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**THE CANONICAL STATUS OF SEPARATELY INCORPORATED  
HEALTHCARE APOSTOLATES IN THE UNITED STATES; CURRENT  
STATUS AND FUTURE POSSIBILITIES FOR THE PUBLIC AND PRIVATE  
JURIDIC PERSON**

**by  
Patsy James Gonsorcik**

**A dissertation submitted to the Faculty of  
Canon Law, Saint Paul University, Ottawa,  
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ments for the degree of Doctor of Canon Law**

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## **ABSTRACT**

The development of healthcare in the United States is unique. Within this framework, the Catholic healthcare apostolate has had to engage in various and complex innovations, both canonically and civilly, to carry out this mission which encompasses acute care facilities, emergency systems, clinics, hospices, home healthcare, mobile clinics, nursing homes, etc. Financial and other pressures have led to the establishment of various congregational and inter-congregational systems. However, the canon law, as we know it, was not designed specifically for such massive undertakings. What arrangements can be made within the present canonical system to provide for good management and oversight of these new systems? Starting from the Vatican II teachings on "apostolate" and "mission", the dissertation examines various ways in which issues relating to the administration of healthcare works have been addressed in the United States.

The 1983 *Code of Canon Law* presented a number of possibilities which help bridge the gap between the present and the future. Among these, there is the canonical institution of "juridic persons", distinct from the juridic personality of the sponsoring congregations. Are there good openings here? Although the law provides for both "private" and "public" juridic persons, the experience of the past few years shows a marked preference on the part of Church authorities for the public juridic person, since the temporal goods belonging to them are considered to be ecclesiastical goods. However, for some people, this creates difficulties because of the legal restrictions governing the administration and disposal of temporal goods. In healthcare, these assets are quite significant. Nevertheless, in spite of some hesitations, we must recognize that new means of instant communication have resolved a number of potential administrative difficulties.

The dissertation examines the implications of both types of juridical personality, the advantages and disadvantages of both, and roads towards future development.

Looking at the future and given the pressure faced today, particularly when confronted with various delicate ethical and moral issues, it can be asked whether the Catholic healthcare apostolate can indeed continue to exist as Catholic? The response, obviously, is in the affirmative, but we must recognize that participation in the healing mission of Christ calls for strong commitment and informed boards of directors. It might even be helpful if there were a centralized "clearing house", or Vatican "office for healthcare", properly staffed and administered, so as to assure some type of unity in approach. However, the implications of such a move would have to be carefully considered before any decision was taken in this regard.

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## ABBREVIATIONS

AA	Decree on the Apostolate of Lay People <i>Apostolicam actuositatem</i>
AAS	Acta Apostolicae Sedis
AG	Decree on the Church's Missionary Activity, <i>Ad Gentes</i>
AMA	American Medical Association (United States)
c.	canon
cc.	canons
CCCB	Canadian Conference of Catholic Bishops
CD	Decree on Pastoral Office of Bishops in the Church, <i>Christus Dominus</i>
CHE	Catholic Health East
CHW	Catholic Health West
CHA	Catholic Health Association of the United States
CIC 1917	<i>Codex iuris canonici, Pii X Pontificis Maximi iussu digestus, Benedicti Papae XV Auctoritate promulgatus</i>
CIC 1983	<i>Codex iuris canonici, auctoritate Ioannis Pauli PP.II promulgatus</i>
CICLSAL	<i>Congregation for Institutes of Consecrated Life and for Societies of Apostolic Life.</i>
CLD	<i>Canon Law Digest</i>
CLSA	Canon Law Society of America
CFR	Code of Federal Regulations (United States)

## ABBREVIATIONS

CHS	Covenant Health Systems
D.C.	District of Columbia
EHO	Emerging Healthcare Organization
ERD	Ethical and Religious Directives for Catholic Health Care Services (United States)
FLANNERY	<i>Vatican Council II: Conciliar and Post Conciliar Documents</i>
GS	Pastoral Constitution on the Church in the Modern World, <i>Gaudium et Spes</i>
HCFA	Health Care Financing Administration (United States)
HMO	Health Management Organization
H.R.	House of Representatives (United States)
IDS	Integrated Delivery System
IMC	International Missionary Council
IRC	Internal Revenue Code (United States)
IRS	Internal Revenue Service (United States)
LG	Dogmatic Constitution on the Church, <i>Lumen gentium</i>
NCCB	National Conference of Catholic Bishops (United States)
PO	Decree on the Ministry and Life of Priests, <i>Presbyterorum Ordinis</i>
S.	Senate (United States)
U.S.	United States
U.S.A.	United States of America

## **INTRODUCTION**

This dissertation will examine the canonical status of separately incorporated Roman Catholic healthcare apostolates. Although the Catholic presence in healthcare is centuries-old, the Church was not the original caregiver nor always at the forefront of healthcare innovations. The Catholic healthcare system has adjusted to the forces of development and change over the centuries and, where it could not do so, it has yielded and moved in other avenues. The primary mission of the Catholic healthcare apostolate is to carry on the healing ministry of Jesus Christ. This paper speaks to healthcare systems, canon law, civil law and operations but, in a sense, we are also speaking to life.

The development of healthcare in the United States is unique and the Catholic healthcare apostolate has had to engage in various and complex innovations, both canonically and civilly, to carry on this mission which encompasses acute care facilities, emergency systems, clinics, hospices, home health care, mobile clinics, nursing homes, etc. Some of this is not by choice but by necessity. The threat of for-profit markets and of ever-increasing expenditures lead to the creation of various congregational and inter-congregational systems. Healthcare expenditures in the United States now average three trillion dollars a year and the Catholic healthcare apostolate, being one of the larger entities consumes a large amount of these monies. Obviously this presents benefits as well as serious administrative problems.

Some people measure the presence of Catholic healthcare by the number of facilities that exist and by those that have been closed within the last ten years. The United States has an oversupply of hospital beds and Catholic healthcare has

## INTRODUCTION

adjusted its presence to respond to local needs. It has had to review its *modus operandi* as did every other healthcare system. What has occurred in the United States is the “industrialization” of healthcare. No longer can it be simply an apostolate to those in need. The history of United States healthcare shows that it was originally relegated to the domain of public and religious charities, primarily because there was very little hope of return on investments in healthcare markets. Various attempts to establish “universal coverage” in the United States failed. However, in 1964 the Congress of the United States established “*Medicare*” and “*Medicaid*”. *Medicare* provided healthcare coverage to a specific group (older Americans) while *Medicaid* provided monies for healthcare assistance for the economically poor. This allowed large amounts of monies to be poured into the healthcare systems in the United States raising the interest of those who invested in the latent field of for-profit hospitals. This of course shattered the complacency not only of the Catholic healthcare systems in the United States but also of all the non-profit groups. Until that time most Catholic hospitals were stand-alone simple structures without distinct canonical recognition, and with few major concerns. A significant number of people had employer-provided health coverage and there was some government funding of new facilities which, coupled with fund-raising, provided adequate monies for existence. However, with the onslaught of seemingly unlimited funding, the healthcare environment changed from sedate to maniacal. The fact that these systems had to address the new market forces moved them to adapt the business practices of their competitors, the for-profits, in order to off-set the latter’s goal of eventually buying them out. The stand-alone hospitals had to merge or shut down; the internal systems had to become mega-systems which entailed pooling the financial resources of numerous religious institutes. While all of this was happening at seemingly break-neck speed, the matter of the institutes’ responsibilities as juridic persons in the Church had not only to be reconsidered but also dealt with in a proper manner.

## INTRODUCTION

To help address the situation it must be kept in mind that the 1983 Code presented us with new and exciting possibilities for the establishment of both “public” and “private” juridic persons. For a time it was thought that the “private” juridic person might solve the dilemma of having to seek regularly “proper” permissions for bond issues, the alienation of temporal goods and other financial matters. Since the majority of Catholic hospitals were operated by religious and by societies of apostolic life, it fell to the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life to make decisions in this area. One means envisaged was to establish distinct juridic persons. Special arrangements and modern means of communication allowed for speedy decision-making when requests for authorizations had to be processed. This Congregation is currently reviewing its role in the healthcare milieu.

Although we originally initiated this study to ascertain the eventual place of the “private” juridic person in the Catholic healthcare milieu, we came to see that the “public” juridic person was quite relevant. In view of the fact that numerous Congregations are now working together, what can Catholic systems do and how far can they move to retain market share and “Catholic” identity? In light of present and future developments, is the juridic person a viable approach to Catholic entities whose apostolate has now been turned into an industry?

This dissertation will investigate the changing face of Catholic healthcare from the perspective of the issues impacting it. We look to mission, to the development of healthcare, to the juridic person, to the civil corporation in the United States, to for-profit and non-profit civil aspects, and to the bearing of all of these on the healthcare milieu. The civil corporate structures have had to change over the years to accommodate various developments, but we do not see such changes occurring as quickly in the Catholic canonical areas, especially as they pertain to juridic persons.

## **INTRODUCTION**

The framework of this dissertation is the following. Chapter One will look at the concept of “mission” or apostolate as employed by Vatican II. We will consider the expectations of the Council Fathers in the mission of clerics (bishops, priests and deacons), laity and religious. This provides a basis for their interaction in healthcare, a foremost mission of the Church. This is complemented by an overview of the development of healthcare, more particularly in the United States, which is significant to an understanding of the healthcare apostolate today.

Chapter Two will deal with the juridic person as a canonical structure to enhance apostolic mission. We first examine the development of this notion in Roman Law, European civil law, and the 1917 Code. We consider both types of juridic persons in the 1983 Code, “public” and “private”, and their ownership of temporal goods. We refer also to the creation of the current juridic person structures to allow for more direct participation of the laity in the apostolates of the Church. We then, for two reasons, make reference to associations of the faithful as presented in the 1983 Code: first, canons 312, 313 are often used relative to the establishment of juridic persons and secondly, to view some of the difficulties found in associations, making the juridic person a better choice for a Church entity to participate as such in the healthcare mission and apostolate. Associations have a tendency to focus more on their members than on the apostolate they carry out, this would lead to innumerable difficulties. Also, many non-Catholics are involved, as is the case today, in senior management positions in Catholic healthcare.

Chapter Three examines the notion of corporation and the various types commonly used by Church entities and operations in the United States. Juridic persons in the Church, if they wish to obtain legal recognition in the United States must form some type of legally recognized entity. Corporations have the status of for-profit or non-profit; the latter is associated more with religious and charitable institutions and related to federal tax regulations of the Department of the Treasury,

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Office of Internal Revenue. In the second section of this chapter we will deal more specifically with the corporate structures being used by Catholic healthcare systems today.

Chapter Four, in the first section, provides an analysis of the canonical statutes and bylaws of two existing Catholic healthcare systems in the United States today, namely, *Covenant Health Systems* (a public juridic person in the Church) and *PeaceHealth* (a private juridic person in the Church). Accompanying this analysis is a reference to some of the norms of Book V relating to temporal goods. These new forms might have to be considered as stop-gap measures, because in the second section we provide an overview of the current situation of United States healthcare, events and issues impacting it and future directions of Catholic healthcare as separately incorporated apostolates. If Catholic hospitals are to continue to receive their share of managed-care programs, and a regular clientele, there is strong pressure on them to offer all “procedures” which the insurance company wishes to offer its subscribers. This creates intolerable moral dilemmas. Since “healthcare” is currently a global issue (universal coverage notwithstanding) we consider the necessity of a globally centralized leadership structure to address them. Although the Bishops are responsible for the apostolates in their diocese the inter-polity of the healthcare industry/apostolates creates difficulties that only national and international groups are able to address effectively.

## **CHAPTER ONE**

### **NOTION OF APOSTOLIC MISSION IN VATICAN COUNCIL II**

#### **INTRODUCTION**

Juridic persons in the Church are established for the purpose of carrying on the mission of the Church. However, since mission is such an integral part of the existence of juridic personality and of the Church itself, some attention should first be given to the notion of “apostolic mission”<sup>1</sup> and, more specifically, as it is found in the Second Vatican Council.

“Apostolate” is identified as a Greek term meaning a sending, a commission, or an expedition. Originally, it was applied in limited manner to the efforts of the Apostles in sustaining the mission of Jesus and its application has been expanded over the years.<sup>2</sup> The Fathers of Vatican II augmented it even further as we shall see. An apostolic mission can be realized by individuals either working alone or as a group; it is by such effort that the mission of the Church is ultimately sustained.

In this chapter, we are looking specifically at the notion of “apostolic mission,” as envisioned by the Fathers of Vatican II, to provide a shared understanding of the concept as found in the conciliar teachings. Our strategy will be to present a

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<sup>1</sup>“Apostolic mission” and “apostolate” are used interchangeably, with “apostolic mission” given primary usage.

<sup>2</sup>F. KLOSTERMANN, “Apostolate”, in *New Catholic Encyclopedia*, Vol. I, 1967, p. 688.

general overview of the purpose of the Council, clarify some preconciliar concepts, and address the problem of interpreting the Council. The Fathers of the Council did not give specific consideration to the topics of juridic personality of dioceses and even to a lesser degree that of religious institutes. Instead, they considered the persons who are participants in the undertakings of these entities. Once this basis is established, we shall then treat the apostolic mission of individual bodies of clergy (bishops, priests, deacons), laity and religious. Indirectly, this approach will manifest which conciliar concepts guide dioceses and religious institutes in conducting their apostolic mission, while developing a common understanding of this mission. Finally, in this chapter we will review the conciliar teachings which relate specifically to the apostolic missions preparatory to our focussing on the development of the healthcare apostolate.

## **I. GENERAL CONCEPTS OF MISSION IN VATICAN COUNCIL II**

### **1. CONVOKING OF THE COUNCIL**

#### **1.1 PURPOSE**

The Council was convoked for the express purpose of bringing about renewal in the Church in a radically changed world.<sup>3</sup> It did not hesitate to teach that the Church was always in need of reform and that the triumphalism visible in parts of the

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<sup>3</sup>Re: SYNOD OF BISHOPS, "A Message to the People of God", in *Origins*, 15 (1985-1986), p. 443.

Church since the Council of Trent was to be brought to an end.<sup>4</sup> The Fathers spoke of a Church on the move, constantly adjusting to the changing world by continually searching for the truth.<sup>5</sup> A proper understanding of the Second Vatican Council and its insights begins by placing it in its historical context.

Closer examination shows that the period of Christian history involved in the phenomenon of Vatican II is much more extensive. It includes not only Vatican I (1869-1870), the immediate predecessor of Vatican II, but to some extent even the Council of Trent (1544-63) insofar as it was a strictly monoconfessional and monocultural council. For Vatican II was, in contrast, "open" to the other Christian confessions and to a variety of cultural influences; it also aimed at restoring both a real subordination of ecumenical councils to the word of God and a real involvement in human history, to the point even of recognizing in this history "signs" pregnant with the gospel. To that extent Vatican II represents a recovery of directions, neglected but not abandoned, that are profoundly imbedded in Christian tradition as understood in its fullest Catholic sense.<sup>6</sup>

The bishops who gathered together for the Council came to understand, accordingly, that they were not creating something absolutely new, but were often approving and encouraging practices that were already in process and at work,

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<sup>4</sup>See R. WEAKLAND, "From Dreams to Reality", in *Origins*, 20 (1990-1991), p. 289 (hereafter cited as WEAKLAND): Weakland's perspective is that the Church needed renewal and it had also to accept the fact that the world had changed. Some (Weakland does not identify the "who" of the "some") in the Church considered this thinking problematic as it was tantamount to admitting a mistake and it was a "public" acknowledgement of such by the Church.

<sup>5</sup>See WEAKLAND, p. 289. The Church would no longer be considered a perfect society but one that is in the process of "becoming". See D. J. BOSCH, *Transforming Mission*, Maryknoll, New York, Orbis Books, 1991, p. 422 (hereafter cited as BOSCH): Reflecting on Friedrich Schleiermacher (1768-1834), "The Christian church is always in the process of becoming; the church of the present is both the product of the past and the seed of the future."

<sup>6</sup>G. ALBERIGO, "The Christian Situation After Vatican II", in *The Reception of Vatican II*, G. Alberigo et al. eds., Washington, DC, The Catholic University of America Press, 1987, pp. 1-2 (hereafter cited as ALBERIGO).

setting a direction, albeit a general one, for the future.<sup>7</sup> This was a Council that dealt with Church reform and renewal, notwithstanding the initial hesitancy of the Fathers to consider a new understanding of the Church's apostolic mission until it became apparent that this was what most of them were actually seeking.<sup>8</sup> Previously, they rarely shared their views with one another even in their own countries, but the large number of Council Fathers gathered from all over the world forced countrymen to seek out one another for the purpose of discussion and support. These discussions created bonds and provided a venue for voicing concerns and gaining understanding.

## 1.2 INFLUENCE OF SCHOLARS

Scholars such as Henri de Lubac, Yves Congar, Karl Rahner, Hans Kung, and Edward Schillebeeckx,<sup>9</sup> to name a few, were experts at the Council or consultors to individual bishops.<sup>10</sup> They proceeded to influence the intellectual

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<sup>7</sup>See M. FAHEY, "Commentary on the Dogmatic Constitution on the Church, *Lumen Gentium*", in *The Church Renewed, The Documents of Vatican II Reconsidered*, G. Schner, ed., Lanham, MD, University Press, 1986, p.13. Vatican II in a sense legitimized what was already occurring in the Church. Liturgies and theologies were being developed peripherally within monastic and scholarly groups and in some pastoral settings. See WEAKLAND, p. 290: he concedes that liturgical reform should have been better left for a later moment during the Council as the people were not properly prepared to adjust to it. Liturgical reform called for a communal element that was in stark contrast to the then experience of the Church membership who were involved mainly in personal pious practices. We would also state that the expectations of some of the Church membership for continued tumultuous changes failed to materialize.

<sup>8</sup>Re: E. SCHILLEBEECKX, *Vatican II, A Struggle of Minds and Other Essays*, Dublin, M.H. Gill and Son Ltd., 1963, p. 7.

<sup>9</sup>See J. RATZINGER, "The Ecclesiology of Vatican II", in *Origins*, 15 (1985-1986), pp. 371-374.

<sup>10</sup>See G. ALBERIGO, editor, J. KOMONCHAK, editor of English translation, *History of Vatican II*, Maryknoll, Orbis, 1995, Vol. I, pp. 458-462, (hereafter cited as ALBERIGO/KOMONCHAK).

climate of the Council and, through their conferences and lectures in Rome, helped to update some of the Fathers on the latest views relating to the nature of the Church, Catholic social teaching, population explosion, potentialities of increased ecumenical activity, etc.<sup>11</sup> For instance, Y. Congar brought forward the idea of the Church remaining the same in its evangelical substance, but not being a Church of yesterday in a world of today and tomorrow.<sup>12</sup> Many of the Fathers took advantage of the opportunity to update themselves and were able to participate more constructively in the work of the Council.

The familiarity with some of the preconciliar concepts allowed these to be handled with some degree of comparative ease. However, when an attempt was made to move beyond the limits of these concepts, numerous disagreements set in, mainly because there was not adequate time or information available to handle them effectively, nor were cultural differences always given appropriate consideration.<sup>13</sup> The members of the Council worked with tensions which were still unresolved, such as certain trends which had been developing slowly and quietly, but with suspicion, from 1930 to 1960 and also tensions developed by holding the Council itself.<sup>14</sup> John XXIII gave much latitude to the Council, but as befall people who have been freed of restraints, there was initially a level of fear of the freedom as well as a wariness of the saviour. The bishops present had no prior expectation of freely expressing themselves at this Council.<sup>15</sup> Rather, their expectation was that it would be a repetition of the dynamics of Vatican I where the permission to express oneself

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<sup>11</sup>See G. BULL, *Vatican Politics, At The Second Vatican Council 1962-5*, London, Oxford University Press, 1966, pp.100-101 (hereafter cited as G. BULL).

<sup>12</sup>Re: ALBERIGO/ KOMONCHAK, p. 459.

<sup>13</sup>See ALBERIGO, p. 11.

<sup>14</sup>See ALBERIGO, p. 11.

<sup>15</sup>A large number of bishops anticipated that the Council would last no longer than three or four months.

freely, participate in setting the agenda, and selecting commission members was not allowed.

### **1.3 INTERPRETATION OF THE COUNCIL DOCUMENTS**

The interpretation of the Council documents has caused some degree of concern. At times it is based on pre-conciliar concepts and at other times on conciliar principles. This difficulty stems from the dualism of the Council as it attempted to bring renewal to the Church while retaining continuity, a process which required compromise.

Special attention must be paid here to the method the Council used in linking two concerns: renewal of the Church and preservation of continuity. The method is essentially that of juxtaposition: alongside a doctrine or thesis couched in preconciliar language is set a doctrine or thesis that formulates some complementary aspect. Here are three examples. In the "Constitution on Revelation" the theses on the unity of revelation and on the magisterium's mission of serving the word of God are set alongside the Tridentine thesis on scripture and tradition. In the "Constitution on the Church" the thesis of Vatican I on the primacy of the pope is followed by the thesis on the equally supreme authority of the episcopal college. In the "Decree on Ecumenism" the thesis on the truth of the Catholic Church stands side by side with the thesis on the elements of truth in the other churches.<sup>16</sup>

This method of juxtaposition represents progress as the older thesis is complemented and thus relativized and, at the same time, directions are presented for development in understanding of the faith, leaving the needed synthesis to the

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<sup>16</sup>H. POTTMEYER, "A New Phase in the Reception of Vatican II", in *The Reception of Vatican II*, G. Alberigo et al. eds., Washington, D.C., The Catholic University of America Press, 1987, p. 37 (hereafter cited as POTTMEYER).

Church and the theologians.<sup>17</sup> This method allowed for “conservative” and “progressive” concepts to share the same document but it also created a problem of selective interpretation. On this issue, H. Pottmeyer writes:

I am referring to the selective interpretation, “conservative” or “progressive,” depending on the viewpoint of the interpreter, that seizes upon one thesis in a pair without attending to the other and incorporates it into a given line of argument. As a result, the conciliar battles between majority and minority, which the Council brought to an end by its method of juxtaposition, are still being fought. Fidelity to the Council requires that both juxtaposed theses be taken seriously and that an attempt be made through more penetrating theological reflection and a renewed ecclesial praxis to reconcile them in a synthesis that will allow further advances.<sup>18</sup>

It must be recognized that certain elements in Church leadership today seemingly tend once again towards the “conservative” thesis in their interpretation of the Vatican II documents, with the similar preconciliar action of marginalizing those who are not in step.<sup>19</sup> The terms “conservative” and “progressive” can be clarified:

The differences in theological attitude reflect two kinds of temperament. The conservative tends to emphasize the Church’s possession of the whole truth as expressed in set formulae, is unwilling to countenance the idea of the development of doctrine, emphasizes the unity rather than the diversity of the Church, takes his stand on the dogmatic definitions of Trent and Vatican I, and often tends, because of the identification of scholasticism at its best with a particular historical period, to look to the past, namely, to the intellectual synthesis achieved in the thirteenth century for the measure of the present. (At its most defensive, the attitude of the

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<sup>17</sup>See POTTMEYER, p. 38.

<sup>18</sup>POTTMYER, p. 39.

<sup>19</sup>See ALBERIGO, p. 22.

conservative theologian is that of St. Leo, who in the fifth century had asked, as did many Catholics during Vatican II: 'To seek what has already been found, to re-open discussion on what has already been defined, is this not to be ungrateful for the truth which has been acquired?')

The other theological temperament stresses the inadequacy of human language as an expression of the truth, accepts that the Church's definitions are unalterable but believes they are capable of fresh expression and more profound understanding.<sup>20</sup>

Selective interpretation and theological attitudes are not new to the Church or for that matter to any other institution, but it is incumbent to keep in mind that they do exist. For instance, Cardinal Joseph Ratzinger has indicated that the true tradition of the Church is the Vatican Council and that we must remain faithful to the today of the Church which is the Council, not the yesterday or tomorrow of the Church.<sup>21</sup> He goes on to speak of achieving a balance by returning to the authentic texts of the Council, but fails to mention that the authentic texts were in need of interpretation; nor does he indicate the methodology to be used in such interpretation.<sup>22</sup> This can be problematic and confusing.

In spite of the difficulties, it was indeed most beneficial that the Second Vatican Council was convoked. It created a new benchmark for the Church, which

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<sup>20</sup>G. BULL, *Vatican Politics at the Second Vatican Council*, p. 27. See T. J. GREEN, "Persons and Structures in the Church: Reflections on Selected Issues in Book II", in *The Jurist*, 45 (1985) p. 32 (hereafter cited as GREEN): "A major tension at Vatican II was the contrast between a "juridical ecclesiology" which understood the Church in terms drawn significantly from civil political theory (so-called "perfect society" ecclesiology focussing significantly on papal monarchy) and an "ecclesiology of communion" which reflected an ancient Christian perception of the Church as a "communion". Elements of both ecclesiologies can be found in the conciliar documents, and not surprisingly influenced the code revision process as well."

<sup>21</sup>Re: J. RATZINGER, *The Ratzinger Report, An Exclusive Interview on the State of the Church*, San Francisco, Ignatius Press, 1985, p. 31.

<sup>22</sup>See, H. KÜNG, et al., ed., *The Church in Anguish, Has the Vatican Betrayed Vatican II*, San Francisco, Harper & Row, Publishers, 1986, pp. 62-65.

was vital. Nevertheless, the Council did not present a well constructed treatise, but it did build a platform with many jumping-off stations. If we recognize the potential difficulties in interpreting the Vatican II documents, we can understand the problem of attempting to define a notion such as "apostolic mission" or any other theme developed by the Fathers. However, in arriving at an interpretation, one is required to take into consideration the "whole" rather than the "part", if the interpretation is to be authentic and balanced.

## **2. THE CONCEPT OF APOSTOLIC MISSION IN VATICAN II**

### **2.1 PRECONCILIAR CONCEPTS OF APOSTOLIC MISSION**

There are many writings concerning the Second Vatican Council and just as many understandings and interpretations of the Council. The existence of both official and unofficial interpretations is to be expected. The ideas presented at the Council were not always new nor always original, but were being practiced and discussed in various areas of the Church during the period leading up to Vatican II.

Some of the works developed prior to the Council give an idea of the existing concepts and the way they were interpreted. For instance, P. D'Souza, in his study of the apostolic mission,<sup>23</sup> indicated that God realises his plan to divinise humanity

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<sup>23</sup>See BOSCH, p. 1: "Since the 1950s there has been remarkable escalation in the use of the word "mission" among Christians. [...] Until the 1950s "mission", even if not used in a univocal sense, it had a fairly circumscribed set of meanings. It referred to (a) the sending of missionaries to a designated territory, (b) the activities undertaken by such missionaries, (c) the geographical area where the missionaries were active, (d) the agency which despatched the missionaries, (e) the non-Christian world or mission "field", or (f) the center from which the missionaries operated on the mission"field". In a slightly different context it could also refer to (g) a local congregation without a resident minister and still dependent on the support of an older, established church, or (h) a series

through Christ and that if apostolic mission is used for the same end by God, it must have an intimate relation with Christ.<sup>24</sup> Christ entrusted his mission to human beings to actualize it completely and this becomes the source of all apostolic missions.<sup>25</sup> This study is representative of the thinking on the apostolic mission in the period immediately prior to Vatican II: apostolic mission is the work of God and the manifestation of God's plan.<sup>26</sup> The function of the apostle, then, is to announce a message, to reveal an unknown at the command of God. Every Christian, because he/she is a Christian, is called to be an apostle to the degree that he/she is a member of the Mystical Body,<sup>27</sup> whether a cleric, religious or a lay person.

According to D'Souza, there are various forms of the apostolic mission, such

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of special services intended to deepen or spread the Christian faith, usually in a nominally Christian environment. If we attempt a more specifically theological synopsis of "mission" as the concept has traditionally been used, we note that it has been paraphrased as (a) propagation of the faith, (b) expansion of the reign of God, (c) conversion of the heathen, and (d) the founding of new churches." However, Bosch goes on to say these connotations are fairly recent origins since up until the 16<sup>th</sup> century it was used in reference to the sending of the Son by the Father and the sending of the Holy Spirit by the Father and the Son. The Jesuits were the first to use it in the context of the spread of the Christian faith among the people who were not Catholic, the colonial expansion. BOSCH, pp.1-2: Bosch goes on to say, "The term "mission" presupposes a sender, a person or persons sent by the sender, those to whom one is sent, and an assignment. The entire terminology thus presumes that the one who sends has the authority to do so. Often it was argued that the real sender was God who had indisputable authority to decree that people be sent to execute his will. In practice, however, the authority was understood to be vested in the church or in a mission society, or even in a Christian potentate. In Roman Catholic missions, in particular, juridical authority remained, for a long time, the constitutive element for the legitimacy of the missionary enterprise. It was part of this entire approach to view mission in terms of expansion, occupation of fields, the conquest of other religions, and the like." This was modified during the 20<sup>th</sup> century.

<sup>24</sup>Re: P. D'SOUZA, *Apostolate, Its Significance in God's Design*, Dissertation, Pontifical Urban University de Propaganda Fide, Rome, Ajmer, St. Anselm's Press, 1957, p. 34 (hereafter cited as D'SOUZA). D'Souza's thinking appears to be representative of the developing concepts of "mission" prior to Vatican II, which general understanding coupled with Y. Congar's influence generated a developing ecclesiology. We realize that D'Souza's views were not the only ones present at the time but they appear to be progressively middle of the road.

<sup>25</sup>See D'SOUZA, p. 34.

<sup>26</sup>See D'SOUZA, p. 173.

<sup>27</sup>Re: D'SOUZA p. 176.

as the apostolic mission in missionary countries and that which occurs in Catholic countries. The one establishes the Church and works to win non-Catholics to it.<sup>28</sup> The other seeks to intensify the relationship with Christ.<sup>29</sup> Both are doing God's work.

The notions of the apostolic mission of the laity and the apostolic mission of the hierarchy are mentioned as coming into existence around 1935, with the apostolic mission of the hierarchy seen as an integral part of the life of the Church (Faith, sacraments and hierarchy).<sup>30</sup> Not surprisingly, then, the concepts of lay initiative and Catholic Action<sup>31</sup> were treated in a manner which exposed the tensions

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<sup>28</sup>See BOSCH, p. 344: "The Western missionary enterprise of the late eighteenth century to the twentieth century remained, in spite of valid criticism which may be aimed at it, a most remarkable exercise. [...] The entire phenomenon, in all its ramifications, was a child of Christianity and, given the overall constellation of facts and events, truly inevitable. Within the ambience of the movement Western Christians, in their emerging relationship with people of other cultures, did the only thing that made sense to them, they brought them the gospel as they understood it."

<sup>29</sup>See BOSCH, p. 369-370: Protestant thinking regarding church and mission can be seen in the mission conferences: "In Edinburgh (1910), a major concern was the absence of missionary enthusiasm in the churches of the West; the theological question of the relationship between church and mission was hardly touched. At the Jerusalem Conference of the IMC (1928), however, the relationship between "older" and "younger" churches received a considerable amount of attention and became a prominent issue, even if the subdivision of the world into two geographical areas, the one Christian, and the other "non-Christian", remained unchallenged. Tambaram (1938) discussed the relationships between the church and mission as well as between "older and younger" churches in a more theological manner. The distinction between Christian and non-Christian countries was in principle abandoned. This meant that Europe and North America, too, had to be regarded as mission fields." There was a passage in a shift from a church-centered mission to a mission-centered church. Further development moved the thinking to God's salvific work preceding both church and mission. The mission of God institutes the mission of the church. In this manner the church changes from the sender to the one sent.

<sup>30</sup>Re: D'SOUZA, p. 179.

<sup>31</sup>The concept of Catholic Action was in continual development since the First Vatican Council, although the term itself was first used by Pope St. Pius X. Pius XI later gave it a restricted definition as a participation of the laity in the work of the hierarchy of the Church. Many bodies of Catholic Action were being formed but without mandate of the competent authority and this caused concern. See J. NEWMAN, *What is Catholic Action?*, Dublin, M.H. Gill and Son LTD., 1958, pp. 38-39 (hereafter cited as NEWMAN); See POPE PIUS XI, Letter, *Quae Nobis*, 12 November 1928 in *Acta Apostolicae Sedis (=AAS)*, 20 (1928), pp.384-387, here at p. 385; See also, POPE PIUS XI, Encyclical, *Ubi arcano*, 23 December 1922 in AAS, 14 (1922), pp. 673-700.

between laity and hierarchy. However, submission to the hierarchy did not mean that private initiative was prohibited to the laity relative to engaging in the apostolate.<sup>32</sup> No matter what the tensions are, it is necessary to keep in mind that all the apostolic missions basically have the mission of Christ as their purpose and goal. D'Souza completed his thesis with the following:

4. Christian apostolate, therefore, considered in the subject, is the delegation made by God through Christ to the Church to vivify and unify mankind and through men all human values, thus to realise fully the purpose of Incarnation and Redemption.

5. Considered in its "mission and its final realisation" apostolate is the full realisation of the divine plan to vivify man and through man all temporal values, by the Church through her members each according to his rank and function in the Church. It is the active continuation by the Church of the Redemptive work of Christ, to lead in Christ, mankind and human values, to God.<sup>33</sup>

D'Souza's dissertation presented a microcosm of Church thinking, both official and unofficial, at the time Vatican II was convoked. He pointed out the tensions which had been developing regarding lay apostolic mission (Catholic Action) and hierarchy, and these were carried over into Vatican II. The practice that any initiative taken by the laity must be approved by the hierarchy, if it is to be given proper recognition, was and continued to be a source of tension. Needless to say, there existed a number of lay initiatives, which had probably never been submitted for anyone's approval. A definition of Catholic Action given in 1936 indicates a movement guided by the hierarchy, carried out by the members of the Church, and encompassing the whole Church in an organized apostolate, including the laity who participate in the hierarchical apostolate for the purpose of christianizing all

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<sup>32</sup>See D'SOUZA, p. 181.

<sup>33</sup>D'SOUZA, p. 199.

humanity.<sup>34</sup> The fact that Catholic action was the initiative of the laity was given some emphasis in the Council.

## **2.2 CONCILIAR TEACHINGS ON THE GENERAL APOSTOLIC MISSION**

The Fathers of Vatican II present a general view of Church and its mission when they say:

Henceforward the Church, endowed with the gifts of her founder and faithfully observing his precepts of charity, humility and self-denial, receives the mission of proclaiming and establishing among all peoples the kingdom of Christ and of God, and she is, on earth, the seed and the beginning of that kingdom. While she slowly grows to maturity, the Church longs for the completed kingdom and, with all her strength, hopes and desires to be united in glory with her king.<sup>35</sup>

The Church is presented here as a growing Church, one which has not arrived, and which is not yet fully united to its Creator. This Vatican II concept changed the manner in which the Church had viewed itself since the Council of Trent and

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<sup>34</sup>Re: J. WILL, *Catholic Action Handbook*, Translated by K. Hennrich, New York, Joseph F. Wagner, 1936, p. 3. Though the term was not yet coined, we sense a degree of "contextualization" of "mission" in Vatican II. See BOSCH, p. 421: "Contextualization would be "namely that the missionary message of the Christian church incarnated itself in the life and world of those who had embraced it."

<sup>35</sup>SECOND VATICAN COUNCIL [Second Vatican Council], Dogmatic Constitution on the Church, *Lumen Gentium*, (=LG), 21 November 1964, in AAS, 57 (1965), pp. 5-89, here at no. 5, p. 8: English translation in FLANNERY, (gen. ed.), *Documents of Vatican II: The Conciliar and Post conciliar Documents*, Grand Rapids MI, William B. Eerdmans Publishing Co., Vol. I, 1982, pp. 350-426, here at p. 353. See BOSCH, p. 371: "Contributions of French theologians such as Yves Congar [...] became catalytic in opening the way toward a fundamentally new understanding of church and mission. Of primary importance in this regard was a new interest in the New Testament and, more particularly, the Pauline view of the church."

presented a future direction which was more open to growth. This newly defined mission is the basis of the apostolic mission.<sup>36</sup>

The Church is called to save and renew all persons so that everything would be restored in Christ and, in Him, we might form one people of God.<sup>37</sup> The Church on earth has its origin in the mission of the Son of God and the Holy Spirit, and in a continuous calling of the Father to share His life.<sup>38</sup> The Church is obliged to proclaim to all the faith and salvation derived from Christ so as to fulfill the express command given to the Apostles and passed down through the bishops. This is the reason for the life Christ infuses into his members.<sup>39</sup>

The mission of the Church is carried out by means of that activity through which in obedience to Christ's command and moved by the grace and love of the Holy Spirit, the Church makes itself fully

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<sup>36</sup>See BOSCH, p. 366: "The thesis of this study is that, in the field of religion, a paradigm shift always means both continuity and change, both faithfulness to the past and boldness to engage the future, both constancy and contingency, both tradition and transformation." See BOSCH, p. 367: "In the case of each paradigm change reviewed so far, there remained a creative tension between the new and the old. The agenda was always, consciously or unconsciously, one of reform, not of replacement. [...] in light of a fundamentally new situation and precisely so as to remain faithful to the true nature of mission, mission must be understood and undertaken in a imaginatively new manner today. In the words of John XXIII, spoken in 1963, shortly before his death, "Today's world, the needs made plain in the last fifty years, and a deeper understanding of doctrine have brought us to a new situation [...] It is not that the Gospel has changed; it is that we have begun to understand it better."

<sup>37</sup>SECOND VATICAN COUNCIL, Decree On the Church's Missionary Activity, *Ad Gentes Divinitus*, (=AG), 7 December 1965, in *AAS*, 58 (1966) pp. 947-990, here at no.1, p. 947; English translation in FLANNERY, pp. 813-856, here at p. 813.

<sup>38</sup>Re: AG, no. 2, p. 948; FLANNERY, p. 814. See BOSCH, pp. 371-372: "[..].the real breakthrough in respect to mission occurred not in the missionary decree but in *Lumen Gentium*. Right at the outset, LG dissociates itself from traditional ecclesiology. The church is no longer described as a societal entity on a par with other societal structures like the state, but as a mystery of God's presence in the world, "in the nature of" a sacrament, sign and instrument of community with god and unity among people. [...] LG's ecclesiology is missionary through and through."

<sup>39</sup>Re: AG, no. 5, pp. 951-952; FLANNERY, pp. 817-818. See BOSCH, p 377: the church needs to be continuously aware of its provisional nature; it is not the kingdom of God on earth but is the sign and instrument of the reign of God.

present to all men and peoples in order to lead them to the faith, freedom and peace of Christ by the example of its life and teaching, by the sacraments and other means of grace. Its aim is to open up for all men a free and sure path to full participation in the mystery of Christ.<sup>40</sup>

The Council Fathers go on to point out the ministries that are required:

Various types of ministry are necessary for the implanting and growth of the Christian Community, and once these forms of service have been called forth from the body of the faithful, by the divine call, they are to be carefully fostered and nurtured by all. Among these functions are those of priests, deacons and catechists, and also that of Catholic Action. Brothers and nuns, likewise, play an indispensable role implanting and strengthening the kingdom of Christ in souls, and in the work of further extending it, both by their prayers and active work.<sup>41</sup>

A definition of "apostolic mission", based on the mission of the Church, and given by the Fathers of Vatican II, reflects the preconciliar aspects<sup>42</sup> that have been mentioned in the consideration of D'Souza's position:

The Church was founded to spread the kingdom of Christ over all the earth for the glory of God the Father, to make all men partakers in the redemption and salvation, and through them to establish the right relationship of the entire world to Christ. Every activity of the Mystical Body with this in view goes by the name of "apostolate", the

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<sup>40</sup>AG, no. 5, p. 952; FLANNERY, p. 818. See BOSCH, p. 372: Vatican II exhibits a concentration of Catholic and Protestant views regarding the missionary nature of the Church. It is suggested that there are seven metaphorical expressions of church: church as "sacrament of salvation", "assembly of God", "people of God", "kingdom of God", "Body of Christ", "temple of the Holy Spirit", and "community of the faithful".

<sup>41</sup>AG, no.15, p. 965; FLANNERY, p. 831. It is interesting to note that "brothers" and "nuns" are mentioned here specifically. In "Apostolicam Actuositatem" the religious were excluded.

<sup>42</sup>See BOSCH, p. 373: The notion of "church" as the "people of God" (pilgrim church) has been promoted by Yves Congar since 1937 but was not looked upon with any favor by the hierarchy. As a "pilgrim church" it is continuously on the move.

Church exercises it through all its members, though in various ways. In fact, the Christian vocation is, of its nature, a vocation to the apostolate as well.<sup>43</sup>

In this descriptive definition, the understanding of the term "apostolate" extends to all the members of the Church, but applies to them in different ways, as can be noted in the various constitutions and decrees of the Council. For example,

though they differ essentially and not only in degree, the common priesthood of the faithful and the ministerial or hierarchical priesthood are none the less ordered to one another, each in its own proper way shares in the one priesthood of Christ.<sup>44</sup>

There is also the sharing of the special graces given by the Holy Spirit among the faithful of every rank which makes them fit and ready to undertake various tasks and offices for the renewal and building up of the Church.<sup>45</sup> Wherever Christians live they have an obligation by the example of their lives and the witness of the word to show to others the new person they put on in Baptism and to reveal the power of the Holy Spirit which strengthened them at Confirmation so that others in seeing them and their works will give honour to the Father.<sup>46</sup> The Council presented its

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<sup>43</sup>SECOND VATICAN COUNCIL, Decree On the Apostolate of Lay People, *Apostolicam Actuositatem*, 18 November 1965 (=AAS), in AAS, 58 (1966), pp. 837-864, here at no. 2, p. 838: English translation in FLANNERY pp. 766-798, here at pp. 767-768. See BOSCH, p. 397: "Catholic missionary thinking on salvation paralleled that of Protestantism, particularly after Pope John XXIII announced the Second Vatican Council in 1959. As in Protestantism, it was believed that salvation could not be defined only in "religious" (or ecclesial) terms but also in terms of what happened elsewhere." See also BOSCH, p. 400: "Those who know that God will one day wipe away all tears will not accept with resignation the tears of those who suffer and are oppressed now. Anyone who knows that one day there will be no more disease can and must actively anticipate the conquest of disease in individuals and society now. And anyone who believes that the enemy of God and humans will be vanquished will already oppose him now in his machinations in family and society. For all of this has to do with salvation."

<sup>44</sup>LG, no. 10, p.14; FLANNERY, no.10, p. 361.

<sup>45</sup>Re: LG, no. 12, pp.16-17; FLANNERY, no.12, p. 363.

<sup>46</sup>Re: AG, no.11, pp. 959-960; FLANNERY, p. 825.

expectations for each 'rank' of the faithful, for clerics, religious and lay persons. It wished for the apostolate to be presented as one, rather than many divided amongst the various groups. The Council in effect represented the apostolic mission reflected in D'Souza of hierarchy and laity, albeit in different words. However, it did not accord separate consideration to juridic personalities; we will, nevertheless, provide some explanation of what they did consider, thus setting the task for what will follow.

## **II. SPECIFIC TEACHINGS ON APOSTOLIC MISSIONS IN VATICAN II**

### **1. TEACHING ON THE SPECIFIC APOSTOLIC MISSION OF CLERICS, RELIGIOUS AND LAITY**

The Fathers of the Council, as was indicated, did not expound on the apostolic mission of specific juridic personalities in the Church such as the diocese, parish, religious institute, schools or healthcare or other juridic personalities. They gave consideration to people such as clergy, laity and religious, who were members of these juridic personalities or administered them. However, within the duties and expectations of each group we find the expectations for juridic persons so that in speaking of clerics, laity or religious, we are speaking also of diocese, parish, religious institute or association in as much as all three groups participate with, interact with, or give substance to the juridic personalities.

### **1.1 THE APOSTOLIC MISSION OF BISHOPS**

The Apostles had the intention of formally transmitting their office and their mission.<sup>47</sup> The bishops are designated by the Holy Spirit to take the place of the Apostles, as pastors<sup>48</sup> of souls and, with the Supreme Pontiff and subject to his authority, are to carry on the work of Christ.<sup>49</sup> The Papacy was the primary agenda item of Vatican Council I which was concerned with the bishop's relation with his own diocese and subjection to the Roman Pontiff.<sup>50</sup>

In the interim period between Vatican I and Vatican II, an awareness developed that the papacy and the episcopacy lacked a certain degree of balance, especially in regard to collegiality.<sup>51</sup> The Bishops at the Council were concerned with regaining some of the powers which would assist them in more effective ministry to their particular churches.<sup>52</sup> Paul VI, responding to this need, issued the

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<sup>47</sup>Re: LG, no. 20, pp. 23-24; FLANNERY, pp. 371-372. See H. VORGRIMLER, (gen. ed.) *Commentary on the Documents of Vatican II*, Vol. II, Montreal, Palm Publishers, 1967-1969, pp. 190-193 (hereafter cited as VORGRIMLER, *Commentary on the Documents of Vatican II*, Vol. II). A number of questions are brought up here regarding divine right, apostolic succession and the reasoning of the Council document. Bishops are the Pastors of the Church and are able to bind in conscience.

<sup>48</sup>See VORGRIMLER, *Commentary on the Documents of Vatican II*, Vol. II, pp. 199-200 ): for an explanation of the use of the term "pastor" in the Decree on the Bishop's Pastoral Office.

<sup>49</sup>Re: SECOND VATICAN COUNCIL, Decree on the Pastoral Office of Bishops in the Church, *Christus Dominus* (=CD), 28 October 1965, in AAS, 58 (1966) pp. 673-701, here at no. 2, p. 674: English translation in FLANNERY, pp. 564-610, here at p. 564.

<sup>50</sup>Re: J. HENNESEY, "Vatican Council I", in *New Catholic Encyclopedia*, Vol. XIV, 1967, p. 560. See S. DONLON, "Bishop" (in the Church), in *New Catholic Encyclopedia*, Vol. II, 1967, p. 589.

<sup>51</sup>Re: VORGRIMLER, *Commentary on the Documents of Vatican II*, Vol. II, 1967, p. 201.

<sup>52</sup>See WEAKLAND, p. 290. He indicates that Vatican Council II balanced the concepts of Vatican Council I on the role of the pope with an extended theology of the role of the bishop as well as the role of the particular and local churches. This reflected the theology of St. Ignatius of Antioch and it was hoped that it would help bring about a closer link with the Orthodox churches.

motu proprio, *Pastorale Munus*,<sup>53</sup> on November 30, 1963 which extended certain powers and privileges to diocesan bishops. This action allowed them to handle many matters themselves without first submitting them to the Holy See, as had often been the previous practice.<sup>54</sup>

Bishops are members of the episcopal college and have the right to take part in the ecumenical council in union with the Roman Pontiff.<sup>55</sup> In their quest to carry out the mission of the Church, they sought to maintain a closer relationship with the Pope in order to demonstrate a more visible sharing in their responsibility for the Church.<sup>56</sup> Paul VI responded to this wish by establishing the Synod of Bishops.<sup>57</sup> This Synod is essentially an advisory body, subject to the Pope and it comes into existence when called by him with an ability to make decisions if so empowered. Originally, the idea of the Synod as it was presented was acceptable in as much as it was offered within the context of the extension of powers of the individual bishops in their dioceses who focussed on the immediate acquisition of those powers. This was short lived, however, as actual experience revealed the limitations imposed on the bishops in subsequent synods. A Synod scheduled for October 2001 will address the "Role of Bishops".

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<sup>53</sup>See POPE PAUL VI, motu proprio, *Pastorale Munus*, 30 November 1963 in AAS, 56 (1964), pp. 4-12.

<sup>54</sup>Re: VORGRIMLER, *Commentary on the Documents of Vatican II*, Vol. II, p. 184. It could be noted that sometimes bishops had quinquennial faculties allowing them to function but these were delegated, not part of their office.

<sup>55</sup>Re: CD, no.4, p. 675; FLANNERY, p. 565. VORGRIMLER, *Commentary on the Documents of Vatican II*, Vol. II, p. 201. See S. DONLON, "Bishops" (in the Church), in *New Catholic Encyclopedia*, Vol. II, 1967, p. 589.

<sup>56</sup>See VORGRIMLER, *Commentary on the Documents of Vatican II*, Vol. II, p. 203.

<sup>57</sup>Re: POPE PAUL VI, motu proprio, *Apostolica sollicitudo*, 15 September 1965, in AAS, 57 (1965), pp. 775-780. Pope Paul VI's strategy was to prevent an open discussion on episcopal and papal authority which could take precious time and threaten papal authority. If the Council Fathers had stayed their course events might have taken a different turn.

**1.2 RESPONSIBILITY OF BISHOPS FOR APOSTOLIC MISSION**

The bishops, in as much as they are the successors of the apostles, receive from the Lord, to whom all power is given in heaven and on earth, the mission of teaching all peoples, and of preaching the Gospel to every creature, so that all men may attain to salvation through faith, baptism and the observance of the commandments (cf. Mt. 28:18; Mk. 16:15-16; Acts 26:17 f.). For the carrying out of this mission Christ promised the Holy Spirit to the apostles and sent him from heaven on the day of Pentecost, so that through his power they might be witnesses to him in the remotest parts of the earth, before nations and peoples and kings (cf. Acts 1:8; 2:1 ff; 9:15).<sup>58</sup>

The Bishops have many responsibilities in their mission of presiding over the particular Church. However, the Council Fathers in reflecting the spirit of Trent indicate that, of all the duties of bishops, the preaching of the Gospel has pride of place.<sup>59</sup> The Bishop has universal responsibility for the care of the people within his diocese. It is his charge to maintain general oversight of all apostolic missions that are operational within his area whether they be diocesan, religious or lay, in as much as the fundamental reason for their existence is to assist the particular church. The bishop's activity is the primary apostolic mission in his diocese and all other apostolic missions are coordinated through it. He is to encourage various forms of the apostolic mission adapted to current needs and, beside the clergy and religious serving in the diocese, the laity are to be encouraged to exercise their right to participate in these activities.

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<sup>58</sup>LG, no. 24, p. 29; FLANNERY, p. 378.

<sup>59</sup>Re: LG, no. 25, p. 29; FLANNERY, p. 379.

**1.3 THE APOSTOLATE OF PRIESTS**

Through the sacred ordination and mission which they receive from the bishops, priests are promoted to the service of Christ the Teacher, Priest and King; they are given a share in his ministry, through which the Church here on earth is being ceaselessly built up into the People of God, Christ's Body and the temple of the Spirit.<sup>60</sup>

Priests share in the mission and ministry of the bishops in their own way. As such, it is their first task to preach the Gospel of God to everyone in such a way that it applies to the concrete circumstances of life and fosters his sacramental ministry.<sup>61</sup> The priest is consecrated by God through the ministry of the bishop for the purpose of sharing in Christ's priesthood and, in the liturgy, to function as his minister through His Spirit for the benefit of all.<sup>62</sup> The ministries and works of the apostolate are bound up with the Eucharist in which is contained the whole spiritual good of the Church, namely, Christ Himself; it is the center of the assembly of the faithful over which the priest presides.<sup>63</sup>

Priests whose duties are trans-parochial are often in a better position to collaborate more closely with the bishop, especially in schools or in other institutions or associations.<sup>64</sup> Parish priests collaborate with the bishop in the area of the diocese assigned to them and, in carrying out their apostolic mission, are to see to it that the people entrusted to their care feel themselves as truly part of the diocese

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<sup>60</sup>SECOND VATICAN COUNCIL, Decree on the Ministry and Life of Priests, *Presbyterorum Ordinis*, (=PO), 7 December 1965, AAS, 58 (1966), pp. 991-1024, here at no.1, p. 991; English translation in FLANNERY, pp. 863-902, here at p. 863.

<sup>61</sup>Re: PO, no.4, pp. 995-997; FLANNERY, pp. 868-870.

<sup>62</sup>Re: PO, no. 5, p. 997; FLANNERY, p. 870. LG, no. 28, pp. 33-34; FLANNERY, p. 384.

<sup>63</sup>Re: PO, no. 5, p. 997; FLANNERY, p. 871.

<sup>64</sup>Re: CD, no. 29, pp. 687-688; FLANNERY, pp. 580-581.

and of the Church as a whole.<sup>65</sup> The priest, as a collaborator of the bishop, has the pastoral responsibility to care for the spiritual needs of the faithful.

#### **1.4 PRESBYTERATE AND EPISCOPACY**

The presbyterate was seen, from the Middle Ages until Vatican II, as the foundation of the priestly order. However, the Fathers of the Second Vatican Council saw the episcopate as foundational and the presbyterate as a participation in it.<sup>66</sup> The apostolic mission of the presbyter is enmeshed in that of the episcopate. In so far as the bishop continues the mission of Christ, so the priest participates in that apostolic mission. The Council Fathers sought to present the presbyter as teacher, servant, and spiritual leader of the faith community, leading and developing spiritual growth through preaching and the sacraments, especially the Eucharist.

The ambiguity of the presbyterate became somewhat more pronounced in the Council.<sup>67</sup> The emphasis on the cultic was not removed and in so far as this is true, the apostolic mission of the presbyterate is cloudy because its existence is participatory in the mission and apostolic mission of the episcopate.<sup>68</sup> The Council

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<sup>65</sup>Re: CD, no. 30, p. 688; FLANNERY, p. 581.

<sup>66</sup>See VORGRIMLER, *Commentary on the Documents of Vatican II*, Vol. IV, p. 224. See B. PENNINGTON, *Vatican II, We've Only Just Begun*, New York, The Crossroad Publishing Company, 1994, p. 35 (hereafter cited as PENNINGTON).

<sup>67</sup>See WEAKLAND, p. 290: "The role of the Priest was poorly developed so that between the expanded role of the laity and the exalted sense of the position of the Bishop, the priest gets a bit shortchanged." See BOSCH, p. 468: "The clericalizing of the Church went hand in hand with the sacerdotalizing of the clergy. [...] the term "priest" was not applied to Christian clergy until around the year 200."

<sup>68</sup> Re: PENNINGTON, pp. 72-75. See also WEAKLAND, p. 292: "The priesthood, as mentioned, remains full of ambiguities, and priests have rebelled against being restricted to just the cultic or the therapeutic models. That identity must continue to be worked out in the light of the role

Fathers affirmed that the office of priesthood is viewed in terms of its function and not of its status. In consequence, the entire life of the priest is stamped by his ministry, function and mission.

### **1.5 APOSTOLATE OF THE DEACON**

At the lower level of the hierarchy are to be found deacons, who receive the imposition of hands not for priesthood but for ministry, who are dedicated to the People of God, with the Bishop and his priests, in the service of the Gospel, liturgy and works of charity.<sup>69</sup> When assigned by competent authority, the deacon's function and apostolic mission is to administer Baptism, distribute the Eucharist, assist at marriages, bring Viaticum to the dying, read the sacred scriptures, instruct the people, officiate at funerals and be dedicated to the functions of charity and administration.<sup>70</sup> The Council recommended that the Order of Deacon be restored in the Church from being simply a transitional state, received as a step to priestly ordination, to encompass also a permanent state. The deacon is in direct service to the bishop of the diocese.

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of both bishop and laity." See BOSCH, pp. 467-471: "The movement away from ministry as the monopoly of ordained men, to ministry as the responsibility of the whole people of God, ordained as well as non-ordained, is one of the most dramatic shifts taking place in the church today." Bosch points out that the development of the "sacrament of holy orders" separated the priest from the community and relegated the people to a passive role. Other denominations have experienced tension in this area of ordained ministers, and the extremes of the minister controlling or the congregation controlling, the pastoral roles. It gradually dawned on the Catholic Church as well as the Protestant Churches after W W II that "apostolicity was an attribute of the entire church and that the ordained ministry could be understood only as existing within the community of faith."

<sup>69</sup>Re: LG, no. 29, p. 36; FLANNERY, p. 387.

<sup>70</sup>Re: LG, no. 29, p. 36; FLANNERY, p. 387. Re: PAUL VI, Apostolic Letter Containing the Norms for the Order of Diaconate, *Ad Pascendum*, 15 August 1972, in AAS, 64 (1972), pp. 534-540, here at p. 535; English translation in Flannery, pp. 433-440, here at p. 434.

There is some confusion as to the role of the deacon, for although the specific elements of his apostolate are determined, there has been some difficulty in assimilating him on the parish level. Rather than place emphasis on his liturgical and sacramental duties, it might be advantageous to place emphasis on his function of charity and administration as were his duties in the early church. Essentially, the apostolic mission of the deacon is to assist and work with the episcopate and presbyterate in continuing the mission of Christ in the service of the Christian community.

## **2. RELIGIOUS**

### **2.1 STATUS OF RELIGIOUS IN THE CHURCH**

The Fathers of the Second Vatican Council went to great pains to assert that the state of consecrated life in the Church was not hierarchical in its existence, but was a form of life which some Christians, clerical and lay, are called to by God so that each may contribute in his or her own way to the mission of the Church.<sup>71</sup> The religious state belongs to the Church's life and holiness. In fact, chapter five of the Constitution on the Church, entitled "The Call to Holiness,"<sup>72</sup> was initially part of chapter six on "Religious," and teaches that all Christians, clerics, religious and laity, are called to the fullness of Christian life and the perfection of love; scarcely

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<sup>71</sup>Re: LG, no. 43, pp. 49-50; FLANNERY, pp. 402-403. See WEAKLAND, p. 290: "The treatment of the Council on renewal of religious life was one of the least satisfactory. It could be that the new concept of secular institutes needed a space for growth and the religious life had to be confined to another kind of existence."

<sup>72</sup>See LG, no. 43, pp. 44-49; FLANNERY, pp. 396-402.

mentioning religious, it overlooks the continuity of the two chapters.<sup>73</sup> The Council was attempting several actions: to cultivate the place of the laity in the Church; to bring and connect religious with the world; and to deal with the structures of secular institutes. However, it found it difficult to maintain a balance and cohesiveness in the process, especially with different groups doing the work.<sup>74</sup>

Although not stated forthrightly, personnel or lack of it was (and continues to be) a major problem for the bishops. The priests are their collaborators but there are not sufficient numbers of them to carry out the responsibilities in the Church. Deacons offered promise but had no modern track record as yet. There were still a fair number of religious personnel in the church, but for various reasons their availability and use were limited. The end results hoped for were greater availability and access to religious personnel and their talents, and a better coordination of the work they rendered in the dioceses and in the Church as a whole.

The hierarchy renders its assistance to the religious state of life by its oversight and approval. Therefore, members of institutes directly subject to the Pope are to show respect and obedience towards bishops and in accord with Canon law to promote harmony in the carrying out of apostolic work. The Council gave its support and praise to those who in monasteries, schools, hospitals and missions, give generous service to all.<sup>75</sup>

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<sup>73</sup>Re: G. SCHNER edit. *The Church Renewed, The Documents of Vatican II Reconsidered*, Lanham, M.D., University Press of America, 1986, p. 64.

<sup>74</sup>See P. HANNAN, *The Apostolate of Women Religious in the Particular Church Since the Second Vatican Council, Juridical Relationships with Bishops According to the 1983 Code*, diss. Ottawa, Faculty of Canon Law, Saint Paul University, 1989. This work gives a good review of the concerns of the Bishops in the discussion and preparatory phases during Vatican II regarding religious in all areas of the Church.

<sup>75</sup>Re: LG, no. 46, p. 52; FLANNERY, pp. 406-407. This reference to healthcare is apparently the sole reference to the topic in the Council.

**2.2 RENEWAL OF RELIGIOUS LIFE**

The Council resolved that a renaissance take place within the religious state. It was also deferential to the request of Pope John XXIII that it be positive rather than negative in its work. The bishops opted to present some general principles for the renewal and discipline of religious orders, coupled with a rediscovering of their founding charism.<sup>76</sup> They indicated that religious life is ordered to the following of Christ and an acceptance of the evangelical counsels.<sup>77</sup> The religious live a life of service governed by love of God and charity; their lives are to be dedicated to the mission of the Church. The religious were to accommodate their ministry to the needs of the locale where they were located and they were to coordinate their works and apostolic missions with the conferences of bishops. The Council exhorted religious and secular institutes to spread the good news of Christ throughout the whole world and, in so doing, their witness will be seen by all.<sup>78</sup>

**2.3 APOSTOLATE OF RELIGIOUS AND THE DIOCESE**

The place of association with religious for the majority of Council Fathers was their individual diocese. Many of the bishops at the Council were themselves religious. Although it was established that the bishops were the coordinators of the apostolic missions within their diocese, it was difficult for them to obtain the cooperation of religious. The difficulty was not the failure of religious to work but

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<sup>76</sup>Re: SECOND VATICAN COUNCIL, Decree on the Up-to-Date Renewal of Religious Life, *Perfectae Caritatis*, (=PC) 28 October 1965, in AAS, 58 (1966), pp. 702-712, here at no. 1, p. 703; English translation in FLANNERY, pp. 611-623, here at p. 612.

<sup>77</sup>Re: PC, no. 2, p. 703; FLANNERY, p. 613.

<sup>78</sup>Re: PC, no. 25, p. 712; FLANNERY, p. 623.

that their work was not always directly beneficial to the diocese. The bishops wanted greater coordination of the work of religious, but it was difficult to work with organizations who set their own agendas and direction. Religious operated many institutions, most of which were educational or related to healthcare. This also tended to give them a high profile within the diocesan community.

The bishops wished the work to continue, but with more attention being given to the needs of the diocese. A special area of concern is the "healthcare" apostolate. Bishops, since the time of the early Church, were interested in this work but as we shall see this apostolate developed in a way that could not be foreseen. Various economic developments and changes enabled this work to take on a life of its own, often as a "separately incorporated apostolate". This dimension will be addressed in this paper from the aspect of a "juridic person". Although some of the problems associated with the apostolates in the diocese still exist, there are now more instruments to address them in a productive manner than existed prior to the Council.

#### **2.4 EXPECTATIONS OF THE CONCILIAR FATHERS REGARDING RELIGIOUS**

Religious are to respond to the divine call and to spread the good news of Christ throughout the world.<sup>79</sup> The religious life is an apostolate in itself as well as a community of persons who conduct external apostolates and participate in them. The Fathers exhorted religious to be aware of the world, and to operate so as to instill Christian values in it. Many Council members had exempt religious in their

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<sup>79</sup>Re: PC, no. 25, p. 712; FLANNERY, p. 623.

dioceses and their inability to exert control over them was a thorny issue<sup>80</sup>. They were firm in their insistence that all institutes reevaluate themselves, as well as their position and mission in the Church.

### **3. APOSTOLATE OF THE LAITY**

#### **3.1 IN *LUMEN GENTIUM***

The Fathers of Vatican II made it clear that everything it said of the People of God was addressed equally to laity, religious, and clergy.<sup>81</sup> Pastors are to acknowledge that alone they are unable to attain to the total salvific mission of the Church; therefore they are to welcome the participation and assistance of the laity.<sup>82</sup> The Council first identifies the “laity” in a somewhat negative manner by indicating that they are those not in Holy Orders, or belonging to a religious state.<sup>83</sup> Then, in a positive manner, it indicates those who by Baptism, are incorporated into Christ, placed in the People of God, sharing in the priestly, prophetic and kingly office of Christ, and carrying on the Christian mission in the Church and in the world.<sup>84</sup>

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<sup>80</sup>Re: VORGRIMLER, *Commentary on the Documents of Vatican II*, Vol 1, p. 124.

<sup>81</sup>Re: LG, no. 30, p. 37; FLANNERY, p. 388.

<sup>82</sup>Re: LG, no. 30, p. 37; FLANNERY, p. 388.

<sup>83</sup>Re: LG, no. 30, p. 37; FLANNERY, p. 388.

<sup>84</sup>Re: LG, no. 31, p. 37; FLANNERY, p. 388. See WEAKLAND, p. 290: “Vatican Council II also awakened in all of us a new sense of the role of the laity. Suddenly it was seen that baptism gave to the individual a whole new vocation both within the Church and with regard to the world. Suddenly it seemed so commonplace to see the Church as the laity, sustained by the clergy, but not somehow relegated to a second place. The laity were indeed the Church.” See BOSCH, p. 473: “One must therefore say, emphatically, that a theology of the laity does not mean that the laity should be trained to become “mini-pastors”.

The Council recognized the fact that the laity are in the world directly, more so than others associated with the Church and, because of this, the laity could have a greater impact on the environment and on society through the witnessing of their life of faith.<sup>85</sup> The Fathers presented first the similarities pertaining to all the People of God, and then the differences; these differences concern sacred ministers and the rest of the People of God. However, there is true equality in relation to the dignity and activity common to all the faithful in the building up of the Body of Christ.<sup>86</sup> The Council Fathers wished a collaboration between the faithful and the sacred ministers to give witness of fraternity to the world.<sup>87</sup>

The laity have the vocation of building up the Mystical Body, their apostolic mission is a sharing in the salvific mission of the Church; they are appointed to it by the Lord himself through Baptism and Confirmation.<sup>88</sup> The sacraments, especially the Eucharist, provide nourishment to the core of the apostolic mission which is the love of God and of humankind.<sup>89</sup> The laity can also be beckoned by the ecclesiastical leadership to participate in the apostolic mission and be entrusted with certain ecclesiastical offices. They participate in the mission of Christ which is to bring salvation to the whole world. Since they are engaged in the day to day affairs of humankind, the laity, men or women, married or single, are in a position to have a better understanding of these realities and exert a Christian influence on them.<sup>90</sup>

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<sup>85</sup>See LG, no. 31, p. 38; FLANNERY, p. 389.

<sup>86</sup>Re: LG, no. 32, p. 38; FLANNERY, p. 389.

<sup>87</sup>See BOSCH, p. 474: "The clergy are not prior to or independent of or over against the church; rather with the rest of God's people, they are the church, sent into the world. In order to flesh out this vision, then, we need a more organic, less sacral ecclesiology of the whole people of God."

<sup>88</sup>Re: LG, no. 33, p. 39; FLANNERY, p. 390.

<sup>89</sup>Re: LG, no. 33, p. 39; FLANNERY, p. 390.

<sup>90</sup>Re: LG, no. 33, p. 40; FLANNERY, p. 391.

**3.2 IN APOSTOLICAM ACTUOSITATEM**

The Council wished to “intensify the apostolic activity of the People of God” and prepared a Decree on the Laity to this end.<sup>91</sup> Given the positions of the laity in the world, with their much greater influence and their increased desire to exercise activity for the Church, it became necessary to address the lay movements that were emerging. Likewise, an increase in population and developments in science and technology certainly fostered the extension of lay involvement. Nevertheless, the initial approach with regard to the clergy-laity relationship found in *Lumen gentium* was neglected in the subsequent decree and, although theologically the Council did not change its shift from the monarchical Church to a fraternal one, it seems to have planted seeds of such possibilities for the future. We recall that “the Christian vocation is, of its nature, a vocation to the apostolate as well.”<sup>92</sup>

The laity exercise their apostolic mission in the temporal order and in secular affairs. Baptism and Confirmation initiate the laity into the Mystical Body and their sharing in the mission of Christ gives them their assignment which is to present the message of salvation to all people. The Church’s mission of bringing to all the message of Christ also includes the permeation of the world and its improvement.<sup>93</sup> The laity work to harmonize the terrestrial order with the principles of Christian life, making them relevant according to the conditions of the place, time and people.<sup>94</sup> The Council considered that, within the task of this lay apostolate, “Christian social

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<sup>91</sup>See AA, no.1, p. 837; FLANNERY, p. 766.

<sup>92</sup>Re: AA., no. 2, p. 838; FLANNERY, pp. 767-768.

<sup>93</sup>See AA, no. 5, p. 842; FLANNERY, p. 772. See WEAKLAND, p. 291: the People of God were not seen as somehow receiving the Spirit from the hierarchy, but rather through their baptism they brought the life of that Spirit to Church and world.

<sup>94</sup>Re: AA, no. 5. p. 842; FLANNERY, p. 772.

action was preeminent" and it wished for it to be extended to every sector of life, with due consideration for the cultural milieu.<sup>95</sup>

Charity is the mark of the Christian who follows Christ and participates in His mission and is the reason why assisting the poor, the sick, and carrying out works of mutual aid to alleviate human needs are considered works of honor.<sup>96</sup> The Fathers also stated:

Wherever men are to be found who are in want of food and drink, of clothing, housing, medicine, work, education, the means necessary to leading a truly human life, wherever there are men racked by misfortune or illness, men suffering exile or imprisonment, Christian charity should go in search of them and find them out, comfort them with devoted care and give them the helps that will relieve their needs. This obligation binds first and foremost the more affluent individuals and nations.<sup>97</sup>

Almost every area of the apostolate is covered in this statement. The laity are to work to this end in their church communities, with their families, with youth, in their social environment and within national and international spheres. They are to assist their pastors, on the parish and diocesan levels, support the autonomy of the family, dialogue with youth and influence in a Christian manner the laws, structures and vision of the community in which they live.

