

# THE CHURCH AND INSTITUTES OF CONSECRATED LIFE

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**T**HE AIM OF this article is to provide an outline of the theology of the consecrated life that we find reflected in the new Code of Canon Law and to draw some comparisons with the 1917 Code. I shall begin by taking a brief look at the history of the Church's legislation on religious life and the theology of religious life that used to be common, and which was eventually incorporated into the 1917 Code of Canon Law. This will be followed by a consideration of insights into the consecrated life that were expressed in the decrees of the Second Vatican Council and developed in post-conciliar legislation. The final part of the article will be an attempt to show in some detail how this approach has affected the 1983 Code of Canon Law.

## *The development of religious life*

We can pass over the first stages of religious life in the early christian communities, those virgins, widows and ascetics who lived a life consecrated by the evangelical counsels while remaining in the world and in their own homes, though there was early legislation concerning such people. Pachomius in Egypt appears to have been the first to set down in writing a monastic rule and his ideas were taken up and developed by St Basil. There had in fact been a great variety of approaches to what we now call religious life before the sixth century but then, in a comparatively short time, the benedictine ideal became the standard for a life consecrated by vow. This entailed public profession of vows, living together according to a rule, and stability in one place. The achievement of the monks was such, and their way of life so appealing to the age, that by the eighth century no other form of religious life was thought of. Indeed, the prestige of the monks was so great that the two distinct notions of consecrated life according to the counsels and the monastic form of this life became confused, and for centuries monasticism was considered the ideal form of christian living towards which all were encouraged to strive.

After the decline of Cluny, the twelfth century witnessed a great development of religious life, and new forms emerged which were

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outside the traditional monastic pattern. There were the military orders like the Templars, founded for the defence of the Holy Sepulchre, who drew their rule from benedictine and cistercian models. There were the Humiliati of Lombardy who had members belonging to different classes: married members living with their families, laymen who lived a common life under rule, and the traditional monks and nuns consecrated by vow and living in the monastic tradition.

The profusion of religious orders led to a certain amount of confusion in the Church of the twelfth and thirteenth centuries. So much so that the fourth Lateran Council in 1215 attempted to restore order by issuing the following decree:

In order that too great a variety of religious orders should not cause confusion in the Church of God we firmly prohibit anyone in the future from instituting a new form of religious life; if anyone wishes to take up the religious life he must follow one of the orders that are already approved. Similarly if anyone wishes to found a new order he must take over one of the already approved rules and constitutions.

This decree was renewed by the second Council of Lyons in 1274. Such legislation did not altogether prevent the development of different forms of religious life, though it presented a considerable obstacle to the free inspiration of the Spirit. It did not, in fact, stop growth because very shortly after the fourth Lateran Council the Franciscans were approved and so were the Dominicans, though the Dominicans had to adopt and adapt the rule of St Augustine. These mendicant friars made a clear break with traditional monasticism, in the sense that their priories were not enclosures of local stability but bases for apostolic preaching in the world. Moreover, the friars favoured mobility under a central command over the monastic tradition of stability and local autonomy. The monastic ideals still exercised a strong influence, however, because the friars retained a distinctive habit and office in choir, and there was a tendency for friaries to stabilize into coventual life which affected their ideal as pioneers.

In the fifteenth century a new form of religious life appeared in the 'Brethren of Common Life'. These included clerics and laymen, and revived the old idea of married families living a life of apostolic simplicity which the Humiliati had proposed centuries earlier. They came under attack because they did not take public vows in the same way as approved religious orders, but they flourished and were a great influence for good and for reform in the Church. At the same time the monks and the friars were pilloried by the humanists for not living up to their ideals of religious life. All this led to new expressions of religious life and a variety of new foundations. Notable

among these were the clerks regular, and of these the Society of Jesus embodied the most radical departure from traditional monastic lines. The Jesuits, as they came to be called, were priests living together under the full vows of religion and engaged in preaching, teaching and all kind of pastoral activity.

Their aim was to be freed as far as possible from the restrictions of religious life as traditionally conceived, so as to be able to concentrate more effectively on pastoral renewal. They were not dedicated to the solitary or contemplative life; they were not given to the rigorous practice of penance in common, or to the solemn celebration of the liturgy in choir; and they had no distinctive habit. For all these reasons the Jesuits came under attack as not conforming to the requirements of religious life, but in the face of these attacks they flourished and obtained papal approval for their way of life.

