TESI GREGORIANA
Serie Diritto Canonico

106

JACINTA AUMA OPONDO

TEMPORARY PROFESSION AND EXCLUSION FROM SUBSEQUENT PROFESSION (CANN. 655; 689)

Theological-Juridical Study

EDITRICE PONTIFICIA UNIVERSITÀ GREGORIANA

PONTIFICIA
UNIVERSITÀ
GREGORIANA

Roma 2017

Vidimus et approbamus ad normam Statutorum Universitatis

Romae, ex Pontificia Universitate Gregoriana
die 28 mensis novembris anni 2016

Prof. Yuji Sugawara
Prof. Ulrich Rhode

© 2016 Gregorian & Biblical Press
Piazza della Pilotta, 35 - 00187 Rome, Italy
books@biblicum.com

ISBN 978-88-7839-**352**-3

INTRODUCTION

From the beginning of religious life in the Church, men and women have felt the call to perpetually follow Christ more closely. Those who founded religious communities and those who willingly joined them were well aware of the perpetuity of the commitment. Having in mind the words of Christ: «No one who puts his hand to the plough and looks back is fit for the kingdom of God» (Lk 9:62), founders of various Religious Institutes, from the very beginning, emphasized the ideal of perpetuity inherent to religious life. This Gospel foundation meant that once a religious, always a religious; there was no question of turning back. However, despite the fact that members willingly committed their lives to God through the profession of the evangelical counsels, there were not a few cases in which a religious himself[1], or the Institute, for various reasons, felt that the life the religious had chosen was not his call, even after making a public vow. On account of this, the determination of the suitability of members, therefore, has been one of the highest ideals in law for Religious Institutes. At the same time, it has been one of the most challenging to implement.

Can. 653 §2 of *CIC/1983*, inspired by the very nature of religious life itself, expresses the ideal of suitability when it calls upon all competent Superiors to admit to temporary vows only those novices who are judged suitable. «Suitability» here implies having the required age and health, appropriate character, and sufficient maturity to live the proper life of the Institute (cf. can. 642). The practical mechanisms for discerning this ideal are a challenge, such that the Superiors at times find themselves admitting members to profession of vows who actually lack a vocation to religious life in general or to the life of the particular Religious Institute. To facilitate the practical mechanisms in such situations, *CIC/1983* in can. 655 legislates that temporary profession is to be

[1] In this study, «he», «him», «himself» refer to both genders except where explicitly stated otherwise or where otherwise is clear from the nature of things.

made for the period defined by the Institute's own law and may not be less than three years nor longer than six. Depending upon the particular law of the Institute, can. 657 notes that this period may be renewed prior to perpetual profession (§1) and may be extended, when deemed opportune for no more than an additional three years (§2). Accordingly, can. 689 provides for the exclusion from subsequent profession at the expiry of temporary profession when just causes exist.

The concept of «temporariness» of the profession and the discretion of the Superior to exclude a member from subsequent profession of vows, however, raises a number of issues. These issues are theological and juridical in nature regarding the essence itself of this «temporariness» if one commits himself to the service of God for life at the very first profession of vows. There appears to be some theological-juridical conflict in the term «temporary vows». This apparent conflict raises further issues such as whether the renewal of vows is optional if the vow taken is just «temporary» or obligatory given the presumption of permanence, or perpetuity, of the vow. If an obligation does actually exist, a further question arises regarding its source.

Moreover, even though can. 689 §1 legislates on exclusion from subsequent profession and can. 696 regards facultative dismissal, common practice among the Religious Institutes is to apply can. 689 §1 to almost all cases during the period of temporary vows – including those that rightfully fall under can. 696. That is, Superiors choose to allow the time to lapse and then refuse admission to subsequent profession rather than becoming embroiled in the dismissal procedures. This seems justified by the fact that not admitting a member to a subsequent profession is not in itself a dismissal because the Institute is never obliged to accept as a member someone who is not judged to be suitable. This practice, however, raises questions such as: If God is the source of a vocation, why, due to an offense, should a Superior deny one who still feels called to admission to subsequent profession? In other words, do all offenses imply a lack of vocation? If not, what criteria does the Superior use to determine that just causes do actually exist in a given instance of commission of an offense? Once excluded, does such an ex-member have right to some help and to what extent is the Institute obliged to render such help?

Universal law leaves it to the discretion of the competent Superior to determine the lack of suitability of a member. This discretion is based on the assumption that Superiors generally use their authority responsibly. The challenge that such discretion poses is not only that it appears

to inevitably threaten impartiality, but also that it is a process whose strength and uniqueness appear to lie solely in the personal responsiveness of the decision maker – the Superior – whose discretional judgement in a decision of such gravity can possibly be unconsciously influenced by other factors such as suspicions, personal differences, conflicts, assumptions, fears and other frailties of human nature. This gives rise to the following questions: How does the law support and protect Superiors who are bound in conscience in such delicate decisions and members who are the passive subjects of such decisions? Is recourse against exclusion from subsequent profession practically possible?

Motivated by these questions, this study presents an analysis of the temporary profession of vows and the exclusion from subsequent profession through a theological-juridical framework in light of the existing official documents of the Church from the first century until the *CIC/1983*. It then studies the jurisprudence on recourses against exclusion from subsequent vows in order to shed more light on these areas.

1. **Scope, originality and limits of the study**

The scope of this study is limited to the legislation of the Latin Church regarding temporary profession of vows in Religious Institutes and the exclusion from subsequent profession after the expiry of those vows. The objective of the study is to present the law governing temporary profession of vows and the exclusion from subsequent profession and to discuss theological-spiritual, juridical and pastoral elements both in law and in practice. In this way, the study hopes to see how the practice corresponds to or develops the law. Further, it seeks to study the theological-juridical issues arising from the actual practice of profession of temporary vows and the exclusion from subsequent profession in order to see how the Church has attempted to address such issues. Thus, it hopes to discover how the Church – in order to protect both the individual members and the Institute – dealt with cases of unsuitability in the past and in the present. It will do so by limiting the study to cases of exclusion from subsequent profession before perpetual vows.

Ultimately, the study tries to add clarity to the application of the *ratio legis* for can. 689 as well as to address the issue of the canonical equity required. Thereby, the study aims at finding out whether there is a conflict in the understanding of the concept of «temporariness» of profession of vows if the canon is understood in its rightful theological and juridical context. This understanding will provide clarity to the purpose

for temporary profession and the faculty to exclude a member from subsequent vows.

The originality of this study is founded on the fact that apart from two articles, one by E. McDonough on the exclusion from profession (cf. can. 689) and the other by H. Richard on denial of profession, no other study has been done specifically on the theological-juridical study of temporary profession of vows and the exclusion from subsequent profession in the light of both cann. 655 and 689. Consequently, a study in this area is deemed necessary. Taking the two canons together is based on the fact that the period of temporary profession of vows is such an important period in discerning, nurturing and sustaining the suitability of members once admitted to vows, that when its practice is jeopardized by uncertainties, then the Institute inevitably gets into crisis of admitting to subsequent vows those who ought not to have been admitted to vows and vice versa. This gives way to serious repercussions not only for the individual members but also for the community members and the entire Institute.

Moreover, this thesis limits itself to the experience of Religious Institutes of the Latin Church who are actively engaged in works of apostolate. Consequently, Secular Institutes, Societies of Apostolic Life, Monasteries *sui iuris*, Eastern Church and other forms of consecrated life as well as new forms are outside the scope of this study. The study also does not include other forms of departure from a Religious Institute provided for in the *CIC/1983* such as departure after perpetual vows and departure of a religious who is a cleric.

Although the events in the study may take a chronological order and historical references may be made when it is useful for commenting on Church documents or in order to provide necessary background information, this study does not purport to be historical in the strict sense of the word. Rather it is a study of what the Church has been teaching on temporary profession of vows in Religious Institutes throughout its history. Consequently, even though plenty of documents exist at every historical period involving religious life, this study focuses on analysing only those documents considered helpful in laying the foundation for the theological, juridical and pastoral understanding and the actual realization of temporary profession and exclusion. Other documents are mentioned only incidentally and as needed for emphasis.

Besides *CIC/1917* and *CIC/1983*, additional principle sources for this study include the conciliar and post-conciliar documents of the Church as well as other documents from the Roman Pontiff and the Roman Cu-

ria. In presenting and analysing the contents of these primary sources, secondary sources taken from observations and commentaries of selected and representative authors are also used. By using these sources, the study attempts to provide observations along with analysis and comments on the present legislation and various official documents of the Church regarding the current practice of temporary profession of vows and exclusion from subsequent profession as well as trying to respond to issues raised by the study.

2. **Methodology**

This thesis employs an interdisciplinary methodological approach within the context of the theological-canonical tradition. It, therefore, includes theological, expository, exegetical, juridical, and analytical methods with historical references. In so doing, it brings together the theological-spiritual, pastoral and juridical understanding of temporary profession of vows and the faculty to exclude a member from subsequent profession of vows. This study is organized into five chapters with a general introduction and a general conclusion.

In chapter one, the study employs an historical expository method to examine the selected Church documents and writings of relevant Monastic Fathers in order to answer the question, «what was the practice of temporary religious profession before the promulgation of the *CIC/1917*?» Accordingly, an analysis is provided of the content of the *CIC/1917* in order to find out if there is any influence from documents studied and the writings of the Fathers. This approach is intended to trace the sources of cann. 655 and 689.

In applying this method, chapter one is divided into four sections and presents the historical evolution of temporary profession and exclusion from subsequent profession until its formal inclusion in the *CIC/1917*. Section one presents religious profession from its origin to the Lateran Council I: a period in which religious profession is understood as a spiritual practice and the nature of the vows professed is viewed as perpetual. This period is important for a proper understanding of the nature of temporary profession. Section two explores the development of religious profession from the Lateran Council I to Pius IX: a period which marks the beginning of universal legislation on religious profession and defines the juridical meaning of temporary profession. Section three examines the development of the practice of temporary profession from Pius IX to Pius X: a period that includes major reforms in the practice of religious profession with temporary profession acquiring specific ju-

ridical effects. The reforms examined include: ratification of temporary profession for religious men and women *ad validitatem*; the granting of the faculty to Superiors to exclude their members from further profession; and the clarification of the rationale for temporary profession. In this exposition of the reforms, the following documents among others are studied:

i. Encyclical *Neminem latet* (1857) – which introduced temporary vows as obligatory for all Religious Institutes of men before perpetual profession.
ii. Apostolic Constitution *Ad universalis* (1862) – which not only confirmed the obligation of temporary profession before perpetual vows but also decreed as invalid any solemn profession made without a prior three years of temporary profession.
iii. The Decree *Perpensis* (1902) – which extended the provisions of temporary profession to all Religious Orders and Congregations.

The chapter concludes with the study of the legislation of the *CIC/1917* on temporary profession of vows and the faculty to exclude a member from subsequent profession.

In chapter two, the study applies a speculative approach to conciliar and post-conciliar documents in order to bring to light the theological and juridical foundations of the practice of temporary profession based on sacred scripture, tradition, doctrine and ecclesial norms. In doing so, it seeks to recognize how this foundation aids in the current understanding of temporary profession of vows and the faculty to exclude a member from subsequent profession.

By means of this method, chapter two presents Vatican Council II and post-conciliar documents before 1983 with a close focus on temporary profession of vows and exclusion from subsequent profession. It takes note of theological-spiritual and pastoral elements in the teachings of the Church in order to shed more light on the mind of the Church on this practice. Accordingly, the chapter begins with an analysis of the Dogmatic Constitution *Lumen gentium* (1964) which, since it gave foundation to the Decree *Perfectae caritatis* (1965), brought to light how the profession of vows become a means for perfection of charity. It then examines *Perfectae caritatis* which gave the identity of consecrated life as well as explained the doctrine of the Church regarding religious profession of vows and called for renewal in Institutes whose members assume the observance of the three evangelical counsels by profession of vows. These two documents provide general principles for determining just causes for exclusion from subsequent pro-

fession. From the post-conciliar documents, chapter two focuses on areas where departure during the period of temporary profession is explicitly treated with an aim of showing some concrete criteria which papal and curial documents have given for the effective practice of profession of vows and the discerning of the suitability of members. Among others, the chapter analyses:

i. The Motu proprio *Ecclesiae Sanctae* (1966) – which invited all Institutes to adapt their life in accordance with the Council's guidelines.
ii. The Instruction *Renovationis causam* (1969) – which tried to break new ground in the difficult task of formation with an attempt to solve the vocation crisis through reformation of temporary profession.
iii. The Apostolic Exhortation *Evangelica testificatio* (1971) – which treated the renewal of religious life, shedding more light on the practice of temporary profession and the faculty to exclude members from subsequent profession for just causes.

In chapter three, the study uses exegetical-analytical methods in the consideration of cann. 655 and 689 as well as descriptive methods to delineate the nature, elements, and issues arising from the practice of temporary profession (cf. can. 655) and application of can. 689 from its juridical contexts.

With this method, chapter three explores the legislation of the *CIC/1983* on temporary profession and exclusion from subsequent profession. It begins by studying the revision process that brought about the placement of cann. 655 and 689 into the *CIC/1983* in order to discover the reasons for this revision as well as its effects. To arrive at this, the deliberations of group sessions as well as the *Schemata* of 1977, 1980 and 1982 are studied. In analysing and discussing these *Schemata*, the chapter considers the theological, juridical and pastoral concerns and implications arising from them both for individual members and for the Institute. It then presents, in section two, the general principles guiding the nature and application of cann. 655 and 689, in particular, the principles of subsidiarity (cf. can. 587 §1), autonomy (cf. can. 586 §1) and suitability (cf. can. 642). Section three examines the basic elements of can. 655, including the subject, object and juridical effects of the canon, its rationale, the question of «temporariness», and the question: is renewal a moral or juridical obligation or is it merely a choice. Finally, the last section investigates the nature, elements and *ratio legis* for can. 689. It begins with a brief presentation of three possi-

bilities of departure from the Institute within the period of temporary vows and then focuses on the imposed departure at the expiry of temporary vows. While studying these possibilities, the significance of the theological, juridical, pastoral and disciplinary elements of can. 689 are noted. In so doing, the chapter tries to reveal the *ratio legis* for can. 689. It also analyses the nature of causes considered just with an aim of shedding more light on the characteristics of just causes for excluding a member from subsequent profession as well as the circumstance and conditions under which physical or psychic illness becomes just causes for exclusion. In this regard, a case of a religious who becomes insane during the period of temporary vows is also taken into consideration (cf. can. 689 §3).

Since the provision under study, namely can. 689, deals with the «object» (faculty to exclude), «subject» (who can be excluded and competent authority to exclude), «motive» (just causes) and «procedural safeguard» (discretionary judgement after hearing the council) of exclusion from final profession, chapter three also investigates the condition for hearing the council as provided for in universal and proper law. It tries to respond to the question of how the decision should be communicated once made. It also responds to the question of whether giving reason(s) for the exclusion is obligatory or not. In so doing, the chapter delves into an issue that is directly and inseparably connected to any departure from an Institute, namely, the kind of help to be given to an excluded member. While doing so, it attempts to analyse the nature of the obligation for the Institute that arises from exclusion and for how long should the Institute observe canonical equity and evangelical charity (cf. can. 702). The chapter finally concludes with a response to a question that arises with every legitimate departure, namely, the possibility of readmission (cf. can. 690).

In chapter four, descriptive-analytical methods are used in the study of the juridical issues arising from the practice of exclusion from subsequent vows. To facilitate this analysis, cases of recourse made to the Holy See are studied and analysed. Through this analysis, the study attempts to understand how the hierarchical Superior and the Supreme Tribunal of Signatura Apostolica deal with recourse against decisions to exclude a member from subsequent profession (cf. can. 689). It also seeks to make observations on how their jurisprudence develops the understanding and application of can. 689.

With this method, chapter four tries to answer the question: is recourse against exclusion from subsequent profession possible both in

theory and in practice? Here, the chapter considers actual challenges to such recourse made to the internal higher authority and also analyses the jurisprudence of the Holy See in dealing with such recourse with an aim of understanding how the external higher authority deals with recourses against exclusion from subsequent profession and to observe how their jurisprudence develops the understanding of applicability of can. 689.

From its findings, the study concludes among others that:

i. There is no theological-juridical contradiction in the term «temporary profession of vows».
ii. There is a very close connection between temporary profession period and suitability of members such that when its practice is not appreciated and given the attention it requires, then the Institute inevitably gets into the crisis of admitting to subsequent vows those who ought not to have been admitted and excluding from subsequent profession those who actually have a vocation, both of which have serious repercussions not only for the individual members but also for the Institute.
iii. Given that temporary profession of vows is a true consecration of life which is intentionally definitive, once a member is admitted to vows, any decision to exclude him from subsequent profession is considered grave. And the only cause that is proportionate to a decision of such gravity is lack of a vocation to the life of the Institute.
iv. The gravity of the decision to exclude a member from subsequent profession necessarily requires that there be clear evidence of a lack of vocation. Such clarity however, is only possible where the proper law is clear on: what exactly makes one suitable for the life of the Institute; and the procedures by which the competent Superiors gather information on causes of unsuitability upon which they are to exercise their discretion as to whether the causes are just enough to merit exclusion from subsequent profession or not.
v. The study of cases in which recourse was presented to the Holy See reveals that Superiors are experiencing significant challenges in the application of can. 689.

Finally, the study in chapter five recommends forward-looking possibilities based on the findings of the study.

CHAPTER I

Historical evolution of temporary profession of vows and the faculty to exclude a member from subsequent profession

This chapter presents the historical perspective of the practice of temporary profession and the faculty to exclude a member from subsequent profession of vows. In particular, the chapter intends to explore the developments that occurred in religious life and in the society prior to and which contributed to the institution of temporary profession of vows. Thereby, it will show how the Church dealt with cases of unsuitability that finally led to the concession of the faculty to exclude a member from subsequent profession for just causes as provided for now in the *CIC/1983*. This historical approach is preferred in this first chapter because the meaning, interpretation and application of norms become clearer when the knowledge of their sources and their historical evolution is clear.

1. Religious profession from its origin to the Lateran Council I (I-XII century)

This section begins with the study of religious profession in the Rule of the Monastic Fathers. Treating the first twelve centuries in this section is motivated by the fact that, during this early Monastic period, the only direct sources of information on religious profession were private disciplinary norms from the Rules of Monastic Fathers. Deliberations of the Bishops, particular Councils and Apostolic constitutions addressed religious profession but only indirectly by focusing on the problem of infidelity after profession. Even though there was one general Council – Chalcedon of 451 – within this period which legislated for Religious Orders, it did not directly address the question of reli-

gious profession. This period however, is important to this study because through the private disciplinary norms of the Monastic Fathers, it is possible to gain insight into the origin of religious profession as a spiritual practice and at the nature of the vows professed as perpetual.

1.1 *The virgins, ascetics, hermits and anchorites and religious profession*

Just as religious life owes its inception to the virgins and ascetics of the early years of the Church (cf. 1Cor. 7; Acts 21:9)[1], so also does religious profession. However, during this period, religious profession was manifested as a private spiritual practice[2] without any juridic effects. During the first and the early part of the second century, the virgins – and later on the ascetics – had no determinate form of commitment through religious profession. Their lives were inspired by the Gospel and other writings of the Apostles, especially the invitation to follow Christ more closely through the practice of evangelical counsels, in particular, chastity and poverty (cf. Acts 21:9; 4:32; 18:18; Mt 10:9; Mk 6:8; Lk 9:3).

The first manifestations of religious[3] profession date from the time when Christians were recognized in the Church as followers after perfection[4]. They appeared in history in the third century, and were recognized under the name of ascetics. Having once entered upon a life of

---

[1] Cf. S.J. TURNER, *The vow of poverty*, 3-4; A. VERMEERSCH, «Religious life», XII, 750.

[2] But in the first three centuries there are no records to show that those who practiced the evangelical counsels endeavoured to live community life as we have it today. That is, a community which has as its essence the practice of evangelical counsels in their entirety. On the contrary, the evidence seems to indicate that individuals practiced one or the other counsel and assumed other mortifications without, however, leaving their homes and the world. Even if they had contemplated community life, it would have been generally impossible to put it into effect because of the chaotic conditions of the times, for everywhere, persecutions and civil suppression prevailed. But amidst all chaos, there were many who were distinguished by the name *ascetics* who did live a real life of perfection. The Church through the individual bishops encouraged this practice of asceticism.

[3] Throughout this study, the words «virgin», «ascetic», «anchorite», «religious», «Order», «Institute», and «Congregation» will begin with capital letters when they refer to a state of life or an approved community organized juridically with a clear purpose and identity. The words will begin with a small letter when they are used in generic way or when they refer to a reality that is not a juridically organized community or juridically ratified as a state of life with juridic effects.

[4] Cf. E. SASTRE SANTOS, *La vita religiosa*, 17.

perfection, they felt the determination to persevere. This determination as time went on resolved itself into a form of promise[5], forming in this manner the background for religious profession[6]. In these early centuries, it is impossible to discover religious profession so well defined and regulated as we have it today. They did not form communities, and there were no ties among them, no Superiors, no use of any special form of identification except – little by little and only in some places – the veil for virgins[7]. Therefore, before the mid-third century, there is no trace of vows, neither public nor private. There was only a simple acknowledgment by the Church of the state of the ascetics and the promise that it implied. And to protect them, the Church consecrated[8] and recognized[9] them as Order of Virgins and Ascetics[10].

However, despite the fact that they willingly made a promise to God to live their commitments for life, right from the beginning, the Church has had a significant number of cases in which those who had made

---

[5] No historical documentary evidence could be found to show with any degree of certainty whether the virgins and ascetics bound themselves by formal, public vows.

[6] While the ecclesial profession of ***propositum*** of virgins and ascetics was total dedication of their lives to the worship of God according to the Gospels, there was no precise formula for this commitment. Asceticism at this time did not seem to require any other special commitment other than that implied by baptism. Cf. TERTULLIAN, ***De virginibus***, cap. 16 (c), 911.

[7] During this period prior to monasticism, the endeavour to follow the evangelical counsels was an individual venture. All fervent Christians lived an isolated life, scattered throughout the world: they were not subjected to any other body of the Episcopal hierarchy. There were no clear juridical rules that protected their status. Virginal status was, however, becoming known and being praised in the early Christian communities. What they shared in common with each other was the desire for perfection and their protection assumed by the Church for their virtue: the Church prayed for them and took precautions in favour of their virginity, cf. G. LECLERCQ, «Alle origini», 6.

[8] According to dictionary definition, «to consecrate» and «consecration» involves separating someone or something from the sphere of the profane and placing him at «the disposal of the divine», which is made explicit in the goal of consecration. Cf. E. FORCELLINI – J. FACCIOLATI, ***Totius latinitatis lexicon***, I.

[9] The public recognition of commitment to virginity came as a request from those willing to commit themselves, or rather from those who already lived a life of virginity. Their will to renounce matrimony and consecrate their virginity to Christ was interpreted as similar to the will of a woman to commit herself to her spouse; thus it was considered a spiritual matrimony. With this public recognition, they were placed under the care of bishops of the local Churches where they were. The virgins voluntarily vowed celibacy and their vow was received and accepted by their respective bishops in the presence of the community. This vow was of its nature perpetual.

[10] Cf. A. BONI, «Professione», 947.

promises to live their commitments for life felt that the life they had chosen was not their call after making the promise. The challenge at this time was manifested in the abandonment of the commitment after making the promise and in most cases, getting married[11]. The organized forms of the Institute of Virgins developed as a possible remedy to this challenge[12]. As a result of these organized forms, towards the end of the third century there are traces of religious life with some resemblance to the modern conception of this state[13]. At this time, there was already certain form of liturgical celebration of consecration of virgins (*consecratio virginum*) and later the rite of blessing of virgins (*benedictio virginum*)[14]. The public form of consecration – from which developed the name profession – was to affect the ecclesiastical discipline of virgins such that, belonging to an institutionalized forms of life, they could no longer easily abandon their status[15] on account of the fact that from the beginning their commitment was understood as perpetual.

Until the early part of the third century, ascetics and virgins had lived in their households and within the society. The situation began to change, when due to the persecution of Christians by the emperors Decius (249-251), Valerian (258-260) and Diocletian (284-305), many believers fled into the desert and the mountains[16]. But their motivation was deeper and their *fuga mundi* had rather spiritual reasons since even after the persecutions – when the Church had several privileges – the hermits became increasingly numerous[17], objecting to the relaxation of customs. Moreover, other than persecution, some abuses had cropped up among the ascetics including dressing in somewhat exaggerated ornaments and in cohabitation[18] which was not in harmony with the radical following of Christ. Faced with this kind of moral decadence in some Christian communities, some believers began to separate them-

---

[11] Cf. AMBROSE, *De lapsu virginis*, VII, 375; VIII, 376-378; IX, 379; CIPRIAN, *Lett. 62 ad Pomponium*, II, 366-367.

[12] Cf. G.M. COLOMBÀS, «Asceti e ascete», 920; A. LÓPEZ AMAT, *La vita consacrata*, 19.

[13] Cf. A. VERMEERSCH, «Religious life», XII, 750.

[14] Cf. E.L. BOLCHI, *La consacrazione*, 14-15. Ambrose describes the Rite of consecration of virgins with a public character. Cf. AMBROSE, *De virginibus* 187-233; ID., *De institutione virginis*, 305-334.

[15] Cf. AMBROSE, *De lapsu virginis*, V, 372.

[16] Cf. M. AUGE, «Dalle origini», 15-16; U. BERLIÈRE, *L'ordine monastico*, 27; J. KOWAL, *Uscita definitiva*, 7; A.P. STEIGER, «De propagatione», 44.

[17] Cf. M. AUGE, «Dalle origini», 16.

[18] Cf. A. LÓPEZ AMAT, *La vita consacrata*, 19.

selves from the world, fleeing into the desert[19]. These faithful, separating themselves from the society, lived a solitary life and were called hermits or anchorites[20].

Initially, the hermits lived separately without a rule of life. The practice of chastity and poverty among them was private and individually accepted. Consequently, each was free to abandon the life at anytime as long as he felt an inability to persevere[21]. Some of those who persevered became the first founders of religious communities. Worth noting is that these founders of the first religious communities had no intention to found religious communities. These early founders had left the world solely for the purpose of drawing closer to God by meditation, penance and seclusion; and they had no intention of having followers. Their sole motive for entering the desert was to remove all impediments to their life of sanctity; to avoid the allurements, enticements and temptations of the world. But the circumstances forced the foundation of communities. The sanctity and austerity of their lives had spread among the people and had attracted numerous disciples who endeavoured to emulate these masters of perfection by seeking to be their followers just as the disciples were of Jesus. Consequently, the Monastic life which had so small a beginning in the deserts soon spread to all parts of the Christian world taking the form of foundations of community living. And with Monastic life, the essential elements of religious profession of evangelical counsels began to come out clearly. The religious were obliged to practice perfect chastity, radical poverty and obedience to their spiritual masters as the content of their profession.

Their coming together gave rise to association or groupings of Christians within the Church. Although such grouping was not recognized as being a particular state of life in the sense of the lawful meaning of the term *status*, it was somehow organized in the sense of the ancient terms: *ordo*, *taxis*, *tagma*; that is, a group of the faithful who came together with a common purpose[22]. Their main purpose was perfection for their own salvation[23]. The Hermits, although

---

[19] Cf. G.M. COLOMBÀS, «Asceti e ascete», 921-923; A. FAVALE, «Dinamica storica», 41; J. GRIBOMONT, «Eremitismo», 1224-1226.

[20] Cf. J. REZÀC, «Eremita», 1153-1154.

[21] Cf. J. FERNÀNDEZ, «Esclaustrazione», 1271.

[22] Cf. G. LECLERCQ, «Alle origini», 1.

[23] They would carry out works of mercy and charity to the needy, but this act of charity was not their main purpose of choosing religious life since it was not considered a constitutive element of such life. Cf. G. LECLERCQ, «Alle origini», 3-4.

they lived in community around their masters, did not follow a particular rule, but relied on the direction of their spiritual guides[24]. Their radical celibacy was closely linked to a form of life of separation from the world, because they were not only separating themselves from worldly things, but also from their fellow men in order to encounter God alone[25]. Thus, by devoting themselves exclusively to God, in chastity and poverty, hermits added also separation from the world and life in solitude, and submission to their spiritual teachers. They were not bound by any ecclesiastical laws; they retained full autonomy. Since their religious profession was a spiritual practice not governed by any Rule, there was complete freedom to abandon the life when one felt he could no longer persevere in the life freely chosen[26]. Consequently, we do not meet any written records on the nature of religious profession and its consequences during this early period.

1.2 *The cenobites and religious profession*

Already in the early period of anchorites, the need for the grouping of Hermits for better living under the direction of a Master was felt. With time, communities were organized, of which the first leader seems to have been Pacomius, who is said to have introduced common life to the anchorites of the Egyptian desert[27]. It is he who brought Rule and order to monastic life. But why did he have to bring in Rule in monastic life? The answer is: It was not a choice but a necessity as explained below.

With time, having drawn a large following of those who were attracted to their way of life, the desert Fathers would be forced to draw up rules and regulations. These were intended to order such a large number of followers since it was apparent that grave disorders would result in the absence of rules and regulations. This is due to the fact that the experience of time had made it clear that, not all which has an appearance of good is such in reality. They realized that under the guise of zeal: error and scandals often lurked; unrestricted zeal caused disturbances in the social order; and too great multiplication of members often times did not produce the holiness for which the evangelical life

---

[24] Cf. M. DANILUK – J. DUCHNIEWSKI – J. DUCHNIEWSKI, «Eremici», 1069-1070; A. FAVALE, «Dinamica storica», 42.

[25] Cf. G.M. LOZANO, «Celibato e solitudine», 174-175.

[26] Cf. J. KOWAL, *Uscita definitiva*, 9.

[27] Cf. J.B. RAUS, *De sacrae obedientiae*, 143, n. 78.

was intended[28]. Thus as time passed, it was deemed fit to guide the spiritual growth and mould the character of followers. Therefore, it can be said that coming together[29] for a common purpose necessarily called for community life under a Rule[30]. This is possibly the reason for the formation of Cenobitic communities and the drawing up of a Rule that also formalized and governed the practice of religious profession.

Consequently, towards the end of the third century, in Egypt, under the guidance of Pacomius, there began another form of ascetic life, that which, while adopting the life of anchorites of separation from the world, added another element, namely, common life[31]. The asceticism of the early centuries then became a more organized form of life which took into account the social nature of man which by necessity requires internal rules for community living in order to achieve their purpose[32]. This form of life became known as Cenobitic life[33].

---

[28] As a result of these experiences, when the first forms of cenobitic life emerged, the Provincial Councils began to take precautions against the direct admission into the hermitic life. For example, the Councils of Vanes (465) asked the monks to live in the monastery for some years before entering into eremitic life. Moreover, these hermits remained under the jurisdiction of the Abbot of the monastery of origin. Cf. COUNCIL OF VANNES (463), can. 7; COUNCIL OF ADGE (506), can. 38.

[29] Cf. W.M. PLÖCHL, *Storia del diritto canonico*, I, 195.

[30] According to G.E. Ganss' commentary in IGNATIUS LOYOLA, *The Constitutions*, trans. G.E. Ganss, 40: «Early in the history of religious life, the word Rule was used as a title to mean the fundamental code of statutes for directing and governing the members of a given Religious Institute». G.E. Ganss explains that «in1214 the fourth Council of the Lateran […], and again in 1274 The Council of Lyons […], enacted a decree which required future founders of Religious Institutes to adopt one of the already established Rules». The Church, consequently, introduced the institution of Constitutions that adopt one of the existing Rules while adding some disciplinary rules consistent with the charism and mission of the Institute. Cf. J. KOWAL, *Uscita definitiva*, 10-11; A. CARMINATI – M. SAID, «Diritto dei religiosi», 621-622. Hence, as new circumstances and usages arose in monasteries, the competent authority [...] enacted new statutes which further applied or determined an ancient Rule and fittingly called each of such statute a Constitution. Such constitutions were added to the Rule which was itself left intact. A collection of such statutes was entitled the Constitutions (*Constitutiones*)». Cf. the commentary of G.E. Ganss in IGNATIUS LOYOLA, *The Constitutions*, trans. G.E. Ganss, 41. Therefore, «Constitutions» are ordinances or statutes which are established according to the norm of law which define the purpose, constitution, government, and methods of operation of a Religious Institute. They are intended to supplement the discipline of the Rule. Cf. A. CARMINATI – M. SAID, «Diritto dei religiosi», 621-622.

[31] Cf. A. CARMINATI – M. SAID, «Diritto dei religiosi», 631.

[32] Cf. U. BERLIÈRE, *L'ordine monastico*, 25. «Asceticism» is the practice of evangelical self-denial; when embodied in a Rule and in an organization, it becomes mo-

The Cenobitic life, therefore, has three main features that distinguish it from other ascetic forms: the monastery, the Rule and the Abbot[34]. As a result of these three elements, the community form of ascetic life enjoyed greater stability since with the birth of organized forms of religious life; it was no longer possible to live in a community without an internal order[35]. And apart from giving their communities principles of ascetic life, the founders and organizers of the monastic cenobitic life had also to give their followers disciplinary norms. In this way from the IV century, there emerged the Monastic Rules that were a true internal code of binding norms on religious behavior and a necessary element of order and stability in monasteries. With these internal codes, religious profession also became not only a spiritual but a «spiritual-juridical» practice. While keeping in mind the fact that the first Rules did not have a juridical character as we know it today – but rather constituted a spiritual code – we acknowledge that they contained prescriptions very concrete and necessary for organizing everyday life. These first Rules differ from the later juridical system in the sense that they had rather spiritual value based on the Sacred Scripture. The authors of the Rules aimed at those who were seeking evangelical perfection and not those who wanted to abandon the monastic state. There are, therefore, within the Rules, mainly, the prescriptions that should help the religious to live faithfully the life they had chosen. But considering the weakness of human nature; as the Rules developed, they did not ignore the difficulties that monks or nuns would encounter in their lives; and therefore, they did not definitively exclude the possibility of aban-

---

nastic life. Therefore, the evolution of monastic life includes three phases: (i) asceticism in Christian communities; (ii) asceticism in solitude or hermitic life, and (iii) the cenobitic life.

[33] Afterwards the Cenobitic life would become a form of consecrated life organized juridically with their proper Rules and ecclesiastical legislation.

[34] Cf. A. LÓPEZ AMAT, *La vita consacrata*, 34.

[35] This is not to say that before the written Rule, monks were practising a ***laissez faire*** life style without any order; because right from the beginning, Christian monks – just as the virgins, anchorites and hermits – had the Sacred Scripture as their fundamental rule of life, especially the New Testament; and Jesus and the Apostles were the role models in their lives. In addition, the monastic enthusiasm of the early centuries compensated the lack of written rules. The master or founder of the community was the living rule: his example and directives were enough, especially in the strong conviction and enthusiasm of those who chose to follow them in these early centuries, cf. G. TURBESSI, «Introduzione allo studio», 151.

doning the monastic life with the assent of the Superior for a grave cause in extreme cases[36].

Consequently, the study found these Rules – being internal legislation for the monasteries – worth considering as the main sources of information in highlighting the practice of religious profession during these early centuries of religious life. The study of the Rules reveal that the essential structure of religious profession took shape as different Rules for different monasteries were written. Among the legislators of these Rules were: Pacomius (286-346); Basil (329-379); Augustine (354-430) and Benedict (480-547)[37]. Considering the importance of the Rules of Pacomius, Basil and Benedict in the development of the practice of religious profession, this study will focus on them[38].

1.2.1 The Rule of Pacomius on religious profession

Pacomius39 (292-346) – known to be the founder of the Cenobitic form of monasticism40 – organized his disciples into a group under one roof with strict subjection to a leader. His Rule prescribed community life within the monastic limits under obedience and poverty41. In ch. 4 of his Rule[42], Pacomius treated the admission of

---

[36] Cf. J. KOWAL, *Uscita definitiva*, 23-24.

[37] Their works – while having greater influence on legislation in the monastic life in the Church, and so are important for study of religious profession – are not the only ones. Many other Rules appeared after these Rules which, although they did not add anything new to the already existing Rules, testify to the existence of the widespread emergence of monastic life during the first centuries. Thus, in the fifth century, we observe the arrival of the ***Institutiones*** of Cassiano, Fathers' Rules which include the Rule of the four Fathers, Fathers' second Rule and the Rule of Macarius; in the sixth century, there came the third Rule of the Fathers, two Cesarie Rules, the Aurelian Rules, the ***Regula Tarnatensis***, the Ferreolus Rule, the Rule of the Master and the Rule of Paul and Stephin; starting from the seventh century, we find the Rules of Columbanus and the Rule of Isidorio of Sevilia. Cf. A. CARMINATI – M. SAID, «Diritto dei religiosi», 620-622; J. KOWAL, *Uscita definitiva*, 10-11.

[38] On the theme of Monastic Rule in general cf. A. FAVALE, «Dinamica storica», 44-51; A.P. STEIGER, «De propagatione», 46-60; G. TURBESSI, «Introduzione allo studio», 150-162.

[39] For life history of Pachomius and a profound treatment of his works, cf. M. AUGE, «Dalle origini», 41-52; G.M. LOZANO, «La comunità pacomiana», 237-267.

[40] Cf. A. CARMINATI - M. SAID, «Diritto dei religiosi», 623.

[41] Cf. G. TURBESSI, ed., ***Regole monastiche***, 103-105.

candidates into his community and gave the necessary directions with reference to reception, probation and final admission of candidates into the community. Before admission, those found to possess the required qualifications were first to be instructed in the monastic discipline; they were to be taught the things they would be obliged to do. The commitment in the Rule of Pacomius was a more or less private act. After the probation was complete, admittance into the community required that each monk voluntarily assume the obligation of the Rule established by Pacomius, which especially required the three great external renunciations of poverty, chastity and obedience; he received in return the monastic habit, and enrolment into the Order of monks since the Rule made no reference to an explicit profession. The change of garment was the only external formality connected with admission[43]; an external sign showing that the novice had taken upon himself the obligations of the religious state.

Schenute (332-466?), who was a member of White Monastery, made Pochomius' Rule the basis of government for the monks during the time when he was the community's Superior[44], but he made various changes in it. Among the changes, he made was that no one was to enter the community to become a monk without making his promise before the altar. And the promise which the candidate was obliged to make declaring his earnest determination to strive after perfection, had to be made according to a prescribed formula[45]. This was the first time a promise took the form of a prescribed formula for the admittance of candidates into a religious community. The formula, however, was not drawn up in writing, rather it was made verbally[46]. This formula made no mention of the evangelical counsels; rather, it had only the ordinary duties which are demanded of every Christian. As to its effect, it did not expressely bind for life, but Schenute, in his writings was very much against monks leaving the monastic life once they made the promise[47]. Schenute considered it an act of denial and betrayal for one to leave the monastic life after having promised to lead a life consecrated to God[48].

---

[42] For the general structure of the Rule and commentary on the structure, cf. L. CREMASCHI, ed., *Pacomio e i suoi discepoli*, 179-275.

[43] Cf. A.P. STEIGER, «De Propagatione», 48.

[44] C. POINTEK, *De indulto*, 19.

[45] Cf. J. LEIPOLDT, *Schenute von Atripe*, 106.

[46] Cf. J. LEIPOLDT, *Schenute von Atripe*, 110-111; C. POINTEK, *De indulto*, 19.

[47] Cf. J. LEIPOLDT, *Schenute von Atripe*, 92-155.

[48] Cf. J. LEIPOLDT, *Schenute von Atripe*, 110; C. PIONTEK, *De indulto*, 20-21.

1.2.2 The Rule of Basil on religious profession

The Rule of Basil[49] (329-379) gave a more detailed and organized form of reception of candidates in the ch. 5 of ***Regulae Fusius Tractatae***[50]. After giving direction for their admission and probation, he regulated the final admittance of these novices into monastic family as follows: profession was to be preceded by a time of probation, during which the candidate was to be tried in order to discern if he was prepared to practice the virtues necessary for monastic life; only when the candidate had shown sufficient proof of fitness, was he to be admitted to profession[51]. Basil mentioned in ch. 15 only chastity, but in various places throughout his two Rules, obedience[52] and poverty[53] were also mentioned. He introduced greater stability into monastic life which was reinforced by the profession of vows, from which one could be dispensed only for grave reasons[54]. Profession had to be made in public before the Superior and witnesses. In order to guard against hasty profession, Basil directed that it be made only after due reflection and deliberation. This profession marked the entrance of the candidate into the community and placed the candidate on an equal basis with the other members of the community[55]. In the Rule, a term of probation was left undefined. Undefined in that, the period of this probation was not fixed; the candidate was to be tried and instructed until he was found suitable to enter upon monastic life. Like in the Rule of Pacomius, profession in the Rule of Basil was perpetual. But there was the possibility of dissolution of vows for those who were not fit or who were unable to perse-

---

[49] For the life of Basil and the study of his Rules in general, cf. M. AUGE, «Dalle origini», 63-73; U. NERI, ed., *Opere ascetiche di S. Basilio*, 99-511; A.P. STEIGER, «De propagatione et diffusione», 57-60.

[50] Basil left two monastic Rules to direct his disciples along the paths of virtues: the *Regulae fusius tractatae* and the *Regulae brevius tractatae*. Cf. S. BASILIO, *Regula ad Monachos*, 484-554. For an Italian trans., cf. U. NERI, ed., *Opere ascetiche di S. Basilio*, 213-511. They were written in a catechetical form, that is, the disciple places the question to which the master gives an answer. Neither of these Rules contains a systematic plan for a monastic community; instead, they contain ethical principles and rules of life.

[51] Cf. *Regulae fusius tractatae*, q. 15.

[52] For example, cf. *Regulae fusius tractatae*, qq. 31, 41; *Regulae brevius tractatae*, qq. 9, 115, 117, 118, 119.

[53] For example, cf. *Regulae brevius tractatae*, qq. 85, 87, 89, 90, 91, 93, 205.

[54] Cf. *Regulae fusius tractatae*, 15; *Regulae brevius tractatae*, qq. 2, 102, 255.

[55] Before the profession and during the time of probation, the candidate is not yet considered to be a member of the community.

vere. This, however, had to take place in the presence of the same witnesses.

His Rule admitted to profession even of children. As a result, in his treatment of cases of those who abandoned religious life, he addressed differently cases of those who did not live according to their profession but who were admitted to profession as adults; and those who were admitted to profession as children and who made no progress in life even as they reached adulthood[56]. To those who joined as children and were unable to live their consecration faithfully, Basil recommended that they be expelled from the community. Basil appreciated the value of vows, but he was also aware that some could abandon the community. Therefore, to help those who wished to leave the monastery, he asked the community to use all available means to support the monk to remain faithful to his vows[57]; however, if such support did not bring the desired effects, not only should the monk be sent away, but he should also be treated as a stranger[58].

These directives on religious profession in the Rule of Basil – when compared with the prescriptions laid down in the Rule of Pacomius – show not only a marked development in the importance of the act of religious profession; but also that the practice of religious profession was experiencing challenges related to ability to persevere. It further demonstrates that expulsion was considered a possible solution to this challenge. Distinction between the two kinds of profession also begins to surface as seen in the treatment of those who professed as children and those who professed as adults.

1.2.3 The Rule of Benedict on religious profession

Benedict (480-547), in his Rule, also made provision for perpetual profession. When speaking of the admission of novices, he says that once they had made profession they may no longer leave the monastic community nor wrest their necks from under the yoke of the Rule[59]. Benedict wrote his Rule at Monte Cassino where he had transferred his twelve monastic communities from Subiaco. He divided his Rule into 73 chapters[60]. In ch.

---

[56] Cf. *Regulae fusius tractatae*, q. 7.

[57] Cf. J. KOWAL, *Uscita definitiva*, 16.

[58] Cf. *Regulae fusius tractatae*, q. 14.

[59] Cf. A. LENTINI, ed., *S. Benedetto*. *La Regola*, ch. 58, 531-533.

[60] For a detailed treatment of his works, cf. V. CATTANA, «S. Benedetto», 40-50; A. LÒPEZ AMAT, *La vita consacrata*, 85-117; G. TURBESSI, «La regola di S. Benedetto», 397-474.

58, he gave instructions for the reception and profession of novices[61]. A year of probation was required before a novice could be admitted to make his profession. During this period, the novice was to be taught all that was hard on the way to perfection and the Rule was to be read at intervals so that he would become fully acquainted with the requirements and duties of a religious. After this year of trial and preparation; once he was ready to observe the precepts of the Rule and understood that once vows were professed it was no longer lawful to abandon the monastery, then he would be admitted into the community by profession.

In this same chapter he described the manner of making profession: it was to take place in the oratory as a public act witnessed by the entire community. The novice had to draw up the profession in writing, that is, in the form of a petition[62]. The Rule prescribed that the novice explicitly promise stability[63], conversion of morals[64] and obedience. Finally the novice was directed to place the written document upon the altar; thereby signifying his complete renunciation of self and his perfect union with God. The promise which the novice was to make was final and perpetual[65]. The document was to be preserved in the archives

---

[61] Cf. A. LENTINI, ed., *S. Benedetto. La Regola*, ch. 58, 509-551.

[62] If the novice does not know how to write, he must request another to write this petition for him but the novice must fix his mark on it; generally done by a sign of the cross. Such a form of petition was commonly used in the time of Benedict in both the ecclesiastical and civil legal proceedings. For instance, requests submitted to the Holy See were called *petitiones*. Cf. A. LENTINI, ed., *S. Benedetto. La Regola*, ch. 58, 525-527; I. HERWEGEN – M. ROTHENHÄUSLER, *Zur Aufnahmeordnung der Regula S. Benedicti*, 9-10. So also the *petitio* prescribed by Benedict was a request for admission into the monastic community.

[63] Benedict distinguished four kinds of monks: (i) The «cenobites» who live community life under the direction of an Abbot; (ii) the «anchorites or hermits» who as individuals fight the spiritual battles of life; (iii) the «sarabites» who live together in small groups of three or four without a leader and who (the sarabites) calls good and holy that which pleases them; and (iv) «Gyrovagues or Wonderers» who travel from one community to another always wondering, never settled. Cf. A. LENTINI, ed., *S. Benedetto. La Regola*, ch. 1, 41-55.To guard his disciples against following the example of sarabites and gyrovagues, and to dissuade weaker souls from entering upon the difficult life of anchorites, he decreed that his monks should make a vow of stability, binding themselves to remain in the community of which they became members by profession. Cf. J. KOWAL, *Uscita definitiva*, 21.

[64] By the vow of conversion of morals, the monk obliges himself to strive constantly for a higher degree of perfection since religious life is a state of perfection to be acquired.

[65] Cf. A. LENTINI, ed., *S. Benedetto. La Regola*, ch. 58, 519.

of the monastery, so that it could be used against the novice should he afterwards decide to forsake the life he had vowed to live.

In the chapter on profession, Benedict made no mention of either chastity or poverty. The novice was simply to promise obedience according to the Rule. But the Rule itself required chastity and poverty[66] such that, by promising obedience according to the Rule, the novice implicitly also vowed chastity and poverty. Benedict in this chapter on profession, laid down a twofold requirement: the verbal promise and a written document bearing witness that the novice had made the required vows. A new feature introduced by Benedict, therefore, was the written formula or petition, which he required of every one who made profession. This seems to suggest that dispite the rigorous preparation to ensure stability of religious life, cases still appeared of those who abandoned religious life.

The Rules that the study has briefly examined had a fundamental influence on religious life and the practice of religious profession. Initial development of religious profession was brought about by the private regulations of the various religious communities. Through these Rules, religious life acquired an internal discipline framework and a consolidated stability of life. In this early Monastic period, four things stand out clearly:

i. Juridically, the obligations of religious profession became precise only when profession of *propositum* passed from that of consecrated virgins and ascetics to that of the monks[67]. From this concept of *propositum* of virginity gradually developed the concept of religious profession.
ii. The search for perfection and salvation was the principal concern of those who joined religious life. It was viewed as a call not to a particular or superior holiness but to salvation. Other motives of joining religious life were not excluded, but they were not constitutive elements of religious life, at least not for the monastic vocation.
iii. To realize this vocation, one was called to offer all, to surrender all for love in response to a call.
iv. The trend towards provision of strict rules to regulate religious profession in the Rules of the Fathers is a clear manifestation that the religious profession was experiencing serious challenges even at its very beginning.

---

[66] Benedict devoted to poverty a whole chapter, ch. 33 of the Rule. Chastity was also mentioned in a number of chapters, for example, chs. 4, 7.

[67] Cf. A. BONI, «Professione», 948.

The sequence of strictness from all the Rules studied can be summed up as follows:

i. The initial, individual voluntary desire to live the evangelical virtues.
ii. Voluntarily assuming the obligation of the Rule and living under strict subjection to a leader.
iii. No one was to enter the community to become a monk without making his promise before the altar using a prescribed verbal formula.
iv. Profession was to be preceded by a time of probation which was not defined.
v. The candidate was to be tried in order to discern if he was prepared to practice the virtues necessary for monastic life.
vi. Only when the candidate had shown sufficient proof of fitness, was he to be admitted to profession.
vii. Profession had to be made in public and only after due reflection and deliberation.
viii. An entire year of probation was required and profession was to be drawn up in the form of a petition.
ix. The document was to be preserved in the archives of the monastery, so that it could be used against the novice should he afterwards forsake the life he had vowed to live.

This trend is a clear indication of a movement away from an obligation that bound only in conscience to one which bound both in law and in conscience as a way of protecting both the candidate and the community from the jeopardy of recieving unsuitable members into the community who would later abandon the life or be a source of scandal. These indications further suggest that determining suitability of members had been a challenge since the origin of religious profession; hence the need to look for viable solutions. This need foreshadows the reason as to why the Church would later legislate a probationary period for all religious during the time of temporary profession before final commitment.

1.3 *Papal and Particular Councils' legislations until the Council of Lateran I*

The Rules made a great contribution to the institutionalization of ascetic life in the Church and introduced greater stability and highlighted the essential elements of religious life. They did so particularly in the introduction of the perpetual nature of religious profession and the assumption of the triad of the evangelical counsels of chastity, poverty and obe-

dience. Accordingly, a monk bound by a Rule of life could not arbitrarily and without a real difficulty abandon the religious state once professed. Consequently, people who abandoned the religious life caused a grave scandal among the faithful especially if they got married[68]. In consideration of the understanding of religious vows as perpetual and faced with not a few scandalous cases of those who abandoned consecrated life after profession, the Church had to give clear norms. Therefore, besides the letters and sermons of bishops, particular Councils and the Popes as well as the later universal Councils began to develop jurisprudence through addressing the situation of those who abandoned the monastery. Since religious profession was understood as perpetual, the assumption was that all who assumed Monastic life by profession were mature enough for such decision, that they discerned well their vocation before professing and that they were convinced that they were capable of persevering in a vowed life. Consequently, legislators of this period provided preventive prohibitions and enjoined penances on offenders who violated the prohibitions. They did so, not so much because abandoning religious life after profession was an offence, but because in doing so the departed religious deserted a higher good to which they had freely bound themselves by vow. For such violations, medicinal penalties[69] and penal remedies[70] were instituted[71]. The most explicitly violated vow during this period was chastity given the fact that most of the cases of abandonment[72] of religious life preceded mar-

---

[68] Cf. A. LÓPEZ AMAT, *La vita consacrata*, 17.

[69] J. BURKE, ed., *A dictionary of Canon Law*, 493: «These are penalties which presuppose contumacy or stubbornness or rebellion against authority and are meant to break that attitude of contumacy, by leading the offender to repentance with reparation of scandal and of damages. Its purpose is correction of the offender».

[70] «Penal remedies» are «quasi-penal» measures that help to preclude delicts or address problematic, yet non-delictual disciplinary situations (cf. can. 1312 §1). *Quasi* is an adjective used to describe something that has some resemblance or features of something else usually by possession of certain of its attributes. Thus, «penal remedies» are measures imposed by a competent authority which are related to a behaviour that to some degree, or at least apparently, has harmed or may harm the common good or the juridical system. Therefore, they are both corrective and preventive in nature.

[71] Although not explicitly called medicinal penalties and penal remedies, their nature meets the threshold of medicinal penalties and penal remedies.

[72] The frequent abandonment of religious life, which in most cases preceded marriage, could have had a significant influence from the phenomenon of oblation of children. The oblation of children to monasteries by parents was also known in the ancient Rules, and according to the tradition that followed the idea of Basil, a child would follow the will of the parents; however, when he became of age, he was free to

riage. Consequently, most of the prohibitions in the decrees and canons of the Councils until the Council of Chalcedon were aimed at preventing infidelity and discouraging getting married. The first to put such prohibitions in place were particular Councils and Synods. Initially, they did not address religious profession in particular but they emphasized the fact that religious life, once embraced, was for life. The decrees of these early Councils were in agreement that the perpetuity of vows bound in conscience in such a way that those who went against the vows committed a grave sin. Consequently, these Councils generally prohibited the return of the religious to secular life. Since abandonment of religious life is outside the scope of this study, we shall not enter into the discussion of such legislations[73].

Nevertheless, in spite of the particular norms in place regarding Monastic life and those who violate the vows through infidelity or/and abandonment of religious life, the problem of abandoning Monastic life persisted which necessitated the ongoing generation of particular norms. With a multitude of particular norms in place, there was no longer harmony in the practice of Monastic life. And so ecclesiastical legislation at the universal level concerning particular points of religious life became necessary in order to bring some uniformity to the practice of religious life as well as to correct abuses and to effect stability which is so essential to religious life[74].

---

make a choice whether to remain in the monastery or to leave. Cf. J. DUBOIS, «Oblato», 655-656; J. KOWAL, *Uscita definitiva*, 40-41. The Benedictine Rule, on the other hand, generally did not permit anyone to leave the monastery after profession including the children given to the Monastery by their parents, although there were exceptions in accordance to the Rule. Cf. BENEDICT, ST., *Regula monachorum*, ch. I. The Church Councils tended towards the Benedictine Rule in their prescriptions. The practice of oblation endured until the Council of Trent, which would set the minimum age of 16 years for the validity of religious profession. Cf. THE COUNCIL OF TRENT, sess. 25, Decr. *De regularibus et monialibus*, cap. 15.

[73] For information about some of these legislations, cf. COUNCIL OF ELVIRA (305), ch. 13-14; THE COUNCIL OF ANCIRA (314), can. 19; COUNCIL OF CARTHAGE I (345-348), cann. 3-4; COUNCIL OF VALENCE (374), can. 2; COUNCIL OF CARTHAGE IV (398), can. 104.

[74] At this time, there were still no institutionalized forms of consecrated life and the intervention of the Bishops of Rome on monastic discipline was very limited. Nevertheless, the Popes intervened, by responding, in most part, to questions from various bishops and by strengthening particular laws. Cf. B.E. FERME, *Introduzione alla storia*, 33. The Supreme legislator also intervened when there was need for order and where cases of infraction of common law had become frequent. In this sense, it can be said that the particular Councils prepared a way for a universal law which was given by the Council of Chalcedon (451). Cf. W.M. PLÖCHL, *Storia del diritto*, I, 201.

The first general council to address the problem of abandoning Monastic life was the Council of Chalcedon (451)[75]. Since it did not directly address religious profession, it falls outside the scope of this study. Nevertheless, in order to report a smooth flow of events, the importance of this Council, at least until the eight century, is seen in the fact that Popes and bishops, through particular Councils[76], applied its discipline to particular circumstances[77]. Therefore, with regard to fidelity to one's consecration, the disciplinary norms of Chalcedon were often repeated, changing only the severity of ecclesiastical penalties[78].

Given the persistence of the problem – even with ecclesiastical penalties in place – and the phenomenon of oblation, questions began to emerge at the level of particular Councils concerning maturity of candidates, their suitability and their preparedness. Consequently, the Council of Trullo (692) required that a candidate must be accepted only after a thorough examination and at the age of at least ten years, in order that his profession of life made to God be firm and made consciously and intelligently after a deep reflection[79].

With time, the monasteries were gradually being built away from the solitude of the desert and near the cities. With this change in environment came laxity and diminished fervour. Many of the monks were influenced by worldly desires and – wandering about from place to place

---

[75] Cf. COUNCIL OF CHALCEDON, can, 16. This Council, although did not directly address religious profession, marked an important period towards development of the practice of religious profession because it is the first Ecumenical Council which gave the universal Church disciplinary norms on the problem of abandonment of religious life by those who profess the vows. The Council gathers the norms of past particular Councils, giving common law for the Church but leaving a wide margin of discretion for local bishops in applying the ecclesiastical penalties. Cf. W.M. PLÖCHL, *Storia del diritto*, I, 202. Among the disciplinary canons of the Council, there was one dedicated to Monastic life – can. 4 – which gave two basic principles for religious life: (i) implicitly, it prescribed that religious community should follow its proper Rule and (ii) explicitly, it stated that all the monastries and their members were to be under the full jurisdiction of the bishops. Cf. COUNCIL OF CHALCEDON, can. 4; J. KOWAL, *Uscita definitiva*, 31.

[76] These included: COUNCIL OF AGDE (506), can. 38; COUNCIL OF ORLEANS I (511), can. 21; COUNCIL OF TARRAGONA (516), can. 11; COUNCIL OF ORLEANS V (549), can. 19; COUNCIL OF AUXERRE (561-605), can. 26; COUNCIL OF TOLEDO IV (633), cann. 52-53; COUNCIL OF TRULLO (692), can. 47; COUNCIL OF ROME (721), ch. 3; COUNCIL OF WORMS (868), cann. 20-23; COUNCIL OF MAINZ (888), can. 26.

[77] Cf. A. CARMINATI – M. SAID, «Diritto dei religiosi», 643; J. KOWAL, *Uscita definitiva*, 33.

[78] Cf. J. KOWAL, «Impedimentum voti», 39-40.

[79] Cf. COUNCIL OF TRULLO (692), can. 40.

– they caused many disturbances. Many were abandoning religious life for marriage. Many also found difficulty in living as subject to their own Superiors and so started monasteries or cells of their own. Since, the building of a new monastery in that age was generally synonymous with the beginning of a new Order[80]; the result was the rise of too many Religious Orders. Some other monks adopted false opinions and fell into dogmatic errors and – by the propagation of these heretical tenets – gravely harmed the Church. It became apparent that these disturbances needed to be quieted. The monasteries needed to and had to be helped to remain free from error and excess through the intervention of ecclesiastical authority at the universal level, which in fact occurred, as will be shown in the next section, at the First Lateran Council and, subsequently developed in the centuries to follow.

2. **From Lateran Council I to Pope Pius IX (XII-XIX century)**

Indeed, the Period following the First Lateran Council marks the beginning of universal legislation on religious profession. That is to say, it defined the distinction between profession of solemn vows and the profession of simple vows. It also gave juridical meaning to temporary profession as well and provided juridic effects to temporary profession of simple vows.

2.1 *Implicit declaration of all religious vows as solemn by Lateran Councils*

The first universal intervention that directly addressed religious profession was the Lateran Council I held in 1123. In fact, this Council provided the first universal legislation on religious life. It also specified the first juridic effects of religious profession.

Of interest to our study is the twenty-first canon of the Council which forbade marriage to professed men and declared that those who had contracted marriage must be separated from the Religious Order[81]. Any doubt in this matter, which may still have existed after the Lateran Council I was finally dispelled by the Lateran Council II, held under Pope Innocent II in 1139. The words used by this Council explicitly

---

[80] This is because monasteries did not form a part of a grand unit as religious units often do today, but each was independent and formed a distinct religious community.

[81] COUNCIL OF LATERAN I (1123), can. 21: «We absolutely forbid [...] monks to have concubines or to contract marriages. We adjudge [...] that marriage contracts between such persons should be made void and the persons ought to undergo penance».

declared that marriages contracted by both men and women bound by religious profession were both null and void[82]. Lateran Council I[83] and Lateran Council II[84], by decreeing marriages contracted by persons who had made religious profession to be null and void[85], implicitly declared all religious vows to be solemn. This declaration determined that all future professions were juridically solemn. Solemn profession was of its very nature perpetual. From that time on, therefore, it can be said that to be a religious meant also to be juridically bound by solemn vows with juridic effects. From this time henceforth, legislation emerged that aimed at ensuring the stability of this juridic entity called Religion and to protect the members of this entity[86].

In the same spirit of curbing abuses in Religious Orders and ensuring order and stability, Pope Innocent III at Lateran Council IV in 1215 prohibited the foundation of any new Religious Orders and declared that if anyone desired to become a religious, he must become a member of one of the approved Orders[87]. The purpose of this legislation was to forestall the formation of too great a variety of Religious Orders with no clear and distinct charism. Although this enactment did not carry an express invalidating clause, canonists judged that it rendered contrary acts null and void due to the nature of religious state and the reason alleged. Moreover, the

---

[82] COUNCIL OF LATERAN II (1139), cann. 6-8. «That the law of continence and the purity pleasing to God might be propagated among ecclesiastical persons and those in holy orders, we decree that where [...] monks and professed lay brothers have presumed to take wives and so transgress this holy precept, they were to be separated from their partners. [...]. Furthermore, when they have separated from each other, let them do a penance commensurate with such outrageous behaviour; we decree that the same is to apply also to female religious if, God forbid, they attempt to marry».

[83] Cf. COUNCIL OF LATERAN I (1123), can 21.

[84] Cf. COUNCIL OF LATERAN II (1139) cann. 6-8.

[85] The legislation of the First and Second Lateran Councils would later be reaffirmed by several Pontiffs: Alexander III (1159-1181); Innocent III (1198-1266); Boniface VIII (1294-1303); and finally by the decrees of the Council of Trent. Cf. ALEXANDER III, Lett. ***Meminimus***, in X. 4, 6, 3; INNOCENT III, Lett. ***Insinuante***, X. 4, 6, 7; BONIFACE VIII, Decr. ***Quod votum***, in VI° 3, 15, 1.

[86] Temporary profession of simple vows for all Religious Institutes would later emerge as a consequence of this effort to protect the individual members and the Institute from the harm caused by admission of candidates who lacked a vocation.

[87] Cf. COUNCIL OF LATERAN IV (1215), const. 13. Similar decrees were later issued by Popes Gregory X (1271-1276) and John XXII (1316-1334). Cf. GREGORY X, Decr. ***De religiosis domibus***, 4 May 1298, in VI° 3, 17, 1; JOHN XXII, ***De religiosis domibus***, 2 Jan. 1317, in Extrav. Jo. XXII 7, 1.

other texts of the law[88] and the mode of prohibition sufficiently made known the will of the legislator[89]. So any foundation of a Religious Institute in violation of the prescription of this Council did not constitute a true Religious Institute[90].

But inspite of this decree, in practice, new «Religious Orders» kept emerging without any approval. The Second Council of Lyons in 1274 issued a canon reiterating the previous legislation and suppressed all forms of religious life and mendicant Orders founded after the prohibition. It contained two prohibitions:

i. It forbade the erection of any new Religious Institute without the approbation of the Holy See.
ii. It forbade anybody to enter such a non-approved Institute.

That this decree applied to all the Institutes of both male and female desiring to have community life under a rule is evident from the text of the canon[91].

2.2 *Explicit declaration of all religious vows as solemn and imposition of cloister on all religious*

Pope Boniface VIII (1294-1303) in 1298 declared that the solemnity of religious profession was of ecclesiastical origin. When he made this declaration, he at the same time also declared that «those vows only

---

[88] Cf. G. SEBASTIANELLI, *Praelectiones Juris*, pars II, tit. II, ch. 1, 357. The reason that such an Institute was regarded as condemned and considered to be not a Religious Institute followed from the fact that it was not approved. Cf. Clem. 3, 11, 1. The only valid profession was one that was made in an approved Order. Cf. VI, 3, 17, 1.

[89] Cf. X. 3, 36, 9; P. MOCCHEGIANI, *Iurisprudentia ecclesiastica*, I, ch. II, 16, n. 17.

[90] Cf. BENEDICT XIV, const. *Quamvis iusto*, 30 Apr. 1740, §13, n. 6, *CICFontes* II, 398; D. BOUIX, *Tractatus*, I, pars II, ch. II, 199; F. SCHMALZGRUEBER, *Ius ecclesiasticum*, pars. IV, tit. 31, n. 22, q. 5 G. SEBASTIANELLI, *Praelectiones Juris*, pars II, tit. II, ch. 1, 357. Their argument was that the state of the religious life was a state of perfection; but a papal prohibition renders life in a non-approved Institute a sinful state.

[91] COUNCIL OF LYONS II (1274), can. 23: «A general Council by a considered prohibition averted the excessive diversity of religious orders, lest it might lead to confusion. Afterwards, however, not only has the troublesome desire of petitioners extorted their multiplication, but also the presumptuous rashness of some has produced an almost unlimited crowd of diverse orders, especially mendicant, which have not yet merited the beginnings of approval. We therefore renew the constitution, and severely prohibit that anyone found henceforth a new order or form of religious life, or assume its habit. We perpetually forbid absolutely all the forms of religious life and the mendicant orders founded after the said council which have not merited confirmation of the Apostolic See, and we suppress them in so far as they have spread».

were solemn which were either imposed by the reception of major orders, or were freely made by either "*express*" or "*tacit*"[92] religious profession in a Religious Order approved by the Church»[93]. He also commanded all who were professed to live in perpetual cloister and forbade them to leave the cloister for any reason[94].

The necessity of papal approbation was later decreed by Pope Gregory X[95] (1271-1276) and again by Pope John XXII[96] (1316-1334) in 1318. John XXII also declared as canonically non-existent all congregations founded without approval of the Holy See.

The declaration of Boniface VIII that solemn profession existed only in approved Religious Orders considered in connection with the decrees of the First and Second Lateran Councils, which had declared all marriages contracted by persons bound by religious profession to be invalid, afforded a very firm foundation for holding that, after that time there existed no true Religious Order in which solemn vows was not professed[97]. This appears to suggest that at this date, there were – canonically speaking – no religious who did not belong to one of the approved Orders. And since all these Orders professed solemn vows, it can rightly be concluded that the only vows made in the religious life at this time were solemn. Except for particular provisions made by the

---

[92] Cf. A. REIFFENSTUEL, *Jus Canonicum Universum*, lib. III, tit. 31, n. 158. The Church has always acknowledged two modes of making profession: (i) *express* and (ii) *tacit*. According to F. Schmalzgrueber, A. Reiffenstuel and E. Pirhing, profession is «*express*» when the consent of the person making it is manifested by means of word of mouth, or by a written document, or by some similar external sign, explicitly significant of this manifestation of consent. In «*tacit*» form, no formal words are used; no explicit solemnity or any act significant to community takes place. Certain acts, however, performed by the novice under certain circumstances would be considered as a sufficient manifestation of a novice's intention of assuming religious life and of binding himself by the religious vows. Cf. E. PIRHING, *Jus Canonicum*, III, tit. 31, n. 113; A. REIFFENSTUEL, *Jus Canonicum Universum*, lib. III, tit. 31, nn. 158 & 177, 180; F. SCHMALZGRUEBER, *Jus Ecclesiasticum*, pars IV, tit. 31, n. 155-159. 'Tacit' and 'explict' profession is also defined in CONGREGATION FOR BISHOPS AND REGULARS, *Nemo est*, 19 Jun. 1750.

[93] BONIFACE VIII, *Quod votum*, in VI° 3, 15, 1: «solum votum debere dici solemne [...] quod solemnizatum fuerit per susceptionem sacri ordinis, aut per professionem *expressam* vel *tacitam*, factam alicui de religionibus per sedem apostolicam approbatis». (English transl. is by the author; emphasis added).

[94] Cf. BONIFACE VIII, *De statu regularium*, in VI° 3, 16, 1.

[95] Cf. GREGORY X, *De religiosis domibus*, in VI° 3, 17, 1.

[96] Cf. JOHN XXII, *De religiosis domibus*, in Extrav. Jo. XXII 7, 1.

[97] Cf. E. PIRHING, *Jus Canonicum*, lib. III, tit. 36, n. 33; F. SCHMALZGRUEBER, *Jus Ecclesiasticum*, pars IV, tit. 31, nn. 13-14.

Holy See for individual cases, solemn profession continued to be, in law, the only profession made in approved Religious Orders and this would continue until the latter half of the nineteenth century. In the meantime, some authors were building up weighty arguments in an effort to demonstrate that the vows of the early religious were all simple[98].

2.3 *From profession of solemn vows to profession of simple vows before solemn vows*

2.3.1 The genesis of the distinction between solemn and simple vows

The explicit use of the terms ***solemn*** and ***simple*** vows are found for the first time in the twelfth century[99] in the ***Decretum Gratiani***[100]. In his various canons, Gratian cited two views held by the Fathers and the Councils concerning the marriages of those who had vowed to live in perpetual chastity before marriage. Some of such marriages had been declared illicit, but nevertheless valid, while others had been declared not only illicit, but also invalid. In consideration of the existence of two very different effects on this important question, Gratian came to a conclusion that there must be a distinction in the vows of these two classes of persons[101]. To this distinction he applied the terms ***simple*** and ***solemn***. These terms, as applied to the two classes of vows by Gratian, was taken up by Bernard[102] and

---

[98] Cf. A good example is Bouix in M.D. BOUIX, ***Tractatus***, I, pars. I, ch. VI, 118-122.

[99] The actual distinction of vows existed before the exact terminologies of solemn and simple began to be applied to the two kinds of vows. As is evident from the Rule of Basil and some of the Particular Councils, a distinction was made between profession of an adult and that of a child in cases of abandonment of religious life. The violation of the vows was considered to be more serious in those professed as adults than those professed as children. G. Devoti thinks that already in the fourth century there existed – from the custom – vows which rendered a subsequent marriage contract invalid and others which only impeded marriage, cf. G. DEVOTI, ***Institutionum canonicarum***, lib. II, tit. 2, sect. 9, §§128-130. In consequence, there is some ground for asserting that at least in certain regions, the actual distinction between solemn and simple vows existed before the exact terminologies were used. Other authors of this opinion include F. Ballay, P. Vidal, G. Chelodi. Cf. F. BALLAY, «Quaestiones quaedam de votis», 3; G. CHELODI, ***Jus matrimoniale***, 54; F.X. WERNZ – P. VIDAL, ***Ius canonicum***, V, 352.

[100] Cf. A. VERMEERSCH, ***De Religiosis***, II, ch. I, 11-15; F.X. WERNZ – P. VIDAL, ***Ius canonicum***, V, 297 footnote 106.

[101] Cf. C. 2, 3, 5; C. 8; D. 27.

[102] A.VERMEERSCH, ***De Religiosis***, II, ch. I, 11.

taught in the schools of canon law until they were officially adopted by the Supreme Pontiffs.

2.3.2 The origin of temporary profession of simple vows in Religious Institutes approved by the Holy See

Temporary profession of simple vows, as public vows capable of creating a religious state, traces its remote origin in the simple vows introduced by Ignatius of Loyola[103]. In the *Formula of the Institute of the Society of Jesus* of 1540, he stated that in his Society there should be a profession of simple vows for admission of the formed coadjutors and scholastics in to the society. The simple vows of the scholastics were, however, to be followed by renewal[104] of these vows at certain times until such time as the candidate should be prepared for the solemn profession. «The Society did not have convents where young people could devote themselves to study under the direction of a professed member; and the Society had to be always available to all the missions entrusted to it by the Supreme Pontiff»[105]. Ignatius came up with the idea of schools where students could prepare to carry out the mission. These students had to take simple vows while pursuing their studies, and once they completed their studies, they were to be incorporated into the Society with solemn vows if they were deemed suitable to be part of the Society[106].

With the approval of the Constitutions[107], members of the Society professed simple vows before solemn vows and such memebrs could be

---

[103] Where as the simple vows introduced for the admission of the formed coadjutors were public in nature (cf. IGNATIUS, ST., *The Constitutions*, arts. 533; 535), those introduced by Ignatius of Loyola for the scholastics were not; Ignatius intended them as private vows. The Constitutions at art. 539 states that «just as this vow is made to God alone and not to a man, so no man whatsoever receives it». They public nature was later granted by Pope Gregory XIII.

[104] The simple vows introduced by Ignatius of Loyola for the scholastics were perpetual (cf. IGNATIUS, ST., *The Constitutions*, arts. 535; 540). Therefore, to renew these vows according to Ignatious of Loyola is not to take on a new obligation but to remind themselves of the one they already have in the Lord and to confirm it. Cf. IGNATIUS, ST., *The Constitutions*, arts. 544; 546.

[105] E. OLIVARES, *Los votos*, 1: «La Compañía no tendría esos conventos donde los jóvenes pudieran dedicarse al estudio bajo la dirección de antiguos profesos; la Compañía tenía que estar toda siempre disponible para las misiones que le encomendase el Sumo Pontífice». English transl. is by the author.

[106] Cf. A. GUTIÉRREZ, «Professio religiosa», 290.

[107] Cf. L. PASTOR, *The history of the popes*, 12, 34. Pope Paul III approved the first *formula* of the Institute on 27 Sept. 1540. He also approved the plan of simple vows for the coadjutors. When the Society was formed with its members taking solemn

dismissed if it was found that life in the Society was not their vocation or if the common good of the Society demanded their departure[108]. Ignatius' idea and plan behind the simple vows is seen very clearly in the ruling that if one was not fit for studies he could be engaged by the Society in those duties for which he seemed fit; but if he was found to be entirely unfit for the intellectual duties required in his state, he could be dismissed even if he had been admitted to simple vows in the Scholasticate[109]. When the religious in simple vows was dismissed, he was freed from his vows *ipso facto* and there was no need for a dispensation. But, if there was time to do so, the Superiors were to obtain a dispensation from the vows for their subjects rather than to use their power of dismissing them with the same effect[110].

In law, this provision remained a privilege of the Jesuits. Meanwhile, there were changes taking place in other communities with a tendency towards the practice of simple vows. A «tendency» because many associations of Franciscan and Dominican tertiaries arose during the fourteenth and fifteenth centuries[111]. Gradually many of these associations adopted the «community life». Some of them professed one or more of the «solemn vows». Nevertheless, it cannot be proven from the literature available that any of them professed legitimate simple religious vows, since it seems that prior to the sixteenth century there were no officially approved Congregations.

The ultimate conclusion to be drawn from this is that the first temporary profession of religious vows which may be considered as

---

vows, they decided that only those should become members of the Society who had proved their intellectual ability by means of successfully undergoing searching examinations. This necessarily limited their number. Accordingly, they admitted other capable priests as *coadjutor* who would preach, hear confessions, and the like. Until they were deemed ready to teach or had obtained a degree, they, as well as the scholastics, took only simple vows. Cf. L. PASTOR, *The history of the popes*, 17, 278-279.

[108] The more obligations there were toward some person because of his good service, or the more qualifications he had for helping the Society in the service of God our Lord, the less easily could he be dismissed. The Scholastics and Coadjutors with public simple vows could be dismissed, but not as readily as the novices in the first or second year of their probation. In certain cases, but only for the gravest crimes, could those who were professed with solemn vows be dismissed. Cf. IGNATIUS LOYOLA, *The Constitutions*, Doc. 3, part II, ch. 1, 142, English trans. by G.E. Ganss.

[109] Cf. IGNATIUS, ST., *Constitutiones*, III, *Constitutio*, Pars IV, ch. VI, n.15.

[110] Cf. IGNATIUS, ST., *Constitutiones*, III, *Constitutio*, Pars II, ch. IV, nn. 3-4, *Declaratio* B; Pars V, ch. IV, n. 5.

[111] Cf. I.L. ALIJARD, «Super Tertio Ordine», 381.

valid public simple vows were those professed by Jesuit novices at the completion of their novitiate[112].

2.3.3 Development and rapid growth of Institutes of simple vows

From the sixteenth century – contrary to the legislation of the First, Second and Fourth Lateran Councils and later the Second Council of Lyons – there arose communities who made only simple vows[113].

Several pious associations also called *Congregations* had come up and were developing rapidly. Among these were pious female communities not bound by the norms on cloister. They did not have a particular habit, they did not profess solemn vows and so did not qualify as «religious». Consequently, they were not bound by cloister norms. These communities professed simple vows but not approved by the Church. Thus, their vows were considered private. By that very fact, they did not belong to any religious state in the strict sense of the word[114].

Many of these new communities began with a *conservatorium*, that is, a home for orphan girls. The women who belonged to such Institutes naturally chose one of their members as the head, and with time, they began to feel the need for a Rule of life and that stability which could be best furnished through the profession of vows. Their work of charity made the observance of the cloister impossible, so they took simple vows.

In the meantime, even some of the old Religious Institutes dropped the observance of the cloister in favour of this work. And so gradually, the term *conservatorium* was extended to embrace those female communities who lived together as religious under a certain Rule but were not obliged to take solemn vows or to observe the cloister. The term

---

[112] Ignatius of Loyola is the one who initiated the practice of temporary religious profession because what he introduced in the name of profession of simple vows constitutes the antecedent of «temporary vows». This implies that without the introduction of simple vows that equally constitutes a person an authentic religious, temporary profession would have probably remained private. Long before Ignatius of Loyola, Thomas Aquinas in the *Summa Theologica*, had distinguished simple from solemn vows when he said that adolescents commit themselves to religious vows – simple or solemn – without the consent of their parents. Cf. *Summa Theologica*, II-II, q. 88, art. 9. In this period however, it is only solemn religious profession which constituted a candidate an authentic religious. Simple vows were considered as private.

[113] Cf. S. SIPOS, *Enchiridion iuris*, pars II, §61, 325 n. II (10).

[114] For a detailed description of religious state, cf. A. CARMINATI, *I fini*.

would later become synonymous with the term Religious Congregation[115] with the approval of the Holy See – and with this would also arise the problem of terminology: There were some called «Orders» or «Religion» and others «*Conservatorium*» or «Religious Congregation». What exactly did these terms mean? It is important that we distinguish «Religion» or «Order» from «Congregation» before we proceed with the discussion. A «Religion» or «Order» was an Institute which had the essence of the religious state[116], the approbation of the Holy See, and solemn[117] vows[118]. A «Religious Congregation» was an Institute which had the essence of the religious state, the as-

---

[115] Cf. A. LARRAONA, «Commentarium», 48; M.D. BOUIX, *Tractatus*, I, pars III, sect. I, ch. II, 329-330; C.R. ORTH, *The approbation*, 57-58.

[116] The three essentials of the religious state were considered not as essentials which were demanded by the ecclesiastical law but as essentials which were demanded *ex natura rei*. The three are: (i) the three vows of poverty, chastity and obedience, (ii) the express profession of these vows, and (iii) the intention to persevere perpetually. Cf. A. VERMEERSCH, *De religiosis*, I, art. II, ch. I, 15, n. 24.

[117] The distinction between simple and solemn vows had a gradual development. For genesis of the distinction between solemn and simple vows, cf. sec. 2.3.1 of this chapter. For the explicit declaration of all religious vows as solemn, cf. sec. 2.2 of this chapter. Gradually, the terms came to be distinguished as follows: Whereby by solemn vows, a religious assumed a state that is public, absolute and irrevocable, by simple vows, one assumed a state that was not absolute and that could be dissolved under certain conditions. Cf. F. PELLIZZARI, *Manuale regularium*, I, tract. III, ch. IV, nn. 9-10, 170-171. Solemn vows came to be understood as perpetual and contrary acts, like getting married, were not only illicit but invalid. Religious in solemn vows could not own property. A religious society of solemn vows was called an order, and its members were called regulars or nuns if they were women. Simple vows – like solemn vows – were understood as vows taken publicly, that is, received by the Superior in the name of the Church. Unlike solemn vows, they could be temporary or perpetual. Simple vows permitted ownership of property. Acts contrary to simple vows such as getting married would be illicit, but valid. A religious society of simple vows was called a Congregation, and religious women in simple vows were called sisters. Nuns, strictly speaking, were religious women who had taken solemn vows. Various opinions have been expressed as to the matter of this distinction and that debate is outside the scope of this study. These distinctions would later be codified in the *CIC/1917* (cf. cann. 575, 580, 581-583 of *CIC/1917*) but disappeared in the *CIC/1983*. According to the *CIC/1983*, a vow is solemn if the Church has recognized it as such; otherwise, it is simple (can. 1192 §2).

[118] Cf. M.D. BOUIX, *Tractatus*, I, pars. II, ch. I, 187. The ecclesiastical law added the following three requirements: (i) ecclesiastical approbation, (ii) the solemn character of the vows, and (iii) the following of an approved Rule. Without these, there was no *religio* strictly speaking. Cf. M.D. BOUIX, *Tractatus*, I. pars I, sect. II, 57. The essence of the religious state could be realized if all that was required *ex natura rei* were present plus the approbation of the Church, even without solemn vows, for the Church could constitute a new entity, as Pope Gregory XIII states in his Constitution *Ascendente Domino*.

sent of the Holy See, but only simple vows[119]. Therefore, the word «*congregatio*» was employed since in those days the word «*religio*» meant only an Institute of solemn vows[120]. The adjective «*religious*» was used in connection with the word «*congregatio*» – that is, Religious Congregation – in order to distinguish it from a Lay or Secular Congregation[121]. However, as the years went on, the nature of Religious Congregations approached more and more that of the Orders.

2.3.4 The Decrees of the Council of Trent relative to religious profession

The nineteenth ecumenical Council of Trent[122] was held from 1545-1563. It opened at Trent on 13 Dec. 1545 and closed there on 4 Dec. 1563. Its main object was the definitive determination of the doctrines of the Church in response to the heresies of the Protestants; a further

---

[119] M.D. BOUIX, *Tractatus*, I, pars. II, sect. I, ch. I, 187. This author does not explicitly include in his definition the fact of the assent or of the approval of the Church, but, in the light of the treatise which follows the definition, this seems to be included implicitly, for he holds that the prescriptions of the Council of Lateran IV and Council of Lyons II were invalidating laws.

[120] This distinction is not an arbitrary one, but is based on pertinent decrees issued by the Holy See: The *Confraternitas Bethlemitarum* was begun in 1653. In 1674 the Holy See approved it as a merely secular confraternity. Pope Innocent XI in 1687 erected it as a Religious Congregation in which the Rule of Augustine was followed and in which simple vows were taken. Cf. INNOCENT XI, Const. *Ecclesiae Catholicae*, 29 March. 1687, in *BR* 19, 735. Over twenty years later Pope Clement XI erected this Religious Congregation a *true and formal Religious Institute* (*ordinem religiosum*). Cf. CLEMENT XI, Const. *Ex debito pastoralis*, 3 Apr. 1710, in *BR* 21, 385-387. In it the members took solemn vows and received the name of religious and of true regulars. The Confraternity of Hippolytus for serving the sick in the hospitals was erected in Mexico City as a secular confraternity. It was raised to the status of a Congregation and later in 1700 was made a formal Religious Institute. Cf. INNOCENT XII, const. *Ex debito pastoralis*, 20 May 1700, in *BR* 20, 931-934. In 1621, Pope Gregory XV erected the Congregation of Priests of the Mother of God and the Congregation of Clerics Regular of the Pious Schools into Religious Institutes with solemn vows. Cf. GREGORY XV, Const. *In Supremo apostolatus*, 3 Nov. 1621, in *BR* 12, 608-609; ID., Const. *In Supremo apostolatus*, 3 Nov. 1621, in *BR* 12, 627-628; M.D. BOUIX, *Tractatus*, I, pars II, sect. I, ch. I, 187-190. Therefore, one can see emerging at this period in the Church a clear distinction between Religious Congregations with simple vows and Religious Order with solemn vows.

[121] Towards the middle of the eighteenth century, legislation on religious life in common law distinguished between «religious state», that is, Orders with solemn vows and «secular societies», that is, all Institutes without solemn vows or with no vows at all.

[122] The references to COUNCIL OF TRENT (1545-1563) are taken from *DEC* II, Sess. 25, *Decretum de regularibus et monialibus*, 776-784.

object was the execution of a thorough reform of the inner life of the Church by removing the numerous abuses that had developed in it[123]. Under these circumstances, the Council did a lot to bring unity and uniformity into some phases of religious profession. The Council established rules for the religious in different sessions. In its rules, it demanded a return to the life prescribed by the Rule and renewed the law of Pope Boniface VIII on cloister, commanding the bishops to restore the cloister where it was not kept and to preserve it where it was kept[124].

