

**THE ROLE OF THE CONSTITUTIONS OF A RELIGIOUS INSTITUTE OF DIOCESAN RIGHT
TO DEFINE ITS RELATIONSHIP WITH THE BISHOP: A PARTICULAR REFERENCE TO THE
INSTITUTE OF THE SISTERS OF THE SACRED HEART OF JESUS (NIGERIA)**

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ABSTRACT

The objective of the thesis is to determine that the constitutions of religious institutes have a role in fostering the relationship between bishops and religious institutes. It outlines the historical development of rules and constitutions in orders and religious institutes and posits that the Church continuously underscores the importance of rules and constitutions in these institutions. Furthermore, with Vatican II and the directives of *Ecclesia sanctae*, the Church required institutes to review their constitutions and ensure in the *ius vigens* that these constitutions have the essential elements regarding their patrimony, norms of governance, discipline, incorporation, formation and the proper object of the sacred bonds, as a way for institutes to protect the unique gift of the Spirit expressed in the vocation and identity of each institute. The thesis also sketches the history of the relationship between religious institutes and bishops. It notes that though the Church has several legislation and instructions on this matter including Vatican II, various post-conciliar documents as well as the *ius vigens* of the Church which continue to outline aspects of the relationship, tensions and difficulties persist between the parties. In order to determine the role that the constitutions of religious institutes have in fostering this relationship, the thesis utilizes the constitutions of a non-clerical religious institute of diocesan right to examine how an institute defines aspects of its relationship with diocesan bishops identified in the *ius vigens* of the Church. The thesis observes that though the constitutions respond to majority of the aspects of the relationship, some matters were either lacking or not clearly and inadequately defined. Consequently, in order to enhance the relationship and minimize tensions and difficulties, the thesis underscores the necessity to respond to the inadequacies and *lacunae* in the constitutions as well as a review of some aspects of the relationship defined in the *ius vigens* of the Church. Additionally, the thesis proposes other ways to foster the relationship; these include the adequate formation of members of institutes on the different aspects of the relationship, the education of clerics on the value of consecrated persons in the Church, the need for bishops to be familiar with the constitutions of religious institutes and the need to establish a neutral structure in dioceses or at the Episcopal conferences to collaborate with CICLSAL in resolving cases that bother on this relationship. To sum up, the thesis accentuates the significance of clear and precise universal legislation and the constitutions of religious institutes in bringing about communion between institutes and particular churches.

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ABBREVIATIONS

<i>AA</i>	SECOND VATICAN COUNCIL, decree <i>Apostolicam actuositatem</i>
<i>AAS</i>	<i>Acta Apostolicae Sedis</i>
<i>AG</i>	SECOND VATICAN COUNCIL, decree <i>Ad gentes</i>
art./arts.	Article(s)
<i>AS</i>	CONGREGATION FOR BISHOPS, <i>Directory for the Pastoral Ministry of Bishop (Apostolorum Successores)</i>
c./cc.	Canon(s)
<i>CCC</i>	<i>Catechism of the Catholic Church</i>
<i>CCEO</i>	<i>Codex Canonum Ecclesiarum Orientalium</i>
<i>CCLA</i>	CAPARROS, E. et al. (eds.), <i>Code of Canon Law Annotated</i>
<i>CCLS</i>	Canadian Canon Law Society
<i>CD</i>	SECOND VATICAN COUNCIL, decree <i>Christus Dominus</i>
Chap.	Chapter
<i>CIC</i>	<i>Codex Iuris Canonici, auctoritate Ioannis Pauli PP. II promulgatus</i>
<i>CIC/17</i>	<i>Codex Iuris Canonici, Pii X Pontificis Maximi iussu digestus, Benedicti Papae XV auctoritate promulgatus</i>
<i>CICLSAL</i>	CONGREGATION FOR INSTITUTES OF CONSECRATED LIFE AND SOCIETIES OF APOSTOLIC LIFE
<i>CLD</i>	<i>Canon Law Digest</i>
<i>CLSA</i>	Canon Law Society of America
<i>CLSA Comm1</i>	CORIDEN, J.A., T.J. GREEN and D.E. HEINTSCHEL (eds.), <i>The Code of Canon Law, A Text and Commentary</i>
<i>CLSA Comm2</i>	BEAL, J.P., J.A. CORIDEN and T.J. GREEN (eds.), <i>New Commentary on the Code of Canon Law</i>
<i>CLSAP</i>	<i>Canon Law Society of America Proceedings</i>
<i>CLSGBI</i>	Canon Law Society of Great Britain and Ireland
<i>CLSGBI Comm</i>	SHEEHY, G. et al. (eds.), <i>The Canon Law, Letter & Spirit</i>
Comp.	Compiler
<i>Conditae</i>	LEO XIII, Apostolic Constitution <i>Conditae a Christo</i>

COURTOIS	COURTOIS, G. (ed.), <i>The States of Perfection According to the Teaching of the Church</i> , J.A. O'FLYNN (transl.)
CT	JOHN PAUL II, Apostolic Exhortation on catechesis in our time <i>Catechesi tradendae</i>
DSP	DAUGHTERS OF SAINT PAUL
EE	SCRIS, <i>Essential Elements in the Church's Teaching on Religious Life</i>
EN	PAUL VI, Apostolic Exhortation <i>Evangelii nuntiandi</i>
ES	PAUL VI, Motu proprio <i>Ecclesiae sanctae</i>
ET	PAUL VI, Apostolic Exhortation <i>Evangelica testificatio</i>
<i>Exegetical Comm</i>	MARZOA, A., J. MIRAS, R. RODRÍGUEZ-OCAÑA (eds.) and E. CAPARROS (gen. ed. of English translation), <i>Exegetical Commentary</i>
FLANNERY1	FLANNERY, A. (gen. ed.), <i>Vatican Council II</i> , vol. 1
FLANNERY2	FLANNERY, A. (gen. ed.), <i>Vatican Council II</i> , vol. 2
GE	SECOND VATICAN COUNCIL, declaration on Christian education <i>Gravissimum educationis</i>
HA	PIUS XII, Encyclical Letter <i>Haurietis Aquas</i> ,
<i>Handbook on cc. 573-746</i>	HITE, J.F., S. HOLLAND and D. WARD (eds.), <i>Religious Institutes, Secular Institutes, Societies of Apostolic Life. A Handbook on Canons 573-746</i>
ICEL	INTERNATIONAL COMMISSION ON ENGLISH IN THE LITURGY
<i>Handbook of Canon Law</i>	LANSLOTS, D.I., <i>Handbook of Canon Law for Congregation of Women Under Simple Vows</i>
LG	SECOND VATICAN COUNCIL, dogmatic constitution <i>Lumen gentium</i>
L'OR	<i>L'Osservatore Romano</i>
MANSI <i>Collections</i>	MANSI, J.D. (ed.), <i>Sacrorum Conciliorum Nova et Amplissima Collectio</i>
MR	SCRIS and SCE, <i>normae Mutuae relationes</i>
NA	SECOND VATICAN COUNCIL, declaration <i>Nostra aetate</i>
no./nn.	Number(s)
OPR	SACRED CONGREGATION FOR DIVINE WORSHIP, <i>Rituale Romanum, Ordo professionis religiosae</i> ,
OT	SECOND VATICAN COUNCIL, decree <i>Optatam totius ordinis</i>

PC	SECOND VATICAN COUNCIL, decree <i>Perfectae caritatis</i>
PCPCU	PONTIFICAL COUNCIL FOR THE PROMOTION OF CHRISTIAN UNITY
PME	PIUS XII, Apostolic Constitution <i>Provida Mater Ecclesia</i>
PO	SECOND VATICAN COUNCIL, decree <i>Presbyterorum ordinis</i>
RC	SACRED CONGREGATION FOR RELIGIOUS AND SECULAR INSTITUTES, instruction <i>Renovationis causam</i>
SC	SECOND VATICAN COUNCIL, dogmatic constitution <i>Sacrosanctum concilium</i>
SCCE	SACRED CONGREGATION FOR CATHOLIC EDUCATION
SCSDW	SACRED CONGREGATION FOR THE SACRAMENTS AND DIVINE WORSHIP
SCE	SACRED CONGREGATION FOR BISHOPS
SCR	SACRED CONGREGATION FOR RELIGIOUS
SCRIS	SACRED CONGREGATION FOR RELIGIOUS AND SECULAR INSTITUTES
SRC	SACRED CONGREGATION FOR RITES
SSH	SISTERS OF THE SACRED HEART OF JESUS
<i>s.v.</i>	<i>sub verbo or sub voce</i> [under the word or heading]
SVC	SECOND VATICAN COUNCIL
TANNER1	TANNER, N.P. (ed.), <i>Decrees of the Ecumenical Councils</i> [<i>Nicaea I – Lateran V</i>], vol. 1
TANNER2	TANNER, N.P. (ed.), <i>Decrees of the Ecumenical Councils</i> [<i>Trent – Vatican II</i>], vol. 2
UR	SECOND VATICAN COUNCIL, decree on Ecumenism <i>Unitatis redintegratio</i>
VC	JOHN PAUL II, Post-Synodal Apostolic Exhortation <i>Vita consecrata</i>
vol.	Volume

INTRODUCTION

To be consecrated by the profession of the evangelical counsels of chastity, poverty, and obedience entails an undertaking in virtue of religion for the perfection of charity. By these vows, some individuals or persons among the Christian faithful consecrate themselves to God for His service in the Church and for the salvation of human kind.¹ Consequently, these persons are set aside for the honour and worship of God, and are per se no longer available for acts which are inconsistent with this purpose. This way of life is lived in institutes of consecrated life, in particular, religious institutes. This study focuses on specific aspects of the relationship between diocesan bishops and religious institutes, especially as these are defined in the institutes' constitutions and following the Latin Code's norms on the matter. The inquiry centers on diocesan non-clerical religious institutes and the applicable *CIC* canons. It excludes canons on other religious institutes and societies of apostolic life.

The canonical recognition of a diocesan institute is preceded by a series of stages. Once an association is formed with the intention to become a religious institute, the diocesan bishop is obligated by the norm of canon 574 to interpret and examine the intended or prospective institute according to canonical requirements. If his interpretation is confirmed through the grant of a *nihil obstat* by the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life,² that is, the competent dicastery of the Roman Curia, in accord with canon 579 of the 1983 Code of Canon Law, the diocesan

¹ See *CIC*, cc. 573 and 1191. Some of the basic canons concerning the evangelical counsels and the consecrated life: canons 587 on the proper law of institutes; 602 concerns common life of sharing with other members; 607 the opening canon on religious life; 598-601 on the three vows and their observance, as well as canon 670 on the obligation of the institutes regarding members.

² See JOHN PAUL II, Apostolic Constitution on the Roman Curia *Pastor bonus*, 28 June 1988, arts. 105-111, in *AAS*, 80 (1988), pp. 886-888; English translation *Code of Canon Law: Latin-English Edition, New English Translation*, prepared under the auspices of THE CANON LAW SOCIETY OF AMERICA, Washington, DC, Canon Law Society of America, 1999, p. 718 (= *CIC*). This translation of the 1983 Code of Canon Law will be used in subsequent citations unless otherwise stated.

bishop can then erect the association as a religious institute of diocesan right, which is a public juridical person in the Church.

Canon 113, §2 states: “In the Church, besides physical persons, there are also [juridical] persons, that is, subjects in canon law of obligations and rights which correspond to their nature.” In the canons regarding institutes of consecrated life, canon 607, §2 establishes the following definition: “A religious institute is a society in which members, according to proper law, pronounce public vows, either perpetual or temporary which are to be renewed, however, when the period of time has elapsed, and lead a life of brothers or sisters in common.” Paragraph §3 maintains, “The public witness to be rendered by religious to Christ and the Church entails a separation from the world proper to the character and purpose of each institute.”

Canon 117 states that juridical persons are to have their own statutes which must be sanctioned by the competent authority of the Church. Canon 94 defines statutes as ordinances set up according to the norm of law as aggregates of persons or of things; such statutes define the “purpose, constitution, government, and methods of operation” of the juridical person (§1). Canon 114 says juridical persons are constituted in the Church for works of piety, the apostolate, or charity, whether spiritual or temporal. The approval of juridical persons presupposes that they can exercise some degree of autonomy. Canon 586 acknowledges a just autonomy of life for religious institutes.

The foundational charter of a religious institute is found in its constitutions, which canon 587, §1 insists must contain essential elements regarding the patrimony, governance, discipline, incorporation, formation and the proper object of the sacred bonds is vital to this study. Approval of the constitutions of an institute is part and parcel of the process of erection. The constitutions are the key instrument in addition to universal canonical norms

through which institutes regulate themselves in order to ensure their uniqueness and integrity, as well as conformity with the norms of universal law. The constitutions become the instrument through which the Church regulates the institutes in their uniqueness and the flourishing of the institutes and their mission in the Church. Moreover, in accord with the norm of canon 94, §2 the constitutions of the institutes bind their members. However, they also apply to non-members with respect to certain interactions with the institutes.

Church hierarchy became involved in the issue of the rules and constitutions of religious institutes precisely for the same reason that the constitutions and rules were laid down: that is, to prevent institutes and their members from veering away from their “vocation and identity.” This often happens either consciously or unconsciously in the way of life of the members, as well as in the assumption of new apostolates, in the context of “practical adaptations” to places and times, their current needs, and available resources. At other times, the constitutions may fail to make or make only inadequate provisions for some key aspects of an institute’s life or the lives of the members. Nonetheless, constitutions remain the point of reference in ordering the life and mission of the institutes.

Consequently, the necessity to ensure discipline and prevent abuses in monasteries and religious institutes led to hierarchical concern about the rules and constitutions that govern them. One often finds in the writings of various popes or Church councils an invitation to members of monasteries and other religious institutes either to live in accord with their rules and constitutions, or to return to them for renewal of their lives. The crux of the matter is the necessity of fidelity in observing the rules and constitutions of the institutes to prevent abuses and to protect the identity and mission of each institute. Accordingly, the idea of this study is that the constitutions of such institutes, in addition to protecting their vocations and identities, should clearly define their relationship with diocesan bishops.

The fact that problems arise in the relationship between diocesan bishops and religious institutes is not new in the Church. Indeed, there are a plethora of laws and instructions issued by the Church to provide guidance in this matter. These laws and instructions often defer to the constitutions of religious institutes, as will be seen later in the study. In line with these findings we ask: What is the role of the constitutions of non-clerical religious institutes in defining the various aspects of the relationship between diocesan bishops and such institutes? Where should diocesan bishops and these institutes look to find objective guidance in resolving mutual problems while still preserving the vocations and identities of the institutes? We will employ the constitutions of a specific non-clerical diocesan institute—the Sisters of the Sacred Heart of Jesus—as the main point of reference in our investigation.³ However, the answers to these questions will depend on other matters that this study will address in four chapters.

Chapter One will investigate the concept of such constitutions in order to understand their nature and necessity for religious institutes. It will examine the historical development of constitutions within the life of religious institutes and how they have been instrumental in ordering the internal affairs of such institutes. The chapter presents the Church's understanding and prescriptions regarding the nature and content of the constitutions of religious institutes. It also presents the principles and provides guidelines for composing and making changes to these constitutions, and addresses the different principles that guide the internal autonomy and external relationships, such as the principles of subsidiarity and shared responsibility. This analysis will draw from the decrees and documents of Vatican II, post-conciliar documents, and the legislation that followed the Council, particularly the 1983 Code of Canon Law.

³ While there are a plethora of studies on the matter of the relationship between bishops and religious, none has considered the role that the constitutions of religious institutes can have in fostering this relationship.

Religious institutes and their members do not exist and exercise their mission in a vacuum. They interact with the community of the faithful within a particular church and the hierarchical authority instituted in that particular church. Moreover, certain theological and juridical assumptions exist with respect to the relationship between diocesan bishops and such institutes. The universal Church has a series of rulings in the 1983 Code and various documents about these relationships. In spite of these regulations, conflicts and difficulties arise in matters of these interactions and relationships. This fact raises the question: What is the objective basis for resolving such conflicts in a just and equitable manner?

Chapter Two focuses on the history, magisterial teaching, and canonical legislation on the matter of the relationships between diocesan bishops and religious institutes. It highlights the place of consecrated persons in particular churches, as well as the duties and rights of diocesan bishops, especially regarding diocesan non-clerical institutes. The chapter identifies various aspects of the relationship between diocesan bishops and religious institutes in general and the role of the constitutions in ordering the relationship. On a historical level, this analysis utilizes the pre-1917 and 1917 Code legislation, the teaching of the Second Vatican Council and post-conciliar documents, and the 1983 Code.

Some major works regarding the relationship between bishops and religious institutes employed in the study include: P. MADALAIMUTHU, *Religious in Their Relations with Diocesan Bishop and Diocesan Clergy: With Reference to the Indian Context* (1997); J. DORAN, *Just Autonomy of Religious Institutes and Episcopal Authority from the Second Vatican Council to the Ninth Synod of Bishops on Consecrated life* (1998); A.L. KAITTHARATH, *The Autonomy and Hierarchical Dependence of Religious Institutes According to the Code of Canon Law* (2002) and V. KOLUTHARA, *Rightful Autonomy of Religious Institutes: A Comparative Study Based on the Code of Canons of the Oriental Churches and the Code of Canon Law* (2005).

Chapter Three of our study will present an overview of the constitutions of the Sisters of the Sacred Heart of Jesus, Nigeria. The chapter will include a brief history of the institute, seeking to highlight the understanding given to the directives of the universal Church in light of Vatican II and the 1983 Code regarding the nature and content of the constitutions of religious institutes. The latter part of the chapter will identify the various provisions of the constitutions of this institute on the matter of the relationship between the institute and diocesan bishops in order to examine critically the provisions as complements to the regulations of the Church on the matter of fostering this relationship. The chapter will identify areas of *lacunae* and imprecision in the provisions that could result in conflicts.

Chapter Four will consider some of the ways constitutions of institutes can foster the relationship between diocesan bishops and the institutes. The chapter focuses on the *lacunae* in the provisions of the SSH *Constitutions*. It identifies some aspects of the provisions in the *Constitutions* regarding the bishop–institute relationship which were not adequately specified and which could, as a result, cause conflicts. The chapter then proffers some recommendations for fostering this relationship, as well as an amendment in the provisions of the *Constitutions* on aspects of the relationship which should aid in developing concrete principles to guide the institute in revising them if necessary. Some of these proposals are also suggested for possible revision of the universal legislation on some of these matters.

The examination of constitutions in this study emphasizes the importance of ensuring that religious institutes truly *a priori* carry out the remote preparation that will ensure order both within and outside the institutes. The argument here is that clear definitions in constitutions of the various aspects of the institutes, of their life and mission, and in particular, precise legislation regarding their relationship with diocesan bishops mark one more step toward ensuring a way forward for order and in the relationship.

CHAPTER ONE

THE CONSTITUTIONS OF DIOCESAN NON-CLERICAL RELIGIOUS INSTITUTES

Introduction

The Catholic Church is a communion of Christ's faithful with a mission to evangelize the world in obedience to the command of Christ, the bridegroom of the Church (Mt. 28:19). This mission pertains to all the faithful. It requires the participation of each person "in accord with the condition proper to each."¹ Canon 207 of the 1983 Code of Canon Law defines Christ's faithful as both clerics and the laity. The canon also recognizes the existence of those faithful in the Church who, through the action of the Holy Spirit, are called by God to a life consecrated to God through the profession of the evangelical counsels. These persons live in religious institutes that are approved, along with their constitutions, by the competent ecclesiastical authority (c. 573, §2; cf. *CCEO*, c. 410). In the Latin Code, "religious institutes" refers to a category of consecrated life in the Church.² Moreover, in the Church, Christ's faithful are governed by the Code of Canon Law and other legislation, both universal and particular. The categories of Christ's faithful who assume the consecrated life are governed also by their proper laws. These include the constitutions, which are the central internal laws for each institute's internal life and external relations.

¹ *CIC*, c. 204 "[...] secundum propriam cuiusque condicionem" Cf. c. 7 of the 1990 *Code of Canons of the Eastern Churches: Latin-English Edition, New English Translation*, prepared under the auspices of THE CANON LAW SOCIETY OF AMERICA, Washington, DC, Canon Law Society of America, 2001 (=CCEO).

² In *CIC*, the term "institutes of consecrated life" covers religious institutes which consist of autonomous monasteries, orders and congregations as well as secular institutes (c. 710). The *CCEO* has more forms of consecrated life listed under the title of religious institutes. J. Abbass made a detailed comparison of this in his book. See J. ABBASS, *Two Codes in Comparison*, 2nd ed., Rome, Pontificio Istituto Orientale, 2007, pp. 23-56. See also idem, *The Consecrated life: A Comparative Commentary of the Eastern and Latin Codes*, Ottawa, Saint Paul University, 2008, pp. 4-7 (=ABBASS, *The Consecrated life*). In this study, by "institutes of consecrated life" we refer only to religious institutes; and by "consecrated life" we intend religious life.

This chapter will examine the nature and role of the constitutions in religious institutes, commencing with a brief examination of some key concepts. It will first survey briefly the evolution, nature, and purpose of consecrated life. The purpose of the survey is to establish the foundation for the exposition of the concept and role of these constitutions. The study will examine the history of these constitutions with reference to the 1917 Code,³ Vatican II, and the development of the *CIC* canon 587. Furthermore, given that the approval of religious institutes as public juridical persons, along with their constitutions, allows them to exercise some degree of internal autonomy,⁴ this chapter will briefly examine canon 586 on the just autonomy of these institutes in order to identify the constitutions' role in organizing their internal life and external relations.

1.1 – CONSECRATED LIFE IN THE CHURCH

In Scripture, God initiates consecration by His call while the one called responds. Etymologically, the Latin term *consecrare* means to dedicate, consecrate, or deify. The term is rooted in the word *sacrum*, meaning sacred or holy.⁵ It implies that persons or things are set aside for a specific purpose, including the honour and worship of God. B. Cole and P. Conner note that although the consecrated life is not one of the seven sacraments, “the Latin terms used by Vatican II, *consecrare* and *consecratio*, make it clear that consecration is

³ *Codex Iuris Canonici, Pii X Pontificis Maximi iussu digestus, Benedicti Papae XV auctoritate promulgatus, praefatione fontium annotatione et indice analytico-alphabetico Ab Emō P. Gasparri*, Westminster, MD, The Newman Press, 1963 (=CIC/17).

⁴ In *CIC*, the norms governing juridical persons are articulated in canons 113-123 and canon 634, §1 states the rights of religious institutes as juridical persons: “[...] institutes, provinces, and houses are capable of acquiring, possessing, administering and alienating temporal goods unless this capacity is excluded or restricted in the constitutions.” See *CCEO*, c. 423.

⁵ See *s.v.*, “*consecrare*,” in D.A. KIDD (ed.), *Collins Latin Dictionary and Grammar*, New York, NY, HarperCollins Publishers, 2005, col. 2, p. 47 (=Collins Latin Dictionary).

exclusively an action of God.”⁶ The related human act is the response of the one called. This act, B. Cole and P. Conner add, is depicted by Vatican II as *se devovere*, to devote (LG 42c) and *mancipare*, to deliver up (PC 5a).⁷ In the Church, consecrated life, a theological and canonical reality (PC 5), presupposes a call. The gift of oneself is the response given to that call. Therefore, consecrated life “is a triple gift: a gift of God, a gift of the one consecrating himself, and a gift to the Church and from the Church.”⁸ It is a life that calls for the total gift of self. Speaking of this reality, Cardinal E. Pironio states that

consecrated life is inscribed in the mystery of a covenant of love. It celebrates and shows the covenant of God with His people, of Christ with His Church. The covenant always presupposes a free initiative of God who speaks His Word and commits Himself in His own unshakable faithfulness. On our part, the covenant presupposes a grateful welcoming of the gift of God, a joyful response to His Word and the commitment of our own fidelity.⁹

1.1.1 – The Origin of Consecrated Life

Jesus Christ Himself instituted the consecrated life in its essence by His own way of life and also by His teaching when He recommended the practice of the evangelical counsels.

The *Catechism of the Catholic Church* teaches that

Christ proposes the evangelical counsels, in their great variety, to every disciple. The perfection of charity, to which all the faithful are called, entails for those who freely follow the call to consecrated life the obligation of practicing chastity in celibacy for the sake of the Kingdom, poverty and obedience. It is the profession of these counsels, within a permanent state of life recognized by the Church, that characterises the life consecrated to God. The religious state is thus one way of experiencing a “more intimate” consecration, rooted in Baptism and dedicated totally to

⁶ B. COLE and P. CONNER, *Christian Totality: Theology of the Consecrated Life*, Staten Island, NY, Alba House, 1997, p. 37 (=COLE and CONNER, *Christian Totality*).

⁷ See *ibid*, p. 38.

⁸ DAUGHTERS OF SAINT PAUL (comp.), *Religious Life in the Light of Vatican II*, Boston, MA, St. Paul Editions, 1967, p. 32 (=DSP, *Religious Life*).

⁹ E. PIRONIO, “Some Reflections on Revised Constitutions,” in *Consecrated Life*, 9/1 (1984), p. 4 (=PIRONIO, “Some Reflections”).

God.¹⁰ In the consecrated life, Christ's faithful, moved by the Holy Spirit, propose to follow Christ more nearly, to give themselves to God who is loved above all and, pursuing the perfection of charity in the service of the kingdom, to signify and proclaim in the Church the glory of the world to come.¹¹

The apostles followed both the example and teaching of Jesus when they "left everything and followed him" (Lk. 5:11). This act by the apostles demonstrated that consecrated life as lived and taught by Christ was intended as a stable life style. In fact, since the days of the apostles, persons of both sexes have lived the three evangelical counsels.¹² The practice of this way of life expressed by the early Christians, like Anthony (251-356), began with seclusion in desert areas. It evolved according to the needs of time and place and has gradually progressed into the more contemporary diverse forms depicted in the cenobitical form as expressed in monasteries and institutes of consecrated life.¹³ The evolution of consecrated life had its constraints. Nonetheless, it continued to flourish. As W.A. Hinnibusch noted, from the history of consecrated life one finds that "when the

¹⁰ Cf. *LG*, nn. 42-43, in J. ALBERIGO et al. (eds.), *Conciliorum oecumenicorum decreta*, 3rd ed., Bologna, Istituto per le Scienze Religiose, 1973; English translation *Decrees of the Ecumenical Councils [Nicaea to Vatican II]*, N.P. TANNER (ed.), London, Sheed and Ward and Washington, DC, Georgetown University Press, 1990, vol. 2, pp. 883-885 (=TANNER2). Cf. *PC*, no. 1, in *ibid*, p. 939.

¹¹ *The Catechism of the Catholic Church*, nn. 915-916, Nairobi, Kenya, Paulines Publications Africa, 1995, pp. 244-245 (=CCC). Some sources of Jesus' life and teaching related to consecrated life are: Mt. 8:30, 16:24 and 19:17, 21; Phil. 2:8; John 4:34; 6:38; 8:29; 12:6 and 15:29.

¹² Cf. T. AQUINAS, *Summa theologia*, II, II, q. 184, a. 3 and q. 188, a. 2. The totality, firmness and fidelity to this life style, fits well with Christ's word that: "No one who sets a hand to the plow and looks to what was left behind is fit for the Kingdom of God (Lk. 9:62)."

¹³ For further study of the early evolution of consecrated life, see C.A. BACHOFEN, *A Commentary on the New Code of Canon Law*, 2nd ed., vol. 3, St. Louis, MO, B. Herder Book Co., 1919, pp. 1-39 (=BACHOFEN, *A Commentary*); T. SCHAEFER, *De religiosis: ad normam Codicis iuris canonici*, 4th ed., Typis polyglottis Vaticanis, 1947, nn. 52-69, pp. 19-27 (=SCHAEFER, *De religiosis*); W.A. HINNIBUSCH, "Origin and Development of Religious Orders," in *Review for Religious*, 28 (1969), pp. 910-930 and 29 (1970), pp. 59-78 (=HINNIBUSCH, "Origin and Development"); O. ENGELS, *s.v.*, "Religious Orders," in K. RAHNER (ed.), *Encyclopedia of Theology: A Concise Sacramentum mundi*, London, Burns & Oates, 1975, pp. 1406-1424 (=ENGELS, "Religious Orders") and J.T. NGUYEN, *Totally Consecrated to God and to the Service of His Church: Historico-Theological Aspects*, Doctoral thesis, Rome, Pontificia studiorum Universitas a S. Thoma Aq. in Urbe, 1992.

Christian people faced a crisis, the Holy Spirit raised up charismatic leaders to found new religious institutes.”¹⁴

1.1.2 – The Nature and Purpose of Consecrated Life

The first Code of the Latin Catholic Church, *CIC/17*, articulated in canons 487-682 the norms on consecrated life that had evolved through the centuries.¹⁵ Prior to Vatican II consecrated life was described as a *status perfectionis*. Its literal translation as “state of perfection” led to diverse misinterpretations among which was the presupposition that consecrated persons were already perfect or that consecrated life depicted by the title of “state of perfection” was the sole means of perfection, with the implication that those not in such a life could not attain perfection. A.G. Courtois opined that perhaps it was “better to speak of the juridical or canonical state of striving towards perfection.”¹⁶ He held that “we reconcile ourselves to current usage, while taking the precautions in speech which are necessary in order to avoid regrettable misunderstandings.”¹⁷ However, Vatican II teachings led to a shift in the understanding of life consecrated through the profession of the evangelical counsels from a static *status perfectionis* to one of “an ongoing conversion to Jesus Christ in a Church that ceaselessly reflects on its own mystery in a constantly changing world.”¹⁸

¹⁴ HINNESBUSCH, “Origin and Developments,” p. 76. Cf. L. JARRELL, “The Legal and Historical Context of Religious Life for Women,” in *The Jurist*, 44 (1984), pp. 419-431 (=JARRELL, “The Legal and Historical”).

¹⁵ Pope Pius X initiated this first codification of the law of the universal Church and determined that there should be a section on religious. See PIUS X, Motu proprio *Arduum sane munus*, 19 March 1904, in *Corpus actorum RR. Pontificum: Pii X Maximi acta*, vol. 1, Graz, Akademische Druck-u. Verlagsantalt, 1971, pp. 219-224 (=ASM).

¹⁶ A.G. COURTOIS (ed.), *The States of Perfection According to the Teaching of the Church*, J.A. O’FLYNN (transl.), Dublin, M.H. Gill and Son, 1961, p. xiv (=COURTOIS, *The States of Perfection*). Emphasis in the original.

¹⁷ Ibid.

¹⁸ R.M. McDERMOTT, “Consecrated Life and the *Novus Habitus Mentis*,” in *The Jurist*, 56 (1996), p. 268.

Canon 573 of *CIC*, the *ius vigens* of the Church, echoes some facets of the Church's teaching on consecrated life found in *CIC/17* and Vatican II documents.¹⁹ The canon states:

§1. The life consecrated through the profession of the evangelical counsels is a stable form of living by which the faithful, following Christ more closely under the action of the Holy Spirit, are totally dedicated to God who is loved most of all, so that, having been dedicated by a new and special title to His honor, to the building up of the Church, and to the salvation of the world, they strive for the perfection of charity in the service of the kingdom of God and, having been made an outstanding sign in the Church, foretell the heavenly glory.

§2. The Christian faithful freely assume this form of living in institutes of consecrated life canonically erected by competent authority of the Church. Through vows or other sacred bonds according to the proper laws of the institutes, they profess the evangelical counsels of chastity, poverty, and obedience and, through the charity to which the counsels lead, are joined in a special way to the Church and its mystery.²⁰

This canon, with its theological and juridical elements, presents a broad understanding of institutes of consecrated life: religious institutes properly speaking and secular institutes. In order to accommodate secular institutes, the canon does not mention the public profession of the vows and living of common life. These are noted in canon 607, §2 within the contexts of the vows and way of life of religious.²¹ Canon 573 sets apart this form of life from other forms of “consecration” obtained through baptism or ordination.²² It holds that “some of the faithful deepen their baptismal consecration through a free and total

¹⁹ Cf. *LG*, nn. 43-47; English translation in TANNER2, pp. 884-887; *PC*, no. 1, in *ibid.*, p. 939. Some conciliar and post-conciliar documents also address the notion of consecrated life. Cf. G. ALBERIGO and J.A. KOMONCHAK (eds.), *History of Vatican II: Announcing and Preparing Vatican Council II Towards A New Era in Catholicism*, vol. 4, Maryknoll, NY, Orbis, 1995. JOHN PAUL II, Apostolic Exhortation on the Theology of Religious Consecration in Relation to the Mystery of Redemption *Redemptionis donum*, 25 March 1984, in *AAS*, 76 (1984), pp. 513-546 (=RD); *idem*, Post-Synodal Apostolic Exhortation on the Consecrated Life and Its Mission in the Church and the World *Vita consecrata*, 25 March 1996, in *AAS*, 88 (1996), pp. 377-486 (=VC).

²⁰ *CIC*, c. 573. This canon has as its parallel canon 410 in *CCEO*. Cf. *LG*, nn. 42-45, pp. 883-886; *PC*, nn. 1 and 5, pp. 939-940; *RC*, no. 1, p. 492; *ET*, no. 7, p. 683; *MG*, pp. 567-568 and *AG*, no. 18, p. 1027.

²¹ See E. WILLIAMSON, “Commentary on Institutes of Consecrated Life and Societies of Apostolic Life, cc. 573-746,” in *CLSGBI Comm*, no. 1124, p. 315 (=WILLIAMSON, “Commentary on cc. 573-746”).

²² See T. RINCON-PEREZ, “Commentary on Institutes of Consecrated Life and Societies of Apostolic Life, cc. 573-606,” in *Exegetical Comm*, vol. II/2, p. 1461 (=RINCON-PEREZ, “Commentary on cc. 573-606”).

self-donation to God, who is loved above all through a new special title.”²³ In spite of the evolution and variety of consecrated life through the centuries, its essence still remains essentially *sequela Christi*, witness to the kingdom of God and striving after the perfection of charity for the honor of God, for the building up of the Church, and for the redemption of the world. This description of consecrated life focuses on its witness as well as eschatological value. In addition, through the centuries, those who assumed consecrated life have brought great benefits to the Church and its mission by the holiness of their lives, their good works, and their contribution to the arts and sciences.²⁴

1.1.3 – The Canonical Dimension of Consecrated Life

Vatican II teaches that the Church and its hierarchy are responsible for the prudent regulation of the practice of the counsels for the perfection of charity and for the receipt of the rules set forth by founders of institutes for this way of living (*LG* 45). Canon 573, §1 holds that consecrated life is set forth as “a stable form of living.”²⁵ This means that a person

²³ R.M. McDERMOTT, “Commentary on Institutes of Consecrated Life and Societies of Apostolic Life, cc. 573-616,” in *CLSA Comm2*, p. 843 (=McDERMOTT, “Commentary on cc. 573-616”). Cf. RINCON-PEREZ, “Commentary on cc. 573-606,” p. 1466; WILLIAMSON, “Commentary on cc. 573-746,” no. 1123, p. 315.

²⁴ See T.L. BOUSCAREN and A.C. ELLIS, *Canon Law: A Text and Commentary*, 4th rev. ed., Milwaukee, WI, Bruce Publishing Co., 1963, p. 234 (=BOUSCAREN-ELLIS, *Commentary*). Cf. LEO XIII, Letter to Cardinal Richard on Religious Orders *Au milieu*, 23 December 1900, in *Leonis XIII Pontificis Maximi Acta*, vol. 20, Rome, Ex Typographia Vaticana, 1881-1905, p. 339 (=AU); English translation in COURTOIS, *The States of Perfection*, no. 34, p. 14. See also PIUS XI, *Unigenitus Dei Filius*, 19 March 1924, in *AAS*, 16 (1924), p. 133; English translation in COURTOIS, *The States of Perfection*, no. 130, p. 55; idem, Allocution to the International Congress of Religious *Annus sacer*, 8 December 1950, in *AAS*, 43 (1951), p. 40; English translation in *CLD*, vol. 3, no. 35, p. 130 (=Annus sacer); PAUL VI, Allocution *Magno gaudio*, 23 May 1964, in *AAS*, 56 (1964), p. 567 (=MG); *LG*, no. 44, p. 885. According to E. GAMBARI, “We can, therefore, affirm that religious life was born and developed as part of the history of the Church which is not so much a succession of alternate events but rather a development of the ecclesial life throughout the centuries. It is a life which gains ground, progresses in the knowledge of self, in fidelity to its vocation and in spreading the message received from the Lord throughout the world” (E. GAMBARI, *Religious Life According to Vatican II and the New Code of Canon Law*, Boston, MA, Daughters of Saint Paul, 1986, p. 60 [=GAMBARI, *Religious Life*]).

²⁵ Such stability is compared to that entailed in the married life or the clerical state. See BOUSCAREN-ELLIS, *Commentary*, p. 233. For RINCON-PEREZ, “religious state does not exist uniquely; rather, there exists a *status consecratorum*” (idem, “Commentary on cc. 573-606,” p. 1469).

who assumes this life intends to take on the obligations of consecrated life permanently.²⁶ Canon 573, §2 adds other juridical elements of consecrated life consisting of the evangelical counsels of chastity, poverty, and obedience (cc. 599-602). These are taken on by means of vows or other sacred bonds (oaths, promises) theologically akin to the vows.²⁷ The order in which these are presented follows the pattern of Vatican II documents.²⁸ Their consequence is a particular juridical state among the people of God (cc. 662-672).

Canon 573, §2 mentions that this state of life is assumed at the free discretion of the faithful who feel drawn to it. This element of freedom is crucial in assuming any state of life in the Church, as expressed in *CIC* canon 219 (*CCEO*, c. 22). Moreover, such acts are juridical acts.²⁹ Hence, their validity presupposes that they be free from inflicted force, grave fear, error, or ignorance (*CIC*, cc. 125-126 and 656; *CCEO*, cc. 527, 1°-3°). Anything to the contrary invalidates the act of the individual involved. Therefore, both the decision to assume this way of life and the institute of choice are to be decided freely by the faithful.

²⁶ See WILLIAMSON, "Commentary on cc. 573-746," no. 1123, p. 315.

²⁷ See T. RINCON-PEREZ, "Commentary on cc. 573-606," p. 1461. Recall that all Christ's faithful are encouraged to follow the evangelical counsels. But it becomes peculiar to consecrated persons by the fact that they explicitly assume these counsels by making a public profession of them by vows and binding themselves to live them in a stable manner in community. See L.G. FANFANI and K.D. O'ROURKE, *Canon Law for Religious Women*, Dubuque, IO, The Priory Press, 1961, p. 3 (=FANFANI-O'ROURKE, *Canon Law for Religious Women*). Cf. PIUS XII, Apostolic Constitution *Provida Mater Ecclesia*, 2 February 1947, art. II, in *AAS*, 39 (1947), pp. 120-121, English translation in *CLD*, vol. 3, p. 142 (=PME). Pius XII published other constitutions in recognition of the place and value of consecrated life in the Church, including the call to renewal of cloister. See idem, Apostolic Constitution *Sponsa Christi*, 21 November 1950, in *AAS*, 43 (1951), pp. 5-24.

²⁸ See E. O'HARA, "Norms Common to Institutes of Consecrated Life, cc. 573-606," in *Handbook on cc. 573-746*, p. 32 (=O'HARA, "Norms Common to Institutes"). Cf. *PC*, nn. 12-14, pp. 943-945.

²⁹ Canon 124, §1 states that: "For the validity of a juridic act it is required that the act is placed by a qualified person and includes those things which essentially constitute the act itself as well as the formalities and requirements imposed by law for the validity of the act" (*CIC*; *CCEO*, c. 931). The other general norms governing juridical acts are covered in *CIC*, cc. 125-128; *CCEO*, cc. 932-935. The concept of juridical act is a key element in this entire study. Internally, it affects both the acts of members and of leaders of religious institutes. Externally, it affects the acts of the diocesan bishop and his delegates, and those of the members and leaders of the institutes who interact in the process of carrying out the mission of the institute and that of the Church. For an in-depth study of the notion of juridical acts, see H. PREE, "On Juridic Acts and Liability in Canon Law," in *The Jurist*, 58 (1998), pp. 41-83 and 479-514.

However, his or her acceptance in an institute depends on several requisites. Canon 597 lists some of these requisites for admission to religious institutes, including having the right intention, qualities indicated by universal and proper law, and the absence of impediments (*CCEO*, cc. 448 and 450, 1°). M. Said notes the following regarding the proper law's vital role:

A religious family or any institute of consecrated life with a peculiar nature, charism, inspiration and mission in the Church is an entity which requires norms of government adapted to that nature and peculiar qualities. And these norms could hardly be given by those who did not know the institute intimately or who were not personally familiar with that way of life.³⁰

The *ius proprium* is the basic internal norms that govern religious institutes distinct from statutes of juridical persons required by the Latin canons (587, 94, §1 and 117; *CCEO*, c. 922, §1). It includes the constitutions—the principal code of the institutes,³¹ and other books.³² These have, among others, those roles stated in canons 573 and 607. Canon 573, §2 says that the *ius proprium* determines the means by which members of religious institutes make their profession. Canon 607, §2 prescribes that the *ius proprium* determines the type of public vows and the form of common life. Canon 607, §3 adds that the way of life of the members is to be in accord with the character and aim of their institutes. Here, one sees the need to have a document that can be accessed and which expresses these elements. Furthermore, the consecration through the profession of the three evangelical counsels is to be lived in light of the constitutions of the religious institute in which the profession is made. Accordingly, we need to explore the concept, content, and purpose of the constitutions of

³⁰ See M. SAID, "Particular Law of Institutes in the Renewal of Consecrated Life," in *Review for Religions*, 36 (1977), p. 929 (=SAID, "Particular Law").

³¹ See A. GUTIÉRREZ, "The New Code of Canon Law and Internal Law of Institutes of Consecrated Life," in *Consecrated Life*, 9/1 (1985), p. 82 (=GUTIÉRREZ, "The New Code"). Cf. *Communicationes*, 11 (1979), pp. 53-55.

³² See F.G. MORRISEY, "Introduction," in *Handbook on cc. 573-746*, pp. 17-18 (=MORRISEY, "Introduction").

the institutes in light of *CIC*, and to appraise their role in matters pertaining to the institutes and their charisms.

1.2 – THE DEVELOPMENT OF CONSTITUTIONS OF RELIGIOUS INSTITUTES

The term “constitutions” and its juridical connotation have been in use within and outside ecclesial circles for centuries. The term *constitutio* derives from the verb *constituere*, meaning to organize, determine, or to set down.³³ In Roman law it signified an imperial decree, which was a law issued by the emperor.³⁴ A collection of such decrees in different forms was called *constitutiones*.³⁵ In contemporary usage, constitutions are more precisely defined as written instruments containing “the basic principles and laws of a nation, state, or social group that determine the powers and duties of the government and guarantee certain rights to the people in it.”³⁶ This is a general concept adaptable to any entity, including religious institutes.

1.2.1 – The Origin and Evolution of the Rule of Life—Constitutions for Religious

D.F. O’Connor defines constitutions in respect of religious institutes as

the book outlining and describing the character and identity of the institute in the ordering of the life and activity corresponding to its traditions and charism. It is a code of life in a spiritual and normative sense, so as to inform and characterize the way of life and activity of the institute and its members.... For congregations,

³³ See *s.v.*, “*constituere*,” in *Collins Latin Dictionary*, col. 1, p. 49.

³⁴ GAIUS, I, 5: “*Constitutio principis est quod imperator decreto vel edicto vel epistola constituit.*” C. 4, D. II states: The constitution is what is first established by the decree or proclamation of the ruler or emperor. Translation is mine.

³⁵ Examples of such collections are the Theodosian and Justinian Codes. In Roman law, *constitutiones* included: laws submitted by the senators (*orationes*), laws by the emperor that were of general character (*edicta*), instructions to imperial officials (*mandata*), decisions from legal cases given by the emperor (*decreta*) and the emperor’s replies to questions from petitioners or imperial officials (*rescripta*), see B.A. GARNER, T. JACKSON, and J. NEWMAN (eds.), *Black’s Law Dictionary*, 8th ed., St. Paul, MN, West, Thomas Business, 2004, p. 330.

³⁶ See *s.v.*, “constitution,” in H.B. WOOLF et al. (eds.), *Webster’s New Collegiate Dictionary*, Toronto, Thomas Allen & Sons, G & C Merriam Company, 1975, col. 2, p. 243 (= *Webster’s Dictionary*).

the constitutions function as a *Rule*, similar to the code and norm of life in use among the ancient orders. For those orders already having a Rule, the constitutions determine its application insofar as this is necessary.³⁷

Nonetheless, the practice of alternating the terms “rule” and “constitutions” for the laws approved for religious institutes by legitimate authorities was implicitly restricted to “constitutions.” The use of the term “constitutions” for the basic code of institutes in the 1921 *Normae* confirms this statement.³⁸ It is a more contemporary occurrence.³⁹ The trend began in the 13th century with the advent of congregations of simple vows.⁴⁰ Before that time, consecrated life did not include a common life and therefore did not need an instrument like the constitutions to keep order. Those who assumed the ascetic way of life were inspired by the Gospel, which they used with the life of Anthony as a guide.⁴¹

However, Pachomius (286-346) of Egypt, who at first was an anchorite, became the founder of a family of monks of common life at Tabennisi (ca. 323), a fact for which he is commonly credited.⁴² He composed the first monastic Rule, in which he laid out the distinctive attributes of organization and discipline that today remain aspects of religious

³⁷ D.F. O’CONNOR, “Some Observations on Revised Constitutions,” in *Review for Religious*, 38 (1979), p. 772 (=O’CONNOR, “Some Observations”).

³⁸ See SCR, *Normae*, 6 March 1921, no. 22, in *AAS*, 13 (1921), pp. 317-318.

³⁹ See RINCON-PEREZ, “Commentary on cc. 573-606,” p. 1505.

⁴⁰ See J. SUNDARA, *The Juridical Nature of the Religious Constitutions in the New Law System of the Church*, Doctoral thesis, Rome, Pontificia Università Lateranense, 1991, p. 19.

⁴¹ An example of the rule of life for the anchorites was that of Ailred of Rievaulx (1110-1167) which was substantive in its provisions. The rules with texts often taken directly from the scripture had directives for both external observance and spirituality. See G. SHEPHERD (ed.), *Ancrene Wisse (The Anchoresses’ Guide): Parts Six and Seven*, New York, NY, Manchester University Press, 1973, p. xxxvi. Cf. SAINT AUGUSTINE, *De vita eremitica*, in J.P. MIGNE et al. (eds.), *Patrologiae cursus completus*, Series Latina, vol. 32, cols. 1451-1474, Paris, Garnier/Migne, 1844-1891, 1958-1974. For a list of early rules for recluses, see L. GOUGAUD, *Ermîtes et Reclus: études sur d’anciennes formes de vie religieuse*, Ligugé, Abbaye Saint-Martin, 1928, pp. 62-65.

⁴² See ENGELS, “Religious Orders,” col. 1, p. 1407. Cf. SCHAEFER, *De religiosus*, no. 55, p. 21.

institutes.⁴³ By this initiative, Pachomius remedied a weakness of the eremitical life, which had lacked the opportunity to practice charity. He had many followers who, without taking the vows, observed the three evangelical counsels.⁴⁴ This marked *per se* the origin of a rule for communitarian consecrated life.

Pachomius' ideas were taken up and developed by Basil the Great (330-379), the father of Eastern monasticism.⁴⁵ Basil is thought not to have written any rule. Even so, his talks and replies to questions offered by founders of monasteries about the life and mores of members served as a guide for Benedict and others who wrote rules for their groups.⁴⁶ The way of life and services rendered by Basil's monasteries influenced those of western monasteries and orders of the later middle ages.⁴⁷

While the history of constitutions for religious in the East shows that the rules focused on matters internal to the institutes,⁴⁸ in the West, the Benedictine Rule was rather more elaborate and adaptable. This Rule, written around 535-545, followed the common practice of combining parts of various rules, resulting in the observance of *regulae mixta*.⁴⁹ According to Knowles, it shows the first effort to set out with "lapidary brevity" the outline

⁴³ See D. KNOWLES, *From Pachomius to Ignatius: A Study in Constitutional History of Religious Orders*, Oxford, Clarendon Press, 1964, p. 3 (=KNOWLES, *From Pachomius to Ignatius*).

⁴⁴ See HINNESBUSCH, "Origin and Development," p. 917. See also ENGELS, "Religious Orders," col. 2, p. 1407. The practice required common organization, government and rules to guide all.

⁴⁵ See KNOWLES, *From Pachomius to Ignatius*, p. 4. See also ENGELS, "Religious Orders," col. 2, p. 1407.

⁴⁶ See KNOWLES, *From Pachomius to Ignatius*, p. 4. See also HINNESBUSCH, "Origin and Development," p. 917.

⁴⁷ See KNOWLES, *From Pachomius to Ignatius*, p. 4. St. Basil's monasteries were known for the charity they offered. These were often expressed in services in the form of orphanages, hospitals, hospices, including workhouses and farms. See *ibid.* For further studies on St. Basil, see W.R. LOWTHER CLARKE, *St. Basil the Great*, Cambridge, London, 1913.

⁴⁸ For example, in Theodore of Studios rule (ca. 9), based on Basil's principles, the focus was "to safeguard the intrinsic values of the coenobitical life." ENGELS, "Religious Orders," col. 2, p. 1407.

⁴⁹ See KNOWLES, *From Pachomius to Ignatius*, p. 6. See also ENGELS, "Religious Orders," col. 2, p. 1408.

of domestic government with which the monasteries were governed. He wrote:

The key points of the Rule were: the monarchical abbot, elected for life by his monks, and himself, appointing his officials;⁵⁰ the general gathering of all the brethren to council on all matters of grave common interest, and the smaller council of seniors to advise the abbot on matters of lesser importance;⁵¹ and the vow of stability binding the monk to life-long residence in the monastery of profession.⁵² The Rule thus deals with a single self-contained, self-supporting, and self-sufficient family. There is no suggestion of any supervision by an authority, save that of the bishop in the case of a notoriously culpable abbot,⁵³ no hint of any association for discipline or legislation, no instructions even to govern the making of new foundations, though St. Benedict made at least one, at Terracina.⁵⁴

This passage summarizing the *Rule of St. Benedict* gives some idea of the core of the Rule: the structure and regulation of the manner of life. While there is some doubt that St. Benedict was the actual author of the text of the *Rule* attributed to him, the use of the rule by monasteries and later generations and forms of consecrated life did not diminish.⁵⁵ These enactments of the Rule became part of the sources of canon law for religious institutes,⁵⁶ which, in response to varying needs of time, place, and circumstance, grew alongside the Church and at the service of God and the Church.

⁵⁰ See *Benedicti Regula* in R. HANSLIK (recensuit), *Corpus Scriptorum Ecclesiasticorum Latinorum*, vol. 75, chap. 64, nn. 1-3, Vienna, Hoelder-Pichler-Tempsky, 1960, pp. 148-149 (=HANSLIK, *Benedicti Regula*). Cf. chaps. 21, no. 3, p. 76; 65, no. 11, p. 154 and 69, no. 3, p. 161.

⁵¹ See HANSLIK, *Benedicti Regula*, chap. 3, pp. 27-29.

⁵² See *ibid*, chap. 58, no. 15, p. 135, chap. 4, no. 78, p. 35.

⁵³ See *ibid*, chap. 64, no. 4, p. 149. Cf. chap. 62, no. 9, p. 145.

⁵⁴ KNOWLES, *From Pachomius to Ignatius*, p. 6.

⁵⁵ The veracity of this element is supported and can be detected in the next major stage in the growth of the rule or constitutions of the new forms of religious institutes like the Augustinians, the Mendicants, Franciscans and Dominicans who used the *Rule of St. Benedict* as a guide in formulating their own rules and which are enduring, as is the Ignatian rule. An example of such adaptation is making profession binding to a monastery of profession akin to making vows according to the constitutions of a religious institute and being incorporated into it. See *ibid*. See also ENGELS, "Religious Orders," col. 1, p. 1409. HINNESBUSCH, "Origin and Development," p. 922.

⁵⁶ See KNOWLES, *From Pachomius to Ignatius*, p. 6.

1.2.2 – Ecclesial Recognition of Constitutions of Religious Institutes: Pre-Vatican II

The need to have some rules to order consecrated life in its various forms and the daily lives of the individuals, as well as to determine their interaction with the Church and its authority has existed since this type of life began. This is logical, particularly as the Church, recognizing the action of the Holy Spirit in the response of these individuals to their calling, claimed consecrated life as the gift of the Holy Spirit to the Church. The Church assumes responsibility to see to it that this form of life is protected, fostered, and encouraged. It has from the start sought to regulate lapses and abuses in these institutes through the decrees or canonical prescripts of various councils calling for renewal and reform. Hence, Lateran Council IV (1215), in its constitution 13, which forbade the creation of new rules, played a role in the growth of constitutions of religious institutes. The Council stated:

Lest too great a variety of religious orders leads to grave confusion in God's church, we strictly forbid anyone henceforth to found a new religious order. Whoever wants to become a religious should enter one of the already approved orders. Likewise, whoever wishes to found a new religious house should take the rule and institutes from already approved religious orders....⁵⁷

The Council of Lyons II (1274) affirmed the ban of Lateran IV.⁵⁸ It gave directives on the authority to dispose of the goods of orders—especially of any new foundation—whose nature did not allow it to carry out such disposition.⁵⁹ O. Engels explains that this prescription was not to hinder the growth of consecrated life, but to ensure that the various forms of its expressions fit into customary and manageable outlines.⁶⁰ This marked a stage in

⁵⁷ LATERAN COUNCIL IV, Constitution 13 “De novis religionibus prohibitis,” in TANNER1, p. 242.

⁵⁸ COUNCIL OF LYONS II, Session VI, Constitution 23 “De religiosis domibus, ut episcopo sint subiectae,” in TANNER1, p. 326 states: “A general council by a considered prohibition averted the excessive diversity of religious orders, lest it might lead to confusion.... We therefore renew the constitution, and severely prohibit that anyone found henceforth a new order or form of religious life, or assume its habit....”

⁵⁹ See *ibid*, pp. 326-327.

⁶⁰ See ENGELS, “Religious Orders,” col. 1, p. 1414.

the history of constitutions in religious institutes. The new forms of consecrated life developed their rules based on older rules, like the *Rule of St. Benedict*, in compliance with conciliar decrees and papal directives. Therefore, the rules or constitutions seem to have influenced each other, especially those of the Franciscans⁶¹ and Dominicans.⁶² Similarly, the Augustinians⁶³ and Carmelite Hermits⁶⁴ shaped their rules on the Dominican constitutions following these directives. Ignatius, the founder of the Jesuits, did not adopt a rule like other orders for his society. Rather, he provided them with constitutions made up of the *Examen generale* and ten parts. These were approved in 1558.⁶⁵

The Council of Trent in several canons asked that monks or religious should adhere to the norms of their rule of life or the constitutions.⁶⁶ It did not specify any details regulating the rules or constitutions of orders. The next major legislation regarding religious

⁶¹ Innocent III first gave oral approval to the seeds of what developed into the Rule in 1210. See ENGELS, "Religious Orders," col. 2, p. 1414. The actual Rule approved by the pope in 1223 received different interpretation by the friars. It led to friction in the order which Bonaventure tried to resolve. He organized the order and drafted its first constitutions in 1261. See HINNESBUSCH, "Origin and Development," p. 64.

⁶² Chapter of Pentecost adopts the Augustinian Rule in 1216 following the promptings of the Curia. See ENGELS, "Religious Orders," col. 1, p. 1415. Their constitutions took from the religious observances of the Prémontré and retained their opening statement: "[S]ince the rule commands us under precept to have one heart and mind in the Lord, it is fitting that we who live under the same rule [...] should want to be found uniform in the observances of our canonical order" (HINNESBUSCH, "Origin and Development," p. 65). Other notable aspects of the constitutions which form their second part included statements about the order's mission, way of life, governmental structure and dispensing power allowed to the superiors. See *ibid.*, p. 66.

⁶³ This Rule was later given to some group of hermits after their unification in Tuscany (1243-44) by Cardinal Richard Annibaldi at the instance of Innocent IV. See ENGELS, "Religious Orders," col. 2, p. 1415. In spite of the adaptation, the Augustinian Rule shows that its inspiration is based on the primitive community at Jerusalem as can be deduced from its opening paragraph: "The first purpose for which you have been brought together is that you dwell in unity in the house and that you have but one soul and heart in God. And call not anything your own, but let all things be common [...] for thus you read in the Acts of the Apostles" (HINNESBUSCH, "Origin and Development," p. 59).

⁶⁴ The Carmelites received a Rule (1207-1210) from the Patriarch of Jerusalem, but in 1247 at the Council of Lyons, Innocent IV confirmed their Rule after asking them to relinquish their solely eremitical organization and take on pastoral work. See ENGELS, "Religious Orders," col. 2, pp. 1414-1415.

⁶⁵ See *ibid.*, col. 1, p. 1421. See also *Monumenta historica Societatis Jesu*, vol. 65: *Monumenta Ignatia*, series 3, *S. Ignati de Loyola Constitutiones Societatis Jesu* III, Rome, 1938.

⁶⁶ See COUNCIL OF TRENT, Session XXV, "Decretum de regularibus et monialibus," chap. 1, 3-4 December 1563, in TANNER2, p. 776. The Council's directive highlights the role of the rules and constitutions as sources for renewal and return to the original principles guiding these institutes and their mission.

institutes was *Conditae a Christo*⁶⁷ by Leo XIII, who recognized congregations of simple vows and the relationship of diocesan bishops to religious institutes of diocesan right. It dealt with various matters affecting these institutes. The *CIC/17* norms on consecrated life were shaped by conciliar and papal decrees and focused on reforming existing constitutions (c. 489).⁶⁸ Several *CIC/17* canons refer to matters to be incorporated in these constitutions. The *Normae*, which followed, treated the nature of the constitutions of religious institutes.⁶⁹

Church history has shown that consecrated persons were required to live according to their rules or constitutions. However, what precisely is the contemporary thinking on these constitutions? The main distinction between the early rules, chiefly the *Rule of St. Benedict*, and the constitutions of religious institutes is that, unlike the constitutions, the rules allowed for flexibility and did not intend uniformity. Those who observed them did not feel any obligation to keep all their prescriptions. Yet, by their nature, the precepts of constitutions were binding and presumed uniformity and compliance by all members.⁷⁰ Furthermore, approval was a key factor. The value of having a system or an external authority to uphold standards cannot be over-emphasized. History has taught that the absence of such authority could have negative effects on a system. Knowles explained this:

First, the Rule of St. Benedict had become submerged under customs, some of which were legitimate interpretations while

⁶⁷ LEO XIII, Apostolic Constitution *Conditae a Christo* (= *Conditae*), 8 December 1900, in *ASS*, 33 (1900-1901), pp. 341-347; English translation in D.I. LANSLOTS, *Handbook of Canon Law for Congregation of Women Under Simple Vows*, 9th rev. and enl. ed., New York, F. Pustet Co., Inc., Publishers, 1920, Appendix A, pp. 246-256 (=LANSLOTS, *Handbook of Canon Law*).

⁶⁸ “The rules and particular constitutions of individual religious organizations which are not contrary to the Canons of the Code remain in force. Those rules and constitutions which are opposed to the Canons of the Code are hereby abolished” (*CIC/17*, c. 489; English translation in S. WOYWOD, *A Practical Commentary on the Code of Canon Law*, rev. and enl. ed., in one volume, C. SMITH (ed.), New York, NY, J.F. Wagner, Inc., 1957, no. 366, p. 208 (=WOYWOD, *A Practical Commentary*)).

⁶⁹ See SCR, *Normae secundum quas Sacra Congregatio de Religiosis in novis religiosis Congregationibus approbandis procedere solet*, 6 March 1921, nn. 22-25, in *AAS*, 13 (1921), pp. 317-318 (=SCR, *Normae*).