#### *Religious congregations of women*

Unfortunately, the same cannot be said concerning the women who tried to set up new forms of religious life in the Church of the sixteenth century. Together with the clerks regular there were similar associations of women who wanted a less formal but still religious way of life; and before the Council of Trent there were numerous societies of 'religious' women who were dedicated to working for the poor and the sick. Some of these took simple vows and they were not bound by enclosure.

The obligation of strict enclosure for women religious developed only gradually and it varied in different parts of the Church. Repeated prohibitions can be found in conciliar legislation against men entering convents and women leaving them. In 1298, Boniface VIII, in the constitution *Periculoso*, had imposed the cloister on all women religious. He did so in order to safeguard chastity, to avoid scandal and to ensure an atmosphere conducive to contemplation. By the time of the Council of Trent, however, this legislation seems to have fallen into disuse. Trent revived it and extended it to include nuns without exception: to leave the convent the nun needed permission both from her superior and from the bishop.

This tridentine legislation was reinforced a few years later by Pope Pius V who in 1566 issued a new decree *Circa pastoralis*. Recalling the legislation of Boniface VIII and the Council of Trent, Pius V declared that all professed nuns in solemn vows without exception were bound by the laws on strict enclosure. Cloister was regarded as an essential for the life of religious women. Moreover, it was also stipulated that *all* professed sisters had to take solemn vows. Simple vows for religious women were rejected as unacceptable. Communities which did not take solemn vows were forbidden to

receive novices, and any future profession of their members was declared invalid. This was equivalent to the suppression of communities in simple vows. Nor was this thought to be sufficient. In 1570 Pius V promulgated another decree, *Decoris*, which laid down that the only excuses which would permit a nun to leave the monastery were an epidemic, leprosy or an extensive fire! Moreover, the law decreed excommunication for any nun who presumed to leave the cloister without permission, and this penalty was reserved to the Holy See. These laws remained in force for centuries and were reinforced by later legislation. Strict cloister was regarded as an integral and essential part of religious life for women; some canonists even argued that this was of natural and divine law. For this reason many found the idea of religious life for women without strict enclosure simply incomprehensible.

By this legislation Pope Pius V rejected as unacceptable any proposals about any possible state other than being a layman in the world, and being an enclosed regular with solemn vows. In this he was in harmony with a general canonical tradition which tended to identify religious life with the strictly monastic life, and which therefore required the following as essential: separation from the world, symbolized by enclosure; common life; solemn vows; office in choir and a distinctive habit. This explains the strong opposition against those who proposed relinquishing office in choir and permitting simple vows. There were not a few who would have welcomed the strict imposition of the decree of the fourth Lateran Council against religious orders.

The legislation we have been considering had a devastating effect on the development of the religious life for women. It obstructed this development for centuries. It had been introduced to safeguard religious life against abuses which had caused real scandal in the middle ages. The life of Teresa of Avila and the correspondence of Charles Borromeo provide ample evidence of the need for reform. This should be borne in mind in any evaluation of the legislation of Pius V. However, there can be no doubt that canon law arrested at their beginnings new experiments in religious life. It was particularly devastating for apostolic communities of women. The Ursulines provide a good example of what happened. Angela Merici had started a community of apostolic women who developed an active apostolate in the instruction of girls in their homes. They wore no distinctive habit, lived at home with their own families according to a rule confirmed by Pope Paul III and under obedience to superiors. They rejected the monastic version of the consecrated life in order to meet contemporary needs, and they spread rapidly throughout northern Italy and France. Within less than a century, however, under the pressure of the canonical legislation we have just

been considering they had been turned into a religious order on fully traditional and monastic lines: solemn vows, habit and strict enclosure.

