

CANADIAN THESES ON MICROFICHE

I.S.B.N.

THESES CANADIENNES SUR MICROFICHE



National Library of Canada
Collections Development Branch

Canadian Theses on
Microfiche Service

Ottawa, Canada
K1A 0N4

Bibliothèque nationale du Canada
Direction du développement des collections

Service des thèses canadiennes
sur microfiche

NOTICE

The quality of this microfiche is heavily dependent upon the quality of the original thesis submitted for microfilming. Every effort has been made to ensure the highest quality of reproduction possible.

If pages are missing, contact the university which granted the degree.

Some pages may have indistinct print especially if the original pages were typed with a poor typewriter ribbon or if the university sent us a poor photocopy.

Previously copyrighted materials (journal articles, published tests, etc.) are not filmed.

Reproduction in full or in part of this film is governed by the Canadian Copyright Act, R.S.C. 1970, c. C-30. Please read the authorization forms which accompany this thesis.

THIS DISSERTATION
HAS BEEN MICROFILMED
EXACTLY AS RECEIVED

AVIS

La qualité de cette microfiche dépend grandement de la qualité de la thèse soumise au microfilmage. Nous avons tout fait pour assurer une qualité supérieure de reproduction.

S'il manque des pages, veuillez communiquer avec l'université qui a conféré le grade.

La qualité d'impression de certaines pages peut laisser à désirer, surtout si les pages originales ont été dactylographiées à l'aide d'un ruban usé ou si l'université nous a fait parvenir une photocopie de mauvaise qualité.

Les documents qui font déjà l'objet d'un droit d'auteur (articles de revue, examens publiés, etc.) ne sont pas microfilmés.

La reproduction, même partielle, de ce microfilm est soumise à la Loi canadienne sur le droit d'auteur, SRC 1970, c. C-30. Veuillez prendre connaissance des formules d'autorisation qui accompagnent cette thèse.

LA THÈSE A ÉTÉ
MICROFILMÉE TELLE QUE
NOUS L'AVONS REÇUE

**THE EXERCISE OF AUTHORITY IN
APOSTOLIC RELIGIOUS INSTITUTES OF WOMEN
ACCORDING TO THE 1983 REVISED CODE OF CANON LAW**

by

Ishbel M. MacPherson, S.N.D.

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

Ottawa, Canada, 1984



Ishbel M. MacPherson, OTTAWA, Canada, 1984.

TABLE OF CONTENTS

	Page
· BIOGRAPHICAL NOTE	vi
ACKNOWLEDGEMENTS	vii
ABBREVIATIONS	viii
INTRODUCTION	ix
CHAPTER	
I THE EXERCISE OF AUTHORITY IN APOSTOLIC RELIGIOUS INSTITUTES OF WOMEN BEFORE VATICAN II	1
1. Before <u>Conditae a Christo</u>	1
a) Growth of Religious Congregations before the 19th Century	1
b) Juridical Status of Congregations of Simple Vows	3
c) Government of pre-19th Century Congregations	5
d) The Growth of the Congregations in the 19th Century	8
2. <u>Conditae a Christo</u> and the <u>Normae</u> of 1901	12
a) <u>Conditae a Christo</u>	13
i) Preparation	13
ii) Content of the Constitution	15
b) The <u>Normae</u> of 1901	17
3. The 1917 Code of Canon Law and the <u>Normae</u> of 1921	20
a) The Code of Canon Law	20
i) Preliminaries	20
ii) External Superiors	21
iii) Proper Superiors	22
iv) Dominative Power	27
v) Chapters	33
vi) Councils	34
b) <u>Normae</u> of 1921 and Subsequent Canonical Documents up to Vatican II	35
Conclusion	38

	Page
II PRINCIPLES OF AUTHORITY ACCORDING TO VATICAN II	39
1. The Dignity and Freedom of the Human Person	43
a) In the Church	43
b) In Religious Life	46
2. Obedience and Faith	50
a) Use of the term "obedience" in the Old Testament	51
b) Use of the term "obedience" in the New Testament	52
c) The Obedience of Jesus	52
d) The Obedience of the Christian	53
e) The Obedience of the Religious as outlined in Vatican II Documents	54
f) The notion of obedience as found in Vatican II Documents	59
3. Participation in Authority	62
a) In the Church	62
b) In Religious Life	65
Conclusion	72
III THE EXERCISE OF EXTERNAL AND INTERNAL AUTHORITY ACCORDING TO VATICAN II DOCUMENTS	73
1. The Exercise of External Authority	73
2. The Exercise of Internal Authority	81
a) Nature of Religious Authority	81
b) The General Chapter	84
i) Representation	86
ii) Special General Chapter	87
iii) Faculties granted to the General Chapter	89
c) Superiors	93
i) Authority of Superiors	93
ii) Faculties of the Superior General and Other Major Superiors	101
d) Councils and Assemblies	107
Conclusion	109

IV	PRINCIPLES OF AUTHORITY AS OUTLINED IN THE 1983 REVISED CODE	110
1.	Preparation of the New Law for Religious	110
	a) Guidelines for the General Revision of the Code	110
	b) Guidelines for the Revision of the Law for Institutes of Consecrated Life	112
2.	Implementation of Vatican II Principles in the Revised Law for Religious	116
	a) The Dignity and Freedom of the Human Person	116
	i) Admission and Incorporation	119
	ii) Spiritual, Community and Apostolic Life within the Institute	120
	iii) Departure and Dismissal	125
	b) Obedience and Faith	133
	c) Participation	143
V	THE EXERCISE OF EXTERNAL AUTHORITY ACCORDING TO THE 1983 REVISED CODE	148
1.	External Authority and Religious Institutes	149
	a) Matters reserved exclusively to the Apostolic See	149
	b) Matters reserved to the competent Ecclesiastical Authority	152
2.	External Authority and Religious Houses	153
3.	External Authority and Individual Religious	161
4.	Some Applications	165
	a) The Episcopal Vicar for Religious	166
	i) Conciliar and Post-conciliar Teaching	166
	ii) The New Code	168
	iii) Functions which could be assigned to an Episcopal Vicar for Religious	171
	iv) Practice	176
	b) Contracts	181
	c) Religious Houses and Residences	187
	Conclusion	195

	Page
VI THE EXERCISE OF INTERNAL AUTHORITY ACCORDING TO THE 1983 REVISED CODE	196
1. Legislative Organisms	196
a) The General Chapter	196
i) The New Law	197
ii) Practical Responsibilities of the General Chapter	201
iii) Voting	204
b) Superiors	207
i) Superiors in general	211
ii) The Supreme Moderator	213
iii) The Competent Authority	217
iv) Major Superiors	219
c) The Council	221
i) The Extended Council	222
ii) Executive Committees of the General Council	225
d) Assemblies and other Gatherings	227
2. Legislative Texts	227
a) The Constitutions	229
b) The Second Book	232
c) The Third Book	235
d) Other Texts	236
3. Some Practical Issues related to the Exercise of Internal Authority	237
a) Participatory Structures	237
b) The Role of the Superior	241
i) General and Provincial Level	242
ii) Local Level	245
Conclusion	251
 CONCLUSION	 254
 BIBLIOGRAPHY	 258
 APPENDIX	 271

BIOGRAPHICAL NOTE

Ishbel Mary MacPherson, S.N.D., was born on September 12, 1933 in Fort William, Scotland, where she received her primary and secondary education. In 1950, she entered the Congregation of the Sisters of Notre Dame de Namur and after first profession, continued her education at Notre Dame College of Education, Glasgow, Scotland, from which she graduated with the Diploma of College Education.

After eighteen years of teaching, principally in High Schools in England, she spent three years as a full-time member of the Movement for a Better World, before becoming a member of the Westminster Metropolitan Tribunal, London, England.

Post-graduate studies have resulted in the Diplôme Supérieur de Langue et de Littérature Française (Paris, 1969), the Diploma in Pastoral Theology (Heythrop College, University of London, 1978), a Master's degree in Canon Law (University of Ottawa, 1982) and the Licentiate in Canon Law (University of Saint Paul, Ottawa, 1982).

ACKNOWLEDGEMENTS

I wish to thank all those who helped, in any way, to make this study possible, in particular, my Provincial Superior and the members of the British Province of the Sisters of Notre Dame de Namur, especially those in my local community. Their unfailing support and encouragement during the course of the project is greatly appreciated.

A special message of thanks is given to the Rev. F.G. Morrissey, O.M.I., for the generosity, patience, encouragement and suggestions which have accompanied his direction of the work. My gratitude is expressed to the other Professors and to the Librarians at Saint Paul University for their continued example and support.

Finally, I would like to express gratitude to my family and friends, whose love and encouragement have been invaluable.

I dedicate this study to the memory of my parents.

ABBREVIATIONS

AAS	Acta Apostolicae Sedis
CD	Christus Dominus
CIC	Codex Iuris Canonici
CLD	Canon Law Digest.
CP	Communio et Progressio
DC	Dum Canoniarum
DH	Dignitatis Humanae
ES	Ecclesiae Sanctae
ET	Evangelica Testificatio
GS	Gaudium et Spes
LG	Lumen Gentium
MR	Mutuae Relationes
PC	Perfectae Caritatis
RC	Renovationis Causam
Relatio 1981	Relatio: complectens synthesim animadversionum ab em. mis atque exc. mis Patribus Commissionis ad Novissimum Schema CIC exhibitaram, cum responsionibus a Secretaria et Consultoribus datis.
RL	Religionum Laicalium
SCRIS	Sacred Congregation for Religious and Secular Institutes

INTRODUCTION

The question of authority and its exercise in religious life is a complex one. Changing attitudes and patterns in secular society produce new structures of civil authority and the same can be said for developments within religious institutes.

Nowhere, perhaps, have the changes in recent years been more marked than in apostolic institutes of women religious whose mission brings them into close contact with the secular world. These women should be able to find within their congregations, life-styles which in some way correspond to the trends in the world which are life-giving, or at least take these into account. Thus, any kind of authoritarianism or dictatorship is unacceptable since it fails to respect the innate dignity of the person and legitimate aspirations to involvement in decision-making, points clearly brought to the fore by Vatican II. Women of today rightly demand a say in what involves their own lives, and religious women are no different in this regard.

The Church, at the Second Vatican Council, showed an awareness of the need to renew structures of authority in religious life, at their very foundations. It was not enough to change their appearance; they had to reflect some basic principles which would give their existence true meaning.

Thus, we find that, wherever authority in religious life is mentioned in conciliar or post-conciliar documents, there is a repeated emphasis on three basic values: the dignity and freedom of the human person, obedience and faith, and participation or shared responsibility. In addition, the Council gave consideration to those who hold authority, both outside and inside the institute. It would be false to claim that these principles had no significance previously in religious institutes, but it is no exaggeration to say that their articulation in explicit terms was a momentous development which would have significant repercussions in the years which followed.

With the advent of the revised Code of Canon Law, the time has come to evaluate how the Church has translated the Council teaching into its law for religious, with a particular emphasis on its effect on women religious. It is also necessary to examine whether the new norms, while faithful to the spirit of the Council, show an open-endedness which will allow for legitimate developments within an institute.

The theme of authority is a vast one. For this reason, we have decided to limit this study to the exercise of authority in apostolic religious institutes of women; this will explain the use of the feminine personal pronoun. Obviously, this is not to say that most of the norms would not be equally applicable to male religious.

Although our main preoccupation is with the new law and its effects on women religious, we cannot imagine that the story begins in 1983. It took many

centuries for apostolic religious to achieve the canonical status of religious. Up to 1900, this was the prerogative of cloistered nuns with solemn vows. But the publication of Conditae a Christo in 1900¹ changed this situation.

Thus, to begin our study, we shall provide an historical overview, covering the period up to the Second Vatican Council, and include an examination of the prescriptions of the 1917 Code of Canon Law. We shall then proceed to a consideration of the principles of authority as outlined in Vatican II and post-conciliar documents and subsequently incorporated in the 1983 revised Code of Canon Law. We shall conclude with an examination of the canons which treat of the exercise of external and internal authority, including therein more detailed considerations on some practical issues of concern for religious.

It is my firm conviction that a study of authority which ignores the past and present history of religious life, will have no acceptance among religious. Similarly, a superficial treatment which takes no account of the underlying motives for obedience and the faith dimension of religious life, would be suspect at the very least. It is for this reason that I have paid special attention to the teaching of Vatican II, believing that whatever the Church ultimately approves for religious in their Constitutions, must be a reflection of the values which that Council held dear.

¹ Leo XIII, Constitution "Conditae a Christo", December 8, 1900, in Acta Sanctae Sedis, 33(1900), pp. 341-347.

CHAPTER I

THE EXERCISE OF AUTHORITY IN APOSTOLIC INSTITUTES OF WOMEN BEFORE VATICAN II

Because Conditae a Christo, published by Leo XIII on December 8, 1900,¹ marked such an important turning-point in the history of apostolic religious institutes, we propose to trace briefly some of the stages leading to this moment. This will be followed by a consideration both of the document itself and the norms which were published the following year. Finally, we shall proceed to a study of the 1917 Code of Canon Law.

I. Before "Conditae a Christo"

The period before Conditae a Christo, as it relates to religious congregations, is a long one, but we shall single out some of the more significant events.

a) Growth of Religious Congregations before the 19th Century

Although the modern religious congregations of women rose to prominence in the Church in the 19th century, there were many similar congregations in existence before that time. It would seem that the tertiaries attached to the mendicant orders, founded in the 13th century, gradually came to

¹ Leo XIII, Constitution "Conditae a Christo", December 8, 1900, in Acta Sanctae Sedis, 33(1900), pp. 341-347.

adopt a community life with simple vows and without a strict form of cloister. Thus, the Tertiary Rule, approved by Nicholas IV in 1289,² was adapted to the new community situation by Leo X in 1521,³ at the same time as he gave approval to Franciscan tertiary communities. At this time, as Julius II had done in 1509 for the Sisters of Penance, attached to the Dominicans,⁴ Leo X permitted simple vows and did not impose strict enclosure.

An important development was the foundation, in 1535, by Angela Merici, of an institute devoted to works of charity and education. These Ursulines, as they came to be known, did not live in community or pronounce vows. They did have a superior to direct the apostolate and observed obedience and chastity. In this form, they received approval from Paul III on June 8, 1544.⁵ However, St. Charles Borromeo, who had invited them to his diocese of Milan in 1568, persuaded them that common life and simple vows would give a greater stability to the institute. So, the approval of Rome was sought for the Institute and its Constitutions and this was granted by Gregory XIII in 1572.⁶

2 Nicholas IV, "Supra Montem" August 17, 1289, Magnum Bullarium Romanum, Tome 3, Part II, pp. 53-56.

3 Leo X, Constitution "Inter cetera", January 20, 1509, in Magnum Bullarium Romanum: Bullarium Privilegiorum ac Diplomatum Romanorum Pontificum Amplissima Collectio, Tome 3, Part I, pp. 497-499.

4 Julius II, Constitution "Considerantes", March 14, 1509, in F.J. Callahan, S.J., The Centralization of Government in Pontifical Institutes of Women with Simple Vows (From their beginnings till the legislation of Leo XIII), p. 8.

5 Max Heimbucher, Die Orden und Kongregationen der Katholische Kirche, Vol. I, p. 629.

6 Ibid., p. 632.

From this time, there was a steady growth of congregations without strict enclosure and solemn vows. Some of these have been examined by Francis J. Callahan, S.J., who concludes that, in view of the fact that their Constitutions differ greatly, the common ground of all these congregations seems to be "a consuming zeal and ardent charity."⁷

b) Juridical Status of Congregations of Simple Vows

The juridical situation of the congregations which were springing up was rather confusing. The legal recognition given by Julius II and Leo X was directed to tertiary communities and the Council of Trent confirmed these approbations.⁸ It is clear that the Holy See did not regard the members as religious in the canonical sense. The Council of Trent renewed the legislation of Boniface VIII requiring strict cloister for all nuns and imposed severe penalties for the violation of rules.⁹ Officially, women religious were those who lived in a cloistered community and professed solemn vows.

That such was the norm can be adduced from the Apostolic Constitution, Circa pastoralis, promulgated by Pius V in 1566.¹⁰ It was addressed to tertiary communities and intended to halt abuses by imposing, even on them, solemn vows

⁷ F.J. Callahan, *op. cit.*, pp. 8-11.

⁸ Canones et Decreta Sacrosancti Oecumenicij Concilii Tridentini, Vol. 9, Session XXV, "De regularibus", caput 5, pp. 1080-1081.

⁹ Ibid.

¹⁰ Pius V, Constitution, "Circa pastoralis", May 29, 1566, in Magnum Bullarium Romanum, Tome 4, Part I, pp. 292-294.

and strict cloister. It went so far as to declare that, unless these prescriptions were observed, no new candidates could be admitted and any vows pronounced would be null and void.

However, this Constitution committed the implementation of the norms to the bishops. Thus, it came about that, although this Constitution was the official juridical position of the Holy See for two and a half centuries, in individual cases it was not always firmly adhered to. In part, this situation can probably be attributed to the fact that the Constitution was addressed to tertiary communities. There was no official position on other groups of apostolic women, although the norms of Circa pastoralis were, in fact, applied to them by many bishops. Thus, some like the Archbishop of Lyons, in relation to the Visitation nuns, would be strict while others would be more lenient. Even the Holy See acted ambivalently by approving rules and statutes which did not conform to the Constitution, although it did add, in these approvals, a clause which indicated that approval was not intended to be definitive in any way.¹¹

It seems evident that many new groups circumvented the legislation by not pronouncing any vows at all until late in their history, while some made promises or even vows to the local bishop without seeking approval from the Holy

¹¹ "Ceterum non intendimus per praesentes ipsum conservatorium in aliquo approbare." Cf. F.J. Callahan, *op. cit.*, pp. 13-15 for various developments. Cf. also G. Lesage, O.M.I., L'Accession des congrégations à l'état religieux juridique, and G. Fransen, "L'Évolution du droit des religieux" in Vie Consacrée, 55(1983), pp. 150-156 for a full treatment of the canonical status of religious congregations.

See.¹² Others, like the Ursulines, developed two strands, one with solemn vows and one with simple ones.¹³

c) Government of Pre-19th Century Congregations

The government of the monasteries of monks and nuns who, ordinarily, remained in the one place for life, was comparatively simple. The men were under the authority of the abbot or superior general who was usually their Ordinary as well. For the nuns, it was not quite so simple since the abbess or superior had only dominative power; jurisdiction was in the hands of either the local Ordinary or the regular Ordinary of the Order to which the nuns were affiliated. Since the nuns were usually confined to one monastery, there were few conflicts about jurisdiction.

When the mendicant Orders of St. Dominic and St. Francis were established, there no longer was the one stable monastery but a collection of houses and this new form necessitated a different type of government, a centralised one. The superiors of local communities were subject to the Master General of the Order and to the general chapter.

The pattern of centralised government, alongside decentralised government among the monks and nuns, was paralleled in the apostolic

¹² F.J. Callahan, op. cit., p. 14.

¹³ Ibid., p. 13.

5

congregations of women without solemn vows or cloister. Some were subject to the local bishop, others to the superior of a male institute. Within this system, the powers of the "external" superior varied from community to community, as indeed did the powers of the "internal" superior.¹⁴ There was no general legislation to clarify the status of ecclesiastical and domestic superiors. Only within the congregation itself, through the statutes, constitutions or papal approbations, does one find some kind of clarification. We discover, for example, that in 1521, Leo X in the Constitution, Inter cetera, made the local superioresses of tertiary communities directly subject to the superiors of the First Order of St. Francis and not to the local Ordinary.¹⁵

Two other facts need to be mentioned at this time. The first is that it took virtually two centuries to work out some of the problems related to the distribution of powers between the ecclesiastical and the domestic superiors. While some of these were ironed out in constitutions, the Holy See, for the most part, did not interfere in the others. The second fact to take into consideration is that, with regard to the very existence of centralisation within a congregation, there were problems, mainly from bishops who did not wish to see a congregation develop beyond their dioceses to others beyond their control.

One outstanding example of the struggle for centralisation, with maximum powers vested in the superioress general, is found in the development of

14 Cf., ibid., pp. 16-24 for details of how various institutes developed.

15 Leo X, loc. cit., pp. 764-767.

the "English Ladies" of Mary Ward, established in 1609.¹⁶ The culmination of the one and a half centuries of struggle, which included suppression in 1631 and imprisonment of the Foundress, was Benedict XIV's Constitution Quamvis iusto, of April 30, 1749.¹⁷ This is a very important document because, while it was destined to apply only to the "English Ladies", it was used in practice as a guide for future developments in apostolic institutes. Callahan sums up its importance for other congregations as follows:

Benedict XIV made it abundantly clear that it was not his purpose to derogate from the existing laws and yet it is impossible not to recognize in the constitution Quamvis iusto a step in advance of the mere tolerance of institutes of simple vows, which had characterized the attitude of the Holy See ever since the constitution Circa pastoralis of Pius V. For certainly a tacit approval of such institutes is contained in this constitution. This fact was commonly accepted by canonists of the time and it also explains the subsequent omission of the privative clause, citra approbationem conservatorii. It was but a short step from the position taken by the Holy See in Quamvis iusto towards the institute of the English Ladies to a policy of full approval and encouragement.

The constitution Quamvis iusto has been called the primum iuridicium schema constitutionis mulierum. For it is the first detailed legislation which attempted to formulate a modus vivendi between an institute of simple vows with a superioress general and the hierarchy of the Church. It defined in broad terms the relations of the superioress general of the English Ladies and the bishops of the dioceses in which the institute had communities.¹⁸

It is clear that through Quamvis iusto, the Holy See accepted the principle of a superioress general over a number of houses situated in different dioceses and countries. On the other hand, it limited her power considerably and one wonders whether much was achieved because, while the office of a superioress general was

16 Cf. F.J. Callahan, op. cit., pp. 25-33 for a comprehensive outline of the proceedings.

17 Benedict XIV, Constitution "Quamvis iusto", April 30, 1749, in Magnum Bullarium Romanum, Bullarium Benedicti XIV, Tome III, pp. 54-68.

18 F.J. Callahan, op. cit., pp. 31-32.

recognised; in this case, there were no approved constitutions to support juridical unity. It is remarkable to notice that, although a rule outlining the purpose of the congregation and practice of virtue was approved in 1703 by Clement XI,¹⁹ the constitutions of the "English Ladies" were not approved until 1903 by Leo XIII.²⁰ Even then, they were not allowed to adopt the Jesuit constitutions as their fundamental code, something Mary Ward had wanted.

At the end of the 18th century, one can say that religious congregations were still without a common law to define their status and their practice. There was certainly a growth of these congregations and many of them received approval of their constitutions; but recognition from the Holy See remained within the realm of particular law. In addition, there was still the conviction that religious could only be so called if they made solemn vows and observed strict enclosure. An alternative way of life, while desirable and praiseworthy, did not qualify as "religious" life in the canonical sense.

d) The Growth of the Congregations in the 19th Century

The French Revolution marked the end of an era and the beginning of another, not only on the political scene but also in the ecclesiastical world. Out of the ruins there grew up an immense number of female religious congregations, filled with women whose desire was to respond to the needs of people deprived of

¹⁹ M. Heimbucher, op. cit., Vol. II, p. 456.

²⁰ Ibid.

spiritual and medical care and of education. Nowhere was this more evident than in France itself, the site of the Revolution. Those congregations which had survived the devastation and the new ones which sprang up, had the ingredients to cope with the new situation. They were unencumbered by the cloister and free to go wherever the need was greatest. Those which had some kind of centralisation were even more mobile.²¹ Callahan, in the work already cited, states that 571 pontifical congregations were established in the 19th century, the vast majority of which were in France.²²

It can easily be appreciated that this abundance of foundations began to cause concern to the Holy See. The First Vatican Council seemed to be a suitable occasion for putting some kind of order into the situation. At that time, permission of the Holy See was not required for the erection of a new congregation. Any bishop could authorise the foundation of a congregation independently of the Holy See. In the majority of cases, the bishops who sanctioned the establishment of a new religious family were anxious to keep

²¹ That this mobility was often only won by constant requests to the Holy See can be seen in the correspondence between the Holy See and the Society of the Sacred Heart on the matter of enclosure. This is fully dealt with by Jeanne de Charry, in Les Constitutions Définitives et leur Approbation par le St. Siège, Vol. I, pp. 482-488; Vol. II, pp. 174-183.

In addition, as explained by Mary Linscott, in Towards Revised Constitutions, p. 7, the early days of the 19th century were controlled by rules from Napoleon limiting the growth of congregations. Central government was forbidden, postulants could only be accepted with imperial permission, perpetual vows were prohibited, etc. He even wanted to amalgamate all religious into two groups, teaching and nursing but this was never implemented. These restrictions could well be one explanation for the number of small congregations in France alone.

²² F.J. Callahan, op. cit., pp. 34-35. The footnotes of chapter 4 of this work give an account of the founding of some well-known congregations.

control of it by limiting its activity to their own dioceses. The struggle of the Sisters of Notre Dame de Namur bears witness to how strong ecclesiastical opposition could be. The foundress arrived home from a journey to find that the chancery had replaced her with another superior.²³ The French and Belgian bishops were opposed to any change in the system and the Holy See had to tread carefully, although instructions were given to the Sacred Congregation for Bishops and Regulars to tighten requirements for approval by the Holy See. As far as possible, existing congregations were encouraged to spread into other dioceses and obviate the need for the establishment of completely new ones.

The most effective way of separating religious congregations from the direct control of the bishops was through the approval of institutes and their constitutions by the Holy See itself; this procedure became more stringent as the century progressed. It called for the expression of a clear delineation of powers, and constitutions would not be approved until these demands were met.²⁴ Approval included the appointment of an ecclesiastical superior. However, by the middle of the 19th century, the Holy See realised that this was not sufficient and the office of ecclesiastical superior was abandoned in favour of that of Cardinal Protector,

²³ Cf. Mary Linscott, *op. cit.*, pp. 9-12, 16. The four essential reasons for having centralisation are particularly worth noting. - It is also significant that the first article of the Constitutions of the Sisters of Notre Dame de Namur until 1948, was:

"The Congregation of the Sisters of Notre Dame is governed by a Superior General." By 1948, it was considered safe to relegate the article to the section on government!

²⁴ Cf. A. Bizzarri, "Methodus quae a Sacra Congregatione Episcoporum et Regularium servatur in approbandis novis institutis votorum simplicium", in Collectanea in usum Secretariae Sacrae Congregationis Episcoporum et Regularium, which made public the norms of the Holy See, pp. 772-814.

one of whose special roles was to represent the Holy See in extraordinary affairs of government which required the intervention of the hierarchy.²⁵

By the end of the 19th century then, two important developments had occurred. Firstly, the move towards centralisation of government. It became increasingly difficult to meet the demands of local Ordinaries when a congregation spread beyond the confines of a diocese. Some congregations, like the Sisters of Notre Dame de Namur²⁶ encountered grave difficulties which were only finally resolved by the pontifical approval of an ecclesiastical superior and later, by the appointment of a Cardinal Protector. Centralisation was seen to be a powerful force for unity in a congregation, as well as a factor in growth and efficiency. As time went on, and institutes spread further afield, distance and difficulty of communication presented problems, but these were usually resolved by the establishment of an intermediate unit of government between the local house and the mother-house or generalate: the establishment of a province or region which had its own major superior. This was possible whenever an institute had a sufficient number of sisters and houses to justify setting up a province or region. Thus was developed the threefold "hierarchy" of local superior, provincial or regional superior, and superior general. This new arrangement, resulting from the growth of congregations provided that a higher superior, while not being the supreme moderator, had an appreciable influence in the local situation and was

²⁵ Cf. F.J. Callahan, *op. cit.*, pp. 48-52 for a full discussion of Rome's attitude.

²⁶ Mary Linscott, *op. cit.*, pp. 9-13. The difficulties were so acute that the Foundress had to leave Amiens and establish the mother-house in Namur where the bishop of Namur had offered to have it.

available for liaison with the Ordinary, when, perhaps, a local superior might not have been as acceptable.²⁷ From the readiness with which the Holy See approved constitutions of communities having central government during the 19th century, it becomes clear that the Church approved of this style of legislation.

The second important development of the 19th century was the distinction which emerged between congregations of pontifical right and those of diocesan right. This was the inevitable result of congregations' seeking pontifical approval for the constitutions. There was no common law at this stage, one which stated that these congregations were composed of religious, properly so called. All that was being declared was that these groups existed, under ecclesiastical approval, and operated according to the particular law which had been approved for them.

When we realise that 571 new pontifical congregations were added in the 19th century to those already in existence, it is small wonder that the Holy See set about seriously to consider the whole question with a view to regularising the situation, with legislation which would become common law for these congregations and give their members full religious status in the Church.

2. *Conditae a Christo and the Normae of 1901*

As has been indicated, the year 1900 was a momentous one in the history

²⁷ Cf. John Sharp, "The Redemptorists in the United Kingdom: the Early Years", in Clergy Review, 67(1982), p. 388, where one of the complaints of the bishop was that the sisters had a "foreign" superior! Obviously, it could also be a drawback!

of religious congregations. It is important, then, to examine in some detail what was written in Conditae a Christo.

a) Conditae a Christo

Before considering the material of Conditae a Christo, it might be useful to study some of the preparations which led to the formulation of the document.

i) Preparation

The Constitution Conditae a Christo, of Pope Leo XIII, promulgated on December 8, 1900, is a document of the highest importance in the history of congregations of simple vows. By it, the canonical status of these congregations was firmly established in the law of the Church.

Through its constant review of constitutions, the Sacred Congregation of Bishops and Regulars gradually evolved a number of norms to guide its examination. These norms were made public in 1863 by A. Bizzarri in his Methodus.²⁸ Helpful as these were, they were not laws; but they were important in that they contributed positively to building up the law which would be formalised in the 20th century. They were a good example of how lived experience, with its trial and error process, authenticates the final expression of the law.

²⁸ A. Bizzarri, loc. cit.

Many of the situations which had been highlighted over the years, especially those concerning the relative powers of bishops and superiors general, were becoming acute through lack of clarity. The Sacred Congregation for Bishops and Regulars saw that something had to be done and, in 1898, decided to prepare a pontifical constitution. A Redemptorist, Claudius Benedetti, was commissioned to study the issue and prepare an outline of suitable legislation.²⁹ Although not all his recommendations were accepted, such as giving the bishop right of visitation in all that pertained to temporal administration in the congregations in his diocese, his document was indeed the framework on which the new law was built.

A further contribution came from the bishops of Latin America who met in Rome in 1899 for a plenary council. In the Acts of this council, one chapter was devoted to the institutes of simple vows and most of the legislation enacted by Conditae a Christo was actually contained in this chapter.³⁰ As many of the constitutions which had contributed to the preparation of the new law had emanated from Europe, it is exciting to realise that a similar experience of this new form of religious life was being lived out in the southern hemisphere. Although some of the congregations in Latin America may well have originated in Europe, the Holy See could not overlook the unity of thought and life.

²⁹ Claudio Benedetti C.Ss.R., Sulla dipendenza dei Pii Instituti della Giurisdizione degli Ordinarii Diocesani, Rome, 1899 (Archives of the Sacred Congregation for Religious).

³⁰ Acta et Decreta Concilii Plenarii Americae Latinae in Urbe Celebrati Anno Domini 1899, Rome 1906, pp. 150-158.

ii) Content of the Constitution³¹

The Constitution begins by acknowledging the birth of new religious families of simple vows and accepting that the love of Christ has urged the majority of them to go far beyond the confines of a city or diocese, while remaining under a common rule and government.

The Constitution then points out the distinction between diocesan and pontifical congregations and declares that the uncertainty which exists about the relationship of the diocesan bishop vis-à-vis the superior of a congregation needs to be clarified. It affirms that there is a limitation on the power of the bishop in the case of a pontifical congregation, although the relative rights should have been clear from the terms in which constitutions were approved. This highlights at once both the importance of the constitutions in building up a common law and the reluctance of bishops to relinquish power, once a congregation became pontifical. The papal Constitution makes the position quite clear.

There are two sections in the Constitution. The first deals with congregations which have not received pontifical approval. It would seem that the rules enjoined could be applied equally to emerging congregations or to those who wished to remain diocesan. The bishop is a key figure at the start of a congregation because it cannot be established without his permission. It should be

³¹ I have used the translation of "Conditae a Christo" found in D.I. Lanslots, O.S.B., Handbook of Canon Law for Congregations of Women Under Simple Vows, Appendix A, pp. 246-258.

noted that, in No. III, the bishop is urged not to make a new foundation when one of similar aims and life style already exists. What emerges clearly is that, while the bishop retains his jurisdiction over these religious as he would over any lay member of his diocese, he has no power with regard to internal government or even to the choice of superiors. He fulfils a certain role of guardianship in matters concerning morals, worship, etc., as well as in those which affect the rights of individual religious, e.g. dismissal or dispensation.

The second section refers to congregations of pontifical right. The power of the bishop is more restricted. He has ordinary power of jurisdiction with regard to the internal forum but, in external matters, only in so far as these are prescribed by law, e.g. worship, censures, alms collecting, etc. Bishops must still give permission for the erection of new houses, as well as for churches and oratories. But in cases such as dismissal of religious and dispensation from vows, the Holy See is the competent ecclesiastical authority. With regard to the administration of the temporal goods of the community, the bishop may not interfere except in those matters which deal with trusts or legacies to be applied to worship or the needs of the diocese.

Conditae a Christo is an important document because it expresses in unequivocal language the status of religious congregations of simple vows without enclosure, and their position with regard to the bishops. The new way of life, with a much broader concept of internal government came into its own. The conclusion of the Constitution states very firmly that, from this time onwards, this law was to

be obeyed by all of whatever rank in the Church. Conditae a Christo truly represents a great step forward for religious congregations of women.

b) The Normae of 1901³²

The Normae issued in 1901 consisted of a series of principles and points which the Sacred Congregation for Bishops and Regulars looked for when it was examining Constitutions submitted for approval.

Although these normae did not have the force of law, they soon acquired something of a binding force. This is not surprising if one considers that they were the result of a century's experience of examining the constitutions of religious congregations. Moreover, the process had received official approbation in Conditae a Christo which was the law. This can surely be implied in the words:

...the others have had, besides this, a decree of the Roman Pontiff issued in their favour, inasmuch as he has recognised their laws and statutes or granted them his recommendation and approbation...

What these limits (of the bishop's authority) should be may be gathered from the manner in which the Holy See generally approves similar associations and which consists in approving a congregation as a religious society with simple vows under the authority of a superior general, without prejudice to the jurisdiction of the Ordinary, according to the sacred canons and the apostolic constitutions.³³

It would seem, then, that the norms of the Sacred Congregation of Bishops and Regulars, while not being strictly law, are obviously not to be taken lightly or set aside, except for very serious reasons.

³² Sacred Congregation of Bishops and Regulars, Normae secundum quas Sacra Congregatio Episcoporum et Regularium procedere solet in approbandis novis institutis votorum simplicium, Romae, 1901.

³³ D.I. Lanslots, op. cit., pp. 247-248.

It is worthwhile examining in some detail, the content of the Normae on government and authority because they were to be the basis of future legislation. The norms were simply guides to drawing up constitutions for presentation to the Holy See; they were not intended to be followed slavishly but, in practice, since they were not dealing directly with the charism of the congregation or its apostolate, they were followed fairly exactly.

Normae 203 and 204 are key principles with regard to authority in a religious congregation. The first states categorically that supreme authority is exercised ordinarily throughout the whole congregation by the superior general and council and, extraordinarily, by the general chapter.³⁴ The second repeats part of Conditae a Christo by saying that the bishops may not limit or change the authority granted to superiors by the constitutions, whether these be for the whole congregation or for individual houses.³⁵

The rights of the bishops, taken largely from Conditae a Christo, are repeated in various parts of the Normae and refer to worship, diocesan works and jurisdiction in general.³⁶

The various rights and obligations of the superior general are designated throughout the norms. They refer to the acceptance and dismissal of postulants

³⁴ Norm 203, pp. 35-36.

³⁵ Norm 204, p. 36; D.I. Lanslots, op. cit., Section II, No. II, p. 253.

³⁶ Norms 12, 258-267, 308, pp. 44-45.

and novices,³⁷ dismissal of professed religious³⁸ and administration of property belonging to the sisters or the congregation.³⁹ Mention is made of the superior general's right to make appointments,⁴⁰ conduct visitations of houses⁴¹ and to call the ordinary general chapter.⁴² Norm 252 puts her authority into perspective: "The superior general, lawfully elected, governs and administers the whole institute committed to her, according to the norms of the constitutions.⁴³

There are other norms which speak of the power of local superiors,⁴⁴ of provinces,⁴⁵ other offices⁴⁶ and chapters,⁴⁷ but those referring directly to the superior general seem the most significant in the light of the struggle for recognition which characterised the 19th century.

37 Norms 63-64, 271, pp. 16, 46.

38 Norms 192-199, pp. 33-34. It should be noted that in the case of perpetual profession, consent of the council and confirmation by Holy See is required.

39 Norms 117, 123, 263, pp. 23, 23-24, 45.

40 Norm 254, p. 43.

41 Norm 255, p. 43.

42 Norm 211, pp. 36-37.

43 Norm 252, p. 43; author's translation, (emphasis added).

44 Norms 305-316, pp. 52-54.

45 Norms 301-304, p. 52.

46 Norms 276-300, pp. 48-52.

47 Norms 213-251, pp. 37-43.

3. The 1917 Code of Canon Law and the Normae of 1921

The year 1917 marked the appearance of the first Code of Canon Law, in which, because of their new status, religious congregations would find their place, with other forms of religious life.

a) The Code of Canon Law

Before studying the Code of 1917 in some detail as it relates to the question of authority, mention will be made of some general canons.

i) Preliminaries

Conditae a Christo recognised a new form of consecrated life in the Church, characterised by simple vows, but without exemption or papal enclosure. It established the authority of external and internal superiors and distinguished between congregations of pontifical right and those of diocesan right.

The Code of Canon Law goes further, for while previous legislation had placed laws for the new congregations parallel to those for regulars, the Code puts both under the title "De Religiosis" which is Part II of Book II. The Code recognises that these two forms of consecrated life have common foundations and both can be acknowledged equally as "religious" in the canonical sense. CIC (1917), canon 487 establishes this: "The religious state, a stable form of living in common, in which the faithful, in addition to keeping common precepts, also undertake to

observe the counsels through the vows of obedience, chastity and poverty, is to be held in honour by all."

Since the 1917 Code was presented as a comprehensive book of law for the whole Church, naturally, the basic legislation to be applied to a particular group will be found there. Some of the canons were already law; others contained new prescriptions. With regard to religious congregations, the elements of Conditae a Christo and of the Normae of 1901 are readily recognizable.

"De Religiosis" begins with some general principles on religious life and the application of laws (CIC (1917), canons 487-491). It then, in Title IX, considers the erection and suppression of Institutes, provinces and houses. The Holy See is the competent authority with regard to institutes and provinces. When it is a question of erecting or suppressing a religious house of a non-exempt congregation, the canons regulate the co-operation required between the superior and the bishops concerned.

ii) External Superiors

Title X brings us to the section on the government of institutes (CIC (1917), canons 499-507). Canon 499, § 1 states that religious are subject to the Roman Pontiff by virtue of their vow of obedience. The second paragraph of the canon makes clear that the function of the Cardinal Protector is a pastoral one and not connected with jurisdiction. CIC (1917), canon 500 deals with the question of

jurisdiction which, unless it has been given to a regular Ordinary by the law, is in the hands of the local Ordinary.

iii) Proper Superiors

Having treated of the external government of religious, the Code enunciates the fundamental principle of government in religious congregations:⁴⁸ "Superiors and chapters have dominative power over their subjects according to the norms of the constitutions and common law..." (CIC (1917), canon 501, § 1). These superiors are called "proper" as distinct from external or ecclesiastical superiors; they are selected from among the members of the congregation itself.⁴⁹ CIC (1917), canon 488, 8° points out that these superiors can be major or minor. In congregations, the major superiors would be the superior general and the provincial or regional superior, with their vicars and others having power equivalent to that of the provincial. All others are minor superiors.

CIC (1917), canon 502 states that the superior general has dominative power over all the provinces, houses and members of the institute, in conformity with the constitutions; other superiors have it within the limits of their office. In this canon, as in CIC (1917), canon 501, it will be noticed that the power is not absolute but exists in accordance with the limits imposed by common law and the constitutions. Common law says very little about what is encompassed by

⁴⁸ Since this paper is dealing with apostolic congregations of simple vows, I shall speak only of the aspects which refer to them.

⁴⁹ L. Fanfani, and K. O'Rourke, Canon Law for Religious Women, p. 55.

dominative power, but the implications of religious profession, especially the vow of obedience, make its range fairly comprehensive. Fanfani expresses it thus:

By reason of their dominative power, women who are superiors have the following authority:

1. They can give commands, issue precepts and make regulations in accordance with the constitutions proper to their institute.
2. They can give penances to those who are guilty of faults. For example, they can impose fasting or certain pious practices. They can never, however, inflict true canonical penalties such as excommunication or interdict.
3. They can dispense from the observance of the constitutions, not indeed at will, but within the limits determined by the constitutions themselves. They may not, however, dispense from the laws of the Church.⁵⁰

As can be seen, the particular law of each congregation will define more exactly how the various superiors are to exercise their authority. In general terms, we can say that, at each level (general, provincial and local), the person responsible has power over all who are committed to her. On the whole, we are speaking about fairly routine matters as Fanfani's words suggest. There is nothing in the Code about the manner in which authority is exercised, except, perhaps, when it comes to financial aid for a member who departs or is dismissed.⁵¹ With regard to each level of government, the superior has authority over temporal goods without usurping the duties of the treasurer who administers them.⁵² It should be remarked also that, at each level, the superior has authority from the law, by office and not by delegation. Higher superiors are not generally entitled to take

⁵⁰ *Ibid.*, pp. 59-60.

⁵¹ CIC (1917), canon 643, § 2.

⁵² CIC (1917), canon 516, § 3.

over the authority of a lower superior. As Heston says: "...it is contrary to the mind of the Church for major superiors to retain for themselves a decisive hand in all, or even any, details of local administration."⁵³ There are, therefore, aspects of authority common to all superiors at all levels, and aspects reserved to a certain level of government. Particular law will define these in more detail for each congregation. The constitutions are also to state the manner in which binding commands may be made, that is, either in writing or before two witnesses.

It follows that certain areas are reserved to the general or the provincial superiors. These are related mainly to visitations, admission to various stages of membership, departure and dismissal. One of the rights of the major superiors is that of visitation of the houses within their sphere of activity.⁵⁴ The Code prescribes rules to safeguard both the visitor and the members.⁵⁵

Admission to the novitiate and to religious profession is subject to the major superiors, with their councils or chapters. The nature of the vote of the council or chapter is determined in the particular law of each congregation, as is the person who is competent in each case to admit a person to these steps. The major superior may prolong the time of novitiate⁵⁶ but not beyond six months.⁵⁷

⁵³ E. Heston, "Some Aspects of Government in Religious Communities", in The Jurist, 10(1950), pp. 38-39.

⁵⁴ CIC (1917), canon 511.

⁵⁵ CIC (1917), canons 512-513.

⁵⁶ CIC (1917), canon 543.

⁵⁷ CIC (1917), canon 571, § 2.

CIC (1917), canon 556 deals with absences from the novitiate and CIC (1917), canon 571, § 1 gives the major superior or the chapter the right to dismiss a novice, according to the norms of the constitutions, for a just cause which need not be communicated to the novice. During the period of temporary vows, the religious is free to leave the congregation when the time vowed has expired.⁵⁸ The same canon provides that the superiors may refuse to allow the renewal of the temporary vows or the taking of perpetual vows. This action is not regarded as formal dismissal, dealt with in CIC (1917), canons 646-648 which give the various reasons for dismissal, the procedure to be followed and the effects of such action. The canons also determine the authority competent to dismiss from the institute. In the case of religious congregations of pontifical right, this authority is the superior general; in diocesan congregations, the local Ordinary of the place where the religious resides, in consultation with the religious superiors.

With regard to the dismissal of religious of perpetual vows, the process is carefully outlined in CIC (1917), canons 649-669. The superior general is the competent authority to handle the process of dismissal and is bound to follow the procedure; but she may not, on her own, dismiss the sister, except in cases of emergency. She must send all the acts of the case, with the recommendation of dismissal (following the vote of her council in this matter) to the Holy See, in the case of pontifical congregations and to the Ordinary, in the case of diocesan congregations. If the ecclesiastical superior confirms the decision, the dismissal becomes effective.

⁵⁸ CIC (1917), canon 637.

It will be seen that the Code gives general principles on authority but its exercise in the actual situation at each level is largely determined by the particular law of each congregation. It will be noticed also, that the law is careful to protect the individual from a decision which could be final, as in the canons which deal with dismissal.⁵⁹

While the terms of reference and the delimitation of authority are quite clear in the law, the manner in which such authority has been exercised by certain persons has caused a negative reaction on the part of many religious women. It is one thing to have authority and another to use it in a way that is not fully respectful of the persons to whom it is applied. It often happens that when a person is insecure in a position of leadership, the exercise of authority becomes more intransigent; this is not the fault of the law, but of those applying the norms.

Before leaving the question of authority vested in the superior, according to the 1917 Code, we must note an important reply of the Code Commission, dated March 26, 1952, which stated that CIC (1917), canons 197, 199 and 206-209 are to be applied to dominative power unless the nature of the matter or the text or the context of the law prevent this.⁶⁰ This calls for some explanation.

⁵⁹ I have chosen not to go into details of the selection of the superiors. The prescriptions for elections are found in CIC (1917), canons 160-182; CIC (1917), canon 507, § 1 obliges the following of these in so far as they apply. CIC (1917), canon 504 deals with the requirements of a superior with regard to age, profession, etc., CIC (1917), canon 505 with the length of office, CIC (1917), canon 508 with residence and CIC (1917), canon 509 with her duties. It will be interesting to compare CIC (1917), canon 509 with CIC (1983), canons 618 and 619 of the revised Code of Canon Law at a later stage. CIC (1917), canon 509 obliges the superior to promote knowledge and practice of the Law; local superiors are bound to the instruction of their subjects and employees.

⁶⁰ Canon Law Digest, III, p. 73, (original in AAS, 44 (1952), p. 497).

iv) Dominative Power

The nature and exercise of dominative power has been a topic for discussion and controversy for many centuries. It was contrasted with jurisdiction which was understood as the public power of governing, possessed by the legitimate authority, either for the whole Church (the Pope) or for a constitutive part of the Church, the diocese (local Ordinary). The basis for this jurisdiction as described is obviously territorial. But there was another type of jurisdiction which was regarded as authentic, even though it was not territorial, and that was the power possessed by the superiors of an exempt clerical institute, although in this case, the basis for the power was personal.

However, within the Church, there also existed other religious Institutes of men and women whose major superiors had authority by right of office. Until the end of the Middle Ages, the basis for dominative power was the vow of obedience whereby the subject gave herself into the hands of the superior and each contracted mutual rights and obligations, in accordance with the constitutions and the common law of the Church. The predominant feature was that the vow of obedience initiated a contract between the member and the congregation, as represented by the legitimate superior, to whom obedience was promised.

Until the middle of the 20th century, this authority had been defined as "dominative power" although a uniform description of its essence was not commonly received. St. Thomas Aquinas did not use the term in reference to religious superiors; rather, he limited its use to describe the power of a master

over a servant.⁶¹ Other writers did not hesitate to class religious superiors with masters, husbands and parents, with regard to slaves, wives and children respectively. The status of the subject was very much in the line of servitude: "...the monk, although he is such for the love of God, is indeed a slave."⁶²

The writings of Francis Suarez, however, revealed a different attitude. He moved away from the master/slave model to the father/son relationship, rejecting any theory that would degrade innate human dignity and promote exploitation of the person: "...the servitude of a slave with respect to another is a most vile condition... since very repugnant to the natural dignity of man; but religious subjection is most noble, not raising but actually extolling and perfecting the natural dignity of man."⁶³ In his view, superiors possessed authority for the good of community and for the good of the individual within that community: "First, then, dominative power, which is present in religious superiors, is not ordained for their convenience or utility but for the good of their subjects; therefore, their subjection is not that of slaves but a much nobler condition."⁶⁴

61 Summa Theologicae of St. Thomas Aquinas, literally translated by the Fathers of the English Dominican Province, Vol. 10, Part II (Second Part), q.57, art.4, pp. 110-112.