⁷⁰ See HINNESBUSCH, “Origin and Development,” p. 922.

others were easy-going modifications, forming a jungle from which neither the individual monk nor the abbot of goodwill could escape. Secondly, there was a complete absence of any machinery or external authority to maintain or re-create a standard of observance. Hence any reform was personal and transient in its effects.⁷¹

1.2.3 – A Renewed Appreciation of Constitutions in Light of Vatican II

There have been various approaches to the rules of religious institutes since they were first introduced into the organization of institutes. Initially, these rules were theologically inclined. Later, in the years preceding Vatican II, they became juridical in tone, partly because, after the promulgation of *CIC/17*, religious institutes were asked to revise and adapt their constitutions in accord with the code. In addition, this directive asked that the corrected texts be forwarded for approval to the Sacred Congregation for Religious.⁷² However, due to delays in carrying out this mandate, SCR set forth some norms to hasten the mandated revision.⁷³ Institutes were required to insert missing items and utilize the same words as those in the canons whenever possible. The directives created such similarity and uniformity in the constitutions of institutes that it was often difficult to identify their distinctiveness.⁷⁴ However, with the influence of Vatican II, the codes of religious institutes achieved a greater balance between their theological and juridical elements, especially regarding the nature of the contents of the constitutions. This is illustrated by a brief survey

⁷¹ KNOWLES, *From Pachomius to Ignatius*, p. 22.

⁷² See SCR, Decree, 26 June 1918, in *AAS*, 10 (1918), p. 290; English translation in *CLD*, vol. 1, pp. 270-271.

⁷³ See SCR, Declaration Regarding Submission of Constitutions for Revision, 26 October 1921, in *AAS*, 13 (1921), pp. 538-539; English translation in *CLD*, vol. 1, pp. 271-272.

⁷⁴ See M.B. PENNINGTON, "The Evolution of Monastic Law," in *Studia canonica*, 14 (1980), pp. 349-362. D.I. Lanslots explains that: "The Sacred Congregation has no intention of imposing absolute uniformity on all new congregations, as this would destroy their varied usefulness. But religious life is substantially the same for all, and therefore the various constitutions will practically resemble each other, and be what the 'Normae' prescribe. The difference will chiefly consist in what regards the special work of each Congregation; and about these the 'Normae' are restricted to a few general rules" (LANSLOTS, *Handbook of Canon Law*, p. 6).

of pertinent conciliar and post-conciliar documents and their impacts, as well as the principles for renewal in religious institutes and in their bodies of proper law.

1.2.3.1 – Vatican II Documents on the Constitutions of Religious Institutes

The outcome of the work of Vatican II (1962-1965) on account of which the revision of *CIC/17* had been postponed, became the foundation and point of departure for the revised laws of the Church. Given the nature of the constitutions of religious institutes at the time, the Church directed that institutes proceed to revise their constitutions even before the universal law was ready.⁷⁵ This revision, which required a renewal of spirit, was to enable the institutes to put aside what was out of date with the times and, even more importantly, to have the constitutions embrace and reflect both the teaching and the spirit of the Council. By these directives, the Council made clear that the constitutions of institutes were no longer to be just sets of rules handed down from the founders to the members. Rather, they were to be based on rules handed down from the founders and enriched by the lived experiences of the members.

Among the various documents of Vatican II that had an impact on religious institutes and their *ius proprium*, precedence is given to *Lumen gentium* and *Perfectae caritatis*. This further portrays the place of consecrated life in the Church, especially because of the entire “Constitution on the Church,” which locates the institutes within the Church and holds that they share in all concerns of the Church—hence these concerns have to be reflected in the institutes’ *ius proprium*.⁷⁶ In this regard, *Unitatis redintegratio* and *Dignitatis*

⁷⁵ See S.L. HOLLAND, “Commentary on Institutes of Consecrated Life and Societies of Apostolic Life, cc. 573-606,” in *CLSA Comm1*, footnote 31, p. 459 (=HOLLAND, “Commentary on cc. 573-606”).

⁷⁶ E. GAMBARI, *Rinnovamento nella vita religiosa, principi generali, costituzioni, formazione*, 3rd ed., Milano, Editrice Ancora, 1967; English translation in *Renewal in Religious Life: General Principles, Constitutions, Formation*, THE DAUGHTERS OF ST. PAUL (transl.), Boston, MA, St. Paul Editions, 1967, p. 216 (=GAMBARI, *Rinnovamento*). Gambari explains, “It is especially through their own codes and norms that religious should profit from the conciliar patrimony [...] to accomplish this it is necessary to incorporate the conciliar spirit,

humanae are Vatican II texts which, respectively, concern the Church's external relations also in religious matters and the worth of the human person.⁷⁷ Both documents are worth considering in an institute's constitutions regarding an institute's duties in areas such as fostering ecumenism in an institute's schools, or promoting human dignity in an institute's health facilities.

Texts dealing with the relationship between the institutes and the local church—or the support that should exist among them mostly in areas of the apostolate, temporal goods, and care of souls—include *Christus Dominus*, *Optatam totius*, and *Presbyterorum ordinis*.⁷⁸ In fact, the Council in *Christus Dominus* holds that institutes are to consider adapting their constitutions where necessary to supply for pastoral work in a particular church. However, they are to be always mindful of their character as well as the principles of the decree. The constitutions may also address other related issues to ensure consistency, preservation of harmony, discipline in the particular churches, and the final good of the Church (*CD* 35, §1).

Optatam totius is relevant to institutes in the formulation of the principles on initial and ongoing formation, mainly in training and areas of studies (*OT* 4-22). *Presbyterorum ordinis* can guide the institutes as they lay down rules for their life and apostolate in the constitutions, since priests and consecrated persons share more directly in the ministry and the Eucharistic sacrifice on a daily basis (*PO* 4-6 and 9). The constitutions can echo other

doctrine and norms into the constitutions and supplementary codes; first, therefore, the codes will be renewed and adapted, and then they will become sources and means of renewal The light and strength of the grace of the Council should permeate, vivify and in a sense infuse dynamism into the constitutions. As a 'new Pentecost,' the Council should permeate the codes of religious and renew in them the charism of their founders" (ibid., p. 215). Cf. *LG*, no. 44, p. 885.

⁷⁷ Cf. SVC, Decree on Ecumenism *Unitatis redintegratio*, 21 November 1964, in *AAS*, 57 (1965), pp. 90-107; idem, Declaration on Religious Freedom *Dignitatis humanae*, 7 December 1965, in *AAS*, 58 (1966), pp. 929-941.

⁷⁸ Cf. SVC, Decree on the Pastoral Office of Bishops *Christus Dominus*, 28 October 1965, in *AAS*, 58 (1966), pp. 673-701. Idem, Decree on the Training of Priests *Optatam totius*, 28 October 1965, in *AAS*, 58 (1966), pp. 713-727. Idem, Decree on the Ministry and Priestly Life *Presbyterorum ordinis*, 7 December 1965, in *AAS*, 58 (1966), pp. 991-1024.

Vatican II texts in accord with the institutes' charism and aim. They take on the role of helping to promote conciliar teaching, through the institutes' contact with the larger community of Christ's faithful and the people to whom they minister.

1.2.3.2 – Post-Conciliar Documents on the Constitutions of Religious Institutes

Ecclesiae sanctae, the document containing norms for the application of some of the conciliar documents, has a direct impact on the constitutions of religious institutes (ES 22-40).⁷⁹ *Ecclesiae sanctae II* contains both the procedure and some norms meant to apply *Perfectae caritatis*.⁸⁰ The document is a major source for our study of post-conciliar statements regarding the constitutions. Paul VI states what should be the nature and content of the constitutions or *typica* of institutes (ES II 12-14). In *Ecclesiae sanctae II* (no. 12) he states:

The general laws of every institute (constitutions, *typica*, rules or whatever other name is given to these) must, generally speaking, contain the following elements:

a) the evangelical and theological principles concerning religious life and its incorporation in the Church, and an apt and accurate formulation in which “the spirit and aims of the founder should be clearly recognized and faithfully preserved, as indeed should each institute’s sound traditions, for all of these constitute the patrimony of an institute” (*Perfectae caritatis*, no. 2b).

b) the juridical norms necessary to define the character, aims and means employed by the institute. Such rules must not be multiplied unduly, but should always be clearly formulated.⁸¹

Ecclesiae sanctae II (no. 13) calls for a careful harmonization of the spiritual and juridical elements of the principal code of institutes to ensure that the code will have a concrete base and that it be permeated by an authentic spirit and active law. Article 14

⁷⁹ PAUL VI, Motu proprio on the Implementation of the Decrees *Christus Dominus*, *Presbyterorum Ordinis* and *Perfectae caritatis Ecclesiae sanctae*, 6 August 1966, in *AAS*, 58 (1966), pp. 757-775; English translation in FLANNERY1, pp. 591-610. Part I commonly referred to as *Ecclesiae sanctae*, focuses on the documents dealing with the structure of particular churches.

⁸⁰ PAUL VI, Motu proprio Norms for Implementation of the Decree on the Up-to-Date Renewal of Religious Life *Ecclesiae sanctae II*, 6 August 1966, in *AAS*, 58 (1966), pp. 775-782; English translation in FLANNERY1, pp. 624-633.

⁸¹ *ES II*, no. 12; English translation in FLANNERY1, p. 626.

establishes that obsolete items are to be omitted from each institute's basic code. It adds that norms that are subject to changes be placed in other books of the *ius proprium* of the institutes. Therefore, constitutions are to state the principles relating to matters addressed in them. They express the Church's understanding of each institute, the mission each carries out in the name of the Church, and each institute's particular response to the Gospel.⁸²

1.2.3.3 – Principles and Guidelines for Renewal

Vatican II states in *Perfectae caritatis* (no. 2), "The sensitive renewal of religious life involves: the constant return to the sources of Christian life in general, and the original genius of religious foundations in particular; together with the modifications of such foundations to accommodate new circumstances."⁸³ This renewal was to be under the power of the Holy Spirit and the guidance of the Church in accord with the principles outlined by the Council.⁸⁴ Logically, the principles of renewal might also serve as sources of renewal.⁸⁵

The first principle of Vatican II regarding renewal of consecrated life holds that all institutes must take the following of Christ as depicted in the Gospel, as their supreme rule (*PC* 2a). The principle is both a directive and a prescript. The second principle of the Council recognizes the benefits of the diverse forms of religious institutes and directs that the institutes accept and retain both the spirit and aims of their founders (*PC* 2b). Principle three calls for and stresses ways and areas that institutes can share in the life of the Church (*PC* 2c), suggesting that constitutions will best bring together these elements for each institute. The fourth principle refers to the conditions that allow for effectiveness of ministry

⁸² See D.F. O'CONNOR, "Developing Constitutions and Directories," in *Review for Religious*, 37 (1978), p. 756 (=O'CONNOR, "Developing Constitutions").

⁸³ *PC*, no. 2, p. 940.

⁸⁴ Cf. SCRIS, International Union of Superioresses General: Purpose and Religious Renewal, 12 March 1967, in *CLD*, vol. 6, p. 465 (=SCRIS, "Religious Renewal").

⁸⁵ See GAMBARI, *Rinnovamento*, p. 55.

(PC 2d). Principle five insists on the necessity for a spiritual renewal in the life of members of institutes, holding that such renewal should have a prime place in institutes (PC 2e).⁸⁶

Ecclesiae sanctae II (no. 15) states that the norms and spirit required for renewal and adaptation are found both in *Perfectae caritatis* and in chapters five and six of *Lumen gentium*. *Ecclesiae sanctae II* (nn. 16-19) spells out the criteria for renewal and adaptation. Institutes are to ensure that their members engage in study and meditation on the Gospel and the Holy Scripture, share in the mystery and life of the Church, and reflect on the theological, historical, and canonical tenets relating to consecrated life. Furthermore, they are to seek for true reception of their initial spirits so that they keep them faithfully even while adapting them and removing alien and obsolete elements from their lives (*ES II* 16). Article 17 states that obsolete elements in consecrated life do not concern the nature and purpose of the institutes nor do they have value for this way of life. However, all are to be mindful of the witness expected of the consecrated life. Article 18 encourages the need for participatory structures and the use of the principle of subsidiarity in the mode of government. Article 19 reminds all that the task of renewal is always in progress and needs to be fostered.

Following the principles for renewal in religious institutes, the Council turned to the way of life, the organization, and the codes that order the life of the institutes in *Perfectae caritatis*. It directed that institutes were to appraise carefully their constitutions and other books for the purpose of remaining up-to-date in accord with conciliar decrees (PC 3). Such updating is obligatory and not optional; thus, these books must be assessed by each institute.

⁸⁶ For Cardinal H. Antoniutti: "The renewal of an institute does not consist in condescending to the spirit of the age but in inserting into the current of one's own activity whatever one meets that is good in the progress of the actual world; it is therefore necessary to be aware of its particular conditions in order better to insert one's own apostolic activity. Indeed, there is no question of sacrificing religious life to the society of the day, but of adapting it ever better by means of the Church in its own adaptation to human vicissitude, because religious life needs the Church which has recognized it, thus ensuring its expansion" (SCRIS, "Religious Renewal," p. 463).

1.2.3.4 – Instruments of Renewal for the Constitutions

Paul VI attributes the task of renewal and adaptation to the institutes, who are then to achieve this through their general chapters or, in the Eastern rite, through *synaxes* (*ES II* 1). This task requires the cooperation of all in the institutes (*PC* 4). Paul VI further holds that a similar cooperation of all is required for the renewal of their lives, the spirit with which the chapters are carried out, and the observance of the laws and norms from the chapters (*ES II* 2). Nonetheless, the competent authorities, especially general chapters, have the duty to legislate and set forth norms for suitable renewal and experimentation. Any approval required by law must be sought from the competent ecclesiastical authority (*PC* 4). However, the quality of the laws or norms they propose is vital. In proposing laws or binding norms, L. Örsy holds that the “lawmakers”—in this case, the general chapter delegates—must “be satisfied that the value [the law] intends to serve is certainly established.”⁸⁷ Besides, *Perfectae caritatis* (no. 4) and canon 631 name other roles for the general chapter, including protection of the spiritual patrimony of the institutes; fostering of suitable renewal in light of the patrimony; election of the supreme moderator; and treatment of affairs of greater import.

Ecclesiae sanctae II (no. 7) authorized the supreme moderators and their councils to draft and modify the constitutions during the time between the end of a special general chapter and the start of an ordinary chapter. They were also empowered by SCRIS⁸⁸ to issue norms regarding matters required for the institutes, and those they judged were necessary to balance their institutes’ proper law, through a collegial process with all present. However, these norms were to be ratified at the meeting of the general chapter according to law.

⁸⁷ L.M. ÖRSY, “The Meaning of *Novus Habitus Mentis*,” in *The Jurist*, 48 (1988), p. 440.

⁸⁸ See SCRIS, Decree Empowering Supreme Moderators to Align Particular Law vis-à-vis the New Code, 2 February 1984, in *AAS*, 76 (1984), pp. 498-499; English translation in *CLD*, vol. 11, pp. 84-85 (=SCRIS, “Particular Laws à-vis the New Code”).

1.2.3.5 – Experimentation of Renewal vis-à-vis the Constitutions

Paul VI in *Ecclesiae sanctae II* (no. 3) directed that special general chapters be carried out to effect the prescribed renewal and adaptation. Where necessary, the outcomes of such chapters were to be tested in order to ascertain their practicality and usefulness prior to being submitted for approval by CICLSAL. This testing was to end with the next ordinary chapter, with a possible extension to the subsequent chapter (*ES II* 6). Paul VI extended this faculty to general councils for the interval between the chapters (*ES II* 7). At the end of this period, the constitutions were to be evaluated, mainly with regard to those matters that were altered, in order to ensure that they were in accord with the nature, purpose, and character of the institutes.⁸⁹ Although these principles in *Ecclesiae sanctae II* (nn. 6-7) were intended for the renewal of constitutions or *typica* carried out by the special general chapter after Vatican II, they could, with the proper approvals, be applied to constitutions when the need arises. Constitutions should reflect a certain novelty, as long as the guidelines and principles were observed.

1.3 – CONSTITUTIONS OF RELIGIOUS INSTITUTES IN LIGHT OF THE 1983 CODE

Most of the constitutions currently in force in religious institutes were greatly influenced by Vatican II and the principles for the revision of Latin Church law. However, as the contributions of Vatican II were examined in previous paragraphs, this section focuses on the principles for the revision of *CIC/17*, examining the development of the specific canon that articulates what is to be contained in an institute's constitutions.

⁸⁹ It is hoped that the evaluation of the work of the chapters on the constitutions could be seen in the light of what Cardinal Pironio says regarding renewed constitutions, that they reflect: "Dynamic fidelity to the charism and spirit of the founder; a view of faith in the new situation in the Church and the world; a capacity to help the ongoing inner transformation in the spirit. This last seems to me to be particularly important. It is not that the text alone, of itself, can bring about conversion. Conversion is the work of God. But the evangelical simplicity and strength of the text should be a clear and constant invitation to a profound transformation in Christ" (PIRONIO, "Some Reflections," p. 4).

1.3.1 – The Fundamental Principles for the Revision of the Law on Religious

When the code commission for the revision of *CIC/17* was constituted, it was given the ten directive principles previously approved by the Synod of Bishops in 1967 to guide its task.⁹⁰ However, the *coetus* for religious law at its third session of the meeting, on 22-26 January 1968, formulated four additional principles in order to ensure that the task before it was orderly and the debates less abstract.⁹¹

The first principle directed that in their formulation, juridical norms should foster vocation, aid the work of grace, and guard from harm those who assume the consecrated life. Principle two stated that norms concerning discipline should focus on the need to foster the knowledge and maintain the spirit of the founder, promote fidelity to the spiritual legacy and constitutions of each institute. Principle three held that the norms must retain the constitutive elements of the consecrated life, and allow room for flexibility and adaptation to diverse conditions and exigencies of the Church and the institutes. The fourth principle stipulated that the norms should ensure a greater representation and input of the members with regard to the life and government of their institutes and the choice of superiors.⁹²

While all the principles set out for the revision of *CIC/17* have an effect on the issues treated in the constitutions, this study focuses on only two of these principles, that is, the fifth principle of the ten general principles, that is, the principle of subsidiarity, and the fourth principle from the *coetus de religiosis*, on the matters of the internal life and discipline of institutes and their members.

⁹⁰ PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECOGNOSCENDO, *Schema canonum de institutis vitae consecratae per professionem consiliorum evangelicorum*, Vatican City, Typis polyglottis Vaticanis, 1977, p. xiii (=PCCICR). Cf. *Communicationes*, 1 (1969), pp. 77-85.

⁹¹ See *Communicationes*, 1 (1969), p. 80. See also *Communicationes*, 18 (1986), pp. 171-209.

⁹² See PCCICR, pp. xiii-xv. See also *Communicationes*, 1 (1969), pp. 77-100.

1.3.1.1 – The Principle of Subsidiarity in the Revision of the Law on Religious

The principle of subsidiarity was first used in Church documents in relation to the “rights of citizens as against undue interference by the state in the economic field.”⁹³ Pius XI asserted that it is unjust for authorities to grant to a group of subjects what those individuals can do on their own. Furthermore, while it is not right for higher authorities to take on what lower authorities can do, it is nonetheless, their duty to assist lower authorities or individuals when required without absorbing them.⁹⁴ The origin of the Church’s use of this principle and its theological basis came with the new understanding of the Church.⁹⁵ Paul VI⁹⁶ and John Paul II⁹⁷ encouraged it and noted its necessity and place in the Church.

The use of the principle of subsidiarity with regard to the law on religious can be traced to Vatican II.⁹⁸ The Council first applied the principle by deferring some norms to the competent authority (cf. *PC* 1). This authority, as seen in the law on religious, also applied the principle by giving general outlines in the universal code and deferring the details to the *ius proprium* of the institutes, predominantly the constitutions, with the intention of

⁹³ E. GAMBARI, *Unfolding the Mystery of Religious Life*, Boston, MA, St. Paul Editions, 1974, footnote 15, p. 183 (=GAMBARI, *Unfolding the Mystery*).

⁹⁴ See PIUS XI, Encyclical on the Reconstruction of Social Order *Quadragesimo anno*, 15 May 1931, no. 79, in *AAS*, 23 (1931), p. 203.

⁹⁵ See J. LOSADA, “Subsidiarity from an Ecclesiologist’s Point of View,” in *The Jurist*, 48 (1988), p. 352.

⁹⁶ See PAUL VI, Allocution, 29 September 1963, in *AAS*, 55 (1963), pp. 841-859, especially p. 845.

⁹⁷ See JOHN PAUL II, Encyclical *Redemptor hominis*, 4 March 1979, nn. 3, 7 and 11, in *AAS*, 71 (1979), pp. 260-261, 268-270 and 275-278.

⁹⁸ See T.J. GREEN, “Subsidiarity during the Code Revision Process: Some Initial Reflections,” in *The Jurist*, 48 (1988), p. 772 (=GREEN, “Subsidiarity during the Code Revision Process”). For in-depth study of some notable proponents and opponents of the principle of subsidiarity both in society and in the Church, see J. KRUCINA, “Das Verhältnis von Gesamtkirche und Ortskirche in Lichte des Subsidiaritätsprinzips,” in *Collectanea theologia*, 45 (1975, fasc. Specialis), p. 126. For a study of the principle of subsidiarity as applied in the Church, see J.A. KOMONCHAK, “Subsidiarity in the Church: The State of the Question,” in *The Jurist*, 48 (1988), pp. 298-349. See also R.M. HARRINGTON, *The Applicability of the Principle of Subsidiarity According to the Code of Canon Law*, Doctoral thesis, Ottawa, Faculty of Canon Law, Saint Paul University, 1997.

safeguarding the institutes' distinctive identity.⁹⁹ The *coetus de religiosis*¹⁰⁰ also used this principle in their work.

F.G. Morrissey explains the various applications of the principle of subsidiarity in relation to the *ius proprium* of religious institutes which consists of four various levels.¹⁰¹ Level one concerns the fundamental code or constitutions, which Morrissey names Book 1 and is the key feature of our survey. This code holds the essential elements of each institute. It is followed by a second code, called the rules or other names decided by the institutes. This code offers the application for the constitutions or Book 1. The third code, often known as “directories,” offers more details of application that are not necessarily binding on the whole institute. Book 4, common among institutes that have spread and are in various regions or provinces contains applications that are adapted to various situations or regions. With the principle of subsidiarity, the *ius proprium*, mainly the constitutions, has the task of applying the directives and precepts of Vatican II for the decentralization of religious governance.

1.3.1.2 – The Principle of Shared Responsibility

The fourth principle adopted at the third session of the *coetus de religiosis* concerns shared responsibility. It is conceivable in the context of the theory underlying the structure

⁹⁹ T. Green says on this matter: “[...] it was important to recognize their proper autonomy and enable them to express adequately the spirit of their founders. Second, more noteworthy legislative decentralization was critical if the distinctive patrimony of such institutes were to be protected and fostered. Third, their varied scope, purpose and character needed to be recognized, and they had to be protected from undue higher level interference in realizing their ecclesial objectives, often amid rapidly changing social situations. Fourth, such an approach corresponded to the conciliar call to religious institutes to pursue appropriate renewal” (GREEN, “Subsidiarity during the Code Revision Process,” pp. 783-784).

¹⁰⁰ This was the first title of the sub-commission appointed in June 1966, to revise part II, book II of *CIC/17*. See M. SAID, “The Present State of the Reform of the Code Concerning the Section *De Institutis Perfectionis*,” in *Studia canonica*, 8 (1974), pp. 213-233 (=SAID, “The Present State”). The group was named variedly in the course of time. Its second name was *Coetus de Institutis Perfectionis* in February 1977. See *Communicationes*, 2 (1970), p. 173. It was later known as *Coetus Studiorum de Institutis Vitae Consecratae per Professionem Consiliorum Evangelicorum*. See *Communicationes*, 7 (1975), p. 63.

¹⁰¹ See MORRISSEY, “Introduction,” pp. 17-18.

of government in the institutes.¹⁰² Shared responsibility often arises by way of each member's participation, or "sharing a common responsibility, each in his own place and his own way, so that through the diversity of the members the kingdom of God may be built up. To feel it as not only a right but a duty will prevent passive acceptance of a situation that calls for action."¹⁰³ As the principle is foreseen in management structure, it follows that, in governance, "[s]tructures should provide for the religious to work together not only in carrying out decisions but in the preliminary thinking out, planning and discussion, and this implies information, consultation and dialogue."¹⁰⁴ This view of shared responsibility sums up the ideas found in *Perfectae caritatis* (no. 14) and *Ecclesias sanctae II* (no. 18) on how to achieve sharing in the life and governance of institutes. Superiors must lead the members in a way that creates a partnership in apostolic works. While still retaining their personal authority, superiors are to listen to and invite the cooperation of the members for the benefit of the institutes and the Church (PC 14d).

Chapters and councils are bound to fulfill carefully their role in government for the good of the whole institute (PC 14e). Indeed, realizing the duties of these structures depends on whether the institutes' members truly share in deciding their composition (ES II 18). According to R.T. Kennedy, some people regard the principle of shared responsibility as shared power, or they see decision-making as choice-making. He opines that with this conception the actual sense of the principle could be misread. Hence, he insists on the need for awareness, honesty, and learning for the effective expression of shared responsibility. Failure to note that decision-making is a process that involves various phases before a final

¹⁰² See PCCICR, p. xv.

¹⁰³ GAMBARI, *Unfolding the Mystery*, p. 179. The principle can be known by various headings such as: "co-responsibility, comparticipation, democracy or collegiality, according to the angle from which it is looked at and its degree of efficacy in action" (ibid).

¹⁰⁴ Ibid.

decision is made, often results in a refusal to participate effectively.¹⁰⁵ Despite this reality, the *coetus de religiosis* was anxious that institutes develop governmental programs suitable to their identity and mission, such that the management structure allows for ample representation and the support of all the members. Moreover, the duration of an office is to be clearly limited in order to avoid protraction, or a situation of one person staying too long in office.¹⁰⁶

1.3.1.3 – Legislative History of the Canon on the Constitutions of Religious Institutes

Canon 90 of the 1977 *Schema canonum de Vitae consecratae* on the *ius proprium*, including constitutions of religious institutes was amended in a variety of ways. Changes included clarification of terminology, literary form, competencies, and enrichment of the text to avoid ambiguity. The canon had the core of the three paragraphs of the final text of *CIC* canon 587. The text on the patrimony of the institutes, now *CIC* canon 578, was part of canon 89, §2 of the 1977 *Schema*.

Changes made at the March 1979 meeting of *the coetus* to the text of canon 90, §1 of the 1977 *Schema*¹⁰⁷ included the issue of the proper term to identify the fundamental code of religious institutes and cross-references in the law of the institutes in the new Code of Canon Law.¹⁰⁸ The consultors proffered various terms, such as *Constitutiones*, which one consultor observed are used in general practice to refer to the most important legislation. Also proposed were *Codex praecipuus*, *Codex fundamentalis*, or *Codex constitutionalis*, or *Liber constitutionalis*, *ius proprium*, which includes other codes and *ius particulare*.

¹⁰⁵ See R.T. KENNEDY, “Shared Responsibility in Ecclesial Decision-Making,” in *Studia canonica*, 14 (1980), pp. 3-23.

¹⁰⁶ See K.D. O’ROURKE, “The New Law for Religious: Principles, Content, Evaluation,” in *Review for Religious*, 34 (1975), p. 25.

¹⁰⁷ See *Communicationes*, 11 (1979), pp. 42-66.

¹⁰⁸ See *ibid.*, p. 53.

Regarding *ius proprium*, the consultors proposed that more distinctions could be made between *ius constitutionalis* and *ius constitutivum*. In the case of *ius particulare*, the Secretary of the *coetus* reminded the members that this term had been reserved exclusively for the *ius proprium* of the particular churches. By a vote of 8 *placet* out of 10, the *coetus* adopted *Codex fundamentalis* or *constitutionalis* for the basic code of institutes, and *ius proprium* as a basic term for the entire norms of the institutes. However, institutes would decide how to designate their other respective laws.¹⁰⁹ With further terminological changes, and at the suggestion of a consultor, the *coetus* unanimously split canon 90, §1 into two paragraphs and adopted the newly formulated text.¹¹⁰ In the 1980 *Schema*, canon 90 appears as canon 515 and had introduced into the text “elements to be preserved in accordance with” canon 507, which itself concern the institutes’ patrimony and their founders’ intent. Also new to the draft text of canon 515 of the 1980 *Schema* was the phrase “to protect more faithfully the vocation and identity of each institute,” and the changing of canon 507 to 581. In the 1982 *Schema*, canon 90 became 589, and 581 changed to 578 in *CIC*. This was the origin of canon 587 of *CIC*. All of these changes were made possible due to extensive consultation with various bodies.¹¹¹

1.3.2 – Understanding Canons 578 and 587 of the Latin Code

The obligations and the rights of institutes are necessary for their internal ordering. Canon 662 of *CIC* speaks of the supreme rule of life of consecrated persons as *sequela Christi* as it is proposed in the gospel and expressed in the constitutions of the various institutes (*CCEO*, no parallel). It notes one principal role of the constitutions of religious institutes. Regarding this role, canon 587, §1, which has no parallel in *CCEO*, states:

¹⁰⁹ See *ibid.*, pp. 53-55.

¹¹⁰ See *ibid.*, pp. 56-57.

¹¹¹ See *Communicationes*, 9 (1977), p. 52. For texts of the legislative history of c. 587, see appendix A.

To protect more faithfully the proper vocation and identity of each institute, the fundamental code or constitutions of every institute must contain, besides those things which are to be observed as stated in can. 578, fundamental norms regarding governance of the institute, the discipline of members, incorporation and formation of members, and the proper object of the sacred bonds.

A careful analysis of canon 587 gives a broad outline of the nature and content of constitutions. However, to analyze the canon effectively, we recall the principle for the interpretation of ecclesiastical laws in *CIC* canon 17: “Ecclesiastical laws must be understood in accord with the proper meaning of the words considered in their text and context. If the meaning remains doubtful and obscure, recourse must be made to parallel places, if there are such, to the purpose and circumstances of the law, and to the mind of the legislator.”¹¹²

Contextually, canon 587 on constitutions appears in the section pertaining to norms common to all institutes of consecrated life in *CIC*. In this canon, the legislator establishes the importance of the *ius proprium* of religious and secular institutes, which is distinct from laws of the universal Church, particular churches, and Episcopal conferences.¹¹³ In canon 587, §1, he identifies that, among the codes of religious institutes, one is constitutive: the *codex fundamentalis*. The canon specifies the purpose and elements of the constitutions, which will be examined below.

1.3.2.1 – The Nature of the Constitutions of Religious Institutes

Pope John Paul II, in *Sacrae disciplinae leges*, says of the nature of the norms of *CIC*:

The instrument which the Code is fully corresponds to the nature of the Church, especially as it is proposed by the teaching of the Second Vatican Council in general and in a particular way by its ecclesiological teaching. Indeed, in a certain sense this new Code could be understood as a great effort to translate this same conciliar doctrine and ecclesiology into *canonical* language. If, however, it is impossible to translate perfectly into *canonical*

¹¹² *CIC*, c. 17; *CCEO*, c. 1499.

¹¹³ See MCDERMOTT, “Commentary on cc. 573-616,” p. 753.

language the conciliar image of the Church, nevertheless the Code must always be referred to this image as the primary pattern whose outline the Code ought to express insofar as it can by its nature.¹¹⁴

Some of the canons show evidence of this difficult task of converging theological and juridical elements. Hence, canon 587, §3 directs that both elements in the codes of religious institutes be aptly joined together. R.M. McDermott affirms this reality:

It is difficult to discuss a divine vocation in purely juridical terms without introducing spiritual elements that express a life totally dedicated to God.... Juridical norms fall short of describing the inspiration and spirit of the founder. However, the fundamental code is a juridical text that contains the essential elements of the vocation. Clarity, precision, and economy should be the hallmarks of the fundamental code....¹¹⁵

While it is a challenging task to join the spiritual and juridical, if the constitutions take in exclusively spiritual or juridical elements, the type of constitutions intended by the renewal begun with Vatican II will not achieve the purpose of ensuring a foundational charter infused by both a genuine spirit and an active law.¹¹⁶ This principle—which allows institutes to include scriptural quotes that are brief, apt, and explicitly applicable to the text of the constitutions—is a departure from the *praxis* prior to Vatican II, which forbade and limited such inclusion.¹¹⁷ Usually, most institutes avoid repeating the norms of the relevant canon. They either refer to the observance of these canonical norms, or, for expediency and clarity, provide an appendix to the canons. To ensure harmony between the common and proper law, and to foster the awareness of Church laws, mostly in non-clerical institutes, it is preferable to retain in the text of the constitutions those canons that establish the institute's

¹¹⁴ JOHN PAUL II, Apostolic Constitution *Sacrae disciplinae leges*, 25 January 1983, in *AAS*, 75 (1983), pars II, p. xi; English translation in *CIC*, p. xxx.

¹¹⁵ McDERMOTT, "Commentary on cc. 573-616," p. 755.

¹¹⁶ See HOLLAND, "Commentary on cc. 573-606," p. 460. Cf. *ES II*, no. 13, p. 627.

¹¹⁷ See SCR, *Normae*, no. 22b. See also SACRA CONGREGATIO DE PROPAGANDA FIDE, Instruction, 19 March 1937, no. 12b, in *AAS*, 29 (1937), p. 277.

image, the life style of the members, and the diverse elements and structures within which these institutes operate in accord with the will of the Church.¹¹⁸

Canon 587, §3, echoing *Magno gaudio*, says that norms should not be multiplied needlessly. Rather, institutes' growth must depend more on careful observance of rule than

on the number of members or the making of new laws. Indeed, multiplicity of laws is not always accompanied by progress in religious life [...] let the General Chapters always use moderately and prudently whatever right they have to lay down laws.¹¹⁹

A further aspect of the nature of these constitutions is their hermeneutical value. Like the canons of the Latin Code, they contain three basic types of literary genres: those that intend to proclaim doctrine, those that state norms of actions, and those that are exhortatory.¹²⁰ "Doctrines" expressed in constitutions contain beliefs and perspectives which an institute holds in common with the universal Church or other religious institutes, or its specific convictions. These beliefs may be theological statements, biblical quotes and allusions, historical reports, quotations from a founder or other important persons, and interpretative statements of spirituality. Theological declarations place the institute's life within that of the entire Church, while biblical quotes and allusions lift the relations of religious institutes to the course of revelation and the whole Christian tradition. Historical statements of an institute's origin express beliefs about it, its destiny and divine preference. Quotes from a founder or significant others verify an institute's life and bestow its unique character. Interpretative accounts of spirituality relate common theological principles to an institute's specific conditions, known and inspiring world, so as to actualize universal beliefs

¹¹⁸ See HOLLAND, "Commentary on cc. 573-606," p. 459.

¹¹⁹ *MG*, English translation in *CLD*, vol. 6, p. 430.

¹²⁰ See L.M. ÖRSY, "The Interpreter and His Arts," in *The Jurist*, 40 (1980), p. 40 (=ÖRSY, "The Interpreter"). See also C. OSIEK and K. HUGHES, "Constitutional Hermeneutics: On the Interpretation of Constitutions," in *Review for Religious*, 45 (1986), p. 60 (=OSIEK and HUGHES, "Constitutional Hermeneutics").

into members' living theology, the statements of purpose, intent, and mission proper to the institute.

Norms of actions are legislative texts that, strictly speaking, define requisites for membership, members' duties and rights, leaders' duties and powers toward the members and the institute's material assets—all for the purpose of helping members in their respective roles to fulfill the institute's mission.¹²¹ These norms foster order, protect the rights of each member and the group, and reduce conflict. In addition, they state the required procedures for certain acts, bestow favours, oblige penalties, and duly denote restrictions and exceptions to the general norms.¹²²

A third literary form known as “exhortation” is meant to impel to action by articulating ideals. Exhortatory texts in constitutions are like a family portrait or tradition, which tries to show the best of the members and how they make sense of their lives. It illustrates the ideal of consecrated life, what members can become and should seek to aspire to no matter what they are at present. This denotes an institute as one in the making, shaping itself to a way of life in attitude of mind and heart. These texts are presented in the indicative (as “the religious is/does,” “we are/do”) or in the imperative mood (as “let us be/do”).¹²³

1.3.2.2 – Necessity and Purpose of the Constitutions of Religious Institutes

Canon 607, §2 says members of religious institutes live in common. However, since individuals differ in temperaments and have diverse backgrounds and rearing, a code is needed to regulate common life. Thus, as canon 587, §1 clearly intends, the constitutions are “necessary because the institute and its members require an articulated basis for their life and

¹²¹ See OSIEK and HUGHES, “Constitutional Hermeneutics,” p. 63.

¹²² See ÖRSY, “The Interpreter,” pp. 38-40.

¹²³ See OSIEK and HUGHES, “Constitutional Hermeneutics,” p. 62.

mission within the Church [...] to preserve the proper identity of the institute and avoid a vacuum in authority.”¹²⁴ The constitutions are instruments that serve as instructional tools and guides from which members of institutes and other persons in close relation with them come to learn the institute’s patrimony. Members find in their constitutions a challenge to perseverance and maturation in keeping with the duties they assumed upon their incorporation into the institute.¹²⁵

1.3.2.3 – Elements of the Constitutions of Religious Institutes in Canon 578

Canon 587, §1 identifies several constitutive elements for the constitutions of religious institutes. The importance of constitutive elements of juridical acts or institutes is underlined by canon 86, which states that laws that define those things which are essentially constitutive of juridic institutes or acts are not subject to dispensation (*CIC*; *CCEO*, c. 1537). The constitutions of religious institutes must include the constitutive elements to be recognized as such in the Church. These elements are those that are “essential to the charism, the particular way of life, and the stability of each institute.”¹²⁶

Canon 587, §1 names both the evangelical and theological principles on consecrated life and its place in the Church, with the basic juridical norms to define the nature, ends, and means of these institutes.¹²⁷ Its first part refers to canon 578.¹²⁸ This canon lists some of the

¹²⁴ O’CONNOR, “Developing Constitutions,” p. 756.

¹²⁵ See MCDERMOTT, “Commentary on cc. 573-616,” p. 754.

¹²⁶ WILLIAMSON, “Commentary on cc. 573-746,” no. 1151, p. 323. Constitutions may follow this outline: Nature and Purpose of the Institute; Religious Consecration; Community Life; Apostolic life/Mission; Formation; Government; Separation from the Institute; Administration of Temporal Goods and the Interpretation of Community Documents. See O’CONNOR, “Some Observations,” p. 773.

¹²⁷ See RINCON-PEREZ, “Commentary on cc. 573-606,” p. 1506.

¹²⁸ *CIC*, c. 578; *CCEO*, c. 426. This matter concerns the spiritual patrimony of religious institutes as distinct from their temporal patrimony which arises from the possession of temporal goods. Cf. *PC*, no. 2 and *ES II*, no. 14. *CIC*, cc. 634-640 and 1291-1296. For an analysis on this theme, see D.P. NGUYEN, *The Spiritual Patrimony of an Institute of Consecrated Life*, Doctoral thesis, Rome, Urbaniana Pontificia Universitas, 1989.

essential elements examined by competent ecclesiastical authorities in approving institutes and their constitutions. It refers to the nature, purpose, spirit, and character of each institute as these have been approved by the Apostolic See for pontifical institutes or by the diocesan bishop of the principal seat for institutes of diocesan right.¹²⁹ These form the patrimony of each institute and of the Church.¹³⁰ Canon 578 is important because “it requires that the institutes know their legitimate history, both of founders and graced development since then, and that legitimate historical changes be distinguished from historical accretions.”¹³¹ This requisite will also enhance the task of preparing the constitutions.

Canon 587, §1 notes other factors to complete the essential elements. They include other norms in the section on religious law in *CIC* that are left to the determination of the constitutions or *ius proprium*.¹³² According to an unofficial publication of the norms applied by officers and consultors of SCRIS to examine and correct constitutions, these constitutions should define the life, nature, and role of the institutes. The constitutions are

¹²⁹ *CIC*, canon 578 is significant for this work not only in respect of the elements to be included in the constitutions, but also because of the injunction stated therein. The canon directs the observance of the patrimony by all. This duty applies *omnibus* and therefore extends beyond the institutes to include the hierarchy, bishops, clergy and people. See WILLIAMSON, “Commentary on cc. 573-746,” no. 1135, p. 318. This observation seems proper when one considers the conciliar and post-conciliar teachings which call each of these groups to ensure that institutes develop in accord with their founder’s spirit, at the same time, to esteem the forms and way of life of these institutes. See *LG*, no. 45, p. 886 and *PC*, no. 24, p. 946. Cf. SACRED CONGREGATIONS FOR RELIGIOUS AND SECULAR INSTITUTES AND BISHOPS, Document on Mutual Relations Between Religious and Bishops in the Church *Mutuae relationes*, 14 May 1978, no. 47, in *AAS*, 70 (1978), p. 493; English translation in *CLD*, vol. 9, p. 329 (=MR). The matter of approval and the competent authority to approve will be addressed further. Cf. *CIC*, cc. 579, 583, 589 and 591; *CCEO*, cc. 412, §2, 434, 435, 505, §§1-2, 1° 3° and 506, §1.

¹³⁰ See J. SUNDARA, *The Juridical Nature of the Religious Constitutions in the New Law System of the Church*, Doctoral thesis, Rome, Pontificia Università Lateranense, 1991, p. 37.

¹³¹ O’HARA, “Norms Common to Institutes,” p. 50.

¹³² See MCDERMOTT, “Commentary on cc. 573-616,” p. 754. For a list of the different canons that remit matters to the constitutions or proper law, see J. HITE, “Canons That Refer to the Constitutions and Proper Law of Institutes of Consecrated life and Societies of Apostolic Life,” in *Handbook on cc. 573-746*, pp. 371-381. The deference to the constitutions on certain issues in many canons of *CIC* is due not to the legislator’s inability to provide for them in the code. Rather, it expresses the principle of subsidiarity and respect for the diverse charisms, which are better protected when, in their constitutions, institutes can make statements on the issues.

also to determine, by norms of a juridical nature, the ways, degrees, and means of putting these into practice.¹³³ Furthermore, since the constitutions are the only code of the institutes subject to Church approval, it is crucial that they contain whatever requires its approval.¹³⁴

1.3.2.3.1 – The Nature of Institutes

Canon 607, §2 holds that religious institutes are societies. Canon 573 defines the nature and purpose of institutes of consecrated life without stating the nature of the institutes as either clerical or non-clerical religious or secular institutes.¹³⁵ The Latin term “*natura*” used in canon 578 means the nature, quality, character, or natural order of things. It implies the inherent character, essence, or basic make-up of a person or thing.¹³⁶ As a rule, consecrated life cannot be defined as either clerical or non-clerical. As noted in canon 588, §1, such a life can be assumed by persons who are either clerics or lay. The canon is balanced by canon 207, §2, which identifies consecrated life as not belonging to the hierarchical structure of the Church, but to its life and holiness. However, canon 588, §§2-3 clarify this rule by defining clerical and non-clerical institutes respectively; clerical institutes entail the exercise of sacred orders and are directed by clerics (cf. *CCEO*, c. 505, §3).

The founding intent and design of an institute’s founder or foundress also shape its general nature. Verifying this element can be a rather difficult aspect of the patrimony for members to deal with, especially if the initial intent of the founder or foundress was not faithfully stated when the institute was approved. Examples of this are institutes that were

¹³³ See SCRIS, Index articulum pro redigendis constitutionibus, in *Commentarium pro Religiosis et Missionariis*, 59 (1978), p. 191-200, English translation in *Review for Religious*, 38 (1979), pp. 71-77, especially p. 71 (=SCRIS, “Index articulum”). Those who draft constitutions may find this guide useful for their task.

¹³⁴ See GAMBARI, *Rinnovamento*, p. 184.

¹³⁵ See HOLLAND, “Commentary on cc. 573-606,” p. 456. See also WILLIAMSON, “Commentary on cc. 573-746,” no. 1133, p. 318.

¹³⁶ See *s.v.*, “*natura*,” in *Collins Latin Dictionary*, col. 1, p. 139. See also *s.v.*, “*nature*,” in *Webster’s Dictionary*, col. 2, p. 937.

secular by nature but which were treated as religious prior to being recognized as such in 1947; or religious institutes that, due to events, were required to review their original charism, nature, and the ensuing changes that have affected their charism. Even so, in principle, any reliable progress in an institute's charism should not really require a significant change of identification, such as a change from a religious to a secular institute.¹³⁷

1.3.2.3.2 – The Purpose of Institutes

The constitutions are to state the specific purpose of the founders. Canon 578 refers to this as *finis*, meaning end, aim, or purpose. It concerns the inherent motive for which something is constituted as a goal or end to be attained; it is something proposed by oneself as one's goal.¹³⁸ For example, some societies exist solely for their particular purposes, while others share in the purposes of the larger community. Societies also have their purpose and manner of conduct, which may fit into that of a larger community. In the Church, potential purposes for the concession of juridical status, as noted in canon 114, are the carrying out of spiritual or temporal works of piety, of the apostolate, or of charity. Religious institutes are societies and they are juridical persons whose ends conform to these purposes of the Church.

A religious institute must declare in its constitutions its general and specific ends without entering into great detail. The focus is on the ends proper to consecrated life and apostolic life. While these ends can be expressed in different ways, an institute can refer to *Perfectae caritatis* (no. 8) in stating its purposes. The principles to be enunciated include the

¹³⁷ See HOLLAND, "Commentary on cc. 573-606," p. 456. Worthy of note is the emphasis on uniformity and conformity, see WILLIAMSON, "Commentary on cc. 573-746," no. 1133, p. 318. John Paul II speaking of religious brothers notes the possibility of ordaining some among them as clerics for the priestly service of the community if the general chapter so decides. He adds however, that this does not reflect Vatican II's concerns regarding fidelity to the vocation and mission of each institute. See *VC*, no. 60, p. 378.

¹³⁸ See *s.v.*, "*finis*," in *Collins Latin Dictionary*, col. 2, p. 88. See also *s.v.*, "purpose," in *Webster's Dictionary*, col. 2, p. 937.

activities or works proper to an institute, together with the means employed to achieve its goals.¹³⁹ The purposes are to be in accord with the Church's mission. Moreover, the presentation of these ideas or works enables the competent ecclesiastical authorities to approve them and thus confer the mandate or canonical mission on an institute for these works. This is the basis from which an institute shares in the Church's mission and acts in its name (cf. *CIC*, c. 116; *CCEO*, no parallel). In fact, John Paul II exhorts institutes to fidelity even as they creatively adapt their aims to the needs of place and time in their mission amid the people of God (*VC* 37, 96-103). An apostolic institute needs to have a clear vision of the link between the apostolate and the holiness to be achieved. Vatican II's doctrine on sanctity or priestly and apostolic perfection can be a helpful guide in formulating principles aiming to ensure a balance between the apostolate and spiritual life (cf. *PO* 12-13).

1.3.2.3.3 – The Spirit of Religious Institutes

Canon 578 uses the word *spiritus*, meaning inspiration, character, or spirit. It concerns the activating or vital belief influencing a person: an inclination, impulse, or tendency of a specific kind.¹⁴⁰ According to E. Gambari, the spirit is the first feature a founder impresses on an institute. It can be compared to an institute's soul, which

vivifies and informs the whole institute and each of its elements, imprinting thereon a very distinct character, a special style of life, which is translated into a particular way of becoming part of the mystery of the Church and making it present to the world. It comes into the spirituality, the manner of living, the evangelical counsels, the apostolic work, the common life, the manner of reaching out to fellow men, and so forth.¹⁴¹

¹³⁹ Gambari on this matter, remarks that the use of "aims" for the purposes of the founder is broader and encompasses "the vision the founder had of his institute in the original inspiration, through which he perceived its *raison d'être*, its activity, its particular ways, its motivation—at first in almost a vague, global manner and then ever clearer as time went on" (GAMBARI, *Rinnovamento*, p. 190).

¹⁴⁰ See *s.v.*, "*spiritus*," in *Collins Latin Dictionary*, col. 1, p. 204. See also *s.v.*, "spirit," in *Webster's Dictionary*, col. 2, p. 1121.

¹⁴¹ GAMBARI, *Rinnovamento*, p. 189.

The focus on the spirit is to be stated concisely and effectively in the constitutions as the point of reference for the spirituality assumed by an institute. Such is the case if the spirit relates directly to an aspect of Jesus Christ, the Blessed Virgin Mary, or any of the saints, such as Teresa of Avila, Francis, Ignatius, or Alphonsus. The spirit is also to be perceived as permeating other matters in the constitutions.¹⁴² The managerial principle of an institute, whether it is centralized or consists of independent houses, is to be considered in the light of the guiding spirit.¹⁴³

1.3.2.3.4 – The Character of Institutes

The word *indoles* used in canon 578 means nature, character, or talents.¹⁴⁴ It refers to the mark, distinctive quality, feature, or attribute that make up an individual: the detectable expression of the action of a gene or group of genes.¹⁴⁵ Identifying the nature of an institute's charism with its character, *Mutuae relationes* holds that the

very charism of the Founders (*EN*, 11) appears as “*an experience of the Spirit*,” transmitted to their disciples to be lived, safeguarded, deepened and constantly developed by them, in harmony with the Body of Christ continually in the process of growth. “It is for this reason that the distinctive character of various religious institutes is preserved and fostered by the Church” (*LG*, 44; cf. *CD*, 33; 35, 1; 35, 2; etc.). This *distinctive character* also involves a particular style of sanctification and of apostolate, which creates its particular tradition, with the result that one can readily perceive its objective elements.¹⁴⁶

The character of institutes is something proper and permanent to each one and the Church intends to promote and defend it (cf. *LG* 44, §2). For some commentators, the character regards an institute being conventual, integrally apostolic, or mixed, as in a

¹⁴² See *ibid.*, p. 189.

¹⁴³ See HOLLAND, “Commentary on cc. 573-606,” p. 456.

¹⁴⁴ See *s.v.*, “*indoles*,” in *Collins Latin Dictionary*, col. 2, p. 108.

¹⁴⁵ See *s.v.*, “character,” in *Webster's Dictionary*, col. 1, p. 187.

¹⁴⁶ *MR*, no. 11, p. 307.

conventual institute that engages in apostolic activity and contemplation.¹⁴⁷ The apostolate could be specifically contemplation. For example, in a monastic institute, the constitutions should reflect the elements proper to a monastic way of living consecrated life. By the same token, if an institute is conventual, its constitutions should also reflect this. The same principle applies to an integrally apostolic institute that engages in various apostolic services, such as health care, education, social work, and services to the poor. These are all subject to the approval of the competent ecclesiastical authority.¹⁴⁸

1.3.2.3.5 – The Sound Traditions of Institutes

The word “traditions” which appears in the phrase “sound traditions” in canon 578, refers to belief, information, and customs handed down through word of mouth or by example from one generation to the next. Traditions are not necessarily written for they are inherited modes of thought or action, as is the case with religious practices and social customs.¹⁴⁹ By its insistence that constitutions contain those things which are in canon 578, canon 587, §1 thereby provides that “sound traditions” (not just any traditions) of an institute be delineated in its constitutions. However, as institutes often develop traditions over the years that were not part of their foundational heritage, the question arises as to what constitutes *sanae traditiones*?

E. Williamson mentions that in the years when the Church emphasized uniformity and conformity for the common good, many women’s institutes took on more enclosure than their mission required; this cannot be considered as a “sound tradition” for those

¹⁴⁷ See WILLIAMSON, “Commentary on cc. 573-746,” no. 1133, p. 318.

¹⁴⁸ See MCDERMOTT, “Commentary on cc. 573-616,” p. 747. See also HOLLAND, “Commentary on cc. 573-606,” p. 456.

¹⁴⁹ See *s.v.*, “*traditiones*,” in *Collins Latin Dictionary*, col. 2, p. 220. See also *s.v.*, “tradition,” in *Webster’s Dictionary*, col. 1, p. 1238.

institutes.¹⁵⁰ For E. Gambari, *sanae traditiones* implies “the living patrimony of the institute, springing from the life of the institute itself and amassed down through the years and centuries as a family heritage. It complements the founder’s spirit or interprets and expresses it in accord with varying circumstances.”¹⁵¹ They are “the historical contributions that have been wisely incorporated into the patrimony of each institute.”¹⁵² Excluded from *sanae traditiones* are simple external practices and observances arising from external conditions that are subject to change and revision, such as the case of

a special attachment to poverty; preference for certain apostolic ministries; particular spiritual attitudes or forms of devotion and prayer; special attitudes or practices concerning mortification or separation from the world (e.g. cloister) or the manner of encountering the world; the spirit of reparation, and so forth.¹⁵³

The other codes mentioned in canon 587, §4 can be reflectors of sound traditions.¹⁵⁴ On this matter, in the review of the canon on patrimony, the *coetus* was anxious not to encourage continuous updating which could have pathological consequences for institutes.¹⁵⁵

1.3.2.4 – Other Elements of the Constitutions According to Canon 587, §1

In addition to the elements of an institute’s patrimony noted in canon 578, other elements making up the constitutions are listed in canon 587, §1. The constitutions are to contain norms regarding the governance of the institute, the discipline of members, the incorporation and formation of members, and the proper object of the sacred bonds. Each of these constitutive aspects are examined below.

¹⁵⁰ See WILLIAMSON, “Commentary on cc. 573-746,” no. 1133, p. 318.

¹⁵¹ GAMBARI, *Rinnovamento*, p. 191.

¹⁵² RINCON-PEREZ, “Commentary on cc. 573-606,” p. 1482.

¹⁵³ GAMBARI, *Rinnovamento*, pp. 191-192.

¹⁵⁴ See McDERMOTT, “Commentary on cc. 573-616,” p. 756.

¹⁵⁵ See *Communicationes*, 11 (1979), p. 40.

1.3.2.4.1 – The Basic Norms on Governance

The term *regimen* refers to rules to guide, steer, command, or govern. The act of governance consists of the office, authority, and task of governing, involving the complex political institutions, laws, and customs through which this task is carried out in a specific political entity.¹⁵⁶ This applies also *mutatis mutandis* to religious institutes, which, like all societies, need rules for governance. To ensure the proper governance of an institute, especially within the larger community of the Church, it is important to have some normative guidance. Hence, an institute's constitutions should state the nature and mode of exercising authority, whether collegial or personal.¹⁵⁷ The constitutions must recall that

authority and obedience are exercised in the service of the common good as two complementary aspects of the same participation in Christ's offering. For those in authority, it is a matter of serving in their brothers the design of the Father's love; while, in accepting their directives, the religious follow our Master's example (Lk. 2:51) and cooperate in the work of salvation.¹⁵⁸

Those with authority are superiors, councils and chapters, all of whom partake in ecclesiastical authority (c. 596). Thus, an institute is required to spell out the essential structures of governance on all levels. On the general level, these should include the general chapter or its equivalent, its convocation and composition.¹⁵⁹ The constitutions should also define the major superiors, their authority and term of office, how they are constituted, and then their collaborators (the councillors), their number, their main roles in decision-making,

¹⁵⁶ See *s.v.*, “*regimen*,” in *Collins Latin Dictionary*, col. 1, p. 184. See also *s.v.*, “governance,” in *Webster's Dictionary*, col. 2, p. 497.

¹⁵⁷ See SCRIS, Index articuloꝝ, pp. 75-76. Cf. *PC*, no. 14, p. 945; *ES II*, nn. 18 -19, p. 628. A general chapter exercises collegial authority. A superior general and council would also exercise this authority in certain matters (see *CIC*, cc. 631 and 699). A superior general often exercises personal authority.

¹⁵⁸ PAUL VI, Apostolic Exhortation on the Renewal of Religious Life *Evangelica testificatio*, no. 25, 29 June 1971, in *AAS*, 63 (1971), p. 510; English translation in FLANNERY1, p. 692.

¹⁵⁹ See MCDERMOTT, “Commentary on cc. 573-616,” p. 754. Cf. SCRIS, “Index articuloꝝ,” p. 76. See cc. 631-633.

when and in what matters they are to give consent or be consulted.¹⁶⁰ The constitutions must also define intermediate structures, if any, as well as essential provisions to be made for local governance.¹⁶¹ The constitutions should identify the role of competent authority on issues of mergers, unions, suppression, and related matters (cc. 580-585). They should state the requisites for an institute's attitude and conduct regarding the administration of its temporal goods,¹⁶² including fundamental elements for placing acts of ordinary and extraordinary administration as well as acts of alienation of temporal goods.¹⁶³ In order to ensure the security of all basic structures and areas of competency noted in the universal law regarding institutes, it would be prudent to provide for all of them in the constitutions.¹⁶⁴

1.3.2.4.2 – The Basic Norms on the Discipline of Members

Disciplina as employed in canon 587, §1 means training or habits. “Discipline” implies the training that corrects, molds, or perfects the mental faculties or moral character, the orderly or prescribed conduct or pattern of behaviour, and the rule or system of rules governing conduct or activity.¹⁶⁵ Canon 587, §1 requires that the constitutions contain the basic norms regarding the essential elements of the daily life of members. Canon 598, §1 states that an institute is to indicate how the vows are to be lived in its constitutions. These norms highlight the fact that the Church does not intend uniformity in the living out of the

¹⁶⁰ See HOLLAND, “Commentary on cc. 573-606,” p. 456. See also MCDERMOTT, “Commentary on cc. 573-616,” p. 754; cc. 620-630.

¹⁶¹ See SCRIS, “Index articulorum,” pp. 76-77. See also HOLLAND, “Commentary on, cc. 573-606,” p. 459.

¹⁶² See M.M. MODDE, “Questions Asked by the CICLSAL,” in P.J. COGAN (ed.), *Selected Issues in Religious Law*, Washington, DC, Canon Law Society of America, 1997, p. 6 (=MODDE, “Questions Asked”).

¹⁶³ See SCRIS, Index articulorum, p. 77. See also MCDERMOTT, “Commentary on cc. 573-616,” p. 754. Regarding temporal goods confer: for religious institutes, cc. 634-640 and for the Church cc.1254-1310.

¹⁶⁴ See HOLLAND, “Commentary on cc. 573-606,” p. 459.

¹⁶⁵ See *s.v.*, “*disciplina*,” in *Collins Latin Dictionary*, col. 1, p. 68. See also *s.v.*, “discipline,” in *Webster's Dictionary*, col. 1, p. 325.

evangelical counsels. Rather, these should, be based on the purpose and character of each institute.¹⁶⁶ All members are bound to the faithful and full adherence to these norms. The constitutions are to state the essential elements of the spiritual life.¹⁶⁷ Institutes should consult the canons on the obligations and rights of institutes and their members regarding this part of the constitutions (cc. 663-672; 277; 285-287; 289).

The norms of canons 208-223 on the duties and rights of all Christ's faithful are also presumed for members of institutes. Therefore, they may not have to provide explicitly for these in their constitutions. Provisions should denote how the supervision of temporalities is to be carried out, mostly regarding individual members in view of the vow of poverty (cf. 634-640 and 1254-1310). The institutes' stance on the issue of personal patrimony should be stated clearly in order to help reduce the frequency of the difficulties often linked with this issue, arising from changes in conditions, places, and the age of members. Institutes should also consider canons 684-702 regarding separation of members from the institute when it makes provisions concerning this matter.¹⁶⁸

1.3.2.4.3 – The Basic Norms on Incorporation of Members

Incorporatio, as used in canon 587, §1, means to incorporate or to unite thoroughly with something already in existence.¹⁶⁹ Such union often entails certain duties and rights. Canon 849 states that through valid baptism a person is incorporated into the Body of

¹⁶⁶ See O'HARA, "Norms Common to Institutes," p. 52.

¹⁶⁷ See HOLLAND, "Commentary on cc. 573-606," p. 460.

¹⁶⁸ See CICLSAL, Procedure for the Separation of Members from Their Institutes, June 1984, in *Enchiridion Vaticanum*, 9 (1984), pp. 847-860; English translation in *CLD*, vol. 11, pp. 92-98.

¹⁶⁹ See *s.v.*, "incorporation," in *Webster's Dictionary*, col. 2, p. 582. We note here the various translations of the term *incorporatio* by different commentaries. The *CLSA Comm* in canon 587, §1 translates *incorporatio* as "incorporation" whereas the *CLSGBI Comm*, *CCLA* and *Exegetical Comm* used "admission" (cf. c. 587, §1). These two terms have distinctive meaning in religious law. Cf. *CIC* cc. 641-645 and 654. Therefore, regarding the subject matter of our investigation, the term incorporation is preferred over admission.