A similar tale can be told about Francis de Sales and his desire to found a congregation of women who would visit the sick and help the poor 'in the world'. There seems to have been a general reluctance on the part of both clergy and laity alike to accept this idea of consecrated women being engaged in such works of charity outside their convent. As a consequence, the congregation was established as a religious order with solemn vows and enclosure, and the original inspiration of Francis and Madame de Chantal was not permitted to flourish on account of canon law. Mary Ward provides a further example of how the law was an obstacle to development: she had founded a religious congregation, after the fashion of the Jesuits, which would have an active apostolate among women and girls. The project was untraditional, it ran counter to the decrees of Trent and Pope Pius V and so it was suppressed in 1630, though Mary Ward's original inspiration did survive in a modified form and was later fully approved.

Vincent de Paul managed skilfully to get round the law and establish a confraternity which was not bound by enclosure and solemn vows, and so was free to carry out its active apostolate among the poor. But he warned his confraternity of dedicated women against calling themselves 'religious'. There must be no religious terminology for his Daughters of Charity; 'if some mischief-making person should appear in your midst saying "we should be religious; it would be far nicer" — oh! my dear sisters, the company would be in a fit state to receive extreme unction. . . .' So he managed to found a congregation of women without enclosure entirely devoted to the care of the sick and the poor. This was in 1638, and it was done in spite of the canonical legislation.

### *Conditae a Christo*

In the seventeenth and eighteenth centuries there was no real legislative development concerning religious women, though Benedict XIV, in 1749, issued an important document on the subject, *Quamvis iusto*. This recognized the English Ladies, founded by Mary Ward, and while stating clearly that they could not be called true religious, this document provided some kind of official approval for groups of active women in simple vows, and it set a precedent for future legislation. It was the french revolution and the popular rejection of religious in France that hurried on legislative development. Religious were compelled to abandon their houses and their property was sold. Religious habits were forbidden, and only those engaged in hospitals or other charitable works were

exempted from the anti-religious state legislation. Ironically it was this legislation that actually strengthened the position of women religious without solemn vows or enclosure. Many such diocesan congregations were founded in the nineteenth century and received official approval without, however, being considered religious.

Then, on 8 December 1900, Pope Leo XIII promulgated the Apostolic Constitution, *Conditae a Christo*, which has been described as the Magna Carta for congregations of women religious. It provided formal papal approval for women religious with simple vows, and recognized them as true religious, and is an important milestone in the development of church law. Leo XIII acknowledged that the circumstances of the times had called out new congregations, bound by simple vows, and dedicated to works of mercy. These congregations were now formally recognized as religious and they were permitted to be centralized under their own superior general.

*Conditae a Christo* laid down the general principles for the approbation of congregations of women religious. These principles were specified in much greater detail in the General Norms published by the Congregation for Bishops and Regulars in 1901. These norms consisted of a series of detailed instructions on how a congregation should draw up its constitutions if it wished to obtain formal approval from the Holy See, and a model for such constitutions was provided. This new legislation allowed for full approval of congregations in simple vows and dedicated to the active apostolate, but it also contained many restrictions on the freedom of the individual congregation to develop. The detailed prescriptions on how constitutions should be drawn up, and on what they should and should not contain favoured uniformity and stifled individual inspiration. For example, the constitutions were not to include non-judicial matter and so quotations from holy scripture or the writings of the saints including the foundress should be kept to the minimum. This same approach was taken over by the new Code of Canon Law in 1917 which crystallized this stress on centralized control and standardization that is characteristic of the 'classical' ecclesiology that was current at that time. These General Norms were reissued in 1921 and constitutions had to be revised in accordance with them. There was also a prohibition against translating these directives into other languages; so the original latin text had always to be consulted.

### *The Second Vatican Council*

The aim of the first part of this article has been to illustrate the influence that canonical legislation has had on the development of religious life. It has not encouraged positive development. On the other hand, the law is often the mirror of current views and

prejudices rather than the cause of these; and the legislation we have been considering to a large extent did reflect popular sentiment about what religious women should be and how they should behave. However, the law should do more than mirror current prejudices, and it should not present obstacles to genuine development. I would like now to go on to consider how this whole approach to religious life was revised at the Second Vatican Council.