62 G. Kindt, De Potestate Dominativa in Religione, p. 35: "...monachus, quamvis propter amorem Dei, est vere servus."

63 F. Suarez, Omnia Opera, Tome 15, tract 7, lib. 6, cap. 2, no. 20, p. 394: "...servitus mancipii respectu alterius hominis est vilissima conditio, ...utpote multum repugnans naturali dignitati hominis; subjectio autem religiosa nobilissima est, non elevans, sed extollens potius ac perficiens naturalem hominis dignitatem."

64 Ibid., No. 22, p. 395: "Nam in primis dominativa potestas, quae est in praelatis religionis, non ordinatur ad commodum vel utilitatem ipsorum, sed ad bonum subditorum; ergo horum subjectio non est propria servitus, sed nobilior quaedam conditio."

In spite of disagreements, then, it was generally held that dominative power was a private power, within the Church, affecting only the persons or group concerned. Religious life was, in a sense, an area apart from the general life of the Church and its internal government could be in this respect considered to be private in nature.

However, with the acquisition of juridical status through Conditae a Christo, religious became an integral part of the Church's structure and this change would be reflected somewhat in the notion of dominative power. One could no longer speak of a purely private power in an Institute which has both a public and a social dimension in the Church, as Father A. Vermeersch was to point out in his writings. Indeed, he developed the idea that the superior's authority over the member derived not just from the vow of obedience, but from her own legitimate appointment to office in an institute approved by the Church.⁶⁵

A further development was provided by Father (later Cardinal) Arcadius Larraona who began, in his commentary on CIC (1917), canon 501, to distinguish among the various classes of dominative power. He held that the nature of a religious society determined the kind of power possessed. Thus, a private society such as a confraternity, would have private dominative power whereas a public society, such as a religious institute, would have public dominative power.⁶⁶

⁶⁵ A. Vermeersch, De Religiosis Institutis et Personis, Vol. 1, No. 388, 2 on p. 254 and Vol. 1, No. 205, 6 on p. 134.

⁶⁶ A. Larraona, "Commentarium Codicis", in Commentarium pro Religiosis, 7(1926), pp. 32-33. The superiors in a religious institute receive authority from God through the Church, which has approved the Institute. These

Larraona developed his ideas still further at the International Congress on Law which took place in Rome, from November 12-17, 1934.⁶⁷ Father James O'Connor, in an article in The Jurist of 1961,⁶⁸ traces the development of Larraona's theory and summarises it thus:

For Larraona, then, there are in the Code, only two forms of public power: jurisdiction and dominative power. Jurisdiction is the higher grade and belongs only to the immediate divisions of the Church, dioceses and clerical exempt religious institutes. All other public power of governing is dominative power, although not all dominative power is public.⁶⁹

In his book on dominative power, G. Kindt rejects Larraona's theory of public dominative power, maintaining that the Code recognises only private dominative power: "The dominative power of religious superiors is an ecclesiastical power of a private kind, which has as its direct and single object, the personal commitment of those who are subjects, at least through temporary religious profession."⁷⁰ But many of the acknowledged experts in canon law, such as Timotheus Schaefer,

superiors have personal authority which they exercise publicly within the Institute. They are able to lay down norms and see to their implementation, settle internal controversies and inflict disciplinary (non-canonical) penalties. Because they do not possess "potestas regiminis" they cannot dispense from ecclesiastical laws or impose ecclesiastical penalties.

⁶⁷ Id., "De Potestate Dominativa Publica in Iure Canonico", in Acta Congressus Iuridici Internationalis VII Saeculo a Decretalibus Gregorii IX et XIV a Codice Iustiniano Promulgatis, Vol. IV, pp. 145-180.

⁶⁸ J. O'Connor, S.J., "The Dominative Power of the Religious Superior", in The Jurist, 21(1961), pp. 12-16.

⁶⁹ Loc. cit., p. 16.

⁷⁰ Op. cit., p. 286: "Potestas dominativa superiorum religiosorum est potestas ecclesiastica ordinis privati, quae ut directum et unicum obiectum habet praestationes personales eorum qui per professionem religiosam saltem temporariam sunt subditi."

O.F.M.Cap. and Joseph Creusen, S.J. agreed with Larraona.⁷¹

Larraona's theory is confirmed in the reply of the Code Commission of March 26, 1952, which applied to the dominative power held by superiors and chapters of Religious Institutes and Societies of Common Life, the prescriptions of CIC (1917), canons 197, 199 and 206-209 of the 1917 Code, which treated of jurisdiction, provided such power was not in contradiction to the situation in question, because of other specific laws.⁷²

According to CIC (1917), canon 197, dominative power could be ordinary or delegated, proper or vicarious, depending on the office of the holder.⁷³ CIC (1917), canon 199 outlines the law on delegation and subdelegation, which can now be applied to dominative power.⁷⁴ CIC (1917), canons 206-208 specify further

⁷¹ Examples are De Religiosis ad normam codicis iuris canonici, by T. Schaefer, O.F.M.Cap., pp. 197-198 and Epitome Iuris Canonici, by A. Vermeersch, S.J. and J. Creusen, S.J., pp. 442-443. For a very comprehensive treatment of dominative power, one should consult Jose Luis Gutierrez, "Dalla potesta dominativa alla giurisdizione" in Ephemerides, 39(1983), pp. 74-103.

⁷² Canon Law Digest, III, p. 73, (original in AAS, 44(1952), p. 497).

⁷³ CIC (1917), canon 197, § 1: "Potestas iurisdictionis ordinaria ea est quae ipso iure adnexa est officio; delegata, quae commissa est personae.
§ 2: Potestas ordinaria potest esse sive propria sive vicaria."

⁷⁴ CIC (1917), canon 199, § 1: "Qui iurisdictionis potestatem habet ordinariam, potest eam alteri ex toto vel ex parte delegare, nisi aliud expresse iure caveatur."

§ 2: Etiam potestas iurisdictionis ab Apostolica Sede delegata subdelegari potest sive ad actum, sive etiam habitualiter nisi electa fuerit industria personae aut subdelegatio prohibita.

§ 3: Potestas delegata ad universitatem negotiorum ad eo qui infra Romanum Pontificem habet ordinariam potestatem, potest in singulis casibus subdelegari.

§ 4: In aliis casibus potestas iurisdictionis delegata subdelegari potest tantummodo ex concessione expresse facta, sed articulum aliquem non iurisdictionalem etiam

details of delegation and subdelegation, such as when and how they expire.⁷⁵ CIC (1917), canon 209 states that in common error or in positive and probable doubt of law or fact, the Church supplies jurisdiction for the external and internal forum.⁷⁶ These canons integrate the so-called "dominative power" into the public authority of the Church in a way which many canonists had desired for years.⁷⁷

This reply paved the way for a new understanding of the place of religious superiors in the authority structure of the Church. It was a development to which Pope Pius XII had given a preview in an Allocution to the Superiors General of Religious Orders and Congregations of men in Rome on February 11, 1958, when he said:

sine expressa commissione iudices delegati possunt subdelegare.

§ 5: Nulla subdelegata potestas potest iterum subdelegari, nisi id expresse concessum fuerit."

⁷⁵ CIC (1917), canon 206: Pluribus successive delegatis, ille negotium expedire debet cuius mandatum anterieus est nec posteriore rescripto expresse abrogatum fuit."

CIC (1917), canon 207, § 1: "Potestas delegata extinguitur, expleto mandato; elapso tempore aut exhausto numero casuum pro quo concessa fuit; cessante causa finali delegationis; revocatione delegantis delegato directe intimata aut renuntiatione delegati deleganti directe intimata et ab eodem acceptata; non autem resolutio iure delegantis; nisi in duobus casibus de quibus in canon 61.

§ 2: Sed potestate pro foro interno concessa, actus per inadvertentiam positus, elapso tempore vel exhausto casuum numero, validus est.

§ 3: Pluribus collegialiter delegatis, si unus deficiat, aliorum quoque delegatio expirat, nisi aliud ex tenore delegationis constet."

CIC (1917), canon 208: "Ad normam can. 183, § 2, potestas ordinaria non extinguitur resolutio iure concedentis officium cui adnexa est; sed cessat, amisso officio; silet, legitima appellatione interposita, nisi forte appellatio sit tantum in devolutivo, firmo praescripto can. 2264, 2284."

⁷⁶ CIC (1917), canon 209: "In errore communi aut in dubio positivo et probabili sive iuris sive facti, iurisdictionem supplet Ecclesia pro foro tum externo tum interno."

⁷⁷ J. O'Connor, in the article already cited, gives the reactions of some canonists to the reply and proceeds to develop its implications, pp. 19-26.

In this department of Our work, therefore, beloved sons, We have taken you as associates of Our supreme office, either directly by delegating to you through the Code of Canon Law some share of Our supreme jurisdiction, or by laying the foundations of your so-called "dominative power" by the approval of your rules and Constitutions. And so We have it very much at heart that you should exercise this authority of yours according to Our mind and that of the Church.⁷⁸

There, the Pope recognises the bond of unity existing between the authority of the religious superior and that of the Supreme Pontiff, laying the foundations for the development of the doctrine of ecclesial authority which would commence with Vatican II deliberations. In the new Code of 1983, the term "dominative power" has disappeared and CIC (1983), canon 618 speaks only of power received from God through the ministry of the Church, to be used in a spirit of service.⁷⁹

v) Chapters

CIC (1917), canon 501 recognises that Chapters have dominative power, but does not specify which chapters are meant. Schaefer maintains, therefore, that all chapters have such power within the sphere of their competency.⁸⁰ The chapter, when in session, exercises extraordinary power of government. It is a kind of collegial superior because the president does not have more power than the other members during that time, except possibly in some cases of a tied vote. The chapter is free to discuss and decide matters, even against the will of the

⁷⁸ Canon Law Digest for Religious, Vol. I, p. 194, (original in AAS, 50(1958), p. 154).

⁷⁹ CIC (1983), canon 618: "Superiores in spiritu servitii suam potestatem a Deo per ministerium Ecclesiae receptam exercent..."

⁸⁰ T. Schaefer, O.F.M.Cap., op. cit., p. 208, no. 453.

president, and the latter is bound to carry out the decree enacted. CIC (1917), canon 101, no. 1, 1° provides that matters are decided by majority vote. The constitutions determine the scope of a chapter and provide whether it will be part of the congregation's structure at the intermediate level. The law requires that there be a general chapter.⁸¹ While the chapter cannot make laws, it can make regulations for its sphere of activity. One important role of the general chapter is the election of the superior general and the officers of the congregation. Another important one is the drawing up of new constitutions or the adaptation of existing ones, but such actions require approval by the competent ecclesiastical authority before they can become the law of the congregation.

vi) Councils

Finally, the 1917 Code demands that the superior general of a religious congregation, the provincial superiors and the local superiors of at least formed houses,⁸² have a council from whom advice or consent is required according to common law and the constitutions.⁸³ The council differs from the chapter in that it is not a collegial body. Authority is vested in the superior who, although she may have to receive a vote from her council before acting, does not, in fact, have to act at all. She cannot act contrary to the vote but she can choose to do nothing at all, except in one situation. When it is a case of the dismissal of a perpetually

81 CIC (1917), canon 501.

82 I.e., where according to the 1917 Code at least six professed religious reside.

83 CIC (1917), canon 516, § 1.

professed religious, the superior general must accept the vote of the council and act upon it.⁸⁴ Heston maintains that, in this situation, the council is acting as a judicial tribunal.⁸⁵ Thus, it can be seen that, with this exception, no council is at liberty to make decisions; its role is not one of governing but of aiding the one who governs. Some important areas where the Code requires the consent of the council are with regard to admission to novitiate and to religious profession⁸⁶ and alienation of temporal goods.⁸⁷

b) The Normae of 1921 and Subsequent Canonical Documents up to Vatican II

The Normae of 1921⁸⁸ are a shortened, revised version of the 1901 Normae and add little to what has already been said. They take into account the new legislation existing in the Church. Many of the articles of the 1901 norms were incorporated into the Code itself and others became part of the constitutions of religious congregations, with the sometimes unfortunate result that constitutions took on a uniformity which was not in character with the original charism of the community.

84 CIC (1917), canon 650, § 2.

85 E. Heston, loc. cit., p. 50.

86 CIC (1917), canons 543, 572.

87 CIC (1917), canon 534, § 1.

88 Sacred Congregation for Religious, Normae secundum quas Sacra Congregatio de Religiosis in novis religiosis congregationibus approbandis procedere solet, Rome, 1922.

With regard to other material issued between 1921 and Vatican II, the reply of the Code Commission on CIC (1917), canons 197, 199 and 206-209, treated earlier, is the most important. Individual congregations might have received private replies but these are normally in the nature of interpretations of the existing laws.

However, several other decrees or replies from the Sacred Congregation for Religious are worthy of mention. On March 9, 1920, for instance, norms for the postulation of Superiors General were issued, but it was made clear that repeated re-election against the Constitutions was not approved by the Holy See.⁸⁹ On March 6, 1922, another reply stated that if the constitutions limited the duration of office or the re-election of the superior general, even the founder or foundress could not be elected for life without an indult from the Holy See.⁹⁰ Also in 1922, the Sacred Congregation for Religious issued a decree to the effect that every religious congregation obtain a decree of approval of its institute so that it might enjoy moral personality according to the law.⁹¹ In 1924, another reply stated that superiors of filial houses were not local superiors but definite provisions had to be made for them when revising constitutions.⁹²

⁸⁹ Sacred Congregation for Religious, Letter of March 9, 1920, in Canon Law Digest for Religious, Vol. 1, pp. 216-218, (original in AAS, 12(1920), pp. 365-367).

⁹⁰ Id., Reply of March 6, 1922, in Canon Law Digest for Religious, Vol. 1, p. 206, (private).

⁹¹ Id., Decree of November 30, 1922, in Canon Law Digest for Religious, Vol. 1, pp. 140-142, (original in AAS, 14(1922), pp. 644-646).

⁹² Id., Reply of February 1, 1924, in Canon Law Digest for Religious, pp. 218-219, (original in AAS, 16(1924), pp. 95-96).

Although not canonical documents, two addresses given by Pope Pius XII are memorable for the reference made to authority in religious life. The first, in 1952,⁹³ reminds superiors that they have a duty of motherly care towards their sisters and the obligation to provide for their adequate formation.⁹⁴ The second, in 1957,⁹⁵ reminds superiors that they can command only in the name of God and in virtue of the powers entrusted to them.⁹⁶ Finally, an address by Father Larraona, then Secretary of the Sacred Congregation for Religious,⁹⁷ deserves mention since it draws attention to many aspects of government in religious life. He speaks, in particular, about elections, admission to profession and exclaustation. He spells out in some detail the reasons for allowing extended terms of office and postulation for superiors, as well as some of the factors which contribute to ineptitude for profession and the qualifications attached to exclaustation.⁹⁸

⁹³ Pius XII, "Address to Superiors General of Institutes of Religious Women", September 15, 1952, given at the First International Congress in Rome, in Review for Religious, 11(1952), pp. 305-308, (original in AAS, 44(1952), pp. 825-826).

⁹⁴ Ibid., pp. 307-308. The Holy Father speaks in strong terms: "Here let there be no parsimony; take a broad and generous view. Be it a question of education, pedagogy, the care of the sick, artistic or other activities, the sister ought to entertain this conviction: 'My superior is making possible for me a formation which will put me on an equal footing with my colleagues in the world.' Make it possible also for them, and give them the means, to keep their professional knowledge and training up to date."

⁹⁵ Id., "Second General Congress of the States of Perfection", Rome, December 9, 1957, in Canon Law Digest for Religious, Vol. 1, pp. 125-134, (original in AAS, 50(1958), pp. 34-43).

⁹⁶ Ibid., p. 132.

⁹⁷ A. Larraona, Address, International Congress of Mothers General in Rome, September, 1952, in Canon Law Digest for Religious, Vol. 1, pp. 206-215 (private).

⁹⁸ Ibid., pp. 213-214.

Conclusion

Religious congregations came of age in the 20th century after a long period of development. The common law which was codified for them in the 1917 Code was the product of their experience over many years. One could have expected, then, a time of relative calm but that would have failed to take into account a second, significant revolution, Vatican II, which would again call upon the Church to search for means to meet the needs of a world having new demands and new problems. Prominent in the work of renewal would be the religious congregations, one of whose tasks was to examine their own structure in the light of the discoveries of a new age.

CHAPTER II

PRINCIPLES OF AUTHORITY ACCORDING TO VATICAN II

In 1982, the periodical The Tablet ran a series of articles under the general title, "The Vatican II Revolution" which was designed to evaluate the Council under various aspects, twenty years after the event. The use of the term "revolution" was somewhat apt, although the Council Fathers, at the time, may not have realised just how far-reaching their decisions would be. As Sister Mary Linscott says, in her contribution to the series, with reference to a statement in the decree Perfectae Caritatis, "This apparently peaceful formula in fact touched off an explosion."¹

With reference to religious life, perhaps few areas have been as revolutionised or caused so many explosions in the years since Vatican II as those of authority and government. In the Church, as a whole, there have been questioning and exploration to the extent that the situation has often been regarded as one of a crisis of authority. Religious life has been affected by the general situation of the Church.

The understanding of the notion of authority would appear to have changed radically as a result of our new understanding of the nature of the Church. John Courtney Murray makes a powerful comparison of pre- and post-Vatican

¹ Mary Linscott, "Being before doing", in The Tablet, 236(1982), p. 1237.

conceptions of authority which are linked to the new model of the Church. He uses the thought of Pope Leo XIII to illustrate pre-Vatican II understanding:

His conception of the political relationship between ruler and ruled was vertical: the ruled are subjects, their simple duty is to obey...

His ecclesiology, his theology of the Church: those who hold office make the decisions, doctrinal and pastoral. The faithful in the ranks submit to the decisions and execute the orders. The concept of obedience is likewise simple. To obey is to do the will of the superior: that is the essence of obedience.²

This was a familiar pattern before Vatican II. It is not difficult to see the vertical orientation of authority which corresponded to the image of the Church as institution and structure. However, the emphasis in the Council, while not disregarding the value of the vertical and the need for structure, is strongly focused on a horizontal model, which sees the Church in terms of community and relationship. Authority is within the community and not somewhere outside.

Murray again provides some principles which encapsulate the changed idea:

1. The Church is primarily the people of God and the members enjoy a basic equality in dignity and freedom because they possess the same Spirit.
2. The Church is an inter-personal communion.
3. It is essentially missionary and has a service to perform towards all humanity.
4. The Church is a visible society in which authority and juridical functions are essentially related to and in service of its communal and missionary activities; authority, therefore ... stands, as it were, within the community as a ministry to be performed in the service of the community.³

Ladislav Orsy writes about authority as it is developing with this new understanding:

² Cf. J.C. Murray, "Freedom, Authority, Community", in America, 115(1966), p. 735.

³ Ibid., p. 735.

Following on this more profound understanding of the mystery of the Church, it was re-discovered (if this term is legitimate in theology) that the highest form of authority in the Church in its deepest reality is of a collegiate nature: not in a legal, but in a theological sense whereby college means communion and organic union. However, this communion of many in the one power of Christ has a hierarchical structure: the position of the head and his share in the power of Christ is different from that of the members. But the close union between the head and the members, that is, between the Pope and the bishops, does not destroy the full authority of the head; rather, it strengthens it. This general vision of authority has been incorporated, in an analogous form, in the Decree on religious life.⁴

With the new concept of the Church as the People of God, a community, there emerged a whole new vocabulary relating to the exercise and function of authority. Words like "co-responsibility", "collegiality", "subsidiarity", "consensus" and so on became common parlance as the members of the Church struggled to respond to new insights. At this point, it should be mentioned that the world was developing along the same path. What was happening in the Church was not peculiar to it but part of the general trend in society, as Jacques Lewis said:

Fundamentally, the Council is only reflecting, on a higher level, what our age is discovering. Is it not the case that the preoccupation of our contemporary world with democratisation, intersubjectivity, respect for the human person, socialisation and co-responsibility is expressing a trend which the Spirit has awakened and which the Council has taken into consideration? Again must we not believe the trend to be irreversible?⁵

The Second World War and the period of rehabilitation had produced a new society in which old values were reinstated and new orientations were seeking recognition. The Church could not help being caught up in the flow of new ideas.

⁴ L. Orsy, "Government in Religious Life", in Supplement to the Way, 2(1966), p. 92.

⁵ J. Lewis, "Vers une théologie du supérieurat religieux", in La Vie des communautés religieuses, 25(1967), p. 262.

A careful reading of the documents of Vatican II will reveal the basic principles which were being reinforced at this period. Since our study is directed specifically to the area of religious authority, we shall restrict ourselves chiefly to the sections of conciliar teaching which deal with this topic, while not neglecting those passages which treat of authority in general. It is important to do the latter because religious are not apart from the Church but within it and anything which relates to a person in his or her relationship to the community must surely be relevant for religious also.

It seems, then, that the thinking of Vatican II, as presented in the documents of the Council and in those which have developed or implemented its teaching since, highlights the following basic principles. Firstly, the inherent dignity of the human person is singled out as fundamental to Christian living; connected with this, is the concept of freedom which is the birthright of every human being. Secondly, one must consider obedience in the context of faith; freedom can be restricted in the context of faith for the sake of a greater good, while still preserving the innate dignity of each person. Thirdly, the life of the person is centred in the community and this brings up the whole idea of responsibility within the group, which we could call participation, to cover aspects such as collegiality, subsidiarity, shared responsibility, etc. Indeed, wherever authority is spoken of in the documents, these three principles underlie the development of the concept.

1. The Dignity and Freedom of the Human Person

Before proceeding to the question of human dignity and freedom as it is spoken of in relation to religion, it might be useful to consider these values as they apply to every person.

a) In the Church

The Pastoral Constitution on the Church in the Modern World, Gaudium et Spes,⁶ devotes chapter 2, nos. 12-22 to the dignity of the human person and returns to this topic again in nos. 26 and 27. The sections begin with the basic statement: "Believers and unbelievers agree almost unanimously that all things on earth should be ordained to man as to their center and summit."⁷ The raison d'être for this statement is expressed further on: "For Sacred Scripture teaches that man was created "to the image of God" as able to know and love his creator and as set by him over all earthly creatures that he might rule them, and make use of them, while glorifying God."⁸ Later sections speak of the dignity of moral conscience⁹ and the excellence of freedom.¹⁰ For instance, in no. 26 we read: "At the same

6 Vatican II, "Gaudium et Spes" (Pastoral Constitution on the Church in the Modern World), December 7, 1965 in Documents of Vatican II, by A. Flannery, editor, pp. 903-1001. All references to Vatican II documents, unless otherwise stated, will be to this edition by A. Flannery. The document "Gaudium et Spes" will hereafter be referred to as GS.

7 Ibid., no. 12, p. 913.

8 Ibid., no. 12, p. 913.

9 Ibid., no. 16, p. 916.

10 Ibid., no. 17, p. 917.

time, however, there is a growing awareness of the sublime dignity of the human person, who stands above all things and whose rights and duties are universal and inviolate."¹¹ No. 27 is entitled "Respect for the Human Person" and states that the

Council lays stress on respect for the human person: everyone should look upon his neighbour (without any exception) as another self, bearing in mind above all his life and the means necessary for living it in a dignified way, lest he follow the example of the rich man who ignored Lazarus, the poor man.¹²

Turning to the Declaration on Religious Liberty, Dignitatis Humanae,¹³ we find an entire document devoted to freedom, the natural consequences of man's dignity. Although this document is not very long, to repeat its frequent confirmation of the dignity of the person, would occupy considerable space. However, a few sentences could indicate how firmly the whole notion of human dignity and freedom has become embedded in the thinking of the Council Fathers.

The Fathers recognise that "contemporary man is becoming increasingly conscious of the dignity of the human person"¹⁴ and they want to pay "careful attention to these spiritual aspirations."¹⁵ They say openly that the "Declaration

¹¹ Ibid., no. 26, p. 927.

¹² Ibid., no. 27, p. 928.

¹³ "Dignitatis Humanae" (Declaration on Religious Liberty), December 7, 1965, pp. 799-812. The document hereafter will be referred to as DH.

¹⁴ Ibid., no. 1, p. 799.

¹⁵ Ibid., no. 1, p. 799.

... on man's right to religious freedom is based on the dignity of the person¹⁶ which, presumably, is derived from the fact that "God has regard for the dignity of the human person which he himself created."¹⁷

Various aspects of freedom are dealt with in the Declaration. The most important is freedom of conscience by which man acts according to the light he has received in his search for truth, a search which he must be allowed to carry out "in a manner that is appropriate to the dignity of the human person and his social nature."¹⁸

The rights spoken of in this Declaration are common to all and should be accorded to all, both in civil society and in the Church. They are not restricted to any class of individuals nor are they limited to persons as individuals only. They apply equally to persons grouped together into communities, as no. 4 acknowledges:

The freedom or immunity from coercion in religious matters which is the right of individuals, must also be accorded to men when they act in community. Religious communities are a requirement of the nature of man and of religion itself ... Religious communities have the further right not to be prevented from publicly teaching and bearing witness to their beliefs by the spoken or written word.¹⁹

The Fathers of the Council give a warning and an exhortation regarding freedom with reference to authority, which will provide a fitting introduction into a fuller exposition of the principles of dignity and freedom as applied to religious life:

16 Ibid., no. 9, p. 806.

17 Ibid., no. 11, p. 807.

18 Ibid., no. 3, p. 801.

19 Ibid., no. 4, p. 802-803.

... there are many who, under the pretext of freedom, seem inclined to reject all submission to authority and make light of the duty of obedience.

For this reason, this Vatican Council urges everyone especially those responsible for educating others, to try to form men with a respect for the moral order who will obey lawful authority and be lovers of true freedom — men, that is, who will form their own judgments in the light of truth, direct their activities with a sense of responsibility and strive for what is true and just in willing cooperation with others.

Religious liberty therefore should have this further purpose and aim of enabling men to act with greater responsibility in fulfilling their own obligations in society.²⁰

b) In Religious Life

It is clear that the value of human dignity and freedom must be basic to the religious as a member of the human race. He or she cannot be accounted as less than others in something so fundamental. In the Constitution on the Church, Lumen Gentium,²¹ the Council accepts the principles of the right to human development in religious life:

At the same time, let all realize that while the profession of the evangelical counsels involves the renunciation of goods that undoubtedly deserve to be highly valued, it does not constitute an obstacle to the true development of the human person but by its nature is supremely beneficial to that development.²²

In the documents specifically addressed to religious, we find various statements which make clear that the religious life must enhance human dignity and meet human needs. We could note that whatever is said about renewal and adaptation in

²⁰ Ibid., no. 8, p. 805.

²¹ "Lumen Gentium" (Constitution on the Church), November 21, 1964, pp. 350-440. The document hereafter will be referred to as LG.

²² Ibid., no. 46, p. 406.

general is equally applicable to religious life²³ so that "it is no longer tolerable that a religious receive less recognition for her rights and dignity in her community than she does from the civil society she lives in."²⁴ Many of the references to religious concerning human dignity and freedom are in terms of their right to human development in accordance with their needs. For example, in the Instruction on the Renewal of Formation to Religious Life, Renovationis causam,²⁵ there is a specific reference to the differing needs of men and women.²⁶ Throughout this Instruction, there are frequent reminders that each one has the right to develop at a personal pace and the rate of maturity should be respected: "In fact, for each candidate, the novitiate should come at the moment when, aware of God's call, he has reached that degree of human and spiritual maturity which will allow him to decide to respond to this call with sufficient and proper responsibility and freedom."²⁷ The Decree on Confession for Religious, Dum Canoniarum,²⁸ updates the canons on confession for religious women, giving more freedom to individuals on a very personal matter.

23 "Ecclesiae Sanctae" (Norms for Implementing the Decree: On the Up-to-date Renewal of Religious Life), August 6, 1966, no. 15, p. 627. This document is found on pp. 624-633 and will hereafter be referred to as ES.

24 P. Boyle, "Experimentation", in Review for Religious, 27(1968), pp. 527-528.

25 "Renovationis Causam" (Instruction on the Renewal of Formation for Religious Life), January 6, 1969, pp. 634-655. This document will hereafter be referred to as RC.

26 Ibid., no. 1, p. 637.

27 Ibid., no. 4, p. 639. The same ideas are expressed in no. 6, pp. 642-643 and no. 8, p. 644.

28 "Dum Canoniarum" (Decree on Confession for Religious), December 6, 1970, pp. 676-677. This document will hereafter be referred to as DC.

Pope Paul VI, in the Apostolic Exhortation on the Renewal of Religious Life, Evangelica Testificatio,²⁹ several times refers to the grandeur and greatness of the religious state in a way which shows that the offering made to God by the religious is something noble and beautiful: "The teaching of the Council illustrates well the grandeur of this self-giving."³⁰ "To the extent that this joy radiates from your communities, it will be a proof to everyone that the state of life which you have chosen is helping you by the threefold renunciation of your religious profession to realize the greatest possible expansion of your life in Christ."³¹ Also, in Evangelica Testificatio,³² Pope Paul VI repeats the words of the Decree on the Renewal of Religious Life, Perfectae Caritatis:³³ "In this way, far from lowering the dignity of the human person, religious obedience leads it to maturity by extending the freedom of the sons of God."³⁴ He states, a little further on, that superiors "should govern their subjects in the realization that they are sons of God and with respect for them as human persons."³⁵

²⁹ "Evangelica Testificatio" (Apostolic Exhortation on the Renewal of Religious Life), June 29, 1971, pp. 680-706. This document will hereafter be referred to as ET.

³⁰ Ibid., no. 7, p. 683-684.

³¹ Ibid., no. 55, p. 705.

³² Ibid., no. 27, p. 693.

³³ "Perfectae Caritatis" (Decree on the Up-to-date Renewal of Religious Life), October 28, 1965, pp. 611-623. This document will hereafter be referred to as PC.

³⁴ ET, no. 14, p. 619.

³⁵ Ibid., no. 14, 619.

The mind of the Church is to recognise the dignity of each person and accept the right to human development according to specific needs. Pope Paul VI returned to the theme again in 1972:

The form of religious life must not look down on natural talents or personal charisms; it must serve the vocation of each person. It is a heavy charge for you, superiors, to take care that each one of your brothers and sisters develops himself/herself through it, be it by being treated with regard or by being recognised and loved and that each one be able to bring to one's community and to the world, the best of himself/herself. But we should not forget the gospel paradox which you, more than others, have the mission to realize fully: "He who would save his life will lose it; but he who will lose his life for my sake, will find it."³⁶

It may seem that the point has been laboured rather much but, unless this principle is appreciated and interiorised, we cannot apprehend the full significance of new trends in authority. We cannot speak of the role of the superiors without paying close attention to their relationship with the members. So Ladislav Orsy writes:

To be a human person is to have one's own mind and heart, a personal vision of the world and a basic freedom to act. To respect a person means to respect his uniqueness, his talents, and all that is good in him, in his opinions and in his desires ...

To respect a human person means also to leave him a certain amount of freedom. Rules are meant to be a framework to help the individuals and the community to create the most helpful climate for the work of the Holy Spirit.³⁷

To sum up, therefore, before we can speak about how authority works in religious life, we must realize that the older model based on forms of authoritarianism has little relevance today when a heightened awareness of human dignity has replaced

³⁶ Paul VI in an allocution to the Moderators of the National Conferences of Major Superiors of Religious Men and Women assembled in Rome under the auspices of SCRIS, October 19, 1972, in CLD, VII, pp. 452-453, (original in AAS, 64(1972), p. 690).

³⁷ L. Orsy, loc. cit., pp. 98-99. Pages 98-100 spell out very clearly the importance of acknowledging human dignity.

a more submissive attitude. The new emphasis on the People of God, in community, has made authority a matter of relationship rather than one of giving commands. As Father John Courtney Murray says:

What is really being said is that sheer submission to the will of the superior and mere execution of his orders do not satisfy the exigencies of the dignity of the person. They do not call into play the freedom of the person at its deepest point, where freedom appears as love. Still less do they exhaust the responsibilities of the person, which are to participate fully in community and to contribute actively to community. Thus stated, the contemporary difficulty is seen to be entirely valid. It is not to be solved by methods of repression. Nor will it yield to mere reiteration of the principle of authority: that authority is to be obeyed simply because it is authority.³⁸

Because the community context is now of great importance in the way authority is expressed, it is vital that one take note of the invaluable unique contribution which each member makes to communion within the group. As W.W. Meissner expresses it:

the community becomes an expression of the creative responsibility of its members. (In a context) governed by a fundamental respect for human dignity and human freedom ... the community achieves its structure on the basis of an inherent flexibility and tolerance for diversity of thought, value and action.³⁹

2. Obedience and Faith

Whereas there can be no compromise with regard to human dignity, that very dignity implies that the individual person can limit her freedom, in pursuit of nobler ends. This is precisely what the religious does by the vow of obedience. She

38 J.C. Murray, loc. cit., p. 734. Cf. also J. Lewis, loc. cit., p. 260.

39 W.W. Meissner, The Assault on Authority. Dialogue or Dilemma, p. 197.

is not less a person because she has taken this vow and she must always remain a person throughout her fulfilment of it.

The obedience of the religious is a perfection of the obedience which every Christian is pledged to give to the Father, in imitation of Christ who was obedient to the Father, because obedience means "doing the Father's will." This simple definition, however, hides a more complex reality which is, perhaps, best explained by a brief inroad into the roots of the word and its biblical expression.

a) Use of the term "obedience" in the Old Testament

In the Old Testament, the common Hebrew word which we translate by "obedience" is the word "shema" which, in its root sense means to "hear."⁴⁰ The Old Testament uses the term to express the relationship of God with his people, Israel, though it can also be used to speak of ordinary human friendships. Obedience in the Old Testament context has little to do with rules and regulations, blindly followed. It is far more akin to a process of discernment where the person, in love and trust, hears the message, listens to it in his heart till it is truly interiorised and then follows it as the surest way of life. It is set in the context of the covenant relationship of love, which is constantly being deepened by fidelity to the Word of the faithful God.

⁴⁰ Cf. P. Fink, "Religious Obedience and the Holy Spirit", in Review for Religious, 30(1971), pp. 64-79, and F.H. Agnew, "Obedience: a New Testament Reflection", in Review for Religious, 39(1980), pp. 409-418, both of whom give valuable insights into the meaning of obedience in Scripture.

b) Use of the term "obedience" in the New Testament

In the New Testament, we find two words for the English expression "obedience". The first one is "hypakoé" (with the sense of "hearing") and the second is "hypotagé" (where the nuance is "submission"). The second word, with the meaning of "submission" is used when there is question of a relationship of superior-inferior status. Examples of this second use are the slave's obedience to his master (1 Peter 2:19), or a child's to his parents (1 Tim. 3:4; 1 Peter 5:5; Luke 2:51). Also included in this category is the subject's submission to civil authority (Titus 3:1; 1 Peter 2:3). However, by far the more interesting study for our purposes is the use in the first sense, that of "hearing" because this is the word used for the obedience of Jesus towards his Father.

c) The Obedience of Jesus

Jesus expressed his life in simple terms: "My food is to do the will of the one who sent me and to complete his work" (John 4:34), and "I have come so that they may have life and have it to the full" (John 10:10). In fact, a prayerful reading of St. John's gospel would reveal to us more deeply what it means to be in union with the Father and to act in his name.

Jesus' public ministry began with an act of "hearing" when he was baptised by John the Baptist in the Jordan. The words, "This is my beloved son; hear him"⁴¹

⁴¹ The pattern of the words heard, "This is my beloved son", followed by the period of prayer and fasting in search of the meaning of the call, the

(Matt. 3:17) established the identity of Jesus and gave him his mission. This identity and mission were firmly confirmed during the forty days spent by Jesus in the desert, from which he emerged to carry out the Father's will.

d) The Obedience of the Christian

It is important to understand the dual aspect of vocation and mission contained in the life of obedience. So often, the virtue of obedience has been identified with a blind carrying out of rules and regulations which in no way enhance a person. But Jesus makes us aware that the life of obedience is a call given to a person, asking for a free, human response, mission. It has nothing to do with automatic, unthinking action. It is true that sometimes what the Christian is called to is hard to understand but in the context of faith, essential to every Christian, human risk is always possible. What the Lord asks for is the constant search to hear the Word and do it. A glance through the Acts of the Apostles and the Epistles shows us that the expression used for the obedience of the Christian towards Christ is the same as that used for Christ's obedience to the Father.⁴² The fact that the emphasis of obedience in the Old and New Testaments, with reference to God and his People, Christ and his Father and the Christian with Christ, is on a relationship of "hearing" and doing in love, has profound implications

temptations which tested the strength of Jesus' commitment and his final emergence from the desert to follow that call is a powerful parallel to the process which the Christian and the religious experience less dramatically.

⁴² E.g., 2 Cor. 10:5-6, Pet. 1:1seq; 2 Thess. 1:8; Heb. 5:9; Phil. 2:12-13; Acts 6:7; Rom. 1:5-6; 6:16-17; 16:26-27.

for the religious who actually dedicates herself to this by vow. Whatever is said in the documents of Vatican II on the subject is founded on this indispensable basis.

e) The Obedience of the Religious as outlined in Vatican II Documents

The religious is called to promise obedience through a vow which will include all that has been said of Christian obedience, with the additional aspect that it will be publicly offered to God, through the instrumentality of legitimate superiors, in a community context.

When we read the documents of Vatican II, with reference both to Christian as well as religious obedience, we are left in a dilemma. There is no doubt that obedience is demanded of the religious as a strict obligation, but the emphasis is still very much on the self-emptying, as will be seen later. If we had not also read how much stress was laid on human dignity and freedom, we could easily believe that the Council Fathers were unaware of the Scriptural foundations of obedience. But, even given their belief in these principles, the teaching does not always come through as clearly as the principles themselves. Two steps appear necessary if we are to understand what is written. The first is to try and capture the "tone" they give to the Christian's life. By this, we should determine how the Council saw the Christian's response to God's call and conclude from that, the greater obligation of religious. The second is to see how the Council Fathers expected religious to live the vow since little was done to define its exact nature.

The Pastoral Constitution on the Church in the Modern World, Gaudium et Spes,⁴³ is of vital importance in this matter, partly because it spells out the Christian's response in today's world and, partly, because coming at the end of the Council, it must surely represent some development in thinking. Two passages can be singled out which seem to indicate to whom the Council is addressing itself:

Now that the Second Vatican Council has deeply studied the mystery of the Church, it resolutely addresses not only the sons of the Church and all who call upon the name of Christ, but the whole of humanity as well, and it longs to set forth the way it understands the presence and function of the Church in the world of today.⁴⁴

They are addressing themselves to all — including religious; in no. 4, they speak of a mission given to all: "At all times, the Church carries the responsibility of reading the signs of the times and of interpreting them in the light of the gospel, if it is to carry out its task."⁴⁵ Herein lies the obedience to which all are called and in a special way, religious by reason of their vow. If this statement can be seen as an indication that our response requires searching in the light of the gospel, the "hearing" we have spoken of, we can perhaps put the starker words on religious obedience into a better perspective. "It is, however, only in freedom that man can turn himself towards what is good."⁴⁶ "The dignity of man rests above all on the fact that he is called to communion with God."⁴⁷

43 GS, pp. 903-1001.

44 Ibid., no. 2, p. 904.

45 Ibid., no. 4, p. 905.

46 Ibid., no. 17, p. 917.

47 Ibid., no. 19, p. 918.

We can now turn to our second point which is to look at what the Council says about the practice of obedience. In the Constitution Lumen Gentium,⁴⁸ very positive words on the life of obedience are found in the section on the laity and the call to holiness. No. 36 introduces the idea that obedience is service,⁴⁹ while no. 39 speaks of God's call and the response of service.⁵⁰ In no. 41, we have a more scriptural understanding of the "hearing" and the "doing", which is the Christian's life of obedience:

The forms and tasks of life are many but holiness is one — that sanctity which is cultivated by all who act under God's Spirit and, obeying the Father's voice and adoring God the Father in spirit and in truth, follow Christ, poor, humble and cross-bearing, that they may deserve to be partakers of his glory. Each one, however, according to his own gifts and duties must steadfastly advance along the way of living faith, which arouses hope and works through love.⁵¹

When it comes to the section on religious, Lumen Gentium has little to say about obedience as such. This is understandable since the Constitution does not set out to give details. However, there is one important statement which must be mentioned: "Furthermore, the religious state constitutes a closer imitation and an abiding re-enactment in the Church of the form of life which the Son of God made his own when he came into the world to do the will of the Father and which he propounded to the disciples who followed him."⁵² It is clear from this passage that the life of the follower of Christ is modelled on the life of the Master himself.

48 LG, pp. 350-426.

49 Ibid., no. 36, p. 393.

50 Ibid., no. 39, p. 397.

51 Ibid., no. 41, p. 398, (emphasis added).

52 Ibid., no. 44, p. 404, (emphasis added).

We must now turn to those Council teachings specifically addressed to religious. Perfectae Caritatis⁵³ begins by calling religious those who "follow Christ with greater liberty" and "imitate him more closely."⁵⁴ Yet, in no. 14, we see reference to the word "subject": "(Superiors) should govern their subjects in the realization that they are sons of God and with respect for them as human persons, fostering in them a spirit of voluntary subjection."⁵⁵ Again, we read:

Religious, therefore, should be humbly submissive to their superiors, in a spirit of faith and love for God's will and in accordance with their rules and constitutions. They should bring their powers of intellect and will and their gifts of nature and grace to bear on the execution of commands and on the fulfilment of the tasks laid upon them, realizing that they are contributing towards the building up of the Body of Christ, according to God's plan. In this way, far from lowering the dignity of the human person, religious obedience leads it to maturity by extending the freedom of the sons of God.⁵⁶

Furthermore, the Council adds: "... the religious moved by the Holy Spirit subject themselves in faith to those who hold God's place, their superiors."⁵⁷

Renovationis Causam⁵⁸ suggests that obedience is a fully human response in the following words: "... the obedience with which they fulfill their duties and perform their tasks allotted them is active and responsible."⁵⁹

53 PC, pp. 611-623.

54 Ibid., no. 1, p. 61.

55 Ibid., no. 14, p. 619, (emphasis added).

56 Ibid., no. 14, p. 619, (emphasis added).

57 Ibid., no. 14, p. 619, (emphasis added).

58 RC, pp. 634-655.

59 Ibid., no. 32, p. 652, (emphasis added).

Finally, in Evangelica Testificatio⁶⁰ there is evidence of an important development. In the seven years which had elapsed since Lumen Gentium there had been time to evaluate what had been said. No longer are such words as "subjection" and "humbly submissive" used. We do find the word "submission", but it is to God and not to man.⁶¹ The phrases used are "offering", "self-giving", "communion" and so on. There is a concise description of what it means to practise religious obedience:

Through this profession, in fact, you make a total offering of your will and enter more decisively and more surely into his plan of salvation. Following the example of Christ, who came to do the will of the Father, and in communion with him who "learned to obey through suffering" and "ministered to the brethren", you have assumed a firmer commitment to the ministry of the Church and of your brethren.⁶²

We can see here the close following of Christ which is the life of obedience and an indication of its ecclesial dimension as a commitment to the ministry of the Church.

In this document, the complementarity of authority and obedience is expressed in no. 25, in terms which are human, realistic and spiritual. The dignity of the person, the freedom and voluntary limiting of freedom, come into play when participating in the decisions of authority. This could also be expressed by saying that these fundamental principles give a right to participate in responsible dialogue:

⁶⁰ ET, pp. 680-706.

⁶¹ Ibid., no. 27, p. 693.

⁶² Ibid., no. 23, p. 691, (emphasis added).

Consequently, authority and obedience are exercised in service of the common good as two complementary aspects of the same participation in Christ's offering. For those in authority, it is a matter of servicing in their brothers the design of the Father's love; while, in accepting their directives, the religious follow our Master's example and co-operate in the work of salvation. Thus, far from being in opposition to one another, authority and individual liberty go together in the fulfilment of God's will, which is sought fraternally through a trustful dialogue between the superior and his brother, in the case of a personal situation, or through a general agreement regarding what concerns the whole community.⁶³

Two things might be noted in this passage. The first is the use of "brother" instead of "subject" and the second is the reference to authority and obedience in terms of service. If obedience involves a call and a mission, as we identified for Jesus, this, too, must be true of the disciple, particularly one who makes profession of obedience in religious life.

f) The notion of Obedience as found in Vatican II Documents

Before the Council, Karl Rahner, S.J., described obedience as: "the acceptance of a common mode of religious life in imitation of Christ according to a constitution, which the Church has acknowledged to be a true and practical expression of a divinely oriented existence."⁶⁴ In the same article, he described it also as: "a permanent life-form giving man a God-ward orientation. Such orientation is ecclesiological because by it the religious reveals the peculiar essence of the Church."⁶⁵ These quotations illustrate a realisation that obedience

⁶³ Ibid., no. 25, p. 692, (emphasis added).

⁶⁴ K. Rahner, "Reflections on Obedience", in Cross Currents, 10(1960), p. 371.

⁶⁵ Ibid., p. 370.

is much more than a renunciation and a sacrifice. It is a whole life, oriented towards God the Father, in the company and imitation of Christ.

However, earlier documents of Vatican II display a line which, in many ways, can be seen as narrow. Edward O'Connor, writing in 1967, sums up the Council's views on the value of religious obedience in terms of:

1. sacrifice by which God is directly glorified and
2. apostolic fruitfulness, by making the would-be apostle the instrument of the Holy Spirit and of the external and sacramental movement of the Church's ministry.⁶⁶

Father Joseph Gallen, S.J., in the same year, also speaks of the decided traditional bent which the Council teaching on obedience shows:

Vatican Council II did not depart in any way from the traditional notions of the necessity and importance of obedience, that its practice demands faith, particularly in its motive that the superior is the representative of Christ, that its remote matter is what is contained in the vows, Rule and constitutions, its proximate matter the command of a legitimate superior, and the Council may even have implied the obedience of will and judgment.⁶⁷

However, both authors point to the newer trends which, to some degree, help to redress the balance. They speak of the emphasis on human dignity and freedom, the value of interpersonal relationships, consultation and dialogue between superiors and members, personality development and the inviolability of the conscience.⁶⁸

⁶⁶ Edward O'Connor, "Vatican II and the Renewal of Religious Life", in Review for Religious, 26(1967), p. 421.

⁶⁷ J.F. Gallen, "Religious Obedience in Vatican Council II", in Review for Religious, 26(1967), pp. 251-252. Gallen illustrates his last point by giving quotations from DH, no. 8, Ad Gentes, no. 24, PC, no. 14, and Presbyterorum Ordinis, no. 15, which show a strong traditional line on obedience.

⁶⁸ E. O'Connor, loc. cit., p. 410; F.J. Gallen, loc. cit., pp. 252-255.

Father Elio Gambari summarises no. 14 of Perfectae Caritatis, which he considers a description of obedience rather than a definition:

... pointing out its object, the dedication of one's will; its motive, the sacrifice of self offered to God; its strength and value, greater stability and security in union with God's salvific will; its example, Jesus Christ; its expression, submission to superiors as showing us the will of God; its social dimension, the service of others; its ecclesial dimension, a stricter obligation to serve the Church; and lastly, its end and aim, to attain to the stature of the fullness of Christ.⁶⁹

In his footnote to this section, Gambari gives the definition found in the first draft of the document, a definition that was rejected.⁷⁰

These authors have tended to base their comments on the earlier documents, for the obvious reason that with the exception of Gambari they were writing before the appearance of Evangelica Testificatio.⁷¹ A study limited to the earlier documents would lead to the conclusion that, while they express the essence of obedience, they do not add much to our understanding of it. In the passages quoted from Evangelica Testificatio, a much more meaningful presentation of obedience is given, one which does not neglect the traditional aspects but fills them out through a better appreciation of scriptural values and a wider knowledge of sociological and psychological factors. Obedience finds its expression in many ways, one of which is participating in decision-making.

⁶⁹ E. Gambari, Unfolding the Mystery of the Religious Life, p. 84.

⁷⁰ Ibid., p. 99, "Religious obedience consists in the submission by which the subject, freely offering to God the holocaust of his own will, renders humble deference for the love of Christ to the superiors who hold the place of God, in all that is commanded according to the Rules and Constitutions" (Art. 26, Schema constitutionis de statibus perfectionis acquirendae, 1963).

⁷¹ Id., p. 95.