Christ, the Church. To be incorporated into a religious institute, one needs first to be admitted into the institute. Regarding admission, canon 597 makes clear that only persons who have been lawfully incorporated into the Church, have the right intention and the required qualities according to universal¹⁷⁰ and proper law,¹⁷¹ and have no impediment can be admitted into an institute.¹⁷²

Canonical norms regulating incorporation into an institute are found in canons 654-658. Of these, canon 654 determines that incorporation into an institute is achieved through the act of religious profession. The constitutions should supply norms relating to the process of incorporation into an institute. They should specify the conditions for admission to temporary or perpetual profession, the maximum and minimum length of time in temporary profession, and the juridical effects of temporary, perpetual or definitive profession with the duties and rights that come with each.¹⁷³ It is imperative to provide such details in order to do justice to those aspiring to be incorporated into the institute.¹⁷⁴

1.3.2.4.4 – The Basic Norms on Formation of Members

Formation denoted as *institutio* in canon 587, §1 means education or the act of forming or shaping something or someone.¹⁷⁵

Religious formation is, as it were, the bringing to birth of a new personality which was conceived in baptism and must now be shaped and fashioned to respond to the particular mode of the Christian vocation to which religious are destined. The work of all

¹⁷⁰ Cf. *CIC*, cc. 204-205, 642 for the universal law on the requisite for admission to religious institutes.

¹⁷¹ Institutes' proper law regulates admission into them because vocation to consecrated life is a call to a particular institute with its unique character, see RINCON-PEREZ, "Commentary on cc. 573-606," p. 1549.

¹⁷² See *CIC*, c. 597; *CCEO*, cc. 448-450 1° and 518. Cf. *Communicationes*, 11 (1979), p. 308.

¹⁷³ See MCDERMOTT, "Commentary on cc. 573-616," p. 754.

¹⁷⁴ See HOLLAND, "Commentary on cc. 573-606," p. 460.

¹⁷⁵ See *s.v.*, "*institutio*," in *Collins Latin Dictionary*, col. 2, p. 113. See also *s.v.*, "formation," in *Webster's Dictionary*, col. 1, p. 452.

Christian education or formation is to collaborate in the progressive transformation of the individual “into Christ.”¹⁷⁶

Among the items to be found in the constitutions are those requirements of the universal law that validate the formation of any person intending to assume consecrated life in the Church. Once these elements have been stated, an institute can then add other elements proper to it. According to S.L. Holland, the constitutions of an institute should state the different stages of formation, from the pre-novitiate phase through on-going formation. This should include the following: the purpose of each stage, the minimum and maximum duration, the authority to admit or dismiss from each stage, and the obligations and rights during each stage. Since initial formation is crucial, especially during the canonical year of the novitiate, more details should be provided on this stage. The canonical requisite for a pre-novitiate is left to each institute, and most institutes are silent about this stage. However, there should still be provisions for it, even if they are few.¹⁷⁷ Statements in the constitutions on formation of members require wisdom and a study of canons 646-653, together with any other conditions particular to an institute.

1.3.2.4.5 – The Proper Object of the Sacred Bonds

Concerning the object of the sacred bonds, canon 587, §1 uses the term *obiectus*, which means purpose or goal.¹⁷⁸ In societies, bilateral agreements are made, together with instruments used to execute these agreements. Within these instruments—for example, signed agreements constituting a contract between parties—varied stipulations set out the duties and rights of each of the concerned parties. Similarly, by the profession of the three vows, conforming to the rule or constitutions of an institute approved by the competent

¹⁷⁶ E. GAMBARI, *Religious-Apostolic Formation for Sisters*, New York, NY, Fordham University Press, 1964, p. 19. Cf. PIUS XII, Apostolic Constitution *Sedes sapientiae*, 31 May 1956, in *AAS*, 48 (1956), pp. 354-365.

¹⁷⁷ See HOLLAND, “Commentary on cc. 573-606,” p. 459.

¹⁷⁸ See *s.v.*, “*obiectus*,” in *Collins Latin Dictionary*, col. 2, p. 143.

ecclesiastical authority, persons are consecrated to God. They pledge to observe the three vows in accord with the institute's constitutions, thus giving rise to a bilateral contract between the individual and the institute.¹⁷⁹ For this act of profession, the institute's constitutions define the proper objects of the sacred bonds. This is about the form, content, and instrument of the bond to be used for incorporation.¹⁸⁰

As regards this element, all religious institutes are legally bound by the basic requirements of the vows, which are common to all and make complete the self-dedication to God intended by the Church. However, the legislator concedes that in accord with the diversity of institutes, the practices employed by them will be unique, in keeping with their spirituality and customs.¹⁸¹ Generally, members of religious institutes profess the three vows, while those of secular institutes may do likewise or may employ other sacred bonds. What is important is that institutes specify in their constitutions what type of dedication corresponds to the sacred bonds and their specific ties with the Church.¹⁸² To provide for this, institutes will find useful the conciliar texts on the evangelical counsels and the traditions of the institutes that have stood the test of time.¹⁸³ It seems that SCRIS would prefer that institutes express the content of the counsels and their way of living out these counsels.¹⁸⁴ In undertaking this task, institutes should consider the *CIC* general norms regarding profession.

¹⁷⁹ See LANSLOTS, *Handbook of Canon Law*, p. 75.

¹⁸⁰ See HOLLAND, "Commentary on cc. 573-606," p. 460. See also D.F. O'CONNOR, "Constitutions and the Revised Code of Canon Law," in *Review for Religious*, 42 (1983), p. 506 (=O'CONNOR, "Constitutions").

¹⁸¹ See WILLIAMSON, "Commentary on cc. 573-746," no. 1151, p. 323. See also MODDE, "Questions Asked," p. 6. For a brief historical development of the vows or sacred bonds expressed by those who assume the consecrated life in the Church, see JARRELL, "The Legal and Historical," pp. 433-434.

¹⁸² See MODDE, "Questions Asked," p. 6.

¹⁸³ See HOLLAND, "Commentary on cc. 573-606," p. 465. Cf. *PC*, nn. 5, 12-14, pp. 941 and 943-945.

¹⁸⁴ See O'HARA, "Norms Common to Institutes," p. 52. Cf. SCRIS, Letter Concerning Modification of Constitutions, 10 July 1972, Prot. No. Sp. R. 194/72, in *CLD*, vol. 7, pp. 478-480.

1.3.3 – Approval of the Constitutions of Non-Clerical Religious Institutes

Canon 587, §2 says that the approval of constitutions and the consent to change them belongs to the competent ecclesiastical authority, without stating who is this authority. However, canon 589 states two competent ecclesiastical authorities: the Apostolic See has such competency over a pontifical institute, while a diocesan bishop has it over a diocesan institute. Canon 595, §1 requires other conditions to be fulfilled before a diocesan bishop can act regarding changes: the diocesan bishop of the place of the principal seat of an institute must consult other bishops of the dioceses where the institute may be present. However, it remains his prerogative to approve or endorse changes to the constitutions.¹⁸⁵

Furthermore, canon 579 allows diocesan bishops in their own territories to erect institutes of consecrated life by formal decree, so long as they consult the Apostolic See. During the consultation and the consent that permits diocesan bishops to proceed with such erections, the Apostolic See notes essential elements peculiar to each institute. These and other vital elements of consecrated life become part of each institute's identity. In addition, canon 583 maintains that the permission of the Apostolic See is required in order to make changes regarding matters it had approved. Canon 595, §1 prohibits the diocesan bishop from altering these and other issues that have been brought before the Apostolic See which become part of the "things taken in hand" by the same Holy See.¹⁸⁶

However, regarding the constitutions of a religious institute of diocesan right, changes made after the initial mandatory consultation with the Apostolic See at the time of its erection do not require such consultation unless they affect constitutive elements of the

¹⁸⁵ O'Hara, remarks that, though the diocesan bishop is required to consult, it is not necessary that he receives approval or that they agree with him. See O'HARA, "Norms Common to Institutes," p. 50. Cf. *CIC*, c. 127; *CCEO*, c. 934.

¹⁸⁶ See RINCON-PEREZ, "Commentary on cc. 573-606," p. 1539.

institute.¹⁸⁷ Therefore, canon 587, §2 represents an implicit principle in that the constitutions describe the particular gift of the Holy Spirit to the Church in each institute and they also contain the basic elements through which the gifts are preserved and fortified.¹⁸⁸ It accentuates the rule that the authority which approves the constitutions also permits their changes.¹⁸⁹

The question arises: Why approve the written constitutions or any changes made to them? The term *approbare* as employed in canon 587, §2 means to approve or to perform to someone's satisfaction.¹⁹⁰ The practice concerning approval of the *ius proprium* of institutes is as follows: when an institute is approved, the constitutions and the complementary codes that have been approved by its general chapter are sent to the competent church authority for approval in order that it has a general idea of the institute and its laws. Subsequent approval from the same authority is required only for changes in the constitutions after the prior two-thirds vote of the general chapter.¹⁹¹ The conciliar teaching in *Christus Dominus* (no. 35, §1) and *Ecclesia sanctae* (no. 28), and canon 677, §1 based upon these teachings show concrete examples of when thought may be given to such changes. The documents refer to the need to consider the constitutions, which may, if required, be adapted for the purpose of apostolic works in accord with the character of the institute and the principles of the decree.

¹⁸⁷ See HOLLAND, "Commentary on cc. 573-606," p. 460.

¹⁸⁸ See MCDERMOTT, "Commentary on cc. 573-616," p. 754.

¹⁸⁹ See WILLIAMSON, "Commentary on cc. 573-746," no. 1153, p. 323.

¹⁹⁰ See *s.v.*, "*approbare*," in *Collins Latin Dictionary*, col. 2, p. 16.

¹⁹¹ See HOLLAND, "Commentary on cc. 573-606," p. 460. To value better the need for the Church's approval of constitutions we recall analogically, the words of the Prefect of SCRIS to the International Union of Superioresses general: "And so, no religious institute may allow itself to be guilty of the abuse of introducing without authorization novelties which are in disagreement with the norms of canon law and with the spirit of the constitutions and do this under the specious pretext of making experiments in order to put themselves on the path to *aggiornamento*. This must be carried out in an orderly manner with the aim clearly fixed by the *motu proprio*, *Ecclesiae sanctae*, of following the lines of the decrees of the Council to correspond to the exigencies of religious life and not at the caprice of some restless soul" (SCRIS, "Religious Renewal," p. 466).

Approval of the constitutions signals to an institute that the Church finds no incongruity between its teachings and the spirituality described in these constitutions. Therefore, the Church accepts and approves them, along with the authority contained in them and mandates the apostolic work delineated in them.¹⁹² The need for such approval is a universal norm in canonical tradition. Indeed, in the past, there were some institutes whose constitutions did not receive explicit formal approval from the Apostolic See. Some of these constitutions are still in force, in institutes such as the Dominicans, Jesuits, Premonstratensians, and the Carmelite Order of the Primitive Observance.¹⁹³ The Church's approval of constitutions "confers the needed stability and guarantee of a truly ecclesial life, with resultant security for every member."¹⁹⁴ Members' observance of these constitutions is a fulfillment of their covenant of love. Pironio says on this issue that

in the life of an institute, this covenant is renewed when the new text of constitutions is received This covenant was established with each member on the day of profession. It was a joyful covenant, brought about through the mediation of the Church. Now, once again, it is the Church that offers a new opportunity to renew the covenant ever more deeply and consciously. The Church hands over in the name of the Lord a word which human beings have written but which has the special virtue of manifesting God's design for the institute and, above all, of giving it a particular strength of light and of faithfulness to fulfill its mission.¹⁹⁵

1.3.4 – Other Normative Documents of Religious Institutes

Canon 587, §4 makes clear, first, that the competent authorities to establish the other norms of an institute are to exist within the institute, and, second, that these norms be placed together in other codes. Moreover, the norms are to be open to revision as

¹⁹² See HOLLAND, "Commentary on cc. 573-606," p. 460. Cf. *ES II*, nn. 6, 8 and 11, pp. 625 and 626; *PC*, no. 3, p. 940.

¹⁹³ Cf. *Conditae*, no. 1, §1. See RINCON-PEREZ, "Commentary on cc. 573-606," p. 1507.

¹⁹⁴ GAMBARI, *Rinnovamento*, p. 184. Cf. DAUGHTERS OF SAINT PAUL, *Religious Life*, p. 38.

¹⁹⁵ PIRONIO, "Some Reflections," p. 4.

necessitated by circumstances. Canon 587, §1 and §4 list the elements that form the *ius proprium* of an institute; however, they are silent about the nature of the codes cited in canon 587, §4 and why they are not part of the basic code.

Although the norms alluded to in canon 587, §4 are neither essential nor constitutive elements, they are, like the constitutions, vital for the smooth functioning of an institute.¹⁹⁶ They are meant “to apply, determine, and develop the fundamental code either in a systematic form or by sectors or specific subject, like the *Ratio institutionis*, or norms regarding them.”¹⁹⁷ Their nature determines the frequency or degree of changes to which they can be subject. These documents include details of, for example, entry into an institute, formation, temporal goods, elections, vows, and community life.¹⁹⁸ For an institute with provinces, these codes may be provincial statutes that attend to cultural and geographical divergence. The supreme moderator, with the consent of the council, approves them.¹⁹⁹

Canon 587, §4 does not specify the persons who approve the other codes. However, from the directives of *PC* (no. 2) and *ES II* (nn. 3, 8 and 11), a general chapter does have the competence to propose norms for the constitutions and to enact norms for the directory that are binding on all.²⁰⁰ Supreme moderator and council issue detail norms for applying aspects of the constitutions. Provincial chapters can approve and promulgate provincial statutes for their use, which the supreme moderator confirms. A general or provincial chapter or the leadership of the institute can interpret, modify, or abrogate the norms of the

¹⁹⁶ See McDERMOTT, “Commentary on cc. 573-616,” p. 755.

¹⁹⁷ RINCON-PEREZ, “Commentary on cc. 573-606,” p. 1507.

¹⁹⁸ See HOLLAND, “Commentary on cc. 573-606,” p. 460.

¹⁹⁹ See WILLIAMSON, “Commentary on cc. 573-746,” no. 1155, p. 324. See also McDERMOTT, “Commentary on cc. 573-616,” p. 755.

²⁰⁰ See ABBASS, *The Consecrated Life*, p. 35.

different codes each established.²⁰¹ The contents of the codes are to concur with the norms of the constitutions that are approved and renewed by the pertinent Church authorities.²⁰²

1.3.5 – Binding Force of the Constitutions

The constitutions of a religious institute bind each of its members. “The whole content of the constitutions even the doctrinal, spiritual and apostolic sections, is binding; they have an obligatory and normative force in the life of religious.”²⁰³ However, the other supplementary collections have lesser binding force.²⁰⁴ Moreover, unlike *CIC/17*, which explicitly called for the abrogation of norms of the constitutions contrary to the provisions of the code, *CIC* makes no such explicit determination. However, in light of the re-ordering of the canons of the code, this principle can be deduced from *CIC* canons 6, §1, 2° and 20 on the abrogation of contrary universal and particular laws and re-ordering of laws. SCRIS had acknowledged the need to ensure contrary laws were abrogated.²⁰⁵

The Pontifical Commission for the Authentic Interpretation of the Code of Canon Law says religious law in the code consists mainly of norms of positive human or merely ecclesiastical law.²⁰⁶ Thus, one would expect them to be limited. In this way, members of an institute must recognize the necessity, usefulness, and limitations of juridical norms.²⁰⁷

²⁰¹ See McDERMOTT, “Commentary on cc. 573-616,” p. 755. However, the provincial statutes are subject to the approval of the supreme moderator as specified in the *ius proprium* of the institute. S.L. Holland suggests that the texts of these codes could also state the competent authority responsible for making changes as well as the required vote for such changes. See HOLLAND, “Commentary on cc. 573-606,” p. 460.

²⁰² See RINCON-PEREZ, “Commentary on cc. 573-606,” p. 1507.

²⁰³ GAMBARI, *Rinnovamento*, p. 193.

²⁰⁴ See HOLLAND, “Commentary on cc. 573-606,” p. 460.

²⁰⁵ See SCRIS, “Particular Laws à-vis the New Code,” p. 84. Cf. *ES II*, no. 14, p. 627.

²⁰⁶ See PCCICR, p. ix.

²⁰⁷ See O’CONNOR, “Developing Constitutions,” p. 754.

1.4 – CONSTITUTIONS AND INTERNAL ORDER OF DIOCESAN NON-CLERICAL RELIGIOUS INSTITUTES

Thus far, this study has examined the meaning of constitutions of religious institutes and the elements they contain. In this section, we will identify the specific canons of *CIC* dealing with the internal ordering of an institute in the constitutions. We note, however, that while this chapter focuses on the constitutions of religious institutes in the church, the governance of these institutes is not limited to the norms of their constitutions or other normative documents. Rather, religious institutes are generally governed by four different normative sources. First, they are subject to the universal law, that is, the Latin Code and other documents from the Apostolic See. Indeed, the legislator provides general principles for certain matters relating to the internal life of institutes. Canon 592, §2 states that moderators of institutes have the duty to foster awareness of documents of the Apostolic See pertaining to the members entrusted to them and ensure they are observed. The canon presumes that whatever is required of the members by the document is binding on them.

Second, the particular laws of diocesan bishops or Episcopal conferences that are in effect in a particular church provide, pursuant to canons 12 and 13, general principles on matters affecting the internal life of institutes and members in their territory. For example, in accordance with canons 462 and 466, an institute is bound by the decrees that emanate from any diocesan synod that the diocesan bishop may convoke and preside over, or other laws that originate with him. The same rule applies with the decrees of the Episcopal conferences or of particular councils noted in canons 446 and 455. The constitutions are expected to recognize these sources. The third and fourth sources of law are the approved constitutions and recognized codes by the institute's competent authority.²⁰⁸ Therefore, while thought is

²⁰⁸ See RINCON-PEREZ, "Commentary on cc. 573-606," p. 1505.

given in the constitutions to an institute's internal life, other norms are not necessarily to be ignored.

1.4.1 – Internal Autonomy: Canon 586, §1 of the 1983 Code

Canon 586, §1 states: “A just autonomy of life, especially of governance, is acknowledged for individual institutes, by which they possess their own discipline in the Church and are able to preserve their own patrimony intact, as mentioned in can. 578.”²⁰⁹

The internal ordering of a religious institute refers to its internal governance and discipline, including “the basic, defined structure of government that co-ordinates and sees to the realization of the style of life, of the apostolate particular to the institute.”²¹⁰ Canon 586, §1 holds that an institute has “*iusta autonomia vitae*” in the area of governance and discipline. However, what does this mean? What is the role of the constitutions in relation to canon 586, §1?

In canon 587, §1, the content of canons 578 and 586, §1 converges.²¹¹ Canon 578 lists the elements of the patrimony of institutes and prescribes their observance by all, with no distinctions or exceptions.²¹² Canon 586, §1 implies that an institute is only able to preserve its patrimony intact if it has a just autonomy of life (“*iusta autonomia vitae*”). A true autonomy of life for each institute entails the right to their *ius proprium* and internal structures

²⁰⁹ CIC, c. 586, §1; CCEO, no parallel, but see c. 418, §2. Cf. ABBASS, *The Consecrated Life*, p. 30.

²¹⁰ V. KOLUTHARA, *Rightful Autonomy of Religious Institutes: A Comparative Study Based on the Code of Canons of the Oriental Churches and the Code of Canon Law*, Bangalore, Dharmaram Publications, 2005, p. 69 (=KOLUTHARA, *Rightful Autonomy*).

²¹¹ Canons: 578, 586 and 587 have no parallel in the CIC/17. They are inspired by various conciliar and post-conciliar teachings: LG, no. 45, p. 886; CD, nn. 35, 2-4, p. 935; PC, nn. 2b, 3 and 4, p. 940; ES II, nn. 8, 11, 12b, 13, 14 and 16, §3, pp. 626-627; MR, nn. 9c-d, 13c, 28, 34 and 52, pp. 305, 309, 320, 324 and 333.

²¹² While observance is obligatory for members of institutes, other members of Christ's faithful are bound either to promote or protect and preserve, or respect the patrimony of the institutes. See WILLIAMSON, “Commentary on cc. 573-746,” no. 1135, pp. 318-319. Cf. ET, no. 11, p. 685; LG, no. 45, p. 886; MR, no. 47, p. 329; PC, no. 24, p. 946.

of governance.²¹³ It is evident that, just as institutes differ in their nature and character, they may also differ in their governing structures.²¹⁴ Nevertheless, the legislator foresees a basic governing structure for the institutes in *CIC* canon 596, which provides a general rule concerning the power of superiors and chapters (cf. *CCEO*, cc. 441, §§1-2, 511 and 995).

Furthermore, canon 586, §1 recognizes the just autonomy of every religious institute, whether of pontifical or diocesan right. While the degree and extent of autonomy in institutes of pontifical or diocesan right will differ, the principle of *iusta autonomia* is equal for all institutes. Essentially, pontifical institutes have more distinct autonomy than diocesan ones.²¹⁵ The merit of canon 586, §1 is not exactly that it concedes autonomy of government to religious institutes, because this has always been admitted. However, in the case of diocesan institutes, this autonomy has little concrete application: their autonomy of life and discipline had been considerably curtailed because the local ordinaries had the right to regulate their internal religious discipline. The innovation of canon 586, §1 is, therefore, the formal canonical recognition that gives autonomy of government to all religious institutes, including the diocesan institutes.²¹⁶

With reference to the innovation in the Latin Code canon 586, §1 regarding the *iusta autonomia* of life of religious institutes, one author comments that, “any undue involvement of the local Ordinary in the internal life and government of an institute is strictly

²¹³ See WILLIAMSON, “Commentary on cc. 573-746,” no. 1150, p. 322. See also McDERMOTT, “Commentary on cc. 573-616,” p. 753.

²¹⁴ See KOLUTHARA, *Rightful Autonomy*, p. 71.

²¹⁵ See *ibid.*, p. 62.

²¹⁶ *Ibid.*, p. 70. For the first official recognition of the internal autonomy of religious congregations of simple vows, see LEO XIII, *Conditae*, in *ASS*, 33 (1900-1901), pp. 341-347. Secular institutes received this recognition in 1947. Cf. PIUS XII, Apostolic Constitution *Provida Mater Ecclesia*, 2 February 1947, in *AAS*, 39 (1947), pp. 114-124; English translation in *CLD*, vol. 3, pp. 135-146.

prohibited.”²¹⁷ The result of such autonomy is the guarantee that the competent authorities of these institutes can exercise their functions according to the norm of law: they can receive new members, grant admission to profession or incorporation, receive the sacred bonds, assign members to apostolates, and supervise the administration of goods.²¹⁸ These diverse aspects of the internal life concur with the substance of canon 587, §1 for each constitutions.

As it were, canon 587, §1 has a role similar to canon 586, §1. It holds that the constitutions are meant to help protect in a more faithful manner the “proper vocation and identity” of each institute. The same canon puts forth the various aspects of the internal life of the institutes that are entrusted to the constitutions and through which they can fulfill this duty. Institutes are expected to make provisions in these areas. Providing adequate norms is the foundation for the constitutions to protect the patrimony of the institutes. By observing the constitutions, the institutes’ members will fulfill their duty flowing from canon 578. Canon 586, §1 assures the liberty and structures necessary for the institutes to do this. However, the canon 1 differs greatly from that of *CIC*/17 canon 618, §2, 2°, the latter of which allowed the local ordinary to inquire into discipline in non-clerical religious institutes.

Concretely, the legislator, in order to ensure that the constitutions fulfill their purpose in matters of governance and discipline in institutes make certain deferment to them in the *CIC*. In Book II, Part III, under title I, from the norms common to all institutes of consecrated life, and title II, religious institutes of the *CIC*, the legislator requires the constitutions to define the nature, the persons, or the approach regarding the following:

The profession of the evangelical counsels and object used (c. 573, §2)

The patrimony of the institute (c. 578)

The competent authority to erect, divide or redefine parts of the institute (c. 581)

²¹⁷ WILLIAMSON, “Commentary on cc. 573-746,” no. 1150, p. 322. This means that the local Ordinary can intervene in internal life and government when necessary, especially in matters or areas specified by law.

²¹⁸ See HOLLAND, “Commentary on cc. 573-606,” p. 458.

The contents of the constitutions, authority to approve (c. 587)
 The bishop to grant dispensation from the constitutions (c. 595, §2)
 The authority of superiors and chapters (c. 596, §1)
 Manner of living out the evangelical counsels (c. 598, §1)
 The way of living out the vow of obedience (c. 601)
 The authority responsible for the erection of houses of the institute (c. 609)
 The authority to suppress a house and mode of disposition of the goods (c. 616, §1)
 How superiors exercise their power (c. 617)
 Qualification for nomination of major superiors (c. 623)
 The duration of the office of superiors and exception to term of office (c. 624, §1)
 The style for election of supreme moderator and confirmation of others (cc. 625, §1 and §3)
 The requirement of having a council for superiors (c. 627, §1)
 The supreme authority of the general chapter (c. 631, §1)
 The composition and power of a general chapter (c. 631, §2)
 The limits of rights regarding temporal goods (c. 634, §1)
 Periods of apostolic activity carried out outside the novitiate community (c. 648, §2)
 The way institutes and members are to follow Christ (c. 662)
 The way cloister is observed (c. 667, §3)
 Time for the cession of goods (c. 668, §1)
 Obligations of an institute towards its members (c. 670)

These canons focus on the requirement for institutes to define matters regarding their patrimony, proper law, governance including designation and duties of internal authorities, discipline, incorporation and formation in their constitutions.

1.4.2 – Local Ordinaries and Preservation of Autonomy: *CIC*, Canon 586, §2

Canon 586, §2 asserts the duty of local ordinaries regarding the “*iusta autonomia vitae*” of each religious institute. However, just exactly how they are to realize this is not indicated. In fact, the uncertainty concerning the role of the hierarchy was a matter of concern in the legislative history of the canon.²¹⁹ Nonetheless, *Mutuae relationes* (no. 28) provides a guide:

It is the duty of Bishops as authentic teachers and guides of perfection for all members of the diocese [...] to be the guardians likewise of fidelity to the religious vocation in the spirit of each Institute [...] Bishops, along with their clergy, should be convinced advocates of the consecrated life, defenders of religious communities, promoters of vocations, firm guardians of the specific character of each religious family both in the spiritual and in the apostolic field.²²⁰

²¹⁹ See PCCICR, *Communicationes*, 2 (1970), pp. 171 and 179.

²²⁰ *MR*, no. 28, p. 320.

In this post-conciliar document, which was in effect before the promulgation of *CIC*, the role of bishops and their collaborators was already foreseen. However, a detailed study of those norms will follow in subsequent chapters. It suffices to note here that bishops who are also local ordinaries to non-clerical institutes of diocesan right, and the collaborators of these bishops, whoever they may be, have the duty to preserve and safeguard this *autonomia* of religious institutes in their dioceses or local churches as this concerns the specific character of these institutes.

1.4.3 – Other Canons regarding Non-Clerical Religious Institutes

Several other canons contain matters that could be considered when religious institutes provide norms for their constitutions, but the legislator has opted by way of subsidiarity to defer these matters to the *ius proprium* of the institutes. By this act, he grants to the institutes the power to choose in which code of their laws to treat these matters. The following are the relevant canons:

- Who can be admitted to the institute (c. 597, §1)
- Duty to live according to proper law (c. 598, §2)
- Dependence and limitation arising from the vow of poverty (c. 600)
- Admission of candidates to the novitiate by major superiors (c. 641)
- Extension of period of temporary profession (c. 657, §2)
- Permission of competent superior to change cession or will (c. 668, §2)
- Permission of supreme moderator for renunciation of goods (c. 668, §4)
- Written agreements for works on behalf of the diocese (c. 681, §2)
- Consent of the competent superior to accept a diocesan office (c. 682, §1)
- Removal of a religious from a diocesan office (c. 682, §2)
- Supreme moderator to determine probation period (c. 690, §1)
- Dismissal of members due to scandal or grave imminent harm (c. 703)

These canons centre on the requirement for each institutes to define in the proper law, matters of entrance into institutes, way to live the evangelical counsels in institutes, institutes' works and contract with dioceses and members' separation from institutes.

1.4.4 – Constitutions of Religious Institutes and the *CCEO*

This study of the constitutions of religious institutes pursuant to the categories in *CIC* canon 587 indicates the significance of the canon for religious institutes. While there is, regrettably, no parallel canon in *CCEO*, every Eastern religious institute has *typica* or statutes which, though not defined, generally correspond to Latin “constitutions” and serve the same purpose.²²¹

Conclusion

By defining the various elements of the contents of the constitutions and taking into consideration the provisions of the universal law on these matters, the constitutions of religious institutes help order the life of the institutes. This ordering of the life of the institutes is comparable with that which exists in the larger community of the faithful, for example, in the parish community, the particular and universal Church. It also positions the institutes to be in harmony with the churches where they exercise their apostolates.

This chapter, in order to contextualize the theme, presented first the concept of the consecrated life in terms of its origin, nature, purpose, and canonical aspects. Next, the work investigated the origin and evolution of constitutions from rules of life in monasteries as initiated by early founders such as Pachomius, Basil, and Benedict. A survey was made of the

²²¹ The lack of a specific *CCEO* canon on this is regrettable especially in light of events following the promulgation of *CCEO*. See ABBASS, *The Consecrated Life*, pp. 34-35. J. Abbass explains at page 35, the confusion as many Eastern institutes which have recourse to *CIC* canon 587 also misguidedly identify their foundational charter as

constitutions and their more particular law ‘statutes’. In fact, the statutes of the Eastern orders and congregations correspond to the Latin constitutions and can only be changed by the ecclesiastical authority upon which they depend [...] the lack of an Eastern norm distinguishing between what an institute’s statutes include and what its more particular law contains ultimately makes it unclear which laws can be changed or amended at a general synaxis and which cannot.

The situation cannot be easily classified as a *lacuna* in the *CCEO* nor considered in light of *CIC* canon 19 which asserts “laws issued in similar matters” (cf. *CCEO*, c. 1501). However, to reduce or eliminate further confusion, Abbass notes, the legislator or the appropriate dicastery needs to intervene in keeping with *CIC*, canon 16, §1 (*CCEO*, c. 1498, §1). See *ibid.*, p. 36.

history of Church legislation requiring religious institutes to assume a rule of life, along with the different times that the various rules of life and constitutions were adopted by orders like the Dominicans, Franciscans, Carmelites, as well as the Jesuits in the later years of the development of consecrated life. At that time, the concept of the constitutions was not understood as it is today. The events that led to the *CIC/17* and the subsequent directives for religious orders to update their rules of life and constitutions helped define the concept and place of the constitutions of religious institutes. Vatican II and the need to revise the *CIC/17* also led to the necessity of updating the constitutions of religious institutes and removing whatever was obsolete. Guidelines and a time frame were set for their update and experimentation. With the development of canon 587, §1, a clear definition of a religious institute's constitutions and their contents has emerged.

Canon 587, §1 has determined that, among the various instruments of proper law, the constitutions of these institutes are the fundamental code. Moreover, the constitutions apply the principle of subsidiarity consistent with the norms of the 1983 Code as they relate to consecrated persons. The constitutions ensure that the proper vocation and identity of each institute are preserved. This chapter also identified the place of canon 578, regarding the elements of the patrimony of the institutes, and canon 586, with respect to the just autonomy of institutes. The chapter utilized various sources including conciliar and post-conciliar documents, codes of law, scripture, and materials from the competent dicasteries. The inquiry underscores the role, significance, and place of laws in religious institutes and the constitutions' duty to protect their vocation and identity. With this foundation, the thesis will proceed in the next chapter to examine the principles concerning the relationship between bishops and non-clerical religious institutes of diocesan right in dioceses. The focus will be on the historical, doctrinal, and canonical provisions pertaining to this matter.

CHAPTER TWO

THE RELATIONSHIP BETWEEN DIOCESAN BISHOPS AND DIOCESAN NON-CLERICAL RELIGIOUS INSTITUTES

Introduction

The previous chapter examined the notion of the constitutions of religious institutes and their goal to protect the vocation and identity of the institutes. Canon 586 regarding the autonomy of institutes was briefly introduced in this survey. One of the fundamental aspects of the relationship between bishops and religious institutes is the necessity for unity and coordination of apostolic action under the guidance of the bishops or the local ordinaries.¹ In Chapter Two, religious institutes' dependence on the hierarchy will be treated in detail, principally as this concerns diocesan bishops and diocesan non-clerical institutes. The chapter will examine some key concepts. These will include a brief review of the evolution of Church legislation on the relationship between bishops and religious institutes and an investigation into the theological and canonical aspects of the teachings of the Church on this matter. The chapter will also identify the resultant duties and rights of diocesan bishops in this relationship as determined in the *CIC*, and will consider the role of the constitutions in fostering the various aspects of the relationship.

2.1 – CONCEPTUAL CONSIDERATIONS

This section endeavours to clarify the key concepts in this chapter which include: the notion of a particular church as a diocese, a diocesan bishop and his role as juridical representative of the diocese (c. 393), and diocesan non-clerical religious institutes, including their place, duties, and rights in a diocese.

¹ See D. HYNOUS, *The Relationship Between Religious and the Hierarchy Since the Second Vatican Council*, Doctoral thesis, Rome, Typis Pontificiae Universitatis Gregorianae, 1969, p. 8 (=HYNOUS, *Religious and the Hierarchy*).

2.1.1 – Particular Churches

The expression “particular churches” as employed in the Latin Church is a rather broad term with many connotations. Latin canon 368 characterizes particular churches thus:

Particular churches, in which and from which the one and only Catholic Church exists, are first of all dioceses, to which, unless it is otherwise evident, are likened a territorial prelature and territorial abbacy, an apostolic vicariate and an apostolic prefecture, and an apostolic administration erected in a stable manner.²

The canon recognizes the relationship between particular churches and the entire Church. It describes them as an image of the one and only Catholic Church. This description echoes the interconnectedness of the universal and particular churches noted in various Vatican II and post-conciliar documents, such as *Lumen gentium*, *Ad gentes*, and *Apostolorum Successores*. These documents articulate in various ways of the role of bishops, who as the visible source and foundation of unity, working in hierarchical communion with the College of Bishops, integrate their particular churches into the communion of all the churches, making the one Church of Christ (see *LG*, 13, 23, 26; *AG* 19; *AS* 5). Canon 368 specifies the common form of particular churches as being first dioceses. Akin to dioceses on juridical terms are other particular churches some of which are usually various stages in the growth of these churches toward becoming dioceses.³

² *CIC*, c. 368. “Ecclesiae particulares, in quibus una et unica Ecclesia catholica existit, sunt imprimis dioeceses, quibus nisi aliud constet, assimilantur praelatura territorialis et abbatia territorialis, vicariatus apostolicus et praefectura apostolica necnon administratio apostolica stabiliter erecta.” *CCEO*, c. 177, §1. See CONGREGATION FOR BISHOPS, *Directory for the Pastoral Ministry of Bishop Apostolorum Successores*, no. 5, Vatican City, Libreria editrice Vaticana, 2004, p. 13 (=AS).

³ See G. READ, “Particular Churches and their Groupings,” no. 759, in *CLSGBI Comm*, p. 210 (=READ, “Particular Churches”). See also J.A. RENKEN, *Particular Churches and the Authority Established in Them, Commentary on Canons 368-430*, Ottawa, Faculty of Canon Law, Saint Paul University, 2011, pp. 15-16. Examples of particular churches equivalent to dioceses are territorial prelature and territorial abbacy, an apostolic vicariate and an apostolic prefecture, and an apostolic administration erected in a stable manner, See *CIC*, cc. 370-374; *CCEO*, cc. 311, 312 and 177, §2. Others equivalent to dioceses are military and personal ordinariates, See also JOHN PAUL II, Apostolic Constitution *Spirituali militum curae*, 21 April 1986, in *AAS*, 78 (1986), pp. 481-486; BENEDICT XVI, Apostolic Constitution *Anglicanorum coetibus*, 4 November 2009, in *AAS*, 101 (2009), pp. 985-990; CONGREGATION FOR THE DOCTRINE OF THE FAITH, Complementary Norms for the Apostolic Constitution *Anglicanorum coetibus*, 4 November 2009, in *Origins*, 39 (2009), pp. 390-392.

Commenting on the concept of particular churches, L.M. Örsy recognizes the various connotations of the term in relation to its usage and evolution from the time of the early Church.⁴ At one time, members perceived they belonged to two communities: the Church universal, which is world-wide, and their particular churches. Still, Christ's faithful have different understandings of the particular church, including the idea of a particular community as a local church, meaning their parish or diocese, or the church in their country. Örsy further elaborates on the common and distinctive elements characteristic of particular churches, principally as they refer to these churches and the duties of each of their members. For him, the universal elements of the particular churches concern the Christian faith, worship, and discipline. Their particular elements are the humanity or legacy of Christ's faithful as depicted by their human traditions, history, and culture. In this study, the expression "particular churches," refers to dioceses. Canon 369 defines a diocese as

a portion of the people of God which is entrusted to a bishop for him to shepherd with the cooperation of the *presbyterium*, so that, adhering to its pastor and gathered by him in the Holy Spirit through the gospel and the Eucharist, it constitutes a particular church in which the one, holy, catholic, and apostolic Church of Christ is truly present and operative.⁵

The concept of particular churches as dioceses identifies three elements as constitutive: (1) the people of God, (2) the bishop as Pastor—although one who is not a bishop may administer this office⁶ and (3) the *presbyterium*. The canon also highlights the bond between the bishop, the *presbyterium*, and the people, as well as the bishop's duty to

⁴ See L.M. ÖRSY, "A Theology of the Local Church and Religious Life," in *Review for Religious*, 36 (1977), pp. 668-670 (=ÖRSY, "A Theology").

⁵*CIC*, c. 369. "Dioecesis est populi Dei portio, quae Episcopo cum cooperatione presbyterii pascenda concreditur, ita ut, pastori suo adhaerens ab eoque per Evangelium et Eucharistiam in Spiritu Sancto congregata, Ecclesiam particularem constituat, in qua vere inest et operatur una sancta catholica et apostolica Christi Ecclesia." *CCEO*, c. 177, §1. See *CD*, no. 11, p. 924. For equivalence to dioceses, see *CIC*, cc. 370-374.

⁶ For example, a priest can be elected as a diocesan administrator in a vacant See to administer the diocese without being ordained a bishop. See *CIC*, cc. 423-425.

shepherd the flock in his care. The bishop carries out his duties with the help of the Holy Spirit through the gospel and the Eucharist.

2.1.2 – Diocesan Bishops

Dioceses, as juridical persons, require physical persons to act in their name. Church teaching and tradition identify bishops as these physical persons (*CIC*, cc. 118 and 393; *CCEO*, c. 190). Latin canon 375 describes the institution and duties of bishops:

§1. Bishops, who by divine institution succeed the place of the Apostles through the Holy Spirit who has been given to them, are constituted pastors in the Church, so that they are teachers of doctrine, priests of sacred worship, and ministers of governance.

§2. Through Episcopal consecration itself, bishops receive with the function of sanctifying also the function of governing; by their nature, however, these can only be exercised in hierarchical communion with the head and members of the college.⁷

This Latin Code also determines who diocesan bishops are. They are those “to whom the care of some diocese is entrusted (c. 376).” Diocesan bishops or their equivalents are assigned specific communities of Christ’s faithful over which they possess a certain degree of authority. Regarding the nature and scope of this authority, Latin canon 381 states:

§1. A diocesan bishop in the diocese entrusted to him has all ordinary, proper, and immediate power which is required for the exercise of his pastoral function except for cases which the law or a decree of the Supreme Pontiff reserves to the supreme authority or to another ecclesiastical authority.

§2. Those who preside over the other communities of the faithful mentioned in can. 368 are equivalent in law to a diocesan bishop unless it is otherwise apparent from the nature of the matter or from a prescript of law.⁸

⁷ *CIC*, c. 375. §1. “Episcopi, qui ex divina institutione in Apostolorum locum succedunt per Spiritum Sanctum qui datus est eis, in Ecclesia Pastores constituuntur, ut sint et ipsi doctrinae magistri, sacri cultus sacerdotes et gubernationis ministri. §2. Episcopi ipsa consecratione episcopali recipiunt cum munere sanctificandi munera quoque docendi et regendi, quae tamen natura sua nonnisi in hierarchica communione cum Collegii capite et membris exercere possunt.”

⁸ *CIC*, c. 381. §1. “Episcopo dioecesano in dioecesi ipsi commissa omnis competit potestas ordinaria, propria et immediata, quae ad exercitium eius muneris pastoralis requiritur, exceptis causis quae iure aut Summi Pontificis decreto supremae aut alii auctoritati ecclesiasticae reserventur. §2. Qui praesunt aliis communitatibus fidelium, de quibus in can. 368, Episcopo dioecesano in iure aequiparantur, nisi ex rei natura aut iuris praescripto aliud appareat.” *CCEO*, c. 178.

Lumen gentium (no. 23) defines bishops as vicars of Christ. The document declares: “The individual bishops, however, are the visible principle and foundation of unity in their own particular churches, formed in the likeness of the universal church; in and from these particular churches there exists the one unique Catholic Church.”⁹ Moreover, Christ endowed the hierarchy with the authority to teach the faith. Bishops are to guard against errors regarding this faith among the flock entrusted to their care.¹⁰ Similarly, concerning the sanctifying office, bishops are to regulate the celebration of the Eucharist and other liturgical activities in their dioceses¹¹ They are to exercise their ruling office by counsels, exhortations, and examples, especially by the authority and *sacra potestas* they exercise exclusively over the faithful assigned to them for the spiritual growth of these persons. Additionally, the bishops have the authority of legislating and making decisions regarding their faithful, for good order of divine worship and of the apostolate. Vatican II expects these duties will be exercised in a spirit of compassion for those who err (*LG* 27).

Furthermore, *Apostolorum Successores* (no. 8) mentions that the bishops have the duty of building their particular churches continuously in accord with their members, while ensuring that the various gifts and ministries are in harmony with those of the universal Church. Therefore, bishops, both in their pastoral governance and in the life of their dioceses, have a duty to show their communion with the Roman Pontiff and the Episcopal College, as well as with particular sister Churches, especially those in their region (*AS* 5).

⁹ *LG*, no. 23. “Episcopi autem singuli visibile principium et fundamentum sunt unitatis in suis ecclesiis particularibus, ad imaginem ecclesiae universalis formati in quibus et ex quibus una et unica ecclesia catholica existit”; English translation in TANNER2, p. 867. Cf. Cyprian, *Epist.* (Letters), 66, 8: Hartel, III, 2, p. 733: “The bishop in the church and the church in the bishop.” Also Cyprian, *Epist.* (Letters), 55, 24: Hartel, p. 624, line 3: “One church throughout the whole world divided into many members”; *Epist.* (Letters), 36, 4: Hartel, p. 575, lines 20-21.

¹⁰ See *LG*, no. 25, p. 869. Cf. Mt. 13:52 and 2 Tim. 4:1-4.

¹¹ See *CIC*, cc. 835, §1 and 838, §1 §4; *CCEO*, cc. 199, 657, §1, §2 and 668, §2.

2.1.3 – The Place of Diocesan Non-Clerical Religious Institutes in the Diocese

Among the people of God commended to the care of diocesan bishops are those in institutes of consecrated life. Theologically, consecrated life belongs essentially to the life of holiness of the particular churches or dioceses in which they exist, since it developed within the Church as a gift of the Spirit within the structure, not as a part of the structure.¹² It is not a state between clergy or laity in the Church's hierarchical structure. Rather, the place of diocesan institutes in the diocese must be seen first from the standpoint of their place within the People of God in the Church. These institutes begin within a diocese. They embody the same universal elements of Christian faith, worship, and discipline, as well as the particular elements of the legacy of Christ's faithful as depicted by their human traditions, history, and culture in the diocese. When institutes spread to other dioceses, they bring these elements with them. However, they would need to be open to similar elements in their new environs.

The doctrinal principle from which the relationship between bishops and institutes arise is found, first and foremost, in the nature of the Church as a mystery and offered as the People of God, called together by the Holy Spirit from all nations (see *LG* 1, 4 and 9). This People of God, constituted as a sign of salvation, are members of one body who belong to each other. However, diverse and complementary gifts and functions have been received by each member for the one communion and mission of the Church.¹³ Consecrated persons are called to holiness and to the apostolate. Thus, they all share in the common vocation of union with God and the salvation of humanity. This vocation requires that they all should give priority to their spiritual life through hearing the Word, interior prayer, being aware that

¹² See *LG*, nn. 43a, 44, pp. 884-885. Also *MR*, no. 8; English translation in *CLD*, vol. 9, p. 304 and *MG*; English translation in *CLD*, vol. 6, p. 425; *CIC*, c. 574, §1. Here we recall that in *CCEO*, c. 410, consecrated life as lived by Christ's faithful in institutes is actually a state or a separate category.

¹³ Cf. *MR*, nn. 2-3, pp. 300-301. Also Rom. 12:5; 1 Cor. 12:13.

they are members in the People of God, and having concern for its unity. It also requires fidelity to the execution of its mission, selfless service, and humility of penitence. These elements bring about the need for good bishops-institutes relationship (MR 4).

Different features to examine in determining the place of institutes in the Church include the institutes' ecclesial nature and distinctive character, signs of genuine charisms and a service typical of religious authority (MR 10-12). This last factor focuses on the source of the authority and the duties entailed in its exercise. With regard to the basis of the teaching on the sharing of all the people of God in the *tria munera* of Christ, *Mutuae relationes* (no. 13) clarifies that the nature of the importance of religious authority is on a par with the teaching, sanctifying, and governing function of the pastoral ministry of bishops. However, their authority and religious superiors' cannot be equated, as they differ. The article states:

Regarding the office of teaching, religious superiors have the competency and authority of spiritual directors in relation to the evangelical purpose of their institute. In this context, therefore, they must carry on a veritable *spiritual direction* of the entire Congregation and of its individual communities. They should accomplish this in sincere harmony with the authentic magisterium of the hierarchy, realizing that they must carry out a mandate of grave responsibility in the evangelical plan of the Founder.¹⁴

Similarly, according to the second part of the same article of *Mutuae relationes*, the sanctifying function of religious superiors requires them to

have also a special competency and responsibility, albeit with differentiated duties. They must foster perfection in what concerns the increase of the life of charity according to the end of the institute, both as to formation, initial and ongoing, of the members and as to communal and person fidelity in the practice of the evangelical counsels according to the Rule. This duty, if it is rightly accomplished, is considered by the Roman Pontiff and the bishops a valuable help in fulfillment of their fundamental ministry of sanctification.¹⁵

¹⁴ MR, no. 13a; English translation in *CLD*, vol. 9, p. 309. Cf. *LG*, nn. 9-10 and 34-36, pp. 855-856 and 877-878.

¹⁵ MR, no. 13b; English translation in *CLD*, vol. 9, p. 309.

With regards to the office of governing, *Mutuae relationes* (no. 13c) specifies that

superiors must render the service of ordering the life of the community, of organizing the members of the institute, of caring for and developing its particular mission and seeing to it that it be efficiently inserted into ecclesial activity under the leadership of the bishops.¹⁶

The document, acknowledging the autonomy of religious institutes, concludes:

Institutes then have an internal organization all their own (cf. *CD*, 35, 3) which has its proper field of competency and a right *autonomy*, even though in the Church this autonomy can never become independence (cf. *CD*, 35, 3 and 4). The correct degree of such autonomy and the concrete determination of competence are contained in common law and in the Rules or Constitutions of each institute.¹⁷

Mutuae relationes, which essentially describes the place of consecrated life in ecclesial communion, also speaks of the duty of consecrated persons and their institutes to give witness through their total dedication to God. It reminds us that each institute exists in the Church, which they are to enrich with their unique vocations and missions, and their superiors have the duty to ensure their fidelity to their founders' charisms (*MR* 14).

2.1.4 – The Duties of Religious Institutes within Particular Churches

In the context of the relationship between bishops and religious institutes, there is a need to promote communion in the particular churches. Addressing this issue, Pope John Paul II wrote:

A distinctive aspect of ecclesial communion is allegiance of mind and heart to the magisterium of the bishops, an allegiance which must be lived honestly and clearly testified to before the people of God by all consecrated persons, especially those involved in theological research, teaching and publishing, catechesis and the use of social communication. Because consecrated persons have a special place in the church, their attitude in this regard is of immense importance for the whole people of God. Their witness of filial love will give power and forcefulness to their apostolic

¹⁶ *MR*, no. 13c; English translation in *CLD*, vol. 9, p. 309.

¹⁷ *MR*, no. 13; English translation in *CLD*, vol. 9, p. 309.

activity which, in the context of the prophetic mission of all the baptized, is generally distinguished by special forms of cooperation with the hierarchy.¹⁸ In a specific way, through the richness of their charisms, consecrated persons help the church to reveal ever more deeply her nature as the sacrament “of intimate union with God and of the unity of all mankind.”¹⁹

Apostolorum Successores (no. 4) affirms that “Christ has endowed all the members of this people with hierarchical and charismatic gifts, established them in a communion of life, charity and truth, and invested them with priestly dignity....”²⁰ Hence, each member of Christ’s faithful has a duty to uphold the particular church to which they belong in keeping with their condition and arising from their sharing in the common priesthood of Christ.²¹ This applies also to consecrated persons as members of the Church, since it is within the context of the diocese or particular church that they and the diocesan bishops give expression to their interrelation and share in the mission of the Church.

Moreover, each religious institute enjoys a particular charism or gift of the Spirit in the Church. They give expression to their consecrated life in the light of their charism. In essence, their expression of the Church’s holiness carries with it the particular character of their institute, as approved by the competent ecclesiastical authority. Therefore, institutes have the duty to strive to give witness to this part of the Church’s life of holiness and in time “serve the mission of the Church in a particular way.”²² This notion is affirmed in *Apostolorum Successores* (no. 63), which says that diocesan bishops are “assisted by members of

¹⁸ See JOHN PAUL II, Apostolic Exhortation on the Theology of Religious Consecration in Relation to the Mystery of Redemption *Redemptionis donum*, 25 March 1984, no. 15, in *AAS*, 76 (1984), pp. 513-546; English translation in *Origins*, 13 (1983-1984), p. 728 (=RD).

¹⁹ *VC*, no. 46, English translation in *The Church and Consecrated Life*, p. 364. See *LG*, no. 1, p. 849.

²⁰ *AS*, no. 4, p. 12.

²¹ ÖRSY, “A Theology,” pp. 670-671. See *CIC*, cc. 204 and 209, §2. Cf. *CCEO*, c. 12.

²² S.L. HOLLAND, “Commentary on cc. 573-606,” in *CLSA Comm1*, p. 455. Cf. *CIC*, c. 574, §2.

institutes of consecrated life [...], which enrich the particular Church with fruitful charisms and the witness of holiness, charity, fraternity and mission.”²³ In fact, John Paul II says that

communion in the church is not uniformity, but a gift of the Spirit, who is present in the variety of charisms and states of life. These will be all the more helpful to the church and her mission the more specific identity is respected. For every gift of the Spirit is granted in order to bear fruit for the Lord²⁴ in the growth of fraternity and mission.²⁵

As a way to foster further the interest of religious institutes in the life of a particular church, Örsy suggests that diocesan bishops need to involve the institutes when they are making pastoral plans or in the decision-making process for their dioceses, especially as these institutes are the ones “who carry so much of the burden of daily work in the Church and the churches. If religious share the pastoral work of the bishops, they should also have some part in planning and evaluating the same work.”²⁶ This practice, he holds, is a tradition in the Church that should be maintained. He remarks, “Indeed, there is an ancient tradition to invite abbots of independent monasteries and, a newer practice, to invite superiors general of exempt religious orders, to an ecumenical council. To have religious present at synods, held either on regional or diocesan levels, would be not only fair and just, but it would be according to our traditions, too.”²⁷ In recent times, Pope John Paul II also stressed a need for the institutes’ involvement and support in the particular church as a way to foster communion in it. He states:

²³ *AS*, no. 63, p. 72.

²⁴ See ST. FRANCIS DE SALES, *Philothea or an Introduction to the Devout Life*, Charlotte, NC, TAN Classics, St. Benedict Press, 2010, part 1, chap. 3, p. 9.

²⁵ *VC*, no. 4; English translation in *The Church and Consecrated Life*, p. 326.

²⁶ ÖRSY, “A Theology,” p. 676.

²⁷ *Ibid.*

Communion must be cultivated and extended day by day and at every level in the structures of each Church's life.... The theology and spirituality of communion encourage a fruitful dialogue between Pastors and faithful: on the one hand uniting them *a priori* in all that is essential, and on the other leading them to pondered agreement in matters open to discussion While the wisdom of the law, by providing precise rules for participation, attests to the hierarchical structure of the Church and averts any temptation to arbitrariness or unjustified claims, the spirituality of communion, by prompting a trust and openness wholly in accord with the dignity and responsibility of every member of the People of God, supplies institutional reality with a soul.²⁸

2.1.5 – The Rights vis-à-vis Dependence of Religious Institutes

Once religious institutes are approved, they establish and maintain relations with the Church's hierarchy, especially within the particular church where they exist. Among the various categories of consecrated persons and their institutes entrusted to diocesan bishops are the apostolic religious institutes mentioned in Latin canon 675. The canon states:

§1. Apostolic action belongs to the very nature of institutes dedicated to works of the apostolate. Accordingly, the whole of life of the members is to be imbued with an apostolic spirit; indeed the whole apostolic action is to be informed by a religious spirit.

§2. Apostolic action is to proceed always from an intimate union with God and is to confirm and foster this union.

§3. Apostolic action, to be exercised in the name and by the mandate of the Church, is to be carried out in the communion of the Church.²⁹

These institutes may be of pontifical or diocesan right. A key aspect of diocesan institutes is that they “dedicate themselves to the service of the universal Church through serving exclusively near a local Church. They are not superior or inferior to others; they

²⁸ See JOHN PAUL II, Apostolic Letter *Novo Millennio Ineunte*, 6 January 2001, no. 45, in *AAS*, 93 (2001), p. 298; English translation in *Origins*, 30 (2000-2001), p. 503.

²⁹ *CIC*, c. 675, §1. “In institutis operibus apostolatus deditis, apostolica actio ad ipsam eorundem naturam pertinet. Proinde, tota vita sodalium spiritu apostolico imbuatur, tota vero actio apostolica spiritu religioso informetur. §2. Actio apostolica ex intima cum Deo unione semper procedat eandemque confirmet et foveat. §3. Actio apostolica, nomine et mandato Ecclesiae exercenda, in eius communione peragatur.”

simply have their own distinctive vocation and dedication.”³⁰ Moreover, apostolic diocesan non-clerical institutes are integrally apostolic. They are more likely to be expected to respond to the request of diocesan bishops when there is great need of personnel for the apostolate. However, apostolic institutes are unlike contemplative institutes, which Vatican II in *Perfectae caritatis* (no. 7) insists cannot (*nequeunt*) be called upon to take an active role in the apostolate, no matter how great the need.

Each religious institute in the Church possesses the right to a just autonomy of life. However, this does not necessarily mean that these institutes are not regulated by the Church in this regard.³¹ At the time of approving the institutes and their constitutions, the competent ecclesiastical authority, on behalf of the Church, implicitly sanctions and gives norms for the regulation of their internal governance, life, and activities. Thus, besides universal and particular laws, the constitutions become a more specific way that the Church directs institutes.

The constitutions should guide institutes even in their external relations, mainly in the areas of the apostolate, temporal goods, and liturgy, not only because they concern the Church, but since the institutes depend on the hierarchy in these relations. The institutes ought to follow the norms and practices of the dioceses or particular churches where they exist. Additionally, approved constitutions imply that the institutes and the competent ecclesiastical authorities are aware of their contents. Thus, diocesan bishops and diocesan institutes should be aware of the contents of these constitutions, which regulate the life of the institutes. Similarly, civil requirements, especially in matters of temporal goods and the

³⁰ ÖRSY, “A Theology,” p. 672.

³¹ For an extensive study of this matter, cf. J. DORAN, *Just Autonomy of Religious Institutes and Episcopal Authority from the Second Vatican Council to the Ninth Ordinary Synod of Bishops on Consecrated Life*, Doctoral thesis, Ottawa, Saint Paul University, 1998. Also, A.L. KAITHARATH, *The Autonomy and Hierarchical Dependence of Religious Institutes According to the Code of Canon Law*, Doctoral thesis, Rome, Urbaniana Pontificia Universitas, 2002, pp. 99-155 (=KAITHARATH, *The Autonomy*); KOLUTHARA, *Rightful Autonomy*, pp. 53-85.

apostolate, bring the institutes into relations with civil society. The constitutions should prescribe that institutes be attentive to the civil requisites on such matters wherever they live.

2.2 – RELIGIOUS INSTITUTES AND DIOCESAN BISHOPS: A HISTORICAL PERSPECTIVE

From its origins, consecrated life has been held in high regard by the Church. It has also been regulated by the Church through numerous teachings, laws, and directives of various councils, as well as papal decrees regarding religious institutes and their relationship with the hierarchy. Most of the early councils were called to define doctrinal issues, condemn heresies, and respond to other issues affecting the life of the Church, including matters relating to the institutes.³² Utilizing pre-*CIC/17* documents, *CIC/17*, the *Normae*,³³ Vatican II, and post-conciliar documents, this section traces briefly the origin and evolution of the relationship between bishops and the institutes over the centuries. Attention is given to the role of the rule or constitutions in regards to this relationship.

2.2.1 – Prior to the 1917 Code

While there are many ecclesiastical laws relating to religious institutes' dependence on the bishops for Church recognition and sanctification, this inquiry is limited to the principal documents that treat this subject. The following section identifies the relevant aspects of the relationship between diocesan bishops and religious institutes prior to the *CIC/17* legislation.

2.2.1.1 – From the Early Christians to the 6th Century

From the time of the early Christian community, the Church has tried to legislate and regulate consecrated life, especially with regard to the relationship between the institutes

³² See KAITHARATH, *The Autonomy*, p. 12.

³³ SCR, *Normae secundum quas sacra congregatio de religiosis in novis religiosis congregationibus approbandis procedere solet*, 6 March 1921, in *AAS*, 13 (1921), pp. 317-318 (=SCR, *Normae*).

and bishops. Early records show the subjection of abbots to the local bishops in monastic governance, as decreed by various Councils. This determination included the first major legislation regulating the relationship between bishops and religious institutes as affirmed by the Council of Chalcedon (451). This council promulgated various laws to order the life of institutes and subject them to the local bishops.³⁴ One of its prominent laws held:

It has been decided that no one is to build or found a monastery or oratory anywhere against the will of the local bishop; and that monks in each city and region are to be subject to the bishop, are to foster peace and quiet, and attend sorely to fasting and prayer, staying set apart in their places. [...] it is for the local bishop to exercise the care and attention that the monasteries need.³⁵

The norm ordained that the institutes needed the consent of the local bishop to erect monasteries or oratories, and implicitly reminded members to live according to the demands of their way of life, which would have been determined by their rules or constitutions. The norm brought monks under universal Church law at this point of their life: that is, in a matter concerning their right to begin foundations.³⁶

2.2.1.2 – From the 6th to the 13th Century

As a result of persistent abuses and in order to prevent scandal, various councils continued the practice of regulating religious institutes. At Lateran Council I (1123), monks

³⁴ See COUNCIL OF CHALCEDON, cc. 4, 7 and 16; English translation in TANNER1, pp. 89-90 and 94.

³⁵ COUNCIL OF CHALCEDON, “De honore monachorum, et ut nullis se actibus vel ecclesiasticis vel saecularibus misceant, nec alienum servum praeter conscientiam domini sui recipiant,” c. 4, in TANNER1, p. 89, states “[...], placuit nullum quidem usquam aedificare aut constituere monasterium vel oratorii donum praeter conscientiam civitatis episcopi. Monachos vero per unamquamque civitatem autum regionem subiectos esse episcopo et quietem diligere et intentos esse tantummodo ieiunio et orationi, in locis, quibus renuntiaverunt saeculo, permanentes [...] Verum tamen episcopum convenit civitatis competentem monasteriorum providentiam gerere.” See COUNCIL OF NICAEA II (787), cc. 12-14, 17-20; English translation in TANNER1, pp. 141-149 and 151-154. The matters of these canons included: alienation of monastic property, liturgical activities, keeping order and remaining in one’s monasteries, new foundations and houses of prayer.

³⁶ See L.M. JARRELL, *The Development of Legal Structures for Women Religious between 1500 and 1900: A Study of Selected Institutes of Religious Women*, Doctoral thesis, Canon Law Studies, No. 513, Washington, DC, The Catholic University of America, 1985, p. 8 (=JARRELL, *The Development of Legal Structures*). Some other norms were given regarding abuses and lapses in monastic life and undue involvement in both civil and church affairs. See *ibid*, cc. 8-10, 13 and 24, pp. 91-93 and 98. See also KAITHARATH, *The Autonomy*, p. 187.

were subjected to bishops in the matter of the care of souls and in their apostolate.³⁷ Lateran Council II (1139) prohibited the practice of women who did not observe the rule of Basil, Benedict, or Augustine—women who lived in the world, owned private dwellings, and received guests at will—but still wanted to be recognized as nuns. According to the council, in order to be considered nuns, women were required to follow the rules that regulated the lives of nuns.³⁸ Lateran Council IV (1215) prescribed the reform of orders and the observance of their rules by chapters. It directed that diocesan bishops ensure the reform of monasteries in their territories without burdening them unnecessarily.