During the twenty-fifth session (3-4 Dec. 1563),[125] with the *Decretum de regularibus et monialibus*, the Council Fathers discussed in particular the reforms among the religious, addressing all the issues concerning the life of the religious[126]. The discussion here is focused only on those topics related to the theme of this study, namely, religious profession and departure from the Institute. Important to this study is ch. 15 on religious profession and ch. 17 on release by the Institute. Ch. 15 gave clarity on the requirements and effects of religious profesion as follows:

i. On the required age and formation, in order to protect perfervid youth from imprudence, ch. 15 decrees that «profession must not be made in any Institute of male or female before the completion of the sixteenth year, nor shall anyone be admitted to profession, who had been under probation for less than a year since the habit was received». It added an invalidating clause: «Profession made before is null and induces no obligation to the observance of any Rule or Institute or Order or to any effects whatever»[127]. Ch. 16 stated that «it is not the intention of the Council to modify the Rule and practice of the Society of Jesus»[128].

---

[123] Cf. J.P. KIRSCH, «Council of Trent», 30; H.J. SCHROEDER, ed., *Canons and decrees*, 11. For further discussions on the purpose of this Council, cf. also H. JEDIN, *Storia del Concilio*, I-V.

[124] Cf. Sess. 25, Decr. *De regularibus et monialibus*, ch. 5.

[125] Cf. H.J. SCHROEDER, ed., *Canons and decrees*, 217-232.

[126] Cf. H. JEDIN – G. ALBERIGO, *Chiesa della fede*, 268. Among the most important aspects discussed were: living according to the rule (ch. 1); no personal ownership of property (ch. 2-3); obedience to the Superior (ch. 4); keeping the cloister (ch. 5); election of Superiors and their scope of authority (ch. 6-7; 20-21); the competent external authority (ch. 8-9); the practices of piety (ch. 10-12); settlement of disputes (ch. 23); discipline of members (ch. 24); religious profession: age and the time of the profession and the release by the Institute (25-27); admission (28); cases of pretended invalidity (ch. 29); and implementation of decrees (ch. 22).

[127] Sess. 25, Decr. *De regularibus et monialibus*, ch. 15.

[128] Sess. 25, Decr. *De regularibus et monialibus*, ch. 16.

ii. On free and responsible response, the Council stated that religious profession implied a free response to a call to piety. To ensure freedom of young people who desired to make religious profession, the Council prescribed a prior examination, designed to test the freedom of choice, made responsibly without being vitiated by duress or deceit[129].

iii. On prior examination of motive and determination of suitability, the Council ordained and decreed that if a girl, being more than twelve years of age, desired to take the religious habit, she could not take that habit until the bishop – and if he was absent or impeded, his vicar, or someone deputed by them and who acted on their behalf – had carefully examined the intention of the virgin, whether she had been compelled or enticed, or understood what she was doing; and if her will be found to be pious and free, and she had the qualifications required by the Rule of that convent and Order; and if also the convent was a suitable one. Only once this investigation occurred was she considerd free to make her profession. She was not permitted to make such profession even at a later period or in any other convent until this examination was done. The Council further added that the bishop may not be ignorant as to the time of profession. Therefore, the Superior of the convent was bound to give him notice one month beforehand; failure to do so would result in her being suspended from her office for as long a period as the bishop deemed fit[130].

The effects of taking the habit were given as incorporation, fidelity to the rule, and obedience to the Superior.

On incorporation, the Council decreed that with religious profession one was incorporated into the Institute. With this norm, religious profession and membership to a particular Religious Institute necessarily

---

[129] Cf. Sess. 25, Decr. *De regularibus et monialibus*, ch. 17.

[130] Cf. Sess. 25, Decr. *De regularibus et monialibus*, ch. 18. This chapter is tied to the next chapter, which places under anathema all persons – of all categories without any exception: clerics or lay, Seculars or Regulars, with whatsoever dignity invested – who shall, in any way whatsoever, force any virgin, or widow, or any other woman whatsoever to enter a convent against her will, or to take the habit of any Religious Order, or to make her profession; as well as all those who lend their counsel, aid, or countenance. The Council also cautions those who, knowing that the candidate does not enter into the convent voluntarily or voluntarily take the habit or make her profession, do not interfere in that act in any way, whether by their presence or consent or authority. Also, subject to anathema were those who in any way, without a just cause, hinder the holy wish of virgins, or other women, to take the veil, or to make their vows.

coincided. In concrete terms, the ascription of religious to a particular Religious Institute, duly approved by the Apostolic See, remained the only juridical proof established by the Church for the solemnization of religious profession.

On the rule, it decreed that religious profession necessarily required fidelity to the Rule. Ch. 1 reminded the religious of fidelity, that is, ordering all the members of the Order to conform and adapt their lives to the requirements of the Rule to which they had committed themselves with the religious profession[131]. The Council thought it necessary to enjoin that all regulars, male and female, order and regulate their lives in accordance with the requirements of the Rule which they had professed and, above all, that they faithfully observe whatsoever belonged to the perfection of their profession, such as the vows of obedience, poverty, and chastity, as well as all other vows and precepts that might have been peculiar to any Rule or Order. These latter pertained, respectively, to the essential character of each Rule or Order, and regarded the observance of a common mode of living, food and dress. The Council Fathers, being certain that those things which belong to the substance of religious life cannot be relaxed – for if those things which are the basis and the foundation of religious discipline are not strictly preserved, the whole edifice falls, – established that all care and diligence be used by the Superiors. This care and diligience took place by means of the general and the provincial Chapters and by the visitation of the Superiors who were to ensure that these essentials namely, the Rule and proper laws related to the vows and charism of the Order are not departed from.

On obedience, this Council reiterated the importance of obedience to the Superior with regard to pastoral activity and the obligation to live in the cloister. Should any one act to the contrary, he was to be punished for disobedience at the discretion of his Superior. It was considered unlawful for regulars to withdraw from their own convents; unless they were sent or summoned by the Superiors. And whoever lacked such permission in writing was to be punished as a deserter from his Institute by the ordinaries of the places. As to those who were sent to the universities for studies, they were to dwell in convents only; otherwise the ordinaries were to proceed against them[132].

The Council did not directly address the question of exclusion from subsequent profession since the faculty did not exist yet due to the fact

---

[131] Cf. Sess. 25, Decr. *De regularibus et monialibus*, ch. 1.
[132] Cf. Sess. 25, Decr. *De regularibus et monialibus*, ch. 4.

that temporary profession was not yet established juridically. It instead addressed voluntary departure of the religious who claimed to have embraced the religious state by force, fear or other similar causes[133]. Voluntary departure, however, is outside the scope of this study.

The chapter of the twenty-fifth session concluded with instructions intended to secure the execution of the decrees[134].

This Council shaped the entire era of the Church that followed. Three centuries had to pass before another ecumenical Council would be called. But within this period, practices which were considered divergent from the universal legislations began to emerge which needed attention. In spite of the broad scope, invalidating clauses and elaborate instructions on how to secure the execution of the decrees given by the Council, there were still: male Congregations professing only simple vows; nuns not observing the cloister[135] and tertiaries living «common life» with only private vows. Consequently, post-Tridentine legislation on religious profession until the twentieth century attempted mainly to respond to challenges of unlawfully professing simple vows and not keeping the Rule of cloister in keeping with the circumstances of time[136].

During these three centuries, sources relevant to the common law for the religious which were responding to such needs were exclusively papal documents. Therefore, in this journey towards obligatory temporary profession for all religious, we shall study basically Papal documents and Curial documents that were issued during pontificate of popes selected for this study due to the direct link of their documents to the topic of the study. In studying them, the study shall look at how they influenced the practice of temporary religious profession.

2.3.5 The outlaw of all communities not professing solemn vows by Pius V (1566-1572)

Shortly after the Council of Trent, Pius V ordered women with solemn vows to obey the decree of the Council[137]. The tertiaries living the

---

[133] Cf. Sess. 25, Decr. *De regularibus et monialibus*, ch. 19.

[134] Cf. Sess. 25, Decr. *De regularibus et monialibus*, ch. 22.

[135] One of the chief causes for some of these nuns' failure to keep within the cloister was the fact that their poverty compelled them to go out begging for their sustenance. Cf. G. PENNACCHI, *Commentaria in constitutionem* I, 706.

[136] Obligatory temporary profession of vows for all religious and the faculty to exclude a member from subsequent profession would later emerge as a response to such challenges facing religious profession under given circumstances.

[137] Cf. Sess. 25, Decr. *De regularibus et monialibus*, ch. 5.

«common life» without solemn vows[138] were to be persuaded to make solemn vows and to observe the strict cloister. The Pope was prepared and willing to implement the resolutions of the Council against such communities. He issued the Const. *Circa pastoralis* on 29 May 1566. In this Constitution, he commanded all the members of societies of women without solemn vows to make solemn vows and to observe the papal cloister under threat of severe punishment[139]. If they failed to comply with the commands contained in the Constitution, they were forbidden to receive new candidates. If despite this regulation, they nevertheless continued to receive new members, it was declared that the professions of such candidates would be null and void[140].

In his Constitution, Pius V repeated the law of his predecessor, Boniface VIII, and the confirmation of it which was accorded by the Council of Trent. All communities of women, even of tertiaries living a common life, were obliged to the observance of the cloister even when their vows or Constitutions did not demand it. All female Institutes whose Constitutions provided for a life in common without the profession of solemn vows and the observance of cloister were interdicted and perpetually forbidden in future. All receptions and professions in such Institutes would be invalid. The latter provision condemned them to a slow death since no new members could be received.

The obligation of cloister began to be connected with the obligation of taking solemn vows, so that both the cloister and solemn vows began to be regarded as ecclesiastical law essentials for female Religious Institutes. In view of this invalidating clause, female Congregations with simple vows met with much more opposition than the male Congregations[141].

In 1568, through a Bull *Lubricum vitae genus*[142] of 17 Nov. 1568 addressed chiefly to the Canons of George and the Hermits of Jerome

---

[138] Cf. A. BOUDINHON, «Les Congrégations Religieuses», 361.

[139] Cf. PIUS V, Const. *Circa Pastoralis*, 29 May 1566, §3, *CICFontes* I, 112.

[140] Cf. PIUS V, Const. *Circa Pastoralis*, 29 May 1566, §§4, 6. For the assistance of those in want, the Pope ordained that extern Sisters, who were not permitted to enter the cloister, be commissioned to beg for alms for the nuns; if this means did not suffice, the bishops and other Superiors were to provide in any other suitable manner; the number of nuns in a convent ought not be greater than could be well supported by its income or usual alms. Cf. PIUS V, Const. *Decori*, 1 Feb. 1570, §§1-2, *CICFontes* I, 133.

[141] The force of Const. *Circa pastoralis* was to be felt for over two centuries. It set up a policy from which the Holy See would later recede only because of the necessity caused by civil upheavals such as French revolution.

[142] Cf. PIUS V, Bull *Lubricum vitae genus*, 17 Nov. 1568, in *BR* 7, 725-726 §1.

who were not professing any of the approved Rules, Pius V issued a second condemnation against societies making only simple vows. He commanded that within twenty-four hours after receiving notice of the Bull, they must adopt one of the approved Rules, and within one month make solemn vows.

The members of these Congregations were obliged[143] to embrace a Religion, that is, one with solemn vows. In addition, they had to choose one of the approved Rules[144]. The extent of the binding force of this Bull is not certain. Some authors hold that it was obligatory on all male Institutes[145] considering its wording. Others are of the opinion that it was not a general decree, for they regard it as not certainly including those Institutes which had a Rule which was approved by the Holy See. It had, they say, no reference to the future, so it did not threaten the invalidity of future professions in Congregations which had been approved by the Holy See before the decree[146]. Moreover, the Bull – from its wording – seemed to include all the male Congregations in which at that time the common life prevailed and in which a distinctive garb was worn as a sign of voluntary obedience. Nevertheless, from the sixteenth to the eighteenth centuries, records exist of the Holy See approving male Institutes and without the restricting clause[147]. The fact that these Congrega-

---

[143] Between the years 1601-1908, the dicastery responsible for the religious was joined to the Congregation for Consultations about Bishops and Other Prelates and called by the name «Sacred Congregation for Bishops and Regulars». For consistency purposes, however, throughout this study we shall use its current title, The Congregation for Institutes of Consecrated Life and Societies of Apostolic Life, hereafter CICLSAL, in reference to this decastery and the author of documents emanated by this decastery.

[144] Cf. CICLSAL, *Disceptatio synoptica*, 4 Feb. 1870, *ASS* 9 (1876) 158; PIUS V, Bull *Lubricum vitae genus* 17 Nov. 1568, §1, in *BR* 7, 725; C.R. ORTH, *The approbation of Religious Institutes*, 46.

[145] Cf. A.P. STEIGER, «De propagatione», 172-173.

[146] Cf. A. LARRAONA, «Commentarium», 48 footnote 10.

[147] Examples include: Congregation of Clerks Regular Administering to the Infirm. Cf. SIXTUS V, Const. *Ex omnibus*, 18 March 1586, in *BR* 8, 669; Clerks Regular of the Mother of God. Cf. CLEMENT VIII, Const. *Ex quo Divina*, 13 Oct. 1595, in *BR* 10, 227-229; Congregation of Christian Doctrine. Cf. CLEMENT VIII, Const. *Exposcit debitum*, 23 Dec. 1597, in *BR* 10, 411-413; Congregation of Poor Clerks of the Mother of God of Pious Schools. Cf. PAUL V, Const. *Ad ea*, 6 March 1617, in *BR* 12, 382; The Congregation of the Mission. Cf. ALEXANDER VIII, Const. *Ex commissa nobis*, 22 Sept. 1655, in *BR* 16, 67-69.

tions had no intention of taking solemn vows did not prevent the Holy See from approving them without any direct limitation[148].

The documents of erection of many of the Congregations of Clerics Regular suggest that the regulations of the Const. ***Lubricum vitae genus*** of Pope Pius V were not so strictly enforced by the Church. To some Congregations, however, approbation was given as a preparation for the eventual taking of solemn vows[149]. Some were later raised to the status of Orders, others kept their first juridical character without change or, having lost it, arose again[150]. Many of these were established for the purpose of teaching and care for the poor and the sick. Later, with the loss of many monasteries and the endowments attached to them, as occasioned by the Reformation, the need for new Institutes to educate and to care for the poor and the sick became quite evident. Thus, in the eighteenth century many of these male congregations received full approbation[151].

There is no doubt about the validity of the simple vows professed in these approved male Institutes. The obligations arising from these vows, however, were to be determined by the private legislation of

---

[148] For example, cf. BENEDICT XIII, Const. ***Pretiosus***, 25 May 1727, §38, in ***BR*** 22, 522-554.

[149] One such congregation approved after the death of Pius V was the Congregation of Clerics Regular, with the purpose of caring for the sick. It was approved by Pope Sixtus V (1585-1590) on 18 Mar. 1586. Cf. A. LARRAONA, «Commentarium Codicis», 48, footnote 10; For other Congregations who also received such approval, cf. S. GOYENECHE, «De votis simplicibus», 310, footnotes 9 & 10. This act was but a beginning, for many other congregations would likewise be approved. Some of the congregations which were founded by way of preparation for the eventual taking of solemn vows were: The Clerics Regular of the Mother of God, 13 Oct. 1595; the Doctrinarians, 23 Dec. 1597; The Poor Clerics of the Mother of God of the Pious Schools, 6 Mar. 1617. Cf. CLEMENT VIII, Const. ***Ex quo Divina***, 13 Oct. 1595, in ***BR*** 10, 227-229; ID., Const. ***Exposcit debitum***, 23 Dec. 1597, in ***BR*** 10, 411-413; PAUL V, Const. ***Ad ea***, 6 Mar. 1617, in ***BR*** 12, 382. Other congregations were founded perpetually and definitely: The Congregation of the Missions, 22 Sept. 1655; the Congregation of the Most Holy Redeemer, 25 Feb. 1749; the Passionists, 16 Dec. 1769; and the Congregation of the Brothers of the Christian Schools, 7 Feb. 1724. Cf. ALEXANDER VIII, Const. ***Ex commissa nobis***, 22 Sept. 1655, in ***BR*** 16, 67-69; Rules of the Brothers of the Christian Schools, 1925. Cf. M. HEIMBUCHER, ***Die Orden***, II, 347.

[150] Cf. CONGREGATION FOR CLERGY, ***Super privilegiis***, 16 Sept. 1864, in BIZZARRI, 745; A. LARRAONA, «Commentarium», 49; F.X. WERNZ, ***Ius decretalium***, III, pars II, 607.

[151] But the female Congregations did not receive the same tolerance until the pontificate of Pope Benedict XIV (1740-1758) as we shall see.

each Institute[152]. Nevertheless, the Holy See seemed to have favoured a stricter discipline, since the pattern of obligations in the Religious Congregations of this century approved by the Holy See approached more and more closely that of the Orders.

Meanwhile, the authors[153] were almost unanimous in stating that the prohibitions of the Popes on founding of unapproved Institutes extended to the foundation of Institutes whose members took only simple vows. Accordingly, those who entered any Institute, whether of solemn or simple vows, which was not approved, took purely *secular* vows and not *religious* vows. They were also *private* vows, since they were not accepted by the Superior in the name of the Church. In the meantime, the simple vows of the Jesuits were being disputed. Eventually, this dispute would require an intervention of ecclesiastical authority to resolve.

2.3.6 Ratification of temporary profession of simple vows by Pope Gregory XIII

Right from the beginning of his pontificate, Pope Gregory XIII (1572- 1585) was committed to implementing the decrees of the Council of Trent just like his predecessor. To actualize his plan of spiritual renewal, the Pope turned to the religious, for whom he proved to be a real benevolent father. He showed that he was disposed to grant them graces, exemptions and favours, provided that these were used to the advantage of the Church. The Superior General of the Jesuits turned to him for a solution to the unending debate about their simple vows.

---

[152] Some of the simple vow Institutes became Orders and some of the Orders became Congregations, for instance: Priests Regular of the Mother of God. Cf. GREGORY XV, Const. *In supremo apostolatus*, 3 Nov. 1621, in *BR* 12, 608-609; Clerks Regular of the Pious Schools. Cf. GREGORY XV, Const. *In supremo apostolatus*, 3 Nov. 1621, *BR* 12, 627-628; Hospitalers of Joseph. Cf. ALEXANDER VII, Const. *Sacrosancti apostolatus*, 8 Jan. 1666, in *BR* 17, 411-412; Hippolitans. Cf. INNOCENT XII, Const. *Ex debito pastoralis*, 20 May 1700, in *BR* 20, 931-934 §3; Bethlehemites. Cf. CLEMENT XI, Const. *Ex debito pastoralis*, 3 April 1710, in *BR* 21, 385-387.

[153] Cf. P. BASTIEN, *Directoire canonique*, 4, 10 footnote 1; CONGREGATION FOR CLERGY, *Super privilegiis*, 16 Sept. 1864, in A. BIZZARRI, 798 footnote; M.D. BOUIX, *Tractatus*, I, pars I, sect. II, 53; D. CRAISSON, *Manuale totius*, II, 430; P. LEUREN, *Forum ecclesiasticum*, lib, III, tit. 35, q. 86; F. PIAT DE MONT, *Praelectiones*, I, 18-20 qq. 21-22; R.P.E. PIRHING, *Jus canonicum*, lib. III, tit. 36, n. 33; A.REIFFENSTUEL, *Jus Canonicum Universum*, lib. III, tit. 31, nn. 9-10; G. SEBASTIANELLI, *Praelectiones Juris*, pars. II, tit. II, ch. 1, 359; ANTONIUS A SPIRITU SANCTO, *Directorium Regulari*, tr. III, disp. VI, Sect. II, n. 179.

Simple vows had been approved in the Society of Jesus by way of privilege[154]. These simple vows were perpetual on the part of the religious but tacitly conditional on the part of the Society[155]. This is a feature that differentiated this new Order from all others that had existed until that time. Keeping in mind the understanding of that time about religious vows, one can easily see what a novelty these simple religious vows were. More still, a greater departure from the traditional practice was implied in the fact that the very act of dismissal was recognized to be equivalent to a dispensation from these vows. Since it was probable that solemn vows had been practiced in the Religious Orders since the fifth century, it is understandable that at the end of the sixteenth century, there existed a strong opinion that solemn vows were essential to the religious state and that, as a consequence, no community whose members lived with only simple vows could be considered as authentic religious. Naturally, the practice evoked considerable opposition[156]. This new concept of simple vows, therefore, was contested among the au-

---

[154] In the current legislation, the *CIC/1983* defines a «privilege» as favour given through a particular act to the benefit of certain physical or juridic persons; it can be granted by the legislator as well as by an executive authority to whom the legislator has granted this power (can. 76 §1).

[155] The coadjutors and scholastics take these vows with a tacit condition in regard to the perpetuity, and the condition is expressed as follows: if the Society will desire to retain them. For although they on their own side bind themselves perpetually for their devotion and stability, the society remains free to dismiss them and in that case, they are entirely freed from their vows. Cf. IGNATIUS, ST., *The Constitutions*, arts. 536-537; 539.

[156] For instance, in France when twenty theologians were requested by the French parliament to give a decision on the Jesuit Rules and Statutes, they issued on 1 Dec. 1554 what was practically a complete condemnation of them and stated that all the deviations from the older Orders in the Constitutions of the Society were to be held blameworthy. Already the difficulty against simple vows had arisen. Not only the vows themselves, but also the changes made necessary by them ran counter to a long tradition. Cf. L. PASTOR, *The history of the popes*, 13, 206-207. In Spain, it was objected that the members of the Society were not obliged to choir service. This was indeed a novelty, since all the Orders at that time had the choral obligation. Further objections were brought against the Society for its lack of the usual penances and austerities. Cf. J. BRUCKER, *La Compagnie de Jésus*, 120-121. Pope Pius V, though, in favour of the Society did not approve of its provision of ordaining priests with simple vows, even though the Society agreed to support them if they were dismissed. Consequently, the Jesuits were included in his decree of 14 Oct. 1568, which demanded that religious have solemn vows before they were raised to priesthood. Cf. PIUS V, Const. *Romanus Pontifex*, 14 Oct. 1568, §§2-3, *CICFontes* I, 129; L. PASTOR, *The history of the popes*, 17, 280-281.

thors of the time. They disagreed with it and much more with the fact that these simple vows made those who professed them authentic religious[157]. The most fundamental objection against the Society of Jesus, therefore, concerned the cardinal point of the «temporariness» of these simple vows. Could one be truly a religious with only simple vows? The argument was simply: it was not possible to make a profession for a determined period of time since such profession would be null and void because it would go against the very essence of religious profession and the nature of a vow itself[158]. The dissension that existed was so strong that it necessitated the intervention of Pope Gregory XIII. In fact, he had to intervene twice in order to clarify the matter; first with the Ap. Const. *Quanto fructuosius* of 1 Feb. 1583 and then with Ap. Const. *Ascendente Domino* of 25 May 1584.

The General Superior of the Jesuits, Claude Aquaviva (1543-1615), recognized the latent danger in the dissension, namely, the denial that a good number of the Jesuits were truly religious. Accordingly, he presented the case to the Pope who responded with the Apostolic constitution *Quanto fructuosius*. Herein, the Pope explained the reason for the simple vows and stated that, in regard to the manner of living in general and in regard to obedience in particular, there was no difference between the members in solemn vows and those in simple vows. For this reason, he clarified that «all the Jesuits, even those in simple vows, were and always had been religious and that they should be consid-

---

[157] For example cf. T. MICHELE – V. SALZANO, *Lezioni di diritto*, II, lezione 30, 258-262.

[158] But, there were also few but strong voices defending the profession of simple vows. Voices can be found in the writings of the Jesuit authors of the time who wrote treatises on religious profession and in defence of the privilege of professing simple vows granted to the Society. A good example is found in F. Suarez's treatise «De religione». Cf. F. SUÁREZ, «De religione», tract. V, lib. III, c. XVI, n. 10. Within his treatise is found a solid defence of the peculiar Jesuit profession of simple vows. He makes it clear in his works that this vow is not perpetual on the part of the Institute but only on the part of the one who makes the vow such that there is no mutual obligation of the same nature. Cf. F. SUÁREZ, *Operis de religione*, IV, t. IV, tract. X, lib. III, cap. I-III. He added that these simple vows could only be dispensed by Apostolic See. Another author who defended religious profession with simple vows as valid and authentic was Pellizzari. He distinguished simple and solemn vows as two ways of becoming a religious. Whereby by solemn vows, a religious assumed a state that is public, absolute and irrevocable, by simple vows, one assumed a state that was not absolute and that could be dissolved under certain conditions. Cf. F. PELLIZZARI, *Manuale regularium*, I, tract. III, ch. IV, nn. 9-10, 170-171.

ered and referred to as such»[159]. The difference was only in the fact that it was perpetual on the part of the professed only while the Society remained free to determine the eventual admission to solemn profession or to dismiss the temporally professed religious based upon the judgement of the Superior General.

With this Apostolic Constitution, the Pontiff clearly stated that the candidate after two years of novitiate, was to take the three simple vows and, with this profession, ceased to be a novice and became a true and authentic religious and member of the Society of Jesus[160]. With this explanation, temporary profession was ratified as legitimate such that by temporary profession one was incorporated into an Institute[161]. Indeed, with this ratification, temporary profession acquired for the first time a juridic effect, namely, that of incorporating one into the Institute.

Despite the very clear and evident declaration of *Quanto fructuosius*, there still remained those who could not be convinced of the possibility of a religious not having solemn vows. In order to have the matter fully settled, Aquaviva, the Jesuit Superior General, asked the Pope to confirm again the nature and the extent of the simple vows in the Society in order to do away with all contrary criticisms. The Pope did so in the Const. *Ascendente Domino* of 25 May 1584. In it Gregory XIII cited the approbations the Society had received, gave a succinct and complete schema of the purpose and makeup of the Society[162], and went into detail about the simple vows. In other words, he provided a sort of summary of the Constitutions of the Society[163].

With this Constitution, Gregory XIII formally recognized the simple vows professed by scholastics and coadjutors as public vows. Moreo-

---

[159] GREGORY XIII, Const. *Quanto fructuosius*, 1 Feb. 1583, §§2, 3, 5, *CICFontes* I, 150: «tria vota praedicta, tametsi simplicia, emiserint emittentque in futurum, vere et proprie religiosos fuisse et esse, et ubique semper et ab omnibus censeri et nominari debere, ac si in professorum praedictorum numerum adscripti fuissent». (All English transl. of texts from *Quanto fructuosius* are by the author).

[160] GREGORY XIII, Const. *Quanto fructuosius*, 1 Feb. 1583, §2: «biennio novitiatus absoluto, omnes qui in Societate perseverare voluerint, tria vota substantialia quidem, paupertatis, castitatis et oboedientiae, simplicia tamen, emittere debeant, ac novitii esse desinant».

[161] GREGORY XIII, Const. *Quanto fructuosius*, 1 Feb. 1583, §2: «quibus votis emissis, in corpus eiusdem Societatis cooptati, et quantum ex parte ipsorum, perpetuo obligati remanent».

[162] Therefore, it can be said that, *Ascendente Domino* gave Pontifical doctrine on the members of the Society of Jesus.

[163] GREGORY XIII, *Ascendente Domino*, 25 May 1584, §§ 1-17, *CICFontes* I, 153.

ver, those who professed them were recognized as true religious[164]. Thus, temporary profession acquired the second juridical characteristic essential to a vow, namely, that it be public in nature. In this way, Gregory XIII ratified the uniqueness of the coadjutors and scholastics, and clarified that those who profess simple vows were to be considered authentic religious. Thus, for the first time, simple vows were ratified as legitimate and suitable for religious profession and for constituting the religious state. This Pontifical clarification emphasized that these simple vows in the Society of Jesus were to be considered perpetual on the part of the professed only while, the Society remained free to determine the eventual admission to solemn profession or to dismiss the temporally professed religious based upon the judgement of the Superior General[165]. Therefore, with these simple vows, the coadjutors and the scholastics did not become perpetual members of the Society, nor did they have the right or freedom to leave the Society on their own accord since, on their part, the vows were perpetual and accordingly had to persevere. In essence, through the vows, intended as a promise made to God, the scholastics and coadjutors made a covenant with Christ to consecrate themselves to God totally and forever, while the Society retained the right and freedom, even duty, to dismiss them if they were proved unsuitable. *Ascendente Domino* also gave a reminder that this was a privilege granted only to the Society. In fact, the Pontiff stated that all the rules and privileges remained in force, that he sanated any defects of

---

[164] GREGORY XIII, Const. *Ascendente Domino*, 25 May 1584, §18: «biennio novitiatus peracto, tria vota tametsi simplicia emiserunt, esse vere et proprie religiosos, cum praecepto ne quis haec in dubium revocare audeat, ac cum irritante et aliis decretis, prout in Nostris super hoc confectis litteris plenius continetur».(All English transl. of texts from *Ascendente Domino* are by the author).

[165] GREGORIUS XIII, Const. *Ascendente Domino*, *25* May 1584, 459, §7: «ac quantum est ex parte ipsorum perpetuo, ex parte vero Societatis, iuxta apostolica indulta et constitutiones praedictas, tandiu obligati sunt, quamdiu praepositus generalis eos in Societate retinendos esse censuerit. Quod ad Societatis conservationem maxime est necessarium, idque ab illius exordio praevisum, et post experimento comprobatum est; idque initio ingressus illis explicite manifestatur, atque ipsi conditionem hanc amplectuntur, quae eis, si quos dimittere oporteat, multo est commodior, ut liberi potius quam votis obligati dimittantur, aliisque iustis et rationalibus de causis».

Compare with GREGORY XIII, Const. *Quanto fructuosius*, 1 Feb. 1583, §2: «quibus votis emissis, in corpus eiusdem Societatis cooptati, et quantum ex parte ipsorum, perpetuo obligati remanent».

law or fact in them, and that the simple vows of the Society by institution of the Holy See were truly substantial vows of Religion[166].

In order to correct the opinion of those who could not be convinced of the possibility of a religious not having solemn vows, Gregory XIII, in *Ascendente Domino*, imposed a *latae sententiae* excommunication reserved to the Holy See upon anyone who would presume to deny that the members of the Society of Jesus, though they made only simple vows, were not true religious[167]. Further, he provided for the penalty of ineligibility for all offices and benefices, reserved to the Holy See, upon all those who sought openly to perpetuate the dispute, or who directly or indirectly impugned or contradicted anything stated in his Constitution. Any doubts regarding it were to be referred to the Holy See, to the Superior General of the Jesuits, or to a delegate appointed by either of them[168].

The Pope in the same Constitution stated that the solemnity of the vow was a purely ecclesiastical institution[169]. This decision of Gregory XIII is inconsistent with the doctrine of Thomas Aquinas and that of some Thomists concerning the solemnization of the vows[170]. According

---

[166] GREGORY XIII, Const. *Ascendente Domino*, *25* May 1584, §§17-21: «statuimus, atque decernimus, tria vota huiusmodi etsi simplicia, ex huius Sedis institutione, ac nostra etiam declaratione et confirmatione esse vere substantialia Religionis vota et omnes, et quoscumque, qui in ipsam Societatem admissi, tria vota substantialia praedicta, tametsi simplicia emiserint, aut emittent in futurum, vere, et proprie religiosos fuisse, et esse, ac fore, et ubique semper, et ab omnibus censeri, et nominari debere ...».

[167] GREGORY XIII, Const. *Ascendente Domino*, 25 May 1584, §18: «quia tamen non defuit temeraria quorumdam audacia, qui post declarationem, decretum, paeceptum, et interdictum nostrum [...] ausu temerario impugnare, mentemque nostram perverse interpretari non erubescunt, disputantes, et praedicta in dubium revocantes. Praecipimus igitur in virtute s. oboedientiae, ac sub poenis excommunicationis latae sententiae [...] quarum absolutionem. Nobis et Successoribus reservamus, ne quis [...] dicta; Societatis Institutionum, Constitutiones, vel etiam praesentes [...] quovis disputandi, vel etiam veritatis indagandae quaesito colore, directe vel indirecte impugnare vel eis contradicere audeat».

[168] Cf. GREGORY XIII, Const. *Ascendente Domino*, *25* May 1584, §24

[169] GREGORY XIII, Const. *Ascendente Domino*, *25* May 1584, §18: «non considerantes voti solemnitatem sola Ecclesiae constitutione inventam esse, triaque huiusmodi Societatis vota, tametsi simplicia, ut substantialia religionis vota ab hac Sede fuisse admissa, illaque emittentes, in statu Religionis vere constitui».

[170] According to Thomas Aquinas in his S. Th., II-II, q. 88, art. 7, 9: «A vow is a promise made to God: wherefore, the solemnization of a vow consists in something spiritual pertaining to God; that is, in some spiritual blessing or consecration which, in accordance with the institution of the apostles, is given when a man makes profession of observing a certain rule [...]. The reason of this is that solemnization is to be

to the theory of Thomas Aquinas and his followers, the solemnity of the vow was considered something spiritual that comes from God, through internal spiritual dedication (i.e., «consecration») or through the rite of consecration which was the external symbol of the internal consecration. Therefore, God was the author of this benediction or consecration whereas man was its minister. Such consecration implied perfect donation of self and total dedication to divine worship. Consequently, a religious could no longer involve himself in any act contrary to this consecration since solemn vows imposed more serious obligation before God unlike simple vows. Thus, whoever violated perpetual vows commited a grave sin[171].

This inconsistency can be attributed to the fact that the simple profession of coadjutors and scholastics of the Society of Jesus was something completely new and had nothing to do with the «simple vows» of the period before the Council of Trent when the «simple vows» were the vows deprived of the juridical solemnity established by the Church and so were not recognized as *public*. With this development, these new «simple vows» were to be considered *public* because they were professed in a Religious Institute approved by the Holy See in accordance with the doctrine of the Decr. *Quod votum*[172] of Pope Boniface VIII.

From the desputes which arose against the practice of the profession of simple vows by the Jesuits, we can say that these disputes served as an occasion for clarifying and solidifying the Church's doctrine on religious profession. This holds true on accout of the fact that these innovations approved by Gregory XIII, apart from marking the beginning of ecclesiastical intervention and legislation on temporary profession of simple vows, were of considerable importance for future legislation on temporary profession by future popes. Moreover, while this practice of the Jesuits was maintained as a privilege, the practice of simple vows could not be shared by others. Thus, if a new Institute with simple vows was to become truly and properly a Religious Institute strictly so-called, then a special indult was needed. Theoretically, the Const.

---

employed only [...] when a man gives himself up entirely to some particular thing [...] thus a vow is solemnized when a man devotes himself [...] embraces the state of perfection by renouncing the world and his own will by the profession of a certain rule». Cf. also G. RINALDI, «Voti solenni e semplici», 337.

171 Cf. S. Th., II-II, q. 88, art. 7 ad 1.

172 Cf. BONIFACE VIII, Decr. *Quod votum*, in VI° 3, 15, 1. (date of the document is uncertain).

Ascendente Domino was a general doctrinal decision which stated that the Holy See could constitute a Religious Institute with simple vows which did not follow one of the four approved Rules[173]. In fact, the Holy See did constitute many such Institutes thereafter. Finally, these disputes clearly reveal the fact that the profession of simple vows was very doubtful and that many authors indeed held contrary opinions. Consequently, there was real need for further clarity.

2.3.7 An act of tolerance for female Congregations with only simple vows during Pontificate of Benedict XIV

Initially the recognition of simple vows had juridical value only for the members of the Society of Jesus. Only gradually was this recognition extended to other Congregations. As most of the male Congregations were receiving approval, the female Congregations still encountered resistance and minimal tolerance. Many of them accordingly decided to live under «simple vows» even without approval. These Congregations would have to wait a little bit longer since during this time there were several subsequent laws issued for the enforcement of the Constitution of Pope Pius V. Despite the solemn condemnation merited by so many of these tertiaries as they were called, the legislation of Pius V never attained its full effect, that is, the total abolition of these communities[174]. Many of these communities continued «*de facto*» to exist and function even though they were at this time canonically non-entities. Many of these condemned Institutes also continued to receive new members[175] and new ones sprang up in the course of years[176]. None of these had papal approbation. While subsequent Popes did not issue explicit decrees against them, from their documents, it can be implicitly understood that several of them expressed a desire that these communities should observe the intent of Pius V. Gradually, the Holy See came to tolerate the communities which had only Episcopal approval[177] – not

---

[173] Cf. A. LARRAONA, «Commentarium», 45.

[174] Cf. A. LUCIDI, *De visitatione*, II, n. 264; A. LARRAONA, «Commentarium», 47; P. MOLINARI, «Annotationes», 423; A. VERMEERSCH, *De religiosis*, I, pars. II, ch. I, 45, n. 66.

[175] Cf. A. LARRAONA, «Commentarium», 47-48; S.J. TURNER, *The vow of poverty*, 45-46.

[176] Cf. A. VERMEERSCH, *De religiosis*, I, pars. II, ch. I, 45, n. 66.

[177] They would receive praise and full approbation much later than the Congregations of men. Cf. CICLSAL, *Sororum charitatis*, 24 Sep. 1816, in BIZZARRI, 411-412;

as Orders or Religion, but as Congregations. They were tolerated[178], perhaps because of the greater evils feared from their suppression, or because the evils which Pope Pius V fought were not present in them or because of the good work they were doing[179]. Eventually, however, they were permitted to exist since subsequent Popes did not issue any distinct decrees against them[180].

The first moment of tolerance came with Pope Benedict XIII (1724-1730) in his Bull *Pretiosus*[181] of 25 May 1727. In this Bull, Benedict XIII explicitly stated that he did not wish to prohibit these communities. But it was only during the pontificate of Pope Benedict XIV (1740-1758) that a more kindly disposition began to be shown towards female communities with «simple vows». Without giving them formal approbation, Benedict XIV was determined to ensure their stability. From the standpoint of being a canonist, he did not wish to let these female Congregations remain in such an anomalous position. Accordingly, on 30 April 1749 he issued the Const. *Quamvis iusto*[182], which became the guiding principle for female Congregations in simple vows. The Constitution concerning the Anglican Nuns expressed the status of the female Institutes not making solemn vows: «although they are not approved by the Holy See, they should be tolerated»[183]. The same paragraph said that their promises were, at most, simple vows. In the narrative part of the Const. *Quamvis iusto*, Benedict XIV distinguished the Jesuitesses who had been suppressed by Pope Urban VIII from the *Virgines Anglicanae* who had been approved by Pope Clement XI, for two authors in England had erroneously thought that the approbation of the *Virgines Anglicanae* was a restoration of the Jesuitesses. These *Virgines Anglicanae* were not religious *proprie dictae*, since they had no solemn vows and the approbation of a rule and their common life with

---

ID., *Super privilegiis*, 16 Sep. 1864, in BIZZARRI, 742. This Congregation was at the time called «Congregation of Bishops and Regulars». Cf. also A. LARRAONA, «Commentarium», 45.

178 Cf. BENEDICT XIII, Const. *Pretiosus*, 25 May 1727, §28, in *BR* 22, 534-535.

179 Cf. M.D. BOUIX, *Tractatus*, I, pars III, sect. I, ch. I, 324-327.

180 Not all however tolerated them; some did express a desire that the legislation enacted by Pius V should be strictly observed. Cf. S.J. TURNER, *The vow of poverty*, 75-76.

181 Cf. BENEDICT XIII, Const. *Pretiosus*, 25 May 1727, in *BR* 22, 522-554.

182 BENEDICT XIV, Const. *Quamvis justo*, 30 April 1749, §§1-8, *CICFontes* II, 398.

183 BENEDICT XIV, Const. *Quamvis justo*, 30 April 1749, §13: «Dictarum vero virginum conservatoria, licet ab Apostolica Sede, ut prefertus, non approbata, ab hac tamen benigne tolerari...».

simple vows was not enough to constitute them religious *proprie dictae*[184].

Whatever vows made by these Institutes were regulated by the private legislation of their respective Institute. There was no general legislation for the simple vows at this time. The only legislation of papal character that applied as regards the simple vows was an occasional rescript given to some of the approved Institutes[185].

He entrusted these Institutes to the care of the local ordinaries who were advised to treat the Institutes with kindness. Therefore, the Church did not approve them yet, but merely tolerated them and declared them subject to the bishop[186]. They were subject to the ordinary who freely chose the confessors and spiritual directors for them from the secular clergy. The Constitution also gave some power to the Superior General. In general, it was limited to the internal affairs of the house and was always dependent on the authority of the bishop. The Superior General's authority was limited to visitation, superintendence over the education of the girls and the transfer of subjects from one house to another, but all in due subjection to the ordinary, since she needed the permission of the ordinary to admit novices to profession, to initiate a visitation and to transfer one of her subjects[187].

Therefore, in this Constitution, Pope Benedict XIV did not approve the *Virgines Anglicanae* as religious[188] nor did he abrogate the Const. *Circa pastoralis* of Pius V. Rather, he derogated from that law to the extent that he gave passive tolerance to this Institute. With this, he gave the *Virgines Anglicanae* certain rights and privileges as well a standing in law. However, he added the phrase: «*caeterum non intendimus per praesentes ipsum conservatorium in aliquo approbare*»[189]. In doing so, he explicitly indicated that they were not approved. Apparently, it seems that this phrase was added in order that a suppression of this Congregation would be easier in the event that abuses feared by Pope Pius V should appear.

---

[184] In his Constitution, Benedict XIV cited the Brief of Clement XI and the response of the Congregation for Bishops and Regulars – currently called the CICLSAL. Cf. BENEDICT XIV, Const. *Quamvis justo*, 30 April 1749, §§13, 14; CICLSAL, Response, 21 July 1748, *CICFontes* IV, 1862.

[185] For an example, cf. CONGREGATION FOR CLERGY, *Excalceat. SS. Crucis et Passionis*, 15 Sept. 1837, BIZZARRI, 74-75.

[186] Cf. BENEDICT XIV, Const. *Quamvis justo*, §23.

[187] Cf. BENEDICT XIV, Const. *Quamvis justo*, §§16-17, 19-20.

[188] Cf. BENEDICT XIV, Const. *Quamvis justo*, §13.

[189] BENEDICT XIV, Const. *Quamvis justo*, §5.

This Constitution revealed the beginning of a new juridical outlook on this type of community. Although it concerned only the *Virgines Anglicanae*, it was this decision which was used for all similar cases in the future. It gave the fundamentals of this type of Religious Institute and, indeed, gave the first true, though imperfect, picture of the present-day Institutes of female religious with the following elements: simple vows; no cloister; hierarchical organization, and the exercise of works of charity as their purpose. This document – with the various derogations from it which arose in the course of time – became the established guide and norm for all female Congregations until the time of the Const. *Conditae a Christo*, issued by Pope Leo XIII on 8 Dec. 1900[190].

Further, to ensure the stability of these simple vows, Pope Benedict XIV with the Const. *Convocatis*[191] of 25 Nov. 1749, declared that the confessors could not alter the simple vows professed in Congregations and that their dispensation was reserved to the Holy See. In addition, like many of his predecessors[192], he sought to strengthen regulations concerning the observance of community life and the cloister, always with the aim of ensuring greater stability for religious life[193].

2.3.8 From mere tolerance to approbation of female Congregations of simple vows

Resistance to and a mere tolerance of female Congregations continued until the urgent necessity for works of charity arose due to the public disorders and wars that ravaged Europe at the end of the eighteenth and the beginning of the nineteenth century. These historical realities and events necessitated the recognition and approval of these Congregations. The urgency of this recognition and approval became all the more urgent in the face of the persecution of the religious that arose at the end of the eighteenth century throughout Europe. For example, as early as 1781, the Emperor of Austria abolished many monasteries in his kingdom[194].

---

[190] Cf. LEO XIII, Const. *Conditae a Christo*, 8 Dec. 1900, *ASS* 33 (1900) 341-347.

[191] Cf. BENEDICT XIV, Const. *Convocatis*, 25 Nov. 1749, §22, *CICFontes* II, 402.

[192] Cf. CLEMENT VIII, Const. *Nullus omnino*, 25 Jul. 1599, §12, in *BR* 10, 664-665; CLEMENT XII, Const. *Admonet nos*, 11 Jan. 1735, §1, in *BR* 24, 70; GREGORY XV, Const. *Inscrutabili*, 5 Feb. 1622, §2, in *BR* 12, 656; INNOCENT XIII, Const. *Apostolici ministerii*, 23 May 1723, in *BR* 21, 934-938.

[193] Cf. BENEDICT XIV, Encycl. *Cum sacrarum*, 1 Jun. 1741, *CICFontes* I, 310; ID., Const. *Regularis disciplinae*, 3 Jan. 1742, *CICFontes* I, 322.

[194] Cf. B. JUNGMANN, *Dissertationes selectae*, III, t. VII, cap. II, 425 n. 61.

The civil laws in France at the turn of the nineteenth century were quite severe and had a negative effect on Religious Institutes. The Convention of 1792-1795 completed the suppression of Religious Institutes under French rule. The French Revolution and the anti-religious laws which followed in its wake left the children of Catholic parents to grow up without any Catholic education. Orphans were left destitute; the old, the sick and the poor had no help. The Orders and Monasteries which had cared for them in the past were either plundered or suppressed, exiled or denied legal existence by civil law. Germany soon followed the example of France when in 1802 the civil law suppressed all Religious Institutes in the four provinces across the Rhine, and the following year, the remaining Institutes suffered a similar fate[195]. In nearly all European countries, similar kinds of legislation so disastrous to religious life came to prevail[196].

The laws of the *Directoire exécutif* (executive directory) of 1795-1799 were renewed on 22 June 1804, dissolving every aggregation or association formed under the «pretext» of religion and not approved by the state. This law affected France, Belgium, Germany (especially the parts ceded to France in 1801), Spain (where the convents were suppressed during the French occupation from 1808-1814), Holland (by decree of Napoleon of 3 Jan. 1812) and Italy (especially during the French occupation)[197].

The older and well-known Orders having been suppressed and the works of charity such as nursing and teaching being in great demand, associations of pious people under Episcopal direction naturally sprang into existence. Christ in His mercy raised up men and women who gave their lives and fortunes to further the spiritual and corporal works of mercy. These individuals organized themselves into groups which were united for furthering the particular works of mercy. Many strove for a more perfect life by binding themselves through vows to the practice of the evangelical counsels. Many of these latter groups developed into religious communities. They worked well both for the sanctification of their members and for the salvation of souls in such a way that finally their mode of life in common merited and eventually obtained the approval of the Holy See[198].

---

[195] Cf. J. MARX, *Lehrbuch der Kirchengeschichte*, 756 §142, n. 2.

[196] Cf. PIONTEK, *De indulto exclaustrationis*, 62-64; H.W. WOUTERS, *Historiae ecclesiasticae compendium*, II, 301 n. 19; 312-314.

[197] Cf. J. MARX, *Lehrbuch der Kirchengeschichte*, 744-760, §§140-142.

[198] Cf. LEO XIII, Const. *Conditae a Christo*, 8 Dec. 1900, *ASS* 33 (1900-1901) 341-347; PIUS X, Motu proprio, *Dei providentis*, 16 July 1906, *CICFontes* III, 675.

The reaction to this situation by the Holy See was the ratification of Institutes of simple vows. The mere toleration of such Institutes already in existence gave way to decrees of praise and of approbation. The practice of the Holy See during this period seems to suggest that it did not approve any new Orders, but rather allowed a great increase in the number of new Congregations of simple vows[199]. A possible explanation for this change can be seen in the fact that, it seemed that these Institutes which were organized in a more flexible pattern than that of the traditional Religious Orders within the Church were the ones which allowed for meeting the needs of the time[200].

As a result of the anti-religious laws, many religious from Orders were compelled to live separate from their communities. Not infrequently, many of these religious found themselves lacking in necessities for sustenance. Necessity, therefore, prompted a reconsideration of the previous universal restriction of Institutes with simple vows. Institutes with solemn vows were in part suspended. Religious with simple vows were needed to take their place. Even when the solemn vows were not revoked, the law often suspended a number of their effects. The Church, rather than dispense the individual religious from their solemn vows, suspended the juridic effects of solemn profession[201].

---

[199] Cf. A. VERMEERSCH, *De religiosis*, I, n. 57. So great did these grow in number that Pope Pius IX began to doubt the utility of this growth and asked in a letter of 6 Jun. 1867, which was sent out to the bishops of the world to determine the *agenda* of the First Vatican Council (1869-1870), whether this phenomenal growth was such a good thing that approbations should continue to be given without limit in number, or whether it would not be better to strengthen and propagate the Congregations which already had been founded. Cf. G. SCHNEEMANN – T. GRANDERATH, *Collectio Lacensis*, VII, 1028, q.10. This debate however is outside the scope of our study.

[200] Cf. A. LUCIDI, *De visitatione*, II, 247-250; A.P. STEIGER, «De Propagatione et Diffusione», 174-176; A. BOUDINHON, «Les Congrégationis Religieuses», 417-423.

[201] The Redemptorists, because of certain existing laws incompatible with solemn vows, had to take simple vows in Belgium and Austria. Cf. CICLSAL, Decree, 20 Sept 1840, in BIZZARRI, 451-453. The vows of the *moniales* of France ceased to be solemn until the Holy See decided otherwise. Cf. CICLSAL, Decr. *Parisien*, 1 Aug. 1839, *CICFontes* IV, 1923, ad 1. Both male and female religious who were in solemn vows in the kingdom of Naples were allowed the right to acquire, retain, administer and dispose of their property for honest and pious uses, if that was done with due dependence on legitimate religious Superiors. Cf. APOSTOLIC PENITENTIARY, 1 Dec. 1820, in BIZZARRI, 739. In America, a duly appointed religious was allowed to hold and administer the property of his Institute in his own name; but such an arrangement was to be made which allowed the acts to stand as valid solely in the civil law. Cf. CONGREGATION FOR PROPAGATION OF FAITH, Decr. *Quum in foederatis*, 15 Dec. 1840, §11, *CICFontes* VI, 4786.

The law of the cloister was suspended during these troublesome times, since the governments of the places concerned recognized the religious communities only because of their social worth in education, their care for the sick and other works of charity which were incompatible with the cloister. The Holy See left it to the bishops or to the Constitutions of the Institute to decide on what kind of cloister the Institute was to observe[202]. In response to the profession of triennial solemn vows demanded by civil law which was felt to be a contradiction in terms, on 21 Apr. 1841, the Sacred Congregation of Bishops and Regulars – currently called CICLSAL[203] – decreed that, because of the civil laws of the places concerned, the novices were to make temporary profession of simple vows for three years. These simple vows, however, were not to be made with the intention of binding oneself merely temporarily. Rather, the vows could be taken annually or renewed triennially until the time when solemn vows were to be taken[204]. Here we see temporary profession of simple vows being prescribed for a particular case due to circumstances of the time.

As already seen, Pope Pius V had decreed that the only female religious Institutes permitted were those which professed solemn vows and observed the papal cloister. The purpose of the cloister had been to remove the religious from the dangers of the world. The new works of mercy they were engaged in and the dangers with which they were faced in the society among the people where they served now called for simple and even temporary vows[205], so that those who could not persevere in

---

[202] For instance, cf. CICLSAL, Decr. *Parisien*, 1 Aug. 1839, nn. 2-3; A. LUCIDI, *De visitatione*, II, nn. 325-328.

[203] Pius X, by the Constitution *Sapienti consilio* (29 Jun. 1908) separated the two institutions and, placing the Bishops under the Consistorial Congregation, made the *Congregation for Regulars* autonomous. By the Constitution *Regimini ecclesiae universae* (15 Aug. 1967) of Paul VI, the Congregation for Regulars was named the *Sacred Congregation for Religious and for Secular Institutes*. The Apostolic Constitution *Pastor bonus* (28 Jun. 1988) of John Paul II changed the title to *The Congregation for Institutes of Consecrated Life and Societies of Apostolic Life* (hereafter CICLSAL).

[204] Cf. CICLSAL, *Extābant*, 21 Apr. 1841, in BIZZARRI, 463-464.

[205] On the 24 Mar. 1837, permission had been granted to all Trappist monasteries within the borders of France, in virtue of which, novices in these communities made only simple vows at the end of the term of probation, instead of the customary solemn vows. Cf. CICLSAL, Decr. *De Trappensium*, 24 March 1837, in BIZZARRI, 73-74. The *moniales* in France were allowed to take simple vows before they took solemn vows. In the regions under the emperor of Austria the *moniales* could take simple

such extremely difficult times could leave at the cessation, dispensation or commutation of these vows. And so, profession of temporary vows continued to be prescribed for female Congregations in particular cases where there was need. Therefore, it can be said that the effects of the civil law on the rule of cloister, the vows of poverty and chastity, as well as the needs of the time, contributed to the occasion for this change in juridic approach in particular cases.

In the act of approval, Congregations with simple vows were being recognized juridically as Institutes with a specific juridical structure closer to that of religious state[206]. Thus, we can conclude that one of the characteristics of ecclesiastical intervention during this period was juridical recognition of Institutes of simple vows as a result of the jurisprudence of approval by the Holy See[207]. But recognition of these new forms and their rapid growth[208] was not without challenges. In particular, there arose a problem of stability with respect to simple vows professed in these Congregations. The practice of the Holy See at the time clearly reveals that there was a real concern regarding how to make these simple vows stable and how to make members of such communities effective in carrying out apostolate[209]. The response to this need is seen in the jurisprudence of approvals. The Holy See started by affirming that the common law for the religious did not apply to such Congregations, unless explicitly provided. Then, by single provisions, it

---

vows until they were twenty-five years of age. Cf. CICLSAL, *Circa professionem votorum simplicium*, 19 March 1857, in BIZZARRI, 736-737.

[206] Cf. A. CARMINATI – M. SAID, «Diritto dei religiosi», 652.

[207] As a result of the various decrees of erection in the case of Congregations, authors began to make a division among Religious Institutes in such a manner as to distinguish between: (i) religious properly and truly and in the strict sense – these were the regulars with solemn vows; (ii) religious properly and truly in the less strict sense – these were the members of Religious Congregations; and (iii) Pious Congregations which lacked one or the other of the things which were essential *ex natura rei* for the religious state. This «lack» could result from: the absence of all vows, the absence of all public vows even though private vows had been taken, the absence of even one or more of the public vows of religion, or the absence of papal approbation for the Institute. Cf. R. MOLITOR, *Religiosi iuris*, ch. IV, 219-229, §1; F.X. WERNZ, *Ius decretalium*, III, pars II, n. 610; IV, n. 378; A. VERMEERSCH, *De religiosis*, I, pars I, ch. III, 43, n. 64.

[208] On 12 Nov. 1847, the Congregation of Bishops and Regulars noted the increasing number of nuns in simple vows: «SSmus D.N. Pius PP. IX. prospicere cupiens Institutis monialium votorum simplicium quae in dies ubique augentur...». CICLSAL, Decr. *Subsidia dotalia*, 12 Nov. 1847, 120.

[209] Cf. A. CARMINATI – SAID, M., «Diritto dei religiosi», 651-652

gradually moved to applications of such common law to similar cases up to the practice of structuring the life of Congregations with many provisions of common law of the Religious Institutes. On this basis, it established an approval procedure for these Congregations similar to that used in the past for the Religious Orders, namely: examination of the Constitutions – freely composed by the founders – by the Holy See; issue of a decree of praise; entrusting the congregation under the care and jurisdiction of the ordinary for a period of experience; and finally granting papal approval in common or specific form[210].

Meanwhile, in all approved Religious Orders – except in those for which the Holy See had granted special concessions – novices continued to make solemn profession immediately after the year of probation. They did so, provided they had attained the age of sixteen years as required by the Council of Trent[211].

3. **From Pope Pius IX to Pope Pius X (XIX-XX century)**

This period marks the reform in the practice of religious profession which sought to bring unity to the discipline of religious profession and that of temporary profession having specific juridic effects. In particular, Pope Pius IX formed the *Congregatio super Statu Regularium* (Congregation of regulars) – currently called CICLSAL[212] – which initiated the reform towards unity, ratified temporary profession for all male Orders with invalidating effect and instituted the faculty to exclude a member in temporary profession for all Religious Orders of men. Pope Leo XIII reaffirmed this unity by raising Religious Congregations of simple vows to the status of Religious Orders and ratified temporary profession for all male and female religious *ad validitatem*. Subsequently, Pope Pius X worked towards the synthesis of the doctrine and jurisprudence of his predecessors by clarifying the rationale for temporary profession of simple vows before solemn vows and by issuing common norms for all the religious. These norms would eventually be promulgated by Pope Benedict XV in the *CIC/1917*.

---

[210] Cf. A. CARMINATI, *I fini*, 104-114.

[211] Cf. COUNCIL OF TRENT, Sess. 25, *De regularibus et monialibus*, cap. 15.

[212] Consequently, for consistency purposes, we use its current name in citing the documents by this decastery in this study.

3.1 *Ratification of temporary profession before perpetual vows for all male Institutes by Pope Pius IX*

When Pope Pius IX (1846-1878) ascended to the throne, political revolt and the spread of lack of religious spirit was rampant among many nations. This influence was felt also among the religious. In Religious Institutes with vows, it was made manifest in the many defections from these Institutes and in the relaxation of discipline of the vows especially in regard to obedience and poverty[213]. Besides this, the law of France and of other countries sanctioned what the Church forbade, that is, the state protected the monk or the nun who – in yielding to the temptations and the spirit of the age – had attempted marriage upon leaving the monastery[214].

To regulate the discipline in the Religious Congregations, the *Congregatio super Statu Regularium*[215] created by Pope Pius IX in 1847 issued many important regulations that reflected the Holy Father's mind in regard to the strengthening of discipline within Religious Congregations[216]. In 1848, with the Decr. *Regulari disciplinae* on receiving the novice habit and profession, the Congregation for Regulars – currently called CICLSAL[217] – clarified the distinction between *simple* and *solemn* vows in the Orders, Institutes, Congregations, Societies and Monasteries[218]. To get to the root of the evil caused by admission of unworthy candidates to perpetual profession encouraged by the circumstances of the time, this Congregation, besides the Decr. *Regulari disciplinae* on the admission of novices, issued the important Encycl. *Neminem latet*[219] of 19 March 1857 which clearly stated the purpose of temporary

---

213 Cf. V. LA PUMA, «Evoluzione del diritto», 196.

214 The civil law, to the great harm and scandal of the faithful, made such marriages permissible.

215 Cf. PIUS IX, Encycl. *Ubi primam arcano*, 17 June 1847, 818; T. SCHÄFER, *De religiosis*, 180; A. VERMEERSCH, *De religiosis*, II, 37-41.

216 For instance, cf. CICLSAL, Decr. *Regulari disciplinae*, 25 Jan. 1848, *CICFontes* VI, 4376. This document issued norms regulating the admission and formation of novices.

217 This Congregation by then was called Congregation for Regulars. But for consistency purposes, this study uses its current name, the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life (CICLSAL), in reference to this Congregation and to the author of documents emanated during this period.

218 Cf. CICLSAL, Decr. *Regulari disciplinae*, pars I, n. I.

219 Cf. CICLSAL, Encycl. *Neminem latet*, 19 March 1857, *CICFontes* VI, 4381. The full text of the document, telling why the change was introduced is also found in A. VERMEERSCH, *De religiosis*, II, 326-327.

profession: *to guard against admission to perpetual vows candidates unfit for religious state*. As stated in the Encyclical, «the needs of the time demanded greater care in admitting candidates to solemn profession, lest such be admitted who were unfit for the religious state»[220]. In order to guard against the jeopardy which would result from such admissions, it was decreed that future candidates for each and every male Order of solemn vows, would make temporary profession of simple vows at the completion of the year of probation, provided that the age prescribed had been attained[221]. The Letter provided for three years of simple vows before admission to profession of solemn vows if the Order found a candidate ***suitable***, unless simple vows had already been professed for more than this number of years[222]. It made a provision for taking a longer period than three years in simple vows for two reasons: either because the Constitutions provide for such or because the Superior General or Provincial Superior for just and reasonable causes postponed the solemn profession. In both cases the age limit was not to supersede 25 years[223]. If the candidate, at the end of the novitiate, was already twenty-five years of age, he nevertheless still had to take simple vows for three years[224]. However, if his Superiors wished to defer his solemn profession, they had – in each case – to obtain permission from the Congregation in charge of religious affairs[225]. The Encycl. *Nemi-*

---

[220] CICLSAL, Encycl. *Neminem latet* §1: «tristissimis hisce temporibus [...] maximam adhibendam esse curam solicitudinem, diligentiam, ad eorum spiritum, uti par est, probandam qui vota solemnia Deo nuncupare postulant, ne quis admittatur [...] saeculi contagione pollutus...». All English transl. of texts from *Neminem latet* are by the author.

[221] CICLSAL, Encycl. *Neminem latet*, §3: «Peracta probatione et noviciatu ad praescriptum S. Concilii Tridentini, Constitutionum Apostolicarum et statutorum Ordinis a S. Sede approbatorum, Novitii vota simplicia emittant postquam expleverint aetatem annorum sexdecim ab eodem Tridentino Concilio statutam, vel aliam maiorem, quae forsan a statutis proprii Ordinis a S. Sede approbatis requiratur».

[222] CICLSAL, Encycl. *Neminem latet*, §4: «Professi post triennium a die, quo vota simplicia emiserint, computandum, si digni reperiantur, ad professionem votorum solemnium admittantur...».

[223] CICLSAL, Encycl. *Neminem latet*, §4: «nisi fortasse pro aliquibus locis, uti nonnullis institutis indultum est, professio votorum simplicium ad longius tempus iam concessa fuerit. Poterit vero Superior Generalis, ac etiam Superior Provincialis ex iustis et rationabilibus causis professionem votorum solemnium differre, non tamen ultra aetatem annorum vigintiquinque expletorum».

[224] CICLSAL, Rescript, 16 Aug. 1866, §1, in *Collectanea*, 866-867: «nempe non posse differri». English transl. is by the author.

[225] CICLSAL, Rescript, 16 Aug. 1866, §1: «si vero longior mora requiratur, aditus ad apostolicam sedem patet...». English transl. is by the author.

nem latet had no reference to Orders of women, however, such that the legislation in force before the publication of this Encyclical continued to be the guiding principle for their professions.

Until the Encycl. *Neminem latet*, the simple vows had been reserved principally to Congregations. Never were simple vows professed in Orders as a principle norm. With this Encyclical, the simple vows that had been a privilege only of the Society of Jesus, were now declared for other male Orders with the purpose of ascertaining and effectively proving the vocation and suitability of candidates[226].

3.2 *The faculty to exclude from subsequent profession for just causes in all male Institutes*

In 1858, following upon the provisions of the Encycl. *Neminem latet*, the CICLSAL issued a Decr. *Sanctissimus* of 12 June 1858 addressed to the Master General of the Order of Preachers of Dominic which concretized the Encycl. *Neminem latet* and granted to the Superior General the faculty to exclude a member from subsequent profession[227]. It explained the nature of simple vows temporarily professed. This decree stated that the simple vows referred to in Encycl. *Neminem latet* were perpetual on the part of the professed, but were to be perfected and completed by solemn vows to which they tended[228]. By his simple profession, the candidate was truly incorporated into the Order[229]. Regarding rights and obligations, the Decree stated that members in simple vows had same rights, obligations and privileges as those with solemn vows in terms of communal deliberations[230] and were obliged to live authentic community life[231]. However, for grave and urgent reasons, a

---

[226] Cf. E. SASTRE SANTOS, *La vita religiosa*, 850. The provision of three years minimum with possibility of extension would later be entered into the codification of Canon Law as it is today in the current legislation.

[227] CICLSAL, Decr. *Sanctissimus*, 12 Jun. 1858, n. III, *CICFontes* VI, 4383: «simplicia vota solvi etiam possunt ex parte ordinis in actu dimissionis professorum». All English transl. of texts from *Sanctissimus* are by the author.

[228] CICLSAL, Decr. *Sanctissimus*, n. I: «Vota simplicia, de quibus agitur, perpetua erunt ex parte voventis».

[229] CICLSAL, Decr. *Sanctissimus*, n. VI: «Professi dictorum votorum simplicium participes erunt omnium gratiarum et privilegiorum».

[230] CICLSAL, Decr. *Sanctissimus*, n. VIII: «a die emissionis votorum simplicium computentur; et professi votorum simplicium suffragium habeant in actis capitularibus sui conventus, quatenus el prout habent solemniter professi».

[231] CICLSAL, Decr. *Sanctissimus*, n. X: «et studiorum, et vitam communem perfectam observare».

member could himself request a dispensation reserved to the Roman Pontiff to whom the request was to be addressed[232].

This acceptance of the member by the Order was not perpetual for the Institute which remained free to dismiss a member who was found unsuitable. The dismissal of a member by the Institute resulted in a dispensation from the vows, since once dismissed, one was free from both the bond of the vows as well as from all obligations that came from the vows on account of the dismissal itself[233]. The faculty to dismiss a member in simple vows belonged to the Master General of the Order with his General Council. However, in extraordinary cases and, above all, for reasons of distance, this could be delegated to honest and prudent members whose number should be at least three[234].

The decree also stipulated some manner of proceeding as follows: Even though the decree of dismissal did not require any procedure or formal judicial process, one could only be dismissed after verifying the truth of the facts after which the Superior could proceed with great charity and prudence to dismiss the member for just and reasonable causes. In doing so, he was to put aside all human passion, lest he remained severely burdened in his conscience. On the other hand, according to *Sanctissimus* no one was to be dismissed because of illness acquired after the profession of simple vows[235].

Regarding the modality of profession, this same decree abrogated tacit profession. Explicit profession of simple vows was established as a requirement for professing solemn vows under pain of nullity (*ad va-*

---

[232] CICLSAL, Decr. *Sanctissimus*, n. II: «Eorumdem votorum simplicium dispensatio reservata est romano pontifici, cui professi gravibus urgentibus causis preces porrigere poterunt».

[233] CICLSAL, Decr. *Sanctissimus*, n. III: «Verum eadem simplicia vota solvi etiam possunt ex parte ordinis in actu dimissionis professorum, ita ut data dimissione professi ab omni dictorum votorum vinculo et obligatione eo ipso liberi fiant».

[234] CICLSAL, Decr. *Sanctissimus*, n. IV: «Facultas autem dimittendi professos votorum simplicium, de quibus agitur, spectat ad magistrum generalem ordinis cum suo generali consilio. Idem magister generalis cum suo generali consilio poterit in casibus extraordinariis, et praesertim pro regionibus et locis longinquis ad dimissionem decernendam subdelegare probos et prudentes religiosos, qui saltem tres esse debent».

[235] CICLSAL, Decr. *Sanctissimus*, n. V: «Licet ad decernendam dimissionem neque processus neque iudicii forma requiratur, sed ad eam procedi possit sola facti veritate inspecta, tamen Superiores procedere debent summa charitate, prudentia, et ex iustis et rationabilibus causis, quacumque humana affectione remota, secus eorum conscientia graviter onerata remaneat. Nemo autem ex causa infirmitatis post professionem votorum simplicium superventae dimitti poterit».

liditatem)[236]. The solemn profession was invalid unless the religious had passed the period of three years in simple vows as required by the Encycl. *Neminem latet*.

From this decree, the following observations can be made:

i. It defined simple vows in the very terms that were used by Ignatius; that is, the profession was perpetual on the part of the one professing but temporary on the part of the Institute.

ii. This decree, though addressed to a particular concrete case, sheds light on the mind of the Church to make profession of simple vows the beginning of religious life. With this profession, one was incorporated into the Institute as a member with the rights and duties defined by law; and this kind of life was to be assumed by explicit profession.

iii. Temporary professed members could be dispensed only by the Holy See, but should the one professed, for any reason whatsoever, prove himself unfit for the religious state, the Order – through the Master General of the Order with his General Council – was fully empowered to dismiss such an unworthy religious at any time during the period of his simple vows. In the event of such dismissal, the religious, by that very fact, was released from his vows, and freed from all obligations contracted by his profession, and he became a lay person – that is, if he was not in sacred orders when he entered the Institute.

iv. This document greatly influenced the current norms on lawful dismissal including exclusion from subsequent profession in terms of: (a) juridic effect of lawful dismissal; (b) competent authority to dismiss or exclude a member; (c) just cause requirement; (d) illness not considered a just cause and (e) discretionary judgement to dismiss a member in simple vows.

3.3 *An invalidating clause to an obligation to profess temporary vows in male Institutes*

After the Encycl. *Neminem latet*, simple profession became an obligatory requirement for all Religious Orders and Congregations for men. However, in practice, not all Instiutes fulfilled this requirement. In fact, there were some Institutes in which candidates were immediately admitted to solemn profession[237] without respecting the three-year period of simple vows after novitiate established in *Neminem latet*. This gave

---

[236] CICLSAL, Decr. *Sanctissimus*, n. XI: «professio tacita omnino abrogata est».

[237] Cf. A.J. ECHAVE, *La profesión religiosa*, 62; A. GUTIÉRREZ, «Professio religiosa ad tempus», 298, n. 5.

rise to serious doubts in the minds of some Superiors concerning the validity of such solemn professions. Cases were brought to the knowledge of the Holy See in which novices, contrary to the prescriptions of the Encyclical, had been advanced to solemn profession immediately after their novitiate.

To that effect, Pope Pius IX (1846-1878) issued an Ap. Const. ***Ad universalis ecclesiae*** on 7 Feb. 1862. The aim of ***Ad universalis ecclesiae*** was to remove such ambiguity in the future. In order to do so, it declared definitively and decreed null and void any solemn vows professed in male Religious Orders and Congregations without the simple profession required by the Encycl. ***Neminem latet*** and/or without taking at least three years of simple vows after profession, anything to the contrary notwithstanding[238]. This meant that such professions of solemn vows – whether made consciously or ignorantly, in whatever manner, and no matter what the reasons or arguments were for such action – would have no juridic effect and, therefore, a «religious» would be technically speaking «without vows»[239]. Pope Pius IX's ***Ad universalis ecclesiae***, filled the ***lacuna*** left by ***Neminem latet*** reinforcing the decision already established in 1857 and gave the profession of simple vows a serious juridic effect. Indeed, the Pontiff made the profession of simple vows a requirement for solemn vows ***ad validitatem***.

Although the Const. ***Ad universalis ecclesiae*** did not leave any future doubt, it made no declaration in reference to the validity or invalidity of professions already made contrary to the Encycl. ***Neminem latet***. Nevertheless, before the Const. ***Ad universalis ecclesiae*** had been issued, CICLSAL on 16 Aug. 1866 had declared that the solemn profession in these cases had been made validly but illicitly[240].

---

[238] PIUS IX, Ap. lett. ***Ad universalis ecclesiae***, 7 Feb. 1862, §3, ***CICFontes*** II, 532: «motu proprio et certa scientia, deque apostolicae nostrae potestatis plenitudine, quoad religiosas virorum familias cuiuscumque Ordinis, Congregationis et Instituti, in quibus solemnia vota emittuntur, statuimus ac decernimus nullam omnino, irritam et nullius roboris fore professionem votorum solemnium tam scienter, quam ignoranter, quovis modo, praetextu et colore facta a novitiis quibuscumque etiam laicis et conversis, qui licet probationem et novitiatum prout de iure expleverint, non emittant prius professionem votorum simplicium». English transl. is by the author.

[239] The words «religious» and «without vows» are placed in quotation marks to indicate that one cannot be a religious without vows juridically speaking. Consequently, even though, in fact, one would be living in a religious community and participating in community activities, one would not be a religious juridically speaking.

[240] CICLSAL, Rescript 16 Aug. 1866, n. II, in ***Collectanea***, 866-867: «Utrum dictus religiosus professionem solemnem validam emiserit? Affirmative».

With the Encycl. *Neminem latet*, the Decr. *Sanctissimus* and the Ap. const. *Ad universalis ecclesiae*, we can conclude that Pope Pius IX began a reform of religious profession of vows by means of the requirement of temporary profession of simple vows and gave this the required clear juridical significance. Accordingly, from these documents, two things stand out clearly: One, simple vows are perpetual on the part of the one who professes them but not on the part of the Institute who accepts the profession; and two, the reform focuses on male Orders with solemn vows, excluding female Orders and other Institutes where solemn vows were not professed[241].

3.4 *Uniformity of discipline in Religious Institutes based upon the jurisprudence*

Initially, only with respect to a few points was there an explicit declaration that the common law for the Religious Orders was to be applied to Congregations[242]. But with time, as circumstances changed, several points of uniformity were expressly stated in new decrees. For instance, the Encycl. *Neminem latet* (19 Mar. 1857) and the Decr. *Perpensis* (3 May 1902) made simple vows in Orders and Congregations equivalent as regards the juridic effects of religious profession. Several decrees extended the old law to the new Congregations[243].

Consequently, at the time Pope Leo XIII released Ap. const. *Conditae a Christo*, most of the legislation for both Orders and Congregations were similar. However, in the case of Congregations, these norms were scattered variously in Decrees and Constitutions. The Ap. const. *Conditae a Christo* and, a year after, *Normae* attempted to bring these norms together.

It is for this reason that, though not addressing temporary profession directly, *Conditae a Christo* is considered worthy of mention in this study. Apart from *Normae* of 1901[244], which prohibited new evan-

---

[241] This gap would later be filled by Decr. *Perpensis*.

[242] For instance, cf. CICLSAL, *Parisien*, 1 Aug. 1839, nn. 2-3, *CICFontes* IV, 1923; ID., *Clausura papalis cum votis simplicibus*, 6 Dec. 1839, BIZZARRI, 88-89; M.D. BOUIX, *Tractatus*, I, pars IV, ch. V, n. 11, 577-578.

[243] Cf. A. LUCIDI, *De visitatione*, II, n. 463, at 1, 458; LEO XIII, Const. *Conditae a Christo*, §2 (I).

[244] During the latter part of the nineteenth century, Popes Pius IX and Leo XIII received requests for approval from numerous simple vow Institutes which had sprung into existence on account of the needs of the time. The many problems that had been placed before the Congregation in charge of the affairs of the religious had shown the

gelical councils other than the three essential vows of poverty, chastity and obedience in new Congregations, the Ap. const. *Conditae a Christo* (8 Dec. 1900) is considered one of the most important and innovative legislative documents in the doctrine and legislation regarding Congregations of simple vows[245].

By the time this Constitution appeared on 8 Dec. 1900, more than three hundred years had passed since the Council of Trent began the task of authentic reform and renewal of religious life in the Church. There was no real uniformity of discipline in Religious Orders and Congregations until in the 19th century. Each case had been handled as a particular matter. However, the rapid growth of these Congregations needed attention. The common law for the Religious Orders could not be applied to them in very many points such as those regarding the observance of the cloister, the enjoyment of exemption and the solemn character of the vows, among others. In general, it can be said that the common law was applicable to these new Congregations only in such matters which were common to both types of Institutes and in such points wherein the common law was explicitly applied to them. In all other cases, new laws had to be made; or the prescriptions of the common law had to be changed in order to fit the new conditions.

With the rapid growth of these Congregations, there was a distinct need for norms which could be followed in their founding. These

---

necessity for more perfect legislation for the Institutes to be approved in the future. In 1901, a year after the release of *Conditae a Christo* the Sacred Congregation of Bishops and Regulars emanated *Normae* on 28 June, the norms which were to be followed in the approval of the legislation of new Institutes of simple vows. Cf. S.J. TURNER, *The vow of poverty*, 53.

It was issued with an aim of clarifying the uncertainties and controversies on the rights of bishops toward Religious Institutes with simple vows and the obligations of Supreme Moderators to the bishops. This Papal document recognized the existence of several Congregations who with simple vows committed themselves to various works of religion and of mercy and called them «religious families». It established prescriptions for establishing rights and duties of such Congregations both of diocesan and pontifical rights in relation to the bishops. Cf. A. CARMINATI – M. SAID, «Diritto dei religiosi», 653. It also drew attention to certain erroneous practices in the exercise of power of the bishop. To this effect, it established that only the Roman Pontiff could dispense from both temporary and perpetual vows in Institutes of pontifical right and at the same time affirmed that any change in the Constitutions approved by the Apostolic See was reserved to the same Pontiff. Cf. LEO XIII, Const. *Conditæ a Christo*, ch 2, n. II; A.P. STEIGER, «De Propagatione et diffusione», 177-178.

[245] A. LARRAONA, «Commentarium», 134.

norms were given in a rather simple «guidelines» form by the *Methodus* of Archbishop Bizzarri, Secretary of the Congregation of Bishops and Regulars – currently CICLSAL. The *Methodus* appeared in 1884[246]. After the First Vatican Council, however, the Sacred Congregation of Bishops and Regulars in 1897 examined the question of the multiplication of these Institutes and adopted rules to control any inconveniences and abuses which could arise from such a phenomenal growth. A commission was appointed within the Congregation for the approval of the new Institutes[247]. The rules it followed were not promulgated, but they are found incorporated substantially in the Const. *Conditae a Christo*[248].

The Constitution, therefore, represents an important step in the formal restructuring of the life of the religious especially with regard to active Religious Congregations of sisters who had been taking simple vows. It brought to a conclusion the praxis of the Holy See of emanating one category of norms for the Congregations with simple vows and another category of norms called «common laws for the religious»[249].

The *Normae*, in turn, extended the norms of the Encycl. *Neminem latet* (1857) to all Institutes of simple vows with pontifical approbation, and achieved uniformity in the following matters: the novitiate formation; the triennial temporary profession to be made before perpetual profession; and the competent authority to dismiss a member among others[250]. It prescribed that the council of the Superior General had a decisive vote in the dismissal of those who were temporarily professed.

The *Normae* (1901) made more determinate the imperfect and rather general rules of the *Methodus*. *Normae*, however, were not laws but rather directive norms for bishops in the founding of new Institutes. The Const. *Conditae a Christo* (1900) of Pope Leo XIII had given the bishops the juridical right to found new Institutes[251]. The Holy See had determined from the time of this Constitution onwards not to approve an Institute unless the bishop had already done so. This task

---

[246] Cf. CICLSAL, *Methodus* 22 Sept. 1854, in BIZZARRI, 772-773.

[247] Cf. A. BATTANDIER, *Guide canonique pour les constitutions*, 7, n. 16.

[248] Cf. LEO XIII, Const. *Conditae a Christo*, ch. 1, n. III.

[249] Cf. A. CARMINATI – M. SAID, «Diritto dei religiosi», 653.

[250] *Normae*, 6 Mar. 1921, nn. 71-90, 96-109, and pars secunda, nn. 202-320, *AAS* 13 (1921) 312-319; V. LA PUMA, «Evoluzione del diritto», 198.

[251] Cf. P. MAROTO, «Regulae», 297 n. 133 (1°); A. VERMEERSCH, *De religiosis*, II, supplementum XI, ch. I, §2 (II), n. 6, 124.

required some guidelines, and so *Normae* was emanated in response to this need.

3.5 *Obligatory temporary profession prior to solemn vows for all religious* ad validitatem

Forty-five years had passed since the CICLSAL with Encycl. *Neminem latet*, had established the obligation to profess simple vows after the novitiate according to the requirements of the Council of Trent, for all male Orders with solemn vows. Within this period, for the Religious Orders of women, the former discipline had remained in force, in consequence of which, solemn profession for them continued to be the only profession made immediately after the novitiate. Exception was made where the Holy See had given special provisions for individual cases[252]. With time, the provision of simple vows before perpetual vows was extended to Communities of nuns in some dioceses. On 30 Sept. 1864, a letter was addressed to the Archbishop of Baltimore by the CICLSAL in which several provisions were made in reference to the Congregations of sisters of the United States[253]. Vows, which up to the date of the letter, had been made by the nuns of the Visitation B.V.M., in Georgetown, Mobile, Kaskaskia, Louis and Baltimore, were declared to be solemn. But due to the circumstances of the times, it was further stated that, in the future, all novices making profession for the Convents above enumerated were to make simple vows and, after having spent five years in simple profession, they could be admitted to solemn profession. In reference to other communities in the States, which were not among those enumerated above, the CICLSAL, in the same letter, declared that, unless a special rescript had been obtained from the Holy See, novices could make only simple vows. It was finally stipulated that candidates for any convent which would be established in any of the States after the date of the letter, would be permitted to make only simple vows. And so, until the year 1902, temporary profession of simple vows for both female Orders and Congregations was an exception whereas it was the norm for male Orders.

On 3 May 1902, the Congregation issued a Decr. *Perpensis*, with which it extended the previous laws to other religious and established that nuns of any Order or Congregation with solemn vows, after suc-

---

[252] For such provisions, cf. CICLSAL, *Circa professionem*, 19 Mar. 1857, BIZZARRI, 736.

[253] CICLSAL, Litt. *Pluribus*, 30 Sept. 1864, *CICFontes* IV, 1995.

cessfully completing the novitiate, as required by the Council of Trent, must temporarily profess simple vows before making perpetual profession[254]. The decree made it obligatory for all the Orders and Congregations to profess simple vows for at least three years before solemn vows with a possibility of extending to more than three years, but not beyond 25 years of age of the religious professing. This requirement of at least three years of simple vows was to bind *ad validitatem*; anything to the contrary rendered any subsequent profession null and void and therefore, without any juridic effect [255]. It further stated that these simple vows were perpetual on the part of the one who professed them and that their dispensation was reserved to the Holy Father. Those who professed simple vows had the same privileges and enjoyed the same spiritual favours as those with solemn vows. They were also bound by the common law and the Constitutions of the Institute[256].

The influence that Encycl. *Neminem latet* had on the Decr. *Perpensis* is very clear from the norms cited here. They are all taken almost verbatim from Encycl. *Neminem latet*. Consequently, the provisions of the Encycl. *Neminem latet* were introduced shortly afterwards into the Constitutions of these Congregations with simple vows. For the same reasons, the discipline regarding dismissal which had been enacted with reference to religious of simple vows in the Orders was made applicable to religious in Congregations with simple vows[257]. This reiteration

---

[254] CICLSAL, Decr. *Perpensis*, 3 May 1902, n. I, *CICFontes* IV, 2039: «In omnibus et singulis sanctimonialium monasteriis cuiuscumque Ordinis seu Instituti, in quibus vota sollemnia emittuntur, peracta probatione et noviciatu ad praescriptum S. Concilii Tridentini [...] noviciae vota simplicia emittant». All English transl. of texts from *Perpensis* are by the author.

[255] CICLSAL, Decr. *Perpensis*, 3 May 1902, nn. II-IV: «Huiusmodi professae post expletum triennium, a die quo vota simplicia emiserint computandum, si dignae reperiantur, ad professionem votorum sollemnium admittantur: sublata cuilibet potestate hac super re dispensandi, ita nempe ut si qua, non exacto integro triennio, ad professionem sollemnem quacumque ex causa admitteretur, professio ipsa irrita prorsus foret ac nullius effectus».

[256] CICLSAL, Decr. *Perpensis*, 3 May 1902, nn. V-VII: «Vota simplicia, uti praefertur, emissa perpetua sunt ex parte voventis; et dispensatio super iisdem Romano Pontifici reservatur; Professae istiusmodi votorum simplicium fruuntur et gaudent iisdem indulgentiis, privilegiis et favoribus spiritualibus, quibus legitime fruuntur et gaudent professae votorum solemnium proprii cuiusque monasterii; Eaedem tenentur ad observantiam regularum et constitutionum non secus ac solemniter professae; itemque tenentur choro interesse».

[257] Cf. CICLSAL, Animadversiones, II, 10 Mar. 1860, N. 6727-5, in BIZZARRI, 777; *Normae*, nn. 193, 201; A. TABERA, «De dimissione religiosorum», 140-41.

of previous norms is important to this study because it shows consistency and continuity in the Church's doctrine concerning temporary religious profession of simple vows and exclusion from subsequent profession. Eventually these norms would form part of legislation of *CIC/1917* and later that of *CIC/1983*.

Dismissal of a religious with simple vows in Orders was regulated by the Decr. ***Sanctissimus*** (cf. sec. 3.2 of this chapter). Instead, dismissal from Congregations with simple vows before solemn profession was henceforth to be regulated by Decr. ***Perpensis*** which stated that there must be a grave cause and that recourse must be made to the Holy See explaining the gravity of the cause for dismissal[258].