3. Participation in Authority

We cannot speak of the participation of members in the decisions of religious life without looking at participation in its broader context within the Church. As Ladislav Orsy says: "The idea of government in religious life is hardly more than a particular application of the idea of authority in the Church to the particular case of religious."⁷²

a) In the Church

The Constitution on the Church, Lumen Gentium,⁷³ presents us with several models of the Church — the sheepfold, the cultivated field, the city of God, Jerusalem and the Body of Christ.⁷⁴ It also speaks of the community of faith⁷⁵ and then proceeds to devote a whole chapter to this idea where the community of faith becomes the well-known model, identified with Council teaching, the People of God.⁷⁶ Within the description of this new People of God, we could single out a section which summarises the new community:

The state of this people is that of the dignity and freedom of the sons of God, in whose hearts the Holy Spirit dwells as in a temple. Its law is the new commandment to love as Christ loved us (cf. Jn.13:34). Its destiny is

72 L. Orsy, loc. cit., p. 93.

73 LG, pp. 350-426.

74 Ibid., nos. 6-7, pp. 353-356.

75 Ibid., no. 8, p. 357.

76 Ibid., nos. 9-17, pp. 359-369.

the kingdom of God which has been begun by God himself on earth and which must be further extended until it is brought to perfection by him at the end of time when Christ our life (cf. Col.3:4) will appear and "creation itself also will be delivered from its slavery to corruption into the freedom of the glory of the sons of God" (Rom. 8:21).⁷⁷

It is clear from this description that the Church consists of all the members. However, in the next chapter, the document points out that, while each must exercise the priestly, prophetic and kingly roles of Christ, not all offices are the same. There is a variety of function because the Church is hierarchical:

... Christ the Lord set up in his Church a variety of offices which aim at the good of the whole body. The holders of office, who are invested with a sacred power, are, in fact, dedicated to promoting the interests of their brethren, so that all who belong to the People of God, and are consequently endowed with true christian dignity, may, through their free and well-ordered efforts towards a common goal, attain to salvation.⁷⁸

Lumen Gentium accepts that, within the one community of the Church, there is diversity of office but each has the obligation of contributing towards the good of the whole. The bishops with the Pope exercise supreme power in the Church and this "collegiality" is carefully described in the preliminary explanatory note to the Constitution.⁷⁹ It has to be understood that even though the college of bishops is a reality, the Pope, by reason of his office, may exercise supreme power on his own. In the section on the laity,⁸⁰ lay persons are reminded of their responsibility in the Church. They have a right to contribute to decisions by

77 Ibid., no. 9, p. 360.

78 Ibid., no. 18, p. 369.

79 Ibid., pp. 424-426.

80 Ibid., nos. 30-38, pp. 388-396.

dialogue and consultation. In other words, they must be active and co-responsible agents of the work of the Church in the world. Priests and deacons are recognised as special co-workers of the bishop within the diocese, by reason of their sharing in the sacrament of Orders.⁸¹

These basic notions of Lumen Gentium have since been translated into more concrete forms such as Conferences of Bishops, presbyteral councils, pastoral councils, financial councils, lay ministries and more active involvement in church organisation. It is accepted policy that, even though roles may vary, responsibility is definitely a shared task. A year after Lumen Gentium, the Council Fathers would state: "The laity are called to participate actively in the whole life of the Church; not only are they to animate the world with the spirit of christianity, but they are to be witnesses to Christ in all circumstances and at the very heart of the community of mankind."⁸²

Another aspect of the Council Fathers' attitude could be summarised in their own words: "Moreover the civil authorities should respect the principle of subsidiarity which has often been affirmed in the official teaching of the Church, the gist of which is: "Let them not undertake to do themselves what can be done just as well, or even better, by individuals or private groups."⁸³

⁸¹ Ibid., no. 20, p. 372.

⁸² GS, no. 43, p. 944.

⁸³ "Communio et Progressio" (Instruction on the Means of Social Communication), January 29, 1971, no. 86, p. 322. This document is found on pp. 293-349 and will hereafter be referred to as CP. It is the direct result of the

The involvement of the laity in the life and mission of the Church represents a new understanding of the Church as a community with its members actively involved. There is no denial of the power of the Pope or the bishops, but a realisation that, in the exercise of this power, they need the contribution of others whom they should not be afraid to consult because the Church belongs to all Christians. Authority is basic to the life of the community but it must be exercised in a way which is human and reflects the nature of the community. This can, perhaps, best be described in the words of W.W. Meissner:

The finality of authority is, in part, order, and it is in relation to authority that the sense of shared identity and values are communicated through which the community establishes and preserves its sense of solidarity. This is one of the underlying dimensions of authority which is derived from the workings of authority as relation. The function is realized through a continuing dialogue within the relation and by the underlying mechanisms of identification and mutual regulation. The unity is a unity of values, of goals and purposes. The dialogue at all its levels, builds the community. And the individual, who participates in the dialogue through interest, action and initiative becomes a creative and responsible force within the community ... The dialogue also serves to deepen the community's awareness of itself as having a reality and a function in the exercise of authority.⁸⁴

b) In Religious Life

Even allowing for the obligations of obedience and the necessity for some structure to support the group, the principles of participation still must find their application in religious life. A religious is first and foremost a human person, with

instruction found in "Inter Mirifica", no. 23. "Inter Mirifica" appeared on December 4, 1963 and may be found in Documents of Vatican II, by A. Flannery, editor, pp. 282-292. No. 23 is on p. 292, (emphasis added).

⁸⁴ W.W. Meissner, op. cit., p. 197, (emphasis added).

human dignity and human needs; religious vows do not detract from the fundamentals. Fortunately, the Council documents specifically devoted to religious are very clear about the responsibility of all religious to contribute to renewal in their institutes: "Effective renewal and right adaptation cannot be achieved save with the cooperation of all the members of an institute."⁸⁵ Although the next sentence, which states that only the competent authorities, especially the general chapter, may establish norms, seems to limit the contribution of the members, this, in fact, is not so since the document also makes clear that the general chapter should be properly representative of the members.⁸⁶

Part of the renewal of religious life which has to involve all the members, is that of authority, and Perfectae Caritatis gives criteria for examining the form of government. Does it meet:

1. the physical and psychological conditions of contemporary religious,
2. the nature of each institute,
3. the needs of the apostolate,
4. the requirements of culture,
5. the social and economic circumstances.⁸⁷

As can be seen from these criteria, the details are, in some ways, common to all religious and in others, peculiar to a particular institute. Common sense, as accurate an appraisal as possible of these criteria, in order to establish a viable

⁸⁵ PC, no. 4, p. 613, (emphasis added).

⁸⁶ Ibid., no. 16, p. 620.

⁸⁷ Ibid., no. 3, p. 613.

form of government, demands the active cooperation of all concerned and even if necessary the help of outside experts. We can no longer think of religious life as a life apart from the rest of the world. Religious are affected by the world as never before and this has to be reflected in their way of life. Sister Mary Luke Tobin, S.L., suggests five phenomena which influence the government of religious women, as well as others:

- (1) universal education;
- (2) the apparently unlimited horizons of technology, at once a tribute and an impetus to man's potentials;
- (3) the growing understanding and appreciation of human dignity and personality;
- (4) the changing status of women in society, particularly in well developed countries (Pacem in Terris);
- (5) worldwide aspirations to self-government and social equality.⁸⁸

The result of these trends in communities of religious women has been far-reaching and we can say, with Sister Mary Luke Tobin, that the religious woman: "... experiences (herself) as apt and able for self-determination, as capable of entering into decision-making, as having a contribution to make to all the communities of which (she) is a part. Any structure which contradicts this process is destructive of human development."⁸⁹ Such a development, while a direct response to the society in which we live, is also in accord with Council teaching, for, as Father Paul Molinari, S.J., in his commentary on Perfectae Caritatis says, the use of the word "effective" to describe the required renewal, "indicates the absolute necessity of a

⁸⁸ Mary Luke Tobin, "Government in Religious Communities", in Doctrine and Life, 17(1967), pp. 531-532.

⁸⁹ Ibid., p. 532.

living participation which alone can ensure reinvigoration."⁹⁰ The decree is quite emphatic on the duty of superiors to consult their members about all that concerns the entire institute. Leaders must not give this obligation of consultation a mere lip-service because they are enjoined to listen to their members.⁹¹ Father J.B. Fabrini, O.F.M.Cap., also reminds superiors that although methods and degrees of involvement may vary, they may never be reduced to mere formality, because it is essential that appropriate information, ample consultation and fraternal dialogue flourish in the community.⁹² To act otherwise would be to ignore the dignity and, indeed, the gifts of each member and to reduce them to the status of slaves, as Father L. Boisvert says in strong but plain language: "Subjects are not employees or slaves and superiors are not patrons or masters. United by the same consecration and within the same institute, they should fulfil the plan of God together in a spirit of co-responsibility."⁹³

90 P. Molinari, "Perfect Charity: the Conciliar Decree on the Renewal of Religious Life. Introduction and Commentary", in Supplement to the Way, 2(1966), p. 23.

91 PC, no. 4, p. 613.

92 "Modalitates et gradus huius comparticipationis... varii esse possunt; attamen ne ad meras formalitates reducantur, oportet et vigeat congrua informatio, ampla consultatio et fiduciale dialogum." J.B. Fabrini, "Fraternitas et principium hierarchicum in statibus perfectionis", in Monitor Ecclesiasticus, 101(1976), p. 61.

93 L. Boisvert, "Autocratie, démagogie ou coresponsabilité", in La Vie des communautés religieuses, 25(1967), pp. 239-240. "Les sujets ne sont pas des employés, des esclaves, et les supérieurs des patrons, des maîtres. Tous unis par une même consecration, à l'intérieur d'un même institut, c'est dans la coresponsabilité qu'ils ont à réaliser ensemble le dessein de Dieu."

Ecclesiae Sanctae⁹⁴ recalls that the Council expected each institute to be responsible for its own renewal⁹⁵ and this means the active involvement of all at every stage, which the document expresses in unequivocal terms: "The cooperation of all superiors and subjects is necessary for the renewal of their own religious lives, for the preparation of the spirit which should animate the chapters, for the accomplishment of their tasks, and for the faithful observance of the laws and norms laid down by the chapters."⁹⁶ The general council of each congregation is enjoined to ensure not only ample consultation but sufficient time to evaluate the results of consultation so as to provide for more effective chapter deliberation.⁹⁷

As well as recommending just representation at chapters and councils, no. 18 of Ecclesiae Sanctae makes a plea for the use of a very important principle in the method of government: the principle of subsidiarity which would ensure to each level of government, the power required to act effectively at that level, thus obviating unnecessary recourse to higher authority.⁹⁸

94 ES, pp. 624-633.

95 Ibid., no. 1, p. 624.

96 Ibid., no. 2, p. 625.

97 Ibid., no. 4, p. 625.

98 Ibid., no. 18, p. 628. Cf. G. Lesage, "Le principe de subsidiarité et l'état religieux" in Studia Canonica, 2(1968), pp. 95-123 for a very interesting exposition on the meaning and implications of subsidiarity; also L. Orsy and J. Walsh, "Motu Proprio: the Norms for implementing the Decree of the Second Vatican Council, Perfectae Caritatis. Commentary and translation" in Supplement to the Way, 4(1967), p. 18, and R. Metz, "La Subsidiarité, principe régulateur des tensions dans l'église", in Revue de Droit Canonique, 22(1972), pp. 155-176.

Although Renovationis Causam⁹⁹ is devoted mainly to formation, again we have the reminder that the vitality of institutes and all aspects of renewal require "the generous collaboration of all their members."¹⁰⁰

Evangelica Testificatio¹⁰¹ recognises the responsibility of all to contribute to the spiritual life of the community¹⁰² and extols the value of a common search for truth and action, while preserving inviolable the superior's right to articulate the final decision.¹⁰³ An interesting addition to the Council documents is the consideration given to the relative merits of large and small communities. The Pope accepts that varying needs may make one type more suitable for a certain person or group. But he makes clear that fraternal cooperation and responsibility, and closer human relationships are essential to any community. Sometimes, a certain structure can actually promote these aims and although it is by no means sufficient in itself, it should be recognised as having positive value.¹⁰⁴

A dialogic system in which the last word remains with the superior who exercises personal authority is the ideal which the Council and the post-conciliar

99 RC, pp. 634-655.

100 Ibid., introduction, p. 635.

101 ET, pp. 680-706.

102 Ibid., no. 26, p. 693.

103 Ibid., no. 25, p. 692.

104 Ibid., nos. 40, 41, pp. 698-699.

documents wish to present as the goal. A religious community is not a democracy but it should be governed by those democratic principles which allow each member to develop at a personal pace and to make a unique contribution to the whole. Unity does not spell uniformity and the richness of the religious life will be derived, in great part, from the diversity of the charisms present in each member. Structures must be such that a spirit of fraternal collaboration is possible. Indeed, "government should be first of all a government by people and not by laws."¹⁰⁵ Where structures are de-personalising or inadequate, they should be abandoned for others which promote growth and dialogue. This may mean a certain measure of decentralisation, in accord with the principle of subsidiarity so that issues are dealt with at the level where they occur, as far as possible. The emphasis in this whole question of participation is on the person. Assigning full dignity to the person, promoting development and inviting cooperation in the exercise of authority help not only the individual religious, but the whole congregation and ultimately the Church. As Father Gambari says: "The service of government is for the benefit of those who are governed; structures are organized for the good of persons taken individually and collectively, and in the hierarchy of values, persons have the priority; the person's true welfare may not be sacrificed to the structure."¹⁰⁶ That such an outlook, developed to its logical conclusion in a dialogic community is the wish of the Council and of those who are charged with implementing it, cannot be doubted.

¹⁰⁵ R.H. Chabot, "Reexamining Community Government", in Review for Religious, 26(1967), p. 268.

¹⁰⁶ E. Gambari, op. cit., p. 178.

Conclusion

I make no apology for the liberal use of quotations from Vatican II material. The actual sources speak more eloquently than any of our paraphrases. We are dealing with many new ideas and approaches and it would be easy to dismiss them. But actually seeing the words makes us realise that the Council meant what it said. Our task is to accept and act.

CHAPTER III

THE EXERCISE OF EXTERNAL AND INTERNAL AUTHORITY ACCORDING TO VATICAN II DOCUMENTS

Religious experience the exercise of authority from two sources: from external superiors, such as the Pope and bishops, and from internal superiors and chapters which operate at various levels, such as general, provincial and local. Each type will be treated separately.

1. The Exercise of External Authority

One of the most significant results of the Church's new understanding of itself as the People of God is its effect on consecrated life. Religious at times have been regarded as a race apart, preoccupied with their particular way of life and with their own mission. Some people might have been inclined to consider the particular charism of an institute only as something which differentiated it from other institutions and even from the local Church, rather than as a factor contributing to the rich tapestry of the Church. Thus, one of the great insights of Vatican II has been the renewed emphasis placed on religious as part of the Church, engaged in the Church's mission.

It will be remembered that one of the achievements of Conditae a Christo¹ was to delineate the powers of the bishop and other external superiors so

¹ Cf. Chapter 1, supra, pp. 15-17.

that each institute preserved its autonomy with regard to internal government. Without diminishing in any way the autonomy of an institute, the conciliar emphasis on the People of God and on the importance of the local Church has made the relationship between the hierarchy and religious somewhat different. The difference lies not so much in juridical concepts as in their theological foundations. As more religious move out of traditional convent-based works to involvement in the local Church, inevitably, the notion of mission and accountability is going to change — indeed, has already changed.

Basic to our appreciation of the changes is the understanding of the link between the Pope and the bishops, so admirably described in the preliminary note to Lumen Gentium.² The Pope is the head of the Church and, therefore, the first superior of all religious. But, as head of the college of bishops and in communion with them, he involves his colleagues in a special way with his authority. They are the guardians of worship, morals, teaching and good order in their respective spheres.

In its section on religious, Lumen Gentium speaks of the hierarchy's task of feeding the People of God, regulating the practice of the counsels and accepting new rules of religious life.³ While the Pope has the power to exempt any congregation from the jurisdiction of the local ordinary and reserve it to himself, the document insists on respect and obedience towards bishops in accordance with

2 Lumen Gentium, Note, pp. 424-426.

3 Ibid., no. 45, p. 405.

canon law, for two reasons: "... because these exercise pastoral authority in their individual churches and because this is necessary for unity and harmony in the carrying out of apostolic work."⁴ Thus, the relationship of religious to the bishops is seen in terms of pastoral care and apostolic work. The document also establishes a further bond between them through the liturgical acceptance of vows and the prayer of the Church for religious.⁵

Christus Dominus, the Decree on the Pastoral Office of Bishops in the Church,⁶ goes into detail about how religious are subject to the local Ordinary.⁷ But an important paragraph would indicate how close the Council wishes cooperation between religious and bishops to be:

Religious should at all time treat the bishops, as the successors of the apostles, with loyal respect and reverence. Moreover, whenever legitimately called upon to do apostolic work, they must carry out these duties in such a way as to be the auxiliaries of the bishop and subject to him. Furthermore, religious should comply promptly and faithfully with the requests or desires of the bishops when they are asked to undertake a greater share in the ministry of salvation. Due consideration should be given to the character of the particular institute and to its constitutions, which may, if necessary, be adapted for this purpose in accord with the principles of this decree of the Council.⁸

The document then proceeds to say: "Religious who are engaged in the external apostolate should be inspired by the spirit of their own institute, should remain

4 Ibid., no. 45, p. 405.

5 Ibid., no. 45, p. 406.

6 "Christus Dominus" (Decree on the Pastoral Office of Bishops in the Church), October 28, 1965, pp. 564-590. This document will hereafter be referred to as CD.

7 Ibid., no. 4, p. 585 which refers to worship, preaching, education, etc.

8 Ibid., no. 35(1), p. 584.

faithful to the observance of their rule and should be obedient to their superiors. Bishops should not fail for their part to insist on this obligation.⁹ There are two ways of looking at these texts. It would seem that the local bishop can make demands on religious according to local needs, even if their particular charism is not geared to the specific role, but due adjustments are to be made by competent authority. Although this could lead to possible interference on the part of the bishops, on the other hand, religious have a duty to respond to the needs of the time and make necessary adaptations.

The situation becomes clearer with the publication of the norms for the implementation of Christus Dominus, in the Motu Proprio Ecclesiae Sanctae.¹⁰ The authority of the bishop is more confined to externals in the traditional understanding, but there are several passages which indicate the desirability of good mutual relations between bishops and religious and the necessity to respect the legitimate autonomy of internal superiors. There are frequent references to consultation, respect for an institute's charism, mutual understanding of problems and circumstances, and recognition of the special role of the proper superiors.¹¹ One is left with the distinct impression that, while the bishop is the leader of the local flock, he must work in close cooperation with the religious who are in his diocese, and religious are to show the same attitude.

9 Ibid., no. 35(2), p. 584.

10 ES, August 6, 1966, pp. 590-610.

11 Ibid., nos. 22-40, pp. 604-609.

Christus Dominus allowed for the appointment of episcopal vicars¹² and Ecclesiae Sanctae described this office.¹³ Although religious were not singled out at that time, it has become the practice in many dioceses to appoint an episcopal vicar specifically for the needs of religious. Such a vicar enjoys ordinary vicarious power according to the law, unless the bishop has reserved certain things to himself; he may also have other faculties granted to him by the bishop.

Although the bishop cannot impose involvement by religious in diocesan organisations, he is advised, both in Christus Dominus¹⁴ and Ecclesiae Sanctae,¹⁵ to encourage religious to be members of the pastoral councils. In addition, some dioceses have established a council or senate of religious which can help the bishop by its study, information and ideas.

In the years following the Council, there still remained much to be done in some areas to improve the mutual relations in practice between bishops and religious.¹⁶ A reminder of the need of such cooperation was found, fifteen years

12 CD, no. 27, p. 579.

13 ES, no. 14, pp. 599-600.

14 CD, no. 27, p. 580.

15 ES, no. 16(3), p. 601.

16 Cf. J. Snijders, "Bishops and Religious. The Document on the Mutual Relations between Bishops and Religious", in Review for Religious, 39(1980), pp. 115-116 for a brief outline of the reasons which led to the publication of Mutuae Relationes, on April 23, 1978. This document by the Sacred Congregations for Religious and Secular Institutes and for Bishops may be found in CLD, IX, pp. 296-339 (original in AAS, 70(1978), pp. 473-506) and henceforth will be referred to as MR.

later on April 23, 1978, in the document Mutuae Relationes, on the mutual relations between bishops and religious.¹⁷

Mutuae Relationes seems to clear up many of the ambiguities found in the previous pronouncements on the topic. It is a major document which "pursues the great orientations of the Second Vatican Council"¹⁸ and brings us up to date on the Church's official approach to the question.

No. 8 of Mutuae Relationes summarises much of the material found in Council documents on the duty of the hierarchy with respect to religious life.¹⁹ No. 10 establishes the ecclesial nature of religious institutions: "... religious life is a special way of participating in the sacramental nature of the People of God."²⁰ Chapter IV emphasises the fact that bishops and religious are engaged in the self-same mission of the People of God.²¹

Specifically, with regard to the power of bishops over religious, no. 35 recognises that bishops and religious have their own sphere of competency.²² No. 45 is even more explicit:

¹⁷ CLD, IX, pp. 296-339.

¹⁸ J. Snijders, loc. cit., p. 116.

¹⁹ CLD, IX, no. 8, pp. 304-305.

²⁰ Ibid., no. 10, pp. 306-307. Cf. also pp. 309-310 where no. 14 speaks of "renewed ecclesial awareness."

²¹ Ibid., Chapter IV, pp. 310-319.

²² Ibid., no. 35, pp. 324-325.

In order that the relations between bishops and superiors produce increasingly more fruitful results, they must be developed in cordial respect for persons and institutes, in the conviction that religious must give witness of docility towards the Magisterium and of obedience to their superiors, and with the mutual understanding to act in such a way that neither transgresses the limits of competency of the other.²³

No. 54 speaks of the appointment of an episcopal vicar for religious. This person does not take over any of the authority of the religious superiors. He is to help the bishop in matters which relate to religious and, in a certain sense, be the bridge between bishop and religious. The religious, themselves, should be consulted about the choice of a vicar.²⁴

Finally, there is a very clear exposition of the role of a religious superior under the three-fold aspects of teaching, sanctifying and governing, ending with a paragraph which can be taken, perhaps, as the Church's position on the relative powers of bishop and religious superior:

Institutes, then, have an internal organization all their own (cf. CD, 35,3) which has its proper field of competency and a right to autonomy, even though in the Church this autonomy can never become independence (cf. CD, 35,3 and 4). The correct degree of such autonomy and the concrete determination of competency are contained in common law and in the Rules or Constitutions of each institute.²⁵

This document is encouraging. It bases its plea for mutual understanding on the model of the Church as the People of God and on the principles so clearly enuntiated in Council documents: human dignity and the responsibility of all to

²³ Ibid., no. 45, p. 34.

²⁴ Ibid., no. 54, p. 39.

²⁵ Ibid., no. 13,c, p. 14.

build up the Kingdom of God. Within the Church, the bishops have their special role, as do religious by the dedication of their lives through vows and by the charism particular to their own congregation. As the document says: "... everything will progress better if they are deeply convinced of the necessity and of the nature and importance of such cooperation, of mutual trust, of respect for the role of each individual, of mutual consultation in determining and organizing undertakings on every level."²⁶

The document is not, in the strict sense, a legal text. It contains nothing different from the norms set up in Council documents and directives. What is new is the tone of the document. It is "spiritual, pastoral and humane rather than juridical."²⁷ Thus, it re-emphasises the doctrinal ecclesial foundations of authority found in Vatican II documents.²⁸

²⁶ Ibid., conclusion, p. 339.

²⁷ E. Gambari, "How to read Mutuae Relationes", in Supplement to Doctrine and Life, 19, no. 81(1979), p. 24. This whole article repays study since, as well as summarising the document, it sets out clearly the consequent obligations of bishops and religious.

²⁸ It has seemed wiser not to interrupt this discussion of the mutual relations between bishops and religious as contained in the previous pages, although Mutuae Relationes appeared at a much later date. Before leaving this section, mention should be made of a short decree which appeared in 1970 on the subject of confession for religious: Dum Canonicarum (cf. footnote 28, p. 47). By this decree, CIC (1917), canon 876 was suspended so that women religious and novices might make their confession to any priest in the locality who had faculties. The Ordinary was to judge whether a request for an ordinary confessor was justified. He was asked to choose confessors carefully and was given the freedom to determine factors of age, term of office and number, having consulted the community concerned.

Thus, in this document, as in others, the bishop was reminded of his duties towards religious, in keeping with their own right to consideration and dialogue in what concerned them intimately.

2. The Exercise of Internal Authority

The exercise of internal authority rests with chapters and superiors and these will be treated separately but it might not be out of place to devote a few comments to the nature of religious authority.

a) Nature of Religious Authority

The fact that Vatican II laid so much stress on the Church as the People of God immediately gives the Church a "community" context. We cannot speak of the members of the Church in isolation, but in relation to one another. Inevitably, in such a context, there has to be caring for the other person, a service of the other. Increasingly, as our understanding of authority has developed, it has been seen primarily as a service.

The author or source of all authority is God himself. As man, God lived on this earth in the person of Christ. So, whenever we want to understand the nature of authority, we must look at Christ. There is no doubt that a study of the gospels will reveal that before Christ gave authority to His Church, He showed how it should be exercised. The sublime example of Jesus' desire to show His authority in service was when He washed the feet of His disciples at the last supper (Jn. 13:12-17).²⁹ The kingly role of the leader of the People of God in the Old

²⁹ Cf. L. Boisvert, "The Nature of Religious Authority", in Review for Religious, 24(1965), pp. 35-38, for a useful exposition on the biblical foundations of authority.

Testament was primarily one of service. So, the idea that authority is essentially service is very old. As Gambari points out, for centuries the Pope has used the title "Servant of the servants of God."³⁰

The religious community is no ordinary community. It is not just a social grouping like a sports club, but is something spiritual and mystical. It is true that, like any organisation, it has to have some structure and rules; yet, because it is of divine origin, it goes far beyond the juridical aspect. It is hard to legislate for a spirit of faith, and yet each person who exercises authority and each person who receives from authority, has to be aware that the basis for action is belief in the God who shares his authority with mankind.

Religious superiors and organisms, such as chapters, share in the authority of Christ according to the specifications of common law and the constitutions. They exist to be the binding force in their communities and to mediate the authority of Christ and his Church. Father Gambari gives three purposes and aims of authority in religious life: the first task of authority is to lead religious to holiness; secondly, authority is a unifier and animator of the group which looks to it for the fulfilment of theological rather than juridical needs; thirdly, authority is needed to coordinate the apostolate of the group which is sanctioned by the mandate of the Church.³¹

³⁰ E. Gambari, Unfolding the Mystery of the Religious Life, p. 185.

³¹ Ibid., p. 187.

Without true authority in a group, it would be no exaggeration to say that there would be chaos or dictatorship. It is also true that too great a display of authority would likewise be detrimental because such an extreme could only spell authoritarianism and rigidity which have no place in service. Whatever does not promote the life of the group should be abandoned. This is not to say that mistakes will never be made. As Father Ladislav Orsy points out, religious superiors do not receive infallibility on their appointment.³² But, wherever both superiors and members understand the true nature of authority as something existing within the context of faith, faults can be overcome and more suitable structures formed to support the good of the group.

Since we are dealing, in this paper, with religious women in apostolic institutes, authority in their religious communities is expressed in terms of what used to be called "dominative power" which is governing power, distinct from the jurisdiction in which the exempt institutes shared according to the teaching of the 1917 Code. The constitutions and directives of each institute, in addition to the common law, set out how the governing power is exercised. Not all aspects of the power reside in the same person or groups. Normative power which is the ability to make rules will be the task of the chapter; executive power is usually in the hands of the superiors.³³ The details of the different powers will vary according to law and constitutions. What will remain constant is the necessity of authority so that

³² L. Orsy, "Government in Religious Life", in Supplement to the Way, 2(1966), p. 93.

³³ Cf. E. Gambari, op. cit., pp. 189-190, where he also speaks of judicial, coercive and administrative powers.

the rights of all are protected. That the essence of authority is service is well expressed by Pope Paul VI in Evangelica Testificatio:

Exercising authority in the midst of your brethren means, therefore, being their servants, in accordance with the example of him who "gave life as a ransom for many"... authority and obedience are exercised in the service of the common good as two complementary aspects of the same participation in Christ's offering.³⁴

b) The General Chapter

The chapter is an authoritative body which may exist at any level in a congregation. All congregations are obliged to have a general chapter, but often there is also one at the provincial level. At the local level, chapters are usually found only in monasteries or similar communities. At whatever level it exists, the chapter acts in a collegial manner; that is, every member has equal authority and even the superior general is obliged to follow decisions taken by the group.

The word "chapter" is itself an interesting term, especially in view of the new emphasis on participation. The word is derived from the Latin "caput", meaning "head" and is itself found as "capitulum" in Latin. French has the term "chapitre", which, in addition to meaning "chapter" as referred to a book, can be used for the top of a pillar. These words all point to the supremacy of the "general chapter" as the highest authority in an institute while in session. The term has hallowed connotations also when used of the Cathedral chapter which is a

³⁴ ET, no. 24, pp. 691-692.

descendant of the monastic chapter and a reminder that the cathedral was often the abbey church or entrusted to the monks.

However, the powers of chapters are not equal. The general chapter while in session is the highest authority in the institute. It has the power to elect the principal members of government, to make laws for the whole institute, to propose constitutions or changes in them after due consultation and to deal with matters which affect the life of the whole congregation. The provincial chapter may make rules according to the provisions of the constitutions, but this chapter does not receive special attention in the common law. While all chapters have authority, this authority is rather limited with regard to provincial and local chapters.

Chapters have been a feature of religious life from the earliest days. In theory, they have always been regarded as collegial bodies, representative of the congregation at whatever level they are called. Vatican II has not changed this in principle. But there seem to be three major points connected with the Council's deliberations on chapters which arise from the conciliar texts and subsequent documents. The first was a call to genuine representation at chapters, the second was the injunction to call a special-general chapter which could be extended, and the third was to give extensive powers to the general chapter. We shall treat each of these points separately.

i) Representation

The heightened awareness of co-responsibility generated by the Vatican Council is seen in the Council's call to institutes to ensure that the members of a chapter are truly representative of the institute or province concerned. Perfectae Caritatis in no. 4 reminds religious that: "effective renewal and right adaptation cannot be achieved save with the cooperation of all the members of an institute."³⁵ In no. 14, it further specifies that "chapters and councils should faithfully discharge the role committed to them in government and, each of them in its own way, should give expression to the involvement and concern of all the members of the community for the good of the whole."³⁶

Ecclesiae Sanctae repeats these general instructions when it calls for a special general chapter in each institute for the purpose of renewal and adaptation:

The cooperation of all superiors and subjects is necessary for the renewal of their own religious lives, for the preparation of the spirit which should animate the chapters, for the accomplishment of their task, and for the faithful observance of the laws and norms laid down by the chapters... In preparation for this chapter, the general council must arrange, by some suitable means, for an ample and free consultation of all the subjects.³⁷

Ecclesiae Sanctae makes it clear that adequate representation and collaboration are not limited to the workings of the particular renewal chapter, but are to be the policy in the future:

³⁵ PC, no. 4, p. 613.

³⁶ Ibid., no. 14, p. 620.

³⁷ ES, no. 2, p. 625.

The mode of government should be such that chapters and councils should express, each one at its own level, the involvement and concern of all the members of the community for the good of the whole (PC, no. 14). This will be the case, especially, if the members have a real and effective part in the choice of chapter and council officials... suitable renewal cannot be achieved once for all: it needs to be fostered continually, with the help of the fervor of members and the solicitude of chapters and superiors.³⁸

One other document deserves to be mentioned in this context. It is a letter concerning constitutions addressed to superioresses general of all religious institutes by the secretary of the Sacred Congregation for Religious and Secular Institutes. Under "government", we read: "Provision should be made for the collaboration of the members of the institute and for adequate representation."³⁹

It can be seen, then, that, in line with its teaching on participation in the life of the Church, the Vatican Council has clearly expressed the right of every religious to be consulted about chapter agendas and be adequately represented at the chapters.

ii) Special General Chapter

The call to renewal and adaptation by the Council was no ordinary injunction. It was contained in a context of a radical re-thinking in all areas of the Church's life and it demanded a concerted response. It would involve, for religious, a close look at their way of life as expressed in the constitutions, so that these

³⁸ Ibid., nos. 18-19, p. 628, (emphasis added).

³⁹ Sacred Congregation for Religious and Secular Institutes (hereafter abbreviated to SCRIS), "Modifications of Constitutions", private letter to superiors general of religious institutes, July 10, 1972, in CLD, VII, p. 480.

would be up-dated or changed to harmonise with new trends and needs in the Church and in the world. The means to do this was a special general chapter.

Ecclesiae Sanctae, in 1966, obliged each institute to summon a special general chapter within the following two years or, at most three years. The ordinary general chapter could be used or the congregation could decide to hold an extraordinary one. Furthermore, this special chapter could be divided into two sessions, provided that not more than a year elapsed between the two sessions and the chapter itself had agreed to this by a secret vote.⁴⁰

Provision had to be made for ample consultation beforehand and for thorough preparatory study so that the draft documents given to the capitulants would be well thought-out and lead to effective decisions.⁴¹ An important facet of this special chapter was its power to allow experimentation. This meant that articles of the constitutions which did not go against the purpose, nature and character of the institute might be altered temporarily, on an experimental basis. Even experiments contrary to common law undertaken seriously and prudently would be given authorisation by the Holy See as the need arose. The experiments were permitted to continue until the next ordinary general chapter and that chapter could prolong them till the following one.

⁴⁰ ES, no. 3, p. 625.

⁴¹ Ibid., no. 4, p. 625.

There is no doubt that this prescription of the Council had far-reaching results. The fact that a special general chapter was ordered, highlighted the urgency of renewal and gave to all religious deliberations an impetus which might, otherwise, not have been so forthcoming. The Instruction, Renovationis Causam, owed much to the research undertaken in conjunction with the special general chapter.⁴² Now, almost twenty years after Ecclesiae Sanctae, religious are still grappling with constitutions, trying to prepare a definitive document in a world which is constantly changing. The consolidation which Ecclesiae Sanctae foresaw for an earlier date, is still in process. Perhaps this is as it should be. The special general chapter should not have been seen as an end in itself, but as an instrument for on-going renewal and ever-deepening commitment of religious to the growth of the kingdom. As Ecclesiae Sanctae states: "The task of general chapters is not limited to making laws; they should also foster spiritual and apostolic vitality."⁴³

iii) Faculties granted to the General Chapter

Renovationis Causam is the post-conciliar document which greatly extended the powers of the General Chapter. This document dealt primarily with formation, and many of its articles in practice rendered certain canons of the 1917 Code obsolete.

⁴² RC, introduction, p. 635.

⁴³ ES, no. 1, p. 625.

The easiest approach might be to follow the document in its development to see where changes occur.⁴⁴ No. 4 allowed the chapter to deliberate and legislate concerning the minimum age of postulants and novices.⁴⁵ No. 12 allowed for the adaptation of the postulancy in those institutes where it was obligatory.⁴⁶ A new requirement of no. 12 was that a period of probation had to be introduced if previously non-existent and the chapter was to decide the form and length of such.⁴⁷ No. 16, i, suspended CIC (1917), canon 554 § 1 by giving permission to the general chapter to lay down directives concerning the setting up of a novitiate, instead of reserving this to the Holy See as was the case for pontifical institutes.⁴⁸ No. 22 was a radical modification of CIC (1917), canon 556 § 2 since it allowed the chapter to give general principles about the absence of novices from the novitiate for a period of less than three months.⁴⁹ No. 23, i, permitted the general chapter, by way of experiment and with a two-thirds majority, to sanction periods of formative activity for novices outside of the novitiate house. It could make stipulations regarding the nature of this activity.⁵⁰ No. 27 again suspended CIC (1917), canon 558 by allowing the chapter, in congregations where different categories of members existed, to determine in the constitutions the conditions for

⁴⁴ See "Index of Faculties" provided by J. Walsh and P. Molinari at the end of their commentary on RC in Supplement to the Way, 7(1969), pp. 168-171.

⁴⁵ RC, no. 4, pp. 639-640.

⁴⁶ Ibid., no. 12, p. 645.

⁴⁷ Ibid., no. 12, p. 645.

⁴⁸ Ibid., no. 16, i, p. 647.

⁴⁹ Ibid., no. 22, p. 648.

⁵⁰ Ibid., no. 23, i, p. 649.

transfer from one category to another.⁵¹ No. 28 changed CIC⁸ (1917), canon 564 § 1 by allowing greater contact between novices and professed religious. The chapter was to decide how this could be done.⁵² No. 29, i, also broadened the scope of the Code, this time in CIC (1917), canon 565 § 3, so that certain studies could be permitted or even prescribed during the period of novitiate for the good of the novices.⁵³ No. 33 allowed the chapter to decide on the dress of novices and candidates, thus changing CIC (1917), canon 557 which required the novices to dress in the habit of the institute.⁵⁴ No. 34, ii, introduced a major change into religious life by allowing the chapter to permit, after a two-thirds majority, the making of promises rather than vows, during the period of temporary commitment. With this permission, came the freedom to decide on how the promises would be applied.⁵⁵ No. 35, ii, gave the chapter the faculty to determine the duration and structure of the immediate preparation for final profession.⁵⁶ No. 36 granted authorisation to decide on the details and implications of the period of temporary commitment.⁵⁷ Finally, no. 37 empowered the chapter to decide on the length of the period of temporary commitment, provided that it was not less than three years nor more than nine.⁵⁸

51 Ibid., no. 27, p. 650.

52 Ibid., no. 28, p. 650.

53 Ibid., no. 29, p. 651.

54 Ibid., no. 33, p. 653.

55 Ibid., no. 34, ii, p. 653.

56 Ibid., no. 35, ii, p. 653.

57 Ibid., no. 36, pp. 653-654.

58 Ibid., no. 37, p. 654.

These articles, as can be readily seen, increased the power of the general chapter. Most of them found their way into the Code promulgated in 1983.⁵⁹ They are part of the over-all renewal called for by the Council.

One further faculty should be mentioned to complete this section. On June 4, 1970, the Sacred Congregation for Religious and Secular Institutes issued a decree that changed CIC (1917), canon 494 § 1. Institutes of pontifical right were henceforth permitted to unite existing provinces or modify their boundaries, establish new provinces or suppress existing provinces, without recourse to the Holy See. The Holy See reserved the right to the initial division into provinces and for the total suppression of provinces. The general chapter was instructed to establish norms to be observed in the erection and modification of provinces and these were to be inserted in the constitutions.⁶⁰

The Council's approach to chapters is consonant with its strong emphasis on collegiality and co-responsibility. The effect was to give a congregation more responsibility for its own affairs. This is seen in the detailed instructions just outlined in Renovationis Causam. It can also be observed with regard to all chapters when giving instructions which call for more dialogue between members

⁵⁹ One that was not retained in the revised Code of Canon Law was no. 34; the revised Code did not sanction promises as a form of temporary commitment for religious.

⁶⁰ SCRIS, "Faculties granted to Religious Institutes", June 4, 1970, in CLD, VII, p. 80, (original in AAS, 62(1970), pp. 549-550)..

of an institute and for a deeper level of inter-personal relationships.⁶¹

c) Superiors

When speaking of superiors, one can distinguish between what they are and what they do. For this reason, the nature of their authority will be considered first and then the faculties they possess.

i) Authority of Superiors

For the most part, the conciliar and post-conciliar documents do not differentiate between the levels of superiors. They are more concerned with the way any superior exercises authority. Exceptions to this are found in Religionum Laicalium⁶² and Renovationis Causam, both of which are concerned with, among other things, faculties of superiors general and major superiors and will be dealt with separately.

⁶¹ B. Frison has a very interesting article called "Renewal of Religious" in Studia Canonica, 1(1967), pp. 45-78. The section on the general chapter, pp. 54-77, is particularly informative since it develops in great detail many of the implications of the new legislation.

⁶² SCRIS, "Religionum Laicalium" (Faculties of Superiors General of Pontifical Lay Religious Institutes), May 31, 1966 in CLD, VI, pp. 153-156. (Henceforth referred to as RL.) (Original in AAS, 59(1967), pp. 362-364.) The same faculties were repeated for pontifical institutes of religious women in mission territories by the Sacred Congregation for the Evangelisation of Peoples, on September 7, 1967. This document may be found in CLD, VII, pp. 72-74 (private). With regard to Oriental Religious, the Sacred Congregation for the Oriental Churches issued a decree for them on June 27, 1972, which extended various faculties, with suitable accommodation to Oriental Law. This document can be found in CLD, VII, pp. 19-24, (original in AAS, 64(1972), pp. 738-743)..

A religious superior possesses authority through legitimate appointment or election. She receives it from the Church, to be exercised in relation to a portion of the People of God committed to her. It is personal to her and the Church has always held that, even though the superior may make decisions after consultation, she retains her power to decide, except in very clearly defined situations which are provided for in general or particular law. She is the recipient of the obedience of those who are committed to her, but her authority is not dependent on their obedience. It exists as a share of Christ's authority received from the Church. All of this is traditional teaching and the Vatican Council has changed nothing with respect to the right to exercise personal authority. But the renewed consciousness of each person's dignity as a human being and her right to participate in all that affects her life, inevitably affects the style of authority. Human dignity and co-responsibility leave no place for authoritarianism which often characterised the past and has not totally deserted the present.

Surprisingly enough, Lumen Gentium says nothing about religious superiors, even in the section devoted to religious. It speaks of the hierarchy's role in approving institutes and constitutions,⁶³ but says nothing of the superior's duty to promote observance of the rules approved. There is only a reference in no. 42 to the fact that, by the vow of obedience, religious "subject themselves to man for the love of God."⁶⁴ We have to look at the documents more specifically addressed to religious to find out what the Council said.

⁶³ LG, no. 45, p. 405.

⁶⁴ Ibid., no. 42, pp. 401-402.

In no. 2 of Perfectae Caritatis, there is laid on institutes (and presumably on superiors), the duty of seeing that

their members have a proper understanding of men, of the conditions of the times and of the needs of the Church, this to the end that, making wise judgments about the contemporary world in the light of faith, and burning with apostolic zeal, they may be able to help men more effectively.⁶⁵

No. 3 also implies that superiors are responsible for life conditions which correspond to the needs, both of the members themselves and of the milieu in which they live.⁶⁶ Superiors are specifically mentioned in no. 4 as having the duty, "in matters which concern the destiny of the entire institute," to "find appropriate means of consulting their subjects and (they) should listen to them."⁶⁷

No. 12 introduces a more personal note into the duties of superiors. They are reminded that chastity is more securely preserved if the general atmosphere is one of affection.⁶⁸ No. 14 reminds superiors that they are responsible to God for the care of their members: "They should be docile to God's will in performing the task laid upon them and should exercise authority in a spirit of service of the brethren, thus giving expression to God's love for them."⁶⁹ Having asked superiors to realise that the people committed to them are sons and daughters of God, deserving of respect as human persons, the Council requests them to "listen to

⁶⁵ PC, no. 2, pp. 612-613.

⁶⁶ Ibid., no. 3, p. 613.

⁶⁷ Ibid., no. 4, p. 613.

⁶⁸ Ibid., no. 12, p. 617.

⁶⁹ Ibid., no. 14, p. 619.

their subjects willingly (and to) promote cooperation between them for the good of the institute and of the Church."⁷⁰ At the end of this sentence it adds: "retaining however their own authority to decide and to prescribe what is to be done."⁷¹ Thus, it is clear that the Council recognises personal authority as co-existing with participation. It is unnecessary to go into further details about what was said earlier, with reference to obedience.⁷² The tone of the decree is one of brotherly love and co-operation in religious life, as is revealed in no. 15 which speaks in such terms as:

- prayer and the sharing of the same spirit,
- religious, as members of Christ, should live together as brothers and should give pride of place to one another in esteem,
- carrying one another's burdens,
- true family
- love of God poured into their hearts
- bond
- unity⁷³

The spirit of Perfectae Caritatis is one of love between superiors and members⁷⁴ and the document spells out the duty to allow for ample and effective participation

⁷⁰ Ibid., no. 14, pp. 619-620.

⁷¹ Ibid., no. 14, p. 620, (emphasis added).

⁷² Cf. section on obedience, *supra*, pp. 54-59.

⁷³ PC, no. 15, p. 620.

⁷⁴ ES, no. 2, p. 625.

of all in chapters.⁷⁵ An interesting addition in no. 18 is the injunction to apply the principle of subsidiarity so that unnecessary recourse to higher authority is avoided.⁷⁶

Turning to Evangelica Testificatio, Pope Paul VI's Apostolic Exhortation on the Renewal of Religious Life, dated June 21, 1971, there is no doubt that this document is primarily doctrinal and inspirational. The whole orientation of the life of the religious is towards God, who is loved and served in the other members and in all persons. It is within this framework that the authority of the superior is situated, as a role of service: "Exercising authority in the midst of your brethren is therefore being their servants, in accordance with the example of him who gave 'his life as a ransom for many'."⁷⁷ The Pope, in this Exhortation, points out the complementarity of authority and obedience. For the superior, this means "serving in their brothers the design of the Father's love (and) awakening in the community the certainties of faith which must be their guide."⁷⁸ The superior must help an individual, in fraternal dialogue, search out the will of God, while, in community decisions, she should be attentive to the voice of all.⁷⁹ There is a paragraph on situations where the superior's authority may be in conflict with the conscience of the religious and the member is asked to understand the wider view which the

⁷⁵ Ibid., no. 18, p. 628.

⁷⁶ Ibid., no. 18, p. 628.

⁷⁷ ET, no. 24, p. 691.

⁷⁸ Ibid., no. 25, p. 692.

⁷⁹ Ibid., no. 25, p. 692.

superior may have and the fact that, ultimately, the superior has the right of decision where there is no manifest sin.⁸⁰ So, it can be seen in this document too, that the personal authority of the superior is never in question.

It seems that this teaching on the personal authority of the superior has not been clearly understood or followed because there are several replies to be found in Canon Law Digest and Review for Religious which try to make the position clearer. Some of these can illustrate the point. A private reply of the Sacred Congregation for Religious and Secular Institutes, dated October 5, 1969, says that the office of superior cannot be dispensed with in the government of local houses (PC, no. 14), but superiors should be careful to listen, discuss and consult in their communities. The constitutions are allowed to determine when the local superior needs the consent of her council.⁸¹ In another reply, dated April 16, 1970, the Sacred Congregation for Religious and Secular Institutes says:

... relationships between religious and superiors are such as to be unobtainable except in dealing with an individual person duly invested with authority. Such personal relationships could hardly be realised where a senate, an assembly, or any other group of this kind replaced the superior. In addition, we cannot lose sight of the role of the superior as spiritual leader and not as a simple administrator.⁸²

A decree of the Sacred Congregation for Religious and Secular Institutes, entitled Experimenta Circa, dated February 2, 1972, forbids an exclusive form of government for a whole religious institute or province or individual house, in which

80 Ibid., no. 28, pp. 693-694.

81 CLD, VII, p. 467 (private).

82 CLD, VIII, pp. 329-330 (private).

the superior, if there is one, is merely an executor. The superiors must possess personal authority but be open to legitimate consultation and take cognisance of any limitations imposed by common and particular law.⁸³ The phrase "if there is one" alludes to the fact that some communities even abolished the role of superior especially at the local level. The question of correspondence of members comes up in a private reply from the Sacred Congregation for Religious and Secular Institutes, dated July 2, 1971, where it is remarked that the superior should use her "right of vigilance with prudence and when just reasons so dictate."⁸⁴ Another private reply of the Sacred Congregation for Religious and Secular Institutes, dated April 21, 1972, states that sisters are to render an account of expenses to the competent superior. They are also told that, while mutual help is a good thing, the role of the superior is indispensable.⁸⁵ In a reply to superiors general on constitutions, dated July 10, 1972, the Sacred Congregation for Religious and Secular Institutes declared that superiors cannot totally abdicate their authority with respect to recreation, vacations, visits and correspondence.⁸⁶ Finally, in a series called "Canon Law for Religious after Vatican II", Father J.F. Gallen, S.J., quotes two private replies from the Sacred Congregation for Religious and Secular

⁸³ SCRIS, Decree "Experimenta Circa", (Form of Ordinary Government; Secularized Religious Men and Ecclesiastical Offices), February 2, 1972; in CLD, VII, pp. 484-485, (original in AAS, 64(1972), pp. 393-394).