Subsequent councils also made rulings about these orders. However, the papacy took a prominent place in the concern for religious orders and their juridical status. The Decree of Gratian (d. 1140) and the Decretals of Gregory IX (d. 1234) testify to this reality, presenting various documents and decrees on the rules, vows, the organization of religious houses and the relationship between these institutes and the bishops.³⁹ The Council of Lyons II (1274) gave directives regarding the distribution of the members and the goods of suppressed orders. It recognized the role of the constitutions of the orders regarding acquisition of revenues and goods and their alienation.⁴⁰ An assessment of the legislation reveals that the Holy See made further efforts to create uniformity and exercise greater centralization and control. In a similar move, Pope Boniface VIII (1235-1303) in 1298 imposed cloister on all women religious with his apostolic constitution *Periculoso*.⁴¹

³⁷ See LATERAN COUNCIL I, c. 16; English translation in TANNER1, p. 193.

³⁸ See LATERAN COUNCIL II, c. 26; English translation in TANNER1, p. 203.

³⁹ See C. 16, q. 1; C. 18, q. 1, 2; C. 19, q. 1-3; C. 20, q. 1-4 and C. 27, q. 1-2; X 3, 31, 35-37; X 5, 1, 11; X 5, 3, 19 and 40.

⁴⁰ See COUNCIL OF LYONS II, c. 23; English translation in TANNER1, p. 326.

⁴¹ See *Sextus* 2, 16.

2.2.1.3 – From the 13th to the 19th Century

The Council of Basel-Ferrara-Florence-Rome (1431-1445) decreed that in diocesan synods, diocesan bishops were to call on members of the communities subjected to them to observe the rules and constitutions of their orders. Members of the orders were to renounce all ownership, and the orders were not to require candidates to bring anything with them when they entered the order. The superiors were to ensure chapters were held at the proper time and in accord with the norm of law and the constitutions.⁴²

The Council of Trent also provided details on consecrated life by entrusting to bishops the duty to ensure that superiors of orders observed the rule of their orders and carried out visitations of their monasteries.⁴³ It decreed various reforms in the orders, confirmed some decrees of other councils (including compulsory cloister), and required that members make confessions as determined by their constitutions, subjected institutes to Episcopal visitation, correction, and oversight regarding the spiritual care of souls.⁴⁴

Pope Pius V (1570) in *Decori* clarified the obligation of cloister and specified instances of fire, leprosy, or an epidemic as conditions for leaving the cloister with two written certifications, one each from the superior and the bishop.⁴⁵ As part of papal care for consecrated life, in 1586 Pope Sixtus V (1520-1590) set up the dicastery *Super consultationibus*

⁴² See COUNCIL OF BASEL-FERRARA-FLORENCE-ROME, Session 15; English translation in TANNER1, pp. 473-476.

⁴³ See COUNCIL OF TRENT, Session 21, “Decree on Reform,” c. 8; English translation in TANNER2, p. 731.

⁴⁴ See COUNCIL OF TRENT, Session 25, “Decree on regulars and nuns,” 3-4 December 1563, chaps. 1-22, especially chap. 5-7 and 10-11; English translation in TANNER2, pp. 777-780.

⁴⁵ PIUS V, Apostolic Constitution *Decori*, 1 February 1570, in PETRI CARD. GASPARRI (ed.), *Codici Iuris Canonici Fontes*, no. 133, vol. 1, Rome, Typis polyglottis Vaticanis, 1923-1939, pp. 237-239.

Regularium, now the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life, to handle the affairs of these institutes.⁴⁶

Pope Benedict XIV in *Quamvis iusto* recognized the rules of women's institutes.⁴⁷ Vatican I, cut short due to the Franco-Prussian war (1870), had no statement on consecrated life.⁴⁸ However, from the drafts of its agenda can be gleaned concerns about this life, mainly the criteria for the approval and regulation of new forms of consecrated life then prevalent, or even the decision of whether new forms were to be allowed to grow.⁴⁹ Pope Pius X with *Dei providentis* gave further regulations on the requirement for founding new congregations.⁵⁰

2.2.1.4 – The 20th-Century Papacy to the *Normae*

In the 20th century, Roman Pontiffs, including Pope Pius X (1825-1914), continued to bear witness to the Church's concern for consecrated persons and their institutes through various acts and writings. This period witnessed several apostolic constitutions on the issue.⁵¹ Of these, the apostolic constitution of Pope Leo XIII (1810-1903), *Conditae a Christo*, promulgated on 8 December 1900⁵² is of relevance to this study. It focused on congregations

⁴⁶ This dicastery has evolved through the years with adoption of various titles, including the following: under Gregory XIII it was called "Sacra Congregatio Episcoporum et Regularium," under Pius X it was known as "Sacra Congregatio de Religiosis." The last title prior to its current one was "Sacra Congregatio de Religiosis et Institutis Saecularibus." For the current competence of the dicastery, see JOHN PAUL II, Apostolic Constitution on the Roman Curia *Pastor bonus*, 28 June 1988, arts. 105-111, in *AAS*, 80/2 (1988), pp. 886-888.

⁴⁷ BENEDICT XIV, Apostolic Constitution *Quamvis iusto*, 30 April 1749, in *Benedicti XIV Bullarium*, vol. 3, Prati, in Typographia Aldina, 1846, pp. 49-61.

⁴⁸ See FIRST VATICAN COUNCIL, "Introduction," English translation in TANNER2, p. 800.

⁴⁹ See L. JARRELL, "The Legal and Historical Context of Religious Life for Women," in *The Jurist*, 44 (1984), pp. 429-430 (=JARRELL, "The Legal and Historical").

⁵⁰ PIUS X, Motu proprio on Congregations of Simple Vows *Dei providentis*, 16 July 1906, in *AAS*, 39 (1906), pp. 344-346 (= *Dei providentis*).

⁵¹ For a summary in the development of the Church's concern for the consecrated life, see T. SCHAEFER, *De religiosis*, nn. 19-31, pp. 8-11. Cf. *PME*, no. 3; English translation in COURTOIS, no. 222, p. 96.

⁵² LEO XIII, Apostolic Constitution *Conditae a Christo*, 8 December 1900, in *AAS*, 33 (1900-1901), pp. 341-347; English translation in *Handbook on Canon Law*, pp. 246-258 (= *Conditae*).

of simple vows and defined the relationship between bishops and diocesan institutes by naming the following rights and duties of the bishop in this matter.

According to articles 1-6 of this constitution, a bishop was to receive new institutes into his diocese for which he has examined and approved their rules or constitutions. He was to give consent and approval for houses of new institutes in his diocese. The bishop was to prefer inviting existing institutes that could serve the needs of his diocese, rather than founding new religious institutes for these needs. These elements underscore the bishop's initial and direct involvement with the institutes concerned. The bishop's consent was required for certain acts of the diocesan institutes in his diocese, including their establishing themselves in other dioceses, changing their nature or rules, or closing institutions under him. He could suppress separate houses in his own diocese.

In articles 7-10, the constitution specified that the bishop was to be informed of candidates wanting to enter the institutes or seeking profession in them. He was to examine the candidates and accept them if feasible. He could dismiss professed members from the institutes and dispense them from their temporary or perpetual vows, with the exception of the perpetual vow of chastity. He was to ensure the rights of others were safeguarded in the exercise of this duty. The bishop was to preside personally or through another at the elections of the superiors general of the institutes, and could confirm or annul the elections according to his conscience. He was to visit the houses of all diocesan religious institutes in his diocese, to inquire into their practice of virtue, the observance of the institutes' discipline,⁵³ and the accounts of their administration. He was to regulate the administration of the sacraments and appoint priests for liturgical offices as confessors and preachers.

⁵³ Leo XIII says of pontifical institutes, that, the Bishops had the right to inquire into observance of discipline *according to the rule*. See *Conditae*, no. 9, p. 257. Emphasis added to highlight the role of the rule.

2.2.2 – The 1917 Code: Diocesan Bishops vis-à-vis Religious Institutes

For the most part, in the section regarding the law on religious, *CIC/17* canonized the norms from *Conditae, Dei providentis*, and the various decrees and letters issued by the popes. Some key aspects of the relationship between diocesan bishops and the institutes are identified in this part of *CIC/17*. However, since these matters are again taken up in the 1983 Code, their treatment will be appropriately addressed below. Suffice it to say that as determined in the relevant canons of *CIC/17* the bishops or local ordinaries were to act personally, by giving their consent, or through delegates. They had to ensure that the issues were handled *ad normam iuris*. For example, the bishops were to ensure that the Apostolic See handled the matters reserved to it by the law. Implicitly, in matters regarding the relationship between bishops and institutes, the institutes' constitutions had their role in determining which of the two had authority to act and under which conditions.

2.2.3 – Post-1917 Code to Vatican Council II

After an assessment of various post-*CIC/17* papal constitutions and decrees regulating religious institutes and the role of the rules or constitutions, some conclusions can be drawn. It should be noted, that in some of these documents no reference is explicitly made to the role of the rules or constitutions.⁵⁴ However, there are instances where the observance of the rules or constitutions is mentioned.⁵⁵ Nonetheless, these institutes have

⁵⁴ An example of when these documents did not mention either the rules or the constitutions is seen in Pius XII's letter regarding adaptation of consecrated life to the times. According to him: "Reform means rather not to lead a sluggish, idle life, but to reproduce in one's life the great deeds of those who have gone before, to nourish intensely the flame of piety; it means striving by every means that the holy laws of one's institute will not appear as a collection of exterior and useless regulations, *whose letter*, in absence of the spirit, *kills* [2 Cor. 3:6]; but that these laws will really be so many instruments of heavenly virtue, and that those who are bound to obey them will be enabled to form an ever keener desire for holiness and to spend all their powers, following the example of St. Paul, in securing the salvation of their brethren" (PIUS XII, Letter to Cardinal Micara on Adaptation of Religious to Contemporary Conditions, 12 November 1950, in *AAS*, 43 (1951), p. 25; English translation in *COURTOIS*, no. 322, p. 142). Emphasis added in the original.

⁵⁵ For example, Pius XII says regarding the place to find the spirit of an institute in order to safeguard it in the midst of adaptation to present day: "Major superiors cannot decide it according to their personal taste

always been governed by the universal law and their *ius proprium*. Their subjection to the bishops, whether for correction of abuses or prevention of scandal, required that the bishops consult the *ius proprium* of the institutes for the proper execution of their duty.

2.3 – INSTITUTES AND DIOCESAN BISHOPS: A THEOLOGICAL-CANONICAL PERSPECTIVE

This section will examine some theological and canonical bases for the relationship between diocesan bishops and non-clerical religious institutes of diocesan right, and will investigate Vatican II documents relevant to this relationship. To bring this section together, some pertinent post-conciliar documents will also be surveyed.

2.3.1 –Vatican II on the Relationship between Bishops and Religious Institutes

What was the mind of Vatican II regarding matters in which bishops and religious institutes were to relate? Utilizing the Constitution on the Church, *Lumen gentium*, and the decree on the Pastoral Ministry of Bishops in the Church, *Christus Dominus*, this section identifies some of these issues.

2.3.1.1 – *Lumen gentium* (1964)

Lumen gentium (no. 45) teaches that the hierarchy of the Church is responsible for the prudent regulation of the practice of the counsels both for the perfection of charity and for the acceptance of the rules set forth by founders of religious institutes. Each of these institutes is necessarily subject to the hierarchy. This duty would also be binding on non-

or impression, even in all good faith and sincerity. If the major superior is also the founder, and if he has received from the Church the approval of his personal ideas as the norm of a state of perfection, then it is always permissible for him to appeal to his own intentions. But in other cases, the superior must come back to the ideas of the founder as expressed in the constitutions approved by the Church. A subjective conviction, even though supported by one or other passage of the constitutions, is not sufficient” (PIUS XII, Discourse to General Congress of the States of Perfection, 9 December 1957, in *AAS*, 50 (1958), pp. 34-43; English translation in *COURTOIS*, no. 663, p. 310).

exempt institutes.⁵⁶ Regarding the duty of Church hierarchy and religious institutes, *Lumen gentium* (no. 45) states that the hierarchy

also provides vigilant and protective authority to see that institutes that have been set up here and there for the building up of the body of Christ develop and flourish in accordance with the spirit of their founders.... The members themselves [consecrated persons], in carrying out their duty towards the church which arises from their particular form of life, have a duty of reverence and obedience, in accordance with the canon laws, towards the bishops, because of their authority in the particular churches and because of the need for unity and harmony in apostolic work.⁵⁷

In *Lumen gentium*, institutes are urged to give authentic witness to Christ according to their particular character. *Lumen gentium* (no. 46) states:

Religious should try hard to ensure that through them the church more effectively shows forth the real Christ – to believers and unbelievers – in prayer on the mountain, or announcing the kingdom of God to the crowds, or healing the sick and the wounded and turning sinners to a better life, or blessing children and doing good to everybody, always, however, in obedience to the will of the Father who sent him.⁵⁸

2.3.1.2 – *Christus Dominus* (1965)

The pastoral office of bishops in the Church is focused on concern for the people of God, especially those entrusted to the bishops. *Christus Dominus* (no. 15) states that it is the bishops' duty to promote the spiritual growth of Christ's faithful entrusted to their care, mostly by their own example of holiness in charity, meekness, and simplicity of life. Such example should reveal the mind of the Church as mirrored in the bishops. The Council directs that diverse forms of the apostolate be promoted. The bishops are to ensure that collaboration and coordination exist in them, and that they are adapted suitably to the needs

⁵⁶ Cf. *Annus sacer*, no. 9, p. 122; PIUS XII, Apostolic Constitution *Sedes Sapientiae*, 31 May 1956, in *ASS*, 48 (1956), p. 355; *MG*, pp. 432-433.

⁵⁷ *LG*, no. 45; English translation in TANNER2, p. 886.

⁵⁸ *LG*, no. 46; English translation in TANNER2, p. 886. Cf. PIUS XII, Encyclical *Mystici Corporis*, 29 June 1943, in *AAS*, 35 (1943), p. 214 ff.

of the times and human conditions as depicted in social, demographic and economic conditions (*CD* 17).

In a more specific way, *Christus Dominus*, addressing the institutes as collaborators of bishops in the dioceses, outlines their duty toward the progress of the particular churches. Number 33 of the document names the means for such an alliance as primarily through prayers, works of penance, the example of their lives, and external apostolic works carried out in accord with the unique character of the institutes. It makes clear the need for consultation between the institutes and the bishops, predominantly in apostolic activities.

Christus Dominus (no. 34), after admonishing the clerical members of religious institutes on the aid to be given to bishops, calls on members of non-clerical institutes to offer more aid in areas of the apostolate for the growth of the dioceses in which they are present. Number 35 of the document sets forth the principles that are to regulate participation of the institutes in apostolic activities within particular churches. Its §4, which treats the subjection of institutes to the authority of the local ordinaries, is significant in the matter of the apostolate. The article states that all religious, whether exempt or non-exempt

are subject to the authority of the local ordinaries in the following matters: public practice of divine worship, (without prejudice, however, to the diversity of rites), the care of souls, sermons preached to the people, the religious and moral education of the faithful, especially of children, catechetical instruction, formation in liturgy, and what concerns the good repute of the clerical state as well as the various activities involving the exercise of their sacred apostolate. Catholic schools conducted by religious are also under the authority of local ordinaries in what concerns their general organization and supervision, without prejudice to the right of religious to manage them. Likewise, religious are obliged to observe all general directives legitimately prescribed by episcopal councils or conferences.⁵⁹

Christus Dominus (no. 35, §5) specifies the need for cooperation among various religious institutes and between them and the diocesan clergy. It notes the duty of diocesan

⁵⁹ *CD*, no. 35, §4; English translation in TANNER2, p. 935.

bishops to foster this cooperation in their dioceses. According to this number, “It is desirable that there be consultations beforehand between bishops or episcopal conferences and religious superiors or conferences of major religious superiors, with regard to the apostolic activities to be undertaken by religious.”⁶⁰ *Christus Dominus* (no. 35, §6) suggests that

harmonious and productive relations are to be mutually fostered between bishops and religious. Accordingly, it is desirable that bishops and religious superiors should get together, at regular intervals and whenever it seems opportune, to discuss business which affects the apostolate throughout their territory.⁶¹

2.3.2 – The Post-conciliar Documents on the Matter of the Relationship

Several post-conciliar documents address the relationship between bishops and religious institutes. They recall the nature and purpose of consecrated life. We will examine the relevant documents chronologically: *Ecclesiae Sanctae*, *Mutuae relationes*, *Vita consecrata*, *Pastores gregis*, and *Apostolorum Successores*.

2.3.2.1 – *Ecclesiae sanctae* (1966)

Ecclesiae sanctae (no. 23) defines the criteria for institutes of all rites to determine the local ordinaries they are subject to in their places of ministry. *Ecclesiae sanctae* (nn. 24-40) outlines norms for implementing the provisions of *Christus Dominus* (nn. 33-35) on matters affecting the relationship between bishops and religious institutes.⁶² However, since these norms are reflected in the relevant Latin canons, their details will be treated below.

2.3.2.2 – *Mutuae relationes* (1978)

This document is the first extensive post-Vatican II treatment of the matter of the relationship between bishops and religious institutes, outlining some major areas of this

⁶⁰ *CD*, no. 35, §5; English translation in TANNER2, p. 936.

⁶¹ *CD*, no. 35, §6; English translation in TANNER2, p. 935.

⁶² Cf. *ES*, nn. 23-40; English translation FLANNERY1, pp. 604-609.

relationship. The first part of the document presents a doctrinal synthesis of the principles for the basis of the relationship. Its chapter four addresses the common mission of the people of God as one and the same as that pursued by bishops and consecrated persons. *Mutuae relationes* (nn. 15-22) make clear the dimensions of this ecclesial mission. Part two of the document centers on directive norms concerning practical aspects of life as this affects this relationship. It groups those elements that are to promote sound relations under three main headings: the formative aspect of the relationship, its operative component, and its organizational dimension.

Regarding the formative aspect, *Mutuae relationes* (nn. 24-35)⁶³ focus on the responsibility of the Roman Pontiff and the Bishops to teach and sanctify the entire Church. It recalls the duties of bishops and superiors to ensure proper formation of those in their charge regarding clear knowledge of the mystery and structure of the Church and the role of the Spirit. Various aspects and means are proposed for adequate formation.

Concerning commitments and responsibilities in the field of action, the document focuses on the necessity of pastoral mission, where the place and responsibility of Christ's faithful are highlighted.⁶⁴ Then, in numbers 44-50, *Mutuae relationes* centers on the requirements of consecrated life. Of these, the following are highlighted:

The pastoral activities and areas of subjection of religious to the authority of the local ordinary (MR 44);

The development of fruitful relationship between bishops and religious superiors regarding persons and institutes (MR 45);

Fidelity of religious to their rules and constitutions in apostolic activities especially those outside of the community's apostolate (MR 46);

The need for bishops and their collaborators to understand the distinctive nature of institutes, their actual situation and criteria for renewal, the religious superiors also need to keep abreast of the doctrinal vision of the particular Church where they

⁶³ See MR, nn. 24-35, pp. 319-324.

⁶⁴ See MR, nn. 36-51, pp. 325-331.

serve, and to inform the local ordinary of any difficulty regarding their service in the local Church (MR 47);

Fostering of exchange of information, better understanding and cooperation between religious institutes in the local Church (MR 48);

Women, especially religious women, are to contribute to the apostolic activity in the ecclesial community. They are encouraged to seek new forms of ministry in accord with the concrete needs of the Church and of the world (MR 49);

Bishops and their collaborators in the pastoral field to ensure that the apostolic service of women religious be better known, are intensified and increased (MR 50).

Chapter seven stresses the importance of coordinating pastoral means of service and animation at the diocesan, national, or universal levels.⁶⁵

2.3.2.3 – *Vita consecrata* (1996)

Vita consecrata is Pope John Paul II's post-synodal exhortation on the consecrated life in the Church and in the world. The document exhorts consecrated persons to fulfill their call to holiness and the hierarchy's duty to encourage them in fidelity to this call and to their charisms by a return to the institutes' rules and constitutions (VC 35-37).⁶⁶ Regarding the relationship between bishops and religious, John Paul II, in number 46, calls on consecrated persons to cultivate and show forth in their lives *sentire cum Ecclesia*. He states:

Consecrated persons are asked to be true experts of communion and to practice the spirituality of communion as "witnesses and architects of the plan for unity which is the crowning point of human history in God's reign."⁶⁷ The sense of ecclesial communion, developing into a spirituality of communion, promotes a way of thinking, speaking and acting which enables the church to grow in depth and extension. The life of communion in fact "becomes a sign for all the world and a compelling force that leads people to faith in Christ [...] in this way communion leads to

⁶⁵ See MR, nn. 52-66, pp. 333-338.

⁶⁶ VC, nn. 35-37; English translation in FLEMING, D.L. and E. McDONOUGH (eds.), *The Church and Consecrated Life: The Best of the Review* - 5, St. Louis, MO, Review for Religious, 1996, pp. 354-357 (= *The Church and Consecrated Life*).

⁶⁷ CONGREGATION FOR RELIGIOUS AND SECULAR INSTITUTES, "Religious and Human Promotion," 12 August 1980, II, no. 24, in L'OR, English edition, 26 January 1981, p. 11.

mission and itself becomes mission”; indeed, “communion begets communion: In essence it is a communion that is missionary.”⁶⁸

Vita consecrata (no. 48) highlights the duty of local ordinaries to preserve and safeguard the autonomy of institutes. It states:

The identity of each institute is bound up with a particular spirituality and apostolate, which takes shape in a specific tradition marked by objective elements. For this reason the Church is concerned that Institutes should grow and develop in accordance with the spirit of their founders and foundresses, and their own sound traditions. Consequently, each institute is recognized as having a rightful autonomy, enabling it to follow its own discipline and to keep intact its spiritual and apostolic patrimony. It is the responsibility of local ordinaries to preserve and safeguard this autonomy. Thus, Bishops are asked to welcome and esteem the charisms of the consecrated life, and to give them a place in the pastoral plans of the Diocese. They should have a particular concern for institutes of diocesan right, which are entrusted to the care of the local bishop.⁶⁹

Furthermore, *Vita consecrata* (no. 48) notes the effect of the presence of consecrated persons in the life of the dioceses as they bring the diverse gifts and fruits of their experience, particular insights, and missionary fervour.

2.3.2.4 – *Pastores gregis* (2003)

Pastores gregis asserts the significance of consecrated life in the ministry of bishops in the particular churches. The document, referring to *Vita consecrata*, states that

in the Church as communion the Bishop must esteem and promote the specific vocation and mission of the consecrated life, which belongs stably and solidly to the Church's life and sanctity.⁷⁰ In the particular Churches too, the consecrated life fulfils its duty of exemplary presence and charismatic mission.⁷¹

⁶⁸ *VC*, no. 46; English translation in *The Church and Consecrated Life*, p. 364. *Christifideles laici*, nn. 31-32, p. 849.

⁶⁹ *VC*, no. 48; English translation in *The Church and Consecrated Life*, p. 366.

⁷⁰ Cf. *LG*, no. 44; English translation in *TANNER2*, p. 885.

⁷¹ JOHN PAUL II, Post-Synodal Apostolic Exhortation *Pastores gregis*, 16 October 2003, no. 50, in *AAS*, 96 (2004), pp. 825-924; English translation in *Origins*, 33 (2003-2004), p. 378 (=PG).

2.3.2.5 – *Apostolorum Successores* (2004)

Most of the provisions in *Apostolorum Successores* regarding the relationship between bishops and religious institutes are affirmations of the doctrinal principles principally taken from Vatican II and the 1983 Latin canons. Numbers 98-102 specify that the bishop is to ensure that institutes are properly incorporated into the diocesan community through his support and encouragement. He is to involve institutes in the life of the diocese, especially by his way of exercising his authority over the institutes on the basis of his pastoral duty. Number 99a of *Apostolorum Successores* says that the bishop is to acquaint himself with the specific character of each institute in his diocese as these are described in the institutes' constitutions.⁷² This underlines the constitutions' pedagogic role as guide.

Although the bishop has the duty to maintain the common discipline of institutes, *Apostolorum Successores* (no. 100) also calls on him and others to respect the rightful autonomy of the institutes. The document adds that a bishop is not to interfere in an institute's life and government nor claim to be the authentic interpreter of an institute's original charism. The bishop is to stress the spirit of holiness in consecrated persons, remind them of their duty to renew their institutes' original charisms, and insist on fidelity to their rules and obedience to their superiors. It adds that a bishop should call superiors' attention to any abuses they see in the work of the members. Number 104 states that a bishop is to encourage non-clerical institutes to participate in different diocesan structures—such as various diocesan commissions and delegations, diocesan and parish pastoral councils where pertinent—in the direction of apostolic and educational projects and in deciding issues that pertain to them.

⁷² On this point, R.M. McDERMOTT holds that the constitutions would be of great assistance to the diocesan bishops. This is particularly true if they are to fulfill their duty of pastoral care for the institutes and their members. They would need to be familiar with the nature, spirit, character and mission of the institute. In a word, they need to have an idea of the patrimony of the institute. See R.M. McDERMOTT, *The Consecrated Life: Cases, Commentary, Documents, Readings*, Alexandria, VA, Canon Law Society of America, 2006, p. 73.

In these conciliar and post-conciliar documents, the role of the constitutions was not often explicitly specified. Even so, it would not be an exaggeration to say that they are essential for the achievement of the various matters addressed by the documents. To the extent possible, institutes should respond with appropriate references in their constitutions to these issues, as they ultimately involve the very character of an institute. Moreover, the role of the constitutions and *ius proprium* can be deduced from the documents' few references to the specific character of the institutes (cf. *LG* 45; *CD* 33, 35, §§1-2, 4-6). As *CIC* canon 578 reminds us this element is part of what the constitutions are to state for each institute.

2.4 – THE *CIC* NORMS ON THE RELATIONSHIP BETWEEN DIOCESAN BISHOPS AND DIOCESAN NON-CLERICAL RELIGIOUS INSTITUTES

In this section, we will survey the canons dealing with aspects of the relationship between diocesan bishops and diocesan non-clerical institutes, and those concerning the duties and rights of the diocesan bishops regarding the institutes. The section will also examine other canons that treat specific areas of subjection of the institutes to these bishops, noting the role of the constitutions of the institutes in these matters. We will begin with a brief excursus on the matter of the dependence of religious institutes on Church hierarchy.

2.4.1 – Dependence of Religious Institutes on the Hierarchy

In canon 573, the legislator recognizes that the consecrated life is a response to the action of the Holy Spirit. Institutes will inevitably continue to depend and surrender to the action of the Holy Spirit in living out their consecrated life and mission. Their recognition of this indispensable aspect of dependence will be verified if they work “in union with the Church, and in a continuous and intimate dependence on its authority and in generous

co-operation with its pastors.”⁷³ Christ entrusted the care of His Body the Church to Peter and the Apostles (Jn. 21: 15ff). The Roman Pontiff and the College of Bishops, and those assimilated to them,⁷⁴ make up the Church hierarchy, and they perpetuate this task of caring for the Church in hierarchical communion. This communion is the fruit of the Holy Spirit, linked with Christ the Head of the Church, who is present in the Episcopal ministry. Bishops exercise their ministry within the organic Church communion. This ministry of the bishops with the collaboration of the priests is a three-fold service to the community-*docendi, regendi et sanctificandi*-which is indivisible. Individual bishops exercise this ministry in a variety of functions. It includes the bishop’s duty regarding the approval of institutes with their laws and the mandate he confers on these institutes (cf. *CD* 15; *MR* 5-9).

Canon 590 first subjects all institutes of consecrated life, religious or secular, whether they are of pontifical or diocesan right, to the authority of the Roman Pontiff. It then states their subjection to the Roman Pontiff arises from members’ profession or incorporation into an institute and their vow of obedience (cf. *CCEO*, c. 412, §1). Canon 593 specifies the particular relationship between institutes with the Church’s hierarchy in keeping with their nature, holding that pontifical institutes are subject to the Apostolic See (cf. *CCEO*, c. 413). Canons 589 and 594 state that diocesan institutes remain under the authority of the diocesan bishops, with due regards for the norm of canon 586 (cf. *CCEO*, cc. 413, 434, 505, §2, 3°).

Meanwhile, some institutes can be exempted from the authority of diocesan bishops.⁷⁵ The understanding of exemption in *CIC/17* canon 618, which allowed a certain degree of autonomy of institutes from diocesan bishops, is quite different from *CIC* canon

⁷³ J. SUNDARA, *The Juridical Nature of the Religious Constitutions in the New Law System of the Church*, Doctoral thesis, Rome, Pontificia Università Lateranense, 1991, p. 17.

⁷⁴ See *CIC*, c. 336. See also HYNOS, *Religious and the Hierarchy*, p. 8.

⁷⁵ Cf. *CIC*, c. 591; *CCEO*, c. 412, §2. See *LG*, no. 45b, p. 886. See also *CD*, no. 35, §3, p. 585; *MR*, nn. 8, 22, pp. 304 and 316.

591, where such distinct autonomy is not so obvious. A key element in *CIC/17* legislation was based on the nature of the institutes, principally on the inequality between the pontifical and diocesan institutes.⁷⁶ An assessment of the current law on the relationship between diocesan bishops and the institutes seems to render the relevance of exemptions questionable, as the institutes are subject to the bishops in different degrees. Besides, canon 586 asserts the right to a just autonomy of life mostly in internal government and discipline, by which institutes preserve an essential part of their patrimony. It also asserts that local ordinaries have the duty to preserve and safeguard the autonomy of institutes. Nonetheless, the situation whereby institutes, especially non-clerical diocesan institutes, are subject to diocesan bishops—who is also the local ordinary for such institutes—in several aspects of their lives and mission makes observers question the relevance of the exemption that *CIC* holds the Roman Pontiff may grant to some institutes for the good of the universal Church.⁷⁷

2.4.1.1 – Legislative History of Canon 594

Canon 594 asserts: “Without prejudice to can. 586, an institute of diocesan right remains under the special care of the diocesan bishop.”⁷⁸ This canon, which has a parallel in *CCEO* canon 413, first appeared as canon 19 in the 1977 *Schema canonum de Vitae consecratae*. It then appeared as canon 522, §1 in the 1980 draft and as canon 596, §1 in the 1982 *Schema*. Through the course of the canon’s evolution, the main distinction from its first version was

⁷⁶ See J.M. HUELS, “The Demise of Religious Exemption,” in *The Jurist*, 54 (1994), p. 42 (=HUELS, “The Demise”).

⁷⁷ For studies on this question and the history of exemption see: R.K. SEASOLTZ, “Monastic Autonomy and Exemption: Charism and Institution,” in *The Jurist*, 34 (1974), pp. 316-355; J.G. MARTÍN, “Exemptio Religiosorum iuxta Concilium Vaticanum II,” in *Commentarium pro Religiosis et Missionariis*, 60 (1979), pp. 281-330; M.B. PENNINGTON, “The Evolution of Monastic Law,” in *Studia canonica*, 14 (1980), pp. 349-362; V. DE PAOLIS, “Exemptio a autonomia Institutorum Vitae Consecratae?” in *Periodica*, 71 (1982), pp. 147-178; D.J. KAY, *Exemption: Origins of Exemption and Vatican Council II*, Doctoral thesis, Rome, Pontifical Gregorian University, 1990, pp. 89-96; HUELS, “The Demise,” footnote 2, pp. 41 and 46-52.

⁷⁸ *CIC*, c. 594. “Institutum iuris dioecese, firmo can. 586, permanet sub speciali cura Episcopi dioecese.” *CCEO*, c. 413.

that matters regarding the competency of a diocesan bishop over institutes of diocesan right were separated from the canon that explicitly stated the fact of the subjection. These former matters, regarding the diocesan bishop's authority, are now part of Latin canon 595.⁷⁹

2.4.1.2 – Understanding the Norm of Canon 594

As the previous norm to *CIC* canon 594, *CIC/17* canon 492, §2 made it clear that ordinarily diocesan institutes were *Ordinariorum iurisdictioni ad normam iuris plane subiecta*, meaning that the institutes were completely subject to residential bishops (cf. *CIC/17*, c. 198, §1) as provided in the law.⁸⁰ One condition for these institutes to be subtracted from the supervision of a residential bishop was the receipt of pontifical approval or commendation.⁸¹ Canon 594 is a shift from its predecessor *CIC/17* canon 492, §2 in the matter and degree of subjection. This prompts the question: What does being under the special care entail?

Canon 594 is a disciplinary norm binding members of diocesan institutes. Rincon-Perez gives the following explanation on the implication of canon 594.⁸² The norm of the canon goes beyond pastoral considerations, as is the case with what the diocesan bishop normally exercises over the flock in his jurisdiction. The canon entails greater juridical authority of the bishop over the institutes, both as public juridical persons and with regard to their internal governance. Even so, this authority pertaining to the internal governance of the institutes does not constitute the bishop an internal superior of the institutes.⁸³ His responsibility in this regard is to ensure that the norm of law is followed and that abuses do

⁷⁹ See the various discussions on the canon in: *Communicationes*, 11 (1979), pp. 65-66 and 299-302; Canon 4, §1, in *Communicationes*, 18 (1986), p. 199. For the legislative history of canon 594 see Appendix B.

⁸⁰ We recall, though, that the concept of “just autonomy” for religious institutes was not explicitly legislated in *CIC/17*. The concept as articulated in *CIC* c. 586 is new and arises from Vatican II.

⁸¹ Cf. *Dei providentis*, no. 5; English translation in COURTOIS, no. 61, p. 28.

⁸² See RINCON-PEREZ, “Commentary on cc. 573-606,” pp. 1536-1537.

⁸³ See c. 4, §1, in *Communicationes*, 18 (1986), p. 199.

not creep into the matter of internal governance.⁸⁴ This competency does not give the bishop the degree of authority that the Roman Pontiff has over the institutes (cf. *CIC*, c. 590; *CCEO*, c. 412, §2). The superiors of the institutes retain their authority in them.

2.4.2 – Duties and Rights of Diocesan Bishops vis-à-vis Religious Institutes

Ecclesiae sanctae (no. 25) articulates a fundamental principle that can influence the relationship between diocesan bishops and religious institutes. According to this principle, all consecrated persons are bound by the laws, decrees, and ordinances of the local ordinaries (see *CIC*, cc. 391 and 134, §2) and those of the Episcopal conference of the particular churches where they reside. The number lists the following among other areas, the usage of the means of social communications, attendance at public functions and participation in prohibited associations, whether as members or by cooperation, and the decrees regarding ecclesiastical dress (cf. *AS* 100).

However, the relationship between diocesan bishops and diocesan institutes requires that certain issues will call for greater distinctions in deciding which diocesan bishop is intended. In some cases, the role of diocesan bishops of the dioceses where the institutes are operating and exercise their apostolate is distinct from that of the bishop of their principal seat. Canon 595, §1 is an example of such a distinction. It gives the diocesan bishop of the principal seat the right to approve and confirm changes to the constitutions of diocesan institutes. However, the canon requires him to consult other diocesan bishops of the places where the institutes have spread in treating matters that are beyond internal authority and affect the entire institute.⁸⁵ What are the various occasions for the manifestation of the competencies of diocesan bishops regarding these institutes?

⁸⁴ See E. WILLIAMSON, “Commentary on cc. 573-746,” no. 1169, p. 327.

⁸⁵ Cf. *CCEO*, cc. 414, §1, 1°-2° and §3.

2.4.2.1 – Erection of Diocesan Religious Institutes and their Houses

Diocesan bishops, each in his own territory, can erect institutes of consecrated life by formal decree, provided that the Apostolic See has been consulted.⁸⁶

Religious institutes must first exist before their houses. The Church's *ius vigens* sets forth that institutes and their houses are to be erected. "Erection" is the "act by which an institute [a house] is officially established and recognized by competent ecclesiastical authority."⁸⁷ It is a juridical act which requires that certain requisites and formalities be observed for its validity.⁸⁸ It is to be carried out through a formal decree, issued according to the norm for administrative acts.⁸⁹ Canon 579 establishes that diocesan bishops (c. 376) are competent to erect religious institutes (c. 607, §2) within their dioceses.⁹⁰ It limits such erections within each diocese to the respective diocesan bishops in addition to the Roman Pontiff or if the diocesan bishop delegates this duty to one of his Vicars. However, their competency to erect institutes does not automatically constitute bishops as founders, though they may also be founders. As such, canon 579, in principle, is more technically precise than the predecessor, *CIC/17* canon 492, §1, regarding the ecclesiastical authority for such erections. That canon had explicitly prohibited a Vicar Capitular who administered a diocese during a vacancy (*CIC/17*, c. 432) or a Vicar General from erecting institutes.

Bishops are to consult with the Apostolic See prior to the erection of institutes. They are to supply other requirements regarding the identity and character of the founder of the

⁸⁶ *CIC*, c. 579. "Episcopi dioecesani, in suo quisque territorio, instituta vitae consecrate formali decreto erigere possunt, dummodo Sedes Apostolica consulta fuerit." *CCEO*, c. 506.

⁸⁷ S.L. HOLLAND, "Glossary," in *Handbook on cc. 573-746*, p. 331 (=HOLLAND, "Glossary").

⁸⁸ See *CIC*, cc. 125-127; *CCEO*, cc. 932 and 934.

⁸⁹ See *CIC*, cc. 37 and 51; *CCEO*, cc. 1514 and 1519, §2.

⁹⁰ See RINCON-PEREZ, "Commentary on cc. 573-606," p. 1483. The initial idea to include the Episcopal conference of the particular church in the consultation regarding the erection of new institutes was dropped after the consultations following the 1977 *Schema*. Cf. *Schema canonum de Vitae consecratae*, c. 7, §2.

proposed institutes, their name, purposes, habit, works, number, and means of sustenance.⁹¹

The praxis is a step outside what obtained with earlier decrees of prior councils, where other persons could found monasteries or institutes with the bishops' approval.⁹²

As diocesan institutes grow, they spread into other dioceses, if invited, which may require erection of new houses in their new environs. Leo XIII encouraged diocesan bishops to invite existing institutes from other dioceses that meet their needs, instead of founding similar ones (*Conditae*, 1, 3^o). Canon 495, §1 of *CIC/17* addressed such occurrence for the erection of houses of institutes in other dioceses. The canon required diocesan institutes to obtain the consent of the diocesan bishops of their home dioceses, as well as the consent of the local ordinary where they intended to erect other houses. It obliged the local ordinary of the principal seat to give the required consent. He or the bishop of an institute's principal seat could refuse it only for grave causes. However, *CIC/17* did not indicate if the consent of the diocesan bishop of the principal seat of the institute concerns the first erection of houses in other dioceses, or for every new house to be erected. The opinion is that the consent of the diocesan bishop of the principal seat was required only for the first new house in other dioceses. Subsequent new foundations where the institutes had houses required only the consent of diocesan bishops of these dioceses.⁹³

⁹¹ See *Dei providentis*, nn. 1-2; English translation in COURTOIS, nn. 57-58, p. 27. Cf. *Conditae*, nn. 2-3, pp. 249-250. For further study regarding the erection of religious institutes confer: C.R. ORTH, *The Approbation of Religious Institutes*, Doctoral thesis, Canon Law Studies, No. 71, Washington, DC, Catholic University of America, 1931, pp. 5-73 (=ORTH, *The Approbation*). Also E. GAMBARI, *The Canonical Establishment of A Religious Institute: Process and Procedures*, M.M. ARMATO and T. BLESSIN (transl.), Florence, Artigraf, 1999. These requisite are meant to prevent duplicate institutes. See SCR, *Normae*, 6 March 1921, no. 3, in *ASS*, 3 (1921), p. 313. See also *PC*, no. 19, p. 946; *VC*, no. 12, pp. 331-332.

⁹² Cf. SYNOD OF ROME (483) in MANSI *Collections*, vol. 7, p. 1178. Also COUNCIL OF ADGE (506), c. 27 in H. BRUNS, *Canones Apostolorum et conciliorum saeculorum*, vol. 2, Berlin, G. Reimer, 1839, p. 151; COUNCIL OF ARLES (511), in *ibid*, p. 165.

⁹³ See WOYWOD, *A Practical Commentary*, no. 373, p. 208. See also BOUSCAREN-ELLIS, *Commentary*, p. 240. Some commentators on *CIC/17* c. 495 opine the consent does not have to be written. See CORONATA, *Institutiones*, footnote 3, p. 614. See also SCHAEFER, p. 131. This opinion would be questionable today. We think

Regarding the erection of religious houses, canon 609, §1 of *CIC*, which replaces *CIC/17* canon 497, §1, declares, “Houses of a religious institute are erected by the authority competent according to the constitutions, with the previous written consent of the diocesan bishop.” The practice of obtaining the permission or the consent of the bishop for erecting houses of institutes is not something new in the history of this institution. Records show that it was prevalent as early as the 4th century with the expansion of monastic life, when founders and abbots opened monasteries. For example, St. Augustine obtained permission prior to erecting his monasteries,⁹⁴ as did St. Martin of Tours before erecting a monastery in the city.⁹⁵ They sought such permission in order to receive the protection and guidance of the Church authorities.⁹⁶ While, at that time, institutes requested such permission or consent on their own accord, canon law now requires them to request it.

Canon 609, §1 makes clear that any legitimate erection of the houses of religious institutes must be carried out in accordance with two requirements. First, the institutes’ constitutions must fulfill their role by naming the authority responsible for erecting the houses. Second, the written consent of the diocesan bishops must be obtained prior to the erection. Erection of the houses would be invalid if made contrary to this provision if: (1) the prior written consent of the diocesan bishops was not obtained; (2) the persons erecting the houses were not those named in an institute’s constitutions or (3) they lacked the mandate to do so; (4) the requirements for such erection as stipulated in the universal law

it would be much better to have the consent in writing in order to avoid conflict or misunderstanding and establish the fact of such consent.

⁹⁴ See ORTH, *The Approbation*, p. 12.

⁹⁵ See C.C. MONTALEMBERT, *The Monks of the West, from St. Benedict to St. Bernard*, vol. 1, New York, Kenedy, 1905, p. 340.

⁹⁶ See ORTH, *The Approbation*, p. 12.

and the constitutions were not followed.⁹⁷ Additionally, religious houses are to be erected only if they are judged useful to the Church and the institutes, if it is established that there are adequate resources for members' needs, and if all that is necessary for them to live their consecration in accord with the purpose and spirit of their institutes is available (cf. c. 610; PC 19). Therefore, in accord with *Mutuae relationes* (no. 51) it is necessary that, "When there is question, therefore, of new foundations, all who have a role to play in passing judgment must express their opinion with great prudence, patient appraisal and just demands."⁹⁸

Once a diocesan bishop grants consent for the erection of a house of a religious institute, this consent implies much more. Indeed, his consent allows the institute other rights including for instance, the right of the institute to live according to its proper purpose and carry out its proper works in keeping with the norm of law. Any conditions stated in the written consent are to be observed.⁹⁹ The erection of a religious house implies the establishment of a religious community with at least three consecrated persons and not the physical lodging which could be a rented accommodation.¹⁰⁰ The Latin Code and *CCEO* insist on the role of the diocesan or eparchial bishop for the erection of the institutes themselves and each of their houses.¹⁰¹ Moreover, Latin canon 611 envisages the erection of

⁹⁷ See WILLIAMSON, "Commentary on cc. 573-746," no. 1203, p. 336. See also HOLLAND, "Commentary on cc. 573-606," p. 472; MCDERMOTT, "Commentary on cc. 573-616," p. 774; D.J. ANDRÈS, "Commentary on Institutes of Consecrated Life and Societies of Apostolic Life, cc. 607-630," in *Exegetical Comm*, vol. II/2, p. 1461 (=ANDRÈS, "Commentary on cc. 607-630").

⁹⁸ MR, no. 51; English translation in *CLD*, vol. 9, p. 332.

⁹⁹ See *CIC* c. 611; cf. *CCEO*, cc. 437, §1 and 509, §2.

¹⁰⁰ See BOUSCAREN-ELLIS, *Commentary*, p. 239. Cf. *CIC*, c. 115, §2; R.T. KENNEDY "Commentary on Physical and Juridical Persons, cc. 113-123," in *CLSA Comm2*, pp. 159-160.

¹⁰¹ We note here that *CIC* says nothing about erection of houses in a mission territory as did *CIC/17* canon 497, §1. The canon held that for any of the religious institutes to establish houses in mission territories subject to the Sacred Congregation for the Propagation of the Faith, the permission of the Holy See with the written consent of the local Ordinaries of the place for the intended houses was required. Exempt religious institutes needed the approval of the Holy See and the written consent of the local Ordinaries of the place for

houses of an institute in other dioceses. Therefore, an institute would make its request for the erection of a house to the bishop of that other diocese. Applying the principle of consultation present in *CIC* canon 595, the bishop, before giving consent, should consult and observe the requirements for the erection of a religious house. One may note also that, although there are no provisions for diocesan institutes to be constituted as provinces in the codes, nothing opposes this. Still, such a reality would be unwieldy, as the institutes would need the extra consent of the diocesan bishops in the various dioceses where they exist. A better way here might be to request pontifical status.¹⁰²

2.4.2.2 – Suppression of Diocesan Religious Institutes and their Houses

“Suppression” is “a legal act by which the existence of a house, province, or institute is terminated as a [juridical] entity.”¹⁰³ It is a juridical act that must be carried out according to the general norms for juridical acts and juridical persons on this matter (cc. 120-128). Religious institutes and their erected houses as juridical persons are, by nature, perpetual, yet both *CIC* and *CCEO* foresee the prospect of their suppression. First, reminiscent of *CIC/17* canon 493, *CIC* canon 584 determines that the Apostolic See has the exclusive right to suppress an institute or its only house that was lawfully erected. Suppression of the institute’s only house redounds to the suppression of the institute itself, and the Apostolic See makes disposition of its goods. Some general reasons for suppressing an institute might include (1) a median age of seventy-five years or higher; (2) the absence of perpetual profession for

the intended houses. Non-exempt religious institutes of pontifical right required only the written consent of the local Ordinary of the place for the intended houses. But, they also were to obtain the consent of the Holy See to erect their novitiate house (*CIC/17*, c. 554, §1). Diocesan institutes required only the consent of the Ordinaries of the place of their principal house and of the place of their intended house. Moreover, non-clerical religious institutes needed the special permission of the local Ordinary to open a church or oratory related to the erected houses (*CIC/17*, cc. 1162 and 1191-1192). See BOUSCAREN-ELLIS, *Commentary*, pp. 239-240.

¹⁰² See BOUSCAREN-ELLIS, *Commentary*, p. 238.

¹⁰³ HOLLAND, “Glossary,” p. 336. See WILLIAMSON, no. 1148, p. 322.

twenty-five years; (3) the lack of personnel for the leadership of the institute; (4) cessation of the bishops' request of the institutes' services.¹⁰⁴ Regarding suppression of a legitimately erected religious house, Latin canon 616 states:

§1. The supreme moderator can suppress a legitimately erected religious house according to the norm of the constitutions, after the diocesan bishop has been consulted. The proper law of the institute is to make provision for the goods of the suppressed house, without prejudice to the intentions of the founders or donors or to legitimately acquired rights.

§2. The suppression of the only house of an institute belongs to the Holy See, to which the decision regarding the goods in that case is also reserved.¹⁰⁵

This canon specifies that the supreme moderator of an institute is competent to suppress a legitimately erected house of the institute as determined by the constitutions. However, this is conditioned by prior consultation with the diocesan bishop. Just as the diocesan bishop's consent was essential for the valid erection of each house, so also is consultation with him required for the suppression.¹⁰⁶ The supreme moderator should inform the diocesan bishop of the reasons for the suppression during the consultation. An institute can suppress its houses either by merging or dividing them. The constitutions may require the supreme moderator to obtain the consent or counsel of the council in order to suppress. The institute's *ius proprium* determines the disposition of the goods with respect for the intentions of founders or donors or legally acquired rights. The constitutions will assist

¹⁰⁴ Cf. *PC*, no. 21, p. 946 and *ES II*, no. 41, p. 632.

¹⁰⁵ *CIC*, c. 616, §1. "Domus religiosa legitime erecta supprimi potest a supremo Moderatore ad normam constitutionum, consulto Episcopo dioecesano. De bonis domus suppressae provideat ius proprium instituti, salvis fundatorum vel offerentium voluntatibus et iuribus legitime quaesitis. §2. Suppressio unice domus instituti ad Sanctam Sedem pertinet, cui etiam reservatur de bonis in casu statuere." *CCEO*, c. 510.

¹⁰⁶ See WILLIAMSON, "Commentary on cc. 573-746," no. 1214, p. 336. See also HOLLAND, "Commentary on cc. 573-606," p. 474; H. GRAEF, "The Religious as Collaborators of the Diocesan Bishop," in H. VORGRIMMER (ed.), *Commentary on the Documents of Vatican II*, vol. 2, New York, NY, Herder and Herder, 1967-1969, p. 274 (=GRAEF, "The Religious"). Implicit here is the principle that the authority who erects also suppresses. Thus, the norm of *CIC* c. 609, §1 is also further respected. *CIC/17*, c. 498 speaks of the suppression of formal or non formal houses, while its c. 488 5° defines *domus formata* or formal house as having a minimum of six consecrated persons, with four members being priests if they are clerical institutes.

the diocesan bishop in this matter: mainly by ensuring that it is the competent authority requesting the suppression, and that the conditions for such suppression are observed. Canons 121-123 govern the destination of the goods of the suppressed juridical person.

2.4.2.3 – Canonical Visitation by the Diocesan Bishop

Lateran Council IV (1215) and other councils¹⁰⁷ required diocesan bishops to make a canonical visitation to religious institutes and to look into certain aspects of the life and discipline of the institutes. The code commission for *CIC/17* included the practice in canon 512. The Latin Code retains the tradition of visitation by various competent authorities. As shepherds of the dioceses entrusted to them, bishops have the duty to visit persons, Catholic institutions, and sacred things and places within their territories (cc. 396-397). Regarding consecrated persons, *CIC* canon 628, §2 states: “It is the right and duty of a diocesan bishop to visit even with respect to religious discipline: [...] 2° individual houses of an institute of diocesan right located in his own territory.”¹⁰⁸ Canon 628, §3 add the scope of the matters to be treated which may extend to internal discipline and the responsibility of members of the houses to give their cooperation for the visits to be fruitful (cf. *CCEO*, c. 420, §2).¹⁰⁹

Canon 806 adds that it is the prerogative of the diocesan bishop to visit and oversee Catholic schools in his territory, as well as to prescribe general regulations regarding them. Schools founded by an institute are also subject to bishops’ authority and regulations, even

¹⁰⁷ Cf. COUNCIL OF LYONS II, Constitutions II, c. 24; in TANNER1, p. 327. Also COUNCIL OF TRENT, Session XXV, cc. 8 and 11; in TANNER2, pp 779-780. These councils gave directives regarding the manner of the visits, reception of gifts or procurations during the visits. They also warned against abuses and excesses.

¹⁰⁸ *CIC*, c. 628, §2. “Episcopi dioecesiani ius et officium est visitare etiam quoad disciplinam religiosam: 2° singulas domos instituti iuris dioecesiani in proprio territorio sitas.” *CCEO*, c. 415, §2.

¹⁰⁹ *CIC*, c. 628, §3. “Sodales fiducialiter agant cum visitatore, cui legitime interroganti respondere tenentur secundum veritatem in caritate; nemini vero fas est quoquo modo sodales ab hac obligatione avertere, aut visitationis scopum aliter impedire.” *CCEO*, c. 420, §2.

while the schools retain their internal autonomy.¹¹⁰ Canon 683 lists some matters diocesan bishops could examine when they visit:

§1. At the time of pastoral visitation and also in the case of necessity, the diocesan bishop, either personally or through another, can visit churches and oratories which the Christian faithful habitually attend, schools, and other works of religion or charity, whether spiritual or temporal, entrusted to religious, but not schools which are open exclusively to the institute's own students.

§2. If by chance he has discovered abuses and the religious superior has been warned in vain, he himself can make provision on his own authority.¹¹¹

Canon 512, §1 of *CIC/17* held that every five years the local ordinary could visit institutes personally or through others. Diocesan bishops can exercise their authority over institutes through others, especially through episcopal vicars (cf. *CIC*, c. 479). Canon 396 specifies diocesan pastoral visits to be annual or at least within the period of five years. Both codes specify that the visits to the houses are to take place at the bishop's scheduled canonical visit to the area or when the need arises, for example, if the competent superior neglects this (*CIC*, c. 683; *CCEO*, cc. 415, §2 and 420, §3). In order for diocesan bishops to correct abuses in institutes, they evidently need knowledge of the approved constitutions or *typica* or statutes of the institutes in addition to the universal or common law on the matter. In this way, the bishops are able to fulfill their duty of preventing abuses within the parameters of the peculiar character of each institute while, at the same time, safeguarding their unique vocation and identity, to which *CIC* canon 578 obliges all.

¹¹⁰ See *CD*, no. 35, §4, p. 585; *ES*, no. 39, §§1-2, p. 608; *AS*, no. 133, pp. 147-148. Cf. *CCEO*, cc. 634, §3 and 638, §1.

¹¹¹ *CIC*, c. 683, §1. "Ecclesias et oratoria, quibus christifideles habitualiter accedunt, scholas aliaque opera religionis vel caritatis sive spiritualis sive temporalis religionis commissa, Episcopus dioecesanus visitare potest, sive per se sive per alium, tempore visitationis pastoralis et etiam in casu necessitatis; non vero scholas, quae exclusive pateant propriis instituti alumni. §2. Quod si forte abusus deprehenderit, frustra Superiore religioso monito, propria auctoritate ipse per se providere potest." *CCEO*, cc. 415, §2, §4 and 638.

Canon 595, §1 specifies the responsibility of diocesan bishops to treat matters beyond the power of internal authority. However, it says nothing about the nature of these matters. Some of them, which are identified variously in *CIC*, could include cases of *lacunae* in an institute's laws, relocating the principal house of the institute to a different diocese, and confirming decrees of departure and dismissal.¹¹² Canon 595, §2 specifies that diocesan bishops can dispense from the constitutions of the institutes in particular cases. The canon, which does not identify matters that are subject to such dispensation, does not limit this power to dispense from the constitutions only to the diocesan bishop of the principal seat of the institute. The *CCEO* canon 414, §1, 2°, although similar, goes further. It explicitly states that the eparchial bishop can grant dispensations that are "legitimately requested." A bishop needs to be familiar with the constitutions to dispense suitably and effectively from them.

2.4.2.4 – Administration of Temporal Goods

Canons 532-535 of *CIC/17* regulated the role of the local ordinary regarding the administration, the alienation of temporal goods, and contracts of institutes. The canons required institutes to obtain the consent of the local ordinary to act, and stated their duty to answer to the local ordinary. Canon 634, §1 identifies religious institutes and their parts as juridical persons *ipso iure*, subjects capable of ownership of temporal goods. The canon adds that the constitutions could exclude or restrict that capacity.¹¹³ This code asserts that the temporal goods of these institutes, as ecclesiastical goods, are governed by the prescripts of

¹¹² See WILLIAMSON, "Commentary on cc. 573-746," no. 1171, pp. 327-328.

¹¹³ Concerning ways the institutes' constitutions may exclude or restrict the capacity for temporal goods, F.G. MORRISEY remarks that some constitutions determine that all surplus funds from the parts of the institutes are submitted regularly to the next higher part of the institutes for its good. Some institutes do not allow the right of possession. Their goods belong to the Holy See or are put in Trusts. See F.G. MORRISEY, "Temporal Goods and their Administration," in *Exegetical Comm*, vol. II/2, p. 1674 (=MORRISEY, "Temporal Goods"); see also R. SUGAWARA, "Le norme sui beni temporali negli istituti religiosi (can. 635)," in *Institia in caritate. Miscellanea di studi in onore di Velasio de Paolis*, James J. Conn and Luigi Sabbarese (eds.), Rome, Urbaniana University Press, 2005, pp. 419-420.

Book V, *The Temporal Goods of the Church*, unless other provision is expressly made. Implicit in these canons is the recognition of the right of institutes to own goods. However, since these goods are ecclesiastical goods (*CIC*, cc. 635, §1 and 1257), they are subject to the canons governing temporal goods and the institutes' norms established for their use and administration. Canon 1254 asserts the innate right of the Church and its entities to own temporal goods for their mission (cf. *CCEO*, c. 1007).¹¹⁴ Ownership of goods by institutes and their houses includes the capability to acquire (governed by cc. 1259-1272), to administer (regulated by canons 1273-1289), and to alienate (subject to cc. 1290-1298).

Canon 637 of *CIC*, which succeeds part of *CIC*/17 canon 535, establishes the right of the local ordinary of the house of a diocesan institute to be informed of its economic situation. In *CIC*, such right flows from the duty of ordinaries to watch over such goods (c. 1276). The right puts a corresponding obligation on the house to ensure it provides the local ordinary with its financial report. The administrator (finance officer), designated according to the *ius proprium*, is to prepare these reports (*CIC*, cc. 636, §2, 1284 and 1287).

According to *CIC* canon 638, §4, the written consent of the local ordinary is also required for diocesan institutes to perform acts of alienation, or any other transaction in which the patrimonial condition of the institute could be worsened, whose value exceeds the sum established by the Holy See for that region, or for items donated to the Church by vow, or for precious things of arts or history.¹¹⁵ However, regarding the administration and alienation of temporal goods, the constitutions, by stating clearly the relative competence of superiors of the institutes regarding these matters, will help the local ordinaries to fulfill their

¹¹⁴ See J.A. RENKEN, *Church Property: A Commentary on Canon Law Governing Temporal Goods in the United States and Canada*, Staten Island, NY, Society of St. Paul/Alba House, 2009, p. 13 (=RENKEN, *Church Property*).

¹¹⁵ See *CIC*, c. 638, §4; cf. 1292, §1; *CCEO*, no parallel. For further study of this matter, see F.G. MORRISEY, "Conveyance of Ecclesiastical Goods," in *CLSA Proceedings*, 38 (1976), pp. 123-137; idem, "Temporal Goods," pp. 1681-1688; RENKEN, *Church Property*, pp. 350-354.

duty. They should also state significant elements that qualify for acts of ordinary and extraordinary administration and alienation.¹¹⁶

2.4.2.5 – Canonical Election of the Supreme Moderator

An “election” is “the formal choosing of a person for an office, dignity, or position of any kind, usually by the votes of a constituent body.”¹¹⁷ Similarly, in the Church, an election is the act of electing by a competent collegial body, exercised in order to make provision for an office or position *ad normam iuris*.¹¹⁸ However, not every office in the Church requires an election.¹¹⁹ For those that do, canon 164 specifies that if the statutes, proper law, or particular law have no provision for election, the norms of canons 165-179 will apply, together with the general norm of canon 119, 1°. This implies that even in cases where provisions are made, if certain points are lacking, the general norms are observed.

The office of the supreme moderator¹²⁰ is an ecclesiastical office acquired by canonical election,¹²¹ within the context of a general chapter (c. 631) *ad normam iuris proprii*. The election of the supreme moderator is a juridical act. It has juridical effects for those

¹¹⁶ See MCDERMOTT, “Commentary on cc. 573-616,” p. 754.

¹¹⁷ See *s.v.*, “election,” in *The Compact Edition of the Oxford English Dictionary: Complete Text Reproduced Micrographically*, vol. 1, Great Britain, Oxford, Clarendon Press, 1971, col. 75.

¹¹⁸ Elections are carried out in the church for different reasons: provision or presentation for a post or an office (cc. 147; 158, §2; 424) etc. According to J.H. Provost, whenever election is required one must first look to the statutes, proper or particular law that govern an electoral body. Where these are lacking, the norms of canons 165-179 are employed, see J.H. PROVOST, “General Norms (cc. 145-196),” in *CLSA Comm2*, p. 212.

¹¹⁹ Examples of offices requiring election: the Pope or the Bishop of Rome; some members of the presbyteral council are elected by the priests of the diocese; as well as the superiors general of religious institutes elected by the general chapter. But the election of the Pope is governed by special law. See JOHN PAUL II, Apostolic Constitution *Universa dominici gregis*, 22 February 1996, in *AAS*, 88 (1996), pp. 305-343. See also BENEDICT XVI, Apostolic Letter *Normas nonnullas*, 22 February 2013, in *AAS*, 105 (2013), pp. 253-257.