The decrees of Pope Pius X (1903-1914) and of the CICLSAL explicitly show the trend to constitute a uniform law for Orders and Congregations with regard to the exclusion of certain members from the Religious Institute[259] and the method to be used in the dismissal[260].

3.6 *Determination of nine years for initial formation*

On 1 Jan. 1911, the CICLSAL issued a Decr. ***Sacrosancta Dei***[261] directed to the Religious Orders and regulated the admission of lay members and converts. The objective of this document was to help these members remain faithful and persevere in their vocation upon professing solemn vows that were absolutely irrevocable, firm and public[262]. The decree gave Superiors General the faculty to permit, from time to time, the Provincial Superiors to admit – in accordance with the provisions of law – young people who had completed 17 years of age and who felt called to serve as lay religious. Once admitted,

---

[258] CICLSAL, Decr. ***Perpensis***, 3 May 1902, nn. XII-XIII: «Ad dimittendas e monasterio praefatas votorum simplicium professas, recurrendum erit in singulis casibus ad S. Sedem, distincte exponendo graves causas quae dimissionem suadere seu exigere videantur».

[259] Cf. CICLSAL, Decr. ***Ecclesia Christi***, 7 Sept. 1909, ***AAS*** 1 (1909) 700-701. The content of this decree was extended to female Religious Institutes on 4 Jan. 1910. Cf. CICLSAL, Declaration, 4 Jan. 1910, ***AAS*** 2 (1910) 36.

[260] Cf. CICLSAL, Decr. ***Quum singulae***, 16 May 1911, ***AAS*** 3 (1911) 235-238.

[261] Cf. CICLSAL, Decr. ***Sacrosancta Dei***, 1 Jan. 1911, ***AAS*** 3 (1911) 29-36.

[262] CICLSAL, Decr. ***Sacrosancta Dei***, 1 Jan. 1911, §2: «Quum vero per votorum solemnitatem prorsus irrevocabili, arctissimo et publico nexu mancipetur homo divino servitio coram Ecclesia et fidelibus universis, decet omnino, ut qui, hac ratione, Christi vestigia se propius ac perpetuo secuturos spoponderunt, ii fideliter in sua promissione perseverent». All English transl. of texts from ***Sacrosancta Dei*** are by the author.

these had to begin with postulancy. That is to say, no one was to be admitted to the novitiate who had not completed a postulancy period of at least two years or more if the statutes of the Order stipulated more than two years *ad validitatem*. Anything to the contrary would invalidate subsequent profession. Moreover, the novitiate was not to begin before the twentieth year of age in accordance with the law and was to last for one or two years in pursuant to the statutes of the Order[263].

The decree further stated that, once the novitiate was completed and all that the law required was faithfully observed, the candidate was to be admitted to the profession of simple vows which were perpetual on the part of the one professing but temporary and limited to six years on the part of the Order. Once the six years of simple vows had elapsed and the religious had reached 30 years of age and not more *ad validitatem*, and having observed all that law required, the religious was to be permitted to profess solemn vows[264].

In other words, this decree restated the Church's doctrine on the nature of simple vows temporarily professed and determined the period for initial formation to be at least nine years. This obligation of temporary profession of simple vows for six years was for the validity of solemn profession. Therefore, this decree confirmed, once again, that simple vows were perpetual *ex parte voventis*. Furthermore, it reinforced that temporary profession of simple vows limited to six years — after at least two years of postulancy and one or two years of novitiate — was a requirement for validity of solemn vows.

Having decreed this period of at least nine years of initial formation for all lay religious *ad validitatem*, we can conclude that, the CICLSAL

---

[263] CICLSAL, Decr. *Sacrosancta Dei*, 1 Jan. 1911, §5 nn. 1-3: «Moderatoribus Generalibus facultas fit permittendi toties quoties Superioribus Provincialibus, ut excipere valeant eos quoque iuvenes, ad Laicorum munia destinatus, qui vix expleverint decimum septimum aetatis annum, servatis servandis. 2. Nemo ad Novitiatum admittatur, qui per duos saltem annos, vel per plures, si magis diuturnum experimentum Constitutiones Ordinis praescribant, postulatum non expleverit, sub poena invalidae postea professionis. 3. Novitiatus ante vigesimum primum aetatis annum initium non habeat, ad tramitem iuris vigentis; isque unum vel etiam duos annos perduret, iuxta proprii Ordinis Constitutiones».

[264] CICLSAL, Decr. *Sacrosancta Dei*, 1 Jan. 1911, §5 nn. 4-5: «4. Expleto Novitiatu, servatisque quae servanda sunt, Laici admitti possunt ad simplicem votorum professionem, quae quidem, perpetua ex parte voventis, sit ad tempus sexennii ex parte Ordinis. 5. Absoluto sexennio votorum simplicium et expleto trigesimo aetatis anno ac non prius, sub poena item invaliditatis, servatisque pariter servandis, Laici vota solemnia nuncupare poterunt».

considered this period of at least nine years — from the time of postulancy to the sixth year of simple vows — necessary for both the candidate and the Institute. That is, it was long enough to give the candidates sufficient opportunity to acquire the necessary maturity for assuming the obligations of vowed life and to discern well their vocation and their total commitment before professing solemn vows. At the same time it was considered long enough for the Institute to determine the suitability of the candidate for the life of the Institute.

However, the Decree affirmed that this counting of years alone was not a sure guarantee of perseverance and ensuring suitability. This determination of suitability required much more precaution and care in accepting candidates and in providing for the quality of formation of these candidates once selected. To ensure this, the Decree stated that it would require gathering information about: legitimacy of birth of the candidate; character; good reputation in the society; the motive for joining the Institute and ascertaining that all the documents required were authentic. And only when all these had been ascertained should the major Superior admit those who had met the requirements to begin formation under the guidance of a religious considered capable and suitable both in age and in his way of life[265].

As can be seen from the text of this Decree, it did not add anything new to the already existing doctrine of the Church in relation to temporary profession of vows. Rather, it only applied the principles already established to the experiences of lay members of the Religious Institutes. In so doing, it brought out the rationale for temporary profession of simple vows as well as expressed what was required in the discernment process. This is important for this study, because it gives insight on what may determine suitability and that which may qualify as just causes for exclusion from subsequent profession.

---

[265] CICLSAL, Decr. *Sacrosancta Dei*, 1 Jan. 1911, §§7-9: «Haec autem aliquam, non tamen omnino firmam darent perseverantiae spem, nisi ea comittentur sequentes et aliae id genus cautelae et industriae, quas Apostolica Sedes, decursu saeculorum, edixit vel adhibendas suasit, et observantiores familiae religiosae laudabili consuetudine et felici exitu expertae sunt. [...] Provincialis indaget oportet de legitimitate natalium, de morum honestate, de optima coram populo fama, de idoneitate tyronum, ac praesertim de natura finis, quo ipsi aguntur, amplectendi statum religiosum. [...] Quos factae, etiam secreto, inquisitiones et exhibita documenta serio commendaverint, ii tantum, praehabita de more maiorum Superiorum licentia, ad Postulatum admittantur».

3.7 *The use of the term «Institute» before the promulgation of the CIC/1917*

A point worthy of note before we end this section – because it helps appreciate the difficulty in understanding the concept of «temporary profession» and its perceived contradiction – concerns the use of the term «Institutes» before the promulgation of the *CIC/1917*. The term «Institutes» was first used to refer to a group who performed works of mercy but whose members were not considered religious[266]. Therefore, in canonical language, members of an Institute were not called «religious», but «*sodales*» (members); and the Institutes to which they belonged were termed «*sodalitates piae*», distinct from Congregations whose members were recognized as religious. This fact is borne out of various pronouncements of the Holy See[267]. As regards them, there was no expressed common law about temporary profession of vows. Majority of these Institutes, however, stated in their own Constitutions that «temporary vows» were to be taken in a variety of ways: annually, biennially, or triennially, with a corresponding renewal of the vows at the end of each such expiration of time. Otherwise, it could also be made for that period which was specified in the Constitutions as a preparation for the «perpetual vows», the period itself being of varying lengths of one, two, three or five years[268]. In other words: for some, «temporary vows» were definitive with continuous renewal at the expiry of time; while for others, «temporary vows» were transitory as a preparation for «final vows». The Decr. *Auctis Admodum* and the *Normae*, however, supposed that all these Institutes had only temporary vows[269]. They did

---

[266] Cf. F. PIAT DE MONT, *Praelectiones juris*, I, q 12, 7-10; S. SIPOS, *Enchiridion iuris*, Pars II, §61, n. IV (1-3), 325-326.

[267] For instance, Pope Benedict XIV, in his Const. *Quamvis justo* §13, stated that the Institute of Mary, or English Ladies, concerning whom the Constitution treats in particular, were not true religious. CICLSAL expressed itself in like manner on several occasions. For example, when asked whether the Redemptorists could be called religious in the canonical interpretation of the word, the Congregation gave a negative response on 16 Sept. 1864. Cf. CICLSAL, Rescr. *Congregationis presbyterorum*, 16 Sept. 1864, *CICFontes* IV, 1993.

[268] For example, cf. CICLSAL, Decr. *Pluribus*, 15 Jul. 1843, in BIZZARRI, 104; ID., *Extabant*, 21 Apr. 1841, in BIZZARRI 463-465; APOSTOLIC PENITENTIARY, 1 Dec. 1820, in BIZZARRI, 739, CICLSAL, Animadversiones, XIV, 20 Feb. 1861, N. 13476-5, in BIZZARRI 789-790.

[269] For example, cf. CICLSAL, Decr. *Auctis Admodum*, 4 Nov. 1892, nn. II-IV, *CICFontes* IV, 2020; *Normae*, 6 Mar. 1921, ch. 2, n. 15, *AAS* 13 (1921) 312-319. These two documents have explicit reference to temporary vows.

so, both from the viewpoint of the Institute and also on the part of the professed member[270]. This discipline of temporary vows of the Institutes was prescribed for all Congregations in the preparatory *schemata* of the *CIC/1917*[271] as a preparation for perpetual vows. Eventually, it entered into the *CIC/1917*. Consequently, *CIC/1917* distinguished between temporary simple vows – which were temporary on both the one professing them and the Institute – and perpetual simple vows (cf. cann. 572-580 of *CIC/1917*), then perpetual solemn vows (cf. can. 572 §2 of *CIC/1917*)[272].

3.8 *The distinction between dismissal and expulsion before the promulgation of CIC/1917*

For clarity purposes, it is important that we give the distinction between dismissal and expulsion as understood before the promulgation of *CIC/1917*. Dismissal was understood as an act by which a religious in simple vows was sent away from the Institute by the competent Superior without the judicial form prescribed for an expulsion (*eiectio*). That is to say, a member could be dismissed in view solely of an examination of the truth in the case which revealed just and grave causes, even though these causes did not necessarily involve guilt or incorrigibility on the part of the dismissed member[273]. Dismissal was thus dis-

---

[270] Cf. CICLSAL, Decr. *Pluribus*, 15 Jul. 1843, in BIZZARRI, 104; ID., *Extabant*, 21 April 1841, in BIZZARRI, 463-465; ID., *Votorum*, 13 Jan. 1845, in BIZZARRI, 487-489; APOSTOLIC PENITENTIARY, 1 Dec. 1820, in BIZZARRI, 737-739; CICLSAL, Animadversiones, XIV, 20 Feb. 1861, N. 13476-5, in BIZZARRI, 789-790; ID., Animadversiones, XVIII, 13 Dec. 1859, N. 164-5, in BIZZARRI, 795-797.

[271] Cf. S. GOYENECHE, «De egressu a religione», 53-54.

[272] This distinction, however, appears to have caused more confusion than clarity during post-*CIC/1917* period as we shall see in the next section. But the *CIC/1983*, with the disappeareance of the distinction between solemn and simple vows and the use of the phrase «temporary profession of vows», seems to go back to the temporary profession of simple vows as understood by the Decr. *Quanto fructuosius*, the Const. *Ascendente Domino*, and the Decr. *Sanctissimus*. That is to say, they considred them vows which are perpetual on the part of one who professes them, but only temporary on the part of the Institute. However, the use of the term «temporary vows» in a few canons (cf. cann. 607 §2; 689 §3) still raises problems of understanding but which are merely terminological. The *CIC/1983* retained only the word «Religious Institute» in reference to all religious communities with vows whether solemn or simple even though the use of other terms in proper law is not prohibited. Cf. title of bk II, part III; cann. 574 §1; 607 §2.

[273] Cf. A. BATTANDIER, *Guide canonique*, 269-270; G. PALOMBO, *De dimissione*, tit. XVI, lib. II, n. 2; F.X. WERNZ, *Ius decretalium*, III, pars II, nn. 377-378.

tinct from expulsion (*eiectio*). The latter term was used with reference to religious in solemn vows. It presupposed the use of the judicial form and connoted incorrigibility as the cause which justified the expulsion[274].

4. **The 1917 Code of Canon Law**

4.1 *The aim of codification of Canon Law*

One of the aims of the codification of ecclesiastical law was to keep the growing mass of legislation in order. By the 19th Century, there had appeared an almost endless series of collections of law, many of which their authorship was unknown[275]. The body of ecclesiastical legislation included thousands of norms scattered throughout different places and this created difficulties in use and application. Many of these norms had lost value having been abandoned altogether or abrogated explicitly or implicitly. And many norms remained difficult to reconcile with one another due to changes in circumstances and practice[276]. Moreover, it was difficult to know which of the laws currently accepted were genuine. Still more difficult was the determination of whether they had been repealed or not[277]. Already during Vatican Council I, the Council fathers asserted the great benefit and opportunity of a new collection of canonical laws. Bishops also made a request for a single collection. In response to this situation and the request of the bishops, Pope Pius X (1903-1914) with the Motu proprio *Arduum sane* of 14 May 1904 set up a Commission. The task of the Commission was the redaction of these diverse documents into a Code of Canon Law, that is, a single volume of clearly stated laws, presenting the normative portion in the form of systematic short canons, shorn of the preliminary considerations and omitting those parts that had been superseded by later developments[278].

---

[274] CONGREGATION FOR THE COUNCIL, Decree, 21 Sept. 1624, §§3-9, *CICFontes* V, 2454; ID., Decree, 24 Jul. 1694, *CICFontes* V, 2942. Cf. also A. BATTANDIER, *Guide canonique*, 269-273; G. PALOMBO, *De dimissione*, tit. XVI, lib. II, n. 8, 7; F. PIAT DE MONT, *Praelectiones juris*, I, q. 227, 218; G. SEBASTIANELLI, *Praelectiones Juris*, 432; F.X. WERNZ, *Ius decretalium*, III, pars II, n. 676; These authors stated, however, that occasionally the word *ejectio* was used with reference to the dismissal of religious in simple vows.

[275] Cf. B. LINCOLN – E.C. ADAM, *Canon Law*, 2.

[276] Cf. J. NOONAN, *Power to Dissolve*, 159-165.

[277] Cf. B. LINCOLN – E.C. ADAM, *Canon Law*, 2.

[278] Cf. E.N. PETERS, The *1917 Pio-Benedictine Code of Canon Law*, xxi.

4.2 *Redaction of the CIC/1917*

In its preparation under the aegis of the Cardinal P. Gasparri (1852-1934)[279], centuries of material were examined extending from the Justinian reign through that of Napoleon to establishment of the modern European states. This material was scrutinized by leading experts with respect to its authenticity and harmonized as much as possible[280]. Pope Pius X also gave a special invitation for cooperation to the Catholic Universities and the Faculties of Theology. P. Gasparri, then Secretary of the Pontifical Commission for the Codification of Canon Law, sent a circular to the heads of those scientific institutions encouraging them to contribute to this most important and arduous work[281]. The work of Consultors would concentrate around the first formulation of the *schema* of canons. They were divided into various sub-commissions. The first complete draft of the Code was issued in 1912. P. Gasparri, as President of the Commission of Cardinals, took the initiative to send it to the bishops for advice and suggestions on all the *schemata* of the Code[282]. Thus, before the promulgation of the *CIC/1917* there had been three preparatory *schemata* over the years: 1912, 1914 and 1916. This study will treat the 1914 and 1916 *schemata* together, because, with regard to the subject of the study, the *schema* of 1916 did not make any significant changes with respect to the 1914 *schema*.

4.2.1 The *schema* of 1912

Religious profession is found in the lib. II, pars II, tit. XI, chap. III. In fact, the *schema* devoted 15 canons to the matter, namely, cann. 445-459. Can. 445 repeated what had already been established in the Pontifical and Curial documents/legislation studied in previous sections of this work: the Encycl. *Neminem latet* (1857), the Ap. Const. *Ad universalis ecclesiae* (1862), the Decr. *Sanctissimus* (1858), the Decr. *Perpensis* (1902), and the Decr. *Sacrosancta Dei ecclesia* (1911)[283]. Ac-

---

[279] P. Gasparri was a cardinal, diplomat in the Roman Curia and the signatory of the Lateran pacts. He served also as the Secretary of State under Pope Benedict XV and Pope Pius XI. In the redaction task, he was aided by Giacomo della Chiesa, future Pope Benedict XV, and Eugenio Pacelli, future Pope Pius XII.

[280] Cf. E.N. PETERS, The *1917 Pio-Benedictine Code*, xxi.

[281] Cf. A. NASONI, «Il Codice del Diritto Canonico», 97.

[282] Cf. F. JANKOWIAK, «Codice di Diritto Canonico del 1917», 355.

[283] *Schema CIC* 1912, can. 445: «In quolibet ordine regulari sive virorum sive mulierum, post novitiatum votis solemnibus praemittenda est, salvis praescriptis can.

cording to the draft of this canon, profession lasts for a period of three years and – in the case of converts and lay religious – six years. After this time, had elapsed, the religious would be admitted to solemn profession if they were found suitable and they had attained the legitimate age[284]. Can. 446 §3 gave major Superiors the faculty to postpone profession of solemn vows for just causes for not more than three years[285]. More time had been provided for in *Neminem latet* and *Perpensis* (they both provided for possibility of extending simple vows up to twenty-five years of age). This paragraph did not repeat this requirement of maximum age of twenty-five years, prior to which one had to profess. Rather, it prescribed how much time should elapse before final profession. With this resolution, simple profession according to can. 446 §1 was perpetual on the part of the one professing[286] and lasted from three to six years. This restriction to a maximum of six years had already been established in the *Normae*[287] and repeated in the Decr. *Sacrosancta Dei*.

Can. 447 §2 on temporary vows stated that the provisions of can. 446 §§ 2, 3, and 4 applied to temporary vows. Whereas, can. 448 §2 stated that simple profession was necessary before solemn profession and temporary profession was necessary before perpetual simple profession[288]. This canon emphasized necessity of *simple profession* before solemn profession and *temporary profession* before perpetual simple profession. The first part addressed the necessity of simple profession before solemn profession without which the subsequent profession

---

506, votorum simplicium professio per se perpetua». All English transl. of texts from *Schemata CIC* 1912, 1914 and 1916 are by the author.

[284] cf. *Schema CIC* 1912, can. 446 §1. The sources of this canon are: Encycl. *Neminem Latet*; Const. *Ad universalis ecclesiae*; Decr. *Perpensis*; Decr. *Sacrosancta Dei ecclesia*.

[285] *Schema CIC* 1912, can. 446 §3: «Iustis de causis Superior maior protrahere potest professionem solemnem ad aliud triennium et non ultra».

[286] *Schema CIC* 1912, can. 446 §1: «Post triennium ab hac professione religiosus ad professionem sollemnem admittatur, si dignus fuerit repertus et annum expleverit vicesimum primum; conversus autem post expletim annum tricesimum, dummodo saltem per sex annos in votis simplicibus permanserit; salvis constitutionibus vel indultis a Sancta Sede probatis vel concessis, quorum vi professio sollemnis vel serius emittatur vel non ab omnibus».

[287] *Normae* in L. RAVASI, *De regulis*, cap. VIII, n. 103.

[288] *Schema CIC* 1912, can. 448 §2: «Ad valorem vero professionis solemnis necesse praeterea est ut praecesserit professio simplex, de qua in can. 445; ad valorem professionis simplicis perpetuae, ut praecesserit professio simplex temporaria, ad normam can. 447».

was invalid. This profession of simple vows was to be made in accordance with can. 445, which stated that simple vows were perpetual on the part of the one professing (*votorum simplicium professio per se perpetua*). The second part stated that temporary profession in accordance with can. 447 was necessary for the validity of perpetual simple profession.

From this it is clear that in the 1912 *schema*, temporary profession was only meant for the Congregations where no solemn vows were professed, that is, those who professed only simple vows. Instead where solemn vows were professed, profession of simple perpetual vows was to precede profession of solemn vows[289]. The duration was the same for both professions (simple and temporary): three years minimum and six years maximum. Can. 450 §2 granted Superiors the faculty to permit anticipation or postponement of temporary profession for not more than one month[290]. In the case of renewal of temporary vows in the Congregation, it was to be done without delay[291]. Indeed, even during the time of temporary vows, for grave reasons, a professed religious with simple vows could be dismissed without special process[292]. Concerning departure from the Religion at the expiry of the period of temporary profession, the *schema* added nothing new. In this respect, can. 508 only emphasized the need for dispensation by the Holy See from temporary vows which were prior to perpetual profession and which, by themselves, were perpetual on the part of the professed in accordance with can. 445[293]. It did not impose any juridical obligation to make perpetual profession after the time for temporary vows had expired.

4.2.2 The schemata of 1914 and 1916

Two years later a new *schema* was released with an increased number of canons. With regard to religious profession, there were sixteen

---

[289] Here we see a possible influence of the jurisprudence of the time. Cf. sec. 3.7 of this chapter.

[290] Cf. *Schema CIC* 1912, can. 450 §2.

[291] Cf. *Schema CIC* 1912, can. 450 §1.

[292] *Schema CIC* 1912, c. 446 §2: «Durantibus votis simplicibus, professum dimittere potest supremus moderator vel abbas cum consensus sui cuiusque consilii vel capituli iuxta constitutiones, ex gravibus causis, circa quas graviter eorum conscientia oneratur...».

[293] *Schema CIC* 1912, can. 508: «Concedere dispensationem a votis in religione editis uni Apostolicae Sedi reservatur, salvis particularibus privilegiis et praescripto iuris, quo religiosus dimissus a votis dispensatur».

canons (cf. cann. 571-586); nine canons were dedicated to departure from Religion (cf. cann. 637-646). The canons in this *schema* were much more extensive than those of the 1912 *schema*. Regarding simple profession before solemn profession, there was no innovation. The *schema* established – as in the previous 1912 *schema* – the obligation of professing simple vows after the novitiate (cf. cann. 571; 572). Lay people and converts were to profess at the age of 21 and for duration of six years. The rest of the religious professed at the age 16 for at least three years (cf. can. 574 §1). Can. 575 §2 stated that authentic perpetual profession, solemn or simple, necessarily required prior simple profession in accordance with cann. 572-573[294]. This canon unified what can. 448 of the 1912 *schema* had put into two parts. It did not give an explanation of what kind of simple profession was being referred to – temporary or perpetual. From the sources of this canon[295], however, we can deduce that it was perpetual on the part of the individual making the profession whereas the Order reserved the right to dismiss the member where unsuitability was evident. The possibility of the Superior to extend temporary profession of simple vows beyond three years before solemn vows was repeated in can. 572 §2.

In both *schemata* of 1914 and 1916, first profession was called *rescindable* (that is, subject to revocation) on the part of the Religion – not arbitrarily – but in accordance with the norm of can. 571[296]. Canon 572, instead, enumerated the causes of the possible revocation by the Religion. One could be dismissed who during temporary profession was not found worthy according to the requirements of perpetual vows[297]. According to the same canon, the causes for dismissal had to be grave though not necessarily culpable[298]. The said

---

[294] *Schema CIC* 1914, can 575: «Ad valorem vero professionis solemnis aut simplicis perpetuae et ex utraque parte absolutae necesse praeterea est ut praecesserit professio simplex, de qua in cann. 572, 573».

[295] Cf. Const. *Ad universalis ecclesiae*, 7 Feb.1862 and Decr. *Perpensis*, 3 May 1902.

[296] *Schema CIC* 1914, can. 571: «In quolibet Ordine regulari sive virorum sive mulierum, post novitiatum, votis solemnibus praemittenda est, salvo praescripto can. 634, votorum simplicium professio rescindibilis ex parte religionis ad normam can. 572».

[297] *Schema CIC* 1914, can. 572 §2: «Etiam ante expletum triennium vel sexennium religiosus dimitti potest, si dignus non habeatur, qui vota solemnia nuncupet...».

[298] *Schema CIC* 1914, can. 572 §4, n. 1: «Causae dimissionis debent esse graves, licet non culpabiles».

grave cause could be raised either by the Religion or by the religious himself. Even a spiritual defect of the religious was sufficient. It was not necessary that the cause be proved by a judicial judgment[299]. Regarding the competence to dismiss a professed in temporary vows, there were no significant innovations in any of the *schemata*[300].

Can. 637 which would later be taken up by the *CIC/1917* with the same numbering was reintroduced in the *schemata* of 1914 and 1916. The said canon established a general principle for all categories of religious[301], that is,

> One professed by temporary vows, upon the completion of the time of the vows, was able freely to leave a Religious Institute; likewise, the Religion [Religious Institute] for just and reasonable causes can exclude one from the renewal of temporary vows or from giving perpetual profession but not, however, because of infirmity, unless it has been certainly proved that this was intentionally withheld or simulated prior to profession[302].

Regarding the competence to grant the dispensation from vows, can. 508 of the 1914 *schema* had significant innovations:

> An indult of staying outside the cloister, whether temporary, in which case it was an indult of exclaustration, or perpetual, in which case it was an indult of secularization, can only be given by the Apostolic See in a Religious Institute of pontifical right; in a Religious Institute of diocesan right, it can also be given by the local Ordinary[303].

---

[299] *Schema CIC* 1914, can. 572 §4, n. 2: «Possunt se habere sive ex parte religionis sive ex parte religiosi. Defectus spiritus religiosi est sufficiens dimissionis causa, non vero infirma valetudo, nisi certo constet eam ante professionem fuisse dolose reticitam aut dissimulatam».

[300] Cf. *Schemata CIC*, 1912 can. 446 §2; 1914 and 1916, can. 572 §3.

[301] Already *schema* of 1912 with can. 445 had established as a common norm for all categories of religious temporary profession prior to perpetual profession.

[302] *Schema CIC* 1914, can. 637: «Professus a votis temporariis, expleto votorum tempore, libere potest religionem deserere; pariter religio ob iustas et rationabiles causas eundem potest a votorum temporariorum renovatione vel ab emittenda professione perpetua excludere, non tamen ratione infirmitatis, nisi certo probetur eam ante professionem fuisse dolose reticitam aut dissimulatam».

[303] *Schema CIC* 1914, can. 638: «Indultum manendi extra claustra, sive temporaneum, idest indultum exclaustrationis, sive perpetuum, idest indultum saecularizationis, sola Sedes Apostolica in religionibus iuris pontificii dare potest; in religionibus iuris dioecesani etiam loci Ordinarius».

4.3 *Temporary Profession of vows and exclusion from subsequent profession in the CIC/1917*

The *CIC/1917* was promulgated with the Ap. const. ***Providentissima Mater*** on 27 May 1917 as the ***Code of Canon Law*** (***Codex Iuris Canonici***) by Pope Benedict XV, who set 19 May 1918 as the date on which it was to come into force. It had force of law for the universal Church. It contained 2,414 canons. Codification in this form was a novelty for the Church. It brought order and also focused the discipline of the Church in relation to the realities of the twentieth century. It was in force and governed the Church for the next sixty-five years until it was abrogated on 27 Nov. 1983 after the promulgation of the *CIC/1983*. The *CIC/1917* contained 200 canons on every aspect of religious life. The *CIC/1917* – having been begun by Pius X and promulgated by Benedict XV – is sometimes called the Pio-Benedictine Code[304].

The *CIC/1917* was divided into five books. Norms on temporary profession and exclusion from subsequent profession were found in book II. In the study of this book, the discussion will concentrate on the innovations brought about by the *CIC/1917* on temporary profession and departure from the Institute during the period of temporary profession. Under departure, the study shall briefly present voluntary departure at the expiry of the period of temporary profession and departure with an indult before the expiry of the period. The study shall then focus mainly on imposed departure at the expiry of the period of temporary profession which is at the centre of this study.

4.3.1 Innovations brought by *CIC/1917* on temporary profession

Innovations brought about by *CIC/1917* regarded basically the following: forms of religious life[305]; juridical configuration of religious state[306]; religious profession; the essence of simple vows; juridic effect

---

[304] Cf. E.N. PETERS, The *1917 Pio-Benedictine Code*, xxiii, fn. 1.

[305] The legislation of the *CIC/1917* presented the juridical religious state as the only state of life of perfection but lived in various forms: canons, monks, mendicants, clerics regular, Religious Congregations.

[306] Can 489 of *CIC/1917* defined religious state as «a stable manner of living in common, by which the faithful take up, besides common precepts, also the observing of evangelical counsels by vow of obedience, chastity and poverty and it must be held in honour by all». These, however, are theological elements that had been expressed throughout history right from the advent of monastic life as we have already seen. To become a juridical state, it was necessary that religious life be

of simple vows; rights and obligations of temporary professed religious; prohibitions for a religious in temporary vows; duration of temporary vows and age requirement.

On religious profession, the second part of book II, ch. III entitled *De professione religiosa* (on religious profession) contained fifteen canons (cf. cann. 572-586 of *CIC/1917*) dedicated to religious profession. Incorporation into religious life was by temporary profession. It defined the time for novitiate (cf. can. 555 of *CIC/1917*) and established that religious obligations begun to bind formally with a valid simple temporary religious profession (cf. can. 572 of *CIC/1917*). For the validity of any religious profession the following were required according to can. 572 of *CIC/1917*:

i. The novice must have reached the age required by can. 573 of *CIC/1917*, namely, at least sixteen years, for temporary profession.
ii. They had to be admitted to profession by the legitimate Superior, namely, him to whom the Constitutions assigned the right of admitting novices to profession.
iii. A valid novitiate must have preceded, according to the conditions of can. 555 of *CIC/1917*.
iv. The profession must have not been based on duress, fear or deceit.
v. The profession must have been explicit.
vi. The profession must have been made in the hands of the Superior authorized by the Constitutions or his delegate.

The *CIC/1917* in relation to temporary profession specified the terminologies with clarity. According to can. 574 of *CIC/1917*:

> In any Order, whether of male or of female, and in any Congregation that has perpetual vows, after completion of the novitiate, a novice must in the same novitiate house give perpetual vows, whether solemn or simple, with due regard for the prescription of can. 634 of *CIC/1917* [after] three years of experiencing the profession of simple vows, or for a longer time if the required age for perpetual profession is further off, unless the Constitutions require annual profession (§1); The legitimate Superior can extend this time, with the temporary profession having been renewed by the religious, but not beyond another three years (§2).

---

assumed through profession in a Religious Institute, tha is, a society approved by legitimate ecclesiastical authority in which the members, according to the laws of their own Institute, pronounce public vows, perpetual or temporary, to be renewed upon the elapse of time, and who tend to evangelical perfection (cf. can. 488 of *CIC/1917*).

Can. 574 §1 of *CIC/1917* repeated what had already been established in the Encycl. *Neminem latet* (1857), the Decr. *Sanctissimus* (1858), the Ap. const. *Ad universalis ecclesiae* (1862), the Decr. *Perpensis* (1902) and the Decr. *Sacrosancta Dei ecclesia* (1911), that is, profession lasted for a period of three years and, in the case of converts and lay religious, six years. After this time had elapsed, the member could be admitted to solemn profession if found suitable and they had attained the legitimate age. It made temporary profession before perpetual profession obligatory. The rule of this canon that temporary vows must be taken in all Religious Orders, as well as in all Congregations, and that the persons who wanted to take perpetual vows, either solemn or simple, must have completed their twenty-first year, were new regulations. The Decr. *Sacrosancta Dei ecclesia* had ruled that lay brothers in Religious Orders could not begin the novitiate until they were twenty-one years of age and that they had to be in simple vows for six years and be at least thirty years of age before they could be admitted to solemn vows[307].

On the essence and juridic effect of simple vows, can. 579 of *CIC/1917* briefly indicated the distinction between simple and solemn religious vows. In their essence, the vows were the same, whether simple or solemn, but the *CIC/1917* introduced a juridical distinction between them by adding to the solemn vows effects which were not given to simple vows. In the doctrine of the *CIC/1917*, many juridic effects of simple vows were distinct from those of solemn vows. The general principle was given in can. 579 of *CIC/1917* which stated that the simple vows, both temporary and perpetual, rendered actions against the vows illicit[308], but not invalid, unless invalidity was decreed by special law. In the Society of Jesus, for example, the profession in reference to the simple vow of chastity rendered an attempted marriage invalid.

On rights and obligations of temporary professed religious, the rights and duties of religious who, in accordance with can. 574 of *CIC/1917*, had taken temporary vows, were defined and qualified in can. 578 of *CIC/1917* as follows:

i. They enjoyed the same indulgences, privileges and spiritual favours as the religious in perpetual simple or in solemn vows, and, if they died in temporary vows, they had the right to the same suffrages as the other professed members.

---

[307] CICLSAL, Decr. *Sacrosancta Dei ecclesia*, 1 Jan. 1911, *AAS* 3 (1911) 29; Cf. Also ID., Risp. *dubium circa professionem*, 6 Oct. 1919, *AAS* 11 (1919) 420.

[308] On the other hand, «solemn profession renders contrary actions invalid, if they are of such a nature that they can be annulled by the Church» (can. 579 of *CIC/1917*).

ii. They were bound to observe the Rule and Constitutions, but, if the Institute had the obligation of the choir, they were not held to the private recitation of the Divine Office, unless they were in sacred orders, or the Constitutions explicitly imposed the private recitation.
iii. They had neither an active nor passive vote, unless the Constitutions explicitly stated otherwise. The time prescribed for obtaining active and passive vote was counted from the first profession, if the Constitutions determined nothing on this point.

Through temporary profession, the religious became subject to the *potestas dominativa* of the Superiors of the Institutes. In virtue of can. 1315 of *CIC/1917*, any vows which he had taken (private or devotional) before religious profession were by first profession suspended for as long as the person remained in the Religious Institute. Because of the *potestas dominativa*, the Superiors could, according to can. 1312 §1 of *CIC/1917*, declare null the private vows of the temporary professed members.

On prohibitions for a religious in temporal vows, can. 766 of *CIC/1917* forbade novices and professed members of any Religious Institute to take the office of sponsor in baptism or confirmation unless, in a case of necessity, the local or the higher Superior permits it. The temporarily professed – as well as those in perpetual vows – could not be members of any secular Third Order, and if they belonged to it before making profession, the membership was suspended and revived in the event that the religious was freed from his vows and returned to the world (cf. can. 704 of *CIC/1917*).

On duration of temporary vows and age requirement, the *CIC/1917* made no new innovations in relation to documents already studied. The possibility of the legitimate Superior extending the time before solemn profession – with the temporary profession having been renewed by the religious – but not beyond another three years remained in can. 574 §2 of *CIC/1917*. Therefore, temporary profession could be made for a minimum of three years. This was mandatory for all religious except for the provisions of can. 634 of *CIC/1917*. There was, however, a possibility of extension which was facultative. This new extension was not to go beyond three years; the canon was clear on this. A Superior could grant a few months, a year, two years or three. Therefore, if after an extension of three years, a candidate was still found unsuitable for life in the Institute, he needed to be excluded from subsequent profession in accordance to can. 637 of *CIC/1917*. The text of the canon plainly refered to cases where the temporary vows had to be repeated, either be-

cause in some Institutes the temporary vows were taken for only one year at a time, or because the religious after the three years of the temporary vows had not yet completed his twenty-first year, or because the Superior hesitated to admit the religious to perpetual vows and wanted to extend his probation. In any case, it seems quite certain from can. 574 of *CIC/1917* that fully three years of temporary vows must have elapsed before perpetual vows could be taken.

In general, we can say that the *CIC/1917* brought together the practice and all legislation in use before its promulgation. It is, therefore, in *CIC/1917* that temporary profession found its greatest fulfilment.

4.3.2 Exclusion from subsequent profession at the expiry of the period of temporary profession

Exclusion from subsequent profession at the expiry of the period of temporary profession was governed by can. 637 of *CIC/1917*. This canon was found in ch. XV – under the title *De egressu e religione* (on departure from a Religious Institute) – which governed departure from the Institute during the period of temporary profession. It had six canons (cf. cann. 637-643 of *CIC/1917*)[309]. The norms on departure contemplated two instances of departure: legitimate and illegitimate[310]. In this study, we are concerned only with legitimate departure.

The general principle for legitimate departure was the following: Upon the completion of the time for temporary profession, a religious, according to the norm of can. 637 of *CIC/1917*[311], either made perpetual profession, whether solemn or simple, according to the Constitutions

---

[309] Can. 639 of *CIC/1917* treats exclaustration while cann. 641 & 642 of *CIC/1917* are on departure of a religious in sacred orders, all of which are outside the scope of this study.

[310] Illegitimate departure, occured in cases of apostasy and fugitive: An «apostate from Religious Institute» was one professed by perpetual vows, whether solemn or simple, who had illegitimately left the religious house without the intention of returning or who had legitimately left but had ceased his religious obedience and who was not returning (can. 644 §1 of *CIC/1917*); A «fugitive» was one who without the permission of the Superiors left the religious house with the intention of returning to the Religious Institute (can. 644 §3). These are outside the scope of our study.

[311] According to the provisions of can 637 of *CIC/1917*, one professed by temporary vows, upon the completion of the time of the vows, was able to freely leave a Religious Institute. Likewise, the Religious Institute for just and reasonable causes could exclude one from the renewal of temporary vows or from giving perpetual profession, but not, however, because of infirmity, unless it had been certainly proved that this was intentionally withheld or simulated prior to profession.

of the particular Religious Institute, or returned to the world. However, even during the time of temporary profession, he could, if he was judged unworthy of pronouncing perpetual vows, be dismissed by the legitimate Superior. Can. 575 of *CIC/1917* repeated this general principle[312].

The *CIC/1917* established as a common discipline for all religious, both male and female, the practice of temporary profession prior to perpetual profession (cf. can. 572 of *CIC/1917*). It is from this provision that the general principle established in can. 637 of *CIC/1917* was logically derived. This canon appears to have introduced a juridical mutual liberty to initiate departure; that is on the part of both the member and the Institute.

On the part of the member, it granted liberty to the person who had made temporary vows to leave the Institute at the expiration of the term for which such vows were taken or one who obtained the permission by an indult of the Holy See to live outside the Religious Institute either temporarily (*exclaustratio*) or permanently (*saecularizatio*).

On the part of the Institute, it granted liberty to the Institute to refuse, under certain conditions, permission to make subsequent profession. The decision to refuse permission to make subsequent profession is a grave one for both the person and the Institute. Therefore, just causes were required. Consequently, the understanding of liberty intended here is not liberty to arbitrary decision since such decisions were binding in conscience. Moreover, just causes that would merit such a decision had to be those that made the member unsuitable for the life he would embrace through the subsequent profession.

This juridical mutual liberty was an innovation in the *CIC/1917*. From all ecclesiastical documents studied so far beginning with those that provided the origin of the practice of temporary profession, none of them ever stated that the vows were temporary on the part of the professed[313].

---

[312] There were exceptions to this general principle for particular cases such as the case of the religious in military service where temporary vows were to be effective only until military service was entered. If the Constitutions required annual vows after the novitiate, persons subject to military service would take them, but the vows ceased – suspended – when they were called to the service. Hence during such service religious were free to leave their Institutes, notifying Superiors as had been provided in the Decr. *Inter reliquas*. Cf. CICLSAL, Resp. *Circa decretum* «*Inter reliquas*», 15 Jul. 1919, *AAS* 11 (1919) 321-323. But this exception was only temporary and to last as long as the problem persisted.

[313] Possible explanation for this innovation was the practice of Institutes as already explained. Cf. sec. 3.7 of this chapter.

This innovation, then generated various ways of legitimately departing from an Institute during the period of temporary vows:

i. Voluntarily initiated by the religious through an indult.
ii. Voluntarily initiated by the religious at the expiry of temporary profession.
iii. Imposed by the Institute at the expiry of temporary profession.

The first two cases were spontaneous or, as B. Russo called them, were active departures in which case a member either waited for the time to expire and departed or asked for an indult within the period of temporary profession. In the third case, it was a forced departure or, in Russo's words, was a passive departure[314]. Accordingly, the *CIC/1917* provided for the three modalities of legitimate departure during the period of temporary profession in cann. 638, 640 (on departure with an indult during the period of temporary profession), 575 §1 (on voluntary departure at the expiry of vows) and 637 (on imposed departure at the end of expiry of vows). The focus of this study is on imposed legitimate departure as a result of non-admission to subsequent profession at the expiry of temporary profession (cf. can. 637 of *CIC/1917*). However, for the sake of clarity, it begins by briefly presenting *CIC/1917* legislation on the other two modalities.

a) *Departure with an indult before the expiry of temporary profession*

Can. 638 of *CIC/1917* identified two possible indults of staying outside the cloister based on time – temporary and perpetual. When it was temporary, it was called «exclaustration»[315] and when it was perpetual, it was called «secularization». As necessary background information, it is convenient to analyse briefly the notion of «secularization» before the promulgation of *CIC/1917* since «secularization» as understood in *CIC/1917* was a novelty.

Before the *CIC/1917* the term «secularization» existed, but cases of genuine secularization were rare, especially before the pontificate of Benedict XIV[316]. Although being rare, such cases did exist[317]. However, «secularization» did not mean what it meant in the *CIC/1917*. In theory, according to a number of authors, «secularization» could be described as the indult granted by the Holy See for a grave cause that dis-

314 Cf. B. RUSSO, «L'uscita dalle religioni», 662.
315 This is outside the scope of our study.
316 Cf. M.D. BOUIX, *Tractatus*, II, 48.
317 Cf. A.A. PARMA, «De saecularizatis», 412-416; 468-475.

solved forever the juridical bond between the Order and the religious[318]. In practice, however, there were two types of secularization:

i. The dispensation from simple vows which dissolved the bond with the Institute and with the religious state[319].
ii. The dispensation from solemn vows[320], which dissolved the bond with the Institute but not with the religious state.

Dispensed religious could leave the Institute and live in the world but had to keep the vows and the obligations arising from them[321]. This is because the vows were not dispensed[322]. The most common juridic effects were ban on wearing the religious habit, loss of financial administration and loss of active and passive vote within the Institute. The professed with solemn vows continued to be subject to the obligations of the vows and other religious obligations[323]. Following the practice of the Holy See before promulgation of *CIC/1917*, Kowal identified five modes of «secularization»[324].

In the *CIC/1917*, «secularization» was understood as the return of a religious both in simple and solemn vows to the secular state (cf. can. 640 §1 of *CIC/1917*). «Secularization ***perpetua***» remained secularization ***per se***, whereas «secularization ***ad tempus***» took the name ***exclaustration*** (can. 638 of *CIC/1917*). Every other mode that may have existed before the *CIC/1917* was abrogated and, from this time on, the norms only speak of these two types of separation from the Institute. For instance, the CICLSAL was asked whether, in the case of clerics professed with solemn vows, who were called upon for military service, solemn vows would be suspended during their military service, as

---

318 Cf. F.X. WERNZ, *Ius Decretalium*, III, n. 427, 461.

319 Cf. J.R. FERNÀNDEZ – G. ROCCA, «Separazione dall'Istituto», 1276.

320 This was not permitted for nuns with solemn vows. Cf. F.X. WERNZ, *Ius Decretalium*, III, n. 428, 462 footnote. 17.

321 With regard to the observance of the vows, obedience and poverty were to be observed to the extent permitted by the new state, whereas chastity remained intact without any change. Cf. J. KOWAL, *Uscita definitiva*, 129.

322 Cf. F.X. WERNZ, *Ius Decretalium*, III, 755.

323 Cf. N. MASI, *Legittima assenza*, 31.

324 Kowal identifies the five modes of «secularization» as follows: (i) ***Perpetua***: departure from the Institute to live in the world, with no more juridical bond with the Institute; (ii) ***Ad annum et interim***: usually granted before the perpetual secularization; (iii) ***Ad tempus***: granted for a specified time, after which the religious must return to the Institute; (iv) ***Nutum***: this by its very nature is temporary, but to return to the Institute necessarily requires an intervention of the Holy See; (v) ***Loco expulsionis***: used in cases of culpability for some grave moral or political scandal. Cf. J. KOWAL, *Uscita definitiva*, 122.

were temporary vows under these circumstances according to the Decr. *Inter reliquas*[325]. In the response, major Superiors, especially in the places in question, were given the faculty to provide in individual cases, while the necessity of military service continued and during such service, by granting an indult of exclaustration [and not suspension of vows], as far as possible according to can. 639 of *CIC/1917*[326]. From this response it was clear that the mind of the Church was to keep to the two forms of separation from the Institute.

On juridic effects, an indult of secularization had the juridic effect explicitly given in can. 640 of *CIC/1917*. One who had obtained an indult of secularization and left the Religious Institute according to can. 640 §1, 1º of *CIC/1917* was separated from the Institute and was prohibited from wearing the exterior habit. During Mass and in the recitation of the canonical hours as well as in the reception and dispensation of the Sacraments, such a person was considered a secular. He remained freed from vows, and he was not bound by the obligations of reciting the canonical hours in view of profession, nor was he bound by other Rules and Constitutions (§1, 2º). The Commission for the Authentic Interpretation of the Code declared[327] that the regulations of can. 640 of *CIC/1917* regarding the effects of secularization applied to all who obtained an indult of secularization, whether from the Apostolic See or from the local ordinary.

The indult of secularization separated the religious completely from the Religious Institute and wiped out all the effects of the religious profession in so far as the obligations of the vows and of the Rule and Constitutions were concerned[328]. In this aspect, the law was new in comparison to the former legislation which established that not all vows were *ipso facto* dissolved by any mode of departure. The secularization of the *CIC/1917* dissolved all religious vows, both simple and solemn. In case of voluntary departure, the secularization did not take effect until the religious who asked for and obtained it accepted it and left the religious house. With reference to the refusal to accept the indult, the question arose as to whether, the religious could decline the indult after having accepted it but prior to having left the religious house. Nothing definite was said on this question in the *CIC/1917*. S.

---

[325] Cf. CICLSAL, Decr. *Inter reliquas*, 1 Jan. 1911, *AAS* 3 (1911) 37-39.

[326] Cf. CICLSAL, Resposta, 14 Apr. 1939, *CpR* 20 (1939) 213.

[327] THE PONTIFICAL COMMISSION FOR AUTHENTIC INTERPRETATION OF THE CODE OF CANON LAW, Response, 12 Nov. 1922, *AAS* 14 (1922) 662.

[328] Cf. S. WOYWOD, *A Practical Commentary*, 318, n. 555.

Woywod, while interpreting can. 640 of *CIC/1917*, argued that before the secularized member left, he still had a chance to decline the indult, even if the Superior General may have already issued the decree for the execution of the indult, according to can. 56 of *CIC/1917* of the *CIC/1917*[329]. However, in its declaration on this point, the CICLSAL stated that, if the Superiors had grave objections to the refusal of the religious to accept the indult and did not want him to remain in the Institute, they should refer the matter to CICLSAL[330].

On readmission, there was possibility of readmission if one was legitimately secularized. According to can. 640 §2 of *CIC/1917*, this occured only by means of an Apostolic indult. Such a person had to undergo the novitiate again and, only after the novitiate and profession, would he obtain a place among the professed from the day of the new profession, i.e., he did regain his place (that is, rank) in the community.

b) *Voluntary departure at the expiration of temporary vows*

Religious who had made temporary vows could freely leave the Institute after the term of the vows had expired in accordance to cann. 637 and 575 §1 of *CIC/1917*. The Church here appeared to grant freedom to those who had taken temporary vows so that they would leave if they wished upon the expiration of the period of temporary vows. Consequently, can. 2352 of *CIC/1917* punished with excommunication, *nemini reservata* and incurred *ipso facto*, all persons who, in any manner, forced a man or woman to take temporary or perpetual vows.

Given the innovation of can. 637 of *CIC/1917* that granted mutual liberty, after the promulgation of the *CIC/1917*, this norm began and continued to generate various reactions on the quality of this juridical «liberty». According to some authors, in the voluntary departure, the religious had total juridical freedom to abandon the Institute at the expiry of the period of temporary vows[331]. Once the period had expired, one was set free to renew temporary vows or give perpetual vows or abandon the religious life altogether[332]. Canonists, such as A. Vermeersch, T. Schäfer, and E. Regatillo were of the opinion that from the canon, there was freedom from both juridical and moral law perspective. Con-

---

329 Cf. S. WOYWOD, *A Practical Commentary*, 319, n. 555.

330 Cf. CICLSAL, Resp. *Circa acceptationem*, 1 Aug. 1922, *AAS* 14 (1922) 501.

331 Cf. A.A. TABERA – G.M. ANTOÑANA – G. ESCUDERO, *Il diritto dei religiosi*, 516.

332 Cf. B. RUSSO, «L'uscita dalle religioni», 662; A. TABERA – G.M. ANTONANA – G. ESCUDERO, *Il diritto dei religiosi*, 516.

sequently, they exonerated from any form of sin or danger of damnation those who freely abandoned religious life[333]. In their opinion, the reason for this dual freedom lied in the temporary nature of the mutual obligations assumed respectively by the Institute and the religious. There were other authors who believed that the religious was morally bound in spite of the juridical liberty granted by this canon. The debate continued into the period of Vatican Council II as we shall see. These reactions further reveal the problem of the lack of clarity on the practice of temporary profession and its logical consequences. They also help to appreciate the need for further clarity in this area.

c) *Imposed departure by exclusion from subsequent profession at the expiration of temporary vows*

Initially, many and great difficulties accompanied the procedure to be followed in dismissing religious[334]. When the three years of temporary vows before solemn vows were ordered for male Orders by *Neminem latet* (1857), the form for dismissal of those in temporary vows was simplified. This provision was later substantially contained in the Const. *Conditæ a Christo* of 8 Dec. 1900 for female Congregations with simple vows. Finally, the CICLSAL with Decr. *Quum singulae*[335] of 16 May 1911, issued new and complete norms on procedures for expulsion and dismissal which – with some modifications – were incorporated into the *CIC/1917* with a binding force on all Religious Institutes. With specific reference to exclusion from subsequent profession, *CIC/1917* did not require any formal process. All was left to the discretionary judgement of the competent Superior (can. 575 §2 of *CIC/1917*) as long as there were just causes.

The kind of vote required for exclusion from subsequent profession was consultative. According to can. 575 §2 of *CIC/1917*, the vote of the council or Chapter for the time of first profession was deliberative so that the Superior admitting a candidate against the vote of the majority acted invalidly. For subsequent perpetual profession, whether solemn or simple, it was merely consultative. This implied that exclusion of a member from subsequent profession required a mere consultative vote of the council.

---

[333] Cf. E. REGATILLO, *Institutiones Iuris Canonici*, I, 426; T. SCHÄFER, *De religiosis*, 901-902; A. VERMEERSCH – J. CREUSEN, *Epitome iuris canonici*, I.

[334] S. WOYWOD, *A Practical Commentary*, 267-268, n. 325.

[335] Cf. CICLSAL, Decr. *Quum singulae*, 16 May 1911, *AAS* 3 (1911) 235-238.

Can. 637 of *CIC/1917* provided that the Institute had the right to exclude from renewal of temporary vows and the giving of perpetual profession. This was reiterated in can 575 §1 of *CIC/1917* which states that, «even during the time of temporary profession, he could, if he was not considered worthy of pronouncing perpetual vows, be dismissed by the legitimate Superior according to the norm of can. 647 of *CIC/1917*». But it cannot be said that this right encompasses absolute freedom since can. 647 of *CIC/1917* explicitly stated that the causes – that had to be verified for a religious to lawfully and validly depart from the Institute – had to be just and reasonable.

The Institute could – for just and reasonable causes – refuse to allow the religious to renew the temporary vows or to make profession of perpetual vows. However, it could not do so because of ill-health, unless it could clearly be proven that the religious had fraudulently concealed such illness before profession (can. 637 of *CIC/1917*). Since a religious could not be dismissed after the expiration of the first temporary vows for reason of illness — even when it was evident that such illness already existed before the taking of the first vows, except for wilful deceit which could be proved — it was very important that the Religious Institutes take all possible precautions to ascertain the state of health of the candidates before they were admitted to the first vows[336].

Regarding the juridic effects of imposed departure, *CIC/1917* stated in can. 648 of *CIC/1917* that «a religious dismissed according to the norm of can. 647 of *CIC/1917* was by that fact absolved from all religious vows (*ipso facto solvitur ab omnibus votis religiosis*)». Examining this canon together with can. 637 of *CIC/1917*, the following two juridic effects can be identified related to the juridic bond and the material benefit.

Regarding the bond, separation absolved the separated member from all religious vows. It set him free from every mutual obligation and generated in the dismissed religious an impediment as established by can. 542 (e) of *CIC/1917*, namely, «they are invalidly admitted to the novitiate who are impeded or have been impeded by the bond of prior religious profession». That is to say, the religious who abandoned religious life was prevented from being readmitted in the Institute abandoned and to be accepted in any other except with an Apostolic See indult stated in can. 640 §2 of *CIC/1917*.

---

[336] This necessity stands even in the *CIC/1983* as we shall see.

Regarding the material benefit, can. 643 §1 of *CIC/1917* stated that, «whoever leaves a Religious Institute at the completion of temporal vows or who has obtained an indult of secularization or who is dismissed from it can seek nothing for any works done on behalf of the Religious Institute»[337]. This norm logically followed from can. 580 §2 of *CIC/1917* regarding proprietary rights of anyone professed by simple vows (whether perpetual or temporary) which stated that: «whatever he acquires by effort or by reason of the Religious Institute, he acquires for the Religious Institute». It is, therefore, certain that the Religious Institute was not bound by any obligation out of justice to meet any demand for compensation for services rendered by excluded members. This is clearly evident from the provisions found in cann. 643 §1 and 580 §2 of *CIC/1917*.

What is more, while departure of a member marked the end of obligation of the Institute towards him, it also marked the beginning of the obligation of the Institute to provide evangelical charity and canonical equity. That the Religious Institute was bound by an obligation out of charity in the instance was explicitly enunciated in can. 643 §2 of *CIC/1917*, which stated that if a religious was not able to provide for himself, the Religious Institute out of charity must give to him what was required for a safe return home. Moreover, it should provide for him for a period of time, observing natural equity by mutual consent. Consequently, this canon required that it must be clearly determined to what extent payment by a Religious Institute was truly and properly obliged for a given member who left the Institute or was dismissed from it. From the wording of this canon, the measure or quantity of the subsidy to be given as well as the time for which it was to be supplied was to be determined by mutual agreement. «Mutual agreement», however, became a bond of contention[338], generating controversies between the dismissed religious and the Religious Institute. A good example of this tension is found in the decision of the Apostolic Signatura of 6 Jul. 1971[339]. In this decision, the Signatura stated that this subsidy had a temporary character and was not to have the character of a life-pension, even if the religious became infirm or grew old. It explained categori-

---

[337] This equally applies not only for imposed but also for voluntary departure.

[338] Such contentions seemingly prepared the way for innovation found in the *CIC/1983* concerning decision on the assistance and sustenance to be provided by the Institute.

[339] For the text of this case, cf. SUPREME TRIBUNAL OF THE APOSTOLIC SIGNATURA, Decision, 6 Jul. 1971, *LE*, IV, 3988, 6132-6134.

cally that the subsidy did not bind the Religious Institute, even out of charity, to assure that the dismissed religious may be able to live comfortably and/or for the whole span of his life, or for a long or indefinite time. Rather, it bound the Religious Institute to what the law stated, namely, that the separated member may have what was necessary for a decent and dignified living[340].

Regarding the subjects of exclusion from subsequent profession, can. 637 of *CIC/1917* included, in principle, all members in temporary profession, whether male or female, of Institutes of pontifical or of diocesan right. A question may arise regarding Orders whose Constitutions still kept simple vows without mutual liberty? We can respond that can. 637 of *CIC/1917*, in accordance to can. 22 of *CIC/1917*, did not abrogate special laws with privileges of professing simple vows considered perpetual on the part of the professed but not perpetual on the part of the Institute[341]. Consequently, that practice seems to have continued in some Institutes such as in the case of the Society of Jesus which was an exception to the principle.

d) *The question of «as long as I live in the Congregation» condition*

There were certain institutes of simple vows in which the vows were pronounced with the condition: «as long as I shall live in the Congregation» (*donec in Congregatione vivam*). There were also examples of other similar conditions which stated that, if the person left of his own accord or was dismissed by the Superior, he was *ipso facto* free from his vows. To these practices, the Pontifical Commission for the Authentic Interpretation of the Code stated in 1921 that these vows ceased either on the voluntary departure of the professed or on his dismissal. The Pontifical Commission declared that in such Congregations the first temporary vows required by can. 574 of *CIC/1917* needed not be taken for three years. It added that imposed departure was to be exacted in accordance with the dispositions of cann. 646-648 of *CIC/1917*, which governed the dismissal of religious who had pronounced temporary vows even in the Congregations where the vows were professed with such a clause[342]. The reason for this was that

---

[340] A similar explanation is found in A.A. TABERA – G. MARTINEZ – G. ESCUDERO, *Il Diritto dei Religiosi*, 537, n. 396 (c).

[341] The second part of can. 22 of *CIC/1917* states that, «though observing can. 6, 1°, general laws in no way derogate from the special laws of places and from the statutes of inferior authorities, unless expressly established otherwise in the law».

[342] PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECOGNOSCENDO, Resposta, 1 Mar. 1921, *AAS* 13 (1921) 177: «In quibusdam Institutis votorum simplicium vota

they had professed under a condition. Hence, it can be concluded that the canonical effects of a profession made under a condition were equivalent to those of temporary profession.

e) *The juridical status of a religious under temporary vows who became incurably insane and the duties of the Institute towards such a member*

Can. 647 §2, 2º of *CIC/1917* exempted illness from being a cause for exclusion. However, it did not explicitly include insanity inasmuch as it qualified a sickness that «was culpably hidden or dissimulated prior to profession». Nevertheless, it sometimes happened that a religious became insane during the three years of temporary vows. Accordingly, at the end of the three years – being still out of his mind – he could not be admitted to the profession since he was incapable of such act. At other times, the mental illness could even be incurable according to the judgement of physicians. This is a matter of practical importance. And so, a question was raised as to whether «at the end of three years such a member could be sent back to his relatives or into the world, or whether he had to be kept in the Religious Institute. If he had to be kept, what was the juridical condition of such a religious, and what were the obligations of the Religious Institute in the matter?». The CICLSAL on 5 Feb. 1925, clarified that «such a religious could not be dismissed at the expiry of the period of vows, but continued to belong to the Religious Institute in the state in which he was when he became insane and that the Institute had the same obligations toward him that it had at that time»[343].

The effect of religious profession, solemn or simple, perpetual or temporary, was to make the individual a true member of the Institute

---

emittuntur sub hac vel simili conditione apposita: "Donec in Congregatione vivam", ita ut alumnus, sive sponte discedat sive a Superioribus dimittatur, ipso facto a votis liber evadat. Hinc quaeritur:

1º In hisce Institutis debetne tali professioni praemitti triennium votorum temporaneorum, ad normam can. 574?

2° In dimissione alumnorum, qui similem professionem emiserunt, debentne servari cann. 647-648 de dimissione religiosorum qui vota temporanea emiserunt, vel can. 649 et sequentes de dimissione eorum, qui vota perpetua emiserunt?

Resp.: Ad 1º. Negative; Ad 2º. Pro iis qui vota iam emiserunt sub hac conditione, serventur canones 646, 647 et 648». English transl. is by the author.

[343] CICLSAL, Resp. *Cum aliquando*, 5 Feb. 1925, *AAS* 17 (1925) 107: «pertinet ad Religionem in eo statu in quo erat quando ment e captus est, et Religio tenetur erga eum ad eadem officia ad quae tunc tenebatur».

with the rights and duties which pertained to canonical state[344]. The obligations of the Institute to the member were, therefore, based on religious profession itself. Fundamental among the rights was that the person was to receive from the Institute the necessities of life, namely, lodging, food, clothing and care in illness. Sickness – physical or mental – though it deprived the person of the capacity to render any external service, was not a reason for dismissal, nor did it deprive him of the right to receive these necessities from the Institute. If he was committed by the Institute or, at least with its consent, to any external agency to receive such care, the Institute remained responsible[345]. We can, therefore, conclude that in *CIC/1917*, what was explicitly said about infirmity applied also to insanity.

4.4 *The Juridical debate on the nature of religious profession*

As the Holy See continued through various documents to respond to challenges affecting the practice of religious profession, scholars developed various concepts and theories in attempt to explain the meaning and significance of religious profession and its juridic effects. In particular, they sought to try solving the controversies that were surrounding temporary religious profession of simple vows. The various opinions culminate in one phrase: «Religious profession is a contract *sui generis* or a contract of incorporation». The fundamental requirement was that this contract was entered into freely or voluntarily.

The debate began with a mere bilateral contract. As the doctrine on religious profession expanded, the debate moved from a mere bilateral contract to a quasi-contract of incorporation. Thus, we find most of the ancient authors considering religious profession as a bilateral contract[346], while most of the later authors consider it as a quasi-contract or contract of incorporation[347]. Both considerations are worth mentioning,

---

344 F.X. WERNZ – P. VIDAL, *Ius canonicum*, III, 309, n. 325.

345 APOSTOLIC TRIBUNAL OF THE ROMAN ROTA, Sententiae, 25 Mar. 1957.

346 Cf. J.M. BIEDERLACK – M. FUHRICH, *De Religiosis*, 52; F.M. CAPPELLO, *Summa iuris*, II, 175, n. 609; G. COCCHI, *Commentarium*, II, pars II, 150, n. 76; L.G. FANFANI, *Chi sono i religiosi*, 37; L.G. FANFANI – T. ARDANZA, *El derecho*, 162; T. SCHÄFER, *De religiosis*, 565-566; A. VERMEERSCH – J. CREUSEN, *Epitome iuris*, I; F.X. WERNZ – P. VIDAL, *Ius canonicum*, III, 262-265, nn. 300-301.

347 Cf. D.J. ANDRÉS, *Il diritto dei religiosi*, 350; A. BLAT, *Commentarium textus*, Lib. II, pars II et III; A. BONI, *Gli istituti religiosi*, 137, 147-148, 176, 179; E. GAMBARI, *Vita religiosa*, 254; G. KINDT, *De potestate dominativa*, 250; R. MOLITOR, *Religiosi iuris*, 69-80, nn. 41-45; V.F. MUZZARELLI, *De professione religiosa*, n. 83; P.M. PASSERINI, *De hominum statibus*, III; F. PELLIZZARI, *Manuale regularium*, tit. I,

because they assist in understanding the nature of temporary religious profession as legislated in the *CIC/1917*.

4.4.1 Religious profession as a bilateral contract

Proponents of the bilateral contract theory claimed that it was a contract between the professed and the Institute, that is, it bound both parties in the sense that:

i. The candidate freely undertook to observe the three vows, according to the Rule and Constitutions of the Institute. By doing so, the professed worked for the Institute without demanding any payment for the work done[348]. Those who made religious profession considered themselves a gift – a donation – to the Institute in which they had made their consecration[349], and they gave themselves to the Institute with dedication.
ii. The Institute was obliged to receive the professed religious within it and take care of all their spiritual and physical needs, considering them as children within the family which was the Institute. The contract conditions differed according to the nature of profession and various Constitutions[350].

Currently, there are very few authors, if any, who speak of profession as a bilateral contract.

4.4.2 Religious profession as a quasi-contract or contract of incorporation

According to the quasi-contract or contract of incorporation theory, two acts of consent coincided on the same object producing real obligations for both parties. Profession was considered a contract of incorporation because it was understood as a self-giving of the person to Religion (to God and the Institute), and by so doing, becoming part of it. That is, through this self-donation, the person joined the Institute as a member with all the rights and obligations established by the Constitu-

---

tract. III, ch. IV, nn. 1-78, 168-183; A. TABERA – G.M. DE ANTOÑANA – G. ESCUDERO, *Il diritto dei religiosi*.

[348] Cf. M.A CONTÉ DE CORONATA, *Institutiones iuris canonici*, I, 735 n. 589.

[349] Cf. J. BIEDERLACK – M. FUHRICH, *De religiosis*, 146-147; Cf. G. COCCHI, *Commentarium*, 150 n. 76; M.A CONTÉ DE CORONATA, *Institutiones iuris canonici*, I, 735 n. 589; L.G. FANFANI, *Chi sono i religiosi*, 37; F.X. WERNZ – P. VIDAL, *Ius canonicum*, III, 264-265, n. 301.

[350] Cf. P. BASTIEN, *Direttorio canonique*, 92, 111-112 nn. 147, 182-183.

tions[351]. Thus, in the profession, two elements were distinguished[352]: entry into the Institute (the person gave himself to the Institute) and acceptance (the Institute accepted this gift of self, incorporating the professed into the Institute as a member).

This quasi-contract was understood to be with God through the Church who accepted and made it public. The justification for this theory was that religious profession could not be an effect of a purely human contract between the religious and the Superior because the call came from God and was permanent. Consequently, a bilateral contract was not stable enough since it could be dissolved at will by the contracting parties. Profession, however, – being a permanent commitment – according to the quasi-contract or contract of incorporation theory required greater firmness and stability. Therefore, it could not be a mere bilateral contract.

Proponents of this theory considered solemn religious profession to be a perfect moral contract. The nature of this contract was indissoluble by the parties. They considered it so because it was a contract in which the religious and the Institute had mutual obligations toward one another. But, above all, there was obligation towards God, in whose honour and worship the contract was made. Therefore, the contract, by its very nature, was indissoluble and could not be terminated at will by the contracting parties. In this sense, F. Pellizzaro – basing his explanation on Basil who in his Monastic Constitution spoke of religious profession as a covenant with the Holy Spirit (*pactum cum Spiritu Sancto*) – considered profession, not as a merely human agreement, but as a religious, sacred, moral contract which arose from the voluntary self-giving of the person to God and to an approved Institute[353].

P. Larraona[354] gave a new impetus to this theory. He, like other proponents of this theory, considered profession as a contract of incorpora-

---

[351] J.R. SANABRIA, *Derecho de religiosas*, 389: «Por voluntad mutua de la Religión y de la profesante surge en la Religión, sociedad necesaria-voluntaria, en virtud de la ley canónica, una condición jurídica religiosa con la cual la profesante se hace religiosa y miembro de la Religión que acepta la profesión».

[352] Cf. A. LARRAONA, «Commentarium codicis», 55; J.R. SANABRIA, *Derecho de religiosas*, 389.

[353] F. PELLIZZARI, *Manuale regularium*, I, 135 tract. II, ch. I, n. 2: «Loquendo de professione abstrahente ad explicita, et implicita, posse definiri, quod sit contractus moralis, non mere humanus, sed religiosus, et făcĕre per quem homo voluntarie se ipsum tradit Deo in tali religione approbata, quatenus approbata est».

[354] Cf. A. LARRAONA, «Commentarium codicis», 56-58.

tion into the Institute. The reasons he gave for not considering profession a bilateral contract were as follows:

i. In terms of purpose, profession is not intrinsically ordered, as bilateral agreements are, to bind another or to bind oneself to another. Rather, the obligation is made to God, namely to attain perfection. This obligation is fulfilled in the Institute in which one has made profession.
ii. In terms of effect, profession is made for the purpose of incorporating the professed into the Institute as a member. From this incorporation arise the rights and duties. However, with the profession do not arise all the obligations of commutative justice found in bilateral contracts.
iii. In terms of conditions and requirements, profession lacks the characteristic features of a bilateral contract, namely, determined conditions, terms of the contract, the definition of the object, the possibility of changing the conditions of the contract and mutual agreement to terminate the contract.
iv. In terms of essential elements, a bilateral contract does not explain all those elements that define profession and its character; however, it may explain the material, accessible, temporal things but not spiritual ones.
v. In terms of practicability, a bilateral agreement imposes unpleasant and unfamiliar difficulties to the sacred context of profession which are difficult to realize in such a context.

The relevance of these theories to our study is seen in the fact that the redaction of the *CIC/1917* seems to have operated within these two theories with the elements of both finding their way into the *CIC/1917*. It appears precisely in the fact that the liberty of departure during temporary profession was based on bilateral theory whereas departure during perpetual vows was based on quasi-contract theory. S. Woywod in his commentary on the *CIC/1917* showed clearly this mixed approach with regard to religious profession as both a bilateral and a quasi-contract when he stated that:

> Religious profession is a bilateral contract in virtue of which rights and obligations are incurred by both the religious and the religious organization. [...]. Religious profession, however [...] is also a quasi-contract between God and the religious recognized and accepted by the Church in his name. As such, it essentially consists in the pronouncement of the three public vows of obedience, chastity and poverty – in other words, the three evangelical counsels. This is so essential to the religious state that without it

there cannot be a religious profession in the strict sense or incorporation into the religious organization[355].

This mixed approach, however, raises serious theological and philosophical questions which are moral and logical in nature: Who is the author of a vocation? What is the essence of religious vows? Is doing God's will a choice or an obligation? What is the purpose of religious life? Can one contract what does not belong to one? What is the essence of liberty? Such questions deepen the appreciation for the need for more clarity on the practice of temporary profession[356].

5. **Conclusion**

This chapter has presented a historical perspective of legislation on religious profession with a particular focus on temporary profession and exclusion from subsequent profession. It has done this by studying the legislation of the Church prior to codification and promulgation of the *CIC/1917*.

In studying the development of the doctrine on temporary profession and the faculty to exclude a member from subsequent profession, the study has followed a chronological order of events while taking note of the doctrinal trends that marked its development. It also focused on the most important documents that introduced temporary profession and led to its subsequent development. Selected classic authors within the period of development were studied in order to highlight the way the documents were received, interpreted and applied to various situations.

In summary, the doctrine on temporary religious profession found its remote origin in the religious profession of simple vows of the scholastics and coadjutors of the Society of Jesus founded by Ignatius of Loyola in the sixteenth century. Pope Gregory XIII formally recognized the simple vows of the Society of Jesus as public vows and those who professed them as authentic and true religious. These simple vows were perpetual on the part of the religious but tacitly conditional on the part of the Society. They were practiced with an aim of giving enough time for proper discernment of a vocation and the determination of suitability by the Institute. Until this time, the only re-

---

[355] S. WOYWOD, *A Practical Commentary*, 268.

[356] Vatican II and post-conciliar documents would later attempt to respond to most of these questions as we shall see, with the consequence that in the *CIC/1983*, we no longer encounter elements of profession as a bilateral contract but only as a quasi-contract of incorporation.

ligious profession that was considered authentic and which constituted a person as an authentic religious was solemn profession in an Order approved by the Holy See.

However, the influence these simple vows exerted and the positive experience over the centuries on one hand and the socio-personal conditions of the religious on the other, led to the emanation of the Encycl. *Neminem latet* which was addressed only to male Orders with solemn vows. With this Encyclical, the privilege of the Jesuits to temporarily profess simple vows became a requirement for all male Orders. The practice of temporary profession, however, was not without disputes and criticism. However, there were also a few, but strong, voices defending authenticity of the profession of simple vows.

After the publication of the Encycl. *Neminem latet* came the Decr. *Sanctissimus* which, apart from explicitly repeating the nature and character of simple vows as perpetual on the part of the one who professed them but not on the part of the Order, also added that those in temporary vows could be dismissed for just and reasonable causes. After this came successive documents issued by Pope Pius IX and the CICLSAL. Scholars, too, began repeating part of the new legislation that appeared in Papal documents as well as interpreting them. The scholars were conscious of the fact that the new Papal documents were bringing changes to the existing legislation. However, there were still some authors who considered the profession of simple vows to be less solemn. This is a sentiment that would endure until the post-Vatican II period.

With the Ap. Const. *Ad universalis ecclesiae*, the first attempt at renewal of religious profession was completed. In this Constitution, the obligation to profess simple vows under penalty of nullity of the solemn profession was established. This clause had not been clear in the Encycl. *Neminem latet*. This discipline, as established in *Ad universalis ecclesiae*, is reproduced in the Decr. *Perpensis* which provided legislation for all religious who profess solemn vows. Therefore, with the Decr. *Perpensis*, that obligation was extended to all religious, both male and female. The minimum time expected for the profession of simple vows was three years, while the maximum time was to be determined by the Constitutions of each Institute however within the limit of twenty five years of age.

As from the time of the Decr. *Perpensis*, religious profession of simple vows and that of solemn vows was considered by most authors as distinct juridically. However, both were considered theologically per-

petual. As a result of new ecclesiastical documents, the term «temporary profession» appeared in literature. At the level of terminology, there was no uniformity. Some documents, like Const. *Conditae a Christo*, used the term «temporary profession», whereas other documents did not use it explicitly but rather implied it in the explanation of the nature of simple vows as being perpetual on the part of the one who professed them but not on the part of the Institute.

Consequently, we can conclude that the doctrine on temporary profession began by simple vows being explained by the Constitutions of the Jesuits and such vows being recognized juridically as truly religious vows by Const. *Quanto fructuosius* and Const. *Ascendente Domino*. From the explanation of the Jesuits' Constitutions, – reiterated by the above mentioned documents – simple vows were clearly distinguished from solemn vows in regard to perpetuity. The *solemn vow* signified a perpetual vow in the absolute sense, that is, in relation both to the individual and to the Institute. The *simple vow*, on the other hand, signified a perpetual vow on the part of the religious but temporary in regard to the Institute, since the Institute could dismiss a member for the reasons stated in law. By the year 1911, the practice of temporarily professing simple vows in preparation for solemn vows was well-established, and it was obligatory for all Religious Orders and Congregations *ad validitatem*. Exclusion from subsequent profession when one was found unsuitable was also a faculty granted to all Superiors General of all Religious Orders and Congregations. However, disputes existed which suggested that there was still need for more clarity, especially at theological and terminological levels.

Nevertheless, despite the disputes, between the period from 1900 to 1917, there seemed to be a common agreement among many authors about the authenticity of temporary profession. It was commonly defined as the profession of simple vows made for three years or more, as established in the Constitutions of the Institute, but not beyond twenty-five years of age – the age that the Council of Trent had established for perpetual profession, solemn or simple. They also seem to agree on the following facts:

i. Temporary vows are perpetual on the part of the one professing them – this had been reiterated in all documents since the Decr. *Sanctissimus*.
ii. After expiration of the time for which temporary vows were made in both male and female Institutes, either temporary profession was to be renewed according to the formula of the first profession or per-

petual profession was to be made, and the one found unsuitable, was to leave the Institute – in other words, he was to be excluded from subsequent profession of vows.

Consequently, it can be said that the chief sources for norms on temporary profession and exclusion from subsequent profession before the promulgation of the *CIC/1917* were at least seven: the Encycl. ***Neminem latet*** (1857), the Decr. ***Sanctissimus*** (1858); the Ap. Const. ***Ad universalis ecclesiae*** (1862); the Ap. Const. ***Conditae a Christo*** (1900); the Direct. ***Normae*** (1901); the Decr. ***Perpensis*** (1902) and the Decr. ***Sacrosancta Dei ecclesia*** (1911).

All of these documents prior to the *CIC/1917* affirmed, either implicitly or explicitly, that in their essence, the vows, whether simple or solemn, were the same. The distinction between simple and solemn vows was basically juridical. The challenge however, was lack of common reference for these norms. They were all scattered in various Papal decrees and constitutions which made their application burdensome. The promulgation of the *CIC/1917* was a solution to this challenge.

The *CIC/1917* clarified this juridical distinction by adding to solemn vows juridic effects not given to simple vows by the Church. The various juridic effects of unlawfulness and invalidity of contrary acts are without a doubt the effect that principally distinguished temporary profession from solemn profession. On the basis of this principle, the *CIC/1917* provided other particular applications to each of the three vows, keeping a clear distinction between temporary simple vows, perpetual simple vows and perpetual solemn vows. However, right from its introduction, the concept of «temporary vows» has raised more questions than clarity in the minds of many. It was perceived as a contradiction in terms. This perception would continue to persist in the minds of many even in the post-conciliar period.

The *CIC/1917* also gave clear guidelines on the exclusion from subsequent profession: by stipulating the requirement of a just cause; by establishing that it be determined by a competent Superior and by providing a procedure to be followed as well as the juridic effects of such exclusion.

Finally, since the prescriptions of the documents emanated before the promulgation of *CIC/1917* applied ***expressly*** to those who were temporarily professed with simple vows in both Orders and Congregations in preparation for profession of solemn vows, it is appropriate to consider the discipline of these documents – in addition to *CIC/1917* – as sources of the norm in the *CIC/1983*. It is particularly appropriate with

regard to temporary profession, exclusion from subsequent vows, the Superior authorized to exclude a member from subsequent vows, the causes necessary to justify exclusion and the effects deriving from such exclusion. The content of these sources can be summarized as follows:

i. The passive subjects for dismissal. Affected by dismissal were those religious who had temporarily professed the simple vows mentioned in these documents. The members in the Orders of solemn vows took – before their final profession – triennial simple vows which were temporary on the part of the Institute. The one who was, therefore, professed with temporary profession could be dismissed for a reasonable cause.
ii. Causes for dismissal while in temporary vows. They had to be grave and just. Even though the vows were temporary on the part of the Institute, it was not permitted to arbitrarily dismiss a member. However, determination of the gravity and reasonableness of the cause was left to the discretion of the competent Superior.
iii. The procedure for the dismissal. No judicial form was needed, only the certain knowledge of the truth. The power to dismiss resided in the Superior General. In the cases of religious whose houses were established throughout the world, this faculty could be delegated to at least three prudent and upright religious. They were to proceed with the greatest charity and prudence. The Superior who was empowered to dismiss members in Congregations of pontifical right was the Superior General of that Institute. He had to follow the norms of the Institute and the Pontifical decrees.
iv. The juridic Effects of dismissal. When a religious was dismissed while he was professed with the simple vows which were to precede solemn vows, he was *ipso facto* freed from his vows.

CHAPTER II

The teachings of Vatican Council II and Post-conciliar documents

The practice of temporary profession and exclusion from subsequent profession had found its proper place in the *CIC/1917*. But the doctrine regarding this practice continued to develop for purposes of clarity through Papal documents, responses of the Pontifical Council for the Interpretation of Legislative Texts[1] and the praxis of the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life and other offices of the Roman Curia as expressed in their various rescripts and decrees. In the process, some norms were modified or abrogated especially during Vatican II and post-Vatican II period. It is this development in doctrine and changes that this chapter intends to explore. Throughout the chapter, the study will try to highlight various doctrinal changes in the practice of temporary profession of vows from the start of Vatican II until the time of the revision of the *CIC/1983*. The chapter is divided into three sections. Section one is on the ecclesial institution of temporary profession at the time of Vatican Council II. Section two explains the doctrine of the Instr. *Renovationis causam*, which is the post-conciliar document most important to this study because of the major changes it brought in the practice of temporary profession. Finally, other post-conciliar documents that make reference to the practice of temporary profession are discussed in section three.

---

[1] John Paul II with Motu proprio *Recognito Iuris Canonici Codice* of 2 Jan. 1984 instituted the Pontifical Commission for Authentic Interpretation of the Code of Canon Law, and with Ap. const. *Pastor Bonus* of 28 Jun. 1988, the commission was transformed into the *Pontifical Council for the Interpretation of Legislative Texts*. It is currently called *Pontifical Council for Legislative Texts*.

1. **Temporary profession of vows in the teachings of the Vatican II**

Vatican II was the first Council to deal with the religious life within the framework of a renewed ecclesiology[2]. The Council on religious life was a moment of renewal and adaptation to modern times[3]. It started a debate that enabled true doctrinal development to occur. What the Council did not itself accomplish would later be the task of the renewal it set in motion. The Council brought about significant doctrinal development, which was continued in the papal documents and the reflections on these documents by classic authors. It fostered deeper doctrinal reflection especially with reference to consecration through religious profession. Vatican II addressed the need for *aggiornamento* or renewal in all Religious Institutes. Consequently, the renewal that followed the Council affected all areas of the Church's life, including religious life, and in particular, religious profession. Among the many causes that necessitated a call for renewal in religious profession of temporary vows were the anachronism of certain ecclesiastical traditions and customs[4] and the rapid changes in the society[5].

When John XXIII convened Vatican Council II, he announced that he was hoping that it would bear fruits in the areas of the teaching of doctrine and the renewal of ecclesiastical discipline[6]. The Council[7] more than once in its documents expressly dealt with the religious and religious life[8]. In two documents in particular, the Dogmatic constitution *Lumen gentium*[9] and the Decree *Perfectae caritatis*[10], the religious are given special attention both from the doctrinal and from the

---

[2] Cf. J. BEYER, «Life consecrated», 64.

[3] The need for renewal in the Church was prepared for some time. Pope Pius XII had called for the renewal and adaptation to the time. Cf. PIUS XII, Lett. *Venerabilis Frater*, 12 Nov. 1950, *AAS* 43 (1951) 25; ID., Ap. const. *Sponsa Christi*, 21 Nov. 1950, *AAS* 43 (1951) 14; ID., Alloc. *Nous vous*, 15 Sept. 1952, *AAS* 44 (1952) 825. Pope John XXIII reiterated this need. Cf. JOHN XXIII, Ap. const. *Humanae salutis*, 25 Dec. 1961, *AAS* 54 (1962) 7-8.

[4] Cf. PIUS XII, Alloc. *Nous vous*, 15 Sept. 1952, *AAS* 44 (1952) 825.

[5] Cf. PIUS XII, Lett. *Venerabilis Frater*, 12 Nov. 1950, *AAS* 43 (1951) 25.

[6] Cf. JOHN XXIII, Alloc. *Questa festiva*, 25 Jan. 1959, *AAS* 51 (1959) 68.

[7] All Latin reference to the documents of this Council are taken from *AAS* while the English translation is taken from N.P. TANNER, ed., *Decrees of the Ecumenical Councils*, II.

[8] Cf. M. SAID, «La vita consacrata», 28-29.

[9] Cf. VATICAN COUNCIL II, Dog. const. *Lumen gentium*, 21 Nov. 1964, *AAS* 57 (1965) 5-75.

[10] Cf. VATICAN COUNCIL II, Decr. *Perfectae caritatis*, 28 Oct. 1965, *AAS* 58 (1966) 702-712.

practical point of view with regard to their role in the life of the Church. There are several other meaningful documents of the Council which dealt with religious life. However, in addressing the theological position of religious life in the Church, ***Lumen gentium*** and ***Perfectae caritatis*** are regarded as central since the other conciliar documents on religious life are rather disciplinary or limited to particular issues. Consequently, the study in this section shall focus on these two documents. Although these documents did not exhaustively discuss religious life – for instance, while ***Lumen gentium*** seeks to return religious life to its roots, it raises other questions which it leaves unanswered – they are considered relevant to this study because they started a debate which, extended by the papal documents, enabled theological discussions. These discussions in turn fostered deeper doctrinal reflection on religious life, especially with regard to religious profession of evangelical counsels. In studying these documents, the focus will be placed on the path that the practice of religious profession has taken on its journey of renewal.

1.1 *Dogmatic constitution* Lumen gentium (*1964*)

The preparation of ***Lumen gentium*** had a long and difficult process. It was drafted in three different ***schemata*** before the final text as we have it today. In particular, chapter V: ***De statibus evangelicae acquirendae perfectionis*** and chapter VI: ***De religiosis*** – which are at the centre of this study – had a long and complicated ***iter*** of redaction. Accordingly, this section begins with a brief presentation of their preparation[11] process and will focus only on what concerns this study so as to properly contextualize the discussion of the renewal desired and proposed by the Fathers of the Council.