⁸⁴ SCRIS, "Observations on Acts of a Special General Chapter", July 2, 1971, in CLD, VIII, p. 333 (private).

⁸⁵ M.J. Dinn, Louise Tessier, Erma Courneene, Canonical Documentation on Consecrated Life, (1963-1976), p. 371.

⁸⁶ SCRIS, "Modification of Constitutions", July 10, 1972, in CLD, VII, p. 481 (private).

Institutes. The first is dated April 21, 1975 and concerns small communities, satellite and fraternities:

... every community must necessarily have a superior, recognised as such. In both the satellite communities and fraternities, mentioned in this directive, there is a superior to whom the group is responsible, but this superior is not resident with the actual group. If the group in the satellite community numbers more than two or three, it would be advisable to have a delegate of the local superior in charge. Also, it would be prudent for the provincial to depute someone to represent her in the fraternity, generally someone suggested by the group.⁸⁷

The second is dated September 15, 1977:

The sister is first of all responsible to the superior. Paragraph 3 brings out the personal authority of the superior but paragraph 5 again emphasizes accountability to total and local communities for personal choices. While it is true that there should be cooperation with the community, obedience on the part of the sister to her superior has an even greater importance.⁸⁸

It will be noticed that in these replies, the latest of which dates from 1977, there is no doubt in the mind of the Sacred Congregation for Religious and Secular Institutes that, in spite of encouragement to participate actively in community concerns, the superior still holds a very important place in religious life. In no way can her personal authority be weakened or ignored. There is never any suggestion that her authority comes to her directly from the community. As Father Gallen sums it up: "The source of the authority of all these is canon law and the constitutions, not the mandate of any religious community or chapter."⁸⁹

⁸⁷ J.F. Gallen, "Canon Law for Religious after Vatican II", in Review for Religious, 36(1977), p. 142.

⁸⁸ Id., "Canon Law for Religious after Vatican II", in Review for Religious, 38(1979), p. 57.

⁸⁹ Id., "Questions and Answers", in Review for Religious, 38(1979), p. 466.

Before leaving these documents and the question of superiors, we could mention in passing that both Perfectae Caritatis and Ecclesiae Sanctae encourage the formation of conferences of major superiors and cooperation among different congregations and with the Roman Congregations.⁹⁰ While, in these bodies, there is no question of the exercise of religious authority as such, their influence on religious life should not be taken lightly.

ii) Faculties of the Superior General and of other Major Superiors

There was a significant increase in the number of faculties accorded general superiors and other major superiors through the documents Religionum Laicalium⁹¹ and Renovationis Causam.⁹² Some faculties required the consent of the relevant council.

⁹⁰ PC, no. 23, p. 622; ES, nos. 42, 43, p. 633.

⁹¹ RL, in CLD, VI, pp. 153-156. This decree, with one exception, was the same as the Pontifical Rescript, Cum Admotae, given to Superiors General of Clerical Institutes of Pontifical Right, on November 6, 1964 and to be found in CLD, VI, pp. 147-152, (original in AAS, 59(1967), pp. 374-378). The exception concerned no. 14 of Cum Admotae. Here, the superior general, with the consent of the council, could grant secularisation which ipso iure included a dispensation of vows, to a member in temporary profession. No. 3 of RL required the superior or superioress general to approach the local Ordinary of the member for this secularization. SCRIS reviewed no. 3 and issued a decree on November 27, 1969, which allowed the superior or superioress general, with the consent of the Council, to give secularisation with ipso iure dispensation from temporary vows. This decree may be found in CLD, VII, p. 77, (original in AAS, 61(1969), pp. 738-740). Cf. footnote 62 p. 93 with reference to faculties concerning congregations subject to the Sacred Congregation for the Evangelisation of Peoples and the Sacred Congregation for Oriental Congregations.

⁹² RC, pp. 634-655.

Turning first to Religionum Laicalium, we should note that the document was addressed to the superiors general (or those who legitimately succeeded them according to the constitutions or replaced them) of lay institutes of pontifical right, both men and women. All of the following faculties required the consent of the council. No. 1 allowed the superior general to dispense candidates from the impediment of illegitimacy provided they were not born of a sacrilegious or adulterous union.⁹³ No. 2 concerned the alienation of property and the contracting of debts up to the amount proposed by the Conference of Bishops and approved by the Holy See.⁹⁴ No. 4 concerned absence from the religious house which could be permitted for a year, for a just cause, or beyond a year, for reasons of health, study or apostolate, according to norms of common and particular law. This faculty could be subdelegated to other major superiors who might use it only with the consent of their own councils.⁹⁵ No. 5 allowed the superior general to give permission to a simply professed religious to give away goods belonging to that person's patrimony, provided the cause justified it. The faculty could be subdelegated to a major superior who might use it only with the consent of her council.⁹⁶ No. 6 allowed the superior general to subdelegate to the major superior (who did not need the consent of her own council) the faculty of permitting a member to change her will.⁹⁷ No. 7 allowed the transfer of a novitiate, either

93 RL, no. 1, p. 154.

94 Ibid., no. 2, p. 154.

95 Ibid., no. 4, p. 154.

96 Ibid., no. 5, pp. 154-155.

97 Ibid., no. 6, p. 155.

permanently or temporarily, provided the interested Ordinaries were informed and norms of law had been observed.⁹⁸ No. 8 allowed for the confirmation in office of a local superior for a third term of three years, after consultation with the local Ordinary.⁹⁹

There were two articles which did not require the consent of the council. No. 3 allowed the superior general to approach the local Ordinary of a petitioner for a dispensation from temporary vows, if the person had requested it.¹⁰⁰ No. 6 allowed the superior general to give permission to a member to change her will.¹⁰¹

With regard to Renovationis Causam, the following faculties which concerned formation, required the consent of the general council. No. 16, i, suspended CIC (1917), canon 554 § 1 by giving the superior general permission to establish a novitiate or allow someone else to do so. She was allowed to determine the character and pattern of life in the novitiate and could also decide in which particular house the novitiate would be located.¹⁰² No. 17 suspended CIC (1917), canon 554 § 2 by allowing the establishment of several novitiates in the same

⁹⁸ Ibid., no. 7, p. 155.

⁹⁹ Ibid., no. 8, p. 155.

¹⁰⁰ Ibid., no. 3, p. 154. As stated in footnote no. 91, supra, p. 101, a Decree of SCRIS, dated November 27, 1969, in CLD, VII, p. 77, allowed Superiors General with the consent of the Council, to authorise religious in temporary vows to leave the institute. Dispensation is granted by law.

¹⁰¹ Ibid., no. 6, p. 155. Cf. footnote no. 66 concerning extension of these faculties to mission territories.

¹⁰² RC, no. 16, i, p. 647.

province, after consultation with the appropriate provincial superior.¹⁰³ No. 19 provided for a novice, by way of exception, to make her novitiate outside the novitiate house, in another house and under the guidance of an experienced religious. This permission was previously only given by special indult and rarely.¹⁰⁴ No. 38, i, allowed the superior general to take back, without the obligation of repeating the novitiate, a person who had legitimately left, either through dispensation from temporary vows or at the expiry of temporary commitment. This permission formerly required a special dispensation.¹⁰⁵ No. III, vi, allowed for the convocation of the special general chapter to implement the norms of Renovationis Causam. This article also allowed the superior general to make use of the faculties given in Renovationis Causam until the next ordinary or extraordinary chapter was in session.¹⁰⁶ No. III, iv, gave all the above powers to the person legitimately appointed to replace the superior general by reason of death or incapacity.¹⁰⁷

The following faculties were given to the superior general and did not require the consent of the council. No. 16, ii contained a change from CIC (1917), canon 556 since it allowed the superior general to permit the community of novices to reside in another house of the institute for certain periods when this would be

¹⁰³ Ibid., no. 17, p. 647.

¹⁰⁴ Ibid., no. 19, p. 648.

¹⁰⁵ Ibid., no. 38, i, p. 654.

¹⁰⁶ Ibid., III, vi, p. 655.

¹⁰⁷ Ibid., III, iv, p. 655.

beneficial for their formation.¹⁰⁸ No. 18 allowed for the insertion of the novitiate community into another community when the former was so small that genuine experience of community life would be impossible.* The superior general had to ensure that the receiving community would further and support the development of the novices.¹⁰⁹ No. 38, ii gave the superior general the right to extend the period of probation beyond what was envisaged by Renovationis Causam, in the case of a person who returned to the institute after legitimately leaving.¹¹⁰ Should the superior general die or become incapacitated, the above powers would also be held by her successor.¹¹¹

The following faculties were given to major superiors who did not require the consent of their councils. No. 20 said that for a good reason, they could allow first profession to be made outside the novitiate house.¹¹² No. 22, ii was a radical modification of CIC (1917), canon 556 § 2 since it allowed the major superior, after consultation with the Director of novices for each case, to decide whether and for how long the absence of a novice for less than three months should be made up.¹¹³ No. 23, i allowed for the establishment of apostolic periods outside the novitiate, if these had been approved by the general chapter and the Director of novices

¹⁰⁸ Ibid., no. 16, ii, p. 647.

¹⁰⁹ Ibid., no. 18, p. 648.

¹¹⁰ Ibid., no. 38, ii, p. 654.

¹¹¹ Ibid., III, iv, p. 655.

¹¹² Ibid., no. 20, p. 648.

¹¹³ Ibid., no. 22, ii, p. 648.

considered them beneficial.¹¹⁴ Finally, no. 26 was new, allowing for first profession to be brought forward, but by no more than fifteen days.¹¹⁵

One can notice in these documents an attempt to respect the person by providing a suitable formation at the rate and in the place which will most help the individual. There was an accent on support for building up a genuine community for novices. There was also the provision for individuals to return to an institute if they had left legitimately. What was encouraging in Renovationis Causam was that the Sacred Congregation for Religious and Secular Institutes listened to appeals of congregations for an update on formation. What was disappointing was that in none of the documents treated did we find any alternative life styles suggested. It was clear that the model was still the traditional one. However, it is not the place of law to introduce something which is not a lived experience so we can only conclude that in these years, experimentation was still in early stages and had not impinged on the deliberations of the Sacred Congregation for Religious and Secular Institutes to any great extent. An interesting feature was that none of the legislation really touched the local community level; this was probably a good thing because it left ample room for development and experimentation without undue restraint. One could argue that limits might be better, but again, good law proceeds from life.

¹¹⁴ Cf. also footnote no. 91 supra, p. 101.

¹¹⁵ Ibid., no. 26, p. 650.

d) Councils and Assemblies

There was no attempt in the Vatican II documents to define the nature of a council or any other assembly. It was taken for granted that councils form part of the structure of government. With regard to other groupings, which could be called "assemblies", whether these are at the general, provincial or local levels, there are no instructions as such but these bodies are implied by the requirements of the documents. The need for consultation on a wide scale inevitably demands the coming together of groups outside the chapter structure. How else could congregations fulfil the call of Ecclesiae Sanctae for realistic preparation for chapters: "This will be the case, especially, if the members have a real and effective part in the choice of chapter and council officials."¹¹⁶ The years since the Council have seen the emergence of non-legislative groups for purposes of discussion as well as for the building up of more open relationships. On July 10, 1972, the Sacred Congregation for Religious and Secular Institutes showed that it was aware of enlarged or extended councils as well as the possibility that all in a small community could form the council, while, in a larger community, apart from the normal council, there could be some structure which would allow the whole community to dialogue together on what concerned the whole group. The Sacred Congregation for Religious and Secular Institutes pointed out that where there was an enlarged general council, the powers given to it should be clearly determined and it was not to interfere with the legislative and executive functions of the general council properly so called.¹¹⁷

¹¹⁶ ES, no. 18, p. 628, (emphasis added).

¹¹⁷ SCRIS, "Modification of Constitutions", July 10, 1972, in CLD, VII, p. 480 (private).

The council is not a legislative body; it assists the superior at arriving at decisions. The importance of this function is stressed in the norms found in Religionum Laicalium and Renovationis Causam.¹¹⁸

Perfectae Caritatis, in no. 14, asks the chapters and councils to "discharge faithfully the role committed to them in government and, each in its own way, to give expression to the involvement and concern of all the members of the community for the good of the whole."¹¹⁹ Ecclesiae Sanctae, in no. 4, commits to the general council, the provisions to be made for "ample and free consultation of all the subjects."¹²⁰ No. 7 is rather important since it permits the general council, between the special general chapter and the next ordinary one, to allow experimentation which does not touch the purpose, nature and character of the institute. This would apply also to experiments contrary to common law, provided the Holy See gave authorisation. Another modification of no. 7 is that the general chapter must set the norms for experimentation.¹²¹ Finally, no. 18 repeats the injunction of Perfectae Caritatis, no. 14 to the effect that chapters and councils are to reflect the involvement and concern of all the members of the community.¹²²

118 Cf. section c), ii, supra, "Faculties of the Superior General and other Major Superiors," pp. 101-106.

119 PC, no. 14, p. 620.

120 ES, no. 4, p. 625.

121 Ibid., nos. 6-7, p. 625.

122 Ibid., no. 18, p. 628.

Conclusion

Again, as in chapter 2, it has seemed wise to quote from the Vatican II documents and the subsequent material dependent on Vatican II to illustrate the intention and the thinking of the Church at that time and since. In many ways, one could note that the material is not too abundant. But that would be to see the Council as an end instead of a beginning. Life does not stand still and the revolution begun by the Council will certainly provide for movement. Time will tell whether the movement has been in the line of progress or not. The task of the People of God is to draw inspiration from the Council and act on it. Religious, too, are called to the same task. The next chapter will attempt to analyse how the new Code of 1983 has contributed to the growth of religious life.

CHAPTER IV

PRINCIPLES OF AUTHORITY AS OUTLINED IN THE 1983 REVISED CODE

Our concern, in this paper, is with the exercise of authority in apostolic institutes of women, but before proceeding to examine the relevant canons in the new Code, we need to give some attention to the preparatory work of the Code Commission which spanned some twenty years.

1. Preparation of the New Law for Religious

Religious occupy a special place in the Church. They are not part of the hierarchy but, rather, a sign of the mystery of the Church and the kingdom which is to come at the end of time. The new law for religious has to remain sensitive to the charismatic nature of religious life and attempt to maintain a balance between legitimate protection of rights and the encouragement of spiritual growth. Religious life, of course, cannot be taken out of context and before considering the special guidelines governing the section for religious in the revision of the Code, we shall look at the general preparation for the revision of the Code itself.

a) Guidelines for the General Revision of the Code

The new Code of Canon Law cannot be seen in isolation; it was intended to be a major product of Vatican II, an encapsulation in juridical terms of the "aggiornamento" inspired by Pope John XXIII and nobly pursued by Pope Paul VI.

who was often at pains to remind canonists that, unless canon law was faithful to the inspiration of Vatican II, which was itself an attempt to re-express gospel values, it had no place in the life of the Church. In addressing the International Congress of Canonists on January 19, 1970, he used these words:

The Council delved more deeply into the doctrine of the Church, pointed up the mystical aspect proper to her and so obliged the canonist to search deeper in Sacred Scripture and theology for the reasons for his own teaching ... In the post-conciliar period, in fidelity to the doctrinal and disciplinary orientation that has come out of the great synod, the Church will seek in herself, in her intimate and mysterious constitution, the why and wherefore of her ancient and renewed canonical discipline.

This seems to Us to be the new element that has now entered into the study and formulation of canon law, something new from which the revision of the current code springs. But, unlike almost all the great juridical compilations in the history of canon law, it has not been undertaken for a mainly practical purpose — "ad communem et maxime studentium utilitatem" — nor, as Dante has Justinian say, "to remove what is excessive and useless within the framework of the laws." Rather it is in order to derive canon law from the very essence of the Church of God, for whom the new and original law, that of the Gospel, is love, "gratia Spiritus Sancti, quae datur per fidem Christi."¹

These words of Pope Paul VI make clear that the new Code will indeed be new in many senses. As he was to say later, the revised Code would be in a "style more in harmony with the pastoral spirit of the Second Vatican Council."² It would not simply be a set of legalistic items, but rather would consist of guidelines respecting the human condition and protecting persons both individually and as a community. Those who were commissioned to draw up the new Code found their

¹ Pope Paul VI to the International Congress of Canonists, "Canon Law Renewal in the Light of Vatican II", in The Pope Speaks, 15(1970-1971), pp. 72-73.

² Id., to the Sacred Roman Rota, "Law at the Service of Truth", in The Pope Speaks, 16(1971-72), p. 76.

starting point in the Gospel of Christ and the teachings of the Second Vatican Council.³

To clarify its own thinking and provide a basis for work, the Code Commission drew up ten principles which would govern its deliberations. These were presented to the Synod of Bishops in October, 1967 and accepted by the assembly.⁴ While all the principles were important, two in particular are especially relevant to institutes of consecrated life: the application of the principle of subsidiarity, and the protection of the rights of persons. As will be seen below these principles were of such importance that they were further expanded upon and developed by the group studying the norms on consecrated life.⁵

b) Guidelines for the Revision of the Law for Institutes of Consecrated Life

Father Jean Beyer, one of the consultors to the Commission, in his book, Vers un nouveau droit des instituts de vie consacrée, has given a very clear

³ It does not seem necessary to go into details about the formation of the Code Commission since this is fully treated in various articles and books such as: "The New Law for Religious: Principles, Content, Evaluation", by K. O'Rourke, in Review for Religious, 34(1975), pp. 23-49; Understanding the Synod, by Peter Hebblethwaite; as well as in the official organ of the Code Commission, Communicationes, 1(1969), pp. 1-54.

⁴ Cf., P. Hebblethwaite, Understanding the Synod, pp. 26-41, for an account of the presentation of the principles, their content and the ensuing discussion and voting on them.

⁵ Cf., M. Said, "The Present State of the Reform of the Code", in Studia Canonica, 8(1974), pp. 219-222 for a description of the formation and operation of the study group "De Institutis Perfectionis" which, henceforth will be referred to simply as "study group". The group had originally been called "De Religiosis" but it was realised this was too narrow a description. In fact, the eventual name for this section of the Code would be "Institutes of Consecrated Life".

exposition of the work of the study group from 1966 to 1974.⁶ He points out that in the third session, January, 1968, the group had formulated its own supplementary guidelines for the revision of the Code in the area of consecrated life.⁷ In another work, he summarises the four main principles, as well as five secondary ones which are almost as important for the revision of this section of the Code.

1. Juridical norms, though they do not contain the gifts and graces proper to the consecrated life, ought nevertheless to foster the growth of this divine vocation.
2. The norms ought to promote the knowledge and maintain the spirit of the founder, and encourage fidelity to the spiritual heritage and the particular constitutions of each Institute.
3. Though the norms must re-affirm the constitutive principles of this state of life, they must also assure that flexibility necessary for adaptation to the conditions of the life and work of these Institutes in the Church.
4. The norms must also ensure a greater participation of the members in the life and government of their Institutes; they must also achieve a better representation of the members and a better choice of superiors.
5. General norms should concern only those matters which are appropriate to all; each Institute must have the right to retain its own identity, or better, to become what it was in the understanding of its founder.

6 Jean Beyer, Vers un nouveau droit des instituts de vie consacrée, pp. 14-20. One should also consult Communicationes, 2(1970), pp. 173-181 for a discussion on the name of the study group, a proposed plan of the eventual 1977 Draft and the method to be followed. In Communicationes, 5(1973), pp. 47-50, and 6(1974), pp. 72-93, progress reports are given.

7 J. Beyer, loc. cit., pp. 22-32.

6. All discrimination between Institutes of men and women must be avoided. Women religious have no need of a tutelage which limits their free development.
7. Provision should be made in the general law for a just application of the principle of subsidiarity, leaving to each Institute its own responsibility.
8. The greatest possible harmony should be achieved between common law and the particular law of each Institute, leaving to each Institute true liberty for establishing norms which are suitable to its life and its work within the limits indicated by the exigencies of common law.
9. The greatest possible respect should be accorded to the dignity of the human person, his rights, his personal responsibilities, and his normal development, to enable him to achieve physical and psychological maturity.⁸

These principles are remarkable for the breadth of vision contained in them and for the freedom which is given to institutes to develop according to accepted criteria which respect persons and structures. There can be no doubt about the importance of the individual and the community, shown by a recognition of human dignity in itself and as it is expressed in structures of responsibility. The

⁸ Id., "Institutes of Perfection in the New Law of the Church", in Supplement to the Way, 13(1971), p. 92. The original is set out in Communicationes, 2(1970), pp. 170-173, and Mark Said, the Relator of the study group, has written another commentary on them in, "The Present State of the Reform of the Code concerning the section De Institutis Perfectionis", in Studia Canonica, 8(1974), pp. 213-235. Cf. also James Walsh and Lachlan Hughes, "Draft of the New Law for Institutes of Consecrated Life", in Supplement to the Way, 33(1978), pp. 15-20, and K. O'Rourke, loc. cit., pp. 24-27.

emphasis on subsidiarity which allows for decisions to be made at the most appropriate level, acknowledges that religious should be regarded as capable of determining their own life-style and government.

Beyer remarks that the "point of departure for the study group had been the conciliar texts"⁹ as is evident in the guiding principles.¹⁰

Earlier, in chapter II,¹¹ we identified Vatican II principles with regard to the exercise of authority. A look at the study group's working guidelines reveals that these same principles were very much in their minds. In the new law for religious, we should also then be able to find canons which highlight the Vatican II principles governing the exercise of authority and illustrate the guidelines which the study group adopted as its own. In a very obvious way, the Vatican II principle of human dignity and freedom finds an echo in principles 6 and 7 of the study

⁹ J. Beyer, "Institutes of Perfection in the New Law of the Church", in Supplement to the Way, 13(1971), p. 91.

¹⁰ It should be pointed out that all writings on the revised Code for Institutes of Consecrated Life, so far referred to, have been with respect to the Draft which appeared in 1977. However, although the 1983 revised Canon shows a major alteration in plan and many changes in canons, it would still be true to say that the inspiration remained the same. Beyer suggests in his article "Le deuxième projet de droit pour la vie consacrée" in Studia Canonica, 15(1981), p. 89, that the 1983 Code does not give priority to particular law but there is no reason to believe that particular law was considered unimportant.

Reference to the canons of the 1977 Draft will be prefaced by DC. Schema of Canons on Institutes of Life Consecrated by Profession of the Evangelical Counsels, Washington, U.S. Catholic Conference, 1977, 73p. As the version which appeared in 1980 is almost the same, at least in content, if not in style, as the 1983 revised Code, no special abbreviation will be used.

¹¹ Chapter 2, supra, pp. 39-72.

group's guidelines; obedience and faith are linked with principles 1 and 2; and participation finds its expression in numbers 4 and 7.

2. Implementation of Vatican II Principles in the Revised Law for Religious

The guidelines were formulated to direct the work. It now remains to be seen whether the canons themselves are faithful to the inspiration. To determine this, we shall proceed to an examination of the canons which deal with authority, grouping them conveniently according to the Vatican II principles. If, as we maintain, the new Code of Canon Law is meant to be an expression in juridical terms, though not without theological and pastoral overtones, of Vatican II teaching, then we should be able to find a rule of life which corresponds to the new insights of that historic Council. In addition, we should also be able to detect an open-endedness in the canons which leaves room for development as religious strive continually to meet the needs of the times.

a) The Dignity and Freedom of the Human Person

A comparison between the 1917 Code and the 1983 one reveals that the former is more detailed in the canons on authority than in the ones on individuals. Obligations seem to outweigh rights although rights are never neglected. But, when one looks at them closely, a very strong impression arises that human dignity and freedom were equated more with freedom of conscience and sacramental confession than with any other aspect of a person's life. In the 1917 Code, for

instance, there are thirteen canons devoted to confessors and chaplains;¹² in the revised Code, there are but two.¹³ This is a significant shift. In the 1917 Code, one could suspect that religious were sometimes not regarded as sufficiently mature and responsible to order their own lives; only in matters of conscience would they have inviolability. However, the canons must be placed in the context of the time; they provided generously for the needs of religious, especially women religious. However, in the 1983 Code, religious are treated more as whole persons with rights which encompass the well-being of the entire person. This more integrated approach, with its greater emphasis on personal responsibility, obviates the need for detailed canons.

A religious woman is a person who freely gives herself to God in a particular institute, approved by the Church. This is proclaimed in CIC (1983), canon 573 and developed in CIC (1983), canon 654 which makes it clear that, by religious profession, religious acquire rights and duties defined by law. CIC (1983), canon 654 gives a summary of the essence of religious profession: "By religious profession, members assume by public vow the observance of the three evangelical counsels, are consecrated to God through the ministry of the Church and are incorporated into the institute with rights and duties defined by law." No such canon existed in the 1917 Code. While the details of rights and duties were indeed outlined in the previous law, no mention was made of the fact that religious profession automatically bestowed these, as of right. Furthermore, the 1917 Code

¹² CIC (1917), canons 518-530.

¹³ CIC (1917), canons 567, 630.

spoke of the "obligations and privileges of religious"¹⁴ while the 1983 law treats of "obligations and rights of institutes and their members."¹⁵

The 1983 Code has taken account of changes in society, particularly where women are concerned. Better education, wider apostolic opportunities and greater involvement with their own lives have made them less dependent on men and there is little need to make special provisions for them in the Code. CIC (1983), canon 606 affirms that the canons are applicable to either sex unless the matter is obviously one that applies only to one. It is true that there was a similar canon in the 1917 Code, but the wording is significantly different.¹⁶ The 1917 text implied that the canons were designed for men but were applicable to women.

Some canons of the 1917 Code are simply not repeated, such as CIC (1917), canon 617 which forbade religious women to go out alone unless necessary and CIC (1917), canon 611 which restricted correspondence. They no longer have the same significance today.

What are the rights which authority must respect and, in some instances, positively promote? They could be considered in terms of admission and

¹⁴ Title III, Chapters I and II, CIC (1917), canons 592-625.

¹⁵ Title II, Chapter IV, CIC (1983), canons 662-672.

¹⁶ CIC (1983), canon 606 reads: "Quae de institutis vitae consecratae eorumque sodalibus statuuntur, pari iure de utroque sexu valent, nisi ex contextu sermonis vel ex re natura aliud constet," whereas CIC (1917), canon 490 reads: "Quae de religiosis statuuntur, etsi masculino vocabulo expressa, valent etiam pari iure de mulieribus, nisi ex contextu sermonis vel ex rei natura aliud constet."

incorporation in an institute, spiritual and community life, apostolate within the institute, and departure and dismissal should this arise.

i) Admission and Incorporation

CIC (1983), canon 642 acknowledges that the candidate to religious life requires physical and psychological maturity; superiors have a corresponding responsibility to avoid burdening someone who lacks these qualities, with a commitment that could prove too onerous. The superior is allowed to obtain assessments from experts, but never at the expense of the candidate's inviolable right to personal privacy. This last stipulation did not appear in the 1917 Code or in the 1977 Draft; although it was provided that experts could be called in, no mention was made of the person's right to privacy.¹⁷ Taken in conjunction with CIC (1983), canon 220, CIC (1983), canon 642¹⁸ is an important development, reminding us of the right of each person to privacy, revealing only what is necessary. Throughout the novitiate, the candidate is provided with training which is designed to lead to making a free commitment to the institute. Even at this early stage of preparation, the new Code fully admits the personal responsibility of

¹⁷ DC 46, p. 26.

¹⁸ CIC (1983), canon 220 reads: "Nemini licet bonam famam, quo quis gaudet, illegitime laedere, nec ius cuiusque personae ad propriam intimitatem tuendam violare". CIC (1983), canon 642 reads: "Superiores vigilanti cura eos tantum admittant qui, praeter aetatem requisitam, habeant valetudinem, aptam indolem et sufficientes maturitatis qualitates ad vitam instituti propriam amplectendam; quae valetudo, indoles et maturitas comprobentur adhibitis etiam, si opus fuerit, peritis, firmo praescripto can.220."

each candidate in making that choice.¹⁹ If profession is chosen, CIC (1983), canon 654 makes clear to the novice what is being undertaken.²⁰ On the other hand, if separation is decided, either by the person or by the institute, CIC (1983), canon 653 establishes that the person is freed from obligations once the step has been taken.²¹ The canons, then, on admission and incorporation, highlight the respect due to the person and the freedom to make a choice.

ii) Spiritual, Community and Apostolic Life Within the Institute

Probably one of the most obvious differences between the 1917 and the 1983 Code is the way the latter leads into canonical norms by prefacing them with a pastoral or theological introduction. While not being strictly juridical, this practice goes a long way in situating the norms in their proper perspective. Thus, when the 1983 Code speaks of spiritual obligations, it begins by showing that a desire to follow Christ will inevitably lead the religious to perform certain things.²² CIC (1983), canons 663 and 664 outline a course of spiritual exercises

19 CIC (1983), canon 652 § 3: "Novitii, propriae responsabilitatis conscii, ita cum magistro suo active collaborent ut gratiae divinae vocationis fideliter respondeant."

20 CIC (1983), canon 654: "Professione religiosa sodales tria consilia evangelica observanda voto publico assumunt, Deo per Ecclesiae ministerium consecrantur et instituto incorporantur cum iuribus et officiis iure definitis."

21 CIC (1983), canon 653: § 1. "Novitius institutum libere deserere potest; competens autem instituti auctoritas potest eum dimittere. § 2. Exacto novitiatu, si idoneus iudicetur, novitius ad professionem temporarium admittatur, secus dimittatur; si dubium supersit de eius idoneitate, potest probationis tempus a Superiore maiore ad normam iuris proprii, non tamen ultra sex menses prorogari."

22 CIC (1983), canon 662: "Religiosi sequelam Christi in Evangelio propositam et in constitutionibus proprii instituti expressam tamquam supremam vitae regulam habeant."

which is sufficiently detailed to pinpoint a religious' duties while leaving due freedom to develop in a way most suited to each individual. The canons appear to protect the individual's right to spiritual nourishment without making uniform provisions for all. This shows a healthy respect for differences which do not touch the essentials. CIC (1983), canon 670 is a new point which summarises the rights of each religious: the institute has the duty to provide all that the member requires to fulfil the demands of the particular vocation.

CIC (1983), canon 630 is important since it simplifies the numerous regulations regarding the confessions of religious, especially women religious. Significantly, it is placed with the canons on superiors, perhaps to point out both the freedom that must be allowed to the individual and the care which superiors should use not to impose any burdens on conscience. The study group spent three days in 1979 discussing this one canon.²³ The consultors were particularly anxious that freedom of access to confession as well as availability of confessors, were sufficiently provided. They were conscious of the needs of religious who were unable to leave the house, as well as of the requirements of large communities and houses of formation. For this reason, § 3 was added to draft canon 36. The second sentence of § 5 concerning manifestation of conscience was also added at this time to the draft canon, although it was but a repetition of CIC (1917), canon 530 § 1. We must also remember in this context that Dum Canoniarum had made significant changes in the 1917 Code, particularly with regard to women

²³ Communicationes, 12(1980), pp. 161-170.

religious.²⁴ An interesting feature of this canon is that the word "sodalis" is used throughout to signify the member or subject, except in § 4 when we suddenly find the word "subditorum" in a sentence which uses "sodales" for the same people. There was no explanation for this with regard either to the 1977 Draft or the 1983 Code. It may be that it slipped in because it originally appeared in CIC (1917), canon 530. The more likely explanation, however, is that in the original draft this sentence followed the first sentence in § 1 and instead of repeating the proper nouns, the pronoun was used,²⁵ so that in the separation into two paragraphs, the change of term went unnoticed. In 1981, the canon again came under discussion when one member of the Commission wanted to note that the freedom allowed by § 1 should be used with discretion. This suggestion was rejected because it was deemed to be unjuridical.

With regard to other aspects of life, the 1983 Code again respects the individual's right concerning personal property. CIC (1983), canon 668 repeats the provisions of CIC (1917), canon 569, ensuring that a religious has the right to cede the administration of property to any person chosen as administrator, as well as to determine how the property is to be used. However, it is not as clear in this canon, as it was in CIC (1917), canon 569 that a religious may inherit property after profession and arrange for its administration and disposition. The particular law of

²⁴ Dum Canoniarum, pp. 676-677.

²⁵ DC 36 § 1: "Superiores sodalibus omnibus debitam agnoscant libertatem circa Paenitentiae sacramentum et conscientiae moderamen (salva tamen Instituti disciplina). Districte autem vetantur eos quoquo modo inducere ad conscientiae manifestationem sibi peragendam." Communicationes, 12(1980), p. 161.

an institute may make other stipulations but normally they would not be restrictive. The right of a member in perpetual vows, mentioned in § 4, to renounce ownership of goods, either partially or totally, is new in the Code, although the procedure has been in practice since Vatican II.²⁶ This provision responds to the need many religious felt for a more radical form of poverty than was expressed in the 1917 Code for religious of simple vows. It also provides for the possible alleviating of needs of family or others.

There are three canons which could be grouped under the heading of freedom of speech. The first, CIC (1983), canon 628, concerns the Visitor and affirms the right of the individual religious to speak freely with this person, without hindrance. An interesting innovation, apart from simplification, is that the 1917 Code, in CIC (1917), canon 513 mentioned only superiors as being likely to interfere with freedom in this situation, while the new canon makes no distinction between superior and member. In CIC (1983), canon 631, which is the first of three new canons dealing with chapters, § 3 articulates the right of each religious to send agenda material to the general chapter, thus ensuring personal involvement in matters of government. Finally, CIC (1983), canon 618, which is a welcome departure from the 1917 Code, specially mentioned the superior's duty to reverence the human person in all contacts.

²⁶ PC, no. 13, p. 618; ES, no. 24, p. 629; CA, no. 16, in CLD, VI, pp. 150-151; RL, no. 5, in CLD, VI, pp. 154-155. We are, of course, referring to members with simple vows and not to those with solemn vows.

This last canon puts into focus the attitude which should prevail in authority relationships. Members are just as responsible as superiors, even though the manner may vary, for the well-being of the institute. In another context, this makes CIC (1983), canon 666 rather surprising, as if the person were suddenly unable to be fully trusted: "Necessary discretion should be observed in the use of media of communication and those things should be avoided which are harmful to the vocation itself and dangerous to the chastity of a consecrated person." It is true that there are other canons in the revised Code which deal with the use of the media in positive terms, but these normally refer to broadcasts or writings which could appear to be giving an official Church position.²⁷ In this canon, the concern seems to be with the person as an individual and it somehow seems out of place in a juridical context, particularly by presenting the media in a negative context.

Mention should be made in this section of CIC (1983), canon 567 which speaks of the chaplain to a religious community. This canon was removed from the section on consecrated life and placed in chapter 8 of the second part of Book II, dealing with rectors of churches and chaplains. The community not only has a right to be consulted in the choice of chaplain, but the bishop may not make an appointment without this consultation. The consultation of the community is made by the superior who then has the right to propose some priest. However, it appears that, provided the bishop has gone through the procedure, he would be free to make any appointment he wishes. With regard to the chaplain himself, the canon makes

²⁷ E.g., CIC (1983), canons 772 § 2 and 832.

clear that his role is strictly liturgical and he is in no way empowered to interfere in the internal government of the institute.

Later, we shall be speaking of the relations between bishops and religious, but it would be appropriate here to mention CIC (1983), canon 681 which concerns the apostolate of religious. The revised Code has incorporated the norm of Ecclesiae Sanctae, no. 30,²⁸ which assures a written contract to religious working specifically for the bishop. This is a very definite guarantee of the respect for rights, on both sides.

iii) Departure and Dismissal

With regard to departure from an institute, CIC (1983), canons 687 and 692 emphasise the freedom granted from obligations which are no longer compatible with the life of one who is exclaustated or dispensed from vows. These canons are not new, but they do acknowledge the rights of the person. One canon which is new in the Code is CIC (1983), canon 690 which was introduced by Renovationis Causam²⁹ and concerns the person who has legitimately left an institute and wishes to return. In this situation, the superior general, with the consent of the council, can allow the person to return without the obligation of repeating the novitiate. All that is required is a suitable probationary period before temporary profession is made. The superior general with the consent of the

²⁸ ES, no. 30, p. 606.

²⁹ RC, no. 38, p. 654. This is the opposite of CIC (1917), canon 640 which required that the novitiate be repeated.

council, also decides the length of time which should precede perpetual profession. This canon does not restrict the concession to those who have left after temporary profession, as was the stipulation in Renovationis Causam; it now refers also to those who have legitimately left after perpetual profession. The canon is certainly one which shows consideration for the person who wishes to return.

An interesting canon is CIC (1983), canon 689 which has undergone some refinement. In the 1917 Code, unspecified ill-health was no barrier to religious profession unless it could be proved that it had been fraudulently hidden before profession. This meant that a person in ill-health could not be prevented from renewing vows and making final profession. There was some concern over this and the question was discussed at various times. Indeed, on February 5, 1924, the Sacred Congregation for Religious decreed that a person who became mentally afflicted during the period of temporary vows had to be kept in the institute, even although unable to renew vows or make final profession.³⁰ On December 8, 1970, the question came up again and the Sacred Congregation for Religious and Secular Institutes decided that a person in ill-health, either from physical or mental causes, whose continuance in the institute would be harmful to both parties, could be refused admission to renewal of vows or final profession.³¹ The implication appears to have been that the person was expected to leave, although the institute might have been bound to provide for maintenance if required. Now, CIC (1983), canon

³⁰ AAS, 17(1925), p. 107.

³¹ Ibid., 63(1971), pp. 318-319.

689 § 2 speaks of "physical or psychic" illness³² and § 3, added in 1983, makes it quite clear that a person who loses the use of reason during temporary vows, so that any further commitment is impossible, may not be dismissed. Obviously, this is a very important protection for the member. The fact that the institute keeps responsibility means that it must supply assistance, such as professional and medical treatment. There might, of course, be a problem, if the family intervened to bring the person home. Should this happen, there would need to be some record that the family had taken over the responsibility voluntarily.

So far, we have concentrated on the dignity and freedom of each person, but should also keep in mind the rights of the community. CIC (1983), canon 686, which did not figure in the 1917 Code, provides for qualified excommunication and imposed excommunication, for serious and grave reasons. The stipulation that charity and equity be observed shows that this measure is one not lightly taken. In fact, it may only be imposed by the Apostolic See for pontifical congregations and by the diocesan bishop for diocesan ones. Such forced excommunication is more in the nature of a penalty and has only been applied as a remedy since about 1953 when it was introduced by the Sacred Congregation for Religious.³³

³² Cf., Communicationes, 13(1981), p. 332, where mention is made of the decision to use "psychic" instead of "mental".

³³ For a fuller treatment of the subject, cf. A. Gutierrez, "De excommunicatione qualificata" in Commentarium pro Religiosis, 36(1955), pp. 374-379, and "Excommunicatione ad nutum Sanctae Sedis" in Commentarium pro Religiosis, 34(1953), pp. 336-339.

The whole question of dismissal is, naturally, a delicate one. In the 1917 Code, the procedure was complicated, had burdensome effects and was, in a certain way, discriminatory. There were canons for those in temporary vows,³⁴ as well as canons for those in perpetual vows, this latter area being subdivided into clerical non-exempt³⁵ and exempt institutes.³⁶ Furthermore, certain canons applied only to men.³⁷ The revised Code has simplified the procedure and made the canons applicable to all religious. Where there has to be a distinction, e.g., with regard to priests who would require laicisation, the canons state this clearly.

The changes which have been made contribute more efficaciously to the welfare of the individual. CIC (1983), canon 694, dealing with factors which automatically involve dismissal, no longer includes the fugitive. This would appear to be treated in CIC (1983), canon 665 § 2 which speaks of those unlawfully absent from the community and also in CIC (1983), canon 696 which is more explicit about causes for dismissal than was the corresponding canon of the 1917 Code. The change of emphasis indicates that a more pastoral attitude is appropriate to the situation. On the other hand, CIC (1983), canon 703 provides for the situation when grave scandal, rather than temporary error, may be at issue.

CIC (1983), canon 696 enumerates reasons for dismissal and indicates that even lesser causes could result in dismissal for temporarily professed religious.

34 CIC (1917), canons 647-648.

35 CIC (1917), canons 649-653.

36 CIC (1917), canons 654-668.

37 CIC (1917), canons 649-650.

However, CIC (1983), canons 697 and 699 provide a uniform procedure for all. The canons are detailed to make sure that every opportunity is given to the member to hear the accusations. CIC (1983), canons 695 § 2 and 698 provide that the member is to be made fully aware of the right of defence at all stages. A further protection is accorded in that the decree of dismissal, when finally agreed upon by the superior general and the council, must be confirmed by the ecclesiastical authority. This is not a change from the 1917 Code but it is mentioned because there was question during the deliberations of the study group, that confirmation would no longer be required. It is obvious that the group was undecided and it came up with two draft versions. A first version appeared in the 1980 Draft, but the second one was retained for the law of 1983.³⁸

Although not new, it should be mentioned that CIC (1983), canon 703 makes sure that, even if a person has to be expelled immediately from a religious house, an official method for dismissal still has to be followed.

³⁸ Cf., *Communicationes*, 13(1981), pp. 356-358 for the discussion and the alternatives finally presented to the Code Commission. The first version reads: § 1. "Decretum dimissionis executioni mandatur tradendo sodali exemplar ipsius decreti, in scriptis indicato, ad validitatem, iure quo ipse gaudet recurrenti, intra decem dies a recepta notificatione, ad Sanctam Sedem. Recursus effectum habet suspensivum.

§ 2. Si agatur de Instituto iuris dioecesanum vel de monasterio de quo in can. 38 ter, decretum executioni mandari nequit nisi fuerit ab Episcopo dioecesano ubi sita est domus confirmatum."

The second version reads: "Decretum dimissionis vim non habet nisi fuerit a Sancta Sede confirmatum, ad quam decretum ipsum et acta omnia quamprimum transmittenda sunt. Si agatur de Instituto iuris dioecesanum vel de monasterio de quo in can. 38 ter confirmatio spectat ad Episcopum dioecesanum ubi sita est domus. Decisio vera circa dimissionem significanda est sodali ut auctoritati confirmanti intra decem dies exponere possit, si velit, suas animadversiones."

At the meeting of the Code Commission in October, 1981, the second version (with slightly different wording) was accepted for inclusion in the new law, as can be seen in CIC (1983), canon 700.

An important provision is made in CIC (1983), canon 701 which differs radically from CIC (1917), canon 669. Now, the dismissed religious is freed, by the law itself, from vows as well as rights and obligations of the religious state. When this canon was discussed by the study group, it was agreed that to dismiss a member who would still be bound by bonds (vincula) and obligations, was to impose burdens which could only lead to a multiplication of violations and sins. Therefore, they recommended that these obligations cease.³⁹ When the canon was presented for discussion in March, 1980, "et vota"⁴⁰ had been added to "vincula".⁴¹ The discussion on this canon really hinged on the situation of priests who might obtain a release from vows and yet be bound to the priesthood. However, the second sentence of the canon now makes it clear that the priest may not exercise his priesthood until he has been received into a diocese, but he does not lose the exercise of it definitively by the fact of dismissal from a religious institute. If he wishes laicisation, he must apply for that indult. The promulgated canon speaks only of "vota", dropping the term "vincula".⁴² It seems that since in religious institutes, only vows are recognised as a form of commitment, it was not appropriate to retain reference to other bonds, as had been the case with Renovationis Causam.⁴³ Yet, since the canons dealing with dismissal from secular

³⁹ Communicationes, 5(1973), p. 62.

⁴⁰ Cf. "Canon Law and Religious Life - The Draft of the New Law for Institutes of Consecrated Life", in Supplement to the Way, 33(1978), pp. 84-85 where the commentators, J. Walsh and L. Hughes do not consider these "vincula" as vows, but merely bonds with the institute.

⁴¹ Communicationes, 13(1981), p. 344.

⁴² Ibid., pp. 359-360.

⁴³ RC, no. 34, p. 653.

institutes⁴⁴ and societies of apostolic life⁴⁵ refer to the canons on religious, the expression "vincula et vota" might have been more appropriate to cover all possibilities. However, it is now clear that the vows cease.

One final consideration for the dismissed member is provided in CIC (1983), canon 702 § 2 which obliges the institute to observe equity and evangelical charity for the person. No distinction is made between male and female, in contrast with CIC (1917), canon 643 § 2 which spoke only of the need to provide adequately for the female religious who required financial assistance. This canon is, therefore, a welcome change.

In summary, then, it is readily seen that the revised Code takes a more discerning attitude on all aspects of a person's life in a religious institute. The 1917 Code's preoccupation with confessors as a way of assuring freedom of conscience has broadened out to include legitimate freedom in all areas of life. The person is seen as important and the religious person also has a right to all helps to development as well as a fundamental right to justice. Usually, one does not advert much to rights, but when things go wrong, the question becomes immediate. This new Code shows a very real concern for religious at every stage of life. The attitude is positive and generally free from many of the negative restrictions of the 1917 Code. There is a healthy balance between the rights of the individual and those of the community. It is too early yet to see how the canons will work out in

⁴⁴ CIC (1983), canon 729.

⁴⁵ CIC (1983), canon 746.

practice but they do give hope, especially to women religious. They give every sign, both in their present form and in their orientation, of being a faithful interpretation of Vatican II's insistence on human dignity and freedom. It would be too bad if they became hidebound by narrow restrictions simply because some aspect of religious life was not specifically mentioned. They must be taken in the context of the 1980s when religious are to be accepted fully as adults like other members of the Church, and not considered as "minors" as was the case in the 1917 Code (CIC (1917), canon 501).

One matter which could be interpreted in two ways is the situation with regard to the confirmation of decrees of departure and dismissal. CIC (1983), canons 691 and 700 require that the ecclesiastical authority confirm these decrees; otherwise they do not have the force of law. In effect, then, the decision to leave, on the part of a perpetually professed member, or to dismiss a member, on the part of the superior general and council, may be taken within the institute but it has to be ratified by the competent ecclesiastical authority. Father Jean Beyer has some useful comments to contribute on this question. He maintains that confirmation is unhelpful because, apart from the inevitable delay which could be seen as impeding justice, a decision by the ecclesiastical authority removes one instance of appeal. In other words, a decision made by the institute is subject of recourse to the Sacred Congregation for Religious and Secular Institutes and then, if appropriate, to the Apostolic Signatura.⁴⁶ However, one could argue the opposite way and say that

⁴⁶ Jean Beyer, "Le deuxième projet de droit pour la vie consacrée", in Studia Canonica, 15(1981), pp. 110 and 113. On p. 110, he regrets that confirmation is necessary for an indult of departure and he rejoices, on p. 113,

the confirmation is analogous to a recourse since, presumably, confirmation is not inevitable. Certainly, the need for confirmation indicates the serious nature of the question. No doubt it will be one which canonists will keep on discussing.

In a recent article, Father Ladislav Orsy evaluates the new Code, and, with regard to institutes of consecrated life, comments that they "have greater freedom to determine their own life."⁴⁷ He points out also that the "new code goes further than any earlier canonical document in stating and defining the fundamental rights of all who belong to the Church."⁴⁸ However, he demonstrates that the Code does not always provide adequate avenues of appeal for lay people whose rights may have been violated.⁴⁹ It would be true to say though, that religious are more fortunate since their structures even provide for recourse.

b) Obedience and Faith

When we look at the elements of obedience and faith in religious life, as outlined in the 1983 Code, we make some startling discoveries. There is little similarity with the 1917 Code where there were no canons defining obedience,⁵⁰

that it is not necessary for a decree of dismissal. This was written before the 1983 Code made confirmation necessary for both.

⁴⁷ L. Orsy, "The Church's New Laws", in The Tablet, 237(1983), p. 422.

⁴⁸ Ibid., p. 446.

⁴⁹ Ibid., p. 446.

⁵⁰ There was no definition of chastity, either. With regard to poverty, there was more because other elements such as property, wills, etc., entered into account.

nor definitions or descriptions of religious life beyond CIC (1917), canon 487 which was strictly a juridical statement, accurate as befits a code of law, but rather soulless.⁵¹ Now, in the new Code, at the beginning of the section on consecrated life, we find a series of canons, CIC (1983), canons 573-578, primarily concerned with the theological basis of this form of life. These canons establish that consecrated life is, first of all, a life of faith. It is characterised by the profession of the evangelical counsels in a stable form of living, especially dedicated to the growth of the kingdom. These canons emphasise the gift of consecration and its place in the life of the Church. This very strong insistence on the faith dimension is re-emphasised in CIC (1983), canon 607 which treats specifically of religious life. These canons are not only new, but they also mark a decided departure from the strictly juridical format. They were included only with difficulty. Some of the Code consultors protested that they had no place in a code of law because of their markedly doctrinal content. However, the new ideas prevailed.⁵² Originally, CIC (1983), canon 607 § 1 was on its own but by uniting the next canon as §§ 2 and 3, the doctrinal and juridical elements are more unified. In the discussion period, words like "abnegatio" and "holocaustum" were proposed for the canon. Fortunately, these terms, which have a distinctly negative connotation in the modern world, were replaced by "donatio" and "sacrificium" which are more meaningful.⁵³

⁵¹ CIC (1917), canon 487: "Status religiosus seu stabilis in communi vivendi modus, quo fideles, praeter communia praecepta, evangelica quoque consilia servanda per vota obedientiae, castitatis et paupertatis suscipiunt, ab omnibus in honore habendus est."