The laity can also work as individuals or in groups or associations, working in the apostolic mission of their choice. It is for the individual to determine how the mission of Christ can best be served, giving consideration to personal charisms. Although the Church recognizes the individual apostolic missions, it leans more

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<sup>95</sup>Re: AA, no. 7, p. 844; FLANNERY, p. 774.

<sup>96</sup>Re: AA, no. 8, p. 845; FLANNERY, p. 775.

<sup>97</sup>AA, no. 8, p. 845; FLANNERY, p. 776.

towards apostolic missions of groups or associations, believing that in the long term, more can be accomplished by a group than by an individual. Whatever the laity choose to do, the Church desires that there be a link with ecclesiastical authority, while at the same time it recognizes that the laity have the right to form groups or associations or join existing ones.<sup>98</sup>

### **3.3 LAITY AND CATHOLIC ACTION**

The Council gave consideration to the movements of the day, then known as "Catholic Action". Many bishops requested that Catholic Action be mentioned specifically in the Decree for it is considered a genuine apostolate of the laity and had been present for many decades, having come into being through the initiative of the laity themselves, developing gradually out of the spontaneous Catholic Movement of the eighteenth and nineteenth centuries.<sup>99</sup> The hierarchy made use of these groups which have pursued apostolic ends. They benefited especially from those groups established for evangelization, sanctification and works of charity, working in close union with the bishops who apparently looked upon the work of these groups as an extension of their own responsibilities.

Popes Pius X, Pius XI, and Pius XII supported and wrote on Catholic Action. The Council based its definition of Catholic Action on the words of Pius XI and Pius XII: "a collaboration of the laity in the hierarchical apostolates."<sup>100</sup> Apparently, Pius

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<sup>98</sup>Re: AA, no. 19, p. 854; FLANNERY, p. 786.

<sup>99</sup>Re: VORGRIMLER, *Commentary on the Documents of Vatican II*, Vol. III, p. 356.

<sup>100</sup>Re: AA, no. 20, p. 854; FLANNERY, p. 787. See also NEWMAN, pp. 38-39. Examples of preconciliar Catholic Action would be Third Orders, Liturgical movements, Retreat movements, Sodality movements, Catholic Youth movements and Social Action movements.

XI used the term "participation" rather than "collaboration" as was used by Pius XII and a critical faction in the Council wished to make certain that only the term "collaboration" be used; they wished to have the term defined in a way acceptable to them.<sup>101</sup> The Council mentioned certain characteristics which identified these groups of Catholic Action: 1) they worked in areas that were of assistance to the Church; 2) they promoted the apostolic ends of the Church; 3) they were directed by the laity; 4) they worked in direct cooperation with the hierarchy.<sup>102</sup> Today, "collaboration" is of course the term of emphasis rather than "participation". The English "thesaurus"<sup>103</sup> lists the same words interchangeably as well as "teamwork".

The Fathers restated that the laity participate in the Church's mission in a way that is their own, as a right, and as a function, when they spoke of the training that was desired for the apostolate.<sup>104</sup> The Fathers wished for more preparation of the laity in the areas of evangelization and sanctification, renewal of the temporal order and works of charity. They also asked that centers be established to assist all fields of the apostolic mission in research and training, to develop the aptitudes of the laity, men and women, young and old.<sup>105</sup>

The specific point of Catholic Action was presented to highlight the fact that if the activity of the laity was not mandated or conformed to the accepted structure, then it was not regarded as Catholic Action as such; in some countries, the lay apostolate developed along free lines, without any mandate and with its own form

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<sup>101</sup>Re: VORGRIMLER, *Commentary on the Documents of Vatican II*, Vol. III, pp. 354-355.

<sup>102</sup>Re: VORGRIMLER, *Commentary on the Documents of Vatican II*, Vol. III, pp. 358-360.

<sup>103</sup>Re: P. M. ROGET, *Roget's Thesaurus of English Words and Phrases*, New Edition, S. LLOYD, edit, Harlow, Essex, Longman, 1982, p. 729.

<sup>104</sup>Re: AA, no. 29, p. 859; FLANNERY, p. 793.

<sup>105</sup>Re: AA, nos. 31-32, pp. 862-863; FLANNERY, pp. 796-797.

of organization.<sup>106</sup> This situation more likely than not precipitated the extensive presentation of the lay apostolate in the Council. The Fathers, speaking of associations or of Catholic Action, always placed these lay activities in the context of a degree of acceptance by the hierarchy.

### **III. THE APOSTOLIC MISSION OF HEALTHCARE**

Two apostolic missions which are highly visible and involve the three groups: clerics, laity and religious are education and healthcare. A third area, pastoral care, is fast making inroads in relation to the participation of the laity but has not yet achieved the visibility of education and healthcare. Our focus is the mission of "healthcare", although the mission of "education" was, for obvious reasons, a special concern of the Council Fathers. They in fact did not give specific consideration to healthcare. Not that they did not consider it an important apostolate, but primarily because events that impacted the healthcare apostolate had not yet gained the momentum they have today. In a sense the two move together, education being the vehicle of teaching faith and values, and healthcare being the vehicle of actuating them in the healing mission of the Church. Both place themselves in critical areas of human life.<sup>107</sup> Both allow for group activity and provide the context for juridic personality, whether public or private.

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<sup>106</sup>Re: NEWMAN, p. 39.

<sup>107</sup>See BOSCH, p. 512: "Mission is a multifaceted ministry, in respect to witness, service, justice, healing, reconciliation, liberation, peace, evangelism, fellowship, church planting, contextualization, and much more."

## 1. HEALTH CARE

### 1.1 EARLY DEVELOPMENT OF MEDICINE

Preconceived notions arise by way of isolated experiences. Healthcare as we know it today traversed some very winding roads. A concise review of its development will allow it to be placed in proper perspective. Medicine began with humanity's concern for survival, care of his fellow human being and the willingness to assist one another.<sup>108</sup> The records of the Egyptians indicate a mixture of religion and medicine, and reference to evil demons causing illness.<sup>109</sup> Like other peoples of antiquity, the Egyptians regarded disease as the result of causes which were partly natural, partly supernatural; in Egypt, as in India, China, and primitive Greece, medicine was held to have divine origins.<sup>110</sup> They had a pharmacy, some surgery, ophthalmology, but excelled in hygiene.<sup>111</sup> The Egyptians were very particular in their ablutions and about the cleanliness of their dress.<sup>112</sup> They also practiced circumcision.<sup>113</sup> As advanced as they were, their medical practice never developed into a scientific system. This was most likely due to the fact that it was overseen by the priests and the treatments were established in a written law.<sup>114</sup> If

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<sup>108</sup>Re: W. OSLER, *The Evolution of Modern Medicine*, New Haven, Yale University Press, 1921, pp. 6-7 (hereafter cited as OSLER).

<sup>109</sup>Re: OSLER, p. 12.

<sup>110</sup>Re: L. R., SEYMER, *A General History of Nursing*, London, William Clowes and Sons Ltd., 3<sup>rd</sup> edition, 1954, p. 1 (hereafter cited as SEYMER).

<sup>111</sup>Re: OSLER, p. 13.

<sup>112</sup>Re: SEYMER, p. 3.

<sup>113</sup>Re: SEYMER, p. 3.

<sup>114</sup>Re: SEYMER, p. 4.

the doctors followed the treatments as given in the law, they were then absolved should harm occur to the patient. But if they deviated from the prescribed treatment in any way and the patient came to harm, the doctors could be put to death.<sup>115</sup> Therefore, research and development in this culture was extremely limited.

The influences of Egypt and Babylonia on medicine are seen in the Old Testament, especially in the area of hygiene and some divination (soothsaying, astrology).<sup>116</sup> Hospitality was considered a duty by the Jews and systematic charity was part of their religious life.<sup>117</sup> One of the duties was that of visiting the sick; houses to accommodate strangers and the sick were also maintained.<sup>118</sup> This practice was assumed by the members of the early Church and became the basic foundation of what were eventually termed as hospitals.

The medicine of Rome was introduced by the Greeks. The Romans excelled in public hygiene with a pure water supply, aqueducts, sewers, and drained marshes.<sup>119</sup> They had doctors accompany their military and set up hospitals as needed. Although the Romans had no private hospitals in which to treat the sick, they did have public doctors who gave free attendance to the poor.<sup>120</sup> Claudius Galen, who attended the emperor Marcus Aurelius, the Stoic, was a great teacher and diagnostician; his writings and teaching influenced medicine for some 1500

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<sup>115</sup>Re: SEYMER p. 4.

<sup>116</sup>Re: OSLER, p. 28.

<sup>117</sup>Re: SEYMER, p. 9.

<sup>118</sup>Re: SEYMER, p. 9.

<sup>119</sup>Re: SEYMER, p. 18.

<sup>120</sup>Re: SEYMER, p. 21.

years.<sup>121</sup> Surgery and medicine were eventually taught in the Universities of Europe. The University of Padua was one of the first to give instruction to medicine, and surgery was taught at the University of Montpellier.<sup>122</sup>

The New Testament mentions demoniac possession, convulsions, paralysis, skin diseases, leprosy, dropsy, haemorrhages, fever, fluxes, blindness, and deafness.<sup>123</sup> The cures were miraculously done by the Lord and later by his apostles with power over unclean spirits.<sup>124</sup> Between pre-Christian and post-Christian care of the sick there was this great difference: love and service toward one's neighbor were henceforth regarded as Christian duties no less binding than love towards God (Matt. 22, 37-40; Luke 10).<sup>125</sup> What was a duty of slaves or a service of necessity in any household became a vocation based on Christ's command.<sup>126</sup> Christians responding to this command went out and tended to others who were sick and in need.

Schools of medicine existed well before Hippocrates (b. 460 B.C.) for such schools existed at Croton in Italy, at Cyrene in N. Africa, and Cnidos on the coast of Asia Minor.<sup>127</sup> Hippocrates, considered the Father of Medicine, preached that disease was a part of the order of nature, and to conquer it, to understand it, one

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<sup>121</sup>Re: L. CLENDENING, *The Romance of Medicine*, 2<sup>nd</sup> edition rev. New York, A. Knof, 1943, pp. 40, 53 (hereafter cited as CLENDENING).

<sup>122</sup>Re: CLENDENING, pp. 54, 55

<sup>123</sup>Re: OSLER, p. 29.

<sup>124</sup>Re: OSLER, p. 29.

<sup>125</sup>Re: SEYMER, p. 22.

<sup>126</sup>Re: SEYMER, p. 22.

<sup>127</sup>Re: R. MOON, *Hippocrates and His Successors In Relation to the Philosophy of Their Time*, New York, Longmans, Green and Co., 1923, pp. 4-5.

must study it as one does any other natural event.<sup>128</sup>

## **1.2 EARLY HOSPITALS**

The initial forms of hospital care as we now know it can be traced to the works of the deacons in the early Church. They operated inns for travellers, infirmaries, orphanages, etc., as part of their work of service for the community under the supervision of the bishop.<sup>129</sup> More shelters were established as pilgrimages increased. Gradually, emphasis was placed on care for the sick, although the pilgrim continued to be cared for. Most locales eventually established a shelter for the sick, the poor and the traveller. Christians tended one another during epidemics<sup>130</sup> and at times paid with their lives.

The origin of the hospital is traced to the East with credit given to St. Basil as founding the first hospital near Caesarea.<sup>131</sup> The accommodations in question were a part of the monastery and it must be remembered that in the early days those who benefited from hospitalization were people who could not obtain proper care at home, mainly travellers, lepers and the indigent.<sup>132</sup> The care of the sick led to the establishment of several distinct physical areas within the monastery. The infirmary

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<sup>128</sup>Re: CLENDENING, p. 36.

<sup>129</sup>Re: E. NASALLI-ROCCA, "History of Hospitals: The Christian Hospital to 1500", in *New Catholic Encyclopedia*, Vol. VII, 1967, p. 159 (hereafter cited as NASALLI-ROCCA).

<sup>130</sup>Re: O. TEMKIN, *Hippocrates in a World of Pagans and Christians*, Baltimore, The Johns Hopkins University Press, 1991, p. 160 (hereafter cited as TEMKIN).

<sup>131</sup>Re: TEMKIN, p. 162.

<sup>132</sup>See TEMKIN, p. 163. Incidentally, the word "hospital" derives from the same root as "hospitality" which was one of the hallmarks of the Benedictine tradition: "hospes" - guest.

was for the monks or nuns while the *xenodochia* (*hospitalia*) was for outsiders. Members of any order were cared for in the infirmary, while others were cared for in the *xenodochia*. There were separate buildings housing the infirmary for monks, for novices, for doctors, and for travelling monks, pilgrims and poor people, but all on the same grounds.<sup>133</sup> The poor and sick were housed together except for lepers who were housed separately.

While he was patriarch of Constantinople (A.D. 398-404), John Chrysostom is said to have founded several hospitals, appointing presbyters as well as physicians, cooks and efficient workman so that people seized by disease might find care.<sup>134</sup> Around the 11<sup>th</sup> century the Pantokrator hospital existed in Constantinople. It had fifty beds divided into five sections: surgical, acute and eye cases, women, lighter cases, and emergencies.<sup>135</sup> At Pantokrator there were also specially constructed beds for fracture cases.<sup>136</sup> Hospital staffs of at least two head doctors with doctors and non-doctors under them were appointed.<sup>137</sup> The hospitals in the East seemed to have been more refined than those in the West at this time. The description of the Pantokrator is a rarity and is not found for any other hospital of that period, even though such famous hospitals as those of the Santo Spirito in Rome, St. Peter's Hospital at York, founded by Athelstan in 937 A.D., and the Hôtel-Dieu in Paris were by then already in existence.<sup>138</sup>

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<sup>133</sup>Re: SEYMER, p. 34.

<sup>134</sup>Re: TEMKIN, p. 164.

<sup>135</sup>Re: SEYMER, p. 36.

<sup>136</sup>Re: SEYMER, p. 36.

<sup>137</sup>Re: SEYMER, p. 36.

<sup>138</sup>Re: SEYMER, p. 37.

**1.3 PERIOD OF THE MIDDLE AGES TO THE TWENTIETH CENTURY**

During the Middle Ages, the diocese, parish and monastery were generally considered responsible for setting up and operating hospitals and it is around this period that the sick and the aged were separated. Medieval hospitals were conducted by religious or knightly orders and possessed a strong communal character; those who worked there had a common identity and belonged to a common household.<sup>139</sup> The intimate connection between the Church and the sick colored the organization and work of the medieval hospitals.<sup>140</sup> At this time they were ecclesiastical, not medical, institutions and for care not for cure; for the relief of the body and the refreshment of the soul.<sup>141</sup>

The origin of the military hospitaller orders is interwoven with the crusades and connected with pilgrimages as is the history of hospitals itself. The Knights Hospitallers of St. John of Jerusalem, the Teutonic Knights and the Lazarists are the more familiar of the orders. They operated in a military fashion and were usually divided into three classes: priests, knights and serving brothers. The majority of the hospital work was done by the serving brothers.

The secular orders were lay orders or confraternities who participated in the work of one of the great orders. The Third Order of St. Francis, for instance, gained in popularity and the others such as the Carmelites, Dominicans, etc. followed suit. These societies were usually under its protection. The care of the sick was not the main work of these secular orders, but one such group which did have care of the

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<sup>139</sup>Re: P. STARR, *The Social Transformation of American Medicine*, New York, Basic Books, 1982, p. 149 (hereafter cited as STARR).

<sup>140</sup>See SEYMER, p. 38.

<sup>141</sup>Re: SEYMER, p 38.

sick was the Society of the Holy Ghost, founded towards the end of the 12<sup>th</sup> century.<sup>142</sup> Its members consisted of Brothers and Sisters and were associated with the care of the sick at Santo Spirito Hospital in Rome and in various other hospitals in France, Germany and Italy.<sup>143</sup> Another regular order which cared for the sick was the Augustinian Sisters of the Hôtel-Dieu of Paris. This was considered a religious occupation, not an intellectual one and is reflected in the lack of professional development in this area. The Egyptians, we recall, had a similar problem. This certainly gives an indication, though, of the status of religion at this time.

Although lay operated hospitals began to appear around the year 1000 A.D,<sup>144</sup> in the 12<sup>th</sup> century, the hospital "guilds" emerged and these were given special consideration by the towns.<sup>145</sup> It is around this time too that the first statutes pertinent to health care facilities were formulated. During the medieval period works of charity were usually under the direction of ecclesiastical authorities. Private donations of funds and lands increased and many men and women donated their services to these hospital facilities.<sup>146</sup>

The 15<sup>th</sup> century saw the centralization of hospitals into larger facilities and the suppression of smaller ones; nevertheless, the Church continued to maintain control over these facilities.<sup>147</sup> By the end of the 15<sup>th</sup> century, large hospitals were established in major cities throughout Europe providing both temporal and spiritual care. The Daughters of Charity were founded in 1633 in France under the guidance

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<sup>142</sup>Re: SEYMER, p. 45.

<sup>143</sup>Re: See SEYMER, p. 46.

<sup>144</sup>Re: NASALLI-ROCCA, p. 160.

<sup>145</sup>Re: NASALLI-ROCCA, p. 161.

<sup>146</sup>Re: NASALLI-ROCCA, p. 161.

<sup>147</sup>Re: NASALLI-ROCCA, p. 162.

of St. Vincent de Paul and are one of the first uncloistered communities of women in the Church working specifically in healthcare. The group was established in the United States in 1809 through the efforts of (Saint) Elizabeth Ann Seton.

There was a gradual secularization of hospitals, removing them from Church supervision chiefly because of financial concerns. Medical care was essentially gratis and the devastation caused by wars, plagues, etc., made it difficult for the Church to raise sufficient funds to maintain desired levels of hospital services.<sup>148</sup> Eventually the hospitals were controlled by laymen and regulated by the State. However, we should remember that the medieval hospitals were founded on the spirit of charity by those united in the Spirit. Indeed, when hospitals were secured from ecclesiastical authorities they maintained a religious character in so far as the people who worked there usually united as a vocational community under a religious rule.<sup>149</sup>

The Reformation had also contributed to changes in hospital supervision as the institutions were taken over by municipalities confiscating Church property; other reasons that led to changes were plagues, social unrest, transitional political systems, etc.<sup>150</sup> Urbanization created an influx of people to the cities which put pressures on existing hospital services.

The 18<sup>th</sup> century saw increased support for the training of physicians, especially surgeons. By the late 19<sup>th</sup> century, the majority of hospitals in Europe were in the hands of the State.

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<sup>148</sup>See NASALLI-ROCCA, p. 162.

<sup>149</sup>Re: STARR, p. 149.

<sup>150</sup>Re: A. McPADDEN, "History of Hospitals: 1500 to Present", in *New Catholic Encyclopedia*, Vol. VII, 1967, p. 163 (hereafter cited as McPHADDEN).

**1.4 HOSPITALS IN NORTH AMERICA****a) EARLY ESTABLISHMENTS**

The oldest hospital on the North American continent was that of the Jesus Nazareno built by Cortez in 1540, in Mexico City, while the first formal hospital in Canada was the Hôtel-Dieu at Montreal started under Mademoiselle Jeanne Mance in 1644.<sup>151</sup> Although she made the care of the sick in Montreal her mission in life, she never took vows. She was later assisted by the Sisters of St. Joseph de le Flèche. Augustinian nuns established a hospital in Quebec in 1658 although they and other communities had undertaken care of the sick in that area since 1639 using temporary quarters. These groups gave refuge to the aged, the needy and the orphaned, as well as to the sick.<sup>152</sup>

In the American Colonies, prior to the revolution, there existed five "hospitals" but these were not hospitals as we know them today. Rather, they were almshouses established for individuals who were poor or in ill health. They were first set up in port cities through which a large number of visitors and seamen travelled. The almshouses were usually private homes, whose owner was compensated for providing the type of care which was available during that time, or they were ordinary residences in which the steward and his family lived and worked.

The altruistic motivation in establishing these almshouses was the same in America as in Europe: charity and benevolence. It provided the townspeople an opportunity to help their fellow man and also prevent him from dying in the streets

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<sup>151</sup>Re: SEYMER, p. 60.

<sup>152</sup>Re: SEYMER, pp. 60-61.

(which would be embarrassing for a city of Christians especially so if the dead person were a fellow Christian). However, as Christians, they did not want to provide an incubator for immorality and thus women and men of ill repute were at times turned away. Those taken into the almshouses who were able to do so also carried out assigned duties in the "family" to aid in offsetting costs. In time, almshouses housed the aged, the orphaned, the mentally ill, the ill, the debilitated.

Gradually, state governments took over the administration of the almshouses and a number of them became places of squalor, overcrowded and filthy due to the extreme fear by lawmakers of creating a long term welfare community. Eventually in the 18<sup>th</sup> century each group (orphans, aged, etc.) was sent to an institution concerned with their specific problem. It was not until the mid 18<sup>th</sup> century that an uninterrupted hospital presence was in place in the United States.<sup>153</sup> These institutions continued to exist for the benefit of the poor, since care of the sick who could afford it was undertaken in the individual's home under the ministrations of his or her family and the physician. By the 19<sup>th</sup> century, the sick of all classes were gradually being cared for in an almshouse turned hospital. The almshouse metamorphosed into the modern hospital by becoming more specialized in its functions and more universal in its use, although some continued to exist as almshouses.<sup>154</sup>

### **b) CATHOLIC ESTABLISHMENTS IN THE UNITED STATES**

The Sisters of St. Joseph arrived in St. Louis, Missouri in 1836, the Sisters of Mercy arrived in Pennsylvania in 1843, and the Irish Sisters of Charity arrived in

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<sup>153</sup>Re: McPHADDEN, p. 165.

<sup>154</sup>Re: STARR, p. 150.

San Francisco in 1855. New York's Catholics founded St. Vincent's Hospital in 1849. In Chicago, Mercy Hospital was founded in 1850 and by 1870 St. Luke's, St. Joseph's and the Alexian Brothers Hospital were added.<sup>155</sup> By 1885 the Catholic community in America had opened 154 hospitals, especially in the mid-West and West.<sup>156</sup> This was more than what existed in the whole United States in the late 1860s.<sup>157</sup> These were explicit religious institutions. The reasons for establishment of the Catholic hospitals are given by Rosenberg. He states:

The growth of Catholic hospitals has to be seen in a rather different light, a consequence not simply of the specific history and commitment of the Church and its religious orders, but of the isolated and defensive character of the Catholic immigrant population in American cities. Similar motivations help explain the contemporary movement in Jewish hospitals. In both cases, advocates emphasized that existing hospitals, no matter what their formal auspices, were in reality Protestant and all-too often proselytizing institutions.<sup>158</sup>

This assessment certainly had some substance, given the practice of various denominations of the time. However, the Episcopal hospital in New York sought to admit chronic patients, which voluntary hospitals<sup>159</sup> did not do and, in Chicago, St Luke's found room for some of the aged and feeble. Other religious hospitals admitted tubercular cases not accepted by the voluntary hospitals.

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<sup>155</sup>Re: C. E. ROSENBERG, *The Care of Strangers, The Rise of America's Hospital System*, Baltimore, The Johns Hopkins University Press, 1995, p.110 (hereafter cited as ROSENBERG).

<sup>156</sup>Re: ROSENBERG, p. 111.

<sup>157</sup>Re: ROSENBERG, p. 111.

<sup>158</sup>ROSENBERG, p. 111.

<sup>159</sup>Voluntary hospitals are mainly the public and community hospitals.

**c) PHYSICIANS AND INDUSTRIALIZATION**

Because America's hospitals were first established in port cities, the establishment of a hospital in Hartford, Connecticut in 1859 represented a new presence in a second tier of middle-sized communities.<sup>160</sup> This move was prompted by an industrial accident which left the community with the realization that as an industrial community it had no facilities or means to handle accidents and injuries.<sup>161</sup> Across America people were being injured at work or on their way to work. Institutional treatment, both inpatient and outpatient, gradually became central to the healthcare of the urban working class.<sup>162</sup> If there were no hospitals then the injured were assigned to almshouses which continued to exist in communities, whether or not a hospital was established. In essence, the motivating factor for a number of the earlier hospitals was to assist the working poor.<sup>163</sup> For their own reasons, physicians fostered the creation of hospitals.

Doctors had an interest in creating hospitals as a means of developing medical education and as a source of prestige. The status and influence they derived from hospital positions were of such value to them that they gave their services to the hospitals without pay.<sup>164</sup>

Physicians were not the power in hospitals until the late 19<sup>th</sup> to early 20<sup>th</sup> centuries. Rather, the power prior to this time was found with the trustees and boards. Doctors had a difficult time overcoming the fears of the population (the poor) who were anxious about entering a hospital, being subjected to experiments and, upon death,

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<sup>160</sup>Re: ROSENBERG, p. 106.

<sup>161</sup>Re: ROSENBERG, pp. 106-107.

<sup>162</sup>Re: ROSENBERG, p. 110.

<sup>163</sup>See ROSENBERG, p. 107.

<sup>164</sup>ROSENBERG, p. 152.

being dissected by medical students. Physicians sought support through wealthy and powerful sponsors.

For the sponsors of hospitals, the benefits were various. As so often happens to the rich and successful, by serving a social interest, they could advance their own. No doubt, hospitals helped to satisfy a genuine sense of religious obligation to the helpless; the institutions might also bring about an improved standard of medical practice by giving young physicians experience working under supervision with the poor; and they might even prove a sound investment for the community by restoring to productive labor people who might otherwise become public charges. These were the kinds of considerations, the manifest functions, as sociologists say, that dominated the rhetoric of motivation. At another level, not to be overlooked but not to be exaggerated either, hospitals also conferred a certain amount of power on their trustees through management of the endowment, the letting of contracts, patronage appointments, and even the admission of patients. In the nineteenth century, the trustees or managers entered directly into the detailed operation of hospitals, including decisions that now would be seen as strictly medical.<sup>165</sup>

Although sponsors provided some support to voluntary hospitals it was usually not enough and patients were asked to make a contribution if they were able to do so. The hospitals in America were never totally identified with paupers as they were in Europe, as those who paid and those who did not were usually treated in the same ward. In some instances there were patients who could afford more and thus were accommodated in private rooms and looked after by servants if they had them. Catholic hospitals not only offered a sense of ethnic identity but also gave a sense of dignity by treating their patients as a paying patient, for the majority of them did charge albeit a token payment (three dollars a week).<sup>166</sup> It was no more than the nominal charge of a boarding house at the time although it was said by some that hospitals were little more than boarding houses.

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<sup>165</sup>STARR, p. 153.

<sup>166</sup>Re: ROSENBERG, p. 111.

Physicians usually did not take payment for the work they performed in the hospitals and thus their motivation to obtain a teaching position. They were able to earn monies by teaching and also use the hospital as an adjunct lecture hall with hands-on training experience. Their sponsors would of course use their services and also made private referrals which helped to develop their private practice. This also kept the physician in close proximity to the upper class. However, the physician himself, in order to attain such a position, more than likely came from a wealthy family.<sup>167</sup> The best medical training at this time was taking place in England and France and a physician usually had to spend four to five years in studies. Upon his return the physician then desired to establish himself which required funds. His family usually became the sole means of support until he was able to develop his practice.

#### **d) DEVELOPMENT OF NURSING**

Healthcare as practiced by the physicians of the day was still rather limited. Yet, strides had been made in some areas of healthcare and others were developing. The hospitals were for the most part employed for the use of the poor, sick-poor and working poor. This was similar to the practice of the Romans, the Jews and the early Christians. The monasteries maintained these types of hospitals especially for pilgrims. Monks and nuns had been heavily involved in this kind of mission for centuries and maintained a fairly good record of providing care. Nevertheless, the caregivers were not necessarily provided with appropriate training since individuals working in a hospital were usually illiterate and from poor circumstances. Those administrating hospitals were satisfied to keep the status quo

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<sup>167</sup>See R. H. SHRYOCK, *Medicine and Society in America: 1660-1860*, Ithaca, New York, Great Seal Books, 1962, pp. 2, 6-7.

although evolving medical advancements were beginning to require more expertise. Hospital staff provided domestic service to the poor in a critical time of need, preparing food, changing dressings, emptying bedpans, washing floors, washing linen, etc. The work was considered below the dignity of women of some means and education (nursing was considered women's work at this time). St. Vincent de Paul wished some training for his people and was the first to express the need. In France, Bishop Henri Grégoire (Diocèse de Blois) in 1819 appealed for a system of teaching nurses and some doctors in England circa 1825 made remarks to the effect that the Sisters of Charity should be placed as nurses and pupils in the hospitals of London and Edinburgh and books written for them.<sup>168</sup> This is not to disparage hospitals or the groups involved with them but to indicate that developments in one field were beginning to affect related ones or pressed for even further developments. The advancements in the mid-19th century provided the impetus for change.

During the mid-19th century certain practices were found to enhance the care and health of patients in hospitals. During the Crimean War,<sup>169</sup> for instance, Florence Nightingale was sent to Turkey as head of the nursing corps of the British military. It was the first time females had been sent on assignment with them. Ms. Nightingale had received her training with the Sisters of Charity at the Maison de la Providence in Paris in 1853.<sup>170</sup> Upon her return to London after the war, she moved to correct the appalling conditions which existed in the military hospitals at the time. The training of nurses was certainly foremost on her agenda. She is considered the founder of modern nursing for several reasons: she moved the public to accept nursing as an art and to recognize that it needed to be raised to the status of a

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<sup>168</sup>Re: SEYMER, p. 164.

<sup>169</sup>In March, 1854, Great Britain, France and Turkey declared war on Russia. Hostilities lasted until April, 1856.

<sup>170</sup>Re: SEYMER, p. 80.

trained profession which required training schools for nurses.<sup>171</sup> The lessons learned in the Crimean War were put to use in America during its civil war. The American military hospitals offered cleanliness, ventilation and some nursing, which Ms. Nightingale had provided to the British military hospitals, substantially reducing the death rate. The Union military hospitals treated many soldiers with only an 8 to 10 percent mortality rate.<sup>172</sup> These practices gave further support to the need for nurses' training.

### **e) CREATION OF SCHOOLS OF NURSING**

In 1873 three nursing schools opened in New York, New Haven and Boston an outcome of the continuing lessons learned from Ms. Nightingale.<sup>173</sup> Prior to this, trained nurses in America were virtually unheard of and hospital nursing was considered a menial occupation taken up by women of the lower classes.<sup>174</sup>

The demand for trained nurses and attempts to provide a supply of such women in fact antedated by a generation the founding of America's first three nursing schools in 1873. The work of religious women constituted the most conspicuous precedent for trained nursing, as it did in England and on the Continent. The Catholic orders (particularly the Sisters of Charity and Mercy) had organized and staffed hospitals for decades. Even Protestant women had begun to make their way into hospital work, following precedents such as those that influenced Nightingale herself.<sup>175</sup>

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<sup>171</sup>Re: SEYMER, pp. 94-95.

<sup>172</sup>Re: STARR, p. 154.

<sup>173</sup>Re: STARR, p. 155.

<sup>174</sup>Re: STARR, p. 155.

<sup>175</sup>ROSENBERG, p. 219.

As in Great Britain, it was women who gave the impetus for trained nurses, not the military, or physicians. The exploits of Ms. Nightingale were reported on both sides of the Atlantic and the message did not go unheeded. Nursing was being professionalized and accepted, if grudgingly, by physicians who utilized these unpaid services.<sup>176</sup> Although Florence Nightingale was responsible for initiating training schools for nurses, it is the schools in the United States which eventually established a curriculum with two- to five-year programs. Since the religious involved in nursing were already in the system it did not take long for them to follow the tenets of the likes of Florence Nightingale in providing training for their own members as well as others.<sup>177</sup>

#### **f) IMPACT OF SURGICAL DEVELOPMENTS ON THE HOSPITAL**

In 1867, Joseph Lister developed the concept of antiseptic surgery,<sup>178</sup> although it took about ten years for this development to become accepted. Lister was a teacher and practitioner in Glasgow, Scotland and took the work of Louis Pasteur to the operating theaters.<sup>179</sup> Lister used carbolic acid in controlling germs on wounds and during surgery.<sup>180</sup> The germ theory concept was so innovative that

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<sup>176</sup>Hospitals were training areas for nurses. The norm was private nursing for which services the nurse was paid.

<sup>177</sup>By 1954 there were at least 382 nursing schools operated by Roman Catholic Sisterhoods in the United States alone. The earliest Catholic School of Nursing was started in 1886 at Springfield, Illinois, in St. John's hospital by the Sisters of St. Francis. SEYMER, p. 180.

<sup>178</sup>Re: STARR, p. 155.

<sup>179</sup>Re: ROSENBERG, pp. 137-138.

<sup>180</sup>Re: ROSENBERG, p. 138.

it was unbelievable to the medical profession of the time. A few prominent physicians in America espoused it but to a limited degree. Micro-organisms as the cause of disease and infection did not fit into the existing model of medical or nursing care. The germ theory moved medicine from intellectual abstractions:

The germ theory seems to us correct, not because its various versions in the 1860s and 1870s were accurate, provable, or immediately efficacious, but because they did provide a closer approximation of the natural history of infectious disease, and because the germ theory was to be built into a changing structure of technical qualification, laboratory findings, and professional status. This was a world of credentials and experts increasingly uncongenial to the holistic, individual, and moral understanding of health and illness that had for millennia helped men deal with the incursions of disease. The germ theory had immediate and practical dimensions; it was no intellectual abstraction. In the next half century it would not only reshape the hospital but help transform every aspect of medicine.<sup>181</sup>

By the 1880s, the concept of antiseptic moved to asepsis and aseptic. The sterilization of not only the wounds but also of the instruments, garments and hands of the surgeons and assistants was found to be necessary. This opened up a whole new concept for surgeons. They were not as fearful to enter into the body as they had been beforehand.

More and more surgeons were using the hospital to perform surgery because it was equipped with x-rays, laboratories and rooms especially set aside for this specialty. The upper classes remained hesitant to enter the hospital for anything until the 1920s, and had their needed surgery performed in their homes. But by the 1920s surgical admissions outnumbered medical ones and the hospital came to be

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<sup>181</sup>ROSENBERG, p. 141. Interestingly enough, the "germ theory of health" is now being replaced by "geonomics"; genetic care is the newer approach followed today. See *Time*, February 5, 2001, p. 5. See also E. LICKING, "Spotting Disease Before It Arrives", in *Business Week*, February 12, 2001, pp. 94-95.

accepted by ordinary citizens and at the same time associated with the surgeon.<sup>182</sup> The evolution of surgical procedures brought about a clientele that was able to provide some degree of payment to both the physician and the hospital. Such income gradually removed the hospitals and physicians from the need for sponsors and thus created an environment whereby the physician was able not only to develop a private practice but also to determine treatment both inside and outside the hospital. It was a combination of a for-profit entity (the physician's practice) using a (usually) non-profit entity. In Europe, the primary physician hands over the care of his patient to the hospital staff when he enters the hospital. In the United States, the primary care physician continues as the primary physician on the case no matter who is called in unless the patient moves to change physicians. This system has not been without its drawbacks.

One might say that healthcare began its process towards industrialization when surgeries were able to be performed with less risk of infections.

Hospital budgets, physicians' practice patterns, attitudes toward science, charity, and the prerogative of class, as well as the x-ray, antiseptic surgery, and clinical laboratories, interacted to transform the early twentieth-century American hospital.<sup>183</sup>

Essentially, hospitals had served to isolate the ill and poor from the rest of society. However, as we have noted, in the 18<sup>th</sup> and 19<sup>th</sup> centuries the development of anesthesia, nursing orders (established sanitation practices), training schools for nurses,<sup>184</sup> antiseptics, vaccinations, inoculations, x-rays, bacteria control, all served

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<sup>182</sup>Re: ROSENBERG, p. 150.

<sup>183</sup>ROSENBERG, p. 237.

<sup>184</sup>See R. SHRYOCK, *The Development of Modern Medicine*, Madison, Wisconsin, The University of Wisconsin Press, 1979, p. 346 (hereafter cited as SHRYOCK, *Development of Modern Medicine*).

to enhance the care services and survival rate of patients.<sup>185</sup> Gradually public opinion began to change and hospitals were seen as places to get well rather than simply a place to die.<sup>186</sup> In the late 19<sup>th</sup> and early 20<sup>th</sup> centuries, the hospital environment became one where medical advancements took place and those wishing to practice better medicine would come to observe and learn.<sup>187</sup> Many new hospitals were built in American cities throughout the 19<sup>th</sup> century.<sup>188</sup> The College of Surgeons (founded in 1913) set up the standards that hospitals in the United States would have to meet prior to being placed on an approved list.<sup>189</sup>

The early twentieth-century nonprofit hospital, nevertheless, remained clothed with the public interest and insulated from the full impact of market forces by both a lingering sense of noblesse oblige and the sacred aura of sickness, pain, and death. The majority of voluntary hospitals never thought of themselves as being part of a transaction-structured marketplace, even as they conformed themselves increasingly to its dictates.<sup>190</sup>

This overview of the development of medicine and of hospitals provides an insight into various forces, societal, political and natural, which continue to drive the healthcare sector in the United States.

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<sup>185</sup>See McPHADDEN, p. 166.

<sup>186</sup>Re: SHRYOCK, *Development of Modern Medicine*, p. 347.

<sup>187</sup>See J. FLANAGAN, "Modern Hospitals", in *Catholic Encyclopedia*, Vol. VII, 1967, p. 166 (hereafter cited as FLANAGAN).

<sup>188</sup>Re: SHRYOCK, *Development of Modern Medicine*, p. 347.

<sup>189</sup>Re: SHRYOCK, *Development of Modern Medicine*, p. 348.

<sup>190</sup>ROSENBERG, pp. 253-254.

## 2. HEALTH CARE AS AN APOSTOLIC MISSION

For the most part, the Catholic Church has always had a part to play in the health care apostolate. However, the Council Fathers did not particularly single out this apostolate for special consideration.

The Catholic hospital will not find in the Vatican II documents any directives or specific, detailed procedural instructions which would be pertinent to health services. Whatever statements would be found would be general principles applicable to particular situations only with great difficulty and the risk of mistakes and failure. The Council deals with all people rather than with those in a particular profession, with interpersonal relationships rather than with technology, with the dimension of faith rather than science.<sup>191</sup>

In *Lumen gentium* the Council Fathers did give praise and support to the men and women, the brothers and sisters who work in hospitals.<sup>192</sup> They were of course exhorting the religious and laity who at the time staffed and operated many hospitals, especially in the United States. The number of religious at this time was on the decline and the situation had already prompted the employing of more lay persons for hospital operations and administration. The Fathers of the Council exhorted clergy, laity and religious to continue the mission of Christ with the gifts that have been given to them. The legislation in the United States which would eventually set its hospital systems off on an unexpected journey was practically in the process of being enacted and assuredly no one could or did predict the fall-out.

“The Church is obliged to act for the benefit of all persons, especially those

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<sup>191</sup>J. COMEY, “The Documents of Vatican II and the Catholic Hospital”, in *The Mission of Healing, Readings in Christian Values and Health Care*, K. O’ROURKE, ed., St. Louis, Missouri, The Catholic Hospital Association, 1974, p. 76.

<sup>192</sup>See LG, no. 46, p. 52; FLANNERY, p. 407.

in need, and pursuing works of mercy and the like.”<sup>193</sup> The Church through its religious institutes continues to carry on the mission of Christ the healer by providing health care of quality and in a manner befitting Christians.<sup>194</sup> The hospital apostolic mission has viability today as a leader in the pursuit of human dignity. It finds itself today in a quick paced environment of high tech imaging equipment, genetic engineering, gene therapy, fertilization procedures, biochemistry, advanced cardio-pulmonary care, nuclear medicine, etc. Health care is not limited to hospital facilities but extends also to home health care, extended care facilities, hospice care and walk-in clinics. In the past, the hospital focussed its efforts on the dying, those seriously ill, and the poor, but now it must also develop initiatives for preventive and educational considerations regarding health care.<sup>195</sup>

The hospital, in order to provide the most updated care, must keep abreast of developments in scientific techniques and diagnosis. In short,

the range of services to be based in each hospital must be expanded. Every patient has the right to the application of as much relevant knowledge as possible in the solution of his health problems. Thus far, we have interpreted this mandate in terms of complicated equipment and specialized personnel. Important as they are, they serve only a limited number of people and problems. To these must be added social and psychological services, and programs for convalescent and long term care, visiting nurses, health screening and health education. [...] these and other services should be available, regardless of geography and the social or economic status

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<sup>193</sup>Re: SECOND VATICAN COUNCIL, Pastoral Constitution on The Church in the Modern World, *Gaudium et Spes*, 7 December 1965 (=GS), in AAS, 58 (1966), pp. 1025-1120, here at no. 42, p.1060; English translation in A. FLANNERY, pp. 903-1001, here at p. 942.

<sup>194</sup>Re: K. O'ROURKE, "Catholic Hospitals", in *New Catholic Encyclopedia*, Vol. XVII, p. 275 (hereafter cited as O'ROURKE).

<sup>195</sup>Re: E. PELLEGRINO, "What Makes a Hospital Catholic", in *The Mission of Healing*, K. O'ROURKE, ed., St. Louis, Catholic Hospital Association, 1974, p. 34 (hereafter cited as PELLEGRINO, "What Makes a Hospital Catholic").

of the patient.<sup>196</sup>

Integrated comprehensive healthcare is essential to the patient today. Religious communities engaged in sponsorship of healthcare facilities have moved in recent years to establish systems within their group and with other groups to keep them viable and available to the communities they serve.

In as much as the Christian apostolic healthcare mission is founded on the mission of Jesus Christ, it is commissioned with developing the proper attitude of all associated with Christian healthcare. The participants of the healthcare mission today must satisfy not only ecclesiastical authority but also state, county, and federal authorities. Other groups demanding satisfaction are the patients, patient care associations, labor associations, medical associations, nurses associations, etc. From the lowly hospice existing outside the city walls with meagre fare, the Christian healthcare mission has become one of great complexity. But in spite of the complexity, the mission continues to be viable so long as the focus continues to be the continuance of the healing mission of Christ.

#### **IV. SUMMARY**

The notion of "apostolic mission" found in Vatican II is a continuum of the concept of "apostolate" found in preconciliar considerations. It is the work of God and the manifestation of His plan: the sending of His Son Jesus Christ to bring salvation to the world. The delegation made by God through Christ to the Church is that of unifying humankind fully to the purpose of Incarnation and Redemption. Apostolic mission is the continuation of the redemptive work of Christ and its end is

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<sup>196</sup>PELLEGRINO, "What Makes a Hospital Catholic", p. 34.

to lead humankind and human values to God. Although the "Ecclesiology" was somewhat static in preconciliar teachings, the conciliar Church is one that is on the move, has not arrived; it is not yet perfect, but is growing. The Church is now called to save all human beings, restore them to God in Christ, and form as much as possible one people of God. This is the founding mission of a growing and developing Church. The command of God is to proclaim the message given by Christ and carried on by the apostles and their successors, the bishops. The Council Fathers wished for all, clerics, laity and religious, to be an example and witness of the new life they put on at Baptism.

Some of the organizations through which the Church pursues its apostolic mission are dioceses, parishes, institutes of consecrated life, associations, etc., and these are usually established as juridic persons. Although the Council Fathers referred to these and certainly recognized them, they approached "mission" through arrays of individuals such as bishops, clergy, laity and religious. *Lumen gentium* presents a general overview of what is expected of the Holy See, the episcopacy, the clergy, the laity and those in consecrated life. *Christus Dominus* provides an in-depth presentation and expectation of the episcopacy and dioceses; *Presbyterorum ordinis*, the expectations on priests and parishes; *Perfectae caritatis*, the expectations placed on religious and institutes of consecrated life; *Apostolicam actuositatem*, the expectations on the laity and associations of the faithful.

The fact that the bishop has general oversight of all apostolates in his diocese was made clearer.<sup>197</sup> The priests share in the mission of the bishop and collaborate with him in ministering to the assemblies in the diocese, assisting in the work of

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<sup>197</sup>The bishops are attempting to maintain a handle on the healthcare apostolate but it is not easy as the following articles attest. As the dissertation progresses the complexity will be made more evident. See NCCB ADMINISTRATIVE COMMITTEE, "Bishop's Pastoral Role in Catholic Healthcare Ministry", in *Origins*, 26 (1997-1998), pp. 700-704. See also, A. BEVILACQUA, "Catholic Health Care Collaborative Relationships", in *Origins*, 28 (1998-1999), pp. 657,659-660.

other institutions and associations in the diocese. Religious were asked to reevaluate their existence, duties and place in the Church in light of a Church that was on the move and becoming. The laity were reminded of their rights and responsibilities in the Church and of the positive aspects of working with the bishop of the diocese in any works that they might have under way. The Council Fathers placed emphasis on the fact that group apostolates are able to accomplish more than individual ones, thus indirectly reemphasising the issue of juridic persons in the Church.

The apostolic mission of health care has a viable place in the Church and world. It is buffeted by the winds of continuous change which force related actions and decisions. Our emphasis will be on this special place.

Within the organizational structure of the Church are groups and entities that are recognized as juridic persons and it is usually through these legal persons that the Church pursues its responsibilities of apostolic mission. Healthcare systems and facilities in the Church are usually juridic persons or are operated by them. The next chapter will examine, more particularly, the place of juridic personality in the life of the Church today.

## **CHAPTER TWO**

### **CANONICAL STRUCTURES TO ENHANCE "APOSTOLIC MISSION"**

#### **INTRODUCTION**

The Church is composed both of individuals and of organizational structures which are erected to fulfill various objectives. The structures are often called "juridic persons" and fall within two categories, public or private. For, in addition to physical persons (i.e., those who have been baptized), the Canon law also recognizes both "moral" persons (who come into existence without the intervention of any legislator) and "juridic" persons (who receive legal existence, with accompanying rights and obligations, through the operation of the law).

Just as Canon law recognizes two categories of juridic persons (public and private), it also recognizes two types of associations: those established by ecclesiastical leadership which are "public" and act in the name of the Church, and those established by individual initiative, which are "private" and do not act in the name of the church, even though through their members they carry out the works of the apostolic mission.

In this chapter there is a concentration on the development of the idea of juridic person in Roman law and an examination of various influences. Then a review is made of the concept of juridic person in the 1917 Code of Canon Law and finally of juridic persons according to the 1983 legislation. Associations of the

faithful will be referred to only concerning those norms which are applicable to the juridic person. We intend to examine which types of organizations can exist in the Church, why they are recognized and how they can be utilized to foster the apostolate. We will then ascertain how the private and public juridic forms can apply to healthcare systems operating in the Church.

## **I. THE JURIDIC PERSON IN ROMAN LAW**

### **1. A GENERAL OVERVIEW OF ROMAN LAW PROVISIONS**

#### **1.1 THE CLASSICAL PERIOD AND THE EMPEROR JUSTINIAN**

The period from A.D. 98 -244 is usually called the classical period of Roman Law.<sup>1</sup> This era saw gradual movement from a narrow city law to a world-wide law. Although the formation of Roman law ceases during the reign of Diocletian, the understanding of juridic person develops as Roman commerce increases. In the period lasting from 284 A.D. to the overthrow of the Eastern Roman Empire by the Turks in 1453 A.D.,<sup>2</sup> Roman law was eventually summed up and codified. Constantine centralized the Roman Empire and the essence of his work remained in place for the duration of the Empire.

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<sup>1</sup>Re: C. P. SHERMAN, *Roman Law in the Modern World*, Vol. I, 3<sup>rd</sup> edition, New York, Baker, Voorhis & Co., 1937, p. 25 (hereafter cited as SHERMAN I).

<sup>2</sup>Re: SHERMAN I, p. 173.

The Emperor Justinian, who reigned from A.D. 527-565 at Constantinople, is known for his re-conquest of Italy and Africa but his greatest achievement is his legislation. He promulgated his codification in A.D. 529-534,<sup>3</sup> something which others had attempted beforehand but without success. Justinian's codification is the consolidation of three areas of Roman law: the statutes which he himself set forth, those of his predecessors, and the writings of the Roman jurists. He forbade any commentaries to be written and reserved the right to settle all disputed points.<sup>4</sup> Justinian referred to the various parts of his codification as Code, Digest, Pandects and Institutes. In the 16<sup>th</sup> century it received the name "*Corpus Juris Civilis*" and is usually referred to simply as the "*Corpus Juris*".<sup>5</sup> His law was applied initially in the East, since the West had been overrun by the Teutonic conquerors, who, nevertheless, retained the basic principles of Roman law for citizens of the Western Empire. When Justinian regained Italy and Africa, he made his codification the law in these parts and consequently it became known to Western Europe. Although this law held in Italy it was given new life in the 12<sup>th</sup> century with the revival in Bologna of Roman law studies.<sup>6</sup>

Through the endeavors of Justinian and others, Roman law incorporated the best of the laws of nations and was, by means of competent jurists and able leaders, capable of bringing justice and fairness into the lives of everyone who eventually fell within its scope.

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<sup>3</sup>Re: B. NICHOLAS, *An Introduction to Roman Law*, Oxford, Clarendon Press, 1995, p. 41 (hereafter cited as NICHOLAS).

<sup>4</sup>Re: SHERMAN I, p. 115.

<sup>5</sup>Re: SHERMAN I, p. 116.

<sup>6</sup>See SHERMAN I, p. 125.

## 1.2. THE TERMINOLOGY “JURIDIC PERSON” IN ROMAN LAW

Some terminology evolves over time. A word might have a meaning today which it did not have a hundred years ago. This is the position with Roman law terminology relative to juridic persons.

In early writings, “*persona*” or person was a human being,<sup>7</sup> any being who could be called human.<sup>8</sup> Legal writings even referred to a slave as a “*persona*”.<sup>9</sup> Until the third century, “*persona*” did not indicate a legal person or legal personality;<sup>10</sup> it did not have the technical sense that it has today.<sup>11</sup> The Romans in fact had no term to differentiate those “*personae*” who were capable of rights and duties from those who were not capable of them. “*Persona*” does not play a part in the early history of legal personality. However, three words that do enter into the realm of personality, are “*caput*”, “*corpus*”, and “*universitas*”.

“*Caput*” corresponds more closely than “*persona*” to modern legal personality as it is extended from the sense of “a head” to mean a “man” or the “position of a man”.<sup>12</sup> However, “*caput*” is attributed only to natural man, and not to any town or college, or to any juridic person.<sup>13</sup>

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<sup>7</sup>Re: W. W. BUCKLAND, *Roman Law and Common Law, A Comparison in Outline*, 2<sup>nd</sup> revised edition, Cambridge, Cambridge University Press, 1952, p. 54.

<sup>8</sup>See P. DUFF, *Personality in Roman Private Law*, Cambridge, Cambridge University Press, 1938, p. 7 (hereafter cited as DUFF).

<sup>9</sup>Re: DUFF, p. 7.

<sup>10</sup>Re: DUFF, p. 9.

<sup>11</sup>Re: DUFF, p. 25l. See F. SCHULZ, *Principles of Roman Law*, translated by M. WOLFF, Oxford, Clarendon Press, 1936, p. 43 (hereafter cited as SCHULZ).

<sup>12</sup>Re: DUFF, p. 25.

<sup>13</sup>Re: DUFF, p. 26.

“*Corpus*” has the meaning of a “body” and can be used as a “corporate body” and is so used for any set of persons who are regarded as a group, such as individuals connected by some intrinsic relation, although not spatially conjoined.<sup>14</sup>

It appears that “*corpus*” is never a technical term meaning “a corporate body” even if it does once mean “corporate character”; but that classical Roman lawyers were quite aware that some bodies, groups, were recognized by law as able to own and sue, and in that respect are different from other bodies; and that consequently, when they talk of “*corpora*”, they tend to have these “corporate” bodies primarily in mind. Sometimes “*corpora*” means only the guilds, “*collegia*”, which could own and sue, not because other bodies are not “*corpora*” but because other bodies are not relevant.<sup>15</sup>

The three words, “*persona*”, “*caput*” and “*corpus*” do not convey the meaning of a juridic person in the sense of a category that bears rights and duties. However, the word that is nearer to the concept of juridic person but is not quite there is “*universitas*”.

Some time later, between 350 B.C. and 180 A.D., the period of time extending from the Twelve Tables of Roman Law to the time of Gaius, a new term appeared, “*universitas*”.

In the time of Justinian the *universitas rerum*, or *universitas iuris* (both expressions are used) is a somewhat abstract conception: it means the sum of or whole of a man’s legal position so far as it concerns the *ius rerum*. The conception is important in law only on the occasions, of which death is by far the most, on which the *universitas* passes from one to another. [...] some of the elements of the *universitas* are extinguished by the event leading to the transfer. [...] The expression *universitas rerum* is also used in another sense, to denote any collection of objects considered as a whole. [...] This is

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<sup>14</sup>Re: DUFF, pp. 26-27.

<sup>15</sup>DUFF, p. 33.

not very important in law but it has its significance in the history of the conception of a *universitas*.<sup>16</sup>

It is a word that meant a whole (contrasted with its parts), or a group contrasted with its members.<sup>17</sup>

“*Universitas*” is also a group of people, with the emphasis placed on the fact that they are a group and not considered as individuals.

By a natural development “*universitas*” comes to be used in particular by lawyers in speaking of a group which has been recognized by the law to be a group and either made capable or recognized to be capable as such of rights and duties. In other words, “*universitas*” sometimes means a collective juristic Person.<sup>18</sup>

“*Universitas*” was probably never a technical term and could be used with regard to any group, whether it was corporate or not, except when used by lawyers who would normally refer to it as a corporate body.<sup>19</sup>

Likewise, “*collegium*” does not refer to juridic personality as such. It referred to the college of magistrates and the college of priests. But these were not

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<sup>16</sup>W. W. BUCKLAND, *A Manual of Roman Private Law*, Cambridge, England, University Press, 1928, p. 172 (hereafter cited as BUCKLAND, *Manual*). See BUCKLAND, *Manual*, p. 110: “[...] *ius rerum*, are all rights which are concerned with some physical thing, rights *in rem* in a literal sense.” The whole or substantial part of the rights involved in ownership is vested for the time being in some person other than the owner (similar to copyrights, patents, etc.).

<sup>17</sup>Re: DUFF, p. 36, indicates in a footnote that the term “is not used by any jurist or lay writer before the Byzantine age, apart from Gaius, 2. II [...]. It is not likely to have been so used, as a legal term of art, by any but lawyers, either in the second or the sixth or any other century [...].

<sup>18</sup>DUFF, p. 37.

<sup>19</sup>Re: DUFF, p. 38. See W. BURDICK, *The Principles of Roman Law and Their Relation to Modern Law*, Rochester, New York, The Lawyers Co-operative Publishing Co. 1938, p. 277 (hereafter cited as BURDICK). A. WATSON, English translation, *The Digest of Justinian*, Latin text translation by T. MOMMSEN and P. KRUGER, Vol. I, Philadelphia, Pennsylvania, University of Pennsylvania Press, 1985, pp. 97-98. Latin text D. 3, 4,1, (hereafter cited as WATSON).

corporate bodies. Other “*collegia*” were private and likened more to clubs or guilds. The history of these organizations is as varied by their purposes: burial, electioneering, military training, drinking, etc., but they do not have a corporate capacity. Since these were founded by private persons initially, they had no statutes, but if they were formed by the State then they would have statutes.

No Latin word or phrase is similar to “juridic person” and the Romans did not concern themselves with this concept. By the first century a form of corporate application was recognized, and towns and guilds eventually acquired the right to own property and the right to sue.<sup>20</sup> The recognition of artificial personality is a product of the Roman law of the Empire.<sup>21</sup> This occurred as Rome developed from an agrarian society to a commerce and trade-based economy, precipitated by its territorial expansion which was a consequence of the successes of its armies under the monarchy. The Church in the Empire most likely existed under the form of a “*collegium*”.

### **1.3 JURIDIC PERSON IN ROMAN LAW**

By the first century, the Roman law came to recognize “juristic persons”.

Among juristic persons, it is for each legal system to determine what things or groups or individuals are to be deemed legal persons, and personality may attach to idols, funds, institutions, and groups of individuals associated in particular ways.<sup>22</sup>

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<sup>20</sup>See DUFF, p.129.

<sup>21</sup>Re: C. P. SHERMAN, *Roman Law in the Modern World*, Vol. II, 3<sup>rd</sup> edition, New York, Baker, Voorhis & Co., 1937, p. 118 (hereafter cited as SHERMAN II).

<sup>22</sup>D. WALKER, *The Oxford Companion to Law*, Oxford, Clarendon Press, 1980, p. 949.

Legal systems today are somewhat based on the principles developed in Roman law. The terminology might seem the same, but, in reality there is an evolution in the understanding of concepts over the course of time. The concepts of "person"<sup>23</sup> and "legal and artificial persons" came to mean different things, depending on who used them and when they were used.

Juridic persons<sup>24</sup> are created by the law which gives them their existence and, therefore, are unlike natural persons who do not depend on the law for theirs.<sup>25</sup> The two main characteristics of juridic persons are a personality distinct from that of the natural persons who are its members, and existence that can be perpetual or at least beyond the natural period of human life.<sup>26</sup> The *Ius Civile*, the law of Rome, concerned itself only with Roman citizens as natural persons.

#### **1.4 CLASSES OF JURIDIC PERSONS**

By the end of the first century many classes of juridic persons were recognized in Roman law: public juridic persons, religious associations, charitable foundations, commercial companies, and industrial associations, political clubs, social and mutual benefit associations.<sup>27</sup>

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<sup>23</sup>Re: WATSON, Vol. I, p.15; D. 1, 5, 1.

<sup>24</sup>Juridic persons meaning also artificial persons/corporations. This term was not actually used by the Romans but they did establish the "idea" of juridic person. It was not until the 18<sup>th</sup> century that the term juridic person is actually used in civil law and later in canon law.

<sup>25</sup>Re: SHERMAN II, p. 117.

<sup>26</sup>Re: SHERMAN II, p. 117.

<sup>27</sup>Re: SHERMAN II, p. 118.

Public juridic persons are political bodies such as the State, cities, towns, etc., and usually have governmental powers, while private juridic persons do not.<sup>28</sup> Ordinarily, religious associations were created by the State to maintain the national religion of Rome.<sup>29</sup> Eleemosynary juridic persons or charitable foundations (*a pia causa*) developed during the Empire, and were established by the State for the distribution of alms, etc.<sup>30</sup> The influence of Christianity on legislation in the 5<sup>th</sup> century allowed individuals to create charitable foundations and endow them with property, which, such as the poorhouse, hospital, orphanage or asylum, dedicated to the administration of charity, were able to share in the juridic capacity granted by Roman law to ecclesiastical institutions.<sup>31</sup>

Commercial companies were usually of a private nature and were organized for business or trade purposes; industrial associations can be compared to trade unions or artisan groups.<sup>32</sup> Political clubs, although not juridic persons in the strict sense, were initially set up for feasting or worship but gradually became concerned with political purposes, some threatening the very well-being of the State; this moved Augustus to dissolve them around 20 B.C.<sup>33</sup> The social and mutual benefit associations were not juridic persons in the strict sense and were formed to provide burial services and social opportunities for the membership.<sup>34</sup>

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<sup>28</sup>Re: SHERMAN II, p. 118. See BURDICK, p. 281.

<sup>29</sup>Re: SHERMAN II, p. 119.

<sup>30</sup>Re: SHERMAN II, p. 119.

<sup>31</sup>Re: SHERMAN II, p. 120.

<sup>32</sup>Re: SHERMAN II, pp. 120-121.

<sup>33</sup>Re: SHERMAN II, p. 121. Augustus was made emperor by the Roman Senate in 27 B.C. In actuality he established rules for establishing associations.

<sup>34</sup>Re: SHERMAN II, p. 121.

## 1.5 BEGINNINGS OF JURIDIC PERSONS

The juridic person as we know it today had its true beginnings under Augustus around 20 B.C., with his legislation "*Lex Julia de collegiis*".<sup>35</sup> Under this law, for associations to exist, they needed the permission of the senate which then had to be confirmed by the Emperor.<sup>36</sup> Eventually, only the Emperor could grant recognition to an association and gradually there developed the concept of juridic personality. Artificial personality, originally attributable to public juridic persons, was later extended to private ones.<sup>37</sup> State authorization was always required in the Roman Empire (under Augustus) to form a juridic person. In the spirit of Augustus, legislation on this matter was carried through by later Emperors who required State authorization for the legitimate formation of a juridic person. Given the past history of certain groups, this was essentially a matter of State security.

## 1.6 REQUIREMENTS FOR THE FORMATION OF A JURIDIC PERSON

The formation of a juridic person, under Roman law, required three persons and, once formed, it remained the same despite membership changes even if it was reduced to a single person.<sup>38</sup> All the members, through their vote, participated in the internal government of the juridic person. In Roman law, juridic persons had the

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<sup>35</sup>Re: SHERMAN II, p. 126. See W. K. BOYD, *The Ecclesiastical Edicts of the Theodosian Code*, New York, N.Y., AMS Press, Inc., p. 80 (hereafter cited as BOYD).

<sup>36</sup>Re: WATSON, Vol. I, p. 96; D. III, 4, 1.

<sup>37</sup>Re: SHERMAN II, p. 126. See WATSON, Vol. I, p. 96; D. III, 4, 1, 1.

<sup>38</sup>Re: SHERMAN II, p. 127.

same capacity to hold, acquire or possess property, to contract obligations, to sue and be sued in courts of justice as did natural persons.<sup>39</sup>

Roman law eventually allowed juridic persons to receive property under wills, to succeed to the property of deceased members without heirs, to contract through agents, to be sued because of tort, and to sue or be sued in a court of justice.<sup>40</sup> The juridic person could cease by cessation of authorization, death or withdrawal of its members, voluntary surrender of its authorization, or forced dissolution by the State.<sup>41</sup>

### **1.7 PRACTICAL APPLICATIONS**

The Roman world was one of great commercial activity due to the territories that were governed. The law was able to maintain its flexibility through the leadership of its legal experts and the Emperors. Over time, as the need arose, the Romans developed the idea of a "corporation". Although they rarely dealt with the nature of law itself, they did provide a wealth of practical applications of the law. The idea of the juridic person, the corporation in Roman law, was formative of most of corporate law which exists in the world today.

That a corporation is an artificial person, a juristic person, a legal person, a legal fiction, or that it is intangible, or invisible, are the products of philosophic reflection. Such views were not expressed by the Roman lawyers. Regardless of academic speculation and dispute upon the extent of the development among the Romans of the idea of legal personality in a corporation, the important thing is the fact that

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<sup>39</sup>Re: SHERMAN II, p. 128-129.

<sup>40</sup>Re: SHERMAN II, pp. 131-132. See WATSON, Vol. I, p. 97; D. III, 4, 1, 2; D. III, 4, 7.

<sup>41</sup>Re: SHERMAN II, pp. 131-132.

they developed the corporate idea. A corporation is one thing and the nature of a corporation is another thing. That what we call corporations were recognized as a part of Roman Law there is no question, and from the Roman Law of corporations our English fundamental law upon the subject is derived. [...] The thing achieved by the Romans [...], was the conception of a legal entity, a sort of legal personality, apart from and independent of the individual members that composed the associated group.<sup>42</sup>

## **II. REVIVAL OF ROMAN LAW**

### **1. RESTORATION OF THE WESTERN EMPIRE**

The crowning of Charlemagne as Roman Emperor in the ninth century restored the Western Empire. The glory that was Rome was really never restored and Italy evolved into a feudalistic society during the medieval period. The Western Empire continued until 1806. It must be recognized that the reestablishment of the Western Empire did much to preserve as well as spread the use of Roman law, especially through the German Roman Emperors.

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<sup>42</sup>BURDICK, pp. 276-277.

### 1.1 MEDIEVAL CONCEPT OF CORPORATION

There was a lack of precision regarding the concepts of corporation, as held by both civil and canon lawyers of the thirteenth century,<sup>43</sup> as is indicated by the following:

A corporation might be called a *corpus*, *universitas*, *communitas*, *collegium*, *societas*, or even (by Pillius) a *consortium* or *schola*, and it was vaguely defined as a *collectio personarum plurium*, or "*plurium corporum inter se distantium, uno nomine specialiter eis deputato*." Three persons or more in a profession could form a *collegium* for the purpose of securing justice for each member, but the *collegium* must be recognized either by common law or by the "tacit or express approval" of a superior authority. Such a corporation could elect its own officers and representatives could within certain limits make statutes, could possess property, and could as a legal person, sue and be sued through a *syndicus* or *procurator*. In detail these conceptions varied from time to time, and developed in step with the evolution of corporations and legal procedure.<sup>44</sup>

For example, in considering the incorporation of a university at this time (1221), the term "*universitas*" was used; distinct from any group of persons, it designated the whole body of students acting as a legal person.<sup>45</sup> This appropriation of the term for corporations of learning continues although the members of the corporation may have changed.

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<sup>43</sup>Re: G. POST, *Studies in Medieval Legal Thought, Public Law and the State, 1100-1322*, Princeton, New Jersey, Princeton University Press, 1964, p. 29 (hereafter cited as POST).

<sup>44</sup>POST, pp. 29-30.

<sup>45</sup>Re: POST, pp. 30-31. A recent definition of *universitas* is: a union of persons considered as a whole; a corporation. H. BLACK, *Black's Law Dictionary*, 7th edition, B. GARNER, edit, St. Paul, Minn., 1999, p. 1536 (hereafter cited as BLACK).

## 1.2 MEDIEVAL REPRESENTATION

The medieval concept of "representation" was built on feudal law, communities, ecclesiastical synods and councils, and the growth of papal and royal power, but the stimulation for its broader use arose through the revival of Roman and Canon law, especially through the procedure of corporate representation by agents (procurators or syndics).<sup>46</sup> The papacy of the twelfth century decisively introduced the practical application of Roman principles and procedures in the courts of the Church, the literature on such not flourishing until the last third of the century.<sup>47</sup> After the first decade of the thirteenth century, the system of corporate representation by agents given full powers (*plena potestas*) grew steadily with Pope Innocent III playing an important role in the adoption of the new method of representing communities in ecclesiastical and secular assemblies.<sup>48</sup>

## 2. CHRISTIANITY AND ROMAN LAW

The reign of Constantine marked the beginning of the Christian influence on Roman law. Constantine converted to Christianity and a year later, with the Edict of Milan in 313 AD, made Christianity the most favored religion of the State.<sup>49</sup> Any influence that Christianity had on Roman law was derived through Imperial legislation.<sup>50</sup> To what degree Christianity influenced Roman law continues to be

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<sup>46</sup>Re: POST, p. 61.

<sup>47</sup>Re: POST, pp. 66-67.

<sup>48</sup>Re: POST, p. 88.

<sup>49</sup>See BOYD, p. 92.

<sup>50</sup>Re: SHERMAN II, p. 126.

debated, but it did bring to it a set of ethics heretofore lacking while not changing the basic principles of Roman law.<sup>51</sup>

During this time ecclesiastical law began to develop on its own. It was due to Christianity, and more specifically, to the Western Latin Church, that the remnants of civilization survived during the Middle Ages.<sup>52</sup> The clergy never abandoned the Roman law and it was their personal law accompanying them wherever they went.<sup>53</sup> The Bishops set up ecclesiastical courts in their jurisdiction and applied a refined Roman law which eventually became known as Canon law.<sup>54</sup> The Papacy gained in strength and modeled its organizational structure on the Imperial Roman Empire which is seen in the centralization of power, the absolute supremacy of the Pope, and the universal system of church law.<sup>55</sup>

### **3. CANON LAW**

#### **3.1 DEVELOPMENT**

Canon law is a system of law that was developed over time for the purpose

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<sup>51</sup>Re: SHERMAN II, p. 129.

<sup>52</sup>Re: BOYD, pp.111-113.

<sup>53</sup>Re: BOYD, p. 218.

<sup>54</sup>Re: BOYD, p. 218. See BOYD, pp. 90-92.

<sup>55</sup>Re: SHERMAN II, p. 218. See BOYD, pp. 101-102.

of governing and regulating the Christian Church.<sup>56</sup> It was the law laid down by ecclesiastical councils and by Popes through letters and decretals. After the Church was made the official State religion of the Empire, bishops were authorized by the Christian emperors to assume jurisdiction in Church matters, thus developing a large amount of ecclesiastical law over time. In 1150, Gratian, a Camaldolese monk, completed the first collection and modeled its layout on Justinian's Digest. It was known as the *Decretum of Gratian*.