Much attention is now being given to the inspiration of the Spirit that lies at the origin of religious life in the Church. For years now each religious congregation has been encouraged to develop according to the charismatic inspiration of the founder or foundress. The Church has always believed, of course, in the guidance of the Holy Spirit, but the Vatican Council's emphasis on this marked a considerable departure from the canonical legislation that has been considered in this article, and which was incorporated in those General Norms which controlled all forms of religious life until fairly recently. These regulations stressed uniformity and conformity with a model proposed by the Holy See, and if approval of the Holy See was desired, then close adherence to these norms was necessary. There was little room for manoeuvre. The decrees of the Second Vatican Council adopted a different approach and shifted the emphasis to the guidance of the Spirit. In the conciliar decrees we find a greater awareness of the working of the Spirit in the Church and a more careful attention to the charismatic aspect of the christian life. This change can be seen in the Constitution on the Church, *Lumen Gentium*, chapter VI:

In docile response to the promptings of the Holy Spirit the hierarchy accepts rules of religious life which are presented for its approval by outstanding men and women, improves them further and then officially authorizes them. It uses its supervisory and protective authority to ensure that the religious institutes established all over the world for building up the Body of Christ may develop and flourish *in accordance with the spirit of their founders* (n 45).

This same attention to the inspiration of the Holy Spirit is plainly evident in the Decree on the Renewal of Religious Life *Perfectae caritatis*:

It is for the good of the Church that institutes have their own proper character and functions. Therefore the spirit and aims of each founder should be faithfully accepted and retained, as indeed each institute's sound traditions, for all of these constitute the patrimony of an institute (n 2).

The new emphasis is clearest of all in Paul VI's promulgated norms for implementing the Vatican decrees, *Ecclesiae sanctae* of 1966.

These reiterated the Council's directives concerning the spirit and aims of each founder and the patrimony of each religious institute. Religious were instructed to revise their constitutions in the light of the Council and to combine the spiritual and the juridical:

For the good of the Church, institutes must seek after a genuine understanding of their original spirit, so that they will preserve it faithfully when deciding on adaptations, will purify their religious life from alien elements, and will free it from what is obsolete (n 16).

The theology that lies behind this new approach or renewed emphasis is a deeper realization of the guiding influence of the Spirit of God in the Church, and a renewed attention to the charismatic aspect of the christian community. Two points have to be kept in mind here. First of all there is the charismatic aspect of religious life, since each individual institute owes its origin to the inspiration of the Spirit. Secondly, there is the manner in which the charismatic is related to the institutional aspect, both within each religious order or congregation and within the Church as a whole. This touches on the relationship that should exist between the consecrated and commissioned hierarchy and the charisms of the Spirit. This is a matter that touches on the very nature of the Church; it is an ecclesiological question. For some time there had been a tendency to concentrate attention on the administrative or institutional aspect of the Church and of church authority. The Council has altered this perspective. By its clear affirmation of the sacramentality of the episcopate and of the importance of episcopal collegiality it has made the function of bishop appear more clearly as a sacramental charism. That is to say, the bishop should not be considered merely as an institutional administrator, but as a consecrated leader of the christian community. A deeper study of charismata has been initiated by the Council and this has led to more attention being paid to the bishops' task of spiritual discernment and their pastoral responsibility towards the whole community, including religious institutes.

A charism is, after all, an inspiration from the Spirit of God which urges the individual to perform a special role in the community. There are numerous religious institutes in the Church because a variety of Christians have responded to the free gift of the Spirit in particular ways. These persons have been drawn towards a definite way of life which puts special emphasis on a particular aspect of the following of Christ, and they have attracted others to join them and share their charism and their vision. In this sense then, every religious congregation is a charismatic institution. It has grown up from a special charismatic gift that was granted to the founder or foundress for the good of the Church. This explains the Council's



stress on the importance of deep reflection on the inspiration of each founder or foundress.

There will be a particular insight into the gospel message associated with every institute of consecrated life. From this insight there emerges a particular way of life that is peculiar to this group of Christians and this in turn often leads to a written rule or constitutions. What is this written rule meant to achieve? The rule should provide a firm support for the charism of the institute that has been established under the guidance of the Spirit. It should be a basic document which crystallizes and preserves the original charism. It will only do this, of course, if the founders are left free to follow the guidance of the Spirit in drawing up their rule, which should embody the charism in words that clearly express the gifts and insights of this community. It should also embody too the necessary organizational elements for this particular community. Both these aspects belong to the charismatic inspiration of the Spirit, as can be seen for example, in the *Rule of St Benedict* or the *Carta caritatis* of the Cistercians. Such rules or constitutions are the fruit of experience and prayer, and their authenticity is discerned in the fruit they bear when they are observed. It is for this reason that such rules cannot simply be imposed from outside. They have to grow from within, from the charismatic inspiration that is given to the founder and his or her first companions.