¹²⁰ *CIC*, c. 620 defines major superiors. But c. 622 describes the supreme moderator by the extent of power, as one who “holds power over all the provinces, houses and members of the institute.”

¹²¹ *CIC*, c. 145 defines an ecclesiastical office as any office established in a stable manner for the purpose of a spiritual good. Canon 146 stipulates that such an office cannot be validly acquired unless through canonical provision. Canon 147 mentions elections as one way provisions are made for ecclesiastical offices.

elected,¹²² members of the institute,¹²³ the institute, and the Church.¹²⁴ Canon 625, §§1-2 expresses the ideas of *CIC/17* in canons 507, §1 and 506, §4 on the election of the supreme moderator.¹²⁵ According to the present *CIC* canon 625 on this matter:

§1. The supreme moderator of an institute is to be designated by canonical election according to the norm of the constitutions.

§2. The bishop of the principal seat presides at the election of a superior of the autonomous monastery mentioned in canon 615 and of the supreme moderator of an institute of diocesan right.¹²⁶

The canon states that a supreme moderator is chosen by canonical election according to the norms of an institute's constitutions. These norms should state the criteria for eligibility for the office (c. 623).¹²⁷ The bishop of the principal seat of a diocesan institute presides at the election. Canon 625, §2 excludes reference to his confirming or rescinding the elections as stated in *CIC/17* canon 506, §4. The right to declare an election null includes the right to call for a new election, which does not translate into the right to appoint the supreme

¹²² The canonical election of the supreme moderator grants to those elected the obligations and right of the office. Canons 618-619 states the duties of the supreme moderators together with those mentioned in the constitutions or proper law of each institute.

¹²³ Members are subject to the authority of the supreme moderator (c. 596) in addition to that of the Roman Pontiff (c. 590) by virtue of their vow of obedience.

¹²⁴ The supreme moderator acts in the name of the Church (because a religious institute is a public juridical person that acts in the name of the Church c. 116, §1). As an office recognized in the Church, the election of a person to the office of supreme moderator grants the one elected authority over the members of the institute. The power of supreme moderators is a result of the quasi-contract of religious profession by which members of each institute accept the state of submission to their superiors under the vow of obedience, see J.A. ABBO and J.D. HANNAN, *The Sacred Canons: A Concise Presentation of the Current Disciplinary Norms of the Church*, vol. 1, St. Louis, MO, Herder & Herder Book Co., 1957, p. 510.

¹²⁵ See J. HITE, "Authority in Institutes of Consecrated Life and Societies of Apostolic Life," in *Handbook on cc. 573-746*, Appendix 3, p. 80.

¹²⁶ *CIC*, c. 625, §1. "Supremus instituti Moderator electione canonica designetur ad normam constitutionum. §2. Electionibus Superioris monasterii sui iuris, de quo in can. 615, et supremi Moderatoris instituti iuris dioecesani praest Episcopus sedis principis." *CCEO*, cc. 515, §1 and §2.

¹²⁷ *CIC*, c. 623. "Ut sodales ad munus Superioris valide nominentur aut eligantur, requiritur congruum tempus post professionem perpetuam vel definitivam, a iure proprio vel, si agatur de Superioribus maioribus, a constitutionibus determinandum." *CCEO*, c. 513.

moderator.¹²⁸ Regarding the election of a supreme moderator, canon 626 specifies that members are to avoid abuses or partiality. Furthermore, members of an institute are to elect in conscience, and abstain from securing elections either for themselves or for others.¹²⁹

2.4.3 – Canon 678 of the 1983 Code

Canon 678, §1 is based on several conciliar and post-conciliar documents.¹³⁰ It addresses various matters, which are examined below. The canon states:

Religious are subject to the power of bishops whom they are bound to follow with devoted submission and reverence in those matters which regard the care of souls, the public exercise of divine worship, and other works of the apostolate.¹³¹

The canon highlights the supervisory right of bishops regarding the care of souls, public exercise of worship, and other apostolic activities within their dioceses. This right occasionally comes into conflict with the rights ceded to the erected houses of institutes.

Regarding these rights, *CIC* canon 611 1°-2° states:

The consent of the diocesan bishop to erect a religious house of any institute entails the right:

1° to lead a life according to the character and proper purposes of the institute;

2° to exercise the works proper to the institute according to the norm of law and without prejudice to the conditions attached to the consent.¹³²

¹²⁸ See WOYWOD, *A Practical Commentary*, p. 215.

¹²⁹ *CIC*, c. 626. “Superiores in collatione officiorum et sodales in electionibus normas iuris universalis et proprii servant, abstineant a quovis abusu et acceptione personarum, et, nihil praeter Deum et bonum instituti prae oculis habentes, nominent aut eligant quos in Domino vere dignos et aptos sciant. Caveant praetera in electionibus a suffragiorum procuracione sive directe sive indirecte, tam pro seipsis quam pro aliis.” History of praxis cf. CLEMENT VIII, Decree *Nullus omnino*, 25 July 1599, in *Bullarium Romanum*, vol. 5, II, p. 340.

¹³⁰ See *MG*, pp. 432-433. See also *CD*, nn. 34 and 35, §1, §§3-4, pp. 584-585; *PC*, no. 6, p. 913; *ES*, nn. 23, §1, 24-25, §1, 26, 29 and 35-36, pp. 604-608; *CCEO*, c. 415, §1.

¹³¹ *CIC*, c. 678, §1. “Religiosi subsunt potestati Episcoporum, quos devoto obsequio ac reverentia prosequi tenentur, in iis quae curam animarum, exercitium publicum cultus divini et alia apostolatus opera respiciunt.” *CCEO*, c. 415, §1.

¹³² *CIC*, c. 611. “Consensus Episcopi dioecisani ad erigendam domum religiosam alicuius instituti secumfert ius: 1° vitam ducendi secundum indolem et fines proprios instituti; 2° opera instituto propria exercendi ad normam iuris, salvis condicionibus in consensu apposis.” *CCEO*, cc. 437 and 509, §2.

According to this norm, legitimately erected institutes and their houses enjoy the right to live according to their proper purpose and carry out their proper works *ad normam iuris*. The rights ceded to the houses are moderated by any condition stated in the written consent and the supervisory duties of the bishops in their dioceses. However, the question arises: At a moment of conflict regarding these rights, what is the way forward?

The rights of the houses of institutes in dioceses and the supervisory role of bishops over their dioceses are both legitimate. However, religious institutes possess some spiritual gift also meant for the building up of the Church and its mission. Similarly, the supervisory role of the bishops is meant for the common good. The rights of the houses acknowledged in canon 611 will be an expression of the institutes' charism and their unique gift of the spirit within the Church. To try to subdue or control the exercise of such rights may be as good as restricting the action of the Spirit and proper flourishing of the institutes. There should be some criteria to handle such conflict, as this can be a source of scandal to Christ's faithful, especially when they are involved in the activities of such institutes. The focus should be on what extent the activities or rights of the houses serve the common good, especially in the light of evangelization and assistance to Christ's faithful. Nonetheless, the institutes have to ensure they do not take advantage of these rights to the detriment of the common good.¹³³ Moreover, the rights of the diocesan bishop prevail if the rights concern the apostolate.

Additionally, while institutes are bound to obey the directives of the bishops, they can also be encouraged in their vocation and mission when the bishops show an understanding concerning them, particularly when moments of conflict arise here. This can be a concrete way for bishops to fulfill their duty to foster vocations and see to it that institutes flourish according to their distinctive character and mission (c. 385; *MR* 38-39, 51).

¹³³ See J.H. PROVOST, "Rights in Canon Law; Real, Ideal, or Fluff?" in *CLSA Proceedings*, 61 (1999), p. 317.

2.4.3.1 – The Pastoral Care of the Faithful

Canon 383 with its four paragraphs lists in extensive detail all those subject to the diocesan bishop in light of his pastoral duties irrespective of their rites, denomination, or faith.¹³⁴ The first three paragraphs of the canon state a bishop's duty regarding all of Christ's faithful and obliges the bishops to be solicitous about their spiritual welfare. This can have far reaching implications, including in ecumenical matters and the regulation of the administration of the sacraments to non-Catholics. The canon also mentions the need to reach out to the non-baptized. In the attempt to reach out to Christ's faithful who are unable to make ample use of ordinary pastoral care, as noted in paragraph one of canon 383, a bishop may require the assistance of consecrated persons.

Canon 678, §1 states that consecrated persons are subject to bishops in matters regarding the care of souls. The care of souls denotes the varied functions that are entrusted to ordained ministers in offices that entail the care of souls,¹³⁵ including pastoral offices, which are geared towards the salvation of souls. Regarding this matter, V. De Paolis gives a range of those matters that could be included in this expression:

[P]arish ministry, rector of the church, chaplain to the community, preaching to the people, catechesis, ministry in Catholic schools, religious and moral education, in public writings, in the direction of associations of faithful, and in the attitudes and conduct of religious in public.¹³⁶

The parallel *CCEO* canon 415, §1 states:

All religious are subject to the power of the local hierarchy in matters that pertain to the public celebration of divine worship, to the preaching of the word of God to the people, to the religious and moral education of the Christian faithful, especially of children,

¹³⁴ See *CIC*, c. 383; *CCEO*, cc. 192, §§1-3, 193, §2 and 678, §2. See also *CIC*, c. 844; *CCEO*, c. 671.

¹³⁵ See *CIC*, cc. 274, 149, §1 and 150; *CCEO*, cc. 371, §2, 940 and 946.

¹³⁶ V. DE PAOLIS, "Commentary on the Apostolate of Institutes, cc. 673-683," in *Exegetical Comm*, vol. II/2, p. 1816 (=DE PAOLIS, "Commentary on cc. 673-683").

to catechetical and liturgical instruction, to the decorum of the clerical state, as well as to various works of the apostolate.¹³⁷

Unlike the Latin canon 678, §1, which mentions only the “care of soul,” this *CCEO* canon further enumerates items that constitute aspects of the “care of souls.” The canon incorporates all the elements of the care of souls stated in *Christus Dominus* (no. 35, §4).

In keeping with this basic understanding of the care of souls, secular clerics, clerics of religious institutes, and non-clerical institutes are also competent to assume some of such tasks. Since the expression “care of souls” is broad and consists of the *tria munera: docendi, regendi* and *santificandi*, it opens ways that allow for participation of even non-clerical religious.

Canon 801 specifies that institutes devoted to education are to strive to focus on Catholic education through the schools they founded with the consent of the diocesan bishop.¹³⁸ Additionally, catechetical instruction is another aspect of the care of souls governed by the *CIC* canons 773-780. Of these, canon 778 states the duty of superiors to ensure the diligent conveyance of catechetical instruction in their churches, schools, and in any other works entrusted to them (*CCEO*, no parallel).¹³⁹

2.4.3.2 – Public Worship

Regarding the Church’s public worship, canon 834 states:

§1. The Church fulfills its sanctifying function in a particular way through the sacred liturgy, which is an exercise of the priestly function of Jesus Christ. In the sacred liturgy the sanctification of humanity is signified through sensible signs and effected in a manner proper to each sign. In the sacred liturgy, the

¹³⁷ *CCEO*, c. 415, §1. “1. Religiosi omnes subsunt potestati Hierarchae loci in eis, quae spectant ad publicam celebrationem cultus divini, ad verbi Dei praedicationem populo tradendam, ad christifidelium praesertim purorum religiosam et moralem educationem, ad institutionem catechetica et liturgicam, ad status clericalis decorem necnon ad varia opera in eis, quae apostolatam respiciunt.”

¹³⁸ *CIC*, c. 801 “Instituta religiosa quibus missio educationis propria est, fideliter hanc suam missionem retinentes, satagant educationi catholicae etiam per suas scholas, consentiente Episcopo dioecesano conditas, sese impendere.” Cf. *AS*, no. 101a, p. 113.

¹³⁹ *CIC*, c. 778. “Curent Superiores religiosi et societatum vitae apostolicae ut in suis ecclesiis, scholis aliisque operibus sibi quoquo modo concreditis, catechetica institutio sedulo impertiatur.”

whole public worship of God is carried out by the Head and members of the mystical Body of Jesus Christ.

§2. Such worship takes place when it is carried out in the name of the Church by persons legitimately designated and through acts approved by the authority of the Church.¹⁴⁰

According to the canon, public worship is one way the Church carries out its sanctifying *munus* in the sacred liturgy and through acts approved by Church authority. Regarding the content of public worship, De Paolis states that it includes:

The scope of *communicatio in sacris* (c. 844): the administration of baptism and confirmation, celebration of the Eucharist, the sacrament of penance, anointing of the sick, holy orders, and matrimony. Public worship also includes the sacramentals as well as funerals, cult of the saints, holy relics and sacred images, and sacred places and times.¹⁴¹

In fact, Vatican II Constitution *Sacrosanctum concilium* (no. 10) states that

the liturgy is, all the same, the high point towards which the activity of the church is directed, and, simultaneously, the source from which all its power flows out. For the point of apostolic work is that all those who have become children of God through faith and baptism can assemble together in order to praise God in the midst of the church, to share in sacrifice, and to eat the Lord's supper.¹⁴²

Canon 835, §1 states: "The bishops in the first place exercise the sanctifying function; they are the high priests, the principal dispensers of the mysteries of God, and the directors, promoters, and guardians of the entire liturgical life in the church entrusted to

¹⁴⁰ *CIC*, c. 834, §1. "Munus sanctificandi Ecclesia peculiari modo adimplet per sacram liturgiam, quae quidem habetur ut Iesu Christi muneris sacerdotalis exercitatio, in qua hominum sanctificatio per signa sensibilia significatur ac modo singulis proprio efficitur, atque a mystico Iesu Christi Corpore, Capite nempe et membris, integer cultus Dei publicus exercetur. §2. Huiusmodi cultus tunc habetur, cum defertur nomine Ecclesiae a personis legitime deputatis et per actus ab Ecclesiae auctoritate probatos." *CCEO*, c. 668, §1.

¹⁴¹ DE PAOLIS, "Commentary on cc. 673-683," p. 1817.

¹⁴² *SC*, no. 10; English translation in TANNER2, p. 823. "Attamen Liturgia est culmen ad quod actio Ecclesiae tendit et simul fons unde omnis eius virtus emanat. Nam labores apostolici ad id ordinantur ut omnes, per fidem et Baptismum filii Dei facti, in unum conveniant, in medio Ecclesiae Deum laudent, Sacrificium participant et cenam dominicam manducant."

them.”¹⁴³ Canon 839, §2 specifies: “Local ordinaries are to take care that the prayers and pious and sacred exercises of the Christian people are fully in keeping with the norms of the Church.”¹⁴⁴ Moreover, canon 392, §2 states, with regard to the duty of the bishop:

§2. He is to exercise vigilance so that abuses do not creep into ecclesiastical discipline, especially regarding the ministry of the word, the celebration of the sacraments and sacramentals, the worship of God and the veneration of the saints, and the administration of goods.¹⁴⁵

This canon succeeds the first half of *CIC*/17 canon 336, §2 on the matter of fostering common discipline for the good of the universal Church as recognized in canon 336, §1 and *CIC* canon 392, §1. Canon 392, §2 requires diocesan bishops to ensure abuses do not enter into the ministry of the word (governed by *CIC* canons 756-780), the celebration of the sacraments and sacramentals (regulated by *CIC* canons 840-1172), the worship of God and the veneration of the saints (governed by *CIC* canons 1186-1190), and the administration of goods (in accord with *CIC* canons 1254-1310). In fulfilling this duty, the diocesan bishop may need to establish some laws or general decrees (cf. c. 29) or instructions¹⁴⁶ to which religious institutes and their members are bound in accordance with the directive norm of *Ecclesiae sanctae* (no. 26). Given the place and role of public worship in the life of the Church, it is understandable that religious institutes, as part of the diocesan

¹⁴³ *CIC*, c. 835, §1. “Munus sanctificandi exercent imprimis Episcopi, qui sunt magni sacerdotes, mysteriorum Dei praecipui dispensatores atque totius vitae liturgicae in Ecclesia sibi commissa moderatores, promotores atque custodes.”

¹⁴⁴ *CIC*, c. 839, §2. “Curent locorum Ordinarii ut orationes necnon pia et sacra exercitia populi christiani normis Ecclesiae plene congruent.”

¹⁴⁵ *CIC*, c. 392, §2. “Advigilet ne abusus in ecclesiasticam disciplinam irrepant, praesertim circa ministerium verbi, celebrationem sacramentorum et sacramentalium, cultum Dei et Sanctorum, necnon bonorum administrationem.” Cf. *CCEO*, c. 201, §2. See *LG*, no. 27, p. 871. Also *AS*, no. 100, p. 111.

¹⁴⁶ See *CIC*, cc. 34 and 1276, §2. For an extensive treatment of the matter of instructions given by a diocesan bishop regarding the administration of temporal goods see, E.N. OMOROGBE, *The Power of the Diocesan Bishop with Regard to the Administration of Ecclesiastical Goods of Public Juridic Persons Subject to Him: An Analysis of Canon 1276, §2*, Doctoral thesis, Ottawa, Faculty of Canon Law, Saint Paul University, 2010.

community, be subject to bishops, especially as bishops have the duty to direct and protect the liturgical life of their dioceses.

One major example regarding public worship is the adaptation of certain aspects of the ceremony for religious professions according to the practices of institutes. Such adaptations will require adherence to the related liturgical norms, both in the universal codes, *praenotanda* depicted in liturgical books, as well as liturgical legislation of diocesan bishops and Episcopal conferences. Observance of the relevant norms is required even in regular public worship, as in Eucharistic celebrations and veneration or other public liturgical activities. In terms of formulating their constitutions and other proper laws, institutes need to be mindful of the *CIC* norms regarding the liturgy and public worship and to be conversant with Vatican II document, *Sacrosanctum concilium*.¹⁴⁷ At the same time, they are to be attentive to *CIC* norms on spiritual life of the institutes and their members (cc. 662-664).

2.4.3.3 – The Apostolate

Ecclesiae sanctae (nn. 28-30) refer to the apostolate. Number 28 acknowledges the need to give precedence to the proper works of institutes, that is, those approved by the Apostolic See in institutes' constitutions or *ius proprium*.¹⁴⁸ However, there is room for exceptions. Such exceptions fit in with *Christus Dominus* (no. 35, §1), which warns institutes against holding claim to their proper works to the effect of neglecting to respond to the call of diocesan bishops in cases of urgent needs of the particular churches, arising from the dearth of clergy. This matter becomes more relevant if institutes are also short of personnel for their own proper works. The question arises: What is the criterion for obtaining an objective judgment

¹⁴⁷ SECOND VATICAN COUNCIL, The Constitution on the Sacred Liturgy *Sacrosanctum concilium*, 4 December 1963, in *AAS*, 56 (1964), pp. 97-138; English translation in TANNER2, pp. 820-843.

¹⁴⁸ See *ES*, nn. 28-29, §1, pp. 605-606. See also GRAEF, "The Religious," p. 276.

in such circumstances? This can be a source of disagreement between institutes and the bishops if the bishops do not demonstrate understanding in making requests of institutes. However, there is need to consider certain principles regarding the apostolate.

First, canon 394 says of the authority of diocesan bishops regarding the apostolate:

§1. A bishop is to foster various forms of the apostolate in the diocese and is to take care that in the entire diocese or in its particular districts, all the works of the apostolate are coordinated under his direction, with due regard for the proper character of each.

§2. He is to insist upon the duty which binds the faithful to exercise the apostolate according to each one's condition and ability and is to exhort them to participate in and assist the various works of the apostolate according to the needs of place and time.¹⁴⁹

These provisions give context and scope to what is meant by the apostolate and a bishop's power regarding it, as mentioned in *CIC* canon 678, §1. *Christus Dominus* (no. 33) addresses religious institutes as collaborators with bishops in the dioceses with regard to works of the apostolate and their obligation toward the development of the particular churches. It names the means for such cooperation as principally through prayers, works of penance, the example of their lives, as well as external apostolic works in accord with the unique character of each institute. It exhorts that institutes can help build up the particular church they are in through "prayer, works of penance and example of their own way of life."¹⁵⁰ In praxis, though, the question arises as to whether institutes or diocesan bishops prioritize these as means of building up the particular churches. Is the focus not often on carrying out one activity or the other in ministry? The use of prayers, works of penance, and the examples of their lives as means of building up the particular church seems to be

¹⁴⁹ *CIC*, c. 394, §1. "Varias apostolatus rationes in dioecesi foveat Episcopus, atque curet ut in universa dioecesi, vel in eiusdem particularibus districtibus, omnia apostolatus opera, servata uniuscuiusque propria indole, sub suo moderamine coordinentur. § 2. Urgeat officium, quo tenentur fideles ad apostolatam pro sua cuiusque condicione et aptitudine exercendum, atque ipsos adhortetur ut varia opera apostolatus, secundum necessitates loci et temporis, participant et iuvent." Cf. *CCEO*, c. 203.

¹⁵⁰ *CD*, no. 33; English translation in TANNER2 p. 934 states: "Hos vero fines promovere tenentur imprimis oratione, poenitentiae operibus et propria vitae exemplo...."

unambiguously accepted by all. However, conflict often arises in areas of external apostolic work.

In fact, canon 676 holds that non-clerical religious institutes share in the pastoral duty of the Church “through spiritual and corporal works of mercy and offer the most diverse services to people.”¹⁵¹ The canon exhorts consecrated persons to firmness in the grace of their vocation. However, the canon does not state the relative activities. These works, according to De Paolis, although not properly the ministries of the hierarchical Church, pertain to the Church and its nature. Moreover, through them, the Church shows its dedication to the growth of humanity. The activities are not always easy to delineate, but there is need for constant dialogue between superiors of institutes and diocesan bishops.¹⁵²

Canon 678 highlights certain juridical aspects of this collaboration:

§2. In exercising an external apostolate, religious are also subject to their proper superiors and must remain faithful to the discipline of the institute. The bishops themselves are not to fail to urge this obligation if the case warrants it.

§3. In organizing the works of the apostolate of religious, diocesan bishops and religious superiors must proceed through mutual consultation.¹⁵³

Similarly, several issues are at stake for institutes to exercise their apostolate within particular churches, including, for example, the erection of houses and the apostolic works. *Ecclesiae sanctae* (nn. 30-31), canons 678, §3 and 681, §2, all specify the need for mutual consultation and written agreements in order to safeguard against abuses, to promote unity and proper coordination and cooperation between diocesan bishops and the institutes.

¹⁵¹ *CIC*, c. 676. “Laicalia instituta, tum virorum tum mulierum, per misericordiae opera spiritualia et corporalia munus pastorale Ecclesiae participant hominibusque diversissima praestant servitia; quare in suae vocationis gratia fideliter permaneant.”

¹⁵² See DE PAOLIS, “Commentary on cc. 673-683,” pp. 1809-1810 and 1817.

¹⁵³ *CIC*, c. 678, §2. “In apostolatu externo exercendo religiosi propriis quoque Superioribus subsunt et disciplinae instituti fideles permanere debent; quam obligationem ipsi Episcopi, si casus ferat, urgere ne omittant. §3. In operibus apostolatus religiosorum ordinandis Episcopi dioecesani et Superiores religiosi collatis consiliis procedant oportet.” *CCEO*, c. 415, §1. See *AS*, no. 101a, p. 112; Also *VC*, nn. 35-37, pp. 354-357.

Furthermore, diocesan bishops have authority over the works they entrust to institutes. In these cases, canon 681 stipulates the following:

§1. Works which a diocesan bishop entrusts to religious are subject to the authority and direction of the same bishop, without prejudice to the right of religious superiors according to the norm of can. 678, §§ 2 and 3.

§2. In these cases, the diocesan bishop and the competent superior of the institute are to draw up a written agreement which, among other things, is to define expressly and accurately those things which pertain to the works to be accomplished, the members to be devoted to it, and economic matters.¹⁵⁴

The canon declares that diocesan bishops have authority over the works they entrust to an institute. It requires that written agreements are to be made that define expressly and precisely, in addition to other things, the works to be fulfilled, the members of the institute for the works, and economic matters. The matter of contracts is quite delicate and often constitutes a source of tension in the relationship between bishops and institutes.¹⁵⁵

Institutes need the consent of diocesan bishops to change the approved use or purpose of their erected houses or apostolic works. When such changes concern internal governance or discipline, an institute can proceed without this consent.¹⁵⁶ Canon 612 succeeds *CIC/17* canon 497, §4 on the changes of constituted religious houses from one use to another. The previous canon held that the changes may be internal or external to the institutes and may concern the broader Christian community. If it is a case of converting

¹⁵⁴ *CIC*, c. 681, §1. “Opera quae ab Episcopo dioecesano committuntur religiosis, eiusdem Episcopi auctoritati et directioni subsunt, firmo iure Superiorum religiosorum ad normam can. 678, §§ 2 et 3. §2. In his casibus ineatur conventio scripta inter Episcopum dioecesanum et competentem instituti Superiorem, qua, inter alia, expresse et accurate definiantur quae ad opus explendum, ad sodales eidem addicendos et ad oeconomicas spectent.” *CCEO*, cc. 282, §2 and 543.

¹⁵⁵ There are studies on written agreements for the relations: T. LYNCH, *Contracts between Bishops and Religious Congregation: A Historical Synopsis and Commentary*, Doctoral thesis, Canon Law Studies, No. 239, Washington, DC, The Catholic University of America Press, 1946; A. PINHEIRO, “Bishop-Religious Relationship According to *CIC* and *CCEO*,” in *Vidyajyoti Journal of Theological Reflection*, 58 (1994), pp. 232-233.

¹⁵⁶ See *CIC*, c. 612. “Ut domus religiosa ad opera apostolica destinetur diversa ab illis pro quibus constituta est, requiritur consensus Episcopi dioecesani; non vero, si agatur de conversione, quae, salvis foundationis legibus, ad internum regimen et disciplinam dumtaxat referatur.” *CCEO*, cc. 437, §3 and 509, §2. See *AS*, no. 101a, p. 113.

schools opened for the public into houses of studies for their members, the institutes needed the approval of the competent church authority (*CIC*/17, c. 497, §1). However, this process does not apply if the changes affect only matters internal to the institutes, for example, converting a house of study to a novitiate house.¹⁵⁷ Still, the lawful conditions of contract between the bishops and the institutes or the benefactors that were stated at the time of the erection must be kept.¹⁵⁸

A member of a religious institute is to be appointed to an ecclesiastical office after due presentation by his or her superior, or the superior's consent to the appointment by the appointing authority.¹⁵⁹ He or she can be removed from such an office at the decision of the authority that entrusted the office to him or her, or at the discretion of the superior. Each of the authorities needs only to be informed of this removal. Moreover, neither party is required to consent to the removal in order for the member to leave the assignment.

2.4.4 – Other Areas Identified in the *CIC*

The fact of canonical exemption or membership in institutes of pontifical or diocesan right does not remove any member of Christ's faithful from subjection to Church hierarchy. Hence, members of each institute, like other members of Christ's faithful, are subjects of rights and obligations within the Church, as delineated in canons 208-223.¹⁶⁰ Our study therefore will identify some of those matters and the canonical norms.

¹⁵⁷ See BOUSCAREN-ELLIS, *Commentary*, p. 240.

¹⁵⁸ See WOYWOD, *A Practical Commentary*, p. 210.

¹⁵⁹ *CIC*, c. 682, §1. "Si de officio ecclesiastico in dioecesi alicui sodali religioso conferendo agatur, ab Episcopo dioecesano religiosus nominatur, praesentante vel saltem assentiente competenti Superiore." *CCEO*, c. 284, §2 and *CIC*, cc. 157-183.

¹⁶⁰ See RINCON-PEREZ, "Commentary on cc. 573-606," p. 590.

The local ordinary is to approve ordinary confessors for houses of formation and non-clerical communities of institutes with previous consultation of the communities.¹⁶¹ Moreover, a bishop can forbid members of the institutes from residence in his diocese for the gravest cause, especially when the major superiors fail to address the matter after being informed.¹⁶² Canon 666 calls for prudence in the use of the media mainly so that consecrated persons may protect their vocation and chastity. One would expect that consecrated persons would keep abreast of the norms of the diocesan bishops and Episcopal conferences on the matter of communication and publications.¹⁶³

Diocesan bishops also have their role regarding separation of members from diocesan institutes. They are competent to grant an imposed exlaustation of members or extend its period. These bishops can impose exlaustation on an institute's member following the petition of the supreme moderator and consent of the council. The bishop of the diocese of the place of the house of assignment must confirm the indult of departure from the institute for a temporary professed member. In the case of the departure of a perpetually professed, the diocesan bishop of the place of the house of assignment can grant

¹⁶¹ *CIC*, c. 630, §3. "In monasteriis monialium, in domibus formationis et in communitatibus numerosioribus laicalibus habeantur confessarii ordinarii ab Ordinario loci probati, collatis consiliis cum communitate, nulla tamen acta obligatione ad illos accedendi." *CCEO*, cc. 475 and 539. See also PAUL VI, Motu proprio *Faculties and Privileges Granted to Local Ordinaries Pastoralis Munus*, 30 November 1963, no. 33, in *AAS*, 56 (1963), pp. 5-12; English translation in *CLD*, vol. 6, p. 375.

¹⁶² See *CIC*, c. 679; *CCEO*, no parallel; but cf. c. 417.

¹⁶³ *CIC*, c. 666. "In usu mediorum communicationis socialis servetur necessaria discretio atque vitentur quae sunt vocationi propriae nociva et castitati personae consecratae periculosa." No parallel *CCEO* canon. See *ES*, no. 25, §2a, p. 605. See also *AS*, no. 100a, p. 111; *VC*, no. 46, p. 364; CONGREGATION FOR THE DOCTRINE OF THE FAITH, Instruction on Some Aspects of the Use of the Instruments of Social Communication in Promoting the Doctrine of the Faith, 30 March 1992, nn. 8, §2, 16, §6, 17, §4 and 18, in *Origins*, 22 (1992-1993), pp. 94-95; CICLSAL, Instruction *Starting Afresh from Christ: A Renewed Commitment to Consecrated Life in the Third Millennium*, 19 May 2002, Vatican City, Libreria editrice Vaticana, 2002, no. 32, pp. 44-45.

the indult.¹⁶⁴ The diocesan bishop of the house where the departing member was attached is also responsible for confirming the decree of dismissal issued for such a member.¹⁶⁵

Elsewhere, *CIC* prescribed that institutes require the written permission of their local ordinary and that of the place where they intend to make financial appeals (c.1265; *ES* 27; *CCEO*, c.1015).

2.4.5 – Common Responsibility of Diocesan Bishops and Religious Institutes

In the Latin and the Eastern Codes, the legislator frequently utilizes the word “consent.” In this way, he makes it clear that it is consent that is required in a matter. At other times, he indicates that consultation is needed for the matter. In the various issues of the relationship between diocesan bishops and institutes, the legislator calls for consent or consultation. In such cases, precisely what do consent and consultation entail? The distinction is important in the context of the bishops-religious relationship, since a lack of consent or consultation may ultimately affect the validity or licity of juridical acts.

Canon 127 is the general norm governing consent and consultation for the Latin Church. It is paralleled in *CCEO* by canon 934. In the canons governing consecrated life, this matter is spelled out in *CIC* canon 627 and *CCEO* canons 422, §1 and 557. Those who are “consulted” or whose “consent” is required are bound to seek adequate knowledge of the matter on which they are consulted or their consent is necessary. Accordingly, in seeking the consent of the diocesan bishop, the competent authority of the institute or the persons concerned are bound to provide the diocesan bishop with the information on the matter to

¹⁶⁴ *CIC*, c. 688, §2 “confirmari debet ab Episcopo domus assignationis” and c. 691, “§2. in institutis vero iuris dioecesanis, id etiam Episcopus dioecesis, in qua domus assignationis sita est, concedere potest.” Cf. *CCEO*, cc. 492, 496, 546 and 549, §§1-2, 2°.

¹⁶⁵ *CIC*, c. 700 “Decretum dimissionis vim non habet, nisi a Sancta Sede confirmatum fuerit, cui decretum et acta omnia transmittenda sunt; si agatur de instituto iuris dioecesanis, confirmatio spectat ad Episcopum dioecesis ubi sita est domus, cui religiosus adscriptus est. Decretum vero, ut valeat, indicare debet ius, quo dimissus gaudet, recurrendi intra decem dies a recepta notificatione ad auctoritatem competentem. Recursus effectum habet suspensivum.”; Cf. *CCEO*, cc. 500, §4, 501, §§2-3, 552, §3 and 553.

enable his informed consent or counsel—*CIC* canon 1292, §4 regarding alienation of the temporal goods of an institute is a good example of the requirement of giving consent or counsel.

Furthermore, canon 678, §3 speaks of the need for mutual consultation between diocesan bishops and major superiors, while canon 680 holds diocesan bishops are to direct the cooperation and coordination to be promoted between the secular clergy and the various institutes (cf. *CCEO*, c. 416). The matter can best be achieved through the collaboration of diocesan bishops and the major superiors. For instance, canon 678, §2 subjects members of institutes to their superiors and fidelity to the discipline of their institutes, and insists on the bishops' duty to ensure these are observed by members of institutes subject to them in the apostolate.

Conflicts and tensions often arise in diocesan bishops-religious relationship due to lack of consultation or consent. In some instances, there may be lack of adequate information furnished by either of the parties. Another factor is the unwillingness of some bishops to consider the remuneration of consecrated persons working for them or in their institutions. Sometimes there are no written contracts between the diocesan bishops and the diocesan institutes. At other times, the terms of agreements in the written contracts are not honoured. Dearth of personnel may also affect the relationship.

Conclusion

This chapter traced briefly the evolution of the relationship between diocesan bishops and religious institutes in the conciliar and post-conciliar documents as well as the codes, especially the 1983 Code. The aim of the inquiry was to learn the principles entailed in the doctrinal and juridical aspects of the relationship. The review identified various areas in which diocesan bishops had either obligations or rights regarding religious institutes, and

noted the role of the constitutions in the matters of the relationship. The responsibilities of the bishops and the superiors (major superiors) in some aspects of the relationship were identified. Lack of consultation or consent causes conflicts and tensions.

In the various aspects of the relationship between diocesan bishops and religious institutes, the knowledge of the constitutions, together with the universal or common law, is of paramount importance. This is even more so with regard to the duties of these authorities to safeguard the proper vocation and identity of each institute as approved by the Church, and which the legislator in the universal law sought to preserve by deferring provisions on several matters to the institutes' constitutions or *ius proprium*. Moreover, the knowledge and respect for the constitutions of institutes will help prevent situations where these authorities may be tempted to apply one measure in dealing with the institutes. However, while there is nothing wrong with having a general rule in the dioceses for relations on matters concerning religious institutes, we cannot ignore the need to be aware of the norms of each institute's proper character and vocation as described in the constitutions of each institute.

In the relationship between diocesan bishops and religious institutes, well-deliberated provisions in the constitutions regarding this relationship and the diocesan bishops' knowledge of them are an indispensable help and even a necessity. It is essential for all concerned to be aware of the provisions both in the universal and proper law, especially in the constitutions of institutes. This knowledge will guide all concerned in their consultation and their judgment on whether to give the required consent or counsel. With the principles regarding the relationship clearly established, the study proceeds in the next chapter to examine the understanding given to these principles in the provisions of the constitutions of a diocesan non-clerical religious institute: the Sisters of the Sacred Heart of Jesus (Nigeria).

CHAPTER THREE

THE SSH *CONSTITUTIONS* AND ASPECTS OF THE RELATIONSHIP BETWEEN BISHOPS AND THE INSTITUTE

Introduction

The second chapter of this study focused on the relationship between diocesan bishops and religious institutes, surveying the magisterial teachings and canonical legislation on the duties and rights of diocesan bishops regarding diocesan non-clerical religious institutes. Earlier, this study examined the history, development, and understanding of the constitutions of religious institutes. It also addressed canon 587, §1 of the Latin Code on the current norm regarding such constitutions and their fundamental contents.

With specific reference to the constitutions of the Sisters of the Sacred Heart of Jesus (SSH), a non-clerical religious institute of diocesan right, this study will examine the role of the constitutions in defining aspects of the relationship, especially the effective exercise of the general duties and rights of diocesan bishops regarding the institute. To achieve this goal, this chapter presents a brief history of the SSH Institute, an overview of its legislative history—that is, its initial rule of life, the current constitutions,¹ and the directory² along with their binding force. It will also present briefly the various authorities that relate to the SSH Institute. Next, the study will identify the provisions of these codes, in particular, the response of the SSH *Constitutions* to the principles—magisterial teachings and canonical norms—mentioned in previous chapters, as well as other aspects of the relationship between the institute and diocesan bishops.

¹ *The Constitutions of the Sisters of the Sacred Heart of Jesus*, art. 73, Benin City, SSH, 1999 (=SSH *Constitutions*). All subsequent citations of the articles will be taken from this edition unless otherwise stated.

² *The Directory of the Sisters of the Sacred Heart of Jesus*, Benin City, GiftPrints Associates, 1999 (=SSH *Directory*). All subsequent citations of the articles will be taken from this edition unless otherwise stated.

3.1 – A RELIGIOUS INSTITUTE: THE SISTERS OF THE SACRED HEART OF JESUS (SSH)

The SSH Institute, like any foundation, has its own history and *raison d'être*. This establishment, like other religious institutes, is charismatically based and linked with the Church and its mission. In this section, a brief study is made of the evolution of the institute from its inception to its canonical erection.

3.1.1 – The Establishment of the SSH Institute

At the time of the founding of the SSH Institute, Nigerian society was just coming out of a civil war and there was high tribal animosity. The late Bishop Patrick Joseph Kelly, SMA, bishop of the then Diocese of Benin City, and Patrick Ebosele Ekpu, coadjutor bishop with the right of succession, both had the inspiration to begin an indigenous religious institute. Bishop Kelly could not bring this about as he was approaching retirement, but at the reception of the installation ceremony of Bishop Ekpu as bishop of Benin City, the faithful of the diocese also expressed a desire for the diocese to “have its own indigenous female religious.”³ Bishop Ekpu, the founder of the SSH Institute, executed the plan through a decree of April 4, 1975, erecting the institute as a Pious Union.⁴

When it was time to name the institute, Bishop Ekpu, after prayer and reflection, thought of naming it the Sisters of the Sacred Heart of Jesus. He, without disclosing his own idea of a name for the institute, sought the opinion of his predecessor, Bishop Kelly, who surprisingly proposed the same name. The choice of naming the institute after the Sacred Heart of Jesus was considered fitting since the Heart of Jesus is the heart of love and symbol of God's redemptive love for humanity, a quality that was to inspire and typify the members.

³ H.E. ALOKHA et al. (eds.), *A Journey of Faith: The History of the Sisters of the Sacred Heart of Jesus* (1975-2000), Benin City, Giftprints Associates, 2000, p. 3 (=ALOKHA et al., *History*).

⁴ See P.E. EKPU, Decree of Erection as a Pious Union, 4 April 1975, in Appendix C. Erection of an institute as a pious union, a term used in the *CIC*/17, is synonymous with its erection as a public association implicit in *CIC*, c. 301, §3.

Initially, the institute was named the “Nigerian Sisters of the Sacred Heart of Jesus.” Later, however, Bishop Ekpu reconsidered the inclusion of the word “Nigerian” in the title. He felt it was rather restrictive and could have an unintended ethnocentric implication within a universal Church. He removed the word “Nigerian” to achieve the present title.⁵

The first members of the institute were gathered both from within and outside the diocese. Bishop Ekpu and some priests began the recruitment of candidates through advertisement in schools and parishes and interviews. Seven successful candidates began their postulancy and embarked on a similar vocation drive, attending vocation rallies.⁶ These efforts were fruitful, as aspirants visited and joined the group.⁷

3.1.2 – The Founding Purpose of the SSH Institute

One of the purposes for founding the SSH Institute⁸—besides its spiritual purpose, which is for the glory of God—was to serve the need for an indigenous religious institute in the then Midwestern part of Nigeria. This multi-ethnic society was a fertile ground for female vocations, but it lacked such an institute. This region has now grown into several dioceses with Benin City as its Metropolitan See and the principal seat of the institute. The institute was also to share in the work of evangelization and assist in healing the wounds arising from the ethnic divide within Nigerian society. Members were to witness to Christ’s desire that “all may be one (Jn. 17:21)” and show that it is feasible for all also to live as one, as the family of God, unhindered by tribal divisions. Regarding this, the founder once wrote:

You come from multi ethnic background and our nation is in turmoil from tribal animosity and hatred. Your role in healing this

⁵ See ALOKHA et al., *History*, pp. 3-4.

⁶ Vocation rallies were avenues where different religious institutes recruit candidates.

⁷ See ALOKHA et al., *History*, pp. 3-4.

⁸ See *ibid*, pp. 1-3.

cankerworm is to spread the Gospel of God's concern and love for all. Our own example must be the greatest sermon in this matter for action speaks louder than words.⁹

3.1.3 – The Erection of the SSH Institute

After several years, when both the institute and the founder felt the requirements for founding a new religious institute had been met, the necessary consultation and application took place and the required documentation was assembled. As part of the journey towards the institute's erection, the founder wrote to the members on the Solemnity of the Sacred Heart of Jesus, about his efforts:

As many of you are probably aware, efforts are being made to secure [...] a "NIHIL OBSTAT" to enable you to become a full fledged Religious [Institute] of Diocesan right. Some of the criteria required to take that step include quality and quantity of membership, your reputation in the Diocese where you carry out your apostolate and your material viability. This translates to: Continuous viability of membership, being Self-Administering and Self-Supporting.¹⁰

The institute was canonically erected on April 6, 1999, following the reception of the "Nihil Obstat," Prot. N. DD 2459-1/97, December 2, 1998, from the Apostolic See. The decree of erection issued by the diocesan bishop reads:

I Patrick Ebosele Ekpu [...] since all the prescribed requirements of the law have been fulfilled, do hereby DECREE, FOUND, ESTABLISH AND ERECT the [institute] known as the SISTERS OF THE SACRED HEART OF JESUS, a public association of devout women, into a RELIGIOUS INSTITUTE OF DIOCESAN RIGHT.¹¹

The SSH Institute became officially accredited as an institute of diocesan right following the reading of the above decree at a Eucharistic celebration attended by a large

⁹ P.E. EKPU, Letter to the Sisters of the Sacred Heart of Jesus, 21 November 1985, in ALOKHA et al., *History*, p. 78.

¹⁰ P.E. EKPU, Letter to the Sisters on the Solemnity of the Sacred Heart of Jesus, 10 June 1994, in ALOKHA et al., *History*, p. 82.

¹¹ P.E. EKPU, Decree of Erection of the Congregation of the Sisters of the Sacred Heart of Jesus, 6 April 1996, in ALOKHA et al., *History*, p. 108.

number of Christ's faithful. It marked a new stage in the institute's life and further legitimized its reality and mission.

3.2 – THE LEGISLATIVE HISTORY OF SSH INSTITUTE (NIGERIA)

In the Latin Church, the constitutions of institutes are also approved at their erection. However, these rules or constitutions are often not the first set of legislation under which these institutes are regulated prior to their erection. Rather, their life and mission may be ordered through a number of rules or constitutions. A survey is made here of the various rules of the SSH Institute, from its foundation to its current *Constitutions*, as approved by the diocesan bishop of the principal seat, with his prior consultation with the Apostolic See.

3.2.1 – The First Rule of Life of the SSH Institute

The first rule was written and given to the members by Bishop Ekpu in 1975. The text of this rule consisted of seven chapters.¹² Chapter one treats of the nature, object, principal apostolate and spirit of the institute, chapter two concerns the vows, chapter three, the prayer life of members, chapter four, the formation of members, chapter five, pre-postulancy and the postulancy, chapter six, the novitiate, its program, and its directress, and chapter seven treats temporary commitment. The norms emphasized the meaning and purpose of consecrated life and the observance of the regulations related to this way of life.

3.2.2 – The Second Rule of Life-Constitutions of the SSH Institute

The second rule of life was drawn “together from various sources and authorities as dictated by circumstances and need.”¹³ The rule, which is more detailed and extensive than the 1975 rule, is essentially a further development of it. It was drafted with the help of

¹² Cf. *SSH First Rule of Life*, 1973-1978, pp. 1-25, unpublished.

¹³ *Constitutions of the Nigerian Sisters of the Sacred Heart of Jesus: as approved by His Lordship, Most Rev. Dr. Patrick E. Ekpu, Benin City*, 8 December 1979, Forward, p. v (=SSH *Second Rule-Constitutions*).

J.C. McKenna, a Jesuit priest (then, canonical adviser to the Nigerian Conference of Women Religious) and approved by Bishop Ekpu in 1979.¹⁴ The rule—written in light of *CIC/17*, which was still in effect at that time—had fourteen chapters¹⁵ covering the following: the identity and mission of the SSH Institute, membership in the institute, members' way of life and the evangelical counsels, spiritual life, liturgy and prayer, community life and regulation, care of infirm members, care of the dead, the apostolate, admission and formation, departure and dismissal, government of the institute, the administration of temporal goods, and the observance of the constitutions. Although these constitutions were abrogated with the approval and usage of the institute's present constitutions, there are some norms and matters that are noteworthy and which should have been included in the current constitutions. These could enhance the institute's present life and its administration. For example, chapter twelve, article 9b, §6 of that constitutions stipulated that local superiors of each house were to form part of the *ex-officio* members of the General Chapter.¹⁶ The addition of this norm to the current constitutions would enrich the General Chapter's deliberations, as these superiors would be able to bring their concrete experiences to bear on such deliberations.

3.2.3 – The Third Rule of Life – Constitutions of the SSH Institute

The third rule of life that governs the SSH Institute is the constitutions now in force. These *Constitutions*, which form part of the institute's *ius vigens*, were drafted in 1996 and sent to the Apostolic See for *recognitio* along with the request for the canonical erection of the institute. Following the recommendations and *recognitio* of the Apostolic See, the final draft

¹⁴ Ibid.

¹⁵ See SSH *Second Rule-Constitutions*, chapters 1-14, pp. 1-87.

¹⁶ See *ibid*, art. 9b, p. 62.

of the SSH *Constitutions* was officially approved. On April 6, 1999, at the erection ceremony of the institute, Archbishop Patrick Ekpu, handed these constitutions over to the institute.¹⁷

3.3 – THE SSH *CONSTITUTIONS* IN LIGHT OF *CIC* CANON 587, §1: AN OVERVIEW

Chapter one of this thesis included a general survey of the nature, purpose, and content of the constitutions of religious institutes in light of *CIC* canon 587, §1. This canon holds that stating the various elements identified as components of such constitutions will protect the proper vocation and identity of the institute through various provisions that constitute its patrimony. Besides these elements in canon 578, the constitutions are to provide fundamental norms regarding governance of an institute, its internal discipline, the admission and formation of members, and the proper object of members' vows. How then do the norms of the SSH *Constitutions* respond to the details required by canon 587, §1?

3.3.1 – The Patrimony of the SSH Institute

Canon 587, §1 requires that each institute's constitutions identify its patrimony. This means that they should describe a number of constitutive elements, thus making the constitutions the practical instrument by which institutes preserve and live their patrimony.¹⁸ The patrimony of the SSH Institute is delineated in articles 1 to 5 in Chapter One of the SSH *Constitutions*, which treats the institute's identity.¹⁹ The articles articulate elements of the patrimony in light of *CIC* canon 578: that is, the name of the institute (art. 1), its nature (art. 2), character and charism (art. 3), purpose (art. 4), spirit (art. 5), and sound traditions, which, though not stated, would be inferred from the other norms of the SSH *Constitutions* and

¹⁷ See ALOKHA et al., *History*, p. 30.

¹⁸ See McDERMOTT, "Commentary on cc. 573-616," pp. 753-754.

¹⁹ See SSH *Constitutions*, arts. 1-5, pp. 1-4. Cf. Eph. 4:4-6, 26-27 and 32; 1 Cor. 12:12-13; Gal. 3:27-28; see also SSH *Directory*, arts. 1-4, pp. 1-2.

Directory, especially in the spiritual and apostolic endeavours of the members.²⁰ It is important for the SSH *Constitutions* to state clearly the content of the patrimony in order to present proper guidance for the diocesan bishop as he seeks to understand the institute. This will foster his relationship with the institute and minimize the danger of the bishop misunderstanding the life, manner of being, and the mission of the institute.

3.3.2 – The Norms of Governance in the SSH Institute

Canon 587, §1 prescribes that the constitutions of a religious institute *contineri debent* the basic norms regarding its governance. Articles 149 through 223 in Chapter Nine of the SSH *Constitutions*, responding to canon 587, §1, appropriately stipulates norms for the institute's governance and its various authorities, structures, and competencies.²¹ They accord with the relevant Latin Code canons regarding these matters (cf. cc. 581, 585, 596, 617-640). Notable among the structures identified in the SSH *Constitutions* are the following: the local functionaries, their designation and duties (arts. 154-161), the general administration, comprising the Superior General, the General Councillors, the Secretary and Bursar General, their designation and respective duties (arts. 162-184), the General Chapter, its composition, functions, and directives regarding the election of the officers (arts. 185-205), and temporal goods, their administrations and alienation (arts. 206-223).

The Superior General has an important role to play in the relationship between the institute and the diocesan bishop in matters relating to erection, suppression, and election, which shall be explored further below. The General Council, although not dealing directly

²⁰ See SSH *Constitutions*, arts. 21, 44-46, 59 and 85. See also SSH *Directory*, arts. 24-26, 36 and 47. D.A. Gutiérrez in a recent study about the concepts of constitutions, tradition and incorporation in religious institutes clarifies the relations between the constitutions and tradition. He notes that it is in the constitutions that the oldest, most genuine and most stable traditions need to converge. For further analysis, see D.A. GUTIÉRREZ, “Tradiciones, constituciones e incorporación a los IVCR, IVCS y SVA según el Código latino: tres conceptos claves y complejos bastante inexplorados,” in *Forum canonicum*, 111/2 (2008), pp. 23-43.

²¹ See SSH *Constitutions*, arts. 149-223, pp. 48-69.

with the diocesan bishop, has an important role to play in the relationship between the institute and the diocesan bishop in the quality of counsel it gives to the Superior General in matters regarding the relationship. The General Chapter also has an important role in fostering this relationship by the quality of recommendations it proposes for changes to the *SSH Constitutions*, which the diocesan bishop has the competence to confirm.

3.3.3 – The Norms for the Discipline of Members in the SSH Institute

Canon 587, §1 states that the constitutions of an institute must contain essential norms on the discipline of its members. These include the life style of its members, the particular way of living out the evangelical counsels, and some crucial aspects of the spiritual life.²² Chapters two to seven of the *SSH Constitutions* describe these matters.²³ Chapter Two treats members' way of life—religious consecration (arts. 6-11) and the evangelical counsels of chastity, poverty, and obedience (arts. 12-39). Chapter Four focuses on the various aspects of the spiritual life exercised in the institute (arts. 40-54). Chapter Five addresses common life, its rules and regulation (arts. 55-71). Chapter Six, which treats separation of members, defers to the Latin Code (art. 72). Finally, Chapter Seven treats the apostolate (arts. 73-91). The diocesan bishop's knowledge of the institute's way of life and other aspects of the discipline of its members is essential in his relationship with the institute, especially, if he has to fulfill his duty of ensuring that members remain faithful to their discipline.

3.3.4 – Norms for the Incorporation of Members in the SSH Institute

Canon 587, §1 mentions that the constitutions of an institute must state the basic norms regarding incorporation of its members. A candidate becomes incorporated into the

²² Cf. *CIC*, cc. 598, §1 and 662. See HOLLAND, "Commentary on cc. 573-606," p. 460.

²³ See *SSH Constitutions*, arts. 6-91, pp. 4-31.

institute by the public profession of the three evangelical counsels through the ministry of the Church, and thus becomes a subject of duties and rights. After consulting with the Novice Directress and receiving the Council's consent, the Superior General accepts a novice for temporary profession or excludes her from additional formation in the institute (arts. 127-128; cf. *CIC*, c. 657, §1). Prior to being incorporated into the institute, a candidate is first admitted and undergoes the necessary formation required both by universal Church law and by the constitutions and *ius proprium* of the institute. Several articles in Chapter Eight of the SSH *Constitutions* treat this matter.²⁴ They address temporary and perpetual profession along with the requirements and duration for each stage of incorporation.

The constitutions' clear norms on the incorporation of members can foster the relationship between diocesan bishops and the institute by creating awareness of the requirements for each step of the process of incorporation. The bishops can use these norms in deciding to accept a request to celebrate the profession of the candidates or in determining cases whereby members are delayed regarding further profession in the institute.

3.3.5 – The Norms for the Formation of Members in the SSH Institute

Canon 587, §1 requires that the constitutions of an institute provide basic norms regarding the formation of its members. The SSH *Constitutions* also treat formation in Chapter Eight stating that life in the institute begins with the novitiate (art. 108). They give various requisites for admission, which mostly affirm canons 597, §§1-2 and 641-645. They identify the stages of formation in the institute and related aspects of each stage:²⁵ the pre-novitiate, its purpose, duration and program (arts. 99-102), the novitiate, its requirements, purpose, duration, and program (arts. 103-121), appointment of the Directress and the

²⁴ See SSH *Constitutions*, arts. 127-141; 144-147, pp. 42-47; SSH *Directory*, arts. 105, 110-114, pp. 30-32.

²⁵ See SSH *Constitutions*, arts. 95-223, pp. 34-47.

Assistant Directress of Novices, required qualities of the personnel and manner of exercising the office (arts. 121-126), temporary profession, its requirements for validity, duration, and renewals (arts. 127-141), the scholasticate and its purpose (art. 142), tertianship, its purpose and program (art. 143), and on-going formation and its purpose (art. 148).

It is necessary that the SSH *Constitutions* describe the norms regarding formation in the institute. While this may not directly concern the relationship between the institute and diocesan bishops, it will affect the quality of personnel produced by the programs who will be sent to serve in different apostolates within the diocese—and in this way, may work directly with the diocesan bishop—or whose service may be requested by the bishop.

3.3.6 – The Proper Object of the Sacred Bonds in the SSH Institute

As a last item, canon 587, §1 requires the constitutions to state norms on the proper object of the sacred bonds in an institute. Canon 573, §2 states that the members of religious institutes assume the evangelical counsels through vows or other sacred bonds as indicated in their *ius proprium*, without specifying the particular code of the *ius proprium* (whether the SSH *Constitutions* or the *Directory*). However, to show the importance of the vows or sacred bonds in the life of an institute and its members, canon 587, §1 requires the constitutions to state their proper object. Chapter Three of the SSH *Constitutions* describe the three vows.²⁶ According to the SSH *Constitutions*, the proper object of members' vow of chastity requires them to observe custody of the senses and imagination, not to marry and refrain from exclusive friendships that could endanger observance of this vow. The vow of poverty requires members to exercise dependence and limitations in the use and disposition of material things, observe simplicity of life and be ready to share. The vow of obedience requires members to obey and submit to lawful commands and directives of their superiors.

²⁶ See SSH *Constitutions*, arts. 12-38, pp. 7-13.

3.4 – THE SSH *DIRECTORY* IN LIGHT OF THE 1983 CODE OF CANON LAW

Canon 587, §4 of the 1983 Code declares that institutes may have other codes of law that regulate the life and mission of the institutes. The SSH Institute has a number of such codes including a *Directory* which relates more to its *Constitutions*. It helps to provide direction and further rulings to apply the norms in the *Constitutions*. Due to this correlation between the SSH *Constitutions* and *Directory*, the following section will present briefly the latter's contents. Moreover, this connection will play out in the relationship between the institute and diocesan bishops as it influences the institute's life and mission.

3.4.1 – Contents of the SSH *Directory*

The SSH *Directory* is one of the components of the *ius proprium* of the institute. It follows the division of the institute's *Constitutions* and consists of eight chapters. Chapter One, on the identity of the institute, treats the patrimony of the institute.²⁷ It provides more details on this matter, with a focus on how the members as followers of the Sacred Heart of Jesus are to strive to imitate the attitudes of Christ's Heart and way of life. The chapter also specifies other directives about the spirit and character of the institute, underscoring the value placed on the patrimony of the institute.

Chapter Two, with only one article (art. 5), describes the essential requirements for the members' way of life and their need to renew their consecration to Christ. Chapter Three focuses on the evangelical counsels,²⁸ with directives for the members regarding the ways and means to foster their living out of the three vows of chastity, poverty, and obedience. Implicit in these norms regarding each vow is the members' active role and duty in fostering and preserving their commitment as vowed persons.

²⁷ See SSH *Directory*, arts. 1-4, pp. 1-2.

²⁸ See *ibid.*, arts. 6-23, pp. 4-8.

The fourth chapter focuses on the spiritual life.²⁹ It gives further directives on the time and frequency for the different forms of prayers and spiritual activities outlined in the SSH *Constitutions*. It concludes with a list of the various patron saints of the institute and describes how members are to observe the respective feast days and memorials.

In Chapter Five, the SSH *Directory* focuses on common life.³⁰ The chapter identifies the membership of the institute which include novices, the temporarily professed, and the perpetually professed. This, in effect, excludes any other persons, including postulants, aspirants, and associates. It makes provisions for, among other things, the need to set aside places in the community for the exclusive use of the members, the institute's obligation to members regarding their needs and health care (c. 670), the time and means for holidays and home visits, relations with members' families, assistance to members whose parents are sick, aged, or infirm. This latter aspect of the SSH *Directory* accords with the obligation of members to care for parents and is succinctly recapitulated by SCRIS, which acknowledges this duty.³¹ The chapter also contains norms on an infirmary for sick members and on the death of a member, of the bishop, or of the Pope and suffrages.

The sixth chapter treats matters relating to the apostolic life of the institute and its members.³² It elaborates on the different apostolates stated in the SSH *Constitutions*. Chapter Seven addresses the recruitment and formation of members,³³ describing further the duties of formation personnel, the requisites and documents expected from candidates, and the

²⁹ See *ibid.*, arts. 24-39, pp. 9-13.

³⁰ See *ibid.*, arts. 40-72, pp. 14-21.

³¹ See SCRIS, Decree *Quitte ton pays*, in *Informationes SCRIS*, 1976, pp. 78-82; English translation: "Religious Obligated to Assist Aged or Sick Parents," in FLANNERY2, especially pp. 205 and 208.

³² See SSH *Directory*, arts. 73-85, pp. 22-24.

³³ See *ibid.*, arts. 86-121, pp. 25-34.

duration and program of formation. It treats the subject of the incorporation of members and their continued formation and related programs, listing the different times for entrance into the various stages of formation, a statement on the purpose and composition of the formation commission, as well as a statement on members' further studies.

The eighth chapter focuses on the government of the institute.³⁴ It essentially gives further details regarding the various structures of governance in the institute, including the duties of the local Superiors, the tasks of the Superior General and procedure for her election, the directives concerning the General Council, and how the Councillors are to carry out their duties. There are also statements regarding the Vicar General and the duties of the Secretary and Bursar General. Finally, the chapter details the time for the General Chapter and manner of constituting its delegates, and includes a statement regarding the administration of the institute's temporal goods.

It seems obvious that the outline of the *Directory* mirrors the *Constitutions*. Its norms regarding the respective elements will enhance the relationship between diocesan bishops and the institute by providing further guidance regarding the norms of the SSH *Constitutions*.

3.4.2 – Binding Force of the SSH *Constitutions* and *Directory*

Regarding the binding force of their norms, article 228 of the SSH *Constitutions* states:

The meaning of our dedication as Sisters of the Sacred Heart of Jesus depends on our inner fidelity to the Spirit of our [Institute] and not merely on external observance of its rules and regulations. Our Constitutions are intended to embody our spirit. They express the ideals of our [Institute], give practical guidance for achieving them and regulate our procedures and relationships so that we may work together more efficaciously in love and mutual cooperation. The [members], therefore, will strive to understand the Constitutions and to follow their provisions.³⁵

³⁴ See *ibid.*, arts. 122-151, pp. 35-51.

³⁵ SSH *Constitutions*, art. 228, p. 70.