⁵² Cf., Communicationes, 11(1979), pp. 337-338 for some discussion on this canon.

⁵³ Ibid., pp. 344-346.

One might be inclined at first sight to agree that these canons are rather out of place in a juridical text, but the importance of their inclusion can be seen in the context of obedience and authority. Religious life could be considered by some simply as a business concern, with structures designed for maximum efficiency and profit. The fact that the Code itself, before making any reference to structures, situates religious life in the mystery of the Church, highlights its spiritual foundations and provides a rationale for the dedication involved in the profession of vows, common life and the apostolate.

We are now in a better position to appreciate the definition of obedience which appears in the Code for the first time.⁵⁴ CIC (1983), canon 601 also raised some opposition though, as indeed had the definitions of the other vows, because it is not strictly juridical. But, in general, it was felt that, while not absolutely necessary, a rationale for the vows would be helpful.⁵⁵ This canon shows the influence of Perfectae Caritatis, no. 14⁵⁶ by situating obedience in a context of faith and love; it might have been better theologically had the submission of the will been directed to God rather than to superiors; but canonically, the formulation

⁵⁴ Cf., Commentarium pro Religiosis, 48(1967), pp. 228-230. The Union of Superiors General (male) requested that the evangelical counsels be defined in the Code. The canon on obedience, CIC (1983), canon 601, reads: *Evangelicum oboedientiae consilium, spiritu fidei et amoris in sequela Christi usque ad mortem oboedientis susceptum, obligat ad submissionem voluntatis erga legitimos Superiores, vices Dei gerentes, cum secundum proprias constitutiones praecipunt.*

⁵⁵ Cf., Relatio complectens synthesim animadversionum ab em. mis atque exc. mis patribus commissionis ad novissimum schema codicis iuris canonici exhibitarum, cum responsionibus a secretaria et consultoribus datis, p. 140. This is the report prepared for the October, 1981 meeting of the Code Commission and will henceforth be referred to as "Relatio, 1981".

⁵⁶ PC, no. 14, p. 619.

can be understood. There is a subtle but important distinction between submitting one's will to someone and obeying that person.

However, there are still certain real problems with this canon. It is one thing to situate a juridical principle in a doctrinal context, but quite another to make an ideal, theological value the object of a canon, thus imposing what could be an insuperable burden on many. The Code is not the place to explain the ramifications of submission of the will to another person; yet this is a principle which requires explanation. Indeed, Perfectae Caritatis, no. 14 spoke of the dedication of one's will to God which religious expressed by "subjecting themselves in faith to those who hold God's place, their superiors."⁵⁷ This was a careful way of framing the concept because the Vatican II document presupposed dependence on theological treatises for a much fuller treatment, although the basic ideas were developed in the Council documents. But a Code which is binding cannot afford to be obscure on so vital an issue. The constitutions of many religious institutes contain the sentence that the members, by the vow of obedience, promise "to obey the legitimate superiors according to the constitutions." This is a much clearer and more accurate statement and is the minimum expected of religious; if they can also submit their wills, so much the better. But, a person can obey willingly yet not agree with what is commanded. That is difficult enough; but to do violence to one's will is another matter and it does not seem to be within the scope of a Code of law to require this.

⁵⁷ Ibid.

The Code Commission took considerable time to formulate this canon and a look at the various versions presented makes for interesting study. In the first version, we find that religious are "always prepared to seek, not their own will but the will of the Father who has called and sent them." This is a fine expression of the life of obedience. The next paragraph, however, speaks of "humble submission to the will of their superiors (holding the place of God) according to the norms of (proper) law" and of co-operation with them, "by an active and responsible submission in performing their duties and carrying out their undertakings."⁵⁸ Here the emphasis is on the importance of the will of the superior.

An alternative version of § 2 again tended to give the impression that the will of God resides, at least partially, in superiors who are more able than their subjects.⁵⁹ None of this paragraph subsequently formed part of the canon although some consultors favoured it. Others expressed their approval of § 1 because it centred on the obedience of Christ.

⁵⁸ Cf., *Communicationes*, 11(1979), p. 314: § 1. "Donum divinum quod sodales Institutorum vitae consecratae conservandum acceperunt et missio ad quam adimplendam a Spiritu Sancto assumpti sunt omnes humanas vires humanamque sapientiam transcendunt. Christum Dominum sequentes qui venit ut faceret voluntatem Patris et, formam servi accipiens, ex iis quae passus est didicit oboedientiam, semper parati sint non suam quaerere voluntatem sed Patris qui eos vocavit et misit."

§ 2. "Consilium namque evangelicum oboedientiae exigit ut sodales in spiritu fidei et amoris erga Dei voluntatem Superioribus suis, (Dei vices gerentibus), ad normam iuris (propriii) humile praestent obsequium, activa atque responsabili submissione cum eis cooperantes in muneribus obeundis et in inceptis suscipiendis."

⁵⁹ *Ibid.*, § 2: "Consilium namque evangelicum oboedientiae exigit ut sodales continuo probent quid sit beneplacitum Deo et, propriae infirmitatis conscii, in spiritu fidei et amoris eius voluntate ducantur, quam in Superioribus (Dei vices gerentibus), in Ecclesiae et propriis legibus et in cotidianis rerum adiunctis detegere satagant."

Yet another version made it quite clear that two things were demanded by obedience: the submission of the will to legitimate superiors and the observance of the rules of the institute.⁶⁰ This is a dangerous imposition if the will of the superior with regard to the constitutions is different from the expression of the rules of the institutes. The ambiguity of the sentence was noted by the study group because there was an unanimous vote to exclude the phrase "obligat ad observantiam regularum."⁶¹

Another version appeared to be contradictory to the role of a code of law. It more or less condemned itself by the phrase "... going beyond mere precept in the matter of perfection ..."⁶² The law does not have the right to oblige beyond precept. However, in the second part of this version, we find a more acceptable formula which actually speaks of religious who "oblige themselves (in a spirit of faith and love towards the will of God) to obey their superiors who hold the place of God, by an active and responsible submission to them ..."⁶³ This formula is much

60 Ibid., p. 316: "Evangelicum oboedientiae consilium, centrum vitae Christo usque ad mortem oboedienti consecratae, praeterquam ad (obsequium) submissionem voluntatis activam et responsabillem erga legitimos Superiores, vices Dei gerentes, secundum proprias Constitutiones praecipientes obligat ad observantiam regularum/Instituti in spiritu fidei et amoris."

61 Ibid., p. 321.

62 Ibid., p. 316: "Sodales per professionem oboedientiae, sese homini propter Deum in re perfectionis ultra mensuram praecepti subiciunt, ut Christo oboedienti sese plenius conforment, qui venit ut faceret voluntatem Patris et formam servi accepit."

63 Ibid., p. 316: "Per vinculum oboedientiae evangelicae sese obligant (in spiritu fidei et amoris erga Dei voluntatem) ad oboediendum suis Superioribus vices Dei gerentibus, activa et responsabili submissione cum eis cooperantes in muneribus obeundis et inceptis suscipiendis, ad normam Constitutionum."

more juridical in form and in obligation. It outlines quite clearly the motive and the minimum obligation. The group voted not to use the phrase "activam et responsabillem", but four abstentions suggest that the issue still remained unclear.

Finally, the text which is now CIC (1983), canon 601 was approved. Two comments should be made about this wording. The first is that, in the final vote, "constitutiones" was approved rather than "ius proprium", presumably to indicate that the superior's mandate is contained firmly within the constitutions themselves.⁶⁴ The second comment is that the phrase "holding the place of God" aroused some discussion. It was pointed out that, although the phrase appears in Perfectae Caritatis, no. 14,⁶⁵ it does not figure in the later Evangelica Testificatio. There was some discussion on the phrase and it was decided to leave it in because it was traditional in religious life.⁶⁶ This appears to be an unfortunate decision, precisely because tradition has tended to equate the superior's holding the place of God with the superior's expressing the will of God. Since CIC (1983), canon 618 indicates that a superior receives authority from God, through the Church, it would have been better to omit the ambiguous phrase in CIC (1983), canon 601 since it needs an explanation which has not been provided.

It can be seen that the passage to the formulation of CIC (1983), canon 601 was not smooth and the result is not altogether fortunate. The very part which

⁶⁴ Ibid., p. 321.

⁶⁵ PC, no. 14, p. 619.

⁶⁶ Communicationes, 11(1979), pp. 317-318.

should be clear, the canonical obligation, remains clouded and this can only be a disservice to the religious for whom it was framed. CIC (1983), canon 662 goes some way to redressing the balance by alleging that the highest rule of the religious is the following of Christ, put forth in the gospel and expressed in the constitutions of the institute. It is regrettable that the vow of obedience is not so clearly expressed. One cannot help wishing that some of Karl Rahner's words, such as the following, had figured in the final formula, since they express so precisely the meaning of obedience:

Religious obedience should by no means be considered primarily as obedience to individual commands, nor is it even the abstract notion of a general readiness to fulfil such commands. Primarily, it is the permanent binding of oneself to a definite mode of life — to life with God within the framework of the Church ...

Whence it immediately follows that the proper and essential object of religious obedience is an abiding way of life according to the evangelical counsels ... Thus it is that obedience is always specified with reference to the constitutions of the given Order and the superior can only command within the framework determined by the constitutions.⁶⁷

Before leaving the question of obedience, it should be mentioned that CIC (1983), canon 590 deals with obedience to the Pope. The first paragraph, though implicit in practice, is new in the Code. It affirms that all institutes of consecrated life are subject to the Supreme Pontiff. The second paragraph repeats CIC (1917), canon 499 § 1 in reasserting that individual members are bound by obedience to obey the Supreme Pontiff as their highest superior. There was some discussion about the necessity for two paragraphs, but Cardinal Felici pointed out that the first dealt with the juridical person whereas the second spoke of the

⁶⁷ K. Rahner, "Reflections on Obedience", in Cross Currents, 10(1960), pp. 370-371.


physical person.⁶⁸ Two members of the Commission expressed surprise that the Pope should be referred to as the "highest superior", since he is not of the same order as a religious superior, but the phrase remained since it was considered a classical canonical norm.⁶⁹

Inevitably, one is left with mixed feelings concerning the expression of obedience in the Code. The great attention given to the context of the vows is very good. It is also important to stress that religious live in a community of faith whose values transcend the merely material; this has been beautifully presented. But the definition of obedience itself seems somewhat inadequate. Although Vatican II took a rather traditional and narrow view of obedience, it had some very positive modern orientations which were influenced by the revival of scriptural studies. This approach is not fully reproduced in the canon on obedience. Something about the common search for the will of God as expressed in Evangelica Testificatio, no. 25, could have been added: "... authority and individual liberty go together in the fulfilment of God's will which is sought fraternally through a trustful dialogue between the superior and his brother, in the case of a personal situation or through a general agreement regarding what concerns the whole community."⁷⁰ The canon could have included the notion of searching for the will of God, which, ultimately, comes to be contained in the constitutions as the community's best expression of the will of God at that time. It is in virtue of these

68 Communicationes, 11(1979), p. 62.

69 Relatio, 1981, p. 137.

70 ET, no. 25, p. 692.



constitutions that the member obeys the superior, the guardian of the Constitutions and the one whose first duty is to challenge the member to fidelity to the initial commitment. However, whether one states this explicitly or not in the Code, the canon should contain the clear statement that, by obedience, the member obeys legitimate superiors according to the norms of the constitutions.⁷¹ It would not be surprising if further clarification of this canon were required of the Holy See in the near future.

In conclusion, one could well apply to CIC (1983), canon 601 what was written of draft canon 96:⁷²

It would be helpful if something were said here about the nature of religious obedience as a unitive factor in community. As stated, it could only perpetuate the 'two-class' notion that many religious have concerning the whole area of authority and obedience, since no mention is made of the fact that superiors, too, have made profession of evangelical obedience. It may also be worth stressing that this counsel, like the others, is a divine charism.⁷³

⁷¹ It is interesting to note that SCRIS in its document of May 31, 1983, "Essential Elements in the Church's Teaching on Religious Life as applied to Institutes dedicated to works of the Apostolate", in *Origins*, 13(1983), pp. 133-142, states on p. 135, "The religious is pledged to obey the directives of lawful superiors according to the constitutions of the Institute and further accepts a particular obedience to the Holy Father in virtue of the vow of obedience." This clear statement would have made a better canon.

⁷² DC 96: "Oboedientiae ad exemplum Christi professio plenam Dei voluntatis dedicationem secumfert in submissione Moderatoribus, Dei vices gerentibus, praestanda in spiritu fidei et amoris secundum determinationem iuris universalis et Constitutionum."

⁷³ J. Walsh and L. Hughes, *loc. cit.*, p. 93.

c) Participation

Although, in the past, chapters existed in religious institutes, we would be justified in maintaining that the genuine participation of all is a relatively new phenomenon in some forms of religious life. The most that sisters of perhaps twenty years ago would remember would be filling in a ballot form for delegates to the provincial chapter and listening to a circular letter or other material giving information about what happened at the general chapter. As far as actually contributing to it, most would have regarded it as the field of those "higher" up on the authority ladder. Since then, radical changes have taken place. Now, every sister has the right and duty to be involved with policies and decisions which affect her own life and that of the congregation at every level. As was developed in chapter 2, the inspiration for this involvement was Vatican II's teaching.⁷⁴

That the Code Commission took Vatican II injunctions seriously, is evident in the revised canons. In the 1917 Code, there was no mention of participation beyond the stipulations on elections and the fact that chapters and councils existed. In the 1983 Code, there is an article containing three canons devoted solely to chapters and other gatherings.⁷⁵ This would indicate clearly that the involvement of all members of a community is something to be taken seriously. It is tantamount to saying that there must be involvement.

⁷⁴ E.g., PC, no. 4, p. 613; nos. 14-15, pp. 619-620.

⁷⁵ Article 2, "Chapters", CIC (1983), canons 631-633.

CIC (1983), canon 631 establishes that the general chapter is the supreme authority in an institute and requires that it be truly representative of the entire institute, so that it is indeed a sign of unity in love. Its duties are defined as:

- protecting the particular charism of the institute,
- promoting updated renewal according to this charism,
- electing the supreme moderator,
- treating major business matters,
- drawing up norms which all are obliged to obey.

Contributions to the deliberations of the general chapter may be sent by any individual member, community or province. These provisions show that members need to contribute personally and be informed of each other's contributions, because what comes from the general chapter forms part of the rule of life of the institute, i.e., the will of God as it is revealed, however imperfectly, for that institute.

CIC (1983), canon 632 allows for the existence of other chapters and assemblies but leaves the details to particular law. In fact, with regard to chapters and other gatherings, the particular law should make clear rules about procedures, composition, etc. It is important to understand that the principle of participation is vital to religious life. CIC (1983), canon 633 returns to this theme, stressing that all these structures should express the concern and participation of all members for the good of the entire institute or community.

It will be seen that these canons, after establishing the necessity of having chapters and assemblies, and outlining their purpose in general, wisely leave

further details to particular law. They state a principle, but its development depends on the character and purpose of the institute itself, as is suggested in CIC (1983), canon 633. This is a wise move because an important factor in renewal is the return to sound traditions in an institute, precluding uniformity of structures. Particular law, then, has the responsibility to work out structures of participation in line with its own charism. At the same time, it is important, as CIC (1983), canon 633 provides, to observe a certain discretion, not multiplying such organisms needlessly.

Although these canons are the most evident statements on participation, they are not the only ones. CIC (1983), canon 602 could well be regarded as a basic canon for understanding the emphasis on unity and involvement in chapters, etc., since it speaks of the fraternal life of the community which produces a family in Christ and helps to develop a spirit of mutual love, support and reconciliation. CIC (1983), canon 618 enjoins on the superior the necessity to listen willingly to the members of the community, and CIC (1983), canon 567 demands that they be consulted when there is a question of the appointment of a chaplain. These two canons which have particular relevance in the local community, would not have found their place in law fifty years ago.

With regard to elections, which are obviously participative, the general norms on any election are to be followed unless provided otherwise.⁷⁶ Particular law may modify certain aspects of these laws, e.g., with regard to the majority

⁷⁶ CIC (1983), canons 164-179.

required, but CIC (1983), canon 626 legislates against abuses in elections and provides that each person is to be entirely free in the voting. In 1981, it was proposed that the words "sive directe sive indirecte" be removed because they seemed to forbid discussion in a spirit of prayer, but this was rejected. The Consultors did not wish to prevent seeking of information; what was to be avoided was pressure in casting votes.⁷⁷ The revised Code in CIC (1983), canon 625 § 3 speaks of the additional possibility of holding elections for superiors, other than the general superior who must be elected. Where elections are not held, then suitable consultation is to take place. Thus, whatever the manner of providing for superiors, some form of participation is required.

This question of participation by all members in the life of an institute has significant implications. Not only is input into discussion called for, but responsibility for implementation is also required. Participation can lead to greater asceticism but it should be an acceptable discipline because it is arrived at through the common search for the will of God. The document issued by the Sacred Congregation for Religious and Secular Institutes on May 31, 1983, expresses this succinctly: "As a sign of unity in charity, the celebration of a general chapter should be a moment of grace and of the action of the Holy Spirit in an institute. It should be a joyful, paschal and ecclesial experience which benefits the institute itself and also the whole Church."⁷⁸ To realise this goal, the structures of a particular institute should be suited to it. The study group's

⁷⁷ Relatio, 1981, p. 145.

⁷⁸ Origins, 13(1983), p. 140.

discussion on the canons on chapters and other assemblies was fairly long and one point made was that the canons should be expressed in general terms to allow for freedom within institutes. It would be unwise, for example, to speak in mandatory terms of provincial chapters since some institutes do not have these.⁷⁹ Some consultors felt that too much emphasis was being placed on the general chapter, to the detriment of the office of the superior general, but it was suggested that the stipulation "ad normam constitutionum" would obviate this problem.⁸⁰ Although supporting the principle of participation, some consultors expressed the fear that participatory groups would be multiplied unnecessarily and so they were anxious to state, as has been done, that the constitutions should contain clear norms regarding these.⁸¹

The canons are sufficiently detailed to make clear the obligation of all to be involved in their institute, yet conveniently open-ended so that each institute may adapt or introduce structures which suit its own charism and experience. Jean Beyer sums up the importance of participation by calling it "the key to the conciliar renewal programme."⁸²

⁷⁹ Communicationes, 12(1980), pp. 172-173.

⁸⁰ Ibid., p. 171.

⁸¹ Ibid., p. 174.

⁸² Jean Beyer, "Participation Structures", in Supplement to the Way, 21(1974), p. 80. This article provides some important insights into the question of participation as it is being experienced today. Beyer draws attention to some of the principles developed by Yves Congar, O.P. in "Autorité, initiative, coresponsabilité. Éléments de réflexion sur les conditions dans lesquelles le problème se pose aujourd'hui dans l'Église", in Au Milieu des Orages, Paris, 1969.

CHAPTER V

THE EXERCISE OF EXTERNAL AUTHORITY ACCORDING TO THE 1983 REVISED CODE

It is now the opportune time to study the 1983 legislation of the Church as regards ecclesiastical authorities external to a religious congregation. Mutuae Relationes¹ which was considered in chapter III, indicates a new spirit which should prevail in the relationships between religious institutes and the hierarchy of the Church. The mission of religious is part of the general mission of the Church which demands a high degree of co-operation and understanding based on a common pastoral project. CIC (1983), canon 675 § 3, as do many others, speaks of "ecclesial communion"; this new emphasis found in the ecclesiology of the People of God, as preached by Vatican II, should inspire the life and work of both hierarchy and religious.

Religious are dependent on ecclesiastical authorities at every stage of their existence, whether it be on the occasion of the establishment of the institute itself, or in certain matters affecting individual members. I propose, therefore, to deal firstly with three areas in which external ecclesiastical authorities are called to intervene in relation to the institute as a whole, the houses of the community, and the persons involved. Secondly some practical issues arising from the new law will be examined.

¹ Cf. Chapter III, footnote no. 16, supra p. 77.

I. External Authority and Religious Institutes

Some matters concerning institutes are reserved exclusively to the Apostolic See, whether the institute be of pontifical or diocesan right, whereas other matters are the concern of the competent authority, which is the Apostolic See for institutes of pontifical right and the diocesan bishop for those of diocesan right. These two areas will, therefore, be treated separately.

a) Matters reserved exclusively to the Apostolic See

Although CIC (1983), canon 579 provides that the diocesan bishop may erect an institute, the use of the word "dummodo" in the canon would indicate that the previous consultation of the Apostolic See is required for validity. This canon retains a prescription found in CIC (1917), canon 492 § 1. There had been a suggestion to the effect that the consent of the Conference of Bishops would also be required, but this was not retained.³

CIC (1983), canon 580 asserts that the aggregation of one institute of consecrated life to another is reserved to the competent authority of the

² All the canons which are treated in this paragraph, with the exception of CIC (1983), canons 579 and 590 § 2, are new.

³ Pontificia Commissio codici iuris canonici recognoscendo, Relatio complectens synthesim animadversionum ab em. mis atque exc. mis patribus commissionis ad novissimum schema codicis iuris canonici exhibitaram, cum responsionibus a secretaria et consultoribus datis, p. 136. This document will henceforth be referred to as Relatio, 1981.

aggregating institute, leaving the autonomy of the aggregated institute intact. Yet, the document issued by the Sacred Congregation for Religious and Secular Institutes on May 31, 1983, dealing with the new law for religious, states that this also is reserved to the Apostolic See.⁴ Obviously, some clarification will have to be made.

CIC (1983), canon 582 mentions mergers, unions, federations and confederations. There is no mention of pontifical or diocesan right institutes, so this canon would apply to all. Again, although not specifically mentioned, institutes wishing to change or separate from an existing arrangement, e.g. from one federation to another, would require a similar permission of the Apostolic See. CIC (1917), canon 510 obliged congregations of women first to submit this report, known as a quinquennial report, to the Ordinary of the place where the superior general lived, before sending it to the Apostolic See. This is no longer required.

There are two canons which speak specifically of the authority of the Supreme Pontiff in relation to institutes. CIC (1983), canon 590 introduces a new element into his relationship with religious. In addition to the repetition of the prescriptions of CIC (1917), canon 499 § 1, found here in CIC (1983), canon 590 § 2, which says that individual members are bound to obey the Roman Pontiff as their highest superior, even by reason of their vow of obedience,⁵ paragraph 1

⁴ Origins, 13 (1983), p. 142. If something more than spiritual bonds is intended, then, presumably, aggregation is equivalent to mergers, etc. and would be reserved to the Apostolic See.

⁵ The recent case of Agnes Mary MANSOUR, former Sister of Mercy, which received extensive publicity in the United States, illustrates the importance

states that all institutes, since they are dedicated to the service of God and the entire Church, are subject to the Supreme Pontiff, "peculiari ratione". CIC (1983), canon 591 declares that the Supreme Pontiff may exempt an institute from the jurisdiction of a local Ordinary and subject it to himself alone or to another ecclesiastical authority.

Finally, there are two canons which concern reservation of matters to the Apostolic See, but are not directly related to individual institutes. The first is CIC (1983), canon 605 which reserves certain undertakings to the Apostolic See, such as the establishment of new forms of consecrated life. Diocesan bishops are encouraged to discern new gifts of consecrated life and to help those possessing them to formulate proposals. Only time will tell how this canon will be implemented. But, with the growth of such movements as the Charismatic Renewal groups, encompassing many denominations, it could well happen that existing communes or community life groups might want to be organised formally as inter-faith groups or mixed communities. Again, if ever the idea of married priests were to gain acceptance in the Church, one could visualise the formation of a special organisation to provide for a common life-style. The second canon in this section is CIC (1983), canon 709 which provides that Conferences of Major Superiors can be erected only by the Apostolic See which approves their statutes.⁶

of obedience to the Holy Father. When Sister Mansour was asked to resign her public office, the terms were clearly stated as "by virtue of her vow of obedience to the Holy Father." One should consult Origins, 12-13 (1983), for a full treatment of the situation.

⁶ CIC (1917), canon 499 spoke of the Cardinal Protector but there is no mention of him in the new Code. Pope Paul VI, by a letter of the Secretariate of

b) Matters reserved to the Competent Ecclesiastical Authority

CIC (1983), canon 576 states that the competent authority of the Church has the power to interpret the evangelical counsels and to regulate their practice, as well as encourage the growth of the institute. CIC (1983), canon 578 reminds all that the mind of the founders about the nature, purpose, spirit and character of the institute which have been ratified by competent ecclesiastical authority, as well as the sound traditions are to be respected by all. CIC (1983), canon 587 § 2 indicates that the competent authority of the Church approves the constitutions of an institute.

Two canons indicate wherein lies competency for an institute. CIC (1983), canon 593 states that institutes of pontifical right are immediately and exclusively subject to the power of the Apostolic See with regard to internal government and discipline, while CIC (1983), canon 594 says that diocesan institutes remain under the special care of the diocesan bishop. For some reason, each canon, while making similar points, expresses them very differently because the powers of diocesan bishops vis-à-vis pontifical institutes are more limited in the new law. This is stressed in CIC (1983), canon 397 § 2 where it is stated that the bishop may visit members of religious institutes of pontifical right and their houses only in those cases expressly mentioned in law — divine worship, apostolic activities and the care of souls in the diocese (CIC (1983), canons 683 and 806 § 1). However, CIC (1983), canon 594 was drafted differently because it also serves as

State of April 28, 1964 and reported in CLD, VI, p. 447, (private), intimated that no further appointments would be made.

an introduction to CIC (1983), canon 595⁷ which sets out the procedures for approval of the constitutions and the solution of major questions when a diocesan institute has spread to other dioceses. The bishop of the principal seat has to consult the other bishops beforehand, but he has the final decision. The second paragraph of CIC (1983), canon 595 says that the diocesan bishop may dispense from the constitutions in particular cases. The presumption is that this refers to institutes of diocesan right, since the context is treating of such institutes and CIC (1983),⁸ canon 593 has already treated the matter, although not in the same terms, for pontifical right institutes.

The canons indicate a desire for clarity regarding the powers of the various ecclesiastical authorities, as well as a realisation that new situations in the modern world, e.g., the greater incidence of mergers and unions and the growth of Conferences of Major Superiors, require some kind of co-ordination which can be best provided by the Apostolic See which has an overall vision of consecrated life.

2. External Authority and Religious Houses

As to the erection of houses of religious congregations, CIC (1983), canon 609 is slightly different from CIC (1917), canon 497 § 1 where for religious houses subject to the Sacred Congregation for the Propagation of the Faith, the approval of the Apostolic See and the written consent of the local Ordinary sufficed. Now,

⁷ In the draft schema of 1980, CIC (1983), canon 595 had been part of CIC (1983), canon 594.

in virtue of the 1983 code, the written consent of the diocesan bishop is required before any house can be established.⁸ CIC (1983), canon 611 ensures that the permission to erect a house implies the right to live and work according to the constitutions.⁹ However, if the community should wish to pursue an apostolate different from that expressed in the decree of erection of the house, CIC (1983), canon 612 requires that the further permission of the diocesan bishop be obtained.¹⁰

With regard to the suppression of houses, there is an important change which may lessen the worries of religious congregations when such action is necessary. CIC (1917), canon 498 demanded that the superior general obtain the consent of the diocesan bishop before suppressing a house; now, CIC (1983), canon 616 § 1 requires only previous consultation with the diocesan bishop. In addition, CIC (1983), canon 616 § 1 makes no distinction between institutes of pontifical right and those of diocesan right.¹¹ It also provides that the goods of the house are disposed of according to particular law, taking into account the wishes of donors and any acquired rights. If the religious house happens to be the only surviving

⁸ We are dealing only with religious congregations of women in this paper. CIC (1983), canon 609 § 2 requires permission of the Apostolic See for the erection of monasteries of nuns.

⁹ CIC (1917), canon 497 §§ 2 and 3 says the same in more detail.

¹⁰ Ibid., § 4.

¹¹ CIC (1917), canon 498 had allowed the local Ordinary to suppress a house of an institute of diocesan right, after consultation with the major superior and saving right of recourse, with suspensive effect, to the Apostolic See. This new canon places the initiative with the superior of the institute.

house of the institute, whether of pontifical or diocesan right, CIC (1983), canon 616 § 2 reserves its suppression and the disposition of goods to the Apostolic See, thus repeating the norms of CIC (1917), canon 493.

The external authority most concerned with the life of the religious house is the diocesan bishop. This is in line with the Church's renewed understanding of herself as the People of God and the consequent increased awareness of insertion in the local Church. Religious have come to see their mission as one with the mission of the Church, particularly as it is expressed locally. Inevitably, links between the bishop and religious must be closer, but they must also be clearly defined so that the religious do not lose their identity and the very uniqueness which contributes to the rich tapestry of the Church. CIC (1983), canon 586 reminds us that religious not only have a right to autonomy, especially with regard to the preservation of their charism and their modes of governance, but that it is a special role of the Ordinary to protect these rights.

Possibly the area where conflict could arise is that of the apostolate. The revised Code has tried to balance the rights of the bishop with those of religious. CIC (1983), canon 678 makes some important points. Firstly, § 3 suggests that bishops and religious superiors should confer together about the apostolate. This will help to ensure that religious are allowed to pursue the particular role for which they were founded and approved (§ 2) and the bishop is enjoined to encourage fidelity to this. But § 1 indicates how delicate is the balance between what belongs to the bishop as father of the local flock and what belongs to religious as his associates as well as his "subjects" in a certain sense. This canon will need careful

handling in practice. On the one hand, it is indeed the role of the bishop to guide, protect and instruct his people; yet, on the other hand, the Church has committed certain works to religious through ecclesiastical approbation. All the canons which speak of autonomy and the relative roles of bishops and religious will have to be taken together. In the 1977 draft, draft canon 19, 5° stated that in diocesan institutes, the bishop had the right, albeit with the consent of the competent religious superior, to send members of groups in his own territory, into external works of the apostolate which were in harmony with the character and purpose of the institute. This paragraph was not retained in the 1983 code. Such a power would be an infringement of the religious superior's right to mission members.¹² In those instances where the diocesan bishop entrusts works to religious, CIC (1983), canon 681 makes it clear that religious are under his authority and direction with regard to the works, without infringing on the rights of the religious superior. This could lead to possible conflicts, but § 2 of the same canon attempts to protect the rights of both parties by requiring that a written contract be drawn up, outlining the various responsibilities of both. This canon is new to the Code although, in practice, such arrangements are common. The fact that a contract is required makes the commitment of both parties that much more serious. However, it also opens the door to involvement of the civil courts when conflicts arise over the interpretation of the contract.

12 Cf. *Communicationes*, 13 (1981), pp. 202-211. The study group spent some time drafting this canon. They finally decided that, in the context of CD, no. 35, the canon should centre on three main areas, *viz.*, public worship, care of souls and the apostolate.

Another new canon is CIC (1983), canon 680 which encourages cooperation between religious of all institutes, with each other and with the secular clergy, and the bishop; himself, is asked to co-ordinate the works of religious without prejudicing their individual charisms.

There are several canons which highlight the distinction between pontifical and diocesan congregations and some of these contain changes from the 1917 code. Visitation by the diocesan bishop is addressed in CIC (1983), canon 628 § 2 which gives him the right and duty to visit, even with respect to religious discipline, individual houses of institutes of diocesan right situated in his territory. No further details are given about this kind of visitation. But a major change from the 1917 Code is that congregations of pontifical right are no longer subject to the diocesan bishop with regard to this type of visitation. CIC (1917), canons 512 and 618 explained in detail how the visitation of houses approved by the Holy See should be made. Furthermore, CIC (1917), canon 618 indicated that the visitation of lay institutes was even more detailed than that of clerical institutes.¹³ CIC (1983), canon 397 § 2 refers to visitation of congregations of pontifical right and this can be done only in those cases foreseen by law. For the most part, they would

¹³ CIC (1917), canon 512 § 2, 3°: "Singular domos Congregationis laicis iuris pontificii non solum in iis, de quibus in superiore numero, sed etiam in aliis, quae ad internam disciplinam spectant, ad normam tamen can. 618, § 2, n. 2."

CIC (1917), canon 618 § 2, 2°: "Sese ingerere in regimen internum ac disciplinam, exceptis casibus in iure expressis; nihilominus in religionibus laicalibus ipse potest ac debet inquirere num disciplina ad constitutionum normam vigeat, num quid sana doctrina morumve probitas detrimenti ceperit, num contra clausuram peccatum sit, num Sacramenta aequa stataque frequentia suscipiantur; et, si Superiores de gravibus forte abusibus admoniti opportune non providerint, ipse per se consultat; si qua tamen maioris momenti occurrant, quae moram non patiantur, decernat statim; decretum vero ad Sanctam Sedem deferat."

concern the apostolate, as is evident in CIC (1983), canon 683 which refers to all institutes.¹⁴ The second paragraph of CIC (1983), canon 683 gives the bishop the right to correct an abuse if the religious superior has done nothing about it. From the context, it is evident that such abuses would be in the areas of divine worship and care of souls, although a similar provision also occurred in CIC (1917), canon 618 § 2, 2^o, with reference to discipline.¹⁵

Another area where there are differences between institutes of diocesan right and those of pontifical right is that of property and finance. CIC (1983), canon 638 § 4 prescribes that alienation of goods for which permission of the Apostolic See is required, may not take place in the case of an institute of diocesan right unless the written consent of the local Ordinary is obtained. This canon repeats the regulation of CIC (1917), canon 534 § 1.

CIC (1983), canon 637 gives the local Ordinary the right to know about the treasurer's report in houses of diocesan right. This new canon is not as precise as its counterpart CIC (1917), canon 533 which dealt with investments, dowries,

¹⁴ CIC (1983), canon 683 § 1: "Ecclesias et oratoria, quibus christifideles habitualiter accedunt, scholas aliaque opera religionis vel caritatis sive spiritualis sive temporalis religiosis commissa, Episcopus diocesanus visitare potest, sive per se sive per alium, tempore visitationis pastoralis et etiam in casu necessitatis; non vero scholas, quae exclusive pateant propriis instituti alumnis."

CIC (1983), canon 396 speaks of the normal pastoral visitation by the bishop or his delegate and religious could expect to be included in matters related to public cult, care of souls and the apostolate.

¹⁵ Cf. footnote no. 13, supra p. 157 for text of CIC (1917), canon 618 § 2, 2^o.

bequests, etc.¹⁶ However, these areas are covered in Book V, under the section on bequests and pious foundations; the regulations mentioned in CIC (1983), canons 1299-1305 would cover all institutes, whether of diocesan or pontifical right. As in the 1917 code,¹⁷ only diocesan congregations and monasteries of nuns are to communicate their financial reports to the local Ordinary; in the latter case, only if the Ordinary asks for them.

It should not be forgotten that all members of religious congregations, unless exempt, are under the jurisdiction of the local Ordinary, as members of the diocese. CIC (1983), canon 678 in particular, draws attention to his rights with regard to public worship, the care of souls and the apostolate. CIC (1983), canon

16 CIC (1917), canon 533 § 1: "Pro pecuniae quoque collocacione servetur praescriptum can. 532 § 1; sed praeivium consensum Ordinarii loci obtinere tenentur.

1. Antistita monialum et religionis iuris diocesani pro cuiusvis pecuniae collocacione; imo, si monialium monasterium sit Superiori regulari subiectum, ipsius quoque consensus est necessarius;
 2. Antistita in Congregatione religiose iuris pontificii, si pecunia dotem professorum constituat, ad normam can. 549;
 3. Superior vel Antistita domus Congregationis religiosae, si qui fundi domui tributi legative sint ad Dei cultum beneficentiamve eo ipso loco impendendam;
 4. Religiosus quilibet, etsi Ordinis regularis alumnus, si pecunia data sit paroeciae vel missioni, aut religiosis intuitu paroeciae vel missionis.
- § 2. Haec item servanda sunt pro qualibet collocacionis mutatione."

CIC (1917), canon 535 § 2: "In aliis mulierum religionibus, ratio administrationis bonorum quae dotes constituunt, Ordinario loci reddatur occasione visitationis et etiam saepius, si Ordinarius id necessarium duxerit."

17 CIC (1917), canon 535 § 3: "Loci Ordinario ius insuper esto cognoscendo:

1. De rationibus oeconomicis domus religiosae iuris diocesani;
2. De administratione fundorum legatorumque de quibus in can. 533, § 1, nn. 3, 4."

87 regarding dispensations would also be applicable.¹⁸ With regard to the spiritual welfare of the religious themselves, there are two canons particularly applicable to religious congregations of women. CIC (1983), canon 567 provides that the diocesan bishop may not appoint a chaplain to a house of a lay religious institute without consulting the superior who, in turn, must consult the community. In the end, though, it seems there is nothing to prevent the bishop from appointing anyone he wishes, provided he has gone through the procedure. Secondly, CIC (1983), canon 630 has simplified the question of providing confessors: the responsibility now lies mainly with religious superiors. But for monasteries of nuns, houses of formation and more numerous lay communities, the local Ordinary should approve ordinary confessors after consultation with the community itself. However the religious are under no obligation to avail themselves of their services.

In sum, then the diocesan bishop fulfils a more significant role in the diocese towards those communities immediately subject to him, but he still has a great measure of authority over all religious with regard to worship and the apostolate. In essence, little has changed but the ambiance is more co-operative in the awareness of a common mission and there are some inbuilt safeguards, like the matter of a contract dealt with in CIC (1983), canon 681 § 2.

¹⁸ CIC (1983), canon 87 § 1: "Episcopus diocesanus fideles, quoties id ad eorundem spirituale bonum conferre iudicet, dispensare valet in legibus disciplinariis tam universalibus quam particularibus pro suo territorio vel suis subditis a suprema Ecclesiae auctoritate latis, non tamen in legibus processualibus aut poenalibus, nec in iis quarum dispensatio Apostolicae Sedi aliive auctoritati specialiter reservatur."

§ 2. "Si difficilis sit recursus ad Sanctam Sedem et simul in mora sit periculum gravis damni, Ordinarius quicumque dispensare valet in iisdem legibus, etiam si dispensatio reservatur Sanctae Sedi, dummodo agatur de dispensatione quam ipsa in iisdem adiunctis concedere solet, firmo praescripto can. 291:"

3. External Authority and the Individual Religious

For the most part, external authority does not deal directly with the individual religious. Contact is much more likely to take place through the internal authority structure of the institute, except, perhaps, in matters of the apostolate, where, for example, a bishop might very well deal directly with the principal of a school. This has its advantages, but may also cause misunderstandings should information be gleaned second-hand. The matters which concern individual religious vis-à-vis external authority, fall roughly into two categories. The first might be designated as what applies to the religious in public and the second what applies to the religious within the institute.

CIC (1983), canons 277 and 285 remind religious that their behaviour should be in keeping with the religious state and they should not do anything which would endanger chastity or give scandal to the faithful. The diocesan bishop is empowered to enact norms which would be safeguards. CIC (1983), canon 285 § 3 demands that religious not accept public offices, particularly those which include participation in civil power. Paragraph 4 of the same canon demands that religious have the permission of their Ordinary before taking on any business duties which would involve acting as agents for lay persons and rendering accounts. They may not act as surety, even on behalf of their own goods, without consulting their Ordinary, nor should they sign promissory notes. However, CIC (1983), canon 672 provides that the major superior may give the required permission of § 4 for lay institutes of pontifical right. CIC (1983), canon 286 forbids religious to engage in profit-making endeavours, either for themselves or others, without permission from

the legitimate ecclesiastical authority. CIC (1983), canon 287 prohibits an active role in politics or trade unions unless competent ecclesiastical authority deems it necessary for the protection of the Church and the common good. CIC (1983), canon 289 gives the Ordinary the power to decide, in particular cases, that a religious should not make use of civil exemptions.¹⁹

If an appointment is made to an ecclesiastical office in the diocese, the diocesan bishop, by CIC (1983), canon 682 § 1, is able to name a religious to the post, provided that the person has been presented by the competent superior or, at least, that this superior agrees to the appointment. When it comes to removing a religious from an ecclesiastical office, by the terms of § 2, the authority who appointed to the office may remove from it, after having notified the superior, or the superior may remove the religious after having notified the ecclesiastical authority. Neither requires the consent of the other to act. If a religious is causing serious problems in a diocese and the major superior, having been advised of the situation, neglects to act, CIC (1983), canon 679 gives the diocesan bishop power to exclude this person from the diocese. He is, however, obliged to refer the matter immediately to the Apostolic See.

Turning to internal matters, we find one situation exclusively reserved to the Apostolic See: transfer from a religious institute to a secular institute or an

¹⁹ All the canons discussed in this paragraph are in Part I of Book II, under the title of "The Obligations and Rights of Clerics." CIC (1983), canon 672 of the Code says that religious are bound by these same canons. It should be remembered that, according to CIC (1983), canon 134, the major superior of clerical institutes is an Ordinary.

institute of apostolic life and vice versa, as mentioned in CIC (1983), canon 684 § 5. Previously, in CIC (1917), canon 632, all transfers required permission from the Apostolic See although certain modifications had been introduced in recent years. Pastorale Munus, of November 30, 1963, had allowed the diocesan bishop to permit transfers from one diocesan institute to another diocesan institute,²⁰ and the Apostolic Delegate, Nuncio or Pro-Nuncio was also able to allow a transfer to another religious institute.²¹ The matter now generally comes under the authority of the religious superiors.

CIC (1983), canon 688 § 2 makes a distinction between institutes of diocesan right and those of pontifical right by requiring that the indult of departure given to one in temporary profession must be confirmed by the bishop of the house where the person resides, but only in cases of institutes of diocesan right. This restriction was not found in canon 614 of the 1980 draft but was introduced in the final phases of the revision.²²

Three other canons give similar authority to the Apostolic See or to the diocesan bishop, depending on whether the institute is of pontifical or diocesan

²⁰ Paul VI, Pastorale Munus, "Faculties and Privileges granted to local Ordinaries", November 30, 1963, CLD, VI, p. 376, (original in AAS, 56(1965), pp. 5-12). The document is found on pp. 370-378 and will henceforth be referred to as PM.

²¹ Cf. Sacred Congregation for the Evangelisation of Peoples, "Apostolic Legates in Mission Countries: Faculties", 1971, in CLD, VII, no. 21, p. 288 (private) and Sacred Congregation of Bishops, "Faculties granted to Apostolic Nuncios, Internuncios and Delegates", 1968, in CLD, IX, p. 190 (private).

²² Relatio, 1981, p. 144. The 1917 Code made no distinction between indults of secularisation for those under temporary vows and those in perpetual profession; all indults of departure were given by the ecclesiastical authority according to CIC (1917), canon 638.

right. In the case of extending or imposing excommunication (CIC (1983), canon 686), only the ecclesiastical authority is competent. Similarly, indulgences of secularisation for perpetually professed sisters are reserved to the ecclesiastical authority according to CIC (1983), canon 691, as is the confirmation of a decree of dismissal, according to CIC (1983), canon 700.²³

It is obvious that the new Code has taken cognizance of Vatican II trends for more co-operation between religious and hierarchy and this is very encouraging. In actual detail, many of the 1917 canons have been repeated, at least, in essence, but it would be true to say that many have been greatly simplified; extraneous and outdated material has been removed. This makes for greater clarity. It will, however, always be difficult to determine relative rights when it comes to such matters as apostolate. No Code can legislate adequately for the grey areas and it will call for much good will on both sides to develop working principles. One area which should not have been grey is found in CIC (1983), canon 687 which states that an excommunicated member remains under the dependence and care of her superiors and also the local Ordinary. It is very hard to determine how this will be applied. CIC (1917), canon 639 had put the person exclusively in dependence on the Ordinary of the place where she resided, even by virtue of the vow of obedience. At least, she was subject to only one authority. There is now bound to be some confusion. It might have been better to leave the excommunicated religious dependent on the institute with the option of referring to ecclesiastical authority should the need

²³ CIC (1917), canon 647 allowed the superior general of an institute of pontifical right, with the consent of the council, to dismiss a sister under temporary vows.

arise. One can appreciate, however, that a person might feel the need to distance herself temporarily from the institute, in an effort to regard the situation more objectively. But it could be asked whether exclusive dependence on the local Ordinary would provide the support needed. This particular canon will certainly cause some problems in the near future, although, in practice, it appears that the Holy See considers dependence on the Ordinary to be for matters of the apostolate, care of souls and worship. The responsibility for spiritual, personal and financial support is considered to rest with the institute.

4. Some Applications

a) The Episcopal Vicar for Religious

One of the most innovative changes introduced by Vatican II was the establishment of episcopal vicars for certain geographical areas or particular groups in the diocese, such as religious.²⁴ The Lateran Council in 1215 had already foreseen such an institution in law but it was not applied readily. The new emphasis on the bishop as the leader of the local Church with a more direct pastoral role was to change the organisation of the diocese. The implication of Vatican II's teaching on "communio" was a much closer bonding within the diocese. For this to become a reality, new structures were required, but it is very important that we understand the theological basis for their initiation. These structures were

²⁴ We speak of the "establishment" of this office, but we should not ignore the fact that some dioceses did have a person with responsibility for religious.

not to be an end in themselves but a means to an end, which would be none other than the building up of the local Church as a vibrant and caring community of faith, hope and love.

i) Conciliar and Post-Conciliar Teaching

Mutuae Relationes, which was significant in expressing the relations which should exist between bishops and religious, presented the ideal in these terms:

All pastors, mindful of the apostolic admonition never to be "a dictator over any group that is put in (their) charge, but (to) be an example that the whole flock can follow" (1Pt.5:3), will rightly be aware of the primacy of life in the Spirit. This demands that they be at the same time leaders and members; truly fathers but also brothers; teachers of the faith, but especially fellow-disciples of Christ; those, indeed, responsible for the perfection of the faithful, but also true witnesses of their personal sanctification.²⁵

It is into this image, primarily spiritual in nature, that religious are inserted. Mutuae Relationes has much to say about the belonging of religious to the life of the diocese and a few words from the document itself will highlight this:

Careful reflection on the functions and duties of the Roman Pontiff and the bishops in regard to the practical life of religious leads one to discover with particular concreteness and clarity, its ecclesial dimension, namely, the unquestionable bond of religious life with the life and holiness of the Church.²⁶

Every institute exists for the Church and must enrich her with its distinctive characteristics, according to a particular spirit and a specific

²⁵ MR, no. 9(d) in CLD IX, p. 306.

²⁶ Ibid., no. 8, pp. 304-305 (emphasis added).

mission. Religious, therefore, should cultivate a renewed ecclesial awareness...²⁷

The mission of the People of God is one. In a certain sense, it constitutes the heart of the entire ecclesial mystery.²⁸

From these and, indeed, from the whole document Mutuae Relationes, it is clear that religious have a vital part to play in the diocese. It is equally clear that the bishop has a significant pastoral role to fulfil towards religious. However, it would not be realistic to imagine that the added responsibilities of the bishop as a pastor can always be fulfilled by him personally. Inevitably, his work would have to be shared in a way that would best meet the needs of the diocese.

Mutuae Relationes expresses and develops the features of the office, first spoken of in Christus Dominus, no. 27, which declared that the bishop might appoint one or more episcopal vicars.²⁹ With the publication of Ecclesiae Sanctae, came a fuller description of the role of the episcopal vicar and the reasons for making the appointment:

The new office of episcopal vicar was established in law by the Council so that the bishop; with the assistance of new helpers may be enabled to exercise pastoral care of the diocese in the best possible manner...As co-operator in the episcopal office, the episcopal vicar should refer all that he has done or is going to do to the bishop of the diocese and he should never act against his mind and will. Furthermore, he should not omit to have frequent exchange of views with the other episcopal vicars – particularly with the vicar general in ways to be determined by the bishop of the diocese – in order that unity of discipline among clergy and people should be strengthened and that greater spiritual fruits should result for the diocese.³⁰

²⁷ Ibid., no. 14 (b), pp. 309-310 (emphasis added).