### 3.2 SOME INFLUENCES ON CANON LAW

In early Canon law much of Roman law was found.<sup>57</sup> The influence of the Justinian codification is seen in many areas, such as procedures, property, contract, persons, etc.<sup>58</sup> There is some alteration but the basic principles are there. The concepts of juridic person and corporation are found in Canon law due to the continued influence of the principles of Roman law.

The law of the Decretals recognized the juridic personality of a great number of corporations and institutions. Canonists were probably the ones to contribute to the success of the term "persona" to designate the juridic person.<sup>59</sup>

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<sup>56</sup>Re: BURDICK, p. 172.

<sup>57</sup>Re: BURDICK, p. 173.

<sup>58</sup>Re: SHERMAN II, p 221. See BOYD, pp. 106-107.

<sup>59</sup>A. GAUTHIER, *Roman Law and Its Contribution to the Development of Canon Law*, 2<sup>nd</sup> edition, Ottawa, Saint Paul University, 1996, p. 51 (hereafter cited as GAUTHIER, *Roman Law*).

Sinibald Fieschi, the future Innocent IV (1254), is attributed as being the first individual who referred to "persona" in reference to a corporation as a fiction of the mind.<sup>60</sup>

The Glossators and Post-Glossators helped to transform the Roman law of Justinian into a medieval civil law and in the process developed legal and political theories. These theories were based on the *Corpus Iuris Civilis*, Canon law, Germanic and feudal customary law and other sources of the time. The Romano-canonical theory of corporation is an example of continuous development of law.

To the glossatorial theory of the corporation as being the sum of or aggregate of its individual members the canonists of the thirteenth century added an institutional element derived from the history of the Church. The canonists, moreover, advancing beyond the doctrine of the Glossators, invested the corporation with a personality of its own. It was this Romano-canonical theory of the corporation as *persona ficta*, the result of the combined studies of the Glossators and canonists during the twelfth and thirteenth centuries, which was still further developed by the French and Italian Post-Glossators of the late thirteenth and fourteenth centuries. [...] "The Fiction Theory" leads us into "the Concession Theory"<sup>61</sup>. It was these two theories which played so important a role in the later history of doctrine, both on the Continent and in England respecting the nature of the corporation.<sup>62</sup>

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<sup>60</sup>Re: GAUTHIER, *Roman Law*, p. 51. M. CORONATA, *Institutiones Iuris Canonici, Ad Usum Utriusque Cleri et Scholarum*, Vol. I, Taurini, Marietti, 1933-1939, p. 158 (hereafter cited as *Institutiones*). See also A. GAUTHIER, "Juridical Person in the Code of Canon Law", in *Studia Canonica*, 25 (1991) p. 79 (hereafter cited as GAUTHER, *Juridical Person*).

<sup>61</sup>This refers to the right of the State to protect itself against corporate undertakings which threaten its existence giving it the right to suppress or prevent formation of such corporations. See B. BROWN, *The Canonical Juristic Personality with Special Reference to Its Status in the United States*, Washington, D.C., The Catholic University of America, 1927, p. 55 (hereafter cited as BROWN).

<sup>62</sup>W. ULLMANN, *The Medieval Idea of Law As Represented by Lucas De Penna*, London, Methuen & Co. Ltd., 1946, pp. xix-xx.

Savigny<sup>63</sup> argued for and supported the "fiction" theory,<sup>64</sup> which indicated that individuals are fused by law into a person entirely distinct from even the collectivity or totality of the members.<sup>65</sup> A "will" was necessary for ownership and a corporation is without a will, but the law, by legal fiction, extends one to it.<sup>66</sup> This theory puts the power of establishing any legally recognized corporation into the hands of the State.<sup>67</sup>

Gierke<sup>68</sup> held the "realistic" theory which presupposes that the juridic entity is a reality, a real person with a body, and is construed as a group person with a group will.<sup>69</sup>

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<sup>63</sup>Friedrich Karl von Savigny (1779-1861) was a historian of Roman law and initiator of the historical approach in 19<sup>th</sup> century jurisprudence. He investigated the Roman law as untrammelled by any practical considerations. He held the view that a jurist can dispense with the natural law and that the whole of jurisprudence is a historical science. Influenced by Romanticism he considered the origin of law to be derived from interior ethnic forces rather than from the whim of the legislator. See H. THIEME, "Savigny, Friedrich Karl von", in the *New Catholic Encyclopedia*, Vol. XII, 1967, p. 1104.

<sup>64</sup>Re: BROWN, p. 44.

<sup>65</sup>Re: BROWN., p. 44. See F. WERNZ, *Ius Canonikum ad Codicis Normam Exactum*, Vol. II, *De Personis*, Romae, Apud Aedes Universitatis Gregoriana, 1943, pp. 32, note 11 (hereafter cited as WERNZ).

<sup>66</sup>Re: BROWN, p. 44.

<sup>67</sup>See K. F. SAVIGNY, *Jural Relations (Savigny's System of Modern Roman Law)* translated by W. H. RATTIGAN, Westport, Connecticut, Hyperion Press, INC., (reprint of London, Wildy & Sons, 1884), p. 206 (hereafter cited as SAVIGNY): "The necessity of State sanction for the creation of every Juristical Person has, independent of all Political considerations, a perfect juridical basis. [...] If, now the natural Jural Capacity of the individual Man, were transferred by a fiction to an ideal Subject, it would completely lack that natural confirmation; the Will of the Sovereign Power alone can supply this, because it creates artificial Subjects of Rights, and if the same authority were permitted to be exercised by the volition of private Will, the greatest uncertainty of Jural conditions would unquestionably result, quite irrespective of the great abuse which would be rendered possible by a dishonest exercise of such Will."

<sup>68</sup>Otto Friedrich von Gierke - German jurist, historian and political theorist (1841-1921). Gierke, championed what he regarded as a peculiarly Germanic medieval concept of the "real personality" and hence inherent legal rights of social groups as "corporations". He opposed the legal theory of "persona ficta" since it was a legal creature of the state and under its control. Gierke was a rationalist-voluntarist, and departed widely from the version of natural law, based on practical reason, propounded by St. Thomas Aquinas. See R. HARTNETT, "Gierke, Otto Friedrich von", in *New Catholic Encyclopedia*, Vol. VI, 1967, pp. 471-472.

<sup>69</sup>Re: BROWN, p. 52. See *Institutiones*, p. 158.

Another theory is the “modern canonical” theory. It is the school of “social necessity”, calling into existence certain groups of a social character which exist by virtue of the natural law.<sup>70</sup> The corporation is a representation of real things and is a social necessity. Since various church institutions were independent subjects of rights and duties, if one of their bodies were dissolved, the property went to the immediately higher ecclesiastical moral person.<sup>71</sup> An “act” of the State was not necessary to establish a juridical entity as it was a natural right preceding positive civil law.<sup>72</sup>

Thus, with time, we see the Latin terminology such as “*persona*”, “*corpora*” and “*universitas*” that originally did not have the sense of juridic person or corporation in early Roman law, now being used in that sense.

The term “juridical person” is said to have been first used by the German jurist, A. Heise (1851) and the terms “*universitates personarum*” and “*universitates rerum*” were used by another German jurist of the nineteenth century, G.F. Puchta, a disciple of Savigny.<sup>73</sup> These terms were used in the 1917 Code of Canon Law.

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<sup>70</sup>Re: BROWN, p. 52. See *Institutiones*, p. 159.

<sup>71</sup>Re: BROWN, p. 54.

<sup>72</sup>Re: BROWN, p. 55. See WERNZ, p. 33, note 11.

<sup>73</sup>Re: GAUTHIER, *Roman Law*, p. 52.

### III. JURIDIC PERSONS IN THE 1917 CODE OF CANON LAW

#### 1. CODIFICATION OF CANON LAW

There was an unofficial closing of the *Corpus Iuris Canonici* after the completion of the "Extravagantes"<sup>74</sup> in as much as no further entries were made, although there was no official prohibition of such. The ecclesiastical laws and principles were henceforth scattered throughout various publications, and canonists had to indulge in time-consuming searches to locate them. The sources of law during this time are found in the Council of Trent, papal legislation, rules and regulations given by the Apostolic Chancery and the Roman Congregations. These at times conflicted with the *Corpus Iuris* creating confusion and disagreements. Over the years, there was a call to correct the problems inherent in ecclesiastical laws. On March 17, 1904, Pope Pius X announced his intention to prepare a new canonical collection.<sup>75</sup> He died in 1914 but on May 27, 1917 Pope Benedict XV promulgated the new code which was to take effect on May 19, 1918.<sup>76</sup> This was the first complete collection of the laws of the Church. It was arranged in a systematic order with brief formulae similar to the structure of the civil codes. The movement of "codification" was strong in Western Europe, especially in France and Germany.

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<sup>74</sup>*Corpus Iuris Canonici* is made up of: *Decretum of Gratian* (1150); *Decretals* (1234), letters of various popes; *Sext* (1298); *Constitutions of Clement V* (1308); *Constitutions of John XXII* (succeeded Clement V) which are called the "Extravagantes" because they go beyond the limits of preceding laws. Later papal constitutions are included in the name *Extravagantes*. BURDICK, p. 173.

<sup>75</sup>See POPE PIUS X, *Motu Proprio, Arduum sane, De Ecclesiae legibus in unum redigendis*, 14 April 1904, in *Acta Sanctae Sedis*, 36 (1903-1904), pp. 549-551.

<sup>76</sup>Re: POPE BENEDICT XV, *Constitution, Providentissima Mater Ecclesia*, 27 May 1917, in *Acta Apostolicae Sedis*, 9 (1917), Pars 2, pp. 5-8.

A code states the law comprehensively, in general principles, and the finding of the law in an individual case is deductive, an application of general principles to particular facts. A case law system, on the other hand, develops tentatively, and truly casually; the principles crystallise slowly from decisions in particular cases, and the method of law finding proceeds inductively from the particular to the general.<sup>77</sup>

The codification of the German civil code had an effect on the 1917 Code<sup>78</sup> as to structure and terminology. It seemed to make ecclesiastical law accessible and manageable. The German Civil Code (BGB), promulgated in 1896, has a “general part”, which was different from other codes of the time.<sup>79</sup> We see this “general part” possibly affecting the 1917 Code as “general norms”.

## 2. CANONS 99 AND 100, 102

The 1917 Code presents legal or artificial persons in the Church as constituted by the public authority of the Church; these are divided into collegial and non-collegial.<sup>80</sup> Collegiate persons are made up of a number of individuals such as chapters, etc., but do not receive their rights and existence from them. Non-

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<sup>77</sup>W. FRIEDMANN, *Legal Theory*, London, Stevens and Sons Limited, 1960, 4<sup>th</sup> edition, p. 483.

<sup>78</sup>Re: GAUTHIER, *Juridical Person*, p. 78.

<sup>79</sup>Re: R. DAVID and J. BRIERLEY, *Major Legal Systems in the World Today*, 2nd edition, New York, The Free Press: a division of Macmillan Pub. Co, 1978, p. 85.

<sup>80</sup>*Codex Iuris Canonici*, Romae, Typis Polyglottis Vaticanis, 1917, (=CIC 1917), c. 99: “In Ecclesia, praeter personas physicas, sunt etiam personae morales, publica auctoritate constitutae, quae distinguuntur in personas morales collegiales et non collegiales, ut ecclesiae, seminaria, beneficia, etc. See also, T. L. BOUSCAREN, A. C. ELLIS, F. N. KORTH, editors, *Canon Law, A Text and Commentary*, 4<sup>th</sup> revised edition, Milwaukee, The Bruce Publishing Company, 1966, pp. 89-90 (hereafter cited as BOUSCAREN).

collegiate persons such as churches, seminaries, and benefices have rights exercised through administrators; they are basically properties or funds. The Church recognizes moral persons<sup>81</sup> as distinguished from physical persons. This moral person is recognized in the 1917 code under various titles: c. 687, *persona iuridica*; c. 1409, *ens iuridicum* (the term includes all types of persons recognized by law). No particular definition of a juridic person is given in the 1917 Code.<sup>82</sup>

The ecclesiastical capacity of acquiring and exercising rights in the Church is also given to corporate bodies and institutions through authorized conferral by public ecclesiastical authority.<sup>83</sup> The ecclesiastical moral persons constituted by the Church have the capacity to acquire, retain, and administer temporal goods. We do not find in this Code the distinction between public and private moral persons. The moral person is, of its nature, public, as is the case with some Church bodies whose ecclesiastical corporations are agencies of the State.<sup>84</sup>

The Church and the Apostolic See are moral persons of divine origin, while other inferior moral persons are created by ecclesiastical authority; certain requirements are necessary to constitute them and for them to enjoy the protection

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<sup>81</sup>"A moral person means a juridical entity, a subject of rights, distinct from all physical or natural persons." BOUSCAREN, p. 89. See SAVIGNY, p. 179: he states that he is using the term juridical person as opposed to natural man to indicate existence as a person. He goes on to say, "Formerly the term Moral Person was very common which I have rejected upon two grounds: first, because it does not generally touch the essence of the concept, which has no connection with Moral Relations; secondly, because that expression was more adapted to denote, amongst individual Men, the contrast to immorality, so that by that term the thought is carried away to a wholly foreign province. The Romans themselves had no general term for all the cases of this sort. Where they wished to express the Juristical character of such Subjects, they merely said that these represented the place of Persons, which is tantamount to saying these are feigned persons." See GAUTHIER, *Juridical Person*, p. 80: "As far as the secular sources are concerned, it seems that its (*persona moralis*) wide use in French doctrine played a role in its being adopted by the drafters of the 1917 Code."

<sup>82</sup>T. J. KILCULLEN, *The Collegiate Moral Person as Party Litigant*, dissertation, Washington, D.C., The Catholic University of America Press, 1947, p. 2. (hereafter cited as KILCULLEN).

<sup>83</sup>Re: BROWN, p. 89.

<sup>84</sup>Re: BROWN, p. 89. See BOUSCAREN, p. 89

afforded to minors under the law.<sup>85</sup> There should be a minimum of three incorporators of an inferior moral person and canon 687 also indicates the necessity of a formal decree of erection.<sup>86</sup> Since canonical personality arises from God or through the action of the Church,<sup>87</sup> the moral person is not dependent upon human authority for existence and is above the range of civil rights developed by any system of jurisprudence.<sup>88</sup> The moral person is dependent only on God and His representatives (the Church).

The inferior moral person can be established only by superiors who have jurisdiction in the external forum, such as bishops or those with quasi episcopal authority.<sup>89</sup>

Some moral persons can be erected only by the Holy See, such as ecclesiastical provinces, dioceses, abbeys, catholic universities and faculties, etc.<sup>90</sup>

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<sup>85</sup>CIC 1917, c. 100 §1: "Catholica Ecclesia et Apostolica Sedes moralis personae rationem habent ex ipsa ordinatione divina; ceterae inferiores personae morales in Ecclesia eam sortiuntur sive ex ipso iuris praescripto sive ex speciali competentis Superioris ecclesiastici concessione data per formale decretum ad finem religiosum vel caritativum. §2: Persona moralis collegialis constitui non potest, nisi ex tribus saltem personis physicis. §3: Personae morales sive collegiales sive non collegiales minoribus aequiparantur." See, SAVIGNY, p. 211: "A corporation may be likened to a Minor, whose guardianship is exercised, in the UNIVERSITAS ORDINATA (§86), by an artificially constituted Authority, and in the INORDINATA by the existing Members." See SAVIGNY, p. 232: "Its (corporation) existence depends upon the representative Will of certain determinate individuals, which is intrusted to it, in consequence of a Fiction, as its own Will. Such a representation, however, without the exercise of a personal Will, can usually only be acknowledged in matters of Private, and not of Criminal Law."

<sup>86</sup>CIC 1917, c. 687: "Ad normam can. 100, tunc tantum fidelium associationes iuridicam in Ecclesia personam acquirunt, cum a legitimo Superiore ecclesiastico formale obtinuerunt erectionis decretum."

<sup>87</sup>Re: KILCULLEN, p. 1.

<sup>88</sup>Re: BROWN, p. 91.

<sup>89</sup>See BROWN, p. 92. "Erection as a juridic person was reserved to local ordinaries." R. KENNEDY, "Juridic Persons", in *New Commentary on the Code of Canon Law*, J. BEAL, J. CORIDEN, and T. GREEN, editors, New York, NY, Paulist Press, 2000, Canon Law Society of America, p. 158 (hereafter cited as *New Commentary*).

<sup>90</sup>Re: BROWN, p. 92.

There are also moral persons which can be erected by Bishops, such as hospitals, religious congregations, seminaries, orphanages, etc.<sup>91</sup> Religious, with the consent of the bishop, are able to erect associated works such as hospitals, schools, etc.<sup>92</sup> The scope of the moral person must be for religious or charitable purposes.<sup>93</sup>

The collegiate moral person corresponds to the "*universitas personarum*" of the Roman law, while the non-collegiate one is the "*universitas bonorum*".<sup>94</sup> The ecclesiastical moral person is able, under the law, to do whatever a physical person can do, acting according to its end.<sup>95</sup>

The moral person is perpetual by nature and ceases to exist only if suppressed by competent authority (c. 494, 498, 699; 1470, 1494), or is inactive for one hundred years.<sup>96</sup> If the moral person has not de facto ceased to exist for one hundred years, it can be revived.

Legal personality in the 1917 Code of Canon Law is mainly applied to an inferior moral person, as distinct from the divinely established moral persons of the Church and the Apostolic See. It is not defined as much as described, or ascribed to an entity. The Romans were hesitant to offer definitions for fear that they hindered interpretation and the Church seems to have followed this practice. The

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<sup>91</sup>Re: BROWN, pp. 92-93.

<sup>92</sup>Re: BROWN, p. 93.

<sup>93</sup>Re: BROWN, p. 94.

<sup>94</sup>Re: KILCULLEN, p. 18.

<sup>95</sup>"Full moral or juridical personality, with which we are here concerned, includes among other rights especially the right to acquire and own property; and this is consequently a fair general criterion of the existence or nonexistence of full moral personality. It is, however, subject to some exceptions." BOUSCAREN, pp. 89-90.

<sup>96</sup>CIC 1917, c. 102, §1: "Persona moralis, natura sua, perpetua est; exstinguitur tamen si a legitima auctoritate supprimatur, vel si per centum annorum spatium esse desierit. §2: Si vel unum ex personae moralis collegialis membris supersit, ius omnium in illud recidit."

principles of Roman law and also of the Canon law prior to the code are observed in the 1917 Code specifying the number of members required to establish a moral person, the scope of the moral person, its administration, and termination. The terms: "moral person", "inferior moral person", and "public moral person" are used in the Code, but a "private moral person" is not indicated.

#### IV. JURIDIC PERSON IN THE 1983 CODE OF CANON LAW

A. Gauthier acknowledges that the XIX<sup>th</sup> century concept of juridic persons as the subject of rights and obligations distinct from those of physical persons was used extensively in Italy and Germany.<sup>97</sup> He observes that in contemporary Italian, German, Spanish, and Swiss secular legislation, the term "juridic person" is also given extensive use; this in turn influenced the Commission responsible for the revision of the Code of Canon Law.<sup>98</sup> It should be noted, though, that the term "juridic person" is not one that is used in common parlance in North America. Rather, people here are more familiar with expressions such as "corporation",<sup>99</sup> "company", and so forth. However, since the Code is universal in its scope, it tried to use terms that were general in their application. For instance, in many other parts of Europe, in addition to speaking of juridic persons, reference is often made to "sociétés anonymes", to "charitable trusts", to "public associations", and so forth. There are many similarities among these terms, but they are not the same. The drafters of the Code, then, endeavoured to use an expression that would be equally

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<sup>97</sup>Re: GAUTHIER, *Juridical Person* p. 80.

<sup>98</sup>Re: GAUTHIER, *Juridical Person*, pp. 80-81.

<sup>99</sup>Person is defined as a human being, or an entity (such as a corporation) that is recognized by law as having the rights and duties of a human being. An "artificial person is an entity, such as a corporation created by law and given certain legal rights and duties of a human being; a being, real or imaginary, who for the purpose of legal reasoning is treated more or less as a human being also termed fictitious person; juristic person; legal person; moral person." BLACK, p. 1162.

applicable in any part of the world. This is why we find no reference to “corporations” as such in the Code. However, we are mindful that in our North American secular society, the “corporation” is probably one of the realities corresponding most to the canonical expression, “juridic person”.

## 1. JURIDIC PERSON

While the canonically impartial term “juridic person” has the advantage of enabling us to make a like comparison to its equivalent expression in civil law, it also allows for the introduction of a distinction regarding “moral persons”. J. Doyle, when speaking of the Church both as a necessary society and as a moral person, states:

Any society within which the members have rights and obligations can structure for itself a juridical order to determine their existence and protection. In this juridical order it will specify who has rights and obligations both as individuals and as collective or juridical persons. Individuals will have these rights and obligations by reason of their proper incorporation into the society. Non-physical persons will have them according to their recognition by the proper authority within the society.<sup>100</sup>

In the 1983 Code of Canon Law, only the Catholic Church and the Apostolic See are recognized as moral persons by divine law.<sup>101</sup> The 1983 Code provides that,

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<sup>100</sup>J. DOYLE, *Civil Incorporation of Ecclesiastical Institutions: A Canonical Perspective*, dissertation, Ottawa, Saint Paul University, 1989, p. 10 (hereafter cited as J. DOYLE).

<sup>101</sup>Ioannis Pauli PP. II, *Codex Iuris Canonici*, Vatican City, Liberia Editrice Vaticana, 1983, c. 113, §1: “Catholica Ecclesia et Apostolica Sedes, moralis personae rationem habent ex ipsa ordinatione divina” (hereafter cited as CIC 1983). English translation from THE CANON LAW SOCIETY OF GREAT BRITAIN AND IRELAND, *The Canon Law Letter and Spirit, A Practical Guide to the Code of Canon Law*, G. SHEEHY, ed., Collegeville, Minnesota, The Liturgical Press, 1995, (=Letter and Spirit). See also, R. KENNEDY, in *New Commentary*, p. 155. See GAUTHIER, *Juridical Person*, p. 81: “The members of the *coetus studiorum* reviewing this part of the Code were influenced by the doctrine according to which one should distinguish between “juridical” and

besides physical and moral persons, there are also juridic persons in the Church, that is, subjects in Canon law of obligations and rights which are in accord with their nature.<sup>102</sup> The element of the fictitious person created by law, to which we have given prior attention, is found in the notion of the juridic person as distinct from the natural or physical person.<sup>103</sup> The recognition of the juridic person gives it rights and obligations. V. Pospishil, in his commentary on the Eastern Catholic Church law, states:

A juridic person is a fiction of the law, created as a subject as if it were a physical person, as the holder of rights and duties, in order to be able to carry out the task entrusted to the Church, such as works of piety, of the apostolate, charity, etc.<sup>104</sup>

In the 1983 Code there is an inclination to parallel the canonical concepts with some current civil code concepts. The development of the moral person concept supports the idea that a moral personality could be attained by natural law (the state), by divine positive law (the church) and by human authority,<sup>105</sup> the argument being that a moral person can exist without being officially recognized by another authority.

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"moral" persons, the "juridical" person being created by law, while the "moral" person (for instance an association existing in fact) could pre-exist in the moral order, by virtue of natural law: this reality, acknowledged by an analysis of society, is one that positive law should recognize."

<sup>102</sup>CIC 1983, c. 113, §2: "Sunt etiam in Ecclesia, praeter personas physicas, personae iuridicae, subiecta scilicet in iure canonico obligationum et iurium quae ipsarum indoli congruunt." See E. KNEAL, "Physical and Juridic Persons", in *The Code of Canon Law A Text and Commentary*, J. Coriden et. al. ed., New York, Paulist Press, 1985, p. 80 (hereafter cited as *The Code, Text and Commentary*). See PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECOGNOSCENDO, *Communicationes*, 12 (1980), p. 122 (hereafter cited as *Communicationes*). See *Communicationes*, 6 (1974), p. 98 for the earlier discussion of "moral" and "juridic" person and difficulties involved. See also R. KENNEDY, in *New Commentary*, p. 154.

<sup>103</sup>"A juridic person is not a group or collectivity... it is an artificial person...an "it" not a "they" or "those." R. KENNEDY, in *New Commentary*, p. 159.

<sup>104</sup>V. POSPISHIL, *Eastern Catholic Church Law*, 2<sup>nd</sup> rev. & aug. ed., New York, Saint Maron Publications, 1996, p. 674.

<sup>105</sup>Re: H. BOWEN, "Juridic Person", in *New Catholic Encyclopedia*, Vol. XI, 1967, p. 172.

It may not be officially part of an arrangement but it has the right to exist and to carry out its purpose.

### 1.1 AGGREGATES OF PERSONS OR OF THINGS

Juridic persons, whether aggregates of persons, such as an association of the faithful, or of things, such as a trust fund,<sup>106</sup> are ordered to the Church's mission and are constituted by law or by a decree of the competent authority.<sup>107</sup> Since it is an entity that goes beyond the individual, it allows for greater stability in the activity and constant fulfilment of purpose. A juridic person is able to accomplish more and continue in perpetuity because of the endeavor of a number of members, not one individual, and is disposed to continue for as long as members and support are available.<sup>108</sup>

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<sup>106</sup>“Trust fund is the property held in a trust by a trustee.” BLACK, p. 1520. “Trustee is one who, having legal title to property, holds it in trust for the benefit of another and owes a fiduciary duty to that beneficiary.” BLACK, p. 1519.

<sup>107</sup>CIC 1983, c. 114, §1: “Personae juridicae constituuntur aut ex ipso iuris praescripto aut ex speciali competentis auctoritatis concessionem per decretum data, universitates sive personarum sive rerum in finem missioni Ecclesiae congruentem, qui singulorum finem transcendit, ordinatae.” See E. KNEAL, “Physical and Juridic Persons”, in *The Code, Text and Commentary*, p. 81. See *Letter and Spirit*, p. 65. See also, R. KENNEDY, in *New Commentary*, p. 160.

<sup>108</sup>Re: A. McGrath, “Physical and Juridic Persons” in *Letter and Spirit*, p. 65.

## 1.2 PURPOSES

Every juridic person has purposes congruent with the apostolic goals and mission of the Church.<sup>109</sup> These purposes are alluded to in c. 114, §1 and are understood to be those which concern works of piety, of the apostolate, or of charity, whether spiritual or temporal.<sup>110</sup> Healthcare fits easily into these categories.

In addition to these juridical persons recognized by law, we must note that there are other unrecognized entities, such as numerous voluntary associations, which play a significant part in the mission of the Church.<sup>111</sup> J. Doyle, commenting on the observations of M. Condorelli and F. Coccopalmerio, states that the exclusive use of the term "juridic person" is inadequate because of the existence of "moral" (or canonically unrecognized) entities without juridical personality, but which nevertheless should also be acknowledged. To help respond to this rather unclear situation, a distinction has been made in the 1983 Code between "public" and "private" juridic persons.<sup>112</sup> Nevertheless, even this distinction has not been entirely satisfactory, and the discussion continues. As greater understanding arises in this

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<sup>109</sup>Re: E. KNEAL, "Physical and Juridic Persons" in *The Code, Text and Commentary*, p. 80.

<sup>110</sup>CIC 1983, c. 114, §2: "Fines de quibus in §1, intelleguntur qui ad opera pietatis, apostolatus vel caritatis sive spiritualis sive temporalis attinent." See *Communicationes*, 12 (1980), p. 123.

<sup>111</sup>See GAUTHIER, *Juridical Person*, pp. 82-83: "We know, for instance, that there exist associations that have not become juridical persons. This is recognized explicitly in cc. 310 and 322. These groups have some rights, even if these rights belong to the members *"coniunctim"*."

<sup>112</sup>See J. DOYLE, pp. 24-25, commenting on M. CONDORELLI, "Considerazione problematiche sul concetto e sulla classificazione delle persone giuridiche nello Schema de Populo Dei", in *Il Diritto ecclesiastico*, 91 (1980), pp. 451-453. See F. COCCOPALMERIO, "De Persona luridica iuxta Schema Codicis Novi", in *Periodica*, 70 (1981), pp. 393-400. "The distinction between the private and public juridic person is essentially the distinction between a juridic person that is closely governed by ecclesiastical authority (public) and one that, although subject to authority in certain respects, enjoys more autonomy and is governed by its own statutes (private). R. KENNEDY, in *New Commentary*, p. 161. See GAUTHIER, *Juridical Person*, p. 89: "In practice we could also, according to Michiels, consider a public juridical person that juridical person obtaining juridical personality from the law itself (*ipso iure*), while the private juridical person would be the one obtaining juridical personality from a special decree."

area, further clarifications will probably evolve regarding the use of “public” and “private” in relation to juridic persons.

The persons or things receiving juridic personality should have both a valid purpose and the means necessary to carry it out.<sup>113</sup> This purpose is commonly expressed in the statutes of the juridic person, or in the decree of approval itself fostering the mission of the Church in a positive manner and in collaboration with the particular Church or Churches where it carries out its activities.<sup>114</sup>

The juridic person, if it is an aggregate of persons, must be made up of at least three physical persons; if the members participate in deciding the conduct of the juridic person and its governance, it is collegial; otherwise, it is non-collegial.<sup>115</sup> Although this type of juridic person must be made up of three physical persons when it is being established, it is not necessary to maintain that number to continue its existence.

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<sup>113</sup>CIC 1983, c. 114, §3: “Auctoritas Ecclesiae competens personalitatem iuridicam ne conferat nisi iis personarum aut rerum universitatibus, quae finem persequuntur reapse utilem atque, omnibus perpensis, mediis gaudent quae sufficere posse praevidentur ad finem praestitutum assequendum.”

<sup>114</sup>See E. KNEAL, “Physical and Juridic Persons”, in *The Code, Text and Commentary*, p. 81.

<sup>115</sup>CIC 1983, c. 115, §2: “Universitas personarum, quae quidem nonnisi ex tribus saltem personis constitui potest, est collegialis, si eius actionem determinant membra, in decisionibus ferendis concurrentia, sive aequali iure sive non, ad normam iuris et statutorum; secus est non collegialis.” See *Communicationes*, 12 (1980), p. 123. “The present code confines the distinction between collegial and non-collegial juridic persons to ‘universitates personarum’, and roots the distinction in differing approaches to decision-making.” R. KENNEDY, in *New Commentary*, p. 161. See GAUTHIER, *Juridical Person*, p. 87: “Among the collegial *universitates personarum* one can mention the College of Bishops and the cathedral chapter; among the non-collegial *universitates personarum*, there is the diocese, the parish.”

### 1.3 STATUTES

Before examining the distinctions between public and private juridic persons, it would be helpful to indicate briefly what the law states regarding the statutes governing such persons.

Canon 94 provides a working definition of statutes. They are regulations 1) established in accordance with the law, 2) in aggregates of persons or of things, 3) whereby the a) purpose, b) constitution, c) governance, d) and manner of acting of these bodies is defined.<sup>116</sup> Statutes are the basic norms by which juridic persons are governed; they assist in providing for the functioning of a given body or organization and its management. Being internal norms, statutes for an aggregate of persons bind only those who are lawfully its members, while those of an aggregate of things bind the persons who govern it.<sup>117</sup> Someone who is not a member of an organization is not required to follow its statutes. The interpretation and the application of statutes are regulated by the provisions of the canons concerning laws.<sup>118</sup> By their nature, though, statutes are not laws in the formal sense of the term, but, rather, are essentially norms which assist in regulating the life and activities of the entity concerned.

When it comes to church-related associations, the approval of the statutes, given by competent ecclesiastical authority, guarantees the orthodoxy of the organization and the authenticity of its purpose. At times, though, statutes are not approved; they are simply "recognized" by church authority; this occurs when

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<sup>116</sup>CIC 1983, c. 94, §1: "Statuta, sensu proprio, sunt ordinationes quae in universitatibus sive personarum sive rerum ad normam iuris conduntur, et quibus definiuntur earundem finis, constitutio, regimen atque agendi rationes." See R. KENNEDY, in *New Commentary*, pp. 138-139.

<sup>117</sup>CIC 1983, c. 94, §2: "Statutis universitatis personarum obligantur solae personae quae legitime eiusdem membra sunt; statutis rerum universitatis, ii qui eiusdem moderamen curant."

<sup>118</sup>CIC 1983, c. 94, §3: "Quae statutorum praescripta vi potestatis legislativae condita et promulgata sunt, reguntur praescriptis canonum de legibus."

juridical personality is not granted to an association, although the group receives some form of recognition. Nevertheless, recognition of the statutes also implies their conformity with church law and purposes.

## 2. PUBLIC JURIDIC PERSONS

The Code of Canon Law provides many examples of public juridic persons which are established by the law itself. Suffice it to mention some of these, such as: the particular church (c. 373), the parish (c. 515), the religious institute (c. 634), the seminary (c. 238). Other public juridic persons are established by decree, such as, for instance, pontifical universities, or the various healthcare systems established in North America by the Holy See or by diocesan bishops. Because of the multiplicity of such entities in the life of the Church, it is important to make certain that the concept is well understood.

### 2.1 NATURE OF A PUBLIC JURIDIC PERSON

Canon 116 presents the concepts of public and private juridic persons.<sup>119</sup> Public juridic persons are defined as those aggregates of persons or of things established by the competent ecclesiastical authority, so that they might act in the

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<sup>119</sup>CIC 1983, c. 116, §1: "Personae iuridicae publicae sunt universitates personarum aut rerum, quae ab ecclesiastica auctoritate competenti constituuntur ut intra fines sibi praestitutos nomine Ecclesiae, ad normam praescriptorum iuris, munus proprium intuitu boni publici ipsis commissum expleant; ceterae personae iuridicae sunt privatae." See *Communicationes*, 12 (1980), p. 124. *Nomine Ecclesiae* is explained and somewhat clarified - to act within the mission of the Church. Clarification of this continues to be sought. There was also some discussion to recognize that the private juridic person exists "*ipso iure*", but it seems this would simply have added to the confusion.

name of the Church.<sup>120</sup> The law now distinguishes them from private juridic persons, a distinction, as noted above, that is not always clear to canonists and others.<sup>121</sup> In an attempt to clarify the differences between the two types of juridic persons, L. Chiappetta writes:

The new Code also makes a formal distinction between the public and private juridic person: a distinction that constitutes without doubt a progress of canonical science. (*Communicationes*, 1982, p. 143, can. 113) The criterion of distinction is not the end, which is the same for the one and the other (cultural, apostolic, and charitable purpose), in keeping with the mission of the Church: can. 114, §§ 1-2, but is the manner of putting it into effect. Public juridic persons operate **in the name of the Church**, as its instruments, whereas the private juridic person operates in its own name and under the responsibility of its members. Without doubt even these cooperate in the public good (*intuitu boni publici*), but such an intentionality in the public juridic person is more direct and qualified.<sup>122</sup>

In examining canon 116, we note the following: public juridic persons 1) are aggregates of persons or of things; 2) they are established by the competent ecclesiastical authority; 3) they fulfill the specific task entrusted to them in view of

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<sup>120</sup>Re: D. CONLIN, *Canonical and Civil Legal Issues Surrounding the Alienation of Catholic Health Care Facilities in the United States*, dissertation, Romae, Pontificia Studiorum universitas a S. Thoma Aq. in Urbe, 2000, p. 32 (hereafter cited as CONLIN).

<sup>121</sup>Re: G. Lo CASTRO, "Comentario on Canon 116," in *Comentario Exegético al Código de Derecho Canónico*, A. MARZÓA, et.al. editors, Vol. I, 2<sup>nd</sup> edition, Pamplona, Ediciones Universidad de Navarra, S.A., 1996, p. 790 (hereafter cited as *Comentario*). Private and public juridic persons were also discussed during the formation of the 1917 Code.

<sup>122</sup>"Il nuovo Codice distingue formalmente anche tra persone giuridiche pubbliche e private: una distinzione che costituisce senza dubbio un progresso della scienza canonica (*Communicationes*, a. 1982, p. 143, can 113). Il criterio di distinzione non è il fine, che è il medesimo per le une e per le altre (fine culturale, apostolico, caritativo), conforme alla missione della Chiesa: can. 114 §§ 1-2, ma il modo di attuarlo. Le persone giuridiche pubbliche operano **in nome della Chiesa**, quali suoi strumenti, mentre le persone giuridiche private agiscono a nome proprio e sotto la responsabilità dei membri. Senza dubbio, anch'esse cooperano al bene pubblico (*intuitu boni publici*), ma questa intenzionalità nelle persone giuridiche pubbliche è più diretta e qualificata." L. Chiappetta, *Il Codice di Diritto Canonico: Commento giuridico-pastorale*, Seconda edizione, accresciuta e aggiornata, Roma, Edizioni Dehoniane, 1996, Vol. I, pp. 171-172 (my translation).

the public good; 4) they are given this personality a) either by the law itself, b) or by a special decree of the competent authority granting it.

The public juridic person acts in the name of the Church within the limits set for it by the specific mission contained in its statutes.<sup>123</sup> It is thus able to identify itself specifically as Catholic and, in its actions, acts as Church, in conformity with the hierarchy. Because of this, we have every reason to expect a high level of credibility in its activities and that it provide for the public good. Its assets are thus considered to be ecclesiastical goods, that is, belonging to the Church.

Juridic persons act only through physical persons who can assume various titles, such as president, moderator, director, superior, etc;<sup>124</sup> they are perpetual by nature,<sup>125</sup> but can be dissolved by competent authority or by cessation of activity for one hundred years.<sup>126</sup> In the case of an aggregate of persons, as long as one member survives and the juridic person continues to exist, that surviving member has all the rights and obligations of membership of the juridic person.<sup>127</sup> However,

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<sup>123</sup>CIC 1983, c. 117: "Nulla personarum vel rerum universitas personalitatem iuridicam obtinere intendens, eandem consequi valet nisi ipsius statuta a competenti auctoritate sint probata." See *Letter and Spirit*, p. 67. See *Communicationes*, 12 (1980), p. 124. See E. KNEAL, "Physical and Juridic Persons" in *The Code, Text and Commentary*, pp. 82-83.

<sup>124</sup>CIC 1983, c. 118: "Personam iuridicam publicam repraesentant, eius nomine agentes, ii quibus iure universali vel particulari aut propriis statutis haec competentia agnoscitur; personam iuridicam privatam, ii quibus eadem competentia per statuta tribuitur." See *Communicationes*, 12 (1980), p. 125. Here "universal" is placed instead of "communi" and "iuridicam" is used instead of "canonicam". See A. McGrath, "Physical and Juridical Persons", in *Letter and Spirit*, p. 67.

<sup>125</sup>CIC 1983, c. 120, §1: "Persona iuridica natura sua perpetua est; extinguitur tamen si a competenti auctoritate legitime supprimatur aut per centum annorum spatium agere desierit; persona iuridica privata insuper extinguitur, si ipsa consociatio ad normam statutorum dissolvatur, aut si, de iudicio auctoritatis competentis, ipsa fundatio ad normam statutorum esse desierit." See *Communicationes*, 12 (1980), p. 127.

<sup>126</sup>Re: E. KNEAL, "Physical and Juridic Persons", in *The Code, Text and Commentary*, p. 83. See A. McGrath, "Physical and Juridic Persons," in *Letter and Spirit*, pp. 68-69.

<sup>127</sup>CIC 1983, c. 120, §2: "Si vel unum ex personae iuridicae collegialis membris supersit, et personarum universitas secundum statuta esse non desierit, exercitium omnium iurium universitatis illi membro competit." See *Communicationes*, 12 (1980), p. 127. See *Letter and Spirit*,

the goods and assets do not belong to the surviving individual; they remain ecclesiastical goods.

## 2.2 MERGER OF PUBLIC JURIDIC PERSONS

It often happens today that existing structures have to be modified to respond to new needs or to adapt to changes in society. Such modifications can include mergers, unions, and divisions. At times, though, we simply have joint ventures undertaken collectively by a number of juridic persons; these do not change their nature or internal structure. But, when public juridic persons (such as dioceses, parishes, religious houses or institutes, etc.) are merged so that a new juridic person is formed (as when a number of parishes are suppressed to establish a new one), the new entity obtains the goods and rights which belonged to the previous juridic persons as well as the responsibility of discharging their obligations, keeping in mind the wishes of donors and founders and safeguarding acquired rights.<sup>128</sup>

Today, in the field of healthcare, we find that numerous religious institutes are dividing their assets into funds for apostolic needs, and those to be used for internal

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p. 69. See E. KNEAL, "Physical and Juridic Persons" in *The Code, Text and Commentary*, pp. 84-85.

<sup>128</sup>CIC 1983, c. 121: "Si universitates sive personarum sive rerum, quae sunt personae iuridicae publicae, ita coniungantur ut ex iisdem una constituatur universitas personalitate iuridica et ipsa pollens, nova haec persona iuridica bona iuraque patrimonialia prioribus propria obtinet atque onera suscipit, quibus eadem gravabantur; ad destinationem autem praesertim bonorum et ad onerum adimpletionem quod attinet, fundatorum oblatoorumque voluntas atque iura quaesita salva esse debent." See *Communicationes*, 12 (1980), p. 128. (*Iura quaesita* was added) E. KNEAL, "Physical and Juridic Persons", in *The Code, Text and Commentary*, p. 85. See BLACK, p. 304: "Consolidation is the act or process of uniting. The unification of two or more corporations by dissolving the existing ones and creating a single new corporation."

congregational purposes.<sup>129</sup> The apostolic assets are being combined with those of other institutes, to further the mission of the Church. This does not entail a merger of the juridic persons, but consists in a pooling of some of their assets. At times, however, because of the significance of the pooled assets, steps are taken to obtain distinct juridic personality for this newly-created fund.

In similar fashion, when a public juridic person is divided in such a way that part of it is joined to another juridic person or a separate juridic person is established from part of it, the first obligation is to observe the intentions of the founders and benefactors, as well as the demands of any acquired rights, and the requirements of the approved statutes.<sup>130</sup> At the same time, the competent authority<sup>131</sup> is to ensure that the divisible assets and liabilities are divided in due and equitable proportion.<sup>132</sup> Such situations occur when a province of a religious institute is

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<sup>129</sup>See E. KNEAL, "Physical and Juridic Persons", in *The Code, Text and Commentary*, p. 85.

<sup>130</sup>Re: A. McGrath, "Physical and Juridic Persons," in *Letter and Spirit*, p. 70.

<sup>131</sup>See R. KENNEDY, in *New Commentary*, p. 170: "Ordinarily, this would be the authority competent to create the juridic person (or establish the underlying moral person upon which the law confers juridic personality), such as the Holy See for a diocese (c. 373) or the diocesan bishop for a parish (c. 515 §2). Where not determined by universal law, the designation of competent authority is to be found in proper law (see, e.g. c. 581) or in the statutes of a public juridic person."

<sup>132</sup>CIC 1983, c. 122: "Si universitas, quae gaudet personalitate iuridica publica, ita dividatur ut aut illius pars alii personae iuridicae uniatur aut ex parte dismembrata distincta persona iuridica publica erigatur, auctoritas ecclesiastica, cui diviso competat, curare debet per se vel per exsecutorem, servatis quidem in primis tum fundatorum ac oblatores voluntate tum iuribus quaesitis tum probatis statutis:

1° ut communia, quae dividi possunt, bona atque iura patrimonialia necnon aes alienum aliaque onera dividantur inter personas iuridicas, de quibus agitur, debita cum proportione ex aequo et bono, ratione habita omnium adiunctorum et necessitatum utriusque;

2° ut usus et usufructus communium bonorum, quae divisioni obnoxia non sunt, utrique personae iuridicae cedant, oneraque iisdem propria utrique imponantur, servata item debita proportione ex aequo et bono definienda." See *Communicationes*, 12 (1980), p. 127. See R. KENNEDY, in *New Commentary*, pp.169-170: "The act of dividing a juridic person and the act of dividing its assets and liabilities are distinct juridic acts." Equity and justice are to prevail upon any division of a juridic person which is carried out by the competent authority personally or through an executor. Executor, "commonly refers to one who carries out the directives of another, with or without the exercise of discretion having been committed to the executor. In the context of c. 122 the executor would be

divided, or when apostolic works are separated from the juridic person of the province and given their own distinct juridic personality.<sup>133</sup>

When a public juridic person has ceased to exist, the disposal of its goods, assets, patrimonial rights and obligations is governed by law and the statutes.<sup>134</sup> If the statutes do not refer to the matter, then the goods, rights, assets and obligations are transferred to the next higher juridic person,<sup>135</sup> always being mindful of the wishes of the founders and benefactors.<sup>136</sup>

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given discretion but within the parameters set forth by the canon." Final decision making is carried out by the Holy See.

<sup>133</sup>See E. KNEAL, "Physical and Juridic Persons", in *The Code, Text and Commentary*, pp. 85-86.

<sup>134</sup>CIC 1983, 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 propriis statutis regitur." See R. KENNEDY, in *New Commentary*, pp. 171: This canon is similar to the 1917 Code and therefore the jurisprudence developed in this specific area applies. A relationship of superiority exists with parishes, dioceses, and the Holy See but not necessarily with an association of the faithful or a university or a hospital erected as a public juridic person. Where no relationship of superiority exists, then upon extinction of the juridic person the goods will go to the diocese, the episcopal conference, or the Holy See.

<sup>135</sup>See E. KNEAL, "Physical and Juridic Persons" in *The Code, Text and Commentary*, p. 86.

<sup>136</sup>See A. McGrath, "Physical and Juridic Persons," in *Letter and Spirit*, p. 71.

### 3. PRIVATE JURIDIC PERSONS

#### 3.1 NATURE OF THE PRIVATE JURIDIC PERSON

In addition to public juridic persons, there is a second category which we have previously mentioned: the private juridic person.<sup>137</sup> Contrary to public juridic persons which may receive their legal personality either by the law or by decree of the competent authority, private juridic persons are given this personality only by a special decree of the competent ecclesiastical authority.<sup>138</sup> Their founding is usually initiated by individuals and not by Church officials. However the statutes of a private juridic person are to be approved by the competent authority if it is to have juridic personality in the Church.<sup>139</sup>

The decree which establishes a private juridic person spells out its mission, which must be consistent with that of the Church. We could state that the mission of a private juridic person is a "mission of Catholics", but not necessarily a "Catholic" one, as would be the case for a public juridic person. The private juridic person is a response attempting to comply with Vatican II's emphasis on the right of all the faithful to organize and engage in fulfilling the mission of Christ.

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<sup>137</sup>CIC 1983, c. 116, §1: "Personae iuridicae publicae sunt universitates personarum aut rerum, quae ab ecclesiastica auctoritate competenti constituuntur ut intra fines sibi praestitos nomine Ecclesiae, ad normam praescriptorum iuris, munus proprium intuitu boni publici ipsis commissum expleant; ceterae personae iuridicae sunt privatae." See *Communicationes*, 6 (1974), p. 99; see also, *Communicationes*, 12 (1980), p. 124.

<sup>138</sup>Re: A. McGrath, "Physical and Juridic Persons," in *Letter and Spirit*, p. 67.

<sup>139</sup>CIC 1983, c. 116 §2: "Personae iuridicae publicae hac personalitate donantur sive ipso iure sive speciali competentis auctoritatis decreto eandem expresse concedenti; personae iuridicae privatae hac personalitate donantur tantum per speciale competentis auctoritatis decretum eandem personalitatem expresse concedens." CIC 1983, c. 117: "Nulla personarum vel rerum universitas personalitatem juridicam obtinere intendens, eandem consequi valet nisi ipsius statuta a competenti auctoritate sint probata."

### 3.2. RECOGNITION

Prior to Vatican II and the 1983 Code, public juridic personality granted within the context of the then "moral" person was the only type of official recognition given by the Church.<sup>140</sup> However, since for various reasons many people did not wish to go through the formalities leading to formal juridical recognition or were unable to do so, as a result, there were numerous organizations initiated by the faithful which were never formally recognized.<sup>141</sup> Examples of these would include the Catholic Health Association of the United States, the Canon Law Society of America, and numerous other groups which were considered as Catholic. Indeed, many of them even had Bishops on their board, or had an episcopal *ponens* appointed to assure liaison with Church authorities. Nevertheless, recognition of these groups was problematic as there did not seem to be any official means of granting it, in as much as they did not wish to become "pious unions" or "third orders", or something similar. Most canonists recognized their right to exist (based on a natural right of association), but the manner of their existence was intensely discussed.<sup>142</sup> If these organizations had a right to exist then it was necessary somehow to recognize that existence, even if only in a unofficial manner.<sup>143</sup> Not to recognize their existence would mean that the Church could exert very little influence over them. Since most of them were begun by the clergy or the laity, and not by the hierarchy as such, the Fathers of Vatican II, wishing to harness and give direction to the movements of these organizations, provided the groundwork for the eventual development of what became private juridic personality. Basically, this new type of personality gives recognition to the existence of the organization and to its rights and obligations,

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<sup>140</sup>See W. ONCLIN, "Principia Generalia de Fidelium Associationibus", in *Apollinaris*, 36 (1963), pp. 99-109.

<sup>141</sup>See S. WOYWOD, *A Practical Commentary On The Code of Canon Law*, Vol. 1, Revised, New York, Joseph F. Wagner, Inc. 1948, p. 342-343.

<sup>142</sup>See *Communicationes*, 2 (1970), pp. 96-98; *Communicationes*, 9 (1977), pp. 239-241.

<sup>143</sup>See *Communicationes*, 6 (1974), p. 99.

without making it part of formal church structures. Although it is now recognized that these organizations have a right to exist, they must request recognition by the competent authority. However, they cannot be forced to do so, and, indeed, many have never requested recognition or approval. To obtain official recognition usually implies meeting formal criteria which must be adhered to by the organization or group. However, it can be asked what benefits accrue to a group or organization which asks for and receives official recognition by the Church in the form of a private juridic personality?

### 3.3 GROUPS THAT ARE NOT RECOGNIZED

While it is willing to establish juridic persons, the Church also affirms the right of Christ's faithful to form groups without juridic personality. Indeed, it is accepted that the faithful can live out their Christian witness in an unofficial capacity, albeit under the auspices of private collective initiatives.<sup>144</sup>

The 1983 Code, in canon 310,<sup>145</sup> refers to such groups. In a sense, this is an anomaly in law, since we are legislating for something that is not recognized, but it flows from the basic right of association recognized for all the faithful under canon 215.<sup>146</sup>

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<sup>144</sup>Re: R. BARRETT, "The Non-Recognised Association and its Capacity to Act in Court", in *Periodica*, 87 (1998), pp. 39-42 (hereafter cited as R. BARRETT).

<sup>145</sup>CIC 1983 c. 310: "Consociatio privata quae persona iuridica non fuerit constituta, quae talis subiectum esse non potest obligationum et iurium; christifideles tamen in ea consociati coniunctim obligationes contrahere atque uti condomini et compossessores iura et bona aquirere et possidere possunt; quae iura et obligationes per mandatarium seu procuratorem exercere valent."

<sup>146</sup>CIC 1983 c. 215: "Integrum est christifidelibus, ut libere condant atque moderentur consociationes ad fines caritatis vel pietatis, aut ad vocationem christianam in mundo fovendam, utque conventus habeant ad eosdem fines in communi persequendos." See R. BARRETT, pp. 43-45.

## 4. JURIDIC PERSONS AND TEMPORAL GOODS

### 4.1 RIGHT TO ACQUIRE TEMPORAL GOODS

Juridic persons have rights and obligations in the Church, which, according to canon 1255, include those of acquiring, retaining, administering and alienating temporal goods, in accordance with the law.<sup>147</sup> While, in this particular instance, the Code is obviously referring to the observance of the canonical legislation, other canons prescribe that the applicable prescriptions of the civil law of the place are also to be observed.<sup>148</sup> The universal Church, the Apostolic See, particular Churches and all other public and private juridic persons enjoy rights in relation to temporal goods, in accordance with the prescriptions of the law and of their particular statutes. This does not mean that groups which have not obtained juridic personality cannot acquire temporal goods, but, in doing so, they would acquire them in their own name, rather than in that of the Church.

### 4.2 RIGHTS OF OWNERSHIP

Juridical persons acquiring goods exercise their rights of ownership under the supreme authority of the Supreme Pontiff,<sup>149</sup> but, according to canon 1256, the

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<sup>147</sup>CIC 1983, c. 1255: "Ecclesia universa atque Apostolica Sedes, Ecclesiae particulares necnon alia quaevis persona iuridica, sive publica sive privata, subiecta sunt capacia bona temporalia acquirendi, retinendi, administrandi et alienandi ad normam iuris."

<sup>148</sup>CIC 1983, c. 22: "Leges civiles ad quas ius Ecclesiae remittit, in iure canonico iisdem cum effectibus servantur, quatenus iuri divino non sint contrariae et nisi aliud iure canonico caveatur."

<sup>149</sup>CIC 1983, c. 1256: "Dominium bonorum, sub suprema auctoritate Romani Pontificis, ad eam pertinet iuridicam personam, quae eadem bona legitime acquisiverit."

actual ownership belongs directly to the juridic person legitimately acquiring the goods. The Supreme Pontiff does not have ownership of the goods, although he does have authority over them. It could be noted, however, that the Latin text of the Code does not speak directly of "ownership", but rather of "*dominium*" which is a concept derived from the Roman law and is an unrestricted right of using, enjoying and disposing of a thing.<sup>150</sup>

*"Dominium"*. In Roman law and feudal land law absolute ownership of land or goods with full rights of possession and use.<sup>151</sup>

In present-day canonical understanding, "*dominium*" would have a more limited application than it had in Roman law, in the sense that the goods belong to "the Church", but are entrusted to the juridic person which has legitimately acquired them to be used for recognized purposes.<sup>152</sup> It is the right of the juridic person to possess goods primarily for the purpose of furthering the mission of the Church; since the Church is the one which establishes the juridic person, it has a right by extension over the goods of the juridic person. It is somewhat like a "holding corporation". The principle of canon 1256 provides security for juridic persons since it clarifies the nature of the ownership of their goods, especially in instances where there might be need of hierarchical recourse due to the improper action of an ecclesiastical authority.

Though at times the need for civil recognition might require that a juridic person which does not have its own civil identity operate under the aegis of a

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<sup>150</sup>Re: SHERMAN II, p. 150.

<sup>151</sup>D. WALKER, *The Oxford Companion to Law*, Oxford, Clarendon Press, 1980, p. 373. See J. DOYLE, pp. 111-113. Doyle gives a succinct and to the point summary of the concept of "*dominium*". See also D. STAMP, *The Alienation of Temporal Goods in Clerical Institutes*, dissertation, Ottawa, Saint Paul University, 1992, p. 4.

<sup>152</sup>Re: R. KENNEDY, in *New Commentary*, p. 1458; "*Dominium*, in the 1983 code, then is not confined to its meaning in classical Roman law, but refers to all forms of ownership, divided or undivided, recognized in contemporary society."

diocesan or a religious corporation and be subject to civil law through this parent organization, it is the responsibility of the ecclesiastical authority and administrator to act also in accord with Canon law, respecting the rights of the juridic person involved. This situation can arise when, for instance, parishes do not have distinct civil identity, but operate under the umbrella corporation of the diocese, or when religious houses operate under the corporate charter of the institute or the province. This does not mean that they lose their canonical identity and accompanying rights.<sup>153</sup>

### 4.3 ECCLESIASTICAL GOODS

Temporal goods acquired and owned by public juridic persons in the Church are ecclesiastical goods and thus are governed both by the canons regulating temporal goods and by any applicable statutes.<sup>154</sup> The acquisition of goods is covered in Chapter I of Book V of the Code and, usually, in the statutes of the public juridic person. Since these statutes must be approved by the competent ecclesiastical authority, it is reasonable to expect that the interests of the Church have been safeguarded.<sup>155</sup>

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<sup>153</sup>See R. KENNEDY, in *New Commentary*, p. 1457: Kennedy comments on the practice of the civil structures of dioceses which are "corporation sole". In such a corporation most of the Church assets are owned by the corporation. This makes for good control and fiscal benefits but it does expose the assets to liabilities and this central control is contrary to the law of the Church.

<sup>154</sup>CIC 1983, c. 1257, §1: "Bona temporalia omnia quae ad Ecclesiam universam, Apostolicam Sedem aliasve in Ecclesia personas iuridicas publicas pertinent, sunt bona ecclesiastica et reguntur canonibus qui sequuntur, necnon propriis statutis." See *Communicationes*, 12 (1980), pp. 398-399.

<sup>155</sup>The discussion on this matter can be found in *Communicationes*, 5 (1973), p. 96; 9 (1977), pp. 270-271; 12 (1980), pp. 398-399.

The Code does not direct the same attention to the assets of a private juridic person, since these are regulated by its own statutes unless otherwise indicated, and not by the canons relating to temporal goods.<sup>156</sup> As noted above, a private juridic person recognized by the Church must have its statutes approved by the competent ecclesiastical authority. During the approval process the proper controls would be reviewed and, if they were not already in place, they would be required prior to final approval. Even though the assets of a private juridic person are not ecclesiastical goods, the Church obviously does maintain some degree of interest as to how they are utilized.

## V. ASSOCIATIONS OF CHRIST'S FAITHFUL

It is not our intent to treat in depth the associations in the Church since the "juridic person" in the Church is our focus. However, there are some aspects relating to juridic persons that are interpreted using the canons on associations. Because of this factor we present an overview of specific canons on associations which present a fair description of associations of Christ's faithful and their place in the overall structure of the Church. It is apparent that the "association" is not the preferred canonical structure for healthcare ministry in the United States.<sup>157</sup> Some canonists find the "juridic person" arrangement to be a more straightforward manner of proceeding in relation to some ministries in the Church. The structure of "associations" (canonical and non-canonical) seems to be subject to a wider latitude of interpretation and formulation and thus subject to greater misunderstandings as

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<sup>156</sup>CIC 1983, c. 1257, §2: "Bona temporalia personae iuridicae privatae reguntur propriis statutis, non autem hisce canonibus, nisi expresse aliud caveatur." See *Communicationes*, 12 (1980), pp. 398-399.

<sup>157</sup>Re: J. HITE, *A Primer on Public and Private Juridic Persons*, St. Louis, Missouri, The Catholic Health Association of the United States, 2000, p.11( hereafter cited as HITE, *Primer*).

well as being problematic. Associations are formed by groups of people and their membership has a great deal to say about the work and direction; this can create numerous problems and delay decisions. Each association has rules of membership. Public associations have such criteria established by the Church as well as those set forth by the association itself. The requirement of membership in the Catholic Church is certainly a limiting factor. This is not as great a problem in a private association, unless it was one of the criteria for membership. These factors assist in making the association structure somewhat unwieldy when considering mega-systems of any kind. Associations do form the substratum of the same juridic persons if they are given proper recognition by competent ecclesiastical authority.<sup>158</sup>

In his apostolic exhortation on the laity, "*Christifideles Laici*", Pope John Paul II states:

Church communion, already present and at work in the activities of the individual, finds specific expression in the lay faithful's working together in groups, that is, in activities done with others in the course of their responsible participation in the life and mission of the church.<sup>159</sup>

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<sup>158</sup>Re: R. KENNEDY, in *New Commentary*, p. 155.

<sup>159</sup>IOANNIS PAULI PP. II, Adhortatio Apostolica, "Christifideles laici", in *AAS*, 81 (1989), pp. 393-521, here at p. 443, no. 29. English translation in *Origins*, 18 (1988-1989), No. 29, p. 574. See R. PAGÉ "Associations of the Christian Faithful," in *New Commentary*, p. 400: "[...] John Paul II enumerates a list of five "criteria of ecclesiality" to be found in an "association" [...]: the primacy given to the call of every Christian to Holiness, the responsibility of professing the Catholic faith, the witness to a strong authentic communion with the pope and local bishop, conformity to and participation in the Church's apostolic goals, and a commitment to a presence in human society."

Associations play a most significant role in furthering the Church's mission.<sup>160</sup> A number of them have obtained formal recognition, others have not. But, no matter which type of recognition they enjoy, all associations are guided by canon 298 which provides the basic principle governing them. It conveys to us that there exist in the Church associations which are distinct from institutes of consecrated life and societies of apostolic life. In such, Christ's faithful, whether clerics or laity, or clerics and laity together, as members of these associations and with common effort 1) strive to foster a more perfect life, 2) promote public worship, 3) Christian teaching, 4) evangelization, 5) works of piety, 6) works of charity, 7) and those works which infuse society as a whole with the Christian spirit. The faithful are urged to join those associations which have been established, praised or recommended by competent ecclesiastical authority.<sup>161</sup>

Associations of Christ's faithful are presented as distinct from institutes of consecrated life, because, generally speaking, their members usually do not make public vows, although they might bind themselves by some private form of commitment. Nevertheless, the general aims and purposes of an association can be similar to those of institutes of consecrated life or societies of apostolic life.

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<sup>160</sup>The evolutional history of associations is tied up with the history of juridic persons. J. Amos gives a purposeful general overview of them; J. AMOS, *Associations of the Christian Faithful in the 1983 Code of Canon Law: A Canonical Analysis and Evaluation*, Washington, D.C, The Catholic University of America, Canon Law Studies, 516, 1986, pp. 6-72. (hereafter cited as J. AMOS). Onclin also provides a developmental overview: W. ONCLIN, "Principia Generalia de Fidelium Associationibus", in *Apollinaris*, 36 (1963), pp. 68-109.

<sup>161</sup>CIC 1983, c. 298, §1: "In Ecclesia habentur consociationes distinctae ab institutis vitae consecratae et societatis vitae apostolicae, in quibus christifideles, sive clerici sive laici simul, communi opera contendunt ad perfectiorem vitam fovendam, aut ad cultum publicum vel doctrinam christianam promovendam, aut ad alia apostolatus opera, scilicet ad evangelizationis incepta, ad pietatis vel caritatis opera exercenda et ad ordinem temporalem christiano spiritu animandum. §2. Christifideles sua nomina dent iis praesertim consociationibus, quae a competenti auctoritate ecclesiastica aut erectae aut laudatae vel commendatae sint." See R. BARRETT, p. 44; See J. AMOS, p. 177.

The fact of being a member of an association of the faithful does not change the status of a person in the Church, as does the fact of religious profession or priestly ordination.<sup>162</sup>

The basis for the recognition of the place of these associations is the desire of the Fathers of the Second Vatican Council to provide for greater recognition of the participation of the laity in giving Christian witness and of increasing the means of doing so. This point was made by B. Dunn in the following terms:

An association of the Christian faithful consists of a group of people, contrasting with a juridic person, which consists of an aggregate of persons or things. They gather together to promote a more perfect life, foster public worship or Christian doctrine, or exercise works of the apostolate such as engaging in evangelization, works of piety or charity, and animating the temporal order with the Christian spirit. Such associations provide a concrete mechanism for the Christian faithful to fulfill their baptismal right and obligation to work for the salvation of the world.<sup>163</sup>

To assist the faithful in their choice of an association and to be assured of its orthodoxy, a fundamental guideline is presented: they should enroll in associations which are either erected, praised or recommended by competent ecclesiastical authority; in other words, in associations that are known and supported by church authority.<sup>164</sup>

To help us understand better how associations operate in the Church, we shall first examine some general principles applicable to all associations, then

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<sup>162</sup>R. PAGÉ, "Associations of the Faithful in the Church", in *The Jurist*, 47 (1987), p. 171.

<sup>163</sup>B. DUNN, *Sponsorship of Catholic Institutions, Particularly Healthcare Institutions, by the Sisters of Providence in the Western United States*, dissertation, Ottawa, Saint Paul University, 1995, p. 117.

<sup>164</sup>Re: F. MORRISEY, "The Right of Association as a Basic Right of The Faithful", in *Das Konsoziative Element in Der Kirche, Akten Des VI. Internationalen Kongresses Für Kanonisches Recht München*, September, 1987, von Winfried Aymans, et al., editors, St. Ottilien: Eos Verlag Erzabtei, 1989, p. 11 (hereafter cited as F. MORRISEY, *The Associational Element in the Church*).

consider public and private ones, examining the possibilities they offer today for a harmonious coordination of the Church's apostolic activities.

## 1. GENERAL PRINCIPLES GOVERNING ASSOCIATIONS

### 1.1 FORMING ASSOCIATIONS

As noted above, Christ's faithful can, among themselves, freely form associations for the purposes indicated in c. 298, §1, within the parameters established by c. 301, §1.<sup>165</sup> This flows from c. 215 which reflects the direction of Vatican II to foster the activity of the faithful in areas of charitable or pious purposes and the fostering of the Christian vocation.<sup>166</sup>

The recognition of the right of Christ's faithful to form associations is new to the Code. This right is derived from natural law and from baptism. Furthermore, the revised law recognizes the existence of many types of groupings, even though a number of them might never obtain any formal recognition from Church authorities.<sup>167</sup> They might remain private or even merely voluntary associations,

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<sup>165</sup>CIC 1983, c. 299, §1: "Integrum est christifidelibus, privata inter se conventionione inita, consociationes constituere ad fines de quibus in can. 298, §1 persequendos, firmo praescripto can. 301, §1." J. AMOS, p. 169.

<sup>166</sup>CIC 1983, c. 215: "Integrum est christifidelibus, ut libere condant atque moderentur consociationes ad fines caritatis vel pietatis, aut ad vocationem christianam in mundo fovendam, atque conventus habeant ad eosdem fines in communi persequendos." J. AMOS, pp. 162-163.

<sup>167</sup>Re: F. MORRISEY, in *The Associational Element in the Church*, p. 12.

notwithstanding the fact that sometimes they are commended or praised by church authorities.<sup>168</sup>

## 1.2 ADMISSION AND MEMBERSHIP

Participation in the rights, as well as in the temporal and spiritual benefits of an association, requires that a person be validly admitted as prescribed by law and the statutes of the association, and continues as a member in good standing.<sup>169</sup> Each association can, of course, stipulate its own requirements for continued membership and other benefits beside the spiritual ones; the Code simply indicates the minimum.

Membership in an association does not affect rights which individuals hold as members of the Church, including their right to join and remain a member of other associations (unless the statutes of the association in question provide otherwise).<sup>170</sup> There are no exclusions listed for private associations, but this does not prevent the individual association from indicating some.<sup>171</sup> Canon 316 lists some exclusions for public associations.

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<sup>168</sup>CIC 1983, c. 299, §2: "Huiusmodi consociationes, etiamsi ab auctoritate ecclesiastica laudentur vel commendentur, consociationes privatae vocantur." See J. AMOS, p. 169.

<sup>169</sup>CIC 1983, c. 306: "Ut quis consociationis iuribus atque privilegiis, indulgentiis aliisque gratis spiritualibus eidem consociationi concessis fruatur, necesse est et sufficit ut secundum iuris praescripta et propria consociationis statuta, in eandem valide receptus sit et ab eadem non sit legitime dimissus."

<sup>170</sup>CIC 1983, c. 307, §1: "Membrorum receptio fiat ad normam iuris ac statutorum uniuscuiusque consociationis. §2: Eadem persona adscribi potest pluribus consociationibus. §3: Sodales institutorum religiosorum possunt consociationibus, ad normam iuris proprii, de consensu sui Superioris nomen dare."

<sup>171</sup>Re: F. MORRISEY, in *The Associational Elements of the Church*, p. 18.

## 2. PUBLIC ASSOCIATIONS OF CHRIST'S FAITHFUL

### 2.1 THE AUTHORITY TO ESTABLISH PUBLIC ASSOCIATIONS

The competent authority to establish public associations of Christ's faithful, as described in canon 312, is: 1) the Holy See for universal and international associations; 2) the Bishops' Conference for national associations in their own jurisdiction; and 3) the diocesan Bishop, in his area for diocesan associations (except those associations whose establishment is reserved to others by apostolic privilege).<sup>172</sup>

For the valid establishment of an association or of one of its branches, the written consent of the diocesan Bishop is necessary even if an apostolic privilege might apply, but permission given by the diocesan Bishop for the establishment of a house of a institute of consecrated life is valid for the establishment of an association proper to the institute in that same house or in a church attached to it.<sup>173</sup> The Bishop should be informed of the existence of such an association but his permission has already been given for the association when permission was granted to open the house.

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<sup>172</sup>CIC 1983, c. 312, §1: "Ad erigendas consociationes publicas auctoritas competens est: 1° pro consociationibus universalibus atque internationalibus, Sancta Sedes; 2° pro consociationibus nationalibus, quae scilicet ex ipsa erectione destinantur ad actionem in tota natione exercendam, Episcoporum conferentia in suo territorio; 3° pro consociationibus dioecesanis, Episcopus dioecesanus in suo cuiusque territorio, non vero Administrator dioecesanus, iis tamen consociationibus exceptis quarum erigendarum ius ex apostolico privilegio aliis reservatum est."