In his foreword to the SSH *Constitutions*, the founder of the institute states quite unequivocally what is necessary in their observance:

These [...] constitutions are presented to the Sisters of the Sacred Heart of Jesus as a guide in their search for closer union with Christ Jesus, the Lord, for spiritual growth and greater meaning in the religious life. A body of laws by itself, no matter how perfect does not make one holy by the mere observance of it. To attain holiness, one needs more than a mere mechanical observance of the law. One needs above all faith and deep love of God on whose account one subjects oneself to the discipline which the observance of rules and regulations demands. Faith enables one to see God's will in the rules while love helps overcome the obstacles and difficulties in observing the laws and rules....³⁶

The norms of the SSH *Directory* interpret and give further insight to the provisions of the SSH *Constitutions*. Hence, its norms have juridical value and are also binding (cf. c. 16). However, its norms are more flexible and provisional than those of the *Constitutions*. This is due to the diversity of places and times, or details regarding varied roles or parts in the institute, such as the task of superior, the celebration of chapters, or issues of formation.³⁷

3.4.3 – Other Normative Documents of SSH Institute

Besides the SSH *Constitutions* and *Directory*, the institute also has other codes (cf. c. 587, §4) that help to order the life and activities of the institute and its members and reflect its sound traditions. Some of these codes include the handbook on the vowed life, which centers on the practical way to live and give expression to the evangelical counsels; the vocation handbook, which focuses on the ways and means to engage and promote vocations to the institute; the formation handbook, which focuses on the formation of the members of the institute and is mainly designed for initial formation and its program; and finance handbook, which orders matters regarding the institute's ecclesiastical goods. As well, the

³⁶ SSH *Constitutions*, Foreword, p. v.

³⁷ See E. GAMBARI, *Religious Life According to Vatican II and the New Code of Canon Law*, Boston, MA, Daughters of Saint Paul, 1983, p. 76 (=GAMBARI, *Religious Life*).

prayer manual and book of customs proper to an institute, while not necessarily legal documents, have some significance and are highly esteemed in an institute.³⁸ Often, the General Chapter enacts, interprets, and abrogates the other codes of the institute.

These juridical documents discussed thus far form and influence the way of life and mission of the SSH Institute. Given this reality, this study has highlighted them to create an awareness of them, as they will indirectly influence the relationship between the institute and diocesan bishops. For example, as a tradition, the institute's members spend the First Fridays of the month as a day of prayer and recollection. This is not in the SSH *Constitutions* but it binds all members. A diocesan bishop who has a member working directly with him or in any other apostolate will need to know this, especially if it is not stated in an agreement.

3.5 – Authority in the SSH Institute

Canon 596, §1 of the Latin Code identifies the General Chapter as an organ of governance in a religious institute. Article 186 of the SSH *Constitutions* states that the General Chapter is the highest authority in the institute when it is lawfully in session. The Supreme legislator in canon 631 states that the General Chapter is to be a representation of an entire institute, and that an institute's proper law is to state the Chapter's composition, functions, and manner of celebration. It exercises collegial governance.³⁹ Articles 192 to 206 of the SSH *Constitutions* outline the duties of the General Chapter.⁴⁰ One major task of the General Chapter is that it is the competent body in the institute to propose changes, especially regarding the constitutions, which the diocesan bishop of the principal seat is to confirm in consultation with other diocesan bishops of places where the institute has spread. However,

³⁸ Cf. McDERMOTT, "Commentary on cc. 573-616," p. 756.

³⁹ See RINCON-PEREZ, "Commentary on cc. 573-606," p. 1542.

⁴⁰ See SSH *Constitutions*, arts. 192-206, pp. 60-65.

in fulfilling this role, the Chapter is to ensure that the norms being proposed are really essential, while avoiding multiplication of norms (cf. c. 587, §3). Moreover, the General Chapter, in proposing changes to the SSH *Constitutions*, is to consider carefully what it is advising since the norms of the *Constitutions* are meant for the present and future (cf. c. 9). This means that a norm of the SSH *Constitutions* that may seem restrictive in the view of the current generation of the institute might be needed to save it from problems in the future.

Diverse roles fall on the Superior General and Council, as well as on other functionaries, such as the local Superiors and their councils and bursars. Each of these becomes evident and influences the relationship between the institute and diocesan bishops, especially as members live and carry out works within the local communities in a diocese.

3.6 – The Role of the Competent Church Authority regarding the SSH Institute

The remote competent Church authority responsible for the SSH Institute is the Apostolic See and, more immediately, the diocesan bishops of the places in which the institute has houses. The initial role of the Apostolic See regarding the institute was to appraise the readiness of the institute for erection and to evaluate its constitutions and make recommendations (c. 579). The competent Church authority dealing more frequently with the institute is the diocesan bishop where the institute has its principal seat. In other instances, the authority rests with the bishop of each place where houses are located (c. 595). A further role of the Apostolic See arises if the institute or the diocesan bishops either consult or have recourse to it. However, the initial role of any diocesan bishop relative to the institute is that of the erection of the institute, or the opening of local communities (c. 609). Other duties follow from the various matters identified in both the *CIC* and the SSH *Constitutions*, which, for the most part, follow those of the *CIC*. These duties of the diocesan bishops form the bases of our discussion of the relationship between them and the institute.

3.7 – THE SSH *CONSTITUTIONS* ON THE RELATIONSHIP BETWEEN DIOCESAN BISHOPS AND THE INSTITUTE

Canon 594 of the Latin Code mentions that diocesan religious institutes remain *sub speciali cura* of diocesan bishops. Bishops are usually more directly and frequently involved in the affairs of these institutes than they are with institutes of pontifical right. This section of the chapter will examine what the SSH *Constitutions* say on the relationship between diocesan bishops and the institute as stated in various canonical norms. It will analyze the norms of the SSH *Constitutions*, referencing various magisterial teaching and canonical principles specific to matters regarding the relationship. It will treat first the provisions regarding the norm of canon 678, §1. Then, it will examine other matters of the relationship, especially the institute's apostolate, government, and ecclesiastical goods.

3.7.1 – The Provisions of SSH *Constitutions* regarding Canon 678, §1: An Analysis

Canon 678, §1 of the Latin Code highlights that institutes are subject to bishops in the care of souls, the public exercise of divine worship, and the other works of the apostolate. Bishops have prerogatives in these matters in their dioceses, as noted in various canons.⁴¹ An institute interacts with the entire Church in similar matters. Essentially, the themes concern the Church's mission depicted in its *tria munera: docendi, sanctificandi* and *regendi*. John Paul II, in speaking about the elements that portray the true image of the Church, also admits the sharing of each member of Christ's faithful in the Church's *munera*:

Among the elements which characterize the true and genuine image of the Church we should emphasize especially the following: the doctrine in which the Church is presented as the people of God (cf. dogmatic constitution *Lumen gentium*, chapter 2) and hierarchical authority as service (cf. *ibid.*, chapter 3); the doctrine in which the Church is seen as a *communio* and which therefore determines the relations which are to exist between collegiality and the primacy; likewise the doctrine according to which all members of the people of God, in the way suited to each

⁴¹ Some examples of such canons include: *CIC*, cc. 383, 834, 385, §1, 392 and 394.

of them, participate in the threefold priestly, prophetic and kingly office of Christ, to which doctrine is also linked that which concerns the duties and rights of the faithful and particularly of the laity; and finally, the Church's commitment to ecumenism.⁴²

3.7.1.1 – The Premise regarding an Institute's Apostolic Action

A basic principle to be remembered is the fact that the apostolic work of all religious institutes, both those entrusted and proper to them, exercised in *nomine et mandato Ecclesiae* must be carried out in union with the Church.⁴³ This principle is suitably underlined in canon 675, which focuses on the apostolic nature of institutes and how this is expressed in the life of institutes and their members. The canon holds:

§1. Apostolic action belongs to the very nature of institutes dedicated to works of the apostolate. Accordingly, the whole life of the members is to be imbued with an apostolic spirit; indeed the whole apostolic action is to be informed by a religious spirit.

§2. Apostolic action is to proceed always from an intimate union with God and is to confirm and foster this union.

§3. Apostolic action, to be exercised in the name and by the mandate of the Church, is to be carried out in the communion of the Church.⁴⁴

Communion in the Church in its visible form is evidenced by the “bonds of the profession of faith, the sacraments and ecclesiastical governance (c. 205).” Article 77 of the *SSH Constitutions* identifies the basis of the institute's apostolic action:

Since all apostolic action is fundamentally an assistance to the hierarchy and should be carried [out] under their direction, the

⁴² JOHN PAUL II, Apostolic Constitution *Sacrae disciplinae leges*, 25 January 1983, in *AAS*, 75 (1983), pars II, p. xii (=SDL); English translation *Code of Canon Law: Latin-English Edition, New English Translation*, prepared under the auspices of THE CANON LAW SOCIETY OF AMERICA, Washington, DC, Canon Law Society of America, 1999, p. xxx. For a detailed discussion on the diverse concepts of the Church, see A. DULLES, *Models of the Church*, Expanded Edition, New York, Doubleday, 1987, chaps. 2, 3 and 10. Also F.S. FIORENZA, “Systematic Theology: Task and Method,” in F.S. FIORENZA and J.P. GALVIN (eds.), *Systematic Theology: Roman Catholic Perspective*, Minneapolis, MN, Fortress Press, 1991, p. 52.

⁴³ See WILLIAMSON, “Commentary on cc. 573-746,” no. 1356, p. 377. Cf. *CIC*, c. 675, §3; *CD*, nn. 17 and 33-35, pp. 927 and 934-936; *ES*, nn. 22-40, pp. 604-609; *AA*, nn. 23-24, pp. 995-997.

⁴⁴ *CIC*, c. 675, §1. “In institutis operibus apostolatus deditis, apostolica actio ad ipsam eorundem naturam pertinet. Proinde, tota vita sodalium spiritu apostolico imbuatur, tota vero actio apostolica spiritu religioso informetur. §2. Actio apostolica ex intima cum Deo unione semper procedat eandemque confirmet et foveat. §3. Actio apostolica, nomine et mandato Ecclesiae exercenda, in eius communione peragatur.”

[Institute] will strive to accommodate its own choice of priorities to the requests of Diocesan Bishops (cf. c. 675, §3).⁴⁵

The article recognizes that apostolic actions are exercised in support of the hierarchy and under its care. It calls on the institute to do its best to adapt its own apostolic priorities to the requests of diocesan bishops. Again, the article underlines the fact that a religious institute and its mission exist, not in isolation, but as part of the Church and its mission (cf. *LG* 43). This mutual sharing in the Church's mission is the essence of addressing the rights and duties of bishops and diocesan non-clerical religious institutes.⁴⁶ Additionally, article 77 acknowledges some of the diverse images and models of the Church, including being an ordered hierarchical institution and as a *communio*, which allows each member of Christ's faithful to share in the *tria munera* according to his or her condition.

Precisely how, then, do the constitutions of religious institutes respond to the issues raised in canon 678, §1? This inquiry utilizes the responses of the SSH *Constitutions* to these issues. Article 74 of the SSH *Constitutions* declares:

The [members] will labour to share in the work of evangelization and engage in apostolic works that will teach others about Jesus' unifying love and they shall do this not only by their prayers and by the witness of their lives but also by their words and their deeds.⁴⁷

This text asserts that the institute's mission is to participate in the work of evangelization and take on apostolic works that will communicate Jesus' uniting love. It identifies prayers, the witness of the members' lives, and their words and deeds as ways the institute partakes in these works. The norm makes clear that the institute is apostolic and exists to share in the mission Christ entrusted to the Church.

⁴⁵ SSH *Constitutions*, art. 77, p. 28.

⁴⁶ See S.L. HOLLAND, "Bishops and Religious: Right Relations for Ecclesial Mission," in *CLSA Proceedings*, 73 (2011), p. 109 (=HOLLAND, "Bishops and Religious").

⁴⁷ SSH *Constitutions*, art. 74, p. 27.

Article 76 of the *Constitutions* then states that prime among the institute's apostolate is the experience and promotion of Devotion to the Sacred Heart of Jesus. It adds:

This Devotion will permeate our other apostolates, viz:

- ❖ Education (in schools and through Community Development)
- ❖ Uplifting of the dignity of the downtrodden womanhood
- ❖ Collaboration in Pastoral Ministry
- ❖ Healing Ministry (medical and counseling).⁴⁸

These outlines of the institute's apostolate are fulfilled in varied forms, which will be treated in the analysis below. The norms by which the SSH *Constitutions* define aspects of the institute's relations with bishops will hopefully reflect its patrimony as they respond to the relevant magisterial teachings and canonical norms. The next section considers the aspects of the *Constitutions* that address the relationship between the diocesan bishop and the institute.

3.7.1.2 – Aspects of Institutes' Collaboration in the Care of Souls

Canon 678, §1 also subjects consecrated persons to bishops in matters concerning the care of souls. As a general rule, canon 150 states “An office which entails the full care of souls and for whose fulfillment the exercise of the priestly order is required cannot be conferred validly on one who is not yet a priest.”⁴⁹ However, the law in canon 517, §2 foresees the possibility of having the non-ordained share in the practical care of a parish:

If, because of a lack of priests, the diocesan bishop has decided that participation in the exercise of the pastoral care of a parish is to be entrusted to a deacon, to another person who is not a priest, or to a community of persons, he is to appoint some priest who, provided with the powers and faculties of a pastor, is to direct the pastoral care.⁵⁰

⁴⁸ See SSH *Constitutions*, art. 76, p. 27.

⁴⁹ *CIC*, c. 150. “Officium secumferens plenam animarum curam, ad quam adimplendam ordinis sacerdotalis exercitium requiritur, ei qui sacerdotio nondum auctus est valide conferri nequit.”

⁵⁰ *CIC*, c. 517, §2. “Si ob sacerdotum penuriam Episcopus dioecesanus aestimaverit participationem in exercitio curae pastoralis paroeciae concedendam esse diacono aliive personae sacerdotali caractere non insignitae aut personarum communitati, sacerdotem constituat aliquem qui, potestatibus et facultatibus parochi instructus, curam pastorem moderetur.” Cf. *CCEO*, c. 287 §2.

This provision is an example of the application of canon 129, §2, which speaks of the non-ordained cooperating in governance within the Church. The care of souls concerns the aspect of the SSH Institute's apostolate in pastoral ministry stated in article 76 of its *Constitutions*. The norm expects the institute's members to cooperate in *cura animarum* in various ways within its diocese of origin, or wherever they are invited. Defining the aspects and concrete ways it shares in this matter would help uphold communion in the local church and protect the institute's vocation and identity, even as it observes the relevant universal and particular laws.

3.7.1.2.1 – Collaboration in Catechesis

Regarding the institute's participation in the work of catechesis, article 84 of the *Constitutions* states, "When [members] are engaged in the work of [catechesis], they are responding most directly to Jesus' command: 'go and make disciples of all nations' (Mt. 28:19)." This norm regarding the institute's role in the work of pastoral collaboration hinges on the teaching *munus* of the Church for which bishops have prerogatives within their dioceses.⁵¹ Canon 756, §2 states, regarding the particular church entrusted to him, that "an individual bishop, who is the moderator of the entire ministry of the word within it, exercises the function of proclaiming the gospel. [...] sometimes several bishops fulfill this function jointly with respect to different churches at once, according to the norm of law."⁵²

Article 84 mentions further that catechesis is one way the SSH Institute participates in the work of evangelization. The Latin Code canon 758 declares, "By virtue of their consecration to God, members of institutes of consecrated life give witness to the gospel in

⁵¹ Cf. COUNCIL OF TRENT, Session V, *Decretum secundum: super lectione et praedicatione*, ch. 2, no. 9, in TANNER2, p. 669; Session XXIV, *Decretum de Reformatione*, c. 4, in TANNER2, p. 763; *LG*, no. 25, p. 869; *CD*, no. 12, p. 924.

⁵² *CIC*, c. 756, §2. "Quoad Ecclesiam particularem sibi concreditam illud munus exercent singuli Episcopi, qui quidem totius ministerii verbi in eadem sunt moderatores; quandoque vero aliqui Episcopi coniunctim illud explent quoad diversas simul Ecclesias, ad normam iuris." No parallel *CCEO* canon.

a special way and the bishop appropriately calls upon them as a help in proclaiming the gospel.”⁵³ This canon affirms the need for institutes to be involved in the work of evangelization, and states that a bishop is to call on them to assist in this task.⁵⁴ In this way, the Latin Code implicitly draws the institute into a relationship with a bishop, whom canon 756, §2 already states has the right in this matter. Nonetheless, article 84 is lacking on the means through which the members of the institute could be adequately prepared so that they can exercise this role in accordance with the mind of the Church and endear themselves to the bishop whom they assist in this task.

3.7.1.2.2 – Collaboration in Other Pastoral Matters involving the Care of Souls

Article 85 of the SSH *Constitutions* highlight other ways that the SSH Institute might collaborate in *cura animarum*:

[Members] may be assigned to work in full-time parish assistance. They could help with giving religious instructions, making parish visitation, and organizing societies for women and for youth. [Members] who have other primary apostolates are encouraged to offer part-time services in parishes, even in such simple tasks as supervising the care of the sanctuary and sacristy.⁵⁵

According to this article, the task of caring for souls could easily be fulfilled by the institute within the parish, school, or their other apostolate. These settings belong within a diocese, which a diocesan bishop has the right and duty to administer. The diocese is to have its pastoral plans, especially as this affects the care of souls. A parish priest has the duty to work in collaboration with the diocesan bishop to proclaim the gospel (cf. c. 757). This duty is to propel him to seek ways and personnel to assist him in this task and other pastoral

⁵³ CIC, c. 758, §2. “Sodales institutorum vitae consecratae, vi propriae Deo consecrationis, peculiari modo Evangelii testimonium reddunt, iidemque in Evangelio annuntiando ab Episcopo in auxilium convenienter assumuntur.” No parallel CCEO canon.

⁵⁴ Cf. S.A. SZUROMI, “La parrocchia e gli Istituti di vita consecrata e le Società di vita apostolica, nonché la presenza di alcuni movimenti spirituali,” in *Angelicum*, 89 (2012), pp. 517-526.

⁵⁵ SSH *Constitutions*, art. 85, p. 29.

activities involving the care of souls. The SSH Institute can provide such personnel. Its members can assist in pastoral ministry by serving as extraordinary ministers of the Eucharist in parishes *ad normam iuris*.⁵⁶ Although the SSH *Constitutions* say nothing about such a role, which we consider an oversight that needs to be remedied; this line of ministry fits in well with the institute's spirituality of love for the Eucharist and Christ's Heart. It is also a way for the institute to assist in the ministry for the salvation of souls, particularly in places where there are shortages of priests (cf. *CD* 35, §1).

Collaboration in the care of souls, as is noted in these articles of the SSH *Constitutions*, is exercised within the context of the parish. However, it is important for members to bear in mind the fact that the care of souls in each diocese in the final analysis is primarily the responsibility of the bishop. Hence, the proper law is to include some information requiring members to be attentive to the regulations of the diocesan bishop in the different places where they collaborate in the care of souls. The SSH *Constitutions* should mention those apostolates through which the members of the institute could assist in the care of souls; this will also help the bishop to know the institute better.

3.7.1.3 – The Public Exercise of Divine Worship

Consecrated persons, according to Latin canon 678, §1, are subject to bishops in matters regarding the public exercise of divine worship. This exercise consists of all liturgical rites properly so called, all other related liturgical and devotional rituals in which Christ's faithful participate, and those exercised within the local houses or communities of an

⁵⁶ Cf. SCSDW, Instruction on Certain Norms Concerning the Worship of the Eucharistic Mystery *Inaestimabile donum*, 3 April 1980, especially no. 10, in *Notitiae*, 16/2 (1980), p. 291; English translation in FLANNERY2, p. 96 (=ID). CONGREGATION FOR THE CLERGY et al., Interdicasterial Instruction on the Collaboration of the Non-Ordained in the Ministry of Priests *Ecclesiae de mysterio* with Explanatory Note, 15 August 1997, in *AAS*, 89 (1997), pp. 852-877; English translation in *CLD*, vol. 14, pp. 96-98. SCSDW, Instruction on Certain Matters to Be Observed or Avoided Regarding the Eucharist *Redemptionis Sacramentum*, 25 March 2004, in *AAS*, 96 (2004) 549-601; *Origins*, 33 (2003-2004), pp. 801, 803-822, especially nn. 154-160, pp. 816-817 (=RS).

institute.⁵⁷ The *Constitutions* identify the following as some concrete areas that the SSH Institute shares in *exercitium publicum cultus divini*: sharing in the celebration of the Holy Eucharist, adoration of the Blessed Sacrament, religious professions, the communal celebration of some parts of the liturgy of the hours, and the rosary. The SSH *Directory* states further how the institute carries out the various exercises, including: hours, frequency and the required spiritual disposition.⁵⁸

3.7.1.3.1 – The Mass and the Holy Eucharist

Regarding this aspect of public divine worship article 46 of the SSH *Constitutions* holds:

The Holy Eucharist is a priceless gift of the love which burns in the heart of Christ (Cf. HA 71, 136, 137). It is the highest form of worship. In grateful and loving response, the [members] will make the Eucharist central to their spiritual life. They should, participate at the Holy Mass each day, if possible, attentively and prayerfully and receive the Most Holy Body of Christ and adore the Lord Himself present in the Sacrament (cf. Can. 663, §2).⁵⁹

According to this article, the members of the institute are to participate attentively and prayerfully in the celebration of the Mass and to receive the Holy Eucharist. In addition, as part of Christ's faithful, the members are also to adore the Most Holy Eucharist.⁶⁰ The norm conforms to canon 663, §2, which holds, "Members are to make every effort to participate in the Eucharistic sacrifice daily, to receive the most sacred Body of Christ, and to

⁵⁷ See McDERMOTT, "Commentary on cc. 673-678," in *CLSA Comm2*, p. 846; WILLIAMSON, "Commentary on cc. 573-746," no. 1360, p. 378. See discussion about this matter in number 2.4.3.2 above.

⁵⁸ See SSH *Constitutions*, arts. 40-54, pp. 15-20. See also SSH *Directory*, arts. 24-38 and 105, pp. 9-12 and 39; *CIC*, cc. 662-664.

⁵⁹ SSH *Constitutions*, art. 46, p. 18.

⁶⁰ JOHN PAUL II expounds extensively on the value of the Eucharist and its worship in his Apostolic Letter On the Mystery and Worship of the Eucharist *Dominicae cenae*, 24 February 1980, no. 3, in *Notitiae*, 16/1 (1980), p. 128; English translation in FLANNERY2, p. 66. Cf. *ID*, nn. 20-27, pp. 98-100; *RS*, nn. 134-141, p. 815.

adore the Lord himself present in the sacrament.”⁶¹ However, the SSH *Constitutions* say nothing about the possibility and frequency of celebration of the Mass in the houses of the institute. This is an obvious omission, especially as this concerns other directives. For example, regarding the deceased members, article 70, §2 of the SSH *Directory* states: “Mass is to be said [offered] in each house every day until after interment for the repose of the soul of the dead [member].”⁶² How is this norm to be observed? Furthermore, in formation houses, especially in the Novitiate, it would be helpful if the Superior General could approach the bishop to assign a priest for Masses. It is particularly important that members are nourished and that the Eucharist reserved in the tabernacles of the communities is refreshed regularly, at least twice a month (c. 934). Although the frequency could depend on local conditions, these are to be assessed by the different communities and the priest responsible for the parish. However, in conformity with canon 934, §2, as long as the Eucharist is reserved in a community, someone must be responsible to ensure its care. The institute is to keep abreast and observe the relevant universal and particular norms on these subjects.⁶³

The above norms and circumstances emphasize the need for frequent Masses in the local communities. Consequently, it is important for the SSH *Constitutions* to state clearly that wherever the institute has a house, adequate arrangement is to be made with the diocesan bishop to ensure that the members receive this pastoral care.

⁶¹ *CIC*, c. 663, §2. “Sodales cotidie pro viribus Sacrificium eucharisticum participant, sanctissimum Corpus Christi recipiant et ipsum Dominum in Sacramento praesentem adorent.” This canon is enriched with various Church teachings. Cf. *PC*, no. 6, p. 941; *PO*, no. 18, p. 1065; *ET*, nn. 47-48, p. 701; PAUL VI, Encyclical Letter *Mysterium Fidei*, 3 September 1965, in *AAS*, 57 (1965), pp. 753-774, especially p. 771.

⁶² SSH *Directory*, art. 70, §2, p. 21.

⁶³ Regarding the Mass and the Eucharist, the following sources could be considered: *SC*, nn. 47-58, pp. 830-832; SRC, Instruction on worship of the Eucharist *Eucharisticum mysterium*, 25 May 1967, in *AAS*, 59 (1967), pp. 539-573; English translation in ICEL, *Document on the Liturgy 1963-1979, Conciliar, Papal and Curial Texts* (=DOL), nn. 1230-1296, Collegeville, MN, The Liturgical Press, 1982, pp. 395-420; SCDW, *General Instruction of the Roman Missal*, 4th ed., 27 March 1975, Vatican Polyglot Press, 1975; English translation in DOL, nn. 1376-1731, pp. 465-534. *CIC*, cc. 897-964.

3.7.1.3.2 – Religious Profession

Regarding religious profession, article 127 of the SSH *Constitutions* states:

By religious profession the [members] make public vow to observe the three evangelical counsels. Through the ministry of the Church they are consecrated to God, and are incorporated into the institute, with the rights and duties defined by law (Can. 654).⁶⁴

This article makes clear that religious profession is the means through which members are incorporated into the institute. However, the article is silent about what this entails and possible issues that may be related to its expression. Religious profession, a liturgical act subject to liturgical laws,⁶⁵ is another way the institute takes part in *exercitium publicum cultus divini*. The exercise is typically expressed within the Mass after the homily (c. 767) as determined in the *praenotanda* of the rite of religious profession.⁶⁶ The whole Church shares in the life of an institute and its members in such liturgical acts.⁶⁷ It is expressed temporarily and subject to renewal. It is also expressed perpetually. Perpetual religious profession marks the end of the initial formation process of members and the final act of incorporation of such persons into an institute of consecrated life.⁶⁸ It has juridical consequences for the person, members of the institute, the institute itself, and the Church.

⁶⁴ SSH *Constitutions*, art. 127, p. 42.

⁶⁵ See J.M. HUELS, *Liturgy and Law: Liturgical Law in the System of Roman Catholic Canon Law*, Montreal, Wilson & Lafleur, 2006, p. 74 (=HUELS, *Liturgy and Law*). For the nature of the liturgy see SC, no. 7 and c. 834. Huels explains: “Liturgical law (*ius liturgicum*) is the body of canon law regulating the liturgy” (ibid., p. 64).

⁶⁶ See SSH *Directory*, art. 105, p. 30. See also, SCDW, *Rituale Romanum, Ordo professionis religiosae*, editio typica, 2 February 1970, nn. 10-14a, Vatican Polyglot Press, 1975, pp. 6-7; *The Roman Ritual, Revised by Decree of the Second Vatican Ecumenical Council and Published by Authority of Pope Paul VI*, English translation, Washington, DC, ICEL, 1974, pp. 6-7 (=OPR). *Praenotanda* are both the general and specific introductory instructions found in liturgical books. They are laws. See F.R. MCMANUS, “Liturgical Books,” in P.E. FINK (ed.), *The New Dictionary of Sacramental Worship*, Collegeville, MN, The Liturgical Press, 1990, p. 691; For J.M. Huels, *praenotanda* are norms which make up the introductions to the liturgical books and also the introductions to the various chapters of rites. See HUELS, *Liturgy and Law*, p. 85. Cf. A. REHRAUER, “Current Issues in Liturgical and Sacramental Law,” in *CLSA Proceedings*, 62 (2000), pp. 245-262.

⁶⁷ See LG, no. 45, p. 886; PIUS XII, *Annus sacer*, 8 December 1950, in *AAS*, 43 (1951), pp. 26-36.

⁶⁸ See E. FOLEY, *Rites of Religious Profession: Pastoral Introduction and Complete text*, Chicago, Liturgy Training Publications, 1989, p. 87.

Canon 1198 states in this regard, “Vows made before religious profession are suspended while the person who made the vow remains in the religious institute.”⁶⁹

Religious profession, whether temporary or perpetual, is a juridical act, furnished with the institute’s formula for religious profession provided in article 39 of the *Constitutions*. This formula is a document that the members sign after expressing their religious profession. There have been questions concerning who receives the profession and whose name is to appear in the formula (document). SCRIS gave an authentic interpretation indicating it is the superior general, not the bishop, who receives the vows and whose name appears on the formula.⁷⁰ In resolving this issue, which some institutes could experience, the SSH *Constitutions* state clearly that it is the superior general who receives the profession and whose name appears in the formula: “in the hands of N.N. my Superior General (art. 39).” This is a clear way constitutions help to avoid conflict between an institute and a diocesan bishop.

3.7.1.3.3 – The Liturgy of the Hours

With regards to the liturgy of the hours, article 47 of the SSH *Constitutions* states:

Through the Divine Office the universal Church offers unceasing praise to the Lord and unending intercession for the salvation of the whole world. Our communities should celebrate the hours of Lauds and Vespers daily, in common, if possible, Compline should be recited as Night Prayer to mark the end of the day (cf. c. 1173 & 663, §3).⁷¹

This article affirms the norm of canon 1173 describing this matter, stating that in the liturgy of the hours, which is the public and official prayer of the Church, continuous praises are offered to God in song and prayers as well as entreaty for the redemption of the world.

⁶⁹ CIC, c. 1198. “Vota ante professionem religiosam emissa suspenduntur, donec vovens in instituto religioso permanserit.”

⁷⁰ See, SCRIS, Reply, Persons Qualified to Receive Religious Profession; To Be Named in Formula, 14 October 1974; 16 March 1976, in *CLD*, vol. 8, pp. 361-364; See also, SCRIS, Reply, Formula of Religious Profession: Essential Elements, 14 February 1973; in *CLD*, vol. 8, pp. 365-366.

⁷¹ SSH *Constitutions*, art. 47, p. 18.

Sacrosanctum concilium (nn. 83-101) treats of these prayers, their nature, forms, and hours.

Canon 1174 specifies the obligation of Christ's faithful to participate in this action of the Church in varying degrees:

§1. Clerics are obliged to carry out the liturgy of the hours according to the norm of can. 276, §2, n. 3; members of institutes of consecrated life and societies of apostolic life, however, are bound according to the norm of their constitutions.

§2. Other members of the Christian faithful, according to circumstances, are also earnestly invited to participate in the liturgy of the hours as an action of the Church.⁷²

Canon 663, §3, affirming this requirement for members of religious institutes to participate in the Church's liturgy of the hours, states:

They are to devote themselves to the reading of sacred scripture and mental prayer, to celebrate worthily the liturgy of the hours according to the prescripts of proper law, without prejudice to the obligation for clerics mentioned in can. 276, §2, n. 3, and to perform other exercises of piety.⁷³

Article 47 of the SSH *Constitutions* also affirms this norm. It states clearly the liturgical hours that the institute and its members should observe. The institute is expected to try to keep the time stipulated for each part in their celebration of the hours. *Sacrosanctum concilium* states, "So that the day may be truly sanctified and that the hours themselves may be recited with spiritual advantages, it is best that each of them be prayed at the time which corresponds most closely with its true canonical time."⁷⁴ Canon 1175, emphasizing the time element, states, "In carrying out the liturgy of the hours, the true time for each hour is to be

⁷² *CIC*, c. 1174. "Obligatione liturgiae horarum persolvendae adstringuntur clerici, ad normam can. 276, § 2, n. 3; sodales vero institutorum vitae consecratae necnon societatum vitae apostolicae, ad normam suarum constitutionum. §2. Ad participandam liturgiam horarum, utpote actionem Ecclesiae, etiam ceteri christifideles, pro adiunctis, enixe invitantur." Cf. *CCEO*, c. 377.

⁷³ *CIC*, c. 663, §2. "Lectio sacrae Scripturae et orationi mentali vacent, iuxta iuris proprii praescripta liturgiam horarum digne celebrent, firma pro clericis obligatione de qua in can. 276, § 2, n. 3, et alia pietatis exercitia peragant." *CCEO*, c. 473, §2, 1° 3° and 538, §§1-2.

⁷⁴ *SC*, no. 94, "Praestat, sive ad diem revera sanctificandum, sive ad ipsas Horas cum fructu spirituali recitandas, ut in Horarum absoluteione tempus servetur, quod proxime accedat ad tempus verum uniuscuiusque Horae canonicae" (TANNER2, p. 836).

observed insofar as possible.”⁷⁵ By stating clearly which of the liturgical hours the institute shares, the SSH *Constitutions* help to emphasize the value of members’ participation, which is significant for the bishop in fulfilling his duty to help foster internal discipline (cf. c. 678, §2).

3.7.1.3.4 – Ecclesiastical Funeral

On the matter of deceased members, article 71 of the SSH *Constitutions* states:

Death does not end the [member’s] community with their [members]. As Christians the [members] should know that at death, life is not ended but merely changed. The [members]’ love and concern for one another should therefore reach beyond the grave and they should maintain a spirit of union with the [members] who have gone before them. Every [member] available should attend the funeral Mass of a deceased [member].⁷⁶

This article holds that the love that exists among members is not ended with the death of a member. Rather, the living members are to maintain spiritual communion with the deceased members. Furthermore, article 67 of the SSH *Directory* states:

When a [member] dies the local Superior shall immediately inform the Superior General and the rest of the [members]. The Superior General shall inform the family of the [member] and the Local Ordinary. If it is required [the Superior General] shall likewise notify the civil authorities.⁷⁷

This norm states clearly the responsibility of the local Superior and the Superior General regarding the death of a member. In taking cognizance of the need to inform the local ordinary, the article also acknowledges the prerogative that the local ordinary has as the legal representative of the diocese.

3.7.1.4 – Other Works of the Apostolate

The last element of canon 678, §1 subjects institutes to bishops in matters relating to other works of the apostolate. The bishops have prerogatives regarding apostolic works and

⁷⁵ *CIC*, c. 1175. “In liturgia horarum persolvenda, quantum fieri potest, verum tempus servetur uniuscuiusque horae.”

⁷⁶ SSH *Constitutions*, art. 71, p. 25.

⁷⁷ SSH *Directory*, art. 67, p. 20.

the duty to encourage Christ's faithful in their dioceses to engage in apostolic ventures according to their conditions and talents. This norm affirms canon 216, which holds that

since they participate in the mission of the Church, all the Christian faithful have the right to promote or sustain apostolic action even by their own undertakings, according to their own state and condition. Nevertheless, no undertaking is to claim the name Catholic without the consent of competent ecclesiastical authority.⁷⁸

The canon adds a condition requiring the consent of the competent ecclesiastical authority for such apostolic undertakings to assume the name "Catholic." Members of religious institutes are not excluded from the provisions of these canons. In fact, in the case of religious institutes, their apostolic undertakings may not always bear the name "Catholic," but the name is habitually implicit. Other works of the apostolate are those apostolic actions that are intended mostly toward persons outside the institute.⁷⁹ Below, we will examine what the SSH *Constitutions* say regarding these works of the apostolate.

3.7.1.4.1 – Collaboration in Healing Ministry

Regarding the SSH Institute's collaboration in healing ministry, article 83 of the SSH *Constitutions* states:

In health services the [members] may work in various capacities to serve the sick. They should spend themselves and be spent unselfishly. In this manner they will show toward their patients the charity and compassion of Christ.⁸⁰

The article emphasizes the manner in which members are to exercise the institute's role in this ministry. It involves the spirit of selflessness, which requires sacrifice and witness

⁷⁸ *CIC*, c. 216. "Christifideles cuncti, quippe qui Ecclesiae missionem participant, ius habent ut propriis quoque inceptis, secundum suum quisque statum et condicionem, apostolicam actionem promoveant vel sustineant; nullum tamen inceptum nomen catholicum sibi vindicet, nisi consensus accesserit competentis auctoritatis ecclesiasticae." *CCEO*, c. 19.

⁷⁹ See WILLIAMSON, "Commentary on cc. 573-746," no. 1360, p. 378.

⁸⁰ SSH *Constitutions*, art. 83, p. 29.

to Christ's redemptive love.⁸¹ However, the article is silent on the spiritual care for the sick in their care, especially with regard to the sacrament of the anointing of the sick and the need for members to be alert to the possibility of ensuring that the sick, particularly members of Christ's faithful and others who lawfully request this sacrament, receive it (cf. c. 844). In this way, they will be ensuring both the spiritual and physical wellness of the sick in their care.

The Church offers the sacrament of the anointing of the sick as part of its concern for the health of people. This solicitude is expressed in canon 998:

The anointing of the sick, by which the Church commends the faithful who are dangerously ill to the suffering and glorified Lord in order that he relieve and save them, is conferred by anointing them with oil and pronouncing the words prescribed in the liturgical books.⁸²

Canon 1001 emphasizes the responsibilities of the pastors of souls and those close to the sick to ensure they receive this sacrament.⁸³ F. McManus notes that the suitable time for celebrating the sacrament depends on persons who can be anointed, special cases, and the desire for the sacrament by the sick person.⁸⁴ However, *Sacrosantum concilium* clarifies both the purpose and time for celebrating this sacrament: "Anointing of the sick,' is not a sacrament intended only for those who are at the point of death. Hence, as soon as anyone of the faithful begins to be in danger of death from sickness or old age, the fitting time for him to

⁸¹ This article on the members' attitude in caring for the sick touches an aspect of Christ's deeds and attitude which they are called to emulate. Cf. for example, SSH *Constitutions*, arts. 4-5 and 7, pp. 3-5.

⁸² CIC, c. 998. "Unctio infirmorum, qua Ecclesia fideles periculose aegrotantes Domino patienti et glorificato, ut eos allevet et salvet, commendat, confertur eos liniendo oleo atque verba proferendo in liturgicis libris praescripta." CCEO, c. 737, §1.

⁸³ CIC, c. 1001. "Curent animarum pastores et infirmorum propinqui, ut tempore opportuno infirmi hoc sacramento subleventur." CCEO, c. 738.

⁸⁴ See F.R. McMANUS, "Commentary on the Sacrament of the Anointing of the Sick, cc. 998-1007," in *CLSA Comm2*, pp. 1184-1191.

receive this sacrament has certainly already arrived.”⁸⁵ Moreover, canon 1003, §1 asserts, “Every priest and a priest alone validly administers the anointing of the sick.”⁸⁶ To the extent permitted by law, the SSH Institute can collaborate in this form of ministry based on the availability, or lack thereof, of priests.

However, one recognizes that health issues are not limited to spiritual remedies. Often, health care issues require both spiritual and material remedies. In these cases, centers such as the hospital, clinics and similar facilities provide this. These centers may be owned by the Church, its entities, or other organizations where members of the institute can offer their services. Consequently, it is for the diocesan bishop to ensure that priests are readily available within the vicinity of the health facility to respond to this need. He could appoint a chaplain for the facility, especially if this is a large facility. By taking these steps, the diocesan bishop fosters the collaboration between the institute and his priests in this apostolate, which falls under his care as the chief shepherd of the diocese.

Furthermore, regarding the care of infirm members, article 66 of the SSH *Directory* states: “The Local Superior shall see to it that infirm [members] are enabled to receive all the spiritual assistance which is possible, especially the sacraments of Penance, Anointing and the Holy Eucharist.”⁸⁷ These needs should also be considered for other sick persons in their care; otherwise, the exercise of this ministry will just be another social work. Given that this is a significant aspect of collaboration, the SSH *Constitutions* should state clearly the need for members to be alert to the spiritual needs of the sick in their care.

⁸⁵ SC, no. 73. “Extrema Unctio”, quae etiam et melius “Unctio infirmorum” vocari potest, non est Sacramentum eorum tantum qui in extremo vitae discrimine versantur. Proinde tempus opportunum eam recipiendi iam certe habetur cum fidelis incipit esse in periculo mortis propter infirmitatem vel senium.”

⁸⁶ CIC, c. 1003. §1. “Unctionem infirmorum valide administrat omnis et solus sacerdos.” CCEO, c. 739, §1.

⁸⁷ SSH *Directory*, art. 66, p. 20.

3.7.1.4.2 – Collaboration in Education

Referring to the SSH Institute's work in education article 86 of its *Constitutions* states:

[Members] should be ready to undertake the work of teaching in schools controlled by the Church, government or private bodies in accordance with local circumstances and judgment of superiors.⁸⁸

The article mentions the feasibility of members engaging in education ministry within various establishments: Church, government, and private institutions. The institute is also capable of establishing its own schools. However canon 801 states:

Religious institutes, whose proper mission is education, retaining their mission faithfully, are also to strive to devote themselves to Catholic education through their schools, established with the consent of the diocesan bishop.⁸⁹

In addressing institutes involved in education, this canon identifies three things: (1) that institutes are to retain their mission in the schools; (2) that the institutes could establish schools with the diocesan bishop's consent; (3) that they are to focus on Catholic education. As S.A. Euart notes, implicit in canon 801 is the fact that, while religious institutes as public juridical persons can own the schools they establish (cf. c. 634, §1), they need the consent of the diocesan bishop, who also has the right of vigilance over the schools (cf. c. 806, §1).⁹⁰

3.7.1.4.3 – Authority regarding Apostolic Works

With reference to the role of the diocesan bishop in the works he entrusts to the institute, article 78 of the SSH *Constitutions* states: "Works which the Diocesan Bishop entrusts to religious are under the authority and direction of the Bishop, without prejudice to

⁸⁸ SSH *Constitutions*, art. 86, p. 29.

⁸⁹ CIC, c. 801. "Instituta religiosa quibus missio educationis propria est, fideliter hanc suam missionem retinentes, satagant educationi catholicae etiam per suas scholas, consentiente Episcopo dioecesano conditas, sese impendere."

⁹⁰ See S.A. EUART, "Commentary on Catholic Education, cc. 793-821," in *CLSA Comm2*, p. 958.

the rights of Religious Superiors (cf. c. 681, §1).⁹¹ The article assumes the norm of canon 681, §1, which states that the diocesan bishop has authority and directs works he entrusts to an institute. The canon distinguishes between the right of the diocesan bishop that concerns the entrusted works, and the right of religious superiors regarding the discipline of the members assigned to the works. Both norms admit that the diocesan bishop's role does not extend to the matters for which the superiors are competent. The norms resolve that each authority maintains their respective duties and rights in this matter. The members must then discern the loyalty due to each authority. By stating clearly this norm, the *SSH Constitutions* identify and foster the common good. First, they ensure a good relationship between the bishop and the institute through the superior. Second, they help the members assigned to these works to understand the areas where they are called to be loyal to the diocesan bishop and those where they are expected to be loyal to the superior, thus ensuring their effective fulfillment of the ministry.

Along this line of fostering a mutual relationship between the diocesan bishop and the institute through the superior, article 79, §2 of the *SSH Constitutions* prescribe that “for such apostolic work, the Superior General, after consultation with the respective Diocesan Bishop, should choose [members] who are really competent.”⁹² The article echoes the norm of canon 678, §3, which obliges diocesan bishops and religious superiors to organize the works of the apostolate through mutual consultation.⁹³ The focus of the canon is that members of an institute assigned to works of the apostolate have the mutual approval of the diocesan bishop and the religious superior. The subject of the norms will help to prevent

⁹¹ *SSH Constitutions*, art. 78, p. 28.

⁹² *Ibid.*, art. 79, 2°, p. 28.

⁹³ *CIC*, c. 678, §3. “In operibus apostolatus religiosorum ordinandis Episcopi dioecesani et Superiores religiosi collatis consiliis procedant oportet.”

tension for the member assigned to such works, as well as between the diocesan bishop and the religious superior. Similarly, article 79, §2 implicitly states the responsibility of the Superior General to ensure that members of the institute who are assigned to apostolic work are suitable for them. Nonetheless, the Superior General may consult with the relevant diocesan bishop before assigning members to some apostolates.

The explicit provisions made in articles 78 and 79 of the SSH *Constitutions*, which conform to the canonical norms on the matter, will help foster the relationship between the institute and the relevant diocesan bishop if they are observed. However, the Latin Code and the SSH *Constitutions* are silent on what is entailed in this consultation between the diocesan bishop and the Superior General. As this is an important matter not to be omitted, a further elaboration on it follows in Chapter Four of this thesis.

3.7.1.4.4 – Written Agreements regarding Entrusted Works

The SSH *Constitutions* treat written agreements regarding entrusted works in article 79, 1°. This article, which presents almost verbatim the norm of canon 681, §2, states:

When a Diocesan Bishop entrusts any apostolic work to the [Institute], written agreement should be made between him and the Superior General. Such agreements should, among other things, define matters related to carrying out this work, the assignment of [members] to it, and its financial aspects.⁹⁴

Canon 681, §2 states that a written agreement is to be drawn up between the diocesan bishop and the competent superior of an institute for works entrusted to the institute. Such written agreements are other aspects of apostolic works that canons 678 and 681 regulate. Of these canons, canon 681, §2 seeks to protect the respective rights of the bishop and the institute. It declares unambiguously that the matters concerning the agreement are to be stated: *expresse et accurate definiantur*. Canon 681, §2 and article 79, 1° of

⁹⁴ *CIC*, c. 681, §2. “In his casibus ineatur conventio scripta inter Episcopum dioecesanum et competentem instituti Superiorem, qua, inter alia, expresse et accurate definiantur quae ad opus explendum, ad sodales eidem addicendos et ad oeconomias spectent.” Cf. *CCEO*, c. 1391, §2.

the SSH *Constitutions* prescribe the need for a written agreement for entrusted works between the diocesan bishop and the Superior General. As the norm stands, it precludes that the agreement exists between any other member of the institute and the diocesan bishop, or between the Superior General and any other person in the diocese. Whether either party can delegate someone else to enter into this pact is not addressed in either code; however, it is not forbidden. Moreover, those precluded might act as witnesses at the discretion of the competent parties.

Article 79, 3° of the SSH *Constitutions* extends the requirement of a written consent to other instances of possible assignment of works to the institute. The article states:

Even when a work is entrusted to an individual [member] by a Local Ordinary, or by the Episcopal Conference, this should be done only with the consent of the Superior-General and through a written agreement (cf. c. 681, §2).⁹⁵

This article requires the consent of the Superior General and a written agreement for works the local ordinary or an Episcopal Conference entrusts to an individual member of the institute. Here, too, the agreement is to define the specific work of the member, the financial aspects affiliated to this task, and the member to whom it is entrusted. There is a reciprocal obligation of the diocesan bishop to ensure that the institute exercises its apostolate, just as the institute is to be attentive to the directives of the diocesan bishop in this regard. The institute also needs to be familiar with the particular laws of the Episcopal conference and the universal rules that affect these areas: awareness of the Church's stance on health care issues, of the Church's social teaching, of ecumenism, of civil laws, and of particular laws regarding the relevant works. If there is a conflict, dialogue should be encouraged and used to address any disagreement as much as is feasible. We note here though, that article 79, 3° mentions the local ordinary while the canon cited says such works

⁹⁵ SSH *Constitutions*, art. 79, 3°, p. 28.

are entrusted by the diocesan bishop. This need to be corrected since the law requires that within the context of executive power, whatever is attributed to the diocesan bishop by name belong only to him except he delegates it by a special mandate (see c. 134, §3).

3.7.1.4.5 – Collaboration regarding Internal Discipline

Another issue addressed in the SSH *Constitutions* is the norm of canon 678, §2. The norm speaks of the collaboration of bishops in ensuring members' keep their institute's discipline and remain obedient to their superiors as they carry out apostolic works. It also notes subjection of members to the two authorities: the diocesan bishop and the religious Superior.⁹⁶ Article 81 of the SSH *Constitutions*, which basically repeats the canon, states:

In the exercise of an apostolate towards persons outside the institute, religious are also subject to their own Superiors and must remain faithful to the discipline of the institute. If the need arises, Bishops themselves are not to fail to insist on these obligations (cf. c. 678, §2).⁹⁷

The article states that when necessary, bishops have the duty to require and insist that members of the institute working for them observe the discipline of their institute and be responsive to their Superiors. The article replicates the norm of canon 678, §2 on the matter. In addition, one aspect implicit in the matter of the internal discipline is that the members, in their external apostolate, remain subject to their Superiors as consecrated persons, rather than as apostolic workers.⁹⁸ To fulfill this duty effectively, it is helpful that the pertinent bishops are familiar with the general notion of the consecrated life and in particular the constitutions of the institute. Indeed, *Apostolorum Successores* notes the need to

⁹⁶ See McDERMOTT, "Commentary on cc. 673-678," in *CLSA Comm2*, p. 846.

⁹⁷ SSH *Constitutions*, art. 81, p. 29.

⁹⁸ See WILLIAMSON, "Commentary on cc. 573-746," no. 1361, p. 378.

uphold the delicate balance between this duty of bishops and the institute's just autonomy of life.⁹⁹ Canon 586 explicitly states the need for such autonomy.

Based on the norms of these articles, which are ways the SSH *Constitutions* respond to the universal norm on the various themes, it is evident that some form of agreement between the members and their respective partners is needed—in the parish mainly for those assigned to work as full-time parish collaborators, but also with government agencies, private organizations, or non-denominational establishments. Such measures help prevent or minimize conflict between the institutes and these entities or organizations, especially if changes occur in their administration or in the execution of works.

Moreover, in collaborative works, the institute and the relevant party, especially in parishes, are to act in keeping with the universal and particular laws, as well as the other directives of the diocesan bishops, on each subject. In the case of government, private, or non-denominational organizations, the institute is to be mindful of Church directives and legislation as well as relevant civil laws that are not contrary to canon law on the pertinent issues.¹⁰⁰ The SSH *Constitutions* are to state clearly that the institute is to seek the diocesan bishops' direction when necessary and follow their directives in situations of conflicts.

3.7.2 – Provisions for Other Areas of the Relationship in SSH *Constitutions*

Canon 586, §1 recognizes a just autonomy of life for religious institutes relating to governance and the discipline adopted for each institute through which they foster and preserve their patrimony. Canon 586, §2 notes the duty of local ordinaries to protect this autonomy. The bishops are competent in carrying out this task for diocesan non-clerical

⁹⁹ See *AS*, no. 100, p. 111. See also *PG*, no. 50, p. 378.

¹⁰⁰ Several canonical legislation address matters involving civil regulations and the need to observe them. See especially *CIC*, cc. 22, 98, §2, 1284, §2, 1°-3°, 1286, 1°, 1290 and 1299, §2.

religious institutes. But the question arises: What are the other aspects of the relationship between the SSH Institute and bishops identified by the SSH *Constitutions*? As an overview, this study categorizes these areas of the relationship as the following: matters regarding the institute's internal administration, matters regarding the institute's ecclesiastical goods, and matters concerning the members of the institute.

3.7.2.1 – Matters regarding General Internal Administration

Various issues of the internal administration of an institute bring it into contact with diocesan bishops. These include the erection and suppression of houses of the institutes, the residence of the Superior General, loss of office, confession, and the canonical election of the Superior General. Precisely what do the SSH *Constitutions* say regarding these?

3.7.2.1.1 – Erection of a Religious House

Regarding the erection of houses of the institute article 160 of the SSH *Constitutions* states:

A religious house is established, with the prior written consent of the bishop of the diocese where the new house is to be erected, by the Superior General, with the consent of [the] Council (cf. c. 609, §1).¹⁰¹

This article makes it clear that the Superior General with the prior consents of the Council and the diocesan bishop is competent to erect a house of the institute. The determination explicitly excludes other persons. The norm is an application of canon 609, §1, which states that the constitutions are to indicate who is the competent authority for this task.¹⁰² With regard to the institute's relationship with bishops, the canon and article 160 hold that the erection requires the prior written consent of the relevant diocesan bishop. The

¹⁰¹ SSH *Constitutions*, art. 160, p. 50.

¹⁰² CIC, c. 609, §1. "Instituti religiosi domus eriguntur ab auctoritate competenti iuxta constitutiones, praevio Episcopi dioecessani consensu in scripti dato." CCEO, cc. 436, §2 and 509, §1.

effects of a valid erection include the rights ceded to the institute, that is, the right to lead a life proper to the institute's character and purpose and to its works *ad normam iuris*.¹⁰³ By giving his consent, the diocesan bishop implicitly accepts that he is familiar with the institute's *Constitutions* and has thus gained an understanding of its vocation and identity.

Furthermore, the diocesan bishop accepts the institute and its works and considers its presence in his diocese as it is needed in light of his diocesan pastoral plan. The specification in article 160 and canon 609, §1 of a written agreement indicates that mere verbal consent of the bishop is insufficient. Moreover, if there is disagreement in the future, a verbal consent might result in misrepresentation of the bishop's statement, especially in verifying the conditions accompanying the consent. Any act of erection that does not have the bishop's consent invalidates the action.¹⁰⁴ What is more, the institute is subject to the diocesan bishop even as it engages in its various apostolic actions. The clear norm of the *Constitutions* should foster the relationship between the diocesan bishop and the institute.

3.7.2.1.2 – Suppression of a Religious House

Article 161 of the SSH *Constitutions* states that “after consultation with the diocesan Bishop, the Superior General, with the consent of [the] Council, can suppress a religious house (cf. c. 616, §1).”¹⁰⁵ This article, in keeping with canon 585, states that the Superior General suppresses a religious house of the institute. However, the Superior General needs

¹⁰³ Cf. SSH *Constitutions*, especially arts. 4, 73-76, pp. 3 and 27.

¹⁰⁴ Confer *CIC*, c. 127, §2, 2° which treats of the theme of consent for acts of superiors, and c. 627 on the need for a Council. Article 40 of the 1979 SSH *Constitutions*, had discussed the participation of the Council in the acts of the Superior General saying: “In making decisions the Superior General must obtain the deliberative or consultative votes of her Council in accordance with canon law and the other provisions of the *Constitutions*. In a deliberative vote, the Superior-General is obliged to follow the opinions of the majority. In a consultative vote, she is free to follow or not follow the opinion of the majority.” SSH *Second Rule-Constitutions*, p. 72. The importance and essence of consent and consultation for certain actions within the Church cannot be underestimated as they allow for proper discernment regarding the decisions for the acts.

¹⁰⁵ SSH *Constitutions*, art. 161, p. 51.

to consult first with the diocesan bishop and also to obtain the Council's consent. As the norm of the article stands, it limits the Superior General's authority to suppressing a house of the institute and not the institute itself. Consequently, when a house of the institute is being suppressed, it is necessary to ensure first that it is not the institute's only house, as this is practically suppressing the institute—a task that canon 584 reserves for the Apostolic See.

The canon and the article of the SSH *Constitutions* are silent on the internal and external implications of suppressing a religious house. However, these are important issues, which could create conflict between a diocesan bishop and the institute—a matter that will be taken up in the next chapter. Nonetheless, the SSH *Constitutions* and proper law, by mentioning the authorities and the requirements for erecting or suppressing a house of the institute, regulate these processes and acts. They ensure order and conformity with the Church's laws and foster the relationship between a diocesan bishop and the institute.

3.7.2.1.3 – Residence of the Superior General

Regarding the Superior General's residence, article 168 of the SSH *Constitutions* states:

The Superior General shall reside in the Generalate of the [Institute]. [The Superior General] may not permanently transfer [the] residence without the consent of [the] council and the approval of the Local Ordinary of the proposed place of residence (cf. c. 629).¹⁰⁶

This norm of the *Constitutions* requires the Superior General to reside in the institute's Generalate. The underlying principle of the norm is for the Superior General to be available for service. Part of the norm conforms to canon 629 stating the obligation of superiors to reside in their houses.¹⁰⁷ If they are absent from their residence, it is to be for the reasons determined by the institute's proper law. The canon implicitly entrusts the proper law with

¹⁰⁶ SSH *Constitutions*, art. 169, p. 52.

¹⁰⁷ CIC, c. 629. §1. "In sua quisque domo Superiores commorentur, nec ab eadem discedant, nisi ad normam iuris proprii." CCEO, c. 446.

the task of specifying reasons for which the superiors can be absent from their residence.¹⁰⁸

However, the SSH *Constitutions* and *Directory* are silent on possible reasons for such absences.

This is an obvious omission that both the universal and proper law need to address.

Moreover, article 168 states that the Superior General requires the consent of the Council for the permanent transfer of the place of residence. The article goes on to say that the Superior General is to obtain the approval of the local ordinary of the proposed place of residence before proceeding with the permanent transfer of the residence. However, the norms are silent on many salient issues, which require further elaboration. They will be treated in Chapter Four.

3.7.2.1.4 Canonical Election of the Superior General

Article 187 of the SSH *Constitutions* mostly reiterates canon 625, §2 of the Latin Code, which determines that the diocesan bishop of the principal seat of the institute presides at the election of the Superior General. The article states:

[The General Chapter] is to be convened every four years, and whenever the term of office of the Superior General becomes vacant, after having informed the diocesan Bishop of the principal seat of the [Institute] whose duty is to preside over the election of the Superior General, either personally or through his delegate.¹⁰⁹

This norm specifies that the institute is to convene its General Chapter every four years and whenever a vacancy occurs in the office of the Superior General. It also states the duty of the diocesan bishop of the principal seat to preside at the election of the Superior General. He is to be informed about the times for each General Chapter. The provision identifies clearly instances when the institute is to elect a Superior General, as well as the competent person and the structure to carry this out.

¹⁰⁸ See D.A. ANDRÉS, “Commentary on Institutes of Consecrated Life, cc. 617-630,” in *Exegetical Comm*, vol. II/2, p. 1656 (=ANDRÉS, “Commentary on cc. 617-630”).

¹⁰⁹ SSH *Constitutions*, art. 187, p. 60.

The competent diocesan bishop can fulfill this duty personally or through a delegate. However, this part of the provision does not indicate the status of the delegate: whether this is to be a cleric, a religious or any other member of Christ's faithful. The Episcopal Vicar for religious would be the most suitable delegate for this task;¹¹⁰ however, the bishop is free to assign anyone else, especially if the diocese lacks such an Episcopal Vicar.

Article 195 of the SSH *Constitutions* states that the diocesan bishop of the principal seat of the institute verifies the required number of votes with the scrutineers, declares the election valid, and announces "the name of the Superior General-elect, if she will accept the office."¹¹¹ These are important details about an aspect of the diocesan bishop's role in the election of the Superior General. The norm follows some of the canonical tradition, as SCRIS implicitly approves with regard to the election of the Superior General, as noted in this text:

The requirements of canon law will be met for the counting of ballots by elected tellers and the recording by an elected secretary. The bishop will be invited to preside for the election of the General Superior during the counting, opening and verification of ballots and to announce that the election has been canonical and to announce the name of the newly-elected General Superior.¹¹²

3.7.2.1.5 – Loss of Office

The Supreme legislator—of the Latin Code—foresees different ways of losing an ecclesiastical office and specifies norms on this matter in canons 184-194. In articles 173, 174 and 176, the SSH *Constitutions* refer to instances in which the Superior General or a General Councillor could lose their respective office. Of these, articles 173 and 174 state:

¹¹⁰ For further study on the Episcopal Vicar for Religious see: R.M. McDERMOTT, "Apostolorum Successores and Episcopal Vicar for Consecrated Life," in *Studia canonica*, 39 (2005), pp. 243-273; S.L. HOLLAND, "The Episcopal Vicar for Religious," in *The Way Supplement*, 50 (1984), pp. 99-112. A. GUTIÉRREZ, "Vicarius Episcopalis pro Religiosis," in *Commentarium pro Religiosis et Missionariis*, 60 (1979), pp. 105-117.

¹¹¹ SSH *Constitutions*, art. 195, p. 63.

¹¹² SCRIS, Reply, 5 July 1972, Prot. N.T. 103-1/72, in *CLD*, vol. 8, p. 337.

If the Superior General wishes to resign [the] office, [the Superior General] makes known [the] reason and expresses [the] wish to the diocesan Bishop of the place [of] residence, and his instructions are to be followed.

If the need arises to deprive the Superior General of [the] office, the General Council shall refer the matter to the diocesan Bishop of the place where the Superior General resides, and his instructions are to be followed (cf. c. 624, §3).¹¹³

The office of the Superior General is an important ecclesiastical office constituted for the governance of an institute. Article 173 of the SSH *Constitutions* holds that the Superior General is to express the wish and reasons for resigning the office to the diocesan bishop of the place of residence. Such an office may not be abandoned at will. The relinquishment of an ecclesiastical office is to follow due process as foreseen in the general norms of canons 184-196. Of these norms, canon 184, §1 states: “An ecclesiastical office is lost by the lapse of a predetermined time, by reaching the age determined by law, by resignation, by transfer, by removal, and by privation.”¹¹⁴ Canon 187 adds “Anyone responsible for oneself (*sui compos*) can resign from an ecclesiastical office for a just cause.”¹¹⁵ However, canon 189, §1 maintains that the resignation “must be made to the authority to whom it pertains to make provision of the office in question; this must be done either in writing, or orally in the presence of two witnesses.”¹¹⁶ Canon 189, §2 adds that the authority is to accept the resignation only for “a just and proportionate cause.”¹¹⁷ Again, the canon underscores the importance of such an

¹¹³ SSH *Constitutions*, arts. 173-174, p. 53.