²⁸ Ibid., no. 15, pp. 310-311 (emphasis added).

²⁹ CD, no. 27, p. 579.

³⁰ ES, I, no. 14, pp. 599-600.

As might be expected, Mutuae Relationes develops even further the office of the episcopal vicar for religious. No. 54 speaks of the advisability of setting up this office, as a "service of collaboration, with the pastoral ministry of the bishop", but in no way taking over the authority of the religious superiors. The bishop should work out the requirements of the office and choose a person who is familiar with religious life, sympathetic to it and desirous of furthering it. The office, although it may be given to one person, should involve other persons in various professional capacities, such as consultants. The purpose of creating the office is to watch over religious life and integrate it into the pastoral life of the diocese. Finally, no. 54 advises the bishop to consult religious themselves about the choice of candidates.³¹

It is clear from the above documents that religious life is part of the local Church and that the office of episcopal vicar for religious provides an important link between the bishop and religious. Through this vicar, the bishop is able to maintain more direct bonds with the religious who form part of his flock.

ii) The New Code

The new code has a section in Book II devoted to vicars general and

³¹ MR, no. 54, p. 334. This section of MR continues with some norms involving religious and the local apostolate, but as these have been incorporated into the new law and dealt with already, it is unnecessary to repeat them.

episcopal vicars.³² CIC (1983), canon 476 establishes that the episcopal vicar possesses ordinary power for the area to which he is appointed. CIC (1983), canon 479 explains that ipso iure he possesses executive power, enabling him to place administrative acts, with the exception of those reserved by the bishop or demanding a special mandate. He also enjoys the habitual faculties granted to the bishop by the Apostolic See, as well as the power to execute rescripts, unless other provision has been expressly made or the bishop has been chosen for the task by reason of personal qualities. CIC (1983), canon 134 § 3 should be recalled when speaking of the episcopal vicar. This canon states that canons in the Code referring to the "diocesan bishop" do not apply to the episcopal vicar although he is a local Ordinary, unless a special mandate has been given, in such cases. CIC (1983), canon 480 obliges the episcopal vicar to refer major matters to the bishop and to take care that he act with the mind and will of the bishop.

With regard to the actual appointment, CIC (1983), canon 477 says that the bishop may freely appoint and remove an episcopal vicar; unless he is a bishop, his appointment should be for a determined period and, if he cannot fulfil his office, the bishop may appoint a substitute. CIC (1983), canon 478 requires the candidate to be a priest aged not less than thirty years, possessing a doctorate, licentiate or, at least, expertise in canon law or theology; he should be a person of sound doctrine, integrity, prudence and experience in management. He may not be related to the bishop up to the fourth degree of

32 Book II, Section II, Title III, CIC (1983), canons 475-481.

consanguinity. CIC (1983), canon 481 declares that the episcopal vicar's power ceases at the expiry of his mandate, by resignation, removal from office or when the See becomes vacant.

These canons are all found in the section of Book II which deals with particular churches, as stated. The new law for religious itself contains no specific mention of the office of episcopal vicar for religious which, in view of the closer relationships between bishops and religious, could be questioned. It is true, though, that the office is not mandatory and that it has been treated in the general canons. But there are several places in the new law for religious where a mention of this office would have been appropriate. For instance, CIC (1983), canon 675 § 3 recommends that bishops and superiors confer together on the apostolate. CIC (1983), canon 683 § 1 speaks of visitation by the bishop or delegate. In each of these instances, to mention only a few, the ecclesiastical "official" or delegate could well be the vicar for religious. We must, of course, realise that the canons have to respect the freedom of the diocesan bishop and not impose, by law, the delegation of his duties, but the opportunity could have been taken to emphasise more the role of the episcopal vicar for religious, which would at the same time have pinpointed the contribution of religious to the life of the local Church. Conversely, and more probably, one could take the position that the canons deliberately speak of the diocesan bishop to emphasise his personal role with respect to religious.

iii) Functions which could be assigned to an Episcopal Vicar for Religious

If an episcopal vicar for religious is appointed, there should be a clear delineation of his role in the particular diocese. The duties will not be the same everywhere, but whether they are extensive or limited, they should not obscure the relationship which the bishop himself should have with religious.

There are many duties which the episcopal vicar for religious may perform by virtue of ordinary power, unless certain areas have been specifically reserved to the bishop; there are others which require a mandate. There seems to be no reason why mandates should not be given, provided the vicar is in close contact with his bishop. Obvious areas would be those connected with the personal life of an institute, house or individual, such as, confirming a decree of dismissal (CIC (1983), canon 700). However, where the external life of the institute is concerned, the bishop might prefer to restrict mandates, lest, inadvertently, he be left in ignorance until it is too late. Such could happen, for example, if the vicar appointed the rector of a church in a clerical institute (CIC (1983), canon 557 § 2). On the other hand, though, an examination of the Code will reveal that, provided the episcopal vicar for religious is sensitive to his duty of keeping the bishop informed, the mandating of tasks need not cause problems.

In order to illustrate how extensive the functions of the episcopal vicar for religious could be, we propose now to list some of them in broad categories. Although in this paper we are concerned, primarily, with the

apostolic institutes of women, it has seemed better to make this compilation more extensive, even if not exhaustive, in the hope that it could prove to be a useful checklist. Where a mandate is required, this will be noted. When the matter is one which can be dealt with by the proper Ordinary in a pontifical clerical institute, this, too, will be noted.

1. Functions which could be assigned for pontifical institutes

A) General

1. To open new houses (mandate) (c.609); permission to establish an association of the faithful, proper to the institute is included (c.312);
2. To allow the purpose of houses to be changed (mandate) (c.612);
3. To be consulted before houses are closed (mandate) (c.616);
4. To appoint chaplains and approve confessors (cc.567,630 § 3);
5. To allow a second oratory in a religious house (c.936);
6. To visit oratories, schools and apostolic institutions (cc.683, 397 § 2, 800);
7. To allow restoration of precious images exposed to the veneration of the faithful (c.1189) (lay institutes only);
8. To dedicate a sacred place (mandate) (c.1206);
9. To bless a sacred place (e.g., cemetery acc. to c.1241 § 1) (c.1207) (lay institutes only);
10. To bless a church (mandate) (c.1207);
11. To allow the building of a church (mandate) (c.1215);

12. To allow the purpose of a church to be changed (mandate) (c.1222);
13. To approve oratories and liturgical celebrations (cc.1223-1225) (lay institutes only);
14. To approve a shrine frequented by the faithful (c.1230);
15. To approve the statutes of a diocesan shrine (c.1232);
16. To order taxes in special cases (mandate) (c.1263);
17. To order a special collection (c.1266);
18. To allow refusal of offerings or acceptance of offerings to which conditions are attached (c.1267) (lay institutes only);
19. To act as executor of pious wills (c.1301) (lay institutes only);
20. To supervise a trust for pious causes (c.1302) (lay institutes and clerical diocesan institutes only);
21. To allow acceptance of a pious foundation (c.1304) (lay institutes only);
22. To supervise dowries (c.1305) (lay institutes only);
23. To allow entry into lawsuits (c.1288) (lay institutes only).
24. To give dispensations from disciplinary laws of the Church (mandate) (c.87);
25. To give dispensations from diocesan laws, and laws of plenary, provincial councils and episcopal conference (c.88);

B) Offices and Apostolate

26. To assign apostolates in those instances where the work is sponsored by the diocese (c.678);

27. To sign contracts or agreements on behalf of the diocese (mandate) (c.681 § 2) and supervision of same (c.681 § 1);
28. To allow the undertaking of certain public offices (cc.285, 289) (lay institutes only);
29. To appoint to ecclesiastical offices in the diocese and remove from them (mandate) (c.682), (cf. also cc.557, 563);
30. To allow religious to engage in business enterprises (c.286);
31. To authorise the publication of books, articles, etc. (cc. 824-831);
32. To order liturgical celebrations, etc. (cc.560, 562) (clerical institutes only);
33. To allow a religious priest to perform exorcisms (c.1172) (clerical institutes only).

C) Individual Members

34. To care for exclaustated religious in those matters where they are subject to the local Ordinary (c.687);
35. To expel a religious from the diocese (mandate) (c.679); or impose residence in a particular place (c.1337);
36. To give a dispensation from a private vow after religious profession (c.1196) or commute it to a lesser good (c.1197) (lay institutes and clerical diocesan institutes only);
37. To give a dispensation from a promissory oath, unless harmful to others who refuse to remit obligations (c.1203) (lay institutes and clerical diocesan institutes only);

38. To impose penalties in cases which come under local Ordinary (c.1320).

2. Additional functions which could be assigned for Institutes of diocesan right

A) General

39. To approve new institutes (mandate) (c.579);
40. To approve constitutions (mandate) (c.595 § 1, c.587 § 2);
41. To preside over the election of the Superior general (mandate) (c.625 § 2);
42. To review financial statements (c.637);
43. To give consent for alienation of property and contracting of loans in those instances where such permission is required (c.638, § 4);
44. To conduct a visitation even with regard to religious discipline (mandate) (c.628 § 2);

B) Individual Members

45. To give dispensations from constitutions (mandate) (c.595 § 3);
46. To give dispensations from vows (mandate) (cc. 688 § 2, 691 § 3);
47. To extend exclaustation beyond three years (mandate) (c. 686 § 1);
46. To grant forced exclaustation (mandate) (c.686 § 3);
49. To confirm decrees of dismissal (mandate) (c.700).

3. Additional functions which could be assigned for independent monasteries of nuns (pontifical right)

50. All those points assigned above for pontifical institutes;
51. In the points assigned for diocesan institutes: nos. 42, 43, 44, 45, 47 (for c.688 § 2 – temporary profession only);
52. To watch over an autonomous monastery with no major Superior other than its own Moderator and no association with another institute in such a way that the latter would have authority over it (mandate) (c.615);
53. To decree dismissal of a nun (mandate) (c.699 § 2);
54. To grant permission for entry into cloister (mandate) (c.667 § 4).

It can be seen, then, that the office of episcopal vicar for religious can encompass many functions. It would be helpful if each bishop were to circularise religious on the functions which apply in his diocese, making clear that religious are always free to address him directly.

iv) Practice

The bishop is under no obligation to create episcopal vicars for religious. That many bishops have done so is encouraging. Some have appointed a diocesan priest to the office, others have chosen a religious priest while others still, have given the task to a lay religious. The Code, in CIC (1983), canon 478, demands that the candidate be a priest so one cannot speak of a lay episcopal vicar. However, the bishop may delegate most of the duties

to a lay religious, calling the person more accurately, the "episcopal delegate" for religious. Furthermore, this religious can be, and often is, a woman.

Choosing the right person is very important. It should be remembered that the primary role of the vicar or delegate is to aid the bishop in his pastoral care of the diocese, which numbers religious among its members. So the person appointed is not only accountable to the bishop but is, in a very real sense, his "alter ego". The office is an ecclesiastical one and not one belonging to a religious institute. Thus, in a certain way, the ideal choice would be a diocesan priest who has a special bond with the bishop. On the other hand, such a person may have little understanding of religious life in its various dimensions. In the exercise of the purely executive functions, this would cause no great problem, but when his duties involve matters like the visitation of houses and the support of exclaustated religious, genuine understanding and rapport are essential.

The bishop might be inclined to choose a religious priest for the office, thinking that such an appointment would best suit the situation. Many religious priests serve in parishes and are familiar with diocesan matters, as well as religious ones. However, numerous communities have noted a tendency on the part of such priests to intervene in internal community matters. The roots of the problem may well lie in the custom, universal until very recent years, of having priests as spiritual directors and retreat givers. This is a fact of history which requires time for adjustment. The emphasis on the vital contribution of all members of a diocese to its life and work, will, it is hoped,

gradually overcome any feelings, and, indeed, any situations of inequality which exist; but for the present, we have to be aware that they can prove to be a disadvantage when seeking the ideal person to be the bridge between the bishop and religious.

It might appear, then, that in view of the fact that the people most concerned are religious women, the ideal choice would be a lay religious. This is possible, but so much depends on the personality of the one chosen for this office.

When the office of episcopal vicar was conceived, it was thought of as freeing the bishop from routine administrative matters.³³ This is no longer the case. It has oftentimes developed into something more personal and more involved in the communal life of the diocese. But there is a danger that, if committed entirely to religious, it could appear to be part of the religious network rather than the ecclesiastical organisation. There has to be a balance. At the risk of adding yet another organism to the diocese, I would be inclined to favour the setting up, where feasible, of an office for religious which would comprise not only an episcopal vicar, possibly chosen from the diocesan clergy, but also two religious, one man and one woman. Depending on the size of the diocese and the number of religious, their employment could be

³³ William Bassett, "The Office of the Episcopal Vicar", in The Jurist, 30 (1970), p. 286. This article gives some useful lists of duties pertaining to the episcopal vicar, among them those relating to religious on pp. 297-299. Obviously, many of these have been updated in the new Code.

full-time or part-time. The important factor would be the availability of such people to meet the needs of religious.

Another question might be that of finances. Who maintains the office? Who provides for the personnel? One could argue that the ecclesiastical office is part of the diocesan structure and should be supported by the diocese. It is a diocesan appointment. In addition, most religious contribute financially to the diocese in one way or another. There is no doubt that the onus is on the diocese to provide for the episcopal vicar for religious, but it is very possible that if the structure is to be truly effective, the religious will have to contribute somewhat in providing for it. It is not unknown for an episcopal vicar for religious to ask religious for financial support. Religious will not hesitate if they see a genuinely helpful organism. The danger would be that they might see their contributions, especially if they are appreciable, as constituting a control over the work of the organism which is a totally inappropriate response.

The development of a good structure in each diocese for fostering relations between bishops and religious and facilitating administrative procedures, has numerous possibilities at the national and international level. One can imagine the power for good if the Conference of Major Religious Superiors were to establish some kind of organisation with the episcopal vicars for religious from each diocese. The apostolate is one area which would benefit greatly from such co-operation. Most religious institutes are spread over several dioceses and the availability of a structure which goes beyond the

limits of one diocese would be helpful in the co-ordination of activity. In the United States, the Vicars for Religious have formed themselves into an organisation. Such a structure provides for the diffusion of working principles within the group and the opportunity for more widespread co-operation and influence.

We said earlier that the Code does not speak of episcopal vicars for religious in the law on religious. Perhaps that was a wise move. These are early days and the law must follow life experience. Perhaps it is more important for the bishops themselves to give priority to their own personal relations with religious before assigning duties to delegates. Recently, the Conference of Bishops of England and Wales reviewed its role and the structures which existed in its conference, because there was a growing feeling that the apostolate was becoming more tied to office procedures than personal, pastoral work.³⁴ This realisation should spur bishops to devise appropriate methods by which they can become more involved pastorally with their flock, among whom are religious. That the law has imposed no structures, gives them the freedom to pursue their goals. Besides, as Father Ladislav Orsy comments, the "relationship between bishops and religious cannot be entirely, perhaps not even substantially, regulated by law."³⁵ This

³⁴ Cf. The Editorial, "A Local Habitation and a Name" in Clergy Review, 68 (1983), pp. 230-231.

³⁵ L. Orsy, "The Hierarchy and Religious" in Supplement to the Way, 33 (1978), p. 125. Attention is drawn to a document sent to Conferences of Major Religious Superiors, Men and Women, by the Sacred Congregation for Religious and Secular Institutes, following on its plenary session of November

remains true, but it is the duty of the Church and, perhaps, more especially of canonists, to watch the developments of new structures to see how they are fulfilling the needs of the Church. A structure to watch will certainly be that of episcopal vicars.

b) Contracts

One area which might well become the responsibility of the episcopal vicar for religious, is that of the contracts mentioned in CIC (1983), canon 681.³⁶ However, since the canon reserves this to the diocesan bishop, an episcopal vicar would have to be given a special mandate to handle the contracts and sign them on behalf of the diocese. The bishop might attach conditions to the operation of the episcopal vicar: for example, when it is question of drawing up a contract which is rather different from the normal

17-21, 1981, which had as its theme, "The Function of Conferences of Major Superiors in the Light of "Mutuae Relationes"." A translation of this document may be found in Religious Life Review, 22 (1983), pp. 212-216. This document reveals that, while religious were eager to implement Mutuae Relationes, the response of the bishops was rather limited (p. 213). One area which required clarification was that of the Episcopal Vicar for Religious (p. 214).

If the guidelines suggested in the document are followed, they could promote a richer and more harmonious relationship between bishops and religious, which would benefit the life and mission of the entire Church.

³⁶ CIC (1983), canon 681 § 1: "Opera quae ab Episcopo diocesano committuntur religiosis, eiusdem Episcopi auctoritati et directioni subsunt, firmo iure Superiorum religiosorum ad normam can. 678, §§ 2 et 3.

§ 2. In his casibus ineatur conventio scripta inter Episcopum diocesanum et competentem instituti Superiorem, qua, inter alia, expresse et accurate definiantur quae ad opus explendum, ad sodales eidem addicendos et ad res oeconomicas spectent."

form in practice. Certainly, the responsibility of the episcopal vicar, if he is mandated, will have to be expressed clearly.

The recommendation of drawing up contracts between the diocese and religious institutes first appeared in the law in Ecclesiae Sanctae. CIC (1983), canon 681³⁷ is expressed in practically the same terms as No. 30, with an important difference. CIC (1983), canon 681 speaks of the "diocesan bishop" as the competent ecclesiastical authority, whereas Ecclesiae Sanctae mentions the "local Ordinary". Thus, the new canon is more restrictive than the Motu Proprio, although the bishop's power to delegate is not limited in this matter. Conversely, when the matter concerns an ecclesiastical office, Ecclesiae Sanctae, no. 31³⁸ requires a written agreement while CIC (1983), canon 682 § 1 is less specific.³⁹ Again, Ecclesiae Sanctae, no. 32⁴⁰ requires a grave cause for the removal of the person from office, while CIC (1983), canon § 2 sets out no conditions.⁴¹ The acceptance of an ecclesiastical office by a religious requires the assent of the competent religious superior and it would normally be expressed in writing, although this is not actually required.

37 ES, I, no. 30, p. 606.

38 Ibid., no. 31, p. 606.

39 CIC (1983), canon 682 § 1: "Si de officio ecclesiastico in diocesi alicui sodali religioso conferendo agatur, ab Episcopo diocesano religiosus nominatur, praesentante vel saltem assistente competenti Superiore."

40 ES, no. 32, pp. 606-607.

41 CIC (1983), canon 682 § 2: "Religiosus ab officio commisso amoveri potest ad nutum sive auctoritatis committentis, monito Superiore religioso, sive Superioris, monito committente, non requisito alterius consensu."

However, the matter of contracts is treated separately because it concerns the works of the apostolate in the diocese which are the responsibility of the diocesan bishop and not part of the institute's own work as such. Increasingly, over recent years, religious have been moving away from convent-based apostolates, such as schools and hospitals, to engage in works which are controlled by outside agencies such as the State or Church. Wherever they have been employed by the State, for example in Britain and Canada, in the education system, they have been obliged to honour the contracts normal to any employee.

But in a country like the United States where religious operated their own schools and hospitals or were engaged by the Church to run parish schools or similar organisations, there was no uniform system. Canon law did not require written contracts although, in practice, such could have been drawn up. But religious are becoming involved in more individual apostolates which do not always fit into the traditional patterns. They are being hired as individuals and not always as groups. Our concern here is with apostolates directed by the Church and not by secular agencies; the most common title for these would be "pastoral ministries", which expression covers a variety of activity.

Many religious, while seeing the need to maintain traditional works such as formal education, are becoming increasingly aware of needs in Christian education, health care, social services, etc., which call for less structured assistance. The Church authorities, because of the paucity of

priests, often realise that a wider expertise and more realistic team work is demanded if new needs are to be met. In addition, situations of injustice which are not being attended to by other agencies, are coming to the attention of the Church. In the light of greater need and heightened consciousness, the bishop and religious – and lay persons, also – must find a modus operandi.

At first sight, the question of contracts might seem far removed from the spiritual commitment of religious whose very vocation pledges them to a generous service of the People of God. Yet, religious as well as bishops are also human and the written terms of a contract remind both parties of their obligations, at the same time as they protect both. A contract does not prevent a religious from giving more, but it obliges not to give less. In addition, the contract is made, not between the religious and the bishop, but between the superiors and the bishop, thus obliging in obedience to accept the mission from the superiors, as is fitting. It should be noted that CIC (1983), canon 681 does not specify which religious superior is competent and it will be up to the particular law of each institute to determine this competency. Although the local superior would normally not be this person, there could be a delegation to do so in routine circumstances. This, however, would have to be spelled out clearly.

Obviously, once a contract is drawn up and signed, both parties are obliged by its terms. Moreover, the contract is binding, not only in church law but in civil law. This means that care is needed to avoid any vague terms which might have to be fought out in a civil court, if a conflict arose. On the

other hand, it is possible to have a clause in the contract by which each party renounces the right to take a breach of contract or dispute to the civil court and agrees to abide by decisions arrived at through Church procedures. In such a case, it should be clear how a conflict would be handled.

In drawing up a contract, both parties should know what is being agreed so that each is guaranteed justice and equity.⁴² In addition to clear details about salary, benefits, absence and holidays, for instance, a contract concerning religious might differ somewhat from other contracts by making specifications regarding the religious commitments to community life. There could, for example, be provision for the annual retreat in addition to holidays, and for other community feasts, such as that of the Foundress. If these factors are included, possible conflict can be avoided. Also it would be of primary importance to determine when a religious is the agent of the community, and when an agent of the diocese or Church-related group. Such a distinction has very practical consequences, not only in matters relating to taxation, but also in the case of malpractice and similar suits.

The fact that the contract is usually between the bishop and religious superiors, rather than between a pastor or other intermediary and the

⁴² The Research Department of the Canadian Religious Conference produced a very helpful document in 1977, entitled Study on Working Contracts for Religious engaged in Pastoral Activity. The main items to be included in a working contract can be found on pp. 35-37 and a model contract appears on pp. 42-49. The model contract presumed that the contract would be between the individual religious and some diocesan organisation so alteration is necessary but the contract seems to cover every contingency.

individual religious, is also beneficial since it helps to minimise the risk of domination. This can be a sensitive issue, especially where women religious are concerned – as in those instances where the religious is better qualified than the pastor. It is better, for example, if the pastor, assistants and religious can work as a team, under general diocesan policies, even if the pastor is in charge.

It is interesting to note that CIC (1983), canon 681 mentions agreement on economic matters, although nothing is said about justice in this connection. The question of adequate financial remuneration for religious is something which must be faced squarely by the Church. In many countries, religious have contributed their services gratuitously, but this is becoming increasingly difficult. As fewer religious are employed in salaried positions and as congregations have more older members and fewer vocations, the question of financial support becomes crucial. Religious accept that the resources of a diocese may not be great, but the bishop should be willing to pay a living wage to those who work for the diocese. It might be better, at least in smaller countries, if the Conference of Bishops were to agree on a standard scale. There is nothing to prevent a congregation from waiving a salary in individual instances, but it should always be offered, as much for the sister's self-esteem as for material provision. It might happen that the employee is a retired person with a good pension. The Institute is free to offer her services without payment, but such a condition might alter the contract

substantially. In fact, if nothing is being given by the employer,⁴³ it cannot be regarded as a contract but simply as a promise or agreement.

To sum up this innovation in the Code, although we might question the place of such a "secular" arrangement in the Church, experience illustrates that protections are necessary where employment is concerned. Besides, it is the duty of the law to protect all, priests, religious, laity. It is always difficult to determine limits where only good will operates. Certainly, in the past, religious have shown themselves generous and self-sacrificing, with regard to the apostolate outside their own particular works. Often, it was undertaken in free time. In this context, however, we are speaking of the normal, daily employment of religious in the diocese in various fields of expertise. New possibilities are opening out all the time, such as developments in liturgy, instruction for sacraments, etc., which require the assistance of religious. They are entitled to the normal conditions of hire. The fact that CIC (1983), canon 681 has appeared in the Code illustrates that the Church is aware of its responsibility in such matters.

c) Religious Houses and Residences

One further topic of major importance in the relations between external authority and religious institutes invites comment. This is the

⁴³ Although a salary is not given, it is possible that such items as travel expenses, meals and insurance benefits are given, in which case a true contract is possible.

question of religious houses and residences, and the attitude of external authority to innovative life styles among religious. The 1917 Code spoke of "formal" houses⁴⁴ meaning those which had at least six professed religious. The implication of this was that there could exist – and did – "non-formal" houses in addition to residences which were not established canonically. The 1917 Code demanded that permission from the competent ecclesiastical authority be obtained for the erection of a house⁴⁵ and that conditions should be such that the religious were able to support themselves.⁴⁶ But the 1917 Code did not speak of the obligation of religious to live in a house. CIC (1917), canon 508 required though that the superior reside in the house and not leave it, except according to the norms of the constitutions. From these canons, we could conclude that there are two types of religious houses, both of which require permission for erection and suppression, as well as residences with a person in charge, who could be given all the prerogatives of a superior.

The new code does not speak in the same terms. There is no longer any mention of "formal" and "non-formal" houses, but only of "houses", with "domus" the term in use. Only once, do we find the word "sedis" in the new law for religious and this appears to be more in the sense of "mother-house" since it speaks of the principal "seat" of a diocesan institute which has spread to other dioceses.⁴⁷

⁴⁴ CIC (1917), canon 488, 5°.

⁴⁵ CIC (1917), canon 497.

⁴⁶ CIC (1917), canon 496.

⁴⁷ CIC (1983), canon 595 § 1.

CIC (1983), canon 608 states unequivocally that a religious community is to live in a duly constituted house under the authority of a legitimate superior, designated according to the norm of law. Furthermore, there should be at least an oratory for the celebration of the Eucharist and the reservation of the Blessed Sacrament. We shall consider these two sentences separately.

CIC (1983), canon 607 presupposes that religious live in common⁴⁸ so that the religious community of CIC (1983), canon 608 is taken to be the normal expression of religious life. In other words, the canons are saying that religious live together in a group, and that group is a religious community. There is no qualification about the permanence of the group or the apostolate in which it is engaged. As far as the canons are concerned, the group is a community, which is sound theology. CIC (1983), canon 608, requires that a group – that is, a community – formed even for an unspecified time and an unspecified goal, live in a house, legitimately constituted. There is no mention of their living anywhere else except when on permission of absence. In addition, they must live under the authority of a superior, designated according to the norm of law. This latter provision was not in the 1977 Schema⁴⁹ and, as it stands, it seems to infer that the superior would be

⁴⁸ CIC (1983), canon 607 § 2: "Institutum religiosum est societas in qua sodales secundum ius proprium vota publica perpetua vel temporaria, elapso tamen tempore renovanda, nuncupant atque vitam fraternam in communi ducunt."

⁴⁹ Pontifical Commission for the Revision of the Code of Canon Law, Schema of Canons on Institutes of Life Consecrated by Profession of the Evangelical Counsels, C. 97, p. 58.

resident. The probability is that this canon is linked with CIC (1983), canon 629 which repeats CIC (1917), canon 508 by demanding that each superior reside in her own house. Presumably, a superior can have only one "own house". CIC (1983), canons 608 and 629 appear, then, to establish strict norms: religious are to live in houses, each with its superior.

This is borne out by a consideration of the work of the study group. When CIC (1983), canon 629 was being discussed in November, 1979, the members went so far as to declare that the obligation of residence for superiors was also applicable to provincial superiors, warning that non-observance was dangerous.⁵⁰ Yet, a provincial superior, by reason of her office, is responsible for many houses and she is obliged to visit them. This seems to weaken the argument. Could not also a local superior have several houses under her authority? It would appear not, since, with regard to CIC (1983), canon 608, Cardinal Pironio suggested for the October, 1981 meeting of the Code Commission, that "habitare debet" be changed to "sedem habere debet", but this was not accepted because it was open to dangerous false interpretations.⁵¹ As far as can be understood by the suggestion, the plea was for residences accountable to a main house.

One could easily speculate that, behind Cardinal Pironio's suggestion, was the realisation that modern conditions such as varied apostolates, often

⁵⁰ Communicationes, 12 (1980), p. 161.

⁵¹ Relatio, 1981, p. 143.

call for very small communities where a resident superior is virtually an impossibility. Perhaps the consultors, by their warning about "false interpretations" were implying that such small communities were not the norm.

There are no further clarifications on the point in the canons themselves, but a note attached to the discussion on CIC (1983), canon 567 which speaks of chaplains and the obligation to consult the community before their appointment, shows an inconsistency in the use of the word "community". The note says that "community" should be understood as one which is "hierarchice ordinata" as if there were other types.⁵² Is this an indirect admission that there could be groups of religious living in residences which were not communities? Does the Code understand by "community" here, a juridical person? It is possible.

If we continue to the second part of CIC (1983), canon 608, we see that each house is supposed to have an oratory. If this canon is taken in conjunction with CIC (1983), canon 936⁵³ which speaks of the permission to have a second oratory, the implication could be that a filial house or a residence dependent on another house, is the place which requires the second oratory. But, of course, it could just as easily mean that the second oratory

⁵² Ibid., p. 152.

⁵³ CIC (1983), canon 936: "In domo instituti religiosi aliave pia domo, sanctissima Eucharistia asservetur tantummodo in ecclesia aut in oratorio principali domui adnexo; potest tamen iusta de causa Ordinarius permittere, ut etiam in alio oratorio eiusdem domus asservetur."

was in another part of the same building, for example, for the convenience of infirm sisters.

The terms of CIC (1983), canon 608 suggest that the oratory is recognised as integral to the constitution of the house. If it is impossible to have an oratory, as happens in small apartments, presumably the bishop would have the option of granting a dispensation. This would not alter the fact that the group was a religious community, but it seems to me that it might be preferable then to constitute the group as a residence. One could also take into account here, CIC (1983), canon 667 § 1, which requires some appropriate form of cloister. This canon suggests a purpose-built convent which is the exception nowadays, rather than the rule, in apostolic institutes. It is difficult to see how one can fulfil this requirement in an apartment, which must often be the choice of dwelling, because of the exigencies of the apostolate.

The problem is a complex one because the Code does not speak explicitly of alternatives for religious although it should be noted that it does not forbid such. On the other hand, in the section devoted to Societies of Apostolic Life, CIC (1983), canons 733 and 740⁵⁴ speak of "houses" and "communities" as two separate realities, which inevitably, enforces the

⁵⁴ CIC (1983), canon 733 § 1: "Dōmus erigitur et communitas localis constituitur a competenti auctoritate societatis, praevio consensu Episcopi diocesani in scriptis dato, qui etiam consuli debet, cum agitur de eius suppressione."

CIC (1983), canon 740: "Sodales habitare debent in domo vel in communitate legitime constituta et servare vitam communem, ad normam iuris proprii, quo quidem etiam absentiae a domo vel communitate reguntur."

argument that CIC (1983), canon 608 for religious means that "house" and "community" are preferably but one reality.

The Code at first sight might bring us to an impasse, but a closer look at CIC (1983), canons 608 and 609 shows us that the former speaks of houses as "constituta" and the latter as "erecta", thus allowing for the interpretation that "constituted" houses could include residences, while "erected" houses were formally established. CIC (1983), canon 616 which has added "legitime erecta" to the draft canon 542, referring to suppression of houses would also bear out the notion that the "erected" houses are the formal houses. This interpretation certainly seems to be the pattern followed by the Sacred Congregation for Religious and Secular Institutes. In the constitutions of several institutes which have recently been approved, even after the promulgation of the new Code, it is clear that the Apostolic See is allowing residences for a variety of reasons. A few articles will show how the canons are being interpreted.

One congregation speaks of the local community, "whether house, residence or district...",⁵⁵ whereas another says, "Within the regions, there are local communities; religious houses; residences and groups of religious."⁵⁶ Yet another congregation speaks of establishing "houses, residences and

⁵⁵ Constitutions and Rules of the Congregation of the Missionary Oblates of Mary Immaculate, article 88, p. 97.

⁵⁶ Ordonnances des Soeurs de Notre-Dame du Perpétuel-Secours, no. 109, p. 30: "A l'intérieur des régions se situent des communautés locales: maisons religieuses, résidences et regroupements de religieuses."

institutions."⁵⁷ In none of these cases is any reason given.

However, sometimes reasons are given in such terms as the following:

When circumstances do not allow or require the canonical erection of a religious house, a residence may be established by the general superior with the consent of her council. The sisters residing there are subject to a local superior⁵⁸

A group of sisters, assembled temporarily for a particular reason constitutes a residence. The group depends, either on the superior of a house or on the superior of the apostolic region. In certain cases, a director may be named for an unspecified term as intermediary between the group and the mandated superior.⁵⁹

The community is constituted as a residence only when it has not been erected as a house, properly so called, either because of the temporary nature of the work or because of the small number of religious involved. To open a residence, just as for a house, the written authorisation of the local Ordinary is necessary.⁶⁰

Although one wonders why the canons of the Code are not expressed in clearer terms, it seems that in individual cases, where such is necessary, the

⁵⁷ Constitutions of the Sisters of St. Joseph of the Diocese of Peterborough in Ontario, article 115, p. 57.

⁵⁸ Constitutions of the Sisters of St. Martha, Prince Edward Island, article 109, p. 36.

⁵⁹ Code Fondamental des Servantes de Saint-Coeur de Marie, article 193, p. 62: "Une résidence est constituée par un groupe de soeurs réunies pour une raison particulière et d'une façon temporaire. Le groupe relève, soit de la supérieure d'une maison, soit de la supérieure de la région apostolique. En certains cas, une directrice peut être nommée sans terme comme intermédiaire entre le groupe et la supérieure mandatée."

⁶⁰ Constitutions des Religieuses de Notre-Dame du Sacré-Coeur, Archdiocèse de Moncton, Nouveau-Brunswick, article 184, p. 73: La communauté ne constitue qu'une résidence lorsque l'on n'a pas procédé à l'érection proprement dite en maison, soit à cause du manque de stabilité de l'oeuvre, soit à cause du petit nombre de religieuses qui la composent. Pour l'ouverture d'une résidence il faut, comme pour celle d'une maison, l'autorisation écrite de l'Ordinaire du lieu."

Apostolic See has no difficulty in recognising the existence of residences. It seems that, as long as the articles are stated clearly and that the members of a residence are accountable to a superior, the text will be approved. The Code thus expresses an ideal norm which cannot always be achieved in certain circumstances. The Apostolic See recognises the contingencies of the apostolate which must always be held as important but it also wishes to keep alive the reality of religious community living in a way which is recognised externally as well as internally. Such adaptation would be more realistic in integrally apostolic institutes, where the priority is given to the apostolate and not to the conventual life.

Conclusion

The practical issues with which we have dealt appear to be areas where development will take place over the next few years, as norms are implemented. They are not the only new areas concerning the relations between external authority and religious institutes, but they are important ones because they involve the life and mission of the local Church from day to day. It is to be hoped that bishops and religious will use the openings provided by the canons to forge greater links for the good of the Church and the world.

CHAPTER VI

THE EXERCISE OF INTERNAL AUTHORITY ACCORDING TO THE 1983 REVISED CODE

Our study of the internal authority of an institute as it is outlined in the new Code will examine how the principles of participation and subsidiarity have been assumed in the new law. A new spirit is evident in the canons which treat in pastoral terms of such juridical matters as the internal legislative authority of the institute, its organisms and legal texts. We shall deal separately with each of these and then give some attention to practical issues related to the exercise of internal authority.

I. Legislative Organisms

The new Code speaks of the traditional organisms, the general chapter and councils, in addition to introducing other types of leadership groups within an institute. We shall discuss each organism separately.

a) The General Chapter

The approach to chapters, particularly the general chapter, which we find in the 1983 Code, bears little resemblance to the corresponding material in the 1917 Code. The main common bond lies in the fact that in both Codes superiors and chapters are stated to enjoy authority over members; as defined in universal

law and constitutions.¹

i) The New Law

The 1983 Code has omitted the term "potestas dominativa", but kept the word "potestas" rather than "auctoritas" as some had suggested.² The Code Commission wanted to make clear also that this power, although it can be defined as a certain form of ecclesiastical public power, is not "potestas regiminis";³ for this reason, the two notions were separated in CIC (1983), canon 596. The third paragraph of the canon inserts into the Code the terms of the interpretation issued by the Code Commission on March 26, 1952 referring to delegated power and the supplying of power in common error, already discussed in chapter I.⁴ With regard to elections, religious apply the general canons found in both Codes,⁵ unless these have been modified by particular law. The 1917 Code required that when voting for the higher superiors, the Chapter members in an institute of men should promise on oath to elect those they deemed before God should be elected.⁶ There was also an

1 CIC (1983), canon 596 § 1 and CIC (1917), canon 501 § 1.

2 Relatio, 1981, p. 140.

3 Ibid., CIC (1983), canon 129 explains that "potestas regiminis" is also called "potestas jurisdictionis" and is reserved to ordained persons although Christians may share in its exercise according to the norm of law.

4 Cf. Chapter I supra, pp. 31-32.

5 CIC (1983), canons 164-170 and CIC (1917), canons 160-182. The 1983 Code contains some major changes such as the ability to vote for oneself and a revised method of counting votes (CIC (1983), canon 119).

6 CIC (1917), canon 506 § 1.

admonition that all should abstain from seeking votes, either directly or indirectly, for themselves or for others.⁷ These two paragraphs of the 1917 Code form the basis of a new canon in the 1983 Code which is at once less discriminatory but more demanding. CIC (1983), canon 626 enjoins on superiors and members alike the duty of abstaining from any abuses in the conferral of offices and elections and to be single-minded in their choices, discerning prayerfully about those who appear worthy. Furthermore, they may not procure votes, directly or indirectly, for themselves or for others.

This canon, though it does not mention the topic specifically, does in fact bring a new dimension into the chapter, particularly the general chapter which is most involved with elections. CIC (1983), canon 626 is not strictly juridical in content since it contains elements for which we cannot legislate. How can one know with certitude that a person is truly worthy in the Lord? The discussion on the canon in 1979 centred on three points: adding the word "truly" to "worthy", including nominations as well as elections in the canon, and adding the phrase concerning the procurement of votes.⁸ However, in 1981, the canon was questioned again, this time on the inclusion of the words "sive directe sive indirecte" which seemed to preclude prayerful discussion. The phrase was allowed to remain, precisely because this was not the intention.⁹ The Consultors did not

7 CIC (1917), canon 507 § 2.

8 Communiciones, 12(1980), pp. 155-156. The original text was: "Nullus sodalis constituatur Superior nisi qualitibus polleat quae illum in Domino dignum et pro munere aptum demonstrant."

9 Relatio, 1981, p. 145.

want to prevent legitimate seeking of information; what they did wish to avoid was any pressure in casting votes. Although there are no explicit norms in the Code itself about prayer and discernment as such at a chapter, they are most certainly implied in CIC (1983), canon 631 which asks that the general chapter be "a true sign of (the institute's) unity in love".

Having established the spiritual nature of the general chapter, CIC (1983), canon 631 reminds religious that it is the highest authority in the institute, according to the constitutions. Of its nature, it is not a permanent body but an ad hoc group called into existence for specific purposes which, according to canon 631, are:

- to protect the particular charism of the institute,
- to promote updated renewal according to this charism,
- to elect the supreme moderator,
- to treat major business matters,
- to draw up norms which all are obliged to obey.

CIC (1983), canon 586 had earlier acknowledged each institute's autonomy, especially with regard to government, and pointed out that the institute has the right to preserve its own patrimony and enjoy its own internal discipline. CIC (1983), canon 587 went on to speak of the constitutions and other codes of an institute as well as their content. Father Jean Beyer reminds us that the internal autonomy of an institute consists in its own structure, recognised and approved by the Church.¹⁰

10 J. Beyer, Droits des instituts de vie consacrée, p. 330.

The general chapter is the group responsible for drawing up the constitutions in their final form before seeking approval of the appropriate authorities, and for preparing the secondary codes. In the years since the Council, this has been the major responsibility of the general chapter, but once the constitutions are approved by the Church, the general chapter will maintain its vigilance role, updating if necessary according to the purposes outlined in CIC (1983), canon 631. Any changes in constitutions must be confirmed by ecclesiastical authority, but other changes may be made according to the norms of the constitutions.

These prescriptions, although appearing in the Code for the first time, are not new in practice. What gives the canons on chapters an appearance of newness is the seriousness of the obligations enjoined and the way in which they are stated. The general chapter in particular can now be seen as expressing the concern of every member of the institute through delegates, commissions, etc.; it is representative of the entire institute, according to CIC (1983), canon 631. Also, every member, as well as communities and provinces, has a right to send freely desiderata and suggestions to the general chapter, according to CIC (1983), canon 631 § 3. Again, this is not new but the fact that there are other assemblies and means of participation actively encouraged beforehand helps make this a reality.

This whole section of the new Code depends very much on the teaching of Perfectae Caritatis and Ecclesiae Sanctae which spoke strongly of participation.¹¹

¹¹ PC, no. 4, p. 613, ES, nos. 1-6, pp. 624-625.

The general chapter is obligatory in an institute, but CIC (1983), canons 632 and 633 provide for other chapters and assemblies for which norms should be established in particular law.¹²

ii) Practical Responsibilities of the General Chapter

It might not be out of place to devote some time to spelling out a few of the practical functions of the general chapter. It should be realised that this list is in no way exhaustive since every institute is free to develop its own norms, in accordance with general law.

One could probably distinguish three phases in the "life" of a general chapter. One might be the election of the superior general and other general officers, another could be the discussions on institute matters, and the third the manner in which proposals will be communicated to the institute and, if necessary, to ecclesiastical authority. The phases should not be regarded as closed entities. For example, the chapter is unlikely to begin immediately with the election of the superior general, nor do the other elections have to take place at the same time.

One might, then, set out the main duties of the chapter as follows:

¹² Cf. Communicationes, 12(1980), pp. 170-175 for the discussion on CIC (1983), canons 631-633. The group wanted to protect the personal authority of superiors and to allow for other organs of participation without multiplying them unduly.

A. Elections

1. To elect the superior general and other general officers in the manner prescribed in the constitutions;

B. Chapter of Affairs

2. To allow, if not contrary to the constitutions, additions to the membership of the general chapter in progress, using the required voting system (e.g. two-thirds majority);
3. To examine trends in spirituality, and community life-styles and to evaluate the general fidelity of the institute to its charism and mission, noting strengths and weaknesses;
4. To examine the growth of the institute — number of vocations, their location, type of milieu, etc.
5. To examine statistics — age-range of members, nature of employment, etc.;
6. To evaluate the situation with regard to existing apostolates and to determine future policy;
7. To examine liaison with ecclesiastical and civil authorities, as well as with people in general;
8. To examine the financial state of the institute and make provision for the best use of material resources;
9. To decide on the manner of electing delegates to the next general chapter;
10. To provide for changes in the system of voting, either for elections or for business matters.

11. In all of the above, to formulate decisions and vote on them.

C. Implementation

12. To request permission of the appropriate ecclesiastical authority to make changes in the constitutions as a result of decisions taken;
13. To communicate to the institute the results of elections;
14. To communicate to the institute the decisions taken, if these are in accordance with the constitutions;
15. To communicate to the institute decisions affecting constitutions which have been permitted by the ecclesiastical authority as well as refusals, and reasons for these, if there have been any;
16. To ensure that the decisions of the chapter are understood throughout the institute, by assigning responsibilities to various members or groups.

Obviously, an institute might have other items to add to such a list. What is important is that the general chapter see its responsibility in very practical terms so that its legislation never becomes unrelated to the members it is trying to serve. A check-list is sometimes useful in this regard. Similar lists could be compiled for other chapters. The institute itself works out its procedures; the task of the general law, as expressed in CIC (1983), canon 633 is to remind religious that participation at every level is the norm.

Recently, the International Union of Women Superiors General produced a study devoted to general chapters and reform.¹³ This study highlights the importance that the general chapter now has, not simply as a legislative body, but as an instrument of renewed vitality in an institute by reason of the widespread participation of the members.

iii) Voting

In view of the importance of the general chapter's deliberations, great attention must be paid to the matter of delegates to it. These members bear a heavy responsibility for the life of the institute. It might be in order, then to consider the question of voting for delegates and even for the supreme Moderator and other officials.

With regard to the supreme Moderator, the law is clear that this should be done by canonical election (CIC (1983), canon 625 § 1). CIC (1983), canons 164-179 give the norms for canonical election. From these canons, as well as from CIC (1983), canon 119, it appears that the Code envisages an election in the presence of the voters and by absolute majority vote. However, CIC (1983), canon 176, when

¹³ Cf. U.I.S.G., "General Chapters and Reform", in Religious Life Review, 22(1983), pp. 24-29, 92-102, 159-167. This article first appeared in UISG Bulletin, pp. 32-55, under the title, "Chapitres Généraux d'aujourd'hui". Of particular relevance are pp. 93-95, where the purposes of a general chapter are detailed and pp. 98-99 which concentrate on the functions of chapter delegates. Another very comprehensive article is "Nature and Purpose of General Chapters", produced by the SCRIS and found in Consecrated Life, 2(1978), pp. 176-185.

referring to CIC (1983), canon 119,¹⁴ does contain a modifying clause, "unless it is otherwise provided in the law or the statutes", which suggests that it is possible to have some other system of voting. Nevertheless, any system for elections would have to include the provisions of CIC (1983), canon 172, concerning valid votes.¹⁵

It seems surprising that the Code has not considered any other voting system, although the relative simplicity of the majority vote system lends itself to a gathering like a chapter. However, in this technological age, the availability of computers makes more complicated and more time-consuming methods a distinct possibility. A method which could well be considered is the transferable vote system.¹⁶ Because this system depends on a points scheme, it is designed to pick

14 CIC (1983), canon 119: "Ad actus collegiales quod attinet, nisi iure vel statutis aliud caveatur:

1° si agatur de electionibus, id vim habet iuris, quod, praesente quidem maiore parte eorum qui convocari debent, placuerit parti absolute maiori eorum qui sunt praesentes; post duo inefficacia scrutinia, suffragio fiat super duobus candidatis qui maiorem suffragiorum partem obtinuerint, vel, si sunt plures, super duobus aetate senioribus; post tertium scrutinium, si paritas maneat, ille electus habeatur, qui senior sit aetate;

2° si agatur de aliis negotiis, id vim habet iuris, quod, praesente quidem maiore parte eorum qui convocari debent, placuerit parti absolute maiori eorum qui sunt praesentes; quod si post duo scrutinia suffragia aequalis fuerint, praeses suo voto paritatem dirimere potest;

3° quod autem omnes uti singulos tangit, ab omnibus approbari debet."

15 CIC (1983), canon 172 § 1. "Suffragium, ut validum sit, esse debet:

1° liberum; ideoque invalidum est suffragium eius, qui metu gravi aut dolo, directe vel indirecte, adactus fuerit ad eligendam certam personam aut diversas personas disiunctive;

2° secretum, certum, absolutum, determinatum.

§ 2. Condiciones ante electionem suffragio appositae tamquam non adiectae habeantur."

16 This system involves selecting a specific number of people in order of preference. Points are allocated to a person in accordance with her place on the list. For example, if three choices are asked for, a first place might get three

out the person(s) most acceptable to the greater number of electors. In this post-Conciliar era, with its greater stress on active participation and genuine sharing, this would surely be a major advantage. It does not appear to violate the terms of CIC (1983), canon 172, since each voter is quite clear about the identity of the persons being selected as well as the order in which the selection is made. Nor are the voters attaching any conditions to the election. In view of the ease with which this system can now be operated and even more, because of the marked benefits of such a choice, it seems to be one which should seriously be considered, even for the election of the supreme moderator. Unless the Apostolic See makes a clarification forbidding the use of any system different from the one described in the canons, there seems no reason why it could not be adopted, if an institute so desired. If the canons are to be interpreted strictly, presumably an indult could be obtained, but this would not be necessary if the constitutions provided for it.

As far as other elections are concerned, whether they be for major or minor superiors, or delegates, the Code does not make any stipulation about the form to be used. Again, it could be advantageous to consider a transferable vote system as a method contributing to the better deployment of personnel and talents. In fact, many congregations are already using it, at least at intermediate levels of government.

points, a second, two and a third, one. The person with the most points wins the election.

Cf. H. O'Leary, "Experience with Preferential Voting", in Review for Religious, 38(1979), pp. 105-122, for a fuller treatment of this topic.