<sup>173</sup>CIC 1983, c. 312, §2: "Ad validam erectionem consociationis aut sectionis consociationis in dioecesi etiamsi id vi privilegii apostolici fiat, requiritur consensus Episcopi dioecesani scripto datus; consensus tamen ab Episcopo dioecesano praestitus pro erectione domus instituti religiosi valet etiam ad erigendam in eadem domo vel ecclesia ei adnexa consociationem quae illius instituti sit propria." See J. AMOS, pp. 171- 172.

F. Morrissey defines a public association of the faithful as

an association of the faithful established by decree of the Holy See, the national bishops' conference, or a diocesan bishop by which it receives a mission to pursue its chosen apostolic purposes in the name of the Church and according to its statutes. These statutes and their revision and changes are subject to the establishing authority's approval. Public associations, by their decree of establishment, are juridic persons in the Church.<sup>174</sup>

The Church has reserved to itself the erection and direction of associations which intend to promote public worship, impart church teaching in the name of the Church, or pursue other ends which of their nature are left to the competent ecclesiastical authority to establish.<sup>175</sup> Public worship and church teaching are strategic areas that the Church closely guards. The Church itself establishes and erects public associations concerned with public worship and Church teaching in the name of the Church, as well as any other association whose purpose is by nature reserved to ecclesiastical authority; at the same time as it establishes such groups, it provides for their supervision and oversight.

## **2.2 ADMINISTRATION OF TEMPORAL GOODS**

A public association must, unless otherwise stipulated, administer its goods, 1) in accord with the statutes, 2) under the direction of the competent authority, 3) giving a report to this authority regarding the distribution of funds it has collected and

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<sup>174</sup>F. MORRISEY, "Juridic Status: Canonical Provisions, Possible Applications", in *Health Progress*, 67 (1986), no. 7, p. 45.

<sup>175</sup>CIC 1983, c. 301, §1: "Unius auctoritatis ecclesiasticae competentis est erigere christifidelium consociationes, quae sibi proponant doctrinam christianam nomine Ecclesiae tradere aut cultum publicum promovere, vel quae alios intendant fines, quorum prosecutio natura sua eidem auctoritati ecclesiasticae reservatur." See F. MORRISEY, in *The Associational Element in the Church*, p.14. See J. AMOS, pp. 169-170.

disbursed.<sup>176</sup> If the association is not very large, a simple but complete fiscal report should suffice. If it is a large one, with large holdings and huge sums of money, then it is recommended that steps be taken to alleviate any distrust such as appointing an external auditor to review the report. The fact that civil authorities usually need to be satisfied in this area reinforces the necessity for an external auditor. Amos indicates that the 1917 code generally required associations erected by apostolic privilege to give a report to the local ordinary and the 1983 Code makes a radical departure by requiring a report to those who erected them.<sup>177</sup>

### **3. PRIVATE ASSOCIATIONS OF CHRIST'S FAITHFUL**

#### **3.1 RELATIONSHIP TO CHURCH AUTHORITY**

Christ's faithful, who have the freedom to form associations, can moderate and lead them according to their statutes.<sup>178</sup> They have their own internal autonomy, but are also directly or indirectly responsible to competent church authority in matters relating to supervision and governance. A private association can receive juridic personality from the competent authority, provided its statutes are approved by this authority; approval does not change the nature of the association

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<sup>176</sup>CIC 1983, c. 319, §1: "Consociatio publica legitime erecta, nisi aliud cautum sit, bona quae possidet ad normam statutorum administrat sub superiore directione auctoritatis ecclesiasticae de qua in can. 312, §1, cui quotannis administrationis rationem reddere debet. §2: Oblationum quoque et eleemosynarum, quas collegerit, eidem auctoritati fidelem erogationis rationem reddere debet."

<sup>177</sup>Re: AMOS, p. 222.

<sup>178</sup>CIC 1983, c. 321: "Consociationes privatas christifideles secundum statutorum praescripta dirigunt et moderantur." See J. AMOS, p. 173.

as private.<sup>179</sup> A formal decree indicates that the association is a juridic person (usually a private juridic person if the association itself is private) in the Church with certain rights and responsibilities; it also establishes the direction of the association and its relation to the Church. Whether the association is a juridic person or not determines the degree of oversight by the competent authority. The vigilance to be exercised is in relation to the areas of faith, morals and ecclesiastical discipline. R. Barrett states:

Accepting the distinction, for the moment with all the usual qualifications, the consultors who worked on the revision of this part of the law in the study group *De Laicis*, elaborated seven characteristics of the private association: 1) they are freely established by the faithful; 2) the hierarchy in one way or another recognises them and recommends them, granting juridic personality either by law or by formal decree; 3) their purposes, spiritual and apostolic, pertain to the faithful in virtue of their baptism; 4) they do not receive a mission from nor act on behalf of the hierarchy; 5) they have their own statutes which are examined by ecclesiastical authority; 6) they are subject to the jurisdiction of their legitimate pastors in the same way as individual members of the faithful; 7) their goods are not ecclesiastical but are governed by civil norms. Essentially, then, these associations represent a valid exercise of a right by means of a union of wills which is guaranteed by divine law. Just as it is for the members to place the foundational act, so too it is for them to compose the statutes in which they must specify the end to be pursued, the means which they will use, the persons with whom they give life to the entity, the government of the association, conditions of admission and membership, and the title and name of the association.<sup>180</sup>

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<sup>179</sup>CIC 1983, c. 322, §1: "Consociatio christifidelium privata personalitatem iuridicam acquirere potest per decretum formale auctoritatis ecclesiasticae competentis, de qua in can. 312. §2: Nulla christifidelium consociatio privata personalitatem iuridicam acquirere potest, nisi eius statuta ab auctoritate ecclesiastica, de qua in can 312 §1, sint probata; statutorum vero probatio consociationis naturam privatam non immutat."

<sup>180</sup>R. BARRETT, pp. 44-45.

Respecting their autonomy, ecclesiastical authorities are to offer guidance to private associations as to how they can exercise their apostolate in such a way that it offers maximum benefit to the common good.<sup>181</sup>

R. Barrett states that, from a procedural perspective, there are two kinds of private associations:

A fundamental distinction is to be made between two kinds of private associations, namely those that are recognised and those that are not recognised, for much, from a procedural point of view, depends on the distinction. The criterion for recognition is the examination and approval of the statutes of the private association, regulated by canon 299 §3. The regulation of non-recognised associations is determined by c. 310, the latter corresponding to associations of fact of civil legislatures. We may further sub-divide the second category into four classes: a) private associations of fact (their statutes have yet to be examined by the competent authority); b) non-recognised private associations of which the authority has taken notice (c. 299 §3); c) non-recognised private associations commended by authority (c. 299 §2); d) non-recognised private associations recommended by authority (c. 299 §2)<sup>182</sup>

To summarize Barrett, the non-recognised associations are separated into those to be examined, those noticed, those commended, and those which are recommended.

To have an association recognized by the Church, thus giving it a certain standing within the Church community, its statutes must first be reviewed by the

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<sup>181</sup>CIC 1983, c. 323, §2: "Ad auctoritatem ecclesiasticam etiam spectat, servata quidem autonomia consociationibus privatis propria, invigilare et curare ut virium dispersio vitetur, earumque apostolatus exercitium ad bonum commune ordinetur."

<sup>182</sup>R. BARRETT, p. 45. See also W. SCHULZ, "La Posizione Giuridica delle Associazioni e la Loro Funzione nella Chiesa", in *Apollinaris*, 59 (1986), pp. 123-124. Chiappetta indicates that there are three types of private association: 1) one that is recognized by the ecclesiastical authority; 2) one that is simply recognized with implicit acceptance; 3) one which is constituted a juridic person through a particular administrative measure. L. CHIAPPETTA, Vol. I, p. 419.

competent authority.<sup>183</sup> As was the case with juridic persons, this is to ensure that the association is not promoting any activity which is contrary to Church teaching and that its purpose is not of a nature reserved specifically to ecclesiastical authority.

... any de facto association, or one formed by a private agreement, which wishes to obtain the status of a "private association" in the Church, such as is understood in canons 321-326, must have its statutes reviewed by the competent authority.<sup>184</sup>

Apparently, until 1981 at the Plenarium of the Code Commission, the prospect of a private association lacking juridic personality but existing within the Church's framework presented no problem and such associations would arise from agreements between the faithful without requiring any intervention on the part of competent authority with regard to their statutes. The question of the examination of statutes arose only with reference to private juridic personality.<sup>185</sup> It was decided at that moment that the recognition of the statutes was a sufficient requirement to confer juridic personality.<sup>186</sup> However, this was later rejected and there was a return to what amounts to be preconciliar doctrine. It is essentially a matter of vigilance and control on the part of ecclesiastical authority as reflected in the CIC 1917, Canon 679.<sup>187</sup> Recognition of a private association indicates that the association exists in the Church and meets the necessary conditions. However, some canonists

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<sup>183</sup>CIC 1983, c. 299, §3: "Nulla christifidelium consociatio privata in Ecclesia agnoscitur, nisi eius statuta ab auctoritate competenti recognoscantur." See J. AMOS, p. 169.

<sup>184</sup>R. PAGÉ, "Associations of the Faithful", in *The Jurist*, 47 (1987), pp. 173-174.

<sup>185</sup>Re: R. BARRETT, pp. 46-47. See *Communicationes*, 18 (1986), p. 303.

<sup>186</sup>Re: R. BARRETT, p. 47. See *Communicationes*, 18 (1986), p. 343, 363.

<sup>187</sup>CIC 1917 c. 679 §1: "Sodales societatis, praeter obligationes quibus, uti sodales, obnoxii sunt secundum constitutiones, tenentur communibus clericorum obligationibus, nisi ex natura rei vel ex sermonis contextu aliud constet, pariterque stare debent praescriptis can 595-612, nisi constitutiones aliud ferant. §2: Clausuram servant ad normam constitutionum sub Ordinarii loci vigilantia." See R. BARRETT, p. 47. See *Communicationes*, 15 (1983), p. 87.

believe that the foundational act creating a private association of the faithful is enough to grant it ecclesiality.<sup>188</sup> That the many groups that do exist in the Church but do not satisfy the norm of canon 299 §3, are legitimate expressions of the associative movement in the Church, has the support of a number of canonists in the Church.<sup>189</sup> Churches other than the Catholic Church seem to experience a similar situation:

Thus the Italian Episcopal Conference speaks of *free aggregates* which are not explicitly recognised and which do not need any particular authorisation to attain that ecclesial consistency required to work and live within the juridical sphere of the Christian community.<sup>190</sup>

Approaching the private association from the perspective of procedural capacity certainly surfaces a number of problems; however it is not our intent to pursue them here. Nevertheless, given some of the complications we have observed so far, it is easier to understand why the "association" is not the structure of choice for healthcare organizations in the Church.

A similar concept carries over into canon 300 where it is stated that no association may call itself "Catholic" except with the consent of the competent ecclesiastical authority.<sup>191</sup> The use of the term "Catholic" carries with it the connotation that a person or group is operating for the community as a whole, that is, as its representative; for this reason the term cannot be applied without certain forms of "quality control". F. Morrissey indicates that certain criteria need to be

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<sup>188</sup>Re: R. BARRETT, p. 48. See J. AMOS, pp. 183.

<sup>189</sup>Re: R. BARRETT, p. 48.

<sup>190</sup>R. BARRETT, pp. 48-49.

<sup>191</sup>CIC 1983, c. 300: "Nulla consociatio nomen 'catholica' sibi assumat, nisi de consensu competentis auctoritatis ecclesiasticae, ad normam can. 312." See J. AMOS, p. 170.

present for an entity to be called "Catholic", such as: 1) some form of relationship or accountability to Church authorities, 2) establishment or recognition by competent ecclesiastical authority, 3) some form of control or supervision, and, 4) where they exist, a listing in official Catholic directories, whether local or national.<sup>192</sup>

Ecclesiastical authority can establish associations of Christ's faithful to engage in other spiritual ends which may not be adequately provided for by private initiatives.<sup>193</sup> In essence, this authority can establish whatever association it sees fit, if it considers there is a vacuum in the disposition of services or activities in any area that could be carried out by an association of the faithful.<sup>194</sup>

### **3.2. APOSTOLATES, OFFICERS AND TEMPORAL GOODS OF A PRIVATE ASSOCIATION**

Competent authority may invite private associations to work in the apostolates of the diocese and even offer suggestions as to how they might do this. This prevents a duplication of efforts and gives the association a greater sense of acceptance by the bishop. The apostolates of any association should be ordered to the common good.

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<sup>192</sup>Re: F. MORRISEY, "What Makes an Institution "Catholic"?", in *The Jurist*, 47 (1987) pp. 536-538. See also, F. MORRISEY, in *The Associational Element in the Church*, p. 18, for a more extensive listing. See also c. 803 §3.

<sup>193</sup>CIC 1983, c. 301, §2: "Auctoritas ecclesiastica competens, si id expedire iudicaverit, christifidelium consociationes quoque erigere potest ad alios fines spirituales directe vel indirecte prosequendos, quorum consecutioni per privatorum incepta non satis provisum sit."

<sup>194</sup>CIC 1983, c. 301, §3: "Christifidelium consociationes quae a competenti auctoritate ecclesiastica eriguntur, consociationes publicae vocantur."

A private association can appoint its own officers and moderator in accord with its statutes and, if a spiritual counselor is desired, it can choose a priest from those ministering in the diocese, who must be confirmed by the local ordinary.<sup>195</sup>

Private associations can freely administer their goods according to their statutes, but the competent authority is to ensure in accord with c. 1301 that the aforementioned goods are properly applied to the purposes of the association as well as any goods given or left for pious causes.<sup>196</sup> Private associations are autonomous but must operate in accord with their statutes.

### **3.3 SUPERVISION AND GOVERNANCE**

All associations are subject to the supervision and governance of the competent authority in order to ensure the integrity of faith and morals. To make certain that abuses do not occur, associations are to be visited by church authority as provided for in the statutes.<sup>197</sup> Both private and public associations are to relate

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<sup>195</sup>CIC 1983, c. 324, §1: "Christifidelium consociatio privata libere sibi moderatorem et officiales designat, ad normam statutorum". §2: "Christifidelium consociatio privata consiliarium spiritualem, si quemdam exoptet, libere sibi eligere potest inter sacerdotes ministerium legitime in dioecesi exercentes; qui tamen indiget confirmatione Ordinarii loci."

<sup>196</sup>CIC 1983, c. 325, §1: "Christifidelium consociatio privata ea bona quae possidet libere administrat, iuxta statutorum praescripta, salvo iure auctoritatis ecclesiae competentis vigilandi ut bona in fines associationis adhibeantur". §2: "Eadem subest loci Ordinarii auctoritati ad normam can. 1301 quod attinet ad administrationem erogationemque bonorum, quae ipsi ad pias causas donata aut relicta sint." CIC 1983 c. 1301, §1: "Ordinarius omnium piarum voluntatum tam mortis causa quam inter vivos executor est." §2: "Hoc ex iure Ordinarius vigilare potest ac debet, etiam per visitationem, ut piae voluntates impleantur, eique ceteri executores, perfuncti munere, reddere rationem tenentur". §3: "Clausulae huic Ordinarii iuri contrariae, ultimis voluntatibus adiectae, tamquam non appositae habeantur."

<sup>197</sup>CIC 1983, c. 305, §1: "Omnes christifidelium consociationes subsunt vigilantiae auctoritatis ecclesiae competentis, cuius est curare ut in iisdem integritas fidei ac morum servetur, et invigilare ne in disciplinam ecclesiasticam abusus irrepant, cui itaque officium et ius competunt ad normam iuris et statutorum easdem invisendi; subsunt etiam eiusdem auctoritatis

to church authority in this regard. The Code uses two terms here, "supervision" and "governance". "Supervision" has the sense of a general oversight over an association in the areas of faith, morals, ecclesiastical discipline, and fiscal responsibility.<sup>198</sup> Its scale and depth are determined by law and by the statutes and are carried out in part by on site visitation. The term "governance" means a directing, controlling, ruling or regulating by authority as allowed by law and the statutes.<sup>199</sup> It deals directly with the life of the association. While the competent authority supervises all associations, only in specific circumstances does it enter into their internal governance.

Furthermore, all associations are under the authority of the Holy See, and diocesan associations as well as others active in the diocese are also subject to the local ordinary.<sup>200</sup> Because of this relationship to authority, it is recognized in the law that the Holy See has the right to supervise any association. The bishops are directly responsible for the supervision of diocesan associations based within their diocese as well as of other associations operating therein.

## **VI. SUMMARY**

The notion of juridic person in early development of Roman law is virtually non-existent. The citizens of Rome formed groups to accommodate whatever might

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regimini secundum praescripta canonum, qui sequuntur." J. AMOS, pp. 187-188, 210-211: J. Amos points out the fact that all associations are subject to the vigilance and jurisdiction of the Holy See and ecclesiastical authority, which is something the 1917 Code did not mention.

<sup>198</sup>Re: BLACK, p. 1452.

<sup>199</sup>Re: BLACK, p. 703.

<sup>200</sup>CIC 1983, c. 305, §2: "Vigilantiae Sanctae Sedis subsunt consociationes cuiuslibet generis; vigilantiae Ordinarii loci subsunt consociationes dioecesanae necnon aliae consociationes, quatenus in dioecesi operam exercent." See J. AMOS, p. 170, 192.

be a pressing need. When a few of these groups became seditious, the State officials reviewed their situation and, under Augustus, required official sanction. This was the beginning of the juridic person as we have come to know it today. It was not a rapid development, but, as Rome expanded its commerce and trade, the need for various associations arose. The notion of juridic personality was fairly well developed by the time of the codification of Roman law, but only in the manner of practical applications which is the benchmark of Roman law. There were a number of classes of juridic persons in Roman law: public associations, religious associations, political clubs, social and mutual benefit associations. Public juridic persons had governmental powers while private ones did not.

The papacy eventually applied Roman principles and procedural law in its ecclesiastical courts and there was also a development of "public" and "private" law as well as Canon law. From Canon law the concept of "fictitious person" developed, creating the abstraction for juridic persons and the concept of corporations as we view them today.

Various theories of corporation were eventually developed. The Church follows the theory of the "school of social necessity" which argues that natural right precedes positive civil law. In the nineteenth century the canon law was in need of revision. Elements of the German codification structure are used in the revision of the Code of Canon Law which was completed in 1917. Legal personality in the 1917 Code of Canon Law is recognized for inferior moral persons as distinct from the divinely established moral persons which are the Church and the Apostolic See.

The 1983 Code of Canon Law refers extensively to the legal personality of juridic persons which are aggregates of persons or of things and are constituted by law or by decree of the competent ecclesiastical authority. Every juridic person has its purpose congruent with the apostolic goals and mission of the Church. These are works of piety, apostolic mission or of charity, whether spiritual or temporal.

Juridic persons are public or private. Public juridic persons are established by law or by decree of competent ecclesiastical authority and they act in the name of the Church. Their assets are considered ecclesiastical goods subject to Book V of the 1983 Code; they have the right to acquire, retain and dispose of property. Private juridic persons are established by the decree of competent ecclesiastical authority, their purpose being determined in their statutes. The assets of a private juridic person are not considered ecclesiastical goods. One of the purposes in establishing public and private juridic personalities was to eliminate the unrecognized associations as much as possible, but this has not come to pass.

Associations of Christ's faithful play a supporting role in furthering the Church's mission, their members striving to permeate society with a Christian spirit. Some canonists are of the opinion that the foundational act of creating a private association of the faithful is enough to grant it ecclesiality (the associative movement). No association may call itself "catholic" unless it has the consent of the ecclesiastical authority as there is the need to be accountable, to be recognized by and supervised by Church authorities.

Private associations of the faithful were established and developed so as to accommodate a number of groups that existed outside the hierarchical structure of the Church. The unofficial route continues to be chosen for many reasons by the faithful, since becoming "official" usually entails constraints and limitations which many find difficult to accept.

The use of the association structure for healthcare apostolates has not been without its problems and thus is not the structure of choice. There are a number of reasons for this but the ones that are readily apparent are that the association is composed of persons and its criteria for membership is somewhat limiting. Since the healthcare apostolate utilizes skilled managers, by necessity, the pool of

Catholics within this group is somewhat limited, thus requiring the employing of non-Catholics for these positions.

The application of the notion of private juridic personality to separately incorporated apostolates presents more than a few challenges. We need to apply the notion of the apostolic mission as envisaged by the Fathers of Vatican II as well as the formation of current civil incorporation concepts employed in North America, specifically in the United States. This will hopefully allow us to consider in greater depth the future possibility for the private juridic person in the healthcare apostolate.

## **CHAPTER THREE**

### **CIVIL STRUCTURES TO COMPLEMENT CANONICAL ONES**

#### **INTRODUCTION**

This chapter will discuss the notion of "corporation" and the various types of corporations commonly used by church entities and operations in the United States. Juridic persons, whether they be public or private, as well as their mission apostolates, usually acquire some type of legal recognition. We wish here to focus more particularly on the incorporation of an apostolic mission activity. There are numerous types of civil legal existence in the United States, in as much as each state is responsible for incorporating and has its own legislation on the matter. However, since certain types of corporations are common to many jurisdictions, these will serve as a model as we strive to provide an explanation of the various corporate structures used for the apostolic mission activities of juridic persons in the United States. For instance, there are business corporations and non-profit ones. Our analysis of the business corporation will treat the requirements for setting up this type of corporation, with indicators of specific differences relative to the non-profit corporation. One of the main competitors of the Catholic healthcare systems (and all nonprofit systems) are the for-profit or investor-owned systems which are essentially business corporations. The non-profit corporation and its attendant types of charitable and religious corporations will be explained, along with the criteria used by the United States Internal Revenue Service for the recognition of tax-exempt organizations.

In the second part, consideration is given to the corporate structures utilized more specifically today in healthcare. This will enable us to address issues relating to the separate identity of the mission as they apply to the administration of temporal goods.

## **I. CIVIL STRUCTURES**

When referring to various civil structures, we shall consider corporations in general, then various types and their purposes.

### **1. CIVIL CORPORATIONS**

#### **1.1 NATURE AND PURPOSE**

There are certain legal persons in civil law in the U.S.A. called “corporations” which are generally considered in church law as counterparts to those entities known as “juridic persons”. Both are composed of persons (or things) and exist through an act of law. Black’s Law Dictionary defines a corporation as

an entity (usually a business) having authority under law to act as a single person distinct from the shareholders who own it, and having rights to issue stock and exist indefinitely; a group or succession of persons established in accordance with legal rules into a legal or juristic person that has legal personality distinct from the natural persons who make it up, exists indefinitely apart from them, and has

the legal powers that its constitution gives it.<sup>1</sup>

The New Catholic Encyclopedia defines a corporation as

a collection of natural persons, joined together by or under the authority of an act of the legislature, consisting either of a special charter or of a general permissive statute, to accomplish some purpose, pecuniary, ideal, or governmental, authorized by the charter or governing statute.<sup>2</sup>

The corporation provides for a person or persons to form an entity with a separate existence under law to carry out the purposes for which it was established, to hold legal title to assets, real property, etc.<sup>3</sup> Depending on the type of corporation, the law usually requires a minimum of three persons to incorporate, treats the corporate person as the equivalent of a natural person, and gives it rights and responsibilities.<sup>4</sup> The corporation absorbs any liabilities unless there is overt deception or violation committed by its administrators, in which case they would personally be subject to criminal or civil proceedings.<sup>5</sup> The members of the corporation can change but they are replaced by new members, thus allowing the corporation continued existence either in perpetuity or for the specific length of time

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<sup>1</sup>H. BLACK, *Black's Law Dictionary*, B. GARNER, editor, 7<sup>th</sup> edition, St. Paul, Minn., West Publishing Co., 1999, p. 341 (hereafter cited as BLACK). See also W. BASSETT, *Religious Organizations and the Law*, Vol. I, New York, Clark Boardman Callaghan, 1997, p. 3-9 (hereafter cited as BASSETT, Vol. I).

<sup>2</sup>P. HARBRECHT, "Corporation" in *New Catholic Encyclopedia*, Vol. IV, 1967, p. 336 (hereafter cited as HARBRECHT).

<sup>3</sup>Re: BASSETT, Vol. I, p. 3-9.

<sup>4</sup>Re: A. MANCUSO, *How To Form a Nonprofit Corporation in California*, Berkeley, Nolo Press, 1999, p.1 / 2 (hereafter cited as MANCUSO).

<sup>5</sup>Re: MANCUSO, pp. 1 / 9 - 1 / 10. See J. EIDSMOE, *The Christian Legal Advisor*, Milford, Michigan, Mott Media, Inc. Publishers, 1984, p. 419 (hereafter cited as EIDSMOE).

for which it was established.<sup>6</sup> Two factors allow the corporate structure to be advantageous: 1) a group can do more than one person, 2) the corporation absorbs liabilities, not the individual member or director.

In the case of a business corporation that has become public, individuals may buy or invest in stocks in a corporation which then places them in an owner category, proportionate to the number of stocks or shares they own. Shareholders may be individuals, institutions, funds, associations, other corporations. Given the magnitude of most corporations and the broadening of laws, management usually has wide discretionary powers in managing the corporation, subject to the Board of Directors.<sup>7</sup> However, each state has a regulatory agency to oversee the activities of the corporation and, if need be, review its practices.<sup>8</sup>

The business corporation has three levels of governance: (1) the shareholders, if it is a stock corporation, who have the responsibility to elect the board of directors and remove them from that position if they fail in their duties; (2) the board of directors who are responsible for the management of the corporation with authority over policy, personnel, compensation, delegation, declaration of dividends and general supervision of the corporation; (3) the Officers, selected by the board of directors to carry out the day to day operations of the corporation: the president, vice-president, secretary and treasurer.

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<sup>6</sup>See MANCUSO, p. 1 / 10.

<sup>7</sup>See HARBRECHT, p. 336.

<sup>8</sup>See EIDSMOE, p. 420.

## 1.2 CLASSIFICATION OF CORPORATIONS

Corporations are usually classified into *public* and *private*, *aggregate* and *sole*, *domestic* and *foreign*, *subsidiary* and *parent*. We will describe each of these in turn.

*Public corporations* are of three types: those whose shares are traded among the general public; those created by the state for political purposes, as an agency for the administration of civil government; those that are government owned to benefit the general public.<sup>9</sup> On the other hand, *private corporations* are those established and founded by private persons for purposes without governmental duties, such as manufacturing, banking, railroad corporations, charitable and religious corporations, etc.<sup>10</sup> Although a corporation may affect the public in some general or specific way, this is not what designates it as a public corporation.

A *corporation aggregate* is one which is composed of a group of individuals who are vested with corporate powers.<sup>11</sup> When the term "corporation" is used, it usually refers to the corporation aggregate. A *corporation sole* is a series of successive persons holding an office; a continuous legal personality attributed to successive holders of certain ecclesiastical positions who have incorporated in order to obtain some legal capacities, perpetuity in particular, which they would not have as natural persons.<sup>12</sup>

A *domestic corporation* is one that is created or organized under the laws of the state, government or country where it is located, while a *foreign corporation* is

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<sup>9</sup>Re: BLACK, p. 344.

<sup>10</sup>Re: BLACK, p. 344.

<sup>11</sup>Re: BLACK, p. 342.

<sup>12</sup>Re: BLACK, p. 342. The corporation sole is used by many dioceses where it is allowed by the state.

one that is created or organized under the laws of a state, government or country other than the one in which it is located.<sup>13</sup>

*A parent corporation* is one which owns the majority of the shares of another corporation, which corporation is then known as a *subsidiary corporation*.<sup>14</sup> *A holding company* (corporation) is one that is formed to control other companies, usually confining its role to owning stock and supervising management.<sup>15</sup> *A conglomerate* usually is a corporation that owns unrelated enterprises in a wide variety of industries.<sup>16</sup>

## 2. TYPES OF INCORPORATION

Although there are many different types of corporations,<sup>17</sup> for our purposes consideration will be given to business and non-profit corporations. "Non-profit" and "not-for-profit" are terms of tax-status, not a description of the organization's financial status.<sup>18</sup> As will be discussed later, non-profit organizations are able to make a profit, but private inurement is not allowed and all profits are retained by the organization for its purposes. Among the non-profit corporations that we could mention, there are charitable, spiritual or religious ones.

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<sup>13</sup>Re: BLACK, p. 343.

<sup>14</sup>Re: BLACK, p. 344.

<sup>15</sup>Re: BLACK, p. 275.

<sup>16</sup>Re: BLACK, p. 297.

<sup>17</sup>See BLACK, pp. 341-345.

<sup>18</sup>See S. LUTZ, *Med Inc.*, San Francisco, Jossey-Bass Publishers, 1998, p. 73 (hereafter cited as LUTZ, *Med Inc.*).

Probably the most familiar is the business corporation, formed for the purpose of doing or transacting business in the broadest sense of the term, encompassing not only trade and commerce but also manufacturing, mining, insurance, transportation, and every form of commercial or industrial activity, including those hospitals where the purpose is financial profit.<sup>19</sup>

## **2.1 BUSINESS CORPORATION**

The requirements for establishing a business corporation are similar to those used for establishing other corporations; the differences are usually found in the membership and shareholder segments. For example, a non-profit corporation would not have shareholders and possibly only a single member.<sup>20</sup>

Incorporation allows for a group of individuals to use some of their resources for whatever purpose they have chosen.<sup>21</sup> Any liabilities incurred are absorbed by the corporation and not by the individuals, provided they were acting within the parameters of the law.<sup>22</sup>

The first step of incorporation is the choosing of an appropriate name, one

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<sup>19</sup>Re: BLACK, p. 341.

<sup>20</sup>See A. MAIDA and N. CAFARDI *Church Property, Church Finances and Church-Related Corporations*, Pittsburg, PA, Duquesne University School of Law, 1998, p. 120 (hereafter cited as MAIDA/CAFARDI). See EIDSMOE, p. 420.

<sup>21</sup>See MANCUSO, p. 1 / 2.

<sup>22</sup>See MANCUSO, p. 1 / 2.

which cannot resemble too closely that of an existing corporation.<sup>23</sup> A search of the existing names can usually be accomplished or one can wait for the state to process the application and make the determination.

It is customary and sometimes necessary to place after the name of the corporation one of the following terms: *corporation*, *company*, *incorporated*, or *limited*, as these indicate to those doing business with the firm that it is a legal entity under law and that the corporation is responsible for all debts and actions of the firm.<sup>24</sup>

Just as the preparation of the constitution or statute of a juridic person is an important step in canon law, so too the wording of the corporate charter is an important part of setting up a corporation in civil law. In the United States, the corporate charter is granted by the state unless it is a Federal Corporation. A charter is the instrument used by the state in granting rights, liberties, or powers to one of its citizens.<sup>25</sup> A corporate charter (also called articles of incorporation) is

a document that sets forth the basic terms of a corporation's existence, including the number and classes of shares and the purposes and duration of the corporation. In most states, the articles of incorporation are filed with the secretary of state as part of the process of forming the corporation. In some states, the articles serve as a certificate of incorporation and are the official recognition of the corporation's existence. In other states, the government issues a certificate of incorporation after approving the articles and other required documents.<sup>26</sup>

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<sup>23</sup>Re: M. GEORGAS, *Incorporation and Business Guide for Ontario*, North Vancouver, British Columbia, Self Counsel Press, 1996, p. 23 (hereafter cited as GEORGAS). See MANCUSO, p. 6 / 4.

<sup>24</sup>Re: GEORGAS, p. 3.

<sup>25</sup>Re: BLACK, p. 228.

<sup>26</sup>BLACK, pp. 107, 228.

The articles of incorporation or charter are core to the incorporation process and the laws and methods adopted can and do vary from state to state. The articles present the name of the corporation, the business or businesses it will conduct, what shares it will be able to offer, the location of its principal place of business, the number of directors, the names and addresses of the temporary directors and of the incorporators.<sup>27</sup> If the businesses consist of banking, education, healthcare, etc., which have particular requirements, then approvals from other regulatory authorities in the state must also be sought.

A business corporation will usually have stocks or shares to sell.<sup>28</sup> The type of shares/stocks must be indicated, as well as the number of shares to be issued. Some states charge a fee for each share/stock that is issued. A share is a unit of stock in a corporation and possession of the stock certificate indicates that a person has a share or some degree of ownership in the corporation which then allows that person to partake of the profits according to the number of shares possessed.<sup>29</sup> Usually the liability of a stockholder is limited to the value of the shares that are owned; this would be the extent of personal losses should the corporation encounter bankruptcy and no monies were available after the creditors have been given first option to any available funds. The private funds of the shareholder are not considered part of the corporation and normally cannot be touched.

A shareholder is allowed to vote for the board of directors, as determined in the articles of incorporation. A director of a corporation then assists in managing or directing its affairs. Some directors are appointed, others are elected. The articles of incorporation or their accompanying by-laws indicate the procedure for

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<sup>27</sup>Re: E. SPARK, "U.S. Law of Corporations" in *The New Catholic Encyclopaedia*, Vol. III, 1967, p. 688. See GEORGAS, p. 27.

<sup>28</sup>See MANCUSO, p. 1 / 3.

<sup>29</sup>Re: BLACK, p. 1380.

establishing and maintaining a board of directors. Usually there is a minimum of three directors and one is designated chairperson. This information is usually filed with the Secretary of State or some other designated official.

When the appropriate state agency approves the articles of incorporation, the corporation can then schedule an official meeting and is considered open for business. The state will issue a certificate of incorporation to signify the birth of the new corporation.

The corporation also needs to set up by-laws and resolutions. By-laws are administrative provisions adopted by a corporation for its internal governance and enacted apart from the articles of incorporation.<sup>30</sup> A resolution is a formal action by a corporate board of directors authorizing a particular act, transaction, or appointment, or an action on the part of shareholders, usually to ratify the actions of the board of directors.<sup>31</sup>

A corporation seeking to do business in a state other than the one in which it is incorporated is considered foreign to that state.<sup>32</sup> For it to operate elsewhere, it must register or appoint an agent and pay the necessary fees and taxes.

The purpose of a business corporation is to make a profit and the shareholders participate in the proceeds. The profits are the funds which remain after taxes and other requisite pecuniary activities have been taken care of.<sup>33</sup> The state has the granting of the articles of incorporation under its purview and any changes made to the corporation by amendments, etc., must be approved by it.

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<sup>30</sup>Re: BLACK, p. 193. See GEORGAS, p. 54.

<sup>31</sup>Re: BLACK, p. 1313. See GEORGAS, p. 54.

<sup>32</sup>Re: BLACK, p. 343.

<sup>33</sup>Re: BLACK, p. 1226.

## 2.2 NON-PROFIT CORPORATION

Distinct from the business corporation is the non-profit corporation, formed for a purpose other than profit, such as charity or benevolence, organized under special statutes and given special treatment with regard to taxes.<sup>34</sup> This incorporation takes place in the state in which the main operations or headquarters of the non-profit operations are located.<sup>35</sup>

Non-profit corporations have members instead of shareholders, or are a non-member corporation; they have as their purpose, service, mutual or public benefit, and works of charity.<sup>36</sup> A corporate member has those membership rights set forth in the articles of incorporation or by-laws and whatever powers are allocated by the corporation.<sup>37</sup> Although the non-profit corporation is able to make a profit, the income

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<sup>34</sup>Re: BLACK, p. 343. Canadian law offers two types of non-profit organizations, the nonprofit-charitable and the nonprofit-non-charitable. Only those organizations that pursue objects legally charitable are non-profit-charitable while all others are non-profit-non-charitable. R. BURKE-ROBERSTON and A. DRAKE, *Non-Share Capital Corporations*, Rel. 2, Scarborough, Ontario, Carswell Thomson Professional Publishing, 1999, p. G-48 (hereafter cited as BURKE-ROBERSTON/DRAKE).

<sup>35</sup>See BASSETT, Vol. I, p. 3-26. See MAIDA/CAFARDI, p. 119.

<sup>36</sup>Re: BASSETT, Vol. I, p. 3-9. See MAIDA/CAFARDI, p. 23. See EIDSMOE, p. 421. The Canadian law offers a similar definition, "The terms "non-profit" and "not-for-profit" are used interchangeably and generally refer to organizations whose profits are not passed on to their members." BURKE-ROBERSTON/DRAKE, p. 1-1. "The earliest American religious corporations under general state incorporation acts were the trustee corporation and the membership corporation. In the first, a body of trustees, usually elected by the congregation, was incorporated by state law as a unit [...] The trustees had all the rights and duties of ownership of property that an individual owner would have. Because the trustees were incorporated as a body distinct from the congregation, both the loss of congregational control over the trustees and the necessity of the courts to delve into matters of religious belief in order to adjudicate the proper use of property, however, led to new provisions in the *New York Religious Incorporations Act* in 1854 for the establishment of membership rather than trustee corporations. [...] In the membership corporation the entire congregation was incorporated as a body, directly owning and controlling church property and finances according to the rules of the local church, or the charter and bylaws of the corporation." BASSETT, Vol. I, pp. 1-57-1-58.

<sup>37</sup>Re: MAIDA/CAFARDI, p. 120.

cannot be distributed to its members, directors or officers.<sup>38</sup> The articles of incorporation will indicate that no dividends or pecuniary profits shall be declared or paid to any director or officer.<sup>39</sup> Directors and employees are able to receive a salary, depending on the directions of the charter, constitution or by-laws of a particular non-profit corporation.

The articles of incorporation indicate which type of non-profit corporation is being established: educational, religious or charitable, or all three, and this corporation is dependent on the state statutes relating to incorporation of a non-profit entity.<sup>40</sup> A description of some of the activities of the corporation would be presented, as well as the name and the location of the principal office.

A Catholic organization establishing a non-profit corporation usually indicates

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<sup>38</sup>Re: BLACK, p. 343; p. 593. "The Revised Model Nonprofit Corporation Act was promulgated in 1987 by the American Bar Association. The Model Act provides for three categories of nonprofit corporations to reflect the variety of activities in which such corporations engage. There are public benefit corporations, mutual benefit corporations, and religious corporations. Public benefit corporations operate for public or charitable purposes and hold themselves out as "doing good works, benefiting society or improving the human condition." Mutual benefit corporations benefit their members or groups of people they serve or represent. Religious corporations are those operating primarily or exclusively for religious purposes. The Model Act applies different rules to the three types of corporations. Consequently, the articles of incorporation must specify whether the corporation will be a public benefit corporation, a mutual benefit corporation, or a religious corporation." BASSETT, Vol. I, p. 1-61.

<sup>39</sup>Re: MANCUSO, p. 1 / 8. Canadian law is similar for, in a non-share capital corporation, the members are prohibited from receiving any pecuniary gain since the underlying objective is to carry on activities for the common good and not for individual gain. The very notion of "members", as opposed to "shareholders", implies a co-operative or altruistic motive rather than a profit-making intention on the part of those involved. BURKE-ROBERSTONE/DRAKE, p. 1-6.

<sup>40</sup>Re: MANCUSO, p. 1 / 5. See MAIDA/CAFARDI, p. 121. There are three types of non-profit corporations in California-public benefit, religious and mutual benefit. An example of public benefit would be a non-profit school or educational facility; an example of a religious corporation would be a group organized to promote the study or practice of a particular religion; an example of mutual benefit corporations would be automobile clubs, tennis clubs, etc., and usually they fall under a different category for donor purposes - non tax-deductable. MANCUSO, pp. 1 / 6-1 / 7. This is indicative of the basic descriptions of non-profit corporations used by other states. In Canada, charitable and nonprofit organizations can be structured as trusts, unincorporated associations, such as societies or clubs, or through incorporation, usually as non-share capital corporations. BURKE-ROBERSTONE/DRAKE, p. 1-2.

in the articles of incorporation that it is an instrument of the Roman Catholic Church under whose auspices it operates. There is usually an article which stipulates that the corporation is subject to the rules, laws, canons, and regulations promulgated and in force within the Church.<sup>41</sup> There is also an indication of membership.<sup>42</sup> Usually, the Catholic non-profit corporation is an association or a diocese, a public juridic person in the canonical sense. However, anyone can set up a non-profit corporation whether it be sectarian or non-sectarian. Maida and Cafardi recommend that Church entities in the United States use the non-profit membership corporation model.<sup>43</sup> A member is a person (a particular officeholder, etc) who is given the right in the articles of incorporation or by-laws to vote for the election of directors, the sale of assets, and merger or dissolution.<sup>44</sup> The directors/trustees are thus vested with the management of this type of corporation, enabling them to manage the corporation within the framework of corporate powers reserved to the members.<sup>45</sup> Policies applied to business corporations usually apply to this type of corporation, which is separate for purposes of liability limitation, and to the use of human agents who act on behalf of the corporation in a fiduciary relationship.<sup>46</sup>

The tax exemption afforded to a non-profit corporation is not automatic; the corporation must show that it is in compliance with the requirements of the law.<sup>47</sup> The provision for federal tax-exemption afforded non-profit corporations is found

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<sup>41</sup>See MAIDA/CAFARDI, p. 228.

<sup>42</sup>See MAIDA/CAFARDI, p. 120.

<sup>43</sup>Re: MAIDA/CAFARDI, pp. 122-123.

<sup>44</sup>Re: MANCUSO, p. 2 / 16.

<sup>45</sup>Re: MAIDA/CAFARDI, p. 122.

<sup>46</sup>See MAIDA/CAFARDI, p. 123.

<sup>47</sup>Re: MANCUSO, p. 3 / 2. In seeking tax-exemption, a corporation must submit "Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code" which is Form 1023, issued by the Department of the Treasury, Internal Revenue Service. Two of the items required are copies of the Employer Identification Number, and financial statements.

under Title 26, Section 501 (c)(3) of United States Internal Revenue Code.<sup>48</sup> Requirements for exemption of payment of state corporate income taxes usually are parallel to those of the federal code. Some states will not grant an exemption until an exemption is received from the United States Internal Revenue Service.<sup>49</sup> However, a major benefit of the tax exemption is the fact that donors receive a tax deduction from their federal income tax for charitable contributions.<sup>50</sup> Tax exemptions given by each state have different requirements and different benefits.<sup>51</sup> The process for setting up of a non-profit corporation is essentially the same as setting up a for-profit one, the major differences being that there are no shareholders, no private inurement, non-ownership and the fact that the corporation is engaged in activity for community benefit, not for private interests.

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<sup>48</sup>See MANCUSO, pp. 3 / 2, 3 / 8. Code of Federal Regulations, Title 26, Volume 7, Part 1, Chapter 1, Revised April 1, 1997, From the U.S. Government Printing Office via GPO Access, pp. 13-20 (hereafter cited as 26CFR). The Internal Revenue Service provided a group ruling to the United States Catholic Conference in 1946 which gave a tax-exemption to groups and facilities listed in the Official Catholic Directory, an annual publication since 1817 giving the status of the Catholic Church in the United States. The group ruling is an expediency for the Internal Revenue Service and it is up to each listed organization to provide proof of its eligibility for exemption. Those organizations having their own exemptions are indicated as such by an asterisk. *The Official Catholic Directory*, New York, P.J. Kenedy and Sons, published annually. See EIDSMOE, pp. 422-423.

<sup>49</sup>See EIDSMOE, p. 423. In Canada, non-share capital corporations can be incorporated under either the provincial or the federal statute(s). There must be an indication that the corporation's activities are carried out without pecuniary gain to its members. Section 154 of the *Canada Corporations Act* provides that "the Minister may by letters patent under his seal of office grant a charter to any number of persons, not being fewer than three [...] thereby created a body corporate and politic, without share capital, for the purpose of carrying on, without pecuniary gain to its members, objects to which the legislative authority of the Parliament of Canada extends, of a national, patriotic, religious, philanthropic, charitable, scientific, artistic, social, professional or sporting character, or other like objects". The objects of the corporation must be spelled out. BURKE-ROBERSTON/DRAKE, p. 1-7, 1-12.

<sup>50</sup>See MANCUSO, pp. 5 / 2-5 / 4.

<sup>51</sup>See MANCUSO, p. 5 / 4.

### 2.3 CHARITABLE CORPORATION

The terms “charity” and “charitable” are rather difficult to evaluate. The word “charity” is derived from the Latin “*caritas*”, which had the meaning of family affection, friendship, and according to Cicero, love for humankind.<sup>52</sup> The Christians used “*caritas*” to translate the Greek word “*agape*” in the Scriptures and the teachings of Jesus (love of God and love of others) with its attendant duties, including assisting the poor, the widows, the sick, the imprisoned and orphans.<sup>53</sup> There also developed a legal definition of charity:

In English law, a term of technical meaning, covering generally an object of benevolence, but in some ways wider and some narrower than the everyday meaning of the word.

A use or trust is charitable only if its purposes fall within the spirit of the preamble to the Charitable Uses Act, 1601, grouped in modern authorities into four divisions, viz. the relief of poverty, the advancement of education, the advancement of religion, and other purposes beneficial to the community or analogous in spirit and purpose to one of these divisions and is also directed to the public benefit. The persons to be benefited must be a substantial body of the public...<sup>54</sup>

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<sup>52</sup>Re: M. SCADUTO, “Works of Charity”, in *New Catholic Encyclopedia*, Vol. III, 1967, p. 480 (hereafter cited as SCADUTO).

<sup>53</sup>Re: SCADUTO, p. 480.

<sup>54</sup>D. WALKER, *The Oxford Companion to Law*, New York, Oxford University Press, 1980, p. 207. The preamble of the *Charitable Uses Act*, (1601) 43 Eliz. 1, c. 4 (usually referred to as the Statute of Elizabeth I) enumerated a list of specific charitable purposes. BURKE-ROBERSTON/DRAKE, p. G-49. Regarding Canadian law, “The common law starting point for determining whether a purpose is charitable, has, for over a century been the classification developed by Lord McNaughton in *Pemsel v. Special Commissioners of Income Tax*, [1891] A.C. 531, 3T.C. 53, [1891-94] All E.R. Rep. 28 (U.K.H.L.). This legal meaning of “charity” was approved by the Supreme Court of Canada in *Towle Estate v. Minister of National Revenue* (1966), [1967] S.C.R. 133 at 141, (sub nom. *Guaranty Trust co. v. Minister of National Revenue*) 60 D.L.R. [2<sup>nd</sup>] 481, [1966] C.T.C. 755, 67 D.T.C. 5003 [S.C.C.). In the *Pemsel* case, Lord McNaughton stated that: “Charity” in its legal sense comprises four principal divisions: “trust for the relief of poverty; trust for the advancement of education; trust for the advancement of religion; and trust for other purposes beneficial to the community, not falling under any of the proceeding heads.” BURKE-ROBERSTON/DRAKE, pp. 1-9-1-10. In practice, the precise legal meaning of charity is embodied

The United States Code of Federal Regulations, Title 26, Section 501 (c)(3) regarding charitable organizations, provides a definition of "charitable" as including relief of the poor and distressed and of the underprivileged.<sup>55</sup> In short, the relief of poverty. Assistance to the poor can occur through the donation of funds, goods, low rent land, low rent dwellings, loans, employment counselling, soup kitchens and so forth; in essence then, direct financial assistance or provision of services.<sup>56</sup> The Internal Revenue Service has, through court intervention, expanded the meaning of the word "charitable" to one that is broader than merely relief of the poor.<sup>57</sup> Hospitals care not only for the poor, but are also the primary health facilities for both the rich and the poor.<sup>58</sup> The word "charitable" extends to any form of philanthropic endeavour or public benefit.<sup>59</sup> Thus an organization does not have to show that it operates solely to give relief to the poor and distressed for it to gain an exemption; if it operates, for example, to promote health, advancement of education, advancement of religion or science, it is usually eligible.<sup>60</sup> Some question the fact that a charitable

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principally in case law. BURKE-ROBERSTON/DRAKE, p. G-49.

<sup>55</sup>Re: B. HOPKINS, *The Law of Tax-Exempt Organizations*, 7<sup>th</sup> Edition, New York, John Wiley & Sons, 1998, p. 118 (hereafter cited as HOPKINS). 26CFR, pp. 17-18. An interesting note regarding Canadian law: some jurisdictions in Canada restrict non-share capital corporations from holding any land not immediately required for their objects. In Ontario there is no longer the restriction on non-share corporations from holding land for any purpose under the *Statute Law Amendment Act*, S.O. 1994, c. 27 but there is the *Charities Accounting Act*, R.S.O. 1990, c. 10, section 8, which provides that a charity can hold land only for its actual use and occupation for charitable purposes. If the Public Guardian Trust and Trustee (oversees charities in Ontario) opines that the land is not being used for a charitable purpose it can vest the land in itself and sell it. Its practice, however, has been to allow up to ten per cent of surplus land to be rented out. BURKE-ROBERSTON/DRAKE, pp. 2-24 - 2-25. In the United States such surplus property is reinstated on the tax register and assessed for taxes. This prevents land-banking and also the potential loss of tax revenue by the civil entities in whose jurisdiction the "charity" is located.

<sup>56</sup>Re: HOPKINS, p. 118. 26CFR, pp. 18-19.

<sup>57</sup>Re: HOPKINS, p. 120.

<sup>58</sup>Re: HOPKINS, p. 120. See MANCUSO, pp. 4 / 5- 4 / 6.

<sup>59</sup>Re: HOPKINS, p. 121.

<sup>60</sup>Re: HOPKINS, p. 121. 26CFR, pp. 18-19. See MANCUSO, pp. 4 / 6-4 / 7.

purpose exists where the poor, the rich and those in-between are all treated alike.<sup>61</sup> However, Congress has not defined the word “charity” in any of its legislation. Initially it was limited to the aid of the poor and distressed, although it has since taken on the meaning assumed in common law.

*A charitable corporation*, then, is a non-profit-corporation organized to promote charity, the welfare of humanity at large, of communities, of particular classes within the communities or whatever else can be described as promoting charity.<sup>62</sup>

### **3. PURPOSES OF THE NONPROFIT CHARITABLE CORPORATION**

The criteria for recognition of a charitable non-profit corporation, as determined by the Internal Revenue Service, should be examined to make us aware of what is required civilly for verification of acceptable “charitable” activity for tax purposes.<sup>63</sup> It is not surprising that ecclesiastical requirements and civil requirements are rather similar, as the civil regulations are somewhat gleaned from the practices and requirements of mainline churches.

We shall consider two of these purposes: the promotion of health and the advancement of religion.

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<sup>61</sup>Re: HOPKINS, p. 122.

<sup>62</sup>Re: MAIDA/CAFARDI, p. 120.

<sup>63</sup> For the Canadian law on this matter, see BURKE-ROBERSTON/DRAKE, p. 1-11.

**3.1 PROMOTION OF HEALTH**

As a charitable purpose, the promotion of health consists of some or all of the following: establishment or maintenance of hospitals, clinics, homes for the elderly, and other providers of health care, medical research, and maintenance of conditions conducive to health, including mental health.<sup>64</sup>

**(a) HOSPITALS**

When we consider “health”, the hospital is certainly one of the first images that comes to mind. Each hospital, on a case by case basis, if it is seeking tax exemption, must demonstrate that it serves the public, and not private, interest, generally meaning that it must accept all emergencies regardless of ability to pay.<sup>65</sup> The non-profit hospital is currently allowed to generate a surplus of receipts over disbursements; the requirement that healthcare be provided free or at reduced costs is no longer listed under current regulations of the Internal Revenue Service.<sup>66</sup> If a hospital does not have emergency services, then other criteria can be met. There now exist the for-profit hospitals which are not tax- exempt but which at times share in a consolidation of services with the non-profit institutions, or even purchase a non-profit institution. The fact that many people now have some type of insurance or managed care program (even though millions in the U.S.A. are still without appropriate insurance), has created a somewhat profitable business in the health

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<sup>64</sup>Re: HOPKINS, p. 122.

<sup>65</sup>See HOPKINS, p. 123. Hospitals receiving *Medicare* reimbursements or which have received funding through the *Hill-Burton Act* must follow this regulation.

<sup>66</sup>Re: HOPKINS, p. 123.

care industry.<sup>67</sup> Some would say that there is not a substantial difference between a non-profit and a for-profit hospital; however, the law would disagree with them. The essential difference is this: in a nonprofit entity there can be no private inurement, there are no shareholders and any profits remain with the entity. A for-profit hospital must ultimately satisfy its shareholders or they will withdraw their financial support. Others would want "charity" more narrowly defined, rather than keeping the broadened definition that we have today, since such a definition would possibly do much to dispel the differences between a for-profit entity and a non-profit entity, but even for-profit hospital systems are realizing the value of "charity" in marketing their product.<sup>68</sup>

### **(b) HOMES FOR THE ELDERLY**

A home for the elderly is one that provides them with housing, health care and financial security. A home offering these services is able to receive a federal tax-exemption status.<sup>69</sup> The housing is usually residential, in the form of a room or an apartment with emotional, recreational, social, religious and other needs being responded to in a timely manner.<sup>70</sup> Health care is provided on site or arrangements

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<sup>67</sup>See E. GINZBERG, *Tomorrow's Hospital*, New Haven, Yale University Press, 1996, pp. 8-9 (cited hereafter as GINZBERG).

<sup>68</sup>Re: S. LUTZ and E. GEE, *Columbia/HCA—Healthcare on Overdrive*, New York, McGraw-Hill, 1997, p. 4, (hereafter cited as LUTZ/GEE).

<sup>69</sup>See HOPKINS, p. 128. "Categories under the *Revised Nonprofit Corporation Act* are mutually exclusive of each other, each tied to a different set of rules or regulations. This means, for example, that a retirement home, heretofore thought by members of a church to belong to the church, once organized as a mutual benefit corporation, i.e., serving only church members, or a public benefit corporation, i.e., open to serve the public, is no longer a religious corporation. It is a secular corporation. The church wishing to retain some influence over the continuing operation must reserve powers in the articles of incorporation." BASSETT, Vol. I, p. 1-62.

<sup>70</sup>Re: HOPKINS, p. 128.

are made with another organization. Financial security would be fostered by providing services at the lowest possible cost and a continuance of housing and services if a resident is unable to cover costs of the stay.<sup>71</sup> As the population ages, more of these homes will be necessary and will eventually become a significant profit-center of any healthcare system.

### **(c) HEALTH MAINTENANCE ORGANIZATIONS**

A health maintenance organization (HMO) is a group of healthcare providers who participate in furnishing medical services to enrolled members of a health-insurance plan.<sup>72</sup> Thus it is a membership organization that delivers health care to its members on a prepaid plan and to non-members on a fee-for-service basis.<sup>73</sup> This organization can receive a tax exemption when it operates as a community benefit, such as operating its own health care facility which can be comparable to a hospital, or if it is part of a medical service with a hospital, has emergency room facilities available to the community, assists *Medicare*, *Medicaid* and indigent persons.<sup>74</sup> The health maintenance organization (HMO) is relatively new to the health care scene, a hybrid organization, part insurance organization and part health care provider.<sup>75</sup> However, there are a number of HMOs that do not directly provide health care, and thus do not enjoy the tax exemption. The HMO is a type of managed care firm that provides comprehensive health care coverage for a fixed

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<sup>71</sup>Re: HOPKINS p. 128.

<sup>72</sup>Re: BLACK, p. 725.

<sup>73</sup>Re: BLACK, p. 129.

<sup>74</sup>Re: BLACK, p. 129.

<sup>75</sup>Re: J. D. KLEINKE, *Bleeding Edge*, Gaithersburg, Maryland, Aspen Publishers, 1998, p. 9, (hereafter cited as KLEINKE).

price to a specific group by negotiating discounted charges with health care providers and restricting members to using only that network.<sup>76</sup> If a member fails to use a network provider, the bills are not paid by the HMO. Employers enroll their employees as members (individuals can usually enroll also) for a set enrollment fee. The members must obtain care from the designated health care providers, institutions, physicians and other services. Unless it is an emergency, the members are limited to a certain type of care and the organization either agrees to pay for the procedure or not. A member who has non-emergency medical care rendered without the authorization of the HMO will be responsible for the payment, not the organization. Some real and perceived abuses in this system have created a movement for legislation on patients' rights.<sup>77</sup> The philosophy of the HMO is to control the costs of medical care and procedures.<sup>78</sup>

#### **(d) INTEGRATED DELIVERY SYSTEMS**

The integrated delivery system is the basic format through which medical services, that is, the services of physicians and the healthcare services, are integrated. The majority of doctors practicing in hospitals had their own private practice and were given privileges to practice in the hospital.<sup>79</sup> The physician usually

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<sup>76</sup>Re: KLEINKE, p. 11.

<sup>77</sup>The federal government is currently developing "Patients' Rights" legislation. However, the states have less lobbyists to contend with and are able to pass such legislation with greater speed. The State of Massachusetts and other states have "Patients' Rights" legislation pending but Massachusetts has enacted an emergency law to protect the rights of patients and has set up an "Office of Patient Protection" (July 21, 2000). The emergency law gives some new protections to consumers regarding healthcare coverage and closures of acute care facilities. See [www.state.ma.us/legis/laws](http://www.state.ma.us/legis/laws) and [www.state.ma.us/dph/opp](http://www.state.ma.us/dph/opp).

<sup>78</sup>See KLEINKE, p. 14.

<sup>79</sup>See LUTZ, *Med, Inc.*, p. 35.

sent his patients to those hospitals in which he had privileges, which ensured a supply of patients for the hospital. The hospital billed the patient separately for its services and the physicians billed the patient for their services. Eventually, the physicians formed groups and set up clinics to provide those services to their patients that did not require an acute-care setting.<sup>80</sup> This allowed more of the healthcare monies to be directed to the physicians groups which were primarily for-profit. Hospitals began to experiment with integrating the medical and hospital services in order to contain costs and guarantee a certain level of patient population and volume of service.<sup>81</sup> Since the physicians groups are considered for-profit services, it was necessary to purchase or lease their practices to bring them into the system, with direct employment or contract under a professional services agreement.<sup>82</sup> Other areas of the integrated system are obtained by purchase, lease, license, stock transfer, or contribution.<sup>83</sup> The integrated delivery system can become the main provider of healthcare services (medical and acute care), inpatient and outpatient, enter into payer contracts, maintain all assets, provide needed personnel, and collect all revenues.<sup>84</sup> Nursing homes, homes for the elderly, and mental health care services can also be part of the integrated system. In a large metropolitan area, there are usually several of these systems providing services. They can be local, state wide, regional, or even national. This creates a situation for better cost controls and for guaranteeing feeders for the acute-care entities of the system. The systems

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<sup>80</sup>See LUTZ, *Med, Inc.*, pp. 31-32.

<sup>81</sup>The hospital is the costliest service of the healthcare milieu. Health Management Organizations attempt every other route of service before a hospital admission. Currently in the United States there is an oversupply of beds in proportion to the general population. However, it continues to be necessary to increase the volume of patient population and, barring that, to obtain as much of the health dollars available by providing the services utilized in the healthcare arena. The more services provided, the greater number of people using them, the greater the receipts unless the work is functioning on a capitation system.

<sup>82</sup>Re: HOPKINS, p. 131. See LUTZ, *Med, Inc.*, pp. 36-37.

<sup>83</sup>Re: HOPKINS, p. 131.

<sup>84</sup>Re: HOPKINS, p. 131.

exist both in the nonprofit and in the for-profit arena.

The Internal Revenue Service, when considering granting a federal tax exemption to an integrated delivery system, will use the community benefit test and consider: (1) if tests, procedures and treatments can be minimized, resulting in reduced costs and increased efficiency; (2) the system will provide *Medicare*, *Medicaid*, and indigent patients better or greater access to health care services; (3) will conduct research in areas that are of benefit to the public; (4) and provide programs of health education which are open to the public.<sup>85</sup> The Internal Revenue Service prefers systems to have ownership of the resources that are needed since leasing can provide an opportunity for private inurement through favouritism. There are limitations as to the number of physicians who can be directors of a non-profit system. Other types of corporations also fall under the category of the promotion of health, such as, Peer Review Organizations, preferred provider organizations, blood banks, drug rescue centers, home health agencies, senior citizen centers and medical research centers, to mention some.

The healthcare field that was once simple in its operation and exercised charity to a large degree because of the lack of fee-for-service insurance programs, is now a trillion dollars<sup>86</sup> a year enterprise in the United States and thus presents potential for huge profits in both the for-profit as well as the non-profit sectors.<sup>87</sup> A

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<sup>85</sup>Re: HOPKINS p. 132.

<sup>86</sup>Re: LUTZ/GEE, p. 4.

<sup>87</sup>The largest for-profit healthcare system in the United States is *Columbia/HCA* with close to three hundred hospitals. It plans more mergers but is currently under federal investigation for alleged healthcare/*Medicare* fraud. Its acquisition activity is currently curtailed until the legal matters are resolved and investors are assured of no wrongdoing. Until this development, it was the goal of this system to acquire as many nonprofit hospitals as possible. There are over six hundred Catholic hospitals in the U.S., accounting for ten per cent of hospital beds. *Columbia/HCA* was and can yet be a major threat to the Catholic Hospitals. The current frenzy of mergers, alliances, partnerships etc. in the nonprofit sector has as its purpose not only to lower costs and gain economies of scale, and provide efficient management, but also to position themselves to meet the threat of potential for-profit take-over. The amount of healthcare dollars is limited and those systems

major obstacle to health care reform is the number of groups who lobby to place on hold or defer any type of program which would increase the benefit of the recipients at a reduced cost.

### 3.2 RELIGIOUS PURPOSES

An organization that is operated primarily for religious purposes may be exempt from federal income tax.<sup>88</sup> Because of the difficulties involved, the Internal Revenue Service and the Courts are reluctant to define what is or is not a religious

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able to attract the most monies available will survive. In this arena the non-profits have the advantage of tax-exemption. This has been attacked by the for-profits but the federal government has not yielded to taxing all hospitals and services. The non-profits must now make available to the public the Form 990 completed and submitted by them to the Internal Revenue Service. This Form 990 details the benefits they have provided to the community in a one year period. The entrance of some for-profit service providers into the non-profit systems could eventually jeopardize the situation.

A report in *The Wall Street Journal, Interactive Edition*, for May 19, 2000, indicates that *Columbia/HCA*, agreed to a \$754 million health-fraud settlement with the federal government. There are civil issues and a criminal investigation which continue. It has cut its hospital ownership to 200. L. LAGNADO, "Columbia/HCA Healthcare To Pay the U.S. \$754 Million", in *The Wall Street Journal, Interactive Edition*, May 19, 2000, Dow Jones & Company, at <http://public.wsj.com/news/> pp.1-3.

<sup>88</sup>Re: 26CFR, p. 18. Such an exemption for religious organizations carries with it other types of exemptions, see BASSETT, Vol. I, pp. 1-39 - 1-45. Canadian law: under the *Religious Organizations' Lands Act*, R.S.O. 1990, c. R.23, subsection 1(1), a religious organization may be established provided it meets the following requirements: (i) it is charitable under the laws of the province of Ontario; (ii) it is organized for the advancement of religion and for the conduct of religious worship, services or rites; and (iii) it is permanently established insofar as its continuity of existence is concerned and as to its religious beliefs, rituals and practices. A religious organization may be incorporated under the *Ontario Corporations Act*, but this is not recommended because as soon as a religious organization incorporates, its ecclesiastical, canon or church laws and regulations become subject to the provisions of the *Ontario Corporations Act*. Therefore the benefits of remaining an unincorporated religious organization are significant. However, those religious organizations who do incorporate usually do so because of limited liability, separate legal identity with permanent succession and formalized operating structure. Also some religious charitable organizations establish an unincorporated religious organization under the *Religious Organization's Lands Act*, in such a way that it mirrors some aspects of the charitable corporation. BURKE-ROBERSTON/DRAKE, pp. 8-8 - 8-9.

activity or organization.<sup>89</sup> This cautiousness is caused by First Amendment concerns: "Congress shall make no law respecting the establishment of religion, or prohibiting its free exercise."<sup>90</sup> This is known as the "establishment clause". In other words, there is no state-mandated religion and there is neutrality on the part of the government in affairs of religion, unless there is a substantial threat to public safety, peace or order.<sup>91</sup> Though some courts have attempted to define "religious" or "religion", the majority have kept their distance in this area. If a problem exists, it is usually to determine whether there is private inurement or a substantial commercial enterprise, but not if an alleged religion is indeed a religion. B. Hopkins indicates that, on the other hand, the United States Postal Service is not as reticent to utilize some definition of religion in relation to nonprofit status and preferred mailing privileges when it considers as primary purposes: 1) to conduct religious worship; 2) support the primary purpose which is religious worship; 3) instruct, disseminate, inform, about religious faith or beliefs.<sup>92</sup>

Regarding the tax status of monasteries, nunneries and religious orders, the Internal Revenue Service has recognized that support of monks, nuns, and other clerics (in the form of shelter, food and clothing, medical care, and other necessities) is a religious function for which exemption is granted.<sup>93</sup>

Categories of institutions regarded as "religious" institutions by the Internal Revenue Service are: churches, conventions, associations of churches, integrated auxiliaries of churches, religious orders, apostolic organizations as well as church administered institutions (tax exempt but not necessarily religious in nature) such as

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<sup>89</sup>See HOPKINS, p. 191.

<sup>90</sup>Re: HOPKINS p. 191.

<sup>91</sup>Re: HOPKINS, p. 192.

<sup>92</sup>Re: HOPKINS, p. 199.

<sup>93</sup>Re: HOPKINS, p. 200-201.

schools, hospitals, orphanages, nursing homes, broadcasting, and publishing entities, and cemeteries.<sup>94</sup> We will consider two of these: churches and religious orders.

### **(a) CHURCHES**

“Church”, as distinct from the place of worship, is a religious entity. However, in this area there is no set definition given by the courts or the Internal Revenue Code. The Internal Revenue Service has developed criteria to assist in determining for tax purposes whether an organization is a church or not. Some of the following criteria must be found: distinct legal existence, recognized creed, recognized form of worship, definite ecclesiastical government as well as a distinct, formal code of doctrine and discipline, distinct religious history, membership not associated with another church or denomination, complete organization of ordained ministers ministering to their congregations and selected after completing prescribed courses of study, regular religious services, a literature of its own, established places of worship, regular congregations, Sunday schools for the religious instruction of the young, and schools for the preparation of its ministers.<sup>95</sup> Some courts have attempted to define religion or church, but eventually return to the criteria mentioned here and generally utilize whatever is the common prevailing usage of the word “church”.

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<sup>94</sup>Re: HOPKINS, p. 208.

<sup>95</sup>Re: HOPKINS, p. 209. “Certainly, protected religious belief and practice to necessitate a showing of compelling state interest will embrace the following: (1) belief that derives from an express foundation of its divine origin; (2) belief motivating decisions of authorities respecting internal matters in organized religious institutions; and (3) belief that derives from doctrines respecting ultimate verities among persons belonging to organizations with structure and ministries analogously religious. Beyond these categories the religious claims weaken.” BASSETT, Vol. I, pp. 1-36 - 1-37.

**(b) RELIGIOUS ORDERS**

In the United States, "religious order" is another religious organization that is not defined in the Internal Revenue Tax Code.<sup>96</sup> Nevertheless there are various criteria used in testing whether an organization is indeed a "religious order." The characteristics that it looks for are:

The organization is a charitable one; the members of the organization vow to live under a strict set of rules requiring moral and spiritual self-sacrifice and dedication to the goals of the organization at the expense of their material well-being; the members of the organization, after successful completion of the organization's training program and probationary period, make a long-term commitment to the organization (normally more than two years); the organization is, directly or indirectly, under the control and supervision of a church or convention or association of churches, or is significantly funded by a church or convention or association of churches; the members of the organization normally live together as part of a community and are held to a significantly stricter level of moral and religious discipline than that required by lay church members; the members of the organization work or serve full-time on behalf of the religious, educational, or charitable goals of the organization; and the members of the organization participate regularly in activities such as public or private prayer, religious study, teaching, care of the aging, missionary work, or church reform or renewal.<sup>97</sup>

In this instance, although the Internal Revenue Service does not require that all criteria be met in determination of tax-exemption, it does however, expect the first, that it be a charitable organization. The Internal Revenue Service contacts the ecclesiastical authorities to assist in making its determination so that decisions are not made in a vacuum.

In this treatment of corporations, we have remained close to the criteria that

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<sup>96</sup>See HOPKINS, p. 216.

<sup>97</sup>HOPKINS, p. 217.

the Internal Revenue Service has presented for granting tax-exempt status to non-profit charitable corporations. It is usually under this heading that the public or private juridic persons in the Church will incorporate under civil law. A true charitable non-profit entity in the United States will pass the tests that the Internal Revenue Service (IRS) has established over the years. The IRS indirectly assists church authorities in keeping their institutions civilly legitimate. This is not always an easy task since the term "religion" defies one succinct definition that could accommodate the religious milieu, especially as it exists in the United States. The tendency is to look at religion from the eyes of the so-called mainline churches such as Protestant, Catholic, Jewish, although there are many entities other than these. Knowing what the IRS expects allows juridic persons seeking civil incorporation to meet the necessary criteria and establish the appropriate corporate structures.