1.1.1 The Preparation process of chapters V and VI of *Lumen gentium*

a) *First* schema (1962)

Two issues that had been constantly debated in the Church before Vatican II were the nature of temporary profession and the state of

[11] For the historical approach to the redaction of chapter VI of ***Lumen gentium***, cf. J. BEYER, «De statu vitae professione», 3-48; P. MOLINARI – P. GUMPEL, «Il capitolo VI», 175-204; M.J. SCHOENMAECKERS, ***Genèse du chaptîre VI***, 60-66; F. WULF, «Introductory remarks», I, 253-260; from the point of view of the religious profession of evangelical counsels, cf. H. BÖHLER, ***I consigli evangelici***, 40-47.

those who professed vows and of those who made other sacred bonds such as promises. Considering that already various forms of religious life existed and were flourishing in the Church, even during the advent of the Council, these issues still needed more clarity. The Preparatory Commission drafted the first *schema* in 1962, and its discussion began in the first session of the Council. Chapter V, *De statibus evangelicae acquirendae perfectionis*, in n. 19 stated that «by its very nature, a vow is a higher good than a promise just as perpetual vows are firmly binding than temporary vows»[12]. As it is evident from this number, this first *schema* provided for the possibility of using other bonds instead of temporary vows. But the same text comparatively stated the supremacy of a vow over a promise and of perpetual vows over temporary vows.

Various observations were made on this first *schema*. In the observations submitted by the Council Fathers, the study found no references made to this chapter – chapter V – except the observation that its «title» seemed not to be the most appropriate one[13]. Many observations sent by bishops and prelates seemed to have dealt with juridical and disciplinary matters[14]. This probably means that the Council Fathers agreed fully with the provisions of the text without seeing the need for modification. But it also seems to suggest that the insistence on the need for a theology of religious profession was relatively weak at the initial stages of the Council[15]. Even among the responses from Superiors General in the same period, such insistence was scarce[16]. But this is not to say that this *schema* did not contribute anything towards the development of the doctrine of religious profession. Rather, as seen in the observations submitted for other chapters, this *schema* emphasized that the state of perfection is a state for all Christians and that one assumes this state by embracing the evangelical counsels[17]. This emphasis opened the door to a de-

---

[12] *Schema constitutiones*: *De statibus evangelicae acquirendae perfectionis*, cap. V, n. 19 §2, in *SCDCS* II, 33: «Quare suapte nature haec observantia melior est ex voto quam ex promissione, cum ligamine perpetuo quam cum vinculo temporaneo assumpta». All English transl. of texts from *AS* and *SCDCS* are by the author except where specified otherwise.

[13] Cf. P. MOLINARI – P. GUMPEL, «Il capitolo VI», 840.

[14] Cf. P. MOLINARI – P. GUMPEL, «Il capitolo VI», 849.

[15] Cf. Y. SUGAWARA, *Religious poverty*, 21.

[16] Cf. P. MOLINARI – P. GUMPEL, «Il capitolo VI», 832.

[17] Cf. *Animadversiones scripto – Em.mus P. D. Petrus Card. Tatsuo Doi*, *AS* I/IV, 401.

bate towards a clear doctrine of religious profession and the state of evangelical counsels.

b) *Second* schema (1963)

After considering all observations submitted during the first session of the Council, the Commission prepared a new *schema*, smaller in size than the first. In this new *schema*, n. 35 of chapter IV, *De vocatione ad sanctitatem in Ecclesia*, reads as follows: «Public profession, considered in its constitutive elements before God and the Church is better realized with perpetual bonds than temporary ones»[18]. This text shows clearly that the Council Fathers continued to make the distinction between the two types of profession – perpetual and temporary. Perpetual was considered the best and most complete where as temporary was considered incomplete with regard to total self-giving that the individual made to God. This idea was even made clearer in footnote 21 of n. 35[19].

In this new redaction, the distinction between a promise and a vow found in the previous *schema* disappeared. Worth noting however is the observation made by some archbishops and bishops, when they noted the ambiguity of the title: «For it is not by the evangelical counsels that one is consecrated to God but by vows and promises»[20]. This observation seems to suggest that the Council Fathers had assimilated the dual possibility of consecrating oneself to God – with vows or promises. But they continued to regard as religious only those who professed vows[21]. The distinction between perpetual and temporary profession however, remained and the difference was established with reference to the level of donation of self to God.

---

[18] *Congregationes Generales XXXVII*: *De vocatione ad sanctitatem in ecclesia*, cap IV, n. 35 §1, *AS* II/I, 273: «Professio vero publica, in suis elementis constitutivis coram Deo et ecclesia considerata, melior est cum ligamine perpetuo quam cum vinculo temporaneo suscepta».

[19] *Congregationes Generales XXXVII*: *De vocatione ad sanctitatem in ecclesia*, cap IV, footnote 21 of n. 35, *AS* II/I, 279: «De vinculo perpetuo. Vinculum temporaneum suscipitur saepe per modum probationis, cum intentione perpetuae dedicationis, supposita Dei vocatione. Cum votis temporaneis, sacrificium non est totale». Cf. also S. Th., II-II, q. 186, art. 7.

[20] *Animadversiones scriptae*: *Exc.mi PP. DD. Archiepiscopi et Episcopi provinciarum Aquensis et Avenionensis et dioecesis Massiliensis*, *AS* II/I, 770: «Non enim consiliis evangelicis quis Deo consecratur, sed votis et promissis».

[21] Cf. *Animadversiones scriptae*, cap. IV: *U.E. Cibrian Fernandez*, *C. Heiugers*, *P.P. Meouchi*, *AS* II/IV, 133, 209, 264.

c) *Third* schema (1964)

The Commission incorporated the observations from the previous session and proposed a new *schema*. The 1964 *schema* was final. It was enriched by the observations that the Council Fathers had made. In relation to this study, among the observations presented by the Council Fathers to the Commission was a proposal, presented in the form of a «*Modus*», to n. 44. In particular, it proposed the use of terms such as «commitment», «some other bonds» and «profession of evangelical counsels»[22]. In response to the request of J. Sauvage, the Commission seems to have accepted this proposal in order to allow for Secular Institutes[23] and Societies without vows. It can therefore, be concluded that this is probably the reason as to why the notion of «sacred bonds» was introduced in *Lumen gentium* (cf. *LG* 44). In fact, it seems that in the mind of the Council Fathers, it remained clear that a religious was a person who professed vows, whether temporary or perpetual. This seems to be the case since the Fathers also welcomed the request to devote a separate chapter to the religious, namely, chapter VI entitled, *De religiosis*. Moreover, a new chapter – Ch. V: The universal call to holiness in the Church (*De universali vocatione ad sanctitatem in ecclesia*) – was introduced to accommodate all the Christian faithful, including those men and women consecrated by sacred bonds.

This third *schema* was adopted on 19 Nov. 1964 with 2,134 affirmative votes against ten negative votes and one spoilt vote. In the final session chaired by Paul VI, there were 2,151 affirmative votes against five negative votes. On 21 Nov. 1964 it was officially promulgated as a Constitution.

Of note is the fact that, in the five numbers that form chapter VI, there is neither reference to nor distinction made between perpetual and

---

[22] *Schema constitutionis dogmaticae*, cap. VI: *De Religiosis*, Ad 44, n. 20, *AS* III/VIII, 130-131: «Pag, 156, passim: 15 Patres rogant ut in toto numero 44 terminologia mutetur, non adhibendo solummodo vocem: "vota", sed alternis vicibus dicendo sive: "vincula", sive: "ligamina", vel simpliciter ei substituendo: "professio consiliorum evangelicorum". (9 P.) Ratio: Ne sodales Societatum sine votis sibi persuasum habeant se non esse implicatos in tota hac paragrapho. [...] Monitio, quam plures hac de re in ipsum textum inserere vellent, non est necessaria. "Sacra vincula" quae suo modo votis assimilantur, est expressio etiam pro Orientalibus perspicua et ab eis applicabilis».

[23] Cf. *Animadversiones scriptae*: *Exc.mus P.D. Ioannes Sauvage*, cap. VI, n. 1, *AS* III/I, 766. At this time, Secular Institutes were rapidly growing and so it is not surprising that there is an observation which requests that these Institutes be included within chapter VI: *De Religiosis*.

temporary profession. Likewise, this chapter makes no distinction between a vow and a promise. However, the redaction of n. 46, which is taken from nos. 35 and 36 §§1-2 of the previous *schema*, seems to give an explanation as to why the distinctions disappeared in the new *schema*. Indeed, n. 46 states that the expressions «consecration»[24] and «profession» are used in a more broad sense so as to include even those who do not make vows[25]. This makes one thing clear: In *Lumen gentium*, the «religious» are those who are obliged to observe the evangelical counsels through religious profession of vows in accordance with can. 487 of *CIC/1917*. Others, who also observe the evangelical counsels through other commitments, are consecrated but are not considered «religious».

Consequently, the opportunity for including the dual possibility of consecration – by vow or by promise – appears again in this *schema*[26]. The additions should be understood within the possibility given to all Christians to observe the three evangelical counsels[27] and the various forms of religious life in existence in the Church and at the time of the Council, namely, the religious, Societies without vows and Secular Institutes.

Therefore, the conclusion can be drawn that the Council, regarding the theme of religious consecration, considered the matter not merely from the standpoint of the profession of vows but also in light of the

---

[24] Our reference to «religious consecration» is made inasmuch as it aids understanding of religious profession without prejudice to the fact that, after Vatican II, the concept of consecration qualifies the vowed state of life and not the concept «religious» and, keeping in mind that the interpretations given to «consecration», even as far as the Council is concerned, are not always convergent. A detailed discussion of religious consecration as such with emerging controversies, however, is outside the scope of this study. For such discussions cf. A. BANDERA, «La consacrazione a Dio», 345-358, 431-441, 521-531, 609-616; D. BERTETTO, «La consacrazione religiosa», 321-326; J. BEYER, «La consacrazione», 138-150; A. BONI, «La vita religiosa», 265-276; A. DE BONHOMME, «La consacrazione», 35-47; M. FITZPATRICK, «A contemporary understanding», 378-388; G. GHIRLANDA, «Ecclesialità della vita consacrata», 26-32, 231-237; O.G. GIRARDI, «Vocazione e consacrazione», 399-415; E.C. MEYER, «Is religious life», 1100-1120; P. MOLINARI, «Divino obsequio», 417-430; P. MOLINARI – P. GUMPEL, «La dottrina», 3-137; F. MORLOT, «Consacrazione sacerdotale», 638-657; X. OCHOA, «Excursus historico-doctrinalis», 193-221, 289-312; A PIGNA, «La consacrazione religiosa», 117-149.

[25] Cf. *Congregationes Generalis LXXX*: *De Religiosis*, cap. VI, *Relatio* de n. 46, *AS* III/I, 320. In the *Relatio*, the explanation reads as follows: «Redactio constructa est ex textu priori, n. 35-36, aliquibus mutatis vel omissis. In ipso titulo adhibetur locutio *consecratio* loco vocis *professio*, quia *consecratio* magis larga est et comprehendit etiam illos qui vota non habent».

[26] Cf. *Animadversiones scriptae*: *C. De Provencheres*, *AS* III/I, 682.

[27] Cf. F. WULF, «The call», I, 261-279.

importance of the evangelical counsels for all Christians – and not just for the religious. This relationship between profession and vows and the living of the evangelical counsels naturally becomes the context in which to understand the exclusion from subsequent profession when just causes exist.

1.1.2 Theological Identity of religious life and religious profession in the light of the Dogmatic constitution *Lumen gentium*

In order to appreciate the value of religious profession of vows, whether temporary or perpetual, and the justification for exclusion from subsequent profession when just causes exist, it is indispensable to examine the theological identity of religious life and religious profession in the light of *Lumen gentium*. During the period of the Council, the historical moment heightened the awareness for the need to emphasize the great reality of ecclesial communion. Therefore, particular focus was given to the common aspects of the life of the people of God: common Christian initiation, common holiness[28], common perfection and common following and imitation of Christ. After careful reflection, the Council Fathers, respecting the fact that every believer is called «to the holiness and perfection of their state» (*LG* 42)[29], deemed it necessary to dedicate a special chapter to illustrate the special holiness and perfection of the state of life of the religious (cf. *LG* 43)[30]. Chapter VI – entitled «On the religious» (*De religiosis*)[31] – was intended for this

---

[28] Chapter V has this very title: «The universal call to holiness in the Church». This chapter teaches that everyone is expected to live a life consistent with the common and obligatory perfection of the holy baptismal promises (cf. *LG* 40-41). It states that – in a basic sense – all have been consecrated (cf. *LG 44*) and all must follow Christ poor, humble and carrying the cross (cf. *LG* 40-41) and to become formed to his image (cf. *LG* 40).

[29] For instance, the married Christian – although consistent with the holy promises of baptism – does not respect and does not have to respect, the programme of holiness and perfection of the religious state. The married faithful can and must live according to the demands of perfection in the love and chastity of the married state, without living according to the characteristics of undivided love (cf. 1Cor 7:32-34) and perfection of «total continence embraced for the sake of the kingdom of heaven and which has always been held in particular honour by the Church» (*LG* 42).

[30] For an explanation on how this came to be suggested, cf. P. MOLINARI – P. GUMPEL, «Il capitolo VI», 856-857; *AS* II/III, 196.

[31] The draft of 1962 of the Dogmatic constitution – at the time ch. IV – had the title *De statibus evangelicae acquirendae perfectionis*. But during the discussions of the Council, while the Fathers became convinced that all Christians are called to holiness and perfection, it was suggested to stop using this term. After a long debate on which

purpose. Although not technically defined, this chapter gave a doctrinal synthesis of the religious state in the life of the Church. In the history of the Church, a teaching regarding religious life had never been promulgated in such a solemn way as it was done in this chapter of *Lumen gentium*. In this chapter are found the elements of a true theology of religious state and a guide to a correct vision of and a preparation for religious life upon which any subsequent theological explanation is founded. With regard to this study, it gives a fundamental understanding of religious profession as follows:

i. Religious profession of evangelical counsels results in total consecration to God (*LG* 44).
ii. The three evangelical counsels are for the sake of sanctification and mission (*LG* 43).
iii. The religious state caused by religious profession has a Christological, Trinitarian and ecclesial character (*LG* 39, 43, 46, 47).
iv. Profession of evangelical counsels can either be by vows or other sacred bonds (*LG* 44).

It is considered important for this study to briefly look at each of them.

a) *Religious profession of evangelical counsels results in total consecration to God*

In *Lumen gentium*, one finds the Church's fundamental understanding of religious profession with a theological significance. The Constitution summarized the doctrine of the Church in this way: «By such a bond, a person is totally dedicated to God, loved beyond all things. In this way, that person is ordained to the honour and service of God under a new and special title» (*LG* 44). This affirms the doctrine of the Church on religious profession already seen in chapter one of this study, namely that it is always perpetual on the part of the one professing. The Council asserted that a Christian who professes the three evangelical counsels by vows «consecrates himself wholly to God [...]. In a new and special way he makes himself over to God, to serve and honour him» (*LG* 44). With this, the Constitution reiterated the special value of profession of the classical evangelical counsels and recognized the special place of the religious in the Church.

---

term to use, they entitled the chapter simply as *De religiosis* without giving any technical definition of the term «religious». For more information on the problem and history of the terminology in *Lumen gentium*, cf. S. RECCHI, *Consacrazione mediante i consigli evangelici*, 17-23; F. SEBASTIAN, «Historia capitis VI», 349-363.

This profession of evangelical counsels of chastity, poverty and obedience, by which one is consecrated to God involves, in comparison to the common baptismal renunciation[32], a new renunciation: «the renunciation of certain values which undoubtedly merit high esteem» (*LG* 46).

Lumen gentium, however, did not provide a satisfactory solution as regards the nature of consecration brought about by religious profession. Its perspective in this regard was still much more that of the vows professed (*LG* 44) rather than the act of love entailed in total self-giving through such profession. Consequently, the perfection of consecration was seen as dependent on the sacred bonds taken. Therefore, perpetual vows were considered «more perfect inasmuch as the indissoluble bond of the union of Christ and His bride, the Church, is represented by firm and more stable bonds» (*LG* 44). Indeed, it is complete and, thus, reaches the fullness of the gift of self to God. But the Constitution, only in reference to evangelical counsels, stated that they are gifts from the Father[33]. This though may be interpreted to mean that God's hand is in every vocation. It can only be implicitly interpreted to indicate the initiative of God. It does not explicitly show the initiative of God in every true and genuine vocation. Such lack of explicit clarity is also evident in the authentic interpretation of the Doctrinal Commission[34]. Though this interpretation demonstrates that this initiative is implied in the Constitution, even if not clearly and explicitly developed[35], the very fact that an authentic interpretation was called for is in itself enough evidence of lack of clarity. This lack of clarity, however, is problematic, because it implicitly shows lack of clarity about the agent of consecration[36]. By so doing, it tends

---

[32] There exist in the Church the right and the duty to cultivate common or baptismal perfection in each of the states of life. But there is also the possibility to cultivate, with a positive spirit and special renunciation, «an excellence surpassing what is commanded» (*LG* 42).

[33] For instance, *LG* 42 on the vow of chastity, stated that «it is a precious gift of divine grace given by the Father to certain souls».

[34] The authentic interpretation of the Commission in *Modus* n. 24 ad numerum 44, *AS* III/VIII, 131 reads as follows «Textus novus est: "per eadem vincula divino obsequio intimius consecratur" sub forma passiva subintelligendo "a Deo"».

[35] Even though not explicitly expressed in the final text, the Council Fathers were conscious of the fact that profession of the evangelical counsels is an effect of the initiative of the Holy Spirit, since it is reflected in the preparatory *schemata*. Cf. *Schemata Concilii* I, 32-33; III, 219.

[36] Such lack of clarity would later be evident in the matters addressed by the post-conciliar documents.

to suggest that the value of consecration depends on the extent of the bonds. But, if that is the case, then, one cannot deny that the consecration is an act of the person who consecrates himself to God. However, considering the person as the agent of consecration logically leads to a conclusion that renewal of temporary vows is a choice, not an obligation. In other words, despite its theological importance, as J. Beyer observes, «understanding consecration to depend on the extent of the bonds was overly limiting»[37]. J. Beyer's observation is important for this study in the sense that, it would seem not to be possible to construct a whole doctrine of religious temporary profession on this basis since clarity on one important and certain fact is lacking, that is, it is God who has the initiative and it is He who calls the person to the consecrated life. Moreover, in the absence of clarity on the agent of consecration, there is a great challenge in understanding a just cause for exclusion from subsequent profession. The divine initiative calls forth a response to which *Lumen gentium* did not pay much attention. The strength of consecration brought about by religious profession lies in the gift of love received from God, which is answered with the love that is expressed in the acceptance of the divine choice by the person who consecrates himself to God irrevocably[38]. In order to be firm and stable, consecration presupposes the wish to give oneself totally and definitively, even if the bonds are, in fact, temporary[39] and/or have some form other than a vow. Consequently, renewal of vows carries with it a moral obligation and any decision not to renew the vows or to exclude a member from renewal of vows binds in conscience, and therefore, must be based on a just cause.

b) *Profession of evangelical counsels is for sanctification and mission*

Lumen gentium stated that the evangelical counsels have their origin in the teaching and example of Christ (cf. *LG* 43). They are a divine

---

[37] J. BEYER, «Life consecrated», 66.

[38] This was also the position of Paul VI in n. 1 of *Evangelica testificatio* and later, that of John Paul II in n. 8 of *Redemptionis donum*. Cf. PAUL VI, *Evangelica testificatio*, 29 Jun. 1971, *AAS* 63 (1971) 497; JOHN PAUL II, *Redemptionis donum*, 25 Mar. 1984, *AAS* 76 (1984) 524-525.

[39] In J. Beyer's opinion, the *CIC/1917* had supported this aspect in can. 488, 1°: «*temporaria*, *elapso tamen tempore renovanda*». In his view, these words stressed the importance of the personal decision, which goes beyond the commitment made through a temporary vow. Indeed, if a definitive commitment is made through a temporary vow that is to be renewed, it can be seen as conditional on the part of the Church and the Institute, although it may be definitive in the will of the person making it.

gift to the founders for the Church which the Church is to receive and safeguard by the grace of Christ. Without being very clear on the value of the corresponding initiative from an individual to respond to a call from God[40], this number indicated that the state of religious life – not the individual's call to this state – is not of human origin but a gift that the Church gratefully receives from God for a particular purpose in the Church, namely, sanctification and mission (cf. *AG* 38-39)[41]. The inspiration of the founder is authenticated to be for the good of the Church as soon as it is approved by ecclesiastical authority. Profession of evangelical counsels, thus, has a dual purpose: personal sanctification and mission – perfection of charity. The Constitution implicitly regards a religious as one who obliges himself, not one who chooses, to observe the three evangelical counsels for the sake of sanctification and mission (cf. *LG* 44), that is, acquiring «an attitude of life to actualize the will of the Father»[42]. This purpose was already identified from the advent of religious life. However, its theological underpinning was not well developed then. The Constitution opened the road to its theological development. Accordingly, having a vocation to a particular charism implies willingness to be faithful to the founder's spirit. Obviously, faithfulness to the founder's spirit excludes certain forms that are not in consonance with it. Therefore, a member whose actions are not compatible with the spirit of the founder may be deemed as lacking a vocation to that particular Institute. Moreover, since religious consecration by profession is not a matter of personal initiative, but an answer to a divine call[43], renewal of such profession cannot be a matter of choice. Rather, it is necessarily a moral obligation that binds in conscience, and consequently, can only be excluded for a just cause.

Lumen gentium gave the theological and moral[44] teaching on the religious state caused by profession of evangelical counsels (cf. *LG* 44). The theological consequence of profession is that a member of Christ's faithful, by obliging himself to observe the evangelical counsels gives himself totally to God and wishes to shake off all that could hinder him

---

[40] This character of call-response reciprocity would eventually be stressed by John Paul II. in nn. 8 and 11 of *Redemptionis donum*. Cf. JOHN PAUL II, *Redemptionis donum*, 25 Mar. 1984, *AAS* 76 (1984) 524-525; 532-533.

[41] Cf. also A. QUERALT, «Value of "religious" consecration», 38.

[42] H. BÖHLER, *I consigli evangelici*, 54: «libera risposta a far nostra "la forma di vita che il Figlio di Dio prese quando venne nel mondo per fare la volontà del Padre e che propose ai discepoli che lo seguivano" (*LG* 44)». English transl. is by the author.

[43] Cf. A. QUERALT, «Value of "religious" consecration», 36.

[44] This moral teaching would later assume juridical effects in the *CIC/1983*.

from fervently loving God. It is true that through baptism one has died to sin and has been consecrated to God (cf. *LG* 44). However, in order to derive more abundant fruit from this baptismal grace, one intends – by profession of the evangelical counsels in the Church – to free oneself from those obstacles which might draw him away from the fervour of charity and the perfection of divine worship. Those who profess the typical values of the three evangelical counsels are «more intimately consecrated to divine service» (*LG* 44). In *Ad gentes*, the verb «consecrate» is applied to bishops (cf. *AG* 38); to priests (cf. *AG* 39)[45]; and in *Lumen gentium*, to religious (cf. *LG* 45). While affirming that it is God who consecrates[46], the prevailing meaning of «to consecrate» is given as «to dedicate». Moreover, Vatican II often linked «consecration» to «mission» as is evident in *Ad gentes*: «all bishops are consecrated not just for one diocese, but for the salvation of the entire world» (*AG* 38). The same meaning is found in *Presbyterorum ordinis* (cf. *PO* 7) where a priest is considered to be one who is set aside by the sacrament of Orders so as to better fulfil the baptismal mission in his service of all the baptised[47]. According to *Optatam totius*, «the ministers of the Church consecrate to the worship of God and the service of the Church the candidates whose fitness has been acknowledged» (*OT* 2)[48].

In a similar way, we can say that the consecration brought about by religious profession of evangelical counsels is for mission. And the first mission for a religious is to witness to their consecration by observing the counsels through prayer, penance and example of their own life (cf. *CD* 33; can. 673 §1). Consecrated life, lived with coherence, is worthy of this testimony. Morally, profession is a free act of a person. A faithful who responds to a call to religious life voluntarily wills to carry out the duty of effectively observing the counsels. At the same time it is a public act – made in the Church – that is, a public declaration to assume a particular way of life in the Church (cf. *LG* 44). Such a choice of a faithful is accepted by the Church as a stable form and project of life

---

[45] Cf. VATICAN COUNCIL II, Decr., *Ad gentes*, 7 Dec. 1965, *AAS* 58 (1966) 984-985.

[46] Four texts in *Lumen gentium*, three in *Presbyterorum ordinis*, and one each in *Perfectae caritatis* and in *Optatam totius* clarify that God is the agent of consecration, which transmits gifts and graces. This affirmation allows us to speak about «the effect of consecration» and the purpose for which God gives these graces.

[47] Cf. VATICAN COUNCIL II, Decr. *Presbyterorum ordinis*, Dec. 1965, *AAS* 58 (1966) 1001-1002.

[48] Cf. VATICAN COUNCIL II, Decr. *Optatam totius*, 28 Oct. 1965, *AAS* 58 (1966) 714.

(cf. *LG* 39, 43). The profession – temporary or perpetual – of the counsels thus builds the category of those for whom the evangelical counsels become an effective and total choice of life. Through this act, the counsels become «the precept of life»[49] for those who profess them because of having willingly accepted them as the will of the Father in the following of Christ[50]. Consequently, «this free choice to bind oneself by assuming the evangelical counsels as the norm of life is primarily an obligation of love, [an] obligation to offer oneself more completely to the Father in Christ»[51], which binds in conscience. It does not have any penal effect attached to its violation, but – since it binds in conscience – failure to live up to this obligation is a clear sign of a lack of vocation that may merit exclusion from subsequent profession.

c) *The religious state caused by religious profession has Christological, Trinitarian and ecclesial character*

Lumen gentium, in its approach to the religious state caused by religious profession, is Christological and Trinitarian in character. All the members in the Church are called to holiness because of their ontological belonging to and union with the Church by means of baptism. All are called to holiness because the Church is holy; and the Church is holy because Christ alone is holy (cf. *LG* 39). This Christocentric approach necessarily forms a relationship between religious holiness and the Trinity. The Church is holy because Christ – who with the Father and the Spirit is alone holy – endowed the Church with the gift of the Holy Spirit for the glory of God. The Church is holy because she is united to Christ as his Mystical Body by the mediation of the Holy Spirit. Human beings – including the religious – are holy because they are united to Christ by the Holy Spirit through the mediation of the Church (cf. *LG* 47). Consequently, the spiritual identity of one who has professed the evangelical counsels needs to be sought principally in the evangelical figure of Christ, who was totally docile and open to the Father through the Holy Spirit. Thus, the evangelical counsels are not abstract realities, but rather concrete and determinative aspects of Christ who was

[49] Counsels, as voluntarily accepted precepts of life (cf. *ET* 7), presume an attitude that goes beyond a juridical precept and so cannot be imposed on anyone by any external law.

[50] Cf. J. BEYER, «Una nuova disciplina», 160.

[51] Y. SUGAWARA, *Religious poverty*, 45.

chaste, poor and obedient to the point of death on the cross (cf. *LG* 43). Jesus, who fully accepted consecration and the Father's mission and who himself fulfilled this mission in complete harmony with the Father's plan, remains the supreme model, the ultimate foundation and the insuperable prototype of every religious life. However, the Constitution was opposed to the idea of uniformity. While all Institutes must represent Christ who was obedient, chaste and poor, some are called to present, with a special intensity his person as praying, while others have the task of showing more strongly the different aspects of his person as a missionary (cf. *LG* 46). Accordingly, each Institute is to form its members to participate in the mission of the Lord within its own charism[52].

This opposition to uniformity is significant for this study inasmuch as it not only protects the genuine nature of the vocation of every Institute but also protects the members by pointing towards what may make one unsuitable for a given Institute while suitable for another[53]. Consequently, unsuitability for one given Institute does not always imply a lack of a vocation to religious life in general. If one is not able to effectively participate in the charism of the Institute, then he lacks a vocation to that particular Institute which logically amounts to a just cause for exclusion from subsequent profession. Nevertheless, the possibility remains that the member of the faithful may realize his call elsewhere in another Institute.

Although it did not explicitly discuss the ecclesial character of the consecration brought about by religious profession, the Constitution did not completely ignore it either. It is implied where it stated that the religious state caused by religious profession in a given Religious Institute is a divine gift for the Church (cf. *LG* 43)[54]. The special charism given by God to the founders of Institutes is a gift to the Church and for

---

[52] M. RUIZ JURADO, «Consecrated life», 12: «"*Carisma cujusvis Ordinis proprium*" – being a pact between God, the founder, and his followers – is a gift to which the Institute must be loyal». Cf. also §3 of PAUL VI, Allocution, 21 Sept. 1974, *AAS* 66 (1974) 542. This, however, does not exclude paying attention to the particular gifts that some individuals in the Institute might possess. This teaching later takes on a juridical character in cann. 574 §2 and 577.

[53] On diversity of the call, cf. K. RAHNER, «On Evangelical Counsels», 141. Alluding to a response to one's own vocation as a determination of suitability, P. Molinari - P. Gumpel state that «one must follow his own vocation; and precisely because it is "his", it is also the best for him». P. MOLINARI – P. GUMPEL, «La dottrina», 134.

[54] This would later be repeated in *PC* 1 and it would assume juridical character in cann. 575-576.

the Church[55]. Consequently, any mission in the name of the Institute should be exercised for the Church. The profession of the evangelical counsels is a sign which is intended to inspire all the members of the Church to fulfil their duties of the Christian calling. The religious state «should be a real invitation to Christians to ponder things of God, being a prophetic sign, that of liberty of the sons of God, of total obedience, of the fact that the grace comes from above and not as a result of individual's worldly activities»[56]. Anything to the contrary or acting scandalously is opposed to the grace from above. Such acts demonstrate a lack of a vocation and may be considerd just causes for exclusion from subsequent profession.

1.1.3 Profession of evangelical counsels can either be by vows or by other sacred bonds

Lumen gentium did not directly address religious temporary profession although it introduced the concept of sacred bonds. This seems to be so for an obvious reason, namely, that temporary profession is more a juridical than a theological entity, and it was not the intent of the Council to get into the juridical elements of religious profession. It was concerned rather with highlighting the diversity of movements that existed within the Church. Its intent was to shed more light on the diversity that the Church offers to the Christian faithful to embrace the evangelical counsels. Therefore, *Lumen gentium*, when addressing the religious, did not intend the juridical sense of can. 488, nn. 1; 7 of *CIC/1917*, but rather a much broader sense. That is to say, the term «religious» was in fact given to all those who live in a state of consecrated life, while the term «profession» applied to those taking vows or who professed other sacred bonds by which some of the faithful were obliged to live according to the evangelical counsels (cf. *LG* 43). Therefore, the term «profession» refers to all those who profess the three[57] evangelical counsels. Accordingly, it applies to those who enter into monastic life, active Congregations, as well as to Secular Institutes. Consequently, it can be argued that temporary profession of vows is

---

[55] This would later be given a juridical character in can. 574 §1.

[56] Y. SUGAWARA, *Religious poverty*, 59.

[57] The usage of the term «evangelical counsel» without a specific reference to the three counsels is rare in the conciliar documents. For an explanation of this frequent reference and on how the threefold expression of chastity, poverty and obedience became normative in the order in which we have them today, cf. Y. SUGAWARA, *Religious poverty*, 32-37.

implicitly affirmed because in the first place, it was established in the *CIC/1917*. Secondly, none of the Council Fathers raised any observation to this practice.

In relation to this study, ***Lumen gentium***, which introduced the phrase «sacred bonds», stated that:

> The faithful of Christ bind themselves to the three evangelical counsels either by vows, or by other sacred bonds, which are like vows in their purpose. [...] "By his profession of the evangelical counsels, then, he is more intimately consecrated to divine service"[58]. This consecration will be all the more perfect, inasmuch as the indissoluble bond of the union of Christ and His bride, the Church, is represented by firm and more stable bonds (*LG* 44).

This number adopted the phrase «sacred bonds» from the 1962 *schema*. Various commentators[59] stress that this introduction was a last minute act aimed at including all the various movements whose existence in the Church was already strongly being felt. They also note the probability that the prescriptions of ***Provida Mater*** were taken into account[60]. By means of *LG* 44, Christians were offered the opportunity to observe the evangelical counsels through vows or sacred bonds, noting that these bonds were perfect when they were similar to vows. From this, it can be concluded that for the Council Fathers, vows were the

---

[58] PAUL VI, Alloc. ***Magno gaudio***, 23 May 1964, *AAS* 56 (1964) 566: «Ita fit, ut professio votorum evangelicorum adiungatur consecrationi, quae propria est baptismatis, et hanc, quasi quaedam consecratio peculiaris, compleat, eo quod Christifidelis se Deo penitus committit ac devovet, totam vitam suam efficiens eius unius famulatum». English transl. is by N.P. Tanner. Cf. N.P. TANNER, ed., ***Decrees of the Ecumenical Councils***, II, 885.

[59] For example, A. DEL ROSARIO, ***La vita religiosa***, 106; P. MOLINARI – P. GUMPEL, ***Il capitolo VI «De religiosis»***, 190. In the texts cited, Father Anastasio of SS.mo Rosario says that «sacri legami è stata un'inserzione dell'ultima ora. Ricordo molto bene che il testo diceva semplicemente: emissione del sacri voti; poi c'è stato chi ha pensato che nella Chiesa ci sono Famiglie di vita consacrata, società che vivono in comune senza voti che hanno o promesse o giuramenti – altre forme canoniche di vincolo – e allora si è aggiunto: "altri sacri legami"»; and Fathers P. Molinari and P. Gumpel are of the same opinion, noting the willingness of the Council not to leave out different movements or religious families in the words: «Questa proposta, presentata in forma di Modi, fu accettata dalla Commissione Dottrinale per evitare che le cosiddette Società senza voti potessero avere l'impressione di non essere incluse in questo paragrafo. Inoltre la Commissione osservò che l'espressione "sacri legami" era chiara anche per gli Orientali e applicabile ad essi».

[60] PIUS XII, Ap. const. ***Provida Mater***, 2 Feb. 1947, *AAS* 39 (1947) 114-124.

means to the perfection of religious state. Therefore, to the extent that sacred bonds resembled vows, the more the person participated in the state of perfection.

The Council also recognized in *LG* 44, all forms of consecrated life that are approved by the Church. From this, the intention of the Council seems to be clear: It did not want to put weight into the juridical field. Rather, its intention was to gather together all Institutes that already existed. It is for this reason that the text of *LG* 44 was presented in a broad manner. It is, therefore, clear that these other sacred bonds were introduced not for the religious but for Secular Institutes and Institutes without vows[61]. Consequently, it can be concluded that the other sacred bonds were not for the «religious» as understood in can. 488 of *CIC/1917*. Therefore, for the religious, vows, which are the characteristic and the tradition of Religious Institutes, remained the content of religious temporary profession.

1.2 Perfectae caritatis (*1965*): *Decree on renewal of religious life*

The seventh document issued by the Vatican Council II, on 28 Oct. 1965, was the Decree on the adaptation and renewal of religious life, ***Perfectae caritatis***. This decree complements ch. VI, ***De religiosis***, of ***Lumen gentium***. It explicitly expressed what ***Lumen gentium*** implicitly implied or indirectly intended. It is one of the shorter documents chiefly because it dealt only with the broadest guidelines and probably because it had a brief discussion period. It is a decree that treats the life and discipline of religious life and lays the foundations for renewal.

During its preparation, it had five different redactions. Therefore, in the discussion of this document and in order to have clear background information to this document, it is appropriate to begin with the examination of the various ***schemata*** in its redaction process.

---

[61] Even though these other forms of consecrated life are outside the scope of this study, their recognition in this document is significant for our study because this would later influence some religious and some Superiors General to request that candidates to religious profession take other temporary bonds instead of the vows as a possible solution to the vocation crisis. The introduction of sacred bonds and the reasons motivating its introduction provides clear background information to the Instr. ***Renovationis causam*** whose prescriptions revolutionized the practice of temporary profession. It was this influence that would later lead the Instr. ***Renovationis causam*** to offer this possibility to the religious ***ad experimentum***.

1.2.1 The Preparation process of *Perfectae caritatis*

a) *First* schema (1962)

The first preparatory *schema* was released in 1962. The preparatory commission drafted a *schema* that had 30 chapters. Generally speaking, it was considered too long. In relation to this study, temporary profession of vows seems not to be treated in a specific way but in a more general manner. In fact, temporary profession is mentioned in chapter II of the first part of the first session. During this session, the three modalities through which one enters the state of perfection were specified when it stated:

> They are, in the first place, Religious Institutes or societies approved by the legitimate authority of the Church in which the members, in accordance with the laws of their own Institute, pronounce public vows – perpetual or temporary – to be renewed upon the elapse of time and who strive for the evangelical perfection[62].

This definition fully repeats the provisions of can. 488, 1° of *CIC/1917* in reference to what was meant by a religious. On judgment on the vocation – suitability – of the candidate to temporary profession, n. 175 of ch. 25 provided for the admission to temporary profession of a candidate whose vocation was doubtful:

> For admission to profession or to in-definitive incorporation, suitability should be ascertained in so far as it can be done. However, during this time when candidates have not yet completed a probationary period, even if some doubt as to their suitability or intention exists, they can be admitted to this profession or incorporation provided that there is hope that the long experience of an extended period may provide a reliable sign of a vocation[63].

---

[62] *Schema constitutionis*: *De statibus perfectionis adquirendae*. *Tres species*, pars. prior, sec. I, cap. II, n. 15 §2, in *SCDCS* III, 193: «Sunt imprimis Religiones seu societates a legitima auctoritate ecclesiastica approbatae in quibus sodales, secundum proprias ipsius societatis leges, vota publica perpetua vel temporaria, elapso tamen tempore renovanda, nuncupant, atque ita ad evangelicam perfectionem tendunt». Cf. also can. 488, 1° of *CIC/1917*. English transl. is by the author.

[63] *Schema constitutionis*: *De statibus perfectionis adquirendae*. *De admissione*, pars altera, sec. III, cap. XXV, n. 175, in *SCDCS* III, 268: «Pro admissione autem ad professionem vel cooptationem non definitivam, eadem, inquantum fieri potest, quaeratur certitudo. Nihilominus, cum hoc tempore alumni probationem suam nondum compleverint, stante aliquo dubio de eorum idoneitate vel intentione, ad hanc professionem vel cooptationem admitti poterunt, dummodo fundala spes habeatur ut

This implies that the aim of this profession was to allow time to discern the suitability of a candidate for Religious Institute. This is consistent with the doctrine of the Church regarding temporary profession as reflected in the pre-Vatican II documents[64]: the main purpose of temporary profession from its origin was to juridically protect both the member and the Institute by allowing enough time for a mature decision in the discernment of a vocation and suitability for living completely the life and charism of a given Institute.

With reference to exclusion from subsequent profession, the *schema* stated that, when signs of unsuitability were evident, one would be dismissed or would not be admitted to a renewal of temporary profession[65]. This text incorporated the provisions of cann. 637 and 647 §2, 2º of *CIC/1917*.

b) *Second* schema (1963)

The first *schema* of the document, having been considered too long, was redrafted in 1963 with a much smaller *schema*. While reviewing the first *schema* during the preparation of the second *schema*, the first *schema* suffered a sharp reduction to facilitate the rapid development by the Council. With reference to exclusion from subsequent profession, this second *schema* repeated more succinctly what was already established in the first *schema*.

Regarding temporary profession, it repeated can. 488, 1º of *CIC/1917*: «Religious Institutes are societies in which members, in accordance with its laws and, under the jurisdiction of common life, pronounce public vows, either perpetual or temporary to be renewed on the expiry of time»[66]. In this *schema*, the paragraph in the previ-

---

post experimentum longius protractum signa certa vocationis praebere valeant». English transl. is by the author.

64 Cf. Const. *Quanto fructuosius*, 1 Feb. 1583, *CICFontes* I, 150; Const. *Ascendente Domino*, 25 May 1584, *CICFontes* I, 153; Encycl. *Neminem latet*, 19 Mar. 1857, *CICFontes* VI, 4381; Decr. *Sanctissimus*, 12 Jun. 1858, in *CICFontes* VI, 4383; Ap. lett. *Ad universalis ecclesiae*, 7 Feb. 1862, *CICFontes* II, 532; Decr. *Perpensis*, 3 May 1902, in *CICFontes*, IV, 2039.

65 Cf. *Schema constitutionis*: *De statibus perfectionis adquirendae*. *De admissione*, pars altera, sec. III, cap. XXV, n. 175, footnote 19, in *SCDCS* III, 268-269. Cf. also cann. 637 and 647 §2, 2º of *CIC/1917*.

66 *Congregationes Generales CXIX-CXXII*, cap. I, n. 4, *AS* III/VII, 754: «Religiones sunt societates in quibus sodales, secundum proprias leges et sub regimine vitae communis, vota publica, perpetua vel temporaria, elapso tempore renovanda nuncupant».

ous *schema* disappeared where temporary profession was contemplated as a period for determining a candidate's vocation. It is only in the abovementioned text, and nowhere else in this *schema*, where temporary profession was mentioned. This, however, does not evidently reveal that this purpose was no longer in the mind and spirit of the Council Fathers and those who drafted the text. A probable reason for this removal may be attributed to the need to reduce the size of the text such that the things that were felt to be obvious were left out.

c) *Third and fourth* schemata (1964 and 1965)

In 1964, another redaction was released in the form of a decree. In light of the discussions and comments of the Fathers, a new *schema* was again released in 1965. In relation to this study, these two *schemata* did not have any significant difference. For this reason, the two *schemata* are treated here together.

In these two *schemata*, temporary profession disappeared altogether. These two *schemata*, in addressing the differences between the various states of perfection, did not refer to can. 488 of *CIC/1917*. Rather, they took for granted the difference by referring only to the most general things of each Institute. Recalling that the Council tried not to treat juridical aspects but to lay theological foundation for renewal of religious life, it is only understandable that, at this time, from the juridic standpoint, the vows and especially temporary vows did not constitute a topic for discussion. It seems that the Council, by being silent about this, assumed the provisions of *CIC/1917* with reference to temporary vows. Moreover, it seems that because of the need to reduce the size of the Decree, topics that did not require particular specification progressively disappeared in the process of redaction.

The last redaction was finalized and adopted in the form of a decree as we have it today. This Decree came first with the idea that it would be a Constitution. However, by necessity, it was rapidly developed and, in the end, the Council decided that it should be a decree. In the last public session of 28 Oct. 1965, the last redaction received 2,321 affirmative votes against four negative ones. *Perfectae caritatis* was published by Paul VI on the same day.

1.2.2 The doctrine of the Decree *Perfectae caritatis* on religious profession and exclusion from subsequent profession

The Council's intention in *Perfectae caritatis* was to consider the life and rule of communities whose members vow chastity, poverty and obedience and to respond to their needs in the modern world. The Council did not limit itself to highlighting the theology of religious state as given in *Lumen gentium*. In view of the general need for a healthy and necessary renewal in the lives of all the members of the Church, it could not overlook the need for a similar renewal for members of Religious Institutes. For this purpose, it proposed concrete general criteria by which the religious were to seriously set about an appropriate renewal that would lead them to a greater vitality and perfection in the life of the Church. Some of the areas identified for renewal that are relevant to this study included:

i. Cultivating the spirit and practice of prayer. Only when they are «refreshed at the table of the divine word and the sacred altar of God, they will love Christ's members as brothers, honour and love their pastors as sons should do and, living and thinking ever more in union with the Church, dedicate themselves wholly to its mission» (*PC* 6).
ii. Mortification. «This service of God ought to inspire and foster in them the exercise of the virtues, especially humility, obedience, fortitude and chastity» (*PC* 5). Therefore, «striving faithfully to observe the chastity they have professed [they] must have faith in the words of the Lord, and trusting in God's help, not overestimate their own strength but practice mortification and custody of the senses» (*PC* 12).
iii. Poverty. «The religious should diligently practice, and if need be express also in new forms, that voluntary poverty which is recognized and highly esteemed especially today as an expression of the following of Christ» (*PC* 13). One of the things that the Decree identified as not only an outward mark of consecration to God but also a symbol of poverty was the religious habit. In this regard, it stated that «the religious habit, an outward mark of consecration to God, should be simple and modest, poor and at the same time becoming. In addition, it must meet the requirements of health and be suited to the circumstances of time and place and to the needs of the ministry involved» (*PC* 17).
iv. Living the common life. Common life, fashioned on the model of the early Church where the body of believers was united in heart and soul

(cf. Acts 4,32) and given new force by the teaching of the Gospel, the Sacred Liturgy and especially the Eucharist, should continue to be lived in prayer and the communion of the same spirit (cf. *PC* 15). As members of Christ living together as brothers, the religious should give pride of place in esteem to each other (cf. Rom. 12,10) and bear each other's burdens (cf. Gal. 6,2).

v. Education of members. «Adaptation and renewal depend greatly on the education of the religious». Consequently, «neither non-clerical religious nor religious women should be assigned to apostolic works immediately after the novitiate. Rather, their religious and apostolic formation, joined with instruction in the arts and sciences directed toward obtaining appropriate degrees, must be continued as needs require in houses established for those purposes» (*PC* 18).

Each of these elements continued to be discussed in various subsequent post-conciliar documents and were finally given juridical effect in the *CIC/1983*. Consequently, this study shall continue to make reference to them time and again. It is, however, important to mention at this point that these areas are significant to our study because they point to the necessity of proper preparation of the religious. In this way, they reveal the importance of temporary profession for allowing more time for adequate preparation before final commitment.

In reference to religious profession, the decree did not specify. Rather, it treated profession in general terms without mentioning the different kinds of profession. This approach is in accord with its primary purpose which was to articulate the sources of authentic renewal for religious life. This intent is clear from the opening sentence which roots all religious life in «the pursuit of perfect charity through the evangelical counsels» (*PC* 1). The whole point of the document was to set forth the prescriptions required «in order that the great value of a life consecrated by the profession of the counsels and its necessary mission today may yield greater good for the Church» (*PC* 1). In this general approach, however, one thing is clear: when the decree speaks of religious profession, it refers to the fact that the religious leaves everything to follow Christ. In this regard, it is worth noting that an essentially Trinitarian and ecclesial focus permeates the entire document[67].

---

[67] Authentic renewal according to *PC* 2 included: «both the constant return to the sources of all Christian life and to the original spirit of the Institutes and their adaptation to the changed conditions of the time. This renewal must proceed under the inspiration of the Holy Spirit and the guidance of the Church». It did not mean suppres-

The decree repeated the great doctrinal principles of *Lumen gentium* and applied them to the concrete reality of religious life (cf. *PC* 1). The two doctrinal principles stated that consecration brought by religious profession is a reality formed by both divine and human element; and it is multidimensional with Christological, ecclesial, ascetical-sacrificial and juridical dimensions.

With reference to our study, these principles act as general guidelines in vocation discernment and may guide the final decision to exclude a member from subsequent profession. Accordingly, we consider it important to discuss them briefly.

a) *Consecration brought by religious profession is a reality formed by both divine and human element*

Religious consecration is a reality formed by both divine and human elements[68]. The divine element, which implies «a surpassing gift of grace» (*PC* 12), is the privileged element. But the human element of free commitment is required also as essential[69]. This theological identity is very important for understanding why renewal of vows is not a free choice but a moral obligation. Religious consecration by profession as a reality formed by both divine and human elements, is subjected to moral obligations. Therefore, it transcends the will of an individual. Consequently, considering the gravity of the obligation, one cannot choose his own vocation unless it is a call by God. And once professed, no one is free to abandon religious life or be excluded from subsequent profession of vows without a just cause.

b) *Consecration brought about by religious profession is multidimensional*

Consecration brought about by religious profession is multidimensional with Christological, ecclesial, ascetical-sacrificial and juridical dimensions.

With regard to the Christological dimension, *Perfectae caritatis* first directed the religious to the New Testament and threw light on the posi-

---

sion, for example, of religious habit. For detailed discussion on areas that needed renewal, cf. I. ANTONIUTTI, *La vita religiosa*, 7-44.

[68] *Perfectae caritatis* defined «consecration» as a response to the divine call, rooted in baptism, which expresses a personal gift of self to God; received by the Church which commits the person to its service (cf. *PC* 5).

[69] A. QUERALT, «Value of "religious" consecration», 36.

tive meaning of vowed life when it stated that the «fundamental norm» and the «supreme law» of every Religious Institute always remains «the following of Christ as proposed by the Gospel» (*PC* 2). It is a foundational grace given to those whom God chooses to leave behind – in a spirit of poverty – what most roots a human being in life, namely, family and possessions. Following Jesus in consecrated celibacy, they are to live with him in obedience to the Father and the Spirit until death. Hence, the love of Christ that calls for a commitment to strive to give him first place in one's life is clearly central. With this dimension, one begins to realize some of the deeper implications not only for belonging to a given Religious Institute but, above all, for the obligations of the state of consecration brought about by religious profession itself. Such a commitment entails «putting on» the Lord's mind and learning to see the world with his eyes.

Consistent with the teaching of *Lumen gentium*, the Decree reaffirmed the objective excellence of consecration by profession, that is, «the surpassing value of consecrated life through the evangelical counsels» (*PC* 1). This excellence is a value that has a pre-eminently Christological weight observed in the daily intimate encounter of the religious with Christ and must take place in Sacred Scripture, especially in the Gospels, and in the Eucharist. To renew religious life is above all to bring it as close as possible to the chaste, poor and obedient form of life, whose supreme model is Christ (cf. *PC* 25). In this sense, «the following of Christ proposed in the Gospel» (*PC* 2) must be considered by all the religious as «the supreme rule» (*PC* 2). The special consecration and the special mission of the religious are characterized principally by a profound Christological significance. They «are consecrated in a special way to the Lord» (*PC* 1). Therefore, their consecration is «a special consecration» (*PC* 5), which implies a unique configuration to the consecrated Christ.

From this Christological dimension rooted in the Scriptures flows the ecclesial nature of any consecrated life. Religious consecration is grounded on baptism and accomplished in the Eucharist in that Christ's will, mediated by Scripture and contemplated in the Blessed Sacrament are expressed in life through the Eucharist, which provides consecrated men and women with the spiritual strength they need and enables them to draw grace from its very source with which consecrated men and women take upon themselves the commitment to transform their lives. That is, the mission of the religious consists in making Christ present to

the world through personal witness. This is the primary task of the consecrated life[70].

Lumen gentium referred to this union with the sacrifice of Christ without any explanation (cf. *LG* 45). *Perfectae caritatis* expressed an even weaker link between the consecrated life and the Eucharist (cf. *PC* 6)[71]. The Decree analysed in particular the ecclesiological aspect of religious state[72]. This state of consecration forms part of the Church. The consecration made by the religious involves the person placing himself into God's hands upon entering his service. The text further explained «the service of the Church» as follows: As an act of a member of the body of Christ, religious profession is consequently of a salvific order and under the influence of the Holy Spirit. The professed are instruments of the Holy Spirit and their profession is the instrument of their non-sacramental consecration. The members of each Institute, therefore, ought to seek God before all else and solely; they should join contemplation to apostolic love since in contemplation they cleave to God in mind and heart and in apostolic love they endeavour to be associated with the work of redemption and to spread the Kingdom of God (cf. *PC* 5). This implies that:

i. The purpose of religious profession of vows is not only for sanctification but also for mission. This being the case, inability to contribute to the mission of the Institute may be a just cause for exclusion from subsequent profession because a vocation to religious life by its very nature demands that all manifest docility to the charism of the Institute as concretely manifested in the mission.
ii. The religious in carrying out their mission must act in conformity with the doctrine of the Church (cf. *ET* 1, 7)[73].

---

[70] The more consecrated persons allow themselves to be conformed to Christ, the more Christ is made present and active in the world for the salvation of all (cf. *VC* 72).

[71] The *CIC/1983* would later become more explicit on this link (cf. can. 607 §1). But in n. V of PIUS XII, Motu proprio *Primo feliciter*, 12 Mar. 1948, *AAS* 40 (1948) 285-286, Pius XII had already noted this link when he spoke of a «consecration to God and to souls», a concept that express the attitude of Christ and of those who, in Him and like Him, consecrate themselves to the Father for the promotion of the Kingdom and the building up of the Church. Consecration by the counsels can be understood then, as a deep participation in Jesus' unswerving fidelity to the mission given Him by the Father.

[72] Cf. G. BENNO, *Relatio circa argumentum*, 67.

[73] For more explanation, cf. also R. RÉGAMEY, *Paul VI donne aux religieux*, 39-45.

Consequently, if one ceases to act within the teachings of the Church, one ceases to be suitable and so may merit exclusion from subsequent profession.

At this point, we turn to the ascetical-sacrificial dimension and note that what is particular to religious consecration is that its effect is to facilitate «renouncing of the world» (*PC* 5). According to A. Queralt, Vatican II used this specific phrase, «renouncing of the world» so as to distinguish the religious from the laity and to point out what is particular to the grace received by the religious. Herein «world» does not refer to what is evil – such as sin, satan and his works – but to goods, such as marriage, riches and autonomy, which are freely renounced by following the evangelical counsels in imitation of Christ[74]. The reference, then, is to the «world» in terms of lesser goods which a religious renounces for the sake of a higher good, namely, sanctification and mission. In this context, «world» has its original monastic meaning[75]. By the very fact of renouncing the «world», the religious loses the «secular» condition that characterizes «laymen»[76]. This fact of renunciation allowed the Council to declare that the religious state «belongs inseparably to the life and holiness of the Church» (*LG* 44). By declaring that religious consecration provides a fuller manifestation of a life lived for God alone and commitment to the Gospel than does baptism[77], the Council indicated that the effect of this renunciation of the «world» is an enhancement of the same traits that were imprinted on the soul of a religious by baptismal consecration. The strength of religious consecration lies in the gift of love received from God which enables the one called to accept the divine calling. The first paragraphs of *Perfectae caritatis*, therefore, are of particular relevance in understanding the purpose of temporary profession:

---

[74] Cf. A. QUERALT, «The value of "religious" consecration», 31-32, 42-43.

[75] For a detailed explanation of this term, cf. A. GUILLAUMONT, *Aux origines*, 222.

[76] In P.A. BONNET, «De laicorum», 245-246, he observes that «secularity» is characteristic of the «lay people» but not exclusively; he gives an equal rank to the Secular Institutes.

[77] This is not to say that it is extrinsic from consecration by baptism but to say that it differs from it in its effect of providing a fuller manifestation of a life lived for God alone and commitment to the Gospel than does baptism. Baptism, however, is the fertile soil from which the vivifying sap of religious consecration must arise – bearing in mind the parallel teachings of *Perfectae caritatis* and *Lumen gentium* (cf. *PC* 5; *LG* 44). The two consecrations, therefore, share common features: both answer a divine call and recipients are intended to accept this calling; and both entail dying to sin and a commitment of the person to God.

i. The religious have «handed over their entire lives to God's service in an act of special consecration» (*PC* 5).
ii. Religious profession entails answering a «divine call».
iii. It is at the same time «a self-sacrifice», and because it is received by the Church, this implies that «one is dedicated» to the service of the Church[78].

Understanding this purpose of temporary profession aids in determining what may be considered just causes for exclusion from subsequent profession. This implies that:

i. Vocation is not a choice. It must be a response to a call for a specific mission. Consequently, the discernment period in the process of realizing one's vocation is indispensable both on the part of the Institute and the individual; temporary profession is a response to this need for a period of discernment.
ii. Lack of a spirit of sacrifice and inability to carry out the mission of the Institute may be manifestations of a lack of a vocation and so may be considered just causes for exclusion from subsequent profession. This is because the vocation of each person is marked by the presence of the power needed to carry out the ministries and apostolate proper to each Institute[79]. Such power is manifested in a spirit of readiness to respond to mission and a willingness to sacrifice. Therefore, a lack of such spirit is a clear manifestation of a lack of a vocation.

To conclude this section, it is worth pointing out that the call for renewal in Religious Institutes was a noble idea. However, responding to this noble call for renewal was not without challenges. One of the areas that has seen greater challenges in the renewal process is the practice of temporary profession. To renew is to «give new and better form to a pre-existent reality, while preserving the essentials, [...] the goal is to make persons or institutions more faithful to an ideal already accepted»[80]. Renewal, therefore, entails identifying three basic elements:

i. Something essential to preserve.
ii. Some way of dealing with what is essential that has gone wrong and needs to be corrected.
iii. A new way of dealing with what is essential that has to be implemented.

---

[78] Cf. A. QUERALT, «The value of "religious" consecration», 36.

[79] Cf. F. CIARDI, *I fondatori*, 391; J. GALOT, *Porteurs du souffle de l'Ésprit*, 19-37; 66-74; G. LAFONT, «L'Esprit-Saint et le droit», 473-487; M. MIDALI, «Il carisma», 386-387; ID., «La dimensione carismatica», 550-557.

[80] A. DULLES, «True and false reform», 15.

Perfectae caritatis called upon the religious to revise their missions, Rules, and Constitutions in order to make religious life more relevant to modern world (cf. *PC* 2). They were to be guided in this process first and foremost by the gospel and through reflecting on the spirit of their founders. In successive directives, the Apostolic See guided them about the proper process for this renewal[81]. As the Council offered clear and abundant guidelines for the needed reform of consecrated life, the Religious Institutes responded obediently and often enthusiastically to the immense task imparted on them[82]. However – as we shall see in the next section during the study of post-conciliar documents – how those guidelines were being interpreted and applied seems to remain a challenging question calling for more reflection even today.

1.3 *Motu proprio* Ecclesiae sanctae (*1966*)

The motu proprio *Ecclesiae sanctae*, dated 6 Aug. 1966, was issued immediately after the closing of the Council. It invited all Institutes to adapt their life in accordance with the Council's guidelines. Though not a conciliar document in the proper sense of the word, given its purpose, this study considers that its rightful place is to be immediately after the conciliar documents for the sake of logical flow of information.

As soon as Vatican II ended, a study Commission was appointed to determine definite norms for the implementation of the decrees of the Council for which a suspension of the effects of the law – *vacatio legis* – had been decreed. The governing of the Church, following the conclusion of Vatican II, demanded that new norms be established and that new adjustments be made to meet relationships introduced by the Council and which would be more and more adapted to the new goals and areas of apostolate which, through the Council, had been opened up to the Church in the modern world (cf. *ES* §1). After careful consideration of the conclusions of this Commission, the norms were published as motu proprio *Ecclesiae sanctae* on experimental basis.

It established the rules to follow in implementing various conciliar documents. Among the rules were those for implementing the Decree *Perfectae caritatis* (cf. *ES* II, 1-44). *Ecclesiae sanctae* began by

---

[81] They were asked to look at their lives critically and objectively; to review their present practices and customs to which they had become habituated through long observance and to give their frank opinion of them in light of the 20th century world of rapid change and upheaval. Cf. M.B. HARMER, «Governance in religious congregations», 27.

[82] Cf. E.SASTRE SANTOS, *La vita religiosa*, 964.

stating that the purpose of the document was to provide guidelines for putting into effect the norms and teachings of the Council (cf. *ES* II, §1). The guidelines were intended to bind all religious, whether of the Latin or the Oriental church, with suitable adjustments accordingly.

It invited the religious to the renewal at spiritual, apostolic and juridical levels (cf. *ES* II, parts I, III, 16 §2). It stipulated that the principal means for achieving the renewal of religious life best suited to the times then was to be through a series of experiments established by extraordinary General Chapters. These «lived experiences» were to lead eventually to a thorough revision of the Constitutions or Principal Statutes of each Religious Institute – or its equivalent. They were to be written or re-written according to the principles set out in *Perfectae caritatis*. Though they were to be inspirational in tone, they were to be framed in the context of the common law that applied at the time to all Institutes of consecrated life according to the profession of the evangelical counsels (cf. *PC* 2).

Among the things to be adopted and renewed in the religious life that directly have a bearing to this study were: Ch. II, n. 21 on mental prayer; ch. III, n. 22 on mortification; ch. IV, n. 23 on poverty; ch. V, nn. 25-26 on living the common life; and ch. VII, nn. 33-36 on training of members. These areas identified by *Ecclesiae sanctae* for renewal from *Perfectae caritatis* are relevant to this study because the suitability of members depends to a greater extent on maturity and maturity on the other hand, depends partly on the quality of formation of members. Therefore, in relation to just causes for exclusion from subsequent profession, even though formation and community life in general are not within the scope of this study[83], the study cannot ignore paying some attention to the quality of formation on good community living as required by *Ecclesiae sanctae*. Based on *Perfectae caritatis* (cf. *PC* 6), *Ecclesiae sanctae* stated that:

> In order that religious may more intimately and fruitfully participate in the most holy mystery of the Eucharist and the public prayer of the Church and that their whole spiritual life may be nourished more abundantly, a larger place should be given to mental prayer instead of a multitude of prayers, retaining

[83] For more information on formation, cf. M. ANATHARACKAL, *Psycho-Spiritual Dimensions*, 251-288; A. BEGHETTO, ed., *Crescere insieme in Cristo*, 15-144; K. BELSOLE, «A question of models», 76-84; S. BISIGNANO, «Itinerario di formazione», 305-344; A. CENCINI, «An Institution», 433-451; K. MCALPIN, «Conversion», 39-50; Á. PARDILLA – AL., ed., *Formazione alla vita religiosa*, 9-264.

nevertheless the pious exercises commonly accepted in the Church and giving due care that the members are instructed diligently in leading a spiritual life (*ES* II, 21).

Ecclesiae sanctae encouraged the practice of mortification in line with nn. 5 and 12 of *Perfectae caritatis*. The religious are to devote themselves to works of penance and mortification more than the rest of the faithful (cf. *ES* II, 22). «However, the special penitential practices of Institutes should be revised insofar as it is necessary so that, taking into account traditions and modern circumstances, the members may in practice be able to observe them, adopting new forms also drawn from modern conditions of life» (*ES* II, 22)[84].

It emphasized the distinctive character of each Institute. Indeed, God's design for an Institute constitutes its own identity, or its vocation (cf. *ES* II, 25). And God's design expresses itself both in the purpose given to it by the founder enlightened by the Spirit and in the ecclesial recognition granted to the Institute. Members – when provided by the Institute with all that is necessary for meeting this purpose – are obliged to live up to this purpose. Anything to the contrary may be considered a sign of a lack of a vocation.

Following *Perfectae caritatis* (cf. *PC* 15), *Ecclesiae sanctae* emphasized that «in Institutes devoted to works of the apostolate, the common life – which is so important for the religious as a family united in Christ to renew fraternal cooperation – should be promoted by every means possible in a manner suitable to the vocation of the Institute» (*ES* II, 25). While the document acknowledged that «in Institutes of this kind the order of the day cannot always be the same in all their houses, nor at times in the same house for all the members» (*ES* II, 26), it encouraged that «the order be so arranged that the religious, aside from the time given to spiritual things and to works, should also have some periods to themselves and be able to enjoy suitable recreation» (*ES* II, 26).

Ecclesiae sanctae stated that the training of the religious begins with the novitiate and «should not be organized in the same way in all Institutes, but the special character of each Institute should be considered» (*ES* II, 33). It acknowledged the value of experience in acquiring the required maturity during formation when it stated that

---

[84] Regarding poverty, for instance, it stated that «Institutes especially through their general chapters should diligently and in a concrete manner promote the spirit and practice of poverty according to the intention of *PC* 13, while also seeking and urging new ways in keeping with the nature of their Institute to make the practice and witness of poverty more effective in modern times» (*ES* II, 23).

«in training [formation] an adequate and prudent place is to be given for experience» (*ES* II, 33). This formation is to be given in suitable houses. In order that it not to be purely theoretical, it should be complemented by the performance of works and duties in keeping with the nature and circumstances proper to each Institute in such a way that they gradually become part of the life to be lived in the future (cf. *ES* II, 36).

Though a great emphasis was placed on training [formation] by *Ecclesiae sanctae*, we do not find any mention of trainers/formators, especially with respect to who they should be and to their qualities. This omission, however, is critical to the implementation of any formation programme and renewal process. But, it can be argued that probably it implicitly endorsed the prescriptions of prior documents[85] since the challenge of formation is not new to this period and not peculiar to religious life[86]. Diligent selection and proper formation of candidates to re-

---

[85] Cf. CICLSAL, Instr. *Quantum religiones*, 1 Dec. 1931, *AAS* 24 (1932) 74-81. Already in 1931, CICLSAL – by then called Congregation for Regulars – with this Instruction had instructed the Superiors General of Religious Institutes and Clerical Societies on the proper religious and clerical training [formation] of their subjects and on the investigation to be carried out before profession and reception of Sacred Orders. The main purpose of this Instruction was – insofar as human frailty may permit – to forestall early enough serious cases of defection from the religious state and the sacred ranks in which the religious had been enrolled through the reception of Orders. In 1961, without any change in the chief directives and criteria contained in the aforesaid Instruction, this same Congregation proposed to take up the same question again and to treat it anew in accordance to can. 22 of *CIC/1917*, especially as regards the selection and training [formation] of candidates and the investigation to be made prior to professions and Sacred Orders. This was done in order that the aforesaid Instruction may be in complete harmony with subsequent developments and with later pertinent pontifical documents, the Instr. *Religiosorum institutio* was the outcome of this proposal. The instruction was also meant to serve as a particularized commentary on the Ap. const. *Sedes Sapientiae* on religious, clerical and apostolic training of clerics in the states of perfection. Cf. PIUS XII, Ap. const. *Sedes sapientiae*, 31 Mar. 1956, *AAS* 48 (1956) 354-365.

[86] *Religiosorum institutio* – addressed to the Superiors of Religious Institutes, Societies living common life and Secular Institutes – for instance, stated that «although frequently, for the sake of convenience, only religious will be mentioned, the norms and criteria set forth in this Instruction are also applicable to the members of the other states of perfection» and, similarly, in another location, «although the Instruction refers especially to candidates for the clerical state, nevertheless those points which by their very nature deal with the selection and training of candidates for the states of perfection are, with due adaptations, to be applied also to lay religious, including religious women». CICLSAL, Instr. *Religiosorum institutio*, 2 Feb. 1961, §4, in *EVC* 3454. This Congregation by then was called Sacred Congregation

ligious life as well as preparation of formators[87] and qualities required in such formators and spiritual directors[88] has always been the interest and concern of the Church. This seems to suggest that if the task of formation is entrusted to members who are not capable or who are not well-prepared or both, the chances are that those admitted to first profession may not have been formed sufficiently in order to attain the maturity required for assuming the obligations of religious life. Indeed, lack of formation or poor formation raises the chances of such members becoming unsuitable due to lack of maturity.

2. **Temporary profession and exclusion in the post-conciliar document *Renovationis causam* (1969)**

The period of release of conciliar documents was followed by a difficult time for the Church in general[89] and religious life in particular. In the case of Religious Institutes, this was not just because of the great task given by the Council's call for renewal under the new guidelines issued by the Council in *Perfectae caritatis* and *Ecclesiae sanctae*, but

---

for Religious and Secular Institutes (SCRSI). But for consistency purposes, this study uses its current name in reference to the author of this document and other documents emanated during this period.

[87] For instance, *Religiosorum institutio* emphasized preparation of formators and directors when it stated that they should not be assigned without preparation (cf. *RI* §2). On haphazardly chosen directors, the Instruction gave a strong caution in the same paragraph: «Superiors should beware of directors who are chosen haphazardly or who are unprepared. A natural disposition is not enough but, presupposing all the natural and supernatural gifts needed for this difficult task, they usually have a real need to study ecclesiastical pedagogy because, in this sacred discipline, those in charge of formation learn the principles, criteria, and the practical norms of clerical and religious training according to the words and the mind of the Church. On the other hand, ignorance of these principles gives rise to many lamentable evils» (*RI* §2).

[88] The same Instruction dealt with the qualities required in formators and spiritual directors in a considerably exhaustive manner: «Responsibility for formation should not be entrusted to younger religious. It should be observed, first of all, that it is extremely dangerous to turn over to younger priests the very difficult work of religious and priestly formation and especially the task of training minds, since these younger religious have not yet fully completed their own personal formation. [They have neither] achieved the maturity of age required by can. 559 §1 of *CIC/1917*, nor acquired any measure of experience in the ministry» (*RI* 33, §1).

[89] Cf. E. SASTRE SANTOS, *La vita religiosa*, 962. Cf. also the opening words of the homily of Paul VI, *In quest'ora di tribolazione per la Chiesa e di amarezza per noi*, 25 Jan. 1970, on the occasion of the canonization of Maria Soledad Torres Acosta. These words seem to suggest that the Church was going through difficult times.

more importantly, as a result of how the spirit of the Council and the guidelines were being interpreted[90]. This called for the intervention of Apostolic See. Therefore, in the years immediately following Vatican II, the Holy See produced a number of documents in the form of Apostolic letters issued by Pope Paul VI himself or in the form of Instructions published by various Sacred Congregations and special post-conciliar Secretariats and Commissions set up by the Pope. The aim of all of these documents was to set out, in detail, the manner of implementing the various Constitutions and Decrees of the Council and in some cases to specify the time and the conditions of practical experimentation concerning the directives.

Since some of these documents involved matters pertaining to discipline – an area in which experience offers more suggestions – and since, on the other hand, a special Commission was already engaged in revising the *CIC/1917* where all the laws of the Church would be arranged in a more consistent, suitable, and at the same time, definitive manner, Ecclesiastical Authority thought it wise and prudent to publish most of the post-conciliar norms before the promulgation of *CIC/1983* on an experimental basis[91]. During this interval, it was the right of the national conferences of bishops and Superiors General to make known to the Holy See their observations, to present comments on the implementation process and to make suggestions as well as present new measures. They were to give their remarks on the issues arising from the implementation process.

In this section, we study the Instruction *Renovationis causam* – one of the post-conciliar documents whose role is very significant to this study, because it tried to break new ground in the difficult task of formation with an attempt to adapt the formative period of postulancy, novitiate and temporary profession to the new circumstances of society and of formation[92]. This was a document on clarity of doctrine of Vatican Council II regarding profession of temporary vows. Religious Institutes were experiencing a vocation crisis[93] as witnessed in the

---

[90] Cf. R. AMERIO, *Iota unum*, 280-294.

[91] Cf. E.SASTRE SANTOS, «De normis», 138-186.

[92] Cf. CICLSAL, Instr. *Renovationis causam*, 6 Jan. 1969, *AAS* 61 (1969) 103-120. This Congregation by then was called Sacred Congregation for Religious and Secular Institutes (SCRSI). But for consistency purposes, this study uses its current name in reference to the author of this document and other documents emanated during this period.

[93] Cf. CICLSAL, «Dati statistici», 258; ID., «Statistica», 259; ID., «I religiosi nel mondo. Statistiche al 31-12-1975», 208-211, 126-129, 260-261; ID., «I religiosi nel mondo», 363-368.

large number of dispensations. This placed many Institutes in danger of extinction[94] as well as experiencing an identity crisis[95].

Due to the impact this document had on temporary profession, it is deemed necessary to begin its study with the *iter* of its preparation, presenting different views of consultants and then trying to highlight the innovations that the document brought about.

2.1 *The process of redaction of the Instruction* Renovationis causam

The history of the preparation of ***Renovationis causam*** is long. Its distant roots are found in the requirements of the Council in ***Perfectae caritatis*** (cf. ***PC*** 18) on training and their application by ***Ecclesiae sanctae*** II, 33-39, which invited adaptation of training to the needs of each Institute, and ***Ecclesiae sanctae*** II, 6, which gave the faculty to General Chapters to realize the appropriate changes in the Constitutions and to ask the Holy See's approval of changes that were deemed necessary in accordance to common law. During the post-conciliar period, religious life witnessed a drastic decrease in vocations and a large number of defections. This posed a problem which required that all means possible be tried in order to foster new vocations and develop those already fostered.

Following the prescriptions of ***Perfectae caritatis*** and ***Ecclesiae sanctae*** and given such circumstances, it was thought that a certain adaptation to the mentality of the time could contribute to a better selection of vocations. This led to correspondences between the Holy See and Superiors General that finally led to a great change in the formation structures especially with regard to temporary profession.

In 1965 and 1966, various opinions were presented to the dicastery responsible for religious affairs. These opinions requested flexibility of training [formation] and the possibility of substituting temporary vows[96]. On 7 Mar. 1967 the Congress of the International Union of Superiors General was celebrated, and the CICLSAL on this occasion gave certain rules for the renewal of postulancy and the novitiate which were not intended in any way to derogate from the norms of the ***Ecclesiae sanctae***. Rather, they were intended to be purely experimental in character. In reality, however, although they

---

[94] Cf. G. MORAN – M. HARRIS, ***Experiences in community***, 200.

[95] Cf. CICLSAL, «Rivisione delle Costituzioni», 233-342; E.SASTRE SANTOS, «Institución y "crisis de identidad"», 211-270.

[96] Cf. J. BEYER, «De instructione "Renovationis causam"», 23.

gave certain methods that could be used in the postulancy, those norms were not different from the legislation of the *CIC/1917*. In fact, they maintained the traditional form of the canonical novitiate in its aspect of spiritual and ascetic formation, giving greater freedom for the second year. However, this second year could be suppressed in view of the mandatory juniorate. Regarding temporary vows, the CICLSAL judged that the traditional form should not be abandoned[97].

In response to this guidance of the CICLSAL, Superiors General submitted further proposals based upon the individual experiences of their Institutes.

2.1.1 Proposals from the Superiors General

In the same year (1967), in view of the difficult times and circumstances, various religious associations in the Netherlands sent suggestions to the Superiors General. Among others, they asked them to request from the CICLSAL more freedom in experimenting with the new changes. That is to say, they wanted norms that were less juridical and less rigid for a trial in the formation of the religious especially during the period of the novitiate and temporary vows[98]. Meanwhile, in some places, what they were asking for was already being put into practice. These proposals were presented to the CICLSAL by some Superiors through a Union of Superiors General in Rome[99]. In their proposals, they wanted as an experiment the following:

i. Designation of the novitiate house by major Superiors with the faculty of being able to have novitiate in other houses (cf. can. 544 §1 of *CIC/1917*).
ii. A full year of novitiate which is not necessarily continuous (cf. can. 555, 2º of *CIC/1917*).
iii. Mitigation of the norms about interruption of the novitiate (cf. can. 556 of *CIC/1917*).
iv. Common novitiate for the two classes of members of the Institute (cf. can. 558 of *CIC/1917*).
v. Suppression of the norm prohibiting the novices from communicating with the professed members (cf. can. 564 of *CIC/1917*).

---

97 Cf. G. ESCUDERO, ed., *Renovación acomodada*, 9.
98 Cf. G. ESCUDERO, ed., *Renovación acomodada*, 10.
99 Cf. G. ESCUDERO, ed., *Commento giuridico-pastorale*, 8; J. BEYER, «De instructione "*Renovationis causam*"», 25.

vi. Exercise of ministry and opportunity for study during the period of the novitiate (cf. can. 565 §3 of *CIC/1917*).
vii. Prolongation of temporary vows until and including the third year (cf. can. 574 of *CIC/1917*).
viii. Omission of the profession of temporary vows, in such a manner that after three years of postulancy, the Superior could admit a member to perpetual profession immediately after the novitiate (cf. can. 574 of *CIC/1917*)[100].

The CICLSAL did not immediately accept these proposals. Instead, – giving importance to the matter – the CICLSAL proposed that the Union of Superiors General, through a Commission or in any other appropriate manner, carry out a careful study in connection with the diverse points concerning the formation of the religious[101]. They were requested to consider the needs, the actual problems and difficulties indicating solutions at least by way of experience. In the meantime, the National Unions of Religious were invited to study the problem and submit their conclusions[102].

The Union of Superiors General presented its study report in a relatively short period of time[103]. Based on concrete facts, the Union proposed some general principles and then focused on concrete issues that required modification in the legislation in force at that time and proposed that certain faculties be granted to the Superiors General[104].

---

[100] J. BEYER, «De instructione "*Renovationis causam*"», 25: «Domus novitiatus ab ipsis Superioribus designetur pro determinato territorio. Ob graves rationes permittatur iisdem Superioribus ut novitiatus in alia domo fiat (can. 554, § 1); novitiatus per annum integrum "etsi non continuum" fieri possit (can. 555); mitigationes rogantur pro interruptione novitiatus novoque eius exordio (can. 556); novitiatus pro una, etiam pro altera classe validus sit. Novitiatus unicus pro utraque classe proponitur (can. 557); communicatio fiat facilior novitiorum cum professis (can. 564); optatur in novitiatus decursu ut externa munera vel interna religionis officia item studia litterarum aut artium si et quatenus vera novitiorum formationi prodesse possint, permittantur (can. 565); exoptatur ut professio votorum temporariorum omitti possit. Superior maior permittere possit ut cum saltem tres anni postulatus praecessissent, statim post novitiatum vota perpetua emitti possint (can. 574); prorogatio temporis votorum annuorum expetitur usque ad tertium triennium inclusive (can. 574, § 2)». All English transl. of texts on the preparation of *Renovationis causam* are by the author except where otherwise specified.

[101] Cf. J. BEYER, «De instructione "*Renovationis causam*"», 26; M.P. AZAREDO, *Sacred bonds*, 197.

[102] Cf. G. ESCUDERO, ed., *Renovación acomodada*, 10-11.

[103] Cf. G. ESCUDERO, ed., *Renovación acomodada*, 11.

[104] Cf. M.P. AZAREDO, *Sacred bonds*, 197.

Regarding the maturity of the members, they emphasized in principle:

i. The need to integrate the preparation of novices for both religious and apostolic life.
ii. The need for formation to continue for a longer period of time.
iii. The need for a longer period of experience in order to make a decision – especially the final one – on the part of both the candidate and the Superiors[105]; that is, for both to have sufficient time to make a prudent judgement whether he and the Institute are suited for each other.

All these were aimed at having an open and fruitful religious life, perseverance in the same and reduction in defections. To achieve this they believed that

i. It was necessary to begin an initiation into religious life with a certain separation from the world so that the candidate could appreciate the value of silence and retreat and reach the degree of reflection necessary for the spiritual life.
ii. It was necessary that the formation period, especially at its initial stages, provide a faithful image of an active religious[106].

Concerning the methodology and content of the formation program, in their view the following observations needed to be made:

i. The style of life in the novitiate at the time was too different from the kind of life to which it was ordered.
ii. Excluding the exercise of the apostolate during the period of formation created the danger of forming a deficient spiritual life.
iii. There was a variance between the spiritual doctrine of the novitiate and theological studies of the time.
iv. Excessive separation between novices and professed members and the isolation of the novitiate from the rest of the community tended to make religious life in the novitiate artificial.

---

[105] J. BEYER, «De instructione "Renovationis causam"», 26: «1) exigentiam praeparationis ad vitam religiosam apostolicam quae sit, sicut vita ipsa, bene integrata et illa praedita unitate, scilicet apostolatum inter et contemplationem, quam talis vita prae se ferre deberet; 2) necessitatem ut huiusmodi praeparatio per plures annos protrahatur; 3) necessitatem pariter, antecedenter ad decisionem, praesertim si de definitiva agatur, periodi praeparationis plurium annorum, qua durante, ipse candidatus, necnon et Superiores, sibi tempus habeant ad prudenter iudicandum utrum ipse et Institutum sibi mutuo conveniant. Hoc quidem ad securiorem reddendam vitam religiosam bene apertam, foecundam et perseverantem, cum consequenti diminutione numeri eorum qui, vel votis exspiratis discedunt vel eorum dispensationem petunt». Cf. also G. ESCUDERO, ed., *Renovación acomodada*, 13.

[106] Cf. G. ESCUDERO, ed., *Renovación acomodada*, 11.

v. Formation was less flexible as to its duration; and its juridical structures were exaggerated (cf. can. 577) giving a formalistic aspect that contributed to sending away vocations[107].

Regarding temporary vows, they observed that there were cases of young candidates who came to the end of their novitiate formation without feeling spiritually or psychologically ready for the commitment involved in making vows. However, because they gave encouraging signs of an authentic religious vocation, the Superiors asked if these candidates could be allowed to remain in the religious life without binding themselves to vows in the strict sense of the term[108]. They clearly stated that these vows were little esteemed – having been introduced in the practice of religious profession at a later period. For some, it seemed possible for the candidate to acquire religious experience without vows. This is because, «psychologically and socially, the vows contribute to set an orientation subjectively definitive, but if expressed prematurely, they can prevent maturity»[109].

Concerning can. 577 of *CIC/1917* – which required the renewal of vows without any delay and that there be no interval between the end of one and the beginning of the other – the following observation was made: Its excessive uniformity seemed to hinder Institutes from organizing a training programme suited to their purposes. This prevented Religious Institutes from realizing the ideal of formation as given in *Perfectae caritatis* (cf. *PC* 18). Moreover, it appeared to them that this legislation did not help resolve the vocations crisis that they were experiencing[110]. Moreover, such legislation did not respond to the mentality of the time, as it did not take into consideration the diversity of temperament and the circumstances of persons and place[111]. Some were convinced that if the content of the canons were eased a little, it would result in a considerable decrease in ap-

---

[107] Cf. G. ESCUDERO, ed., *Renovación acomodada*, 12; M.P. AZAREDO, *Sacred bonds*, 198-199.

[108] Cf. E. HESTON, «Temporary vows and promises», 373.

[109] J. BEYER, «De instructione "Renovationis causam"», 29: «Vota temporaria possunt, psychologice et sociologice, contribuere ad statuendam orientationem subiective definitivam, sed, praemature prolata, maturationem impedire queunt». English transl. is by the author. Cf also CICLSAL, «Expositio et petitio», 286.

[110] Cf. CICLSAL, «Expositio et petitio», 286.

[111] Cf. G. ESCUDERO, ed., *Renovación acomodada*, 12-13; M.P. AZAREDO, *Sacred bonds*, 199.

plications for laicization and dispensation from vows and for that reason, they were requesting for an urgent solution[112].

In view of all the difficulties given above, the Superiors General proposed that they too be granted faculties similar to those granted by the Rescript *Cum admotae*[113] and the Decr. *Religionum laicalium*[114] concerning some provisions of the law[115]. For example, possibility of practicing religious life in each period of training in an integral manner, that is, with exercise of apostolate and determining the course of the years of training and the period of spiritual and religious formation, but without certain requirements and prohibitions of the canons. According to some, the Institute should have been allowed to proceed to permit admission to perpetual vows – or definitive incorporation – after the period of formation and experience of religious life which could be either continuous or interrupted, provided that the candidate asked for admission and as long as the period of formation lasted for at least four years and no more than twelve years in accordance with cann. 574, 575 §1 and 577 of *CIC/1917* (without prejudice to cann. 634, 974 §1, 7 ° and 982 of *CIC/1917*)[116].

Some were also of the opinion that temporary vows be suspended when necessary. Besides these requests of the Superiors General, there was the personal opinion sent by one religious to the CICLSAL which was contrary to suspension of temporary vows. The reasons[117] given by this religious were the following:

---

[112] G. ESCUDERO, ed., *Renovación acomodada*, 12-13: «El canon 577, que manda renovar los votos sin demora alguna y sin que haya intervalo entre la terminación de unos y el comienzo de otros: 1) Por su excesiva uniformidad parece privar a los Institutos de organizar un programa de formación adaptado a sus fines; puede, además, poner vocaciones en peligro. 2) Responde poco a la mentalidad de nuestro tiempo, y es tan inflexible que no deja tener en cuenta la variedad de temperamentos y circunstancias de personas y lugares. Algunos están persuadidos de que si se atenuara algún tanto veríamos una notable disminución en las peticiones de reducción al estado laical y dispensa de votos. Por eso desearían la solución como urgente». Cf. also J. BEYER, «De instructione "Renovationis causam"», 30.

[113] Cf. PAUL VI, Rescr. *Cum admotae*, 6 Nov. 1964, *AAS* 59 (1967) 374-378.

[114] Cf. CICLSAL, Decr. *Religionum laicalium*, 31 May 1966, *AAS* 59 (1967) 362-364. At the release of this document, this Congregation was called Congregation for Regulars.

[115] Cf. M.P. AZAREDO, *Sacred bonds*, 200; J. BEYER, «De instructione "Renovationis causam"», 30-31.

[116] Cf. CICLSAL, «Expositio et petitio», 287.

[117] Cf. CICLSAL, *De religiosorum institutione*, VI, 2, I, 53.

i. By its very nature, public religious vows cannot be left unstable and uncertain.
ii. No help would be given to the religious at the time of difficulty by favouring superficiality in admission to vows that could easily be suspended.
iii. From the theological point of view, vows require greater credibility and commitment.
iv. Easy grant of the dispensation from the vows does not favour having high esteem of the vows and perseverance in the vowed life.