One could reasonably argue in favour of the actual method of voting or for any other accepted system provided that justice is at all times upheld. One wonders why a particular system is singled out in the Code itself. Perhaps it would have been simpler to leave the question open, provided that matters concerning validity of votes and the freedom of individuals were strictly respected. Of course, it must be recognised that the Code is presenting one method to be used if no other form has been foreseen. In this way, an institute is not blocked by a lack of specific prescriptions on the matter.

b) Superiors

The 1983 Code speaks of superiors in four ways: 1) "superiors" in general, 2) the "supreme moderator", 3) the "competent authority", and 4) the "major superior". Most of the canons will refer either to the superior in general, or to the competent authority. The practical determinations must then be found in the particular law.

However, before discussing each of these instances, a general overview of the canons which define their authority would be in order. There are four such canons. 1) CIC (1983), canon 596 § 1 says that the superior enjoys that authority over members which is defined in universal law and the constitutions. 2) CIC (1983), canon 618 tells us that this authority comes from God through the ministry of the Church and is to be used in a spirit of service. 3) CIC (1983), canon 617, in the section on religious life itself, again reminds us that superiors fulfil their duty and exercise their authority in accordance with particular and universal

law. 4) Finally, CIC (1983), canon 618 points out that, whatever type of consultation or discussion takes place, the final decision always lies by right with the superior.

There is no mention in the new Code of dominative power. However, CIC (1983), canon 596 § 3 is a very important part of the new law. It now incorporates into the law of religious the terms of the reply from the Code Commission, dated March 26, 1952, which stated that CIC (1917), canons 197, 199 and 206-209 are to be applied to dominative power unless the nature of the matter or the text or context of the law prevents this.¹⁷ Thus, the revised Code is acknowledging in its section on "potestas regiminis" that the power of religious superiors and chapters is public and inserted into the mainstream of the Church's hierarchical structure of authority. Although the Code Consultors did not wish to enter into a prolonged debate on private and public power, they did put forward the view that the power of religious superiors is, of its nature, no longer separate from jurisdiction.¹⁸ This is a major step forward from saying it is merely analogous.

It should be noticed that the canons which are applicable, according to CIC (1983), canon 596 § 3, all refer to executive power and not to legislative or judicial power. They allow for delegation and sub-delegation as a normal procedure by law and also provide for the supplying of power in the case of common error,

¹⁷ Canon Law Digest, III, p. 73, (original in AAS, 44(1952), p. 497). CIC (1983), canon 596 § 3 says: "Potestati de qua in § 1 applicantur praescripta cann. 131, 133 et 137-144.

¹⁸ Communicationes, 11(1979), pp. 305-308.

whether "de facto" or "de iure". The implications of these canons are far-reaching. They provide for peace of mind in a number of doubtful situations.

Apart from these significant provisions, the new Code has chosen to speak of power in terms of its exercise, taking as a premise that it is a special sharing in the authority of Christ received through the Church. Whatever the law, whether universal or particular, allocates to a superior is to be seen as an investing of the recipient for its implementation. There is less suggestion of domination and more emphasis placed on service which is the predominant note in our modern understanding of authority. While being strictly juridical in scope, these canons are distinctly pastoral in tone, yet providing a clear principle which has to be respected by the members of a religious institute.

Ultimately, the canons are saying that every superior has personal authority and a right to exercise it at the appropriate level.¹⁹ This principle of personal authority is traditional and has remained inviolable throughout Vatican II teaching and in the 1983 Code. Yet, it is not without opposition in the modern world; the practice of shared authority, so common in some religious institutes at present, even tends to downgrade it. Neither the 1917 Code nor the 1977 draft actually made as strong a statement on personal authority as does CIC (1983), canon 618. The implication has always been there and it was accepted practice, but this new canon says unequivocally that the authority of the superior to decide

¹⁹ CIC (1983), canon 622: "Supremus Moderator potestatem obtinet in omnes instituti provincias, domos et sodales, exercendam secundum ius proprium; ceteri Superiores ea gaudent intra fines sui muneris."

and plan remains intact.²⁰ The preservation of this principle provides a necessary protection for the individual religious who may have no objection if certain matters are discussed openly in the council, but who, on the other hand, may prefer that certain ones remain only with the superior. This principle of personal authority leaves the member with the choice. Admittedly, the law will demand, in certain cases, that a decision not be taken by the superior alone, but it maintains general freedom to withhold information in the best interests of the individual, and not to act according to the opinion of the council. In addition to those instances foreseen by universal law, particular law may determine occasions where authority is limited, so that the intervention of the council is required, but these norms never affect the superior's inherent right to personal authority or the individual's right to personal privacy. CIC (1983), canon 220, which asserts that no one may harm the good reputation of another or violate the right to privacy, applies to all the Christian faithful, including religious. It is significant that the Code imposes only one case requiring a collegial decision of the superior general and council, and this is found in CIC (1983), canon 699 dealing with dismissal. The particular law may specify other cases to be decided collegially, but saving the case of elections of persons, the Apostolic See does not usually allow these to be on issues which affect an individual personally. They are more concerned with such matters as the erection of provinces, undertaking of missions, administration, and so forth. Since the canons on superiors, apart from those already mentioned on the nature of authority, seem to fall into four broad categories, each will be treated separately.

²⁰ "...firma tamen ipsorum auctoritate decernendi et praeciendi quae agenda sunt."

i) Superiors in general

First of all, we could consider some canons which have a pastoral orientation and, although not so designated, appear to relate more to the local level than to other ones. CIC (1983), canons 618 and 619 are unique in their concern that superiors be at the service of their communities and members in every area of their lives, with a consciousness that they are using their share in Christ's authority to build up true and loving communities of faith.²¹ Nothing so comprehensive was found in the 1917 Code, which more or less summed up the superior's duties in CIC (1917), canon 509 as consisting in drawing attention to papal documents and their own constitutions, and instructing the lay members and servants of the community.²² The closest that the 1983 Code comes to this canon

²¹ CIC (1983), canon 618: "Superiores in spiritu servitii suam potestatem a Deo per ministerium Ecclesiae receptam exercent. Voluntati igitur Dei in munere explendo dociles, ipsi subditos regant uti filios Dei, ac promoventes cum reverentia personae humanae illorum voluntariam oboedientiam, libenter eos audiant necnon eorum conspirationem in bonum instituti et Ecclesiae foveant, firma tamen ipsorum auctoritate decernendi et praecipendi quae agenda sunt."

CIC (1983), canon 619: "Superiores suo officio sedulo incumbant et una cum sodalibus sibi commissis studeant aedificare fraternam in Christo communitatem, in qua Deus ante omnia quaeratur et diligatur. Ipsi igitur nutriant sodales frequenti verbi Dei pabulo eosque adducant ad sacrae liturgiae celebrationem. Eis exemplo sint in virtutibus colendis et in observantia legum et traditionum proprii instituti; eorum necessitatibus personalibus convenienter subveniant, infirmos sollicite curent ac visitent, corripiant inquietos, consolentur pusillanimes, patientes sint erga omnes."

²² CIC (1917), canon 509 § 1. "Omnis Superior debet notitiam et executionem decretorum Sanctae Sedis, quae religiosos respiciunt, suos inter subditos promovere."

§ 2. Curent Superiores locales: 1. Ut saltem semel in anno, statis diebus, publice legantur propriae constitutiones, itemque decreta quae publice leganda Sancta Sedes praescribet;

2. Ut saltem bis in mense, firmo praescripto can. 565, § 2, christianae catechesis habeatur instructio pro conversis et familiaribus, audientium conditioni accommodata, et praesertim in religionibus laicalibus pia ad omnes de familia exhortatio."

is CIC (1983), canon 592, § 2 which asks the moderators to promote notice and observance of documents emanating from the Apostolic See. CIC (1983), canon 629 requires superiors to reside in their own house, repeating the norms of CIC (1917), canon 508. The implications of this canon have already been discussed;²³ it need only be repeated here that communities and individual members are to be accountable to a superior. CIC (1983), canon 661 reminds superiors that they have a duty to provide time and means for the general development of their members, while CIC (1983), canon 677, draws attention to the duty they share with members for the guardianship and growth of the apostolate entrusted to their institute. With regard also to apostolate, CIC (1983), canon 678 asks diocesan bishops and religious superiors to work together so that suitable coordination is achieved.

CIC (1983), canon 623 prescribes that particular law determine what period after profession must elapse before a member may be elected or appointed superior; this should be contained in the constitutions with regard to major superiors. CIC (1983), canon 624 requires that the constitutions specify clearly the term of office of superiors and any conditions attached to continuation in office or termination of it.²⁴ CIC (1983), canon 627 requires superiors to have their own

²³ Cf. Chapter V, *supra* pp. 190-191.

²⁴ CIC (1983), canon 624 reads: § 1. "Superiores ad certum et conveniens temporis spatium iuxta naturam et necessitatem instituti constituentur, nisi pro supremo Moderatore et pro Superioribus domus sui iuris constitutiones aliter ferant.

§ 2. Ius proprium aptis normis provideat, ne Superiores, ad tempus definitum constituti, diutius sine intermissione in regiminis officiis versentur.

§ 3. Possunt tamen durante munere ab officio amoveri vel in aliud transferri ob causas iure proprio statutas."

council whose mode of intervention by consent or advice, beyond the requirements of universal law, should be clearly determined in particular law.²⁵ CIC (1983), canon 636 states that the office of treasurer is to be separate from that of the superior, unless circumstances at the local level argue otherwise. In all cases, the superior retains the overall direction of the treasurer's operations. CIC (1983), canon 639 develops further the question of administration with reference to debts and obligations. In general, permissions given by the superior to administrators and various forms of accountability, make the institute or governmental unit responsible, as a juridical person.²⁶ Finally, CIC (1983), canon 628 allows for the visitation of houses according to the norms of particular law.

ii) The Supreme Moderator

CIC (1983), canon 622 establishes that the supreme moderator exercises authority over the entire institute and, by CIC (1983), canon 592 § 1, is accountable

²⁵ CIC (1983), canon 627: § 1. "Ad normam constitutionum, Superiores proprium habeant consilium, cuius opera in munere exercendo utantur oportet. § 2. Praeter casus in iure universali praescriptis, ius proprium determinet casus in quibus consensus vel consilium ad valide agendum requiratur ad normam can. 127 exquirendum."

²⁶ CIC (1983), canon 639: § 1. "Si persona iuridica debita et obligationes contraxerit etiam cum Superiorum licentia, ipsa tenetur de eisdem respondere. § 2. Si sodalis cum licentia Superioris contraxerit de suis bonis, ipse respondere debet, si vero de mandato Superioris negotium instituti gesserit, institutum respondere debet. § 3. Si contraxerit religiosus sine ulla Superiorum licentia, ipse respondere debet, non autem persona iuridica. § 4. Firmum tamen esto, contra eum, in cuius rem aliquid ex inuito contractu versum est, semper posse actionem instituti. § 5. Caveant Superiores religiosi ne debita contrahenda permittant, nisi certo constet ex consuetis redditibus posse debiti foenus solvi et intra tempus non nimis longum per legitimam amortizationem reddi summam capitalem."

to the Apostolic See for the institute by means of a report which is sent in periodically. The supreme moderator is elected by the general chapter according to the norms of the constitutions, as stated in CIC (1983), canon 625 § 1, but the new law introduces a change with regard to the president at the election. CIC (1917), canon 506 § 4 had required that, in congregations of women, the election of the superior general be presided by the Ordinary of the place where the election was being held or by his delegate and, in addition, if the institute was diocesan, the Ordinary had power to confirm or deny the election.²⁷ The new law, in CIC (1983), canon 625 § 2, mentions only that in diocesan institutes, the election will be presided over by the bishop of the principal seat of the institute.²⁸

Many of the most important duties of a superior general are connected with the individual sisters but there are several which refer to the life of the institute itself. The actual establishment of an institute is reserved to the ecclesiastical authority but, once established, the internal authority assumes competence for divisions into parts, mergers and suppression of these parts. CIC (1983), canon 616 § 1 reserves the suppression of a legitimately erected house to the supreme moderator, while in other cases, CIC (1983), canon 581, enjoins that the erection, division and joining of parts of an institute are done by the "competent authority" of the institute. The canon speaks of "partes" as distinct

²⁷ This power of confirming or denying was applied to the procedure. He could not influence the voting. If he failed to confirm the election, the members proceeded to another election.

²⁸ Requirements with respect to age, length of office, etc. have already been considered when speaking of such canons as CIC (1983), canons 623, 624, 627, 628 and 636.

from "domus" which would indicate provinces, vice-provinces and regions, rather than individual houses. The canon might have been better expressed to convey the idea that any actions concerning the whole institute would be carried out with the intervention of the supreme moderator, or by the general chapter itself. It should be noted that neither of these canons mentions the intervention of the council but this would probably be one area in which particular law could require consent of the appropriate council. When it comes to the erection, transfer or suppression of a novitiate house, the matter is clear. This is exclusively the responsibility of the superior general with the consent of the council, according to CIC (1983), canon 647, and expressed in a written decree. Paragraph 2 shows the strictness of the law with regard to the novitiate: for validity, the twelve-month period of novitiate must be spent in a house expressly designated for the purpose and only in special circumstances may the superior general with the consent of the council, allow an individual novice to make the novitiate elsewhere.

With regard to individual members, several matters are reserved to the superior general. For instance, in the case of a transfer to another religious institute, the superiors general of both institutes, with the consent of their councils, are competent to intervene according to CIC (1983), canon 684 § 1. If a religious, after perpetual vows, wishes to renounce her property, totally or partially, she may do so with the permission of the superior general, according to CIC (1983), canon 668 § 4.

In the matter of departure from the institute, several canons refer to the superior general. By CIC (1983), canon 686 § 1, the superior general with the

consent of the council, may grant an indult of exclaustation, for not more than three years, to a religious in perpetual profession. By the terms of § 3, the superior may, with the consent of the council, petition the Apostolic See in the case of an institute of pontifical right, or the diocesan bishop, for diocesan institutes, for an imposed exclaustation. For those in temporary profession, CIC (1983), canon 688 § 2 allows the superior, with the consent of the council, to grant an indult of departure which, in the case of a diocesan institute, has to be confirmed by the bishop of the place where the departing member is assigned. If the person asking for an indult of departure is perpetually professed, by the norms of CIC (1983), canon 691, the petition is handled by the superior general and council, and their opinions are forwarded to the Apostolic See or the diocesan bishop (depending on whether the institute is pontifical or diocesan) who alone are empowered to grant the indult. If a religious who has legitimately left the institute wishes to return to it, CIC (1983), canon 690 § 1 allows the superior general with the consent of the council, to readmit that person without the obligation of repeating the novitiate. The superior general then decides a suitable probationary period before temporary profession. In the case of a religious who has completed temporary profession but who is not regarded as capable of proceeding to another profession, the superior general, by the norms of CIC (1983), canon 689 § 1, may, after consultation with the council, exclude that person from profession. Finally, in the situation where dismissal has been found necessary, CIC (1983), canon 699 provides for the procedure to be carried out collegially by the superior general with at least four council members for validity. The instructions are very strict: there must be a secret ballot and the decree of dismissal must contain the motives for dismissal in law and in fact. CIC (1983), canon 700 declares that the decree, however, does not

have the force of law unless confirmed by the Apostolic See or the diocesan bishop, according to whether the institute is pontifical or diocesan.

iii) Competent Authority

A number of canons refer to the "competent authority" of the institute, leaving particular law to specify which group or superior is actually competent in the situation. Most, if not all of these canons will, in fact, be referring either to the chapter or to major superiors, but we cannot presume this, so we shall treat separately of those which specifically mention the major superior. Furthermore, most of these canons would also refer to the intermediate superior, that is, the provincial superior or regional superior, if there is one.

CIC (1983), canon 581 assigns to the competent authority, the erection, division and joining of parts of an institute, in accordance with the norms of the constitutions, while CIC (1983), canon 585 gives the competent authority the power to suppress parts of an institute. Where an institute is divided into provinces, regions or vice-provinces, the provincial, regional superior or the vice-provincial could in some instances be designated the competent authority for her area in these matters. CIC (1983), canon 580 allows for the aggregation of one institute to another, giving the power of aggregation to the competent authority of the aggregating institute.²⁹ When there is question of erecting a house, CIC (1983), canon 609 assigns this to the competent authority with the written permission of

²⁹ Cf. supra pp. 149-150 for comments on the ambiguity of this canon.

the diocesan bishop. In none of these canons, is there mention of consent or advice from the relevant council but this would be regulated by particular law.

There is a series of canons which treats of the novitiate. CIC (1983), canon 641 allows the competent authority to admit candidates to the novitiate, according to the norms of particular law. CIC (1983), canon 644 recommends that persons burdened by debt should not be admitted and CIC (1983), canon 645 gives some conditions for entry to the institute,³⁰ enabling the superiors to request, even secretly, any information about the candidate which is considered necessary. CIC (1983), canon 653 § 1 allows the competent authority to dismiss a novice, while § 2 gives the major superior, who could well be the same person, the power to extend the period of novitiate, but not beyond six months. CIC (1983), canon 656 outlines conditions³¹ for the validity of temporary profession, one being admission by the competent superior, who must have the opinion of the council, and reception by the legitimate superior or delegate.

Several canons which speak of "competent superiors" concern professed religious. By CIC (1983), canon 668 § 2, the competent superior may allow a sister to change her will and make other arrangements relating to personal property. CIC (1983), canon 671 says that religious should not accept duties and offices

³⁰ E.G., proof of baptism, confirmation, free status.

³¹ Age, completion of valid novitiate, freedom from force, fear and fraud, and reception by legitimate superior. This canon and canon 601 on obedience, both use the expression "legitimate superior" which seems to indicate that the superior has been legitimately appointed, designated, elected. In canon 671, "legitimate" seems equivalent to "competent" as our next paragraph of text mentions.

outside the institute without the permission of the "legitimate" superior. There is no mention of particular law in this canon and one can only presume that "legitimate" either has the same meaning as competent, or refers to a person who has been duly authorised or delegated by the competent superior to act in her name. CIC (1983), canon 682 is concerned with the appointment of religious to ecclesiastical offices in the diocese. The competent superior must give assent to the appointment and may withdraw the person from the office, after notifying the bishop beforehand. The bishop is free to do likewise regarding the termination of the appointment. By the terms of CIC (1983), canon 638 § 3, in matters which might affect adversely the property of the institute or any of its parts, such as alienation within the limits stated by the Apostolic See, the written permission of the competent superior with the intervention of the council, according to the norm of law, is required for validity.

iv) Major Superiors

Finally, there are canons which specifically mention the major superior, of whom a description is given in CIC (1983), canon 620.³² Although the canons reserved to the authority of the competent superior concern matters of great importance, one senses a particular seriousness about the following norms. The Code wishes to make sure that some matters which deeply affect religious as

³² CIC (1983), canon 620: "Superiores maiores sunt, qui totum regunt institutum, vel eius provinciam, vel partem eidem aequiparatam, vel domum sui iuris, itemque eorum vicarii. His accedunt Abbas Primas et Superior congregationis monasticae, qui tamen non habent omnem potestatem, quam ius universale Superioribus maioribus tribuit."

persons and religious, are guaranteed the attention of a major superior, who must protect the individual. Three of these canons are concerned with the novitiate. CIC (1983), canon 674 § 3 states that the major superior may allow the group of novices to live for a specified time in another designated house of the institute. CIC (1983), canon 649 § 2 gives the major superior the power to allow a novice to anticipate first profession by not more than fifteen days. CIC (1983), canon 650 § 3 declares that the governance of the novices is reserved to the director of novices, under the authority of the major superiors.

A group of canons refers to the absence or departure of professed members. CIC (1983), canon 665 § 1 concerns leave of absence. The major superior, for a just cause and with the consent of the council, may allow a member to live outside the institute, but not for more than one year, unless the absence is for reasons of health, study or an apostolate of the institute.

CIC (1983), canon 694 allows the major superior with the consent of the council, and after collecting the proofs, to declare dismissed one who has notoriously deserted the catholic faith, has contracted marriage, or even attempted civil marriage. With regard to the process of dismissal, according to CIC (1983), canon 695 § 2, the major superior must collect the facts and make the situation known to the accused person, before sending an account of the proceedings to the superior general. In the case of serious scandal or harm, CIC (1983), canon 703 allows the major superior to expel a member from the institute, with the duty of initiating the process for dismissal, should this be necessary. By CIC (1983), canon 703, a local superior is also empowered to expel from a house of the institute in a case of emergency, with the consent of the

council; it would appear that the major superior may act alone in such instances, although particular law might add a clause to the contrary.

Finally, there is one canon which refers only to lay institutes of pontifical right. This is CIC (1983), canon 672 which allows the major superiors of these institutes to permit their members to act as agents for the goods of lay people. Acting as executor of someone's will could be one such instance; another example would be to accept the administration of goods belonging to an elderly or sick member of one's immediate family.

It can thus be seen that the canons on superiors range from the pastoral to the strictly juridical. Not too many actions require the consent of the council, but those concerned with the individual person in such matters as absence and dismissal are stricter. This puts the onus on particular law to make specific norms for adequate consultation and protection.

c) The Council

Little is said in the law for religious about councils, apart from the fact that each superior should have one, as CIC (1983), canon 627 states. The operation of the council is largely determined in the particular law of the institute, especially the constitutions, except for those cases mentioned in the universal law.³³ The norms of the particular law will indicate how important the council is

³³ The relevant canons where consent is required are CIC (1983), canons 638 (alienation), 647 (erection and transfer of a novitiate house and making the

seen to be within the institute. In some cases, such as small local communities, the council could be the whole community, which would indicate a high degree of participation by all, in those matters which are within its competence.

i) The Extended Council

In recent years, many congregations have introduced yet another means of more realistic participation at the generalate level. This organ is often referred to as the "extended council" and consists of the other major superiors of the institute, in addition to the superior general and council. There are no norms in the general law for this organism so, if it is going to be operative, the constitutions should set out clear rules concerning its mandate, so that its power does not encroach on that of the ordinary general council. This will be particularly important in matters which the general law assigns to the general council, such as an indult of departure to one in temporary profession or the erection of a novitiate house.

The supposition will also be that this extended council does not meet as regularly as the general council itself. Therefore, the matters with which it will deal are likely to be of rarer occurrence, though not, by that very fact, unimportant. But items which concern the whole institute, such as the division of provinces, and which would not be decided except after some considerable

novitiate in another house), 665 (absence), 684 (transfer to another religious institute), 686 (exclaustration), 688 (indult of departure), 690 (readmission), 694 (declaration of dismissal), 699 (dismissal); only advice is required for CIC (1983), canons 656 (admission to temporary profession), 689 (exclusion from vows) and 691 (indult of secularisation).

consultation and discussion, would be well within the competence of the extended council.

One major advantage of such a group is the up-to-date assistance afforded the general council by the superiors who are "on the spot" in the various geographical areas. Stemming from that, is the fact that participation not only takes place but is seen to affect the operation of the highest authority in the institute. It is one way in which an institute can determine what limits, within the law, it wishes to place on those selected for positions of authority.

Another advantage can be that the number of members required to form the general council is fewer because there is a better distribution of functions. This can be a major factor in the modern world when employment after a term of office is by no means guaranteed. Institutes are obliged to decide whether they can afford to ask members to give up positions which are not only beneficial financially to the institute, but necessary to the well-being of the individual.

However, on the other hand, when major superiors from the intermediate levels are involved actively at the general level, there may well result some confusion in terms of subsidiarity. Care must be taken to separate the two roles assumed so that all are clear wherein lies responsibility.

To obviate possible problems, it is an excellent idea if the constitutions spell out the functions of the general superior alone and with the general council, as well as those of the major superior alone and with her council. This has often

been done in constitutions and it makes for greater clarity. Where an extended council exists, one might suggest a few functions which could be entrusted to it to show how a more widespread consultation can contribute to greater unity and efficacy. Some matters will require consent of the extended council, others are simply more effective means of international co-ordination.

Possible matters requiring the consent or intervention of the extended council

1. The modification of existing provinces or regions;
2. The creation of new provinces or regions;
3. The approval of financial administration at general level and intermediate level;
4. The acceptance or imposition of the resignation of a general councillor;
5. The replacement of a general councillor until the subsequent general chapter;
6. The approval of directories or rules on the intermediate levels;
7. The publication of a common stance on some major issue, either with regard to the secular world, the Church or the Institute;
8. Convocation of an extraordinary general chapter.

Means of fostering co-ordination

1. Informing the extended council of trends in spirituality and community life-styles;
2. Informing the extended council of developments in the apostolate;
3. Developing effective means to disseminate information in the institute.

These few examples illustrate the role of an extended council, functioning as an extension of the council, that is, with power of decision. The institute may wish it to be a college also, in which case, the constitutions must distinguish clearly which matters are to be decided collegially. But it should also be remembered that the council may be simply a consultative group. In this case, there is no need for the constitutions to spell out its role; the institute's second book (which gives more specific norms) would be the proper place for this.

Each institute must work out its own structures, according to its size and needs. The extended council, acting as a college and as a council, could be one structure used to limit the exercise of a superior's authority. But whatever role is assigned to an extended council, it must surely be seen as a powerful means of strengthening an institute's unity and effectiveness.³⁴

ii) Executive Committees of the General Council

Some institutes provide instead for a general council which then delegates a number of day-to-day decisions to an executive committee, provided a quorum is guaranteed. This means that not all the members of the general council have to be present at the generalate for all meetings, and may exercise apostolic functions elsewhere for the well-being of the Church and of the community.

³⁴ SCRIS produced a short but useful article on the "Enlarged General Council" which can be found in Consecrated Life, 2(1978), pp. 149-151. It is obvious that SCRIS is in favour of such an organism, provided its functions are clearly defined.

If an institute prefers to have ancillary, executory committees instead of an extended council or an executive then usually the most important committee will be the group responsible for communications throughout the institute. Its duties could be two-fold: 1) to disseminate material of whatever kind from the superior general and the council and 2) to collect from inside and outside the institute, information and news items and re-distribute them to the whole congregation.

Another essential committee might be concerned with financial administration, in co-operation with the general treasurer. Within this committee, different areas such as determining financial policies, maintenance of buildings, investments, pensions, etc., could be allocated to different people.

Yet another essential committee would have to be the secretariate, under the guidance of the general secretary. Again, different areas could be allocated, such as liaison with Church and civil authorities, as well as the more general correspondence.

It is up to each institute to decide how many or how few of these committees it requires. They have one common factor: they are all the executors of the decisions or wishes of those in authority. As such, they give an incalculable service to the institute, since, without them, the goal of participation would be hard to achieve in any realistic sense.

d) Assemblies and other gatherings

With regard to other assemblies, little is said beyond CIC (1983), canons 632 and 633. The law is intentionally general when referring to these gatherings, leaving to particular law to decide whether organs of participation, apart from the general chapter, should exist. The nearest the Code comes to legislating their existence is in CIC (1983), canon 633 § 2 where it refers to means of participation and consultation "instituendis et adhibendis" but these terms are hardly mandatory. However, this is not to say that the Code is against assemblies. What it does stipulate is that their nature, composition, mode of procedure and time of celebration should be determined clearly in particular law.³⁵ Moreover, they should reflect the active participation of all and the tradition of the institute, but not be needlessly multiplied.³⁶

Although the Code is rather general in speaking about these other gatherings, the emphasis on participation in Vatican II which corresponds to trends in the world of today, is producing new structures in religious life and will, ultimately, be found in particular law.

2. Legislative Texts

It was the hope of the study group to stress the importance of the

³⁵ CIC (1983), canon 632.

³⁶ CIC (1983), canon 633.

particular law of an institute which had become obscured by the 1917 Code. Father Mark Said makes the statement that "until the promulgation of the Code of Canon Law in 1917, the role of particular law in consecrated life was far more important than that of the common or general law of the Church."³⁷ One could argue that before 1917 there was little else but particular law, but it is true that the minute regulations found in the 1921 Normae rather stifled religious life. To counteract this, he suggested that:

the revised particular law should be a set of spirit-filled norms, which effectively help the building up in members and communities of the stature of Christ through the fulness of charity and, at the same time, the development to its full capacity of the human personality. The aim of the revised law should be the formation of mature and responsible men and women of God according to the character and scope of the institute to which they belong, who, individually and united in community, would give testimony to Christ and work unceasingly for the spreading of the kingdom of God on earth.³⁸

Many of the canons in the law for religious refer to implementation of the norms "according to the constitutions" or "according to particular law". Father Jean Beyer, in a recent article on the new Code, has listed those canons which refer to particular law or the constitutions. He tells us that there are twenty-two canons which refer to the constitutions and forty-five which refer to particular law. There are a further eight which could apply both to universal and particular law.³⁹ It will have been noticed in the preceding pages, as we spoke of authority,

³⁷ M. Said, "Particular Law of Institutes in the Renewal of Consecrated Life", in Review for Religious, 36(1977), p. 928.

³⁸ Ibid., p. 926.

³⁹ J. Beyer, "Droit ancien, droit nouveau" in Vie Consacrée, 55(1983), p. 169. He gives a list of the relevant canons.

that particular law is to regulate more-precisely the general norms found in the Code. This is in accord with Vatican II's insistence that each institute must express its charism and tradition in its own way.⁴⁰ This makes it imperative that each institute realise its own responsibility to produce a particular law which is best suited to it.

Particular law is found in the Constitutions, Rules and Directories of an institute, as well as in chapter enactments; these will be the object of our next consideration.

a) The Constitutions

The key canons concerning constitutions are CIC (1983), canons 578 and 587⁴¹ which spell out concisely their content, the reasons for having them and the

⁴⁰ E.g., PC, no. 2, p. 612.

⁴¹ CIC (1983), canon 578: "Fundatorum mens atque proposita a competenti auctoritate ecclesiastica sanctita circa naturam, finem, spiritum et indolem instituti, necnon eius sanae traditiones, quae omnia patrimonium eiusdem instituti constituunt, ab omnibus fideliter servanda sunt."

CIC (1983), canon 587 § 1. "Ad propriam singulorum institutorum vocationem et identitatem fidelius tuendam, in cuiusvis instituti codice fundamentalis seu constitutionibus contineri debent, praeter ea quae in can. 578 servanda statuuntur, normae fundamentales circa instituti regimen et sodalium disciplinam, membrorum incorporationem atque institutionem, necnon proprium sacrorum ligaminum obiectum."

§ 2. Codex huiusmodi a competenti auctoritate Ecclesiae approbatur et tantummodo cum eiusdem consensus mutari potest.

§ 3. In hoc codice elementa spiritualia et iuridica apte componantur; normae tamen absque necessitate ne multiplicentur.

§ 4. Ceterae normae a competenti instituti auctoritate statutae apte in aliis codicibus colligantur, quae tamen iuxta exigentias locorum et temporum congrue recognosci et aptari possunt."

necessity for approval. The content concerns the nature, goals, spirit and character of the institute and its sound traditions, as well as the fundamental norms about the government of the institute, discipline of the members, incorporation and formation of members, and the object of the vows. In articulating these essentials, the constitutions should blend the juridical with the spiritual, but avoid multiplying norms unnecessarily.

The task of drawing up constitutions lies with the institute itself, but final approval is reserved to the ecclesiastical authority. Within the institute, the religious contribute ideas and principles, personally and communally, to groups specially initiated to co-ordinate material until, eventually, a draft is produced for the general chapter. Here, the members discuss the norms until a final text emerges for presentation to the ecclesiastical authority. The process is necessarily long because it must involve the whole institute and express its uniqueness; otherwise, it cannot be said to belong genuinely to each member of that institute. As is well known, the task of revision of constitutions has been going on for many years now, in accordance with Vatican II recommendations⁴² and numerous helpful articles have been produced to aid the process.⁴³

⁴² E.g., PC, nos. 3 and 4, p. 613; ES, nos. 12-14, pp. 626-627.

⁴³ One could mention such articles as J.F. Gallen, "Constitutions and Directory" in Review for Religious, 40(1981), pp. 759-772; L. Orsy, "How to write good Constitutions" in Review for Religious, 32(1973), pp. 482-489; D. O'Connor, "Developing Constitutions and Directories" in Review for Religious, 37(1978), pp. 753-776; id., "Some Observations on Revised Constitutions" in Review for Religious, 38(1979), pp. 771-779; L. Hughes, "Revision, the Law and the Chapter" in Supplement to the Way, 36(1979), pp. 58-70; N.M. Ford, "Why Religious revised their Constitutions" in Review for Religious, 42(1983), pp. 218-225; M. Cerletty, "Some Practical Helps for the Development of Constitutions", in Studia Canonica,

In view of the abundant literature available on the subject, it seems superfluous to enter into a detailed consideration of the material. It might not be out of place, though, to underline the importance of constitutions in the life of an institute. This is well summed up by Father David O'Connor:

The constitution is to have a stability and permanence which is not to be easily altered because it expresses the enduring and fundamental elements of the religious institute.

A constitution is necessary because the institute and its members require an articulated basis for their life and mission within the Church. It is necessary to preserve the proper identity of the institute and avoid a vacuum in authority.⁴⁴

The importance of the constitutions cannot be over-stressed. A religious should be able to find in them the reasons for consecration as a member of a particular institute. As a book of law, it should contain clearly the rights and obligations as a religious and as a member of that institute, and be, at the same time, an inspiration to continuance in it. The constitutions need not be long but they must be clear.⁴⁵

14(1980), pp. 155-170; and A. Guay, "La contribution des canonistes à la révision des constitutions des communautés religieuses" in Studia Canonica, 1(1969), pp. 205-221. Almost mandatory as a guide to drawing up Constitutions is M. Dortel-Claudot, What should be included in New Constitutions.

⁴⁴ D. O'Connor, "Developing Constitutions and Directory" in Review for Religious, 37(1978), p. 756.

⁴⁵ L. Orsy in "How to write good Constitutions" in Review for Religious 32(1973), pp. 482-489 gives ten useful principles which are worth mentioning in this context, and D. O'Connor in "Some Observations on Revised Constitutions" in Review for Religious, 38(1979), pp. 78-779, provides a helpful checklist for evaluating Constitutions.

b) The Second Book

The second book of an institute is called the directory or the rules or whatever name is traditional to the institute. Its purpose is to give more specific norms for the implementation of the constitutions. It is also prepared by the general chapter, in collaboration with the whole institute, through various forms of participation, and can be modified or changed by subsequent general chapters. This second book does not have to be approved by the ecclesiastical authority but it is usually sent in with the constitutions when these are first presented for approbation.

The second book is concerned with the practical implementation of the principles contained in the constitutions. It is not the place for introducing new ideas but for providing norms on the day-to-day living of what has been established. Certain areas stand out as requiring detailed norms.

Since each institute has its own tradition, it will want to spell out for itself its way of living the vows. Thus, as well as a section enlarging on the particular charism and spirit of the institute, one might find one on the life of consecration. Following from that, there might be a chapter on the forms of prayer and devotion favoured by the congregation. Such a section could include specific norms about honouring the founder of the congregation, special feast days, etc.

The next two sections might deal with norms about community living and the apostolate. The former could suggest ways which will promote a spirit of charity in the community while the latter might consider such matters as how the mission of the institute might be better achieved.

Some sections are longer than others and one of these is that on formation which requires more detailed norms since it is dealing with persons as individuals. Each step of formation should be treated adequately and it should be clear where responsibilities lie.

Another section which is usually the longest in the second book, is that on government since it is concerned with each level of government. This section might begin with more detailed norms on the procedures for general chapters — convocation, responsibilities, number of delegates and manner of selection, etc. At the general level: the duties of the superior general, the general council, the general administration and the extended council, if it exists, will be outlined in more practical terms. One could expect to find here the instances when the superior general needs the consent of the council. Following from these sections, each level is considered in the same way so that the question of responsibility for government is clear. This section will usually show how participative are the structures of an institute. It should also, complementing the constitutions, distinguish between the particular roles of each level of government which are usually seen to be as follows: 1) a concern for the unity of the institute at general level, 2) a special concern for the apostolate at the intermediate level and 3) a special care for the needs of the individual person at local level.

The second book would probably conclude with a section on the administration of temporal goods and procedures to be followed for absence, departure from the congregation, re-admission or transfer. With regard to administration of goods, it is important to set out clearly where responsibilities lie. This can be a sensitive issue. Although the treasurer is the administrator of goods, the overall responsibility always lies with the superior. Similarly, in questions of absence, etc., the terms and responsibilities should also be clear.

The form of this second book can vary. It could be one volume following the same chapter headings as the constitutions, Or, it might be split into several volumes, taking topics together under key headings such as 1) spiritual and community life, 2) formation, 3) government, 4) temporal goods. Such an arrangement might also be used for the third book, with the difference that second book material could be changed only by the general chapter whereas the superior general and council would be competent for changes in third book material. Another method is to place constitutional and directory material together in one volume so that all the material on a given topic is found in the same place.⁴⁶ Another very useful addition is to have an appendix containing all the instances when the various levels of government require the intervention of the council. This can be a valuable and quickly-found checklist. It would be helpful when compiling this list to indicate which points are taken directly from general law.

⁴⁶ This can be done by indenting the articles of the directory and using different numbering and type face so that it is clear which articles are constitutions and which are directory material.

The second book is an important text since it should contain clear articles for the smooth running of the institute's life and be a guide to each member in practical matters. It does not have the same permanence as the constitutions because it is concerned, not so much with principles, but with their applications which can vary as society changes. This is not to say that the second book will constantly be in process of change, but it is a book which requires regular evaluation so that outmoded procedures are not allowed to stifle the institute.

c) The Third Book

Sometimes, an institute wishes to have a third book which might be called a directory or customary, in order to obviate too frequent changes in the second book. Very often, at the end of Book I, there is an article which indicates that, although the second book is not equal to the constitutions, it too is binding in virtue of religious profession. Some institutes may feel that much of the material in the second book would be of such a vacillating nature that it would be better to relegate it to another book. Each institute will decide for itself. However, a close examination of the canons of the revised Code would seem to suggest that there could be at least four specialised directories: formation (CIC (1983), canon 659 § 2), financial policies (CIC (1983), canon 635), superiors (CIC (1983), canon 617), and procedures (CIC (1983), canon 631 § 2). Such details could be approved by the superior general and council, without having to go through the general chapter.

d) Other Texts

So far, we have considered the essential legislative texts of the institute. However, it would be a relatively rare event for the general chapter to produce these texts since they enjoy a certain permanence. Nonetheless, whenever it meets, the chapter does have the duty to review legislation and the results may well be contained in shorter documents such as circular letters. The general chapter might also issue a document on some important issue which affects the whole institute, such as suggesting a common stand on a matter of justice or crisis in the world. Although important, these documents do not have the same stability as constitutions and directory.

In addition to the documents produced by the general chapter, each province might have texts which relate to itself alone. One such text might be the procedure to be followed in the province for the election/selection of provincial and local superiors and council members. This could be the implementation of the constitutional norm which allows such a matter to be decided regionally. Another area which might warrant a provincial text could be formation. Differing requirements, for example, those of missionary regions might be better accommodated by a plan produced at the level of need. Another provincial text could deal with the apostolate of the province, establishing areas of priority, norms for personnel, and so forth.

There is no question here of producing texts which are in opposition to the constitutions and directory; such a policy would be a violation of the unity

necessary in an institute. But it would be foolish and undesirable to impose a uniformity in matters which, of their nature, have different facets. A proper decentralisation consists, not in depriving superiors of legitimate authority, but in meeting needs, as far as is possible, at the level they occur and in the manner best suited to the locale and situation. Such a policy also fits in with the wisdom of integrating the activity into the local Church.

3. Some Practical Issues related to the Exercise of Internal Authority

The responsibility for the exercise of authority lies, primarily, with legitimate superiors and chapters. But that these should operate in a vacuum, would indeed be a travesty of authority. However, it is not always easy to determine the most appropriate form of integration of members into the structures of authority. An attempt will now be made to examine some of the problems which arise.

a) Participatory Structures

If participatory groups, apart from the chapter and council, were virtually unknown before the council, the same cannot be said today. Many institutes, indeed, seem to have exaggerated in the number of groups they have established and one wonders, at times, whether the "tyranny" of the superior has been replaced by the tyranny of the group. Obviously, groups are necessary and desirable but a certain caution would not be out of place, lest a reaction against authoritarianism not result in a worse oppression.

Having said this, there are areas in religious life which call for maximum participation by the members. Or, perhaps, it would be more accurate to say that, while every area of life requires the participation of the members, some require a more organised participation in the form of groups, committees, boards, and so on. Areas which suggest themselves are the apostolate, formation, spiritual discernment and finances. The pooling of expertise as a contribution to the governmental structures of the institute not only facilitates efficient organisation but keeps the members in the stream of development.

It is impossible for the superiors or the chapters to have a first-hand knowledge or experience in every detail which contributes to effective organisation, and the work of expert groups should supply what is lacking. The danger would be if the group took over the role of authority. If, for example, the apostolate group began to mission members, this would be a grave misuse of the superior's authority and the member's obedience. It could well happen that a superior would mission a member according to the recommendations of the apostolate group but the decision would be the superior's and not the group's. This might appear to be an argument on a technicality but it involves the understanding of the theology of obedience and authority. The superior and the chapters are the recipients of Christ's authority, through the mediation of the Church.

In addition to initiating specialist groups, many institutes began to experiment with representative groups for a province where the institute is large enough to be so divided. These were often elected assemblies as distinct from chapters and their role was purely consultative. However, they performed an

increasingly important function as they became focal points for the discussion and development of province policies. Some institutes have maintained the system of having elected assemblies. But if the province assembly begins to double as the province chapter where such exist, there is danger of confusion. A chapter is a group called together for an immediate purpose; it is not intended to be an on-going structure. If in apostolic institutes, the chapter is on-going or permanent, it becomes a threat to the authority of the legitimate superior. In addition, the members of the assembly, who have a longer or shorter tenure, according to the rules, may not be the persons one would want to form a general chapter. A sister who was considered a suitable candidate might not be so acceptable two or three years later but the province can do little in such a situation.⁴⁷

On the other hand, some institutes have abandoned the elected province assembly for the open assembly. Everyone is free to attend, which can make it unwieldy unless carefully handled. But in general the systems works well and institutes have seen significant developments in terms of responsible leadership, personal growth and interpersonal relationships, and constructive policies. One problem which can arise is when a province is also committed to having a provincial chapter for the election of delegates to the general chapter. The temptation is to use the province assembly as the chapter for that occasion, but,

⁴⁷ Cf. Code Fundamental des Servantes du Saint-Coeur de Marie, articles 145-151, pp. 41-42, where the Congregation seems to have done the opposite by keeping the regional chapter members as a consultative body called the assembly, for the duration of the regional superior's term of office. Its role includes preparation for the next general chapter, but also the promotion of the life of the region. It is unclear what happens if its mandate comes to an end in the middle of the period between general chapters. It hardly seems likely that one would form a regional chapter too far in advance, yet the region will lack an assembly otherwise.

unless the whole province is present, this will not safeguard the voting rights of absentees, who will, thus, not have been able to elect to the general chapter. If a province wishes to continue with the province assembly, even as the preparation for a general chapter, it might be wise to separate the election of delegates from the discussion of other matters, and make provision for the election to the general chapter by means of a province-wide postal vote. The constitutions should establish some policy about chapters and provincial structures.

Some religious may feel that the Code has not been sufficiently insistent on the formation of participatory groups. CIC (1983), canon 633 § 2 requires that means of participation and consultation be initiated and used. This seems to be as far as a Code should go. It is up to the institute itself to decide how to implement this norm, depending on its size, geographical distribution, and so forth. The constitutions should even express norms on this point in very general terms. It would be a mistake to tie an institute to forms which could become quickly outdated. In fact, a look at constitutions recently approved will reveal that institutes are being very cautious. This is wise as the best place to make detailed structures is at the province level, where they can be changed and modified, as need arises. But many people who feel that participative structures will only be convoked on a sporadic basis would be happy to see a general norm which obliges to some form of province representation on a large scale. This would protect the rights of the members and give them a voice on policies.

One congregation which has made provision for greater participation in policy-making, is the Missionary Oblates of Mary Immaculate. The constitutions

oblige the provincial superior, in council, to "set up committees and organize various meetings of a consultative nature, according to the needs and possibilities" with the purpose of "greater participation by the entire province."⁴⁸ This norm ensures participation while leaving the precise form of such to particular circumstances. In larger provinces, the structures can even be established for districts or part of the territory.

If particular law is to belong truly to an institute, it must express what the institute wants, within the context of the universal law. This matter of participatory structures is one which the institute must develop for itself, in the light of its own experience and aspirations. To impose anything beyond the general exhortation in the common law, would be to lay burdens on institutes and risk an undesirable uniformity.

b) The Role of the Superior

One of the most delicate issues in contemporary religious life is the determination of the role of the superior. Authority in general is problematic but the principle of authority, as indicated earlier,⁴⁹ is fraught with difficulties. We sometimes find a strong reaction against the authoritarianism of the past which has sometimes resulted in a rejection of authority itself. The idea that authority can belong to one person is difficult for many to grasp.

⁴⁸ Constitutions and Rules of the Congregation of the Missionary Oblates of Mary Immaculate, article 103, p. 113.

⁴⁹ Cf. supra, pp. 209-210.

We have tried to indicate the benefits of personal authority.⁵⁰ That it exists, has been affirmed repeatedly in the Council and, again, in the new Code.⁵¹ But the terms in which the Council and the Code speak of superiors, certainly do not show a policy of authoritarianism. On the contrary, the accent has been on care, concern and genuine service.⁵² In addition, the fact that the Code itself imposes the intervention of the council, either by consent or advice, provides a check on the superior's activity.

There has been wide experimentation in the area of superiors. There have been differences at the local level and at the level of major superiors. Both of these will be considered separately.

i) General and Provincial Level

There has been a strong desire in many congregations to have team government at the general and local level and some have even tried to express this in their draft constitutions in such terms as: "The general government group consists of five members, one of whom is the superior general." Congregations which try to use such a statement will sometimes complete it with another, recognising the personal authority of the superior general and her special canonical

⁵⁰ Ibid.

⁵¹ E.g., PC, no. 14, p. 620 and ET, no. 25, p. 692 and CIC (1983), canon 618.

⁵² E.g., PC, no. 14, p. 619, no. 25, p. 692 and CIC (1983), canons 618 and 619.

functions. But it is obvious that their emphasis is on team style of government and even, where possible, on what is seen as "shared authority". This approach is even more common at the provincial level where some congregations have allowed provinces to have a provincial team, each member of which is given personal authority as well as shared responsibility. As far as can be ascertained, each member of such a team would feel able to give a decision to a religious without consulting the other members, should the need arise. But, in actual fact, any decisions which concern serious matters such as admission to the novitiate, missioning to a house, apostolate, and so on, are not taken independently. In effect, then the action of a team with shared authority is collegial.

The implications of acting collegially at all times are far-reaching. With regard to the team members, there is certainly merit in trying to work together to reach decisions. It seems that women have been more inclined to search for this style of government than were men. It should be stressed, though, that genuine cooperation should be the normal style, whatever the type of government. The fact of acting together is not in question; what is in question, is the obligation to resolve every situation with a collegial vote, secret or otherwise, the logical conclusion to which team government leads.

The merits of the team style, from the point of view of the team members, would seem to lie in the support of each other. No one person is responsible for a decision; inevitably, a matter will have received a measure of discussion. This ought to ensure more willing acceptance of decisions since the method of arriving at them will be known by the members of the community. This

is always encouraging for superiors. But surely, this co-operation is perfectly possible and desirable when the government style consists of a superior and a council. If the members of a congregation wish the maximum discussion and co-operation for important decisions or even for lesser ones, they are at liberty to insert the appropriate measure in the constitutions and directory. If congregations have successfully introduced the collegial type of government into their structures, surely they can provide for collaborative styles which will be just as adequate. It does not seem to be beyond the realms of possibility and it is certainly within the demands of the Code.

If there are advantages in the collegial system for the team, there are serious disadvantages and these become obvious when one considers the effect of their activity on individual members. Although members might be happy to think that their needs have been met by consideration of a question by more than one person, they may also be dismayed at the inevitable delay. Such a result may be hard enough. But what of the religious who does not want the entire group to consider a request or problem? If the governmental structure is collegial, she has no option. This is where there is grave danger of injustice, and this is why the Code does not countenance collegial structures of government.

The duty of the law is to protect rights. The imposition of a collegial type of government would not protect the individual's right to privacy. In some cases, it would also not protect the community. If, for example, a person who had legitimately left the congregation, wished to return and the team voted to allow this, the person could return. But, in cases of government with a council, if the

superior had proof that the return of this person would damage the community but was not free to divulge the details, she could decline to act on the council's assent. By her personal authority, she could protect the community, which would not be possible if the decision had been made collegially.