## **II. APOSTOLIC HEALTHCARE MINISTRIES**

The Church has the mission of continuing the work of Christ and there are various ways and means of accomplishing this. It operates by establishing, as we have seen in the previous chapter, juridic persons, legal persons similar to the civil corporation. The entities of the Church such as the diocese, parish, and religious order are public juridic persons and have their mission defined and entrusted to them by the Church. The healthcare facility is usually considered to be part of a public juridic person or is created as one in its own right. It is also possible for such entities to become private juridic persons in the church. The determining factor for the private juridic person is the request for such status and the verification of the fact that required criteria are integrated into the statutes and by-laws. The same can be said for those entities seeking civil incorporation for the purpose of asset holding.

The healthcare mission carried out in the United States has distinct civil legal

existence in law if it is civilly incorporated. Most if not all religious institutes have incorporated themselves as a separate nonprofit charitable or religious corporation under civil law.<sup>98</sup> This gives the juridic person legal existence in those states where it has incorporated. The major impetus for incorporation by religious organizations was to develop a legal entity that would hold title to the real estate and assets of religious institutes and limit liability lawsuits.<sup>99</sup> The possibility for this type of corporate legal existence for the Church (Catholic or others) exists in each state.<sup>100</sup>

## 1. CORPORATE SPONSORS

Churches and Church-related institutions such as religious institutes are also sponsors of corporations related to the mission of the Church. In civil law, a sponsor is "one who acts as surety for another."<sup>101</sup> Surety, is "a person who is primarily liable for the payment of another's debt or the performance of another's obligation."<sup>102</sup> These definitions give us some idea of sponsorship. However, in the Church, the

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<sup>98</sup>See MAIDA/CAFARDI, p. 139

<sup>99</sup>Re: MAIDA/CAFARDI, p. 140.

<sup>100</sup>The states of Virginia and West Virginia in their constitutions prohibit any church from incorporating as a church corporation. They do, however, have other options of incorporation such as the use of trustees. BASSETT, Vol. I, p. 1-58.

<sup>101</sup>Re: BLACK, p. 1410.

<sup>102</sup>Re: BLACK, p. 1455. See D. CONLIN, *Canonical and Civil Legal Issues Surrounding the Alienation of Catholic Health Care Facilities in the United States*, dissertation, Romae, Pontificia Studiorum Universitas a S. Thoma AQ. in Urbe, 2000, p. 124 (hereafter cited as CONLIN); who uses the definition of sponsorship offered by J. Hite, *A Primer on Public and Private Juridic Persons: Applications to the Health Care Ministry*, St. Louis, The Catholic Health Association of the United States, 2000, p. 37 (hereafter cited as HITE). CONLIN, pp. 124-151, sees the need for a development in this concept because it is widely used but is neither a civil law or canon law term. It is an area developed in relation to apostolates of juridic persons whose own existence is in question or whose participation in the healthcare apostolate may be waning. The consolidation of existing healthcare systems into juridic persons of their own right is bridging the gap for the laity.

definition that we generally use is the following:

[The sponsor is] the public juridic person that has founded and sustained an incorporated apostolate and that has reserved certain corporate powers in the structure of the incorporated apostolate that enable it to exercise its canonical faith and administrative responsibilities in regard thereto: sometimes referred to as "religious sponsor" or "canonical sponsor".<sup>103</sup>

These corporations are the legal entities of the juridic persons and also a part of the mission activity of the religious institute or diocese. Although the Church has been involved in these particular apostolates for many years, the context currently generated by government funding under defined circumstances has forced all parties concerned to consider various approaches. The essential actions to maintain the apostolates are those which will enable them to operate as non-profit entities, as charitable corporations, with federal and state tax-exemptions. A major impetus in maintaining a tax-exempt status is not the exemption per se but the ability to seek donor funding coupled with an income tax deduction for the donor.<sup>104</sup> We will now address more particularly the sponsored apostolate/mission of the juridic person in the area of healthcare.

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<sup>103</sup>MAIDA/CAFARDI, p. 327.

<sup>104</sup>"Not-for-profit hospitals have traditionally relied on revenues from sales as well as revenues from charitable contributions. Researchers have pointed to the shifting roles of different sources of funds. Sloan et al. (1990) show that the reliance of not-for-profit hospitals on philanthropy has declined since the 1960s. They offer evidence suggesting that insurance coverage "crowds out" philanthropy. Frank, Salkever, and Mitchell (1990) provide evidence that donations are negatively associated with hospital profits. Smith, Clement, and Wheeler (1995) estimate a positive association between "returns to community" and donations to not-for-profit hospitals. [...] the share of revenues accounted for by private contributions to not-for-profit hospitals has continuously declined during the 15 year period observed (1977-1992)." D. M.CUTLER, editor, *The Changing Hospital Industry*, Chicago, The University of Chicago Press, 2000, p. 199, (hereafter cited as CUTLER).

## 2. MISSION OF HEALTHCARE CORPORATE STRUCTURES

The mission of healthcare today is usually carried out through separately incorporated entities. The acute-care hospital is the mainstay of this type of mission activity, although this position is slowly eroding. The mission of healing has in the past been carried out by religious communities of women and men through hospitals and schools of nursing.<sup>105</sup> In a number of instances, the hospital also served as the religious house with the living quarters of the community attached. These hospitals were usually community based and served the medical needs of the immediate area. Catholics tended to enter Catholic hospitals and Protestants tended to enter Protestant hospitals with the community, city, county and other hospitals in between. Hospitals in North America as we now know them were established around the late 19<sup>th</sup> century, although they have existed in various forms from the beginning of colonization in North America (1644 in Canada). Advances in science (antiseptics, vaccinations, anesthetics, pathology, x-ray), as well as lessons learned from the battlefield hospitals in Europe and America, contributed to revolutionary treatments and new hospital conditions.<sup>106</sup> Medical and nursing standards were developed. A large number of the nursing staff and administrators in Catholic hospitals were members of the religious community that operated the hospitals.<sup>107</sup> The hospital was required to maintain certain operating standards as well as provide a high level of care in line with medical advances, thus creating continuous financial constraints.

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<sup>105</sup>See J. FLANAGAN, "Modern Hospitals", in *New Catholic Encyclopedia*, Vol. IX, 1967, p. 167 (hereafter cited as J. FLANAGAN). We have provided a succinct overview of the development of healthcare in Chapter One.

<sup>106</sup>Re: A. McPADDEN, "History of Hospitals", in *New Catholic Encyclopedia*, Vol. VII, 1967, p. 166 (hereafter cited as McPADDEN)

<sup>107</sup>See J. FLANAGAN, p. 167.

**3. EARLY ORGANIZATIONAL STRUCTURE**

In the early part of the twentieth century, there also developed the need to bring more order to the increased role of hospitals in the communities. Administration and fiscal management became important functions in developing hospital growth and viability.<sup>108</sup> The hospitals were non-profit and operating within the corporate and juridic structure of the religious community. There were some for-profit hospitals in existence, but they were few and were operated mainly by doctors and had a limited number of beds.<sup>109</sup> If it was civilly incorporated, the civil structure of the hospital usually was that of a non-profit corporation or a charitable trust. As a nation of immigrants, there was not an automatic response among the population to enter a hospital facility when ill or for childbirth. Hospitals were for the sick who were dying. A large number of births occurred outside the hospital setting. Hospitals were not always affordable.

**4. DEVELOPING INFLUENCES**

The religious institutes that were engaged in the mission of healing maintained 682 hospitals by 1940.<sup>110</sup> Each hospital conducted its own administrative activities under the oversight of the major superior and council and those civil agencies that were required to do so. A Catholic hospital was easily recognized by the members of the religious communities who worked within and operated it. The Catholic identity came not from some juridical source, but from the presence of religious and their personal care and concern. The presence of the chaplain also aided in creating this

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<sup>108</sup>Re: J. FLANAGAN, p. 167.

<sup>109</sup>Re: J. FLANAGAN, p. 167.

<sup>110</sup>Re: J. FLANAGAN, p. 167.

identity. For the most part, hospital operations were simple and straightforward, with no other entity or enterprise attached.

In the early 1900s, healthcare could be described as a cottage industry, small and localized; patients knew what they were buying and paid for it in cash.<sup>111</sup> Fund-raising was a needed activity as it was the only other source of revenue apart from the patients who were able to pay or had some type of hospital insurance coverage. But until 1946 medical insurance was held by only a small percentage of the population. Very few could afford hospitalization coverage and few businesses offered it as part of an employee's benefits package. The hospitals managed to stay in existence with the monies they were able to collect through their accounts payable, but it was their fund-raising activities as a charitable institution that enabled them to weather difficult times. They assisted those who were able to make some payment as well as the poor and destitute who had no place else to go. Since a large number of people were poor and did not have insurance, they were assisted by the hospitals when in need of medical care. Anyone looking to invest monies into a profit-making venture did not choose to invest in hospitals. Churches and community hospitals did not have competition from other areas. However, during 1946 events took place that began a change in healthcare that reverberates to this day, affecting the mission activities of incorporated apostolates in unexpected and unanticipated ways.

## **5. EARLY FEDERAL INTERVENTION**

In 1946, the United States Government placed a wage and price freeze on all products and services, which created problems for employees. A number of employers wished to do something for their employees and requested from the

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<sup>111</sup>Re: LUTZ, *Med, Inc.*, p. 11.

government permission to extend insurance benefits in lieu of pay increases. The number of people with hospital coverage was increasing and these individuals began to utilize their new-found benefits; they entered the hospital more often and in greater numbers. Two non-profit carriers of the time were *Blue Cross* and *Blue Shield* which later merged.<sup>112</sup> This created the need for more hospital beds, which in turn increased the need for more staff. Since people were reluctant to give up acquired benefits, the labor unions negotiated to maintain the benefits extended to them, especially health care benefits, and employers initially found it less costly to provide health benefits rather than to increase wages.

During the Depression era and World War II, few hospitals were built in the United States and many existing ones became obsolete. Those hospitals which did exist were inadequately distributed among and within the states. Communities began to plan in the early 1940s to address the situation through planning and fund-raising. In 1946, the federal government, with the passage of the *Hill-Burton Hospital Survey and Construction Act*, provided federal subsidies for hospital construction and promoted planning in order to identify local needs.<sup>113</sup> Catholic hospitals were one of the groups that availed themselves of these grants.<sup>114</sup> Many new hospitals were

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<sup>112</sup>Re: J. FLANAGAN, p. 167. *Blue Cross* began in 1929 with plans to cover the cost of hospital care for school teachers in Texas. *Blue Shield* began in 1917: its plans were established to cover the cost of physician services in lumber camps in the Pacific Northwest. In 1939, *Blue Shield* became the basis for the modern plan in California. Both have now merged except in a few locations where they remain separate. Some member plans are now for-profit.

<sup>113</sup>Re: P. STARR, *The Social Transformation of American Medicine*, New York, Basic Books, 1982, pp. 348-349 (hereafter cited as STARR). See J. FLANAGAN, p. 168.

<sup>114</sup>Public funding of nonprofit, private, religiously affiliated hospitals and healthcare facilities poses a less controversial First Amendment analysis than that of private education for several reasons: first, hospitals have always been open to the public with a staff of various skills, backgrounds and beliefs and are less exclusionary than religious schools; second, the hospitals serve a primary secular purpose of delivering health care; third, hospitals retain an aura of public charity; fourth, the system of private, religiously affiliated health care is so large that it is an indispensable component of any national health care program. W. BASSETT, *Religious Organizations and the Law*, Vol. II, New York, Clark Boardman Callaghan, 1997, p. 9-133 (hereafter cited as BASSETT, Vol. II). Note the terms "religious" and "religiously affiliated". The term "religious" would imply a purpose which is the advancement of religion, while "religiously affiliated" would refer

constructed between 1946 and 1964. However, the majority of funds available for voluntary hospital construction until 1967 continued to come from private fundraising sources.<sup>115</sup> A hospital stay at this time cost fifteen dollars *per diem* excluding physician costs. In 1948 the U.S. Congress attempted to pass national health coverage legislation, but lobbyists for the existing insurance industry blocked its passage. Expansion of third party fee-for-service coverage continued to grow.<sup>116</sup> The acute-care hospital was moved to the pinnacle of the U.S. healthcare system by the following set of forces: advances in curative medicine; growing acceptance of medical and hospital care; government funding of facility construction and research; and expansion of private health insurance.<sup>117</sup> These were the primary reasons until 1964.

### **5.1 INITIAL EFFECTS OF FEDERAL INTERVENTION**

Religious communities of men and women who had not yet separately incorporated their apostolates prepared to do so if they wished to increase their eligibility to receive the federal monies and assistance that were available. On the other hand, liability was becoming an issue due to civil action introduced by former patients and accepted by the courts. Health-planning agencies also assisted in determining the services that were required, the number of beds in a given geographical area, the types and amount of medical equipment and a consensual working agreement among the hospitals in the area.<sup>118</sup> The acute-care industry did

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to "care of the sick". BASSETT, Vol. II, p. 9-136.

<sup>115</sup>Re: STARR, pp. 351, 376-377.

<sup>116</sup>See GINZBERG, p. 9.

<sup>117</sup>Re: LUTZ, *Med, Inc.*, p. 8.

<sup>118</sup>Re: STARR, p. 365.

not have to resort to market driven competitiveness as everyone had a predetermined share of the market. In sum, the mandated controls supported both “output restriction” (number of beds) and “market division” (allocation of activity and geographical area).<sup>119</sup> As the number of individuals who possessed insurance coverage for hospital services increased, so too did the actual income of the hospitals, as there was less non-payment of services. Employer sponsored insurance coverage (third party fee-for-service) was a great benefit; however, upon retirement, very little affordable coverage was available to individuals, a problem which concerned members of the United States Congress.

## **5.2 EFFECTS OF *MEDICARE AND MEDICAID***

History usually presents us with blips that indicate a significant occurrence which disrupts the status quo in a explosive manner. Until 1964, the healthcare scene grew and developed at a somewhat serene pace. New hospitals were built; 71 percent of all hospital revenues came from third-party payees.<sup>120</sup> The mission of healthcare as effected by Catholic hospitals was experiencing growth although the number of religious had decreased significantly since the 1950s, thus creating staffing problems. Larger numbers of lay staff and administrators were utilized but Catholic identity was maintained. Then in 1964 things changed radically.

The Congress of the United States was concerned to make medical care available to the older segment of the population who were the elderly retired and their spouses, as well as to the many categories of poor people, such as those employed by firms that did not provide health coverage, or those who had no employment at

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<sup>119</sup>Re: STARR, pp. 359-360.

<sup>120</sup>Re: GINZBERG, p. 13.

all.<sup>121</sup> In the early 1960s the *American Medical Association* campaigned against any type of *Medicare* program which would extend the role of government in the provision of services to the American people.<sup>122</sup> However, in 1964 the U.S. Congress, at the behest of then president Lyndon B. Johnson, released for a vote the bill to establish *Medicare*<sup>123</sup> and *Medicaid*<sup>124</sup> with the promise that government would not interfere with current healthcare operations and services, but would simply shift the funds to state governments and designate regional *Blue Cross* plans to administer the *Medicare* plan.<sup>125</sup> An oversight on the part of everyone concerned was the erosion of the linkage between hospital expenditures and dollar constraint, as effected by the new *Medicare* plan.<sup>126</sup> Third party fee-for-service payments to hospitals increased from 71 percent to 90 percent with *Medicare*<sup>127</sup> and the message was: the more a hospital spent, the more it would be reimbursed.<sup>128</sup> Hospital administrators were

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<sup>121</sup>Re: GINZBERG, p. 9.

<sup>122</sup>Re: GINZBERG, p. 10.

<sup>123</sup>*Medicare* - (Title XVIII) Administered by the Social Security Administration, *Medicare* is the U.S. federal government plan for paying certain hospital and medical expenses for those who qualify, primarily those over 65. Benefits are provided regardless of income level. The program is government subsidized and government operated. B. HANDEL, editor, *Glossary of Healthcare Terms*, 2<sup>nd</sup> edition, Brookfield, Wisconsin, International Foundation of Employee Benefit Plans, 1991, p. 18 (hereafter cited as GLOSSARY). Title XVIII is entitled as "*Health Insurance for the Aged and Disabled.*" The *Balanced Budget Act of 1997* is legislation which enacted the most significant changes to the *Medicare* and *Medicaid* programs since their inception.

<sup>124</sup>*Medicaid* (Title XIX) Program administered by the states under the Health Care Financing Administration (HCFA). It makes payments for approved health services provided by hospitals, health agencies and private practitioners for welfare recipients or persons whose income does not exceed maximum welfare benefits. Funds are derived on a state-federal shared basis. GLOSSARY, p. 17. The Health Care Financing Administration was established in 1977 under the Department of Health and Human Services to administer the *Medicare* and *Medicaid* programs. The *Balanced Budget Act of 1997* also enacted changes to this program.

<sup>125</sup>Re: GINZBERG, p. 10. *Blue Cross/Blue Shield* continue to administer a significant number of these plans.

<sup>126</sup>See GINZBERG, p. 12,

<sup>127</sup>Re: GINZBERG, p. 13.

<sup>128</sup>Re: GINZBERG, p. 13.

unshackled by their boards which resulted in increased wages, purchases of new equipment, more beds, etc.<sup>129</sup> In 1997, the *Balanced Budget Act* was signed into legislation which enacted the first significant changes to the *Medicare* and *Medicaid* programs since their inception.<sup>130</sup>

During this same period, investor-owned, for-profit hospital corporations began to operate freely. *Medicare* and *Medicaid* guaranteed monies in the healthcare arena and, for the first time, "profit" was associated with healthcare. For-profit hospital corporations came into existence in the 1960s, retrenched and restructured in the 1980s and resurged in the 1990s.<sup>131</sup> Since government action and policies affected the monies soaring in the healthcare arena from 1972 to 1974, the federal government attempted to cap these sums.<sup>132</sup> However, by this time for-profit hospital corporations

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<sup>129</sup>Re: GINZBERG, p. 13.

<sup>130</sup>The *Balanced Budget Act of 1997* enacted changes and expanded the services provided by HCFA through the new *Child Health Insurance Program* (Title XXI). These changes will extend the life of the *Medicare Trust* fund and reduce *Medicare* spending; increase health care options available to American's seniors; improve benefits for staying healthy; fight *Medicare* fraud and abuse; look at ways to help *Medicare* work well in the future. Source, Health Care Financing Administration, Department of Health and Humans Services, Web site, <http://www.hcfa.gov/init/bba/bbaintro.htm>. There are currently legislative proposals being presented to provide some relief from the drastic cuts of the *Balanced Budget Act of 1997*. This will leave 75 percent of the BBA legislation intact. Another bill has been introduced to the House of Representatives *H. R. 5093* cited as the "*Patient Fairness and Indigent Care Promotion Act of 2000*" which would give reimbursement to hospitals and healthcare providers for *Medicare* and bad-debt deduction for cash basis healthcare providers for un-paid services provided to low-income individuals.

<sup>131</sup>Re: LUTZ/GEE, p. 5.

<sup>132</sup>Wage and price controls were instituted in 1971; in 1972 Congress passed the *Professional Standards Review Organization Act*, requiring justification for hospital admissions and length of stay; in 1973, modest federal funds were made available to encourage expansion of HMOs; in 1974, Congress passed the *National Health Planning and Resources Act*, requiring a Certificate of Need before expansion of facilities or equipment; National Health Insurance has been discussed since 1972. That healthcare costs required containment was not an issue; rather the ways and means of achieving this containment was a large problem. See GINZBERG, pp. 18-19. The *National Health Planning and Resources Act of 1974* changed the way a hospital could meet its reasonable volume of services for people unable to pay: the hospital could continue using either 3 percent of its operating cost annually or 10 percent of funds given under the Act for indigent care, but it could no longer meet its obligation by certifying that admissions are not refused solely because of inability to pay. If the hospital could not meet its obligation in any one year (not enough indigents

had their foot in the door. At first they built new hospitals, but eventually saw the wisdom of purchasing existing ones. They began to purchase a number of non-profit hospitals and operating them as for-profits. The for-profit sector sought to incorporate "economies of scale" in the healthcare market. To maintain competition, the non-profit hospitals began to imitate the for-profit ones in structure and operations. Non-profit hospitals and for-profit hospitals began to establish integrated systems. Competition became fierce for the gradually contained healthcare dollar.

## **6. CATHOLIC HOSPITAL SYSTEMS**

The local Catholic hospitals were initially stand-alone institutions operated by a sponsoring religious community. They were eventually operated and incorporated as separate entities, with the major superior and council as the board, and were limited to the geographical areas in which the religious community maintained hospital facilities. If the institute or one of its provinces sponsored several institutions and each was separately incorporated, then the institute or province corporation became the holding corporation. It could also be the parent company to the sponsored institutions (subsidiaries). Informed sponsors established the membership corporation.<sup>133</sup> A corporate member has those corporate powers given to members through the articles of incorporation and the by-laws (the member could be the bishop of a diocese, a major superior and council, etc.).<sup>134</sup> Religious communities operating large apostolic mission activities had to come to terms with

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treated), then it had to promote the availability of free services. BASSETT, Vol. II, p. 9-142.

<sup>133</sup>The term "member" has a special limited legal meaning. A member is a person who is given the right in the articles of incorporation or by-laws to vote for the election of directors, for the sale of substantially all of the assets of the corporation, or for a merger or dissolution of the corporation. A legal member is also a person who is specifically referred to as a member in the articles or by-laws. MANCUSO, p. 2 / 16.

<sup>134</sup>See MAIDA/CAFARDI, p. 120.

the fact that professional management was necessary and the governance structures which existed prior to the Second Vatican Council were now somewhat inadequate.<sup>135</sup> The Catholic non-profit hospitals began to establish systems through mergers, collaboration and joint ventures in order to continue their mission and to compete for the volume of patients needed to develop sufficient income. Although patient population was decreasing, the hospital continued to remain the hub of the healthcare industry with spinoffs such as outpatient services, home healthcare, physician services,<sup>136</sup> and shared business services.<sup>137</sup> Non-profit hospitals in recent years have been adopting the business school efficiencies and management techniques of for-profit hospitals.<sup>138</sup> The free-standing autonomous community hospital, nursing home, home healthcare, and social service providers are now often replaced by the integrated delivery system.<sup>139</sup>

The next level of development takes us from the multi-institutional model to the multi-system one. The corporate structure develops from a single system with operating corporations and a holding corporation or corporations to one of multiple holding corporations under a super-holding corporation sometimes known as a conglomerate. The formation of this entity could demand merger, acquisition, etc. and, possibly, from the canonical perspective, alienation (which we will address in the

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<sup>135</sup>See B. DUNN, *Sponsorship of Catholic Institutions, Particularly Healthcare Institutions, by the Sisters of Providence in the Western United States*, dissertation, Ottawa, Saint Paul University, 1995, p. 49.

<sup>136</sup>Re: LUTZ/GEE, p. 4.

<sup>137</sup>Shared business services would include purchasing, accounts payable, vendor alliances, general accounting, reimbursement, reporting, admissions, billing, collections, information technology etc.

<sup>138</sup>Re: LUTZ/GEE, p. 4

<sup>139</sup>Re: M. DiPIETRO, "The Interfacing of Canonical Principles and American Law in the Negotiation of Joint Ventures Between Church-Related and Non Church-Related Corporations", in *Acts of the Colloquium, Public Ecclesiastical Juridic Persons and Their Civilly Incorporated Apostolates in the Catholic Church in the U.S.A: Canonical-Civil Aspects*, Pittsburg, Duquesne University School of Law, 1998, p. 185 (hereafter cited as ACTS 1998 DiPIETRO).

next chapter). As an example, we could mention that in July 1980 eight religious institutes<sup>140</sup> formed the “*Catholic Health Corporation*” based in Omaha, Nebraska, as the civil corporation and established the “*Catholic Health Care Federation*” as the potential canonical juridic person.<sup>141</sup> The “*Catholic Health Care Federation*” was given public juridic person status on June 8, 1991 by the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life<sup>142</sup> (it is now known as “*Catholic Health Initiatives*”). The *Catholic Health Corporation’s* civil law purpose is to help each member institute continue its healthcare mission; it allows for a joint sponsorship of other facilities.<sup>143</sup> Each institute continues to be responsible for its own facilities operated prior to joining “*Catholic Health Corporation*”, while being jointly responsible with the Corporation and the Federation for their jointly-held facilities.<sup>144</sup> It is paramount for adequate management of the hospitals and systems that the governance structures be manageable and simplified, without adverse effects on the mission activity of the religious institute or on the religious institute itself. In the process of establishing new organizations, other persons need to be consulted, particularly the Ordinaries of the dioceses in which the religious institutions operate. A separate “joint venture” corporation can be formed and utilized to create a unified activity of several groups. However, in this type of situation, the board of directors for each separate system in the “venture” delegates primary director functions to the board of directors of the “joint venture”.

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<sup>140</sup>Benedictine Sisters, Watertown, SD; Dominican Sisters of Great Bend, KS; Dominican Sisters, Spokane, WA; Presentation Sisters, Fargo, SD; School Sisters of St. Francis, Milwaukee, WI; Servants of Mary, Ladysmith, WI; Omaha Regional Community of Sisters of Mercy, Omaha. J. HITE/POE, “An Innovative Way to Continue the Ministry”, in *Health Progress*, 73 (1992), No. 7, p. 57 (hereafter cited as HITE/POE).

<sup>141</sup>Re: HITE/POE, p. 56.

<sup>142</sup>Re: HITE/POE, p. 56.

<sup>143</sup>Re: HITE/POE, p. 58.

<sup>144</sup>Re: HITE/POE, p. 58.

These newly created multi-institutional systems create economies of scale by consolidating and eliminating duplicate services. These joint ventures also provide a buffering from the encroachments of for-profit hospital chains and offer a more secure economic base for competition. At least five of the ten largest hospital systems in the United States are Catholic and between 1990 and 1997 there were eighty-four mergers and affiliations between Catholic hospitals and non-Catholic hospitals. These mergers with non-Catholic systems can create problems, especially if the Catholic hospital is merging with a non-Catholic entity. Obviously, hospital affiliations can and do take many forms: acquisitions, formation of holding companies, consolidations, joint ventures, mergers, lease agreements. In the evolution of these systems, the canonical requirements must be taken into account. Today, the diocesan bishop is notified when initial planning of new structures is taking place in as much as he has the responsibility to coordinate the apostolates in his diocese and this includes the healthcare facilities operated by public or private juridic persons. Currently, some systems are partnering with diocesan "Catholic Social Services" to identify better the poor who are in need and to create for them a greater means of access to healthcare services.<sup>145</sup> It is also the responsibility of each ordinary to be vigilant over the application of the principles presented in the *"Ethical and Religious Directives for Catholic Health Care Services."*<sup>146</sup> This becomes difficult when the Catholic health care system extends not only to the entire state but also to the region and even the whole nation. Catholic health care services are to respect the human dignity of each individual through proper standards of ethical behaviour and provide guidance on certain moral issues at proper times and in correct circumstances.

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<sup>145</sup>Some individuals are unaware of their entitlements and *Medicaid* is such an entitlement for which most of the poor would be eligible. The problem as we will point out is not so much the poor, as the uninsured segment of the population. This group may have employment but do not have access to healthcare benefits which places them in the "no-man's land" of assisted healthcare.

<sup>146</sup>See NATIONAL CONFERENCE OF CATHOLIC BISHOPS, *Ethical and Religious Directives for Catholic Health Care Services*, in *Origins*, 24 (1995-1996), pp. 449, 451-462 (hereafter cited as ERDS).

Current trends indicate that regional interstate multi-system entities will eventually merge with other similar systems creating an even larger national system. This will be necessary if they wish to remain competitive with national for-profit hospital systems and other non-profit systems such as community hospital systems, and hospital systems of other church denominations. This has serious implications concerning the administration and alienation of temporal goods. It is in this context that the private juridic person might become a more preferred option from the aspect of national governance structures.<sup>147</sup>

Whether the Catholic hospitals can continue to exist is not the question. The question is whether they can continue to exist as Catholic, maintaining Catholic principles. The presentation of mission and vision statements is a necessity for any organization, the proof is in the delivery of those promised services and in the spirit of the mission set forth by the Church. The words must match the reality. The Internal Revenue Service also reviews the activities of non-profit systems in general so as to determine if the corporate purposes are being carried out. The path is not an easy one and, whereas the for-profits will be able to disengage from unprofitable services, the non-profit systems will not be able to so because of their mission and their status as non-profit. The Catholic healthcare system, in its metamorphosis, if it is to remain viable, may need to consider the possibility of further merging.

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<sup>147</sup>The Holy See and local ordinaries have tended to refrain from establishing private juridic persons in this particular area if a hospital is involved. Some nursing homes have received this status, but only one hospital system in the United States ( which was a matter of timing and special circumstances).

**III. SUMMARY**

We have seen that a parallel exists between the juridic persons of the Church and the corporations of the state. Each has differing rules and regulations, but there are common elements in the philosophy that a group is able to accomplish more by centralizing resources than a single person acting alone. The sponsors of the non-profit charitable corporation have the responsibility of knowing the canonical and civil expectations in order to promote public good and to support the public trust.

Catholic healthcare, once a fairly simple operation, now finds itself caught up in a challenging and competitive marketplace where it must carry out its "apostolic mission" as well as maintain its niche. It must respond to a large group of stakeholders, including ecclesiastical and civil authorities, to bring "Christian healing" to its clients with corporate efficiency. The civil structures in which it must operate to carry this out have developed from a simple corporation, to a corporate system, to mega-conglomerates. The structures that it must maintain ecclesiastically are those related to a juridic person, whether public or private. Public juridic persons and entities sponsored by them involve specific Roman congregations for major fiscal decisions whereas private juridic persons have to deal only with local ecclesiastical authority in accordance with the statutes. Good management dictates that efficiency is paramount in delivering a product, developing a plan and maintaining one's position in the marketplace. The Catholic hospital has been attempting all of these, as well as carrying out its mission.

Religious institutes are experiencing various tensions in carrying out the mission of healthcare. The membership in these religious organizations has steadily declined over the past fifty years with no end of the process in sight. Hopefully, the appropriate use of civil and ecclesiastical structures will enable these ecclesiastical missions to continue in the event the sponsoring institute is no longer viable. Some of the difficulties involved will be treated in the next chapter as we provide an analysis

of both a private juridic person and a public juridic person in healthcare. At the same time we will focus on the areas of administration and alienation of temporal goods, and the implications of current and future developments in healthcare.

## **CHAPTER FOUR**

### **THE ENHANCEMENT OF THE APOSTOLIC MISSION THROUGH NEW CANONICAL ARRANGEMENTS**

#### **INTRODUCTION**

In the first section of this chapter is provided a comparative analysis of the statutes and bylaws of "*Covenant Health*", a public juridic person, and of "*PeaceHealth*", a private juridic person, in relation to some of the norms of Book V regarding temporal goods. The latter will provide some understanding of the consequences of separate or distinct identity and of the alienation of the temporal goods belonging to an apostolic mission. The analysis will focus on mission, purpose, membership, temporal goods and other canonical relationships.

In the second section we will provide an overview of the current situation of the U.S. healthcare, events and issues impacting it, and the future directions and models of Catholic healthcare involving separately incorporated juridic persons. The possibility that the Holy See would provide a central universal office of assistance and coordination is also discussed. This will enable us, then, to draw appropriate conclusions relating to the situation of healthcare ministry in the United States today.

## I. ANALYSIS OF THE STATUTES OF A PUBLIC JURIDIC PERSON AND A PRIVATE JURIDIC PERSON IN CURRENT CANONICAL PRACTICE

### 1. OVERVIEW

This analysis of the statutes of a public juridic person and those of a private juridic person will indicate which elements are common to both and which are specific to each type of juridic person. The analysis of the accompanying canonical bylaws, however, will focus only on the specific major differences between the two types of juridic persons.

The pontifical public juridic person in the area of healthcare selected for analysis is "*Covenant Health Systems*" (main offices located in Lexington, Massachusetts) established in response to a petition of the Sisters of Charity of Montreal.<sup>1</sup>

The pontifical private juridic person in the area of healthcare selected for analysis is "*PeaceHealth*" (main offices located in Bellevue, Washington), established in response to a petition of the Sisters of St. Joseph of Peace.<sup>2</sup>

The decrees of establishment for both juridic persons were issued by the Vatican Congregation for Institutes of Consecrated Life and Societies of Apostolic

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<sup>1</sup>See J. HITE, *A Primer on Public and Private Juridic Persons*, St. Louis, Missouri, Catholic Health Association, 2000, p. 19 (hereafter cited as HITE PRIMER). The writer met with officers of *Covenant Health Systems* on July 10, 2000 in Lexington, Mass. Present were, Mr. David Lincoln, President, President Ms. Nancy Mulvihill, Vice President of Corporate Communications, and Sr. Ruth E. Goodwin, OSF, Vice President of Mission and Education. See N. MULVIHILL, "Public Juridic Person Ensures Catholic Presence", in *Health Progress*, 77 (1996), No. 1, pp. 25-27.

<sup>2</sup>See HITE PRIMER, p. 19. The writer met with Sister Kathleen Pruitt, CSJP Provincial, Western Province, Sisters of St. Joseph of Peace, on July 25, 2000 in Bellevue, WA.

Life (CICLSAL).<sup>3</sup>

One of the purposes found in both entities is to provide for the direct involvement of laity in the healthcare apostolate. The structures of governance of incorporated apostolates<sup>4</sup> make allowance for the placing of lay persons with appropriate expertise in leadership positions. Given the dearth of callings in the United States today to the consecrated life and celibate ministry, institutes are planning for their apostolic missions to continue through the laity, who participate in the administration of ecclesiastical goods, in the name of the Church and within canonical boundaries.<sup>5</sup> Such activity is given serious consideration by the Church and requires of the administrator, and of those who are participating in the administration of a public juridic person, the taking of an oath of office, the establishment of a complete inventory of all goods,<sup>6</sup> arranging for insurance of the

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<sup>3</sup>A discussion with Sr. Margaret Mary Modde, OSF, of the offices of McDermott, Will & Every, Chicago, Illinois, on 31 May 2000, provided the writer information indicating that CICLSAL had placed a moratorium on issuing decrees of establishment of juridic persons relative to the healthcare apostolate until it had pursued a "mode of examination" as to their purview relative to healthcare. Given the direction of healthcare and the increase of lay involvement as well as the fact that they were the only Congregation issuing decrees relative to juridic persons connected with healthcare, it was decided to pause and review the situation.

There is no particular Congregation designated specifically to handle this type of canonical transaction. There is an office for healthcare workers but none such as the Congregation for Catholic Education, for example, to handle healthcare matters. See also HITE PRIMER, p. 21. However, in July 2000, since the petitions were already pending, two additional pontifical public juridic persons were established in the U.S.A: "*Hope Ministries*" and "*Trinity Health*".

<sup>4</sup>In this chapter as in previous ones, "incorporated apostolate" means a non-profit Catholic corporation such as a hospital.

<sup>5</sup>CIC 83, c. 1282: "Omnes, sive clerici sive laici, qui legitimo titulo partes habent in administratione bonorum ecclesiasticorum, munera sua adimplere tenentur nomine Ecclesiae, ad normam iuris."

<sup>6</sup>CIC 83, c. 1283: "Antequam administratores suum munus ineant: 1° debent se bene et fideliter administratos coram Ordinario vel eius delegato iureiurando spondere; 2° accuratum ac distinctum inventarium, ab ipsis subscribendum, rerum immobilium, rerum mobilium sive pretiosarum sive utcumque ad bona culturalia pertinentium aliarumve cum descriptione atque aestimatione earundem redigatur, redactumque recognoscatur; 3° huius inventarii alterum exemplar conservetur in tabulario administrationis, alterum in archivo curiae; et in utroque quaelibet immutatio adnotetur, quam patrimonium subire contingat."

goods, the observance of the provisions of civil law and the will of donors, collection of income and interest, paying of debts, investing surplus funds, and maintaining the necessary records as required by canonical and civil law.<sup>7</sup> This is not required of a private juridic person such as *PeaceHealth* unless it is determined in its statutes.

## 2. THE CANONICAL STATUTES OF COVENANT HEALTH SYSTEMS, A PUBLIC JURIDIC PERSON

*Covenant Health Systems, Inc.* is a Massachusetts non-profit corporation<sup>8</sup>

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<sup>7</sup>CIC 83, c. 1284, §1: "Omnes administratores diligentia boni patrisfamilias suum munus implere tenentur. §2: Exinde debent: 1° vigilare ne bona suae curae concredita quoquo modo pereant aut detrimentum capiant, initis in hunc finem, quatenus opus sit, contractibus assecurationis; 2° curare ut proprietates bonorum ecclesiasticorum modis civiliter validis in tuto ponatur; 3° praescripta servare iuris tam canonici quam civilis, aut quae a fundatore vel donatore vel legitima auctoritate imposita sint, ac praesertim cavere ne ex legum civilium inobservantia damnum Ecclesiae obveniat; 4° redditus bonorum ac proventus accurate et iusto tempore exigere exactosque tuto servare et secundum fundatoris mentem aut legitimas normas impendere; 5° foenus vel mutui vel hypothecae causa solvendum, statuto tempore solvere, ipsamque debiti summam capitalem opportune reddendam curare; 6° pecuniam, quae de expensis supersit et utiliter collocari possit, de consensu Ordinarii in fines personae iuridicae occupare; 7° accepti et expensi libros bene ordinatos habere; 8° rationem administrationis singulis exeuntibus annis componere; 9° documenta et instrumenta, quibus Ecclesiae aut instituti iura in bona nituntur, rite ordinare et in archivio convenienti et apto custodire; authentica vero eorum exemplaria, ubi commode fieri potest, in archivio curiae deponere. §3: Provisiones accepti et expensi, ut ab administratoribus quotannis componantur enixe commendatur; iuri autem particulari relinquitur eas praecipere et pressius determinare modos quibus exhibendae sint." See M. DiPIETRO, "The Interfacing of Canonical Principles and American Law in the Negotiation of Joint Ventures Between Church-Related and Non Church-Related Corporations", in *Acts of the Colloquium, Public Ecclesiastical Juridic Persons and Their Civilly Incorporated Apostolates in the Catholic Church in the U.S.A.: Canonical-Civil Aspects*, Pittsburgh, Duquesne University School of Law, 1998, p. 219 (hereafter cited as ACTS 1998 DiPIETRO).

<sup>8</sup>See A. MAIDA and N. CAFARDI, *Church Property, Church Finances and Church Related Corporations*, Pittsburgh, Pennsylvania, Duquesne University School of Law, 1998, pp. 148-149 (hereafter cited as MAIDA/CAFARDI). Corporations are at best the property-holding function of the juridic person. Confusion can result from the title-holding corporation having the same name; it would be less confusing to have a different name, even if only slightly so.

formed by the Sisters of Charity of Montreal (Grey Nuns) in 1983.<sup>9</sup> The purposes of this corporation are to continue the expression of the charism of Saint Margaret d'Youville (foundress of the Sisters of Charity of Montreal), to oversee the health care and long-term care facilities of the Grey Nuns in the United States, and to offer the management of healthcare and long-term care facilities for other religious institutes.<sup>10</sup> *Covenant* operations currently are located primarily in the Northeast section of the United States, specifically Massachusetts, Maine, New Hampshire, Vermont, and Connecticut; *Covenant* is also one of five co-sponsors of *Catholic Healthcare Partners* headquartered in the state of Ohio. It was the intention of the Sisters of Charity of Montreal to have the *Covenant* system, from its inception, administered by lay persons. Although *Covenant* maintains some sponsorship<sup>11</sup> ties with the Sisters of Charity of Montreal, it is currently a pontifical public juridic person in its own right.

The Superior General of the Sisters of Charity of Montreal petitioned CICALSAL for *Covenant Health Systems* to be established as a public juridic person<sup>12</sup> with the purpose and mission to carry out the healthcare ministries of the Saint

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<sup>9</sup>CIC 83, 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 praescripto can.1547."

<sup>10</sup>See MAIDA/CAFARDI, p. 185. See F. MORRISSEY, "Church Law's Role in Collaborations" in *Health Progress*, 74 (1993), No. 9, pp. 24-29.

<sup>11</sup>See M. GRANT, "Sponsorship Challenge: Influence through Governance", in *Health Progress*, 67 (1986), No. 7, p. 38, where she presents a succinct presentation of "sponsorship" and one of its first definitions: "the support of, influence on and responsibility for a project, program or institution which furthers the goals of the sponsoring group with the implication that the group is publicly identified with the project, program or institution, and makes certain resources available to them."

<sup>12</sup>See MAIDA/CAFARDI, p. 148. A public juridic person can exist separate from the sponsor and continue to maintain the mission of the sponsor. This would require proper permissions.

Joseph Province of the Sisters of Charity of Montreal.<sup>13</sup> In a decree dated July 18, 1995, CICLSAL constituted *Covenant Health Systems* as a public juridic person.<sup>14</sup> The decree was executed at Montreal, Quebec, on October 22, 1996. On October 24, 1996, *Covenant Health Systems, Inc.* implemented the decree which transferred sponsorship from the Sisters of Charity of Montreal, "Grey Nuns", to *Covenant Health Systems*.<sup>15</sup> Canon law does not refer to the apostolate of a public juridic person as a juridic entity existing separately from the sponsor. Therefore, the persons given responsibility by canon law to govern the juridic person would also have the obligation of overseeing the juridic person's apostolates. The one with the direct power of governance has the responsibility for the administration of the temporal goods of the juridic person.<sup>16</sup> The administrator (established by statutes or by the Ordinary)<sup>17</sup> is assisted by a finance council<sup>18</sup> and acts within the scope of

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<sup>13</sup>CIC 83, c. 394, §1: "Varias apostolatus rationes in dioecesi fovet Episcopus, atque curet ut in universa dioecesi, vel in eiusdem particularibus districtibus, omnia apostolatus opera, servata uniuscuiusque propria indole, sub suo moderamine coordinentur."

<sup>14</sup>See MAIDA/CAFARDI, p. 155. Associations of the faithful with their emphasis on the group and on the personal qualities of the members, are less flexible than the juridic person, thus making the juridic person structure the one of choice for healthcare entities. See HITE PRIMER, p. 20.

<sup>15</sup>Re: COVENANT HEALTH SYSTEMS, *Stewardship Accountability Report*, Lexington, MA, 1998, p. 1 (hereafter cited as STEWARDSHIP REPORT 1998).

<sup>16</sup>CIC 83, c. 1279, §1: "Administratio bonorum ecclesiasticorum ei competit, qui immediate regit personam ad quam eadem bona pertinent, nisi aliud ferant ius particulare, statuta aut legitima consuetudo, et salvo iure Ordinarii interveniendi in casu neglegentiae administratoris." J. Doyle indicates that there is a difference between the ownership of goods and the administration of goods in the canonical order. For every juridical person there must be one or more physical persons to place acts in its name (c. 118). See J. DOYLE, *Civil Incorporation of Ecclesiastical Institutions: A Canonical Perspective*, dissertation, Ottawa, Saint Paul University, 1989, p. 148 (hereafter cited as DOYLE).

<sup>17</sup>CIC 83, c. 1279, §2: "In administratione bonorum personae iuridicae publicae, quae ex iure vel tabulis foundationis aut propriis statutis suos non habeat administratores, Ordinarius, cui eadem subiecta est, personas idoneas ad triennium assumat; eadem ab Ordinario iterum nominari possunt." See DOYLE, p. 148.

<sup>18</sup>CIC 83, c. 1280: "Quaevis persona iuridica suum habeat consilium a rebus oeconomicis vel saltem duos consiliarios, qui administratorem, ad normam statutorum, in munere adimplendo adiuvant."

what is determined to be ordinary administration.<sup>19</sup> The Grey Nuns, canonically, retain a significant amount of ultimate responsibility for the juridic person, *Covenant Health Systems*.

## 2.1 TRANSFER OF PROPERTY AND ALIENATION

If *Covenant Health Systems* wishes to transfer ownership of property, such as fixed capital or real estate, the value of which exceeds a predetermined limit, it must approach the proper authority for authorization.<sup>20</sup> When appraising healthcare systems today, we must take into consideration the large number of edifices, equipment, debt reduction and surplus funds that sometimes amount to billions of dollars. For the transfer of goods<sup>21</sup> which are valued above the maximum

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<sup>19</sup>CIC 83, c. 1281, §1: "Firmis statutorum praescriptis, administratores invalide ponunt actus qui fines modumque ordinariae administrationis excedunt, nisi prius ab Ordinario facultatem scripto datam obtinuerint."

<sup>20</sup>CIC 83, c. 1291: "Ad valide alienanda bona, quae personae iuridicae publicae ex legitima assignatione patrimonium stabile constituunt et quorum valor summam iure definitam excedit, requiritur licentia auctoritatis ad normam iuris competentis."

<sup>21</sup> "[Alienation] is that act by which property, real rights, or possessions of any ecclesiastical moral person are gratuitously or onerously transferred, set aside, lessened, or burdened." J. CLEARY, *Canonical Limitations on the Alienation of Church Property*, Washington, D.C., The Catholic University of America, 1936, p. 2 (hereafter cited as CLEARY). "In the notion of alienation is included not only all forms of alienation in the strict sense, but also any act by which one transmits to another a real right over property which remains in the ownership of the one who cedes the right, as easement and license; any act whose purpose is to give to another as a guarantee a thing over which, however, one retains ownership, as mortgaging or giving a security; any act whereby one abandons to another the prolonged enjoyment of a thing with or without certain particular conditions, the ownership of which is retained, and which will be recovered in full at a certain fixed date, such as long-term leases, loan for use, or simple loan; and in general, all acts or contracts capable of rendering more unfavourable the condition of a church corporation, not taking into account the onerous or gratuitous nature of the contract. Consequently there is not alienation in a purchase made with revenues or money not yet forming a part of the stabilized capital of a church corporation, nor in payment made in the same fashion, lending at interest, or borrowing made without conditions or obligations which aggravate or endanger the situation of the ecclesiastical moral person." CLEARY, p. 94.

determined sum, the permission of the Holy See<sup>22</sup> must be given to *Covenant* before the transaction can take place.<sup>23</sup> This predetermined amount<sup>24</sup> caused some difficulty for healthcare systems whose normal operations caused them regularly to spend far beyond the amount, and who could not afford to have decisions held up without considerable loss of funds. It was thought that designation as a private juridic person would expedite matters. However, with the Holy See using modern means of communication, and granting indulgences to accommodate large amounts of debt, this problem has largely been resolved and any needed permissions are usually obtained in a speedy manner.

*Covenant Health Systems* presented its first "Stewardship Report" to CICLSAL in October of 1997.

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<sup>22</sup>CIC 83, c. 1292, §2: "Si tamen agatur de rebus quarum valor summam maximam excedit, vel de rebus ex voto Ecclesiae donatis, vel de rebus pretiosis artis vel historiae causa, ad validitatem alienationis requiritur insuper licentia Sanctae Sedis."

<sup>23</sup>CIC 83, c. 1292, §1: "Salvo praescripto can. 638, §3, cum valor bonorum, quorum alienatio proponitur, continetur intra summam minimam et summam maximam ab Episcoporum conferentia pro sua cuiusque regione definiendas, auctoritas competens, si agatur de personis iuridicis Episcopo dioecesano non subiectis, propriis determinatur statutis; secus, auctoritas competens est Episcopus dioecesanus cum consensu consilii a rebus oeconomicis et collegii consultorum necnon eorum quorum interest. Eorundem quoque consensu eget ipse Episcopus dioecesanus ad bona dioecesis alienanda."

<sup>24</sup>CIC 83, c. 638, §3: "Ad validitatem alienationis et cuiuslibet negotii in quo condicio patrimonialis personae iuridicae peior fieri potest, requiritur licentia in scripto data Superioris competentis cum consensu sui consilii. Si tamen agatur de negotio quod summam a Sancta Sede pro cuiusque regione definitam superet, itemque de rebus ex voto Ecclesiae donatis aut de rebus pretiosis artis vel historiae causa, requiritur insuper ipsius Sanctae Sedis licentia."

**2.2 MISSION, VALUES AND STATUTES**

**a) MISSION, VISION AND CORE VALUES**

The vision:

*Covenant Health Systems* is an innovative Catholic health organization committed to furthering the healing ministry of Jesus by working collaboratively with others to: improve the health status of individuals and communities through a continuum of high quality, holistic care; and advocate for systemic change, especially for those persons who are poor or underserved.<sup>25</sup>

*Covenant Health Systems* honors six core values as its major influences:

**Stewardship:** We administer our human and material resources with responsibility and accountability.

**Integrity:** We act honestly, justly and ethically.

**Creativity:** We shape our future tempering idealism with realism, risk taking with prudence.

**Excellence:** We deliver all services with the highest level of quality performance.

**Collaboration:** We work in partnership, dialogue, and shared purpose.

**Service:** We dedicate ourselves to serve with a personal and communal commitment to meet the needs of others, especially the poor.<sup>26</sup>

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<sup>25</sup>STEWARDSHIP REPORT 1998, p. 1.

<sup>26</sup>STEWARDSHIP REPORT 1998, p. 1.

**b) CANONICAL STATUTES OF COVENANT HEALTH SYSTEMS**

Canonical statutes are integral to the existence of a public juridic person in the Church. Although the canon numbers are usually not indicated, the statutes are usually written in a manner which is supported by various applicable canons in the Code of Canon Law. Some of the canons relating to public associations of Christ's faithful are also used to support the public juridic person. The reason for this was explained in the second chapter.

The Preamble of the canonical statutes of *Covenant Health Systems* indicates that it is a public juridic person<sup>27</sup> (c. 113, §2; c. 115, §1, §3) established by a decree of CICLSAL, dated July 18, 1995 at the request of the Superior General of the Sisters of Charity of Montreal (c. 114, §1; c. 116, §2; c. 117; c. 312, §1; c. 313). The Sisters of Charity of Montreal are referred to as "Congregation" in this document.<sup>28</sup>

Article One stipulates the name of the public juridic person as *Covenant Health Systems* with offices in Lexington, Massachusetts and that it carries out its activities in the secular sphere through a civil corporation known as Covenant Health Systems, Inc. (c. 22 ; c. 94, §1, §2, §3; c. 304, §2).<sup>29</sup>

Article Two indicates the purposes of *Covenant Health Systems* which are to embody the healing ministry of Jesus in the Roman Catholic Church through the ownership or management of health facilities and the offering of programs and

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<sup>27</sup>Re: COVENANT HEALTH SYSTEMS, *The Canonical Statutes of Covenant Health Systems*, Lexington, MA, 1996, p. 1 (hereafter cited as COVENANT STATUTES).

<sup>28</sup>Re: COVENANT STATUTES, p. 1.

<sup>29</sup>Re: COVENANT STATUTES, p. 1.

services consistent with this purpose<sup>30</sup> (c. 114, §2, §3; c. 116, §1; c. 298, §1; c. 313; c. 315). *Covenant Health System* will adhere to the *Ethical and Religious Directives for Catholic Health Facilities* as approved by the NCCB (c. 381, §1, §2; c. 394, §1, §2; c. 397, §1; c. 455, §1, §2, §3, §4).<sup>31</sup>

Article Three indicates that the “Members” of *Covenant Health Systems* are those persons appointed by the “Congregation” as provided for in the bylaws (c. 115, §1, §3; c. 317, §1).<sup>32</sup> Any action required or permitted to be taken by the “Congregation” under these statutes shall be taken by the Provincial Superior and Provincial Council of St. Joseph Province of the “Congregation” or by the Superior General and General Council or their designees if St. Joseph Province ceases to exist (c.118; c.123; c. 311).<sup>33</sup>

Article Four indicates the reservation of powers and the rights and duties of members. 4.1 indicates the basic rights and duties of the members and stipulates that the business and affairs of *Covenant Health Systems* shall be managed by the Members in accordance with Roman Catholic Church laws, teaching and discipline (c. 115, §1; c. 119, §2; c. 319, §1, §2) with the specified powers: to uphold the philosophy and mission of the public juridic person, prepare and approve operating bylaws, the amending of bylaws as per the statutes, to elect the officers of *Covenant Health Systems* (other than the President), to ensure that the business and affairs are conducted with integrity, and to approve all acquisitions of new works for *Covenant Health Systems* (c. 298, §1; c. 304, §1; c. 317, §1; c. 1282).<sup>34</sup>

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<sup>30</sup>Re: COVENANT STATUTES, p. 1.

<sup>31</sup>Re: COVENANT STATUTES, p. 1.

<sup>32</sup>Re: COVENANT STATUTES, p. 1.

<sup>33</sup>Re: COVENANT STATUTES, pp. 1-2.

<sup>34</sup>Re: COVENANT STATUTES, p. 2.

4.2 specifies which actions require the approval of the Congregation, such as a change in the philosophy or mission of *Covenant Health Systems* and any amendment that would jeopardize the rights of the Congregation to appoint or to remove members, to appoint or to remove the president or to approve changes to the philosophy or mission of *Covenant Health Systems* (c. 314; c. 315).<sup>35</sup>

4.3 specifies which actions require the approval of the Holy See such as any change to the purposes of *Covenant Health Systems*, amendment of its statutes, its suppression or the sale, disposition or other form of alienation of the stable patrimony of *Covenant Health Systems* in excess of the amounts established by the Holy See (c. 120, §1, §2; c. 123; c. 305, §1, §2; c. 1281, §1, §2, §3; c. 1283; c. 1286; c. 1291; c. 1292, §1, §2, §3, §4; c. 1293, §1, §2; c.1295).<sup>36</sup>

Article Five indicates in which ways *Covenant Health Systems* will be accountable to the Holy See. It will issue an annual report to the Holy See evidencing the preservation of faith and morals, and that all its activities and the use of its temporal goods are in accord with its specified purposes (c. 304, §1; c. 305, §1, §2; c. 313, §1; c. 319, §1, §2; c. 1284, §1, §2, 7°, 8°).<sup>37</sup> *Covenant Health Systems* may be requested by the Holy See to discuss its apostolate (c. 116, §1; c. 315) and the Holy See has no financial responsibility regarding *Covenant Health Systems* and its affairs (c. 114, §3; c. 319, §1; c. 309; c. 1256; c. 1257, §1; c. 1281, §1, §2, §3).<sup>38</sup>

Article Six provides for the officers of *Covenant Health Systems* and indicates which ones are appointed and which are elected and by whom. The provisions are

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<sup>35</sup>Re: COVENANT STATUTES, p. 2.

<sup>36</sup>Re: COVENANT STATUTES, pp. 2-3.

<sup>37</sup>Re: COVENANT STATUTES, p. 3.

<sup>38</sup>Re: COVENANT STATUTES, p. 3.

found in the bylaws as well as a description of the duties of the officers of *Covenant Health Systems* (c. 119; c. 304, §1; c. 309; c. 317, §2, §3).<sup>39</sup>

Article Seven specifies the number and times of meetings and the procedure for the calling of special meetings (c. 118; c. 119; c. 309).<sup>40</sup>

Article Eight relates to the temporal goods of *Covenant Health Systems* as ecclesiastical goods and the administration of these goods in accord with the Canon Law of the Roman Catholic Church (c. 305, §1; c. 319, §1, §2; c. 638, §3; c. 1253; c. 1255; c. 1257, §1; c. 1258; c. 1265; c. 1267, §1; c. 1273; c. 1280; c.1281, §1, §2, §3; c. 1282; c. 1283; c. 1284, §1, §2, §3; c. 1286; cc.1290-1298; c. 1300; c. 1301, §1).<sup>41</sup>

Article Nine stipulates how and why *Covenant Health Systems* may be suppressed as a public juridic person in the Church. It may be suppressed by the Holy See for failure to act in accord with its approved statutes or at the request of three-quarters of the members.<sup>42</sup> Upon suppression, the temporal goods, patrimonial rights and obligations of *Covenant Health Systems* shall be distributed and allocated as determined by the Members with due consideration given to the will of the founders, donors, and applicable prescriptions of the civil law (c. 120, §1; c. 121; c. 122; c. 123; c. 304, §1; c. 314; c. 320, §1, §3).<sup>43</sup>

Finally, Article Ten stipulates that the amendment of the Statutes is reserved to the Holy See upon the request of two-thirds of the Members of the public juridic

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<sup>39</sup>Re: *COVENANT STATUTES*, p. 3.

<sup>40</sup>Re: *COVENANT STATUTES*, p. 3.

<sup>41</sup>Re: *COVENANT STATUTES*, p. 4.

<sup>42</sup>Re: *COVENANT STATUTES*, p. 4.

<sup>43</sup>Re: *COVENANT STATUTES*, p. 4.

person (c. 305, §1; c. 309; c. 314; c. 319, §1).<sup>44</sup>

*Covenant Health Systems* has as its mission the continuation of the healing ministry of Jesus in accord with the doctrines of the Roman Catholic Church. It is concerned with delivering healthcare to all segments of society, especially the poor and disenfranchised. *Covenant* has continuously opted to follow the directives of its canonical statutes as approved by the Holy See and has invited other healthcare groups to join its endeavour. It is a vehicle for responsible lay participation in the healthcare mission of the Church and this participation continues to grow. The approval of *Covenant's* canonical statutes indicates an official acceptance by the Church as to its purpose and manner of existence. *Covenant* also follows the directives for healthcare as initiated by the National Conference of Catholic Bishops. As a public juridic person in the Church, *Covenant* recognizes and takes seriously that its mission is that of the Church.

### 3. THE CANONICAL STATUTES OF *PEACEHEALTH*, A PRIVATE JURIDIC PERSON

*PeaceHealth* is a healthcare corporation sponsored by the Sisters of Saint Joseph of Peace, Western Province (Our Lady Province). Its purpose is to embody the healing ministry of Jesus. *PeaceHealth*, in a response to a petition of the Superior General of the Sisters of Saint Joseph of Peace to the Holy See, was given pontifical private juridic personality<sup>45</sup> by the Congregation for Institutes of

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<sup>44</sup>Re: COVENANT STATUTES, p. 4.

<sup>45</sup>A private juridic person is dependent on its approved statutes in relation to the alienation of its temporal goods. Its goods are not considered subject to the norms of Book V of the 1983 Code of Canon Law except for a few specified areas. A private juridic person should be incorporated as a non-profit corporation or something similar. The private juridic person carries out the mission of the Church by decree. A private juridic person can be likened to a franchise. The franchisee is

Consecrated Life and Societies of Apostolic Life (CICLSAL) in a decree issued 29 April 1997.<sup>46</sup>

### 3.1 DEVELOPMENT OF *PEACEHEALTH*

*PeaceHealth* is located in Bellevue, Washington and operates in the States of Washington, Oregon and Alaska. It is considered a small system, but given the demographics of the geographical locations that it serves, its size allows it to be flexible enough to meet the needs of the populations it serves. The healthcare ministry of *PeaceHealth* is a continuation of the ministry and charism of the Sisters of Saint Joseph of Peace. In 1976 the Sisters of Saint Joseph of Peace formed *Health and Hospital Services* in order to meet the challenges of healthcare delivery and to bring lay persons<sup>47</sup> into hospital management.<sup>48</sup> In 1994 the name *PeaceHealth* was adopted. Given the fact that *PeaceHealth* as such did not have canonical recognition and that the new structures had already been set in place, it was found to be appropriate to request private juridic personality, since the temporal goods had already, for all practical purposes, been alienated. With the current

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granted the right to engage in providing a service or product in a certain area by a franchiser. The franchisee agrees to uphold the mission, values and standards of the franchiser. "Franchisee, one who is granted a franchise. Franchise, to grant the sole right of engaging in a certain business or in a business using a particular trademark in a certain area. Franchiser, one who grants a franchise." BLACK, pp. 668-669.

<sup>46</sup>Re: Prot. n. 6485/97, *Congregatio Pro Institutis Vitae Consecratae et Societatibus Vitae Apostolicae*, signed by Card. Eduardo Martinez Somalo, Prefect, and Archbishop Piergiorgio Silvano Nesti, C.P., Secretary, given at the Vatican, 29 April 1997.

<sup>47</sup>Though not without tensions, the Protestant Churches have always worked with the laity. See J. LYNCH, "Church Government: The Protestant Experience", in *The Ministry of Governance*, J. MALLETT, Editor, Washington, D.C., Canon Law Society of America, 1986, pp. 56-57 (hereafter cited as J. LYNCH).

<sup>48</sup>CIC 83, c. 129, §2: "In exercitio eiusdem potestatis, christifideles laici ad normam iuris cooperari possunt." Canon 129 is a result of ongoing implementation of the Second Vatican Council, the laity being given a form of consideration which until recently they had not received.

status of *PeaceHealth* as a private juridic person,<sup>49</sup> in the Roman Catholic Church, the Sisters of Saint Joseph of Peace, Western Province, have a sponsorship relationship with it and they have opted to forgo any reserved powers.

### **3.2 MISSION, VALUES AND STATUTES**

#### **a) MISSION, VISION AND CORE VALUES**

The mission of *PeaceHealth* is

to carry on the healing mission of Jesus Christ by promoting personal and community health, relieving pain and suffering, and treating each person in a loving and caring way.<sup>50</sup>

The Core Values of *PeaceHealth* are:

**Respecting Individual Human Dignity and Worth:**

We respect the dignity and appreciate the worth of each person as demonstrated by our compassion, caring, and acceptance of individual differences.

**Stewardship:**

We choose to serve the community and hold ourselves

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<sup>49</sup>The juridic person appears to be better suited for recognizing lay sponsorship of those health care facilities that are already Catholic because of prior sponsorship. J. HOWARTH, "Juridic Person or Private Association: Choosing a Canonical Structure", in *Health Progress*, 67 (1986), No. 7, p. 51.

<sup>50</sup>SISTERS OF SAINT JOSEPH OF PEACE, *Pontifical Private Juridic Person Sponsor Review*, 1999, p. 1, (A private audit instrument of the Sisters of Saint Joseph of Peace, Bellevue, Washington) (hereafter cited as *PEACEHEALTH REVIEW*). *PeaceHealth* is currently the only healthcare system with acute care facilities with pontifical private juridic personality in the United States.

accountable to exercise ethical and responsible stewardship in the allocation and utilization of human, financial and environmental resources.

**Collaboration:**

We value the involvement, cooperation and creativity of all who work together to promote the health of the community.

**Social Justice:**

We build and evaluate the structures of our organization and those of society to promote the just distribution of health care resources.<sup>51</sup>

### **b) CANONICAL STATUTES OF PEACEHEALTH**

Canonical statutes are integral to the existence of private juridic persons in the Church. The statutes are written in a manner which is supported by various applicable canons in the Code of Canon Law. As was the case with *Covenant Health Systems*, some of the canons relating to private associations of Christ's faithful are used to support the private juridic person. This too was explained in the second chapter.

Article One relates to the private juridic person in general. 1.1 of the statutes (c. 94, §1, §2, §3; c. 304, §1, §2; cc. 7-22) specifies the name and description of *PeaceHealth*.<sup>52</sup> It is established as a noncollegial Pontifical Private Juridic Person of the Roman Catholic Church (c. 113, §2; c. 114, §1, §2, §3; c.115, §1, §3; c.116, §1, §2; c.117; c. 312, §1; c. 313; c. 322, §1, §2).<sup>53</sup>

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<sup>51</sup>PEACEHEALTH REVIEW, p. 1.

<sup>52</sup>Re: PEACEHEALTH, *The Canonical Statutes of PeaceHealth a Pontifical Private Juridical Person*, Bellevue, Washington, 1997, p. 1 (hereafter cited as PEACEHEALTH STATUTES).

<sup>53</sup>Re: PEACEHEALTH STATUTES, p. 1.

1.2 gives an overview of the purpose, philosophy, and mission of *PeaceHealth*. It is to embody the healing ministry of Jesus through ownership and management of healthcare facilities and services (c. 298, §1); provide educational, charitable and other activities, services and programs consistent with its purposes; monitor the activities of *PeaceHealth* to guarantee their consistency with the teaching and laws of the Roman Catholic Church and its adherence to the ethical and religious principles of Catholic healthcare (c. 114, §1, §2; c. 304, §1).<sup>54</sup>

1.3 specifies the location of *PeaceHealth* in Bellevue, Washington, USA (c. 22).

Article Two relates to the members of *PeaceHealth*. 2.1 The members of the private juridic person are the current members of the board of directors of the *PeaceHealth Corporation* for the duration of their term of office (c. 115, §1, §3; c. 118; c. 304, §1; c. 324, §1).<sup>55</sup>

2.2 Powers, duties and rights of members are: uphold the philosophy and mission of *PeaceHealth*; ensure that the overall operations of *PeaceHealth* are conducted in a manner consistent with the teachings, directives, and principles of the Roman Catholic Church, issued by the NCCB (c. 455, §1, §2, §3, §4); present any proposals of change to the statutes to the Holy See for approval (c. 321); seek approval from the Holy See to suppress this private juridic person (c. 326, §1, §2); send reports to the Holy See as requested which give evidence that the integrity of faith and morals is preserved in the use of its temporal goods and that the apostolic activity is in accord with its purposes (c. 305, §1, §2; c. 323, §1, §2); ensure that a sponsorship review takes place by the Provincial and Council of the Sisters of

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<sup>54</sup>Re: *PEACEHEALTH STATUTES*, pp. 1-2.

<sup>55</sup>Re: *PEACEHEALTH STATUTES*, p. 2.

Saint Joseph of Peace, Western Province, or persons designated by them (c. 311).<sup>56</sup>

The following statutes specify the practices for meetings: 2.3 the annual meeting of the members; 2.4 the regular meeting of the members; 2.5 the special meeting of members; 2.6 notice of meetings; 2.7 waiver of notice; 2.8 quorum at meetings; 2.9 informal action by members; 2.10 meeting by electronic communication; 2.11 voting (c. 119, §1, §2, §3; c. 304, §1; c. 309; c. 321).<sup>57</sup>

Article Three treats of the activities of the officers. 3.1 specifies that the president, vice-president, secretary and treasurer of the board of directors of *PeaceHealth* are the same for the juridic person.<sup>58</sup> 3.2 - 3.4 specify the duties of the president, vice-president and secretary and treasurer of the private juridic person (c. 118; c. 304, §1; c. 309; c. 324, §1).<sup>59</sup>

Article Four specifies the relationship of the private juridic person to the bishop. 4.1 It will maintain a liaison with the bishop in whose diocese *PeaceHealth* has facilities and be accountable to him for its ministry, especially in the areas of apostolic activities, integrity of faith and morals, raising of funds, and it acknowledges that no financial right or responsibility is incurred by the diocese (c. 223; c. 305, §1, §2; c. 311; c. 323; c. 381, §1; c. 394, §1, §2; c. 397, §1; c.1263; c.1265, §1, §2; c.1267, §1).<sup>60</sup>

Article Five specifies the relationship to the Holy See. 5.1 The private juridic person is subject to and accountable to the Holy See in the areas noted in Article

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<sup>56</sup>Re: *PEACEHEALTH* STATUTES, p. 2.

<sup>57</sup>Re: *PEACEHEALTH* STATUTES, pp. 2-4.

<sup>58</sup>Re: *PEACEHEALTH* STATUTES, p. 4.

<sup>59</sup>Re: *PEACEHEALTH* STATUTES, p. 4.

<sup>60</sup>Re: *PEACEHEALTH* STATUTES, pp. 4-5.

Two, Section 2.2 and will also respond to any request from the Holy See regarding *PeaceHealth* and acknowledge that the Holy See accepts no financial responsibility regarding *PeaceHealth* (c. 305, §1, §2; c.1257, §2).<sup>61</sup>

Article Six refers to temporal goods. The temporal goods of *PeaceHealth* are not considered ecclesiastical goods and are administered according to the Articles of Incorporation and Bylaws of *PeaceHealth*<sup>62</sup> and by those canons related to goods donated for pious purposes (c. 22; c. 325, §1, §2; c. 1257, §2; c. 1255; c.1256; c.1267, §1; c.1280; c.1300; c.1301, §1, §2, §3).<sup>63</sup>

Article Seven relates to the "sponsorship review". An annual sponsorship review shall be conducted by the Provincial Superior and Council of the Sisters of Saint Joseph of Peace or their delegate with a report presented to the members (c. 311; c. 323, §1, §2; c. 329).<sup>64</sup>

Article Eight specifies that amendments to the statutes are reserved to the Holy See upon the request of a two-thirds vote of the members (c. 304, §1; c. 305, §1, §2; c. 321; c. 323, §1, §2).<sup>65</sup>

Article Nine notes that the private juridic person may be dissolved by the Holy See upon the request of two-thirds of the members, or if the private juridic person

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<sup>61</sup>Re: *PEACEHEALTH STATUTES*, p. 5.