The religious who sent these reasons to the CICLSAL added the following remarks to his reasons: «My humble opinion is negative with respect to the suspension in question, but at the same time it seems desirable to have a profound reform of the canonical norms on temporary vows»[118]. He proposed the following instead of suspending temporary vows:

i. Suppression of temporary vows and replacing them with promises with canonical consequences and with the nature of public vows.
ii. Obligatory temporary vows but with duration reduced to one year and annually renewable[119].

His first opinion seems to have been shared by many religious and several consultants as we shall illustrate shortly.

The CICLSAL after receiving the petition for a period of experimentation and proposals for modification of law from the Superiors General, sent these to the Supreme Pontiff who delegated the same dicastery to study the question with regard to the novitiate studies and apostolic experience, duration of temporary vows, its suspension, duration of the novitiate and other matters[120]. In turn, the CICLSAL sought the opinion of Consultants in this regard[121].

2.1.2 Questions for the Consultants

The CICLSAL prepared questions and asked the opinion of twenty consultants. In these questions, issues were raised concerning the interruption, substitution or suppression of temporary vows as well as

---

[118] CICLSAL, *De religiosorum institutione*, VI, 2, I, 54: «Il mio umile parere è negativo nei riguardi della sospensione in oggetto; ma nello stesso tempo mi sembra auspicabile una profonda riforma dell'ordinamento canonico dei voti temporanei».

[119] Cf. CICLSAL, *De religiosorum institutione*, VI, 2, I, 54-55.

[120] Cf. J. BEYER, «De instructione "Renovationis causam"», 31; M.P. AZAREDO, *Sacred bonds*, 201.

[121] Cf. G. ESCUDERO, ed., *Renovación acomodada*, 13.

the possibility of replacing the vows with other bonds or promises to last at least three years. The Consultants were also asked «whether, after the first year of the novitiate, it would be necessary in accordance with can. 574 of *CIC/1917* to profess temporary vows and whether it would be permitted to suspend or suppress the temporary vows once professed»[122]. Among others were the following questions:

i. In accordance with can. 572 §2 of *CIC/1917*, for the validity of perpetual profession – solemn or simple – is it required that a simple temporary profession according to the norm of can. 574 of *CIC/1917* precede perpetual profession; or according to the norm of the Constitutions, can it be substituted for other bonds different from temporary vows such as a promise of fidelity or an oath?
ii. Can temporary vows be suspended by the Superiors General with the consent of their respective councils even if it was renewed every year according to the norm of the Constitutions? And for valid perpetual profession, can time be computed from before the suspension ended or after the member returns to religion; and is there any novitiate or other appropriate testing required in such cases?
iii. Can the lawful Superiors prescribe more than three years of temporary profession according to can. 574 of *CIC/1917*[123]?

2.1.3 Opinions of consultants

Question I: On the possibility of replacing the three years of temporary vows with another form, with a minimum duration of four years.

---

[122] CICLSAL, *De religiosorum institutione*, I, pars II, 31-32: «Post novitiatus annum canonicum initio formationis religiosae peractum, opportunum est legem imitare can. 574 de votis temporariis statutum? Opportunum est permittere, ut vota temporaria suspendate aut interrumpantur?».

[123] CICLSAL, *De religiosorum institutione*, I, pars II, 35: «1) Utrum sustineatur praescriptum can. 572 §2, ex quo ad professionis perpetuae sive sollemnis sive simplicis validitatem, praecesserit opus est professio simplex temporaria ad normam can. 574; an eiusmodi vota temporaria ad normam constitutionum substitui possit alio vinculo, ut promissione fidelitatis vel iuramento? 2) Utrum legitimi Superiores vota temporaria vel alia vincula praescribere vel permittere possint etiam ultra triennium can. 574 concessum? 3) Utrum eiusmodi vota temporaria vel alia vincula, etsi ad normam constitutionum quotannis renovata, a Superioribus Generalibus cum consensu sui Consilii ita suspendi possint, ut tempus ante suspensionem cum votis transactum currere pergat et pro professione perpetua valide emittenda computari possit, postquam sodalis ad religionem redit, nullo praemisso novitiatu aut alia congrua probatione; et quatenus negative».

Out of a total of nineteen consultants who responded, five of them were in favour of the vows and rejected possible replacement of any kind. Seven argued for the abolition of the vows and six were in favour of both vows and promises leaving the freedom and opportunity of choice to each individual.

Their reasons given in favour of temporary vows included:

i. «Young people need to be committed; a simple promise of fidelity does not seem satisfactory»[124].
ii. As regards substitution of another form of preparation in place of temporary vows – a simple promise or simply a prolonged noviciate – there is no great advantage. In fact, the temporary vows give an individual the opportunity and the obligation to live the religious life exactly as envisaged in the Constitutions[125].

Among the reasons given for replacement of temporary vows in favour of promises or other juridical bonds were:

i. «A period of four years without vows after the novitiate gives young religious time to judge in full freedom their vocation»[126].
ii. «In this case the only religious profession would again be perpetual and, no doubt, it would acquire much greater value and would offer greater guarantee of stability»[127].
iii. The abolition of triennial vows is favoured because of lack of psychological maturity in the candidates and their readiness to seek a dispensation from temporary vows[128].

The reasons given can be summarized into two:

i. Candidates' immaturity prevents them from acquiring the necessary ability to discern their vocation and deprives them of the effort to embrace this vocation.
ii. The need to return to perpetual profession as the only profession such that those who embrace this profession will do so with high es-

---

[124] CICLSAL, *De religiosorum institutione*, I, pars II, 127: «Mantenimento dei voti temporanei, perché i giovani hanno bisogno di impegnarsi, una semplice promessa di fedeltà non pare soddisfacente».

[125] Cf. CICLSAL, *De religiosorum institutione*, I, pars II, 57.

[126] CICLSAL, *De religiosorum institutione*, I, pars II, 30: «Une période de quatre ans sans voeux, après le Noviciat, donne aux Jeunes Religieux le temps de juger en pleine liberté de leur vocation».

[127] CICLSAL, *De religiosorum institutione*, I, pars I, 81: «In questo caso l'unica professione religiosa tornerebbe ad essere perpetua e senza dubbio acquisterebbe un valore molto più sentito e offrirebbe maggiori garanzie di stabilità».

[128] Cf. CICLSAL, *De religiosorum institutione*, I, pars II, 51.

teem and assure greater stability for the individual as well as the community.

The rest of the consultants (six) were of varied opinions and contemplated other possibilities as feasible for this formative period. For instance, one of them said: «I am in favour of vows, either an oath or a promise – in my opinion, these are juridically the same – but to be renewed every year»[129].

As can be seen from the responses from the consultants, there were very varied opinions indicating that there was no clarity on the matter. This variety, however, helped the CICLSAL to make a response on whether vows should be substituted by a promise or not.

As for the time that they should take: all agreed on at least three years.

On the maximum time: they had a great range of possibilities ranging from three to twelve.

Question II: On the possibility of suspending the temporary vows or equivalent preparation.

As in the previous question, responses were varied. Sixteen out of twenty consultants responded. None of them responded positively: Nine responded, «in favour, to some extent» (***placet iuxta modum***), while seven responded, «not in favour» (***non placet***).

Those who responded «***placet iuxta modum***» admitted this possibility for special or exceptional cases. They did not admit it as a common principle that could be applied in all cases. Their reasons against the possibility of suspension of vows are summarized as follows:

> Staying too long in a state of uncertainty or non-commitment is not at all a factor of maturity for the young, it is quite the contrary[130]. The phenomenon of affective immaturity, psychological instability and crisis of vocation would not find adequate remedy in the suspension of the vows. This instead would favour certain superficiality in admitting them to vows and less commitment to resistance in the candidate experiencing vocation crisis[131].

---

[129] CICLSAL, *De religiosorum institutione*, I, pars II, 105: «Vota, vel iuramentum, vel promissio - meo iudicio, sub adspectu iuridico, idem est - sed singulis annis renovanda».

[130] CICLSAL, *De religiosorum institutione*, I, pars II, 15: «E però da notare che rimanere troppo a lungo in uno stato di incertezza o di non-impegno non è affatto un fattore di maturazione per il giovane, tutt'al contrario».

[131] CICLSAL, *De religiosorum institutione*, I, pars II, 110. 143-144: «Il fenomeno della immaturità affettiva, della instabilità psicologica e le relative crisi di vocazione, non troverebbero rimedio adeguato nella sospensione dei voti che favorirebbe invece

The CICLSAL studied these responses and did not admit suspension since the promises made to God cannot be suspended at will. The only exception provided for was that of military service which was not the will of the subject. Rather, the civil law forced the suspension of the vow. The Church welcomed a member back after military service precisely because while absent he remained a member of the community albeit with suspended vows.

Question III: On how long temporary vows or other form of preparation for perpetual profession should last.

To this question, can. 574 of *CIC/1917* had set a maximum of six years. The proposal was to extend it to twelve. Five out of nineteen consultants agreed on this extension. Four of them preferred a maximum of nine years since a very long time increases the difficulties both for the individual as well as the Institute. It also renders it difficult to make final decision. Three consultants proposed eight years, while six of them responded that the provisions of can. 574 of *CIC/1917* be respected. Only one consultant responded that this period of trial may last three years.

2.1.4 A meeting of consultants

On 29 April 1968, the CICLSAL convened a meeting of the Consultants who had studied the implication of the petition of Superiors in order to make up for what could be missing in the votes of the Consultants and to discuss their responses[132]. Finally, with all these answers and considerations in hand, from 25-26 June of the same year (1968), the Plenary Council of Cardinals of the CICLSAL was convened to review the material and provide an adequate response to the renovation and accommodation that Superiors General asked for with respect to formation and temporary profession[133]. The Congregation convoked a Plenary of Cardinals with the theme of ***Religiosorum Institutione seu de novitiatu et votis temporariis***. For the greater part, they affirmed the propositions according to the mind of the Superiors General[134]. The result of this meeting prepared a background for the emanation of the In-

---

una certa superficialità nell'emetterli e un minore impegno di resistenza nel soggetto in crisi di vocazione».

[132] Cf. M.P. AZAREDO, *Sacred bonds*, 201; G. ESCUDERO, ed., *Renovación acomodada*, 13.

[133] Cf. J. BEYER, «De instructione "Renovationis causam"», 32; G. ESCUDERO, ed., *Renovación acomodada*, 13.

[134] Cf. M.P. AZAREDO, *Sacred bonds*, 201.

str. *Renovationis causam* of 6 Jan. 1969 on the renewal of religious formation.

2.2 *Instruction* Renovationis causam

Renovationis causam is unique in that, unlike other Instructions, it did not explicitly take into account the documents that immediately preceded it, even though they were of great importance and of recent date, nor the Pontifical teachings. Also, it did not make any reference to Canon Law, not even to indicate its derogation or to grasp the force of the new norm[135]. Only the conciliar documents *Lumen gentium* and *Perfectae caritatis* were cited sparingly. It did not deal with Pontifical laws approved by the Pope in a specific form (*forma specifica*). Rather, it was an act in which the dicastery, by virtue of a special mandate from the Supreme Pontiff, formulated and published the necessary norms. Therefore, it had a juridical and normative character reinforced from the special mandate of the Supreme Pontiff, in virtue of which the CICLSAL proceeded to establish and promulgate the norms of *Renovationis causam*.

The content of the Instruction was a combination of traditional and proposed new methods. Consequently, the document had a preface and three parts: the first part was doctrinal and established some principles (cf. *RC* 1-9); the second part was normative and presented some norms and faculties (cf. *RC* 10-38); the third, which was very short, was a sort of appendix and determined the way of executing the norms and using the faculties. The nature of this content is important for it brings to attention the importance of considering all three parts together in order to interpret this document in accordance with the mind of its author.

As noted, the document began with a preface, general in nature, on the task of the Church in safeguarding religious life. Having its distant roots in Vatican II, the preface proceeded from renewal of the Church and religious life undertaken by the Council, that is, the renewal should be promoted by the Religious Institutes themselves (cf. *ES* II, §1), but under the leadership of the Church (cf. *PC* 2) and the vigilance and protection of her authority (cf. *LG* 45). It then moved on to exercise the authority granted to the CICLSAL by *Ecclesiae sanctae* (cf. *ES* II, §6). By means of this concession, the Congregation for Religious and for Secular Institutes – currently called CICLSAL – could

[135] Cf. A. GUTIÉRREZ, «Renovationis causam – Introductio», 29.

now, beside other things, grant permission for experimentation contrary to the common law.

This move was motivated by the fact that the suitable renewal of the Religious Institutes called for by the Council depended very largely on the training [formation] of the members (cf. *PC* 18). Yet this formation was experiencing crisis that needed attention. Therefore, it was necessary that the laws concerning the cycle of formation should undergo some change in order that they would be adapted to the mentality of the day (cf. *PC* 3). To make new laws, however, experiments were required and, in fact, within limits that are broad enough and for a period of time sufficiently long enough. The reason for this necessary time of experimentation was explained in the Instruction as follows:

> It is evident that no new clear and definitive legislation can be formulated except on the basis of experiments carried out on a sufficiently vast scale and over a sufficiently long period of time to make it possible to arrive at an objective judgment based on facts. This is most true since the complexity of situations, their variations according to localities and the rapidity of the changes which affect them make it impossible for those charged with the formation of the youth to an authentic religious life to determine *a priori* which solutions might be best (*RC*, introduction §7).

Therefore, after a careful examination of the proposals submitted, the Congregation for Religious and for Secular Institutes – currently CICLSAL – judged it appropriate to relax some of the canonical norms making possible the «experience necessary» for the renewal, but without intending a «lawless» state since the Instruction, in the preface observed that although the existing juridical norms were being notably eased, this was not be to the ultimate detriment of the fundamental religious values which both the former legislation and the new possibilities had endeavoured to safeguard (cf. *RC* introduction at §8). It again emphasized in the conclusion of the preface that in order to be authentic, every revision of the means and rules of religious life was to presuppose at the same time a redefining of the values essential to religious life, since the safeguard of these values was the aim of these norms. By these, the Instruction made it clear that no one should get the erroneous impression that these new provisions were intended, in any way, to contribute to a watering down of the religious life. Their purpose, on the contrary, was to make it possible to use new approaches to make religious life more realistic and earnest, and thus to enable it to make to the Church, at large, the contribution which was expected of it. There-

fore, ***Renovationis causam*** – with the innovations it introduced – aimed at responding to the proposals presented by major Superiors while giving opportunity to comply with the renewal that ***Perfectae caritatis*** had called for.

2.3 Renovationis causam *on temporary profession*

In ***Renovationis causam***, importance was given to perpetual profession as assuming its full significance. Consequently, it called on the need for preceding it by a period of immediate preparation, lasting for a certain length of time (cf. *RC* 35 (II)). This «immediate preparation period» was described as the period of temporary vows or other sacred bonds. The General Chapter was to determine the duration (cf. *RC* 37 (I)) and details of it. It would depend on the nature of each Institute and of their manner of organizing the whole period of probation which follows the novitiate. But just as the novitiate could not be indefinitely prolonged, but could last for a maximum of two years, so according to the Instruction, the time of probation before perpetual vows could not be reduced to a shorter period than three complete years, nor prolonged beyond nine complete years (cf. *RC* 24). The Instruction however, emphasized that the success of this period depends on the quality of its preparation and implementation which lies squarely with the leadership of the Institute and the cooperation of members. It reminded the Institutes that the apostolic action and services in the apostolic Religious Institutes are not the primary ends of religious profession (cf. *RC* 5)[136] and, therefore, should not be allowed to obscure the very purpose of this period.

The Instruction clearly specified the effects of temporary commitment: A candidate who binds himself by a temporary commitment after the novitiate was incorporated into the Institute and became a member. It entailed observing the Rule, Constitutions and other regulations of the Institute (cf. *RC* 36). Moreover, after assuming the commitment, the candidate was in every case, obliged to conform to the subjective norms, in which there is community life, discipline of the Institute, and the evangelical counsels of obedience, poverty and chastity[137]. The General Chapter was to determine the other aspects and consequences of this commitment, such as the nature of the bond, its content, duration, obligation, cessation, among others.

---

[136] Cf. G. ESCUDERO, ed., ***Commento giuridico-pastorale***, 13.
[137] Cf. G. ESCUDERO, ed., ***Commento giuridico-pastorale***, 161.

This document, therefore, put emphasis on the necessity of temporary profession of vows in continuity with the precedent documents.

2.3.1 The nature of religious profession and level of maturity of candidates to religious profession

Quoting *LG* 44, *Renovationis causam* recalled the doctrinal and spiritual principles on the nature and proper value of religious profession (cf. *RC* 2). The document, citing *PC* 14, stated with vigour the value of the three vows, and, making reference to *LG* 44, it reaffirmed that the perfection of the consecration is proportionate to the strength and stability of the bonds. It defined religious profession as an act of religion and a special consecration whereby a person dedicates himself to God (cf. *RC* 2). The document also affirmed the desire and willingness of the youth called to religious life to live up to this vocation in all its requirements (cf. *RC* 2).

There were authors who were in support of this point of view when speaking about maturity of candidates. They confirmed that the youth of the time were more mature when they stood at the doors of religious life[138]. But there were also those of the opinion that though physically and intellectually they were well-developed, they did not advance equally well in the development of their will and affectivity[139].

2.3.2 Replacement of temporary vows with other sacred bonds

Renovationis causam gave a special faculty to the General Chapter (cf. *RC* 34 (I)) when it permitted the Chapter to abolish the obligation imposed by can. 574 §1 of *CIC/1917* to take temporary vows before the taking of perpetual vows and to replace it with some other kind of commitment. At the same time, however, the same Instruction also expressed vividly the value of temporary vows (cf. *RC* 7). It allowed the use of this faculty but did not impose it. Consequently, if no decision was taken by the General Chapter on the subject, can. 574 §1 of *CIC/1917*remained in force, in virtue of which, temporary profession comprised religious vows. But when the decision was taken, from the juridical point of view, the Institute was left entirely free to decide upon the nature of the commitment, provided that the competent authority examined seriously the opportunity for making such a decision. Consequently, in n. 6, the Instruction stated that «a candidate is bound by

[138] Cf. J. GALOT, «De "promissione" in vita religiosa», 168-169.
[139] Cf. A. GUTIÉRREZ, «Renovationis causam – Introductio», 31-32.

temporary vows or by some other form of commitment». A number of reasons were given by the Instruction for this move including:

i. Giving enough time for maturity necessary for stable commitment since «it is proper that when he pronounces his perpetual vows, the religious should have reached the degree of spiritual maturity required in order that the religious state to which he is committing himself in a stable and certain fashion may really be for him a means of perfection and greater love rather than a burden too heavy to carry» (*RC* 6).

ii. Perpetual vows can be prepared for without making temporary vows (cf. *RC* 7).

iii. More frequently, than in the past, a certain number of young candidates come to the end of their novitiate without having acquired the religious maturity sufficient to bind themselves immediately by religious vows, although no prudent doubt can be raised regarding their generosity or their authentic vocation to the religious state. This hesitancy in pronouncing vows is frequently accompanied by a great awareness of the exigencies and the importance of the perpetual religious profession to which they aspire and wish to prepare themselves (cf. *RC* 7).

From a close analysis, these reasons for permitting the replacement of vows with other commitments appear to be purely psychological in nature and can be summarized into two *foci*: the immaturity of young people to take religious vows[140] and the awareness of the importance of vows and the obligations of perpetual profession to which they aspire. There is a recognition that candidates often feel not prepared to profess final vows and this necessitates a longer period of preparation. It can, therefore, be concluded that it is to this psychological need that *Renovationis causam* responded. A number of authors such as G. Escudero and E.L. Heston already made this assertion.

G. Escudero argued that the reasons were psychological[141] and in support of his argument stated that «It should be clear that, as far as substance is concerned, a probationary period based on a promise is not fundamentally different in juridical effect from one based on temporary vows». E.L. Heston too shared the same opinion that «the difference was more in the psychological than in the real objective order»; and, in support of the prescriptions of the document, he added

[140] Cf. J. GALLEN, «Comments on the Instruction», 891.
[141] Cf. G. ESCUDERO, ed., *Commento giuridico-pastorale*, 72.

that «since the problems which called for a new solution were in the psychological order, it was natural that their solution should be found there also»[142].

2.3.3 Opinion of various authors on the possible replacement of vows

In spite of the reasons given by the document itself which placed the motivation in the psychological order, this novelty attracted debate among authors especially regarding the motivation for the replacement. The authors discussed the possible reasons that inspired the granting of the possibility of replacing temporary vows with other commitments. For some, *LG* 44 had provided the possibility for any Christian faithful to profess evangelical counsels by vows or other sacred bonds; *Renovationis causam* simply endorsed this. In particular, other than a lack of the psychological and spiritual maturity required to decide on full commitment on the part of candidates, some authors such as E.L. Heston and P. Molinari gave other reasons for the need for such a change including: The constant increase in requests for dispensation from vows, both perpetual and temporal, which led to a devaluation of religious profession and the desire for stability of religious life that caused the Church to grant more time to the candidate and the Institute for preparation for perpetual profession[143].

Others, like G. Escudero[144], added theological reasons. In Escudero's opinion, profession of vows should only be perpetual. Therefore, the change was a re-evaluation of perpetual profession as the only religious profession and an expression of the desire to have some bond with only juridical elements. According to J. Aurby and J. Galot, there was only one reason, that of doctrine[145]. This is evi-

---

[142] E.L. HESTON, «Temporary vows and promise», 377.

[143] Cf. E.L. HESTON, «Temporary vows and promise», 374; P. MOLINARI, *La formazione nella vita religiosa*, 52-54.

[144] Cf. G. ESCUDERO, ed., *Commento giuridico-pastorale*, 71-72.

[145] This is not surprising, given that, already before this document, according to some scholars, due to the fact that «consecration» in its very nature is perpetual – a fact which is accepted in the theology of Vatican Council II as well – there appeared to be a contradiction in the concept of temporary profession. The question being raised then was: how can it be temporary when the candidate during the first profession of vows makes a commitment to God? If one argues that consecration in itself is perpetual but it is in the profession where Canon Law has suspended certain juridical effects to protect the interests of both the individual and the Institute, one falls into a

dent in their words: «The reason is not a lack of established psychological or spiritual generosity of the novice but an opportunity for an attitude of humble wisdom in the face of the concrete and complex character of total self-giving»[146] and «religious profession is unique, and in itself demands to be perpetual. Reducing it to a determinate time is doing violence to it; therefore, the Instruction has expressed the discomfort felt in the face of temporary vows»[147].

These varied opinions seem to suggest a widespread lack of clarity at the time on the doctrine of temporary profession implying the existence of a gap in the theological exegesis of religious profession. But there are also found some voices which attempted to bridge that gap by developing the theology of vocation. One such author is J. Beyer. J. Beyer's profound theological argument seems to suggest that religious profession cannot be well understood unless it begins from the source of vocation: the call. His argument was as follows: In a religious profession, the vows, the promise and the oath – with which a promise is confirmed – have only a subsidiary function; what matters in the first place is the call from God. God calls and consecrates the one called to himself to his work of salvation and to his love. In responding to this call, one consecrates himself to God. And this is accomplished beginning with the first «amen», the «yes» to God, through whom the one called has responded even before he joins postulancy, enters the novitiate and participates in every canonical, liturgical profession. That «yes» is the essential point; hence, whether one is exempted from profession or dismissed from the Institute, before God, the call and the response to the call remains.

J. Beyer added that the vows come as a means of obligation to demonstrate the manner in which one is to live the evangelical counsels and to support one's desire to observe them, binding him to their observance before God, and in his honour. One can commit himself to the evangelical counsels with other sacred bonds which may be easy, less

---

contradiction between consecration to God that must be perpetual and temporary consecration performed.

[146] J. AUBRY, *Teologia della vita religiosa*, 171: «La ragione non è una mancanza di stabilità psicologica né di generosità spirituale nel novizio, ma l'opportunità di un atteggiamento di umile saggezza davanti al carattere concreto e complesso della totale donazione di sé».

[147] J. GALOT, «La professione religiosa», 514: «In realtà, il motivo essenziale della sostituzione era di ordine dottrinale. L'Istruzione faceva allusione parlando della "unica professione perpetua". La professione religiosa è unica, e per se stessa esige di essere perpetua. Ridurla a un tempo determinato, è farle violenza. L'Istruzione esprimeva il disagio avvertito di fronte a voti temporanei».

rigorous perhaps. Nevertheless, whatever the nature of the bond, it should not prevent or relax the total gift of self, the first «amen» of the profession, one intends to make before the Church through that consecration, that is, the consecration of one's life in Jesus Christ and with Him.

For J. Beyer, the counsels are the consecrating elements of one's consecration of life. One consecrates himself through the counsels by assuming them – in the form of vows or other sacred bonds. He explained how this happens: They allow one to live more deeply the paschal mystery and to follow Christ more closely, if such is the will of the Father. In fact, taking the counsels as a norm of life, one enters into the baptismal renunciation as dying with Christ to live his life, to put on Christ and to testify to his glory as son of the resurrection. In this act – both Eucharistic and baptismal – the Father associates the one called with the sacrifice of his Son, consecrated in truth – the act by which he dedicates his life for the salvation of the world. So every consecration to God is a consecration to the Father in Jesus Christ, in the power of the Spirit. This makes this consecration Trinitarian in its very nature. Moreover, this consecration is Eucharistic – ecclesial – since it is for the praise of God, the forgiveness of sins, and the life of the world. Each consecration to God the Father has a dimension of the love of Christ for the Father and for men; in this sense, every consecration is apostolic, even if not committed to particular works of the apostolate. It is apostolic, because it is the soul and foundation of every apostolate both as an act of Christ in the Spirit and as a gift and witness of God's love and our response to that love[148].

From this exegesis, it can be seen that J. Beyer's theological exegesis demonstrates that there is no contradiction in the phrase «temporary profession of vows». His argument shows that even though it is true that perpetual vows can be prepared for without making temporary vows; it is equally clear that, for him who has heeded the call of Jesus to leave everything to follow Him, there can be no question of how important it is to respond generously and whole-heartedly to this call from the very outset of his call to religious life (cf. *RC* 7). This free and whole-hearted response is a substantial requirement of religious profession and in no way should this requirement be obscured by any means whatsoever for it binds in conscience. Considered in the light of ***Renovationis causam***, the making of temporary vows is completely in har-

[148] Cf. J. BEYER, «Voti perpetui», 839-840.

mony with the requirement of a call-response character of vocation to religious life; for, «while still retaining its [juridical] probationary character by the fact that it is [juridically] temporary, [theologically] the profession of first vows makes the young religious share in the consecration proper to the religious state» (*RC* 7). And therefore, there is no contradiction whether juridically or theologically. The apparent contradiction is purely psychological.

With the development of theology of vocation, it is becoming explicitly evident that vows are only one of the means which may be employed in the consecration of life. They are neither the consecration itself, nor are they essential to it. What would constitute an act of religion is the profound recognition of the sovereignty of God and the total gift of self in holocaust to God – one's total consecration to God. As means employed in the consecration of life, however, they hold particular importance in the lives of those who willingly profess them, the Institute and the Church. This is rightly so because the act of religious profession, even temporary, is an act of the virtue of religion which places the person in the religious state and generates a particular bond with God, the Church and the Institute. This implies incorporation to a particular Religious Institute, and it gives to the religious a new canonical status in the ecclesial society. The actual religious life in such an Institute which is essentially communitarian, supposes incorporation in the community with proper laws, authority and all the consequences which follow from it. With incorporation, there follows new obligations which must be assumed – that is, the commitment – by a particular title, to pursue the perfection of charity in fidelity to the Gospel, to the Rule and to the existing norms of the Institute, in conformity with the proper vocation and the charism of the Institute. The religious in turn, binds himself to programme his life according to that of the Institute. In Apostolic Institutes, religious profession binds one to the exercise of the apostolate and confers radically, the canonical mission: the religious gives himself to the Church and the Institute.

The Institute, on the other hand, represents for the professed the proper charism according to which he must seek to sanctify himself aided by grace and actuate the design of God for him. Therefore, belonging to the Institute is understood not only in its purely juridical sense, but also in its theological and spiritual content.

Consequently, religious profession generates relationships, obligations and expectations that serve as guidelines: in the discernment of

one's vocation to a particular Religious Institute, in determining the suitability of members once professed and in deciding on the justness and proportionality of the causes before exclusion from subsequent vows. As a result, by religious profession, the professed not only becomes a participant in the graces and the spiritual privileges of the Institute, but he is also bound to live up to the obligations brought about by such profession with a spirit of perseverance. Consequently, any decision that may terminate this incorporation such as exclusion from subsequent profession binds in conscience and, therefore, necessarily requires just causes.

2.3.4 Positive reception of the Instruction *Renovationis causam* and the consequent challenges

The new possibilities brought about by ***Renovationis causam*** were well received by the Superiors General as possible solutions to the challenges of vocation that they were facing. The Instruction had stated that «the norms and directives contained in the Instruction deal directly with Religious Institutes in the strict sense» (*RC* 38 (II)). The word «religious» has a more restricted meaning in ***Renovationis causam*** than in chapter VI of ***Lumen gentium***, where the religious are understood to include the religious in the canonical sense, Societies of Common Life[149] without Vows and Secular Institutes. The Instruction dealt with the reform of the legislation and methods concerning religious formation, addressed to the religious understood in the canonical sense according to cann. 487 and 488, 1º of *CIC/1917*. Among the Religious Institutes, there are those described in *PC* 8, which are erected for the exercise of the apostolate. It is to these Institutes that the Instruction was directly intended. «Other Institutes, however, if they so wished, were free to follow them in the proper organization of their formation programme and in whatever was best suited to the nature of their activities» (*RC* 3).

Therefore, the Superiors must have felt that it was meant for them directly. And it was clear in their opinion that both temporary vows

---

[149] These Societies are not religious according to can. 673 §1 of *CIC/1917* and as such were not bound by the canonical norms concerning novitiate (cf. can. 677 of *CIC/1917*) or further formation (cf. can. 678 of *CIC/1917*). Consequently, they did not need the faculties granted by ***Renovationis causam***. Cf. J. BEYER, «De instructione "Renovationis causam"», 22. Similarly, Secular Institutes are not religious (*PC* 11) and, hence, these norms were not addressed to them or to other associations of evangelical perfection (*RC* 3).

and other commitments of *Renovationis causam* had the same rationale as already seen in their proposals. Both were aimed at solving a situation of crisis and poor vocational perseverance in religious life by the candidates. What they might have not paid attention to or may have simply ignored, amidst the challenges they were experiencing, was the fact that *Renovationis causam* maintained that there was a significant difference in the nature of temporary vows and that of other commitments. As a hint to this difference, the faculty to replace temporary vows with other sacred bonds was given with caution and n. 7 of the Instruction is very significant here. It stated: «No Institute should decide to use the faculty granted by this Instruction to replace temporary vows by some other form of commitment without having clearly considered and weighed the reasons for and the nature of this commitment». In other words, in dealing with such a great a change which must be brought about only for serious reasons, there should have been evidences of positive experiences which supported that decision. To explain how grave the change could be, the Instruction further explained that the making of temporary vows was completely in harmony with the requirement of a generous and whole-hearted response to God's call from the very outset of religious life. For, while still retaining its probationary character by the fact that it was temporary, the profession of first vows made the young religious share in the consecration proper to the religious state (*RC* 7). The same was not said of the other sacred bonds.

Secondly, the Instruction also extended time so that the candidate could reflect and be mature enough for religious obligations at the time of perpetual profession, which in the Superiors' view, was a good thing because it aimed at protecting perpetual profession. This was precisely what they were looking forward to promoting.

Given the fact that it was well-received as a solution to the proposal Superiors General had presented to the dicastery, the Instruction revolutionized the practice of temporary profession in Religious Institutes. Superiors General proposed *ad experimentum* replacing the temporary vows with promises endowed with canonical consequences, but not the public character of vows. Its application eliminated temporary vows from the canonical programme of formation, replacing them with sacred bonds or promises. But with this apparent solution, there emerged implementation challenges, to which we now turn our attention.

2.4 Renovationis causam *on the importance of proper law and responsible leadership in developing vocation*

The Instruction recognized that the complexity of the situations and, especially, the growing diversity of Institutes and their activities, made it increasingly difficult to formulate any useful set of directives equally applicable to all Institutes everywhere. It could not, therefore, give universal norms and rigidly apply them automatically in all cases. Consequently, it sets forth much broader norms which gave to individual Institutes the possibility of prudently choosing the solution best suited to their needs. At the same time, the document affirmed that the youth who were called by God to religious life were not less desirous than before. They desired to live up to this vocation in all its requirements, provided these requirements were certain and authentic (*RC* 2). This placed the burden of making these requirements certain and authentic on individual Institutes through their proper legislations and internal governance.

This was a truly demanding responsibility that the Instruction was giving to individual Institutes. It required a true – not imagined or merely perceived – sense of personal responsibility, taking into account all the circumstances of the environment and of the person. The CICLSAL counted on the *sense of responsibility* of the Superiors and the General Chapters to determine proper norms for the formation of young religious, taking into consideration the theological and spiritual principles already elaborated in the conciliar documents and in keeping with the general norms given in *Renovationis causam*. The experiments, therefore, were to be channelled along the way marked out by the Instruction. For the rest, *ES* II (6) was to remain valid.

However, even though the CICLSAL hoped for prudence and a sense of responsibility on the part of Superiors and General Chapters in exercising the faculties granted, an investigation by M.P. Azaredo on the application of *Renovationis causam* in various Religious Institutes revealed significant challenges which were doctrinal, juridical and practical in nature. In particular, there were practical problems with large variation in practice within the same Institute, ambiguities where the decision was left solely to the competent Superior or the candidate without any guidelines, conflicting norms such as having all the rights and obligations but at the same time lacking active and passive vote in elections and violation of the norms of *Renovationis causam*. Others had norms on paper but the Superiors did not observe those norms. Others had promises but they specified that they were made to God, not to the Institute. Others

expressed uncertainty about the following: from the theological point of view, what is the nature of these promises; what commitment does it impose and towards whom is its fulfilment directed: God, Superior, or Institute; with what limits before one's conscience; from the practical point of view, are they true religious[150].

These questions further demonstrate that there was a significant confusion in its implementation. Whereas some asserted that there was no difference between the juridical effects of vows and that of promises, others had made a distinction. There were also those who pointed out several problems arising from the implementation of the Instruction. The findings of M.P. Azaredo's study clearly indicate that many Institutes may not have been prepared for the broad discretion that was to come to them with the concession of the faculties they had requested. This seems to suggest that even the exercise of a faculty – like every other responsibility – requires a certain measurable degree of preparedness and some vigilance in order to help manage the challenges as well as to ensure that there are no abuses in the exercise of the granted faculty that may work contrary to the spirit of the faculty granted.

These challenges probably may have influenced the *CIC/1983* which retained only vows for religious profession and not other sacred bonds.

Considering the significant confusion between vows and other sacred bonds, consequently this study needs to look briefly at the nature and juridical effects of both vows and other sacred bonds and their distinct features as well as what they share in common in the context of *Renovationis causam*. Since the Instruction gave the possibility of replacing the vows with other sacred bonds (cf. *RC* 34) but did not establish what these other bonds[151] were – all it said was that these

---

[150] Cf. M.P. AZAREDO, *Sacred bonds*, 269-294.

[151] Concerning what kind of sacred bonds can replace temporary vows, *Renovationis causam* left Institutes free to decide. Consequently, what is available as possible forms of these other commitments come from opinions of various authors, most of whom considered a «promise» and an «oath» as possible bonds that could replace temporary vows. P.C. Gorricho, for instance, contemplated nine different forms of sacred bonds: «(i) Vota privata castitatis, paupertatis et oboedientiae; (ii) Iuramentum aut promissio castitatis, paupertatis et oboedentiae; (iii) Consecratio Deo in castitate, paupertate et oboedientiae; (iv) Votum (iuramentum, promissio) fidelitatis sive stabilitatis in hac religione; (v) Consecratio Deo in obiectum huius religionis; (vi) Promissio (iuramentum, votum) oboedientiae Superioribus; (vii) Contractus institutionis seu incorporationis huic religioni; (viii) Professio, propositum, votum vitae evangelicae coram Ecclesia et religione; (ix) Norma vitae in hac determinata religione ducenda, a Superioribus recognita et approbata» P.C. GORRICHO, «De vinculis temporis (Instr. nn. 6. 34. 35. 36)», 190.

bonds should contain the three evangelical counsels as given in nn. 7, 13 and 15 of *Renovationis causam*[152] – in discussing the nature and effects, this study will focus on the most commonly used sacred bond to replace temporary vows, namely a promise[153].

Accordingly, we now consider the similarities between commitment by other sacred bonds and by vows. The theological content of both commitments is the practice of the three evangelical counsels (cf. *RC* 7; 35 (I)). In spite of the difference in their natures and juridical effect, the Instruction was categorical on this content (cf. *RC* 7). Consequently, both commitments «must answer their [those who profess them] twofold desire to give themselves to God and to the Institute and to pledge themselves to a fuller preparation for perpetual profession». According to the Instruction, the other commitments [sacred bonds], whatever form they take, should contain at their very heart and core the obligation to live according to the evangelical counsels in the manner outlined by the Constitutions of the Institute. In no way should these commitments obscure the substantial demands of religious profession, since young people called by God to the religious state wish to live their vocation in all its requirements, and this wish of theirs is achievable with proper initial formation provided there is a call and the response to the call is true and genuine. Other similarities are as follows: both refer to the present and the future fidelity to what has been pronounced; in both is the public manifestation of the will; both incorporate a candidate into the Institute; and both impose an obligation, namely, to observe the three evangelical counsels.

These similarities would appear to provide an authentic experience of religious life by imposing basically the same kind of life as would result from the making of temporary religious vows. Indeed, they led during the preparation period of *Renovationis causam* – and can still easily lead – to a conclusion that the difference is merely terminological. And in fact, a promise was the formula used by most Religious Institutes after the emanation of *Renovationis causam* with the belief that the dif-

---

[152] Cf. J. GALLEN, «Comments on the Instruction», 892.

[153] For a detailed study of this concept, cf. G. LESAGE, «Evoluzione», 75-78; J. BEYER, «Voti perpetui», 838; A. BONI, «I vincoli», 96-123. In his article, A. Boni applied the concept of «public» of *CIC/1917* to the sacred bonds and affirmed that the concept of «juridically public» of the vows of consecrated life undoubtedly extends to the sacred bonds of consecrated life when these are accepted by legitimate ecclesiastical Superior. The reason is, since the bonds of consecrated life also specify the rights and duties, it is necessary that there exists a public document – juridical solemnity – and made under the public protection of the Church. Cf. A. BONI, «I vincoli», 97; 123 nn. 7-9.

ference was only at the level of terminology, since even a promise had the same object, namely, evangelical counsels. And as already stated, some even assumed that other sacred bonds were equally made to God[154]. This assumption, probably, may have been influenced by the definition of a vow by *CIC/1917* as: «a deliberate and free promise made to God about a possible and better good, [which] must be fulfilled by reason of the virtue of religion» (can. 1307 of *CIC/1917*). This definition seems to imply that a vow is synonymous to a promise. But this is not what was intended by ***Renovationis causam***. If that was the case, then there would have been no need to replace the vows with a promise, nor would the permission granted by the Instruction to replace vows with a promise have any significance.

Considering the spirit of the Instruction, even though a vow is defined as «a deliberate and free promise made to God», and by this definition implying that a vow is, most of all, a promise, there are distinctive juridical features of a promise that differentiates it from a vow. Consequently, every vow is a promise but not every promise is a vow[155]. A vow is a special kind of promise. Since a vow is «a deliberate and free promise made to God», it is of the very essence of a vow that it be made to God. It is an act of the virtue of religion, because it is an act intended to honour and to worship God. Hence, the fulfilment of a vow entails a twofold moral goodness: that of the act itself and that of the vow. Therefore, the violation of a vow implies a twofold malice: one against the virtue involved and another against the virtue of religion[156]. It is not a simple desire, an intention, but rather, an expression of the will to oblige oneself because of the virtue of religion.

It must be a deliberate promise, guided by conscience, by intellectual knowledge of the duty that derives from it and of the fact that it is an act of ***latria – ex virtute religionis*** – since it is made to God, and the object of which is both a morally and physically better and attainable good. Consequently, for a vow to be valid, it is necessary that the deliberation be exhaustive and the freedom with which it is performed be absolute.

A promise, on the other hand, implies binding oneself to do or to omit something. Such promise, having been accepted by the one to whom it is made, gives rise to a genuine obligation. The binding force

---

[154] Cf. J. GALOT, «Gli obblighi», 52.

[155] Cf. J. BEYER, «De instructione "Renovationis causam"», 45. Beyer pointed out the distinguishing marks of a promise in a Religious Institute.

[156] Cf. H. NOLDIN – A. SCHMITT, *Summa theologiae moralis*, II, 195.

underlying this obligation would be that of the virtue of fidelity. It is commitment not made directly to God but to the Institute[157]. Having been made to the Institute, «a promise has as its object, participation in the life of the community, that is, the life of the Institute, with all obligations that such participation requires for a determinate period of time in preparation for perpetual profession»[158]. A promise, therefore, presupposes the intention of the candidate to profoundly discern his vocation through participation in the external life of the community/Institute and to be sustained by the community/Institute during his journey towards total commitment[159]. As stated by S. Pettinato, «what is missing in the mere intention is the will that characterizes the vow, and which has, according to constant doctrine, the binding force of law which whoever takes a vow imposes upon himself»[160].

In the promise, the community/Institute has a key role as it is through it that the candidate participates in the spirit of the Institute so that he can arrive at the total commitment through perpetual profession. It is true that the vow is also realized in a community/Institute in which the competent Superior acting on behalf of the Church receives the vows made to God. Moreover, in religious consecration, the vows are public thus through religious profession of vows, consecration becomes an ecclesial act. However, the vow is made directly to God. Therefore, subjectively, profession of a vow creates a stable relationship with God; objectively, it implies the irreversibility of commitment assumed to follow Christ who was chaste, poor and obedient[161], self-giving. The commitment is made to God and not to the community[162]. Therefore, in profession of vows, the community, though important, has a secondary role.

Unlike the juridical nature of temporary profession of vows, which – as already seen in the preceding documents – is perpetual on the part of the one professing and sufficient to constitute a religious state[163], other

---

157 Cf. CICLSAL, Declaration, 19 May 1949, 4-5, in *EVC* 2142.

158 J. GALOT, «Gli obblighi», 52: «La promessa così fatta all'Istituto, ha per oggetto la partecipazione alla vita della comunità, ossia dell'Istituto, con tutti gli oblighi, per un tempo determinato, in preparazione alla professione perpetua. Così c'è diversità sia quanto al soggetto a cui si fa la promessa, sia quanto all'oggetto». English transl. is by the author.

159 Cf. J. GALOT, «Gli obblighi», 52.

160 S. PETTINATO, «Vows», III/2, 1727.

161 Cf. P. MOLINARI, *La formazione*, 52; G. LESAGE, «Evoluzione», 94.

162 Cf. J. GALOT, «Gli obblighi», 53; J. BEYER, «Voti perpetui», 838-839.

163 The instruction explained this nature as follows: «For him who has heeded the call of Jesus to leave everything to follow Him there can be no question of how im-

sacred bonds do not constitute a juridical religious state. *Renovationis causam* stipulated that the General Chapter was to determine the juridical effects and sanctions involved in the making of a promise instead of vows (cf. *RC* 36). In E.L. Heston's opinion, in this regard, «the Chapter would have to decide, among others, such questions as the mutual obligations of the candidate and the Institute», and he added that «this determination by the Chapter was necessary because, since they would not have made public vows, the religious bound by a temporary promise would not be a "religious" in the canonical sense of the term»[164].

From this explanation, it seems clear that there is a difference both in the subject to whom the promise is made as well as the object of the promise. Under these aspects, a promise which could replace temporary profession is clearly different from a vow. First, such a promise would not be made to God but to the Institute. The juridical effects of other sacred bonds were determined in the Instruction as binding whoever made it to his Institute and it would entail the obligation of observing the Rule, Constitutions and other regulations of the Institute (cf. *RC* 36). In other words, these temporary commitments would incorporate the candidate into the Institute and bind the member to the observance of the Constitutions, Directory and other Rules of the Institute. The Instruction gave the General Chapter the faculty to determine other aspects and consequences of such commitment. Hence the making and keeping of a promise does not in any way involve the virtue of religion. Moreover, just as there is no twofold moral goodness in the act commanded by such a promise, so there is no twofold moral malice in failure to keep it. Hence, it was deemed easier to exclude from subsequent profession one who made a promise than one who professed vows. The assumption in making a promise was that the candidate promised to observe the Constitutions of the Institute subject to the fact that, the candidate who had no vocation to religious life, would separate himself voluntarily or would be separated or dispensed from the commitment by the Institute in a presumably easier way, since the obligation was with the Institute and not with God.

---

portant it is to respond generously and whole-heartedly to this call from the very outset of his religious life, the making of temporary vows is completely in harmony with this requirement. For, while still retaining its probationary character by the fact that it is temporary, the profession of first vows makes the young religious share in the consecration proper to the religious state» (*RC* 7).

[164] E.L. HESTON, «Temporary vows and promise», 377.

This spirit of *Renovationis causam* concerning vows and other sacred bonds sheds more light on the reason as to why, though the vows are always perpetual on the part of the one who professes them, they may not be totally binding on the part of the Institute as is the case in the temporary profession of vows. However, given the special significance of religious commitment and the special consecration which flows from the act of profession; juridically speaking, it seems extremely important to establish and maintain a God-centred approach to religious profession – without prejudice to the fact that theologically it is the first «yes» that is more important. It is probably for this reason that religious profession of «other sacred bonds» would later be omitted in the *CIC/1983*.

2.5 Renovationis causam *on exclusion from subsequent profession*

Renovationis causam permitted exclusion from subsequent profession. But before permitting this, it first confirmed the irreplaceable and privileged role of vocation and initial formation, specifying the novitiate as the first initiation into the religious life (cf. *RC* 4). It implied that the entry into the novitiate should be made freely and in awareness of God's call. It should not, therefore, be undertaken unless one is fully conscious of a divine vocation. It should not be made without having attained sufficient human and spiritual maturity. Importance was given to the necessity of preparation in the novitiate and after novitiate during the period of temporary vows. When speaking about formative activities, the Instruction clearly stated that the formative activity is not intended to provide the novices with technical or professional training required for certain apostolic activities. Rather, it should make them witness to Christ within the Church in a special manner and enable them to stand firm in the vocation to which they have been called. In the concluding paragraph of *RC* 5, it stated that the effectiveness of this formation would – to a great extent – depend largely on the firmness and wisdom of the guidance given by the novice master and his collaborators, thereby drawing attention to the importance of quality of formation. Only as a last possible solution, it permitted exclusion from subsequent profession – when even after formation and other possible help had been given to a religious, the temporary professed religious still evidently demonstrated signs of a lack of a vocation.

The Instruction permitted this by specifying that legitimate departure from the Institute during the period of temporary vows could either be

«at the expiration of temporary profession or commitment[165] or after dispensation from the obligations». In an effort to help both individuals and the Institutes, the Instruction pointed out that in the most difficult cases, extension of probation period as a solution was not enough. It then opened a new way: the one by which the Superior could suggest to the professed in temporary vows, who was struggling, to return to the world (cf. *RC* 8)[166]. Regarding this suggestion, the Instruction remarked that while in certain cases the extension of temporary probation could be an aid to maturity, in others it could involve serious drawbacks which it expressed as follows:

> The fact of remaining for too long a time in a state of uncertainty is not always a contribution to maturity, and this situation may in some cases encourage a tendency to instability. It should be added that in the case of non-admission to perpetual profession, the return to lay life will often entail problems of readjustment, which will be all the more serious and trying as the time spent in temporary commitment has been longer (*RC* 6).

Superiors, consequently, were exhorted to «be aware of their grave responsibilities in this field and should not put off until the last minute a decision which could and should have been taken earlier» (*RC* 6). Two questions arise which one may ask. What power did the CICLSAL have to decide on one's vocation which is a gift from God? Why should a Superior be permitted to deny one who still feels called admission to subsequent profession? The Instruction did not make any explanation that may provide direct answer to these questions. Therefore, in order for this prescription to be well-understood, *Renovationis causam* needs to be examined in the light of the doctrinal and practical principles which Vatican II had outlined previously as well as in consideration of the theology of vocation which had been developed in its wake.

Under the theological-doctrinal aspect, *Renovationis causam* was guided first of all by *Lumen gentium* to which it expressly referred. It first of all recalled that the religious state «constituted by the profession of the evangelical counsels, does not belong to the hierarchical structure of the Church, nevertheless it belongs inseparably to her life and holiness» (*LG* 44). This principle, with which the Introduction of *Renovationis causam* was introduced, is theologically relevant here

---

[165] The Instruction did not specify whether this is voluntary or imposed. Considering that the *CIC/1917* was still in force at the time of issuance of this document, we assume that the Instruction refered to both.

[166] Cf. Also P. MOLINARI, *La formazione*, 58-59.

because it shows that the religious state, as such, forms part of the Church's holiness, also indeed, of the whole life of the Church. This implies that the religious state can and must enter, not only into some, but into all sectors of the Church's life. Based on past doctrine, ***Lumen gentium*** emphasized the hierarchy's competence and duty of guiding the religious by its directive, norms and precepts. This teaching – consistent with the past doctrine – gives the rationale behind the authority that the Instruction gave to the Superiors.

Secondly, it must be understood in the light of ***Perfectae caritatis*** which acknowledged that healthy renewal directly depends on the quality of formation of those who first and foremost have received a divine call [have vocation] to religious life (cf. *PC* 5). Conscious of the fact that prior to any formation, there must be a divine call, the Council, among other things, clearly cautioned that a healthy and opportune renewal of Religious Institutes depends mostly on the training [formation] of those who have been called to life in a particular Institute (cf. *PC* 18). Consequently, the CICLSAL, guided by this conciliar principle, carefully proposed and concretely determined the possibility, both from the disciplinary and canonical points of view, of experimentation with new methods of formation, beginning with candidates to religious life. But, also – conscious of the fact that there is a possibility of admitting to formation candidates who actually lack a vocation to life in a particular Institute and, therefore, conscious of the need to protect both the individual and the Institute from jeopardy that such admission can possibly cause – it gave Superiors the faculty not to admit a member to subsequent profession early enough where it is evident that such a member lacks or has lost a vocation. Therefore, it is not a faculty to an arbitrary decision by the Superior. Rather, this decision must be motivated by clear and proven evidence of a lack of a vocation. Thus, the ultimate cause for non-admission to subsequent profession is not the competent Superior's decision as such, but the lack of a vocation. The Superior's discretion to exclude a member is not a decision in the strict sense of the word but a declaration that one actually lacks a vocation to life in a particular Institute based on evident causes. This implies that exclusion from subsequent profession is intended as a remedy to protect both the individual and the Institute from the negative effects of remaining in the Institute without a vocation to religious life in that particular Institute.

Thirdly, exclusion from subsequent profession is not intrinsically connected to dispensation from vows, but it may simply be dissolution

of the bond with the Institute, which by law *ipso facto* carries the juridical – not theological – effect of dissolution of the vows. It, therefore, does not in any way interfere with God's divine call of an individual. By the fact of exclusion from subsequent profession, one is not prohibited from living under private vows if one still feels called to a vowed life as vows by their theological nature are permanent on the part of the one professing them.

Fourth, it must be understood in the light of *Religiosorum institutio* which succinctly contains the whole theology of vocation: «it comes from God and only God can give it. It is the Institute's task to nurture this vocation, to enrich it, and to adorn it» where it already exists (*RI* 14). Consequently, in the decision not to admit one to subsequent profession, the Superior is actually declaring that the vocation to that particular Institute is lacking and, therefore, any further formation is in futility and may jeopardize not only the life of the Institute but also that of an individual. This declaration is based on the understanding that «*a call* from God to enter the religious [...] state is so necessary that, if this is lacking, the very foundation on which the whole edifice rests is wanting. For whom God has not called, His grace does not move nor assist»[167]. Consequently, such a person lives contrary to the will of God for him. And one who lives contrary to God's will risks not only self-destruction but also jeopardizes community life. Vocation to religious life is designed for an end, namely, salvation and perfection of charity (cf. *PC* 1). There is one way to achieve this end, and that is by fulfilling the obligations of one's call. But one who joins religious life without a vocation to religious life acts contrary to God's will and is incapable of fulfilling such obligations since the very foundation – vocation – upon which such obligations rest is lacking. Therefore, whenever one acts contrary to one's call, there is a disruption in the system to perfection. It leaves a mark in the system and this mark remits a consequence. The mark left and its consequence may be immediately or gradually harmful to an individual and to the community. It appears that it is for this reason that the Church wisely decides that one who lacks a vocation should be excluded from subsequent profession in order to protect both the person and the community from such harm since leaving such a person in the Institute is not only illogical but also catastrophic. It is illogical since the consequences are bound to follow with certainty sooner or later. It is catastrophic in that it causes harm not only to the indi-

[167] PIUS XII, Ap. const. *Sedes sapientiae*, 31 Mar. 1956, pars II, §2.

vidual – both at psychological and spiritual level – but also to the community.

At psychological level, a member who lacks a vocation to the life of the Institute has to bear the consequences of his contrary actions on the plane of conscience. This is because for every human act, man is answerable at the bar of human reason (conscience). And conscience has its own authority and right to appraise but also to condemn[168], such that it causes one who acts contrary to its dictates to experience grief and regret, frustrations and despair. To escape the condemnation of conscience, a person who acts contrary to its dictates may begin to live a hopeless and meaningless life. The future for such a person becomes of no concern and the past may serve only to heighten the meaninglessness of life. Such a person is ready to use any form of argument to defend his way out of all problems at any cost irrespective of what the future consequences might be. He rejects anything which might give direction and purpose to his life. He loses every sense of responsibility. He may have no fixed principles or resolutions in life. Outwardly, he may appear carefree and happy, he may appear to have no fears, but all sense of shame is lost. Inwardly, however, he may be full of loneliness, frustration and despair. To escape this, such a person looks for here and now gratification. But as soon as this is attained, it becomes empty, dissolving into nothingness. He therefore, goes in search of another opportunity for gratification and it becomes a chain of irresponsible behaviour[169].

At the spiritual level, the life of such a person becomes superficial and is lived for the moment. There is no continuity, no reflection and no pattern of life. By reason of acting contrary to his conscience, it

---

[168] Cf. A. FAGOTHEY, *Right and Reason*, 210; J.A. OPONDO, «Shepherding the "innocent will"», 90.

[169] These are clear signs of moments of crisis in life; and experiences of a lack of vocation are moments of such crisis. It is, therefore, not to say that all cases in the community who appear to have behaviours similar to these, are signs of lack of vocation to religious life or to life in a given Institute; for, as J. Vanier states: «Many communities carry one or two marginal people at their heart; people who, having lived in the community for some time, seem to withdraw into a kind of mental illness. They become bitter, depressed and sullen. [...] they feel useless and unloved. They are carrying a terrible cross of loneliness. [But it may not be as a result of the lack of a vocation as such], the community or its leaders may be partly responsible for their situation. Perhaps they asked too much of these people when they were younger and did not take enough care of them then; perhaps they did not confront them when the first signs of their difficulties appeared» J. VANIER, *Community and Growth*, 281. Each case, therefore, needs to be treated individually, taking into consideration all possible circumstances.

might be impossible for him to be responsible. Therefore, within him, he may be having a concept of himself as never sinful because to have a sense of sinfulness is the product of responsibility with some degree of reflection which he seems not to possess at that moment. He is «innocent» in his own mind since he lacks a critical attitude towards himself or towards his behaviour and conduct. In his opinion, it is others who do not wish him well, including his Superiors and they are to blame for his predicament.

To the community, he might become, strictly speaking, an observer in his own community; he may not willingly participate in community activities. His life becomes one of cynical non-involvement. He may refuse to commit himself to anything which might suggest observing the Constitutions. He may endlessly seek for exemptions. But since the life he lives is not in harmony with God's call for him, he fails to find fulfilment in religious life and with time, he may fall into boredom and relentlessly continue experimenting and trying different avenues and approaches to escape boredom. Thereby, he may become involved into shocking behaviours that are scandalous not only to the members of the community, but at times, also to the public. At this point, people might begin to refer to him as having an erroneous, deformed, or dead conscience, because what has been an inner struggle with one's conscience now becomes open for everyone to see. He becomes a victim of failure to make the right decision in time[170].

2.6 Renovationis causam *on re-admission after legitimate departure*

The Instruction gave the possibility of re-admission after legitimate departure in part II, where it treated re-admission of the religious who had legitimately left the Institute at the expiry of profession of temporary vows, other sacred bonds, or with the dispensation from the same vows or bonds. When a member requested re-admission, the Superior General, with the consent of his council, could grant this re-admission without the obligation of prescribing the repetition of the novitiate (cf. *RC* II, 38 (I)).

---

[170] Can. 689 of the *CIC/1983* is, therefore, understood as a protective measure intended to protect both the member and the community against these grave consequences. But when it is not applied prudently, this noble intention easily gets obscured resulting into negative effects not intended by this canon.

Concerning the procedure, it stated that re-admission required an obligatory probation period followed by admission to temporary vows, or other commitment, whose duration was for the Superior to decide. This was a novelty in the doctrine because until then, can 640 §2 of *CIC/1917* required in such cases a special faculty from the Holy See and an obligatory repetition of novitiate formation.

This Instruction, however, determined that the Superior General had to impose a period of probation to the candidate in question, and before one could be admitted to perpetual profession, he had to be bound at least for a year with temporary vows. This period was not to be less than the time that he still had to complete in temporary vows or other similar sacred bonds when he left the Institute. According to the prescription of the Instruction, this period could be extended at the discretion of the Superior if necessary for the greater good of both the candidate and the Institute (*RC* II, 38 (II)).

2.7 *Theological doctrine of* Renovationis causam *and its contribution in determining just causes for exclusion*

Renovationis causam – both in its first and second parts – brought to light the various theological aspects of the religious state which were already mentioned at the Council, namely, Christological, ecclesial and apostolic. These aspects are important because they show that there is no contradiction in the term temporary profession. They also highlight general guidelines for discerning one's vocation and point to what may be considered in a broad sense as just causes for exclusion from subsequent profession once a religious has been given adequate initial formation during novitiate period.

The Instruction expressly – recalling the doctrine of *LG* 46 – showed the Christological aspect of religious life. The text stated that the religious should carefully consider that the Church, through them, wishes to give an increasingly clearer revelation of Christ to believers and non-believers alike (cf. *RC* 5). Through them, Christ must be seen contemplating on the mountain, announcing God's kingdom to the multitude, healing the sick and the maimed, converting sinners, blessing children, doing good to all and always obeying the will of the Father who sent him. The aim of the Instruction, then, was to have the candidates formed in the imitation of Christ according to the specific aims of their own Institutes (cf. *RC* 13 (II)). This is because by its nature, the religious state «more faithfully imitates and continually exemplifies the form of life which the Son of God accepted in entering this world to do

the will of his Father, and which he proposed for his disciples» (*LG* 44). It recalled the object of religious profession of the vows and invited the candidates to evangelical perfection (cf. *PC* 8). Suitability of members, therefore, involves first and foremost, being faithful to evangelical counsels through fidelity to the vowed life but within the specific aims of their respective Institutes. When this fidelity to the vowed life is lacking, it indicates – among others – a lack of a vocation and, consequently, may constitute a just reason for exclusion from subsequent profession.

Likewise, it depicted religious life as ecclesial by repeating the past doctrine that the religious state belongs to the life and holiness of the Church and remains under the competence and the authority of the hierarchy (cf. *RC* Introduction §1). Therefore, «it is necessary that their spiritual life be dedicated also to the whole Church» (*LG* 44). *Renovationis causam* insisted on the formation of candidates in this ecclesial sense of the religious life in harmony with *Perfectae caritatis* and exhorted that candidates be trained to be religious not only for their own benefit, but also for the benefit of the whole ecclesial society (cf. *RC* 31). In other words, the Instruction required a formation that would lead to: a higher perfection in the religious life; a greater perfection in the exercise of charity towards one's neighbour and an increase of holiness and vitality in the Church. Inability to exercise this charity within the life of the Institute could be considered as having a lack of a vocation and, consequently, a just reason for exclusion from subsequent profession.

In connection with the fundamental doctrine of *LG* 44 and 46, the Instruction emphasized that the formation of candidates must not just be spiritual but also be apostolic, unitarian and multiform (cf. *RC* 5). The document recalled that the religious state, even that given exclusively to contemplation, is by its intrinsic nature apostolic; an aspect that – as the Council taught – must be «in keeping with the nature of one's proper vocation» (*LG* 44). If one's life is not in keeping with one's vocation, then such a member is considered to lack vocation and may not be admitted to subsequent profession. The Instruction treated more widely the method of educating those who are to live in Institutes dedicated to apostolic works (cf. *RC* 5, 13 (II), 30). Young candidates should – right from the first years – begin to know and to judge themselves, not only with regard to the general apostolate in view of that which is necessary for every religious and intrinsic to the religious life itself, but also with a view to the different activities and the external forms of the life to

which they intend to dedicate themselves[171]. To realize this, the document opened up the possibility of new methods even with regard to formation during the novitiate period. Participating in the various activities of the apostolate in these early years, so as to become a more perfect religious in relation to the external aims of the Institutes, was the motive for this opening to new methods and experiments. Consequently, one who is not able to effectively take part in such activities of the Institute during such formation may be identified early enough and be advised accordingly, may even be excluded from subsequent profession.

Therefore, *Renovationis causam* was in favour of formation that follows theological-practical criteria. The preparation for the perpetual vows, with the gradualness and the bonds with which the Instruction concerned itself, ought to lead the candidates and young religious to a deeper knowledge of the sacred commitments that they are called to assume before God, the Church and the world in dedicating themselves to the religious life. For this reason, the Instruction observed that «religious formation more based on stages and judiciously extended over the different periods of the life of the young religious, should find its culmination in a serious preparation for perpetual vows» (*RC* 9). *Renovationis causam*, therefore, was in agreement with the preceding documents that the aim of the period of temporary profession is to allow for adequate and sufficient time to enable the religious to acquire elements of maturity regarded as necessary for commitment to the religious life as lived in the Institute. However, it went further to emphasize that this is only attainable with a well-planned probation period programme which is effectively implemented under responsible leadership.

It can, therefore, be concluded that the innovations brought about by this document for formation of the religious sought to open up new ways for training [formation] of the religious ever more qualified and suitable for the demands of their vocation and to provide safe and definite modalities for determining suitability of members and admission to subsequent or perpetual profession.

---

[171] In harmony with the Council, the document purposely avoided the use of expressions which might sound as having less appreciation of and consideration for the formation for contemplative life. On the other hand, the Instruction took account of the great number of Institutes for which – as the Council noted – «the very nature of religious life required apostolic and charitable works» (*PC* 8).

3. **Profession of temporary vows and exclusion in other post-conciliar documents**

This section presents a study of other post-conciliar documents which have direct relation to the topic. These other documents have some relation to this study. However, the history of their redaction is less important – as compared to ***Renovationis causam***. Therefore, this study merely seeks to highlight their value by focusing only on the final text of these other post-conciliar documents. The documents studied in this section include, among others, the Decree ***Dum canonicarum*** – which gave guidelines on when to exclude temporary professed members from subsequent profession for reasons of physical or mental illness – and the Apostolic exhortation ***Evangelica testificatio*** – which treated the renewal of religious life according to the conciliar documents.

3.1 *Decree* Dum canonicarum (*1970*)

A year after the issuance of ***Renovationis causam*** – while the revision of the ***CIC/1917*** was going on – the CICLSAL considered it appropriate to examine, in its plenary session held on 26-27 Oct. 1970, matters relating to the suitability for religious profession of a member in the event of physical or mental illness. After offering a critical analysis of the question, the CICLSAL by means of the decr. ***Dum canonicarum*** of 8 Dec. 1970 derogated from can. 637 of ***CIC/1917*** that had given the faculty to Superiors to dismiss professed members for reasons of physical or mental illness even if contracted after profession[172]. This document may have influenced ***CIC/1983*** as reflected in the text of can. 689 §3[173] and its rationale.

Meanwhile, with the challenges brought about by interpretations unfamiliar to the spirit of the Council on renewal, the Ecclesiastical authority recognized that some were calling into question the very existence of religious life itself. In response to this challenge, Pope Paul VI

---

[172] CICLSAL, Decr. ***Dum canonicarum***, 8 Dec. 1970, 5 ***AAS*** 63 (1971) 319: «Quoad clausulam finalem can. 637 C.I.C., ea ita intelligenda est, ut a votis renovandis vel a professione perpetua emittenda excludi possit a Superiore competenti de consensu sui Consilii professus a votis temporariis qui, praevio medicorum vel aliorum peritorum iudicio, ob infirmitatem physicam vel mentalem, etiam post professionem contractam, non idoneus comperitur ad vitam religiosam ducendam absque damno sive ipsius religiosi, sive Instituti ad quod pertinet. In his casibus diiudicandis caritate atque aequitate uti oportet».

[173] We shall treat in details this canon in the next chapter.

responded with the Apostolic exhortation *Evangelica testificatio*. In order to provide some background information for the need for this response, it seems appropriate to explore briefly how some Institutes interpreted the call for renewal.

3.2 *Interpretations unfamiliar with the spirit of the Council on renewal by some Religious Institutes*

From the available literature, it appears that the spirit of renewal was not understood well by many Religious Institutes[174]. It appears that some Institutes applied the «hermeneutic of discontinuity and rupture»[175] in their interpretation of renewal. The «hermeneutic of discontinuity and rupture» is based on the belief that all has to be made new. It is idealistic insofar as it underestimates the frailty of human nature[176], and it is simplistic in thinking that saying «yes» to all that comes with «modernity» will solve all tensions and create harmony[177]. Some Institutes probably may not have realized that a call for renewal necessarily required a balance between excessive liberality in renewal and strict conservation of the past. When liberty is isolated, it creates extreme liberalism. In the renewal process, the existence of extreme liberalism may have made some Institutes to step beyond the letter and spirit of the Council[178]. This probably may have contributed further to the vocation crisis and the effects seem to be long lasting since what is becoming more apparent with each passing year, is the crisis of religious life itself, its identity and role in the Church, and its slow, but steady, disappearance in various parts of the world.

---

[174] For example, cf. E. SATRE SANTOS, *La vita religiosa*, 965.

[175] BENEDICT XVI, *Expergiscere homo*, Speech, 22 Dec. 2005, *AAS* 98/1 (2006) 46.

[176] Paul VI would later caution on this in *Evangelica testificatio* when he stated that «an excessive desire for flexibility and creative spontaneity can in fact give rise to accusations of rigidity directed against that minimum of regularity in activities which community life and personal maturity ordinarily require» (*ET* 32).

[177] Cf. A. DULLES, *True and false reform*, 14-15.

[178] Cf. F. RODE, «From past to present», 9. According to Cardinal F. Rode, whereas paragraphs which stated that «let Constitutions, Directories, custom books, books of prayers and ceremonies and such like be suitably re-edited, and obsolete laws being suppressed, be adapted to the decrees of this sacred synod» (Cf. *PC* 3) became so familiar to liberals, only with difficulty did they remember the rest of what the Council said. But this paragraph once read with the hermeneutics of change and rupture other than continuity as a point of departure, produces precisely that – discontinuity. The results are described by the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life as: loss of identity, a move towards secularization and neglect of prayer among others. Cf. E. PIRONIO, «Intervento», 180.

Where this balance was not maintained the renewal that occurred might be called a *pseudo-aggiornamento*[179]. As soon as *pseudo-aggiornamento* was accepted as the new way to go, all authority and the rule of law was called into question and obedience might have become the first casualty precisely because obedience without faith and trust in authority and the rule of law cannot survive[180].

From the literature, it is evident that in some Institutes, the Superiors of the local communities started operating as «administrators» in the secular sense of the word; in others, there was some other arrangement such as having no local Superior[181]. The emphasis clearly changed. Collegiality, consultation, «personal responsibility» and «respect» for the individual became the driving principles behind an understanding of the exercise of authority and obedience within an Institute[182]. Some women religious almost completely eliminated personal authority of the Superior. Personal judgement and discretion were no longer the sole realm of the Superior, and the need for various permissions changed into a mature dialogue when merited. Some of the areas where the responsibility for decisions moved from the Superior to the member included «choices about one's life [and] work, dwelling, companions, education, and medical care»[183]. Superiors of the Institute were to function in teams with the same spirit of collegiality and respect that also vested a level of authority in the entire community. Participation and consultation eventually moved toward consensus for some Institutes: consensus within the administrative team or consensus by the whole[184] community in the name of having respect for one another and each other's opinion[185]. Once this level of «respect» was attained, members

---

[179] The prefix *pseudo* comes from Greek word ψευδής which means «lying» or «false» and it is used to mark something as «false» or pretending to be something it is not. In this study, the term is used to indicate an apparent update with visual similarities to real update that the Church had called for, but which in fact, is not.

[180] For detailed treatment of how spirit of service and obedience relate to the spirit of faith and love cf. E. FOGLIASSO, *Il decreto «Perfectae caritatis»*.

[181] Cf. M.A. NEAL, *Catholic sisters*, II, 54; P. WITTBERG – W. CLARK ROOF, *The rise*, 244.

[182] This is implied in the defence of personal authority by the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life. Cf. CICLSAL, Decr. *Experimenta circa*, 2 Feb. 1972, *AAS* 64 (1972) 393-394.

[183] L.A. QUIÑONEZ – M.D. TURNER, *The transformation*, 115.

[184] Cf. M. MOREY – J. PIDERIT, *Catholic higher education*, 263.

[185] Worth noting is that «consensus», like «unanimity», has the potential to become organizationally paralyzing if not managed well or when it is abused. It easily

«could no longer accept to obey laws in whose making they played no part. No longer did it seem credible that decisions of authority, simply because they were decisions of authority, should have a claim on their conscience»[186].

This new way of looking at authority and rules required a new understanding of the vow of obedience. There arose confusion and controversy concerning the meaning and role of authority and the unwillingness of members to accept the definitions of the past. The result was a crisis of obedience because whenever there is a crisis of authority, a crisis of obedience is bound to follow as a natural consequence[187]. Next, followed crisis of prayer, especially community prayer and the sacramental liturgy which were minimized or abandoned. Penance, asceticism and mortification of the body were also abandoned in such «progressive» communities. Many religious became uncomfortable with wearing the habit, and almost everything became a problem for discussion[188].

Such reinterpretation of authority and obedience contributed to several conflicts and difficulties. For instance, according to P. Wittberg, the re-definition of obedience as one's own individual openness to the will of God had, in many communities, the effect of reducing almost to nonexistence any instance when the vow of obedience could oblige members to obey even what they did not agree with. There was often little indication that the Superior could command the members to do anything[189]. The very clear source of authority, where the commands of those in authority mediated the will of God, was forgotten. The «signs of the time» became that which mediated the will of God in directing the lives of such religious. But members of such Institutes still professed the evangelical counsel of obedience and were technically bound by it.

With such redefinition of obedience, there are possibilities that the call for «adaptive renewal» – *accommodata renovatio* – (cf. *PC* 2, 18) by *Perfectae caritatis* could not be interpreted according to the spirit of the Council. As a consequence of unfamiliar interpretations, some

---

paralyzes either the Institutes' activities or the daily lives of the members in communities.

[186] L.A. QUIÑONEZ – M.D. TURNER, *The transformation*, 119.

[187] For more information on obedience and authority in the teachings of the Church, cf. J.M. WACHS, *Obsequium in the Church*, 57-129.

[188] Cf. F. RODE, «From past to present», 8-10.

[189] Cf. P. WITTBERG – W. CLARK ROOF, *The rise and fall*, 244, 246.

members of Religious Institutes understood the call for renewal to mean putting together two movements which seemed – in their view – to point in opposite directions namely: adaptation to the modern world, on one hand, and a return to the roots on the other[190]. In their judgment, *Perfectae caritatis* had sent confusing signals[191] about how the vow of obedience was to be renewed, because the document emphasized that obedience was to be defined in such a way as to respect the dignity of the individual and, at the same time, maintained the Superior's authority to decide and command what must be done (cf. *PC* 14). In their opinion, this was a contradiction.

Amidst this authority-obedience crisis, the noble value and purpose of religious communities became vague and meaningless to some members. This crisis had a dramatic effect on religious community living[192]. With meaning of community life lacking, the religious began to find meaning in their professional life. Community, then, became secondary to ministry in many such Institutes; it became a place to spend the night and get the meals. And only when time allowed, a place to take part in spiritual experiences, almost incidental as opposed to integral part of their apostolic witness.

This *pseudo-aggiornamento* triggered different reactions. As Religious Institutes underwent renewal, some responded with such enthusiasm that they literally renewed themselves out of religious life[193]. And so the Church has constantly experienced the presence of religious who have «moved beyond the Institute», yet they remain externally «in» the Institute. It seems that such an ambivalent existence cannot bring forth fruits of joy, neither for such members nor for the Church and much less for the people they form if they happen to be formators.

This background is important for it aids understanding why formation is critical to the suitability of members and the judgement as to whether a member actually lacks a vocation. This is so because formation, grounded on *pseudo-aggiornamento*, can only give *pseudo-formation* to religious who themselves might be formators in future. Hence, chances of such religious demonstrating immaturity and

---

[190] Cf. R. HARVANEK, «The expectations of leadership», 29; L.A. QUIÑONEZ – M.D. TURNER, *The transformation*, 41.

[191] To avoid similar confusions, can. 601 must always be read in the context of cann. 617 and 618.

[192] Cf. L. CADA – A. FITZ, *Shaping the coming age*, 47-48.

[193] Cf. A. EGAN, «Religious orders after Vatican II», 7-8.

presumably just causes for exclusion from subsequent profession are higher.

These challenges[194] necessitated intervention from the Apostolic See which responded with the Apostolic exhortation *Evangelica testificatio*.

3.3 *Apostolic exhortation* Evangelica testificatio (*1971*)

Pope Paul VI wished to respond to the anxiety, uncertainty and instability shown by some religious; and, at the same time, he sought to encourage those who were seeking true renewal of the religious life (cf. *ET* 2). In his Ap. exhort. *Evangelica testificatio*[195] of 29 Jun. 1971, he encouraged the religious to continue on the arduous work of renewal, recalling what *Ecclesiae sanctae* and *Renovationis causam* had said on this need (cf. *ET* 5). At the same time, he brought to their attention the dangers of getting outside the spirit of renewal intended by the Council. His main focus was to urge the religious to be faithful to the charism of their respective founders and to cultivate a strong spiritual life, the centre of which is the Eucharist.

Concerning the pre-eminent danger of uncertainty and instability, the document noted: the boldness of certain arbitrary transformations; an exaggerated distrust of the past – even when it witnessed to the wisdom and vigour of ecclesial traditions and a mentality excessively preoccupied with hastily conforming to the profound changes of the time which led some to consider as outmoded the specific forms of religious life,

---

[194] These challenges seem to exist in some Religious Institutes even today since Pope Benedict XVI, not long ago, in his Address to Superiors General of the Institutes of Consecrated Life and Societies of Apostolic Life of 22 May 2006, expressed the same challenges as follows: «In these last years, consecrated life has been re-examined with a more evangelical, ecclesial and apostolic spirit; but we cannot ignore that some concrete choices have not offered to the world the authentic and vivifying face of Christ. In fact, the secularized culture has penetrated the mind and heart of not a few consecrated persons, who understand it as a way to enter modernity and a modality of approach to the contemporary world. As a result, in addition to an undoubted thrust of generosity capable of witness and of total giving, consecrated life today knows the temptation to mediocrity, bourgeois ways and a consumerist mentality». BENEDICT XVI, *Ad Supremos Moderatores et Moderatrices Institutorum Vitae Consecratae et Societatum Vitae Apostolicae*, Speech, 22 May 2006, *AAS* 98 (2006) 456.

This clearly shows how challenging the situation was and still is for the Superiors and the ecclesiastical authorities. And with the implementation of *Potissimum institutioni* of 2 Feb. 1990 on inter-congregational formation, if not well-planned, some of the elements of this *pseudo-aggiornamento* could possibly continue to spread among Religious Institutes.

[195] PAUL VI, Ap. exhort. *Evangelica testificatio*, 29 Jun. 1971, *AAS* 63 (1971) 497-526.

thus casting doubt on the very principle of religious life itself (cf. *ET* 2). Consequently, he cautioned against «too hardy» an experimentation intermingled with a worldly spirit (cf. *ET* 4, 5, 6) and recalled the Church's role in authenticating the state of life by profession of the evangelical counsels (cf. *ET* 7). He used the word «charisms»[196] for the first time in an officially promulgated document regarding Institutes of consecrated life (cf. *ET* 11) and insisted on fidelity to the charism of the Institute and adaptation of charism to the «changing circumstances of time and place» while retaining their «touchstone of authenticity» (*ET* 12).

The document did not explicitly address the issue of religious temporary profession. However, n. 7 captured what *LG* 44 had stated about the possibility of embracing the evangelical counsels through vows or other sacred bonds which are like vows in their purpose and that through such a bond a person is totally dedicated to God by an act of supreme love. Although the exhortation did not touch on the theme of temporary profession, it gave a deep theology of vocation and consecration.

With particular reference to this study, it recognized that the consecration of a religious is special (cf. *ET* 4) and it is a response to a call: «by a free response to the call of the Holy Spirit the religious decide to follow Christ, consecrating themselves totally to him» (*ET* 7). This highlights further the fact that renewal of vows is not a choice and emphasizes the need for proper discernment of one's vocation since this latter is not a choice, but a response to a specific call for a specific purpose that can only be understood through proper discernment of God's will. Subsequent profession, therefore, binds in conscience. This implies that a religious must have just reasons for not willing to be admitted to further profession and the competent Superior must also have just reasons for not willing to admit a member to subsequent profession.

It also implies that all members have a responsibility to nurture this vocation once called to religious life. To this effect, the document gave a number of essential commitments of a religious. These commitments are so essential to the quality of religious life that if they are lacking in the life of a religious, then vocation is put to question. Among others:

i. They are reminded of the importance of their consecrated chastity and poverty (cf. *ET* 13).

---

[196] For more information on charisms, cf. A. ROMANO, *The charism of the founders*.

ii. They are to live in poverty in the use of this world's goods which are necessary for daily sustenance (cf. *ET* 16).
iii. They are to hear the cry of the poor – being in solidarity with them not in a movement of the political or temporal order but rather through conversion of hearts for liberation from all temporal encumbrances through love (cf. *ET* 17).
iv. They are to practise discernment and restraint in use of the world's goods and to avoid whatever would be a compromise with any form of social injustice (cf. *ET* 18) because at a time when there is an increased danger for many of being enticed by the alluring security of possessions, knowledge and power, the call of God places the religious at the pinnacle of the Christian conscience (cf. *ET* 19).
v. They are to bear witness to the human meaning of work – which is carried out in liberty of spirit and restored to its true nature as the source of sustenance and of service (cf. *ET* 20). But there is a precaution for such work, in Pope Paul VI's own words: «your activities cannot derogate from the vocation of your various Institutes, nor habitually involve work such as would take the place of their specific tasks. Nor should these activities in any way lead you towards secularization, to the detriment of your religious life» (*ET* 20).
vi. The religious are warned to be watchful regarding the spirit which animates them, for what a failure it would be if a religious felt himself valued by the Institute solely for the payment he receives for worldly work (cf. *ET* 20).
vii. They are exhorted to practice fraternal sharing (cf. *ET* 21), evangelical exigency in total fidelity to their vocation (cf. *ET* 22), consecrated obedience (cf. *ET* 23) and evangelical fraternity and sacrifice (cf. *ET* 24).
viii. They are encouraged to obey the use of religious habit – except where this is not possible – as a sign of their consecration and that it should be in some way different from the forms that are clearly secular (cf. *ET* 22).
ix. They are to accept the directives of Superiors keeping in mind that the range of choices of a religious is limited by their commitment and vow of obedience (cf. *ET* 27).
x. They are to nurture their desire for God, discovering intimacy with God in prayer and silence and letting the spirit of prayer permeate their fraternal life and sharing in the Church's mission (cf. *ET* 42-50).

All these elements are necessary for sustaining the suitability of members and, accordingly, every religious is to strive to live up to them whether in temporary or perpetual vows. Anything to the contrary poses

the threat of losing one's vocation and of becoming unsuitable for religious life.

3.4 *Directive* Mutuae relationes (*1978*)

Mutuae relationes[197] dealt with the relations between the bishops and the religious of all rites and territories throughout the Church. It aimed at making a practical contribution to the smooth functioning of the same. The direct subject of discussion was the relations which should exist between the local ordinary, on the one hand, and Religious Institutes and Societies of common life on the other. Secular Institutes were not dealt with directly, except where general principles of consecrated life (cf. *PC* 4) and the place of these Institutes within the particular Church (cf. *CD* 33) were involved. The text was divided into two parts: doctrinal and normative. The intention was to provide some guidelines for an ever better and more efficient application of the principles of renewal set forth by the Vatican II (cf. *MR*, Introduction III).

Chapter III – which is dedicated to religious life and is entitled: religious life within ecclesial communion – stated that «consecration of those professing religious vows is especially ordained to the purpose of offering to the world visible proof of the unfathomable mystery of Christ» (*MR* 10). Even though this document made no particular reference to temporary profession or other sacred bonds, this text seems to suggest that the ecclesiastical authority was probably doubting the efficacy and necessity of replacing temporary vows with other commitments as *Renovationis causam* had permitted *ad experimentum*, as it spoke only of religious vows when referring to religious state. Moreover, this appears to prepare the way for the legislation of the *CIC/1983* with respect to temporary profession.

4. **Conclusion**

This chapter presented the doctrine of the Church on religious temporary profession and the faculty to exclude a member from subsequent profession for just causes as provided for in Vatican II and post-conciliar documents. Vatican II (1962-1965) studied the nature and type of consecrated life. In doing so, offering a doctrinal development which was not without challenges in its receptivity which necessitated further studies as reflected in selected post-conciliar documents.

---

[197] Cf. CICLSAL AND CONGREGATION FOR BISHOPS, *Mutuae relationes*, 14 May 1978, *AAS* 70 (1978) 473-506.

The period after the promulgation of the *CIC/1917* witnessed major and significant changes, both inside and outside the Church. The society quickly changed especially after the second world war. The Church saw the need to adapt and to respond to the new changes. Pope John XXIII in attempting to respond to new situations called for the celebration of the Vatican Council II. This Council brought new life to the Church. For religious life in particular, the Council was a moment of renewal and adaptation to modern times. Since Vatican II, many aspects of religious life have witnessed significant renewal and among them is the renewal of the practice of religious temporary profession. Among the many causes that necessitated a call for renewal in temporary profession were the anachronism of certain traditions and customs as well as the changes in the society.

In the renewal process, the Council Fathers called upon each Institute to return to the Christian sources of vowed life and to rediscover their special identity as a community through renewed understanding of the vision of their founders. The Council called for prudent adaptation of different Religious Institutes to the changed conditions of life in the modern world (cf. *PC* 2). Based on the call for renewal by the Council, during the post-conciliar period, temporary profession entered what may be termed a trial period, especially with the *Renovationis causam* whose spirit appears to have been interpreted by many Religious Institutes in a manner unfamiliar with the spirit of the Council.

The conciliar documents – particularly *Lumen gentium* in chapter VI and *Perfectae caritatis* – offered a reflection on the identity of consecration brought about by religious profession. The Council Fathers studied profoundly the reality of consecrated life, proposing a new situation in which many traditional elements appeared renewed and many points that were not clear before were made clearer.