In view of the fact that the Code maintains personal authority, for excellent reasons, it would, perhaps, be wiser if congregations laid more stress on norms which would ensure a maximum of collaboration, without infringing on rights.

ii) Local Level

If experimentation in governmental styles at the general and provincial level has been significant, that at the local level has been dramatic. It was becoming more and more common to find local communities with no resident superior or even, no local superior at all. Some recent researches in the United States indicate that, among congregations of women, 25% have no local superiors and another 50% have no local superiors in some of their houses.⁵³ This makes a staggering 75% where the absence of a local superior has become for some an accepted practice.

⁵³ As yet, these are unpublished statistics. However, the report on the Sisters' Survey, 1980, published by the National Assembly of Women Religious, in Probe, 9(1981), pp. 1-7, indicates that "only 10% of the sisters surveyed affirm a preference for obedience to a duly designated authority figure as the best form of governance; nor is delegated authority the primary preference; preference goes to committees researching, forums held and full membership deciding" (p. 4).

In a survey conducted in Britain in 1982, among congregations of women, the 50% response indicated that only 10% of the local communities were without local superiors and most of these belonged to two congregations.⁵⁴ This is a significant difference from the United States scene. In Canada, there seems to be a pattern of having local superiors and some non-resident superiors.⁵⁵

These facts show a change in community accountability. They do not indicate whether the new structures are effective. One does hear of problems connected with the absence of a focal person in the community, such as lack of communication between local communities, little spiritual and social life together, and establishment of pressure groups. The tendency not to want resident superiors must be connected with the size of the communities, at least to some extent. A variety of non-convent-based apostolates has resulted in much smaller communities and, naturally, the necessity for a resident superior for two or three persons, does seem unrealistic. However, one wonders whether suitable alternatives have been sought out and found.

⁵⁴ This was a private survey I conducted through the medium of the Major Religious Superiors of Britain. Ninety-nine major superiors replied, representing 50% of those circulated and the number of local communities involved was one thousand.

⁵⁵ Statistics in two documents issued recently by the Canadian Religious Conference indicate that 70% of religious communities have local superiors and 30% use collegial government. It was not clear to the writers whether local superiors were resident or non-resident. The survey covered male and female religious communities. Cf. K. O'Toole, Community Living in Canada, p. 8 and L. Labonté, The Future of Community Life in Canada, pp. 24-25 for further details.

One alternative in use is providing for accountability of local communities directly to the provincial superior. This is a questionable practice for at least two reasons. First of all, it places a heavy burden on the provincial superior, who already has other responsibilities for the entire province. Secondly, it violates the principle of subsidiarity by obliging her to make decisions which could have been made by a local superior.

Sometimes, the accountability of the local community is to a provincial councillor who is asked to have a special care for a certain geographical area. In theory, this seems a good idea but, unless this councillor is also officially given authority for the communities (that is, as a local superior for these communities), the making of decisions usually lands again in the provincial superior's lap.

It seems obvious that these alternatives are not entirely satisfactory and this could well be caused by an insufficient understanding of the role of the local superior. First and foremost, her office obliges her to the care of each member of the community, as a person and within the group. She herself, is part of that group, not outside it. A genuine grasp of this fact may help to put to rest the ghosts of the past, when the superior was often seen as "apart" from the group, not "a part" of it.

It could be helpful to spell out in more detail how the local superior might fulfil her duty. It will be seen that direct administration does not predominate, since this can be delegated to other members who may well be more skilled in these fields. The day has surely gone when a superior would be expected to be

proficient in everything. In fact, too much preoccupation with the minutiae of administration probably contributed to the present dissatisfaction with authority.

Personal Duties of the Local Superior

1. To promote fidelity to the constitutions;
2. To help to unify the community and to foster an atmosphere in which each member may grow to her full stature in Christ and be increasingly open to the needs of the People of God;
3. To grow with the community in an understanding of shared responsibility;
4. To share responsibility for arriving at decisions with the members;
5. To promote the spiritual, human, professional and psychological development of the members;
6. To safeguard the rights of each member within the context of the community and to ensure that the rights of the community itself are respected;
7. To be available to the members, especially for guidance in realising their apostolic vocation;
8. To ensure regular community meetings;
9. To hold a council meeting every month;
10. To ensure that the goals and policies of the community are reviewed annually;
11. To provide for community celebrations, both spiritual and temporal;
12. To arrange with the members, the filling of community offices and a convenient horarium;

13. To dispense members occasionally and for serious reasons, from some point of the constitutions or rules which is not covered by the common law;
14. To discuss with the members concerned, absences from the community, for reasons other than the normal daily apostolate, etc.;
15. To ensure that all documents concerning the community, such as house chronicles, details of contracts, decrees, inventory of temporal goods, etc., are carefully preserved in the archives;
16. To maintain close bonds with the intermediate level and be prepared to give an account of the state of the community when asked for it;
17. To maintain close bonds with the other communities of the province or region, especially with those near at hand.

This list is by no means exhaustive; it can easily be adjusted to suit an individual institute. It is intended to illustrate that the local superior need not be a dictator as so many fear, but a sister among sisters, with a special role of caring personally for each.

It is accepted that such a superior need not, necessarily, be resident, provided the above duties can be fulfilled easily. Resident superiors are not always possible, because of the small number of members in a house and the demands of the apostolate. The Apostolic See has shown no major objection to the existence of non-resident superiors, as can be seen from the constitutions recently approved, even though the new Code prescribes residence in the community (CIC (1983),

canon 629). A few examples taken from articles which have been presented and approved will illustrate this point.

1. In those cases where a community does not have a resident local superior, the sisters relate to a superior designated by the proper authority. This superior maintains close contact and helps the sisters to foster union with Christ, mutual support, and apostolic spirit.⁵⁶
2. When circumstances do not allow or require the canonical erection of a religious house, a residence may be established by the general superior with the consent of her council. The sisters residing there are subject to a local superior appointed by the general superior.⁵⁷
3. Residences and groups of religious are confided to a person in charge whose powers are those of a local superior.⁵⁸
4. Members of the institute live community in different ways. Some live in canonically established houses entrusted to a superior. Others live in residences entrusted to a Director. Still others live alone because of the mission. In this latter case, they are either united in a district under the responsibility of a superior, or assigned to a house or residence.

Residences are either autonomous or attached to a house or district.

Whatever is stated in the Constitutions and Rules about local superiors applies also to directors and district superiors, saving exceptions foreseen by the Church's common law or by the particular statute of the residence or district.⁵⁹

It will be noticed that the last two articles are specific about the power of the person responsible for a residence or group of religious.

⁵⁶ Constitutions and Statutes of the Institute of the Sisters of Charity of Montreal, no. 20, p. 41.

⁵⁷ Constitutions of the Sisters of St. Martha, Prince Edward Island, article 109, p. 36.

⁵⁸ Ordonnances des Soeurs de Notre-Dame de Perpetuel-Secours, no. 111, p. 30: "Les residences et les regroupements de religieuses sont confies à une responsable dont les pouvoirs sont ceux d'une supérieure."

⁵⁹ Constitutions and Rules of the Congregation of the Missionary Oblates of Mary Immaculate, article 77, pp. 88-89.

From a reading of the constitutions approved, it would seem that non-resident superiors would tend to be the exception. It remains to be seen what the Apostolic See would say about congregations, or at least, provinces, where such a structure would be the rule. One could easily have a province where authority for the local communities rests in a network of local superiors who are each responsible for a number of communities, preferably in the same geographical area. There are few reasons to oppose this system which may well at times be necessitated by the apostolate. The principle to be observed is that each community should be accountable to a superior, legitimately designated for it, either alone or in conjunction with other communities.

Conclusion

There are no easy answers to the problems of authority. The common law has the responsibility to provide protective norms without stifling initiative or development. The particular law has the duty of developing structures which help the institute to witness to the values of religious obedience, commitment and collaborative action. But it must avoid enshrining in a law, an experiment such as shared personal authority (as distinct from sharing in personal authority by delegation), which has not yet been proved a value and a workable structure throughout the whole institute. Otherwise, the reality that law follows life and experience would have no meaning. It should always be remembered that the law is not the only discipline which shapes an institute. It is to be used along with theology and psychology and other sciences which contribute to the welfare of

humanity. We might sum up with the words of Robert Soullard, contained in an excellent article, recently published:

By its objective worth, the law is opposed to the arbitrary. Imagination certainly gives charm to communities and it is often necessary for creation. But if it engenders chaos, it no longer serves people. If the powers of superiors are indeterminate, let us fear authoritarianism and the arbitrary, the taking of control by natural leaders or the sweet fantasy of which we have spoken. If the rules for elections are not wise, let us fear the day when we find ourselves in situations blocked because of the diversity of opinions, pressure groups and tensions, etc. The law favours liberty of expression and helps resolve delicate situations in justice and equity. Experience has shown that the absence of a minimum of precise structures does not always lead to the liberty and fraternal life one had wished for. Charity goes farther than law, but it has law as a support and instrument.⁶⁰

60 R. Soullard; "Le droit et la vie" in Vie Consacrée, 55(1983), p. 137. The text reads: "Par sa valeur objective, le droit s'oppose à l'arbitraire. La fantaisie fait certes le charme de communautés et elle est souvent nécessaire à la création. Mais, si elle engendre la pagaille, elle ne sert plus les personnes. Si les pouvoirs des responsables sont indéterminés, craignons l'autoritarisme et l'arbitraire, la prise en main par des leaders naturels, ou la douce fantaisie dont nous venons de parler. Si les règles des élections ne sont pas sages, craignons qu'un jour on se trouve devant des situations bloquées en raison de la diversité des opinions, de la présence de groupes de tendances, de l'existence de tensions, etc. Le droit favorise la liberté d'expression et aide à sortir, dans la justice et l'équité, de situations plus délicates. L'expérience a montré que l'absence d'un minimum de structures précises ne conduit pas toujours à la liberté et à la vie fraternelle que l'on avait souhaitées. La charité va plus loin que le droit, mais elle a le droit pour appui et instrument."

CONCLUSION

This study has shown that both the Council and the new Code have upheld certain ecclesial traditions with regard to authority and obedience. One of these relates to the personal authority of the superior, received from God, through the mediation of the Church. Another is the central place of obedience in the life of the religious.

But the Church has also introduced new values into its law. The necessity for the members to participate in decision-making is perhaps the most obvious one. In addition, although hardly an innovation in principle, the clear articulation of the importance of human dignity provides a new emphasis.

It is impossible to create new styles of government without taking all these factors into account. It might be asked who is responsible for the form of government in any institute. The answer surely lies in CIC (1983), canon 586 which says explicitly that each institute has a legitimate autonomy, especially in the matter of governance, which enables it to enjoy its own discipline and preserve its own patrimony. This seems to be a clear mandate to each institute to determine its own structure, in accord with the basic principles of the Code, which exist to ensure protection of all concerned.

It is, perhaps, too soon to say which structures are the most appropriate for an institute. Not all institutes will opt for the same pattern. Nor should they, since the forms chosen must be in accord with the life experience of the particular institute.

But whatever form is chosen, many women religious may feel some unease about the question of personal authority. The very word "superior" has for a certain segment connotations of authoritarianism which many want to forget so much, they even refuse to consider the question. Yet this need not be so.

Who is the superior? She is certainly not a "superior" over "inferiors". Rather, she is one of the members, a sister like the others, to whom has been given the role of authority in the community, to be exercised according to the constitutions. The context of her authority should never be forgotten. Her mandate is not one of innovation but of guardianship and challenge, in accord with universal and particular law.

If we accept the biblical understanding of obedience as "hearing" and "doing", we shall see that all members of an institute, including superiors, are called to search for the will of God for that institute. There is never any absolute guarantee that God's will shall be found, but the results of an institute's best efforts to find what God is asking become crystallised in the constitutions and other rules. The task of the superior is to assist each sister in living her commitment to God as expressed in the observance of these laws. The superior must be as obedient as the sisters whom she challenges to constant fidelity. It should be remembered, moreover, that any member of a community can in due course challenge to fidelity and growth according to personal conviction and competence but for the superior, this remains the primary role.

Leadership in a community is a crucial issue. It goes beyond an understanding of the role of the superior who will exercise one kind of leadership, but not the only one. The very emphasis on participation highlights the possible existence of other forms of leadership and the responsibility of each person to share in the achievement of a common goal.¹

Religious should recognise the freedom which the law gives. The fact that a superior has personal authority does not oblige to the constant use of it; it means that she can use it when circumstances make it necessary and desirable. The current reaction against authority noticed in some places is probably a rejection of abuses and the misuse of authority and it should be recognised as such. It should not mean that the right use of authority is irrelevant.

Of its nature religious life is charismatic and any imposition of provisions should be seen as protections for the charisms. Religious should not build their lives around these laws. Rather, they should concentrate on the central aspects of religious consecration which are protected by the law.

¹ In a recent book by Lillianna (Audrey) Kopp, entitled Sudden Spring: Sixth Stage Sisters, one has the impression that canon law is only giving a lip-service to participation. She speaks of a "continued authoritarian model of obedience" (p. 103) and implies that the last twenty years have seen no progress in the area of obedience and authority. While problems remain, they are hardly as serious as this author seems to suggest. It is difficult to assess what the author is trying to prove. For example, many of the points made about the vows (whatever their title) are found in religious institutes canonically erected (pp. 98-105). What does seem clear is that the author fails to recognise the value of the protection given by the law.

This study has attempted to show that religious authority does not exist in a vacuum. It is woven into a context which takes account of historical factors, past, present and future, as well as of theological foundations, without which law would have no true meaning or value. Thus, it seemed useful to give a brief overview of the growth of apostolic religious institutes, before proceeding to conciliar and post-conciliar teaching. The exploration of this teaching established that the principles of human dignity and freedom, obedience and faith, and genuine participation must inspire the exercise of authority.

It was necessary, then, to see how the revised Code incorporated these principles into the law of the Church. It can be said that Vatican II principles have been translated into canons which provide for new and more effective structures, both outside and within an institute.

To illustrate the heightened awareness of the mission of religious within the Church, particular emphasis was laid on the role of the local Ordinary, and in particular of the Episcopal Vicar for Religious, as well as on the importance of drawing up working contracts between the bishop and the institute when religious are engaged in diocesan apostolates. To complete this section, it seemed worthwhile to examine the legislation regarding houses and residences in the light of the revised Code and its implementation of the practice of the Apostolic See, since modern conditions have greatly affected community life-styles.

The study has then concluded with an examination of internal structures, showing that the pastoral role of the superior, especially at the local level, has

been greatly emphasised and that participation of members in the life of the institute is not only desirable but necessary. These points led to a fuller treatment of the office of the superior, as well as to a consideration of structures which would make participation a reality. Highlighted were the responsibilities of the general chapter, the extended council and other executive committees. Finally, it should not be forgotten that the freedom to develop new structures is made possible by a greater emphasis placed on the role of particular law; thus, some consideration was given to the various legislative texts of an institute.

Perhaps one could sum up this study by stating that its aim has been to show how the exercise of authority is a service rendered by external and internal superiors and structures, informed by basic principles which can never be disregarded. If religious build up the whole fabric of consecrated life, with positive attitudes to the dignity and freedom of the human person, to obedience in faith and to participation in love and communion, the question of authority will take its rightful place as a service given to the community by some of its members. In the revised Code of 1983, faithful to the precepts of Vatican II, the Church has pronounced its approval of such a programme.

...it is sufficiently clear that the purpose of the Code is not in any way to replace faith, grace, charisms and above all charity in the life of the Church or of Christ's faithful. On the contrary, the Code rather looks towards the achievement of order in the ecclesial society, such that while attributing a primacy to love, grace and the charisms, it facilitates at the same time an orderly development in the life both of the ecclesial society and of the individual persons who belong to it.²

² JOHN PAUL II, Apostolic Constitution "Sacrae Disciplinae Leges", January 25, 1983, introducing the 1983 Code of Canon Law. This excerpt is taken from the English translation of the 1983 Code prepared by the Canon Law Society of Great Britain and Ireland, p. xiii.

BIBLIOGRAPHY

SOURCES

Acta et Decreta Concilii Plenarii Americanae Latinae in Urbe celebrati Anno Domini, 1899, Rome, Typis Vaticanis, 1902, vii-462p.

BENEDETTI, C., C.Ss.R., Sulla dipendenza dei Pii Istituti dalla Giurisdizione degli Ordinarii Diocesani, Rome 1899, (Archives of the Sacred Congregation for Religious and Secular Institutes).

BIZZARRI, A., ed., Collectanea in usum Secretariae Sacrae Congregationis Episcoporum et Regularium, Rome, Typographia Polyglotta S.C. Propaganda Fide, 2nd. ed., 1885, xi-881p.

Canones et Decreta Sacrosancti Oecumenici Concilii Tridentini sub Paulo III, Julio III et Pio IV Pontificibus Maximis cum appendice theologiae candidatis perutili, ed. novissima, Roma, Typographia Polyglotta S.C. de Propaganda Fide, 1904, xix-551p.

Codex Iuris Canonici, Pii X Pontificis Maximi iussu digestus, Benedicti Papae XV auctoritate promulgatus, Romae, Typis Polyglottis Vaticanis, 1917, vi-916p.

Codex Iuris Canonici, auctoritate Ioannis Pauli PP.II, promulgatus, Vatican City, Libreria Editrice Vaticana, 1983, vii-317p.

Leo XIII, Constitution, Conditae a Christo, December 8, 1900, in Acta Sanctae Sedis, 33(1900), pp. 341-347.

Magnum Bullarium Romanum, Bullarium Privilegiorum ac Diplomatum Romanorum Pontificum Amplissima Collectio, Graz, Austria, Akademische Druck - u - Verlagsanstalt, 1964-1966, 18 tomes in 32 vols.

Magnum Bullarium Romanum, Bullarium Privilegiorum ac Diplomatum Romanorum Pontificum Amplissima Collectio, Benedicti Papae XIV, Graz, Austria, Akademische Druck - u - Verlagsanstalt, 1964-1966, 4 tomes in 2 vols.

PAUL VI, "Allocution to the International Congress of Canonists - Canon Law Renewal in the Light of Vatican II", in The Pope Speaks, 15(1970-71), pp. 70-74.

-----, "Allocution to the Sacred Roman Rota - Law at the Service of Truth", in The Pope Speaks, 16(1971-72), pp. 71-78.

PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECOGNOSCENDO,
Communicationes, Romae, 1969-

-----, Schema Canonum de Institutis Vitae Consecratae per Professionem Consiliorum Evangelicorum, Washington, D.C., Publications Office of the United States Conference, 1977, xxv-73p.

-----, Schema Codicis Iuris Canonici, (Patribus Commissionis Reservatum), Libreria Editrice Vaticana, 1980, xxiii-382p.

-----, Relatio: complectens synthesim animadversionum ab em. mis atque exc. mis Patribus Commissionis ad Novissimum Schema CIC exhibitarum, cum responionibus a Secretaria et consultoribus datis, (Patribus Commissionis stricte reservata), Citta des Vaticano, Typis Polyglottis Vaticanis, 1981, 359p.

SACRED CONGREGATION FOR BISHOPS AND REGULARS, Normae secundum quas Sacra Congregatio Episcoporum et Regularium procedere solet in approbandis novis institutis votorum simplicium, Romae, Typis S.C. de Propaganda Fide, 1901, 59p.

SACRED CONGREGATION FOR RELIGIOUS, Normae secundum quas Sacra Congregatio de Religiosis in novis religiosis congregationibus approbandis procedere solet, Romae, Typis Polyglottis Vaticanis, 1922, 16p.

SACRED CONGREGATION FOR RELIGIOUS AND SECULAR INSTITUTES, "Essential Elements in the Church's Teaching on Religious Life as applied to Institutes dedicated to Works of the Apostolate", in Origins, 13(1983), pp. 133-142.

-----, "Enlarged General Council", in Consecrated Life, 2(1978), pp. 149-151.

-----, "Nature and Purpose of General Chapters", in Consecrated Life, 2(1978), pp. 176-185.

-----, "Regarding Small Communities", in Consecrated Life, 1(1977), pp. 141-149.

-----, "The General Chapters since the Council", in Consecrated Life, 3(1979), pp. 63-76.

-----, "The Role of Conferences of Major Religious Superiors (Men & Women) in the Light of Mutuae Relationes", in Religious Life Review, pp. 212-216.

SACROSANCTUM OECUMENICUM CONCILIUM VATICANUM II, Constitutiones, decreta, declarationes Cura et studio Secretariae Generalis Concilii Oecumenici Vaticani, Romae, Typis Polyglottis Vaticanis, 1966, xxiv-1292 p.

CONSTITUTIONS OF RELIGIOUS INSTITUTES

Code Fondamental des Servantes de Saint-Coeur de Marie, Montreal, 1981, 58p.

Constitutions des Religieuses de Notre-Dame du Sacré-Coeur, Archdiocèse de Moncton, Nouveau-Brunswick, Canada, 1982, 79p.

Ordonnances des Soeurs de Notre-Dame du Perpétuel-Secours, Saint-Damien, Bellechasse, 1982, 35p.

Constitutions and Rules of the Congregation of the Missionary Oblates of Mary Immaculate, Rome, 1982, 181p.

Constitutions of the Sisters of St. Joseph of the Diocese of Peterborough, Ontario, 1983, 73p.

Constitutions of the Sisters of St. Martha, Charlottetown, Prince Edward Island, Canada, 1983, 47p.

BOOKS

- AQUINAS, Thomas (St.), The Summa Theologica of St. Thomas Aquinas, literally translated by Fathers of the English Dominican Province, London, Burns, Oates and Washbourne, 1916-1937, 22 vols.
- ARRUPE, P., S.J., The Modern Religious Superior, Ottawa, Canadian Religious Conference, (Dossiers), 1978, 13p.
- BASTIEN, P., O.S.B., Directoire Canonique à l'usage des Congrégations à Voeux Simples, d'après les plus récents documents du Saint-Siège, Maredsous, Abbaye de Maredsous, 1904, vii-442p.
- BEYER, J., S.J., Vers un nouveau droit des instituts de vie consacrée: commentaire du Projet et premières observations. (Traduit en français par Sr. Marie-Josèphe Lucas), Paris, Editions St. Paul, 1978, 352p.
- BOUSCAREN, T.L., S.J. and ELLIS, A.C., S.J., Canon Law. A Text and Commentary, Milwaukee, Bruce Publishing Co., 1957 (3rd ed.), vii-980p.
- , and O'CONNOR, J.I., S.J., Canon Law Digest, Milwaukee, Bruce Publishing Co., 1934- , 9 vols.
- , Canon Law Digest for Religious, Vol. I, 1917-1963, Milwaukee, Bruce Publishing Co., 1964, v-656p.
- CALLAHAN, F.J., S.J., The Centralisation of Government in Pontifical Institutes of Women with simple vows (from their beginnings till the legislation of Leo XIII), Rome, Gregorian University, 1948, 112p.
- CANADIAN RELIGIOUS CONFERENCE, New Orientations in the Government of Religious, Ottawa, Canadian Religious Conference, Donum Dei Series, No. 12, 1967, 235p.
- , Study on Working Contracts for Religious engaged in Pastoral Activity, Ottawa, Canadian Religious Conference, 1977, 49p.
- CAPPELLE, C., Le voeu d'obéissance des Origines au XII^e Siècle, Paris, Librairie générale de droit et jurisprudence, R. Pichon et R. Durand-Auzias, 1959, 261p.
- CATHOLIC UNIVERSITY OF AMERICA, New Catholic Encyclopoedia, Washington, D.C., McGraw-Hill, 1966, 1967, 1978, 17 vols.
- DE CHARRY, J., R.S.C.J., Histoire des Constitutions de la Société du Sacre-Coeur, Seconde Partie, Les Constitutions Définitives et leur Approbation par le Saint-Siège, Rome, Typis Pontificiae Universitatis Gregorianae, 1979, 3 vols.

- THE CODE OF CANON LAW, in English translation, prepared by the Canon Law Society of Great Britain and Ireland in association with The Canon Law Society of Australia and New Zealand and the Canadian Canon Law Society, London, Collins, 1983, vii-319p.
- CREUSEN, Joseph, S.J., Religious Men and Women in the Code, 4th English Edition, revised and edited to conform with 5th French Edition by Adam C. Ellis, S.J. and translated by Edward F. Garesché, S.J. Milwaukee, Bruce Publishing Co., 1940, v-314p.
- DINN, M.J., P.B.V.M., ed., TESSIER, L., P.M., COURNEENE, E., G.S.I.C., Canonical Documentation in Consecrated Life, (1963-1976), Ottawa, St. Paul University, 1977, i-451p. (private circulation).
- DORTEL-CLAUDOT, M., S.J., What should be included in the New Constitutions, Paris, Centre Sèvres, 1977, 113p.
- FANFANI, L., and O'ROURKE, K., Canon Law for Religious Women, Dubuque, Iowa, Priory Press, 1961, xxiii-393p.
- FLANNERY, A.P., ed., Documents of Vatican II, Grand Rapids, Eerdmans, 1978, 2nd ed., v-1062p.
- GAMBARI, E., Unfolding the Mystery of the Religious Life, translated and abridged by Mary Magdalen Bellasis and others, Boston, St. Paul ed., 1974, 280p.
- GANSS, G.E., ed., Jesuit Religious Life Today. The Principal Features of its Spirit, in excerpts from Papal Documents, St. Ignatius' Constitutions, the 31st and 32nd General Congregations and Letters of Father General Pedro Arrupe, St. Louis, Institute of Jesuit Sources, 1977, 180p.
- HEBBLETHWAITE, P., S.J., Understanding the Synod, Dublin & Sydney, Gill & Son, 1968, 178p.
- HEIMBUCHER, M., Die Orden und Kongregationen Der Katholischen Kirche, 3, gossenteile neubearbeitete, Auflage, Paderborn, F. Schoningh, 1933-1934, 2 vols.
- KINDT, G., C.Ss.R., De Potestate Dominativa in Religione, Dissertatio historico-canonic, Bruges, Desclée de Brouwer, 1945, xxxviii-363p.
- KOPP, L(A), Ph.D., S.F.C.C., Sudden Spring: Sixth Stage Sisters, Trends of Change in Catholic Sisterhoods, A Sociological Analysis, Waldport, Oregon, Sunspot Publications, 1983, 107p.
- LABONTÉ, L., F.I.C., The Future of Community Life in Canada, Ottawa, Canadian Religious Conference, 1982, 55p.

- LANSLOTS, D.I., O.S.B., Handbook of Canon Law for Congregations of Women under Simple Vows, 4th enlarged edition, New York, F. Pustet, 1910, 299p.
- LESAGE, G., O.M.I., L'accession des congrégations à l'état religieux juridique, Ottawa, University of Ottawa, 1948, 300p.
- LEWIS, G., C.P., Chapters in Religious Institutes. An Historical Synopsis and Commentary, Washington, D.C., Catholic University of America, xii-169p.
- LINSCOTT, M., S.N.D. de N., Towards Revised Constitutions, 1976, private circulation, 33p.
- MEISSNER, W.W., The Assault on Authority. Dialogue or dilemma?, Maryknoll, Orbis Books, 1971, 320p.
- O'TOOLE, K., S.C., Community Living in Canada, Ottawa, Canadian Religious Conference, 1981, 17p.
- SCHAEFER, T., O.F.M. Cap, De Religiosis ad normam codicis iuris canonici, 4th edition, Vatican City, Typis Polyglottis Vaticanis, 1947, vii-1214p.
- SIMON, Y.R., Nature and Functions of Authority, Milwaukee, Marquette University, 1940, 75p.
- SUAREZ, F., S.J., Opera Omnia, Editio nova a M. André et Carolo Berton juxta editionem venetianam XXIII tomos in formo continentem accurate recognita, Paris, L. Vives, 1856-1878, 28 vols.
- TILLARD, J.M.R., O.P., The Gospel Path: The Religious Life, Brussels, Lumen Vitae, 1977, 229p.
- VERMEERSCH, A., S.J., De Religiosis Institutis et Personis; Tractatus Canonico-Moralis ad recentissimas leges exactus, altera editio, auctior et accuratior, Bruges, C. Beyaent, 1907-1909, 3 vols.
- , and CREUSEN, J., S.J., Epitome Iuris Canonici, cum Commentariis ad scholas et ad usum privatum, 5th ed., auctior et accurate recognita, Mechliniae-Romae, H. Dessain, 1933-1936, 3 vols.

ARTICLES

AGNEW, F.H., "Obédience: A New Testament Reflection", in Review for Religious, 39(1080), pp. 409-418.

ARRUPE, P., S.J., "Les petites communautés", in Vie Consacrée, 48(1976), pp. 113-116.

BARKER, A., "The Superior and Government: Some Reflections on The Superiorless Community", in Clergy Review, 57(1972), pp. 35-40.

BASSETT, W.W., "The Office of Episcopal Vicar", in The Jurist, 30(1970), pp. 285-313.

BEYER, J., S.J., "Droit ancien, droit nouveau", in Vie Consacrée, 55(1983), pp. 157-172.

-----, "Institutes of Perfection in the New Law of the Church", in Supplement to the Way, 13(1971), pp. 87-115.

-----, "Le deuxième projet de droit pour la vie consacrée", in Studia Canonica, 15(1981), pp. 87-134.

-----, "Participation Structures", in Supplement to the Way, 21(1974), pp. 70-88.

-----, "Religious Life or Secular Institute", in Supplement to the Way, 7(1969), pp. 112-135.

BOISVERT, L., O.F.M., "Autocratie, démagogie ou corresponsabilité?", in La Vie des Communautés Religieuses, 25(1967), pp. 226-242.

-----, "Responsable de communauté locale", in La Vie des Communautés Religieuses, 30(1972), pp. 2-14.

-----, "The Nature of Religious Authority", in Review for Religious, 24(1954), pp. 34-54.

BOYLE, P.M., C.P., "Experimentation", in Review for Religious, 27(1968), pp. 518-534.

-----, "Small Community Experiences", in Review for Religious, 30(1971), pp. 384-391.

-----, "Understanding Legislation for Religious", in Sisters Today, 44(1972-73), pp. 70-83.

CANON LAW SOCIETY OF AMERICA TASK FORCE, "The Schema of Canons on Institutes of Life consecrated by profession of the Evangelical Counsels", in Proceedings, 39(1977), pp. 98-111.

- CERLETTY, M., "Some Practical Help for the Development of Constitutions", in Studia Canonica, 14(1980), pp. 155-170.
- CHABOT, R.H., "Re-examining Community Government", in Review for Religious, 26(1967), pp. 261-281.
- CLARKE, T.E., S.J. "Religious Community", in The Way, 10(1970), pp. 103-112.
- CONGAR, Y., O.P., "Autorité, initiative, corresponsabilité", in La Maison Dieu, 97(1969), pp.34-57.
- CORBISHLEY, T., S.J., "Power and Authority", in The Way, 3(196), pp. 285-293.
- DE COUESNONGLE, V., O.P., "Participation in Government: Experimentation", in Supplement to the Way, 21(1974), pp. 89-104.
- CREUSEN, J., S.J., "La clôture", in Revue des Communautés Religieuses, 15(1939), pp. 11-21, 38-45, 81-84.
- , "Les Instituts Religieux à Voeux Simples", in Revue des Communautés Religieuses, 16(1940), pp. 52-63, 17(1945), pp. 34-43.
- DEMPSEY, P.J.R., O.F.M. Cap., "Psychology and Religious Leadership", in Supplement to Doctrine and Life, 13, No. 60(1975), pp. 50-60.
- DESMOND, H., "Religious Life in England and Wales", in Religious Life Review, 22(1983), pp. 192-202.
- DORTEL-GLAUDOT, M., S.J., "L'obéissance dans les nouvelles constitutions des instituts religieux de vie active", in Vie Consacrée, 48(1976), pp. 285-295.
- FABRINI, J.B., "Fraternitas et principium hierarchicum in statibus perfectionis", in Monitor Ecclesiasticus, 101(1976), pp. 61-69.
- FAGAN, S., S.M., "Leadership and Religious Life Today", in Supplement to Doctrine and Life, 13, No. 59(1975), pp. 27-43.
- FINK, P., S.J., "Religious Obedience and the Holy Spirit", in Review for Religious, 30(1971), pp. 64-79.
- FORD, N.M., "Why Religious revised their Constitutions", in Review for Religious, 42(1983), pp. 218-225.
- FRISON, B., C.M.F., "Renewal of Religious", in Studia Canonica, 1(1967), pp. 45-78.
- , "The Challenge of Change. Renewal of Structures of Government in Religious Institutes", in Studia Canonica, 1(1967), pp. 223-243.

- GAMBARI, E., S.M.M., "How to read Mutuae Relationes", in Supplement to Doctrine and Life, 19, No. 81(1979), pp. 21-28.
- GALLEN, J.F., S.J., "Canon Law for Religious after Vatican II", in Review for Religious, 36(1977), pp. 133-146, 38(1979), pp. 48-77.
- , "Constitutions and Directory", in Review for Religious, 40(1981), pp. 759-772.
- , "Questions and Answers", in Review for Religious, 38(1979), pp. 130-133.
- , "Religious Obedience in Vatican Council II", in Review for Religious, 26(1967), pp. 242-260.
- GOGGIN, A., R.C., and KNIGHT, D.M., "Towards an Obedience of the Future", in Review for Religious, 32(1973), pp. 798-813.
- GOTTEMOELLER, D., "Religious Government: A Reflection on Relationships", in Review for Religious, 34(1975), pp. 370-379.
- GUAY, A., O.M.I., "La contribution des canonistes à la revision des constitutions des communautés religieuses", in Studia Canonica, 1(1967), pp. 205-221.
- GUTIERREZ, A., "De exclaustatione qualificata", in Commentarium pro Religiosis, 36(1955), pp. 374-379.
- , "Exclaustatio ad nutum Sanctae Sedis", in Commentarium pro Religiosis, 34(1953), pp. 336-339.
- GUTIERREZ, J.L., "Dalla potestà dominativa alla giurisdizione", in Ephemerides Iuris Canonici, 39(1983), pp. 74-103.
- HARVANEK, R., S.J., "The Expectations of Leadership", in The Way, 15(1975), pp. 20-33.
- HENRIOT, J., S.J., "A Renewal of Community Life", in Studies in the Spirituality of the Jesuits, 12(1980), No. 2, pp. ii-4.
- HESTON, E.L., "Some Aspects of Government in Religious Communities", in The Jurist, 19(1950), pp. 35-51.
- HILL, R.A., S.J., "The Community and the Option of Non-Canonical Status", in Review for Religious, 41(1982), pp. 542-550.
- HUGHES, L., S.J., "Revision, the Law and the Chapter", in Supplement to the Way, 36(1979), pp. 58-70.
- INTERNATIONAL UNION OF WOMEN SUPERIORS GENERAL, "Les chapitres généraux aujourd'hui", in U.I.S.G. Bulletin, 59(1982), pp. 32-55. English

translation may be found in Religious Life Review, 22(1983), pp. 24-29, 92-102, 159-167, under the title, "General Chapters and Reform".

KING, G., S.J., "Institutes of Consecrated Life", in Canon Law Society of Australia and New Zealand, An Introduction to the New Code of Canon Law, ed., G. Robinson, 1982, pp. 141-152.

KLEIN, J.L., S.J., "A Small Community Within a Large One", in Studies in the Spirituality of the Jesuits, 12(1980), No. 2, pp. 26-29.

KNIGHT, D.B., S.J., "Joy and Judgment in Religious Obedience", in Studies in the Spirituality of the Jesuits, 6(1974), pp. 131-177.

LAFFERTY, N., F.S.P.A., "Experience in Collegiality", in Review for Religious, 29(1970), pp. 419-423.

LARRAONA, A., "Commentarium Codicis", in Commentarium Pro Religiosis, 7(1926), pp. 30-36.

-----, "De Potestate Dominativa Publica in Iure Canonico", in Acta Congressus Iuridici Internationalis VII Saeculo a Decretalibus Gregorii IX et XIV a Codice Iustiniano Promulgatis, Romae, 12-17 Novembris, 1934, apud custodiam Librariam Pontificalis Instituti Utriusque Iuris, 1935-1937, 5 vols., in vol.4, pp. 145-180.

LESAGE, G., O.M.I., "La collegialité dans le gouvernement ordinaire des religieux", in Acta Conventus Internationalis Canonistarum, (Romae 1968), 1970, Rome, Typis Polyglottis Vaticano, pp. 456-472.

-----, "Le principe de subsidiarité et l'état religieux", in Studia Canonica, 2(1968), pp. 99-123.

-----, "Sacred Bonds in the Consecrated Life", in Supplement to the Way, 97(1980), pp. 78-96.

LEWIS, J., S.J., "Vers une théologie du supérieurat religieux", in La Vie des Communautés Religieuses, 25(1967), pp. 259-269.

LINSCOTT, M., S.N.D. de N., "Being before Doing", in The Tablet, 236(1982), pp. 1237-1239.

-----, "The Service of Religious Authority: Reflections on Government in the Revision of Constitutions", in Review for Religious, 42(1983), pp. 197-217.

MEISSNER, W.W., S.J., "Blind Guides", in The Way, 15(1975), pp. 3-10.

METZ, R., "La subsidiarité, principe régulateur des tensions dans l'église"; in Revue de Droit Canonique, 22(1972), pp. 155-176.

- MOLINARI, P., S.J., "Community in Christ", in Supplement to the Way, 19(1972), pp. 63-78.
- MOLINARI, P., S.J. and WALSH, J., S.J., "Perfect Charity: The Conciliar Decree on the Renewal of Related Life. Introduction and Commentary", in Supplement to the Way, 2(1966), pp. 3-64.
- DE MONTEBELLO, E., P.S.A., "La femme et la religieuse dans le Code", in Vie Consacrée, 55(1983), pp. 173-185.
- MURPHY, L.J., "Authority and Freedom", in Supplement to the Way, 36(1979), pp. 71-81.
- MURPHY-O'CONNOR, J., O.P., "The New Canon Law versus the Gospel", in Supplement to Doctrine and Life, 14, No. 63(1976), pp. 38-57.
- MURRAY, J.C., S.J., "Freedom, Authority, Community", in America, 115(1966), pp. 734-741.
- MURRAY, L., S.N.D., "The 'Superiorless' Community", in Clergy Review, 56(1971), pp. 671-685.
- NORTON, M., "A New Form of Religious Community Government", in Review for Religious, 28(1969), pp. 907-909.
- OCHOA, X., "Professio, Consecratio et vota religiosa ante et post Concilium Vaticanum secundum", in Commentarium pro Religiosis, 57(1976), pp. 193-221, 289-307.
- O'CONNOR, D.F., S.T., "Developing Constitutions and Directories", in Review for Religious, 37(1978), pp. 753-776.
- , "Some Observations on revised Constitutions", in Review for Religious, 38(1979), pp. 771-779.
- O'CONNOR, E., C.S.C., "Vatican II and the Renewal of Religious Life", in Review for Religious, 26(1967), pp. 404-423.
- O'LEARY, H., C.Ss.R., "Experience with Preferential Voting", in Review for Religious, 38(1979), pp. 105-122.
- O'ROURKE, K.D., O.P., "The New Canon Law for Religious", in Supplement to Doctrine and Life, 14, No. 63(1976), pp. 3-37.
- , "The New Law for Religious: Principles, Content, Evaluation", in Review for Religious, 34(1975), pp. 23-49.
- ORSY, L.M., S.J., "Government in Religious Life", in Supplement to the Way, 2(1966), pp. 90-107.

- , "How to write good Constitutions", in Review for Religious, 32(1973), pp. 482-489.
- and WALSH, J., S.J., "Motu Proprio: The Norms for implementing the Decree of the Second Vatican Council, Perfectae Caritatis. Commentary", in Supplement to the Way, 4(1967), pp. 3-44.
- ORSY, L.M., S.J., "Religious Government: Permanent Principles and New Trends", in Supplement to the Way, 4(1967), pp. 45-65.
- , "The Church's New Laws", in The Tablet, 237(1983), pp. 422-424, 446-447.
- , "The Hierarchy and Religious", in Supplement to the Way, 33(1978), pp. 115-125.
- PASQUIER, J., O.M.I., "Models of Leadership", in The Tablet, 228(1974), pp. 1203-05.
- , "The Psychology of Leadership", in The Way, 15(1975), pp. 34-45.
- PASSICOS, J., "Le nouveau code de droit canonique", in Vie Consacrée, 55(1983), pp. 140-149.
- POZSGAY, L., "Obedience of the judgment: the Ignatian Concept in our Modern Context", in Review for Religious, 27(1968), pp. 822-837.
- PROVOST, J.H., "Structuring the Church as a 'Communio' ", in The Jurist, 36(1976), pp. 191-245.
- PUJOL, C., S.J., "Superioris religiosi munera", in Periodica, 69(1980), pp. 423-440.
- RAHNER, K., "Reflections on Obedience", in Cross Currents, 10(1960), pp. 363-374.
- REGAN, C., C.P., "Superiors: Are They Outmoded?", in Review for Religious, 35(1976), pp. 740-748.
- RIGA, P., "Prudence and Jurisprudence: Authority as the Basis of Law according to Thomas Aquinas", in The Jurist, 37(1977), pp. 287-312.
- ROTHLUEBBER, F.B., O.S.F., "The Power of Decision in a Religious Community", in Studia Canonica, 4(1970), pp. 297-307.
- SAID, M., O.P., "Particular Law of Institutes in the Renewal of Consecrated Life", in Review for Religious, 36(1977), pp. 924-947.
- , "The Present State of the Reform of the Code Concerning the Section 'De Institutis Perfectionis' ", in Studia Canonica, 8(1974), pp. 213-235.

- SALOIS, M.J., R.S.M., "Pilot Study of Experimentation in local Community Living", in Review for Religious, 30(1971), pp. 402-412.
- SHARP, J., "The Redemptorists in the United Kingdom: The Early Years", in Clergy Review, 67(1982), pp. 383-392.
- SNIJDERS, S.M., "Bishops and Religious. The Document on the Mutual Relations between Bishops and Religious", in Review for Religious, 39(1080), pp. 115-126.
- SOULLARD, R., O.P., "Le droit et la vie", in Vie Consacrée, 55(1983), pp. 135-139.
- THOMAS, B., S.C.N., "Models of Governance for Religious", in Canon Law Society of America, Proceedings, 1976, pp. 92-98.
- TILLARD, J.M.R., O.P., "Authority and Religious Life", in Review for Religious, 27(1968), pp. 80-103.
- , "Les chemins de l'obéissance", in Lumen Vitae, 31(1976), pp. 141-133, 355-386.
- TOBIN, M.L., S.L., "Government in Religious Communities", in Doctrine and Life, 17(1967), pp. 531-542.
- WALSH, J., S.J., "How necessary is the local Superior?", in Supplement to the Way, 8(1969), pp. 248-256.
- , "Draft of the New Law for Institutes of Consecrated Life, with translation and commentary", in Supplement to the Way, 33(1978), pp. 7-109.
- and MOLINARI, P., S.J., "Renovationis causam: translation and commentary", in Supplement to the Way, 7(1969), pp. 3-96.
- YARNOLD, E., S.J., "The Vows: Consecration and Sign", in Supplement to the Way, 2(1966), pp. 77-89.

APPENDIX

SOME REFERENCES ON THE EXERCISE OF AUTHORITY IN APOSTOLIC INSTITUTES OF WOMEN

This appendix is offered as a quick check-list of the Vatican II references and the canons of the 1983 Code used in Chapters II-VI.

1. Principles of Authority as outlined in Conciliar and post-Conciliar Documents

<u>Dignity and Freedom of Person</u>	<u>Obedience and Faith</u>	<u>Participation</u>
i) <u>in the Church</u>		i) <u>in the Church</u>
<u>GS</u> , 12-22, 26, 27 <u>DH</u> , all	<u>GS</u> , 2, 4, 17, 19 <u>LG</u> , 36, 39, 41, 44 <u>PC</u> , 1, 14 <u>RC</u> , 32	<u>LG</u> , 18, 20, 30-38 <u>GS</u> , 43 <u>CP</u> , 86
ii) <u>in Religious Life</u>		ii) <u>in Religious Life</u>
<u>LG</u> , 46 <u>ES</u> , 15 <u>RC</u> , 1, 4 <u>DC</u> , all <u>ET</u> , 7, 14, 27, 55	<u>ET</u> , 23, 25, 27	<u>PC</u> , 3, 4, 16 <u>ES</u> , 1, 2, 4, 18 <u>RC</u> , introduction <u>ET</u> , 25, 26, 40, 41

2. The Exercise of External Authority according to Vatican II and post-Conciliar Documents

LG, Preliminary Note, 4, 5
CD, 4, 27, 35
ES, 14, 16, 22-40
MR, all

3. The Exercise of Internal Authority according to Vatican II and post-Conciliar Documents

General Chapter

PC, 4, 14
 ES, 1, 2, 3, 4, 18-19
 RC, Introduction,
 4, 12, 16, 22, 23,
 27-29, 33-37

Faculties of Sup. Gen. and other Major Superiors

RC, most
 RL, most

Superiors

LG, 42, 45
 PC, 2, 3, 4, 12,
 14, 15, 23
 ES, 2, 18
 ET, 24, 25, 28

Councils and Assemblies

ES, 4, 6-7, 18
 PC, 14

4. Principles of Authority as outlined in the 1983 Revised Code

Dignity and Freedom of the Human Person

Preliminary

c.573
 c.606
 c.654

Spiritual, Community and Apostolic Life in the Institute

c.567
 c.618
 c.628
 c.630
 c.631
 c.662
 c.663
 c.664
 c.668
 c.670
 c.681

Admission and Incorporation

c.220
 c.642
 c.652
 c.653
 c.654

Departure and Dismissal

c.665
 c.687
 c.689
 c.690
 c.692
 c.694
 c.696
 c.696
 c.697
 c.698
 c.699
 c.701-703

Obedience and Faith

cc.573-578
 c.590
 c.601
 c.607
 c.662

Participation

cc.164-179
 c.567
 c.602
 c.618
 c.625
 c.626
 cc.631-633

5. The Exercise of External Authority according to the 1983 Revised CodeExternal Authority and Religious InstituteMatters reserved
to Apostolic See

c.579
 c.580
 c.582
 c.583
 c.584
 c.590
 c.591
 c.592
 c.605
 c.709

Matters reserved to
Competent Authority

c.576
 c.578
 c.587
 c.593
 c.594
 c.595

External Authority and Religious HouseEstablishment of Houses

c.609
 c.611
 c.612
 c.616 § 1

Apostolate

c.586
 c.678
 c.680
 c.681

Spiritual Care
and Jurisdiction

c.87
 c.567
 c.630

Pontifical and
Diocesan Institutes

c.397
 c.628
 c.637
 c.638
 c.683

External Authority and Individual Religious"Public" Life

c.277
 c.285
 c.286
 c.287
 c.289
 c.672
 c.679
 c.682

Within the Institute

c.684 § 5
 c.686
 c.688 § 2
 c.691
 c.700

6. The Exercise of Internal Authority according to the 1983 Revised Code**Chapters**

c.586
 c.587
 c.596
 c.626
 c.631
 c.632
 c.633

Superiors in GeneralAuthority of Superior

c.596 § 1
 c.617
 c.618
 c.622

Pastoral Duties

c.567
 c.592 § 2
 c.618
 c.619
 c.629
 c.630
 c.661
 c.677
 c.678

Various Norms

c.623
 c.624
 c.627
 c.628
 c.636
 c.639
 c.703

Supreme Moderator

Relation to
Entire Institute

c.592 § 1
c.616
c.622
c.625
c.647

Relation to
Individual Religious

c.684 § 1
c.668 § 4
c.686 § 1
c.688 § 2
c.689
c.690
c.691
c.699

Competent Authority

Institute

c.580
c.581
c.585
c.609

Novitiate

c.641
c.645
c.653
c.646

Individual
Religious

c.638 § 3
c.668 § 2
c.671
c.672
c.682

Major Superiors

General

c.620

Novitiate

c.647 § 3
c.649 § 2
c.650 § 3
c.653 § 2

Absence
or Departure

c.665 § 1
c.694
c.695 § 2
c.703

Council

c.627

Consent

- c.638
- c.647
- c.665
- c.684
- c.686
- c.688
- c.690
- c.694
- c.699 - collegial
- c.703 - local superior only

Advice

- c.565
- c.689
- c.691

Assemblies

- c.632
- c.633