<sup>62</sup>Re: *PEACEHEALTH, First Restated Articles of Incorporation of PeaceHealth, 13 September, 1995 and First Restated Bylaws of PeaceHealth, 9 September 1994*, Bellevue, Washington. These documents were filed with the State of Washington on October 23, 1995. Section 1.3 of the General Provision of the Bylaws was inserted when the statutes of the private juridic person were approved by the Holy See.

<sup>63</sup>Re: *PEACEHEALTH STATUTES*, p. 5.

<sup>64</sup>Re: *PEACEHEALTH STATUTES*, p. 5.

<sup>65</sup>Re: *PEACEHEALTH STATUTES*, p. 5.

fails to act in accord with the approved statutes and upon the dissolution, transfer, or merger of the civil law corporation<sup>66</sup> (c. 120, §1; c. 123; c. 305, §1, §2; c. 326, §1, §2).<sup>67</sup>

Finally, Article Ten relates to the approval of these statutes by the Board of Directors of *PeaceHealth* and by the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life (c. 114, §1, §2, §3; c. 116, §1, §2; c. 117; c. 118; c. 305, §1, §2; c. 312, §1; c. 323, §1, §2).<sup>68</sup>

*PeaceHealth* has as its mission in the Church the continuation of the healing ministry of Jesus Christ. It seeks to do this by promoting personal and community health, respecting the dignity of each person, and ensuring a just distribution of healthcare resources to all. *PeaceHealth* consists of a limited but adequate number of healthcare facilities in alignment with the demographic makeup of the area that it serves. As a private juridic person, *PeaceHealth* follows its canonical statutes approved by the Holy See. It is a vehicle of responsible lay involvement in the mission of the Church, adhering to the “*Ethical and Religious Directives For Catholic Health Care Services*” issued by National Conference of Catholic Bishops of the United States regarding healthcare. Although its temporal goods are not considered ecclesiastical goods, its statutes and bylaws ensure an accountability to Church mission, directives and values.

As can be seen there are great similarities between the two sets of statutes, with any differences developing primarily from the prescriptions of the canons

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<sup>66</sup>The “civil law corporation” was added to Article Nine (c), by rescript of the Holy See, Congregation for Institutes of Consecrated Life and Societies of Apostolic Life, given by private letter to Sister Ann Rutan, CSJP, Congregation Leader, Sisters of Saint Joseph of Peace, Washington, U.S.A., dated 29 April 1997, Prot. n. 6485/97, Congregatio Pro Institutis Vitae Consecratae et Societatibus Vitae Apostolicae, signed by Archbishop Piergiorgio Silvano Nesti, C.P., Secretary.

<sup>67</sup>Re: *PEACEHEALTH STATUTES*, p. 6.

<sup>68</sup>Re: *PEACEHEALTH STATUTES*, p. 6.

relating to ecclesiastical goods.

#### 4. COMPARATIVE ANALYSIS OF THE CANONICAL BYLAWS OF *PEACEHEALTH AND COVENANT HEALTH SYSTEMS*

The canonical bylaws of the *PeaceHealth* and *Covenant Systems*, as we will point out, are very similar, but with a certain number of exceptions. The reason for the similarity is that the format and the content of the bylaws are basically “*pro forma*” for civilly incorporated entities in the United States. The bylaws of a civil corporation reiterate and specify in more detail the “Articles of Incorporation” of a corporation. The canonical bylaws of a juridic person in the Church reiterate and specify in more detail the provisions found in the “canonical statutes”. We will now point out the major differences found in the bylaws of *PeaceHealth*,<sup>69</sup> and those of *Covenant Health Systems*.<sup>70</sup>

##### 4.1 MEMBERSHIP

Aside from the fact that one entity is a private juridic person in the Church and the other is a public one, a major difference found in the bylaws is that of membership. *PeaceHealth*, as stated in 1.4 of the bylaws, has no members and the Board of Directors manages the property and business affairs of the juridic

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<sup>69</sup>See PEACEHEALTH, *First Restated Bylaws of PeaceHealth*, Bellevue, Washington, 1995 (hereafter cited as *PEACEHEALTH BYLAWS*).

<sup>70</sup>See COVENANT HEALTH SYSTEMS, *Canonical Bylaws of Covenant Health Systems*, Lexington, Massachusetts, 1996 (hereafter cited as *COVENANT BYLAWS*).

person.<sup>71</sup> 1.5 The board also gives consideration to changes in bylaws, philosophy and mission.<sup>72</sup>

Covenant Health Systems as stated in 2.2 of the bylaws has members who are appointed by the Sisters of Charity of Montreal.<sup>73</sup> 2.1 of the *Covenant* bylaws specify that these members manage the business affairs of *Covenant Health Systems* except in those areas specifically covered by Church law.<sup>74</sup> 2.1 Also, changes in bylaws, philosophy and mission must be approved by the Sisters of Charity and in compliance with the "canonical statutes".<sup>75</sup>

The Sisters of Saint Joseph of Peace decided not to retain any reserved powers in *PeaceHealth* directly but they have positions on the board which are reserved to five (2.2 a) of its members.<sup>76</sup> The provincial of the Western Province of the Sisters of Saint Joseph of Peace is automatically a board member (2.2 a) and the person elected to the office of President of the Corporation is automatically a board member (2.2 b).<sup>77</sup> 2.4 Board vacancies, except for the seat held by the Provincial, are filled by the board.<sup>78</sup> There are twelve board positions (2.1),<sup>79</sup> five of

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<sup>71</sup>Re: *PEACEHEALTH BYLAWS*, p. 1.

<sup>72</sup>Re: *PEACEHEALTH BYLAWS*, p. 1.

<sup>73</sup>Re: *COVENANT BYLAWS*, p. 2.

<sup>74</sup>Re: *COVENANT BYLAWS*, p. 2.

<sup>75</sup>Re: *COVENANT BYLAWS*, p. 2.

<sup>76</sup>Re: *PEACEHEALTH BYLAWS*, p. 3. See also, *First Restated Articles of Incorporation of PeaceHealth*, Bellevue, Washington, 1995, Art. 12, Duration of Existence, p. 6 and Art. 13, Amendment of Articles, p. 6.

<sup>77</sup>Re: *PEACEHEALTH BYLAWS*, p. 3.

<sup>78</sup>Re: *PEACEHEALTH BYLAWS*, p. 3.

<sup>79</sup>Re: *PEACEHEALTH BYLAWS*, p. 2.

which are filled by the Sisters of whom one is in Provincial leadership (2.2a).<sup>80</sup> Any director (except the Provincial leadership representative) may be removed with or without cause by the board (2.6).<sup>81</sup>

The Sisters of Charity of Montreal have reserved the right to appoint all of the board members (2.2) of *Covenant Systems* and have determined that certain matters must have their approval (2.1).<sup>82</sup> The number of board members is fixed on an annual basis by the members then in office (2.2).<sup>83</sup> The Sisters may remove any member at any time with or without cause (2.7).<sup>84</sup>

## 4.2 OFFICERS

The officers of *PeaceHealth* and *Covenant Health Systems* are the President, Vice President, Secretary and Treasurer.<sup>85</sup> Other officers such as vice-presidents and management vice presidents may be appointed. We find specific variations in this area of the bylaws.

*PeaceHealth* has the additional offices of First Vice President and Management Vice Presidents (3.1).<sup>86</sup> All officers, except the First Vice President

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<sup>80</sup>Re: *PEACEHEALTH BYLAWS*, p. 3.

<sup>81</sup>Re: *PEACEHEALTH BYLAWS*, p. 4.

<sup>82</sup>Re: *COVENANT BYLAWS*, p. 2.

<sup>83</sup>Re: *COVENANT BYLAWS*, p. 2.

<sup>84</sup>Re: *COVENANT BYLAWS*, p. 3.

<sup>85</sup>Re: *PEACEHEALTH BYLAWS*, p. 8; *COVENANT BYLAWS*, p. 4.

<sup>86</sup>Re: *PEACEHEALTH BYLAWS*, p. 8.

and the Management Vice Presidents, are elected by the board of directors (3.2).<sup>87</sup> The President does not serve a set term but rather serves at the pleasure of the board; the office of First Vice President is held by the Provincial (3.2).<sup>88</sup> The President is able to appoint individuals to, and to remove them from positions of Management Vice Presidents which have been created by the Board (3.2).<sup>89</sup> Management Vice Presidents must be employees of the corporation (3.3).<sup>90</sup> Vacancies in any office except that of First Vice President and the Management Vice Presidents are filled by the board of directors (3.9).<sup>91</sup>

*Covenant Health Systems* has additional officers: one or more Vice Presidents. The President is appointed by the Sisters of Charity. The other officers of the juridic person are elected by the members (3.1).<sup>92</sup> The President may be removed by the Sisters (3.8).<sup>93</sup> A vacancy of the office of the President of *Covenant* is filled by the Sisters (3.9).<sup>94</sup>

### **4.3 AMENDMENT OF BYLAWS**

The amendment of bylaws for *PeaceHealth* is attended to by the board of

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<sup>87</sup>Re: *PEACEHEALTH BYLAWS*, p. 8.

<sup>88</sup>Re: *PEACEHEALTH BYLAWS*, p. 8.

<sup>89</sup>Re: *PEACEHEALTH BYLAWS*, p. 8.

<sup>90</sup>Re: *PEACEHEALTH BYLAWS*, p. 8.

<sup>91</sup>Re: *PEACEHEALTH BYLAWS*, p. 10.

<sup>92</sup>Re: *COVENANT BYLAWS*, p. 4.

<sup>93</sup>Re: *COVENANT BYLAWS*, p. 5.

<sup>94</sup>Re: *COVENANT BYLAWS*, pp. 5-6.

directors. However, all members of the Sisters of Saint Joseph of Peace holding a seat on the board must be present at any meeting during which amendments are being considered (2.15).<sup>95</sup>

The amendment of bylaws is attended to by the board of directors for *Covenant Systems* (5.1). However, if any proposed changes made by the board adversely affect the rights of the Sisters of Charity of Montreal to appoint or to remove the president, or to approve changes to the written statement of philosophy or mission of *Covenant Health Systems*, they must be approved by the Sisters of Charity of Montreal before they become effective (5.1).<sup>96</sup>

#### **4.4 ACTION BY THE CONGREGATION**

*PeaceHealth* has no “action by the Sisters of Saint Joseph of Peace”. However, Sisters of Saint Joseph of Peace must have all of its members holding seats on the board present for certain actions. Given the nature of boards, these sisters cannot be required to vote on any issue in a block, although they might freely choose to do so.<sup>97</sup>

*Covenant Health Systems* has “action by the Sisters of Charity of Montreal” (6.1). The actions are: any action required or permitted to be taken by the Sisters of Charity under these bylaws (including, in particular, the appointment or removal of members, the appointment or removal of the president, the approval of changes to the written statements of philosophy or mission of *Covenant Health Systems* or

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<sup>95</sup>Re: *PEACEHEALTH* BYLAWS, p. 6.

<sup>96</sup>Re: *COVENANT* BYLAWS, p. 7.

<sup>97</sup>Re: *PEACEHEALTH* BYLAWS, p. 6.

the approval of any amendment to the bylaws that adversely affects the rights of the Sisters of Charity with respect to such matters). These decisions shall be taken by the Provincial Superior of the Sisters of Charity, Saint Joseph's Province, or, if the Province shall cease to exist, by the Superior General and General Council of the Sisters of Charity or their designees, in accordance with the constitution and statutes of the Sisters of Charity (6.1).<sup>98</sup>

## **5. COMPARATIVE ANALYSIS OF MISSION AND CANONICAL RELATIONSHIPS OF *PEACEHEALTH* AND *COVENANT HEALTH* SYSTEMS**

*PeaceHealth* and *Covenant Health Systems* both have set as their primary mission to carry on the healing ministry of Jesus Christ. Both systems have opted to carry on this ministry with high quality and ethical standards and in conformity with the directives of the Church. Although one system is larger than the other, both are secure in knowing their mission and in carrying it out. Ministry is primary with both groups and it is performed directly through delivering quality healthcare services, or indirectly through creating a cultural and political environment of respect and dignity for those in need of healthcare. Given the complexity of healthcare operations, these actions take an enormous dedication of resources to overcome the obstacles.

Systems which have established a mission must have some way of reviewing the ways and means in which it is carried out. This is necessary in order to make an assessment of success and failures as well as to correct any problems or disorder that might exist. Both *PeaceHealth* and *Covenant Health Systems* have developed instruments of assessments.

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<sup>98</sup>Re: *COVENANT BYLAWS*, p. 7.

*PeaceHealth* has developed a review instrument entitled “The Sponsor Mission and Values Review Tool”, for the purpose of reviewing and auditing its facilities, operations and policies.<sup>99</sup> This instrument has been used once as of this writing and is as yet evolving. It moves from general to specific questions relating to mission, values, ethics, core values, governance, human resources, care of the poor, organizational health, continuous improvement, spiritual care, and ethics. An on-site interview of staff at each member facility is carried out by the Province Leader and Council or their delegates. A copy of the report is sent on to the Superior General and, if requested, to the Holy See.

*Covenant Health Systems* as a Pontifical public juridic person makes a yearly “Stewardship Accountability Report”<sup>100</sup> directly to the Holy See and sends a copy to the Superior General of the Sisters of Charity of Montreal. This report covers the areas of mission integration, financial status, system profile, with attachments of property inventory, social accountability report,<sup>101</sup> financial statements, and investment management reports. Each acute care facility of *Covenant Health Systems* employs a Vice President for mission integration. In 1998, a committee composed of these Vice Presidents for mission integration completed the development of a “Mission Assessment Tool and Process”.<sup>102</sup>

*PeaceHealth* and *Covenant Health Systems* are continually, and with great effort, carrying out their stated missions and have painstakingly created instruments which allow them some means of self-assessment. They take great pride in the fact

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<sup>99</sup>Re: *PEACEHEALTH REVIEW*, pp. 1-7.

<sup>100</sup>Re: *STEWARDSHIP REPORT 1998*, pp. 1-12.

<sup>101</sup>*Covenant Health Systems* uses the tools developed by the *Catholic Health Association* specifically to track community benefits extended to the communities served by *Covenant*. See J. TROCCHIO, “What Are True Community Benefits?”, in *Health Progress*, 77 (1996), No. 5, pp. 34-35.

<sup>102</sup>Re: *STEWARDSHIP REPORT 1998*, p. 7.

that they are pontifical juridic persons and conscientiously adhere to the demands and requirements of that status and the responsibilities attached. Both systems are acutely aware that they are by recognition, mission and fact official participants in the overall mission of the Church. *PeaceHealth* and *Covenant* are also dedicated to supporting the fact that the "laity" can and do successfully operate Church affiliated healthcare systems in a manner expected of and appropriate to pontifical public and private juridic persons.

## 6. SUMMARY

*PeaceHealth* and *Covenant Health Systems* are both committed to responsible action to the communities they serve and to the Church whose mission they assume. This commitment is demonstrated in their willingness to work with the ecclesiastical authority of the dioceses in which they practice their ministry of healing. Mission and ministry were the driving forces in their seeking juridic status in the Church and these factors are constantly reflected in their undertakings. We also recognize in both juridic persons that the laity play major administrative roles.<sup>103</sup> This fact is significant in a period when several religious institutes find themselves unable to maintain the healthcare apostolate of their communities. There was speculation at one point that the private juridic person would create the setting for greater participation of the laity in the mission of the Church.<sup>104</sup> Although this perception continues to hold validity, what has come to pass is that the public juridic person is employed just as effectively to admit greater participation of the laity in the

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<sup>103</sup>CIC 83, c. 129 §1: "Potestatis regiminis, quae quidem ex divina institutione est in Ecclesia et etiam potestas iurisdictionis vocatur, ad normam praescriptorum iuris, habiles sunt qui ordine sacro sunt insigniti."

<sup>104</sup>See B. McMULLEN, "A Closer Look At Lay Sponsorship", in *Health Progress*, 77 (1996), No. 1, pp. 28-30.

mission of the Church, at least in the healthcare apostolate.<sup>105</sup>

## II. POSSIBLE MODELS FOR THE FUTURE

But, just as these new Church structures are being put in place, the goal posts are being moved and new challenges arising from the current state of healthcare in the United States. In this section, then, we have to gain an understanding of its future direction in so far as it is influenced by *Medicare* and the various healthcare benefit plans which are currently made available through employers and other groups. We will then reflect on the effects of these healthcare arrangements germane to the current and future status of juridic and non-juridic persons in the Church associated with healthcare apostolates.

### 1. STATE OF HEALTHCARE IN THE UNITED STATES

The Catholic healthcare system in the United States is atypical in so far as healthcare itself in the United States as an industry is unique and complex. Healthcare systems reflect the culture of the country in which they are located.<sup>106</sup>

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<sup>105</sup>See J. AMOS, "Public Juridic Persons Offers Flexibility", in *Health Progress*, 77 (1996), No. 1, pp. 31-35.

<sup>106</sup>"In some countries, where cultural divisions run much deeper than in the United States, the various groups create separate institutions to meet a broad range of social needs. The Dutch call this phenomenon *verzuiling*, or "pillarization," evoking the image of independent pillars supporting a common roof. "Each denominational bloc," writes Johan Goudsblom about the Netherlands, "has set up a whole array of organizations encompassing practically every sphere of social life. Schools and universities, radio and television corporations, trade unions, health and welfare agencies, sports associations, and so on, all fit into the *zuilen* system." This pattern of "segmented integration" has developed only partially in America. Protestants, as by far the largest group, have generally felt little need to define their institutions on religious lines; the denominations that do build their own schools

The fact that there are so many uninsured persons in the United States reflects a culture that looks upon healthcare as a privilege and not a right, as is found in other countries. The healthcare industry in the United States is currently in a continuous but gradual stage of development. Where previously physicians, not directly associated with an acute care facility but practicing within it, directed 80 to 90 percent of patient care costs without question, these are now questioned. Where the practice existed of indemnity coverage of fee for service, with few controls or accountability, no standardized patient care records or review processes for procedures, this is gradually being phased out. The consumer who was not the direct purchaser, but an indirect one through a third party payer, is now gradually becoming actively involved through a defined contribution benefit plan.

## **2. CHANGING LANDSCAPE OF EMPLOYEE BENEFIT PLANS**

### **2.1 FEE FOR SERVICE**

Fee for service medicine rewarded physicians and hospitals financially for over treatment, heroic treatment, redundant treatment, or any treatment at all, regardless of economic or scientific merit.<sup>107</sup> Hospitals were overbuilt, and costly services were horrendously duplicated. Hospitals were stand alone or part of a small local or regionalized system. The entry of *Medicare* coverage infused this

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and hospitals tend to be those that see themselves as deeply at odds with the dominant culture. Among the major religious groups, only Catholics have organized an elaborate network of separate institutions, schools, colleges, hospitals, community associations." P. STARR, *The Social Transformation of American Medicine*, New York, Basic Books, 1982, p. 175 (hereafter cited as STARR).

<sup>107</sup>Re: J. KLEINKE, *Bleeding Edge*, Gaithersburg, Maryland, Aspen Publishers Inc., 1998, p. 5 (hereafter cited as KLEINKE).

system with increased financial support which produced an attractive environment for for-profit investors and opportunists. The expense of providing healthcare benefits escalated, and this moved employers and others to curtail costs by seeking other means of providing health care benefits to their employees. Managed care organizations stepped into the chasm and provided cost cutting measures.

## 2.2 MANAGED CARE

Managed care procedures began to stabilize some healthcare spending, prompting the federal government to stipulate that the same measures be instituted for *Medicare* subsidized healthcare spending. There ensued a marked dislike for managed care, but also a grudging recognition of this practice to decelerate the expense of healthcare. The inflationary cost of healthcare is illustrated in the following: in 1965 a day of hospital care cost on average 45 dollars, a hospital stay slightly over 315 dollars; in 1980 comparable expenditures were 245 dollars and 1,900 dollars respectively,<sup>108</sup> while today a hospital room averages 900 dollars plus per day excluding physician services. Healthcare is currently a three trillion dollar a year industry, which is 13 percent of the U.S. economy, while it is only 9.7 percent for Canada and 10.2 per cent for Western Europe.<sup>109</sup> This buys the U.S. the highest infant mortality rate and lowest life expectancy in the industrialized world.<sup>110</sup> If U.S. healthcare were a separate world economy, it would be the fourth largest in the

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<sup>108</sup>Re: E. GINZBERG, *Tomorrow's Hospital, A Look into the Twenty-first Century*, New Haven, Yale University Press, 1996, p. 16 (hereafter cited as GINZBERG).

<sup>109</sup>Re: KLEINKE, p. 3.

<sup>110</sup>Re: KLEINKE, p. 3.

world.<sup>111</sup> A significant amount of currency moves through the healthcare industry.

Managed Care Organizations are attempting to create an environment which permits improved delivery of healthcare services, while controlling expenses.

Managed Care Organizations have shocked the system into removing excess and costly capacity; shaken providers out of their ignorant bliss about health care costs; created the first-ever expectations about price/performance for employers and other purchasers; developed tools for measuring and monitoring clinical outcomes; and forced hospitals and physicians finally to integrate, coordinate, and rationalize what they do. In the process, managed care has awakened all players in the healthcare system--physicians, hospital administrators, employee benefits executives, drug and device makers, researchers, and all but the most politically extreme among those involved in health policy, to one simple fact: the health care industry needs to be organized and run like any other industry. If healthcare is a business, then the tools that have fixed other businesses will fix this one as well.<sup>112</sup>

However, the increasing disappointment with managed care organizations, and the collapse of some significant ones, slowed to a virtual standstill any marketplace reform.<sup>113</sup>

Private employers influence much of the healthcare system in the United States and will continue to do so as the custom of employment-based insurance is entrenched in the system, in union contracts, in retirement-benefit plans, and used to draw skilled labor into competitive markets.<sup>114</sup> Some industries spend billions on

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<sup>111</sup>Re: I. MORRISON, *Health Care In the New Millennium*, San Francisco, Jossey-Bass Publishers, 2000, p. 239 (hereafter cited as MORRISON).

<sup>112</sup>KLEINKE, p. 9.

<sup>113</sup>See MORRISON, p. 10.

<sup>114</sup>Re: KLEINKE, pp. 9-10.

healthcare benefits for their employees,<sup>115</sup> consequently the need for some type of managed care. Managed care is but one step on the way to a more organized and efficient healthcare system and one such step, global capitation,<sup>116</sup> was strongly considered and currently is used in some form in various markets of the U.S.

### 2.3 CORPORATE HEALTHCARE BENEFIT CONTROLS

Some corporations, such as *General Motors*, have such a large employee population that they have no choice but to engage actively in the process. They have discovered their leverage and use it. For instance, *General Motors Corporation* has hired a pharmacist to track the drugs used most by employees and applies the information in negotiating discounts from drug makers.<sup>117</sup> Various corporations are experimenting with approaches that override the insurers and managed care companies or exclude them by hiring specialists to advise employees, while others have set up their own physician and hospital networks.<sup>118</sup>

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<sup>115</sup>In 1995 *General Motors* spent \$3.6 billion on medical care which is equivalent to \$1200 per car; an aging workforce will eventually retire and medical costs in this category will rise. The impact of this is that a company such as *General Motors* or *Ford Motor Company* needs to set aside on its balance sheet for each additional percentage point of medical inflation an additional 2 billion dollars. KLEINKE, p. 10.

<sup>116</sup>Global capitation is a fixed dollar amount for all necessary care. KLEINKE, p. 52. Under capitation, a hospital's and physician's entire income is based on their success in keeping patients healthy, rather than on maximizing the number of medical services delivered. KLEINKE, p. 44. The original version of capitation was called "contract practice". It involved fully prepaid healthcare for groups of covered employees, with its earliest origins along the railroads and in mining camps where single employers needed to employ physicians to care for their workers. KLEINKE, p. 49.

<sup>117</sup>Re: L. COHN, P. ELIOPOULOS, and A. WEINTRAUB, "What Comes After Managed Care?", in *Business Week*, October 23, 2000, pp. 149 (hereafter cited as COHN).

<sup>118</sup>Re: COHN, p. 149-152. *Motorola* was one of the first ones to do this. It has a network of 118,000 doctors and has set higher standards for them and has been able to customize care to meet its needs. Employees with chronic conditions are contacted individually to discuss any new products becoming available for continued treatment of their illness.

Groups of companies are forming coalitions to obtain more clout when purchasing medical services from doctors, hospitals and managed-care plans.<sup>119</sup> *Honeywell Corporation* assists in the education of its employees on health related topics and encourages them to participate in discussions concerning their own course of treatment.<sup>120</sup> In the future, corporations hope to make better and increased use of the Web to offer treatment information and prices of individual procedures, which hopefully will encourage their employees to comparison shop for healthcare in the same way they buy a car; some of them are even offering “self-service” health plans.<sup>121</sup>

Eventually, employers wish to see employees themselves purchasing healthcare plans thereby relieving the employer of the complex and expensive process. The “defined contribution healthcare plan” concept would grant to the employee a voucher corresponding to a set amount of money.<sup>122</sup> The negative side of this idea is that the rising cost of healthcare would be passed to the employee. Although employees and their unions are not ready for such an arrangement, it is the direction of some major corporations.

The federal government is studying the possibility of moving in this direction with *Medicare* and *Medicaid* as the number of participants increase over the years. It is in situations such as these that the emerging health care organization, which we will consider next, will most likely dominate. This organization will be better positioned to effect cost controls, while providing a menu of procedures with accompanying cost to each individual.

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<sup>119</sup>Re: COHN, p. 149.

<sup>120</sup>Re: COHN, p. 156.

<sup>121</sup>Re: COHN, p. 156.

<sup>122</sup>Re: COHN, p. 156.

## 2.4 EMERGING HEALTHCARE ORGANIZATION (EHO)

Five interrelated forces of healthcare transformation are formulated by Kleinke, as assisting in simplifying the healthcare system in the United States:

1. Risk assumption, to correct fundamental problems in healthcare consumption and market economics.
2. Consumerism, to neutralize distortions in the health system created by the self-interest and faulty paternalism of MCO's (managed care organizations).
3. Consolidation, to scale the health care infrastructure properly, mobilize capital, spread risk across the broader populations of patients and providers, and allocate healthcare resources more efficiently.
4. Integration, to correct the fragmentation and other structural defects built into the medical delivery system.
5. Industrialization, to rationalize the haphazard use of services, increase economic predictability, improve quality, and reduce costs.<sup>123</sup>

This transformation gives rise to the new entity, the "emerging healthcare organization" (EHO).<sup>124</sup> The rudiments of the EHO can be seen in the current formation of the integrated delivery systems of the Catholic, non-profit and for-profit, healthcare systems. The EHOs are consolidating excess capacity, vertically integrating care settings, raising capital and, in time, being so organized in their processes of care as to be able to manage risk profitably.<sup>125</sup> Profit is needed to raise capital and attract the professional management necessary to develop the five forces of transformation of healthcare and establish management discipline.

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<sup>123</sup>KLEINKE, p. 16.

<sup>124</sup>Re: KLEINKE, p. 17.

<sup>125</sup>Re: KLEINKE, p. 17.

When fully developed, the EHO, will have processed horizontal integration of its care, physicians, inpatient, outpatient, and purchasing as well as vertical integration with extended care facilities, elderly care and home healthcare plans, generation of its own financial resources for expansion and development as well as risk management. The integration, to be truly efficient, will be owned by one entity although some jurisdictions might prohibit this for the present. This structure would eliminate layers of governing bodies on top of already existing ones. The EHO would provide a continuum of care for the patient which would be provided more efficiently and at a reduced cost. Fee for service payments do not support this type of operation and growth; therefore the move to global capitation will most likely occur at some point and become the norm.

The EHO is in its infant stage and we are seeing consolidations which cut across religious or other affiliations.<sup>126</sup> This is recognized in the development of "networks" and "systems". The stand-alone hospital is without the necessary resources to compete in developing markets. Kleinke describes a typical market as consisting of one or more of the following:

- one or two for-profit hospitals, one or both of which is usually owned by a national chain;
- one or two not-for-profit hospitals owned or operated by a national religious system like Daughters of Charity or Sisters of Mercy;
- a hybrid for-profit/not-for-profit system of mid-size community hospitals, often with a minor teaching hospital at its helm; or
- a not-for-profit system of community hospitals with a major academic medical center (AMC) at its helm (or, in the case of Boston and

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<sup>126</sup>See KILEINKE, p. 101. STARR, p. 176, "the greater the number of religions in a society, the more diffused the ownership and management of hospitals and the smaller their average size."

New York, two AMCs at its helm).<sup>127</sup>

Ian Morrison does not support the development of the EMO to the extent that Kleinke does. He sees consolidations operable in some markets, but not in all of them, and he postulates that they are not overly cost effective except from the aspect of group purchasing; furthermore, a merger is not necessary before a group purchasing consortium is established.<sup>128</sup> An example would be the *Yankee Alliance*, a regional shared services organization, located in the Northeast, which enhances its members' financial, operational and clinical efficiency as well as its effectiveness. It assists them in helping one another in purchasing and managing supplies, evaluating care practices and improving operations. The answer probably lies between the two approaches.

Given the active involvement of large corporations in the development of the healthcare benefit plans provided to their employees, the need for the EHO will become more prevalent.

The United States has seen the closure of ten percent of all its hospitals in the past decade.<sup>129</sup> There are currently 5000<sup>130</sup> hospitals in the United States and

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<sup>127</sup>KLEINKE, p. 102, "A medical school professor in 1937, noting the large number of hospitals in debt running at 50 percent capacity, suggested that their financial troubles could be alleviated if some hospitals closed, raising the occupancy rates of the rest to 75 or 80 per cent. "The trouble of course, is that the hospitals are sectarian, or partially endowed, or are run for the individual benefit of some surgeon or staff", STARR, p. 176-177. In less densely populated areas a number of mid-size hospitals have formed systems with the state-run university hospitals if there is one located nearby. At the same time they have repositioned themselves geographically by relocating their facilities to areas that are accessed more easily by emergency vehicles and aircraft.

<sup>128</sup>Re: MORRISON, p. 180.

<sup>129</sup>Re: KLEINKE, p. 86.

<sup>130</sup>Re: KLEINKE, p. 100.

half of these are considered to be under-utilized and over-subsidized.<sup>131</sup> Risk assumption, consumerism, consolidation, integration, and industrialization will effect market forces and bring about more closures and needed corrections. All healthcare systems will be affected, sectarian, non-sectarian, non-profit and for-profit. What is noticeable is that the aim is to deliver quality healthcare at reduced cost but not necessarily to individuals who cannot afford it no matter what the cost. The hospital, a place to which the poor went or were taken is now out of reach for at least 45 million people in the United States.

### 3. OTHER DEVELOPMENTS IMPACTING HEALTHCARE SYSTEMS

Some research issues which will eventually impact the healthcare systems in the United States are: predictive genetic testing, xenotransplantation,<sup>132</sup> neonatal treatment protocols (preemptive abortion),<sup>133</sup> and stem-cell research.<sup>134</sup> Other

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<sup>131</sup>"While the general trend in the twentieth century has been toward more administrative control and more structure in the organization of hospitals, they remain loosely coordinated, as does the system as a whole. Within the hospital, there continue to be three separate centers of authority - trustees, physicians, and administrators - posing a great puzzle to students of formal organizations. Sociologists have wanted to know why the hospital departs from the standard model of a bureaucracy in lacking a single, clear line of hierarchical authority. Economists have wanted to know what the hospital maximizes if it does not maximize profit," STARR, p. 179.

<sup>132</sup>Transplantation of animal organs or cells/tissue to humans.

<sup>133</sup>On September 28, 2000, the United States Food and Drug Administration approved the use of RU-486, Mifeprex (mifepristone). The pill has been approved for use in France since 1988. The process requires three visits. The first visit the patient takes Mifeprex. Forty-eight hours later the patient takes misoprostol (a prostaglandin drug) which causes contractions. The third visit is to confirm successful completion. Before a doctor can prescribe the drugs he must be qualified to determine the length of a pregnancy and refer to surgical services (traditional abortion) as backup. The procedure is 92 to 97 percent effective. It is ineffective in some 5 percent of women. In 1 percent of women severe bleeding can occur and 2 percent will need a blood transfusion. No more than 49 days can have passed since the start of her last menstrual cycle. The use of Mifeprex is subject to state laws already governing abortions which still apply with possibly more coming. This development might refocus the issue of abortion on the patient and her physician. D. FRANCE and D. ROSENBERG, "The Abortion Pill" in *Newsweek*, 136 (2000), No. 15, pp. 26-30. See also R.

issues immediately impacting healthcare systems are: euthanasia, the uninsured and emergency medical systems (Ers), mandated employer coverage of contraceptives,<sup>135</sup> patient rights issues, universal coverage (*Medicare*) and lack of integrated physician/hospital patient care record management.

### 3.1 EUTHANASIA

Euthanasia and patient assisted suicide have been exercised with increasing frequency. On October 27, 1997, the Oregon Death with Dignity Act went into effect which allows physician assisted suicide as a legal medical option for terminally ill residents of Oregon.<sup>136</sup> Recently, the Dutch parliament has passed legislation to

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MAHONEY, "Federal Agency Approves RU-486 for United States", in *Origins*, 30 (2000-2001), pp. 273, 275-276.

<sup>134</sup>Use of pluripotent stem cells derived from human embryos (in vitro fertilization) or human fetal tissue. Human pluripotent stem-cells are cells that are self-replicating, are derived from human embryos or human fetal tissue, and are known to develop into cells and tissues or the three primary germ layers. R. DOERFLINGER, "New Embryonic Stem-cell Research Guidelines Criticized", in *Origins*, 30 (2000-2001), p. 193.

<sup>135</sup>Re: D. SCHNURR, "Mandating Employer Coverage of Contraceptives: Protecting Conscientious Objection", in *Origins*, 30 (2000-2001), pp. 161, 163. Washington D.C. city council voted to require all employers (except religious organizations) to buy the coverage for a broad range of contraceptives and "morning-after drugs" for their employees. Congress objected indicating that a clause, providing exceptions for religious beliefs and moral convictions, was to be added to any future council action of this nature.

<sup>136</sup>The Oregon *Death with Dignity Act*, was a citizens' initiative which Oregon voters passed in November 1994 with a 51 percent in favor a 49 percent opposed vote. After myriad legal proceedings the legal injunction was lifted on October 27, 1997. In November 1997, Measure 51 which was authorized by the legislature was placed on a general election ballot and asked Oregon voters to repeal the *Death with Dignity Act*. The people of Oregon chose to retain the *Act* by a margin of 60 percent to 40 percent. This is a 9 percent increase in support. A strict process is required in order for a physician to assist in a patient's suicide. There is the involvement of the primary physician, the consulting physician, counseling, an informed decision, family notification, written requests, opportunity to recind the request, waiting period, medical records documentation, residency requirement, and reporting requirements. The primary reasons given by those choosing this option are: maintenance of their dignity and control of their life. OREGON DEPARTMENT OF HUMAN SERVICES, Oregon Health Division, Center for Health Statistics, "Oregon's Death with

allow for the legality of physician assisted suicide.<sup>137</sup> Although this issue might be currently unacceptable in various jurisdictions, eventual demographic and societal changes effect changes in attitudes. As the population in the United States ages such issues will continually be brought to the forefront. The federal government and some states provide legal protection for conscientious objection based on religious and moral grounds relating to the execution of such practices.<sup>138</sup> This could also change as a substantial number of individuals seek a painless passage out of life.

### 3.2 MANDATED EMPLOYER COVERAGE

Mandated employer coverage of contraceptives is an issue which has recently surfaced in city council action in Washington, D.C. Such requests could be forthcoming from other jurisdictions and employers could eventually be forced by union negotiations to accommodate similar action for their employees. This current action affects only prescription drugs. It does not yet affect surgical procedures. Catholic hospitals would be bypassed as they would not be able to contract provider

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Dignity Act", via net access at [www.ohd.hr.state.or.chs](http://www.ohd.hr.state.or.chs), 23 June 2000.

Legislation has been proposed in the U.S. Senate (S. 2607) and the U.S. House of Representatives, (H.R. 5544), called the *Pain Relief Promotion Act of 2000*, which would disallow intentional use of controlled substances in assisting suicides. This legislation is an attempt to counteract existing and proposed state legislation permitting physician assisted suicide.

<sup>137</sup>Re: M. FLETCHER, "Dutch Move to Legalize Euthanasia" in the *Ottawa Citizen*, October 30, 2000, pp. A1, A2. See also E. ONSTAD, "Mercy Killing To Become Dutch Law," in *National Post*, 3 (2000), No. 29, pp. A1, A15. See A. M. OWENS, "Assisted Suicides for Non-Terminal Patients Proposed", in *National Post*, 3 (2001), No. 66, p. A2: "Belgium has passed draft legislation on assisted-suicides that allow doctors to help non-terminal patients to die."

<sup>138</sup>Individuals cannot be forced to participate in such practices even if it was part of their employment if it affects their conscience.

services under such circumstances.<sup>139</sup>

### 3.3 PATIENTS' RIGHTS ISSUES

The federal government has a committee reviewing the matter of patient rights with the goal of eventually developing a national "patients' bill of rights". A number of states are taking their own initiatives in this area. The effects of managed care created in people a sense of non-control of their healthcare needs. Some of these have formed groups, and through referendums have pressured their state governments to consider some controls and protections. Allied with this movement are "universal coverage" issues. Patients' rights groups and universal coverage groups are collaborating, at least on the state level, to obtain both goals. The concept of "right to healthcare" is emerging and is permeating the American psyche. The former understanding that "healthcare is a privilege" is shifting to one of healthcare as a "right". At an increasing rate the use of the internet and the explosion of medical information online is generating an interest in healthcare by the general population.

### 3.4 MEDICARE

*Medicare* will impact the healthcare system as the "age" eligible population increases. The federal government's contribution to the healthcare industry is forty

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<sup>139</sup>If the Catholic Health System is also a Provider-sponsored organization it could place itself in a double-indemnity situation: morally covering a procedure and providing a procedure. Also a PSO is counter productive to an acute care facility. An acute care facility needs patients while a PSO would work to lessen the number of patients going to such a facility.

percent of the three trillion dollars that is spent on healthcare annually.<sup>140</sup> Over the next ten years, this will increase and the number of individuals on *Medicare* plans will begin to outnumber individuals on employer provided plans. The incentive will be towards “universal coverage” plans which will eventually provide coverage to all Americans.<sup>141</sup> The current leverage of Catholic healthcare systems can be utilized for assisting in the realization of the need for universal health coverage in some form. Lobbying is only one form of impacting legislation; other actions need to be conducted more openly through educating people to the realities of healthcare in the United States. In this context the issues of abortive and contraceptive services would possibly surface.

### 3.5 HEALTHCARE INFORMATION SYSTEMS

Currently there is a need for physician/acute-care data bases with information on patients being served. Lack of such information leads to a lesser quality of care and costly life threatening mistakes. The individual healthcare systems are directing some of their efforts and resources to rectify this situation within their healthcare systems. However, while these systems are focussing on integration of their systems as a priority, it would really be beneficial if a uniform patient treatment record would be developed to allow more portability of the information, especially if the patient moves from physicians to hospitals and in and out of systems.<sup>142</sup> Some

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<sup>140</sup>Re: GINZBERG, p. 124.

<sup>141</sup>Re: GINZBERG, p. 154.

<sup>142</sup>Donna E. Shalala, then secretary of the U.S. Department of Health and Human Services announced on December 20, 2000, “the nation’s first standards for protecting medical records and other personal health information maintained by doctors, hospitals, health plans, insurers and others. [...] The measure was mandated by Congress when it failed to pass comprehensive privacy legislation. The new standards: limit the release of information without the patient’s consent; give patients new rights to access their medical records and to know who else has them; restrict most

of this is mandated by *Medicare*.<sup>143</sup> The use of the internet will gradually become a primary means of this portability, but a standardization process would make the information much more readable and therefore usable.

Healthcare information technology is developing quickly to meet the incursion of e-health and e-commerce although it is already making an impact. A national collaboration of Catholic healthcare systems in developing a standardization of patient care and record keeping can significantly impact healthcare delivery in the United States. We have mentioned "economies of scale" in healthcare. In reality, these do not exist nor can they exist unless there is some degree of standardization in healthcare delivery. This could result in reduced healthcare costs, a greater continuum of care and more efficient handling of patient needs from prevention to treatment.

### 3.6 UNINSURED AND EMERGENCY SYSTEMS

Those Catholic healthcare systems currently operating emergency systems (emergency rooms) as well as other non-profit hospitals are feeling the economic pressure of treating a significant number of uninsured. The uninsured can be refused treatment in a private physician's office but not at a hospital which accepts *Medicare* or *Medicaid* patients. Since a significant number of these individuals fall

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disclosure of health information to the minimum needed for the intended purpose; establish new criminal and civil sanctions for improper use or disclosure of records; establish new requirements for access to records by researchers and others." M. LEONARD, "Physicians, Patients Unsure of Effects of New Regulations", in *The Charleston Gazette*, December 21, 2000, pp. 1C, 8C.

<sup>143</sup>The Health Insurance Portability and Accountability Act of 1996 (HIPPA), goes into effect in two years (2002). It sets new standards to protect health information especially that which is used in electronic transactions. D. LITTLE, "Getting Tangled in Health Care's WEB," in *Business Week*, 18 December 2000, pp. 153-154.

between eligibility for coverage offered by *Medicare* and *Medicaid* (most are employed) it falls upon the non-profit hospital (operating as a charity) to carry the financial costs. The population of this particular group is increasing and the ER is the only access available to them to obtain medical care. If this trend continues, and there is nothing indicating that it will subside, a number of non-profit hospitals, some of which are Catholic, will become financially insolvent unless some other form of financial assistance is provided. For the record, it should be stated that the majority of the poor are assisted by public health facilities.

### 3.7 HEALTH EDUCATION AND PREVENTATIVE HEALTHCARE

The mobilization of Catholic resources in the development of health education and preventative healthcare can be more effective than any treatment provided by any system. Holistic health movements have been given some budgetary considerations but not enough to provide needed impact.<sup>144</sup> The returns on this type of investment are not immediate but, in the long term, lives will be prolonged and a sense of responsibility will develop for maintaining one's own health and a healthy lifestyle. Some of these practices are carried out on local levels in collaboration with Catholic Charities, but there is a need to expand preventative healthcare throughout the population. The use of the internet to provide and allow for access of information is increasing. *Healthon/WebMD* is a healthcare portal for consumers to obtain medical/health information although at the same time they are subjected to marketing strategies.

Non-profit hospitals (although not all have a religious affiliation) comprise

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<sup>144</sup>Some HMOs were aware of the benefits of this type of care and offered incentives for its utilization. However, since the HMOs were not guaranteed the same contract each year it was not cost-effective and they did not continue, as there was no foreseeable return on investment.

eighty percent of the existing hospitals in the United States.<sup>145</sup> The current model of healthcare in the Catholic Systems will continue to evolve, primarily because they reflect the direction of healthcare today. The emerging EHO model will continue to evolve with the various networks and systems creating the mega-systems. Regional shared services organizations will assist the smaller entities to maintain a market presence. Employee benefit plans will continue to undergo significant changes as the employers increase their active involvement in this area. Healthcare in the United States is in need of reorganization, from standardization of treatment to standardized patient care records, from physicians to technicians, from inpatient care to home healthcare, from over-the-counter drugs to prescription medicines.

The Catholic healthcare systems and mega-systems have fairly well positioned themselves in the markets to compete effectively with other entities, especially the for-profits, while maintaining their juridical personality and protecting their patrimonies. They are also establishing greater presence in long term nursing care facilities and home health care. These areas are currently developing as the profit centers of the future (*Medicaid* is one of the means of funding in this area as *Medicare* and regular insurance provide some coverage, but they do put the resources of the Church at the service of disenfranchised).

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<sup>145</sup>Re: S. LUTZ and E. P. GEE, *Columbia/HCA-Healthcare on Overdrive*, New York, McGraw-Hill, 1998, pp. 3-4.

#### 4. FUTURE MODELS OF CATHOLIC HEALTHCARE

##### 4.1 VARIATIONS OF CURRENT "CATHOLIC" HEALTHCARE ARRANGEMENTS

Having presented a synopsis of the current state and future direction of healthcare in the United States, we turn to Catholic healthcare organizations as civilly incorporated apostolates, usually with non-profit<sup>146</sup> status, as a juridic entity in the Church. Catholic health organizations continue to place emphasis on their organizational mission which is the continuation of the healing ministry of Jesus Christ. In addressing and pursuing market strategies, Catholic health organizations have gravitated towards the EHO concept to some degree but it is not the only arrangement available to them.

##### a) FORMS OF CATHOLIC HEALTHCARE ARRANGEMENTS

Some of the various forms of healthcare arrangements currently found within the context of "Catholic" healthcare are listed in the publication of the Catholic

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<sup>146</sup>The non-profit sector is responsible for a large amount of economic activity that economists have considered to be of primary importance; it is estimated to conduct a fifth of research and development (R&D) and accounts for almost all production of high-skill human capital outside on-the-job training and the vast majority of the healthcare produced world-wide. In the United States, the growing not-for-profit economy employs about 10 percent of the labor force. About half of the total employment in the non-profit sector is in health services, concentrated in hospitals, of which 85 percent of employment is non-profit. Education and research make up the second largest component of non-profit employment, about 20 percent, followed by social services, such as child care and job training, which make up about 15 percent of the non-profit labor force. D.A. CUTLER, *The Changing Hospital Industry*, Chicago, The University of Chicago Press, 2000, p. 325 (hereafter cited as CUTLER).

Health Association, *In Their Own Words*,<sup>147</sup> a document by sponsors for sponsors. It indicates the various arrangements in healthcare at present, examining six of those arrangements more particularly. These are:

1. "Joint sponsorship": a sponsorship with other Catholic systems, facilities, corporations or sponsors.<sup>148</sup> The joint sponsorship and unicameral governance structures usually do not involve alienation of temporal goods. These are Catholic public juridic persons or systems or facilities, separately incorporated, operated by public juridic persons, who have chosen to form a new civil structure to enhance visibility of Catholic healthcare in a region or area and to increase the economies of scale in providing healthcare services.

2. "Catholic/Not for Profit Arrangement": Catholic sponsor and not-for-profit sponsor enter into a common affiliation to co-sponsor a third entity which need not be identified as Catholic *per se* but commits itself to observe the substance of the "*Ethical and Religious Directives for Catholic Healthcare Services*".<sup>149</sup> The Catholic/not-for-profit arrangement is used in areas where there are fewer Catholic healthcare facilities or systems and the Catholic system or facility collaborates with a community or other sectarian facility or system. The most commonly used model is that of joint sponsorship. The sponsors create the organization and sponsor it.

3. "Unicameral Governance Structure": powers previously reserved to a separate member are placed within the corporate board of the health care system which is organized into Class I and Class II directors, with reserved powers accruing

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<sup>147</sup>CATHOLIC HEALTH ASSOCIATION OF THE UNITED STATES, *In Their Own Words*, St. Louis, MO, Catholic Health Association of the United States, 1996, p. v (hereafter cited as CHAWORDS).

<sup>148</sup>Re: CHAWORDS, p. 2.

<sup>149</sup>Re: CHAWORDS, p. 7.

to only one class.<sup>150</sup>

4. “Juridic Persons”: an organization becomes a juridic person and is in effect its own sponsor, existing independently of its founding sponsors.<sup>151</sup> Or the founding sponsors continue serving in defined roles.<sup>152</sup> The juridic person model, private or public, creates a Church entity that is itself the sponsor of a system. The juridic person enters into sponsorships, partnerships, collaborative and management relationships with other systems or facilities. There are more issues relating to temporal goods and governance in the case of public juridic persons, but nothing that prevents flexibility.

5. “Private Association of the Christian Faithful”: these are established among the Christian faithful by means of a private agreement to strive by common effort to promote a more perfect life, to foster public worship or Christian doctrine, or to exercise other apostolic works, namely to engage in efforts of evangelization, to exercise works of piety or charity, and to animate day-to-day life with the Christian spirit.<sup>153</sup> The private association of the faithful model was developed to increase the opportunities for the laity to involve themselves directly in the mission of the Church. However, due to the many forms of associations and potential for confusion and lack of direction, it is little used or recommended in the healthcare ministry in the United States.

6. “Sale/transfer-Use of Proceeds for new purposes”: sponsors sell or transfer a facility/organization for the purpose of refocusing their remaining ministries or

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<sup>150</sup>Re: CHA/WORD, p. 11.

<sup>151</sup>Re: CHA/WORD p. 15.

<sup>152</sup>Re: CHA/WORD, p. 15.

<sup>153</sup>Re: CHA/WORD p. 21.

developing new ones (for example, a healthcare foundation).<sup>154</sup> The funds generated through the selling of facilities or organizations are used to focus on specific remaining ministries or to develop new ones. Alienation of temporal goods is usually involved in this action.

The combination of joint sponsorship, unicameral governance structures and the juridic person is increasingly the major arrangement in use today.<sup>155</sup> The Catholic/Not-for-profit structure is used where and as needed as is the Sale/transfer-Use of Proceeds model for new purposes. Add to these combinations the EHO mode and a clearer yet complex structure emerges.

### **b) THE EMERGING CATHOLIC SYSTEMS**

The emerging Catholic systems can be recognized in the following tableaux. The sponsors (juridic persons) create a joint sponsorship organization under a civil entity with a unicameral governance structure and, usually, under a separate name, arranged to have a public juridic person established. The innovative ways and

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<sup>154</sup>Re: CHA/WORD p. 23. The conversion of non-profit hospitals into for-profit hospitals initially aroused little debate. However, various health associations made some of these transactions the center of a number of disputes. Little legislation existed in most states to deal with this phenomenon. But, over the past few years legislation has been passed in a number of states which clarifies the responsibility of the authority having jurisdiction (usually the Attorney General). The State of Nebraska in 1996 passed the first hospital conversion bill in the United States and, by 1998, 13 states and the District of Columbia had enacted similar legislation. Since 1998 at least 34 other states have enacted such legislation or have bills pending. The conversion of non-profit hospitals (sectarian and community hospitals) to for-profit hospitals has resulted in a number of foundations being created. Under federal tax law the proceeds of these sales must be put to charitable use to repay the public for years of tax-exemptions and donations and the setting up of these charitable foundations is one way of accomplishing this. There is increasing scrutiny of this practice by the authorities due to some inappropriate use of funds.

<sup>155</sup>This reflects a move towards the EHO model of organization. It allows for "capitation" to be maximized in an acceptable manner.

means of sponsorship also provide the religious institute with other options should the need arise to alienate or redirect its ministries. They address the reality that not all religious institutes will be able to continue, for whatever reason, their current ministry in healthcare. A sponsor finding itself unable to continue its healthcare ministry has the option of transferring its facilities or system to a public juridic person. An example is *Catholic Health East*, a civilly incorporated joint sponsorship organization with various classes of corporate members.

The members of *Catholic Health East*, a civil corporation, who are selected from individually constituted public juridic persons in the Church, have arranged to have the public juridic person named "*Hope Ministries*"<sup>156</sup> established. The intent of this arrangement is for "*Hope Ministries*" to assume the sponsorship of the institutions governed by the religious institutes constituting *Catholic Health East* should any one of them find it impossible to continue their healthcare ministry. This is achieved by transferring the facility or system of the institute (ecclesiastical property) to the public juridic person "*Hope Ministries*" in which *Catholic Health East* has a defining role. This process simplifies the alienation procedures (cc. 122-123 and cc. 1291-1294) should they be required. The difference between *Covenant Health Systems* and *Hope Ministries* is the fact that *Covenant* is the public juridic person and the civil corporation, whereas *Hope Ministries* is a "holding" public juridic person existing as a sponsorship entity.

However, this does not prevent a religious institute from removing itself from the joint sponsorship organization if it chooses to do so (procedures are usually spelled out in the bylaws).

On a similar note, there exists *Catholic Health West* (CHW), a civil corporation of which most of the participants are public juridic persons in the

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<sup>156</sup>Received pontifical juridic status in July, 2000.

Church.<sup>157</sup> CHW is a California civil public benefit corporation but has not requested distinct juridic status in the Church at this time.<sup>158</sup> Property is contributed to the corporation as each sponsor becomes affiliated in furtherance of its shared mission in the healing ministry of Christ.<sup>159</sup> CHW also has various classes of corporate members. As a civil corporation, its members seek to observe pertinent civil law and Catholic canon law.<sup>160</sup> It has assembled 48 hospitals in California, Arizona and Nevada with annual revenues of up to 5 billion dollars. It donated 200 million dollars in community benefits and care to the poor in 1999.

*“Trinity Health”*, also received juridic person status in July, 2000 as *“Catholic*

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<sup>157</sup> *Catholic Health Care West* is a health care system originally sponsored by the Sisters of Mercy, Auburn and Burlingame Regional Communities; the Sisters of St. Dominic of Adrian, Michigan; the Daughters of Charity, Province of the West; the Sisters of Charity of the Incarnate Word of Houston, Texas; the Dominican Sisters of San Rafael; the Sisters of St. Catherine of Siena, Kenosha, Wisconsin; the Franciscan Sisters of the Sacred Heart of Frankfort, Illinois and the Sisters of St. Francis of Penance and Christian Charity of Redwood City. It also has strong partnerships with several community and district hospitals.

<sup>158</sup> Kleinke indicates that “the innovations of West Coast markets continue to serve as leading indicators for where the rest of healthcare in the United States is headed”, KLEINKE, p. 50. Since CHW has a mixture of participants (sectarian and community hospitals and systems, Catholic/non-profit grouping) and because of its market area, it is presumably less complex for it not to exist as a public juridic person.

<sup>159</sup> CHW does not intend these contributions by the sponsors to constitute alienation under canon law. Each sponsor retains canonical responsibility for its temporal goods.

<sup>160</sup> Since Catholic hospitals do not perform abortions or contraceptive procedures, they are vulnerable in some markets to being passed over as the facility of choice. CHW continues to uphold itself as a Catholic entity but places emphasis on its logo, CHW. CHW activities are under the scrutiny of “merger watch”, a group of “Planned Parenthood” supporters who watch for merger activity of Catholic hospitals in the United States and assess the potential effects of such mergers on the opportunities of individuals who might seek termination of pregnancies or contraceptive procedures. If the Catholic Hospital is the only healthcare facility in the area, they would see it as limiting one’s access to healthcare and attempt legal action to block such mergers. CHW operates in three states, California, Arizona and Nevada. See K. O’ROURKE, “Hospitals: Ethical and Religious Directives”, in *Chicago Studies*, 27 (1988), No. 3, p. 277: “The *Church Amendment*, passed in June of 1973, allowed health facilities representing religious groups to refuse surgical or medical procedure which were contrary to their beliefs, even though the hospitals accepted federal funds. In sum, the *Church Amendment* which is still in effect, protected the rights of conscience of Catholic hospitals and afforded them legal protection from those who wished to treat Catholic hospitals as agents of the state.”

*Health Ministries*". It is a juridic person comprised of members who are public juridic persons in the Church. The initial participants are the Sisters of Mercy of the Americas, Regional Community of Detroit, and the Congregation of the Sisters of the Holy Cross, South Bend, Indiana.

The structures of these systems are a response to their market environment and influences. Some are in heavily populated areas and regions and others have a mixture of densely and thinly populated ones. Some are comprised exclusively of all Catholic organizations, while others have a mixture of non-Catholic and Catholic organizations. Most of their members and a few of the systems are juridic persons in the Church. Those members that are juridic persons in the Church are usually public juridic persons. Some systems have chosen not to acquire juridic personality in the Church while others might not have the support of the local bishops, for whatever reason, to seek or obtain juridic personality.

Healthcare is currently considered by "Wall Street" a growth industry but, due to its volatility, is less desirable to investors. The profitization of hospitals created a moral crisis of sorts for those who think that healthcare delivery should be above the truculence of the business world.<sup>161</sup> For-profits or investor-owned systems stood ready to take over small community hospitals as well as the most prestigious

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<sup>161</sup>Re: KLEINKE, p. 27. Hospitals, until the early 20<sup>th</sup> century were primarily for the poor and working poor. This was a reality from the pre-Christian era and certainly a work dating back from the early days of the Church. The evolution of hospitals to centers of use and control by the medical profession for surgical and medical procedures, the increase of patients able to pay or covered by insurance has skewed the original purpose of hospitals. The fact of the matter is that due to the industrialization of healthcare, the poor have been somewhat shunted aside as the healthcare systems jockey to stay solvent and competitive. The idea that hospitals were always associated with the poor and that the various religious communities who operated hospitals were founded to pursue this end has clashed somewhat with the actual reality today that the working poor are basically without coverage and Catholic hospitals are finding it difficult to provide that coverage as was done in the past. In the past, 100 percent of the patients were poor, today it might be less than 10 percent at any given time. Where the wealthy and paying sick were once treated in their homes and the poor in the hospital, the reverse is now true if the poor have a home at all.

hospitals in communities.<sup>162</sup> To compete effectively, the non-profit corporations quickly adapted most of the practices of the for-profits. In the past, excess monies collected in one area of healthcare, i.e., insurance and *Medicare* payments, could be moved to cover a deficit in another area, i.e., care of the uninsured. But with the advent of managed care and the *Balanced Budget Act of 1997*, these safety nets have vanished, even for the Catholic healthcare systems.

#### 4.2 CANONICAL STATUS, MERGERS AND CONTINUED VIABILITY OF CATHOLIC SYSTEMS

The current canonical status of the healthcare apostolate in the United States has been determined from the differences observed between the public and private juridic persons resulting from our analysis. The Holy See has granted public juridic status, but rarely private juridic status, to healthcare systems (small operations such as nursing homes do not seem to be a problem). The only health care system in the U.S. that has obtained "private" juridic status in the Church is *PeaceHealth* primarily because circumstances and timing were right and no prelate opposed its creation. Most of the participants in the Catholic Healthcare systems are public juridic persons in the Church. In our analysis, we pointed out that the differences between the public and private were few and were germane to the classification of ecclesiastical property and status. The current practice is (1) non-approval of requests by public juridic persons to convert to private juridic person status; (2) approval of small facilities such as elder care residences to obtain private juridic status; (3) approval of a public juridic person as a "holding entity" for civil corporations comprised of public juridic persons. There is a sense that if an entity wishes some type of formal recognition by the Church regarding its mission, then it would fare better as a public

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<sup>162</sup>Re: KLEINKE, p. 27.

juridic person. It is sensed that the private juridic person is seen as an under-supervised entity in the Church and therefore outside the parameters of its regular environments. Although canon law was founded on Roman Law, it has been slower in its continued adjustment to the world milieu. Paul Starr predicted and summarized the current situation regarding healthcare:

The rise of a corporate ethos in medical care is already one of the most significant consequences of the changing structure of medical care. It permeates voluntary hospitals, government agencies, and academic thought as well as profit-making medical care organizations. Those who talked about "health care planning" in the 1970s now talk about "healthcare marketing". Everywhere one sees the growth of a kind of marketing mentality in health care. And, indeed, business school graduates are displacing graduates of public health schools, hospital administrators, and even doctors in the top echelons of medical care organizations. The organizational culture of medicine used to be dominated by the ideals of professionalism and voluntarism, which softened the underlying acquisitive activity. The restraint exercised by those ideas now grows weaker. The "health center" of one era is the "profit center" of the next.<sup>163</sup>

Workable formats (somewhat standardized) for requesting and establishing juridic status have been developed and are extensively used. The Catholic healthcare systems will in fact become larger over the next ten to fifteen years, since growth, critical market mass and services are paramount for survival in this ministry. The Catholic systems will of necessity continue to merge until there are possibly four or five such systems in the United States covering the Northeast, Southeast, Mid-America, Northwest, and Southwest.

In referencing "mission" as the main criterion, in continuing the healing mission of Christ, we were not able to establish a distinguishing differentiation between the work of a private juridic person and that of a public one in the Church,

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<sup>163</sup>STARR, p. 448.

except for the fact that the ecclesiastical authorities have but rarely established a private juridical person in the healthcare apostolate. The fact that an apostolate is private does not take away from its mission in the Church. The private juridic person does no less, nor is it less dedicated than the public juridic person in carrying out its mission in the Church. Although the major canonical difference is “ecclesiastical property” and “official representing entity” of the Church, the reality seems to be that the type of juridic person does not affect the “mission” of a truly dedicated healthcare apostolate. The very fact that an entity wishes to establish any type of official recognition with the Church is in itself significant. It wishes a Church affiliation in as much as it gives an elevated connotation to the work being done.

In an age where healthcare has turned into another industry, those who are truly dedicated to the ministry seek to keep it above the fray. However, the ecclesiastical authorities seem to approach healthcare as if it were a two edged sword, on one side slicing through sickness and effecting cures and the other side slicing through morality and potentially slipping into procedures that could be constituted as abortive or contraceptive. It would seem that the concern should be with more than both sides of the sword. It should place emphasis on the purpose of the juridic status, public or private, and the commitment that is consonant with the mission of Christ.

#### **a) THE CONTINUANCE OF CATHOLIC HEALTHCARE MINISTRY**

The widespread movement of healthcare entities into EHOs or similar structures will not inherently produce a negative effect on the mission of the Church in healthcare. Each of the Catholic systems has mission education programs

established in either the primary system, such as *Covenant Health* and *PeaceHealth*, or in the individual subsystems. However, the behavior of the Catholic healthcare system must match the words of its written mission statements and values. As a juridic person, in the Church, public or private, the approved purpose or purposes are piety, the apostolate and charity whether spiritual or temporal.

### (1) ADJUSTING THE PURPOSE OF HOSPITALS

In the first chapter we indicated that the hospital until the early part of the 20<sup>th</sup> century was a place for the poor. It was given tax-exemptions since the inception of federal income taxes in the United States. Non-profit hospitals were not a large part of the economy and engaged mainly in charitable activities and were usually affiliated with a religious group or philanthropic foundation. Normally, the sick were cared for in their homes by their families. In the latter part of the 19<sup>th</sup> century, surgeries began to increase due to the use of antiseptics and sterile procedures. Surgeons found it more and more difficult to operate in the homes and decided it would be easier to move their practice to a central location and the hospital became the place of choice. The training of student nurses in the hospitals had already positioned nurses as staff in hospitals.<sup>164</sup>

Changes in medical technology and financing created a significant change in the role of hospitals in society. The facility once provided for the poor is now sustained for those who can afford it or have adequate coverage for payment of services. Those who were able to afford treatment in their home are now given treatment in the hospital, while some of those who could not afford treatment in their

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<sup>164</sup>Usually the only time nurses worked in a hospital setting was during their training period. Afterwards, nurses worked mainly as private duty nurses. As the medical profession moved into the hospital setting so too did the nurses.

home are now given treatment at home if they have a home or receive no treatment. The majority of individuals being treated by hospitals enabled them to make stable revenues and thus positioned the hospital for financial investment. However, there continues to be a significant group, the working poor, who are receiving very little care or no care at all.

Those who have adequate employment and those who are extremely poor have some degree of access to healthcare through employer provided health plans or *Medicaid*.<sup>165</sup> There are, however, up to sixty million Americans at any given time who are employed but uninsured and without medical coverage, the working poor. Due to the impact of managed care procedures and the execution of the *Balanced Budget Act of 1997*, some Catholic healthcare systems have found it financially challenging to cross-subsidize care to those who have a need for it but cannot afford it.<sup>166</sup> As a juridic person in the Church, with the mission of continuing the healing mission of Christ to all, especially to the poor, the Catholic system is experiencing some degree of frustration.

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<sup>165</sup>West Virginia Health Right is the only source of free health care for the poor people in the area. All services, diagnosis, treatment and referral, are provided at no charge to the patient. People served by the facility have incomes below the federal poverty level and are without private insurance or *Medicaid*. M. LEONARD, "Health Right Clinic Helps Needy", in *The Charleston Gazette*, December 19, 2000, pp. 1A, 9A.

<sup>166</sup>The Robert Wood Foundation, the nation's largest health-care foundation is funding a three year research project to determine the health and economic consequences of not having access to health care. A 3.7 million dollar grant was awarded to the Institute of Medicine. Although physicians believe that lack of insurance can trigger or worsen health problems a national survey indicated that a large number of people believe that the uninsured receive sufficient health care. It is hoped that the results of the study will bring about a change in conventional wisdom and policy makers will work to get more people health coverage. Uninsured people often seek care in emergency rooms, where it is most expensive, and rarely get screening tests, so dangerous conditions such as diabetes, high blood pressure and cancer go undiagnosed for years. ASSOCIATED PRESS, "Uninsured To Be Subject of New Study", in *The Charleston Gazette*, December 19, 2000, p. 3A.

**(2) UNCOMPENSATED CARE AND DIVERSIFICATION**

The location of the acute care facility determines the amount of uncompensated care provided by it.<sup>167</sup> The location is usually the result of a decision made decades ago. If a facility is located in an impoverished area, then the number of uncompensated care cases increases. If a facility is located in an well-to do area then the uncompensated cases would be less. For-profits tend to locate in the latter. Hospitals and their mega-systems have as EHOs moved heavily toward diversification in order to offset their reduced revenue as a result of managed care and reduced call for inpatient care. Some of the activities to which the for-profit, non-profit and Catholic mega-systems have directed themselves are the following: (1) preventative healthcare, screenings, mobile vans, websites; (2) occupational medicine clinics; (3) urgent care centers; (4) wellness clinics; (5) nursing homes; (6) home health programs; (7) durable medical equipment companies; (8) for-profit joint ventures such as: primary care clinics, medical office buildings, surgi-centers, imaging centers and health clubs.<sup>168</sup> These diversifications help to offset reduction in inpatient revenues, help to gain market share, strengthen ties with physicians, and reduce the uncertainty in the demand for care which can skew a facility's budget projections.

However, there is concern that the trend toward diversification in response to financial pressures raises social concerns in so far as these new activities may divert hospitals from some of their traditional roles and social responsibilities.<sup>169</sup> Diversification has allowed non-profit hospitals to keep their profits relatively high, allowing them to continue to cross-subsidize care for unprofitable patients. This

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<sup>167</sup>Re: CUTLER, p. 206.

<sup>168</sup>Re: CUTLER, p. 205.

<sup>169</sup>Re: CUTLER, p. 201.

allows hospitals to become less and less dependent on philanthropy. They are seeking to create a more consistent revenue base. Indicators are that the number of uninsured people grew more quickly in the last decade than did the supply of uncompensated care.<sup>170</sup> The share of uncompensated care provided by non-profit hospitals has held at a steady rate of 56 percent while the share of uncompensated care provided by for-profits has increased from 4.1 percent to 5.3 percent.<sup>171</sup> This is substantiated by findings that indicate that joint ventures and creation of subsidiaries were not necessarily motivated by the desire to expand charitable activities directed to the care of the medically indigent.<sup>172</sup> In actuality, discretionary funds seem to be directed primarily to new product development, joint ventures, and investment in financial markets.<sup>173</sup> The primary motivation of non-profit hospitals is their own continuation and achieving what is necessary and possible, whereas preserving the supply of specific social goods such as care for the indigent is a secondary consideration.<sup>174</sup> Survival is certainly a paramount concern for any organization but the danger is the imbalance that can occur if one loses sight of the purpose.<sup>175</sup>

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<sup>170</sup>Re: CUTLER, p. 202.

<sup>171</sup>Re: CUTLER, p. 202.

<sup>172</sup>Re: CUTLER, p. 210.

<sup>173</sup>Re: CUTLER, p. 210.

<sup>174</sup>Re: CUTLER, p. 211.