Regarding the consecration brought about by religious profession, the term «consecration» does not designate the ceremony in which the professed, while expressing the total gift of self, receives from the minister who acts in the name of the Church, «a spiritual consecration or blessing». The consecration connected with the profession of the evangelical counsels is a moral reality, consisting in a specific orientation of life and action. It is an act by which some reality or actions are reserved exclusively to God and are directly dedicated to Him. It, therefore, consists in establishing a relationship with God according to the will of God manifested by God himself to a particular person. To consecrate oneself to God through religious profession – whether temporary or

perpetual – is equivalent to committing oneself to behave before God in accordance to what one perceives as God's divine will. It is a gift of self, a resolution through which the entire life of the one who is committing himself is reserved for God. Such a solemn covenant and consecration, as well as the divine blessing that accompanies it, is irrevocable. Consequently, theologically, it is impossible for one who gave himself totally in response to God's call, to go back to the world. This places a grave moral obligation which binds in conscience on both the competent Superior and the individual members. Once professed, a member cannot simply abandon religious life by choice without just causes and a Superior cannot simply exclude a member from subsequent profession without just causes. It also implies that in case one feels that he is mistakenly excluded from subsequent profession, he can still live his consecration even outside a Religious Institute but without public juridical effects.

Regarding religious profession, Vatican II did not define it. It, instead, identified religious profession with the profession of the evangelical counsels (cf. *LG* 44, 47; *PC* 1, 6, 5, 10, 11, 12). With reference to religious temporary profession, the main issue of discussion was the possibility of professing some other sacred bonds equivalent to vows to replace the vows. The discussion began with the preparatory groups and the doctrine found its first place in *Lumen gentium* which set forth the possibility to every Christian of professing the evangelical counsels by vows or other sacred bonds (cf. *LG* 44). As seen in the various *schemata* and observations presented by the Council Fathers, the possibility was a last minute addition for the sake of Secular Institutes and other Institutes without vows that existed at the time of the Council. Throughout the different *schemata*, it is seen that the profession of a religious was always conceived to be with vows. This leads to a conclusion that right from the beginning, other sacred bonds were never intended for Religious Institutes. The Council continued to consider it necessary for the religious to profess religious vows. *Perfectae caritatis* expanded on the doctrine of *Lumen gentium* on religious profession.

Similarly, in the post-conciliar documents, the invitation to renewal was constant. In this environment, one can understand the source of the proposals made by major Superiors to the CICLSAL calling for the possibility of replacing temporary vows with other sacred bonds. It is clear from the findings of this study that the influence was from *LG* 44, and the Superiors seemed to have been attempting to apply what was proper to Secular Institutes and Societies without vows to Religious In-

stitutes, with the intention of solving the crisis of vocations. The CICLSAL, after some study, decided to grant permission to replace temporary vows with some other sacred bonds *ad experimentum*. The Instr. *Renovationis causam* which granted the request did not establish any type of bond to replace the vows. The study found out that there was a wide choice but the most common replacement was that of promises which were made to the Institute. But not everyone was comfortable with such replacement, and some religious expressed their dissatisfaction even providing their reasons. With the formula *ad experimentum*, the CICLSAL continued to study and examine the results. But the efficacy of such replacement remained a question for debate that continued until the time of the revised *CIC/1983*.

In reference to the exclusion from subsequent profession of vows, the Conciliar documents – consistent with the past doctrine of the Church – brought to light the various theological aspects of religious profession, namely, the Christological, ecclesial, eschatological and apostolic. These aspects not only show that there is no contradiction in the term temporary profession, but also highlight general guidelines for discerning one's vocation and points to what may be considered – in a broad sense – guidelines for determining just causes for exclusion from subsequent profession once a religious has been admitted to vows.

Other post-conciliar documents repeat the doctrine of the Council considered under various aspects of religious profession. *Ecclesiae sanctae* gave the importance of adequate formation during the period of temporary profession in order to nurture vocation of members. *Evangelica testificatio* further highlighted the fact that renewal of vows is not a choice and emphasized the need for proper discernment of one's vocation since it is a response to a specific call for a specific purpose that can only be understood through proper discernment of God's will. This implies that the competent Superior must also have just reasons for not admitting a member to further profession. Finally, the Decr. *Dum canonicarum* gave guidelines on when to exclude temporary professed members from subsequent profession for reasons of physical or mental illness.

From the findings of this chapter, it can be concluded that according to the mind of the Church, temporary profession is a total donation of self, a true consecration of life intentionally definitive. Therefore, by temporary profession, one becomes an authentic religious. And the «temporariness» of profession is a juridic element which is a consequence of the need to juridically address the fact that acquiring maturity

to live the life of the Institute is a gradual process. Consequently – without any prudent doubt on the authenticity of vocation of the one in temporary vows – the motive for the period of temporary profession is not just to give the Institute time enough to decide on the suitability of the candidate, but more importantly, it is to give the temporary professed religious enough time and sufficient opportunity to assimilate and deepen that in which religious identity consists. This is important in order to acquire necessary maturity for living meaningfully the obligations of vowed life. Consequently, the innovations brought about by post-conciliar documents are intended to open up new ways for adequate formation of the religious and to provide safe and definite modalities for nurturing a vocation and determining the suitability of members all with an aim of excluding from subsequent profession only those who truly lack a vocation to a given Religious Institute.

CHAPTER III

Norms of the *CIC/1983*

This chapter presents the norms of the *CIC/1983* on temporary profession and exclusion from subsequent profession. It begins with the revision period and studies the various *schemata* of the *CIC/1983* in which temporary profession and the faculty to exclude a member from subsequent profession for just causes is addressed. It then examines the *CIC/1983* itself focusing attention on the reasons for the current legislation on temporary profession and the aforementioned faculty. In the process, it highlights differences with past legislation to better understand the changes in the *CIC/1983* as well as the theological and juridical implications of the norms of the *CIC/1983* on temporary profession and the faculty to exclude a member from subsequent profession.

1. Revision of canons on temporary profession and exclusion from subsequent profession

When Pope John XXIII convened the Ecumenical Vatican Council II, he also called for the revision of the *CIC/1917* in the light of the Council[1]. The *CIC/1917* – after so many formal abrogations, partial modifications and various updates – was in need of a general review as the then current legislation was no longer responding adequately to the needs of the modern world and the post-conciliar period. In addition, the *CIC/1917* was incomplete and much of it was anachronistic[2]. The ecclesiastical doctrine presented by the Vatican II was to be the foundation of the future *CIC/1983*. Pope John Paul II in the Ap. const.

[1] Cf. JOHN XXIII, Alloc. *Questa festiva*, 25 Jan. 1959, *AAS* 51 (1959) 68.
[2] Cf. J. HERRANZ, «Genesis and development», 126.

Sacrae disciplinae leges[3], with which he promulgated the *CIC/1983*, again reiterated that the new *Code* must be read in the light of the Ecclesiology of Vatican II, which the same *CIC/1983* intended to translate into canonical language. The same Pontiff called the revised *CIC/1983* «the last document of the Council», but he also acknowledged it as the first document to embody the entire Council in every aspect of its life[4].

After the Council, it was not enough to review the *CIC/1917* for merely scientific reasons. There were also other reasons equally important, namely, the advisability of a better theological foundation of law in the Church, the need for specific «juridicity»[5] of the canonical norms, and especially, the pastoral reasons for governance[6]. Consequently, Pontifical Commission for Revision of the Code of Canon Law (*Pontificia commissio Codicis Juris Canonici recognoscendo*)[7], which was constituted by Pope John XXIII on 28 Mar. 1963[8], progressively developed its work according to the guidelines appropriately issued by his successor, Pope Paul VI[9]. It not only limited itself to the necessary updates of the norms promulgated in the *CIC/1917* but also formulated new juridical norms. In doing so, it did not take into account only the general legislation enacted for the Latin Church after 1918, but it also considered more especially the teachings of Vatican II and the relative post-conciliar norms on the application and interpretation of various documents[10]. The actual review, in fact, could not begin until after the conclusion of the Council, and the review was to be done according to Vatican II's principles and suggestions. The President and the Secretary of the *CIC* Review Commission wished to include a large number of broadly representative consultors

---

[3] Cf. JOHN PAUL II, Ap. const. *Sacrae disciplinae leges*, 25 Jan. 1983, *AAS* 75 (1983) VII-XIV.

[4] Cf. JOHN PAUL II, Briefing, 4, *L'Osservatore Romano*, 21 Nov. 1983.

[5] «*Juridicity*» refers to the legality of law, that is, whether given norms can be considered law or they are merely methods of decision making or a set of guidelines according to which rules are extracted from other legal systems, reinterpreted and adapted to a given circumstance. The reviewed *CIC/1983* implicitly and necessarily reaffirmed that it is a legal system of its own; since it meets requirements of structure and normative contents which are essential features of any legal system. Analysis of the *CIC/1983* as a legal system of its own is, however, outside the scope of this study.

[6] Cf. *Comm* 5 (1973) 249; J. HERRANZ, «Genesis and development», 126.

[7] This is a collegial body acting in the name of the Pope, the supreme legislator; and it was entrusted with the task of preparing the texts for final approval by the Pope, cf. F. COCCOPALMERIO, «Introduzione al nuovo Codice», 7.

[8] Cf. *Comm* 6 (1974) 29.

[9] Cf. PAUL VI, Discorso, 20 Nov. 1965, *Comm* 1 (1969) 38-42.

[10] Cf. *Comm* 6 (1974) 30.

and persons with both scientific competence and a familiarity with the letter and spirit of the conciliar Decrees. Consequently, after the conclusion of the Council, an advisory body composed of nearly all the secretaries of conciliar Commissions who dealt with matters related to discipline and other experts in theological and canonical fields were incorporated into the *CIC* Review Commission. On 17 Apr. 1964, they began the consultation at the level of national conferences of bishops seeking their opinion on the modalities of the review. Therefore, the new *CIC* not only was to adapt the legislation to the principles of Vatican II and the new circumstances of the people of God; but was also to maintain its juridical character while being animated by that spirit of charity and moderation which is proper to Canon Law. The Commission expressly acknowledged the need for repetition of the subject matter that was in harmony with the spirit of Vatican II and with current scientific developments. But it did not consider it appropriate to do this ***a priori***. Therefore, when reviewing the individual parts of legislation, they left the solutions to particular problems to that time when the review shall have progressed in such a manner that it was able to provide clear direction on the matters in question[11]. To this effect, a provisional index was adopted for different topics. Different groups of study composed of 104 Consultors – bishops, priests, religious and laity of 30 nationalities[12] – had the task of formulating the ***schemataCIC*** of canons or drafts of legislation on various subjects entrusted to them[13]. The distribution of material for study was treated in the first Plenary Session of consultors which took place from 6-8 May 1965[14]. At the end of this session, three fundamental questions were redacted and three sub-commissions of consultors were formed to study each of the three questions in more detail. The three questions were as follows:

i. Drawing up of two separate *CIC* – one for the Latin Church and another for the Eastern Church – or one for both Churches.
ii. Establishment of bylaws and regulations for the *CIC* Review Commission concerning how to form its various internal organs and the concrete procedures for performing the work entrusted to them.

---

[11] Cf. G. FELICIANI, *Le basi del diritto*, 22-44; P. GISMONDI, *Il diritto della Chiesa*; P. HUIZING, «Reflections», 239-276; J. MANZANARES, «El largo camino», 203-234; F. TOMASSI, *Il comandamento*, 41-43; J. VERNAY, *Il Diritto nella Chiesa*, 29-35.

[12] Cf. *Comm* 6 (1974) 30.

[13] F. COCCOPALMERIO, «Introduzione al Nuovo Codice», 8.

[14] Cf. Letter of convocation from Card. Ciriaci, President, 22 Mar. 1965 (Prot. N. 151/65), *Comm* 1 (1969) 38-42.

iii. How to distribute the various parts of the *CIC* or homogeneous groups of canons to the sub-commissions that would be formed provisionally, with the hope of later being able to establish the final organization of the new legislative corpus[15].

Gradually, as they moved on with plenary assemblies, the questions were discussed according to practical necessities and coordination of the work needed, carefully taking into account the ***principia***[16] ***directiva quae Codicis luris Canonici recognitionem dirigant*** approved by the first General Assembly of the Synod of Bishops in October 1967[17].

While examining the preparatory documents, which manifest the *iter* of the redaction of the *CIC/1983*, this study intends to focus on the discussions of the *SchemataCIC* with respect to the norms for Institutes of Consecrated Life, with particular reference to temporary profession and exclusion from subsequent profession, in order to provide background information for the promulgated norms.

The study group entrusted with the revision of the laws for Institutes of Perfection originally called these laws ***De religiosis***[18]. Then it

---

[15] Cf. PCCICR, *Quaestiones fundamentales*, 5.

[16] These principles were as follows: (i) In renewing the law, the juridic character of the new *CIC* which the social nature of the Church requires is to be retained; (ii) there is to be a coordination between the external forum and the internal forum so as to preclude any conflict between the two; (iii) to foster the pastoral care of souls as much as possible through pursuit of equity not only in the application of the laws but also in the legislation itself; (iv) those faculties to dispense from general laws to become ordinary with reservations to the supreme power of the universal Church or other higher authorities only in those areas which require an exception on account of the common good; (v) greater application of the principle of subsidiarity within the Church; (vi) on account of the fundamental equality of all members of the Christian faithful, the rights of persons be appropriately defined and safeguarded; (vii) particular attention be given to the organization of a procedure which envisions the protection of subjective rights; (viii) the principle of territoriality in the exercise of ecclesiastical government is to be revised; (ix) penalties generally are to be *ferendae sententiae* and are to be inflicted and remitted only in the external forum; (x) new systematic arrangement of the *CIC* which is to be pursued only after a sufficient revision of its individual parts. Cf. PCCICR, *Principia*, 7-16.

[17] If the sub-commissions or study groups were to carry on their work in a methodical fashion, it was necessary that there be identified and approved certain principles which would serve as guidelines during the process of revising the whole *CIC/1917*. The central committee of consultors prepared the text of a document, which, at the request of the Supreme Pontiff, was submitted to the examination of a general session of the synod of bishops in October 1967 for approval.

[18] Cf. *Comm* 16 (1984) 196-197.

changed to a broader concept, namely, ***Institutes of consecrated life***[19]. From this follows a widening of the subjects who are to be bound by the norms contained in the ***SchemataCIC***[20]. These norms are established not only for the religious with public vows, who live common life according to the norms approved by ecclesiastical authority, but for every Institute in which is found the two essential elements of the state of consecrated life, namely, the profession and embracing of the three evangelical counsels of chastity, poverty and obedience before the Church (cf. *LG* 43) and the assumption of this commitment through vows or other sacred bonds which are like vows in their purpose (cf. *LG* 44).

There were three ***SchemataCIC*** before the final promulgation of the norms in the *CIC/1983*. The first part of the first ***SchemaCIC 1977*** established clearly the constitutive principles of consecrated life and common norms regarding among others: admission of candidates, formation, incorporation of members, and separation of members from the Institute[21]. The second part of the ***SchemaCIC*** instead treated various species of Institutes of consecrated life, applying the principle of subsidiarity – that is, establishing the general principles and leaving it up to each Institute to establish its own identity through determinations established in its special norms[22].

The entire ***SchemaCIC*** of the new law for Institutes of consecrated life, whose content was already well known from the very beginning and praised by some Superiors General and various experts[23], was printed as a confidential document in 1977 and submitted to the dicasteries of the Holy See, the national conferences of bishops, the conferences of Superiors General, and other bodies, in order to have their opinion and suggestions. The result of this consultation was predominantly negative with sharp criticism[24] from many of those consulted.

---

[19] Cf. *Comm* 6 (1974) 72.

[20] The *CIC/1917* actually considered religious life as the sole form of consecration to God by profession of the evangelical counsels. The Society of common life without vows was considered a form of life imitating the way of life of the religious, although their members were not religious (cf. can. 673 §1 of *CIC/1917*).

[21] In sessions X and XI, the norms on separation were submitted to and approved by the group of experts, cf. *Comm*. 2 (1970) 168; *Comm*. 3 (1971) 49.

[22] Cf. *Comm*. 6 (1974) 73-93; P. HUIZING, «A Methodological reflection», 180-181.

[23] Cf. J. BEYER, *Verso un nuovo diritto*, 271; P. HUIZING, «A Methodological reflection», 180-181.

[24] Cf. E. GAMBARI, *I Religiosi nel Codice*, 14. The strongest criticism consisted in the fact that the *schemaCIC* contained mostly canons that were common to all Insti-

This necessitated a profound revision of the *SchemaCIC* by a study group composed primarily of new members[25]. The work of the new study group, known as *SchemaCIC 1980*, presented significant and substantial differences with respect to the *SchemaCIC 1977*[26]. The *SchemaCIC 1980* was sent to the Review Commission of the entire *CIC* for further study. It was later revised in accordance with the Commission's observations, reprinted in 1982 as *SchemaCIC novissimum* and presented to the Holy Father, who would then decide on the promulgation of the new *CIC* in 1983[27].

1.1 *The first* schema *of 1977*

The 1977 *schemaCIC* on consecrated life was entitled *Schema Canonum de Institutis Vitae Consecratae per Professionem Consiliorum Evangelicorum*. For purposes of this study, we shall refer to it as *schemaCICIVC*. By following the various sessions of the study group (*Coetus de Institutis Vitae Consecratae*), it is possible to observe a wide variety of observations.

On the material content on profession, the preliminary canons which established the theological principles of consecrated life in can. 1 §2, while speaking of the Institutes of consecrated life in general, stated that «the Christian faithful freely assume this form of living through vows or other sacred bonds according to the proper laws of the Institutes»[28]. In relation to this, in session VI of 8 Oct. 1979, the discussion between consultors began with can. 1 §1 of the *schemaCICIVC 1977* with an aim of providing clarity on the specific

---

tutes of Consecrated Life, with the consequent danger of placing Religious and Secular Institutes at the same level; and it lacked elements needed for the specification of two categories, such as their way of life, formation and other important distinctive elements.

[25] Cf. J. BEYER, «Le deuxième projet», 120-128; E. GAMBARI, *I Religiosi nel Codice*, 13-14.

[26] In the *SchemaCIC 1980*, the part on elements common to all Institutes of Consecrated Life was reduced to 34 canons; the majority of canons (103 out of 174) treated Religious Institutes; with 21 canons addressing secular Institutes and 16 on Societies of apostolic life. Cf. E. GAMBARI, *I Religiosi nel Codice*, 14.

[27] Cf. J. BEYER, «Le deuxième projet», 87.

[28] Cf. PCCICR, *schemaCICIVC 1977*, can. 1 §2: «Libere assumunt christifideles, qui per vota aut alia sacra ligamina votis assimilata, iuxta proprias Institutorum leges». All English transl. of texts from *Communicationes* and the PCCICR are by the author except where otherwise specified.

characteristics of religious profession in a Religious Institute[29]. The third Consultor proposed the establishment of temporary vows after the novitiate and that they extend these vows also to novices, although that meant going contrary to the prescription of Instr. ***Renovationis causam***[30]. The sixth consultor was in favour of this change because, in his opinion, if the religious did not take vows – temporary or perpetual – then they would not be considered as religious[31].

The fifth Consultor agreed with the proposal of the third Consultor, arguing that the introduction of the promises had been the cause of much confusion. He did not admit, if not exceptionally, the expression «definitive profession» – that is, temporary vows to be renewed; and he did not consider necessary the word «signed» with respect to «public vows»[32]. He proposed the following formula for can. 488: «A Religious Institute is a public association [***associatio publica***] in which members, according to proper law, pronounce public vows, either perpetual or temporary which are to be renewed when the period of time has elapsed, and lead a fraternal life in common». The eighth Consultor inquired whether those who have not professed vows – definitive or perpetual – were religious[33]. The third Consultor responded that «if they have temporary vows, they are religious; but they would not be religious if, instead of vows, they had other sacred bonds»[34]. The sixth Consultor added that the «definitiveness» is «***ex parte voventis***» and not «***ex parte Instituti***», according to the doctrine of Ap. const. ***Sedes Sapientiae***[35]. The seventh Consultor called for clear clarification on this matter in the canon. In his opinion, consecration should be perpetual or definitive, at least «***ex parte voventis***», that is,

---

[29] *Comm* 12 (1980) 132: «In quolibet Instituto religioso tria evangelica Consilia in professione saltem perpetua vel definitiva ab omnibus sodalibus assumi debent, voto publico firmata, et vita fraterna in communi peragenda est ad normam iuris proprii (cuiuslibet Instituti o iuxta determinationem iuris proprii Institutorum)».

[30] *Comm* 12 (1980) 130-158; 166-170: «Per i religiosi si dovrebbero poi esigere i voti (evidentemente temporanei) anche nel noviziato, benché questo significhi un cambiamento delle norme dell'Istruzione "*Renovationis causam*"».

[31] Cf. *Comm* 12 (1980) 133.

[32] *Comm* 12 (1980) 133: «L'introduzione delle promesse è stata causa di grande confusione».

[33] *Comm* 12 (1980) 133.

[34] *Comm* 12 (1980) 133: «Se hanno voti temporari, sono religiosi. Non sarebbero religiosi se, invece di voti, vi fossero altri vincoli sacri».

[35] *Comm* 12 (1980) 133: «La definitività è "ex parte voventis", secondo la dottrina della Cost. Apost. "Sedes Sapientiae", non "ex parte Instituti"».

for life[36]. The second consultor preferred that, for reasons of prudence, the expression «perpetual or definitive» (*perpetua vel definitiva*) be retained. The Relator was also in favour of retaining this expression. The third Consultor proposed that it could simply be expressed as, «according to proper law, pronounce public vows» (*secundum ius proprium vota publica emittunt*), thus leaving it to proper law to further determine with respect to the specific character of these vows. The fourth Consultor was of the opinion that any hint of promises be completely suppressed in this canon, although, as an exception, it could be mentioned in the canons on the formation period[37].

Voting then occurred regarding which formula of the text to adopt between the one of the Relator and the one proposed by the fifth Consultor. And the results were as follows: Formula of Relator (*placet* 4); Formula of fifth Consultor (*placet* 7). Since it seemed appropriate to make some corrections even in the fifth Consultor's formula, he made those necessary corrections replacing «*associatio publica*» with «*societas*» and the new formula read as follows: «A Religious Institute is a society in which members, according to proper law, pronounce public vows, perpetual or temporary which are to be renewed, when the period of time has elapsed, and lead fraternal life in common». It once again went through voting and was approved with the result as follows: *placet* 8; *non placet* 3[38]. This text appears in the *CIC/1983* as can. 607 §2.

On temporary profession in Religious Institutes, the *schemaCICIVC* addressed Religious Institutes particularly under the title *De Institutis Religiosis*. Can. 93 §1 on definitive incorporation established that incorporation is realized through profession of vows[39]. In this section, there was no reference to the temporary profession. It referred only to definitive profession. Temporary profession instead is found in can. 58 which is located under the title *De cooptatione in Institutum*. This canon gave two possibilities for incorporation: either by vows or by other sacred bonds.

---

[36] *Comm* 12 (1980) 133: «Personalmente pensa che la consacrazione deve essere sempre, per lo meno, "ex parte voventis", una consacrazione perpetua o definitiva, cioè per tutta la vita».

[37] Cf. *Comm* 12 (1980) 133 for these responses and opinions.

[38] *Comm* 12 (1980) 134: «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».

[39] Cf. PCCICR, *schemaCICIVC 1977*, 28.

In session VIII of 13-14 Dec. 1979, can. 38 – which corresponds to can. 58[40] of the first *SchemaCIC* – on the duration of temporary profession was studied. The first paragraph set a minimum of three and a maximum of nine years. The consultors initiated a discussion since not all considered the maximum time of nine years as most suitable. The second Consultor inquired if it was appropriate to retain the phrase «not longer than nine» in §1. In his opinion, the duration of 9 years would be rather exceptional. The other Consultors – who considered the norms of ***Renovationis causam*** as not clear on this point – agreed with him. The tenth Consultor preferred that the text be left as it was. The sixth Consultor was of the opinion that the phrase «***exacto novitiatu***» be suppressed, since it was already in can. 36 §2. These opinions were followed by a brief discussion and then by voting on the following possibilities which resulted as follows: Not longer than six years (***neque sexennio longius sit***) (***placet*** 5) and not longer than nine years (***neque novennio longius sit***) (***placet*** 2). The third Consultor abstained[41]. With regard to §2 they voted that the word «***publico***» should replace «***publice***».

Concerning §3, the Secretary suggested that the paragraph be retained but that the phrase «even though they are not yet religious» (***etsi nondum sit religiosus***) be suppressed, considering that can. 58 of the *SchemaCICIVC 1977* had «***alius generis vinculo***» but this §3 instead read, «***alio sacro vinculo***, ***cuius natura et effectus***». The second Consultor agreed with him but asked that the phrase «***ad modum exceptionis***» be suppressed. The rest agreed. The ninth Consultor doubted the nature and moral consequences of this new type of bond. The fifth Consultor did not see the exact difference in the moral order between the sacred bonds of the profession and these «***alio sacro vinculo***» and wondered: «do they bind one "***sub gravi***" and "***coram Deo***"?» He suggested that, in order to avoid confusion, §3 be suppressed. Three Consultors agreed with him, because in their opinion, if these other sacred bonds bound «***ex virtute religionis***», then they were somehow equivalent to vows, yet these were people who were not yet religious. The Secretary argued that considering the lack of clarity and the fact that the subjects in question were people who still did not consider themselves ready or were

---

[40] Can. 58 §1 set the maximum time of nine years and the minimum of three for temporary profession. In §2 it repeated the possibility of taking the three evangelical counsels through vows or other sacred bonds; and §3 gave proper law (Constitutions) the possibility of establishing and defining the other Sacred bonds. Cf. PCCICR, *SchemaCICIVC 1977*, 17.

[41] Cf. *Comm* 13 (1981) 170.

not yet considered mature enough for religious life, a norm on other sacred bonds was not useful to Religious Institutes; moreover, keeping in mind the experiences after *Renovationis causam*, it did not seem to him prudent to incorporate this provision in the *CIC/1983*. In his opinion, if some Institutes would wish to have or keep the other sacred bonds, they should ask and get it through an indult. In the voting on suppression of the paragraph, the results were as follows: Suppress §3 (*placet* 6) and keep §3 (*placet* 4). It was suppressed[42].

On separation during the period of temporary profession, unlike the *CIC/1917*[43], already in the *SchemaCICIVC 1977*, separation was treated under a single title, *De separatione ab Instituto* (cann. 75-88). And this title was divided into four articles:

i. Transfer to another Institute (2 canons)
ii. Departure (4 canons)
iii. Dismissal (5 canons)
iv. Juridical status of those separated from the Institute (3 canons)[44].

The members of the study group devoted only one canon to establishing a general principle regarding definitive departure at the expiry of temporary incorporation and it was established as follows: «A person who wishes to leave an Institute can depart from it when the time of profession has been completed» (can. 78 §1)[45]. In the next paragraph, the same study group established a common norm regarding the definitive departure during the period of temporary incorporation as follows: «During the time of temporary profession, a person who asks to leave the Institute for a grave cause can obtain an indult of definitive departure from the supreme Moderator with the consent of his council» (can. 78 §2)[46]. The reason for this simplification of the norms on separation was probably to simplify the procedure[47].

---

[42] Cf. *Comm* 13 (1981) 171.

[43] In the *CIC/1917*, separation was treated under three different titles: *De transitu ad aliam religionem* (cann. 632-636); *De egressu e religione* (cann. 637-645), *De dimissione religiosorum* (cann. 646-672).

[44] Cf. PCCICR, *SchemaCICIVC 1977*, 21-26; J. BEYER, *Verso un nuovo diritto*, 85.

[45] PCCICR, *SchemaCICIVC* 1977, 22: «Qui expleto cooptationis tempore ab Instituto egredi voluerit, illud derelinquere potest».

[46] Cf. PCCICR, *SchemaCICIVC* 1977, 22.

[47] In the *CIC/1917*, the procedure for the dismissal was different depending on whether one's vows were simple temporary (cf. cann. 647-648 of *CIC/1917*), simple perpetual, or solemn (cf. cann. 669-672 of *CIC/1917*). It further depended on whether one belonged to a non-exempt clerical Religious Institute or a lay Institute (cf. cann. 649-653 of *CIC/1917*). Moreover, since the distinction between simple

In the work of the study group, ***imposed departure*** was not included in the article ***De egressus*** (on departure); instead, it was made part of ***dimissio*** (the dismissal). In the first Canon in the section entitled ***De dimissione ab Instituto***, it was defined as follows:

> A member, at the expiry of temporary incorporation, if there are just and reasonable causes, either from the part of the Institute or on the part of the candidate, can be dismissed by the competent Moderator» (can. 81 §1).
>
> Physical or mental illness, even if contracted after incorporation, which in the judgment of experts renders the member mentioned in §1 unsuited to lead the life of the Institute, without a loss of his own initiative or that of the Institute, constitutes a cause for not admitting the member to renew profession or to make perpetual profession always keeping in mind charity and equity (can. 81 §2)[48].

On terminology, there was also change from the terminology used in the second part of book II of the ***CIC/1917***[49]. The main reason for these terminological changes both for the entire ***SchemaCIC*** on Institutes of consecrated life and the part on the definitive departure from the Institute probably comes from a new situation. This ***SchemaCIC*** had to adapt a common terminology for various kinds of life who were practicing the evangelical counsels, that is, Religious and Secular Institutes as well as Societies of Apostolic Life. So, for example, instead of using the title used in the ***CIC/1917***, ***De Religiosis***; the ***SchemaCIC*** proposed ***De Institutis vitae consecratae per professionem consiliorum evangelicorum***[50]; and in place of the term ***profession***, the term ***cooptatio*** whether perpetual, temporary, or definitive was used; whereas instead of the term ***votum***, it proposed ***sacra ligamina***; and the term ***Superior*** was replaced with ***moderator***. Important terminological changes related to departure were as follows: the terms ***indultum exclaustrationis*** and ***indultum saecularizationis*** were replaced with the expression: ***concessio vel permissio manendi seu vitam agendi extra Institutum et indultum***

---

and solemn vows was not preserved in the *CIC/1983*, the corresponding diversity equally lacked any foundation of existence in the procedures. Cf. J. BEYER, *Verso un nuovo diritto*, 85.

[48] PCCICR, *SchemaCICIVC 1977*, 23-24: «Etiam infirmitas physica vel mentalis, etsi post cooptationem contracta, propter quam iuxta peritorum iudicium sodalis de quo in § 1 non idoneus ad vitam in Instituto ducendam absque damno proprio vel eiusdem Instituti comperiatur, iustam constituit causam eum dimittendi, servata semper caritate et aequitate».

[49] Cf. *Comm* 7 (1975) 89-90.

[50] Cf. *Comm 2* (1970) 173; 5 (1973) 49.

discedendi ab Instituto[51]. However, not all these terms introduced by the *SchemaCICIVC 1977* would be used in future. For instance, the terms *cooptatio* and *sacra ligamina* are only found in the *SchemaCICIVC 1977*.

Generally, it can be said that the *SchemaCICIVC 1977*, in its articles II: *De egressu ab Instituto* and VII: *De separatione ab Instituta*, significantly changed the law of *CIC/1917*[52]. It addresses in cann. 78-80 temporary residence outside the Institute – this would later be termed «exclaustration» in *SchemaCIC 1980*. It also addresses definitive departure at the expiry of temporary vows, during the period of temporary vows, and after perpetual vows and illegitimate departure[53].

1.2 *Second* (*1980*) *and third* (*1982*) schemata

Since there are no significant changes in the *SchemaCIC 1982* in relation to *schemaCIC 1980* and with reference to this study, the two *Schemata* shall be discussed together. Emphasis will be placed primarily on the *SchemaCIC 1980* and will bring in *SchemaCIC 1982* when necessary for clarity purposes.

In this second attempt of revision, there was a change in relation to the first canons. In the *SchemaCIC 1980*, the first canons were designated *Normae Communes Omnibus Institutis Vitae Consecratae*[54]. The first canon in this section (can. 503 §2) repeated the provisions of the preceding *Schema*, giving the Christian faithful the possibility to take the three evangelical counsels through vows or other sacred bonds according to the proper laws of the Institute[55]. When speaking specifically of Religious Institutes, can. 534 §2 defined it as follows: «A Religious Institute is a society in which members, according to proper law, pronounce public vows, either perpetual or temporary which are to be renewed when the period of time has elapsed, and lead fraternal life in common»[56]. In this defini-

---

[51] Cf. *Comm* 7 (1975) 90.

[52] The indults of exclaustration and of secularization, which did not make sense in Secular Institute were no longer contemplated; for the same reason, the new laws made no mention of apostates or fugitives.

[53] Cf. PCCICR, *SchemaCICIVC 1977*, 22-23.

[54] In the *SchemaCICIVC 1977*, they were entitled: Preliminary Canons (*Canones Praeliminares Generales*).

[55] Cf. PCCICR, *SchemaCIC 1980*, 127.

[56] PCCICR, *SchemaCIC 1980*, 129: «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».

tion is found the obligation to profess vows, whether perpetual or temporary, and reference to the sacred bonds disappears[57]. The sacred bonds are not permitted to the religious, but it remains unchanged for Secular Institutes and Societies of Apostolic Life. They can continue with sacred bonds rather than vows in accordance to cann. 638 and 657[58].

The present *SchemaCIC* in the article: On religious profession (*De professione religiosa*) established that: Religious profession is made by public vows (cf. can. 580); the profession is temporary when it is made *ad tempus*; the time of temporary profession is determined by the Institute and defined in proper law; however, it is not to be less than three years nor longer than six (cf. can. 581); and it gives the possibility of extending the period of temporary vows to a maximum of nine years (can. 583 §2). This extension was intended for special cases in which it was considered appropriate to prolong the time of the profession. On competence, it stated that it was the responsibility of the competent Superior, in accordance with the proper law, to extend this period[59].

In the observations made to this *Schema* by the experts, the Cardinals Razafimahatratra, Rugambwa, Krol, Freeman and O'Connell, following the opinion of P. Molinari[60], proposed, substitution of vows with other sacred bonds. The Commission responded negatively to the proposal. The reason was that «the Supreme Pontiff's opinion on this matter was negative as communicated by the Secretariat of State's letter n. 41.829 on 12 Aug. 1980»[61]. So the letter from the Pope appears to have closed the discussion in the Commission on the possibility of replacing temporary vows with other sacred bonds that *Renovationis causam* had granted. But in the observation on can. 579, the same proposal appeared again, that is, that §2 may have an addition, giving the possibility to the Constitutions of Religious Institutes to replace vows with other sacred bonds. The nature and effectiveness of these bonds should be

---

[57] This is contrary to *SchemaCICIVC 1977*.

[58] Cf. PCCICR, *SchemaCIC 1980*, 155; 159.

[59] Cf. PCCICR, *SchemaCIC 1980*, 141.

[60] Cf. P. MOLINARI, *La formazione nella vita religiosa*, 52-54. Though not the only one, P. Molinari is among those authors who preferred that the temporary profession be realized through sacred bonds instead of vows. The basis of this opinion is that the religious profession with vows should be perpetual, not temporary since it is a contradiction in itself.

[61] PCCICR, *Relatio complectens 1981*, can. 503, n. 3, 133: «Haec animadversio a Commissione recipi non potest, quia Summus Pontifex sententiam suam hac de re protulit negativam, uti nobiscum communicatum fuit per Litteras N. 41.829 Secretariae Status, die 12 augusti 1980 datas».

determined by the proper law within the scope of the universal law. The reason given for this proposal was that: «there are Religious Institutes, both ancient and modern, which have other bonds, either perpetual or temporary, which are equivalent to vows»[62]. The response of the Commission was again negative; it did not admit such proposal, making reference again to the response of the Pope above as a reason for the non-admittance. As can be seen in the two observations, the response is the same, clear and precise by reference to the express will of Pope John Paul II, as the supreme legislator who in his wisdom, did not admit such substitution for the religious.

In the *SchemaCIC 1980*, the number of canons increased[63], but the number of articles decreased due to the elimination of the article regarding the juridical status of separated members. The norms of this article were distributed to other articles[64]. As regards definitive departure from the Institute during the period of temporary profession, there were no major changes between the norms of *SchemaCIC* 1980, *SchemaCIC novissimum* 1982 (cann. 688-689)[65] and *CIC/1983*.

With respect to voluntary definitive departure at the expiry of temporary profession and during the period of temporary profession, the study group did not propose changes in the content: «a person who wishes to leave an Institute can depart from it when the time of profession has been completed» (can. 614 §1) and «during the time of temporary profession, a person who asks to leave the Institute for a grave cause can obtain an indult of departure from the supreme Moderator with the consent of his council» (can. 614 §2)[66].

Regarding exclusion from subsequent profession, after the consultation which occurred in 1977 and during the review of the *Schema*, a new canon was proposed for imposed definitive departure at the expiry

---

[62] PCCICR, *Relatio complectens 1981*, can. 579, 1°, 148: «Ratio est quia sunt Instituta religiosa, antiqua et moderna, quae vincula habent votis aequivalentia, sive perpetua sive temporanea».

[63] Chapter VI, *De separatione sodalium ab Instituto*, which in the *Schema* contained 21 canons was divided into three articles: 1. *De transitu ad aliud Institutum* (2 canons); 2. *De egressu ab Instituto* (8 canons); 3. *De dimissione sodalium* (11 canons).

[64] Cf. J. KOWAL, *Uscita definitiva*, 171.

[65] Cf. PCCICR, *SchemaCIC 1982*, 128-129.

[66] PCCICR, *SchemaCIC 1980*,149: «Qui expleto professionis tempore ab Instituto egredi voluerit, illud derelinquere potest (§1). Qui, perdurante professione temporaria, gravi de causa, Institutum derelinquere petit, a Supremo Moderatore de consensu sui consilii consequi potest indultum ab Instituto discedendi (§2)».

of temporary vows, which in the *SchemaCIC 1977* was part of the third article entitle, *De dimissione ab Instituto*. The text proposed by the consultative organ of the Pontifical Commission[67] was as follows:

> If there are just and reasonable causes, either on the part of the Institute or on the part of the candidate, the competent major Superior (the supreme Moderator), with the consent of his council, can exclude a member from making a subsequent profession when the period of temporary profession has been completed (can. 71 §1).
>
> Physical or mental illness, even contracted after profession, which after hearing the experts (in the judgment of experts) renders the member mentioned in §1 unsuited to lead the life of the Institute (without a loss of his own initiative or that of the Institute) constitutes a cause for not admitting the member to renew profession or to make perpetual profession (can. 71 §2)[68].

At its meeting of 4 Mar. 1980, the Pontifical Commission examined the proposal of this canon. The Secretary of the Commission approved the substance of the canon observing, however, that in §1, *et rationabiles* and *sive ex parte candidati*, *sive ex parte instituti* could be omitted. Also, in his opinion the competent Superior should have been the *Superior maius*. Regarding §2, he observed that it was better to say, *de iudicio peritorum*, and suppress *absque damno proprio vel Instituti*. He also did not consider it necessary to add the clause *servata semper caritate et aequitate* which had been proposed, because that goes without a saying[69].

The second Consultor was of the opinion that this clause should be retained, or alternatively, *salva iustitia*, because there could be some diseases contracted because of the negligence of the Institute. In §2, the fourth Consultor preferred *auditis peritis*, in order not to confine the

---

[67] From 3-8 Mar. 1980, the 10th session of the special study group, constituted to examine the observations submitted by consultative organs about the *Schema* on *De Institutis vitae consecratae per professionem consiliorum evangelicorum*, was held at the headquarters of the Pontifical Commission, cf. *Comm* 13 (1981) 325-350.

[68] *Comm* 13 (1981) 331-332: «Sodalis, expleta professione temporaria, si iustae et rationabiles causae adfuerint sive ex parte candidati sive ex parte Instituti, a competenti Superiore maiore (a Supremo Moderatore) de consensu sui consilii, a subsequenti professione emittenda excludi potest (§1). Infirmitas physica vel mentalis, etiam post professionem contracta, quae, auditis peritis (de iudicio peritorum), sodalem, de quo in § 1, reddit ineptum ad vitam in Instituto ducendam (absque damno proprio vel Instituti), causam (iustam) constituit eum non admittendi ad professionem renovandam vel ad perpetuam emittendam (§2)».

[69] Cf. *Comm* 13 (1981) 332.

Superior to only assessment of medical experts. The eighth and tenth Consultors were also of the same opinion that experts' judgment (psychologists, psychiatrists) should not be given too much weight; therefore, it was better to say ***auditis peritis***. The fifth Consultor pointed out that it would not be fair and just to expel from the Institute one who contracts a kind of dementia disease. The sixth Consultor remarked that it was better to say ***psychicae*** instead of ***mentalis***[70]. Finally, after the discussion, the Consultors voted on the canon and the proposed changes and the results were as follows:

i. To suppress ***et rationabiles*** and ***sive ex parte candidati***, ***sive ex parte instituti*** and to call the competent Superior ***Superiore maiore*** (placet 8)
ii. To add ***caritate et aequitate*** to §1 (***placet*** 3)
iii. To say in §2 ***psychicae*** instead of ***mentalis*** (***placet*** 10)
iv. To say ***iudicio peritorum*** (***placet*** 6)
v. To say ***auditis peritis*** (***placet*** 4)
vi. To suppress ***absque damno proprio vel Instituti*** (***placet*** 7) and to retain the phrase (***placet*** 3)
vii. To suppress ***iustam*** (***placet*** 9)[71]

Given the delicate nature of the matter, time was taken to reflect on the question and after more reflection[72], the definitive formula in the 1980 ***Schema*** was the following:

> If there are just causes, the competent major Superior, after having heard his council, can exclude a member from making a subsequent profession when the period of temporary profession has been completed (can. 615 §1).
>
> Physical or psychic illness, even contracted after profession, which in the judgment of experts renders the member mentioned in §1 unsuited to lead the life of the Institute constitutes a cause for not admitting the member to renew profession or to make perpetual profession, unless the illness had been contracted through the negligence of the Institute or through work performed in the Institute (can. 615 §2)[73].

---

[70] For all these opinions, cf. ***Comm*** 13 (1981) 332.
[71] Cf. ***Comm*** 13 (1981) 332-333.
[72] Cf. ***Comm*** 13 (1981) 335.
[73] PCCICR, ***SchemaCIC 1980***,149-150: «Sodalis, expleta professione temporaria, si iustae causae adfuerint, a competenti Superiore maiore audito suo Consilio, a subsequenti professione emittenda excludi potest (§1). Infirmitas physica vel psychica, etiam post professionem contracta, quae, de iudicio peritorum, sodalem, de quo in §1, reddit ineptum ad vitam in Instituto ducendam, causam constituit eum non admittendi ad professionem renovandam vel ad perpetuam emittendam,

As already seen in chapter I, the *CIC/1917* did not consider the illness contracted after the profession as a just cause for exclusion from subsequent profession (cf. can. 637 of *CIC/1917*). The study group in drafting the canon as: «all kinds of illnesses, which according to the judgment of the experts, makes the candidate unfit to lead the life of the Institute, whether contracted before or after the profession», affirmed that it could now be a ***determinant cause*** for non-admission to subsequent profession, unless the illness was due to negligence on the part of the Institute or to a work supported by the Institute. The guiding principle for this cause is the «lack of fitness for the life one must lead in the Institute», not necessarily for religious life in general[74].

With regard to competent authority to grant the indult of definitive departure, the ***Schemata*** did not differ. In both of them, the one who, during the temporary profession, for a grave reason asked to leave the Institute, could get the indult from the ***supreme Moderator*** with the consent of his council[75]. But with regard to exclusion, the introductory norms of the *SchemaCIC 1980* – on the exclusion of a member from subsequent profession when just causes exist – stated that the competent authority was the major Superior (***Superiore Maior***), after consultation with his council. The norm was accepted and was promulgated without substantial changes in the *CIC/1983* as can. 689 §l.

From this analysis, it can be said that the norms laid down in the *CIC/1917* as a common discipline regarding departure at expiry of temporary vows (cf. can 637 of *CIC/1917*) were retained to a greater extent in the *Schemata* for the *CIC/1983*. Therefore, in full conscience and with the spirit and character of Vatican II, the *CIC/1983* emphasizes the totality and irrevocability of consecration (cf. *LG* 44; can. 607 §1). On the other hand, the group of experts for the preparation of the *CIC/1983*, as it has been demonstrated, left room for the possible situation of abandoning this state of life by the fact that the profession is temporary. The reason for the necessity of this temporary trial period before perpetual profession comes not only from psychological and emotional difficulties that are not always fully resolved at the end of the novitiate formation, but more importantly

---

nisi ob neglegentiam Instituti vel ob laborem in Instituto peractum infirmitas contracta fuerit (§2)».

[74] Cf. J. TORRES, «Dispensa dai voti», 363.

[75] Cf. PCCICR, *SchemaCIC 1977*, 22, can. 78 §2; ID., *SchemaCIC 1980*, 149, can. 614 §2.

from the need to give the young professed enough time to assimilate and deepen that in which religious identity consists (cf. *PI* 6), without any prudent doubt on the authenticity of one's vocation. For the same reason, the competent Superiors may grant such members the indult of departure (cf. *RC* 8) or even exclude them from subsequent profession if the difficulty persists even after the maximum period possible for temporary profession has been given or when it is evident that they may not attain the spiritual maturity required to live the life of the Institute even with addition of more time.

As for the effects of departure from the Institute, the one which is characteristic and principal of both departures – voluntary and imposed – is that mutual juridical relations between the religious and the Institute cease. In other words, after the time has expired, the religious is juridically free *ipso iure*. Vows as well as the rights and obligations deriving from profession cease *ipso facto*.

With regard to readmission[76], in the *SchemaCICIVC 1977*, the obligation of novitiate and profession did not appear. During the review process of the *Schema*, however, this matter was treated at the meeting of 5 Mar. 1980 where the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life[77] proposed the following text analogous to *RC* 38, and suggested that it may be added to the *Schema* as §3 of can. 71 or as a new canon:

> When a candidate has left the Institute legitimately, either at the end of novitiate, during or after expiration of his temporary vows, and later requests re-admission, the supreme Superior may grant this re-admission without the obligation of prescribing the repetition of the novitiate, if the time of absence does not go beyond three years.
>
> The Superior is competent to determine an appropriate probation prior to temporary profession, and the time of vows to precede perpetual profession without prejudice to cann. 77 and 79[78].

---

[76] The *CIC/1917* on readmission stipulated that the religious who abandoned Religion could not be admitted in any Religious Institute without Apostolic indult (cf. can. 542, 1º (e)) of *CIC/1917*. However, if he was readmitted into the same Institute, by virtue of the said indult, he had to repeat the novitiate and profession (cf. can. 640 §2 of *CIC/1917*).

[77] Hereafter CICLSAL. At the time, it was called Congregation for the Religious and the Secular Institutes (CRIS).

[78] *Comm* 13 (1981) 336: «Qui, expleto novitiatu vel post professionem, legitime ab Instituto egressus fuerit, a Superiore supremo de consensu sui consilii readmitti potest sine onere repetendi novitiatum; eiusdem Superioris erit determinare congruam proba-

After discussion among the Consultors and their final proposals[79], it appeared in the *SchemaCIC 1980* as can. 616 §1 with the following text:

> The supreme Superior with the consent of the council can readmit without the burden of repeating the novitiate one who had legitimately left the Institute after completing the novitiate or after profession. Moreover, it will be for the same Superior to determine an appropriate probation prior to temporary profession and the time of vows to precede perpetual profession, according to the norm of cann. 581 and 583[80].

This norm was accepted by the *SchemaCIC novissimum 1982*[81] (cf. can. 690 §1) and in the promulgated *CIC/1983* (cf. can. 690 §1) without any substantial changes.

After this analysis of the work of the Revision Commission, the study now turns to the norms of the *CIC/1983* on temporary profession and exclusion from subsequent profession.

2. Norms of the *CIC/1983* on temporary profession and exclusion from subsequent profession

After many years of review, the *CIC/1983* was promulgated by Pope John Paul II on 25 Jan. 1983[82] and came into force on 27 No-

---

tionem praeviam professioni temporariae et tempus votorum ante processionem perpetuam praemittendum, ad normam cann. 77 et 79».

[79] In the opinion of the Secretary, the formula «*congruam probationem praeviam*» would suffice instead of «*si tempus absentiae triennium non superaverit*» in order not to have a fixed limit of time. The Relator's opinion was that the norm should not be extended to those dismissed from the Institute. The second Consultor proposed that *de consensu sui consilii* be added to supreme Superior. The fifth Consultor was of the opinion that the provision would also bind those who are perpetually professed and that it would be better to say: *expleto novitiatu vel post professionem*, *legitime Institutum dereliquerit.* The sixth proposed that this faculty not be reserved to only supreme Superior but be given simply to major Superiors. The second and fifth Consultors responded that, in this text, the emphasis was on «without the obligation of repeating the novitiate» which removed such kind of readmission from the powers of other major Superiors and reserved it to the supreme Superior. Cf. *Comm*. 13 (1981) 336.

[80] PCCICR, *SchemaCIC 1980*, 150: «Qui, expleto novitiatu vel post professionem, legitime ab Instituto egressus fuerit, a Superiore supremo de consensu sui consilii readmitti potest sine onere repetendi novitiatum; eiusdem Superioris erit determinare congruam probationem praeviam professioni temporariae et tempus votorum ante professionem perpetuam praemittendum, ad normam cann. 581 et 583».

[81] Cf. PCCICR, *SchemaCIC 1982*, 129.

[82] Cf. JOHN PAUL II, Ap. const. *Sacre disciplinae leges*, 25 Jan. 1983, *AAS* 75 (1983) VII-XIV.

vember of that same year. It was entitled, as the previous, ***Codex iuris canonici*** and consisted in 1752 canons distributed in seven books[83]. The part that the *CIC/1983* devotes to the Institutes of Consecrated Life and Societies of Apostolic Life belongs to book II: ***De Populo Dei***, part III: ***De Institutis vitae consecratae et de Societatibus vitae apostolicae*** (canons 573-746). Temporary profession is governed by provision of can. 655, whereas exclusion from subsequent profession is governed by can. 689. But before specifically looking at these canons, it is important to briefly present three general principles that guided the prescription of these canons for they aid the understanding of the spirit of the *CIC/1983*, especially can. 689 that is at the centre of this study.

2.1 *Three general principles that guided the revision process and their implication for application of can. 689*

The nature and application of can. 689 is guided by three principles:

i. subsidiarity – the fifth guiding principle for the revision of the *CIC/1917* (cf. can. 587 §1).
ii. Autonomy (cf. can. 586 §1).
iii. Suitability (cf. can. 653 §2).

2.1.1 The Principle of subsidiarity

The principle of subsidiarity states that «what a lower hierarchical institution can accomplish for itself should not be reserved to a superior authority»[84]. In a speech on 20 Feb. 1946, Pope Pius XII had mentioned «a generally valid principle» expressed by his predecessor Pius XI in the Encycl. ***Quadragesimo anno***, namely, that «all social activities by their very nature are subsidiary»[85]. Pius XII stated that these words «apply to all levels of social life, and therefore, also to Church's life, without prejudice to its hierarchical structure»[86].

---

[83] Book 1: ***De normis generalibus*** (203 canons); book 2: ***De populo Dei*** (543 canons); book 3: ***De Ecclesiae munere docendi*** (87 canons); book 4: ***De Ecclesiae munere sanctificandi*** (420 canons); book 5: ***De bonis Ecclesiae temporalibus*** (57 canons); book 6: ***De sanctionibus in Ecclesia*** (89 canons); book 7: ***De processibus*** (353 canons).

[84] J.D. FARIS, «An overview», 29.

[85] PIUS XI, Encycl. ***Quadragesimo anno***, §2, 1 Jun. 1931, *AAS* 23 (1931) 203: «… socialis quaevis opera vi naturaque sua subsidium»

[86] PIUS XII, Allocution, 1 Apr. 1946, *AAS* 38 (1946) 145.

To foster the Church's pastoral mission, it was felt during the revision process that there was need for greater collaboration between clergy, religious and laity. Therefore, the initial consultation led to the call for the principle of subsidiarity to be applied more fully in the Church. The Revision Commission included this criterion as the fifth of its guiding Principles. The Commission deemed it in harmony with the ecclesiology of Vatican II. Even though the Council did not use the word «subsidiarity», it had applied the principle broadly to the life of the Church[87]. But the request from some Consultors that the Council's doctrine be extended in the *CIC/1983*, especially in regard to the laity, was not accepted since the Commission felt it could not extend the Council's doctrine. However, it was agreed that it was to be kept carefully in mind during their proceedings[88]. This principle, therefore, was clearly in the mind of the Review Commission as they reviewed laws for Institutes of consecrated life. Specifically, the application of this principle in the revision of the *CIC/1917* is demonstrated in two ways.

First, the question of appropriate decentralization is basic to the organization of ecclesiastical government. During the Council, Pope Paul VI considerably broadened the bishops' faculties[89] and then decided that dispensations from general laws would be reserved to the Holy See[90]. He added that, «each Bishop entirely retains his own responsibility – each Bishop must with the assistance of his Presbyterate, personally resolve his own immediate problems»[91].

Second, there is constant tendency to preserve the unity of the canonical system in the essential norms and general institutions then leave it to particular or specific law to make concrete determinations and more detailed norms that can better accommodate the circum-

---

[87] Some of the areas where we see this principle applied are as follows: basic equality of all faithful in general; within the diversity of functions and their common participation in the Church's mission as a divine institution. On this debate, cf. J.L. GUTIÉRREZ, «El principio de subsidiariedad», 413-444. It is also seen within the hierarchic organization without prejudice to the primacy of the Roman Pontiff (cf. *LG* 27; *CD* 8).

[88] *Comm.* 2 (1969) 96: «Prae oculis habenda est doctrina Concilii. Non possumus illam extendere pro arbitrio. Immo oportet caute agere, ut spiritus Concilii revera servetur».

[89] Cf. PAUL VI, Motu proprio *Pastorale Munus*, 31 Jan. 1964, *AAS* 56 (1964) 5-12.

[90] Cf. PAUL VI, Motu proprio *De Episcoporum Muneribus*, 30 Jul. 1966, *AAS* 58 (1966) 467-472.

[91] PAUL VI, Allocution, 6 Jun. 1975, *AAS* 67 (1975) 378: «Ciascun Vescovo conserva intera la propria responsabilità, ciascuno deve proporsi di risolvere personalmente, con l'aiuto del proprio Presbiterio, i propri problemi immediati».

stances of time and place. And a good example is found in the legislation on Institutes of consecrated life.

On the basis of this principle, the *CIC/1983* entrusts either to proper law or to the personal authority of the Superior whatever is not necessary for the unity of the discipline of the universal Church, such that appropriate provision is made for a healthy «decentralization» while avoiding the danger of division and «independence». It was deemed necessary and appropriate for providing for the welfare especially of individual Institutes through proper law and the recognition of a healthy autonomy for internal governance while legislative unity and universal and general law are observed.

It is this second way that is intended in this study when it states that can. 689 is guided by the principle of subsidiarity. Therefore, referring the determination of the period of temporary profession to proper law – despite its grave importance – is due to the desire to apply the principle of subsidiarity by granting greater autonomy to the Institute (cf. can. 586 §1)[92].

The rationale for application of this principle of subsidiarity is that the Institutes need to entirely retain the responsibility to preserve their charism, purpose, identity and character once approved by the competent ecclesiastical authority (cf. can. 578). Superiors assisted by their councils and directed by their proper laws are personally responsible for nurturing the vocation of their members once admitted to the Institute (cf. cann. 617-619). They are equally responsible for determining the suitability of their members and resolving unsuitability problems by discretionary deciding to exclude those whom they deem unfit (cf. cann. 657 §§1-2; 689).

The implication of the principle of subsidiarity for the application of can. 689 is that a number of decisions are left to the discretionary judgement of the competent Superiors of the Institutes. Consequently, higher external authorities cannot substitute their judgment for that of the Superior once a Superior has made a decision – unless gross abuse or violation of rights is evident – since to do so would be equivalent to usurping the function of lower authority which is contrary to the principle of subsidiarity. With particular reference to can. 689, such a decision, being one of a discretionary judgement – which therefore, does not permit intervention of external higher authority unless there is a gross abuse – logically requires proper procedural norms to guide Superiors in their deci-

[92] Cf. D.J. ANDRÉS, «Religious profession», II/2, 1740.

sions even if such requirement is not explicitly given in the common law. This seems necessary to protect both members and Superiors from the dangers of human frailty that tend to lead towards arbitrary decisions whenever procedures are not well defined and discretion of judgement appears to be too broad. This in turn raises the question: «Is it just and equitable to apply can. 689 without any specific guidelines in the proper law of the Institute on what might be considered just causes and how to arrive at such causes?».

It further implies the necessity of prudence in the exercise of authority in Religious Institutes – that is, having Superiors who themselves respect the rule of law; Superiors who not only apply the law with equity, but who also give direction and lead members towards a willingness to live according to their Constitutions and other proper laws[93].

2.1.2 The Principle of autonomy

The autonomy of life and governance is recognized by can. 586 §1 which states that «a just autonomy of life, especially of governance, is acknowledged for individual Institutes, by which they possess their own discipline in the Church and are able to preserve their own patrimony intact, as mentioned in can. 578».

The autonomy recognized by this canon for all Institutes of consecrated life is not substantially new or unknown in the canonical order. From the origin of religious life in the Church, each Institute has been governed by its own Rules and Constitutions, seeking to safeguard its own spirit and identity in the body of ecclesial life. But its formal and general recognition in the *CIC/1983* has a great canonical importance in the application of general norms in particular cases. Consequently, the intention in this study is not to get into the study of this principle in general[94] but to see how it influences the application of can. 689.

---

[93] The rule of law is important for any Religious Institute because the entire life and charism of any Institute is embodied in its proper law. This is clearly stated in can. 598 as follows: Each Institute, attentive to its own character and purposes, is to define in its constitutions the manner in which the evangelical counsels of chastity, poverty, and obedience must be observed for its way of living (§1); Moreover, all members must not only observe the evangelical counsels faithfully and fully but also arrange their life according to the proper law of the Institute and thereby strive for the perfection of their state (§2).

[94] For such general study cf. V. DE PAOLIS, «Exemptio an autonomia» 147-177; G. GHIRLANDA, «La giusta autonomia», 679-699; S. PETTINATO, «Esenzione e autonomia», 194-229.

Can. 586 expressly addresses autonomy of life, so that an Institute has its own discipline but within the Church. It is, therefore, the autonomy necessary to preserve the identity of the Institute pursuant to the law[95]. Consequently, autonomy is not equivalent to independence because there is also in place the principles of communion[96] and of subordination[97] that must be respected. Therefore, autonomy does not have an absolute character; rather, it is externally limited in some cases by the power of Apostolic See (cf. can. 593) and, in others, by the power of the diocesan bishop (cf. can. 594).

The Legislator recognizes that every Institute is unique. He legislates that personal authority be exercised at all levels of governance by one person who has the responsibility for exercising it and the accountability for its exercise (cf. cann. 620; 622)[98] in order to respond to the unique circumstances of each Institute. The Superiors of Religious Institutes are taken in the strict sense, as physical persons who, by virtue of their office exercise their power pursuant to the law (cf. can. 617). According to the mind of Vatican II (cf. *PC* 14) and the papal exhortation (cf. *ET* 25), Superiors must possess personal authority with consideration made to legitimate consultation and the limitations placed by both common and particular law[99]. In accordance with this mind of Vatican II, the legislator put a number of limitations on the exercise of personal authority with the aim of protecting both individual members and the Superiors. One of such limitations is that what is given in general in the *CIC/1983* is to be specified in the proper law (cf. cann. 617; 620-622; 623; 624; 626; 627). The *CIC/1983*, in many canons, refers[100] specifications to

---

[95] Cf. V. DE PAOLIS, «Exemptio an autonomia», 177.

[96] This principle as given in can. 675 §3 states that «apostolic action, to be exercised in the name and by the mandate of the Church, is to be carried out in the communion of the Church».

[97] This principle as given in can. 678 §1 states that «religious are subject to the power of bishops whom they are bound to follow with devoted submission and reverence in those matters which regard the care of souls, the public exercise of divine worship, and other works of the apostolate».

[98] Cf. also M. LINSCOTT, «The Service», 215.

[99] Cf. CICLSAL, Decr. *Experimenta circa regiminis rationem*, 2 Feb. 1972, *AAS* 64 (1972) 393-394.

[100] For the evolution of these referrals cf. PCCICR, *SchemaCIC 1977* – This schema had a total of 126 canons and more than 60 of them made reference to proper law without specifying in which part of the proper law; PCCICR, *SchemaCIC 1980* – This Schema had a total of 170 canons and out of this, about 50 canons referred specifications to the Constitutions and another 50 to other normative texts of the Institute.

proper law[101] of the Institutes following the principles of subsidiarity[102] and autonomy of each Institute. This is intended to allow each Institute the flexibility to enact the necessary norms on the discipline of members (can. 586 §1)[103].

The rationale for this autonomy is in the fact that situations differ not only due to the unique charisms of the Institutes but also because of the particular circumstances of their mission, the Institutes' traditions, discipline and the signs of time. Autonomy to respond uniquely to these varied circumstances is, therefore, a right that is basic to revelation and theology upon which religious life is founded. There are situations that simply cannot be considered under any type of universal standard of fairness and justice.

The implication of the principle of autonomy for the application of can. 689 is that there is need for necessary discretion in the internal governance such that the Institute is able to observe faithfully the mind and designs of the founders regarding the nature, purpose, spirit, and character of the Institute which have been sanctioned by competent ecclesiastical authority, and its sound traditions (cf. can. 578). To observe these necessarily requires suitability for the life of the Institute. Therefore, with particular reference to can. 689, what may qualify as just causes in any given Religious Institute is defined by each Institute's unique charism, purpose, character, the personal views and experiences of the founders and the Superiors' own perception of the Institute's values, traditions and morals. Consequently, the principle of autonomy does not permit universal standards of fairness and justice to apply equally in each case. Attempting to apply such universal standards would be equivalent to disregarding the unique and autonomous nature of each Institute. This, consequently, necessitates having good proper laws that determine what may be considered just causes in concrete terms for exclusion in each Institute and how to arrive at such causes. Since every Religious Institute enjoys some autonomy, this autonomy further requires prudent use of the faculty of

---

[101] The term «proper law» includes the combination of the fundamental code (Constitutions) and other normative texts of the Institute. The expression «fundamental code» appeared for the first time in *ES* II, 14. It has had different names by different Institutes such as: Rule, Constitutions, First Book; Book of life, among others. Cf. Y. SUGAWARA, «Il ruolo delle costituzioni», 675. Today, it is more commonly called «Constitutions».

[102] Cf. *Comm.* 27 (1995) 240, *Notae* (b).

[103] Cf. also Y. SUGAWARA, «Il ruolo delle costituzioni», 670-673.

discretion of judgement in the decision to exclude a member from subsequent profession.

2.1.3 The Principle of suitability

The principle of suitability is found in can. 653 §2 of *CIC/1983*. The canon reads as follows: «At the end of the novitiate, if judged suitable, a novice is to be admitted to temporary profession; otherwise the novice is to be dismissed. If there is doubt about the suitability of a novice, the major Superior can extend the time of probation according to the norm of proper law, but not beyond six months».

Can. 653 §2, inspired by the very nature of religious life, expresses the principle of suitability as the main ground for admission to profession when it calls upon all competent Superiors to admit to temporary vows only those novices who are judged suitable.

The rationale for this principle lies in the following: The public nature of the state to which the candidate wants to accede; the demands of vitality and survival of the Institute; the good of the Church; the avoidance of injury to the candidate by not delaying non-admission to subsequent profession whenever unsuitability is evident and the necessity that each Institute must verify vocation of its members (cf. cann. 574 §2; 646)[104].

The principal end of a Religious Institute is to foster witnessing of consecrated life (cf. can. 673) and to carry out works of apostolate (cf. *CD* 33b). Consecration inevitably implies mission (cf. *EE* 23) which includes both external apostolic activity and participation in the pastoral function of the Church through spiritual and corporal works of mercy (cf. can. 676)[105]. This purpose is to be realized without any dichotomy (cf. *PI* 17) and within a given specific Religious Institute. The vocation to religious life, therefore, is not an abstract entity but one that is specified in a certain Institute with its own particular characteristics. This is the reason why it is the prerogative of the proper law to add to the general qualifications given in the *CIC/1983* other specific qualifications that speak to the nature and

---

[104] Cf. also D.J. ANDRÉS, «Admission to the novitiate», 1696.

[105] Although, following can. 577, Religious Institutes include: (i) Contemplative – those in which Christ is more closely followed when praying, (ii) apostolic Institutes – those which follow Christ when proclaiming the kingdom of God and (iii) those dedicated to works of charity with apostolic dimension; the scope of this study is Religious Institutes dedicated to works of charity, therefore the elaboration on concrete reasons for exclusion will be limited to these Institutes.

end of each Institute[106]; and the Institutes themselves must verify suitability of their members. Such verification necessarily considers four personal qualities:

i. Required age.
ii. Good health understood in its biological, psychic, spiritual, social and familial dimensions.
iii. Keeping in mind the unity of the person.
iv. Suitable character required by religious ideals and values.
v. Religious maturity relative to the life of the Institute.

The religious maturity relative to the life of the Institute must be supported by physical, intellectual, emotional and social maturity and it must also be reflected in the possession of the values, ideals and characteristics of consecrated life in general and of religious life in a particular Religious Institute[107].

«Suitability», therefore, implies positively possessing four personal qualities namely: necessary age, health, suitable character and sufficient qualities of maturity to live the proper life of the Institute (cf. can. 642). Cann. 655 and 689 are logical consequences of this principle since this principle necessitates a period of temporary profession to determine suitability of the religious for subsequent profession. It naturally follows that cann. 655 and 689 provide the faculty to exclude from subsequent profession any member deemed unsuitable at the expiry of the period of temporary profession.

«Unsuitability», on the other hand, is a radical incompatibility with religious life or life in a given Institute. Unlike a weakness that can easily be overcome through ongoing formation (cf. can. 659) or a mere mistake that can be corrected with some effort (cf. can. 664) and fraternal exhortation, incompatibility makes life in a given situation or environment practically impossible both for the one experiencing the incompatibility and those he has to live with, since this incompatibility – if not resolved – in the long run makes him disruptive consciously or unconsciously.

The implications of the principle of suitability for application of can. 689 are as follows:

i. One can only be or remain a religious in a given Institute if he is suitable.

---

[106] Cf. T. RINCÓN-PÉREZ, «The norms common to all Institutes», 1549.
[107] Cf. also D.J. ANDRÉS, «Admission to the novitiate», 1696-1697.

ii. The Superior should not be too quick to exclude a member from further profession except for incompatible behaviours which amount to unsuitability.

The principle of suitability demands that once professed, as long as members are integrated into a community and are aspiring to lead fraternal life in communion (cf. can. 607 §2), their vocation should be nurtured. As long as they live according to evangelical counsels (cf. can. 607 §2) and do not spread discord (cf. *PI* 10), it seems to be against the spirit of can. 689 to send them away after profession due to some personal weaknesses[108] that do not amount to incompatibility. This is because such weaknesses do not meet the threshold of unsuitability given that unsuitability is not just a weakness or a mistake. It is rather a question of effective ongoing formation to help them in whatever ways possible to overcome their personal weaknesses that prevent them from leading a life flourishing in virtues (cf. cann. 659 §1; 664).

On the other hand, the same principle of suitability demands that once unsuitability – and not just weakness or mistake – is evident, one should not be admitted to subsequent profession. It is against justice to let them continue, because to send them away when they have been in the Institute for a long time seems unbearable yet, for sanity in the communities where such members are assigned, it must be done if they become disruptive in the long run. It is against justice because exclusion after staying too long in the Institute can be attributed but not exclusively to the following three possible reasons:

i. Competent Superiors probably did not dare to correct the member and/or to initiate dialogue as soon as the first inklings of unsuitability appeared.
ii. They may have let the situation drag on, hoping that everything would sort itself out.
iii. They may even have exploited the disruptive member because they needed him for a specific apostolate knowing very well that finally he would have to go[109].

All these possibilities, however, are contrary to the principle of suitability.

---

[108] Cf. J. VANIER, *Community and growth*, 127. Moreover, the Institute has a responsibility to assure its members the help of a stable and more solidly based way of Christian life and to grant them a well-proven teaching on seeking after perfection (cf. *PI* 10) and not to send them away for what does not amount to unsuitability.

[109] Cf. J. VANIER, *Community and growth*, 127.

2.2 *Challenges deriving from the three principles in the exercise of discretionary authority*

From these principles, it logically follows that any effective implementation of cann. 655 and 689 necessarily depends on the quality of proper laws and prudent exercise of personal authority of the Superior. The *CIC/1983* – guided by the three principles – gives the Superiors the right to exercise discretionary judgement in many instances such as in can. 689. But there are no juridically binding norms in place to govern the exercise of discretionary judgement. This is so for the obvious reason: no one can legislate for an act of the intellect such as judgement. Such acts are naturally governed by the moral virtue of prudence. Prudence is, therefore, indispensable in such decisions of the intellect. Consequently, the exercise of personal authority in decision making such as that of can. 689 is made complex by the fact that its realization demands not only good procedural norms in place but also human qualities and personality traits that cannot be legislated but which must be taken in to consideration by members when electing their Superiors.

But this complexity is not without challenges. Consequently, the study now examines some of the challenges.

The first challenge relates to the presumption of the necessary prudence and counsel required in the exercise of discretionary authority. Strictly speaking, discretionary authority is not shared since it is normally *ex officio* and is invested in the person of the Superior[110]. The Legislator has made provision that the Superior must be competent in order to admit a member to temporary vows and to exclude a member validly and legitimately. But being competent does not mean that one is discrete in judgement or good at taking counsel; it only means that the person carrying out the act is one who is designated to do so and that he does it according to the provisions of law (cf. can 124 §1).

Therefore, it is obvious that competence does not guarantee that every Superior, merely by virtue of holding an office, will be properly experienced, cautious and dedicated, or that in the exercise of discretionary authority, they will be docile towards God, reverent towards members, good at taking counsel or prudent in making decisions. All that the Legislator can and does guarantee is that the general provisions given in the *CIC/1983* are time-tested guidelines for ensuring that Superiors act legitimately. Therefore, if they are taken into consideration, the

[110] For this very reason, councillors do not share the personal authority of the Superior. Cf. A. CALABRESE, *Istituti di Vita Consacrata*, 96.

Institute is most likely to have good collaboration between members and Superiors in living the life of the Institute. But this requires much more than competence. It also requires prudence and disposition to take counsel. In other words, the *CIC/1983* by means of these canons does not legislate for the aptitude to take counsel or to act discretely in decision making. It, therefore, does not guarantee that one in authority – simply by virtue of office – will certainly be good at taking counsel or act prudently. Therefore, once a member is legitimately elected or appointed to an office, the presence or lack of aptitude to take counsel or prudence in the exercise of the faculty to discretionally decide is not juridically relevant.

Consequently, while the Legislator ensures that Institutes have effective norms that will ensure that office holders exercise their authority within their competence – that is, legitimately –, it is up to each Institute to designate Superiors to such offices who have the necessary aptitude to take counsel and prudence to use discrete judgement in decision making especially in crucial matters.

Unlike the *CIC/1917*, the *CIC/1983* – guided by the principles of autonomy and subsidiarity – gives apparently very broad discretion of judgement to Superiors. It, therefore, seems that Institutes need – much more than before – to take these principles into very serious consideration when designating members to offices, because lack of necessary aptitude and prudence in the exercise of the faculty of such presumably broad discretion is enough to lead the Institute into vocation and suitability crises[111]. And considering that aptitude and prudence are juridically irrelevant, lack of it cannot be validly used as evidence to remove one lawfully and validly elected from an office before the end of his term of office, unless gross abuse of office is evident.

The quality of any discretionary decision directly depends on the Superior's knowledge, experience, integrity and ability to take counsel. This requires that the one invested with the faculty to make decisions possess the necessary skills, right attitude and prudence. Having the

---

[111] Following R. Hill's explanation: Some people are good leaders by nature, it seems, or by training, while others never quite get the knack of it. Some people of the greatest good will and with the very best of intentions seem constitutionally incapable of entering into genuine consultation, of actually hearing what others are saying, or of delegating responsibility to others. Cf. R. HILL, «Authority and Obedience», 227. While this has nothing to do with legitimacy of authority, it can make for strained relationships in a religious community that hinders personal growth and encourages the unsuitability of members.

right attitude has a direct impact on the outcome of any discretionary judgement. Right attitude is here intended good faith. Discretionary judgement as part of the decision-making process, also requires that before any grave decision is taken, a Superior may gather, analyse and synthesize relevant information, observe any law requirement and properly apply any relevant directive.

The second challenge relates to the fact that the *onus* of proving the existence of just causes for exclusion of a member lies solely with the Superior. In deciding on unsuitability, the Superior is not required to get the consent of anybody – unless specified in the proper law – other than mere consultative vote of the council. He is simply to use his discretion to decide whether to exclude a member or not. In reaching his decision, though he needs to consider the counsel of the council (cf. can. 689 §1), he must act independently in exercising his discretion according to his own assessment of the particular case before him. That is, his decision must be made without any influence from another person. This might be very burdensome to some Superiors and, at times, even frustrating since the *onus* (or responsibility) of proving the existence of just causes for exclusion of a member lies solely with the Superior. This is true also in consideration of any grievances from the excluded member.

Consequently, considering the gravity of the matter and the weight of the burden it may impose on one's conscience, the Superior needs some protection. To protect the Superior from human frailty that may interfere with his right attitude, proper procedural guidelines whose rightful place is in supplementary codes[112] are not only necessary but indispensable.

Having considered the principles guiding the application of cann. 655 and 689, the study now turns to the canons in question as promulgated in the *CIC/1983*.

3. **The basic elements of temporary profession of vows (can. 655)**

Because of its «theological solidity, its pedagogical practicality, its security and the objective guarantee it offers at the time of making perpetual profession»[113], the Legislator of the *CIC/1983* decided to retain the institution of temporary profession of vows. As has already been

[112] For the distinction between Constitutions and supplementary codes, cf. Y. SUGAWARA, «Il ruolo delle costituzioni», 675-679.

[113] D.J. ANDRÉS, «Religious profession», II/2, 1740.

shown, he did so in can. 655 which states that «temporary profession is to be made for a period defined in proper law; it is not to be less than three years nor longer than six». While this canon does not explicitly state what the essential elements of temporary profession are, these elements can be ascertained from the canon immediately before it which gives the three essential components of religious profession in general. Can. 654 states that «by religious profession, members assume the observance of the three evangelical counsels by public vow, are consecrated to God through the ministry of the Church, and are incorporated into the Institute with the rights and duties defined by law». With this canon, the Legislator does not define religious profession but he gives its essential elements, both theological and juridical, as follows:

i. Public vows to observe the three evangelical counsels.
ii. Consecration to God through the mediation of the ministry of the Church.
iii. Incorporation into the Institute.

These elements are implied in can. 655 since they apply to all valid forms of religious profession – be it temporary or perpetual. Therefore, this study considers these elements to be the basic elements of temporary profession of vows as well, in addition to the «temporality» of the profession. Temporary profession, consequently, is an authentic religious profession endowed with all the essential components mentioned in can. 654, even though it is relative and pedagogically preparatory to perpetual profession for the reasons already explained in the preceding chapters.

3.1 *Public vows to observe the three evangelical counsels*

In Religious Institutes, temporary profession must be realized through public vows[114]. The content of these vows is the evangelical counsels[115] whose observance is inseparable from the public vow professed. With reference to religious temporary profession, the *CIC/1983* brings together what was established in the 1980 and 1982 *SchemataCIC*. The first canon of title II: *De Institutis Religiosis* gives the definition of a Religious Institute, thereby establishing that its members

[114] The notion of public vows is clear from the *CIC/1983*. For the doctrine regarding vows, cf. cann. 1191-1198. The *criterion* that makes religious vows public is the fact that they are emitted into the hands of a competent Superior and accepted by him in the name of the Church.

[115] For the theological and canonical content of each evangelical counsel cf. cann. 599-601.

should have pronounced public vows, either perpetual or temporary which are to be renewed (cf. can. 607 §2). Indeed, the canon sets forth the obligatory nature of professing vows, perpetual or temporary, for Religious Institutes, and thereby, suppresses the sacred bonds which were provided for in the ***Renovationis causam***. In art. III: ***De professione religiosa***, can. 654 states that: «By religious profession, members assume the observance of the three evangelical counsels by public vow». This canon also definitely establishes the obligation to profess vows in order to be considered a religious and affirms unacceptability of other sacred bonds.

With temporary profession, the religious renounces the free use and disposal of his property and depends on the Institute through the lawful Superior for the provision of material needs. He undertakes to live chastity by a new title; that of the vow, and to live it in consecrated celibacy. This implies a manner of life that is a credible witness to his total dedication. The religious is to obey the directives of lawful Superiors according to the Constitutions of the Institute in virtue of the vow of obedience (cf. *EE* 16). Implicit in this commitment to the Institute through the vows is the willingness to live a common life in communion (community life) and to live in fidelity to the nature, purpose, spirit and character of the Institute as expressed in the Constitutions, supplementary codes, and sound traditions.

Consequently, when one fails to live up to these requirements of the vowed life, appropriate action is to be taken including non-admission to subsequent profession. For this reason, it seems necessary that the content of the Constitutions and other supplementary codes must be clear and unambiguous on these matters in order to serve as a constant reminder to members of what is expected of them.

3.2 *Consecration to God through the mediation of the ministry of the Church*[116]

Total consecration is a value encompassed in the religious profession (cf. *PI* 7), even in temporary profession. God is the author and point of reference (cf. *PI* 8): with the help of his grace, one responds to the gift of a divine vocation and it is to Him by the mediation of the

[116] The act of religious profession is an act of the Church through the authority of the one who receives the vows. In this act, the action of God and the response of the person are brought together (cf. *EE* 13-17).

Church[117] that the one professing directs his consecration (cf. *PI* 10). This being the case, two questions arise: what then is the essence of «temporality» of this profession and why «temporary» profession if the consecration is total. Therefore, at this point it seems appropriate to refer to the problem of «temporariness» of profession from the juridical point of view.

3.2.1 The problem of «temporariness»

Already before ***Renovationis causam*** which authorized replacing temporary profession of vows with some other sacred bonds (cf. *RC* 7), there were religious critics or those who were contrary to the practice of temporary profession as already seen in chapters I and II. ***Renovationis causam***'s intervention by providing for the substitution of vows with other sacred bonds, citing a promise in particular (cf. *RC* 34 (I)), raised further questions about temporary profession of vows which some classic authors attempted to address[118] until the time of the promulgation of the *CIC/1983*. As we have already seen in chapter II, the innovations introduced by ***Renovationis causam*** were not definitive; they were ***ad experimentum***. Therefore, the problem of temporary profession found its definitive response in the *CIC/1983*.

However, it seems that already in the *CIC/1917*, the Church's juridical position was clear since the *CIC/1917* did not acknowledge any kind of bond after the novitiate other than temporary vows (cf. can. 572 §2 of *CIC/1917*). This clarity of mind of the Church on this matter continued even in the *CIC/1983*, which provides that: «At the end of the novitiate, if judged suitable, a novice is to be admitted to temporary profession» (can. 653 §2), with which members assume public vows and the obligation to observe the three evangelical counsels; they are consecrated through the mediation of the ministry of the Church; and are incorporated into the Institute with obligations and rights defined by universal and proper law (cf. can 654). This canon gives a summary of

---

[117] The mediation of the ministry of the Church is not only at the moment of profession, but the mediation «becomes present and irreplaceable at every moment: in the verification of the suitability and even before, that is, at the verification of the vocation of the aspirant; in the community in which he is professed; in the lawful Superior who receives the profession; in the law that prepares and regulates the new way of supernatural life, and also in the social and canonical way of life, into which the professed is introduced», D.J. ANDRÉS, «Religious profession», II/2, 1737.

[118] Cf. J. GALOT, «De "Promissione" in vita religiosa» 167-176; ID., «La professione religiosa», 508-516.

the theological nature of religious profession as given in the doctrine of conciliar and post-conciliar documents. Can. 573 defines consecrated life as:

> Total dedication to God who is loved most of all (§1); the Christian faithful freely assume this form of living in Institutes of consecrated life canonically erected by competent authority of the Church. Through vows or other sacred bonds according to the proper laws of the Institutes, they profess the evangelical counsels of chastity, poverty, and obedience and, through the charity to which the counsels lead, are joined in a special way to the Church and its mystery (§2).

As can clearly be noted, the canon does not make any distinction between temporary and perpetual vows. Therefore, according to this norm, all who make profession – whether temporary or perpetual – consecrate themselves totally to God.

Can. 607 §1 which is specific to Religious Institutes defines religious life as «consecration of the whole person». According to this norm, whoever makes religious profession «brings to perfection a total self-giving as a sacrifice offered to God through which his whole existence becomes a continuous worship of God in charity». Based on this, the *CIC/1983* considers all professed – whether temporary or perpetual – as authentic religious. According to can. 607 §2, «a Religious Institute is a society in which members, according to proper law, pronounce public vows, either perpetual or temporary, which are to be renewed, however, when the period of time has elapsed, and lead a life of brothers [or sisters] in common».

Going by these norms, temporary profession is a total consecration and donation of the whole life of a person which is intentionally (virtually, implicitly) perpetual, and it is only under this condition – not otherwise – that the vows are accepted by the Church according to the spirit of the *CIC/1983*[119]. As D.J. Andrés puts it:

> The exigency of perpetuity that the theology of consecration to God and the constant tradition see inherent in the vow is transferred to the [one] temporarily professing who must have the intention of perseverance and perpetual consecration, despite its temporary character – of a juridical nature – of his real commitment; otherwise, his temporary profession would be null and not religious[120].

---

[119] This spirit of the *CIC/1983* was already present in the doctrine of Instr. ***Religiosorum institutione***, 38 and Instr. ***Quantum Religiones***, 14.

[120] Cf. D.J. ANDRÉS, «Religious profession», II/2, 1740.

This intended perpetuity, not only for the one professing but also for the the Institute which accepts the profession, form part of the very essence of the vows professed in a Religious Institute[121]. In this sense, the Institute does not reserve any right with regard to the second element of temporary profession – namely, the consecration of the one professing. The right is reserved only to the third element of temporary profession – namely, incorporation into the Institute (cf. 3.3 of this chapter). From this, it is clear that according to the spirit of the *CIC/1983*, temporary profession is a total donation of self, a true and intentionally definitive consecration of life. Therefore, by temporary profession, one becomes an authentic religious[122].

With this doctrine, however, can. 607 appears to be opposed to can. 637 of *CIC/1917*, which envisaged that a temporary professed, at expiration of the vows, could freely leave the Institute and to can. 688 §1 of the *CIC/1983*, which repeats this norm by stating that «a person who wishes to leave an Institute can depart from it when the time of profession has been completed». Logically, a question arises concerning how to reconcile, especially within the same *Code* (the *CIC/1983*), these two apparently contradicting positions – that is, on the one hand, a bond that is virtually perpetual and, on the other, the full freedom of the subject to leave the Institute at the expiry of the vow.

From the findings of this study, such contradiction is basically apparent. When understood from the point of view of the consecration brought about by profession and from the juridical elements of temporary profession, such contradiction seems to disappear. That is, the consecration brought about by profession is perpetual in its very essence and «temporality» is only in the juridical effects brought about by religious profession, in particular, the effect of incorporating the one professed into the Institute.

Given that consecration is perpetual in its very essence; the only profession that makes consecration produce its effects in the one professing is that which is made without any reservation. When made with the intention to be perpetual – even if juridically temporary in its third element of incorporating the one professed into the Institute – it produces its effects in the person professing. And such an intention logically excludes any liberty to decide to renew one's vows or not.

---

[121] Cf. A. GUTIÉRREZ, «La consacrazione dei religiosi», 69; A. LARRAONA, «Commentarium Codicis, can. 488», 208-209; T. SCHÄFER, *De Religiosis*, n. 128.

[122] Cf. V. DAMMERTZ, «Istituti di vita consacrata», 113-114; A. GUTIÉRREZ, «La consacrazione dei religiosi», 64.