¹¹⁴ CIC, c. 184, §1. “Amittitur officium ecclesiasticum lapsu temporis praefiniti, expleta aetate iure definita, renuntiatione, translatione, amotione necnon privatione.” CCEO, cc. 965, §1 and 966.

¹¹⁵ CIC, c. 187. “Quisquis sui compos potest officio ecclesiastico iusta de causa renuntiare.” CCEO, c. 967.

¹¹⁶ CIC, c. 189, §1. “Renuntiatio, ut valeat, sive acceptatione eget sive non, auctoritati fieri debet cui provisio ad officium de quo agitur pertinet, et quidem scripto vel oretenus coram duobus testibus.” CCEO, c. 969.

¹¹⁷ CIC, c. 189, §2. “Auctoritas renuntiationem iusta et proportionata causa non innixam ne acceptet.” CCEO, c. 970, §3.

office. Applying these principles to the SSH *Constitutions*, article 173 states that if the Superior General tenders a valid resignation in keeping with these canons, the competent diocesan bishop will examine the reasons presented for the request and its feasibility. The bishop may decide to accept or deny the request. He is to outline the course of action, which the Superior General is obliged to follow. The norm precludes the Superior General from acting alone on the matter, as this could jeopardize the administration of the institute.

Similarly, if necessity arises to dispossess the Superior General of the office, as stated in article 174 of the SSH *Constitutions*, the General Council refers this to the diocesan bishop of the place of residence and follows his instructions. The general norms on this matter are to be considered. Of these, canon 196, §1 states: “Privation from office, namely, a penalty for a delict, can be done only according to the norm of law.”¹¹⁸ Canon 196, §2 adds, “Privation takes effect according to the prescripts of the canons on penal law.”¹¹⁹ Canon 624, §3, to which the SSH *Constitutions* conform, foresees the removal of superiors if the need arises.¹²⁰ Negligence of duties or a violation of the obligation of residence is a latent reason for privation of the Superior General’s office.¹²¹ Before its proposal to the diocesan bishop, however, the Council could consult the norms of canons 192-194 on the manner and basis of removal from office.

Article 176 of the SSH *Constitutions* addresses the possibility of a Superior General, with the Council’s consent, initiating the removal of a General Councillor from the office for grave reasons. The Superior General is to express the reasons in writing to the diocesan

¹¹⁸ *CIC*, c. 196, §1. “Privatio ab officio, in poenam scilicet delicti, ad normam iuris tantummodo fieri potest.” *CCEO*, c. 978.

¹¹⁹ *CIC*, c. 196, §2. “Privatio effectum sortitur secundum praescripta canonum de iure poenali.”

¹²⁰ *CIC*, c. 624, §3. “Possunt tamen durante munere ab officio amoveri vel in aliud transferri ob causas iure proprio statutas.” *CCEO*, c. 514, §2.

¹²¹ See *CIC*, cc. 629 and 1396. Cf. *CCEO*, c. 446.

bishop of the principal seat of the institute. Here, too, canons 192-194, the general norms for removal from office, should be referenced as a guide by all involved in the process.

Canon 192 states that a person is removed from office either by a lawful decree of the competent authority or by the law itself in keeping with the norm of canon 194.¹²² Since the diocesan bishop is the competent authority, the Superior General or the General Council will need to make representations to him. The bishop is to avail himself of the representations and the relevant canons in deciding to accept the proposal for removal or deny it. Whatever he decides, he is to state what the Superior General or the General Council should do. The SSH *Constitutions* state clearly the possibility of the Superior General or a General Councillor losing their office and the need to refer the issue to the diocesan bishop. However, they and the SSH *Directory* are silent on some of the likely reasons for such loss. This is a clear lapse, given the importance of these offices.

3.7.2.2 – Matters regarding Temporal Goods

Canon 1257, §1 states that all temporal goods of public juridical persons in the Church are ecclesiastical goods governed by the canons on temporal goods (cc. 1258-1310) and their own statutes. These principles apply also to the SSH Institute as a public juridical person in the Church. Below, the matter of the temporal goods of the institute will be treated in the following categories: the administration of temporal goods, the investment of funds, and the alienation of temporal goods.

3.7.2.2.1 – Administration of Temporal Goods

With reference to the administration of temporal goods, article 221 of the SSH *Constitutions* states:

¹²² CIC, c. 192. §1 “Ab officio quis amovetur sive decreto ab auctoritate competenti legitime edito, servatis quidem iuribus forte ex contractu quaesitis, sive ipso iure ad normam can. 194.” CCEO, c. 974, §1.

When a [member] is working for a Diocese or other institution, and [the member] receives any gifts or donations, [the member] should enquire carefully as to the donor's intention with respect to the destination and purpose of the gift, and should faithfully honor the intention.¹²³

The article emphasizes the distinction between different categories of properties. It prescribes that members of the institute engaged in works belonging to the diocese, or to other entities, are to ensure they ask the donors diligently of their intention regarding gifts offered. The purpose is to ensure their intentions are known and fulfilled. The article applies the norm of canon 1267, §§1 and 3, which treat the matter of donations and the purpose of donors regarding donations. Canon 1267, §1, in an attempt to avoid conflict regarding ownership of donations given to superiors and administrators of any ecclesiastical juridical person, states the presumption that such donations are for the ecclesiastical juridical person, unless there is a contrary fact.

Latin canon 1267, §3 emphasizes the need to respect the donor's intention in the use of donations. To ensure that there are no misrepresentations of ownership of properties or goods, article 220 of SSH *Constitutions* prescribes that "the administration of property owned by the [institute] must be completely and carefully separated from the administration of property which is merely managed by the [institute]."¹²⁴ Here, the SSH *Constitutions* call for a separation of the administration of the institute's properties from those entrusted to its management. Failure to make the distinction between these properties could constitute problems in accounting and determining ownership. Furthermore, neglecting to note a donor's intention may result in attributing and applying the gift for unintended persons or purposes. It could also lead to unfulfilled obligations, especially those arising from these

¹²³ SSH *Constitutions*, art. 221, p. 68.

¹²⁴ Ibid., art. 220, p. 68.

donations. Latin canon 1276 entrusts the supervision of the administration of all ecclesiastical goods in his diocese to the local ordinary. Consequently, he is to be informed and is competent to intervene in moments of disputes on the matter.

3.7.2.2.2 – Investments and Funds

With regards to the funds of the institute, articles 213, §§1-2 of the SSH *Constitutions* states:

The Superior General and the General Council may establish special funds to support major capital projects such as the construction of large buildings or important on-going tasks such as the education of [members].

With the approval of the local ordinary, the [Institute] may solicit donations for such funds. The Superior General will deposit in the respective funds any gifts or legacies which are contributed specifically for them.¹²⁵

These norms determine that the Superior General and the General Council may set up special funds for the purpose of supporting capital projects, such as major constructions and the education of members. Soliciting donations is one way to source funding for these projects, which article 213, §2 holds is to be done with the approval of the local ordinary. The article, however, does not address how this approval is sought or given. What does the approval entail and what is the duration of the solicitation and approval? These salient questions, which require further elaboration, will be treated in Chapter Four of this thesis.

Article 213, §2 of the SSH *Constitutions* mentions that the Superior General is to deposit the receipts into the relevant funds. This directive helps to ensure that the donations given by the faithful are used for their intentions and also well secured.¹²⁶ Failure to take these steps can lead to the violation of the donor's intention, a lack of proper accountability, and misuse of the funds.

¹²⁵ Ibid., arts. 213, §§1-2, pp. 66-67.

¹²⁶ See *CIC*, cc, 1262, 1267, §3 and 1284, §1, 4°.

Additionally, the SSH *Constitutions* state other provisions regarding the matter of investments and funds in article 213, §§3-4. The articles hold that all

investment or change in investment of funds belonging to the [Institute] or its houses requires the approval of the local ordinary.

To invest funds which have been donated or bequeathed to a community in trust for charitable purposes in a particular place, the approval of the local ordinary of the place is required.¹²⁷

These articles maintain that the approval of the local ordinary is required to invest funds or to change the investments of the institute or its houses, or to invest funds from donations and bequests in a particular place. The norms are to safeguard the funds. They are to assist the local ordinary in assessing the nature of the investments and in his duty of vigilance regarding ecclesiastical goods within the diocese (see c. 1276, §1). These clearly stated provisions of the SSH *Constitutions* should help foster the relationship between a diocesan bishop and the diocesan institute subject to him.

3.7.2.2.3 – Alienation of Temporal Goods

Concerning the matter of alienation of temporal goods of the institute, article 214 of the SSH *Constitutions* states:

For the validity of alienation, and of any transaction by which the patrimonial condition of the juridical person could be adversely affected, there is required the written permission of the Superior General, given with the consent of [the] Council.¹²⁸

The written permission of the Superior General given with the Council's consent is required for acts of alienation, which may harm the patrimonial state of the institute. This conforms to the norm of canon 638, §3 and article 215 of the SSH *Constitutions*. The article stipulates:

Moreover, the written consent of the Diocesan Bishop and the permission of the Holy See are required if the transaction

¹²⁷ SSH *Constitutions*, arts. 213, §§3-4, p. 67.

¹²⁸ Ibid., art. 214, p. 67.

involves a sum exceeding that which the Holy See has determined for each region, or if it concerns things donated to the Church as a result of a vow, or objects which are precious by reason of their artistic or historical value (cf. c. 638, §3).¹²⁹

In addition, the institute needs the written consent of the diocesan bishop and of the Holy See if a transaction exceeds amount established by the Holy See for the region, if the transaction concerns things offered to the Church because of a vow or if it involves objects that are valuable due to their artistic or historical worth.¹³⁰ Moreover, article 216 of the SSH *Constitutions* states that “request to the Local Ordinary for approval of alienation must be accompanied by information on any parts of this same property which have been previously alienated.”¹³¹ The provisions conform to the norm of canon 1292, §3, which requires that alienated parts of a divisible property “be mentioned when seeking permission for the alienation; otherwise the permission is invalid.”¹³² One must note that the gravity of the act of alienation that affects the patrimonial condition of a public juridical person (c. 1295) is accentuated by the different consents required by law. Hence, failure to disclose the required details regarding the property violates the law and invalidates the request if this is granted.

3.7.3 – Matters regarding Members of the Institute

The diocesan bishop has some duties concerning the members of the institute that bring him into contact with the institute, especially with its administration. The main issues identified here include matters of sacramental confession and separation of members from the institute. Some others include prohibition of members from his diocese, situations of

¹²⁹ Ibid., art. 215, p. 67.

¹³⁰ See *CIC*, cc. 638, §3 and 1291-1292, §§1-2.

¹³¹ SSH *Constitutions*, art. 216, p. 68.

¹³² *CIC*, c. 1292, §3. “Si res alienanda sit divisibilis, in petenda licentia pro alienatione exprimi debent partes antea alienatae; secus licentia irrita est.” The Latin Code general norm c. 63, §1 holds “Validitati rescripti obstat subreptio seu reticentia veri, si in precibus expressa non fuerint quae secundum legem, stilum et praxim canonicam ad validitatem sunt experimenda, nisi agatur de rescripto gratiae, quod *Motu proprio* datum sit.”

loss of ecclesiastical office by members, and the bishop's canonical visitation to the institute.

These latter are not treated in the SSH *Constitutions* but will be elaborated on in chapter four.

3.7.3.1 – Sacramental Confession

The SSH *Constitutions*' provision in article 51, §2 regarding confession holds

in the houses of formation, and in large Communities, there are to be ordinary confessors approved by the Diocesan Bishops, after consultation with the Community. There is, however, no obligation to approach these confessors (cf. can. 630, §3).¹³³

The article, which reflects the norm of canon 630, §3, states the need for houses of formation and large communities of the institute to have ordinary confessors approved by the diocesan bishop. Canon 969, §1 makes clear that the “local ordinary alone is competent to confer upon any presbyters whatsoever the faculty to hear confessions of any of the faithful.”¹³⁴ However, approval of these confessors for houses of formation or a religious community requires prior dialogue between a diocesan bishop and the relevant houses of formation or community. The article and canon 630, §3 add that members are not required to approach the appointed confessor. Moreover, canon 991 also states the freedom in a person's choice of confessor: “Every member of the Christian faithful is free to confess sins to a legitimately approved confessor of his or her choice, even to one of another rite.”¹³⁵

Additionally, canon 630, §1 states that superiors need to acknowledge the distinction between the discipline of the institute and the freedom of members regarding the sacrament of penance and direction of conscience. D.J. Andrés identifies three aspects of “due freedom” specified in the canon: (1) due freedom being obligatory regarding the sacrament

¹³³ SSH *Constitutions*, art. 51, §2, p. 19.

¹³⁴ CIC, c. 969, §1. “Solus loci Ordinarius competens est qui facultatem ad confessiones quorumlibet fidelium excipiendas conferat presbyteris quibuslibet; presbyteri autem qui sodales sunt institutorum religiosorum, eadem ne utantur sine licentia saltem praesumpta sui Superioris.” CCEO, c. 724, §1.

¹³⁵ CIC, c. 991, §1. “Cuius christifideli integrum est confessario legitime approbato etiam alius ritus, cui maluerit, peccata confiteri.”

of penance and that the superiors recognize it; (2) due freedom for dealing with persons; and (3) due freedom to receive the sacrament and to declare the context to be most intimate for a person and therefore protected by canons 220 and 642.¹³⁶ The emphasis on the freedom regarding the choice of a confessor is a shift from canon 521, §1 of *CIC/17*, which made extraordinary confessors compulsory for all religious institutes and from which some institutes even requested and obtained dispensations.¹³⁷ Article 104 of *Apostolorum Successores* maintains that bishops are to assign confessors to the institutes who excel in their knowledge of consecrated life, are pious and doctrinally sound, and have a missionary spirit.¹³⁸ Both the canonical norm and the article of the SSH *Constitutions* agree on the need for collaboration between the diocesan bishop and the institute in the approval of confessors to the institute.

3.7.3.2 – Separation of Members from the Institute

Another aspect of the relationship between the diocesan bishop and a religious institute concerns the separation of members from the institute. The matter is mentioned only in an article in Chapter Six of the SSH *Constitutions*. The article defers legislation on the separation of members from the institute to the canonical legislation in canons 684-704 of the Latin Code. These canons treat of the various ways a member may separate from an institute, including (1) transfer from the institute to another, (2) voluntary departure, and (3) legitimate dismissal from the institute by the competent authority. Some norms of these canons require further legislation in the proper law of an institute. Among these are canon 696, which treats of facultative dismissal, and other canons on matters requiring the role of the diocesan bishops. For this reason, and on the entire deferment to these canons by the

¹³⁶ See ANDRÉS, “Commentary on cc. 617-630,” pp. 1659-1660.

¹³⁷ See SACRA CONGREGATIO PRO GENTIUM EVANGELIZATIONE SEU DE PROPAGANDA FIDE, Reply, Dispensation from the Law on Extraordinary Confessor, 3 October 1968, Prot. N. 4966. 68, in *CLD*, vol. 7, p. 486.

¹³⁸ See *AS*, no. 104, p. 117.

SSH *Constitutions*, Chapter Four will undertake a brief study of the issues and the relevant canons.

3.7.4 – Duties regarding the Constitutions

The Supreme legislator foresees wisely the role of the ecclesiastical authority concerning the constitutions of religious institutes. In canon 587, §2, he prescribes that these constitutions are “approved by competent authority of the Church and can be changed only with its consent.”¹³⁹ Canon 595, §1 attributes this competency to the diocesan bishop of the principal seat of the institute.¹⁴⁰ Articles 224 to 226 of the SSH *Constitutions* assert the various roles of the diocesan bishop and Superior General regarding the *Constitutions* of the institute. Article 224 reserves to the bishop of the principal seat of the institute the competency to interpret authentically its *Constitutions*.¹⁴¹ Some salient concerns focus on the matter of the diocesan bishop’s general understanding of the consecrated life, the particular patrimony of the institute, the interpretation and confirmation of changes to the *Constitutions*. Of particular significance are the criteria for the bishop to interpret the constitutions—this is an important issue that is worth considering, and it should be addressed in the revision of the Latin Code.

Articles 225-226 address the limited role of the Superior General regarding the SSH *Constitutions* and the alternate course of action. Of these, articles 225 states:

The Superior General may temporarily and for a just reason, dispense both the individual [Members] and their Communities from any disciplinary norm of the Constitutions.¹⁴²

¹³⁹ *CIC*, c. 587, §2. “Codex huiusmodi a competenti auctoritate Ecclesiae approbatur et tantummodo cum eiusdem consensu mutari potest.”

¹⁴⁰ See *CIC*, c. 595, §2. *CCEO*, cc. 414, §1, 1°-2° and §3.

¹⁴¹ See SSH *Constitutions*, art. 224, p. 70.

¹⁴² *Ibid.*, art. 225, p. 70.

This article holds that, if the situation warrants it, a Superior General is competent to grant dispensations to individual members and communities from “the disciplinary” norms of the SSH *Constitutions*. The norm allows this limited competency only temporarily. It applies the general norm principles in canons 85-92 regarding dispensation. Of these norms, canon 87 states explicitly that only disciplinary laws are subject to dispensation.

Moreover, article 226 of the SSH *Constitutions* stipulates:

If the dispensation requested affects the essential matters of the [Institute], such a dispensation can be given only by the diocesan Bishop of the principal house.¹⁴³

This article requires the Superior General to refer matters that are essential to the institute back to the diocesan bishop of the principal seat of the institute. The article reflects the principle of canon 86, which states: “Laws are not subject to dispensation to the extent that they define those things which are essentially constitutive of [juridical] institutes or acts.”¹⁴⁴ The canon identifies the categories of law that are excluded from dispensation. In practical terms, a Superior General cannot dispense a member temporarily from observing the spirituality of the institute.

Furthermore, while article 226 conforms to canon 595, §2 on the diocesan bishop’s competency to dispense from certain matters that affect essential matters of the institute, the bishop is also limited in the aspects of these matters from which he can dispense, following the general norms on dispensation (cc. 87-93). He is not per se allowed to dispense from every essential issue of the constitutions. Consequently, it goes without saying that the Superior General and the diocesan bishop of the principal seat of the institute need to be attentive to the fact that the Apostolic See has approved some elements constitutive of the

¹⁴³ Ibid., art. 226, p. 70.

¹⁴⁴ *CIC*, c. 86. “Dispensationi obnoxiae non sunt leges quatenus ea definiunt, quae institutorum aut actuum iuridicorum essentialiter sunt constitutiva.” *CCEO*, c. 1537.

institute and inscribed in the SSH *Constitutions*. Hence, if the recommended changes concern these elements, the diocesan bishop of the principal seat is to consult with the Apostolic See.¹⁴⁵ For example, a proposal by a General Chapter that the institute change from a religious to a secular institute, or that it becomes totally contemplative, would require such consultation. Hopefully, in fulfilling this task, the diocesan bishop will carefully consider the present and future effect of a change for the institute and be slow to grant approval for such proposals.

Conclusion

This chapter presented a brief history of the SSH Institute, from its origin to its canonical erection. The study then provided an overview of the legislative history of the institute, examining each constitutive element required by canon 587, §1 for such constitutions in order to identify how their contents are linked and how they influence the relationship between diocesan bishops and the institute. The chapter also surveyed briefly the institute's *Directory* in view of its link with the *Constitutions* and how its provisions further the relationship between diocesan bishops and the institute. It identified the binding force of these juridical and normative documents of the institute, as they shape and give direction to the way of life and mission of the institute and its members, and influence the relationship between the institute and diocesan bishops.

Next, the chapter examined the norms of the SSH *Constitutions* regarding the duties and rights of diocesan bishops concerning the institute stated in its *Constitutions* and clarified in the *Directory*. These included matters of erection and suppression of the houses of the

¹⁴⁵ A study of the document on essential elements of consecrated life will be of help in this regard: SCRIS, Document to US Bishops on the *Essential Elements in the Church's Teaching on Religious Life as Applied to Institutes Dedicated to Works of the Apostolate*, 31 May 1983, in *CLD*, vol. 10, pp. 43-76. Cf. S.L. HOLLAND, "The Code and *Essential Elements*," in *The Jurist*, 44 (1984), pp. 304-338; S.A. EUART, "A Canonical Analysis of *Essential Elements* in the Light of the 1983 Code of Canon Law," in *The Jurist*, 44 (1985), pp. 438-499.

institute, the residence of the Superior General and the transfer of the generalate, canonical visitation, and loss of office of the Superior General or a General Councillor. Also surveyed were norms on matters of the administration and alienation of temporal goods, matters regarding members with regard to confession and separation from the institute, as well the role of diocesan bishops and the Superior General regarding the SSH *Constitutions*. It addressed the norms concerning those matters of canon 678, §1 in which institutes are subject to the diocesan bishop: the care of souls, the public exercise of divine worship, and other works of the apostolate.

Most of the provisions in the SSH *Constitutions* are consistent with the norms of universal Church law. Some of them may be stricter or more innovative, but they are not against Church law. In this regard, and from the study of the SSH *Constitutions*, it appears there has been great dependence or assimilation of the universal Church law. However, some provisions fall short. These and other omissions are the focus of the next chapter, which provides further elaboration and critique of the SSH *Constitutions'* provisions regarding the relationship between the institute and diocesan bishops.

CHAPTER FOUR

TOWARDS AN IMPROVED BISHOPS – INSTITUTE RELATIONSHIP

Introduction

This chapter will examine elements that the SSH *Constitutions* may not have stated adequately, or even failed to mention, but which could better the diocesan bishop-institute relationship. The chapter will commence with observations concerning some provisions of the SSH *Constitutions* with regard to canon 678, §1. Secondly, it will comment on other pertinent subjects in the SSH *Constitutions* concerning the relationship between diocesan bishops and the institute. Next, the chapter will identify matters that the SSH *Constitutions* did not treat adequately or failed to address that would foster the relationship between bishops and the institute, and then highlight other ways the SSH *Constitutions* could advance this mutual relationship. Finally, the chapter concludes with suggestions to improve the content of the constitutions to enhance this relationship. It is hoped that these proposals will provide a template that would be helpful to diocesan institutes and also in view of an eventual revision of the canonical legislation on the relationship between diocesan bishops and diocesan non-clerical religious institutes generally.

4.1 – THE NORMS OF SSH *CONSTITUTIONS* REGARDING CANON 678, §1

In Chapter Three, the aspects of the relationship between the SSH Institute and diocesan bishops were addressed under two categories based upon the SSH *Constitutions*. The first part focused on the provisions of the SSH *Constitutions* concerning matters relating to canon 678, §1. The second section treated other specific matters regarding the relationship. This section of the study treats the main issues of canon 678, §1, as outlined in Chapter Three, that is, the pastoral care of souls, the public exercise of divine worship, and other

works of the apostolate. These issues are further subdivided below in order to highlight their various aspects. However, the focus in this chapter remains an analysis concerning the sections of the SSH *Constitutions* that raise concerns.

4.1.1 – Collaboration in Catechesis

Article 84 of the SSH *Constitutions* states that when members of the institute engage in “the work of [catechesis], they are responding most directly to Jesus’ command: ‘go and make disciples of all nations’ (Mt. 28:19).”¹ However, the SSH *Constitutions* do not make mention of the basic qualifications or formation that the members of the institute must have before they can be assigned to this apostolate. The absence of such a provision could create problems, as members who do not have the basic qualifications or even the required charism for such an apostolate could end up being assigned to it, especially when there is a shortage of personnel. Such a situation would have a negative impact on the quality of their instruction. If these basic qualifications and formation are considered when assigning members to give catechetical instructions, then the directive of the Fathers at Vatican II will be realized. According to the Council Fathers the bishops are to

ensure that [catechesis] is given with zealous care to children, adolescents, young people and even adults. They should also ensure that in giving this instruction a suitable order and method are followed, accommodated not only to the subject matter but also to the disposition, aptitude, age and environment of the hearers. Let them also ensure that this instruction is based on sacred scripture, tradition, liturgy, the teaching authority and life of the church.²

¹ SSH *Constitutions*, art. 84, p. 29.

² CD, no. 14, p. 925. Other relevant Church documents and legislation which could serve as a guide in the matter of catechesis include: SVC, Declaration on Christian Education *Gravissimum educationis*, 28 October 1965, no. 4, in *AAS*, 58 (1966), p. 732; English translation in TANNER2, p. 962 (=GE); CIC, cc. 756, 758, 760-761, 773-780. CONGREGATION FOR THE CLERGY, *General Directory for Catechesis*, nn. 131-136, Vatican City, Libreria editrice Vaticana, 1997, pp. 139-147.

Furthermore, *Christus Dominus* (no. 14) directs that bishops in their dioceses are to issue particular norms regarding catechetics and ensure that resources are available for catechesis.³ Since members of the SSH Institute work in different dioceses, it is important for the SSH *Constitutions* to require the members who participate in the exercise of this apostolate to be mindful also of the initiatives and particular legislation on the work of catechetical instruction established by the pertinent bishops in the dioceses where the institute render services in this ministry.

4.1.2 – The Public Exercise of Divine Worship: Ecclesiastical Funerals

As recognized in Chapter three, article 71 of the SSH *Constitutions*, which treats the matter relating to the funeral of a deceased member of the institute, is silent regarding the place of burial of the deceased member. Canon 1179 states that the funeral of a consecrated person is generally to take place in his or her own church or oratory.⁴ According to J.M. Huels, this does not rule out other possibilities, including choosing another church for the funeral Mass.⁵

The question remains whether, in accord with canon 1180, a member of the institute can choose her parish cemetery for her burial. Alternatively, could a member choose a completely different cemetery, such as a public cemetery, for her burial?⁶ If a member does not clarify this before her death and the institute's constitutions or proper law is silent about

³ See *CD*, no. 14, p. 925. Cf. *AS*, no. 128, p. 142; *CIC*, c. 775, §1.

⁴ *CIC*, c. 1179. "Exequiae religiosorum aut sodalium societatis vitae apostolicae generatim celebrantur in propria ecclesia aut oratorio a Superiore, si institutum aut societas sint clericalia, secus a cappellano."

⁵ See J.M. HUELS, "Commentary on Other Acts of Divine Worship, cc. 1166-1204," in *CLSA Comm2*, p. 1410.

⁶ *CIC*, c. 1180, "§1. Si paroecia proprium habeat coemeterium, in eo tumulandi sunt fideles defuncti, nisi aliud coemeterium legitime electum fuerit ab ipso defuncto vel ab iis quibus defuncti sepulturam curare competit. §2. Omnibus autem licet, nisi iure prohibeantur, eligere coemeterium sepulturae." No parallel *CCEO* canon.

this matter, can the family members insist on having the deceased member buried in a cemetery of their choice? These questions reveal that it is necessary for the SSH *Constitutions* to make clear a statement on the place of burial for deceased members. Other details on the funeral arrangements can be stated clearly elsewhere in the other codes of the proper law of the institute in view of the canons on ecclesiastical funerals (cc. 1176-1185).

4.1.3 – Collaboration in Healing Ministry

Article 83 of the SSH *Constitutions*, regarding the institute's participation in health care services, leaves open the type of health institutions with which the institute is to cooperate. It is also silent regarding the ownership of the health institutions where these services are rendered. It is important to ask whether the facility is owned by the institute, by the diocese, by the government, or by another organization. These facts need to be clarified since the owners of the facilities may have different values from those of the institute. This omission and the broad nature of the provision could constitute a source of conflict especially in the institute's relationship with a diocesan bishop or other organizations. The SSH *Constitutions'* clarity on these matters may well determine the degree of influence and the role of the institute in such facilities. It may also determine the degree to which members can bring gospel values into their ministry.

Furthermore, it is important that members of the institute who are to participate in carrying out this ministry familiarize themselves with the principles of Catholic medical ethics. They are to be attentive to policies that are at variance with Church teachings, canonical principles, and particular directives of diocesan bishops on this matter, especially in light of the complexities regarding health care in contemporary society.⁷ A statement in

⁷ The following would be useful in health issues: PAUL VI, Encyclical Letter *Humanae vitae*, Boston, Pauline Books & Media, 1968; CCC, nn. 2270-2283, pp. 528-531. JOHN PAUL II, *Motu proprio* Apostolic

the SSH *Constitutions* could conceivably require that the institute have codes or directories for its ministries, including its health ministry and other works. The other codes of the proper law of the institute will provide details regarding such policies. The proper law should also require members in the health ministry to be attentive to the needs of the sick, especially in ensuring that they receive the sacraments if possible.

4.1.4 – Collaboration in Education

Articles 86-87 of the SSH *Constitutions*, which assert the matter of collaboration in education, do not identify some issues salient to the demand and diverse regulations of present-day education. Article 86 admits that various local conditions are to be considered as the institute takes up teaching work in different entities. However, it fails to specify the issues that might affect the decision of the superiors to assign members to teach in various entities, especially in entities that do not belong to the Church or to the institute. One major determining factor in the superiors' decision regarding sending members to teach in such entities is whether there is a realistic agreement between the institute and those other entities regarding educational policies.

Additionally, it is important for the SSH *Constitutions* to require that superiors, before signing contracts, ensure that the policies of such institutions are not at variance with the policies of the institute, the laws of the universal Church or those of the particular church in which the institute participate in the exercise of this apostolate. In the final analysis, the SSH *Constitutions* are to require that the institute formulate an educational policy which should also take cognizance of the relevant laws. One of the other codes of the proper law could

Letter Establishing the Pontifical Academy of Life *Vitae mysterium*, 11 February 1994, in *AAS*, (1994), pp. 385-387; English translation in *CLD*, vol. 13, pp. 236-238. Cf. NATIONAL CONFERENCE OF CATHOLIC BISHOPS, "The Bishop's Pastoral Role in the Catholic Health Care Ministry," in *Origins*, 26 (1996-1997), pp. 700-704, especially p. 701.

describe the institute's openness to educational tasks in both governmental and private entities, and provide in more detail its observance of civil regulations in this matter.

4.2 – THE NORMS OF THE SSH *CONSTITUTIONS* IN OTHER AREAS OF THE RELATIONSHIP

This section, considering specific issues of the mutual relationship, follows Chapter Three's subdivision of this study regarding the provisions of SSH *Constitutions*, in particular pertaining to the institute's general internal administration and provisions about the administration and alienation of temporal goods.

4.2.1 – Matters regarding the General Internal Administration

This section considers some salient questions concerning aspects of the relationship between diocesan bishops and the institute in matters concerning its internal administration. It focuses on areas likely to cause conflict in this aspect of the relationship.

4.2.1.1 – Canonical Erection of a Religious House

Article 160 of the SSH *Constitutions* conforms to canon 609, §1 regarding the erection of the religious houses of the institute. Articles 160 and 175, §6, 18° indicate that the Superior General require the consent of the diocesan bishop and the Council to erect a canonically established house according to Church law.⁸ The SSH *Constitutions* or the institute's *Directory*, however, do not provide criteria to guide the Council in deciding whether or not to give such consent. Such criteria may include critical analysis of the relevance and necessity for the proposed religious house, as well as its personnel and financial sustainability.⁹ It would be helpful if the Superior General considered these matters before

⁸ SSH *Constitutions*, arts. 160 and 175, §6, 18°, pp. 50 and 56.

⁹ CIC, c. 610. “§1. Domorum erectio fit prae oculis habita utilitate Ecclesiae et instituti atque in tuto positus iis quae ad vitam religiosam sodalium rite agendam requiruntur, iuxta proprios instituti fines et spiritum. §2. Nulla domus erigatur nisi iudicari prudenter possit fore ut congrue sodalium necessitatibus provideatur.” No parallel CCEO canon. Cf. PC, 19.

approaching the Council and, for the good of the institute, that the Council and the diocesan bishop consider them before giving their consent. This reduces the tension caused by having to close down religious houses due to lack of viability or financial strain on the institute because these issues were not considered before their erection. This principle should also be considered in erecting works. Consequently, the SSH *Constitutions* need to provide a norm on such criteria, while, the proper law should provide further details regarding the criteria established in the SSH *Constitutions*.

4.2.1.2 – Suppression of Parts of the Institute

Article 175, §6, 18° mentions that the Superior General requires the consent of the Council to suppress a canonically established house of the institute according to Church law. Article 161 goes further in stating that consultation with the diocesan bishop is also required. One major issue left out in the SSH *Constitutions*, however, is the internal and external implications of such suppression, including the very important question of what happens to the ecclesiastical goods of the suppressed house. Canon 585 and articles 161 and 175, §6, 18° of the SSH *Constitutions* do not address these matters, nor does the SSH *Directory*, which interprets the SSH *Constitutions*. Such silence can cause conflict in the institute, or between the diocesan bishops and the institute, particularly in cases of houses erected in relation to works entrusted to the institute by diocesan bishops.

The norm of canon 616, §1 applies the general norm of canon 123 concerning the extinction of a juridical person such as an erected religious house (cf. c. 634, §1). Canon 123 states that if a juridical person lacks any provision in its statute, the juridical person immediately superior to it acquires the goods, with consideration for the intention of the

founders and donors and the acquired rights.¹⁰ The SSH *Constitutions* and *Directory* did not address this issue. It would be helpful for the SSH *Constitutions* to make a statement concerning this matter of the destination of the ecclesiastical goods of the suppressed house of the institute, and the proper law should state the details on how this is to be done.

4.2.1.3 – Written Agreements regarding Entrusted Works

Canon 681, §2 and the SSH *Constitutions* state that a written agreement for entrusted works between an institute or its members and the bishops is to state, among other things, the members assigned to the work. However, neither provision states what is to be done when it becomes necessary to replace the members assigned to such work. Is it necessary to formulate a new contract for the replacement, or should the previous contract be followed? Any decision on this matter will depend on certain variable issues. For example, a new contract would be advisable if there is a new Superior General or any additional conditions that arise with the need for a replacement. Some factors affecting the decision of whether or not to replace members assigned to this work include the rapidity of changes in our contemporary world and the lack of vocations.

Another issue that might necessitate a request for a new contract is past experience. For example, in cases where previous agreements have not been honoured, the SSH *Constitutions* and other codes of the proper of law of the institute are silent on what to do. However, canon 1290 states that the provisions of civil law on contracts and their dispositions are applicable unless they are against divine law or canon law has other

¹⁰ *CIC*, c. 123. “Extincta persona iuridica publica, destinatio eiusdem bonorum iuriumque patrimonialium itemque onerum regitur iure et statutis, quae, si sileant, obveniunt personae iuridicae immediate superiori, salvis semper fundatorum vel oblatores voluntate necnon iuribus quaesitis; extincta persona iuridica privata, eiusdem bonorum et onerum destinatio statutis regitur.” *CCEO*, c. 930.

provisions.¹¹ Conceivably, the SSH *Constitutions* could refer to this canon and the proper law of the institute can determine in more detail the action to take.

4.2.1.4 – Obligation of Residence

One obvious reason for the Superior General to be absent from the place of residence is canonical visitation of the houses.¹² However, other reasons not explicitly mentioned may include job-related engagements requiring an extended period away from her place of residence. Nonetheless, the SSH *Constitutions* should properly make provisions for the reasons for the absence of the Superior General from residence besides canonical visitation. If not, the SSH *Directory* or another code of the proper law of the institute should provide further details on the matter.

Additionally, there is a need to examine in the proper law and in the universal law situations in which the Superior General is rarely at the Generalate because of canonical visitation. To avoid this extreme, the SSH *Constitutions* should highlight the significance of the Superior General's duty of residence. This norm on the obligation of residence also applies to all superiors.¹³ The matter calls for proper discernment, particularly in light of the Superior General's or other superiors' required availability for other members and the financial cost for the institute and its houses. Moreover, factors to determine such visitations and their duration, as well as frequent absences of superiors from their residences should be stated in the proper law, in order to avoid abuses or violation of this obligation. Moreover,

¹¹ *CIC*, c. 1290. "Quae ius civile in territorio statuit de contractibus tam in genere, quam in specie et de solutionibus, eadem iure canonico quoad res potestati regiminis Ecclesiae subiectas iisdem cum effectibus servantur, nisi iuri divino contraria sint aut aliud iure canonico caveatur, et firmo iure canonico caveatur, et firmo praescripto can. 1547." *CCEO*, c. 1034.

¹² See SSH *Constitutions* art. 171, p. 52. Cf. *CIC*, c. 628, §1.

¹³ *CIC*, c. 629. "In sua quisque domo Superiores commorentur, nec ab eadem discedant, nisi ad normam iuris proprii." *CCEO*, c. 446.

residency is binding by virtue of the office, and any grave violation of this norm is a delict that is punishable (c. 1396).¹⁴

Another issue here concerns the norm of canon 665, §2, according to which a member who is absent from the religious house for the purpose of withdrawing from the authority of the superiors is to be sought out by the superiors to return to the religious house.¹⁵ A dilemma arises here in situations where the superiors are the very cause of this action. In such situations, any attempt of the same superiors to persuade such a member to return to the institute will hardly be fruitful. It is hopeful that those concerned with revision of the Latin Code could look into this *lacuna*. Then, with particular reference to the SSH Institute, its *Constitutions* need to provide an alternate way to persuade a member who feels aggrieved by the action of a superior to return to the community. Such provision will also protect the rights of members in situations where they are unjustly intimidated into leaving the house due to the action of a superior.

4.2.1.5 – Transfer of the Superior General’s Residence

Article 168 of the SSH *Constitutions* allows the Superior General to transfer permanently her official residence after obtaining the consent of the Council and the approval of the local ordinary of the proposed place of residence. Such a permanent transfer can significantly affect the institute, both administratively and economically. What are reasons that could warrant such a permanent transfer of her residence or the Generalate? Furthermore, does the General Chapter need to give approval prior to such transfer? As the article stands, it contains some ambiguities that need clarification. The role of the General

¹⁴ *CIC*, c. 1396. “Qui graviter violat residentiae obligationem cui ratione ecclesiastici officii tenetur, iusta poena puniatur, non exclusa, post monitionem, officii privatione.” No parallel *CCEO* canon.

¹⁵ *CIC*, c. 665, §2. “Sodalis, qui e domo religiosa illegitime abest cum animo sese subducendi a potestate Superiorum, sollicito ab eisdem quaeratur et adiuvetur ut redeat et in sua vocatione perseveret.” *CCEO*, c. 495 and 550.

Chapter here is not specified in the SSH *Constitutions*. Even when such a transfer is contemplated in an emergency, such as the destruction of the residence by fire, the Superior General needs to get the input of members of the institute. This is essential because the whole institute is affected just by the fact of the relocation. Such relocation may have several consequences for the members of the institute in terms of proximity, transportation and financial effect, as well as the ease of access to the Superior General.

In giving its consent, the Council needs to evaluate the available temporal resources, the impact of the transfer on the other needs of the institute, the need and urgency for the transfer, and the strategic location of the proposed residence. Moreover, when a Superior General wants to transfer her residence, she should provide some pertinent information to the diocesan bishop when seeking his approval: for example, this could include the reason for the transfer and a guarantee of the resources necessary to effect the new residence.

As the rule in article 168 stands, if adequate reasons are presented, the local ordinary has the duty to examine the reasons and information provided about the transfer and proposed location, and he is to ensure that the Superior General has previously obtained the consent of the Council. However, the Council's consent, although persuasive, should not have greater influence on his total judgment, which will rather depend on whether or not other factors are in order. The relevant factors should be detailed in other codes of the proper law of the institute. Therefore, the Superior General is to ensure that the reasons for absence or the transfer of the Generalate or her residence are serious enough.

4.2.1.6 – Loss of Office

Several articles¹⁶ of the SSH *Constitutions* speak of the Superior General or a General Councillor losing office through resignation or removal. Regarding the latter, the SSH

¹⁶ See SSH *Constitutions* articles 173-174, 175, §8 and 176, p. 53.

Constitutions do not indicate what should be done if the Superior General or a General Councillor deliberately and unlawfully holds onto the office after deprivation in accord with the norm of law (cf. cc. 184-196)?¹⁷ Refusal to relinquish an office can be expressed in different forms: delay in handing over, refusal to assume a life style different from the one lived while in an office, seeking out responsibilities for self, and trying to bend others to one's wishes. Such an act of refusal is tantamount to usurpation of the office, which canon 1381 states, "is to be punished with a just penalty."¹⁸

The presupposition of the law regarding ecclesiastical offices is that there would be an orderly provision and exercise of an ecclesiastical office, as foreseen in canons 146-183. However, this may not always be the case, and the orderly transfer of authority necessary for ecclesial life or the life of an institute may be harmed. Therefore, the SSH *Constitutions* should go further in the matter of removal from office by providing a statement about the proper and prompt handing over of an office. Any other code of the proper law of the institute could stipulate more detailed norms on the process of resignation or removal from office in the institute in accord with canons 184-196.

The SSH *Constitutions* are also silent on the loss of an ecclesiastical office mentioned in canon 682, §2, which states:

A religious can be removed from the office entrusted to him or her at the discretion either of the entrusting authority after having informed the religious superior or of the superior after having informed the one entrusting; neither requires the consent of the other.¹⁹

¹⁷ See GREEN, "Commentary on cc. 1311-1399," p. 1588.

¹⁸ CIC, c. 1381. "§1. Quicumque officium ecclesiasticum usurpat, iusta poena puniatur. §2. Usurpationi aequiparatur ilegítima, post privationem vel cessationem a munere, eiusdem retentio." CCEO, c. 1462.

¹⁹ CIC, c. 682, "§2. Religiosus ab officio commisso amoveri potest ad nutum sive auctoritatis committentis, monito Superiore religioso, sive Superioris, monito committente, non requisito alterius consensu." Cf. CCEO, c. 1391, §2.

Neither the Latin Code nor the SSH *Constitutions* offer reasons why a member would be removed from office in this regard. As it stands, especially as it is dependent on the “discretion” of the authorities, this norm can be abused. It is important that both authorities be mindful of the effect of the removal of a member from his or her work or apostolate in consideration of the human dignity of the member and the good of such an apostolate.

In addition, tensions arise when the institute frequently removes members from their offices or apostolate, even when the diocesan bishops are informed about this. In fact, bishops have been known to complain about such removals. Furthermore, frequent transfers may be detrimental to the works from which members are removed, especially those that entail the care of souls. *Christus Dominus* (no. 31) directs that persons who are to take up such works are to be designated in a stable manner.²⁰ The Superior General needs to be mindful of the institute’s apostolic nature and be attentive to apostolic needs, even as internal transfers are taking place.²¹ Therefore, the *Constitutions* need to contain a statement about the removal of members from the apostolate to which they are assigned, especially the criteria upon which such removal might be based. Other codes of the proper law might provide further details in this regard to ensure stability of members in the places where they work.²² When these are missing, tension and suspicion develop among members about the basis for removal.

4.2.1.7– Entrusted Works

Article 79, §2 of the SSH *Constitutions* states that for entrusted works, the Superior General, after consultation with the relevant diocesan bishop, should choose the most

²⁰ See *CD*, no. 31, p. 934.

²¹ See V. DE PAOLIS, “Commentary on the Apostolate of Institutes, cc. 673-683,” in *Exegetical Comm*, vol. II/2, p. 1829 (=DE PAOLIS, “Commentary on cc. 673-683”).

²² Cf. *AS*, no. 101c, p. 115; *CIC*, cc. 148 and 151.

competent members. What should the content of this consultation be (cf. c. 678, §3)? How much information should be disclosed about these members? What are the limits of the consultation and how is confidentiality to be ensured? The SSH *Constitutions* should provide a norm regarding this, while one of the other codes of the proper law of the institute should provide relevant details which for the most part should focus on the work to be done.

Another issue concerns article 77 of the SSH *Constitutions*, which states that the institute is to do its best to adapt its own apostolic priorities to the requests of diocesan bishops.²³ This norm could be problematic as it stands, especially if the institute lacks competent personnel for a proposed work, or is pressured by diocesan bishops when they are really in dire need of personnel. The parties need balance and understanding in making the request or in refusing it. The Superior General is to explain honestly the difficulty or inability to meet the bishop's requests, especially if the works in question are not really proper to the institute, or it no longer engages in such works. A situation where the Superior General resorts to pulling out members from other crucial engagements to respond to the request of the diocesan bishop may seem to resolve the immediate need. However, in the long run, the prior engagements from which the members were withdrawn suffers and has other lasting negative effects. Therefore, the bishops, on their part, should assess objectively the Superior General's reasons—if a refusal of the request is made—try to accept the situation, and seek alternative ways to address such needs.

Furthermore, diocesan bishops as well as the Superior General should take care not to involve the members of the institute in works that are not proper to their calling since

²³ See SSH *Constitutions*, art. 77, p. 28.

their proper vocation is to be a “living ‘exegesis’ of God’s word.”²⁴ The SSH *Constitutions* should therefore state the need for a healthy balance among: the needs of a diocese, the apostolic character of the institute and the need for adequate spiritual nourishment to members of the institute.

Article 175, §6, 19° of the SSH *Constitutions* states that the Superior General needs the consent of the Council in order to withdraw the institute permanently from a parish school.²⁵ In addition, the Superior General also needs to consult with the local ordinary about this matter. Due to the seriousness of this matter and in consideration of the internal and external implications of such an action, it would be worthwhile to mention in any of the other code of the proper law some of the conditions that could make such a withdrawal necessary. This will enable all parties concerned to examine the issue properly before participating in the process of arriving at an appropriate decision.

4.2.2 – Administration of Temporal Goods

Article 213, §3 of the SSH *Constitutions* mentions the need to obtain the local ordinary’s approval before soliciting funds for the institute. The article, however, does not specify whether this approval should be written or verbal. The SSH *Constitutions* must specify clearly that, as much as possible, members should make sure that such approval be given in writing. Such a request, that seeks the local ordinary’s approval to solicit funds, should also provide him with information about the institute’s need and purpose for the funds. These

²⁴ BENEDICT XVI, Post-Synodal Exhortation *Verbum Domini*, 30 September 2010, no. 83, in *Origins*, 40 (2010-2011), p. 442. E. McDonough treats extensively of the rights of consecrated persons. See E. McDONOUGH, “The Protection of Rights in Religious Institutes,” in *The Jurist*, 46 (1986), pp. 164-204. Cf. CICLSAL, Instruction on Fraternal Life in Community *Congregavit nos in unum Christi amor*, 2 February 1994, nn. 60-61 in *CLD*, vol. 13, pp. 288-291.

²⁵ See SSH *Constitutions*, art. 175, §6, 19°, p. 56.

amendments will make the article consistent with canon 1265, §1 which states that private—physical or juridical—persons may solicit funds only with the written approval of their ordinary and the local ordinary. Therefore, for individual members of the institute to solicit for funds, they require the written authorization of the diocesan bishop, who serves as their ordinary and local ordinary.²⁶ The aim of the permission is to substantiate the appeals and avert spurious or arbitrary appeals to the faithful.²⁷

One more issue regarding the administration of an institute's temporal goods concerns the norm in canon 1288, which states: "Administrators are neither to initiate nor to contest litigation in a civil forum in the name of a public [juridical] person unless they have obtained the written permission of their own ordinary."²⁸ The SSH *Constitutions* do not address this matter. Contesting litigation in the civil forum is not something that should be undertaken without due consideration. This is even more so especially in contemporary times, when litigation involving church-related entities abounds. These lawsuits have their effects as they constitute problems in terms of future opportunities for these entities, the particular church, or the institute of which the litigant is a part.²⁹ Lawsuits are easily publicized and are used sometimes as a means of financial exploitation. All it takes is one case in the civil forum, whether successful or not, and other cases soon follow. J.A. Renken wrote regarding the norm of canon 1288 that:

²⁶ *CIC*, c. 1265, §1. "Salvo iure religiosorum mendicantium, vetatur persona quaevis privata, sive physica sive iuridica, sine proprii Ordinarii et Ordinarii loci licentia, in scriptis data, stipem cogere pro quolibet pio aut ecclesiastico instituto vel fine." *CCEO*, c. 1015.

²⁷ See discussion regarding canon 7 in *Communicationes*, 12 (1980), p. 404.

²⁸ *CIC*, c. 1288. "Administratores litem nomine personae iuridicae publicae ne inchoent neve contestentur in foro civili, nisi licentiam scripto datam Ordinarii proprii obtinuerint." *CCEO*, c. 1032.

²⁹ See R.T. KENNEDY, "Commentary on the Temporal Goods of the Church, cc. 1254-1310," in *CLSA Comm2*, p. 1491 (=KENNEDY, "Commentary on cc. 1254-1310").

The ordinary may insist that the administrator refrain from initiating civil litigation. The ordinary cannot insist, of course, that the administrator refrain from civil proceedings if the public [juridical] person is the defendant, since non-compliance may result in civil ramifications (e.g., contempt of court, fines, etc). In such a situation, however, the ordinary can prompt the administrator to settle the dispute out of court.³⁰

Given the above reality, the institute and its members need to seek the necessary written permission from the diocesan bishops to initiate or contest civil litigations. The *Constitutions* could have a statement on this, or cite canon 1288. Other details should be provided in the *Directory* or the relevant code of the proper law of an institute for the administration of temporal goods.³¹

4.2.3 – Alienation of Temporal Goods

Alienation entails the act of “transferring the ownership of goods constituting the stable patrimony of a public juridical person (c. 116, §1).”³² Article 216 of the SSH *Constitutions* in accord with canon 1292, §3, stipulates that if the institute wants to alienate a property, it is to mention any part of the property that has already been alienated.³³ The reasons given in the petition for the alienation must be true.³⁴ However, neither the SSH *Constitutions* nor the *Directory* mentions what would happen should properties be alienated without observing the requirements of law, including seeking the relevant permission. There is need for a norm regarding this matter to fill the *lacunae* in the SSH *Constitutions*.

³⁰ RENKEN, *Church Property*, p. 237.

³¹ For other details on matters for such a code, see F.G. MORRISEY, “The Directory for the Administration of Temporal Goods in Religious Institutes,” in *Unico Ecclesiae servitio: Canonical Studies Presented to Germain Lesage, O.M.I.*, M. THÉRIAULT AND JEAN (eds.), Ottawa, Saint Paul University, 1991, pp. 267-285.

³² T.J. GREEN, “Commentary on Sanctions in the Church, cc. 1311-1399,” in *CLSA Comm2*, p. 1585 (=GREEN, “Commentary on cc. 1311-1399”).

³³ See SSH *Constitutions*, art. 216, p. 68.

³⁴ See CICLSAL, Rescripts for Loans and Alienation of Property of Religious Institutes, in *Roman Reply and CLSA Advisory Opinions*, (1997), p. 6.

In fact, canon 1377 states: “A person who alienates ecclesiastical goods without the prescribed permission is to be punished with a just penalty.”³⁵ What would constitute a “just penalty” for the alienation of ecclesiastical goods in view of canon 1377? The Latin Code is not explicit on this. Regarding this matter, T.J. Green writes³⁶ that, in principle, any Catholic (SSH Institute in this case) can be liable to the preceptive (c. 1344), indeterminate, *ferendae sententiae* penalty foreseen here in canons 1344 and 1349. Furthermore, he notes that in practice, the offender would probably be an authority figure administering the goods of a public juridical person and deliberately disregarding the norms of canons 1291-1296 concerning permission. The question arises: Can these members who decide to disregard the relevant norms regarding the matter claim ignorance of the law in this situation? Canon 15, §2 states that such ignorance of the law should not be presumed.³⁷ Although inculpable ignorance of the law exempts one from penal imputability, observing the norms will foster the common good. Acting otherwise can constitute problems, including scandal³⁸ and civil litigation against the institute or those concerned. Consequently, the SSH *Constitutions* should contain a statement regarding the danger and consequences of placing such acts invalidly.

4.3 – ASPECTS OF THE RELATIONSHIP LACKING IN THE SSH *CONSTITUTIONS*

A major purpose of this study is to state the role that the constitutions of a religious institute have in fostering the relationship between diocesan bishops and diocesan non-

³⁵ CIC, c. 1377. “Qui sine praescripta licentia bona ecclesiastica alienat, iusta poena puniatur.” CCEO, c. 1449.

³⁶ See GREEN, “Commentary on cc. 1311-1399,” p. 1585.

³⁷ CIC, c. 15, §2. “Ignorantia vel error circa legem aut poenam aut circa factum proprium aut circa factum alienum notorium non praesumitur; circa factum alienum non notorium praesumitur, donec contrarium probetur.” CCEO, c. 1497, §2.

³⁸ Scandal in this matter can reflect the non-observance of an institute’s charism. On this issue, S. Recchi notes that the Finance Officer can have a role in helping to safeguard the charism of an institute. See S. RECCHI, “L’economista degli istituti religiosi,” in *Quaderni di Diritto Ecclesiale*, 22 (2009), pp. 130-140

clerical religious institutes. The belief is that for the constitutions to achieve this, they must state clearly those matters in which such institutes and the diocesan bishops are to interrelate. Up till now, we have shown that the SSH *Constitutions* have made several provisions regarding some aspects of the relationship between the institute and diocesan bishops. Nonetheless, there are some matters of the common norms concerning consecrated persons and their relationship with diocesan bishops for which the SSH *Constitutions* lack provisions. Some of these are presented for consideration and possible inclusion in the SSH *Constitutions* or some other code of the proper law of the institute. Still others are presented to assess the role of diocesan bishops in the relevant matters.

4.3.1 – Canonical Visitation by a Diocesan Bishop

Canonical visitation is an aspect of a diocesan bishop's duty regarding religious institutes of diocesan right (c. 628, §2, 2°).³⁹ However, the SSH *Constitutions* and *Directory* do not address the subject of canonical visitation by the diocesan bishop to the religious institute or its houses as foreseen in canon 628, §2, 2°. It is appropriate for the institute to have a statement on this matter in the SSH *Constitutions* or the *Directory* so that members can expect and prepare for it. The provision would also help the members understand this duty of the diocesan bishop and to distinguish such official visits from the friendly visits of the bishop to the institute or its respective houses.

The bishop on his part will need to know the institute well to fulfill this duty. In fact, *Apostolorum Successores* emphasizes that knowledge of the constitutions can help encourage the interest of religious institutes in the life of a diocese. Article 99a of the document states:

As a natural consequence of the bonds linking consecrated persons to other members of the Church, the Bishop should take

³⁹ *CIC*, c. 628, §2 2°. “Episcopi dioecesani ius et officium est visitare etiam quoad disciplinam religiosam: 2° singulas domos instituti iuris dioecesani in proprio territorio sitas.” *CCEO*, c. 414, §1, 3°.

care to ensure the following: a) that members of institutes of consecrated life and societies of apostolic life sense that they form a vital part of the diocesan community, ready to assist their Pastors in every way possible.⁴⁰ To this end, the Bishop should be well acquainted with the charism of each institute and society, described in their Constitutions, and should meet the Superiors and the communities personally, reviewing their situation, their concerns and their hopes for the apostolate.⁴¹

4.3.2 – Prohibition from Residing in the Diocese

Members of the institute should be aware of the possibility of their being prohibited from residing in a diocese by the diocesan bishop, as foreseen in canon 679:

When a most grave cause demands it, a diocesan bishop can prohibit a member of a religious institute from residing in the diocese if his or her major superior, after having been informed, has neglected to make provision; moreover, the matter is to be referred immediately to the Holy See.⁴²

This canon speaks of the diocesan bishop who can prohibit a member of a religious institute from residing in his diocese but only for a most grave reason. However, no mention is made of what grave issues could lead to such an act. Prohibition from residing in a diocese is an issue that could jeopardize the relationship between a diocesan bishop and an institute. The diocesan bishop needs the understanding and support of the Superior General in his effort to ensure that members of the institute do not act in ways that will lead to a prohibition. In fact, mutual cooperation between a diocesan bishop and the Superior General can ultimately mitigate against a situation that could bring the bishop to apply this norm since it is the Superior General who determines where a member of an institute

⁴⁰ Cf. *CD*, no. 35, p. 934. *PG*, no. 50; English translation in *Origins*, 33 (2003-2004), p. 378.

⁴¹ *AS*, no. 99a, p. 109.

⁴² *CIC*, c. 679. “Episcopus dioecesanus, urgente gravissima causa, sodali instituti religiosi prohibere potest quominus in dioecesi commoretur, si eius Superior maior monitus prospicere neglexerit, re tamen ad Sanctam Sedem statim delata.”

resides, including those in the Generalate of the institute.⁴³ Nothing is said regarding the duration of a member's prohibition from residing in the diocese—is the duration temporary or indefinitely? Moreover, no consideration is stated concerning a member advanced in age or who has health care needs that might require the member to live in a specific house within the diocese.

The SSH *Constitutions* have no provision regarding this matter. They should contain a statement to indicate the bishop's power to prohibit a member from residing in his diocese, even if only to create the awareness among members of the possibility of such an action. Such awareness will help the institute to come up with possible courses of action if this happens. The overall concern here would be to prevent scandal and a sense of bewilderment among the members of the institute, who in turn are to help other members of Christ's faithful who may become scandalized if such a prohibition were to occur.

4.3.3 – Financial Reports

Regarding the financial reports of a religious house of diocesan right, *CIC* canon 637 states:

The autonomous monasteries mentioned in can. 615 must render an account of their administration to the local ordinary once a year. Moreover, the local ordinary has the right to be informed about the financial reports of a religious house of diocesan right.⁴⁴

This canon requires a religious house of diocesan right institute to inform the diocesan bishop about its financial reports. *Apostolorum Successores* affirms the necessity for the diocesan bishop to exercise his rights to examine the financial reports, especially during

⁴³ See DE PAOLIS, "Commentary on cc. 673-683," p. 1819.

⁴⁴ *CIC*, c. 637. "Monasteria sui iuris, de quibus in can. 615, Ordinario loci rationem administrationis reddere debent semel in anno; loci Ordinario insuper ius esto cognoscendi de rationibus oeconomicis domus religiosae iuris dioecesiani."

his canonical visits to the houses.⁴⁵ The SSH *Constitutions* and *Directory* are silent on this matter. A statement on this in the SSH *Constitutions* would promote the members' practice of rendering such a report. Other details relevant to the matter could also be mentioned in the other codes or directories of the proper law of the institute.

4.3.4 – Matters regarding the Separation of Members from the Institute

Chapter Six of the SSH *Constitutions* defers legislation on separation of members from the institute to the canonical legislation in canons 684-704 of the Latin Code. These canons treat of the various ways a member may separate from an institute. Some of the canons on the separation of members from an institute contain processes requiring the participation of the diocesan bishop. This can be seen especially in canon 696, which treats of facultative dismissal. Given the complete deferment made to the norms of the Latin Code by the SSH *Constitutions*, a brief study is made below of the relevant canons on the separation of a member from the institute.

4.3.4.1 – Separation by Transfer

One way a member separate from an institute is to transfer from the institute to another. The Latin canons 684 and 685 focus on a perpetually professed member's desire to transfer from one institute to another and the situation of the member during the transfer. As E. McDonough notes, what is at stake here is the "simultaneous departure from and entrance into an institute of consecrated life legitimately established by ecclesiastical authority and following the general and proper law that is pertinent."⁴⁶

⁴⁵ See *AS*, no. 105, p. 118.

⁴⁶ E. McDONOUGH, "Commentary on cc. 684-709," in *Handbook on cc. 573-746*, p. 222 (=MCDONOUGH, "Commentary on cc. 684-709").

S.L. Holland opines that a member may wish to transfer more for a change in juridical incorporation than a change affecting religious consecration. Such a change might include leaving an institute that is undergoing rapid renewal to another institute where renewal is less a priority. This was a common occurrence following Vatican II, whereby a member transferring from one institute to another could opt to embrace contemplative life or a missionary vocation more fully. Holland insists, however, that transfers have effects and create difficulties that the canons do not address, especially in moving away from the shared charism and history of one institute to those of another.⁴⁷ Previously, from *CIC/17* until *CIC*, the transfer process required the permission of the Apostolic See or the diocesan bishop. According to current practice, the Superior General and the Council of the relevant institutes handle the transfer process.⁴⁸

In various articles, the SSH *Constitutions* mention the possibility for a member to transfer to another institute.⁴⁹ Regarding the matter of transfer between institutes, article 175, §6, 8° of the SSH *Constitutions* states that the Superior General requires the Council's consent in approving the transfer of a member of the institute to another institute or receiving a member from another institute.⁵⁰ However, neither the SSH *Constitutions* nor any other code of the proper law mentions reasons for which such a transfer could be granted.

Additionally, while acknowledging that such transfer requires the permission of the Superior General, the SSH *Constitutions* do not state the course of action if the Superior General refuses consent for a member seeking to transfer to another religious institute as foreseen in canon 684, §1. The Congregation for Institutes of Consecrated Life and for

⁴⁷ See S.L. HOLLAND, "Commentary on cc. 684-794," in *CLSA Comm2*, p. 851.