<sup>175</sup>An article appearing in a Harrisburg, Pennsylvania newspaper gives us an indication of some of the things that are happening in some areas and drawing the interest of the press. "PinnacleHealth System officials bristle at the probability that Holy Spirit Health Systems, Holy Spirit Hospital, in East Pennsboro Twp. will start a full-scale heart-care program. The Holy Spirit officials maintain that a choice of heart programs will benefit patients. Holy Spirit plans call for a 120,000-square-foot addition to the hospital. It would cost between \$45 million and \$60 million to build and furnish the addition. Holy Spirit officials indicate that with an aging population heart disease will be on the increase and they want to provide the services the community needs. Holy Spirit Health System officials unveiled their plans the same day that PinnacleHealth Systems shut down the heart program at Polyclinic Hospital and relocated it to Harrisburg Hospital. From 1998 to 1999 PinnacleHealth Systems Polyclinic and Harrisburg hospitals performed 1, 836 open-heart surgeries, the most of any single health system in the state (Pennsylvania) that year. PinnacleHealth officials

### (3) CHARITABLE AND COMMUNITY BENEFIT

In Chapter Three we presented the Internal Revenue Service interpretation of “charitable” which proceeded from a definition emphasizing the “poor”<sup>176</sup> to a generalized “community benefit standard”.<sup>177</sup> This has allowed for broad interpretation by all parties involved. The question we present is, “what definition drives the non-profit Catholic hospital?” The juridic person is to encompass piety, the apostolate and charity, one of the three being sufficient. The hospital apostolate is the continuing healing ministry of Christ. However, implied in that ministry is “charity” which emphasizes care of the poor, since this was the core element of hospitals up until the beginning of the last century and more importantly is a Gospel-based goal for all Christians. There is a tendency for Catholic healthcare to get caught up in the expansionist tendency of modern healthcare.<sup>178</sup>

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claim competition from *Holy Spirit* will tax limited human resources, lead to wage wars, decrease the number of procedures at each institution (more procedures are typically associated with better outcomes) and create a costly technological arms race between the two hospitals. Apparently this was the same claim made against *PinnacleHealth System* by administrators at *Penn State Milton S. Hershey Medical Center* when it started a kidney-transplant program. A concern of *PinnacleHealth* is that there are not enough professionals to staff the facilities adequately. Phil Guarneschelli, senior vice president of corporate services for *PinnacleHealth*, stated in relation to the competition, “But for years the effect of the competition was to have two under-utilized programs and much duplication of services. Moreover, in the days before managed care, and before the *Balanced Budget Act of 1997* reduced *Medicare* payments to hospitals, many hospitals simply made more money. You got paid for everything 20 years ago. Anybody could run a health-care system 20 years ago.” J. McGAW, “Hospital’s Growth Draws Protest”, in *The Patriot - News*, 159 (2000), No. 286, pp. A1, A10. For clarification, *PinnacleHealth System* is a community-based non-profit system and *Holy Spirit Health System* is a non-profit system sponsored by the Sisters of Christian Charity of Mendham, N.J.

<sup>176</sup>The term “poor” refers first of all to those who are economically deprived, but is by no means confined to them. J. A. DWYER, editor, *The New Dictionary of Catholic Thought*, Collegeville, Minnesota, The Liturgical Press, 1994, p. 757 (hereafter cited as DWYER).

<sup>177</sup>A community benefit other than helping the poor would be: an emergency treatment center; a delivery room; and a hospital teaching program. The smaller the hospital, the greater the chance that none or only one of these services would be provided.

<sup>178</sup>Re: DWYER, p. 439.

Catholic teaching calls health-care professionals and institutions to a vision and program of action beyond this horizon of aid to individuals; it demands service to deficiencies in the systems and structures of society's healthcare practice. In large and complex societies it is the systems themselves more than the behaviour of individuals that account for widespread, patterned justice or injustice.<sup>179</sup>

This service to the deficiencies in the systems and structures of America's healthcare practice certainly needs to be addressed, as well as the care of the medically indigent and the continued need for advocacy.

How any non-profit hospital conducts itself depends on the competition in its market area. This is true also of Catholic hospitals. Some areas of the United States do not allow for-profit hospitals (Minnesota), which affects the behaviour of non-profit hospitals or systems. It is interesting to note that the non-profit hospitals dominate in the Northeast section of the United States. The states of Connecticut, Maine, New Jersey, Rhode Island and Vermont do not have any for-profit hospitals and in Massachusetts, New York, and Pennsylvania, the percentage of beds in for-profit control is under 3 percent.<sup>180</sup> The government sector is small in the Northeast, being less than 10 percent in every northeastern state.<sup>181</sup> The percentage of for-profit hospital beds exceeds 30 percent in seven states: Texas, Utah, Tennessee, Nevada, Florida, Delaware and Louisiana.<sup>182</sup> Nearly half of all for-profit hospital beds are in just three states: Texas, Florida, and California.<sup>183</sup> These factors indicate to us that competition in the Northeastern United States is mainly with other

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<sup>179</sup>DWYER, p. 440.

<sup>180</sup>Re: CUTLER, p. 291.

<sup>181</sup>Re: CUTLER, p. 291.

<sup>182</sup>Re: CUTLER, p. 291.

<sup>183</sup>Re: CUTLER, p. 291.

non-profit hospitals and is without the competitive tensions created by possible different objectives of the for-profit hospitals.<sup>184</sup> In those areas where the number of for-profit hospitals is high, Catholic and other non-profit systems are in a more competitive environment. From this perspective we can surmise that *Catholic Health East* and *Catholic Health West* are in more direct competition with for-profit hospitals than are *Covenant Health Systems* or *PeaceHealth*. The stance of those in direct competition with for-profits would be different than those that are not. It is precisely in such competition that the expectations of a juridic person regarding mission could be subjected to a stretch as it situates itself for direct and expensive market positioning. Although non-profit hospitals are expected to provide a reasonable amount of uncompensated care in exchange for their tax-exempt status, in many areas the level of such is vaguely specified.<sup>185</sup> This is the situation in which the purpose of the Catholic healthcare apostolate must be realized since mission has been and continues to be the focus. This is a critical area but also a potentially grey one and the stakes are high from the moral, temporal and spiritual point of view.

Rather than enter into competition with a for-profit healthcare system if another non-profit is situated in the same locality, the Catholic entity could opt to consider another locality which does not have a healthcare facility and whose population is such that a facility could be sustained by need. There is also the competition of Catholic hospitals against one another when they find themselves in the same service area.<sup>186</sup> The problem of "over-capacity" can be addressed in a number of ways and their possibilities are being explored.

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<sup>184</sup>See CUTLER, p. 292.

<sup>185</sup>Re: CUTLER, p. 294.

<sup>186</sup>In such a situation the notion of "mission" has to be reviewed if there is intense competition.

**b) MAIN PARTICIPANTS IN THE CATHOLIC HEALTHCARE SYSTEMS**

For the foreseeable future we will most likely continue to see the main participants being dioceses and religious institutes. Those groups currently involved have operated in the healthcare milieu for many years and healthcare today is not a matter of building more hospitals, but of using more effectively what currently exists.

Although the existing systems are increasingly involving the laity, as a group, their participation in the Catholic healthcare ministry is limited at this point due to their exclusion from the "inner" workings of the Church. There are few options available for the laity to insert itself, in the manner of a religious institute or diocese, into the healthcare milieu except as employees of the Catholic system. The association of the faithful has proven to be unwieldy in the current healthcare milieu. A lay operated non-profit healthcare organization, wishing to establish itself as a public juridic person in the Church, could approach the local bishop or the NCCB. If it wished to seek pontifical status, it could approach the Holy See.

Given the history of relations between the episcopate and healthcare, it appears that there will not be a drastic change in episcopal oversight of the healthcare ministry. However, the way such oversight is carried out needs to be further developed. The capacity of each diocese to oversee the operations of Catholic EHOs creates limitations. Some dioceses are equipped with adequate finances to the extent that they are able to divert personnel to deal with healthcare issues. As the EHOs grow and market pressures increase, liaison with the local bishop will become more difficult just as it becomes more necessary. A suggestion would be for each ecclesiastical province to organize an office for healthcare issues and ministry which could deal with the Catholic Healthcare systems. This would

require that the individual bishops in an ecclesiastical province collaborate to have such an office staffed with experts in civil law, canon law, ethics, moral theology, human resources, etc., creating a greater centralized efficiency, rather than individual attempts to deal with developing healthcare issues. There is a hesitancy on the part of ecclesiastical authority to create super entities because of possible jurisdictional concerns, but the healthcare ministries themselves are creating super entities which will need to be observed and offered assistance.

However, the face of healthcare and thus healthcare ministry will continue to change as the new factors arise to create new challenges. Addressing these new challenges will require the "collaboration" of everyone involved. We will address a few of these collaborations in the next section.

## 5. LEVELS OF CHURCH PARTICIPATION AND LEADERSHIP

The Church, through the Holy See, is in a position to influence healthcare, not only in the United States but globally.<sup>187</sup> It has the resources, but these need to

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<sup>187</sup>That problems exist globally is emphasized in a series of articles in the Washington Post Newspaper, entitled *The Body Hunters*. The Body Hunters is a result of an 11 month reporting effort on five continents led by reporters Joe Stephens, Deborah Nelson, and Mary Pat Flaherty. "A Washington Post investigation into corporate drug experiments in Africa, Asia, Eastern Europe and Latin America reveals a booming, poorly regulated testing system that is dominated by private interests and that far too often betrays its promises to patients and consumers. Experiments involving risky drugs proceed with little independent oversight. Impoverished, poorly educated patients are sometimes tested without understanding that they are guinea pigs. And pledges of quality medical care sometimes prove fatally hollow. [...] The companies use the tests to produce new products and new revenue streams, but they are also responding to pressure from regulators, Congress and lobbyists for disease victims to develop new medicines quickly. By providing huge pools of human subjects, foreign trials help speed new drugs to the marketplace where they will be sold mainly to patients in wealthy countries. The FDA requires that patients in such tests, no matter where they live, consent fully to the experiments if the results are to be used to win marketing approval in the United States. Many tests are conducted carefully but in other instances the rules are poorly enforced or ignored. [...] Drug companies go to developing countries to do experiments because they can find large numbers of sick people on whom to test unproven medicines. U.S.

be harnessed in a manner that would provide visionary leadership and all-encompassing collaboration by clergy, laity and religious. We wish to provide some suggestions as to what steps could be advanced:

1. If such an office could avoid extreme positions, a Congregation or Office at the Holy See to channel global healthcare concerns for deliberation and consideration would be beneficial. This Office would: a) assist the Bishops' conferences to establish liaison; b) process all petitions for juridic person status of healthcare systems and assist in oversight of such; c) clarify meanings and definitions relative to the purposes of the juridic person and determine if the approved juridic person is properly focussed; d) assist in collaborative efforts of clergy, religious and laity approaching the Office for matters relating to healthcare; e) it would assist each diocese, through the National Conference of Bishops or ecclesiastical province, or directly, in providing a more efficient advocacy for the poor and uninsured, influencing the delivery of healthcare in their areas; f) it would be able to monitor global healthcare trends; g) with the information obtained through monitoring activities, the office would be able to assist in planning processes of the existing apostolates; h) it would establish a collaboration with the Council for the Interpretation of Legislative Texts for interpretation of norms affecting healthcare and, if necessary, to develop new norms to accommodate recent developments for presentation to the Legislator for inclusion in the Code.

2. Under the leadership and impetus of the Holy See, the global Church could actively support "universal healthcare coverage" throughout the world. Since many

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regulators may question the tests that are done but have no authority except within the borders of the United States." J. STEPHENS, "The Body Hunters: Where Profit and Lives Hang in Balance; Finding an Abundance of Subjects and Lack of Oversight Abroad, Big Drug Companies Test Offshore to Speed Product to Market", in *The Washington Post*, December 17, 2000, p. A01 (retrieved from WP Archives at [www.newslibrary.com](http://www.newslibrary.com) p. 13). This is one of many global problems developing; add to this the purchasing of body organs from the same population groups by parties from other countries for transplant purposes in developed countries.

developed countries have some form of socialized healthcare, their experiences as well as those of the Church can be shared with first world as well as third world countries. Universal coverage is not a panacea but it is better than nothing at all.

The future model of Catholic healthcare is not only the provider mode, but also the advocacy and leadership mode. The provider mode could increase its contribution to uncompensated care while the advocacy and leadership modes would require a greater utilization of current resources. Although the Bishops' Conference, Catholic Health Associations, et al., have been advocating "universal" healthcare delivery in the United States, these efforts have been through Pastoral Letters, addresses to convocations and writings in professional publications, rather than by direct action. A few "million person marches" might be effective. There have been national meetings of the hierarchy and the administrators of the Catholic healthcare systems, but these appear to be sporadic and limited. We are of the opinion that bi-annual meetings of this nature might serve a better purpose until well placed collaboration and planning is established. The Catholic Health Associations are prepared to approach Congressional committees on Capitol Hill if there are threats to Catholic hospitals in any way but they have not, it seems, always expended similar energies to foster "universal coverage" as a means of eradicating uncompensated care. Well developed web-sites could be utilized for positioning the Church to provide direction and leadership through use of the internet. Easily understood and thought-provoking presentations can be developed to motivate concerned Catholics.

There are many reasons for developing and maintaining a Catholic healthcare system, but the essential factor will always be the mission of the Church through the actions of healing and charity by its members. We subscribe to the notion that the healthcare trends in the U.S. could indeed be influenced by public or private juridic persons operating as Catholic healthcare systems with all of the

facilities working in tandem, thus providing the laity with more direct access and not only presence, in establishing and operating a Catholic healthcare institution.<sup>188</sup>

To paraphrase Paul Starr, " But a trend is not necessarily fate. Images of the future are usually only caricatures of the present. Perhaps this picture of the future of [Catholic] medical care will also prove to be a caricature. Whether it does depends on choices that everyone involved in Catholic healthcare makes."<sup>189</sup>

### III. SUMMARY

Our analysis of a private juridic person in the Church *PeaceHealth*, and of a public juridic person, *Covenant Health Systems*, demonstrated that in reality the "mission" of the Church can and is being carried out effectively by both models.

We then considered the current aspects of healthcare in the United States today and issues impacting it, as well as the potential impact on Catholic organizations. In considering the Catholic healthcare systems we presented various arrangements and consolidations of these arrangements.

We addressed the competitive aspects of non-profit hospitals and for-profits, as well as diversification, which is a means to increase revenues, of which some might be used to fund uncompensated care and address the needs of the hospital itself. This could become problematic if a balance of care and expansion is not maintained.

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<sup>188</sup>The *Catholic Health Corporation of Ontario* has developed a new form of sponsorship model. [www.chco.org](http://www.chco.org) .

<sup>189</sup>Re: STARR, p. 449.

We indicated that a unified Catholic healthcare group with all systems working in tandem and actively assisted by the Holy See could prove sufficient to influence the healthcare system in the United States, provided any extreme position could be avoided.

## **CONCLUSION**

Healthcare in the United States is in a state of transition. This has affected all healthcare systems, even the Catholic ones. The history of healthcare in the United States evidences that this is not the first time that jarring changes have come about, but the current situation is certainly the most taxing to date. Healthcare advancements and market forces in the United States affect the core or soul of this mission. The Catholic healthcare apostolate has served to carry on the healing mission of Jesus Christ, in compliance with canonical and civil laws. However, the pressures to distance itself from ethical guidelines is extreme, particularly in relation to sterilization. Our original intent was to ascertain the viability of the private juridic person in the healthcare apostolate in the United States, but as the research developed, it became evident that both the public and the private juridic persons were appropriate instruments to provide for continuity.

In Chapter One we examined the notion of “apostolic mission” in Vatican II. In doing so, we limited ourselves to the sources and influences of the time of the Council. This Council legitimized much of the thinking and practices that were found in various areas of the Church. The notion of “apostolic mission” as refined in Vatican II is a continuum of the concept of “apostolate” found in preconciliar considerations. The apostolic mission is the work of God and the manifestation of His plan: the sending of His Son Jesus Christ to bring salvation to the world. It is therefore the continuation of the work of Jesus Christ; its end is to lead humankind fully to the purpose of Incarnation and Redemption. We demonstrated that the ecclesiology of the time is reflected in the Council's teaching that the Church is called to grow and to move forward continuously to answer new challenges. The Council Fathers wished for all, clerics, laity and religious, to be an example and

witness of the new life received at Baptism. Although the Council did not directly engage in discussion of the juridic persons of diocese, religious institutes, associations, etc., it did formulate directives and expectations for the individuals who lead them, clerics, religious and laity.

The general oversight role of apostolates by the bishop in whose diocese they are carried out was clarified, as were his relationships to priests, deacons, laity and religious. Group apostolates were emphasized more so in the Council than were individual ones. Although the apostolate of healthcare is mentioned, it is not addressed to the same extent as was education. Clerics and religious still continue to maintain leadership positions in this ministry, but we see a shifting to the laity, partly in response to the wishes of the Fathers of the Vatican Council for a greater participation of the laity in the mission of the Church, but possibly more so to fill the vacuum created by the dearth of clerics and religious. Although the laity are moving into administrative positions in the healthcare apostolate, it will notably be some time before they are directing these apostolates without being related to some religious institute. A primary reason for this is the fact that the operations of the healthcare apostolate are usually carried out through juridic persons sponsored by a religious institute or diocese.

In Chapter Two, our intention was to examine canonical structures which enhance "apostolic mission". This enabled us to provide a more concise understanding of the current usage of "public" and "private" juridic persons in relation to the healthcare apostolate. We first reviewed the evolution of the notion of juridic person in Roman law. It was shown that until the time of the Emperor Augustus, groups formed without the need for official sanction by the State. However, Augustus required that all groups be sanctioned in order to have legal existence. One of the reasons for this was to prevent the development of groups which would militate against the State. This requirement of recognition has been a common practice of most governments, ecclesial and civil, up to the present day. The use

by the papacy of the Roman law principles in ecclesiastical courts led to the concept of “fictitious” person which has since been adopted in creating the abstraction of juridic persons in the Church and the concept of civil corporations in secular society.

The 1983 Code retained a number of norms from the 1917 Code and attempted to reflect the desires of the Fathers of Vatican II in its development. Juridic persons were now shown to be either “private” or “public” and were an attempt to give more leeway to the participation of the laity in the “mission” of the Church. This clarification was not entirely successful and is reflected in the little usage given to the “private” juridic person. The mission of healthcare is usually carried out through a “public” juridic person in the Church, and the “private” juridic person is rarely used. This is partly due to the wish of those participating in the healthcare mission of the Church, whether they be laity, clergy or religious, to be able to do so in “the name of the Church” and not on their own as would be the case with a private juridic person.

Chapter Three examined the civil structures which complement the canonical ones. There is a parallel between the juridic persons of the Church and the corporations of the State. Each has differing rules and regulations, but common elements are found in their purpose which is to expedite the use of resources through legally recognized and administered organizations. The recognition ensures that there are no seditious purposes against the State or, in the case of the Church, that the persons requesting recognition are capable of carrying on the apostolate. The juridic person, in seeking legal recognition by the State, undergoes a process of civil incorporation and since, in our case, it falls within a specific category and does not seek to make a profit, it is considered a non-profit corporation/entity for the purpose of tax-exemption in the United States. As a non-profit organization, any proceeds are returned to the work: they cannot be distributed to investors. The non-profit corporation in the United States owns itself. The Church has been reticent to approve the “private” juridic person in the healthcare field, especially in

relation to systems, because the assets would then no longer be considered Church property. This favors the use of the “public” juridic person. We examined how the forces of the marketplace had placed the Catholic healthcare apostolate in a position of creative innovation relative to civil and juridic structures.

Chapter Four presented an analysis of the canonical statutes and bylaws of two existing Catholic healthcare systems. One is a “public” juridic person in the Church, *Covenant Health Systems*, and the other is a rare “private” one, *PeaceHealth*. We interpolated some of the norms of Book V in this analysis as several of the major differences occur in this area. We saw that both types of juridic person were motivated by mission and ministry and willingly cooperated with ecclesiastical authority. We also showed both entities as heavily involving the laity in this ministry, proving that they can indeed work very effectively in the “public” juridic person setting. The major canonical differences between the “private” and the “public” juridic person are found in “ecclesiastical property” and in the “official” representing capacity of the “public” juridic person. From a perspective of mission, the private juridic person could be effectively utilized, at least within the healthcare apostolate of the Church. However, there is insufficient trust of this genre by the hierarchy, which indicates that its role should be either eliminated or redefined so as to eliminate future controversy and confusion.

The current issues impacting the Catholic healthcare system are those generated by the industrialization of healthcare in the United States and by scientific developments. Although the situation is slowly changing, American culture looks upon healthcare as a privilege and not as a right. We have examined the place of physicians, the movement from fee-for-service to managed care. We have also pointed out the effects of the tightening of funds available from the government for healthcare on which the majority of healthcare services have become dependent, including Catholic systems. Employers would continue to participate in providing healthcare benefits, but the ways and means and level of participation are certainly

changing. These leave the Catholic hospital with a mission but also with reduced funding to carry it out. We have demonstrated that the Catholic hospital is an “emerging healthcare organization” with vertical and horizontal integration. This places it in a good market position, but at the same time creates pressures on the mission aspects of the “juridic” persons in the Church. The healthcare apostolate is forced to use static canonical norms in a continuously changing and developing field. Although, from one aspect, it could respond quicker to market forces as a “private” juridic person, this we have found is not an option readily acceptable to ecclesiastical authorities. Nor do the requirements for Vatican interaction slow down the process needlessly.

We have demonstrated that hospital closures will continue on the part of all systems, Catholic as well as non-Catholic; this is inevitable due to excess bed capacity nationwide. A major problem that has developed because of governmental cutbacks is the ability of the non-profit hospitals (of which the Catholic systems are a part) to service the millions of individuals who are employed but without any healthcare coverage. This is a major problem for systems that generate revenues of billions of dollars and are forced to choose between providing needed healthcare to individuals who cannot afford it, or to utilize a large percentage of those funds for continuous upgrading of services and equipment, and for research and development, all of which are deemed essential for survival. It is the participation in the healing mission of Christ that is to remain paramount to their existence as a Catholic healthcare apostolate.

This leads to a number of practical conclusions:

1. The Catholic systems have moved into a combination of joint sponsorships, unicameral governance structures and juridic persons. The foundation is being laid to continue the Catholic healthcare ministry even if the religious institutes currently involved remove themselves from this apostolate. A

new public juridic person is created as a holding structure which accommodates the mission of those juridic persons unable to continue their apostolate. We have provided examples of such.

2. Catholic healthcare systems could find themselves in the position of not being able to fulfill their mission and need to be watchful of this. This calls for the on-going formation of those entrusted with this apostolate. A mission evaluation system can be of some assistance, but cannot be the final measure. An organization must do what it says it does. The danger lies in believing that it does what it indicates when this may not be always so. It is a difficult area to address and will have to be watched out for, for some time to come.

3. The juridic person is a viable construct for use with the continued evolution of the healthcare apostolate in the United States. The "private" juridic person does not offer the control options available in the "public" juridic person and therefore is not utilized by ecclesiastical authority for large, multi-billion dollar operations. The need for continued development of canonical structures to reflect changes in society is evident. A unified Catholic healthcare mega-group with all systems working in tandem and actively assisted by the Holy See could influence healthcare for the better, providing extreme positions could be avoided.

4. Although we originally intended to consider the use of private juridic personality in the separately incorporated healthcare apostolate, we have found that it is not generally used. Although it was hoped by some that the private juridic person would increase the participation of the laity in the mission of the Church, the public juridic person is shown to be just as effective and acceptable. In fact, a large number of the laity prefer the public juridic person since it puts them in a position formally recognized by ecclesiastical authorities, whereas participants in the private juridic person could find themselves in a grey area of partial acceptance. However, we were unable to locate any public juridic person related to the healthcare

apostolate that is not somehow juridically attached to a religious institute or a diocese, verifying a continued circumscribed participatory role of the laity in the Church.

5. Given the pressures placed on Catholic institutions, and the great sums of money involved, it might be asked whether the Church in the United States should still be involved in acute-care delivery. Perhaps we should use our monies where they are most needed, not perfecting what already exists.

6. If this is so, perhaps even the establishment of public juridic persons is just a stop-gap measure until we have a good picture of where things are going.

**APPENDIX A:**

**CANONICAL STATUTES OF COVENANT HEALTH SYSTEMS**

## **THE CANONICAL STATUTES OF COVENANT HEALTH SYSTEMS**

### **PREAMBLE**

This public juridic person has been constituted upon the petition of the Superior General of the Sisters of Charity of Montreal, "Grey Nuns", a religious institute of pontifical right, (referred to in these statutes as the "Congregation"), by decree of the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life dated July 18, 1995, to succeed to and carry on the health care ministries conducted by the St. Joseph Province of the Congregation. This decree was executed at Montreal, Quebec on October 22, 1996.

### **ARTICLE ONE**

#### **NAME AND OFFICE**

The name of this public juridic person is Covenant Health Systems. Its offices are in Lexington, Massachusetts, or such other location as the members shall determine.

Covenant Health Systems carries out its activities in the secular sphere through a corporation known as Covenant Health Systems, Inc.

### **ARTICLE TWO**

#### **PURPOSES**

Covenant Health Systems shall have as its purposes to embody the mission of the healing Ministry of Jesus in the Roman Catholic Church through the ownership or management of health facilities and the offering of programs and services consistent with that purpose. Its operation shall be conducted in a manner which is consistent with the teaching and laws of the Roman Catholic Church. Covenant Health Systems will adhere to the Ethical and Religious Directives for Catholic Health Facilities as approved by the National Conference of Catholic Bishops, and as amended from time to time.

### **ARTICLE THREE MEMBERS**

The Members of Covenant Health Systems shall be those persons appointed from time to time by the Congregation as provided in the bylaws.

Any Member of Covenant Health Systems may be removed at any time, with or without cause, by the Congregation. For purposes of these statutes, any action required or permitted to be taken by the Congregation under these statutes (including without limitation the appointment or removal of Members, the appointment of the President or approval of the matters described in Section 2 of Article Four) shall be taken by the Provincial Superior and Provincial Council of St. Joseph Province of the Congregation, or if such St. Joseph Province shall cease to exist for any reason, by the Superior General and General Council of the Congregation or their designees, in accordance with the constitution and statutes of the Congregation.

### **ARTICLE FOUR**

#### **RESERVATION OF POWERS, DUTIES AND RIGHTS OF MEMBERS**

1. The business and affairs of Covenant Health Systems shall be managed by the Members in accordance with the teaching, discipline and laws of the Roman Catholic Church. Subject to the provisions of Sections 2 and 3 of this Article, the powers of the Members shall include, without limitation, the following:
  - A. To uphold the philosophy and mission of the public juridic person;
  - B. To prepare and approve operating bylaws consistent with these statutes.
  - C. To amend the bylaws (other than as provided in Section 2.B below).
  - D. To elect the officers of Covenant Health Systems (other than the President);
  - E. To ensure that the business and affairs of Covenant Health Systems are conducted in a manner consistent with the teachings and laws of the Roman Catholic Church; and
  - F. To approve all acquisitions, by gift, purchase, transfer or otherwise of new works for Covenant Health Systems.

2. The following actions shall require the approval of the Congregation:
  - A. Any change to the written statements of philosophy or mission of Covenant Health Systems; and
  - B. Any amendment that adversely affects the rights of the Congregation under the bylaws to appoint or to remove the Members, to appoint or to remove the president or to approve changes to the written statement of philosophy or mission of Covenant Health Systems.
3. The following actions shall require the approval of the Holy See:
  - A. Any change to the purposes of Covenant Health Systems
  - B. The amendment of these statutes;
  - C. The suppression of Covenant Health Systems; and
  - D. The sale, disposition, or other form of alienation of the stable patrimony of Covenant Health Systems in excess of the amount established by the Holy See from time to time.

## **ARTICLE FIVE**

### **RELATIONSHIP TO THE HOLY SEE**

In addition to the points noted in Art. 4.3, Covenant Health Systems shall be subject to and accountable to the Holy See in the following ways:

1. The Holy See shall receive an annual report which gives evidence that the integrity of faith and morals is preserved and that the use of the temporal goods and apostolic activity of Covenant Health Systems are in accord with its purposes.
2. The Holy See may request a meeting of Covenant Health Systems to discuss its apostolate.
3. Covenant Health Systems recognizes that the Holy See accepts no financial responsibility regarding Covenant Health Systems and its affairs.

## **ARTICLE SIX**

### **OFFICERS**

The officers of Covenant Health Systems shall consist of a President, one or more Vice Presidents, a Secretary and a Treasurer. The President shall be appointed by the Congregation and the other officers shall be elected by the Members as provided in the bylaws.

The duties and powers of the officers are specified in the bylaws.

## **ARTICLE SEVEN**

### **MEETINGS OF THE MEMBERS**

1. There shall be regular meetings of Members in addition to the annual meeting, which shall be held at a time and place determined by the Members.
2. Special meetings of Members may be called by the President or by the written request of any one-third (1/3) of all Members.

## **ARTICLE EIGHT**

### **TEMPORAL GOODS**

Since the temporal goods of Covenant Health Systems are ecclesiastical goods they shall be administered in accord with the Canon Law of the Roman Catholic Church. The Members shall appoint a finance committee. Norms governing the administration of goods are specified in the bylaws to assist the Treasurer in carrying out his duties of office.

**ARTICLE NINE****SUPPRESSION**

1. Covenant Health Systems may be suppressed:
  - A. By the Holy See for failure to act in accord with these statutes; or
  - B. By the Holy See upon the request of three-quarters (3/4) of the Members of Covenant Health Systems.
  
2. Upon the suppression or extinction of Covenant Health Systems its temporal goods, patrimonial rights and obligations shall be allocated and distributed as determined by the Members, with due regard for the will of the founders or donors, and for the applicable prescriptions of the civil law.

**ARTICLE TEN****AMENDMENT OF STATUTES**

Amendment of these Statutes is reserved to the Holy See upon the request of two thirds (2/3) of the Members of the public juridic person.

**APPENDIX B:**

**CANONICAL STATUTES OF PEACEHEALTH**

**CANONICAL STATUTES  
OF  
PEACEHEALTH**

**GLOSSARY**

Wherever the following *terms* appear herein, they shall have the meanings set forth below unless qualified in the text:

**Religious Institute** shall mean the Sisters of St. Joseph of Peace.

**PeaceHealth** shall mean the Pontifical Private Juridic Person known as PeaceHealth.

**Members** shall mean those persons who serve on the Board of Directors of the civil law corporation of PeaceHealth.

**System** shall mean the network of affiliated health and human services organizations sponsored by PeaceHealth or otherwise affiliated formally with PeaceHealth.

**ARTICLE I**

**THE PRIVATE JURIDIC PERSON IN GENERAL**

**1.1. NAME AND DESCRIPTION.** The name of the Private Juridic Person is PeaceHealth. It is established as a noncollegial Pontifical Private Juridic Person pursuant to the Code of Canon Law of the Roman Catholic Church. It acts through its members who possess policy-making and executive authority sufficient for organization and administration of its own affairs and temporal goods in accord with the applicable rights and duties of Church law.

**1.2 PURPOSES, PHILOSOPHY, MISSION, AS STATED IN OVERVIEW.** The purposes for which the Pontifical Private Juridic Person has been formed are as follows:

- to embody the mission of the healing ministry of Jesus in the Roman Catholic Church through ownership and management of healthcare facilities and services;
- to provide educational, charitable and such other activities, services and programs consistent with its purposes;
- to monitor that the manner in which PeaceHealth conducts its operations is consistent with the teachings and laws of the Roman Catholic Church;

- and to monitor that PeaceHealth and its affiliates adhere to the ethical and religious principles of Catholic healthcare.

**1.3 LOCATION.** The principal office of the Private Juridic Person shall be located at 15325 S.E. 30th Place, Suite 300, Bellevue, Washington 98007-6538, U.S.A.

## **ARTICLE II**

### **MEMBERS**

**2.1 MEMBERSHIP AND QUALIFICATION.** The members of the Private Juridic Person shall be those persons who are the current members of the Board of Directors of the PeaceHealth Corporation. A member of the Board of Directors shall serve as a member of the Private Juridic Person during his/her term of office as a member of the Board of Directors of PeaceHealth.

**2.2 POWERS, DUTIES AND RIGHTS OF MEMBERS.** The powers, duties and rights of the members include:

- (a) to uphold the philosophy and mission of PeaceHealth;
- (b) to ensure that the business affairs of PeaceHealth are conducted in a manner consistent with the teachings and laws of the Roman Catholic Church, the ethical and religious principles of Catholic healthcare, and these Statutes;
- (c) to seek approval from the Holy See for any changes in the Statutes of the Private Juridic Person;
- (d) to seek approval from the Holy See to suppress this Private Juridic Person;
- (e) to send reports as requested by the Holy See which give evidence that the integrity of faith and morals is preserved and that the use of the temporal goods and apostolic activity of PeaceHealth are in accord with its purpose; and
- (f) to ensure that each year a sponsorship review of all of the entities of PeaceHealth takes place by the Provincial and Council of the Sisters of St. Joseph of Peace or persons designated by them.

**2.3 ANNUAL MEETING OF THE MEMBERS.** The annual meeting of the members shall be the last regular meeting of each fiscal year unless a different date shall be determined by the members pursuant to a resolution.

**2.4 REGULAR MEETINGS OF THE MEMBERS.** Regular meetings of the members shall be held at least semi-annually.

**2.5 SPECIAL MEETINGS OF THE MEMBERS.** Special meetings of the members may be called by the President, or by the Secretary upon the written request of two (2) or more members notwithstanding any provision of Section 2.6, notice of the time and place of a special meeting shall be adequate if given at least forty-eight (48) hours prior to the meeting.

**2.6 NOTICE OF MEETINGS.** Notice of the time and place of the annual or any regular meeting of the members shall be given, by or at the direction of the President or the Secretary, by mail, radio, telegram or personal communication over the telephone or otherwise, mailed or communicated at least ten (10) calendar days prior to the day upon which the meeting is to be held. No additional notice need be given if the time and place of the meeting shall have been fixed by resolution of the members and a copy of such resolution has been mailed to every member at least ten (10) calendar days before the first or any meeting or meetings held in pursuance thereof.

**2.7 WAIVER OF NOTICE.** Notice of any meeting of the members need not be given to any member if such notice is waived by him or her in writing or by radio, telegram or personal communication over the telephone or otherwise which is later confirmed in writing, whether before or after such meeting is held. Notice of any meeting shall be deemed waived by the presence of a member at the meeting unless such member (a) shall have made his or her written objection to the transaction of business at such meeting for the reason that it is not lawfully called or convened, and (b) at or prior to the commencement of such meeting shall have delivered such written objection to the person chairing the meeting. Any meeting of the members shall be a lawfully called and convened meeting without any notice thereof having been given if all of the members are either present, other than for the sole purpose of objecting thereto, or waive notice thereof.

**2.8 QUORUM AT MEETINGS.** For all meetings of the members (other than for action taken by unanimous written consent), a quorum shall be a majority of the members then serving unless a greater majority is required by Church law, or by the Statutes of PeaceHealth. Less than a quorum may adjourn any meeting from time to time and the meeting may be held as adjourned without further notice.

**2.9 INFORMAL ACTION BY MEMBERS.** Any action required to be taken at a meeting of the members, or any other action which may be taken at a meeting of the members, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all the members entitled to vote with respect to the subject matter thereof. Any consent signed by all the members shall have the same effect as a unanimous vote.

**2.10 MEETING BY ELECTRONIC COMMUNICATION.** Members may participate in and act at any meeting of the members by means of conference telephone or similar communications equipment if all persons participating in the meeting can hear each other simultaneously. Participation by such means shall constitute presence in person at such meeting.

**2.11 VOTING.** At any meeting of the members at which a quorum is present, a majority of the elected members may take any action on behalf of the membership, unless a larger number is required by Church law, or by the Statutes of PeaceHealth. Each member shall be entitled to cast one vote on all matters presented to the membership for its approval.

### **ARTICLE III**

#### **OFFICERS OF THE JURIDIC PERSON**

**3.1 OFFICERS AND DUTIES.** The officers of the membership shall be the same as the President, Vice President, Secretary and Treasurer of the Board of Directors of PeaceHealth during their term as such. Officers ceasing to be officers of the Board of Directors of PeaceHealth shall cease to be officers of the members of the juridic person.

**3.2 PRESIDENT.** The President shall be responsible for providing overall leadership of the juridic person and for ensuring the implementation of the Statutes in order to meet its purposes.

**3.3 VICE PRESIDENT.** The Vice President shall be responsible, as requested by the President, for assisting the President to fulfill his/her duties.

**3.4 SECRETARY AND TREASURER.** The Secretary and Treasurer shall carry out such functions for the juridic person as may be assigned from time to time.

### **ARTICLE IV**

#### **RELATIONSHIP TO THE BISHOP**

**4.1 RELATIONSHIP TO THE BISHOP.** The juridic person through its members shall maintain a liaison with and be accountable for its ministry to the Bishop in whose diocese PeaceHealth has facilities. Accordingly, the Bishop: (a) assesses the coordination of apostolic activities for the common good; (b) maintains vigilance that the integrity of faith and morals is preserved in the ministry; (c) approves the raising of funds through charitable fund drives and collections; and (d) accepts no financial right or responsibility regarding the juridic person, its ministries, or its affairs.

## **ARTICLE V**

### **RELATIONSHIP TO THE HOLY SEE**

**5.1 RELATIONSHIP TO THE HOLY SEE.** In addition to the areas noted in Article II, Section 2.2, the Private Juridic Person shall be subject to and accountable to the Holy See as follows:

- (a) To respond to any request of the Holy See regarding PeaceHealth Pontifical Private Juridic Person;
- (b) PeaceHealth acknowledges that the Holy See accepts no financial responsibility regarding PeaceHealth.

## **ARTICLE VI**

### **TEMPORAL GOODS**

The temporal goods of the Private Juridic Person are not ecclesiastical goods and shall be administered according to the Articles of Incorporation and Bylaws of PeaceHealth, a Washington Nonprofit Corporation and the provision of Church law regarding goods donated for pious purposes.

## **ARTICLE VII**

### **SPONSORSHIP REVIEW**

A yearly sponsorship review of the Private Juridic Person and its ministries shall be conducted by the Provincial Superior and Council of the Sisters of St. Joseph of Peace or their delegate. A report of the review shall be presented to the Members.

## **ARTICLE VIII**

### **AMENDMENTS**

Amendments to these Statutes is reserved to the Holy See upon request of a two-thirds (2/3) vote of the members of the Private Juridic Person.

**ARTICLE NINE**

**DISSOLUTION**

The Private Juridic Person may be dissolved as follows:

- (a) by the Holy See upon the request of a two-thirds (2/3) majority of the members;
- (b) by the Holy See for failure of the Private Juridic Person to act in accord with these Statutes;
- (c) upon the dissolution, transfer, merger of the civil law corporation PeaceHealth.

**ARTICLE X**

**APPROVAL OF STATUTES**

These Statutes were approved by the Board of Directors of PeaceHealth, Bellevue, Washington on this 13th day of the month of June, in the year 1997.

\_\_\_\_\_  
Chairperson

Statutes approved by the Congregation of Institutes of Consecrated Life and Societies of Apostolic Life, Rome, Italy on \_\_\_\_\_ day of the month of \_\_\_\_\_, in the year \_\_\_\_\_.

In the presence of:

\_\_\_\_\_

\_\_\_\_\_

## BIBLIOGRAPHY

### I. SOURCES

*Acta Apostolicae Sedis, Commentarium officiale (=AAS)*, Romae, Typis polyglottis Vaticanis, 1909-1928; Civitate Vaticana, 1929 - .

*Acta Sanctae Sedis (=AAS)*, Romae, Typographia polyglotta, 1865-1908, 41 vols.

*Acta et documenta Concilio Oecumenico Vaticano II apparando*, cura et studio Secretariae Generalis Concilii Oecumenici Vaticani II, Civitate Vaticana, Typis polyglottis Vaticanis, 1960-1969, 3 vols., 21 parts.

*Acta synodalia Sacrosancti Concilii Oecumenici Vaticani II*, Civitate Vaticana, Typis polyglottis Vaticanis, 1970-1981, 4 vols., 25 parts.

BENEDICT XV, *Providentissima Mater Ecclesia*, 27 May 1917, In AAS, 9 (1917), Pars 2, pp. 5-8.

CANADIAN CONFERENCE OF CATHOLIC BISHOPS (=CCCB), "Alienation of Property," Decree No.10, in *Studia canonica*, 19 (1985), pp. 187-191.

\_\_\_\_\_, COMMISSION FOR RELATIONS WITH ASSOCIATIONS OF PRIESTS, RELIGIOUS AND LAITY, *Recognition of National Catholic Associations: Guidelines for the CCCB and Associations of the Faithful*, Ottawa, Canadian Conference of Catholic Bishops, 1993, 48 p.

*Canon Law Digest: Officially Published Documents Affecting the Code of Canon Law*, T.L. BOUSCAREN (ed.) Milwaukee, Bruce Publishing Co., 1934-1953, vols. I-III; T.L. BOUSCAREN and J.I. O'CONNOR (eds.) Milwaukee, Bruce Publishing Co., 1953-1969, vols. IV-VI; J. I. O'CONNOR (ed.) Mundelein, IL, Chicago Province S.J., 1975-1986, vols. VII-X; E. G. PFNAUSCH (ed.), Washington, DC, Canon Law Society of America, 1991, vol XI.

*Codex canonum Ecclesiarum orientalium, auctoritate Ioannis Pauli PP. II promulgatus, fontium annotatione auctus*, Città del Vaticano, Libreria editrice Vaticana, 1995, xxx, 617 p.

*Codex iuris canonici, auctoritate Ioannis Pauli PP. II promulgatus, fontium et indice analytico alphabetico auctus*, Città del Vaticano, Libreria editrice Vaticana, 1989, xxxii, 669 p.

*Codex iuris canonici, Pii X Pontificis Maximi iussu digestus, Benedicti Papae XV auctoritate promulgatus*, Romae, Typis polygottis Vaticanis, 1934, xlv, 852 p.

CONGREGATION FOR INSTITUTES OF CONSECRATED LIFE AND FOR SOCIETIES OF APOSTOLIC LIFE, "Rescript for Maximum Amount for Alienation of Church Goods" and "Rescript Regarding Leasing" in *Roman Replies and CLSA Advisory Opinions 1992*, Washington, DC, Canon Law Society of America, 1992, 145 p.

COVENANT HEALTH SYSTEMS, *Canonical Statutes of Covenant Health Systems*, Montreal, Quebec, 1996, 4 p.

\_\_\_\_\_, *Canonical Bylaws of Covenant Health Systems*, Lexington, Massachusetts, 1996, 8 p.

\_\_\_\_\_, COVENANT HEALTH SYSTEMS, *Stewardship Accountability Report*, Lexington, Massachusetts, 1998, 12 p.

FLANNERY, A., Gen. editor, *Vatican Council II: Conciliar and Post Conciliar Documents*, (= FLANNERY), new rev. ed., Northport, NY, Costello Publishing Co., 1992, 1036 p.

GASPARRI, P., editor, *Fontes Codicis iuris canonici*, Romae, Typis polyglottis Vaticanis, 1926-1936, 9 vols.

JOHN XXIII, "Address to Representatives of the Feminine Section of Catholic Action in Rome 10 January 1960," in *Catholic Documents*, 4 (1964), pp. 12-18.

\_\_\_\_\_, "*Ecclesia Christi, Lumen Gentium*, Address Broadcast to the World One Month Before the Opening of the Second Vatican Council 11 September 1962," in *Catholic Documents*, 4 (1963) pp. 21-27.

\_\_\_\_\_, "Address At the Opening of the Second Vatican Council, 11 October 1962," in *Catholic Documents*, 4 (1964), pp. 11.

JOHN PAUL II, Apostolic Constitution, *Sapientia Christiana*, 15 April 1979, in AAS, 71 (1979), pp. 469-499. English translation in *Origins*, 9 (1979-1980), pp. 33, 35-45.

\_\_\_\_\_, Apostolic Exhortation, *Christifideles laici*, 30 December 1988, in AAS, 81 (1989), pp. 393-521. English translation in *Origins*, 18 (1988-1989), pp. 561, 563-595.

- JOHN PAUL II, Apostolic Constitution, *Ex corde Ecclesiae*, 25 September 1990, in AAS, 82 (1990), pp. 1475-1504. English translation in *Origins*, 20 (1990-1991), pp. 265, 267-276.
- \_\_\_\_\_, Encyclical Letter, *Evangelium vitae*, 25 March 1995, in AAS, 87 (1995), pp. 401-522. English translation in *Origins*, 24 (1994-1995), pp. 689, 691-730.
- NATIONAL CONFERENCE OF CATHOLIC BISHOPS (UNITED STATES), Pastoral Letter, *Health and Health Care*, 19 November 1981, Washington, D.C., United States Catholic Conference, 1982, 8<sup>th</sup> printing 1995, 14 p.
- \_\_\_\_\_, *Ethical and Religious Directives for Catholic Health Care Services*, 17 November 1994, in *Origins*, 11 (1994-1995), pp. 449, 451-462.
- \_\_\_\_\_, Administrative Committee, "The Bishop's Pastoral Role in Catholic Health Care Ministry, in *Origins*, 26 (1996-1997) pp. 700-704.
- OCHOA, X., *Index verborum ac locutionum Codicis iuris canonici*, Città del Vaticano, Libreria editrice Lateranense, 1984, xv, 592 p.
- PAUL VI, Motu proprio, *Pastorale Munus*, 30 November 1963, in AAS, 56 (1964), pp. 4-12.
- \_\_\_\_\_, Motu proprio, *Apostolica sollicitudo*, 15 September 1965, AAS 57 (1965), pp. 775-780.
- PEACEHEALTH, *The Canonical Statutes of PeaceHealth*, 1997, Bellevue, Washington, 6 p.
- \_\_\_\_\_, Canonical Decree, Prot. n. 6485/97, CICISAL.
- \_\_\_\_\_, *First Restated Bylaws of PeaceHealth*, Bellevue, Washington, 1994, 11 p.
- \_\_\_\_\_, *First Restated Articles of Incorporation of PeaceHealth*, Bellevue, Washington, 1995, 7 p.
- \_\_\_\_\_, *Sponsor Review Report*, Bellevue, Washington, 1999, 72 p.
- PIUS X, Motu proprio, *Arduum sane, De Ecclesiae legibus in unum redigendis*, 14 April 1904, in ASS, 36 (1903-1904), pp. 549-551.
- PIUS XI, Letter, *Quae Nobis*, 12 November 1928, in AAS, 20 (1928), pp. 384-387.
- \_\_\_\_\_, Encyclical, *Ubi arcano*, 23 December 1922, in AAS 14 (1922), pp. 673-700.

PIUS XII, "Discourse to the First World Congress of the Lay Apostolate 14 October 1951," in *Catholic Documents*, 7(1952) pp. 1-7.

PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECOGNOSCENDO, *Communicationes*, vols.1-16, 1969-1983; PONTIFICIA COMMISSIO AD CODICEM IURIS CANONICI AUTHENTICE INTERPRETANDUM, vols. 17-22, 1983-1988; PONTIFICIUM CONSILIUM DE LEGUM TEXTIBUS INTERPRETANDIS, vol. 23, 1991- .

\_\_\_\_\_, *Schema canonum Libri II: De populo Dei*, Civitate Vaticana, Typis polyglottis Vaticanis, 1977, 158 p.

\_\_\_\_\_, *Draft Canons on Book Five: The Law Regarding Church Possessions*, J. A. ALESANDRO (trans.), NCCB, Washington, DC, 1978, 37 p.

\_\_\_\_\_, *Schema canonum Libri V: De iure patrimoniali*, Civitate Vaticana, Typis polyglottis Vaticanis, 1978, 23 p.

\_\_\_\_\_, *Codex iuris canonici: schema Patribus Commissionis reservatum*, Civitate Vaticana, Libreria editrice Vaticana, 1980, xxiii, 382 p.

\_\_\_\_\_, *Codex iuris canonici: schema novissimum iuxta placita Patrum Commissionis emendatum atque summo Pontifici praesentatum*, Civitate Vaticana, Typis polyglottis Vaticanis, 1982, xviii, 308 p.

SACRA CONGREGATIO PRO EPISCOPIIS, *Directorium de Pastoralis Ministerio Episcoporum*, Civitate Vaticana, Typis polyglottis Vaticanis, 1973, 252 p. English translation, *Directory on the Pastoral Ministry of Bishops*, Ottawa, Ontario, Publication Service of the Canadian Catholic Conference, 1974, vii, 116 p.

SACROSANCTUM OECUMENICUM CONCILIUM VATICANUM II, *Constitutiones, decreta, declarationes*, cura et studio Secretariae Generalis Concilii Oecumenici Vaticani Romae, Typis polyglottis Vaticanis, 1966, xxiv, 1292 p.

SECOND VATICAN COUNCIL, Dogmatic Constitution on the Church, *Lumen gentium*, 21 November 1964, in *AAS*, 57 (1965), pp. 5-89; English translation in *FLANNERY*, pp. 350-426.

\_\_\_\_\_, Decree on the Pastoral Office of Bishops in the Church, *Christus Dominus*, 28 October 1965, in *AAS*, 58 (1966) pp. 673-701; English translation in *FLANNERY*, pp. 564-610.

SECOND VATICAN COUNCIL, Decree on the Up-to-Date-Renewal of Religious Life, *Perfectae Caritatis*, 28 October 1965 in AAS 58 (1966), pp. 702-712; English translation in FLANNERY, pp. 611-623.

\_\_\_\_\_, Decree On the Apostolate of Lay People, *Apostolicam Actuositatem*, 18 November 1965 in AAS, 58 (1966), pp. 837-864; English translation in FLANNERY, pp. 766-798.

\_\_\_\_\_, Decree On the Church's Missionary Activity, *Ad Gentes Divinitus*, 7 December 1965, in AAS, 58 (1966) pp. 947-990; English translation in FLANNERY, pp. 813-856.

\_\_\_\_\_, Decree on the Ministry and Life of Priests, *Presbyterorum Ordinis*, 7 December 1965, AAS 58 (1966) pp. 991-1024; English translation in FLANNERY, pp. 863-902.

\_\_\_\_\_, Pastoral Constitution on the Church in the Modern World, *Gaudium et Spes*, 7 December 1965, in AAS, 58 (1966), pp. 1025-1120; English translation in FLANNERY, pp. 903-1001.

SISTERS OF SAINT JOSEPH OF PEACE, Pontifical Private Juridic Person Sponsor Review Report, 11 June 1999, Bellevue, Washington,

## II. SOURCES - INTERNET ACCESS

MASSACHUSETTS, STATE OF, Department of Public Health, Office of Patient Protection, created pursuant to Chapter 141 of the Acts of 2000, signed into law by Governor Cellucci on July 21, 2000, via net access at [www.state.ma.us/dph/opp](http://www.state.ma.us/dph/opp).

\_\_\_\_\_, Legislation and Law, "Chapter 141 of the Acts of 2000, An Act Relative to Managed Care Practices in the Insurance Industry", via net access at [www.state.ma.us/legis/laws](http://www.state.ma.us/legis/laws).

\_\_\_\_\_, House of Representatives and Senate, Joint Committee on Health Care, referred to committee: S. 610 (Patients rights); H. 815 (Patients rights). Via internet access [www.state.ma.us/legis/comm](http://www.state.ma.us/legis/comm).

OREGON, STATE OF, Department of Human Services, Oregon Health Division, Center for Health Statistics, "Oregon's Death with Dignity Act", via net access at [www.ohd.hr.state.or.chs](http://www.ohd.hr.state.or.chs).

UNITED STATES GOVERNMENT, Code of Federal Regulations (=CFR) United States Government Printing Office via GPO access - [www.access.gpo.gov/](http://www.access.gpo.gov/).

\_\_\_\_\_, Department of Health and Human Services, Health Care Financing Administration, via access, [www.hcfa.gov](http://www.hcfa.gov).

### **III. BOOKS**

ABBO, J. A. and J. D. HANNAN, *The Sacred Canons: A Concise Presentation of the Current Disciplinary Norms of the Church*, 2nd. rev. ed., St. Louis, MO, B. Herder Book Co., 1960, 2 vols.

ALBERIGO, G., J. JOSSUA, and J. KOMONCHAK, editors, M. J. O'CONNELL, (trans.), *The Reception of Vatican II*, Washington, D.C., Catholic University of America Press, 1987, x, 363 p.

ALBERIGO, G., J. KOMONCHAK, editor English version, *History of Vatican II*, Maryknoll, Orbis, 1995-, 2 vols.

ALLEY, R. S., *The Supreme Court On Church And State*, New York, Oxford University Press, 1988, xiv, 445 p.

AMOS, S., *The History and Principles of the Civil Law of Rome: An aid to the study of scientific and comparative jurisprudence*, London, K. Paul, Trench & Co., 1883, xv, 475 p.

AUGUSTINE, C., *A Commentary on the New Code of Canon Law*, 4th. rev. and enl. ed., St.Louis, MO, Herder Book Co., 1929, 8 vols.

AYMANS, W., G. GERINGER and H. SCHMITZ, editors, *Das Konsoziative Element in Der Kirche*, Proceedings of the VIth International Congress of Canon Law, Munchen, 14-19 September 1987, St. Ottilien, EOS-Verlag Erzabthei, 1989, xxviii, 1166 p.

AYRINHAC, H. A., *General Legislation In The New Code Of Canon Law, General Norms (Can. 1-86), Ecclesiastical Persons In General (Can. 87-214)*, New York, Blase Benziger & Co., 1923, 384 p.

BACHOFEN, C. A., *A Commentary On The New Code Of Canon Law*, St. Louis, Herder, 1925-1936, 8 vols.

- BASSETT, W. W., *Religious Organizations and the Law*, New York, Clark Boardman Callaghan, a division of Thomson Information Services, 1997, 2 vols.
- BEAL, J. P., J. A. CORIDEN and T. J. GREEN, editors, *New Commentary on the Code of Canon Law*, Canon Law Society of America, New York/Mahwah, N.J., Paulist Press, 2000, xxxii, 1952 p.
- BERARD, A., (trans.), *Preparatory Reports, Second Vatican Council*, Philadelphia, Pennsylvania, The Westminster Press, 1965, 225 p.
- BERMAN, H. J., *Law and Revolution, The Formation of the Western Legal Tradition*, Cambridge, Massachusetts, Harvard University Press, 1983, xii, 657 p.
- BERUTTI, C., *Institutiones Juris Canonici*, Taurini-Romae, Marietti, 1936-1943, 6 vols.
- BHOTE, K., *Beyond Customer Satisfaction to Customer Loyalty*, New York, American Management Association, 1996, x, 148 p.
- BLACK, H. C., *Black's Law Dictionary*, 7th. ed., B. GARNER, editor, St. Paul, MN, West Publishing Co., 1999, xxiii, 1738 p.
- BIFET, J. E., *Witness to Hope: Apostolic Life*, Bandra Bombay, St. Paul Publications, 1980, 117 p.
- BOYD, W. K., *The Ecclesiastical Edicts of the Theodosian Code*, New York, AMS Press, 1969, 123 p.
- BOUSCAREN, T. L., A. C. ELLIS and F. N. KORTH, editors, *Canon Law: A Text and Commentary*, 4th rev. ed., Milwaukee, The Bruce Publishing Co., 1966, xvi, 1011 p.
- BOSCH, D. J., *Transforming Mission*, Maryknoll, New York, Orbis Books, 1991, xix, 587 p.
- BUCKLAND, W.W., *A Manual of Roman Private Law*, Cambridge, University Press, 1928, xxvii, 432 p.
- \_\_\_\_\_, and A. McNAIR, *Roman Law & Common Law, A Comparison in Outline*, Second edition revised by F. H. LAWSON, Cambridge, University Press, 1952, xx, 439 p.

- BUENO SALINAS, S., *La noción de persona jurídica en el derecho canonico: su evolución desde Inocencio IV hasta el C.I.C. de 1983*, Barcelona, Universitat de Barcelona, Facultat de Teologia de Barcelona, 1985, 260 p., *Collectania Sant Pacia* No. 33.
- BULL, G., *Vatican Politics, At The Second Vatican Council 1962-5*, London, Oxford University Press, 1966, 157 p.
- BURDICK, W. L., *The Principles of Roman Law and Their Relation to Modern Law*, Rochester, New York, The Lawyers Co-operative Publishing Co., 1938, xxi, 748 p.
- BURKE-ROBERSTON, R. J., and A. B. C. DRACHE, *Non-Share Capital Corporations, Release 2*, Scarborough, Ontario, Carswell Thomson Professional Publishing, 1999, xvi, 10-7 p.
- CHIAPPETTA, L., *Il Codice di Diritto Canonico, Commento giuridico-pastorale*, Roma, Edizioni Dehoniane, Seconda edizione, 1996, 3 vols.
- CAPARROS, E., M. THÉRIAULT and J. THORN, editors, *Code of Canon Law Annotated*, Latin-English edition of the *Code of Canon Law*, and English-language translation of the 5th Spanish-language edition of the commentary prepared under the responsibility of the INSTITUTO MARTÍN DE AZPILCUETA, Montréal, Wilson & Lafleur Limitée, 1993, 1631 p.
- CASEY, J., *Food for the Journey: Theological Foundations of the Catholic Health Care Ministry*, St. Louis, MO, The Catholic Health Association of the United States, 1991, ix, 117 p.
- CATHOLIC HEALTH ASSOCIATION OF THE UNITED STATES, *Evaluative Criteria for Catholic Healthcare Facilities*, St. Louis, MO, The Catholic Health Association of the United States, 1980, 54 p.
- \_\_\_\_\_, *The Dynamics of Catholic Identity in Health Care: A Working Document*, St. Louis, MO, The Catholic Health Association of the United States, 1987, viii, 52 p.
- \_\_\_\_\_, *Alternative Sponsorship: Two Options, Private Juridic Person and Private Association of the Faithful*, St. Louis, MO, The Catholic Health Association of the United States, 1991, 24 p.
- \_\_\_\_\_, *Setting Relationships Right: A Working Proposal for Systematic Health Care Reform*, St. Louis, MO, The Catholic Health Association of the United States, 1992, 44 p.

- CATHOLIC HEALTH ASSOCIATION OF THE UNITED STATES, *The Search for Identity: Canonical Sponsorship of Catholic Healthcare*, St. Louis, MO, The Catholic Health Association of the United States, 1993, xi, 88 p.
- \_\_\_\_\_, *Inventorying Church Property and Other Administrative Matters*, St. Louis, MO, The Catholic Health Association of the United States, 1994, ix, 58 p.
- \_\_\_\_\_, *In Their Own Words: An Assessment of Evolving Healthcare Arrangements by the Sponsors Who Use Them*, St. Louis, MO, The Catholic Health Association of the United States, 1996, v, 28 p.
- CELLARD, A. and G. PELLETIER, *Faithful to a Mission: Fifty Years with the Catholic Health Association of Canada*, Perth, Ont., BAC Communication Ltd., 1990, 281 p.
- CHELODI, G., *Ius Canonicum de Personis, Praemissis Notionibus de Jure Publico Ecclesiastico de Principiis et Fontibus Juris Canonici*, editionem III, curavit P. Ciprotti, Vicenza, Società Anonima Tipografica, 1942, xi, 501 p.
- CLENDENING, L., *The Romance of Modern Medicine*, 2<sup>nd</sup> edition rev., New York, Alfred A. Knopf, 1943, xxi, 487 p.
- CONSOLIDATED CATHOLIC HEALTH CARE, *Critical Choices: Catholic Health Care in the Midst of Transformation*, Oak Brook, IL, Consolidated Catholic Health Care, 1993, 55 p.
- CORIDEN, J., T. GREEN and D. HEINTSCHEL, editors, *The Code of Canon Law: A Text and Commentary*, New York/Mahwah, NJ, Paulist Press, 1985, xxvi, 1152 p.
- CORIDEN, J., *An Introduction to Canon Law*, New York/Mahwah, Paulist Press, 1991, xiv, 232 p.
- CORONATA, M., editor, *Institutiones Iuris Canonici, Ad Usum Utriusque Cleri et Scholarum, introductio, Ius Publicum ecclesiasticum*, 4 a ed. aucta et emendata 1960, Taurini, Marietti, xxvi, 327 p.
- COUSER, R., *Ministry and the American Legal System*, Minneapolis, Fortress Press, 1993, xi, 356 p.
- CUSHING, R. J., *A Call to the Laity*, Maryland, The Newman Press, 1957, 237 p.
- CUTLER, D. M., editor, *The Changing Hospital Industry*, Chicago, The University of Chicago Press, 2000, ix, 368 p.

- DAVID, R., and J. E. C. BRIERLEY, *Major Legal Systems in the World Today, An Introduction to the Comparative Study of Law*, 2<sup>nd</sup> edition, New York, The Free Press, A Division of Macmillan Publishing Company, 1978, xv, 584 p.
- DELLA ROCCA, F., *Manual of Canon Law*, translated by A. THATCHER, Milwaukee, The Bruce Publishing Co., 1959, xx, 624 p.
- DE PAOLIS, V., *De bonis Ecclesiae temporalibus: adnotationes in Codicem: liber V*, Romae, Pontificia Universitas Gregoriana, 1986, 121 p.
- DERETZ, J., and A. NOCENT, editors, *Dictionary of the Council*, London, Geoffrey Chapman, 1968, 506 p.
- DOHENY, W., *Practical Problems in Church Finances: A Study of the Alienation of Church Resources and of the Canonical Restrictions on Church Debt*, Milwaukee, Bruce Publishing Co., 1941, 116 p.
- DORAIS, B., *Le Concile Vatican II: la socialisation et les hôpitaux catholiques du Canada*, Ottawa, Conférence religieuse canadienne, 1972, 51 p.
- DOWNS, A., *Beyond The Looking Glass: Overcoming the Seductive Culture of Corporate Narcissism*, New York, American Management Association, 1997, vii, 222 p.
- DOYLE, D. M., *The Church Emerging from Vatican II*, Mystic, Connecticut, Twenty-Third Publications, 1992, viii, 349 p.
- DUFF, P. W., *Personality in Roman Private Law*, Cambridge, University Press, 1938, xiii, 241 p.
- DULLES, A., *Models of the Church*, Dublin, Gill and MacMillan, Ltd., 1988, 256 p.
- \_\_\_\_\_, *A Church to Believe In*, New York, Crossroad Publishing Co., 1982, xii, 200 p.
- DURRWELL, F. X., *The Apostolate and the Church*, E. Quinn (trans.), New York, Sheed and Ward, 1973, viii, 178 p.
- DUQUESNE UNIVERSITY LAW SCHOOL, *Acts of the Colloquium, Public Ecclesiastical Juridic Persons and Their Civilly Incorporated Apostolates in the Catholic Church in the U.S.A: Canonical Civil Aspects*, Pontifical University of Saint Thomas Aquinas in Rome and Duquesne University School of Law, Pittsburgh, Pennsylvania, 1998, iv, 355 p.

- DWYER, J. A., editor, *The New Dictionary of Catholic Social Thought*, Collegeville, Minnesota, A Michael Glazier Book, The Liturgical Press, 1994, xxxi, 1019 p.
- EIDSMOE, J., *The Christian Legal Advisor*, Milford, Michigan, Mott Media, 1984, xiii, 578 p.
- ESPOSITO, B., *Attuali Problemi di Interpretazione del Codice di Diritto Canonico*, Atti del Simposio Internazionale in occasione del I Centenario della Facoltà di Diritto Canonico (Roma, 24-26 ottobre 1996), Roma, Pontificia Università S. Tommaso d'Aquino, Facoltà di Diritto Canonico, 1997, 334 p.
- FRIEDMANN, W., *Legal Theory*, 4<sup>th</sup> edition, London, Stevens & Sons Limited, 1960, xx, 564 p.
- FITZGERALD, P. A., *The Governance of Jesuit Colleges in the United States*, Notre Dame, Indiana, University of Notre Dame Press, 1984, xiv, 310 p.
- GALLEN, J., *Canon Law for Religious*, New York, Alba House, 1983, vi, 218 p.
- GAUTHIER, A., *Roman Law and Its Contribution To the Development of Canon Law*, Ottawa, Faculty of Canon Law, Saint Paul University, 1996, 2<sup>nd</sup> ed. vii, 169.
- GEORGAS, M. S., *Incorporation and Business Guide for Ontario: How to Form Your Own Corporation*, 14th ed., North Vancouver, BC, Self-Counsel Press (division of International Self-Counsel Ltd.), 1996, xiv, 125 p.
- GIERKE, O., *Political Theories of the Middle Age*, translated by F. W. MAITLAND, Boston, Beacon Press, 1959, lxxx, 197 p.
- GINZBERG, E., *Tomorrow's Hospital*, New Haven, Yale University Press, 1996, ix, 165 p.
- GRIESE, O., *Catholic Identity in Health Care: Principles and Practice*, Braintree, MA, The Pope John XXIII Center, 1987, 537 p.
- HADLEY, J., *Introduction to Roman Law, in Twelve Academical Lectures*, New York, D. Appleton & Co., 1904, v, 333 p.
- HANDEL, B., editor, *Glossary of Health Care Terms*, 2nd edition Brookfield, Wisconsin, International Foundation of Employee Benefit Plans, 1991, ix, 37 p.

- HEGY, P. M., editor, *The Church in the Nineties*, Collegeville, Minnesota, The Liturgical Press, xxviii, 323 p.
- HITE, J., *A Primer on Public and Private Juridic Persons*, St. Louis, Missouri, The Catholic Health Association, 2000, vii, 38 p.
- \_\_\_\_\_, S. HOLLAND and D. WARD, editors, *A Handbook on Canons 573-746*, Collegeville, MN, The Liturgical Press, 1985, 400 p.
- HOGUE, A. R., *Origins Of The Common Law*, Indianapolis, Indiana, Liberty Press, 1985, xvi, 271 p.
- HOPKINS, B., *The Law of Tax-Exempt Organizations*, 7th ed., New York, NY, John Wiley & Sons, 1998, xxii, 930 p.
- IMBERT, J., *Les hôpitaux en droit canonique*, Paris, Librairie Philosophique J.Vrin, 1947, 334 p.
- JOLOWICZ, H. and B. NICHOLAS, *Historical Introduction to the Study of Roman Law*, 3rd. ed., Cambridge, MA, University Press, 1952, xxvi, 528 p.
- \_\_\_\_\_, *Roman Foundations of Modern Law*, Oxford, Clarendon Press, 1957, xx, 217 p.
- JOHNSON, H., and D. S. BRODER, *The System*, New York, Little Brown and Company, 1996, xviii, 668 p.
- KANTOROWICZ, H., editor and W. W. BUCKLAND, *Studies in the Glossators of the Roman Law: Newly Discovered Writings of the Twelfth Century*, Cambridge, University Press, 1938, xvi, 323 p.
- KEANE, P., *Health Care Reform: A Catholic View*, New York, Paulist Press, 1993, vii, 232 p.
- KLEINKE, J. D., *Bleeding Edge. The Business of Health Care in the New Century*, Gaithersburg, Maryland, Aspen Publishers, Inc., 1998, xvii, 362 p.
- KOMONCHAK, J. A., M. COLLINS, and D. A. LANE, editors, *The New Dictionary of Theology*, Collegeville, Minnesota, A Michael Glazier Book, The Liturgical Press, 1987, viii, 1112 p.
- KORTH, F., *Canon Law for Hospitals: Administration of Temporal Goods*, St. Louis, MO, The Catholic Health Association of the United States, 1962, vi, 40 p.

- KÜNG, H., *Signposts For the Future*, Garden City, New York, Doubleday & Company, 1978, ix, 204 p.
- \_\_\_\_\_, and L. SWIDLER, editors, *The Church in Anguish: Has the Vatican Betrayed Vatican II?*, San Francisco, Harper and Row Publishers, 1986, x, 324 p.
- LANDAZURI, J., *De alienatione bonorum temporalium religiosorum*, Romae, Desclée, 1950, xix, 143 p.
- LUCAS, J. R., *Balance of Power*, New York, American Management Association, 1998, x, 262 p.
- LUTZ, S., and E. P. GEE, *Columbia/HCA, Healthcare on Overdrive*, New York, McGraw-Hill, 1998, xi, 232 p.
- \_\_\_\_\_, W. GROSSMAN, and J. BIGALKE, *Med Inc.*, San Francisco, Jossey-Bass Publishers, 1998, xii, 212 p.
- MAIDA, A., *Ownership, Control and Sponsorship of Catholic Institutions*, Harrisburg, PA, Pennsylvania Catholic Conference, 1975, xi, 75 p.
- \_\_\_\_\_, *Issues in the Labor-Management Dialogue: Church Perspectives*, St. Louis, Missouri, Catholic Health Association of the United States, 1982, xxi, 273 p.
- \_\_\_\_\_, A. and N. CAFARDI, *Church Property, Church Finances and Church-Related Corporations*, Pittsburg, PA, Duquesne University School of Law, 1998, xxii, 339 p.
- MALLET, J. K., editor, *The Ministry of Governance*, Washington, D.C., Canon Law Society of America, 1986, xi, 255 p.
- MANCUSO, A., *How To Form a Nonprofit Corporation in California*, 8<sup>th</sup> edition, Berkeley, Nolo Press, 1999, 12/4 p.
- MARTY, M. and K. VAUX, *Health, Medicine, and Faith Traditions*, Philadelphia, PA, Fortress Press, 1982, xii, 173 p.
- MARZOA, A., J. MIRAS, and R. RODRIGUEZ-OCAÑA, editors, *Comentario exegetico al codigo de derecho canónico*, 2 ed. Pamplona, Ediciones Universidad de Navarra, 1997, 5 vols.