Such liberty, therefore, can only be understood as referring to some moments after profession and not the time of professing the vows. Using the explanation of A. Gutiérrez for emphasis, temporality, «is not opposed to the intended perpetuity of the vow because this freedom is based on a cause that can emerge after taking the vows, and not on the liberty reserved at the time of profession of vows – in which such profession liberty is excluded»[123]. This implies that if such reserved liberty exists at the time one is taking the vows, that profession is *ipso facto* invalid.

On the other hand, to remain in the Institute when one in fact lacks vocation is to labour in vain. Therefore, the freedom recognized in this case, reconciles with the requirement or obligation to follow a divine vocation – that is, to be where one is called to serve. Therefore, freedom here is a consequence of the lack of a vocation which requires a free response in order to do God's will. Logically – and observing the principle *de internis non iudicat Ecclesia in foro externo* – it follows that a professed religious may become fully aware during the period of temporary vows and after some progress in personal and spiritual maturation[124], that God does not call him to religious life or to life in a particular Institute. Such a religious is not only free to leave, but has a moral obligation to leave in order to find where he is called to serve. Such a moral obligation necessarily requires freedom in order not to place an unbearable burden of guilt in the conscience of one who has to leave due to a lack of a vocation. Therefore, freedom to leave is only morally justified where there is truly a lack of a vocation and that is the spirit of can. 688 §1. Juridically speaking, then, it is not freedom to do whatever one likes with his vocation. Freedom to leave is in relation to the Institute and the Superiors – and not the member; that is, Superiors and the Institutes do not have any juridical means to hold a member back or stop him from leaving once a lack of a vocation is evident. There is no juridical provision for this in the *CIC/1983*. Therefore, juridically, the member is free. The reason is obvious: a vocation is a matter of con-

---

[123] Cf. A. GUTIÉRREZ, «La consacrazione dei religiosi», 89: «la libertà riconosciuta nel caso, si può conciliare con l'obbligo o vincolo di seguire una vocazione divina; non si oppone alla perpetuità intenzionale la libertà riconosciuta alla fine dei voti temporanei, perché questa libertà si fonda su una causa che possa emergere dopo l'emissione dei voti, non sulla riserva della libertà fatta al tempo dell'emissione, la quale riserva è esclusa».

[124] For a detailed discussion of this cf. J. ROVIRA, «L'impegno definitivo», 57-124.

science and *de internis non iudicat Ecclesia in foro externo*. But whichever way one uses this freedom, he remains bound in conscience.

3.2.2 Classic authors' opinion on the doctrine of temporary profession in the post-conciliar documents

In the previous chapter, the study presented how a number of authors supported the change introduced by ***Renovationis causam*** in relation to temporary profession. ***Renovationis causam***, inspired by the ***LG*** 44, had authorized ***ad experimentum*** the substitution of the vows by sacred bonds. The experts and consultors who revised the ***CIC/1917*** considered it suitable to reject such experimentation and to return to the tradition of the Church. Consequently, the ***CIC/1983***, after 14 years of experience (1969-1983), returns to what was established in the ***CIC/1917***, but putting into consideration what experience had shown to be positive. The classic authors after the promulgation of the ***CIC/1983***, are in agreement in stating that profession of vows in a Religious Institute is necessary, be they temporary or perpetual[125]. According to such authors, the main reasons that led to such a move can be summarized as follows:

i. There is a danger of creating two categories of religious: The authentic religious who profess vows and the others who take sacred bonds; with these others not being considered authentic since the religious state requires the profession of vows[126].
ii. According to the tradition, vows are the most appropriate for assuming the three evangelical counsels in the religious profession[127].
iii. After the development of the theology of consecration and of vocation, the presupposed problem with temporary profession of vows from the point of view of the temporality no longer exists. Temporary vows remain perpetual on the part of the one making profession and in the intention of the Institute accepting the one professing. Religious temporary vows by their nature, therefore, are virtually, radically, implicitly and intentionally perpetual, and in no way are definitely and perennially temporary. They have to be intentionally perpetual; only under this condition and not otherwise are they accepted by the

---

[125] Cf. D.J. ANDRÉS, *Il diritto dei religiosi*, 284; V. DE PAOLIS, *La vita consacrata nella chiesa*, 302.

[126] Cf V. DE PAOLIS, *La vita consacrata nella chiesa*, 303.

[127] Cf. J. BEYER, «Risposte a quesiti e dubbi», 756; V. DE PAOLIS, *La vita consacrata nella chiesa*, 303; E. GAMBARI, *Manuale della vita religiosa*, 118.

Church. This intentional perpetuity forms – objectively and subjectively – part of the very essence of the vows professed temporarily in an Institute[128]. For this very reason, other sacred bonds which are temporary both for the individual professing and for the Institute have no reason to be professed by a religious.

iv. If the content of the promises and vows are the same, then, the question arises as to why establish a duplicate of vows and other sacred bonds which do not lead to anything other than confusion. Moreover, if they make Religious Institutes and other Institutes of consecrated life be the same due to the same content, then Religious Institutes would have no reason to be and that would be contrary to the spirit of *LG* 44.

v. Since the *CIC/1983* establishes the age of 18 (cf. can. 656, 1º) as the minimum age for making the first profession adding two more years to 16 which was prescribed by *CIC/1917* (cf. can. 573 of *CIC/1917*), lack of maturity as a reason for professing other bonds is superfluous. Lack of maturity can no longer be claimed today as the reason to continue supporting such substitution of temporary profession of vows[129].

vi. From the pedagogical point of view, promises do not guarantee security at the time of perpetual vows. If vows are made from the beginning, the candidate comes to perpetual profession with a warranty and safety which, in the opinion of the Legislator, are the most convenient when professing definitive or perpetual vows[130]. The vows give to temporary religious profession the necessary stability it needs[131].

vii. The promise, as such, has effect only when freely made by an individual and accepted and received by the one to whom it is made. In

---

[128] For more discussion on this perpetuity, cf. V. DE PAOLIS, *La vita consacrata nella chiesa*, 303-306; E. GAMBARI, *Vita religiosa secondo il Concilio*, 257; A. GUTIÉRREZ, «Schema canonum de institutis vitae consecratae», 21.

[129] This study finds this assertion, however, narrow because it tends to equate maturity with age. Maturity however is multi-dimensional including not only physical but also intellectual, emotional, psychological, social and spiritual maturity. And these levels of maturity are not attained by merely growing in age. Moreover, the maturity required is that which enables one to embrace the life of the Institute. Consequently, one may be 18 years of age but still not be mature enough to embrace the life of a given Religious Institute (cf. can. 642). This is particularly true with young people of the world today in which commitment of any kind, let alone a perpetual one, is often viewed as not possible or not necessary.

[130] Cf. D.J. ANDRÉS, *El derecho de los religiosos*, 356.

[131] Cf. E. GAMBARI, *Manuale della vita religiosa*, 119.

> the context of other sacred bonds made in a Religious Institute, the candidate makes the promise to the competent Superior or to the religious family. But these are, however, incapable of accepting or receiving such promises if their content is the evangelical counsels because the rights to freedom (renounced by obedience), to family (renounced by chastity) and to property (renounced by poverty), are ordained by God for the common good and, therefore, cannot be renounced and be accepted for a private good – such as to belong to a religious family[132]. A religious is prohibited by natural law to make this donation, because the latreutical effect of every good act for a higher good is destined only to God and can neither be promised or given to any other person other than to God; nor can a religious renounce such rights ordained by God for the common good in view of a private good[133].

There is a direct link between the argument of these authors and the theology of consecration and vocation. It can, therefore, be said that the development of theology of consecration and of vocation has contributed clarity to the understanding of temporary profession and the faculty to exclude a member who lacks a vocation from subsequent profession as well as to awareness of the seriousness and soberness with which a competent Superior is to proceed in the exercise of this faculty. This development has also provided further clarity on how critical is the selection of candidates to religious life, their formation, and the determination of their suitability for the growth, fructification and stability of a Religious Institute.

3.3 *Incorporation into the Institute*

Incorporation into the Institute is the socially and juridically visible sign of consecration upon which consecration is based and of which it is a manifestation. Accordingly, incorporation has implications both for the professed and for the Institute. On the part of the professed, through the ministry of the Church, he is given entirely and immediately to the Institute as a visible sign of his consecrated offering to God. On the part of the Institute, incorporation culminates into acceptance of the offering made, through which the Institute incorporates the professed within itself[134]. However, incorporation is not a bilateral contract that would

---

[132] Cf. A. BONI, *I religiosi nella dottrina*, 54.
[133] Cf. A. BONI, *I religiosi nella dottrina*, 55.
[134] Cf. D.J. ANDRÉS, «Religious profession», II/2, 1737.

strictly oblige the parties in law or an agreement of the free will of the parties which created the terms of this agreement. «But rather, it is an ***institutional*** contract [a contract ***sui generis***] because its terms – cause, duration, condition, effects, rights and obligations – are not stipulated by the professed and the Institute, but are imposed on both of them by the public power of the Church»[135]. Flowing from this institutional contract are rights and obligations, pursuant to the universal law (cf. cann. 662-672) and the proper law which is obliged to specify in an applicable manner the general rights and obligations given in the universal law. This obligation to specify the rights and obligations is due to the fact that the incorporation is not to consecrated life in general but into a particular Institute of consecrated life, whose life is uniquely governed by its proper law.

With the incorporation, the religious renounces a free and independent individual life and adopts a communal way of living the evangelical counsels. Membership in the Institute is obtained through incorporation; therefore, incorporation is the basis for the community living whose concretization is present in the following:

i. Life in the same house[136] conforming to a substantially uniform time-table.
ii. Having the same food and clothing according to the poverty of the Institute.
iii. Submission to a common discipline, under the Superiors and in observance of the same Constitutions[137].
iv. A liturgical-spiritual aspect which regulates certain sacramental practices of piety.
v. A disciplinary aspect deriving from community living which regulates the observance of cloister and absence from the house.
vi. An economic aspect as demanded by cann. 668 and 600.
vii. A penal aspect as noted by can. 696 §1 regarding unlawful absence from the house[138].

---

[135] D.J. ANDRÉS, «Religious profession», II/2, 1737-1738.

[136] The only situations that justify being absent from one's community are three: a just cause; permission from the competent superior and causes permitted in law (cf. can. 665 § 1).

[137] On more information on incorporation and community living, cf. D.J. ANDRÉS, *Le forme di Vita Consacrata*, 394; E. MCDONOUGH, «Incorporation into an Institute», 206-211.

[138] More is said about what is necessary for community living in relation to suitability in sec. 4 of this chapter. Other penal aspects found in the *CIC/1983* that apply to a temporary professed religious are cann. 694-695 regarding delicts and other causes

The last four aspects are «supplementary» whereas the first three are «fundamental». But although the last four are supplementary, they have their own importance in the life of an Institute and on the suitability of members. Consequently, repeated failures to observe these community requirements may amount to just causes for exclusion from subsequent profession. For this reason, proper law needs to be very clear on these requirements in order to avoid uncertainty on what exactly is expected of members.

3.4 *On the period of temporary profession*

Can. 655 does not determine the period of temporary profession. It leaves it to proper law to determine the period as well as the subperiods into which it may be divided. The only condition placed is that the period be not less than three years nor more than six years, except for an extension ***ab homine*** of up to nine years as provided for in can. 657 §2[139]. As in the two previous ***SchemataCIC***, the ***CIC/1983*** provides for this extension of up to a maximum of nine years (cf. can. 657 §2) with the intention of giving both the member whose vocation is in doubt and the Institute who is in doubt sufficient time to discern well the vocation of the member in question and his suitability for the Institute. As a rationale, the determination of the maximum limit is based on experience, according to which, if after six years of temporary profession, the member has not matured enough for perpetual profession, it is generally useless and damaging to prolong this time[140]. It is for this reason that extension beyond six years is ***ab homine***. That is to say, the extension is an exceptional attempt to resolve a difficulty and is only permitted in singular cases in which there exist special circumstances that deserve individual consideration. The exception is made on account of the real possibilities that after this extension, the member will attain the required maturity. An extension beyond nine years requires a privilege or an apostolic dispensation in the case of Institutes of pontifical right in order that the nine years of temporary profession be exceeded (cf. can. 657 §2). In the case of Institutes of diocesan right, the dispensation may be granted by the

---

which are juridically proven as grave, external and imputable and can. 703 regarding cases of grave external scandal or of most grave imminent harm to the Institute.

[139] Cf. D.J. ANDRÉS, ***El derecho de los religiosos***, 355-357; ID., «SCRIS: Decretum Iuris Canonici», 167-186; A. GUTIÉRREZ, «Professio religiosa ad tempus», 63 (1982) 289-312; 64 (1983) 107-123; 67 (1986) 55-68, 249-276.

[140] Cf. D.J. ANDRÉS, «Religious profession», II/2, 1739-1740.

bishop of the house of assignment in accordance to can. 594 read together with can. 87 §1.

Comparatively, both the *CIC/1917* and the *CIC/1983* establish the following: Profession of vows for the religious; temporary vows must precede perpetual profession and the possibility of extending the period of temporarily profession.

However, there are also differences: Regarding the duration of the temporarily profession, both the *CIC/1917* and the *CIC/1983* prescribe three years as minimum; but whereas the *CIC/1917* established a maximum of six years with possible extension (cf. can. 574 of *CIC/1917*), the *CIC/1983* gives six years as the maximum (cf. can. 655). An extension for not longer than nine years is an exception to the norm (cf. can. 657 §2); secondly, the *CIC/1983* gives proper law the responsibility of determining the duration of temporary profession, unlike the *CIC/1917* which did not contemplate this possibility.

4. **Definitive departure during the period of temporary vows**

The norms on definitive departure during and at the expiry of temporary profession are found in chapter VI: On Separation of members from the Institute (cf. cann. 684-704)[141]. These twenty-one canons of the *CIC/1983* relate directly to all Religious Institutes[142] both of men and of women.

With regard to definitive departure from the Institute, the *CIC/1983* gives three hypotheses which assume the categories or species of the departure: Transfer to another Institute (cf. cann. 684-685); departure from the Institute (cf. cann. 686-693) and dismissal of members (cf. cann. 694-704). Each hypothesis aims at giving a complete picture of verifiable events by fixing the limits, the competence, and the relationship between the religious, competent authority and the Institute. Guided by the principles of subsdiarity, autonomy and suitability, it gives general principles, leaving proper law to determine specifics.

In order to provide for departure during the period of temporary vows, the *CIC/1983* contemplates three instances of departure: Departure at the expiry of temporary vows (can. 688 §1); departure during the

---

[141] The *CIC/1917* had dedicated 41 canons to separation of members (cf. cann. 632-672 of *CIC/1917*).

[142] For Secular Institutes, cf. can. 726 and for Societies of Apostolic Life, cf. can. 742.

period of temporary vows (can. 688 §2) and exclusion from subsequent profession (can. 689). This study is concerned only with the third instance. Consequently, the main focus is on this third instance with the other instances referenced only and briefly explained to distinguish them from the provisions of can. 689.

4.1 *Voluntary departure at the expiry of temporary vows and departure during the period of temporary vows*

The general principle in the *CIC/1983* for legitimate voluntary departure at the expiration of vows is the following: «A person who wishes to leave an Institute can depart from it when the time of profession has been completed» (can. 688 §1). But even «during the time of temporary profession, a person who asks to leave the Institute for a grave cause can obtain an indult of departure from the supreme Moderator with the consent of the council in an Institute of pontifical right. In Institutes of diocesan right [...] however, the bishop of the house of assignment must confirm the indult for it to have effect» (can. 688 §2).

As noted in the introduction to this section, departure from an Institute can occur at the expiration of or during the period of temporary vows. With respect to departure at the expiration of temporary vows, the *CIC/1983* stipulates that the member is free to leave the Institute. The request to leave is actually a statement of intent. However, it is preferable that it be made in writing for record purposes. A member may also simply not make the request for subsequent profession. This is understood as an implicit wish to leave the Institute. Even in this case, it is advisable that the intent is put in writing by the competent Superior and have it signed by member in question before departure. No further action is required in these case.

Departure during the period of temporary vows, on the other hand, is provided for in the *CIC/1983* in the following manner. If the member wishes to leave the Institute, he must place in writing a request for an indult to leave the Institute in which he states his reasons. The supreme Moderator must act upon the request with the consent of his council. In the case of Institutes of pontifical right, no further action is required. For Institutes of diocesan right, the indult must be submitted to the diocesan bishop of the place where the religious is assigned in order to receive his confirmation. Without the confirmation of the diocesan bishop, the indult is invalid.

4.2 *Exclusion from subsequent profession*

Exclusion from subsequent profession at the expiry of the period of temporary profession is governed by can. 689. This canon is found in chapter VI: On separation of members from the Institute – which governs all departures from the Institute during the period of both temporary and perpetual vows. The *CIC/1983* establishes temporary profession prior to perpetual profession as a common discipline to all religious (cf. can. 655). It is from this provision that the general principle established in can. 688 §1 is logically derived as well as the legislation provided in cann. 657 §1 and 689. Can. 688 §§1-2 – whose immediate sources are cann. 637 and 638 of *CIC/1917* respectively – appears to introduce a juridical liberty for the individual to initiate the departure, that is, the liberty of the person who has made temporary vows to leave the community at the expiration of the term for which such vows were taken or obtain the permission by indult to leave. Can. 689, on the other hand, grants the liberty to the Institute, under certain conditions, to refuse permission to him to make subsequent profession.

4.2.1 Nature of can. 689

Can. 689 §1 declares that «if there are just causes, the competent major Superior, after having heard the council, can exclude a member from making a subsequent profession when the period of temporary profession has been completed». Subsequent profession refers either to the renewal of vows or to the admission to perpetual vows[143]. A question which comes to mind immediately from the content of this canon is: Is exclusion from subsequent profession a departure or a dismissal? In this sub-section, therefore, the study intends to answer the question whether exclusion from subsequent profession is a departure or a dismissal.

Authors seem not to be in agreement on this matter. According to G. De Mattia, the normative provision does not manifest the form of departure (*egressus*) but that of dismissal (*dimissio*)[144]. Exclusion from further profession has also been included under dismissal by some oth-

---

[143] The canon does not bind members of Institutes who only profess vows temporarily – Institutes who do not profess perpetual vows – to be renewed at the expiry of the vows after their sixth year in the Institute. Cf. D.J. ANDRÉS, *Le forme di Vita Consacrata*, 640. Before their sixth year, however, it seems that they are bound by this canon.

[144] Cf. A. CALABRESE, *Istituti di vita consacrata*, 294; G. DI MATTIA, «Separazione dei membri dall'Istituto», 41.

er authors[145]. Instead, according to G. Ghirlanda, can. 689 §1 does not address dismissal even though it has many similarities to dismissal. He supports his claim on the fact that the causes of dismissal are always connected to a fault while in exclusion from subsequent profession, the causes must be just, and according to the judgment of the Superior, be connected to the suitability of the member, and not necessarily founded on the morally reprehensible or blameworthy behaviour of the member. In addition, exclusion does not require any particular formalities, nor any specific procedure[146].

In order to respond to this question and the opinions of these distinguished canonists, it is helpful to examine briefly the canon as found in the two *Codes*. The *CIC/1917* had established as a common discipline, the general provision of can. 637 of *CIC/1917*. This canon was part of *Liber Secundus*, *Titulus* XV: *De egressu e religione*. According to the mind of the Legislator, the canon was not part of *dimissio*, because *dimissio* was found in *Titulus* XVI: *De dimissione religiosorum*. In the *SchemaCIC 1977*, can. 81 was part of art. 3: *De dimissione ab Instituto* (can. 81)[147]. But already with the *SchemaCIC 1980*, this subject matter was transferred to the article on departure (*egressus*) (can. 615)[148]. The same article remains under *egressus* even in the *SchemaCIC 1982* (can. 689)[149] and in the *CIC/1983* (cf. can. 689). The *CIC/1983* does not offer a precise definition of what is intended by the term *dismissal*. However, that can be derived from the possible juridical forms of dismissal canonized by the *CIC/1983*, namely, *ipso facto* dismissal (cf. can. 694), obligatory/mandatory dismissal (cf. can. 695), facultative dismissal (cf. can. 696) and immediate expulsion from the house (cf. can. 703). Based on these forms, F.J. Egaña defines dismissal as the «definitive departure from the Religious Institute as a punishment, on the initiative of the competent ecclesiastical authority, even against the will of the religious»[150].

Given that the norm is placed in art. 2: On departure from the Institute, of chapter VI: On the separation of members from the Institute (cf

---

[145] Cf. A.CALABRESE, *Istituti di vita consacrata*, 289; S.L. HOLLAND, «Separation of members», 871.

[146] Cf. E. GAMBARI, *I religiosi nel Codice*, 352; G. GHIRLANDA, «La problematica della separazione», 167-168.

[147] Cf. *Schema 1977*, 23.

[148] Cf. *Schema 1980*, 149.

[149] Cf. *Schema 1982*, 128.

[150] F.J. EGAÑA, «Dimissione dall'Istituto Religioso», 345: «per dimissione s'intende l'uscita definitiva dall'istituto religioso come pena su iniziativa della competente autorità ecclesiastica, anche contro la volontà del religioso».

book II, part III, section I), just before art. 3 of the same chapter which addresses dismissals, among other things, this implies that the norm does not carry any penalty. But considering some of its juridical effects, it is certainly true that exclusion from subsequent profession shares some of the effects of dismissal. However, going by the definition of F.J. Egaña and the positioning of this canon in the *CIC/1983*, even though there are similarities, the norm falls more under *egressus* and not dismissal.

In relation to competence, because the decision to exclude a member from subsequent profession is a grave one for both the person and the Institute[151], the competent Superior is the major Superior – a local Superior is not competent without prejudice to cann. 613 and 615. It is an act of a major Superior who acts with public power as a representative of a public juridical person.

4.2.2 *Ratio legis* for can. 689 §1 and conditions and requirements for its application

The previous section immediately lends itself to asking about the purpose of can. 689. The *ratio legis* for this canon is in the fact that the Institute may verify during the period of temporary vows that a religious lacks vocation to that given Institute or to religious life. Such a religious is not just free to choose whether he should leave or not. Rather, he has a moral obligation to leave the Institute, and the Superior equally has a moral obligation to assure that such a member is excluded from subsequent profession if the member does not leave on his own accord for the good of both the member and the Institute (cf. can. 689 §§1-2).

The Legislator acknowledges that there is a possibility that an Institute may neglect its own responsibility by excluding a member who was suitable but who suddenly becomes unsuitable for reasons that a member cannot be held wholly responsible. In that case, the same can. 689 stipulates that such a member cannot be validly excluded (cf. §§2-3).

Can. 689 is, therefore, an indispensable «protective measure» for assuring that Religious Institutes fulfil their mission of supporting their members and that they carry out this mission with perfect charity. As a protective measure, can. 689 is needed in Religious Institutes both by «necessity» and for «charity». Charity and necessity seem to be the two justifiable reasons for exclusion from subsequent profession.

---

[151] Cf. F.J. RAMOS, «Departure from the Institute», 1850.

By *charity*, exclusion is considered a means for protecting the individual good of members – namely, personal salvation (cf. can. 1752) and reputation (cf. can. 220). *Charity* here pertains to the need to exclude a member from subsequent profession for the spiritual well-being of the member in whose benefit the decision of exclusion is taken – without prejudice to can. 689 §§2-3. This is a case where even though facts and signs are clear that one lacks a vocation to a particular Institute or to religious life, he is unable to face this reality and decide for himself that he needs to leave.

By *necessity*, exclusion is considered a necessary means for protecting the Institute. *Necessity* concerns the extrinsic cause that relates to the common good of the Institute such as excluding a member with physical or psychological illness – without prejudice to can. 689 §2 – so that his inability to participate in communal activities and/or disruptive behaviour does not harm life in common. These disabilities are not offenses and, therefore, cannot be disciplined under can. 696 with a facultative dismissal.

These two aspects – charity and necessity – may be taken together in some instances or may be considered separately; but, when considered separately, charity must always be present given that can. 689 is a logical consequence of a lack of a vocation. Necessity on its own would make can. 689 odious and seemingly would be in contrary to the mind of the Legislator and the spirit of the law. It seems, therefore, that no one should be excluded based only on necessity. Every decision not to admit a member to subsequent profession must always be motivated by either charity or both charity and necessity depending on the case. Consequently, the criteria of just causes set forth in can. 689 preclude one common objective for discipline, namely, retribution. Superiors are prohibited from excluding a member from subsequent profession merely to punish such a member for whatever reason. Indeed, there is neither spiritual nor juridical value in doing so. Individual Superiors may desire to apply can. 689 retributively, but a Religious Institute has no legitimate authority under the canon to do so. To punish falls within penal laws.

Certain conditions or requirements are established in the canon for its legitimate application: A member in question must be in the period of temporary profession of vows; there must exist just causes; the competent Superior must hear the council *ad validitatem* and the Superior must make the final decision personally through discretionary judgement.

4.3 *The concept of a just cause*

The decision to exclude a religious from further profession if there is no penalty must be based on just causes (cf. can. 689). The plural form used presupposes that there be a multiple of causes, but in D.J. Andrés' opinion, even a single cause is enough to justify exclusion as long as it is considered by the Superior to be just[152]. However, it seems that the canon should be interpreted strictly such that its application is not extended beyond the matters actually intended by the Legislator, since non-admission to further profession has some effects similar to those of dismissal (cf. can. 701)[153] and since it might have very grave effects on a member excluded. Moreover, the just causes required by this canon are those which demonstrate a lack of a vocation to a particular Religious Institute. Unlike commission of an offense that can be demonstrated by one single act, the lack of a vocation cannot be demonstrated by one single cause. Consequently, the causes must be more than one. They must also be proportionate, having been considered under the nature, character and apostolate of the Institute[154].

The word «cause» has been interpreted in the civil forum to mean a «fair and legitimate reason». It has been equated with «reasonable» and «sufficient» justification when applying it to specific situations of decision making. Authors in the civil forum have described it as that which is «reasonable», that which does not «shock the conscience of a reasonable person» and that which is not «arbitrary», «excessive», or «discriminatory»[155]. In the ecclesiastical forum, it has similar connotations[156].

«Just cause» for any legislator is a very important principle for decision making in the exercise of discretionary authority. As a way of demonstrating its importance, it appears in the *CIC/1983* fifty nine (59) times. The concept is variously expressed by the Legislator as «just cause» – ***iusta causa*** (cf. cann. 56, 72, 187, 104, 1342 §1, 1429, 1555, 1704 §1 and 1698 §1), «just and reasonable cause» – ***iusta et rationabili causa*** (cf. cann. 90 §1, 831 §1, 881, and 1125), «just and proportionate cause» – ***iusta et proportionata causa*** (cf. can. 189 §1), or «just and necessary cause» – ***iusta et necessaria causa*** (cf. can. 1310 §1). A

---

[152] Cf. D.J. ANDRÉS, *Le forme di Vita Consacrata*, 641.

[153] For effects of departure in general, cf. E. MCDONOUGH, «Effects of departure», 316-322.

[154] Cf. A. CALABRESE, *Istituti di Vita Consacrata*, 290.

[155] Cf. J.E. DUNSFORD, «Arbitral discretion», 53.

[156] Cf. J.M. GARCIA MARTIN, *Le norme generali*, 628.

question one may ask is whether it is possible to have a «just cause» which is not «reasonable», not «proportionate» or not «necessary». Opinions may vary, but it seems that, these added requirements to a just cause have an emphatic role. This is to say, that for any «cause» to qualify as «just», it must necessarily be «reasonable» and «proportionate». Through these emphatic qualifications, however, the Legislator intends to emphasize «equity over law», to stress the spirit rather than the letter of the law and to remind the one with the faculty to decide about the gravity of the task at hand.

The *CIC/1983* does not give any definition of a «just cause» except by way of giving examples of what may be considered a just cause in some canons (cf. cann. 270, 689 §2, and 1293 §1, 1º). Considering the frequency with which it appears in the *CIC/1983*, it may be surprising that no definition is given for this concept. But it seems that the term «just cause» is purposefully and reasonably left undefined. This is because the Legislator seems to be aware that «just cause» is hardly an obvious concept. The concept is rarely defined in any juridical system. And to some extent, just cause must remain undefined and indefinable in a universal manner because each case in which a decision is to be made is in some ways unique and different from all other cases. It is, therefore, impossible to develop a formula in which facts can be fed into a computer to produce a correct answer in a mechanical manner of a universal just cause. But there are two elements that act as guidelines for arriving at what may be termed a just cause in each given situation.

4.3.1 The two elements that determine the justness of a cause

The two elements that determine the justness of a course are:

i. The matter or material element upon which the discretionary judgement is exercised.
ii. The manner of proceeding in determining that material element.

The matter of an act is the behaviour of the member – concrete facts, failures of omission and commission – upon which the discretionary judgement of the Superior is to be exercised. It is the object of discretional judgement of the Superior. The manner of proceeding refers to steps a Superior follows in arriving at the causes upon which he makes judgement. Therefore, what makes a cause just is not just the material of the act of the member concerned but also how such a cause is arrived at.

With particular reference to can. 689, the matter is a behaviour which demonstrates a lack of a vocation. Just causes as required by can. 689

§1, from the perspective of material element, consist in behaviours on the part of a member which, because of their incompatibility with the life of the Institute, demonstrate a lack of a vocation and makes a member's remaining in the Institute in fact impossible. But the manner of determining such conduct and how it makes a member's remaining in the Institute impossible adds to the justness of the cause, therefore, the manner of proceeding[157] in determining the causes considered incompatible with the life of the Institute forms the second element.

Consequently, for a cause to be just, both the material facts and a manner of arriving at such facts should be considered simultaneously. This is because, the material fact connects a cause to the member, taking a member's action as the only consideration. But the manner in which this cause is arrived at is very vital because without its consideration, a cause risks being intrinsically ambiguous when the Superior's opinion becomes the sole determinant of the justness of the cause. And it can easily and mistakenly become an «implied justified arbitrariness» with a possibility of attributing to a member an alleged just cause and then exclude a member based on such allegations.

4.3.2 Relevance of just causes requirement in can. 689 §1

Just causes – both in the material and procedural aspects – are necessarily required for exclusion from subsequent profession for three main reasons: Theological, juridical and practical reasons.

With regard to theological reasons, the «state» of religious life «which is constituted by the profession of the evangelical counsels, though it is not the hierarchical structure of the Church, nevertheless, undeniably belongs to its life and holiness» (*LG* 44) and enjoys stability (cf. *PI* 7b). Due to this stability, any decision made that affects any «state» of life is considered a grave decision. Consequently, it calls for a cause that is proportionate to such gravity and only a just cause can be proportionate to such gravity. Moreover, radical following of Christ necessarily requires that Superiors act justly for they are, above all, accountable before God for their decisions and actions. Only a just cause meets the threshold of such justice. Even though the consecration of a religious also involves an action of the human person, and essentially so (cf. *LG* 45, 46; and *PC* 1, 11, 17), there is the sovereignty of God's

[157] For a proposed manner of proceeding in determining the justness of the causes in the application of can. 689, cf. chapter IV, sec. 6.4 of this study.

call to every person over mere human choice (cf. *PI* 8) about how one should lead one's life that surpasses human decision.

Concerning the juridical reasons, it can be stated that given the stability of the state of religious life, it is necessary that everyone discern his God-given vocation[158] and the period of novitiate is purposely for this initial discernment both for the member and the Institute.

For the member, it is time to better understand his divine vocation and to discern if his vocation is to this Institute he has joined. It is, then, to be a time to experience the manner of living the life of the Institute and to will to form his mind and heart in its spirit.

For the Institute, it is time to form the minds and hearts of the candidate in the spirit of the Institute, to expose him to the manner of living of the Institute and to verify if his intention and actions are, in fact, compatible with the life of the Institute (cf. can. 646). It is also a time to decide who to admit to vows basing such decision on required age, good health, suitable character and sufficient qualities of maturity to embrace the proper life of the Institute (cf. can. 652 §2 considered together with can. 642).

Therefore, once a member is admitted to vows in a given Institute, the assumption is that he has responded to God's initiative after considerable discernment and the Institute has found him suitable for life in that given Institute. The contrary, therefore, needs to be proven by just causes. It cannot be also presumed, for it is a practical impossibility to have two opposite presumptions that are both true. Consequently, exclusion from subsequent profession necessarily requires just causes.

Finally, there are practical reasons for the requirement of just causes as noted in the Instr. *Potissimum institutioni*:

> Formators should offer religious solid nourishment, both doctrinal and practical, [...] they should progressively examine and evaluate the progress that is being made by those in their charge, in light of the fruits of the Spirit. They must decide whether the individual called has the capacities which are required at this time by the Church and the Institute (*PI* 30).

This implies that not only the existence of a human and Christian foundation should be verified in one who is entering religious life (cf.

---

158 Cf. VATICAN COUNCIL II, Past. const. *Gaudium et spes*, 7 Dec. 1965, *AAS* 58 (1966) 1073, 52(b); JOHN PAUL II, Encycl. *Redemptor hominis*, 4 Mar. 1979, *AAS* 71 (1979) 316, 21(c); ID., Ap. Exhort. *Christifideles laici*, 30 Dec. 1988, *AAS* 81 (1989) 507, 58(b).

cann. 642-645) but it is also necessary to ensure that effective adjustments are made during the period of formation, according to the growth progress of the individual and events (cf. cann. 646, 648, 650, 652). From this fact, it implicitly allows for admission into the novitiate only those candidates who are already living all of their baptismal promises in a manner consistent with their age. Further, it implies that only those who are considered suitable by the competent Superior for the life in the Institute should be admitted to first profession. Consequently, not admitting a member to subsequent profession after admission to vows should be a rare case, permitted only where there are just causes (can. 689 §1). This is because such a decision, apart from being unfavourable to the person excluded, calls into question the Institute's manner of recruitment of candidates, its quality of formation[159] and evaluation process of candidates before admission to first profession[160].

Moreover, the decision of a Superior to exclude a member from subsequent profession is expected to enhance unity of purpose among members. This is only achievable if decisions are based on just causes. A decision as grave as that of not admitting a member to subsequent profession, if not evidently based on just causes (can. 689 §1), threatens this unity. For, if the decision is perceived to be arbitrary, it tends to create factions among members, dividing them into those who support the decision and those who are against the decision even if only implicitly. This may breed mistrust and fear among members. Considering the vital role of life in common (cf. can. 602; *PC* 15; *GS* 12; and *Fraternal life in community*, 7(a), 8, 11)[161], when communities are polarized by factions, suitability of members is jeopardized. Eventually, it becomes a vicious circle of unsuitability where almost every member appears to be unsuitable in one way or another. In such circumstances, crisis in the Institute is inevitable.

---

[159] Instr. *Potissimum Institutioni*, of 2 Feb. 1990, at n. 33 observes that «numerous failures in religious life can, in effect, be attributed to defects that were not perceived, or overcome, in this area», *AAS* 82 (1990) 494. For characteristics of good community life, cf. CICLSAL, *Fraternal life in community*, 19, Feb. 1994, *EV*, 14, 345-537.

[160] For discussion on requirements for admission to temporary and final profession, cf. E. MCDONOUGH, «Requirements for temporary profession», 314-319; ID., «Renewal of vows and perpetual profession», 432-437.

[161] Cf. also J. GIALLANZA, «Called to mission», 227-232; D. O'MURCHU, *Reframing religious life*, 77; ID., *Religious life*; S. SCHNEIDERS, *Prophets in their own country*; ID., *Finding the treasure*, 60; J. SVOBODA, «Quotation for community», 85-88.

4.3.3 An offense as a just cause for exclusion from subsequent profession

Many times Superiors apply can. 689 §1 and members are excluded from subsequent profession for conduct which, properly speaking, requires the application of can. 696 §2. This, though not the purpose of can. 689 §1, is preferred by many competent Superiors for the following two reasons.

First, it is impossible to list comprehensively all delicts notably impairing the Institute's integrity and mission even in proper law. Moreover, such an attempt would condemn proper law to ineffectiveness and make it more odious and Draconian than favourable. Consequently, in practice, unacceptable conduct in a Religious Institute may take any of the following two forms: (a) offenses for which universal law imposes certain penalties, and so can be punished[162] and (b) those offenses, which certainly disrupt normal community life, but for which no penalty may be imposed either because there is no written norm in existence prohibiting them or because they belong to the moral realm (sins) which only bind in conscience and, therefore, cannot be punished. It is to this second category that can. 689 §1 may be applied. Can. 689 §1 employs a discretionary principle which covers all unforeseen cases that may not have been included in the proper law. Certain conduct, though not prohibited by a specific rule, may possibly interfere with the life in the Institute. Members who lack a vocation to a given Institute can mar a carefully nurtured dignity of religious life and can harm the evangelizing mission of the Institute by conduct that, though not juridically prohibited, is morally unacceptable. But this behaviour cannot be punished because in Canon Law, the following rules, or principles, of law (*regula iuris*) must be followed: *nulla poena sine culpa*; *nullum crimen sine lege* and *nullum crimen*, *nulla poena*; *sine lege poenali praevia*. Each of these *axioms* is incontrovertible and give specificity to the principle of legality which implies that in order for one to be punished, he must be found guilty of a crime, that is, a violation of a law that carries a penal sanction[163]. In light of this principle, it is clear that the Legislator has restricted the power to punish to the point of its being

---

[162] The church «constituted and structured as a society in this world» (*LG* 8) by Christ and equipped «by appropriate means for visible and social union» (*LG* 8; *GS* 40 (2)) has innate right to discipline all her members including the religious (cf. can. 1311).

[163] A. MARZOA, «Those who are liable to penal sanctions», 267.

applicable only to the anti-juridical acts that are designated in the law as offenses and for which a penal sanction is mandated. Moreover, can. 221 §3 categorically states that «the Christian faithful have the right not to be punished with canonical penalties except according to the norm of law». This certainly includes religious who are first and foremost Christian faithful by virtue of baptism and so fully enjoy this right. The *CIC/1983* further states in relation to facultative dismissal that, «for the dismissal[164] of a member in temporary vows, even causes of lesser gravity established in proper law are sufficient» (can. 696 §2). This implies that the cause must be established in proper law even for facultative dismissal. Can. 689 §1, therefore, protects both the member and the community from the jeopardy of conduct which although does not fall under can. 696 §2, necessarily requires some attention in order to help a member live meaningfully his true vocation and to restore harmony in fraternal life in community.

The second reason for the permissibility of applying can. 689 §1 instead of can. 696 §2 is that it is in line with the doctrine and the spirit of law which recommends that imposing a penalty should be the last resort after all pastoral means possible have been exhausted[165]. One of the pastoral means of helping a member avoid a penal record and thus protecting his reputation even while outside the Institute is by not admitting such a member to further profession instead of dismissal for an offence that the member is most likely to overcome once he is outside the Institute. Since «a temporary professed religious can be dismissed even for a less grave offense» (can. 696 §2), it is fair enough not to allow such less grave offenses to get into a member's penal record. Unless temporary profession has been made for several years, or the situation, while not covered by canons 694 (*ipso facto* dismissal) or 695 (obligatory dismissal), is nevertheless extremely serious that waiting for the vows to expire poses imminent harm, it is advisable to wait for the expiration of the vows[166] and then exclude a member from further profession[167].

---

[164] For more discussion on facultative dismissal, cf. E. MCDONOUGH, «Discretionary Dismissal», 96-102; 204-210.

[165] Cf. A. CALABRESE, *Diritto penale canonico*, 99.

[166] Cf. S.L. HOLLAND, «Separation of members», 867.

[167] According to A. Calabrese, dismissal from a Religious Institute can come with or without due process, that dismissal without due process can be either voluntary (where a member who merits dismissal is advised to ask for indult of departure and he yields to the advice) or imposed (exclusion from further profession) and that imposed dismissal without any due process applies to only religious in temporal vows. Cf. A.

In consideration of these two reasons, it appears that the spirit of the law seems to suggest that can. 689 §1 should be applied to cases of less grave offenses that rightfully fall under can. 696 §2 only when one has not taken too long in the Institute. When one, after first profession, has spent six or more than six years (cf. can. 655) in the Institute[168], given the gravity of the consequences of such non-admission to subsequent profession, it seems that the only reasonable and justifiable means to judge that the gravity of the offense committed is proportionate to the decision to exclude a member from subsequent profession is to have such a member dismissed procedurally under can. 696 §2.

4.3.4 Illness as a just cause for exclusion from subsequent profession (can. 689 §2)

Can. 689 §2 of the *CIC/1983* takes into consideration certain specific causes that can be reasons for refusing admission to subsequent profession: physical or psychological illness contracted both before and after religious profession. This canon changes the provision of can. 637 of *CIC/1917* according to which the illness contracted after the profession was not considered a just cause. The Decr. *Dum canonicarum*[169], which became the main source of can. 689 §2, had already, before promulgation of *CIC/1983*, suspended can. 637 of *CIC/1917*.

The *CIC/1983* places physical or psychological illness in relation to the proper needs of the life of the Institute and not to those of religious life in general. It is an act of justice because the disease may make a member unfit by reason of damage to his personal good or to the good of the Institute. The Institute has the right[170] not to accept among its members people who are not capable of living the life of the Institute. According to J. Beyer «it would be an injustice to the community

---

CALABRESE, *Istituti di vita consacrata*, 286. And according to D.J. Andrés, it does not require any formality; it neither requires any process to verify the cause nor a decree of exclusion. Cf. D.J. ANDRÉS, *Le forme di Vita Consacrata*, 641.

[168] Can. 655 is to be read together with can. 657. To keep a member in temporary vows beyond six years is considered extraordinary and, therefore, it may also call for extraordinary means to solve a case of a less grave offense by such a member because of the existence of mitigating factors such as time and possible violation of rights among others that can easily provoke a recourse.

[169] Cf. CICLSAL, Decr. *Dum canonicarum*, 8 Dec. 1970, *AAS* 63 (1971) 319.

[170] «Certain illnesses are revealed only after a number of years, hence the importance of a sufficient duration of temporary profession», J. BEYER, *Il diritto della vita consacrata*, 410.

members to impose on them such a brother»[171]. This statement of J. Beyer seems to be justified given that ***Diagnostic and Statistical Manual Disorders*** (DSM-IV-TR) defines personality disorders as enduring subjective experiences and behaviour that deviate from cultural standards, are rigidly pervasive, have an onset in adolescence or early adulthood, are stable through time, and lead to unhappiness and impairment. People suffering from these disorders manifest, among others, excessive suspiciousness and distrust of others; they frequently dispute without any justification; they are often pathologically jealous; and they attribute to others what they cannot accept in themselves. They pride themselves of being rational and objective when that is not actually the case; they are impressed with and pay close attention to power and rank. In social situations, persons with a personality disorder may appear responsible and efficient but they often generate fear or conflict in others. Although some premises of their argument may be false, their speech is goal-directed and logical but their thought content shows evidence of a mixture of projection, prejudice and occasional factual ideas[172]. Those with this disorder have lifelong problems working and living with others[173].

Considering that such illnesses are stable and lead to unhappiness and impairment, it would not only be unfair but also critical and unhealthy, both for the member and for the community, to leave such a member in the community once the illness is evident.

However, it is only an act of justice if the decision to exclude such a member meets the following essential conditions:

i. The illness had not been contracted through the negligence of the Institute or through work performed in the Institute[174]. If it had been, then justice demands that the religious not be excluded for a cause that is attributable to the Institute[175].

---

[171] J. BEYER, *Il diritto della vita consacrata*, 411: «sarebbe una ingiustizia verso i confratelli imporre loro tale fardello».

[172] Cf. B.J. SADOCK – V.A. SADOCK, *Synopsis of Psychiatry*, 794.

[173] Cf. B.J. SADOCK – V.A. SADOCK, *Synopsis of Psychiatry*, 795.

[174] According to J. Beyer, in this case the negligence is understood as a lack of necessary attention or vigilance, excessive strictness or work that is too heavy. According to him, the illness can be contracted even while doing a normal work, due to technical reasons inherent in that work, such as: serious injuries, loss of vision, of a part of the body, car accident, effects of missionary work and infectious diseases contracted during this time. Cf. J. BEYER, *Il diritto della vita consacrata*, 411-412.

[175] According to V. De Paolis, in this case «il religioso dovrà essere ammesso alla professione e l'Istituto lo dovrà considerare come un membro malato, che potrà

ii. Lack of physical or psychological health is seriously assessed by experts, who determine with certainty that the member in question suffers from a particular specific disease, that the disease is incurable and that there is a possibility of significant improvement if the member goes out of the Institute[176].

According to A. Calabrese, experts must also establish whether the disease is due to the negligence of the Institute or as a result of the work in the Institute[177]. The reason for certainty in the examination of the experts consists in the intrinsic difficulty of the disease and in order to assure objectivity and justice with which the competent Superior, who is responsible for the final decision, is to act[178].

However, among all the possible infirmities, the Legislator radically excludes mental illness as a possible cause for exclusion. «If a religious becomes insane during the period of temporary vows, even though unable to make a new profession, the religious cannot be dismissed from the Institute» (can. 689 §3). The content of can. 689 §3 does not appear in any of the three *SchemataCIC* made available to scholars. But it is taken from a decision of the CICLSAL of 5 Feb. 1925 with which a religious who becomes mentally ill after his temporary profession has a right to remain in the Institute, even if he is incapable of making further profession[179]. The prescribed norm sternly prohibits competent Superiors from any possible dismissal of a mentally ill member – that is, one who can no longer realize any act of free will. According to classic authors, the prohibition includes all possible hypotheses that make a member incapable of acts of free will[180]. And it is natural that in such circumstances, he cannot make any religious profession, which is a human act. But the norm recognizes the right of the mentally ill to remain in the Institute where he fell ill. The Institute is obliged to take care of the unfortunate member for as long as he is in that state of illness.

---

compiere ciò che egli è possibile». V. DE PAOLIS, *La vita consacrata*, 568; cf. also E. GAMBARI, *I religiosi nel Codice*, 353.

176 Cf. D.J. ANDRÉS, *Il diritto dei Religiosi*, 610.

177 Cf. A. CALABRESE, *Istituti di vita consacrata*, 296.

178 The canon in question is clear on this: the judgment on unsuitability of the candidate due to these causes belongs to the experts, while the decision to exclude a member from subsequent profession is the sole responsibility of the competent Superiors.

179 Cf. CICLSAL, Resp. *Cum aliquando*, 5 Feb. 1925, *AAS* 17 (1925) 107.

180 Cf. D.J. ANDRÉS, *Il diritto dei Religiosi*, 611; A. CALABRESE, *Istituti di vita consacrata*, 297.

Taking care, however, does not mean in strict sense necessarily leaving the member in the community if this is impossible due to the gravity of the illness. That is to say, the Institute may look for a place or a manner of living suitable for the mental state of the member[181]. According to the norm, it is essential that this disease had been contracted during the period of temporary vows. Interpreting the norm from the words of the text (cf. can. 17), it can be said that this norm does not include mental illness that was contracted prior to the profession. So if the disease is contracted during the novitiate, it falls outside the prescription of this canon.

4.3.5 Insufficient qualities of maturity and unsuitable character as just causes for exclusion (cann. 689 §1 and 642)

Can. 689 §1 does not specify any just causes for exclusion. However, these are implicitly contained in can. 642 which gives specifications for suitability as: required age, good health, suitable character, and sufficient qualities of maturity to embrace the proper life of the Institute. Since these are necessary for suitability, a lack of any of them ***a fortiori*** implies a lack of suitability. Since required age is specified in the *CIC/1983* (cf. cann. 656, 1º and 658, 1º) and health is dealt with in can. 689 §2 as we have seen in sec. 4.3.4 above, in this section, the study discusses insufficient qualities of maturity to live religious life and unsuitable character to live community life as just causes for exclusion.

Sufficient qualities of maturity to live religious life and suitable character to live community life are concretely manifested in the following:

i. Prayer or communion with the Father through and in Jesus.
ii. Total self-giving through fidelity to the vows (cf. can. 607 §2).
iii. Separation from the world (cf. can. 607 §3).
iv. Fraternal life in communion.
v. Actively participating in the mission of the Institute (cf. can. 607 §1).

These five features are necessary for every community[182] of any Religious Institute in order that they remain stable and healthy. Therefore, any member who fails to manifest any of them – as designed in the proper law of the Institute – may be considered as lacking sufficient

---

[181] Cf. J. TORRES, «La dispensa dai voti», 238.

[182] The word «community» as used in this study is taken in the light of cann. 608 and 665.

qualities of maturity and suitable character for religious life and, consequently, as lacking a vocation to a given Institute.

What now follows is an explanation in concrete terms of each of these features and how they affect community living. The explanation, however, is here given with caution that the vocation to religious life is not an abstract vocation but one that is specified in a certain Institute with its own particular characteristics. Consequently, these explanations are not exhaustive but are intended as means to aid application of the concept of insufficient qualities of maturity and unsuitable character as causes for exclusion. This explanation, therefore, does not replace the prerogative of the proper law of each Institute to give specific qualifications that speak to the nature and end of each Institute[183].

a) *Prayer or communion with the Father through and in Jesus*

This is realized in the commitment to a prayer life lived in accordance to the rules and traditions of the Institute. Consequently, when a religious is not committed to prayer life as designed by the Institute's proper law[184] – unless there is a just cause – such a member may be considered as lacking one of the necessary qualities of maturity for living religious life.

This assertion is justified given that the first and foremost purpose of Religious Institute is to foster witnessing of consecrated life and the first and foremost duty of all religious is to be the contemplation of divine things and assiduous union with God in prayer (cf. can. 663 §1; cf. ***PI*** 7; and ***Starting afresh*** 20-21; 23-26). Religious are, therefore, bound to witness to their consecration through prayer, penance and example of their own life (cf. ***CD*** 33b; ***Starting afresh*** 45). It is not a choice, but an obligation.

b) *Total self-giving through fidelity to the vows (can. 607 §2)*

Total self-giving is realized through fidelity to the vowed life. One may, therefore, be considered as lacking some of the necessary qualities of maturity to live religious life when, among others:

---

[183] This is because to be considered suitable requires that one possess the qualities required by the universal law and the Institute's own proper law.

[184] For instance, not being faithful to private meditation, community prayers, ***lectio divina***, set dates for monthly recollections and annual retreats, and the Institute's particular devotions, among others.

i. One continuously manifests behaviours, personal relationships, and forms of recreation incompatible with celibacy.
ii. One does not depend on the Superior for the provision of material needs.
iii. One fails to use in appropriate manner and take good care of temporal goods of the Institute.
iv. One stubbornly disobeys the directives of his lawful Superiors when they command according to the Constitutions and other proper law of the Institute.

This assertion is justified given that the distinguishing mark of a Religious Institute is found in the way in which the vows are visibly expressed (cf. *EE* 16; *PI* 9). The vow of celibacy implies a manner of life that is a credible witness to a total dedication (cf. can. 599; *PC* 12; *ET* 13; *PI* 13) which foregoes any behaviour, personal relationships, and forms of recreation incompatible with celibacy. The vow of poverty demands among others that the religious:

i. Foregoes the free use and disposal of his property and depends on the Institute for the provision of material needs (cf. can. 600).
ii. Be in solidarity with the poor.
iii. Bear outstanding and striking testimony that the world cannot be transformed and offered to God without the spirit of the beatitudes (cf. *PI* 14).

The vow of obedience requires among others that the religious:

i. Obeys the directives of his lawful superiors according to the Constitutions of the Institute (cf. can. 601).
ii. Obeys the supreme authority of the Church (cf. can. 590 §§1-2).
iii. Lives a mature freedom with dignity (cf. *PC* 14) in imitation of Christ and in doing God's will (cf. *PI* 15; *Starting afresh* 9; and *Faciem tuam* 5c, 8, 23).

Implicit in this commitment to the Institute through the vows is the willingness to live a common life in communion and to live in fidelity to the nature, purpose, spirit and character of the Institute as expressed in the Constitutions, supplementary codes, and sound traditions. Therefore, once there is a problem with living the vows, fraternal life in common and the mission of the Institute will be equally jeopardized by the conduct of such a member.

c) *Separation from the world (can. 607 §3)*

This is realized by living according to the norms on separation from the world as stipulated in the *CIC/1983* and in the proper law. Accord-

ing to can. 667, separation is the observance of cloister[185] which provides for the need of the religious for a place to be alone both individually and as a community. In addition to cloister, the use of habit[186] by the religious is also a sign of separation from the world (cf. can. 669 §1). Consequently, when the Institute has its own habit – whose form, colour and characteristic features are to be described with precision by the proper law – its members are obliged to wear it[187], respecting the different provisions regarding its use given by the Institute and by the common law.

This assertion is justified given that the purpose of the cloister is to safeguard the essential elements and values of religious life as well as to aid the observance of religious obligations such as: to protect the privacy of the community; foster its fraternal life and to observe the silence required for prayer and contemplation. Since observing cloister is an obligation that cannot be fulfilled without the cooperation of every member, if there is one member who constantly fails to observe this cloister, the objective of cloister is lost and this violates the other members' right to cloister. Concerning the habit, the necessity of identification as religious, particularly in the apostolate, is an important factor. The religious habit is a sign of consecration and of belonging to an Institute so it contributes to the determination of the identity of the Institute. The value of wearing a habit is well expressed in the conciliar and post-conciliar documents (cf. *PC* 17; *ET* 22).

---

[185] According to can. 667, there are four different kinds of cloister: a general one for all Religious Institutes (§1), a stricter one for monasteries of contemplative life (§2); still more stringent one, Papal cloister, regulated according to the norms given by the Apostolic See, for the monasteries of nuns who are exclusively devoted to the contemplative life (§3) and Cloister observed by other monasteries of nuns which is adapted to their proper character and defined in the constitutions. This study is concerned with cloister of §1. Cloister for Institutes of contemplative life are outside the scope of this study.

[186] A habit is a distinctive form of dress worn by members of a particular Institute which acts as an external and visible witness to the religious life and a sign of the Institute to which the religious belongs.

[187] This is without prejudice to the fact that wherever serious reasons so demand, in a case where the habit could present difficulties in the normal exercise of works of apostolate, especially in determined circumstances, the competent Superiors, after evaluating the circumstances, have full right to authorize some of their religious members to wear secular clothes. Cf. X. OCHOA, *Leges Ecclesiae*, vol. 5, n. 4475. Nevertheless, even in similar cases, their manner of dress must always give witness to their poverty, simplicity, and modesty so characteristic of the religious state, and make a difference from some fashion of purely secular styles. That is, exceptions may always be made, but in all cases, common sense prevails and religious spirit applies.

Separation from the world may also be harmed by the use of social media[188]. Observation of cloister can be violated by imprudent use of mass media. The growing technical perfection of these means of communication is appreciated for easy communication and even evangelization (cf. can. 822 §1), and the religious must use them because although the religious are not of the world, they live in the world. But the objective acknowledgement of the prestige and value of these means of communication should not make the religious assume the incalculable moral, spiritual, educational and social damage that they can cause when not used prudently (cf. *Inter mirifica* 2; *VC* 99). Their use, therefore, must be with extreme caution and prudence (cf. cann. 831 §1 and 832). Otherwise, the religious status and community life are ruined[189] because, then, not only are the religious in the world but they also become of the world. The religious house is disturbed by radio, TV programmes which may disturb the spirit of recollection and impede communal sharing. In addition, the religious have no control over the content transmitted through some of these means. And when television and videos become the main form of recreation, communication becomes blocked and life in common is gradually damaged[190].

d) *Fraternal life in communion*

Fraternal life in common is realized through the manifestation of the character traits and behaviours which are not only acceptable but also compatible with the life of a given Religious Institute.

Although most of the behaviours manifested by members which are not accepted by the Institutes may be attributed to mistakes, moments

---

[188] Social media refers to any means of communication and any communication technology that places the religious in contact with the external world, such as books, newspapers, magazines, telephone, radio, television, internet and any other audiovisual media.

[189] The distorted use of the communications media is very destructive because the media persuade so powerfully. For this reason can. 666 requires that in the use of means of social communication, necessary discretion be observed and those things are to be avoided which are harmful to one's vocation.

[190] Since media persuade so powerfully, apart from legislation on effective communication, the Institute also needs to design ongoing formation programmes that promote: (i) a discerning understanding and use of the media; (ii) an ethical assessment of programmes; (iii) inner freedom from an obsessive interest and involvement in the social media and (iv) a training of expert communicators who respect human and Christian values to help with formation of members. When all this is done and a member still abuses the use of these means of communication, then such a member may be considered unsuitable for religious life.

of crisis and mere weaknesses that can be helped by other means, there are two categories of behaviours that clearly manifest incompatibility with religious life in general. Therefore, members manifesting the following behaviours may be considered unsuitable for life of any Religious Institute:

i. Wilful misconduct.
ii. Character traits and behaviours that sow the seed of discord and promote disunity.

What these two[191] share in common is that they both gradually make a member disruptive, thereby causing discord in the community and deflecting it from its initial goals[192]. They differ in that, whereas wilful misconduct is an implicit manner of communicating one's discontentment with the life one is living, those who cause discord suffer from some level of immaturity and character that are incompatible with religious community living (cf. can. 642). They do not suffer from psychological fragility or some clinical personality disorder as such but they lack sufficient qualities of maturity necessary for religious community living manifested in some of their character traits that are clearly incompatible with community living.

Unlike psychological illnesses which are stable and lifelong, such immaturity does not suffer similar stability and, therefore, can possibly be transcended. Consequently, one with some elements of such immaturity may be admitted to temporary vows when it is judged that he is capable of transcending such immaturity with more guidance, direction and the full cooperation of the member. However, if there are no significant signs of progress as one goes through formation, guidance and spiritual direction during the period of temporary profession, then the Institute admits such a member to subsequent renewal of vows or even to perpetual vows to the disadvantage of both the member and the Institute for the reasons this study states in (ii) below.

i. Wilful misconduct

Members who manifest wilful misconduct are those who have already cut themselves off from the community in their own hearts as

---

[191] Failure to live fraternal life in common normally manifests itself in various ways. Here, however, we limit ourselves to those whose effects we consider grave for fraternal life in common. For other manifestations cf. B. HORVAT, «La vita fraterna», 96-105.

[192] Cf. J. VANIER, *Community and growth*, 127.

reflected in their indifference to the consequences of their conduct. The *Oxford Dictionary of Law* defines a ***wilful misconduct*** as «intentionally doing something that is wrong or wrongfully omitting to do something that shows reckless indifference as to what the consequences may be». «Wilful misconducts» are not, therefore, simply mistakes[193]. An act of «wilful misconduct» is wrongful, improper, or unlawful conduct motivated by premeditated or intentional purpose or by obstinate indifference to the consequences of one's acts that, though not necessarily considered a delict in law, may jeopardize personal or communal good in some way. Such conducts do not conform to the set values of an Institute; they are unreasonable and burdensome to members and may be harmful to the individual and/or the Institute. Some examples may include: aggressive, offensive or abusive actions or behaviour; persistence in unreasonable demands; failure to fulfil obligation without a just cause and wilful violation of prescriptions of proper law with rationalization as to why such violation was necessary.

Unlike those with psychological fragility, insufficient maturity and incompatible character – who think that they have a vocation to religious life while their disorder, immaturity or incompatible character proves the contrary – those who portray wilful misconduct are well aware that they have lost their vocation. Wilful misconduct is an implicit way of communicating that the member actually no longer feels a sense of belonging where he is but lacks the courage to explicitly say so, either due to some misconceptions about leaving religious life or due to some external pressure to persevere. He, therefore, puts into action that which he cannot put in words. When guided well, they easily adjust to life outside the Institute once excluded and often even keep in close contact with the Institute that excluded them.

---

[193] The 8th edition *Oxford Dictionary of Law*, edited by J. Law, defines ***mistake*** as «a misunderstanding or erroneous belief about a matter of fact or a matter of law». A mistake thus is an erroneous belief that certain facts are true. Generally, a mistake is a decision or an action that one comes to regret. Mistakes usually cause some degree of pain, loss or struggle and so one who has made a mistake is remorseful. People may also act out of character in times of frustration or distress. Mistakes and acts out of character are excluded from the notion of «wilful misconduct».

ii. Character traits and behaviours that sow the seed of discord and promote disunity

Character is a complex[194] product of personality traits[195], values[196] and virtues which once developed manifests itself spontaneously and fundamentally shapes, among others: how one engages the world around him; what one notices; what one reinforces; with whom one engages in conversation; what one values; what one chooses to act on and how one decides. Consequently, once character has been developed, one has no control over its manifestations since the manifestation is spontaneous. A character can either be suitable or unsuitable relative to the virtues in general and to the required values in a particular situation and circumstance. But since human beings are transcendent beings, they can transcend some character traits considered unsuitable and develop different ones. This, however, calls for real determination and commitment to change, a change which is only possible when one first admits that a character trait exists in one's life which needs to be changed.

In the context of a Religious Institute, character traits considered incompatible with religious life are those that sow the seed of discord and promote disunity in the community. They include the inability to transcend personal interests and disappointments; emotional imbalance; unreasonable pride, arrogance and malice and irrational jealousy.

This assertion is justified given that such character traits pose a real threat to fraternal life in common and the exercise of authority. Communion is the basis for religious communities (cf. *Faciem tuam* 19). Therefore, the first mission of every religious is communion because the witness given by consecrated life can only be realized in communion (cf.

---

[194] Some dimensions of character may be inherited; but virtues, values and many other traits that make up one's character are developed during early childhood and modified as a result of education, family influences, early role models, work and social experiences, and other life events. The value frameworks may be influenced by home life, fraternal societies one joins, experiences obtained in education, the companies one works for, friends, and many other social influences.

[195] «Traits» are habitual patterns of emotion, thought and behaviour that are considered to be relatively stable in individuals across situations and over time.

[196] «Values» are beliefs that people have about what is important or worthwhile to them. Values influence behaviour because people seek more of what they value. Values, therefore, can be seen as the guideposts for behaviour which translates into character when done repeatedly. Consequently, repeated good behaviour becomes a virtue, that is, a habit which perfects the individual whereas repeated bad behaviour becomes a vice, that is, a habit which renders one imperfect.

can. 602; *Faciem tuam* 12a; 18). A person with these character traits, however, is caught up in his own interests and concerns. And «whenever one's interior life becomes caught up in its own interests and concerns, there is no longer room for others, no place for the poor; God's voice is no longer heard, the quiet joy of God's love is no longer felt, and the desire to do good fades» (*Evangelii gaudium* 2). The end result is being «resentful, angry, and listless. That is no way to live a dignified and fulfilled life; it is not God's will for any human being, nor is it the life in the Spirit which has its source in the heart of the risen Christ» (*Evangelii gaudium* 2). And without good community living, one cannot carry out mission effectively because even though the evangelical counsels necessarily beget charity, it is communion that roots the religious in this charity (cf. *Faciem tuam* 19; 22). And this charity is manifested in works of the apostolate which is the mission of all the religious and, therefore, communion begets mission (cf. *Starting afresh* 33). Consequently, once a member is incapable of living in communion, his apostolate and the mission of the Institute are also jeopardized.

Character traits and behaviours that sow the seed of discord and promote disunity pose threat to fraternal life in communion and to the exercise of authority. It does so, in the first place, inasmuch as *it polarizes the community*. Of all the gravest threats against fraternal life in common is discord since it opposes unity of purpose which is necessary for unity of action to attain the mission of the Institute (cf. *Faciem tuam* 18). Discord denotes a certain disunity insofar as a member or some members inordinately differ from what other members agree upon just to prove that they are more important than others even if what they are opposing is more useful than their own idea. If a person differs with others reasonably, he is not sowing discord; but, if he does so inordinately, then it is due to pride[197] and vainglory[198]. And, «discord is reckoned to be a daughter of vainglory»[199] and «the root of vainglory is pride»[200]. A person manifests his importance in an inordinate manner

[197] And pride is a «generic» sin because all vices can arise from pride – although they do not invariably do so. Cf. THOMAS AQUINAS, ST, *Summa Theologica*, I-II q. 84 a. 2c.; II-II q. 162 a. 2c.

[198] Cf. THOMAS AQUINAS, ST, *Summa Theologica*, II-II q. 37 a. 2c. «Pride» or «Vainglory» is an inordinate expression of one's own excellence by mis-ascribing to oneself what one does not have. Cf. THOMAS AQUINAS, ST, *Summa Theologica*, II-II q. 132 a. Ic. The desire for excellence counts as inordinate because, in order to satisfy it, one ascribes to oneself what one does not have.

[199] THOMAS AQUINAS, ST, *Summa Theologica*, II-II q. 132 a. 5c.

[200] THOMAS AQUINAS, ST, *Summa Theologica*, II-II q. 132 a. 4c.

when he is unwilling to give up his own will so as to agree with others[201]. Therefore, someone is directly guilty of causing discord when «he knowingly and intentionally dissents from the [...] good [...] which he ought to support»[202]. What is intended here is a perverse opposition out of caprice or malice[203] which gives rise to a conduct opposed to unity, charity and peace[204]. The emotionally imbalanced, the proud, the arrogant, the malicious and the jealous are unable to listen to others and to accommodate others' opinions. This is what causes discord especially when a member with such character traits is present in a community.

Another manner in which character traits and misbehaviour sow discord is that they gives rise to a *lack of appreciation for core virtues and the virtuous*. Emotional imbalance, unreasonable pride, arrogance, malice and irrational jealousy prevent one from learning and acquiring the virtues. Their suspension of cooperation inhibits the acquisition of the virtues, especially prudence and humility[205]. This is because unwillingness to cooperate prevents one from subjecting his intellect to God as well as to those wiser than him in order that he might learn[206]. People who are emotionally imbalanced, proud, malicious, arrogant or jealous, consequently, find the virtues present in others distasteful, as this confronts them with their own self-deceit and lack of virtue and imperfection. They develop a special hatred for those aspiring to a virtuous life and, consequently, they make fraternal life in communion unbearable for such members through unjustifiable allegations, malice, and unhealthy criticism.

A third seed of discord planted by a member's negative character traits and misconduct is the fact that *they cause disputes and disharmony in the community*. The emotionally imbalanced, the proud, the malicious, the arrogant and the jealous view the weaknesses of others as evidence of

---

[201] THOMAS AQUINAS, ST, *Summa Theologica*, II-II q. 132 a. 5c: «Alio autem modo nititur aliquis manifestare suam excellentiam indirecte, ostendendo se non esse alio minorem», English Transl. is by D. Schwartz, cf. D. SCHWARTZ, *Aquinas on friendship*, 73.

[202] THOMAS AQUINAS, ST, *Summa Theologica*, II-II q. 37 a. Ib: «per se discordat aliquis a proximo quando scienter et ex intentione dissentit a bono divino et a proximi bono, in quo debet consentire», English Transl. is by D. Schwartz.

[203] If there is a rational reason for willing discord, for instance, the specific benefits of that which is willed by others are outweighed by the long-term harm that may result from it, then lack of conformity of will becomes a proximate good which is not what is intended here.

[204] Cf. THOMAS AQUINAS, ST, *Summa Theologica*, II-II q. 42 a. 1 ad 2; q. 39 a. 1c.

[205] Cf. THOMAS AQUINAS, ST, *Summa Theologica*, II-II q. 39 a. Ic.

[206] Cf. THOMAS AQUINAS, ST, *Summa Theologica*, II-II q. 162 a. 3 ad 1.

their own excellence. To the extent that they desire to be considered important, they may look for and only at the faults of others in order to improve their own self-image by criticizing everyone else. This constant negative criticism impacts negatively on community life and diminishes the joy of the other members who are aspiring for a virtuous life. The presence of constant negative criticism in the community, therefore, interferes with the processes of virtue acquisition and threatens both the vocation and the mission of the Institute since religious life does not flourish as a result of brilliant vocation programs, but on account of the fact that young people find the religious attractive because they witness and experience men and women who are happy in their consecrated life by means of their participation in the life and mission of the Institute. Similarly, the apostolic effectiveness of consecrated life does not depend on the efficiency of its methods but on the eloquence of the lives of the individual members, lives which radiate the joy and beauty of living the Gospel and following Christ to the full[207].

Moreover, a religious can be assigned to only one house at a time[208]. Subsequent assignment to a different house implies change of domicile. Without losing his domicile[209], however, a religious may acquire quasi-domicile in the house in which he resides, in accordance with can. 102 §2, but that is only for a limited period of time. Therefore, it is important that a religious with a vocation find a home in a community where he is assigned without being despised without a reason. The emotionally imbalanced, the proud, the arrogant, the malicious and the jealous, however, despise others without any good reason. Aquinas using Aristotelian insight says that it is not wrong to despise what is not right but only the magnanimous persons are justified when they despise[210]. This is so because the emotionally imbalanced, the proud, the malicious and the arro-

---

[207] Cf. FRANCIS, Ap. Lett. *To all consecrated people*, 12 Nov. 2014, II (2), *AAS* 106 (2014) 941.

[208] A religious community has to be apart from society and open to it at the same time. To the extent that its values are different from those of society, it must necessarily be apart from it. The house of the religious is much different from the house of the people who are not religious in that it is a legitimately established house under the authority of a Superior designated according to the norm of law (cf. can. 608) for the purpose of mission (cf. can. 610 §1), in which a religious has canonical and necessary domicile by assignment or quasi-domicile (cf. can. 103). This becomes his domicile and excludes all possibilities of having another domicile.

[209] Cf. J. GARCIA MARTIN, *Le norme generali*, 367; R.T.A. BAHILO, *Los religiosos ausentes de la casa religiosa*, 170; 175.

[210] Cf. J. BARNES, ed., *The complete works of Aristotle*, 1124a30-b6.

gant do not know how to despise correctly, since, lacking virtues, they lack the knowledge of what deserves to be despised or criticized. This lack of a correct approach causes disharmony in the community. This might make suitable members lose their vocation if they are not protected from such members. Consequently, the larger the number of members with these incompatible character traits in a community, the greater the harm caused to unity of purpose and the greater the risk of the number of members becoming unsuitable. This is true in that community life requires readiness to cooperate with others without one's caprice, emotional imbalance, jealousy, malice, vainglory or unreasonable pride getting in the way. If these are allowed to get in to the way, they cause a faulty way of relating to other members, to authority, and to the law.

A fourth cause of discord is observed in the fact that members with problematic character traits and misconduct *yearn for power at the expense of the common good of the Institute*. Authority exercised in Religious Institutes is to be exercised in a spirit of service (cf. can. 618; *Faciem tuam* 14b; 21). Exercising authority in a spirit of service necessarily requires:

i. Seeking the will of God through reflection.
ii. Listening to others (cf. *Starting afresh* 14; *Faciem tuam* 12; 13a; 20).
iii. Acting prudently.

The emotionally imbalanced, the proud, the arrogant, the malicious and the jealous, however, do not know how to reflect or listen to others and they lack the virtue of prudence. Rather, because they yearn for power, they seek it by all means, including dubious means. They are often extremely cunning with a considerable ability to perceive and exploit failings in legitimate authority or in the community and to use this to demonstrate their ability to redress certain perceived injustices. On account of this they attract some of the members, especially those who are dissatisfied with community life and convince them to put them into the office. They know how to create divisions, sow confusion and then sap authority[211]. And, if they get into the position of authority, they do not exercise vigilance and prudence that sustains unity[212]. Consequently, if they get to the highest office through some dubious means (cf. can. 626), they are most likely to lead the Institute into crisis.

---

[211] Cf. J. VANIER, *Community and growth*, 126.

[212] It takes much time and wisdom to build a religious community. But it takes very little time for pride, malice or arrogance to destroy the stability of a community.

Finally, seeds of discord are planted when these members *are unwilling to submit to law and authority*. Since these incompatible character traits inhibit acquisition of virtues especially prudence and humility that are necessarily needed in order to obey, these members pose a big challenge to the exercise of authority. Humility properly regards the subjection of a human will to God and to human authority representing God as well as to the law that gives power to this authority to act. «Laws and dispositions, legitimately given, provide an insight into the will of God, becoming the concrete and ordered realization of the demands of the Gospel from which they are formulated and perceived» (*Faciem tuam* 9b). Since emotional imbalance, pride, malice, arrogance and jealousy are opposed to humility, people with these character traits lack the willingness to submit to anyone[213], which leads to aversion[214] – contempt for authority and the law[215].

The law is meant to ensure a stable environment within which the members of a Religious Institute can live a specific common life of religious consecration and do God's will through fulfilment of their obligations (cf. *Faciem tuam* 9c; 11a). By living according to the provisions of the Constitutions, members are assured the means necessary for advancement in holiness and the perfection of charity. The restrictions placed by the Constitutions on certain actions or goods are voluntary self-renunciations undertaken for attaining that freedom by which the life of grace can be more effectively operative. Therefore, deliberate disregard for such provisions contradicts the voluntary desire for sanctification expressed in the profession of vows. Thus, every one incorporated[216] into any Religious Institute is, by his own free choice, bound to obey the provisions of the proper law. Wilful disregard for them constitutes a breach of charity which affects the life of the community and the member's place in it and so a member who disregards them may be considered as manifesting signs of a lack of a vocation.

It is true that people who believe themselves to be perfect because they wrongly attribute to themselves qualities they do not have are

---

213 Cf. THOMAS AQUINAS, ST, *Summa Theologica*, II-II q. 162 a. 5c.

214 *Aversion* is being unwilling to be subject to authority and to law.

215 This is without prejudice to the fact that not all violation of law is an act of pride or insubordination of authority. For instance, when the law in question is contrary to moral or natural law.

216 For the discussion on incorporation in an Institute, cf. E. MCDONOUGH, «Incorporation into an Institute», 206-211.

taught by experience and the experience that shows most powerfully that one has made too much of oneself is failure. However, in a religious community where common activities are necessarily needed to attain the mission of the Institute, waiting for such failure to happen may cause more harm than good to both the member and the Institute because a person with these incompatible character traits has difficulty cooperating with others. He dismisses the ideas of others and refuses to take part in any common activity if the part he is to contribute would reflect badly on his self-perceived excellence – for instance, being assigned some responsibilities or some apostolates which he considers to be of lesser value. He is unable to participate in a constructive exchange of ideas since learning from others would be, in his view, admitting inferiority. Most serious of all, he is unwilling to submit to the law and authority if such submission reflects badly on his self-perceived excellence. Consequently, good formation and good norms on the discipline of members are needed to modify such character traits. When, even with such formation and norms in place, a member still wilfully disregards such norms and constantly conducts himself in a manner that clearly portrays incompatible character, he may be considered unsuitable in order to ensure that these behaviours do not take root in the community.

Unlike those who manifest wilful misconduct, people who manifest character traits or behaviours that are incompatible with fraternal life in common are not easy to convince that they are actually demonstrating character traits not suitable for life in a given Institute[217]. Due to their insufficient qualities of maturity, they rarely seek help by themselves and they get baffled when told that they need help. They most

[217] The early philosophers viewed «character» as something that is formed, subconsciously, through repetitive behaviour. Cf. J. BARNES, ed., *The complete works of Aristotle*, 1742. Character is, therefore, developed from habits, and one of the characteristics of habits is that people are often unaware of them. Character, once developed from such habits, shapes thoughts, words and actions. Character – since it manifests itself spontaneously – may sometimes be manifested unwillingly when a person finds himself in a situation where other values, different from his own, are held. In addition, when that happens, a person experiences inner conflict since he is aware that his actions are inconsistent with the values he is supposed to uphold in such an environment, with the result that he experiences guilt, anger or embarrassment. To escape such painful experiences, he tries to minimize such cognitive dissonance by rationalizing or even denying his behaviour; discounting the consequences or simply blaming others. Consequently, such people will not easily admit that their character is incompatible with religious life.

likely refuse any help offered and deny their problems because they do not feel any anxiety about their maladaptive behaviour due to the fact that they do not consider as a problem that which others clearly view as symptomatic of incompatibility. For this reason, if they are excluded from subsequent profession and if they are aware that recourse against such a decision is possible, chances of them making such a recourse are very high – a recourse which they will pursue without prudence but persistently. That is, they will pursue it as far as they can go including all possible civil means of litigation at their disposal and involving as many parties as they can in their litigation – a move that may be destructive to both the excluded member and the Institute. For this reason, it is recommendable that a member be excluded from subsequent profession once such an incompatible character is evident and when it seems clear that there is little hope that the religious will transcend such limitations.

e) *Active participating in the mission of the Institute (cf. can. 607 §1)*

Active participation in the mission of the Institute is realized in the fidelity and commitment with which one carries out the mission assigned to him. Infidelity to the apostolate and mission is manifest when one or any combination of the following are present:

i. A religious makes the works of the apostolate become an escape from the burdens of prayer or community life. For such a religious, it may be more comforting to be with «God's people» rather than to search for truth and God in solitude and in life in common.
ii. When a religious overwork in the apostolate – consciously or unconsciously – in order to achieve something, which may not come to him from contemplation and community life such as prestige, honours, fame and the like.
iii. When a religious creates his own apostolate that makes him to be in control of others.
iv. When a religious uses resources meant for apostolate for his own individual advantage (cf. can. 670).
v. When a religious does his assigned apostolate to the very minimum with many unfounded excuses[218].

[218] Through the profession of the evangelical counsels, the religious place themselves at the disposal of the Institute to carry on the mission of the Institute together with other members. Thus, it seems that the religious have an obligation to be open to

These manifestations are considered as signs of unsuitability.

This assertion is justified given that such apostolic and charitable activity belongs to the very nature of religious life (cf. *PC* 8b; can. 675 §1)[219]. This is true of religious life in all its forms[220].

Fidelity to the apostolate necessarily requires commitment to prayer life; life in common[221]; clear separation from the world; fidelity to the vows; personal charisms and developed natural talents[222]. Therefore, before assigning any apostolate to a member, these five factors need to be taken into consideration by the competent Superior[223]. However, once the Superior has done so, it is every member's duty to live in accordance to these requirements.

In this regard, the first and principal apostolic duty of every religious is to be a genuinely consecrated person (cf. can. 673). Genuine consecration is sustained through contemplative union with God in prayer (cf. *PC*

---

the experience of «being sent». They are obliged to make themselves available for the Institute and Superiors have the right to expect this from them. Every task, even voluntary activities may diminish the involvement of the religious in the community or may affect their health by reason of excessive work. Therefore, it seems that all commitment of time and energies of religious members need to be made under the guidance of the Superior. Religious members are obliged to recognize that even though they have the responsibility to exercise the apostolate assigned to them, the final decision belongs to the legitimate Superior who is to act according to the proper law of the Institute.

[219] Cf. also *Comm*. 7 (1975) 75.

[220] Thus, the life of cloistered contemplatives has its own hidden, apostolic fruitfulness (cf. *PC* 7) and proclaims to all that God exists and that God is love whereas apostolic and lay Institutes actively engage in apostolic activity and works of mercy respectively.

[221] For information on how community life supports mission, cf. R. MCDERMOTT, «Community life supports mission», 189-205.

[222] Success in carrying out the apostolate does not flow simply from vows, common life and contemplation of the Triune God. Rather, what a religious lives and contemplates only becomes an effective apostolate through personal charisms and developed natural talents. Certainly, even what may be considered the simplest apostolate needs a few technical skills. In addition, many other works of the apostolate require specialized training because those ministered to in these works have a right in justice to receive competent services. For example, living the vows in community and praying deeply only motivates a religious to serve in a school, hospital, orphanage or university. However, he must also be humanly qualified and perhaps certified by the state and the Church to effectively and competently exercise these apostolates. The apostolate of teaching catechism (cf. can. 761) for instance, requires the background of solid theology and the skills of public speaking and pedagogy. Consideration at the time of making an assignment, therefore, should be holistic covering even the technical skills required to effectively carry out an apostolate.

[223] Whenever any of them is not considered, a member's vocation is at risk.

8; can. 663 §1). The apostolate then flows from the consecrated life. The God worshiped and loved in prayer is the same God who inspires and sends out on mission. In other words, religious vows nurture deep love for God and so foster the apostolate, and the works of the apostolate arouse deeper love in union with Jesus (cf. *PC* 8; *VC* 74, 93). Even in those Institutes to whom apostolic action belongs as part of their very nature (cf. can. 675), this ministry is to flow from contemplation (cf. can. 673)[224]. Moreover, the religious give witness to God by their public vows, apostolate, and community life which involves a clear separation from the world (cf. can. 607). Accordingly, the whole life of the members is to be imbued with an apostolic spirit; and carrying out their apostolate, their entire apostolic action is to be informed by a religious spirit proceeding always from an intimate union with God (cf. can. 675 §§1-2). Without God as its source, apostolic action makes no sense. If the apostolate, as the purpose of a Religious Institute, belongs to the very nature of an Institute, then the religious cannot consider an assigned apostolate as supplementary or subsidiary to his consecration. The apostolate belongs to his very vocation.

The second apostolic duty is fraternal life in communion. «Fraternal communion, as such, is already an apostolate; it contributes directly to the work of evangelization» (*Congregavit nos* 54). The expectation of the people of God to see an image of the chaste, poor and obedient Christ in the religious and in their fraternal harmony confirms that this witness of being consecrated and living in communion is the life-giving root of their specific apostolate. Thus, consecrated life is first a sign and a witness of the world's true destiny, which goes well beyond all immediate and visible perspectives, seeking to put the Gospel beatitudes into practice. This is the prophetic and eschatological understanding that consecrated men and women are a more powerful witness to the world by what they ***are*** than by what they do.

4.4 *Hearing the council* ad validitatem

A fundamental and indispensable formality for applying can. 689 is that the Superior hears the opinion of his council. This reception of counsel is ***ad validitatem*** in accordance to the norms of can. 127 §1 and proper law. A consultative approach is important in any decision making, especially where the decision may adversely affect a member of a community. For this reason, the Legislator requires that

[224] Cf. also B. HORVAT, «La vita fraterna in comune», 235-246.

the Superior must hear the council *ad validitatem* before discretionally judging that one should be excluded from subsequent profession. However, he is not obliged to follow their counsel (can. 689 §1). This requirement exists «to help the Superior avoid hasty or erroneous decision»[225] in such a delicate matter. Since the decision legally alters the state of life of the member in question, the Superior must obtain the advice of his council in pursuance of the law (cf. can. 627 §1) before deciding on exclusion[226]; failure to do so renders the exclusion invalid (can. 627 §2, 2º). In addition, without an overriding reason, the Superior should not act contrary to the unanimous opinion of those consulted (cf. can. 127 §2, 2º).

Even though McDonough sees a possibility of proper law requiring consent instead of hearing the council[227], it seems that *counsel* – though simply an expression of opinion which formally leaves the Superior free to act or not to act – is justified as the most appropriate requirement for can. 689. This is because discretionary judgement is purely a personal act that binds in conscience. One who makes such judgement must be wholly accountable for his decision. Therefore, it cannot be delegated or shared. Moreover, placing the decision in the competence of a single competent Superior recognizes that he may have confidential information which significantly alters the question but which he may not be able to share with the council members due to its delicate nature.

Therefore, two basic principles guiding legislation on hearing the council – and not consent – are clear from the *CIC/1983*:

i. The major Superior exercises personal authority and so has the last word.
ii. He is not obliged to act contrary to his conscience in such a grave decision.

Consequently, councillors can only give a consultative[228], and not a decisive vote in this matter because the Superior is not in the position

---

225 M. THÉRIAULT, «Juridical acts», 809.

226 Cf. E. MCDONOUGH, «Exclusion from profession», 544.

227 E. MCDONOUGH, «Exclusion from profession», 545: «Non-admission to profession is equivalent to exclusion from profession, so the question put to the council should be worded regarding admission even if proper law requires consent of council for the Superior to act. If worded affirmatively, then a majority for admission is clearly demonstrated by a positive majority opinion – or positive majority vote if consent happens to be required by proper law. A negative wording can be confusing in such cases because "yes" then actually favours non-admission, while "no" favours admission».

228 It is understood that the Superior may not act against it, but he is not obliged to act in accordance with it (cf. can. 127 §2, 1º). He needs it for validity of action but, if

of being required by council's vote to do something of which he may not approve. This is because it is he who is accountable for his decision, not the council members. Otherwise, if consent is required, the Superior's decision is not free and there may be pressure of conscience which should not exist in decisions on such grave matters.