⁴⁸ See *CIC/17*, c. 632. See also McDONOUGH, "Commentary on cc. 684-709," p. 227.

⁴⁹ See SSH *Constitutions*, arts. 107, 141, 176, §6, 8° and 10°, pp. 37, 44 and 55.

⁵⁰ See *ibid.*, art. 175, §6, 8°, p. 55.

Societies of Apostolic Life, responding to a consultation on this matter, recommended that the member re-approach the superior.⁵¹ The Latin canon 684 is also silent on reasons for a member to seek transfer from one institute to another. Having such information would help Council members in granting or refusing consent on the matter.

F.J. Ramos commenting on separation from an institute by transfer wrote that, a member may wish to transfer from one institute to another based on any of the following reasons: (a) physical or mental health, (b) the situation of the institute of origin, especially if it does not offer what the member has the right to expect of it, or (c) a case of vocational discernment process of the member.⁵² The SSH *Constitutions* could have an article with similar or additional reasons for regulating the transfer of a member.

4.3.4.2 – Exclaustation

The Latin Code also treat of another way a member separates from an institute.⁵³ This form of separation is the exclaustation of a member from an institute (cc. 686-687). Of these, the Latin Code canon 686, §1 states that a perpetually professed member can be granted an indult of exclaustation by the Superior General for up to three years, on the condition that the Superior General obtains the consent of the Council, in addition to the

⁵¹ See CICLSAL, Reply to Request for a Transfer Denied by Superior General, in *Roman Replies and CLSA Advisory Opinions*, (1997), pp. 17-18.

⁵² See F.J. RAMOS, “Commentary on Departure from the Institute, cc. 684-693,” in *Exegetical Comm*, vol. II/2, p. 1835. A. Rava underscores the role of the proper law of institutes in the matter of transfer. See A. RAVA, “Il passaggio da un istituto religioso a un altro,” in *Quaderni di Diritto Ecclesiale*, 21 (2008), pp. 299-310.

⁵³ Y. Sugawara remarks that the canon on exclaustation is placed among the canons on separation of institutes in *CIC*, it really does not belong here, since this is a temporary separation. See Y. SUGAWARA, “Esclaustazione di un membro da ll’ istituto religioso (cc. 686-687),” in *Periodica*, 97 (2008), pp. 423-454. J. AMMAIKUNNEL, “Exclaustation: A Comparative Study,” in *Ephrem’s Theological Journal*, 13 (2009), pp. 146-166.

gravity of the reason provided by the concerned member.⁵⁴ Article 175, §6, 10° of the SSH *Constitutions* affirms the norm of canon 686, §1 on this matter.⁵⁵ However, the norm of *CIC* canon 686, §1 and the SSH *Constitutions* exclude a temporarily professed member from making a request for an indult of exlaustration. Rather, Latin canon 688 provides that a temporarily professed member can either freely leave the institute when the period of his or her vows expires or request to leave the institute.⁵⁶

There may be situations where members on voluntary exlaustration request an extension of the period of exlaustration from the Superior General. This authorization is beyond the competency of the Superior General. The Latin Code canon 686, §1 reserves to the diocesan bishop the competency to extend the period of exlaustration beyond that allowed in the law for members of a diocesan religious institute. Moreover, in some situations the Superior General and Council can decide that a member be placed on imposed exlaustration. The Latin Code canon 686, §3 mentions that the diocesan bishop is competent to place this imposed exlaustration on such a member of a diocesan institute at the request of the Superior General of the institute with the consent of the Council.⁵⁷ The Latin Code canons and the SSH *Constitutions* are silent on the initial procedure for imposing

⁵⁴ *CIC*, c. 686, §1. “Supremus Moderator, de consensu sui consilii, sodali a votis perpetuis professo, gravi de causa concedere potest indultum exlaustrationis, non tamen ultra triennium, praevis consensu Ordinarii loci in quo commorari debet, si agitur de clerico. Indultum prorogare vel illud ultra triennium concedere Sanctae Sedi vel, si de institutis iuris dioecesiani agitur, Episcopo dioecetano reservatur.” *CCEO*, c. 548, §1.

⁵⁵ See SSH *Constitutions*, art. 175, §6, 10°, p. 55.

⁵⁶ *CIC*, c. 688, §1. “Qui expleto professionis tempore ab instituto egredi voluerit, illud derelinquere potest. §2. Qui perdurante professione temporaria, gravi de causa, petit ut institutum derelinquat, indultum discendi consequi potest in instituto iuris pontificii a supremo Moderatore de consensu sui consilii; in institutis autem iuris dioecesiani et in monasteriis, de quibus in can. 615, indultum, ut valeat, confirmari debet ab Episcopo domus assignationis.” *CCEO*, c. 546.

⁵⁷ *CIC*, c. 686, §3. “Petente supremo Moderatore de consensu sui consilii, exlaustratio imponi potest a Sancta Sede pro sodale instituti iuris pontificii vel ab Episcopo dioecetano pro sodale instituti iuris dioecesiani, ob graves causas, servata aequitate et caritate.” *CCEO*, c. 490.

exclaustration. The process used for the dismissal of a member from the institute might be applied, although with lesser rigor.⁵⁸

In addition, there is no provision stating the conditions for a member on an imposed exclaustration to return to the institute. Leaving such a member indefinitely in a limbo does not serve any good and constitutes injustice, for which the member could take legal action. Furthermore, no provision is made for situations in which a member refuses to return to the institute at the end of the period of exclaustration.⁵⁹ As these points are left unaddressed, there would seem to be sufficient reason for including pertinent norms in the *Constitutions* of the institute. The SSH *Constitutions* should make provision for these matters, especially the conditions for a member's eventual return to the institute after an imposed exclaustration. These steps are to help in the proper application of the norms governing exclaustration and to avoid a situation whereby the exclaustrated member is left hanging indefinitely.

4.3.4.3 – Definitive Separation

The remaining Latin Code canons 688-693 address the various ways a member could leave or be sent away from an institute. These ways arise from the voluntary request made by a temporarily or perpetually professed member to leave the institute, or from the decision of the major superiors and the council to exclude a temporary professed member from further profession in the institute. Specifically, canon 688, §2 mentions that an indult of departure could be granted to a temporarily professed member who asks to leave an institute before his or her vows expire. Regarding a member of a diocesan institute, the canon states that the

⁵⁸ See SCRIS, Reply, Exclaustration at the Pleasure of the Holy See, 28 November 1975, in *CLD*, vol. 9, p. 459.

⁵⁹ See McDONOUGH, "Commentary on cc. 684-709," pp. 236-237.

diocesan bishop of the house of assignment must confirm the indult of departure for it to be valid. In the case of a perpetually professed member who makes a similar request, canon 691, §2 stipulates that the diocesan bishop of the diocese in which the house of assignment is situated can also grant the indult of departure.⁶⁰

The bishop's duty, stated in canons 688, §2 and 691, §2, is considerable. In the case of an indult for the temporarily professed member, the bishop must (*debet*) confirm the indult of departure. However, in respect of the perpetually professed member of an institute of diocesan right, the law intends that, besides the Apostolic See, the diocesan bishop can (*potest*) also grant the indult. In spite of the different emphasis on the obligation of the diocesan bishop to either confirm or grant the indult of departure, the overall objective is to assist the concerned member in the discernment process. It would seem only logical that the bishop would make a conscious effort to know these members well in order to help him in making this decision. This will undoubtedly foster the continuing relationship between the bishop and the institute.

4.3.4.4 – Dismissal

The Latin canons 694-699 focus on the dismissal of a member from an institute. The SSH *Constitutions* do not have sufficient provisions on the issue. Their only norm states in article 175, §6, 7° that the Superior General requires the consent of the Council to initiate the dismissal process of a professed member and to declare the fact, in the case of an *ipso facto* dismissal, of a professed member.⁶¹ This latter norm is foreseen in canon 694:

§1. A member must be held as *ipso facto* dismissed from an institute who:

⁶⁰ CIC, c. 691, §2. “Huiusmodi indultum in institutis iuris pontificii Sedi Apostolicae reservatur; in institutis vero iuris dioecesanis, id etiam Episcopus diocesis, in qua domus assignationis sita est, concedere potest.” CCEO, c. 549, §2, 2°.

⁶¹ SSH *Constitutions*, art. 175, §6, 7°, p. 55.

1° has defected notoriously from the Catholic faith;
 2° has contracted marriage or attempted it, even only
 civilly.

§2. In these cases, after the proofs have been collected, the major superior with the council is to issue without any delay a declaration of fact so that the dismissal is established juridically.⁶²

According to E. McDonough, the norm seeks to protect an institute against the actions of members whose manner of acting directly and publicly contradicts the nature of consecrated life. While nothing is said regarding what constitutes notorious defection, the fact of “attempted marriage” is addressed in canon 1088, which makes clear that a member bound by public perpetual profession is juridically impeded from contracting marriage.⁶³

Latin canon 695 focuses on mandatory dismissal. Its canon 696 addresses facultative dismissal. Canons 697-699 of the same Code treat the processes for establishing a decree of dismissal for a member of an institute. For the validity of the dismissal, the procedure is to be followed sequentially.⁶⁴ If there is any interruption or omission, the whole process must be started afresh. Canon 699, §1 states that when the procedure is completed through the collegial act of the Superior General and at least four Councillors, the Superior General issues a decree of dismissal for the member in accordance with the requirement of law. Its §1 states the competent ecclesiastical authority to handle this matter.⁶⁵ The Superior General of

⁶² *CIC*, c. 694, §1. “Ipso facto dimissus ab instituto habendus est sodalis qui: 1° a fide catholica notorie defecerit; 2° matrimonium contraxerit vel, etiam civiliter tantum, attentaverit. §2. His in casibus Superior maior cum suo consilio, nulla mora interposita, collectis probationibus, declarationem facti emittat, ut iuridice constet de dimissione.” *CCEO*, cc. 497 and 551.

⁶³ See MCDONOUGH, “Commentary on cc. 684-709,” p. 252. V.G. D’Souza commenting on the cessation of bonds and obligations arising from profession as a result of automatic dismissal in accord with c. 701, observes that *CCEO* lacks such provision. See V.G. D’SOUZA, “Automatic Dismissal of the Religious from the Religious Institute on the Ground of Marriage,” in *Studies in Church Law*, 6 (2010), pp. 445-452.

⁶⁴ See *CIC*, cc. 695-699 Cf. *CCEO*, cc. 500-553.

⁶⁵ *CIC*, c. 699, §1. “Supremus Moderator cum suo consilio, quod ad validitatem saltem quattuor membris constare debet, collegialiter procedat ad probationes, argumenta et defensiones accurate perpendenda, et si per secretam suffragationem id decism fuerit, decretum dimissionis ferat, expressis ad validitatem saltem summarie motivis in iure et in facto. §2. In monasteriis sui iuris, de quibus in can. 615, dimissionem decernere

a diocesan religious institute is required to submit the decree of dismissal and all the acts of the dismissal and its process to the diocesan bishop of the house of assignment—of the member for dismissal—for confirmation (cf. c. 700).⁶⁶ This is to preclude abuse, to ensure that the rights of the member are protected, and that justice and equity are observed.

Regarding the expulsion of a member from a local community arising from grave scandal or the most imminent harm to the institute, mentioned in canon 703, one issue should be re-examined. The canon mentions the possibility of a member being expelled from a house by the local superior and council if there is danger in delay due to the gravity of the offense. However, it fails to say what is to happen in such a situation if the member to be expelled is the superior or a member of the council.⁶⁷ How is such a process to be executed? Perhaps a perpetually professed member in the community who is not a member of the council could serve as substitute for the process. Alternatively, the local superior in the nearest community could act as a substitute in the matter.

Considering the effects of a member's separation from an institute, the different forms of separation ought to be specified in the proper law of the institute. The SSH *Constitutions* are to supply more explicit provisions regarding these forms of separation from

pertinet ad Episcopum dioecesanum, cui Superior acta a consilio suo recognita submittat.” Cf. *CCEO*, cc. 500, §1 which requires that the collegial group must be at least five members for validity. For more details on this matter see, CICLSAL, Procedure for the Separation of Members from Their Institutes, nn. 847-860, June 1984, in *Enchiridion Vaticanum*, 9 (1984), pp. 848-861; English translation in *CLD*, vol. 11, pp. 92-98.

⁶⁶ *CIC*, c. 700. “Decretum dimissionis vim non habet, nisi a Sancta Sede confirmatum fuerit, cui decretum et acta omnia transmittenda sunt; si agatur de instituto iuris dioecesani, confirmatio spectat ad Episcopum dioecesis ubi sita est domus, cui religiosus adscriptus est. Decretum vero, ut valeat, indicare debet ius, quo dimissus gaudet, recurrendi intra decem dies a recepta notificatione ad auctoritatem competentem. Recursus effectum habet suspensivum.” *CCEO*, cc. 500, §4, 501, §2 §3 and 553. *CCEO*, c. 501, §2 allows fifteen days for a member to make recourse.

⁶⁷ *CIC*, c. 703. “In casu gravis scandali exterioris vel gravissimi nocimenti instituto imminetis, sodalis statim a Superiore maiore vel, si periculum sit in mora, a Superiore locali cum consensu sui consilii e domo religiosa eici potest. Superior maior, si opus sit, dimissionis processum ad normam iuris instituendum curet, aut rem Sedi Apostolicae deferat.” R. Ombres addressing this issue opine that it could well be the authority itself which is having a crisis that is scandalous. He suggests that each case be treated differently. See R. OMBRES, “La autoridad y la frágil condición de los religiosos,” in *Vida Religiosa*, 104 (2008), pp. 387-389.

the institute. Further details on the matter and the different processes involved should be provided in the other codes of the proper law of the institute. Furthermore, in the revision of the Latin Code, some aspects of these norms, as indicated above need to be re-examined.

4.4 – PROSPECTIVE WAYS TO FOSTER THE RELATIONSHIP

Various steps could be taken to foster the relationship between diocesan bishops and the institute. These are the focus of this section of our study. They include the need for the SSH *Constitutions* to state clearly the necessity for adequate formation of its members, including a heightened awareness regarding various initiatives in the dioceses. In addition, the fostering of this relationship could also be enhanced through the institute's collaboration with diocesan clerics, and with members of other institutes in works of the apostolate, as well as establishment of neutral structure to handle matters of the relationship.

4.4.1 – *Mutuae relationes* (no. 29)

Regarding the mutual relationship between an institute and diocesan bishops in the respective dioceses, ongoing formation of the institute's members as well as diocesan officials is crucial. Desirable ways of ensuring this formation in view of developing such mutual relationship are stated in *Mutuae relationes* (no. 29):

- a) Meetings of bishops and religious superiors to study these⁶⁸ topics together;
- b) Special courses for diocesan priests, for religious and for the laity engaged in the active apostolate, in order to arrive at new and more appropriate adaptations;
- c) Studies and experiments especially appropriate for the formation of [non-clerical] religious men and religious women;

⁶⁸ The following are topics proposed for study by bishops and religious superiors: each party is required to promote knowledge of the teaching of Vatican II and pontifical pronouncements regarding the episcopacy, regarding consecrated life and on the local Church and the relationship expected to exist among them. See MR, no. 29, p. 321.

d) The preparation of suitable pastoral documents for the diocese, the region or the nation, that present these subjects in a challenging way for the reflection of the faithful.⁶⁹

Because these means of developing the relationship between diocesan bishops and institutes are still generally lacking, the SSH *Constitutions* should at least incorporate a general statement to encourage ongoing formation to strengthen the mutual relationship between the institute and diocesan bishops.

4.4.2 – Formation and the Relationship between Bishops and Religious Institutes

Adequate formation of members of an institute is necessary to advance the relationship between diocesan bishops and religious institutes. Members of an institute undergo formation in order to be formed in virtues and the manner in which they are to live out the consecrated life beginning in the novitiate. Regarding novitiate formation, the Latin Code canon 652, §2 states: “Novices [...] are to be imbued with love for the Church and its sacred pastors.”⁷⁰ Given that learning to love the Church and its pastors is a fundamental aspect of formation, the question becomes what the novices are to be taught about this issue. In light of this thesis, issues on the inter-relationship of bishops and the institutes should form part of the content of their formation.⁷¹

⁶⁹ Ibid.

⁷⁰ *CIC*, c. 652, §2. “Novitii ad virtutes humanas et christianas excolendas adducantur; per orationem et sui abnegationem in plenioris perfectionis viam introducantur; ad mysterium salutis contemplandum et sacras Scripturas legendas et meditandas instruantur; ad Dei cultum in sacra liturgia excolendum praeparantur; rationem addiscant vitam ducendi Deo hominibusque in Christo per consilia evangelica consecratam; de instituti indole et spiritu, fine et disciplina, historia et vita edoceantur atque amore erga Ecclesiam eiusque sacros Pastores imbuantur.”

⁷¹ For further details on the content of Novitiate formation see the following: SCR, Instruction *Plures exstant*, 3 November 1921, no. I, in *AAS*, 13 (1921), p. 539; PIUS XII, Apostolic Constitutions *Sedes sapientiae*, 31 May 1956, no. III, in *AAS*, 48 (1956), pp. 358-360; *PC*, no. 6, p. 941; *OT*, nn. 8-11, pp. 951-954; SCR, Instruction on the Renewal and Adaptation of Formation for Living the Religious Life *Renovationis causam*, 6 January 1969, no. 15, §§ 2-4, and no. 31, §2, in *AAS*, 61 (1969), pp. 114 and 117; English translation in *CLD*, vol. 7, pp. 489-508; CONGREGATION FOR CATHOLIC EDUCATION, *Ratio fundamentalis institutionis sacerdotalis*, 6 January 1970, in *AAS*, 62 (1970), pp. 321-384; English translation by NATIONAL CONFERENCE OF CATHOLIC BISHOPS, Washington, DC, 1970; CICLSAL, Instruction on the Directive on Formation in Religious Institutes

Article 109 of the SSH *Constitutions*, which focuses on the content of the novitiate formation, states:

During this period, the novice is given a solid understanding of the religious life in its relation to Christian charity, the evangelical counsels, prayer, community life, and the apostolate. [The novice] is taught the charism, patrimony, constitutions and rules of the [institute] and its special spirituality distinctively centered on the Sacred Heart of Jesus.⁷²

As seen in this article, the SSH *Constitutions* lack any provision on the formation of the novices with regard to the role of the pastors of the Church. Hence, it might be worthwhile for this article to include the provision that novices be trained to understand that they work in a church, which values *communio*, so that they can appreciate and work harmoniously with diocesan bishops. Additionally, as the novices study the SSH *Constitutions*, which actually identify aspects of the relationship between the institute and diocesan personnel, they will gain knowledge of these matters and better understand the necessity for such relationship. John Paul II in *Vita consecrata* points out:

Better reciprocal knowledge will result if the theology and the spirituality of the consecrated life are made part of the theological preparation of diocesan priests, and if adequate attention to the theology of the particular church and to the spirituality of the diocesan clergy is included in the formation of consecrated persons.⁷³

Furthermore, the need for formation of members of the institute on the matter of the relationship between the institute and the diocesan bishop is to extend beyond the novitiate. It ought to be part of the ongoing formation of professed members of the institute as they continue to reference the *Constitutions* in the living out their consecrated life. Other media, such as seminars, should be utilized to update members on contemporary ways of

Potissimum institutioni, 2 February 1990, in *AAS*, 82 (1990), pp. 470-532; English translation in *Consecrated Life*, 15 (1990), Supplement, pp. 1-66.

⁷² SSH *Constitutions*, art. 109, p. 37.

⁷³ *VC*, no. 50, p. 368.

fostering this relationship. Moreover, the Superior General needs to keep members informed of these matters and help to instil in them the desire to foster this relationship. Thus, the Superior General fulfills her duty to see to the proper formation of members in matters of the relationship as foreseen in *Mutuae relationes* (nn. 24 and 29).

4.4.3 – Collaborators and the Other Works of the Apostolate

An institute can collaborate in works of the apostolate. The Church's history includes the practice of Christ's faithful collaborating in the mission of the Church in the parishes of their particular church. In order to make certain there is no lack of understanding of the role of consecrated persons in the Church and to promote collaboration between consecrated persons and the clergy, *Apostolorum Successores* directs bishops to make sure that the clergy and seminarians

sincerely value consecrated persons, not only for the contribution they can make in diocesan pastoral work, but most of all for the strength of their witness of consecrated life and for the richness they introduce into the local and universal Church by their vocation and their manner of life.⁷⁴

In addition to the need to understand consecrated persons, Pope John Paul II stressed the necessity for collaboration in the work of evangelization:

Everything must be done in communion and dialogue with all other sectors of the church. The challenges of evangelization are such that they cannot be effectively faced without the cooperation both in discernment and action of all the church's members. It is difficult for individuals to provide a definitive answer; but such an answer can arise from encounter and dialogue.⁷⁵

In this way, such magisterial teachings and the norms of the SSH *Constitutions* will help to promote cooperation between the diocesan clergy and the institute under the pastoral care of the diocesan bishop. Moreover, the diocesan clergy can foster collaboration

⁷⁴ AS, no. 99b, p. 110.

⁷⁵ VC, no. 74, p. 393.

with consecrated persons in the particular church in various ways, for example, through the reports of members of the diocesan clergy regarding an institute and its apostolate during meetings with the diocesan bishop, either as members of the college of consultors or in the collaborative body of the presbyteral council.⁷⁶ Such reports should reflect the spirit of *communio* upon which consecrated persons and diocesan clergy can build together.

The Latin Code canon 680 treats of institutes cooperating in apostolic activities under the direction of diocesan bishops in accordance with their character and purpose. John Paul II in *Vita consecrata* persuades institutes to seek mutual cooperation when he wrote:

Fraternal spiritual relations and mutual cooperation among different institutes of consecrated life and societies of apostolic life are sustained and nourished by the sense of ecclesial communion.... Mindful of the spiritual friendship which often united founders and foundresses during their lives, consecrated persons, while remaining faithful to the character of their own institute, are called to practice a fraternity which is exemplary and which will serve to encourage the other members of the church in the daily task of bearing witness to the Gospel.⁷⁷

Such mutual support requires what John Paul II accentuates regarding ecclesial cooperation and apostolic spirituality as this concerns consecrated persons. He holds:

In particular, effective communion among those graced with different charisms will ensure both mutual enrichment and more fruitful results in the mission in hand. The experience of recent years widely confirms that ‘dialogue is the new name of charity,’⁷⁸ especially charity within the Church.⁷⁹

⁷⁶ Canons 502 and 495 treat the matter of the college of consultors and the presbyteral council respectively. In his work, J.E. Okosun emphasized the need for clerics to take seriously their duty to foster the welfare of the diocese. According to him: “If priests fail to take their own share of this responsibility seriously either by not discerning properly before giving counsel or by giving consent when they really are not convinced that they should, their collaboration becomes a stumbling block to the pastoral welfare of the diocese. Hence, in order to boost their collaborative role, priests must be aware and take seriously the fact that they are co-responsible with their bishop in promoting the welfare of the diocese and take their own share of that responsibility seriously” (J.E. OKOSUN, *The Collaborative Role of the Presbyteral Council in the Governance of A Diocese*, Doctoral thesis, Ottawa, Faculty of Canon Law, Saint Paul University, 2012, p. 188).

⁷⁷ *VC*, no. 52, p. 369.

⁷⁸ PAUL VI, Encyclical Letter *Ecclesiam suam*, 6 August 1964, in *AAS*, 56 (1964), pp. 609-659; English translation in *The Pope Speaks*, 10 (1964), pp. 253-292. See especially no. 73, p. 279.

Referencing canon 680, article 80 of the SSH *Constitutions* states the possibility of the institute collaborating with other institutes in various endeavors. The article says:

Cooperation with other religious [Institute] in spiritual, social, educational, medical or other apostolic programmes is to be encouraged whenever local conditions lend themselves to this. For such programmes, the responsibilities of the cooperating groups should be clearly defined in a written agreement (cf. Can. 680).⁸⁰

While this article specifies possible areas the institute is to cooperate with other institutes, canon 680 highlights the role of diocesan bishops to coordinate such collaboration. Both the Latin Code canon and the SSH *Constitutions* are silent about how diocesan bishops are to ensure cooperation between the institute and other religious institutes? Diocesan bishops will necessarily use the provisions of the SSH *Constitutions* and those of the cooperating institutes as basis to ensure that each institute remains faithful to their character, even as the bishops try to make sure there is orderliness and effectiveness in the relevant apostolic works in their dioceses. Moreover, *Apostolorum Successores* states:

For the sake of improved coordination of different apostolic works and programs within the diocesan pastoral context, and with a view to becoming better acquainted and fostering mutual esteem, it is good that the Bishop should *regularly meet the Superiors* of the institutes. This should provide an excellent opportunity for sharing experiences, identifying goals for evangelization and finding suitable methods to meet the needs of the faithful, so that the institutes can plan new apostolic activities and improve existing ones.⁸¹

When institutes cooperate it fosters the duty of the diocesan bishop to coordinate and supervise the joint apostolic efforts of the institutes as well his relationship with the individual institute.

⁷⁹ *VC*, no. 74, p. 393.

⁸⁰ SSH *Constitutions*, art. 80, p 28.

⁸¹ *AS*, no. 102, p. 115. Emphasis in the original.

4.4.4 – A Neutral Structure to Supervise Non-Clerical Diocesan Institutes

This section contains reflections regarding the matters considered above as to the relationship between diocesan bishops and non-clerical religious institutes of diocesan right in light of the common good and furthering the work of evangelization. The study has found that magisterial teachings, canonical norms, and even the constitutions of diocesan non-clerical religious institutes speak to various aspects of the relationship between these bishops and the institutes. Several duties regarding these institutes are entrusted to diocesan bishops, including areas in which these institutes need the approval of the bishops. The fulfillment of these duties requires time. In light of this reality, we propose that the universal Church in its legislation require that a body should be constituted in dioceses. This body should be made up of experts in theology and canon law, experts in the consecrated life—especially if the Episcopal Vicar for religious is not a consecrated person—persons knowledgeable in matters of temporal goods—in view of the bishops’ duties regarding this matter—and persons knowledgeable in matters which concerns the requirements of civil law.

Through this body, it is hoped that diocesan bishops can more effectively fulfill some of their duties regarding religious institutes, especially diocesan non-clerical institutes. In a similar manner, this should give the institutes the needed time to present their concerns and receive well thought-out, objective feedback—which may well be lacking because of the many demands on the diocesan bishops’ time. The proposed body would necessarily have to be familiar with, among other things, the constitutions of these institutes and the norms that pertain to the matters of the relationship between the institutes and the bishops. However, diocesan bishops should still be available and have direct contact with the institutes, especially in view of the matters at stake, since the suggested body is to assist the bishops in examining relevant details of cases.

Another aspect worth considering concerns the administration of institutes and the authority of superiors. Undeniably, these institutes, as juridical persons, are entitled to their autonomy in government and discipline. However, how are abuses by superiors to be regulated? While canons 618 and 619 state how superiors are to govern, these norms in some cases have not forestalled abuses in institutes by those in authority. Several members have been hurt because those in authority have in some ways been domineering over these members. In these situations, such members' only hope is to await the expiration of the office of those in authority. Some of these members continue to live with the wounds of such hurt. They are also members of Christ's faithful in the dioceses who need to be supported and helped on their earthly pilgrimage. What other measures can be used to ensure such situations are eliminated or minimized? Where are these members to turn during such moments? What is the role of the diocesan bishops in this regard? In addition to recourse, this matter needs to be addressed in the revision of the Latin Code with possible norms or, at least, a way forward needs to be identified.

This study also proposes an alternative body to handle the matters of the relationship between diocesan bishops and non-clerical diocesan institutes on the national or regional level. The study has found that church teachings and canonical legislation, as well as the constitutions approved for religious institutes, subject institutes to the authority of bishops. Moreover, three decades after the publication of *Mutuae relationes*,⁸² conflicts and tensions continue to exist in the relationship. Consequently, this study would call for a supplementary approach in handling this matter. The Episcopal Conference of each nation or region should constitute a structure to attend to this matter. The structure would first report to the

⁸² In a recent article, three areas of concerns that endure three decades after *Mutuae relationes* include the matter of erection of houses, entrusting of duties to a member of an institute and abuses in the exercise of authority by superiors. See T. BAHÍLLO RUIZ, "Las relaciones entre Obispos y Religiosos en la Iglesia: realidad y perspectivas a los XXX años del *Mutuae Relationes*," in *Estudios Eclesiásticos*, 83 (2008), pp. 547-573.

conference from the local diocesan level. At the universal level, the structure should collaborate with the Congregation for Institutes of Consecrated Life and for Societies of Apostolic Life in handling the issues, especially those matters regarding conflicts between diocesan bishops and religious institutes that cannot be resolved by the conferences who are more familiar with the peculiarity of their region. This new approach, if executed, would enhance the norm of canon 586, §1.

Finally, in various parts of this study, many issues were stated that should be attended to by diocesan bishops. This may be seen as fostering the subjection of diocesan institutes to the authority of diocesan bishops, a situation that some may already consider excessive. However, with the proposed body to assist the bishops on matters of the relationship with religious institutes and an independent body working with the Episcopal Conferences and the Congregation for Institutes of Consecrated Life and for Societies of Apostolic Life to handle conflicts in the relationship, a way forward should be available. What is important is to find the best way to advance the growth of consecrated life and its variety of institutes engaged at the heart of the Church in its mission and care for souls.

4.5 – REVISION OF ASPECTS OF THE UNIVERSAL LAW ON THE RELATIONSHIP

Thus far, one may have concluded that, according to Church law and magisterial teaching, the Church either presumes non-clerical religious institutes of diocesan rights are always founded by the diocesan bishop, or that every bishop understands the various forms of consecrated life. This perception is detectable even in Pope Leo XIII's apostolic constitution *Conditae a Christo* where, in addressing the duties and rights of the diocesan bishop regarding diocesan religious institutes, he wrote: "In so far as diocesan congregations are concerned the question is not difficult to solve, because these have been established and

exist by the sole will of the Bishop.”⁸³ Various noteworthy issues and suggestions have been made in our study and we will now point to issues in the Latin Code that may need reconsideration.

4.5.1 – Diocesan Bishops and Constitutions of Diocesan Institutes

Nothing is said in universal law about cases of succeeding diocesan bishops in dioceses where the founding bishops of some religious institutes of diocesan right have either died or are no longer the bishops of the dioceses. This matter becomes important in the approval of changes to the constitutions. Will the interpretation of the constitutions by the present diocesan bishops reflect what the founders of these institutes intended, or will the bishops simply accept the recommendations presented to them by the competent body of the institute? What is the basis of their interpretation? Is the assumption that the present diocesan bishops will always interpret the constitutions and changes to them according to the law always correct? What are the consequences of such a situation for the unique vocation and identity of these institutes?

This leads to more questions: How well do the bishops understand the charism of the institutes, especially in interpreting the “wishes and designs of the founders” desirable in canon 578? Can it be hoped that, arising from the diocesan bishops’ solicitude for the common good, they would correctly approve changes to the constitutions, especially if such changes involve adapting the institutes’ apostolate to areas in which the dioceses have pressing personnel needs? These concerns reflect the directives of *Christus Dominus* and canonical legislation regarding the necessity of remaining faithful to the proper works of each institute while expecting them to try to respond to the pastoral needs of the dioceses.⁸⁴

⁸³ *Conditae*, English translation in LANSLOTS, *Handbook on Canon Law*, Appendix A, p. 247.

⁸⁴ See *CD*, no. 35, §1, p. 584 and *CIC*, c. 677.

This is a major area where conflict could arise between the bishops and the institutes. The Latin Code could have a statement on how to address tensions that do arise between diocesan non-clerical institutes and diocesan bishops who are not their founders, especially in relation to the interpretation and approval of changes to the constitutions of these institutes. For example, the Latin Code could require institute to have resort to the Pontifical Council for the Interpretation of the Legislative Text address the matter at stake. Meanwhile, recourse can be made to the Congregation for Institutes of Consecrated Life and for Societies of Apostolic Life in the event these diocesan bishops go against the proper law of the institutes.

4.5.2 – Diocesan Bishop’s Visitation to Institutions of Institutes

The Latin Code canon 683, §2 excludes schools open to students of institutes from diocesan bishops’ visits, obviously because these are proper and internal to the institutes. Granted this, however, bishops could act when abuses within entrusted schools and works are brought to their notice.⁸⁵ The question arises as to who is to attend to abuses in schools and works proper to institutes, especially if the Superiors General have either failed or are biased in addressing them? How can the institutes prevent the prolongation of such abuses or prevent them from fermenting into even greater scandal because of this norm?

While respect for the just autonomy of institutes may underline the norm of canon 683, §2, in view of the scandals that are a common occurrence in contemporary time, the dearth in accountability, and other injustices that could arise in these schools and works, it might serve more good to have norms to deal with this issue. Universal law could establish certain criteria on the bishops’ power to check abuses and to call for the accountability of all, including religious institutes, in their pastoral activities or apostolates within the dioceses.

⁸⁵ See *CIC*, cc. 683, §2; *CCEO*, c. 415, §4.

4.5.3 – Members Assigned to Works and Agreements

A diocesan bishop may entrust works to an institute either directly or indirectly through a member of the institute.⁸⁶ Such entrustment requires that a written agreement be put together that contains, among other things, an accurate definition of the works to be accomplished. In keeping with canon 678, §3, the bishop and the superiors are to proceed through mutual consultation in organizing works of the apostolate. This consultation would also include a discussion of the members to be assigned to a particular work. However, the universal norms are silent on what can be disclosed about a member during such consultation. There should be an explicit requirement on confidentiality regarding what is disclosed about a member during the discernment between bishops and the Superior General in the assignment of entrusted works. This is particularly important if the issues have no bearing on the effectiveness of the member in the assigned work.

A different issue arising from the norm of canon 681, §2 concerns what should be done when contracts are broken—for example, if a diocese fails to fulfill its duty to the institute as indicated in a contract between the diocese and the institute. A statement could be made on the course of action in such a situation, especially in light of each party's obligation in preserving communion in the church. One could propose also that recourse be made to the Congregation for Institutes of Consecrated Life and for Societies of Apostolic Life, which would then direct a resolution. This would help to prevent abuses and conceivably avoid possible civil litigation by the institute, thus safeguarding communion in the particular church. However, other factors sometimes make this course of action less desirable and may lead to further damages for a diocesan non-clerical institute. Such an institute would be concerned about how this step would affect its relationship with diocesan

⁸⁶ See *CIC*, cc. 681, §2 and 682, §1. Cf. *CCEO*, cc. 282, §2 and 431, §1.

bishops in other matters, especially when they need references from these bishops. Furthermore, the directive that religious institutes of diocesan right strive to respond to the needs of dioceses is rather broad, and it favours diocesan bishops while restricting religious institutes and the superiors (CD 35, §1). If bishops forcefully assert this directive, it could put the institutes in difficult situations as they try to meet the request of the bishops, often to the detriment of the institutes themselves.

4.5.4 – Diocesan Bishops and Members’ Separation from Diocesan Institutes

In an eventual revision of the Latin Code, providing some norms on the reasons a member can be placed under imposed excommunication are necessary. Such norms should also state the conditions required for a member under imposed excommunication to return to the institute. With respect to members granted voluntary excommunication, there is a need for further guidelines on the rights and duties of the institute—the Superior General and Council—and the concerned members in these cases. This is to ensure justice as well as to define and safeguard the rights and duties of each party.

Canon 688, §2 mandates the bishop of the house of assignment to confirm the indult of departure of a member from an institute as a condition of validity, but without identifying the criteria for making this confirmation. How is this task to be achieved? What should the bishop be looking for in his decision on whether or not to confirm the indult presented to him regarding the concerned member? Can there be some meeting between the bishop and the concerned member? These issues need to be examined. It would be fitting for the Latin Code to mention some criteria by which a bishop carries out this task. This is to ensure that the bishop, who must (*debet*) confirm the indult, knows the member well enough or is amply informed about the member and his or her situation so as to make an objective decision regarding the confirmation. These criteria can be added to a revision of canon 691, §2.

4.5.5 – Diocesan Bishops and Members’ Dismissal from Diocesan Institutes

Given that canon 694 regarding *ipso facto* dismissal as it stands do not allow for the right of defense, it can be considered an extreme measure. In addition, the canon does not allow for the mitigating factors mentioned in canons 1322-1324 that might have led to the commission of the delicts. Attempted marriage or notorious defection for the Catholic faith does not happen in a day. One notes that canon 694, §2 which requires the major superior and council to issue a declaration of the fact after collecting the proofs of the offense, falls short to also require a collection of proof of the major superior or institute’s effort to guide the offender before these offenses were eventually committed. In an eventual reform, canon 694 arguably needs to allow for these elements and the possibility of following the processes contained in canon 695, §2, which regulates obligatory dismissal of a member.⁸⁷

In the ultimate revision of the Latin Code, consideration should be given to the matter of expelling a member at the local level, as mentioned in canon 703. The concern here is that there should be some indication regarding who and how to process the expulsion of the local superior or a councillor in a community if the local superior or councillor is the member that needs to be expelled.

Similarly, canon 700 states that it is the duty of the bishop of the diocese in which the member who is to be dismissed is assigned to confirm the decree of dismissal.⁸⁸ Apart from specifying that the acts and decree of dismissal be submitted to the relevant bishop, the canon is silent on the criteria for the bishop to accomplish this duty. It is also apparent that there is a need to consider the duration of a member’s stay in a diocese for the bishop to

⁸⁷ *CIC*, c. 695, §2 “Hisce in casibus, Superior maior, collectis probationibus circa facta et imputabilitatem, sodali dimittendo accusationem atque probationes significet, data eidem facultate sese defendendi. Acta omnia a Superiore maiore et a notario subscripta, una cum responsionibus sodalis scripto redactis et ab ipso sodale subscriptis, supremo Moderatori transmittantur.”

⁸⁸ See *CIC*, c. 700; *CCEO*, cc. 500, §4, 501, §2, §3, 552, §3 and 553.

assume this duty, especially if either the bishop or the member concerned is recently assigned to the diocese. If this is the case, could the duty to confirm the indult of dismissal be transferred to the bishop of the member's previous place of residence? Alternatively, could the acts and indult of dismissal be submitted to the former bishop of the diocese?

As it were, it may be more effective to include in a revised version of canon 700 the need for the bishop to know the member to be dismissed. If necessary, the relevant bishop should meet with this member. Such a meeting could serve several purposes. It could provide the bishop with helpful information that may not be in the acts of the dismissal. The meeting might also help to preserve the Christian faith of the concerned member, such that in the eventuality of dismissal of the member from the institute, he or she can still practice his or her Christian faith. It will encourage the dismissed member that, while being sent away from a religious institute, he or she does not become less a member of the Christian faithful. Rather, he or she is called to practice the faith apart from being a consecrated person.

Thus far, the norms of the universal Church law have not completely precluded conflicts in the rules that regulate the relationship between diocesan bishops and non-clerical religious institutes. As this study has shown, the norms often seem tilted in favour of bishops. If disagreements and tensions regarding matters of their relationship are to be minimized, there is need for some improvements, including those noted in this study as well as an alternative structure as discussed above.

Conclusion

In this chapter, the study further elaborated on the various aspects of the mutual relationship between diocesan bishops and non-clerical religious institutes, using as a case study the institute of the Sisters of the Sacred Heart of Jesus. In its *Constitutions*, the institute is subject to diocesan bishops mainly in matters of erection, suppression, change of

residence, matters affecting officers of the institute, the apostolate, and the administration of temporal or ecclesiastical goods. The SSH *Constitutions* have similar requirements for matters in which the Latin Code requires consent or consultation for the acts of the Superior General. It is important that the Superior provide all those concerned with the information about the relevant matter, so that they may give informed consent or advice. Providing partial information is a sign of some degree of untruth and could be inferred as an attempt at misrepresentation. This situation could invalidate the acts following various canonical principles, like those mentioned in canon 50 which requires an authority to seek out the relevant information about a case before acting.⁸⁹ Canon 63 states the rule that any concealment regarding the reasons for a rescript can invalidate it.⁹⁰ A similar rule is stated in canon 1292, §3. This canon requires that when an institute is alienating a property, any portion previously alienated must be mentioned.⁹¹

Institutes need to introduce candidates who join them properly, with a good understanding of the universal and particular Church and matters of the relationship between the institutes and diocesan bishops. Such a positive perception is better developed from the stage of initial formation, as candidates learn their institutes' constitutions, which are to indicate clearly the aspects of acts that bring the institutes into relationship with bishops. Diocesan bishops on their part have the duty to support and encourage religious institutes in their works, whether these are works entrusted or proper to the institutes. The fulfillment of this duty becomes more urgent particularly in situations where the institutes

⁸⁹ *CIC*, c. 50. "Antequam decretum singulare ferat, auctoritas necessarias notitias et probationes exquirat, atque, quantum fieri potest, eos audiat quorum iura laedi possint." *CCEO*, c. 1517, §1.

⁹⁰ *CIC*, c. 63. §1. "Validitati rescripti obstat subreptio seu reticentia veri, si in precibus expressa non fuerint quae secundum legem, stilum et praxim canonicam ad validitatem sunt experimenda, nisi agatur de rescripto gratiae, quod *Motu proprio* datum sit. §2. Item validitati rescripti obstat obreptio seu exposito falsi, sine una quidem causa motiva proposita sit vera."

⁹¹ See *CIC*, c. 1292, §3. Cf. *CCEO*, c. 1038, §2.

develop projects and receive little or no cooperation from other collaborators like some members of the diocesan clergy.

Some areas of concern worth recalling include the need for the constitutions and other codes of the proper law to indicate the way forward in situations of non-fulfillment of agreements. The institutes are to avoid multiplication of their members in entrusted works without consulting the diocesan bishops. Rather, they should follow the requirements of law by consulting with the respective bishops before going beyond their agreement. They are to avoid frequent transfer of members, especially in works concerning the care of souls.

Several areas of the SSH *Constitutions* that need clarification were noted in various parts of this study, especially in the last section of the chapter. Furthermore, some of the norms of the SSH *Constitutions* seem rather broad, and the lack of some other norms could also constitute problems for the institute. It is hoped that the norms noted as likely aspects for improvement will be carefully considered by the institute as well as other institutes that might have similar defects in their constitutions, so that alternative or improved provisions can be made to these defects by the institutes.

In addition, in order to further the relationship between diocesan bishops and religious institutes, the study points to the need to constitute two bodies to assist in this matter. One body, in form of a committee, is to be constituted in each diocese to assist the diocesan bishop in his relations with institutes. Another body, constituted on the level of the Episcopal conference, is to liaise with CICLSAL and handle issues of conflict between diocesan bishops and these institutes.

GENERAL CONCLUSION

The purpose of this study was to explore the means through which the constitutions enhance the relationship between diocesan bishops and non-clerical religious institutes of diocesan right. In the process, the study examined the nature, purpose, and role of the constitutions of religious institutes. Its focus intensified on the value given to these constitutions in the general legislation of the Church, especially in the section on the laws governing institutes of consecrated life. The initial findings were positive. First, the constitutions are well considered in the Church's relations with the various institutes, a fact that dates back to the earliest times in the history of the Church. We saw evidence of cases of the papacy and various councils calling on religious to be mindful of their rules and constitutions. With regard to the constitutions' role in the relationship between church hierarchy and consecrated persons, we also saw instances of the papacy and councils directing, for example, that bishops instruct institutes to hold general chapters as determined by their rules and constitutions. Thus, the constitutions of religious institutes have played a key role in the history of the Church and the growth of the consecrated life.

In the later years of the history of the Church and the advancement of the consecrated life, the Church has reaffirmed its practice of giving prime place to their rules and constitutions. In fact, in most of the norms of the Latin Code for institutes of consecrated life, the legislator left ample room for the proper law of institutes—of which the constitutions are fundamental. The study thus turned to consider the purpose for the continued practice, and found the answer explicitly expressed in the canon on the constitutions of religious institutes: canon 587, §1. The canon unequivocally states that the constitutions are to contain the essential and characteristic elements of an institute—its patrimony with elements in canon 578, norms of governance, discipline of members,

incorporation and formation, and the proper object of the sacred bonds—all for the purpose of faithfully protecting the proper vocation and unique identity of the institute. In other words, the Church is concerned that institutes preserve the unique gift they hold for the Church as identified by the competent ecclesiastical authority at the time of erection.

This awareness of the Church's concern to preserve the diversity of gifts manifested by the various forms of consecrated life as well as to foster vocations and entrust the institutes to the special care of diocesan bishops heightened the necessity of fostering the relationship between these bishops and the institutes. The study emphasized that the Church cannot continuously desire to preserve the diverse identity of institutes and at the same time relent on how to foster the *communio* between the institutes and the diocesan bishops. This fact is confirmed by the many magisterial teachings and canonical norms on the matters of this relationship. The next question that arose in this study was how to move forward. To answer this question, the study examined some of the existing magisterial teachings and canonical legislation and proposed some alternative ways of fostering the relationship.

The findings of this study reveal that the Church has always insisted on institutes having rules or constitutions in place, to which it grants initial approval and subsequent approvals when changes became necessary. We also found that the principle of subsidiarity was applied in the canons on the institutes of consecrated life, of which canon 587, §1 is a part. Consequently, various canons to which the legislator deferred matters of the constitutions were identified as an application of these principles. Canon 586 on the autonomy of religious institutes was also noted.

Analysis of the doctrinal and canonical principles, focusing on the relationship between bishops and religious institutes, reveals that through the course of history there have always been occasions of tension between these parties in the Church, and that the

Church has not relented in its efforts to ensure they collaborate. The Church's efforts to regulate this relationship have produced various documents to define aspects of it. These fundamental documents explored include *Lumen gentium*, *Christus Dominus*, *Ecclesiae sanctae*, *Perfectae caritatis*, *Mutuae relationes*, and *Vita consecrata*, as well as the 2004 Directory for the Pastoral Ministry of Bishops *Apostolorum Successores*. We emphasized that the Church has also issued various canonical norms on the different subjects and areas where the parties interrelate, including the obligations and rights of the diocesan bishop vis-à-vis the institutes, their mission and collaboration in the apostolate of the Church within the particular church, as well as how the parties should proceed on each matter.

The case study of the Constitutions of the Sisters of the Sacred Heart of Jesus (Nigeria) allowed us to explore the role of an institute's constitutions in furthering the relationship between diocesan bishops and the institute. We found that, while the SSH *Constitutions* attempted to make provisions for these matters, some of them were either too broad or inadequate, and sometimes were nonexistent, a situation that could create conflicts. These weaknesses were noted for further elaboration. Accordingly, the study identified some matters of the relationship, along with other salient issues that were lacking or inadequately stated in the SSH *Constitutions*. The following should be considered:

- a. Provision of norms on the various forms of separation of members from the institute, particularly in view of the bishops' role to grant extension for the period of exlaustation or to confirm the indult of departure or dismissal.
- b. A statement regarding canonical visitation by the diocesan bishop.
- c. A statement regarding rendering of financial reports to the diocesan bishop.
- d. Ways to resolve problems that could arise from the prohibition of members from the diocese by certain bishops.

- e. A statement of objective ways to resolve situations of withdrawal of members from the house due to conflict with the local superior.
- f. Statement of the causes of action to be taken should a member refuse to relinquish an office after deprivation (c. 1381).
- g. Statement of the limits of disclosure of confidential matters regarding members during consultation between the superior and the diocesan bishop prior to assignment to an entrusted work.

The following should be detailed in the other codes of the proper law of the institute after a statement has been made concerning them in the SSH *Constitutions*:

- a. The need to develop an appropriate health policy.
- b. The need to state clearly the requisites for the erection of new houses in order to guide the council in offering its consent to the Superior General.
- c. The need to state the reasons why duly erected houses could be suppressed and definition of the destination of the goods of suppressed houses.
- d. The need to state the cause of action in situations of non-fulfillment of a contract (canon 1290).

Similarly, the following matters are suggested for consideration in the eventual revision of the Latin Code:

- i. A reconsideration of the norm on the exclusion of schools opened to members of institutes from the inspection of diocesan bishops on the basis of autonomy, in view of internal abuses.
- ii. An assessment of the diocesan bishops' role in interpreting the constitutions of diocesan institutes, especially if the bishops are not the founders.
- iii. A re-examination of the directive that institutes adapt their works to the

needs of the dioceses, since this could place undue pressure on these institutes (cf. *CD*, 35, §1).

- iv. A statement on the conditions for the return of a member on imposed exlaustration to the institute.
- v. A statement on the duration of stay by a member of an institute in a diocese in order for the diocesan bishop to confirm his or her indult of departure.
- vi. A review of canon 694 on *ipso facto* dismissal of a member in consideration of canons 1322-1324 on mitigating circumstances.
- vii. A statement as in canon 694, §2 requiring proofs indicating the guidance the member received from the institute before the offense was committed.
- viii. A consideration of the need for canon 703 to address the cause of action if a member to be expelled from a local community is the local superior or a councillor.

In fact, one recognizes that most canonical norms on the relationship seem to favour the bishops. In practice, institutes directly or indirectly are always under the authority of bishops. Although this is the situation, institutes must relate and collaborate with bishops. Religious institutes have control only over their side of the matter, that is, their internal discipline. Hence, the study posits that institutes use what tools they have—including the constitutions—to enlighten themselves and their members on the matters of the relationship. Moreover, one hopes that the norm of canon 678, §3, which obliges bishops and religious superiors to carry on with mutual consultation, along with the norms of the constitutions of institutes will be of assistance in this matter.

Furthermore, the study notes that in light of the Latin Code canons 586, §1 on the just autonomy of institutes, taken side-by-side with canon 594 on the supervisory role of the

bishops over the diocesan religious institutes, there appears to be a *lacuna* if conflict arises between diocesan bishops and the institutes which cannot be resolved easily in the short-term within the dioceses. Consequently, the study proposes that there is therefore the need for a body to which diocesan institutes could easily make recourse in such situations. Such a body could be an arm of the CICLSAL on the universal level, or at least, an independent body made up of experts in theology, canon law, religious law and civil law as well as other related areas of the relationship, be established by individual Conferences of Bishops in the different nations or regions, which can collaborate with CICLSAL regarding diocesan non-clerical religious institutes and their relationship with the bishops.

By providing clear, adequate and precise norms in its constitutions, each institute sets the foundation for these constitutions to protect its patrimony as well as enhance its relationship with bishops. In the final analysis, despite these suggestions, the goal of this study is not so much to encourage the promulgation of more legislation but, rather, to posit that the constitutions have a role to promote better awareness and compliance of both bishops and institutes to the existing legislation as well as new legislation on these matters. Moreover, it is hoped that through such compliance the unique vocation and identity of each institute, as well as the communion in the particular church, will be preserved—with the consequence that diocesan bishops and all the institutes in each diocese will continue to promote the mission of the Church.

APPENDIX A

Text of the canon on the constitutions of institutes of consecrated life from its first form as canon 90 of 1977 Schema through its final form as canon 587 of Latin Code:¹

Vita cons. 90 (1977 Schema)	1980 Schema Codicis 515	1982 Schema Codicis 589	1983 CIC 587
§1. <i>Elementa de quibus in §2 canonis praecedentis</i> [fundatorum igitur mens atque proposita circa naturam, finem et indolem Instituti, necnon eius sanae traditiones, ab omnibus servanda sunt (Vita cons. 89, §2)] <i>et</i> <i>normae iuridicae</i> fundamentales circa Instituti et sodalium disciplinam, regimen membrorumque <i>cooptationem</i> atque institutionem <i>et obiectum</i> sacrorum ligaminum proprium, <i>in cuiusvis Instituti</i> codice praecipuo, quocumque nomine veniat, statuendae sunt. {Huiusmodi codex} <i>praecipuus</i> a competenti {Ecclesiae Auctoritate} <i>approbandus est, et absque eiusdem beneplacito mutari nequit.</i> Vita cons. 91: <i>In his textibus redigendis</i> spiritualia et iuridica	§1. Ad propriam singulorum Institutorum vocationem et identitatem fidelius tuendam, in cuiusvis Instituti codice fundamentali seu Constitutionibus contineri debent, praeter ea quae in can. 507 servanda statuuntur, <i>normae</i> fundamentales circa Instituti {regimen et sodalium disciplinam,} membrorum incorporationem atque institutionem, necnon {sacrorum ligaminum proprium} obiectum. §2. {Codex huiusmodi,} a competenti {auctoritate Ecclesiae} approbatur et tantummodo cum eiusdem consensu mutari potest. §3. In hoc codice spiritualia et iuridica apte componantur; <i>normae tamen</i>	§1. Ad propriam singulorum institutorum vocationem et identitatem fidelius tuendam, in cuiusvis instituti codice fundamentali seu constitutionibus contineri debent, praeter ea quae in can. 581 servanda statuuntur, <i>normae</i> fundamentales circa instituti regimen et sodalium disciplinam, membrorum incorporationem atque institutionem, necnon {proprium sacrorum ligaminum} obiectum. §2. Codex huiusmodi a competenti auctoritate Ecclesiae approbatur et tantummodo cum eiusdem consensu mutari potest. §3. In hoc codice elementa spiritualia et iuridica apte componantur; <i>normae</i>	§1. Ad propriam singulorum Institutorum vocationem et identitatem fidelius tuendam, in cuiusvis instituti codice fundamentali seu constitutionibus contineri debent, praeter ea quae in can. 578 servanda statuuntur, <i>normae fundamentales</i> circa instituti regimen et sodalium disciplinam, membrorum incorporationem atque institutionem, necnon proprium sacrorum ligaminum obiectum. §2. Codex huiusmodi a competenti auctoritate Ecclesiae approbatur et tantummodo cum eiusdem consensu mutari potest. §3. In hoc codice <i>elementa</i> spiritualia et iuridica apte

¹ PONTIFICAL COMMISSION FOR THE AUTHENTIC INTERPRETATION OF THE CODE OF CANON LAW *Schema canonum de institutis vitae consecratae per professionem consiliorum evangelicorum reservatum*, Vatican City, Typis polyglottis Vaticanis, 1977, p. 27. Cf. E.N. PETERS (cura.), *Incrementa in progressu 1983 Codicis iuris canonici*, Montréal, Wilson & Lafleur Limitée, 2005, pp. 539-540.

APPENDIX A

<i>opportune uniantur</i> ; normae tamen absque necessitate ne multiplicentur.	absque necessitate ne multiplicentur.	tamen absque necessitate ne multiplicentur.	componantur; normae tamen absque necessitate ne multiplicentur.
§2. Ceterae normae <i>ad Instituti vitam pertinentes</i> a competenti <i>eiusdem</i> Instituti Auctoritate statuuntur et apte colligantur, quae tamen iuxta <i>Constitutiones</i> congrue recognosci et aptari possunt.	§4. Ceterae normae a competenti Instituti auctoritate statutae apte in aliis codicibus colligantur, quae tamen iuxta exigentias locorum et temporum congrue recognosci et aptari possunt.	§4. Ceterae normae a competenti instituti auctoritate statutae apte in aliis codicibus colligantur, quae tamen iuxta exigentias locorum et temporum congrue recognosci et aptari possunt.	§4. Ceterae normae a competenti instituti auctoritate statutae apte in aliis codicibus colligantur, quae tamen iuxta exigentias locorum et temporum congrue recognosci et aptari possunt.
Comm 11: 40, 53-57	Relatio 136, Comm 15:61		

APPENDIX B

Text of the canon on the subjection of institutes of diocesan right to diocesan bishops from its first form as canon 19 of 1977 Schema through its final form as canon 594 of Latin Code:¹

Vita cons. 19 (1977 Schema)	1980 Schema Codicis 522	1982 Schema Codicis 596	1983 CIC 594
<i>In regendis Institutis iuris dioecesanis, utpote suae peculiari curae et vigilantiae concreditis, Episcopo dioecesano, salvo semper iure universali, competit:</i> 1°) <i>codex praecipuus, de quo in can. 90 §1 approbare;</i> 2°) <i>immutationes in eodem a Capitulo generali Instituti propositas, confirmare, salvis iis in quibus Apostolica Sedes manus iam apposuerit;</i> 3°) <i>dispensationes ab eiusdem codicis praescriptis legitime petitas singulis in casibus et per modum actus dare;</i> 4°) <i>visitare coetus Instituti eorumque sedes in suo territorio quoties visitationem pastorem ibi peragit, necnon cum rationes vere perculiares suo iudicio id requirant;</i> 5°) <i>servata Instituti disciplina et de</i>	§ 1. Institutum iuris dioecesanis, firmiter can. 514, remanet sub speciali cura Episcopi dioecesanis. § 2. Episcopi sedis principis est Constitutiones approbare et {immutationes in eas legitime introductas confirmare,} salvis iis in quibus Apostolica Sedes manus apposuerit, necnon negotia maiora totum Institutum respicientia tractare quae potestatem internae auctoritatis superant, consultis tamen ceteris Episcopis dioecesanis, si Institutum ad plures dioeceses propagatum fuerit.	§ 1. Institutum iuris dioecesanis, firmiter can. 588, permanet sub speciali cura Episcopi dioecesanis. § 2. Episcopi sedis principis est Constitutiones approbare et immutationes in eas legitime introductas confirmare, salvis iis in quibus Apostolica Sedes manus apposuerit, necnon negotia maiora totum Institutum respicientia tractare quae potestatem internae auctoritatis superant, consultis tamen ceteris Episcopis dioecesanis, si Institutum <u>ad plures dioeceses propagatum fuerit.</u>	Institutum iuris dioecesanis, firmiter can. 586, permanet sub speciali cura Episcopi dioecesanis.

¹ PONTIFICAL COMMISSION FOR THE AUTHENTIC INTERPRETATION OF THE CODE OF CANON LAW *Schema canonum de institutis vitae consecratae per professionem consiliorum evangelicorum reservatum*, Vatican City, Typis polyglottis Vaticanis, 1977, p. 6. Cf. E.N. PETERS (cura.), *Incrementa in progressu 1983 Codicis iuris canonici*, Montréal, Wilson & Lafleur Limitée, 2005, p. 546.

<i>consensu competentis Moderatoris, sodales coetuum proprii territorii in externa apostolatus opera immittere quae cum indole propria et fine specifico eiusdem Instituti congruant.</i>	§ 3. Episcopi dioecesanus potest dispensationes a Constitutionibus concedere in casibus particularibus.	§ 3. Episcopi dioecesanus potest dispensationes a Constitutionibus concedere in casibus particularibus.	
Comm 11: 65-66, 299-302			

APPENDIX C

April 4th, 1975

DECREE OF ERECTION AS A PIOUS UNION

I, Patrick Ebosele Ekpu, Bishop of the Diocese of Benin City, do hereby erect this institute known as the Congregation of the Sisters of the Sacred Heart of Jesus, founded by me in the Diocese of Benin City in the year Nineteen hundred and Seventy-five.

This letter of establishment marks the first step toward the formal creation of this Pious Union to become in due course a fully fledged institute of Consecrated Life in the Church.

Its members should be made up of women for the purpose of religious life in accordance with the Code of Canon Law (Religious Institute, Canon 492-498). The goals and objective of this institute are as contained in the Constitutions approved by me.

Given in Benin City this 4th day of April 1975.

+Patrick E. Ekpu
Bishop of Benin City

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Curriculum Vitae

Stella E. Giegbefumwen was born on June 3rd 1968. She joined the Sisters of the Sacred Heart of Jesus in 1986 and made her first religious profession in 1989. Thereafter, she worked as directress of initial formation as well as bursar at the Diocesan High School and also helped out with various activities in the parish.

A couple of years after her first religious profession, she did her second cycle education and obtained her B.A. (Hons.) in Business Administration and B.Sc. (Hons.) in Computer Science at St. Mary's College, Michigan, USA in 1995.

On completing the above studies, she served at the Chancery of the Archdiocese of Benin City from 1995-2007 in various assignments. She was the confidential and administrative Secretary to the Archbishop from November 1995-August 2007; an account clerk and payroll officer at the Chancery from 1998-2006; a supervisor at the archdiocesan home for the elderly from 2000-2007. She was also a care provider for the Archbishop during his ill-health, accompanying him for treatments from 2004-2007. Most of these duties were carried out concomitantly. Other responsibilities included the assistance of the less privileged on behalf of her institute.

After twelve years of uninterrupted apostolic activity, Stella Giegbefumwen enrolled at Saint Paul University, Ottawa, Canada in September of 2007 where she began her canonical studies. In 2010 she acquired her Master in Canon Law (MCL) from the University of Ottawa, and a Licentiate in Canon Law (JCL) from Saint Paul University, Ottawa. She immediately, began her Doctoral studies in 2011 at Saint Paul University.