- McCOLGAN, D. T., *A Century of Charity: the first one hundred years of the Society of St. Vincent de Paul in the United States*, Milwaukee, Bruce Publishing Company, 1951, 2 vols.
- McCORMICK, R., *Health and Medicine in the Catholic Tradition*, New York, The Crossroad Publishing Co., 1985, xii, 173 p.
- McDONALD, W. J., editor, *New Catholic Encyclopedia*, New York, McGraw-Hill Book Co., 1967, 15 vols.
- McGRATH, J., *Catholic Institutions in the United States: Canonical and Civil Law Status*, Washington, DC, The Catholic University of America, 1968, ix, 48 p.
- McKENNA, K. E., L. A. DiNARDO, J. W. POKUSA, editors, *Church Finance Handbook*, Canon Law Society of America, Washington, D.C., The Catholic University of America, 1999, xvii, 331 p.
- MICHIELS, G., *Principia generalia de personis in Ecclesia: comentarius libri I Codicis iuris canonici, canones praeliminares 87-106*, Tornaci, Desclée, 1955, xviii, 708 p.
- MOON, R., *Hippocrates and His Successors In Relation to the Philosophy of Their Time*, New York, Longmans, Green and Co., 1923, ix, 171 p.
- MORRISON, I., *Health Care in the New Millenium*, San Francisco, Jossey-Bass Publishers, 2000, xix, 260 p.
- NEWMAN, J., *What is Catholic Action?*, Dublin, M.H. Gill and Son LTD., 1958, xii, 164 p.
- NICHOLAS, B., *An Introduction to Roman Law*, Oxford, Clarendon Press, 1995, xiv, 281 p.
- OAKS, D. H., *Trust Doctrines In Church Controversies*, Macon, Mercer, 1984, xiv, 125 p.
- OGILVIE, M. H., *Religious Institutions and the Law in Canada*, Scarborough, Ontario, Carswell Thomson Professional Publishing, 1996, xiii, 282 p.
- O'ROURKE, K. D, editor, *The Mission of Healing*, St. Louis, Missouri, The Catholic Hospital Association, 1974, vi, 118 p.
- ÖRSY, L. M., *From Vision to Legislation: From The Council To A Code of Laws*, Milwaukee, Wisconsin, Marquette University Press, 1985, 59 p.

- OSLER, W., *The Evolution of Modern Medicine*, New Haven, Yale University Press, 1921, xiv, 243 p.
- PELIKAN, J., *The Idea of the University: A Reexamination*, New Haven, Yale University Press, 1992, x, 238 p.
- PENNINGTON, M. B., *Vatican II, We've Only Just Begun*, New York, The Crossroad Publishing Company, 1994, xi, 167 p.
- PETRONCELLI, M., *Il Concilio vaticano II, e La Codificazione del Diritto Canonico*, Napoli, Libreria Scientifica Editrice, 1968, 340 p.
- PINHEIRO, A., *Bishop-Religious Relationship in the Apostolic Activities of the Diocese According to the Code of Canon Law*, Roma, Pontificia Universitas Lateranense, 1986, 174 p.
- POSPISHIL, V. J., *Eastern Catholic Church Law*, Staten Island, New York, Saint Maron Publications, 1996, liv, 938 p.
- POST, G., *Studies in Medieval Legal Thought: Public Law and the State, 1100-1322*, Princeton, N.J., Princeton University Press, 1964, xvi, 633 p.
- PROVOST J., and K. WALF, *Catholic Identity*, Stichting Concilium, London, SCM Press Ltd and Orbis Books, Maryknoll, N.Y., 1984, viii, 147 p.
- RATZINGER, J., *Ratzinger Report: An Exclusive Interview on the State of the Church*, Joseph Cardinal Ratzinger with Vittorio Messori; translated by Salvator Attanasio and Graham Harrison, San Francisco, Ignatius Press, 1985, 197 p.
- RADDING, C. H., *The Origins of Medieval Jurisprudence: Pavia and Bologna, 850-1150*, New Haven, Connecticut, Yale University Press, 1988, xiii, 258 p.
- REICHEL, O. J., *The Elements of Canon Law*, London, T. Bosworth & Co., 1887, xx, 306 p.
- ROBY, H. J., *An Introduction to the Study of Justinian's Digest: Containing an Account of Its Composition and the Jurists Used or Referred to Therein*, Cambridge, University Press, 1886, cclxxix p.
- ROGET, P. M., *Roget's Thesaurus of English Words and Phrases*, New Edition, S. LLOYD (edit), Harlow, Essex, Longman, 1982, xxxvii, 1247 p.
- ROSENBERG, C. E., *The Care of Strangers, The Rise of America's Hospital System*, Baltimore, The John Hopkins University Press, 1987, x, 437 p.

- ROTENSTREICH, N., *Alienation: The Concept and Its Reception*, Leiden, E.J. Brill, 1989, 147 p.
- ROULEAU, J., *Present Situation and Future of Catholic Hospitals in Canada*, translated by E. McCABE, Quebec, Laval University, 1972, xix, 634 p.
- RYNNE, X., *Letters From Vatican City, Vatican Council II (First Session): Background and Debates*, New York, Farrar, Straus & Company, 1963, xiii, 289 p.
- \_\_\_\_\_, *The Second Session, The Debates and Decrees of Vatican Council II September 29 to December 4, 1963*, London, Faber and Faber, 1964, xxiii, 390 p.
- \_\_\_\_\_, *The Third Session, The Debates and Decrees of Vatican Council II September 14 to November 21, 1964*, New York, Farrar, Straus and Giroux, 1964, xiii, 399 p.
- SAVIGNY, F. K. von, *Jural Relations, or, The Roman Law of Persons as Subjects of Jural Relations*. translated by W. H. RATTIGAN, London, Wildy and Sons, 1884, reprint edition, Westport, Conn., Hyperion Press, 1979, vii, 401 p.
- \_\_\_\_\_, *System of the Modern Roman Law*, translated from the German of Friedrich Carl von Savigny by WILLIAM HOLLOWAY, Madras, J. Higgenbottom, 1867, reprint edition, Westport, Conn, Hyperion Press, 1979, xxvii, 350 p.
- SCHERER, J.A., and S. B. BEVANS, editors, *New Directions in Mission And Evangelization 1, Basic Statements 1974-1991*, Maryknoll, New York, Orbis Books, 1992, xx, 324 p.
- \_\_\_\_\_, *New Directions in Mission And Evangelization 2, Theological Foundations*, Maryknoll, New York, Orbis Books, 1992, xiv, 215 p.
- SCHILLEBEECKX, E. H., *Vatican II - A Struggle of Minds, And Other Essays*, Dublin, Gill and Son Limited, 1963, 91 p.
- \_\_\_\_\_, *Ministry*, New York, The Crossroad Publishing Company, 1981, ix, 165 p.
- \_\_\_\_\_, *The Church With a Human Face: A New and Expanded Theology of Ministry*, J. BOWDEN (transl.), New York, The Crossroad Publishing Company, 1985, xii, 308 p.

- SCHNER, G. P., editor, *The Church Renewed: The Documents of Vatican II Reconsidered*, Lanham, MD, University Press of America, Inc., 1986, x, 153 p.
- SCHULZ, F., *Principles of Roman Law*, translated by M. WOLFF, Oxford, Clarendon Press, 1936, xvi, 268 p.
- SENIOR, D., and C. STUHLMUELLER, *The Biblical Foundations for Mission*, Maryknoll, New York, Orbis, 1983, xii, 371 p.
- SEYMER, L. R., *A General History of Nursing*, 3<sup>rd</sup> edition, London, William Clowes and Sons, Ltd., 1954, xii, 332 p.
- SHEEHY, G., et al., editors, *The Canon Law, Letter and Spirit: A Practical Guide to the Code of Canon Law*, prepared by THE CANON LAW SOCIETY OF GREAT BRITAIN AND IRELAND in association with the THE CANADIAN CANON LAW SOCIETY, Collegeville, MN, The Liturgical Press, 1995, xxv, 1060 p.
- SHERMAN, C. P., *Roman Law in the Modern World*, 3<sup>rd</sup> edition, New York, Baker, Voorhis, 1937, 3 vols.
- SHRYOCK, R. H., *Medicine and Society in America: 1660-1860*, Ithaca, New York, Great Seal Books, 1962, viii, 182 p.
- \_\_\_\_\_, *The Development of Modern Medicine*, Madison, Wisconsin, The University of Wisconsin Press, 1979, xiv, 473 p.
- SIMONDS, R., *Philosophy and Legal Traditions: Reflections on the Jurisprudence of the Glossators: An Inaugural Lecture Delivered Before the American University on April 10, 1973*, 31 p.
- STARR, P., *The Social Transformation of American Medicine*, New York, Basic Books, A Member of The Perseus Books Group, 1982, xiv, 514 p.
- STONE, F. M., and R. T SACHS, *The High-Value Manager*, New York, American Management Association, 1995, iv, 218 p.
- TEMKIN, O., *Hippocrates in a World of Pagans and Christians*, Baltimore, Maryland, Johns Hopkins University Press, 1991, xiv, 315 p.
- THOMAS, J. A. C., *Textbook of Roman Law*, Amsterdam, North-Holland Pub. Co. 1976, xix, 562 p.

- TORRANCE, F. W., *The Roman Law: A Lecture*, Montreal, H. Ramsay, 1854, 29 p.
- TRUAX, R., *Joseph Lister, Father of Modern Surgery*, London, George G. Harrap and Co. Ltd., 1947, 270 p.
- ULLMANN, W., *The Medieval Idea of Law as Represented by Lucas De Penna: A Study in Fourteenth-Century Legal Scholarship*, London, Methuen & Co. Ltd., 1946, xxxix, 220 p.
- UNITED STATES CATHOLIC CONFERENCE, *Health and Healthcare, A Pastoral Letter of the American Catholic Bishops, 8<sup>th</sup> printing*, Washington, D.C., United States Catholic Conference, 1981, 14 p.
- VALDRINI, P., et al., editors, *Droit canonique*, Paris, Dalloz, 1990, xxvi, 749 p.
- VOGEL, M., *The Invention of the Modern Hospital: Boston, 1870-1930*, Chicago, University of Chicago Press, 1980, ix, 171 p.
- VORGRIMLER, H., editor, *Commentary on the Documents of Vatican II*, New York, Herder and Herder, 1967-1969, 5 vols.
- WADDAMS, S., *Introduction to the Study of Law*, 2<sup>nd</sup> edition, Toronto, Carswell Thomson Publishing, 1983, xvi, 256 p.
- WALKER, D. M., *The Oxford Companion to Law*, Oxford, Clarendon Press, 1980, ix, 1366 p.
- WATSON, A., English translation, *The Digest of Justinian*, Latin text translation by T. MOMMSEN and P. KRUGER, Philadelphia, Pennsylvania, University of Pennsylvania Press, 1985, 4 vols.
- WERNZ, F., *Ius Canonicum. Ad Codicis Normam Exactum*, opera P. VIDAL, Romae, Apud Aedes Universitatis Gregorianae, 1927-1946, 8 vols.
- WILL, J., *Catholic Action Handbook*, translated by K. HENNRICH, New York, J. F. Wagner, Inc., 1936, 123 p.
- WOYWOD, S., *Canonical Decisions of the Holy See*, New York, J. F. Wagner Inc., 1933, vi, 309 p.
- \_\_\_\_\_, *A Practical Commentary on the Code of Canon Law*, rev. by C. SMITH, New York, J. F. Wagner Inc., 1948, 2 vols.

ZOLLMAN, C., *American Civil Church Law*, New York, AMS Press, 196, 473 p. (Studies in history, economics, and public law, v. 77).

**IV. DISSERTATIONS AND THESES**

AMOS, J., *Associations of the Faithful in the 1983 Code of Canon Law: A Canonical Analysis and Evaluation*, JCD diss., Washington, DC, The Catholic University of America, 1986, xi, 424 p., Canon Law Studies No. 516.

ANDERSON, A. L., *Canonical And Civil Legislation Affecting Tenure of Church Property In The State Of Florida*, diss., Romae, Pontificia Studiorum Universitas a Thoma Aq. In Urbe, 1986, 161 p.

BIERNE, K., *The Scope of the Private Juridic Person in the Mission of the Particular Church*, Master's Seminar, Ottawa, Saint Paul University, 1992, 54 p.

BROWN, B., *The Canonical Juristic Personality With Special Reference to Its Status in the United States of America*, Washington, DC, The Catholic University of America, 1927, v, 212 p. Canon Law Studies, No. 39.

CATOIR, J. T., *The Laws of the State of New Jersey Affecting Church Property*, Washington, DC, The Catholic University of America, 1964, xi, 191 p., Canon Law Studies No. 436.

CLEARY, J., *Canonical Limitation on the Alienation of Church Property: An Historical Synopsis and Commentary*, Washington, DC, The Catholic University of America, 1936, viii, 141 p., Canon Law Studies No. 100.

COMYNS, J., *Papal and Episcopal Administration of Church Property*, Washington, DC, The Catholic University of America Press, 1942, xiv, 155 p., Canon Law Studies, No.147.

CONLIN, D. C., *Canonical and Civil Legal Issues Surrounding the Alienation of Catholic Health Care Facilities in the United States*, Romae, Pontificia Studiorum Universitas a S. Thoma Aq. In Urbe, 2000, 254 p.

DANELLO, P., *An Analysis of Canon 1499.2 of the 1917 Code and Canon 1256 of the 1983 Code and Modern American Civil Law as to the Ownership and Modes of Tenure of Ecclesiastical Goods in the United States of America*, Romae, Pontificia Studiorum Universitas a S. Thoma Aq. in Urbe, 1996, x, 316 p.

- D'SOUZA, P. P., *Apostolate: its significance in God's design*, Ajmer, St. Anselm's Press, 1957, xxviii, 225 p., Thesis, Pontifical Urban University de Propaganda fide, Rome.
- DOYLE, J., *Civil Incorporation of Ecclesiastical Institutions: A Canonical Perspective*, JCD diss. Ottawa, Saint Paul University, 1989, x, 235 p.
- DOYLE, M. G., *The Catholic Hospitals of Canada*, JCD diss., Ottawa, University of Ottawa, 1964, vii, 345 p.
- DUNN, B., *Sponsorship of Catholic Institutions, Particularly Health Care Institutions by the Sisters of Providence in the Western United States*, JCD diss., Ottawa, Saint Paul University, 1995, v, 272 p.
- GOODINE, J., *The Right of the Church to Acquire Temporal Goods*, JCD diss., Washington, DC, The Catholic University of America, 1941, viii, 119 p., Canon Law Studies No. 131.
- HANNAN, P. M., *The Apostolate of Women Religious in the Particular Church Since the Second Vatican Council: Juridical Relationships with Bishops According to the 1983 Code*, JCD diss., Ottawa, Ontario, Saint Paul University, 1989, xxvi, 302 p.
- HESTON, E., *The Alienation of Church Property in the United States: An Historical Synopsis and Commentary*, JCD diss., Washington, DC, The Catholic University of America Press, 1941, xv, 222 p., Canon Law Studies, No. 132.
- KALLUMKAL, J., *The Patrimony of An Institute According to the Code of Canon Law*, JCD diss., Roma, Pontificia Università Lateranense, 1989, ix, 208 p.
- KILCULLEN, T. J., *The Collegiate Moral Person as Party Litigant*, JCD diss., Washington, D.C., The Catholic University of America Press, 1947, x, 150 p.
- LON, Y. S., *The Right of Association and Its Application to Secular Priests*, JCD diss., Ottawa, Saint Paul University, 1996, xii, 292 p.
- LYNCH, T., *Contracts Between Bishops and Religious Congregations*, Washington, DC, The Catholic University of America, 1946, xiii, 232 p., Canon Law Studies No. 239.
- McGOWAN, M. D., *The Canonical Status of Catholic Health Care Facilities in the Province of New Brunswick in the Light of Recent Provincial Legislation*, JCD diss., Ottawa, Saint Paul University, 1998, xix, 376 p.

- McKEVITT, A., *The Canons on Alienation of Book V of the 1983 Code of Canon Law*, JCL thesis, Washington, DC, Catholic University of America Press, 1984, 75 p.
- MONCION, J., *L'incorporation civile des instituts religieux au Canada*, JCD diss., Ottawa, Saint Paul University, 1978, xi, 400 p.
- MULDOON, M., *The Mission of the Catholic Apostolate: Response to Social Change in Canada*, Master's thesis, Toronto, University of St. Michael's College, 1987, vi, 244 p.
- MURPHY, J., *The Governance of Church Institutions and Protection of Catholic Identity with Particular Reference to Ontario, Canada*, JCD diss., Romae, Pontificia Universitas Lateranense, 1995, x, 332 p.
- PIETTE, G., *An Analysis of the Canonical Administration of Temporal Goods on the Diocesan Level in the Light of Three Management Theories*, JCL thesis, Washington, DC, The Catholic University of America, 1983, iii, 104 p.
- SASAKI, J., *Juridical Relationship Between the Lay Apostolate and the Hierarchy*, JCD diss., Ottawa, Saint Paul University, 1966, iv, 312 p.
- STAMP, D., *Alienation of Temporal Goods in Clerical Religious Institutes*, JCD diss., Ottawa, Saint Paul University, 1993, xiv, 243 p.
- SULLIVAN, W., *The Laws of the State of Illinois Affecting Church Property*, Washington, DC, The Catholic University of America, 1964, xiii, 215 p. Canon Law Studies No. 444.
- SWEENEY, B., *The Patrimony of An Institute in the Code of Canon Law, A Study of Canon 578*, JCD diss., Roma, Pontificia Studiorum Universitas a S. Thoma Aq. in Urbe, 1995, vi, 197 p.
- WIKEEM, S., *Contemporary Lay Associate Programs in Canada: Origins, Canonical Considerations and Practical Aspects*, JCD diss., Ottawa, Ontario, Saint Paul University, 1995, 294 p.
- ZORZI, D., *Towards Altering Canonical Status: A Case for Catholic Universities and Colleges in Canada*, JCD diss., Ottawa, Saint Paul University, 1995, 269 p.

## V. ARTICLES

- ABBASS, J., "The Temporal Goods of the Church: A Comparative Study of the Eastern and Latin Codes of Canon Law," in *Periodica*, 83 (1994), pp. 669-714.
- ALBERIGO, A, "The Christian Situation After Vatican II," in *The Reception of Vatican II*, G. ALBERIGO, J. JOSUA, and J. KOMONCHAK, editors, M. J. O'CONNELL, (trans.) Washington, D.C., Catholic University of America Press, 1987, pp. 9-40.
- ALESANDRO, J., "Overview of the Revised Code of Canon Law," in *The Catholic Lawyer*, 29 (1984), pp. 165-186.
- \_\_\_\_\_, "The Revision of the Code of Canon Law: A Background Study," in *Studia canonica*, 24 (1990), pp. 92-101.
- AMOS, J., "A Moral Quandry for Sponsors," in *Health Progress*, 77 (1996), No. 1, pp. 20-22, 42.
- \_\_\_\_\_, "Public Juridic Person Offers Flexibility," in *Health Progress*, 77 (1996), No. 1, p. 31-35.
- \_\_\_\_\_, "A Legal History of Associations of The Christian Faithful," in *Studia canonica*, 21 (1987), pp. 271-297.
- ANNIS, R. and W. G. KISTNER, "Tax-Exemption: Why Not-For-Profits Deserve It," in *Health Progress*, 69 (1988), No. 4, pp. 34-35, 91.
- APPLEBY, J., "ER Conditions: Critical," in *USA Today*, 18 (2000), No. 101, 4 February 2000, pp. 1A,6A.
- ARBUCKLE, G. M., "Mission and Business: Resolving the Tension," in *Health Progress*, 80 (1999), No. 5, pp. 22-24, 28.
- ARTURI, B., "The Laity and the New Code of Canon Law," in *Homiletic and Pastoral Review*, 84 (1984) 7, pp. 16-21.
- ASSOCIATED PRESS, "Uninsured to be Subject of New Study," in *The Charleston Gazette*, December 19, 2000, p. 3A.
- AUSTIN, R. J., "The Ministry of Catholic Healthcare: A Church Law Reflection on its Future," in *The Australian Catholic Record*, 73 (1996), No.2, pp. 172.

- BARRETT, R. J., "The Non-Recognised Association and its Capacity to Act in Court," in *Periodica*, 86 (1997), pp. 677-711.
- \_\_\_\_\_, "The Non-Recognised Association and its Capacity to Act in Court," in *Periodica*, 87 (1998) pp. 39-79.
- BARRY, J., "The New Code of Canon Law: Diocesan Organization in the New Code," in *Canadian Catholic Review*, 2 (1984), pp. 16-21.
- BASSETT, W., "Relating Canon and Civil Law," in *The Jurist*, 44 (1984), pp. 3-18.
- \_\_\_\_\_, "Religious Organizations: Their Identity in a Secular World," in *Proceedings of the 29th Canon Law Conference of Australia and New Zealand*, June 26-30, 1995, pp. 17- 49.
- BEAL, J., "Catholic Hospitals: How Catholic Will They Be?," in *Concilium*, 5 (1994), pp. 81-90.
- BEAL, J. E., and B. McMULLEN, "Ongoing CHA Project Addresses Lay Sponsorship," in *Health Progress*, 79 (1998), No. 1, pp. 13-15.
- BECKER, R., "Problems of Ecclesiastical and Religious Organizations: Canon Law Preliminary," in *The Jurist*, 44 (1984), pp. 48-51.
- BERGMAN, B., "Leader of the Pack," in *Macleans*, 112 (1999), pp. 28-30.
- BERNARDIN, J., "Catholic Institutions and Their Identity," in *Origins*, 21 (1991-1992), pp. 33-36.
- \_\_\_\_\_, "Crossroads for Church's Health Care Ministry," in *Origins*, 22 (1992-1993), pp. 409-411.
- \_\_\_\_\_, "AMA Address: Medicine's Moral Crisis," in *Origins*, 25 (1995-1996), pp. 454-457.
- BERTONE, T., "Optatum totius e nuovo Codice di diritto canonico," in *Seminarium*, 24 (1984), pp. 469-486.
- BERTRAMS, W., "De Personalitatis Moralis In lure Canonico Natura Metaphysica," in *Periodica*, 48 (1959), pp. 213-228.
- BEVILACQUA, A., "Catholic Health Care Collaborative Relationships," in *Origins*, 28 (1998-1999), pp. 657, 659-660.

- BEYER, J., "Religious and the Local Church," in *The Way Supplement*, 50 (1984), pp. 80-98.
- \_\_\_\_\_, "Le laïcat et les laïcs dans l'Église," in *Gregorianum*, 68 (1987), pp. 157-185.
- \_\_\_\_\_, "Le nouveau Code de droit canonique: esprit et structures," in *Nouvelle revue théologique*, 106 (1984), pp. 360-382, 566-583.
- BIONDI, L., "A Context of Wrenching Changes in Health Care," in *Origins*, 27 (1998), No. 30, pp. 502-505.
- BISHOP'S CONFERENCE OF ENGLAND AND WALES, "Vatican II and the 1985 Synod of Bishops," in *Origins*, 15 (1985), pp. 177, 179-186.
- BOTTA, R., "Persone giuridiche pubbliche e persone giuridiche private nel nuovo Codice di diritto canonico," in *Il diritto ecclesiastico*, 96 (1985), pp. 336-352.
- BOWEN, H., "Juridical Person," in *New Catholic Encyclopedia*, Vol. XI, W. J. McDONALD, editor New York, McGraw-Hill Book Co., 1967, pp. 171-172.
- BRANICK, V., and M. T. LYSAUGHT, "Stem Cell Research: Licit Or Complicit?," in *Health Progress*, 80 (1999), No. 5, pp. 37-42.
- BRENNAN, D. A., D. PRYBIL, K. J. SEXTON, and R. PAJKA, "Eight Lessons On Collaboration: The Daughters of Charity National Health System Experience," in *Health Progress*, 79 (1998), No., 4, pp. 56-61.
- BRINK, S., "HMOs Were the Right Rx," in *U.S. News and World Report*, 124 (1998), No. 9, pp. 47-50.
- BROWN, B., "The Canonical Juristic Personality," in *The Jurist*, 1 (1941), pp. 66-73, 125-133.
- CAFARDI, N., "Closing Churches, Merging Institutes and Dividing Dioceses: Developments in Church Property Since 1983," in *CLSA Proceedings*, 52 (1990), pp. 222-234.
- \_\_\_\_\_, "The Higher Educational Apostolate in the United States," in *Acts of the Colloquium, Public Ecclesiastical Juridic Persons and Their Civilly Incorporated Apostolates in the Catholic Church in the U.S.A: Canonical Civil Aspects*, Pontifical University of Saint Thomas Aquinas in Rome and Duquesne University School of Law, Pittsburgh, Pennsylvania, 1998, pp. 19-40.

- CAHILL, L. S., "Good News and Bad," in *Health Progress*, 80 (1999), No. 4, pp. 23.
- CAHILL, P., "Collaboration Among Catholic Health Providers," in *Origins*, 24 (1994-1995), pp. 212-214.
- CAMPBELL, P., "The New Code of Canon Law and Religious: Some Civil Law Considerations," in *The Jurist*, 44 (1984), pp. 81-109.
- \_\_\_\_\_, "Evolving Sponsorship and Corporate Structures: Canon Law Considerations for Changing Organizations," in *Health Progress*, 76 (1995), No. 6, pp. 35-42.
- CANON LAW SOCIETY OF AMERICA, "Laity in the Renewing Church: Vision and Opportunities," in *The Jurist*, 47 (1987), pp. 5-10.
- CASSIDY, J., "Trustees: Bridge Between Society, Catholic Values," in *Health Progress*, 69 (1988), No. 6, pp. 24-25.
- \_\_\_\_\_, "Bishops and Healthcare Leaders Explore Ministry Issues Together," in *Health Progress*, 73 (1992), No. 1, pp.14-15.
- \_\_\_\_\_, "Partnering: Know Yourself First," in *Health Progress*, 75 (1994), No. 9, p. 16.
- CASTILLO LARA, R., "Some General Reflections on the Rights and Obligations of the Christian Faithful," in *Studia canonica*, 20 (1986), pp. 7-32.
- \_\_\_\_\_, "Some Reflections on the Proper Way to Approach Canon Law," in *Communicationes*, 17 (1985), pp. 267-286.
- CASTAGNA, J., "State Health-Care Rationing Plan Opposed", in *Origins*, 21 (1991-1992), pp.265, 267-268.
- CATHOLIC HEALTH ASSOCIATION OF THE UNITED STATES, "The Dynamics of Catholic Identity in Healthcare: A Working Document," 1987, pp. 22-29.
- \_\_\_\_\_, "Health Care Reform Proposal," in *Origins*, 22 (1992-1993), pp. 60-63.
- \_\_\_\_\_, "How to Approach Catholic Identity in Changing Times," in *Health Progress*, 75 (1994), pp. 23-29.
- \_\_\_\_\_, "Resources in Health Care Reform," in *Health Progress*, 74 (1993), pp. 70-71.

- CHISHOLM, P., "All In The Family," in *Maclean's*, 113 (2000), No. 3, pp. 16-21.
- COCCOPALMERIO, F., "De persona iuridica iuxta schema Codicis novi," in *Periodica*, 70 (1981), pp. 369-400.
- COLLINS, M. F., "Preserving the Vision of Care," in *Health Progress*, 78 (1997), No. 4, pp. 14-16.
- COHN, L., P. ELIOPOULOS, and A. WEINTRAUB, "What Comes After Managed Care?," in *Business Week*, October 23, 2000, pp. 149-156.
- COMEY, J., "The Documents of Vatican II," in *The Mission of Healing*, K. D. O'ROURKE, editor, St. Louis, Missouri, The Catholic Hospital Association, 1974, pp. 75-82.
- CONDORELLI, M., "Considerazioni Problematiche Sul Concetto e Sulla Classificazione delle Persone Giuridiche nello «Schema de Populo Dei»," in *Diritto Ecclesiastico*, 91 (1980), pp. 446-458.
- COREIL, B., "Forging a Future for Catholic Health Care", in *Origins*, 22 (1992-1993), pp. 411-412.
- COYLE, M., et al., "United They Thrive: Merger of Two Healthcare Systems," in *Health Progress*, 69 (1988), No. 7, pp. 73-78.
- CRONIN, C., "Organized Systems of Care", in *Health Progress*, 73 (1992), No. 8, pp. 22-28.
- CUNNINGHAM, A., "Church People As Missionary: A Ministerial Church," in *The Jurist*, 39 (1979), pp. 152-182.
- CURLEY, J., "Catholic Identity in Health Care," in *CHAC Review*, 17 (1989), pp. 18-22.
- \_\_\_\_\_, "Catholic Identity, Catholic Integrity: A Shared Faith Allows Religious and Laity to Live Out Their Commitments in One Another's Company," in *Health Progress*, 72 (1991), No. 8, pp. 56-60.
- DANAGHER, J., "The New Code and Catholic Health Facilities: Fundamental Obligations of Administrators," in *The Jurist*, 44 (1984), pp. 143-152.
- DANIS, J., "L'avenir des hôpitaux catholiques," in *Bulletin AHCC*, 9 (1967) 2, pp. 5-7.

- DANNEELS, G., "Cardinal Danneels: An Overview," in *Origins*, 15 (1985-1986), pp. 427-429.
- DE PAOLIS, V., "De bonis Ecclesiae temporalibus in novo Codice iuris canonici," in *Periodica*, 73 (1984), pp. 113-151.
- DE PAOLIS, V., "Questiones miscellaneae," in *Periodica*, 73 (1984), pp. 451-486.
- \_\_\_\_\_, "Schema canonum libri V de iure patrimoniali Ecclesiae," in *Periodica*, 68 (1979), pp. 673-713.
- \_\_\_\_\_, "Temporal Goods of the Church in the New Code with Particular Reference to Institutes of Consecrated Life," in *The Jurist*, 43 (1983), pp. 343-360.
- DE ROO, R., "A Diocese as Owner," in *CHAC Review*, 18 (1990) 2, pp. 17-21.
- DESILVA, J. and M. PLACE, "Catholic Identity in Cooperative Ventures," in *Health Progress*, 74 (1993), pp. 53-54.
- DEWITT, M., "The Alienation of Church Property," in *The Jurist*, 14 (1954), pp. 394-409.
- DIPIETRO, M., "The Interfacing of Canonical Principals and American Law in the Negotiation of Joint Ventures Between Church-Related and Non Church-Related Corporations," in *Acts of the Colloquium, Public Ecclesiastical Juridic Persons and Their Civilly Incorporated Apostolates in the Catholic Church in the U.S.A: Canonical Civil Aspects*, Pontifical University of Saint Thomas Aquinas in Rome and Duquesne University School of Law, Pittsburgh, Pennsylvania, 1998, pp. 181-229.
- DOHENY, W., "Church Finances and Problems of Alienation," in *The Jurist*, 1 (1941), pp. 97-107.
- DOOLEY, E., "Persons and Juridical Personalities in Canon Law," in *The Jurist*, 4 (1944), pp. 405-432.
- DOUGHERTY, C. J., "Tradition, Mission, and The Market," in *Health Progress*, 78 (1997), No. 4, pp. 44-51.
- DOERFLINGER, F., "New Embryonic Stem-cell Research Guidelines Criticized," in *Origins*, 30 (2000-2001), p. 193.
- DONLON, S., "Bishops," in *New Catholic Encyclopedia*, Vol. II, W. J. McDONALD, editor, New York, McGraw-Hill Book Co., 1967, pp. 588-590.

- DOYLE, T., "The Canonical Status of Religious Institutes," in *Studia canonica*, 18 (1984) pp. 347-365.
- DUSSAULT, M., "Catholic Hospitals: Benefit or Burden?," in *CHAC Bulletin*, 10 (1968), p. 1.
- EICHTEN, B., and M. SCHNEIDER, "Congregation Transfers Its Healthcare System," in *Health Progress*, 75 (1994), No. 10, pp. 42-44, 55.
- ELDERLY HOUSING COALITION, "Toward A National Continuum of Care," in *Health Progress*, 81 (2000), No. 3, pp. 34-39.
- ELLIS, A., "Canon Law: Some Canonical Terms in Dealing with Temporalities," in *Theological Studies*, 1 (1940), pp. 171-174.
- ETTINGER, D., "Focusing on Economic Realities Can Advance Hospital Mergers," in *Health Progress*, 69 (1988), No. 8, pp. 52, 54, 70.
- EVASHWICK, C.J., "Integrating Housing and Healthcare," in *Health Progress*, 81 (2000), No. 3, pp. 40-43, 51.
- FABBRINI, F., "La Personalità Giuridica degli Enti di Assistenza (Detti «Piae Causae») in Diritto Romano", in *Apollinaris*, 63 (1990), pp. 57-152.
- FAHEY, C. J., "A New Role For The Church," in *Health Progress*, 79 (1998), No. 5, pp. 34-37, 51.
- FAHEY, M., "Commentary on the Dogmatic Constitution on the Church, *Lumen Gentium*," in *The Church Renewed: The Documents of Vatican II Reconsidered*, G. P. SCHNER, editor, Lanham, MD, University Press of America, Inc., 1986, pp. 11-18.
- FITZGERALD, J., "The Canon Law Implications of the Physician-Hospital Organization in the United States of America," in *Studia canonica*, 22 (1988), pp. 27-65.
- \_\_\_\_\_, "The Official Catholic Directory: Civil and Canon Law Requirements," in *The Catholic Lawyer*, 30 (1986) pp. 107-133.
- FLANAGAN, J., "Modern Hospitals," in *New Catholic Encyclopedia*, Vol. VII, W. J. McDONALD, editor, New York, McGraw-Hill Book Co., 1967, pp. 166-170.
- FLETCHER, M., "Dutch Move to Legalize Euthanasia," in *Ottawa Citizen*, October 30 2000, pp. A1, A2.

- FRANCE, D., and D. ROSENBERG, "The Abortion Pill," in *Newsweek*, 136 (2000), No. 15, pp. 26-30.
- GALLAGHER, C., "Temporal Administration in the New Code," in *The Way Supplement*, 50 (1984), pp. 71-79.
- GALLEN, J., "Is the Work of a Religious House Considered to be the Same Canonical Moral Person as that House?," in *Review for Religious*, 27 (1968), pp. 53-559.
- GALLIN, A., "Lay-Religious Partnership Needed in Higher Education," in *Health Progress*, 67 (1986) No. 7, pp. 536-558.
- \_\_\_\_\_, "On the Road Toward a Definition of a Catholic University," in *The Jurist*, 48 (1988), pp. 536-558.
- GAUTHIER, A., "Juridical Persons in the Code of Canon Law," in *Studia canonica*, 25 (1991), pp. 77-92.
- GIBBS, N., "A Week in the Life of A Hospital," in *Time*, (Canadian Edition), 152 (1998), No. 15, pp. 76-116.
- GIGANTI, E., "Living Our Promises, Acting On Faith," in *Health Progress*, 80 (1999), No. 6, pp. 52-55.
- GILLIS, V., "Sponsorship Networks," in *Health Progress*, 74 (1993), No. 3, pp. 34-37.
- GOLDEN, F., "Good Eggs, Bad Eggs," in *Time*, Canadian Edition, 153 (1999), No. 1, pp. 40-43.
- GONZALEZ, R., "Stewardship: Concretizing the Implications of Solidarity," in *Origins*, 27 (1997-1998), pp. 429, 431.
- GORMAN, C., "Drugs By Design," in *Time*, Canadian Edition, 153 (1999), No.1, pp. 56-61.
- GOTTEMOELLER, D., "Apostolic Religious Life: Ecclesial Identity and Mission," in *Origins*, 24 (1994-1995), pp. 252-256.
- GRAMLICH, M., "New Directions: Toward Congregational Divestiture of Property," in *Review for Religious*, 39 (1980), pp. 434-440.
- GRANFIELD, P., "The Concept of Church as Communion," in *Origins*, 28 (1998-1999), pp. 753, 755-758.

- GRANT, K., "Sponsorship Challenge: Influence Through Governance," in *Health Progress*, 67 (1986), No. 7, pp. 36-40.
- GREEN, T. J., "Critical Reflections on the Schema of the People of God," in *Studia canonica*, 14 (1980), pp. 235-322.
- \_\_\_\_\_, "Persons and Structures in the Church: Reflections on Selected Issues in Book II," in *The Jurist*, 45 (1985), pp. 24-94.
- GRIFFIN, B., "Interpretation and implementation of the revised Code of Canon Law," in *The Living Light*, 20 (1984), pp. 103-118.
- \_\_\_\_\_, "Introduction to the Jargon of Canon Law," in *The Jurist*, 44 (1984), pp. 19-27.
- HAIGHT, R. D., "The "Established" Church As Mission: The Relation of the Church to the Modern World," in *The Jurist*, 39 (1979), pp. 4-39.
- HALLORAN, D., "Hospital's Search for Solvency May Change Role of Group Ruling," in *Health Progress*, 69 (1988), No. 8, pp. 71-75.
- HAMMOND, L. A., and B. TANG, "Indigency, Ethnicity, and Hospital Viability," in *Health Progress*, 73 (1992), No. 10, pp. 44-48.
- HANNAN, J. D., "The Local Ordinary's Guardianship of Church Property," in *The Jurist*, 1 (1941), pp. 317-328.
- HARBRECHT, P., "Corporation," in *New Catholic Encyclopedia*, Vol. IV, W. J. McDONALD, editor, New York, McGraw-Hill Book Co., 1967, pp. 336-338.
- HARKNESS, J., "Catholic Health Care Without Sisters," in *Health Progress*, 77 (1996), No. 1, pp. 23-24, 42.
- HARTNETT, R., "Gierke, Otto Friedrich von," in *New Catholic Encyclopedia*, Vol. VI, W. J. McDONALD, editor, New York, McGraw-Hill Book Co., 1967, pp. 471-472.
- HEHIR, J., "Identity and Institutions: Catholic Health Care Providers Must Refashion Their Identity as Actors and Advocates in the World," in *Health Progress*, 76 (1995), No. 8, pp. 17-23.
- HEINTSCHEL, D., "Alienation of Church Property Under the New Code of Canon Law," in *The Catholic Lawyer*, 31 (1987), pp. 156-161.

- HENNESEY, J., "Vatican Council I," in *New Catholic Encyclopedia*, Vol. XIV, W. J. McDONALD, editor, New York, McGraw-Hill Book Co., 1967, pp. 559-563.
- HERRANZ, J., "The Personal Power of Governance of the Diocesan Bishop," in *CLSA Proceedings*, 49 (1987), pp. 16-34.
- HERRANZ, J., "The Juridical Status of the Laity: The Contribution of the Conciliar Documents and the 1983 Code of Canon Law," in *Communicationes*, 17 (1985), pp. 287-315.
- HIEBERT-WHITE, J. "Medicare Reform Without Fireworks," in *Health Progress*, 78 (1997), No. 4, pp. 10-12.
- HITE, J., "Church Law on Property and Contracts," in *The Jurist*, 44 (1984), pp. 117-133.
- \_\_\_\_\_, "Property Issues for Religious," in *CLSA Proceedings*, 48 (1986), pp. 139-142.
- \_\_\_\_\_, "Structures in Healthcare Ministry in the Church," in *Health Progress*, 80 (1999), No.6. pp. 43-45, 48.
- \_\_\_\_\_, and J. POE, "An Innovative Way to Continue the Ministry: A Catholic Multi-Institutional Health Care System Achieves Public Juridic Person Status," in *Health Progress*, 73 (1992), No. 7, pp. 56-58.
- HOLLAND, S., "The Code and Essential Elements," in *The Jurist*, 44 (1984), pp. 304-308.
- \_\_\_\_\_, "Religious House", According to Canon 608," in *The Jurist*, 50 (1990), pp. 524-552.
- HOPKINS, B., "Partnerships or Joint Ventures as Vehicles to Achieve Charitable Objectives," in *The Catholic Lawyer*, 31 (1987), pp. 123-129.
- HOWARTH, J., "Juridic Person or Private Association: Choosing a Canonical Structure," in *Health Progress*, 67 (1986), No. 7, p. 51.
- HULSEBUS-FONG, C., "Measuring Corporate Culture to Ensure Mission Fulfillment," in *Health Progress*, 69 (1988), No. 9, pp. 44-47.
- ISAACSON, W., "The Biotech Century," in *Time*, (Canadian Edition), 153 (1999), No. 1, pp. 26-27.

- INTERNATIONAL UNION OF SUPERIORS GENERAL, "Women Religious Meet With Pope to Discuss Their Life," in *Origins*, 13 (1983-1984), pp. 481, 483-486.
- JOACHIM, A., "Legal Aspects of Charitable Institutions," in *Thought*, 15 (1940), pp. 237-244.
- JONES, W. J., "Letters", in *Time* (Canadian Edition)157 (2001), No. 5, p. 5.
- KEALY, R., "Methods of Diocesan Incorporations," in *CLSA Proceedings*, 48 (1986), pp.163-177.
- \_\_\_\_\_, "Canonical Aspects of Catholic Identity in the Institutional Setting," in *CLSA Proceedings*, 61 (1999), pp. 195-209.
- KENNEDY, R., "McGrath, Maida, Michiels: Introduction to a Study of the Canonical and Civil Law Status of Church Related Institutions in the United States," in *The Jurist*, 50 (1990), pp. 351-401.
- \_\_\_\_\_, "Juridic Persons," in *New Commentary on the Code of Canon Law*, J. P. BEAL, J. A. CORIDEN and T. J. GREEN, editors, Canon Law Society of America, New York/Mahwah, N.J., Paulist Press, 2000, pp. 154-176.
- KLOSTERMAN, F., "Apostolate," in *New Catholic Encyclopedia*, Vol. I, W. J. McDONALD, editor, New York, McGraw-Hill Book Co., 1967, p. 688.
- KNEAL, E., "Physical and Juridic Persons," in *The Code of Canon Law: A Text and Commentary*, J. CORIDEN, J., T. GREEN and D. HEINTSCHEL, editors, New York/Mahwah, NJ, Paulist Press, 1985, pp. 70-87.
- KROL, J., "The Goals of the Synod," in *Origins*, 15 (1985-1986), pp. 425, 427.
- KRUKOWSKI, J., "The Juridical Personality of the Church in Relation to the State," in *Studia canonica*, 14 (1980), pp. 377-389.
- LEONARD, M. "Health Right Clinic Helps Needy", in *The Charleston Gazette*, December 19, 2000, p. 1 A.
- \_\_\_\_\_, "Physicians, Patients Unsure of Effects of New Regulations", in *The Charleston Gazette*, December 21, 2000, pp. 1C, 8C.
- LEMONICK, M. D., and D. THOMPSON, "Racing to Map Our DNA," in *Time*, Canadian Edition, 153 (1999), No. 1, pp. 28-35.

- LEMONICK, M. D., and D. THOMPSON, "Designer Babies," in *Time*, Canadian Edition, 153 (1999) No 1, pp. 48-51.
- \_\_\_\_\_, "The Future of Drugs: Brave New Pharmacy," in *Time* Canadian Edition, 157 (2001) No. 2, pp. 32-43.
- LICKING, E., "Spotting Disease Before It Arrives", in *Business Week*, 12 February 2001, pp. 94-95.
- LITTLE, D., "Getting Tangled in Health Care's WEB," in *Business Week*, 18 December 2000, pp. 153-154.
- Lo CASTRO, G., "Stati giuridici delle persone nella legislazione canonica," in *Monitor ecclesiasticus*, 106 (1981), pp. 38-394.
- \_\_\_\_\_, "De Las Personas Fis y Juridicae," in *Comentario exegético al código de derecho canónico*, A. MARZOA, J. MIRAS, and R. RODRIGUEZ-OCAÑA, editors, 2 ed. Pamplona, Ediciones Universidad de Navarra, 1997, Vol. I, pp. 713-818.
- LORIMER, A. B., "Catholic Healthcare, Incorporated: Diversify and Survive," in *Health Progress*, 69 (1988), No. 5, pp. 38-40.
- LYNCH, J. "Church Government: The Protestant Experience," in *The Ministry of Governance*, J. K. MALLETT, editor, Washington, D.C., Canon Law Society of America, 1986, pp. 56-79.
- McGRATH, A., "Physical and Juridical Persons", in *The Canon Law Letter and Spirit, A Practical Guide to the Code of Canon Law*, G. SHEEHY, editor, Collegeville, Minnesota, The Liturgical Press, 1995, pp. 55-71.
- McGAW, J. "Hospital's Growth Draws Protest," in *The Patriot - News*, Vol. 159 (2000), No. 286, 18 December 2000, A 1.
- McPHADDEN, A., "History of Hospitals: 1500 to Present," in *New Catholic Encyclopedia*, Vol. VII, W. J. McDONALD, editor, New York, McGraw-Hill Book Co., 1967, pp. 163-166.
- MacWILLIAMS, M., "Oregon Health Plan Supported," in *Origins*, 21 (1991-1992), p. 269.
- MAIDA, A., "Canonical and Legal Fallacies of the 'McGrath Thesis' on Reorganization of Church Entities," in *The Catholic Lawyer*, 19 (1973), pp. 275-286, 288-289.

- MAIDA, A., "Canon Law Implications of Real Estate Transactions: Impact of the New Canon Law," in *The Catholic Lawyer*, 27 (1982), pp. 218-225.
- MAHONEY, R., "Federal Agency Approves RU-486 for United States," in *Origins*, 30 (2000-2001), pp. 273, 275-276.
- MALLET, J., "Book V: Temporalities Under the Revised Code of Canon Law," in *The Catholic Lawyer*, 29 (1984), pp. 187-194.
- MALONE, J., "Evaluating Vatican II," in *Origins*, 15 (1985-1986), pp. 97, 99-102.
- \_\_\_\_\_, "Oregon's Health Plan: Step Toward Medical Neglect?," in *Origins*, 21 (1991-1992), pp. 270-272.
- MARSHALL, R., "The Best Health Care," in *Macleans*, 113 (2000), No. 23, pp. 18-21.
- McMANUS, F., "Laity in Church Law: New Code, New Focus," in *The Jurist*, 47 (1987), pp. 11-31.
- McCORMICK, R., "The Catholic Hospital Today: Mission Impossible?," in *Origins*, 24 (1994-1995), pp. 648-653.
- \_\_\_\_\_, "Technology, the Consistent Ethic and Assisted Suicide," in *Origins*, 25 (1995-1996), pp. 459-464.
- McCREADY, B., "Catholic Identity in a Changing Church: The 1989 Flanagan Lecture Examines Coping Strategies," in *Health Progress*, 70 (1989), No. 10, pp. 66-71.
- McGRATH, J., "Canon Law and American Church Law: A Comparative Study," in *The Jurist*, 18 (1958), pp. 260-278.
- McMULLEN, B., "A Closer Look at Lay Sponsorship," in *Health Progress*, 77 (1996), No. 1, pp. 28-30.
- McNICKLE, L., "Breakthrough In Elder Care," in *Health Progress*, 81 (2000), No.3, pp. 44-50.
- MEIGHAN, C., "Religious Institutes--Property and Tax Issues," in *The Catholic Lawyer*, 33 (1989), pp. 25-40.
- MODDE, M., "Canonical Stewardship Responsibilities for Health Care Facilities," in *CLSA Proceedings*, 51 (1989), pp. 83-94.

- MODDE, M., "Lay Governance in Catholic Institutions," in *CLSA Proceedings*, 54 (1992), pp. 185-194.
- \_\_\_\_\_, "Private Association: Opportunity for the Laity," in *Health Progress*, 67 (1986), pp. 46-50.
- MOODIE, M. R., "The Administrator And The Law: Authority And Its Exercise In The Code," in *The Jurist*, 46 (1986), 43-69.
- MONCION, J., "L'institut religieux et les biens temporels," in *Studia canonica*, 20 (1986), pp. 355-365.
- MORRISEY, F. G., "Juridic Status: Canonical Provisions, Possible Applications," in *Health Progress*, 67 (1986), No. 7, pp. 41-44.
- \_\_\_\_\_, "What Makes an Institution 'Catholic'?" in *The Jurist*, 47 (1987), pp. 531-544.
- \_\_\_\_\_, "Ownership of Church and Congregational Property and Its Implications for Leadership," in *Canon Law Society of Australia and New Zealand Newsletter*, Spring, 1988, pp. 1-24.
- \_\_\_\_\_, "Ordinary and Extraordinary Administration: Canon 1277," in *The Jurist*, 48 (1988), pp. 709-726.
- \_\_\_\_\_, "The Right of Association as A Basic Right of the Faithful," in *Das Konsoziative Element in Der Kirche*, Proceedings of the VIth International Congress of Canon Law, Munchen, 14-19 September 1987, AYMANS, W., G. GERINGER and H. SCHMITZ, editors, St. Ottilien, EOS-Verlag Erzabthei, 1989, pp. 7-24.
- \_\_\_\_\_, "The Directory for the Administration of Temporal Goods in Religious Institutes," in *Unico Ecclesiae servitio*, (Canonical Studies presented to Germain Lesage, OMI), Ottawa, Saint Paul University, 1991, pp. 267-285.
- \_\_\_\_\_, "The Expression of Church Law in Canonical and Civil Documents," in *CHA, The Search for Identity: Canonical Sponsorship of Catholic Healthcare*, 1993, pp. 49-58.
- \_\_\_\_\_, "The Church's Role in Collaboration," in *Health Progress*, 74 (1993), No. 9, pp. 24-29.

- MORRISEY, F. G., "Canonical Issues to Anticipate and Resolve in Mergers and Joint Ventures Involving Catholic Health Care Institutions," in *Magister canonistarum: Estudios con motivo de la concesión al Prof. Dr. Urbano Navarrete, s.j., del Doctorado Honoris causa*, F. AZNAR GIL, editor Salamanca, Universidad pontificia, 1994, pp. 215-236.
- \_\_\_\_\_, "The Alienation of Temporal Goods In Contemporary Practice," in *Studia canonica*, 29 (1995), pp. 293-316.
- \_\_\_\_\_, "Practical Implications of Bishop's Decision to Remove Catholic Identity," in *Roman Replies and CLSA Advisory Opinions*, Washington, DC, CLSA, 1995, pp. 40-41.
- \_\_\_\_\_, "Acquiring Temporal Goods For the Church's Mission," in *The Jurist*, 56 (1996), pp. 586-603.
- \_\_\_\_\_, "Catholic Identity of Healthcare Institutions in a Time of Change," in *A Swing of the Pendulum: Canon Law in Modern Society*, R. TORFS, editor, Leuven, Katholieke Universiteit Leuven, Uitgeveru Peeters, 1996, pp. 47-64.
- \_\_\_\_\_, "Alienation and Administration", in *Health Progress*, 79 (1998), No. 5, pp. 24-29.
- \_\_\_\_\_, "Catholic Identity in a Challenging Environment," in *Health Progress*, 80 (1999), No. 6, pp. 39-42.
- MULVIHILL, N., "Public Juridic Person Ensures Catholic Presence," in *Health Progress*, 77 (1996), No. 1, pp. 25-27.
- MYERS, J., "Church Approval Necessary for Activity to be Catholic," in *Health Progress*, 68 (1987), No. 8, pp. 70,74.
- \_\_\_\_\_, "Canon Law Outlines Obligations of Institutes, Health Facilities," in *Health Progress*, 68 (1987), No. 3, pp. 88-89.
- \_\_\_\_\_, "Advance Directives and the Catholic Health Facility," in *Origins*, 21 (1991-1992), pp. 276-280.
- NASALLI-ROCCA, E., "History of Hospitals," in *New Catholic Encyclopedia*, Vol. VII, W. J. McDONALD, editor, New York, McGraw-Hill Book Co., 1967, pp. 159-163.
- NATIONAL CONFERENCE OF CATHOLIC BISHOPS, "Ethical and Religious Directives for Catholic Healthcare Services", in *Origins*, 24 (1994-1995), pp. 449, 451-462.

- NATIONAL CONFERENCE OF CATHOLIC BISHOPS, "Catholic Identity: Emerging Consensus," in *Origins*, 25 (1995-1996), pp. 173-177.
- NEWMAN, J., "Key Issues in Mergers and Acquisitions," in *Health Progress*, 72 (1991), No. 4, pp. 56-59, 65.
- NEW JERSEY BISHOPS, "The Rationale of Catholic Health Care," in *Origins*, 25 (1995-1996), pp. 449, 451-452.
- OMBRES, R., "Iusta autonomia vitae: Religious in the Local Church," in *The Clergy Review*, 69 (1984), pp. 310-319.
- ONCLIN, W., "Principia Generalia de Fidelium Associationibus," in *Apollinaris*, 36 (1963), pp. 68-100.
- ONSTAD, E., "Mercy Killing To Become Dutch Law", in *National Post*, 3 (2000), No. 29, 29 November 2000, pp. A1, A15.
- O'ROURKE, K.D., "Catholic Hospitals" in *New Catholic Encyclopedia*, Vol. XVII, W. J. McDONALD, editor New York, McGraw-Hill Book Co., 1967, pp. 274-276.
- \_\_\_\_\_, "Hospitals: Ethical and Religious Directives," in *Chicago Studies*, 27 (1988), No. 3, pp. 271-285.
- ÖRSY, L., "Models of Approaches to Canon Law and Their Impact on Interpretation," in *The Jurist*, 50 (1990), pp. 83-101.
- O'CONNELL, L., "The Future of the Catholic Healthcare Institutions," in *Chicago Studies*, 27 (1988), No. 3, pp. 287-295.
- O'CONNOR, J., "The Temptation to Become Just Another Industry," in *Health Progress*, 25 (1995), No. 27, pp. 452-454.
- OWENS, A. M., "Assisted Suicides for Non-Terminal Patients Proposed," in *National Post*, 3 (2001) No. 66, 15 January 2001, p. A2.
- PASSICOS, J., "Le nouveau Code de droit canonique; expression du renouveau de l'Église," in *Etudes*, 360 (1984), pp. 255-263.
- PAGÉ, R., "Associations of the Faithful in the Church," in *The Jurist*, 47 (1987), pp. 165-203.
- \_\_\_\_\_, "From the University Which is Really Catholic to the University Which is Legally Catholic," in *Concilium*, 5 (1994), pp. 91-99.

- PAGÉ, R., "Note sur les 'critères d'ecclésiabilité' pour les associations de laïcs," in *Studia canonica*, 24 (1990), pp. 455-463.
- \_\_\_\_\_, "La Signature Apostolique et le suppression du statut canonique de l'Armee de Marie," in *Studia canonica*, 25 (1991), pp. 403-415.
- PELLEGRINO, E., "What Makes a Hospital Catholic?," in *The Mission of Healing*, K. D. O'ROURKE, editor, St. Louis, Missouri, The Catholic Hospital Association, 1974, pp. 32-39.
- \_\_\_\_\_, "Managed Care at the Bedside: How Do We Look in the Moral Mirror", in *Kennedy Institute of Ethics Journal*, 7 (1997), No. 4, pp 321-330.
- PEENO, L., "What is the Value of a Voice?," in *U.S. News and World Report*, 124 (1998), No. 9, pp. 40-46.
- PFAFF, M., "German Reform A Model For U.S.," in *Health Progress*, 75 (1994), No. 7, pp. 30-31.
- PILARCZYK, D., "The Catholic Health Facility: Would You Know One If You Saw One?," in *Hospital Progress*, 63 (1982), pp. 30-33.
- PIRONIO, E., "The Laity as Agents of Evangelization," in *Origins*, 18 (1988-1989), pp. 697, 699-700.
- PLACE, M. "Planned Sale of St. Louis University Hospital to For-Profit Chain," in *Origins*, 27 (1997-1998), pp. 447, 499-502.
- \_\_\_\_\_, "Health Care: Essential Building Block of a Free Society," in *Origins*, 29 (1999-2000), no. 4, pp. 9, 51-57.
- \_\_\_\_\_, "CHA Pursues A National Consensus On Healthcare Reform," in *Health Progress*, 80 (1999), No. 4, pp. 10-12.
- PORTILLO, A. del, "Ius Associationis et Associationes Fidelium iuxta concilii Vaticani II Doctrinam," in *Ius Canonicum*, 8 (1968), pp. 5-28.
- POTTMEYER, H. "A New Phase in the Reception of Vatican II," in *The Reception of Vatican II*, G. ALBERIGO, J. JOSUA, and J. KOMONCHAK, editors, M. J. O'CONNELL, (trans.) Washington, D.C., Catholic University of America Press, 1987, pp. 44-64.
- PRICE, D. D., "Juridical Persons: Fiction or Reality? Does It Matter?," in *Canon Law Society of Australia & New Zealand, Proceedings of the Thirty First Annual Conference*, pp. 37-58.

- PRIETO, M., "Iniciativa privada y personalidad juridica: las personas juridicas privadas," in *Ius canonicum*, 25 (1985), pp. 527-573.
- PROVOST, J., "The Church As Mission: Introduction," in *The Jurist*, 39 (1979), pp. 1-3.
- PROVOST, J., "The Participation of the Laity in the Governance of the Church," in *Studia canonica*, 17 (1983), pp. 417-448.
- \_\_\_\_\_, "Approaches to Catholic Identity in Church Law," in *Concilium*, 5 (1994), pp. 15-25.
- \_\_\_\_\_, "Catholic Identity for a Hospital," in *Roman Replies and CLSA Advisory Opinions*, Washington, DC, CLSA, 1988, pp. 48-53.
- \_\_\_\_\_, "Revision of Book V of the Code of Canon Law," in *Studia canonica*, 9 (1975), pp.135-152.
- PRYBIL, L., J. KELLY, and X. BALLANCE, "Improving The Quality of Governance," in *Health Progress* 73 (1992), No. 8, pp. 54-57, 70.
- QUINN, J., "Extending the Dialogue About Religious Life," in *Origins*, 13 (1983-1984), pp. 213, 215-221.
- \_\_\_\_\_, "Dialogue and the Bishop's Pastoral Service to Religious," in *Origins*, 13 (1983-1984), pp. 426-429.
- \_\_\_\_\_, "Preserving the Mission: Sponsors and Lay Leaders Must Collaborate to Maintain and Extend the Church's Institutional Presence in Healthcare," in *Health Progress*, 72 (1991), No. 6, pp. 32-36.
- QUINN, J. B., "Reinventing Medicare," in *Newsweek*, 132 (1998), No.13, p. 88.
- RATZINGER, J., "The Ecclesiology of Vatican II," in *Origins*, 15 (1985-1986), pp. 370-376.
- RAYANNA, P., " Moral or Juridical Persons?," in *The Jurist*, 18 (1958), pp. 459-467.
- RAYER, T. A., "Alienation of Church Property Under the New Code of Canon Law," in *The Catholic Lawyer*, 31 (1987), pp. 150-161.
- REID, C., "Some Applications of Principles of Management Theory to Diocesan Structures," in *The Jurist*, 44 (1984), pp. 448-456.

- RODES, R., "Structures of the Church's Presence in the World of Today: Through the Church's Own Institutions," in *Concilium*, 6 (1970), pp. 53-62.
- RIGALI, J. "St. Louis University Hospital Sold to For-Profit Corporation," in *Origins*, 27 (1997-1998), pp. 629, 631-33.
- RYAN, M. J., "Programs For the Indigent: Filling the Cracks in Healthcare", in *Health Progress*, 69 (1988), No. 5, pp. 45-47, 65.
- SACKETT, F. and P. CAMPBELL, "Temporalities for Religious: Six Practical Cases," in *CLSA Proceedings*, 46 (1984), pp. 72-97.
- SANBORN, A. and C. MACKELVIE, "ABC's of Maintaining Federal Tax Exemption," in *Health Progress*, 69 (1988), No. 8, pp. 64-70.
- SCADUTO, M., "Works of Charity," in *New Catholic Encyclopedia*, Vol. III, W. J. McDONALD, editor New York, McGraw-Hill Book Co., 1967, pp. 480-497.
- SCHWARTZ, J., "State Regulation of Managed Care: Fragments of Reform," in *Kennedy Institute of Ethics Journal*, 7 (1997), No. 4, pp. 345-351.
- SCHROEDER, M. and J. MANSFIELD, "Creating a Private Association: The St. Francis Experience," in *Health Progress*, 67 (1986), No. 7., pp. 52-54.
- SCHULZ, W., "La Posizione Giuridica delle Associazioni e la loro Funzione nella Chiesa," in *Apollinaris*, 59 (1986), pp. 115-130.
- SCHNURR, D., "Harvesting Embryonic Stem Cells for Research: Response to NIH Draft Guidelines," in *Origins*, 29 (1999-2000), pp. 566-571.
- \_\_\_\_\_, "Mandating Employer Coverage of Contraceptives: Protecting Conscientious Objection," in *Origins* 30 (2000-2001), pp. 161, 163.
- SEAY, D., "Community Benefit Prevails," in *Health Progress*, 73 (1992), No.1, pp. 42-47.
- SEMPLE, D. M., "From Ministry to Market, Catholic Healthcare Can Survive in An Age of Commercialization," in *Health Progress*, 77 (1996), No. 5, pp. 18-24.
- SERITELLA, J., "The Code of Canon Law and Civil Law," in *The Catholic Lawyer*, 29 (1984), pp. 195-206.
- \_\_\_\_\_, "Problems of Ecclesiastical and Religious Organizations: Civil Law Perspective," in *The Jurist*, 48 (1984), pp. 51-66.

- SHANNON, P., "Canon Law/Civil Law," in *The Jurist*, 45 (1985), pp. 618-630.
- SHANNON, T. A., "Ethical Issues in Genetics," in *Health Progress*, 80 (1999), No. 5, pp.34-36, 48.
- SHEPPARD, R., "Medicine in 2020," in *MacLean's*, 113 (2000), No. 02, pp. 40-43.
- SIGUR, A., "Lay Cooperation in the Administration of Church Property," in *The Jurist*, 13 (1953), pp. 171-200.
- SPARKS, E., "Law of Corporations," in, *New Catholic Encyclopedia*, Vol. IV, W. J. McDONALD, editor New York, McGraw-Hill Book Co., 1967, pp. 338-343.
- SPRAGINS, E. E., "Does Managed Care Work?," in *Newsweek*, 132 (1998), No. 13, pp. 60-66.
- STENGER, J., "Alienation of Church Property," in *New Catholic Encyclopedia*, Vol. III, W. J. McDONALD, editor New York, McGraw-Hill Book Co., 1967, pp. 856-857.
- SULLIVAN, J., "Proud Heritage, Neglected Treasure," in *Origins*, 27 (1997-1998), pp. 588-592.
- SYNOD OF BISHOPS, 1985, "A Message to the People of God," in *Origins*, 15 (1985-1986), pp. 441, 443-444.
- THIEME, H., "Savigny, Friedrich Karl von," in, *New Catholic Encyclopedia*, Vol. XII, W. J. McDONALD, editor New York, McGraw-Hill Book Co., 1967, p. 1104.
- THOMAS, J. A.C., "History of Roman Law," in, *New Catholic Encyclopedia*, Vol. XII, W. J. McDONALD, editor New York, McGraw-Hill Book Co., 1967, pp. 584-587.
- THOMPSON, W.P., "System Analyzes Readiness For Integrated Delivery," in *Hospital Progress*, 75 (1994), No. 3, pp.18-19.
- TILLARD, J. M. R., "Our Apostolic Life - What is at Stake," in *C.S.R: Dossiers: English*, Ottawa, Canadian Religious Conference, 1976, pp.1-15.
- TOCANEL, P., "Il Concetto di Persona Giuridica Collegiale Presso la Canonistica Moderna," in *Apollinaris*, 63 (1990), pp. 153-169.
- TORRENS, J., "Catholic Health Care: A Changing Field. An Interview with Diana Bader," in *America*, 169 (1993), No. 7, pp. 12-15.

- TROCCHIO, J., "What Are True Community Benefits?," in *Health Progress*, 77 (1996), No. 5, pp. 34-37, 47.
- \_\_\_\_\_, "Community Networks, Partnerships Between Catholic Charities and Catholic Healthcare Organizations," in *Health Progress*, 80 (1999), No. 6, pp. 58-59.
- UNION OF SUPERIORS GENERAL in ROME, "Representatives of Men's Orders Meet With the Pope," in *Origins*, 13 (1983-1984), pp. 487-490.
- URRUTIA, F., "Administrative Power in the Church According to the Code of Canon Law," in *Studia canonica*, 20 (1986), pp. 253-273.
- VANDENBERG, P., and M. K. GRANT, "The Necessity of Mission Integration," in *Health Progress*, 73 (1992) No. 8, pp. 32-35.
- VOWELL, T., "Preserving Catholic Identity in Mergers: An Ethical and Canon Law Perspective," in *Health Progress*, 73 (1992), No. 2, pp. 28-33.
- WALF, K., "Future Aspects of Catholic Identity," in *Concilium*, 5 (1994), pp. 127-135.
- WARD, D., "Trust Management Under the New Code of Canon Law," in *The Jurist*, 44 (1984), pp. 134-142.
- WEAKLAND, R., "From Dreams to Reality," in *Origins*, 20 (1990-1991), pp. 289-293.
- WEIL, T. P., "Canadians Write A New Rx For Healthcare," in *Health Progress*, 75 (1994) No. 7, pp. 32-38, 40.
- \_\_\_\_\_, "Health Reform in Germany," in *Health Progress*, 75 (1994), No. 7, pp. 24-29.
- WHELAN, K., "Current Attitudes of the Courts Toward Church Properties and Liabilities," in *The Catholic Lawyer*, 26 (1981), pp. 219-227.
- WHITE, J. H., "Policy Makers Must Be Candid About Costs of Reform," in *Health Progress*, 75 (1994), No. 3, pp. 14-16.
- \_\_\_\_\_, "States Move Ahead, Through Incremental Reforms," in *Health Progress*, 75 (1994), No. 9, pp. 10-12, 24.
- WILSON, C., "*Ex corde Ecclesiae*: The New Apostolic Constitution for Catholic Universities," in *The Catholic Lawyer*, 34 (1990), pp. 17-32.

WILSON, R. and T. SCHINDLER, "Tradition in Transition: What it Means to be a Catholic Healthcare Facility Today," in *Health Progress*, 71 (1990), No. 8 pp. 26-31.

WOYWOD, S., "Laws of the Code on the Temporal Goods of the Church," in *Homiletic and Pastoral Review*, 30 (1929), pp. 269-277.

## **VI. ARTICLES - INTERNET ACCESS**

LAGNADO, L., "Columbia/HCA Healthcare to Pay the U.S. \$754 Million", in *The Wall Street Journal*, Interactive Edition, May 19, 2000, Dow Jones & Company, at <http://public.wsj.com/news>. pp. 1-3.

SHEA, M., "Advising Nonprofit Organizations Executive and Consultant Compensation by Nonprofit Organizations; New Intermediate Sanctions Regulations", in *Law Office.com from West Legal Directory*, October 1998, [www.lawoffice.com/pathfind/know](http://www.lawoffice.com/pathfind/know) pp. 1-7.

STEPHENS, J., "The Body Hunters: Where Profit and Lives Hang in Balance; Finding an Abundance of Subjects and Lack of Oversight Abroad, Big Drug Companies Test Offshore to Speed Product to Market", in *The Washington Post*, December 17, 2000, p. A01 (retrieved from WP Archives at [www.newslibrary.com](http://www.newslibrary.com), pp. 1-13).

SULLIVAN, T. J., and B. KARLIN, "State Community Benefit Needs Assessment, Planning, and Reporting Laws," in *The Exempt Organization Tax Review*, February 1999, 285-292, at [www.cnhc.org/253867.html](http://www.cnhc.org/253867.html), pp. 1-14.

SULLIVAN, T. J., "New IRS Regulations Will Make Information About Nonprofit Health Care Providers Widely Available," in *The Exempt Organization Tax Review*, May 1999 pp. 307-310, at [www.cnhc.org/256485.html](http://www.cnhc.org/256485.html), pp. 1-7.

WEAKLAND, R.G., "The Changing Health Care Delivery: A Changed Catholic Mission," Keynote Speech, *Catholic Hospital Association of Wisconsin*, 9-20-95, at [www.execpc.com/~chaw/Weakland.html](http://www.execpc.com/~chaw/Weakland.html) pp. 1-5.

## **VII. MISCELLANEOUS**

MYSEL, R., publisher, *The Official Catholic Directory*, New York, P. J. Kenedy and Sons, 2000, A-100, 2133 p. (published annually).

## **BIOGRAPHICAL NOTE**

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