All this has been supported by the Second Vatican Council and has been put into effect in post-conciliar legislation, which has directed a complete revision of religious constitutions in the light of the theology we have been considering. This has led to the renewal of institutes in accordance with the charismatic inspiration of the founders. Attention has been focused upon the particular patrimony of each institute and it has been realized that one cannot separate the juridical from the spiritual — quite a change from a fairly recent canonical tradition!

Recognition by the hierarchy, however, is still important so that charismatic developments in the Church may be protected and promoted. But the task of the bishops is not to impose rules and constitutions from outside, but to recognize and to approve rules that can be seen to have arisen from within under the guidance of the Spirit. The bishops should be alert to ensure that the juridical requirements help and do not hinder the authentic inspiration of the Spirit. Moreover, all this has to be considered in the context of a renewed emphasis on the place of the local Church. Since the Church is now seen more clearly as a *communio* of local Churches rather than one great super-diocese, religious life too must take its place within the local Church and under the leadership of the diocesan bishop, a point that comes out clearly in the revised Code of Canon Law.

*The 1983 Code of Canon Law*

The Code of Canon Law has been revised in the light of this theology and it is time now to take a closer look at the results of the revision.<sup>1</sup> The desire to be faithful to the Council can be seen in the guiding principles that were laid down for the drafting of this part of the revised law. The juridical norms were to foster the growth of the vocation to the consecrated life. They were also to help each institute to maintain the spirit of its founder and encourage fidelity to the spiritual heritage of each institute. The norms should clearly express the essentials of the consecrated life, but they should also ensure a flexibility that would permit adaptation. The law must also ensure greater participation of the members in the life and government of the institute. Additional principles which were accepted by the sub-commission included the following: the diversity of institutes should be recognized in law; there should be provision for the principle of subsidiarity, respect for the dignity of the human person, and no discrimination between institutes of men and women. The effect of these guiding principles is clearly visible in the revised legislation.

A striking innovation of the 1983 Code is to be seen in the ecclesiological context within which it has set out the new law on consecrated life. The theological teaching of the Council is clearly reflected in the revised juridical structures. Here, as elsewhere in the new Code, there has been an effort to combine doctrine and practical directives, life and discipline, theology and law. This can be seen in the place assigned to the consecrated life within the structure of book II. At the last minute this was removed from the section dealing with associations in the Church and given its own place in part III of book II. This more accurately reflects conciliar theology which stresses the importance of institutes of consecrated life for the holiness and the mission of the Church. The title, too, 'Institutes of Consecrated Life' was used so as to include all who make public profession of the evangelical counsels.

The 1983 Code shows greater respect for the charismatic inspiration of each institute than the 1917 Code and the legislation that preceded it. The law now positively encourages individuality. The variety of institutes is attributed to the inspiration of the Spirit. Canon 577, for example, states clearly:

In the Church there are many institutes of consecrated life, with gifts that differ according to the graces given them: they more closely follow Christ praying, or Christ proclaiming the kingdom of God, or Christ doing good to people, or Christ in dialogue with people of this world, but always Christ doing the will of the Father.

Canon 605 is in clear contrast to the famous prohibition of Lateran IV: 'Diocesan bishops are to endeavour to discern new gifts of

consecrated life which the Holy Spirit entrusts to the Church'. This respect for charismatic inspiration is evident in a number of canons throughout this whole part of book II, but it is particularly clear in the introductory canons. Competent authority in the Church 'has the responsibility to do what is in its power to ensure that institutes grow and flourish according to the spirit of their founders and to their sound traditions' (c. 576). 'The whole patrimony of an institute must be faithfully preserved by all. This patrimony is comprised of the intentions of the founders, of all that the competent ecclesiastical authority has approved concerning the nature, purpose, spirit and character of the institute, and of its sound traditions' (c. 578). This same point is brought out in canons 586, 587, 598.

In harmony with this recognition of the charismatic inspiration of each institute, the new law allows a measure of autonomy to each:

A true autonomy of life, especially of governance, is recognized for each institute. This autonomy means that each institute has its own discipline in the Church and can preserve whole and entire the patrimony described in canon 578. It is the task of the local ordinary to preserve and protect this autonomy (cf also c. 593 and c. 611).

A consequence of this is that institutes must be allowed the required freedom to draw up their own constitutions. Consequently, many matters that used to be decided by the common law of the Church are now left to be settled by the *ius proprium* of each individual institute. Here the principle of subsidiarity has played an important part. Institutes have to draw up their own law about many things that were formerly strictly laid down by the 1917 Code or by the General Norms.

The effects of this same principle can also be seen in the fact that a number of matters which used to be the responsibility of the Holy See or the local bishop are now left to the religious superiors themselves. The revised law on canonical visitation is an example of this (c. 628). It is no longer the right of the bishop to preside at the election of the superior general of a lay pontifical institute. This has now to be settled by the constitutions (c. 625). A similar approach is to be seen in the new legislation concerning transfer from one religious institute to another (c. 684,1), the grant of leave of absence and of exlaustration (c. 665 and c. 686), and concerning departure from and re-admission to an institute. All these matters are now more the concern of the internal superiors than they used to be and greater discretion is now granted to superiors.

Distinction between exempt and non-exempt institutes has been dropped, though of course the principle of exemption is clearly stated in canon 591:

The better to ensure the welfare of institutes and the needs of the apostolate, the Supreme Pontiff, by virtue of his primacy in the universal Church, and with a view to the common good, can withdraw institutes of consecrated life from the governance of local ordinaries, and subject them to himself alone, or to some other ecclesiastical authority.

Exemption is based on the charismatic nature of an institute, and it is granted 'so that these institutes may more fully express their identity and devote themselves to the common good with greater generosity . . .'<sup>2</sup> Originally, exemption provided a necessary protection for religious orders, and was called for by the mission entrusted to each institute by the supreme authority in the Church.

All of this was, and was intended to express the pastoral solicitude of the Supreme Pastor for the universal Church. Today, however, when the bishops themselves are so much more involved in the overall pastoral activity of the Church, while the principle of exemption is affirmed and retained by the Second Vatican Council, its early form is no longer applicable to the life of today's Church. Indeed, from the time of the Council of Trent that form of it has been more and more restricted, so that today it is in effect only the *internal autonomy* of religious institutes which is emphasized'.<sup>3</sup>

Hence the new Code stipulates that religious institutes must have a true autonomy of life and internal governance and discipline (cf cc. 586 and 593). Concerning the apostolate, however, they must work within the structure of the local Church:

in matters concerning the care of souls, the public exercise of divine worship and other works of the apostolate, religious are subject to the authority of the bishops, whom they are bound to treat with sincere obedience and reverence (c. 678).

Moreover, the diocesan bishop has the right to make a pastoral visitation of churches, schools and other works entrusted to religious 'whether these works be spiritual or temporal' (c. 683). All this is in harmony with the ecclesiology of communion, with its stress on the importance of the local Church that was put forward by the Vatican Council. Religious must carry out their mission within the structures of the local Church under the general direction of the local bishop. This in turn implies that religious should be expected to take part in the Council of Priests, the Pastoral Council and the other structures for co-operation within the diocese and the parish. Such co-operation requires mutual knowledge and understanding.

Religious need to grasp fully what is entailed by the renewed interest in the theology of the local Church and the bishop's mission of leadership. It is important too that the diocesan priests and the laity take a real interest in consecrated life with its charism, its mission and its various approaches to apostolic action. Mutual respect can only grow out of mutual knowledge and understanding. The new Code of Canon Law could provide an important stimulus to mutual co-operation.

## NOTES

<sup>1</sup> Cf Gallen, Joseph, S.J.: *Canon Law for religious* (Alba House, New York, 1983).

Flannery, A., O.P. and Collins, L., O.P.: *Light for my path: The new Code of Canon Law for religious* (Dominican Publications, Dublin 1983).

<sup>2</sup> Cf *Mutuae relationes*, n 22.

<sup>3</sup> Beyer, J.: 'Religious in the New Code and their place in the local Church', *Canon Law Society Newsletter* (September 1982), p 124.