In hearing the council, the Superior seeks their observations and opinion regarding the member's request to be admitted to subsequent profession. This is the object of the counsel required by can. 689 and is sought for all requests made by all members due for subsequent profession; not only the ones deemed unsuitable. This is because he is not consulting on the decision he has already made, namely, to exclude the member from subsequent profession. It is after he has received the opinion of the council members on the suitability of these candidates based on the facts presented to them that he finally decides by his own discretion whom to admit and whom not to admit to subsequent profession. Therefore, it seems proper that, even though can. 689 is on exclusion from subsequent profession, when the Superior seeks advice of the council, the question he places before them should be worded in the affirmative, in keeping with the request of the member due for subsequent profession; a request made in accord with can. 657 §1. Hence it may read as follows:

> «Should X be admitted to the renewal of vows?» or «Should X be admitted to profession of perpetual vows?».

In this way, the majority vote of «yes» will mean in favour of the request and majority vote of «no» will mean not in favour of the request. E. McDonough who is of the same opinion argues that since the temporary professed member submits a request to be admitted to subsequent profession, «the question put to the council should not be altered to a question about exclusion even if to a Superior, further admission to profession seems unlikely because just causes for exclusion are evident»[229]. Hence it should not read:

> «Should X be excluded from renewal of vows?» or «Should X be excluded from professing perpetual vows?»

In this case, majority vote of «yes» would mean that the council is not in favour of the member's request; and majority «no» would mean that the council is in favour of a member's request. A favourable vote,

---

the majority is against what he proposes, he is free not to act at all, cf. A. CALABRESE, *Istituti di Vita Consacrata*, 146.

[229] E. MCDONOUGH, «Exclusion from profession», 545.

however, is supposed to be given by a «yes» response, not a «no» response. Consequently, a negative wording can be confusing in such cases because «yes» then actually favours exclusion, while «no» favours admission; but worded affirmatively, a majority for admission is clearly demonstrated by a positive majority opinion.

Not altering the question of suitability to that of exclusion is supported by the fact that the council may not be rightly in a position to give an opinion on exclusion given the fact that the Superior may have a reason which is overriding in the Superior's judgment and that may not have been presented to the council due to reasons of confidentiality (cf. can. 127 §2, 2º). Concealing some overriding reason from the council is justified by the nature of the good that can. 689 intends to protect, namely, both personal and common good. There is no doubt that causes that justify exclusion from subsequent profession must be external – and this «external» is opposed to internal and not to private or occult – for the competent Superior to be aware of them. But, within external acts, the following possibilities can occur:

i. External but in fact not known by any member except the Superior (occult), because a member in confidence may have shared this with the Superior while seeking help.
ii. External and known by the community members (public).
iii. External and known only by a few (potentially public).

All of these are variants of just causes which may cause varying degrees of psychological effects to a member excluded when divulged against the will of the member in question. Such psychological effects may cause such harms as the following:

i. Threaten a member's personal good and impair his integral development inasmuch as he is a human being.
ii. Harm the subjective rights of other members of the community.
iii. Harm the Institute by threatening unity of purpose.

All of these effects need to be taken into consideration by the Superior. They may necessitate concealing some information from other members including members of the council depending on the sensitivity of the matter.

4.5 *The faculty of discretionary judgement in can. 689 §1*

In the *CIC/1983*, most of the canons that require just causes also give the Superior a seemingly broad discretion of judgement in determining the justness of the cause (cf. cann. 90 §1, 189 §2, 193 §1, 318 §2, 552, 554 §3, 563, 665 §1, 689 §1, and 726 §1).

4.5.1 Rationale for discretionary judgement granted by can. 689 §1

At this point, a consideration of why the Legislator finds it necessary to grant the faculty of discretion of judgement in the application of can. 689 may be useful. It seems that there are three reasons for this concession of personal, discretionary judgment with regard to the exclusion from subsequent profession.

In the first place, respect for the autonomy in the internal governance of the Institute is clearly present and warranted. The Legislator desires to remain flexible enough to encompass the multitude of unforeseen situations that come up in Religious Institutes. He wants to allow room for the Superior to exercise discretion in response to the exact circumstances present in each case due to the fact that it is not practical to give universal just causes which are applicable to all situations. Indeed, a just cause presents itself under different aspects in concrete cases, which means that its validation always consists in and requires prudent judgement.

Secondly, the decision binds in conscience. At the origin of every religious consecration there is a call[230] which is absolutely gratuitous. It is a gift from God. The Superior is, therefore, a custodian of this gift entrusted to his custody by God through the mediation of the ministry of the Church[231]. He safeguards it in the name of the Institute. Therefore, for any decision the Superior makes that affects this call, he is accountable in conscience. If his decision binds in conscience, it necessarily requires that he is entrusted with the necessary discretion to make a decision which he can explain and justify.

Finally, the decision must be proportionate to the cause. The just causes requirement of can. 689 §1 calls for proportionality; that is, the causes must be proportionate to the decision to exclude a member. However, there is no universal proportionality; it has to be judged case by case. Consequently, a Superior needs the faculty of discretion to decide on the proportionality case by case based on causes present. Moreover, although he enjoys juridical liberty to exclude a member, there is also moral obligation in such a decision. From the juridical point of

---

[230] On the divine vocation, cf. also cann. 574 § 2 and 575; *LG* 39, 43, 44, 47; *PC* 1, 2; *ET* 3, 6, 8, 12, 19, 31, 55; *Redemptionis Donum*, 3 (c), 6 (b), 7 (d), 10 (c) 16 (a); *RC* preface 2; *MR* 8; *EE* 2, 5, 6, 7, 12, 14, 23, 44, 53.

[231] «Church authority has the duty, under the inspiration of the Holy Spirit: of interpreting these evangelical counsels; of regulating their practice; and finally to build on them stable forms of living» (*LG* 43). Having established the stability of the Institute, the Church entrusts custody of this stability to the duly elected Superior.

view, the freedom of the Institute not to admit a member to subsequent profession is full[232]. This freedom is included in the very idea of temporary profession and in cann. 657 §1[233] and 689 §1. Therefore, under the juridical aspect, the Institute is perfectly free to exclude a member who is deemed unsuitable. Nevertheless, there always remains the moral obligation. That is to say, the Superior who decides to exclude a member from subsequent profession is held responsible before God for his motivated and prudent decision that a member actually lacked a vocation and, consequently, needed to be excluded from subsequent profession[234].

4.5.2 Does discretionary judgement in can. 689 §1 require any systematic manner of proceeding?

Generally, ***discretionary judgment***, when understood as «taking a decision», does not require any systematic manner of proceeding. However, when understood as «making a decision», then it forms part of a process that necessarily require some systematic manner of proceeding[235]. The phrase ***making a decision*** implies a process; it refers to the actual moment where a course of action is chosen as well

---

[232] The reason for this juridical freedom lies merely in the temporary character of the profession. When the initiative is from the member who feels he lacks a vocation, the *CIC/1983* – just as it was in the *CIC/1917* – does not require any special act on the part of the religious or the Institute. Simply the cessation of the vows and the external manifestation of will on the part of the religious not to renew the profession is sufficient. With the expiry of the time for which the profession was made, juridically cease also all bonds that were binding the religious to his Institute.

[233] This canon states that a religious who does not freely petition for admission to subsequent profession or one who petitions and is judged unsuitable must depart. There are some authors, such as J. Torres, who are of the opinion that can. 688 is an unnecessary repetition of the can. 657 §1. Cf. J. TORRES, «La dispensa dai voti», 385. Instead, there are other authors, like D.J. Andrés, who are of the opinion that it is distinct from can. 657 §1. According to him, can. 657 §1 obliges one to leave for not having asked to be admitted to subsequent profession or perpetual profession, or one is deemed unsuitable in case of a denied request. Instead, can. 688 declares a subjective freedom to leave, although there is the ability to continue renewing vows or to pronounce perpetual vows. It ensures that the right of departure is protected and guarantees that profession remains a human act. Cf. D.J ANDRÉS, *Il diritto dei religiosi*, 607.

[234] In the same way, the religious, who assumes a form of life based on the evangelical counsels and the following of Christ in a total surrender to God and who decides to abandon the religious life, is bound in conscience and is held responsible before God for the ground upon which he decided not to renew his vows. Cf. V. DE PAOLIS, *La vita consacrata nella Chiesa*, 373.

[235] It is not the exercise of discretion itself that requires a process. Rather, the discretion is exercised within a process and, therefore, forms part of a process.

as the whole process leading up to this moment. In this process, one might undertake some observations, have dialogue and discussions, think about and reflect over the issue and so on, in order to prepare oneself and/or others for the decisive moment. The phrase ***taking a decision***, by contrast, refers only to the decisive moment itself[236] and not to the process leading up to it.

There are two reasons that the ***discretionary judgment***, as required by can. 689 §§1-2, is part of the ***decision-making*** process and cannot be merely decision ***taking***. In the first place, the decision requires ***just causes and the prior hearing of the council***. This necessarily requires some manner of proceeding in the preliminary preparations for the actualisation of discretionary judgement. Consequently, the ***discretionary judgement*** required by can. 689 §§1-2 is understood as a selection made from available alternatives through a series of steps starting with getting the facts – that is, a member's conducts; proceeding to analysis of the facts, – that is, are they incompatible with the Institute's way of life or mere weaknesses; then weighing the facts before the Lord. The following questions assist in such weighing: Is this a case of loss of vocation, lack of it or mere crisis? If it is a crisis, what might be the cause? If he lacks a vocation to this Institute, what is the best counsel to give this member as he leaves the Institute? Only when these preliminary preparations are accomplished does the process finally culminate in a resolution called a decision – that is, to exclude a member from subsequent profession.

Secondly, ***the mission of Superiors*** calls them to serve an ideal that is much greater than themselves (cf. cann. 618-619 and 673). This ideal can be approached only in humble seeking, which allows them to journey with members in the search for and accomplishment of God's will by using the methods sanctioned by the Church, namely, the word of God (cf. can. 663), the Rule and Constitutions (cf. cann. 617 and 662), chapter decisions and signs of the time, among others. This can only be attained through a process and is not merely an instantaneous decision.

Discretionary judgement understood as part of decision making process takes into consideration the following:

i. Benefits and harms each course of action is most likely to produce and possible alternatives that may lead to the best overall consequences.

---

[236] Cf. S. EILON, «What is a decision?» B172.

ii. Possible psychological effects on the affected member and the course of action that best minimises such effects.
iii. The course of action that advances the good of the community.
iv. The course of action that develops moral virtues.

Given that it is an act of the will and intellect, the exercise of this faculty necessarily requires prudence in the exercise of discretionary authority. This is because discretionary judgement is an elusive concept that can serve as a faculty for good administration but can also be a victim of bad administration when used for purposes for which it was not intended. It does not mean making decisions based on personal whims and far less is it intended as a springboard for launching petty issues and personal differences as reasons for grave decisions such as excluding a member from subsequent profession. This prudence is presumed by universal law once one is elected or nominated a major Superior. This is because the tasks (cf. cann. 618-619) of major Superiors and the manner (cf. can. 617) with which these tasks are to be carried out necessarily require prudence. In practice, however, this remains a challenge since it may not always be the case. To protect Superiors in cases where the contrary may be evident, some manner of proceeding in the proper law is necessary.

4.6 *Communicating the motivation for the decision*

Can. 689 does not have any prescription for communicating the motives of the decision to the excluded member. Therefore, one may argue that in exclusion from subsequent profession, since it is not in itself a dismissal, the competent Superior is not obliged to give reasons since there is no legislative requirement to do so. However, it seems that in the spirit of can. 51, any decision that rejects a lawful request needs to be motivated at least in summary. Application of can. 689 falls under such decisions for the following three reasons.

First, even though the exclusion cannot, strictly speaking, be called a «favour that is denied» in a juridical sense, it can be conceived of as such in the broader sense of the word. This is because it partakes of other characteristics of a favour, namely, the Superior responds to a request made by a member seeking admission to subsequent profession and there is the discretionary nature of the assessment by competent authority in order to make a decision. The fact that in the act of exclusion, the competent Superior responds to a request made by a member in accordance to

can. 657 §1[237] seeking admission to subsequent profession, implies that when there is no petition then can. 689 §1 does not apply. Indeed, the assumption is that the member has in fact made a choice to depart from the Institute and, therefore, there is no need to exclude him. In that case, can. 688 §1[238] applies instead. A request for such a concession of admission implies – on the part of authority that grants it – a discretionary assessment of the circumstances that justify the concession. This need for assessment of circumstances justifies the possibility that a response to a request may contain a negative response[239], namely, denial of admission as requested when the circumstances do not favour its concession.

Since the act of exclusion from further profession denies a request and there is a juridical possibility of the affected member taking action in accordance with can. 128, this possibility necessarily requires giving the motive for the decision. Exclusion from subsequent profession is a decision by a competent authority that could contradict expectations (cf. can. 701) or some other type of lawful claims[240]. Therefore, it is logical to think that the person concerned should know the motivation behind the decision to exclude him from subsequent profession.

A second reason for providing the motivation for not granting the request can be stated simply: it is good administrative practice. It shows good faith and respect on the part of the Superior. It also can be a means of communicating his legitimate concern for the member and serve as moment of enlightenment for the soon to be departing member.

Finally, over and above any particular right or interest of individuals that may be moderated by administrative authority, persons have a right to be treated in a manner that comports with their human and Christian dignity. The concrete requirements for treating persons in a manner consistent with their human and Christian dignity are not always clear. Nevertheless, a fundamental requirement of fair, decent treatment of persons is that individuals have some opportunity for meaningful par-

---

[237] This canon grants a member a right to request to be admitted for further profession. The competent Superior retains the right to grant admission or not, but a member retains the right to request for admission.

[238] This canon states that a person who wishes to leave an Institute can depart from it when the time of profession has been completed.

[239] Cf. J.M. GARCIA MARTIN, *Le norme generali*, 258.

[240] The request to be admitted to further profession is considered a lawful claim since it is an application of can. 657 §1. One has a right to request to be admitted to further profession at the expiry of vows, but one has no right to be admitted.

ticipation in decisions that affect their status[241]. Such participation is an expression of the elementary idea that to be a person, rather than a thing, is at least to be consulted or be given reasons for decisions that affect one's status.

Concerning the content of the motive, the expression «at least in summary» cannot be «interpreted to mean vaguely, abstractly or generally; but a genuine motivation is required»[242]. Consequently, the motivation should consist in: the basis in law – that is, which law invested the power on the competent Superior to act in this case; the cause and the arguments that led to the adoption of that particular decision rather than admission to subsequent profession – that is, what are the possible positive effects expected from such exclusion especially for the member affected by exclusion.

The purpose for explaining the motives behind a decision in a clear manner is to enable the recipient to understand the «why» of the decision, because even a correct decision can lead to a complaint if it is badly communicated. Therefore, effective communication of the decision and reasons can assist not only in preventing complaints and founded[243] criticisms but also aid in helping the member to work on his limitations and weaknesses even while outside the Institute.

E. McDonough is of the opinion that exclusion should be communicated with at least summary reasons expressed not only verbally but also in writing[244]. In the spirit of the law, it is also important to distinguish the written form from the act of exclusion itself. A written form is a means by which a request is denied, therefore, it differs from the denial of the request itself which it contains – its content[245]. The response of the competent Superior to the request (its content) is the most essential part of this communication. Accordingly, even if the decision to exclude a member is communicated orally with reasons in the presence of witnesses, it is valid and legitimate; but always keeping in mind that good administration requires that any official communication be made in writing for record keeping purposes. The written form tends also to guarantee the certainty and security of juridical situations making possible their documentary proof, which is of great importance. The

---

[241] Cf. J.P. BEAL, «Confining and structuring administrative discretion», 73.

[242] C.D. BALVO, «The hierarchical constitution», 534.

[243] Unfounded complaints are not relevant to this study since they do not merit any explanation or juridical defense.

[244] Cf. E. MCDONOUGH, «Exclusion from profession», 544.

[245] For more explanation on this difference, cf. J. CANOSA, «La concessione di grazie», 237-257.

CIC/1983 explicitly establishes written form as a common norm (cf. can. 37) for all the administrative acts in the external forum. Though not an act of ecclesiastical administrative power in all Religious Institutes in the sense of can. 35 read together with can. 36 §2, except in clerical Religious Institutes of pontifical right[246], the very fact that exclusion from subsequent profession is an act in the external forum, it seems that by analogy, the spirit of can. 37 does indeed apply to all cases of exclusion in all Religious Institutes.

When placing the decision in writing, the decree may have three parts:

i. ***Facti species*** which gives a summary of the request, that is: (a) name of the member requesting to be admitted to subsequent profession; (b) object of the request – to be admitted to further profession; (c) reason for the request – reasons that the member gave as to why he wished to be admitted to subsequent profession; and (d) the purpose for the request – that is, it is a canonical requirement for any member who wishes to be admitted to subsequent profession (cf. can. 657 §1).

ii. Arguments ***in iure et in facto*** which give the arguments, motivation/reasons for the decision taken by the competent Superior.

iii. The ***decisio*** which contains the decision of the competent Superior – in this case, the denial of the request and the positive effects such denial is hoped to achieve.

4.7 *Assistance to be given to those who depart from the Institute*

Even before the *CIC/1917*, the relationship between the religious and their Institute was always regarded as a relationship ***sui generis*** qualified by vows of chastity, poverty and obedience. With profession, one is incorporated into the peculiar Institute and, therefore, into the nature of religious life according to which the members of that Institute carry out, within the community, its activities for the common good of the Institute. One becomes part of a family and that means entering into the consequent family relationships[247]. Guided by the principle found in can. 580 §2 of *CIC/1917*, whatever a religious acquired through personal effort or by reason of the Institute, the religious ac-

---

[246] In clerical religious institutes of pontifical right, major Superiors possess in addition to power over members which is defined in universal law and the constitutions, ecclesiastical power of governance for both the external and internal forum (cf. can. 596 §2).

[247] Cf. G. LOBINA, «Aiuto ai religiosi», 472.

quired for the Institute. Can. 643 §1 of *CIC/1917* found an exact match in the just mentioned canon, and provided that whoever left a Religious Institute at the completion of temporary vows or who had obtained an indult of secularization or who was dismissed from it could ask nothing for any works done on behalf of the Institute. Exception was made only for religious women who were unable to provide for themselves out of their own goods; in which case, the Institute out of charity was to give them what was required for a safe and becoming return home and so provided for them for a period of time observing natural equity. This was to be done by mutual consent or, in the case of disagreement, as determined by the local ordinary, so that she could live honestly (cf. can. 643 §2 of *CIC/1917*).

This provision for not abandoning those who leave the consecrated life was also discussed in some post-conciliar documents. In particular, the document, *Normae* exhorted those concerned, including the major Superiors of religious men, to continue to observe pastoral charity towards priests reduced to the lay state and dispensed from the obligations arising from sacred orders and vows by assisting, as far as possible, in what was necessary for an honourable sustenance[248]. Three years later, the CICLSAL followed suit with the Decr. *De auxilio praebendo* of 25 Jan. 1974 and likewise addressed the problem of the modalities of giving such help. It provided guidelines for Superiors General regarding aid to be given to those who left the Institute. This document would later become the source for can. 702. Interpreting can. 643 of *CIC/1917*, this Decree stated that the principle of can. 643 of *CIC/1917* fell within the concept of religious profession. It explained that religious profession is an act that belongs to the spiritual order and as such implies a total gift to God of everything that one realizes in the course of religious life, even if this may entail a certain risk for the future[249]. In §2 of the canon, the Church showed concern for ex-religious by explicitly stating what the competent Superiors must do in these circumstances[250].

---

[248] CDF, *Normae*, *Antequam causam*, 13 Jan. 1971, n. 5, *AAS* 63 (1971) 308: «Ordinarii quorum interest, inter quos Superior maior religiosorum, paterna et pastorali caritate prosequantur sacerdotes redactos ad statum laicalem et dispensatos ab oneribus cum sacra ordinatione conexis, et pro posse in necessariis ad vitam honeste sustentandam subveniant». This document was issued by Congregation for Doctrine of Faith on the reordering of the causes for removal of priests from clerical state and sent to the diocesan and religious curia.

[249] Cf. CICLSAL, Decr. *De auxilio praebendo*, 25, Jan. 1974, *EV*, 5, 34-36 n. 3.

[250] For a more detailed discussion on this obligation, cf. G. LOBINA, «Aiuto ai religiosi», 451-454; cf. also A. GUTIÉRREZ, «De modo providendi», 289-301.

The *CIC/1983* in can. 702 repeats the same principle: «those who depart from a Religious Institute legitimately or have been dismissed from it legitimately can request nothing from the Institute for any work done in it» (§1). This principle enters within the context of religious profession, which is of a moral and spiritual nature and not economical. In concrete terms, «whatever a religious acquires through personal effort or by reason of the Institute, the religious acquires for the Institute. Whatever accrues to a religious in any way by reason of pension, subsidy, or insurance is acquired for the Institute unless proper law states otherwise» (can. 668 §3). The Legislator considers it necessary to reiterate that «the activity carried out in the Institute should not be confused with a contract between an employer and his employees»[251]. To avoid any outcome contrary to the provisions of this canon, it is recommendable that at the time of the first religious profession, a religious should make a written declaration which is valid also in civil law since it is not uncommon to find ex-religious making recourse to the civil courts for fulfilment of their claims[252].

However, despite the lack of a right by the member and certainly no obligation on the part of the Institute, can. 702 §2 provides that «the Institute is to observe equity and charity of the gospel toward a member who is separated from it». Authors agree that, as it is expressed in the canon, this is a real juridical obligation because charity in the Christian life is a duty binding not only internally but also externally[253]. Therefore, while acknowledging that an ex-member may not present recourse against an alleged violation of a strict right of commutative justice, this lack of right does not exempt the Institute from the obligation to help those who leave. Rather, the Institute has an obligation imposed on them by the principles of charity, equity, justice and social responsibility[254]. The extent of that help is to be assessed case by case, taking into account all the circumstances of the ex-member's needs and the financial capacity of the Institute. The conditions are not always the same for everyone. Quite different is the case

---

[251] «[Religious] profession in an Institute is not the same as a contract of employment; it is an act of generosity towards God and the Church in a total renunciation». G. GHIRLANDA, «La problematica della separazione», 185. English transl. is by the author. Cf. also E. GAMBARI, *I religiosi nel Codice*, 374; V. DE PAOLIS, *La vita consacrata nella Chiesa*, 396.

[252] Examples of such recourse and threats to make such recourse are given in the appendix and chapter IV, sec. 3 of this study.

[253] For example, cf. F. CICCIMARRA, «Come conciliare il "dovere giuridico"», 889.

[254] Cf. CICLSAL, Decr. *De auxilio praebendo*, 25, Jan. 1974, *EV*, 5, 37 n. 5.

of those who leave the Institute voluntarily after one year from that of those who remain in the Institute for six years or maybe more in accordance with can. 657 §2[255]. Different still is the situation of those who during the life in the Institute acquired academic qualifications and titles and certain specialized experiences, compared with the situation of religious men and women who, for various reasons, did not acquire any of these qualifications.

On the other hand, the help should be evaluated according to the ability of the Institute itself and in light of the obligations of charity, equity and justice that it has towards its members who persevere in the religious life. It should not place upon itself an unjustifiable burden for the sake of those who have left the Institute[256]. It should not be forgotten that the Institute has also an obligation of charity primarily towards those who remain faithful to their vocation. The *CIC/1983* no longer prescribes any modality for determining the type of help to be given. Rather, it leaves the judgement to the Institute. In addition, the canon in question does not provide for what happens in the case of negligence or ill will on the part of the Institute. Authors are, however, in agreement that, in this case, the excluded member may contact the competent authority at the level of the diocese or the Apostolic See[257].

In addition, with regard to the length of time and the extent of economic help, the norm of can. 702 §2 does not indicate a time limit. From the doctrine of the Church, this help is considered temporary and not long-term. According to G. Lobina, the temporary nature of the help is a principle which cannot even minimally be controverted. Excluded, therefore, is any claim for annuity, retirement pension or the purchase of an apartment by competent Superiors. In his opinion, no canonical or civil norm could oblige the Institute to such annual solutions because, in an attempt to administer justice with respect to the individual member, it would commit a grave injustice not only to the Institute but also towards all its members[258]. Therefore, the duration of assistance for an honest sustenance should also be evaluated case by case in the light of equity.

---

[255] If it seems opportune, however, the competent Superior can extend the period of temporary profession according to proper law, but in such a way that the total period in which the member is bound by temporary vows does not exceed nine years (cf. can. 657 §2).

[256] Cf. CICLSAL, Decr. *De auxilio praebendo*, 25, Jan. 1974, *EV*, 5, 39 n. 8.

[257] Cf. J. BEYER, *Il diritto della vita consacrata*, 425.

[258] Cf. G. LOBINA, «Aiuto ai religiosi», 452.

4.8 *Readmission into the Institute*

It is a common fact that there are cases of men and women who, after legitimately leaving the Institute, ask for readmission. The causes for which their vocation was interrupted may have been different: immaturity, spiritual reasons, different types of diseases, family needs or help to parents without support, among others[259]. ***Renovationis causam***, considering such circumstances, for the first time introduced ***ad experimentum*** the norm that a religious who legitimately leaves the Institute, both at the expiry of temporary vows or with an indult, could ask to be readmitted and the Superior General, with the consent of the council, could readmit that ex-member without an obligation to repeat the novitiate (cf. *RC* 38). The same number of ***Renovationis causam*** provided a clause which stipulates that the Superior General must impose on such a member a certain period of probation, upon the completion of which the candidate may be admitted to temporary vows or commitment for a period of not less than one year or not less than the period of temporary probation which he would have had to complete before perpetual profession at the time he left the Institute. The *CIC/1983*, inspired by this Instruction, introduces a new norm. New in the sense that the *CIC/1917* did not allow such readmission into the Institute or even reception anywhere else without an Apostolic indult. The one who received this indult, unless otherwise provided for in the rescript, had to repeat the novitiate and corresponding profession and obtain a place among the professed from the day of the new profession (cf. can. 640 §2 of *CIC/1917*). The *CIC/1983* expresses it at can. 690 §1 as follows:

> The supreme Moderator with the consent of the council can readmit without the burden of repeating the novitiate one who had legitimately left the Institute after completing the novitiate or after profession. Moreover, it will be for the same Moderator to determine an appropriate probation prior to temporary profession and the time of vows to precede perpetual profession, according to the norms of cann. 655 and 657.

This canon gives the competence to the supreme Moderator with the consent of his council to readmit into the Institute one who left legitimately either at the end of novitiate or after profession, without the obligation of repeating the novitiate. It does not give any right of readmission to the

---

[259] Cf. J. BEYER, *Il diritto della vita consacrata*, 416.

ex-members; they only have a right to request it, which may either be accepted or refused by the competent Superior[260]. For this reason, an ex-religious does not have any right to recourse against such refusal[261]. Readmission is facultative on the part of the Institutes. None of those who leave, for whatever reason, can claim legitimate and automatic right to readmission. Even Superiors cannot promise members that which the law does not grant to them. Therefore, to promise a member who is being excluded that once the reason for exclusion no longer exists, he will be readmitted would be to mislead the member and would be considered an explicit lie. Consequently, if an excluded member is not readmitted even after such a promise, he shall not be entitled to any right of recourse, except the general right of recourse granted to every Christian who feels harmed by the act of authority (cf. can. 221 §1)[262].

Whereas, the passive subjects for readmission, according to ***Renovationis causam*** – which is the source of can. 690 – are those who have legitimately left the Institute either at the expiration of temporary profession or commitment or after dispensation from the obligations of profession (cf. ***RC*** 38); according to can. 690 §1, the passive subjects for readmission, without obligation of repeating the novitiate, are those who have legitimately left the Institute after completing the novitiate or after profession[263]. With regard to can. 689, according to classic authors[264],

---

[260] Cf. D.J. ANDRÉS, *Il diritto dei religiosi*, 625; J. BEYER, *Il diritto della vita consacrata*, 416; A. CALABRESE, *Istituti di vita consacrata*, 305; V. DE PAOLIS, *La vita consacrata nella Chiesa*, 380; G. GHIRLANDA, «La problematica della separazione», 174.

[261] Cf. V. DE PAOLIS, *La vita consacrata*, 380-381; J. KOWAL, *Uscita definitiva*, 232; E.M. LISI, «Riammissione o reingresso?» 64.

[262] Cf. also D.J. ANDRÉS, *Il dritto dei Religiosi*, 625; A. CALABRESE, *Istituti di vita Consacrata*, 305; G. GHIRLANDA, «La problematica della separazione», 174.

[263] There is no longer any specification concerning the type of profession in the revised *CIC/1983*. This implies that they can be those who left after temporary or perpetual profession in accordance to the principle of can. 17. Considering this implication, this canon could have been placed after can. 693. This is also the opinion of a number of authors. Cf. J. BEYER, *Il diritto della vita consacrata*, 416; G. GHIRLANDA, «La problematica della separazione», 173-174; J. KOWAL, *Uscita definitiva*, 234.

[264] Cf. D.J. ANDRÉS, *Il dritto dei religiosi*, 624-625; J. BEYER, *Il diritto della vita consacrata*, 416; A. CALABRESE, *Istituti di vita consacrata*, 304; V. DE PAOLIS, *La vita consacrata*, 380; E. GAMBARI, *I religiosi nel Codice*, 354; J. KOWAL, *Uscita definitiva*, 232. Others also considered passive subjects by these authors include: a novice who voluntarily (cf. can. 653 §1) and legitimately leaves at the end of novitiate; a professed religious who voluntarily leaves at the end of the temporary vows (cf. can. 688 §1); a professed who leaves the Institute with the indult during temporary profession (cf. can. 688 §2); a professed who after perpetual profession leaves the Institute with

the mind of the Legislator is that a religious who, after the temporary profession, is excluded from subsequent profession for just causes (cf. can. 689 §§1-2) falls within can. 690 §1. Therefore, an excluded member can be readmitted, but it seems that such readmission would only be prudent if there is clear evidence that the member in question was excluded without just causes. This is because the ultimate cause for non-admission to subsequent profession is the lack of vocation and to readmit a person who lacks vocation to the life of the Institute is to jeopardize the personal good of the person readmitted as well as that of the Institutes for reasons given in ch. III, sec. 4.3 of this study.

With regard to the novitiate, the canon is clear: only those who completed the period of novitiate have the right to request readmission. Those who did not complete novitiate formation certainly are outside the scope of this canon. There may be those who started the novitiate and voluntarily decided to leave before its completion. In their case, J.F. Castaño's opinion is that one cannot speak of «repetition» of a novitiate which, in fact the former candidate did not do or did not complete. Thus, he concludes that this is to be treated as new admission to the novitiate like any other new candidate[265]. In addition, there are those who may not have completed novitiate because they were dismissed by the competent Superior. Even these are not included in this canon[266]. They, like any other candidates seeking admission, must make fresh requests for admission to the Institute. If admitted, the admission will be considered as a new admission and not a readmission.

The competent authority for readmission into the Institute of an excluded member and for the determination of the duration of the probation is the supreme Moderator (cf. can. 690 §1) of the Institute. The competent Superior, however, can proceed only after a formal request for readmission has been made by the member seeking readmission. For the validity of the act of readmission, he must have prior consent of his council, in accordance to can. 127 §1. Without asking for such con-

---

an indult (can. 691). However, passive subjects to the re-admission derived from the canon can always be restricted by proper law, just as in accordance to can. 643 §2, the proper law may impose the obligation to repeat the novitiate.

[265] Cf. J.F. CASTAÑO, *Gli Istituti di vita consacrata*, 301; E.J. GILBERT, «Separation from Religious Institutes», 463-464.

[266] Cf. A. CALABRESE, *Istituti di vita consacrata*, 305; V. DE PAOLIS, *La vita consacrata*, 380; A. GUTIÉRREZ, «De nova admissione egressi», 293; J. KOWAL, *Uscita definitiva*, 232.

sent, or acting against the decision of the council[267], the readmission is invalid in accordance to can. 127 §2, 1º. The decision to readmit a former member is evidently a personal faculty. Therefore, he may act according to his conscience in making the decision. He may even decide not to readmit the ex-member despite the consent granted by the council, because such consent does not compel him to act[268].

The readmission without repeating the novitiate presupposes that during temporary profession one will be given a sufficient probation period. This is a canonical obligation. This means that the readmitted member cannot be exempted from this obligation of probation. Unlike its source (cf. *RC* 38), can. 690 does not determine the length of probation. Rather, it leaves the decision to the prudent judgement of the Superior General, who is to decide case by case. In doing so, he must respect the prescriptions of cann. 655 and 657 §2. Therefore, he is not permitted to act arbitrarily in this matter, since can. 690 makes a direct reference to cann. 655 and 657[269]. From both norms, it is clear that the Superior General cannot dispense from temporary vows prescribed by common and proper law (cf. can. 658, 2º).

It is not, however, necessary to repeat all the years required by can. 655 if one who is readmitted had completed these years of temporary profession before leaving[270]. Therefore, the period of probation depends on the proper law of the Institute and the determination of the competent Superior[271]. For instance, the Superior General can compute the period in which the member lived under temporary vows before leaving and then impose a probation period equivalent to the time that remained for the completion of temporary profession[272].

5. **Conclusion**

This chapter explored the legislation of the *CIC/1983* on temporary profession and exclusion from subsequent profession. It began by presenting a study of the revision process that brought about the placement

---

[267] Even a blank ballot paper is considered negative, because, bearing in mind §1, the Superior must not just seek, but seek and obtain the consensus.

[268] Cf. D.J. ANDRÉS, *Il diritto dei Religiosi*, 503; J. KOWAL, *Uscita definitiva*, 234-235.

[269] Can. 655 establishes that the period of temporary profession shall not be less than three years and more than six; whereas can. 657 grants the Superior the faculty to extend this period to not more than nine years.

[270] Cf. J. BEYER, *Il diritto della vita consacrata*,416.

[271] Cf. D. J. ANDRÉS, *Il diritto dei religiosi*, 627.

[272] Cf. A. CALABRESE, *Istituti di vita consacrata*, 306.

of cann. 655 and 689 into the *CIC/1983*. The deliberations of group sessions and the *SchemataCIC* of 1977, 1980 and 1982 were studied and, by analysing and discussing these *Schemata*, the study considered the theological, juridical and pastoral concerns and implications arising from them both for individual members and for the Institute. Section two presented the general principles guiding the nature and application of cann. 655 and 689, and in particular, the principles of: subsidiarity, autonomy and suitability. The basic elements of can. 655 which include: public vows to observe the three evangelical counsels; consecration to God through the ministry of the Church and incorporation into the Institute were studied in section three as well as its rationale and the question of «temporariness». Finally, the last section dealt with the nature and elements of can. 689. It began with a brief presentation of three possibilities of departure from the Institute within the period of temporary vows, and then focused mainly on the imposed departure at the expiry of temporary vows, taking into consideration: the *ratio legis* for can. 689, the conditions and requirements for application of can. 689 and the nature of causes considered just and concrete analysis of such causes.

From the analysis of the two canons (cann. 655 and 689), three observations can be made. First, the *CIC/1983* is consistent with the doctrine and tradition of the Church on temporary religious profession in which temporary profession is realized through vows. It leaves the sacred bonds to other Institutes of consecrated life. The analysis of the review process clearly revealed that the motive for this was not just to keep to the past tradition, but it was also motivated by experience of the Vatican II and post-conciliar period especially *Renovationis causam*. It is also clear that the motive for the period of temporary profession is to give the candidates sufficient opportunity to acquire necessary maturity for assuming the obligations of vowed life as well as giving the Institute time enough to decide on the suitability of the candidate. More importantly, however, the period of temporary profession is required to give the young professed enough time to assimilate and deepen that in which religious identity consists, without any prudent doubt on the authenticity of their vocation.

Secondly, there is a very close connection between temporary profession period and the determination of suitability of members. This is the case because the effectiveness of formation during the period of temporary profession helps to identify early enough those who lack a vocation. It also helps to nurture the vocation of those who are actually

suitable so that they may not lose their vocation. Even though exclusion from subsequent profession occurs basically as a result of a lack of a vocation, it may also be as a result of loss of a vocation. Given that loss of a vocation may be attributed to either personal factors or to formation factors; fostering the young religious' deeper knowledge of their divine vocation through effective formatiom programmes is one of the goals of the temporary profession period. And discerning and proving suitability of members is one of the tasks entrusted to the director of temporary professed religious, other collaborators in the formation of members and the competent Superiors. Given that growth and maturity are gradual, a newly professed religious is not expected to have attained full maturity for all the obligations of religious life at the time of first profession, but he must have been judged as capable of progressively doing so for him to have been admitted to vows. Attainment of full maturity on the part of the member and discernment and evaluation of that maturity on the part of the Institute justify the time and means given to do so during temporary profession period. The more effective the formation of the members during this period, the more members appreciate fraternal life in common[273]. It also contributes to the decrease in the number of those excluded from subsequent profession after admitting them to vows.

Thirdly, the formation received during the period of temporary vows is more necessary today. The candidates whom the Institutes receive – like every other human being in the society – are never *tabula rasa*. They join the Institute already having some perspective on life and in different proportions depending on how they have been raised. One's perspective is passively formed right through life experiences in childhood, during the youthful years and in young adulthood. Once a perspective is formed it serves as a filter in perceiving the present reality and in determining how one organizes and interprets his current experiences. It acts also as a buffer zone that blocks any new learning that is incompatible with the content of the perspective already acquired.

The challenge many young people face today is not immaturity in terms of age or even intellect, but that of disposition gap. Their sociali-

---

[273] This is important, because it is possible to have Institutes that may not exclude members from subsequent profession after admitting them to vows but in which there is no healthy community living due to the existence of members who probably ought to have been excluded but were not excluded. Therefore, it is not just not excluding members that is important, but the quality of witnessing consecrated life and the mission of the Institute.

zation process has led them to acquire many different perspectives[274], some of which are in fact incompatible with religious life and consequently negate Christian values. As a result, they experience a more serious disposition gap that, if not attended to, easily makes them become unsuitable. The cause of this disposition gap[275] is because Christian values are fostered and nurtured in good families; but in today's world, families are systematically being destroyed by political instabilities, postmodern world ideologies, family separations and advanced mass media technology. In the absence of stable family structures and through the other means available to them for socialization, young people seem to acquire more ideologies that are incompatible with religious life, many of which tend to emphasize rights without responsibility, relativism and absolute liberty. The greater the amount of such ideologies a candidate brings with him to the formation house, the greater the disposition gap.

Consequently, the challenge to nurturing a vocation to religious life is great because there is need for radical transformation from ideologies already acquired in order to attain proper disposition for religious maturity. This is because response to mission as a religious goes beyond the boundaries of rationality and mere human logic; it calls for real truths, faith, trust in divine providence and sacrifice, all of which are negated by many modern ideologies that the young religious are exposed to.

The greatest challenge for formation today, therefore, seems to be how to ensure that the young religious are well-disposed for formation to religious life. Unless they are well-disposed, even a very good formation programme with excellent formators is unlikely to meet the objective of initial formation for the reason that the full development of religious values and Christian sanctity in a soul is inconceivable if a man or woman does not start out with a healthy mind, well balanced in its activities. Moreover, spiritual formation to religious life is also inconceivable if one does not start from a predisposed mind and heart. This implies that any deficiency

---

[274] *Perspective* here refers to one's overall worldview, which comprises specific knowledge, values and beliefs. It reflects the knowledge one has acquired but also the peculiar distortions, prejudices, and beliefs that human beings are all exposed to, owing to different family and cultural backgrounds, childhood and youth experiences, education and training among others.

[275] A «disposition gap» is when a candidate is not able to cooporate with the formator in order to be formed due to existence of knowledge content in the mind which hinders submission of the will to new forms of knowledge.

in the disposition would be an obstacle to effective formation and religious maturity since only one who receives the seed on a good ground hears and understands, and it is only he who indeed bears fruit (cf. *Mt* 13,1-9; 18-21). It is only when one is well disposed to religious life that one has a secure grasp of spiritual things; not just in an abstract theoretical understanding of the mind, but as they manifest themselves in reality. Even though from the spiritual point of view, transformation is primarily attributed to the grace of God, it should also be pointed out that it necessarily involves human cooperation. Incompatible perspectives, however, interfere with this corporation. As long as incompatible ideological perspectives exist, then like the sower in the parable, a formator may work tirelessly to sow the seeds intended to grow and bear fruit; but these perspectives keep choking the seeds and interfering with understanding. For as long as there is a conviction that what one already knows is the truth, it is almost impossible for any transformation to take place.

This challenge seems to suggest a review of the approach to formation during temporary vows period. What is necessary is not just the number of years taken in temporary vows, but an approach to formation that intensively aims at disposing the will and not just focus on intellect. This is because a person's will is where one sets a course that guide and control one's entire being. It necessitates an approach with the following objectives:

i. Orient the young religious towards wanting to be formed, wanting to do good, wanting to do it earnestly, wanting to do it effectively and seeking constantly to practice it.
ii. Orient them towards renunciation of one's whims by responsibly choosing to fulfil one's duty and to give up one's personal plans freely in order to uphold the dignity and liberty of the choices of others – the community.
iii. Help them to be aware of the existence of both compatible and incompatible ideologies in their knowledge and to trace the sources of the incompatible ideologies so that they may commit themselves to replacing such ideologies.
iv. Help them to understand that they need the help of another person – in this case, the formators, directors and superiors – to know the truths of the Institutes they have joined.
v. Help them to realize that the success of their formation necessarily requires their full cooperation.
vi. Orient their attitude towards appreciating the values of the Institute they have joined.

This orientation of will and attitude is key because a life that is clearly marked by correct values is important for any Religious Institute, since it provides motivation for persevering in one's vocation and in the building up of the character of the members thereby minimizing cases of unsuitability.

Some signs that disposition of the will is taking place during the period of temporary vows are summarized as follows:

i. Openness to Growth. This is seen in total dedication to the search for the truth and, hence, an openness to self-examination and a willingness to be personally challenged.
ii. Willingness to be guided. Since every religious is to strive to attain holiness within a given Institute, a young religious needs to be willing to be guided through the search for a clear vision of what his life and attitudes should be like in this particular Institute, and consequently strive for a spirit of adaptability.
iii. Willingness to journey towards inner freedom and personal responsibility. Freedom is a basic human right but responsibility is a necessary quality in order to exercise inner freedom. This inner freedom is reflected in honesty, courage, transparency, authenticity and responsibility.
iv. Docility to the Holy Spirit. This is reflected in the candidate's dedication to his prayer life. This condition contributes to the knowledge of self, God and the world. Docility to the Spirit is the ability to discern the voice of the Spirit and be led by that voice.

These four taken together signify a journey towards religious maturity. Nevertheless, preparing the will is one of the most challenging tasks because it has far-reaching consequences on the personality of a young religious and the stakes involved are very high for some people depending on how different their perspective towards religious life is. Because the truths they hold might be opposed to the realities of religious life, they have to let go these truths in order to acquire the real truth about religious life. However, because what they already know to be the truth appears so familiar and so convincing, it is a call for a real change in one's perspective in order to adapt to the realities of religious life. The first step, therefore, is being ready for change. Readiness for change, however, demands a willingness to embrace the risk of losing a familiar world for something that is not clear yet, the courage to shake one's very foundations guided by hope of a new birth and letting go the known for the unknown.

The formators need to be equipped well with the skills necessary for such a demanding and delicate responsibility once those with qualities needed for such a task have been identified. They need to be made aware that letting go is always a painful experience and will always meet resistance as a first reaction. Embracing the new is also frightening because it takes one out of the comfort zones and brings one face to face with the unknown future and this too will sometimes meet resistance. But this resistance is to be kept in equilibrium. This seems necessary because, if not kept in equilibrium, the hypothetical results are twofold: either extreme means such as threats of exclusion are used or the young religious are virtually left on their own to guide and direct themselves with undesirable consequences.

When the extreme means such as threats of exclusion are used to compel young religious to let go of the old in order to acquire the new, this has a consequence of either creating serious psychological problems or having people who tend to hide their true selves in order to be admitted to perpetual vows which makes it very difficult to identify signs of unsuitability early enough.

When the young religious are virtually left on their own to guide and direct themselves with the academic knowledge already acquired in various institutions of learning on the assumption that candidates received are mature enough and so need very minimal direction after profession; the results are that the young religious may demonstrate intellectual maturity in their reasoning but fail to demonstrate the necessary maturity required to live the life of the Institute in their actions. Chances of such members losing their vocation and becoming unsuitable are very high.

In a balanced approach, the assumption is that the young religious, whose vocation certainly cannot be put in doubt *a priori*, has not yet attained full spiritual maturity necessary to live the life of the Institute. It is also presumed that the young religious often think explicitly or implicitly, that with the admission to first profession they have attained the expected religious maturity, even if they actually have not. Consequently, the young religious, while having a vocation to religious life and the real capacity to live its demands, experience certain misconceptions which they can only break through with the help of the formator. Consequently, the formator assumes the responsibility to take the initiative with a certain firmness in order to help them let go of their perspectives but with genuine love and reassurance that gives the young religious a sense of belonging. This firmness can sometimes be per-

ceived by the young religious as a kind of interference because in their own mind, they feel self-sufficient; they feel that they understand well religious life and they wonder why the formator is failing to recognize this «maturity» in them. In reality, however, they can only arrive at the truth of their religious vocation to that particular Religious Institute with good, well-planned, constant and firm formation. This is precisely the goal of the period of temporary profession.

CHAPTER IV

The jurisprudence of the Holy See

Can. 689 succinctly expounds the requirement of just causes for the decision to exclude a member from subsequent profession after hearing members of the council, but without specifying the consequences of the possible non-fulfilment of the prescription on the requirement of just causes. Therefore, this is not, properly speaking, a norm of procedure in the sense of directly and expressly linking the validity and lawfulness of the acts of the authority to the fulfilment of certain requisites. It appears to be a mere strong appeal to the authority which largely subordinates the effectiveness of the juridical protection of the one affected by the decision of the Superior to the sensitivity and juridical sense of the Superior making the decision. But in the present day where there is a greater sensitivity in the world and in the Church to questions of human dignity and of due process for the protection and respect of that dignity, a question arises as to whether there is a right that can be violated by the act of exclusion from subsequent profession. This implies that if there is such a right, then – in respect for human dignity – it must be protected. This gives rise to a second question: What mechanisms has the Church put in place to protect members against violation of can. 689?

Answers to these questions are not fully covered in the *CIC/1983* and, therefore, to answer them satisfactorily, we must turn to the jurisprudence of the Holy See. Answers to these questions are considered important and relevant because currently, some civil *fora* consider themselves competent to judge contentious-administrative cases presented to them by the religious who appeals against exclusion from subsequent profession despite the fact that the decisions on suitability of a person for religious life is strictly a spiritual matter for which the competence belongs to Church authorities and civil courts have abso-

lutely no jurisdiction. This was the case of A (CIV) NO.2/2013 in the court of appeal of Lesotho in the matter between the Institute of the Oblates of Mary Immaculate and Brother Methodius T. Ponya[1]. The court claimed competence in this case on the ground that – citing case of Lesotho Evangelical Church vs. Pitso LAC (1990-1994) 474[2] – «even if the parties to an agreement creating the domestic tribunal of a voluntary association can in certain respects exclude the jurisdiction of the courts, they cannot do so in all circumstances. More particularly they cannot do so where the act complained of is against the principles of natural justice» (cf. Appendix, n. 7).

In this case, the respondent – having completed his sixth year as a religious in the Scholasticate of the Oblates of Mary Immaculate at Maseru and was due to renew his annual vows in preparation for final profession – was excluded from renewal of vows by the major Superior. He then decided to appeal the decision in a civil court. When the Institute appealed the decision, the Respondent won the case based on «entitlement to a hearing of a temporary member of a Religious Order before excluding him from renewing his vows» (cf. Appendix, n. 6). The Court considered failure to hear the respondent before excluding him as conflicting with tenets of natural justice and found such failure to be reviewably irregular.

This case shows that Religious Institutes can no longer assume that can. 689 on exclusion from subsequent profession is simply an act of the will. It is true that the essence of the act is the expression of the will of the Superior who discretionally judges a member unsuitable and expresses his will in the decision to exclude a member from further profession. But it is also true that such a decision can be challenged with juridical consequences that need to be taken into consideration whenever discretionary judgement to exclude a member from subsequent profession is exercised.

In this chapter, therefore, the study examines the acts of the cases in which recourse was presented to the Holy See against the decisions of

---

[1] For the summary of this case cf. Appendix.

[2] This issue was dealt with in *inter alia* the case of Lesotho Evangelical Church vs. Pitso LAC (1990-1994) 474 albeit in that case it was with specific reference to ouster clauses that are contained in the constitutions of voluntary organizations. J.A. Browde held that the Courts have jurisdiction to review decisions of voluntary associations, even if such jurisdiction is so excluded, where such bodies fail to observe the provisions of their constitutions and procedures, or when they act in bad faith or irregularly or fail to observe the rules of natural justice.

Superiors to exclude members from subsequent profession. It does so in order to find out what kind of precautionary measures the Institutes had taken during the application of can. 689. It then proceeds to study the decisions contained in the decrees of the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life, hereafter CICLSAL, and of the Signatura Apostolica with a purpose of extracting from them the jurisprudence of the Holy See concerning application of can. 689. It does so in order to see how the jurisprudence helps to develop the exercise of administrative discretion in the application of can. 689. Finally, with a view towards providing a practical method for preventing and resolving conflicts at the Institute's level which arise from the application of can. 689, this chapter examines the interplay of law and jurisprudence to see how jurisprudence helps to better exercise discretionary authority in the application of can. 689. It concludes by proposing some forward-looking possibilities.

It is worth noting here that the author had intended[3] to analyze recourses presented to the CICLSAL and the Signatura Apostolica against exclusion from subsequent profession. However, effort to access such recourses at the CICLSAL was unsuccessful[4]. Therefore, the decisions studied here are those on recourses presented to the Signatura Apostolica and reference to the CICLSAL decisions are from the acts of the cases submitted to Signatura Apostolica.

In order to contextualize the study, before analysing the cases studied, the study considers it important to look at the praxis of the CICLSAL and the Signatura Apostolica in examining recourses against decisions of discretionary authority. This is appropriate since the CICLSAL's norms on procedures and the Signatura Apostolica's norms on the same bind each of them in similar cases – if not, there can be arbitrariness and unequal treatment of similar cases[5]. Accordingly, the author believes that procedures followed in examining hierarchical recourse against all acts of discretionary judgement are generally the same. Consequently, they also apply to exclusion from subsequent profession which is a product of

---

[3] This intention was based on the fact that knowledge of this jurisprudence is important because can. 19 explicitly mentions the jurisprudence and practice of the Roman Curia as a source of law. It would, therefore, help Religious Institutes on how to proceed systematically and fairly in the application of can. 689.

[4] The author submitted a letter from the University to the CICLSAL seeking permission to access the archives in order to study the cases but permission was implicitly denied through silence.

[5] For this argument, cf. J.I. ARRIETA, «Il valore giuridico», 113-114.

discretionary judgement. Beginning with the study of the praxis is preferred because the jurisprudence becomes clearer when the knowledge of how the decisions were arrived at is clear.

1. **The hierarchical administrative recourse to the CICLSAL**

This recourse is called «hierarchical» because it is addressed to the hierarchical Superior of the author of the act. It is «administrative» in two ways. First, it is administrative with regard to its object which is an individual administrative act involving the exercise of executive power. Therefore, it is distinguished – with regard to its object – from recourse against acts involving the exercise of judicial power or even administrative acts[6] in the context of a specific judicial process (cf. can. 1732) and from the exercise of legislative power, or even other acts of executive power such as general executory decrees and instructions (cf. cann. 31-34). Secondly, it is administrative in regard to procedure used in examining the recourse. This administrative procedures is distinguished from a judicial process including the contentious-administrative process of the Signatura Apostolica.

The scope of hierarchical recourse[7] is clearly defined by can. 1732 which states that «what is established in the canons of this section concerning decrees must be applied to all singular administrative acts which are given in the external forum outside a trial except those which have been issued by the Roman Pontiff or an ecumenical council». This means that hierarchical recourse is possible only against singular administrative acts in the sense of title IV of book I of the *CIC/1983*, given in the external forum (cf. cann. 35-93). A singular administrative act can be defined as any singular and unilateral juridical act issued by the competent executive authority in the extrajudicial sphere[8]. The recourse

---

[6] For historical aspects of administrative acts in general, cf. E. LABANDEIRA, *Trattato di diritto*, 267-433.

[7] For an elaborate treatment of hierarchical recourse in general, cf. E. LABANDEIRA, *Trattato di diritto*, 435-484.

[8] According to L. Eduardo, it is a juridical act because the declaration of will is intended to produce juridical effects in the external forum; it is a singular act because it concerns a determinate case, person, or group and thus excludes general decrees and other norms of executive power; it is a unilateral act, excluding contracts and other plurilateral acts; it is an authoritative act, because it is an act issued by a public ecclesiastical authority with the power to affect other persons; it pertains to the competent executive extrajudicial authority; and finally it is an extrajudicial act, namely an act issued outside a trial. Cf. E. CAPARROS – M. THÉRIAULT – J. THORN, ed., *Code of Canon Law Annotated*, 1358.

can be used to contest not only individual decrees and precepts but also rescripts, permissions, privileges[9] and dispensations issued by administrative authorities in the Church as well as their refusal to issue them. «A singular administrative act, whether it is a decree, a precept, or a rescript, can be issued by one who possesses executive power within the limits of that person's competence, without prejudice to the prescript of can. 76 §1» (can. 35).

The essential characteristics of an administrative act are provided in can. 124 §1. They can be summarized as follows:

i. It is an act of the will.
ii. It is performed by a person capable in law.
iii. Its constitutive elements must be present.
iv. Formalities and requirements of law must be observed in its performance.
v. It has specific effects recognized in law.

The parties in the hierarchical recourse are the aggrieved person and the author of the act causing the grievance. A person who claims to have been aggrieved by an act of administrative authority can present recourse for any just reason (cf. can. 1737 §1). Recourse is made to the immediate hierarchical Superior of the author of the act against which recourse is being made. It may be proposed either directly to the hierarchical Superior or indirectly to the author of the decree who must transmit the recourse immediately to the competent hierarchical Superior[10].

1.1 *The praxis of the CICLSAL in examining recourse against Superiors' acts of discretionary authority*

As already indicated by the name itself, what occurs at the CICLSAL is an administrative examination of the recourse and not a judicial one.

The *CIC/1983* does not elaborate on the procedure to be followed by the hierarchical Superior for reaching a decision on a recourse made to him. But one thing is clear from the *CIC/1983*, the definitive decision resolving recourse is itself a decree. Therefore, the assumption is that the Superior must observe the procedural formalities for issuing an individual decree. That is, he must seek out the necessary information

---

[9] For the juridic nature of privileges, cf. E. LABANDEIRA, *Trattato di diritto*, 327-349.

[10] It is important to recall here that this recourse made in accordance to can. 1737 must be preceded by *remonstratio* of can. 1734.

and proofs and, insofar as possible, hear those whose rights can be injured by his decision (cf. can. 50). The decree itself must be in writing and must contain – at least in summary form – the reasons that motivated it (cf. can. 51). The decree has no effect until it is legitimately communicated to the interested parties (cf. cann. 54-55). Failure to observe these demands of due process can result in the decree being overturned on further recourse.

The competency of the CICLSAL is defined further in the Apostolic Constitution on the Roman Curia, *Pastor bonus*, as amended by subsequent legislation and other norms[11]. *Pastor bonus*, states that: «Questions are to be dealt with according to law, be it universal law or the special law of the Roman Curia, and according to the norms of each dicastery, but with pastoral means and criteria, attentive both to justice and the good of the Church and, especially, to the salvation of souls» (*PB* art. 15; cf. also *Regolamento* arts. 124; 128 §3). The «special law of the Roman Curia» referred to by *Pastor bonus* is the *Regolamento Generale della Curia Romana* (cf. *PB* art. 37). The *CIC/1983*'s norms on hierarchical recourse, therefore, must be read and applied in conjunction with *Pastor bonus* and the norms on recourse contained in the *Regolamento Generale della Curia Romana*[12].

The general rule given in *Pastor bonus* is that «questions brought before the dicasteries are to be diligently examined and, without delay, an answer or, at least, a written acknowledgement of receipt, insofar as this is necessary, should be sent» (*PB* art. 26 §3). The *Regolamento* states that the dicastery is to determine whether it is competent for the matter and whether the rules for making recourse have been observed. If the answer is negative to either question, it is to declare that it is not competent[13] or that the

---

[11] Cf. JOHN PAUL II, Ap. const. *Pastor bonus*, 28 June 1988, *AAS* 80 (1988) 841-934. The structure of the Roman Curia, as organized by *Pastor Bonus*, has been slightly changed by subsequent legislation. The transfers of competency between various dicasteries are also numerous. It would take us outside our scope to list them all here.

[12] Cf. JOHN PAUL II, *Regolamento Generale della Curia Romana*, 30 April 1999, *AAS* 91 (1999) 629-699, hereafter, *Regolamento*. English transl. of the texts cited from this document are by the author except where stated otherwise. Advocates before the Apostolic See are regulated by the Motu proprio *Iustus iudex* of 28 June 1988. Cf. *AAS* 80 (1988) 1258-1261, and the *ordinatio* issued by the Secretariat of State of 23 July 1990. Cf. *AAS* 82 (1990) 1630-1635.

[13] Generally, if the matter is not within the competence of the dicastery which has received the recourse, the normal practice is to forward the recourse to the competent dicastery and to inform the complainant of this. If the matter falls partly within the

recourse cannot be proposed, as the case may be (cf. *Regolamento* arts. 137 §1).

If the competent dicastery – in this case the CICLSAL – accepts the recourse, it does not respond to the aggrieved party before it has more information. In this case, the universal practice of the entire Curia is to inform the author of the administrative act regarding the presentation of recourse against the act. This usually occurs by sending a copy of at least the recourse itself – if not of all the documentation submitted with the recourse – and asking for pertinent explanations, information, and documentation, among others. The local Papal Representative is usually notified of the recourse as well[14]. The author of the decision is expected to respond to the asked questions and send necessary documents needed.

Once it has received the response of the author of the administrative act, the CICLSAL then submits the case to study by its own internal staff and quite often one or more external consultors depending on the complexity of the case (cf. *PB* art. 12). After this study, more information or documentation may be requested from the author of the decision (the Superior) or even from the aggrieved party (the member)[15].

Depending on the gravity and difficulty of the issues raised by the recourse, there are three ways of resolving the recourse:

i. By a plenary session – a meeting of all the cardinals and bishops who are members of the CICLSAL.
ii. By an ordinary session – a meeting of the cardinal and bishop members who reside in Rome and any others who happen to be present.
iii. By a *congresso* – a meeting of the Prefect, the Superior prelate, the undersecretary, the chief official and, in the discretion of the Prefect, other officials.

---

competence of one or more other dicasteries, the original dicastery consults with the other dicastery or dicasteries on the matter in order to decide how it should be handled (cf. *PB* art. 21).

[14] *Regolamento* art. 123(e) states that each dicastery, within its area of competence, as determined by *Pastor bonus*, «examines and, as the case may be, decides questions which the faithful, using their right, defer directly to the Holy See. In these cases, as a rule, the ordinary concerned and Papal Representative will be consulted with due confidentiality», *AAS* 91 (1999) 678-679. This concerns recourses in the broad sense, but certainly includes hierarchical recourse in the strict sense.

[15] According to K. Martens, although the dicastery is free to order a supplementary instruction of the case, the usual practice is to resolve the recourse on the basis of the record developed in preparation for the original decree. Cf. K. MARTENS, «Protection of rights», 666.

Recourses must be resolved within ninety days from their receipt by the dicastery, unless a more in-depth study is required. In this case, the dicastery is to inform the one making recourse of the prorogation of the peremptory time and the reasons for the prorogation (cf. ***Regolamento***, art. 136 §2).

The CICLSAL may encourage the two parties (the Superior and the member) to reconcile their differences. This can occur sometimes with the aid of a third party, such as the local Pontifical Representative (cf. can. 1733 §3). If there is a serious problem with the act, it may also encourage the author (Superior) to withdraw or amend the act in question.

When the hierarchical Superior has determined that enough information has been acquired to make an informed decision about the recourse, and/or that the case will not be resolved by other means, he issues a decision. In his decision, he can not only confirm the decision or declare it invalid, but he can also rescind or revoke it or, if it seems more expedient to him, amend, replace, or modify it (cf. can. 1739). The hierarchical Superior, therefore, not only judges the violation of the law, but also the merits of the case. That is, the dicastery reviews more than the legitimacy of the administrative act (of the Superior of the Institute). In other words, the hierarchical Superior is entitled to substitute his own judgment for that of his subordinate – he can confirm the subordinate's decision, but he can also modify the decision in any way he deems appropriate. As a result, his decision is usually one of the following:

i. The recourse has been rejected, without any consideration of its merits, because of some defect in the recourse itself, for example: (a) the object is not an individual administrative act; (b) the one making recourse does not have standing to challenge the act in question; (c) the aggrieved party made recourse directly to the Holy See without first asking the author of the act to revoke or amend the decision[16]; (d) the recourse was presented when the time limit for doing so had already expired.
ii. The recourse itself has been considered on merits but then rejected. In other words, the dicastery has studied the reasons given for the

[16] M. Marchesi rightly observes that it would be too formalistic to reject the recourse in this way if it had been made within the ten day time limit for failure to ask for reconsideration. In such a case the recourse should be forwarded to the author of the decision as a «petition for reconsideration». Cf. M. MARCHESI, «Recorsi gerarchici», 81, footnote 18.

recourse and has decided to confirm the decision against recourse presented.

iii. The dicastery has accepted the recourse and has decided totally or at least partially in favour of the aggrieved party by adopting one of the actions mentioned in can. 1739.

The decision of the dicastery necessarily includes the reasons in law and in fact in accord with can. 51 (cf. ***Regolamento***, art. 136 §3). The decision is communicated to the parties as soon as possible (cf. ***Regolamento***, art. 134 §1). The hierarchical Superior communicates the decision in writing to the aggrieved party and the author of the decision directly or through others. The form of the decision may vary. Sometimes it is given in a letter and other times in a formal decree. But in either case, it necessarily indicates what has been decided and why that decision was reached (cf. can. 51; ***Regolamento*** art. 136 §3).

But, there is another possible outcome to any recourse, namely, that of no response. This can occur if the decision is not issued within three months of receipt of the recourse. In this case, the decision is presumed to be negative for purposes of further recourse (cf. cann. 57 §§1-2). It seems that this applies also in cases of hierarchical recourse to the Holy See such that, if the CICLSAL did not give an answer within three months, the aggrieved party could possibly present further recourse[17] against that presumed negative decision provided that the original recourse was legitimately filed[18]. However, the ***Regolamento*** states that whenever dicasteries are unable to meet this time limit, they are to advise the parties that the time limit has been extended and explain why (cf. ***Regolamento*** art. 136 §2).

1.2 *If either of the parties is not satisfied with the decision of CICLSAL*

If either party feels aggrieved by the decision of the dicastery, there are two remedies available. First, within ten days of receiving the decision, the aggrieved party can ask the dicastery itself to revoke or change its decision. This can be done for any just reason, for example, if it appears that the dicastery has not given due considera-

[17] In practice, whenever a party has made recourse to the Signatura Apostolica against the presumed negative response of a dicastery, the Signatura Apostolica always asks the dicastery whether it still intends to make a decision, which the dicastery still has an obligation to do (cf. can. 57 §3).

[18] Cf. J. PUNDERSON, «Hierarchical recourse», 38.

tion to the arguments or proofs presented (cf. *Regolamento* 135 §1). Only a plenary or ordinary session of the CICLSAL can modify the decree originally made by the plenary or ordinary session (cf. *Regolamento*, art. 134).

The second remedy against a decision of the Dicastery can occur if the dicastery refuses the request, or does not respond within thirty days (cf. can. 1735). Then, the aggrieved party can have recourse to the Signatura Apostolica. This is done within sixty days from notification of the hierarchical Superior's decree or, if reconsideration is sought from the CICLSAL, within sixty days of notification of the reconsideration[19]. One can also have recourse immediately to the Signatura Apostolica even without first asking for reconsideration (cf. *Regolamento* art. 135 §2).

There are two important things to remember for the success of such a recourse. First, the time limit for having recourse to the Signatura Apostolica is sixty useful days from the reception of the decision or from the rejection of the request for reconsideration. Second, recourse to the Signatura Apostolica can be made only on the basis of an alleged violation of the law and not on merits of the decision.

2. **Contentious-administrative recourse to the Signatura Apostolica**

The very last step in the procedure to challenge a singular administrative decree is presentation of recourse to the Supreme Tribunal of the Signatura Apostolica. The establishment of the second section of the Signatura Apostolica as a result of the curial reform undertaken by Paul VI was a step towards the organization of an elaborate system of administrative tribunals[20]. With the creation of the second section of the Signatura Apostolica[21] by the Apostolic constitution *Regimini Ecclesiae Universae*[22], a supreme administrative tribunal was created in the

---

[19] According to art. 135 §2 of the *Regolamento*, one may have recourse to the Signatura Apostolica within thirty days, but this norm has subsequently been changed by art. 74 §1 of the *Lex propria* of the Signatura Apostolica to sixty days.

[20] Cf. J. KRUKOWSKI, «Le domaine du contrôle judiciaire», 381-382.

[21] For historical aspects of Signatura Apostolica, cf. PIUS X, Ap. const. *Sapienti consilio*, 29 June 1908, *AAS* 1 (1909) 7-19; J.P. BEAL, «Administrative tribunals», 39-71; N. DEL RE, *La Curia Romana*, 212-225; I. GORDON, «De Signaturae iustitiae», 351-386; ID., «De procedura sequenda», 575-604; Z. GROCHOLEWSKI, «La Segnatura Apostolica», 211-228; G. LOBINA, *La competenza*, 1-26; 49-116; V. MARTIN, *Les cardinaux et la Curie*, 89-99; V.C. ORTI, «Il Supremo Tribunale», 168-195; F. ROBERTI, *De processibus*, 363-367.

[22] PAUL VI, Ap. Const. *Regimini Ecclesiae Universae*, 15 Aug. 1967, *AAS* 59 (1967) 885-928.

Church[23]. The second section[24] was made competent to resolve, among others, contentions that arise from the exercise of administrative power (*Regimini Ecclesiae Universae* art. 106). In resolving these contentions, it follows its proper norms (*Lex propria*). Special norms (*Normae Speciales*) approved in 1968 for five years[25] were in effect until the new *Lex propria*, promulgated in 2008, became effective[26].

In this sub-section, the study intends to explain in a summary way what actually happens to a hierarchical contentious-administrative recourse, based for the most part on the norms governing the Signatura Apostolica and classic authors who have published information on the jurisprudence of the Signatura Apostolica[27] with particular reference to contentious-administrative recourse.

---

[23] On the structure and praxis of the supreme administrative tribunal, cf. J.J. COUGHLIN, «The historical development», 455-496; 661-690; K.K. SCHWANGER, «Contentious-administrative recourse», 171-197.

[24] *Pastor bonus* restructured the Signatura Apostolica and, as the later law, no longer is the Signatura Apostolica divided into diverse «sections» – although the Second Section is still spoken of in practice. Rather, in a clearer manner, each area of the competence of the Signatura Apostolica is attributed to one unified organ. «The Signatura Apostolica functions as the supreme tribunal and also ensures that justice in the Church is correctly administered» (*PB* art. 121). The internal structure of the Signatura Apostolica is as a unified body with personnel common to all its parts (cf. *PB* art. 123). Cf. also R. COPPOLA, «In tema di risarcimento del danno», 175-179; J. MIRAS, «El Contencioso-administrativo canonico», 410-414; F. SALERNO, «Il giudizio presso la "Sectio Altera" del S.T.», 140. This dicastery, as a unified whole, is a judicial organ, not an administrative one. Cf. I. GORDON, «De iustitia administrativa», 305-313; E. GRAZIANI, «De supremi organismi», 537-545; Z. GROCHOLEWSKI, «La "Sectio Altera" della Segnatura Apostolica», 69. This is unlike under *Regimini Ecclesiae Universae*, when the Second Section was considered an administrative organ and not a judicial one. Cf. D. STAFFA, «De distinctione inter iurisdictionem ordinariam», 9-11. As a judicial organ, it functions to resolve conflicts between parties, who are assisted by advocates, by means of sentences. As a tribunal of the Holy See, it exercises with ordinary and vicarious power the judicial power held by the Roman Pontiff. This is not to ignore the fact that there exist diverse opinions concerning the nature of the Signatura Apostolica, especially in regard to its contentious-administrative jurisdiction. That debate, however, is outside the scope of this study.

[25] For the text of the «*Normae speciales Signaturae Apostolicae*, cf. G. LOBINA, *Elementi di procedura amministrativa*, 78-108.

[26] BENEDICT XVI, Motu proprio *Antiqua ordinatione*, 21 June 2008, *AAS* 100 (2008) 513-538.

[27] Cf. M. MARCHESI, «Recorsi gerarchici», 71-96; J.R. PUNDERSON, «Hierarchical recourse», 23-29. A thorough overview of the jurisprudence of Signatura Apostolica before the promulgation of *CIC/1983* is given by G. Lobina. Cf. G. LOBINA, «Rassegna di giurisprudenza», 293-323. A significant amount of jurisprudence after the

The Signatura Apostolica has three different functions, which were previously commonly referred to as the three Sections of the Signatura Apostolica:

i. It acts as a higher court of ordinary justice, especially for incidental cases involving the Roman Rota (cf. *PB* art. 122).
ii. It adjudicates recourses lodged against singular administrative acts whether issued by the dicasteries of the Roman Curia or approved by them, whenever it is contended that the impugned act violated some law either in the decision-making process or in the procedure used (cf. *PB* art. 123 §1).
iii. It acts as an administrative body in matters concerning proper administration of justice in the Church's tribunals (cf. *PB* art. 124)[28].

Our topic concerns its function as administrative tribunal given in (ii) above. Therefore, once recourse against discretionary decision of authority is made to the Signatura Apostolica, the case moves beyond hierarchical recourse to what is known technically as contentious-administrative recourse to the Signatura Apostolica. It is, therefore, important to briefly[29] illustrate some main differences between the two types of recourses before we proceed.

2.1 *Some main differences between hierarchical recourse and contentious-administrative recourse*

It is first important to understand the terminology. Recourse presented to the CICLSAL is called «hierarchical recourse» whereas that which is presented to the Signatura Apostolica is called «contentious-administrative recourse». The difference in terminology reflects the different nature of these organs. When examining a recourse against an individual administrative act issued by a lower authority, the CICLSAL functions as a higher administrative authority; whereas the Signatura Apostolica, when it examines a recourse against an individual administrative act issued by or confirmed by the CICLSAL, func-

---

promulgation of *CIC/1983* is found in the manual of Pinto. Cf. P.V. PINTO, *Diritto amministrativo canonico*, 279-517. General or thematic overviews of the jurisprudence of the Signatura Apostolica are found in other periodicals. For example, cf. Z. GROCHOLEWSKI, «La giustizia amministrativa», 3-22, which gives a general overview of the jurisprudence of the Signatura Apostolica. F. D'OSTILIO, «Gli istituti della vita consacrata», 279-344 which deals with cases involving consecrated life.

[28] Cf. J. PUNDERSON, «Hierarchical recourse», 39.

[29] For examination of these differences, cf. also J.R. PUNDERSON, «Contentious-administrative recourse», 295-304; ID., «Hierarchical recourse», 40-43.

tions as an administrative tribunal, not as a hierarchical Superior of the CICLSAL[30]. This is due to the fact that all the dicasteries are juridically equal (cf. *PB* art. 2 §2).

The second important consideration regarding the difference between the two types of recourse is related to the limit of competence. Art. 123 §1 of *Pastor bonus* states that the Signatura Apostolica is competent to adjudicate «recourses lodged within the peremptory limit of thirty[31] useful days against singular administrative acts whether issued by the dicasteries of the Roman Curia or approved by them, whenever it is contended that the impugned act violated some law either in the decision-making process [the substance of the decision – *in decernendo*] or in the procedure used [*in procedendo*]». The Signatura Apostolica is competent to judge only whether or not the administrative act in question is legitimate, or, in other words, whether that decision has violated the law, either *in procedendo* or *in decernendo* (*Lex propria*, art. 34 §1). This constitutes the main difference from the procedure of hierarchical recourse. Whereas the hierarchical Superior can also look at the merits of the case, that is, its appropriateness and prudence, among others, and can change the decision or replace it with a new decision; the Signatura Apostolica as supreme administrative tribunal is limited to a control of the legitimacy of the administrative decision of the Superior and can thus not review the merits of the case *per se*.

A third difference can be observed in the parties involved and the need for a procurator-advocate. An administrative case brought before the Signatura Apostolica is a contentious case and will, therefore, be pled by a «petitioner» and answered by a «respondent». The «petitioner» is that person who feels injured by an administrative act. The «respondent» is the person opposed to the recourse including the author of the act and all those who legitimately intervened in the case.

In a hierarchical recourse, the parties can choose to act personally or through a procurator-advocate. Before the Signatura Apostolica the parties can submit their initial recourse personally, but they can participate in the process only through an approved procurator-advocate[32]. This is meant to

---

[30] Cf. J. PUNDERSON, «Hierarchical recourse», 40.

[31] This norm has subsequently been changed by art. 74 §1 of the *Lex propria* of the Signatura Apostolica to sixty days.

[32] The procurator has a representative function. He acts in the process on behalf of the party. The procurator is, in short, the *alter ego* of the party in whose name and for whom he presents written documents to the tribunal with the petitions, receives notifi-

provide both parties with an adequate defence in an area of law which requires a special expertise[33], and therefore, helps to guarantee parity between both the author of the decree and the aggrieved member. A party is free to ask the Signatura Apostolica to admit someone else to serve as procurator-advocate in a particular case. Before admitting such a person, however, the Signatura Apostolica considers three important requirements: (a) the person must be trained in Canon Law, especially in administrative law; (b) the person must be able to read and write Latin; and (c) the person must live in Rome or close enough to receive notifications and review the acts[34].

A fourth difference between recourse presented to the CICLSAL and to the Signatura Apostolica can be noted in the language requirements. In a hierarchical recourse, the parties can communicate with the dicastery at least in one of the more widely known modern languages (cf. *PB* art. 16); while before the Signatura Apostolica, cases must be argued in Latin and the decisions are issued in Latin, although the initial recourse can still be presented in a modern language.

A fifth difference is observed in the cost of presenting recourse. In a hierarchical recourse, there are usually no expenses involved, apart from the cost of representation and submission of materials; while persons making recourse to Signatura Apostolica must make a deposit if they can afford it and are not living under a vow of poverty; although the deposit may be returned depending on the outcome of the recourse. This deposit is in addition to the cost of the procurator-advocate. If a party wishes to be exonerated in whole or in part from the expenses of

---

cations, among others. The function of the advocate, on the other hand, consists of giving technical assistance and advice, examining and drawing up the different documents, undertaking the oral and written defense, and preparing the evidence. Cf. C. GULLO, «Procurators and advocates», 976. A «procurator-advocate» is one who combines the two roles. This is necessary since the parties do not argue their case personally in a trial before Signatura Apostolica.

[33] This requirement is important given that many people are not only disadvantaged but also at risk if they have to be personally present at the trial because many do not possess special technical knowledge, especially of procedural norms. Since ignorance of the law is not presumed (cf. can. 15 §1), but the law is deemed to be known after promulgation (cf. cann. 7-8), anyone who is personally present at a trial is exposed to serious jeopardy. This is because the fact that a party defending himself in a trial is ignorant of procedural laws does not constitute a violation of the right of defense since what is solely attributable to the negligence of the party cannot be considered a violation of the right of that party.

[34] Cf. J. PUNDERSON, «Hierarchical recourse», 42.

the process, and/or wishes to be given gratuitous legal assistance, they must provide documentation of their inability to pay. This would be the case of an excluded religious who is not employed and until the time of his exclusion was living under the vow of poverty, and consequently, is not able to meet the costs.

Finally, the time limits differ. The time limit for making hierarchical recourse is fifteen days from the time the decision had been communicated; while the time limit is sixty days for filing recourse to the Signatura Apostolica.

Having seen the main differences between the two possible remedies for presenting recourse against an administrative act, the study now briefly explains the actual procedures for examining recourse at the tribunal of Signatura Apostolica.

2.2 *The actual process before the Signatura Apostolica*

The recourse procedure before the Signatura Apostolica[35] contains a number of steps. It begins with a petition for recourse, then moves to the first phase during which the admissibility of the petition is checked. It concludes with a second phase during which the recourse, if accepted or admitted, is examined and concluded.

2.2.1 The petition for recourse

The petition for recourse to the Signatura Apostolica is made by the petitioner and must include the following elements:

i. The name of the petitioner.
ii. The decree against which recourse is being presented.
iii. What is asked by the petitioner – what does he want the tribunal to do.
iv. Which rights have been violated.
v. The date of notification of the decree against which recourse is being presented.
vi. The signature of the petitioner introducing the recourse (cf. ***Lex propria***, art. 73 §1).

In addition to these elements, the petitioner must also attach the decree against which recourse is being presented and the special mandate for the procurator-advocate or the petition to obtain free assistance of a

[35] For a more elaborate treatment of contentious-administrative recourse to Signatura Apostolica in general, cf. E. LABANDEIRA, ***Trattato di diritto amministrativo***, 485-558.

procurator-advocate (cf. *Lex propria*, art. 31). This petition must be supported by documents; therefore, authenticated copies of every document mentioned in the petition must be attached. A recourse is null if it remains absolutely uncertain about which persons or what object is dealt with in the recourse (cf. *Lex propria*, art. 75).

The fact that recourse must be presented within the peremptory time limit of sixty useful days from the date of the notification of the decree against which recourse is being presented (cf. *Lex propria*, art. 74 §1) means that there must be a decree of the hierarchical Superior confirming or overruling the original decision. Since nothing is determined about the time limit for recourse against silence of the hierarchical Superior, the general rule applies: that is, recourse can be made when three months have elapsed without issuing a decree since the hierarchical Superior received the recourse (cf. cann. 57; 1734)[36]. If a hierarchical Superior extends the time for its examination of the case beyond the three months but does not make a decision within the new time frame (cf. *Regolamento*, art. 136, § 2), the sixty days for having recourse to the Signatura Apostolica runs from the expiration of the new deadline set by the hierarchical Superior.

One of the effects of such recourse is that the parties can change. In recourse against such acts issued by the CICLSAL, the petitioner could be the author of the original decision (the Superior), or it could be the original petitioner who thinks the new decision is illegitimate for some reason.

If the original decision is confirmed by the hierarchical Superior, nothing changes. In other words, the recourse can be against a decision confirmed by the CICLSAL. In which case, the recourse presented would not concern directly the original decision of the Superior but rather the act by which the CICLSAL confirmed it[37]. This would also include the situation in which it had rejected the recourse without consideration, for example, because it was filed too late. Such a rejection is not a confirmation of the original decision but simply a direct act of the dicastery. In these cases, the petitioner is still the same person who made the original recourse and the respondent is the CICLSAL; alt-

---

[36] The three months of can. 57 §2 could turn out to be not exactly ninety days (cf. can. 203 §2).

[37] According to J. Punderson, generally such recourses quite often concern alleged violations of the law in the original act confirmed by the competent dicastery, not necessarily violation of the law in the act of confirmation. Cf. J. PUNDERSON, «Hierarchical recourse», 43.

hough in this case, the author of the original decision has a strong interest in defending the CICLSAL's decision and, therefore, he is notified of the recourse and is invited to participate[38].

However, should the hierarchical Superior change the decision, the author of the decision or the internal Superior of the author of the decision might now start a procedure before the Signatura Apostolica as the petitioner and claim that the law has been violated in *procedendo* or in *decernendo* by the decision of the CICLSAL. Such may be the case if the decision issued by the CICLSAL revoked the original act, declared it invalid, changed it, or replaced it with a new act. In this case, the original petitioner would have a strong interest in defending the CICLSAL's decision and, therefore, he is notified of the recourse and is invited to participate.

In either case, the CICLSAL, whose decision is being challenged, is the principal respondent, although obviously the original petitioner or the author of the act (the Superior), as the case may be, has a strong interest in defending the CICLSAL's decision.

2.2.2 The First Phase: Whether the recourse is to be admitted or rejected

The first decision is made with a decree by the Secretary of the Signatura Apostolica. After having heard the Promoter of Justice[39], he decides whether the recourse is to be admitted or rejected as manifestly lacking foundation (cf. *Lex propria*, art. 76 §1). A recourse is considered as lacking foundation when, for example, it does not involve a case for an administrative tribunal, when the person making recourse does not have standing in a trial, when the law that is

---

[38] Cf. J. PUNDERSON, «Hierarchical recourse», 43.

[39] Promoter of Justice is the guardian of the public good as understood in the church. The office of the Promoter of Justice is an office exercised for the institutional purpose of achieving justice through knowledge of the truth. Cf. C. DE DIEGO-LORA, «The Promoter of Justice», 765. A key component of the responsibilities of the Promoter of Justice, therefore, is to ensure the administration of justice. As a guardian of the public good, he has a special responsibility to be the guardian of the rule of law, since it is the rule of law that protects individuals and society as a whole from arbitrary measures and safeguards rights. He, therefore, has a special role to play in advising the tribunal to ensure the rule of law is maintained and that the tribunal's actions are canonically valid and legitimate. It is for this reason that he is heard before every definitive decision is made. He is not a member of the tribunal (cf. cann. 1505 §1, 1513 and 1611); therefore, he does not make decisions, he provides legal advice. The ultimate decision lies with the tribunal.

claimed to have been violated does not exist anymore, or when the time limits for recourse have lapsed. The Secretary informs the Promoter of Justice of the decision made and, if necessary, he also informs the competent authority who authored the decision (cf. *Lex propria*, art. 76 §2). The petitioner can have recourse to the *Congresso* against this decree within the peremptory time limit of ten days from the receipt of the decree (cf. *Lex propria*, art. 76 §3). No further recourse is possible should the *Congresso* confirm the decree of the Secretary (cf. *Lex propria*, art. 76 §4). If the petition is declared null and no other valid recourse is presented within the peremptory time limit, recourse against the administrative act is no longer possible[40]. If the recourse was defective because certain elements were missing, the Secretary, having informed the petitioner of the missing elements, sets the time limit for re-presenting the recourse so that the defects can be repaired and recourse can be represented. The re-presentation does not require the recourse itself to be re-presented *per se*; only the missing elements need to be clarified or added. Such is not possible, however, if the defect for rejecting the recourse was expiry of peremptory time limits since this defect cannot be repaired.

The Secretary is to give the petitioner a time limit within which to appoint a procurator-advocate. If the petitioner then lets the time to expire without having done so, without offering a suitable excuse, and without having obtained free assistance, the Secretary declares the case abated (cf. *Lex propria*, art. 77, 16 §2). At all stages of the procedure, the case can be ended through abatement, revocation of the recourse, renunciation, or a peaceful settlement (cf. *Lex propria*, art. 78 §1). The peaceful settlement agreed upon between parties needs the approval of the *Congresso*. The Secretary issues a decree if the case is ended in another way and communicates this decree to the interested parties (cf. *Lex propria*, art. 78 §§2-3).

If the case is not ended by these other possible means, the Secretary does the following:

i. He decrees that the CICLSAL and all those who legitimately intervened in the case be informed about the recourse and he invites them to appoint a procurator-advocate by legitimate mandate. If the CICLSAL does not appoint a procurator-advocate, the Prefect will appoint someone *ex officio* (cf. *Lex propria*, art. 80).

---

[40] Cf. G. LOBINA, *Elementi di procedura amministrativa*, 33.

ii. He asks the CICLSAL to submit within thirty days a copy of the administrative act against which recourse was presented and all the acts related to the controversy.
iii. He appoints a Promoter of Justice for the case.
iv. He mandates the Chancellor to encourage the petitioner, the CICLSAL, and all those who legitimately intervened with the CICLSAL to fulfil their function correctly (cf. *Lex propria*, art. 79 §1).
v. As soon as the acts of the CICLSAL have arrived, he informs the procurator-advocate of the petitioner and determines a time within which the procurator-advocate must present a *memorandum* in which he clearly indicates the laws that have allegedly been violated and in which he illustrates, completes or changes the recourse, or perhaps presents or asks for further documents.
vi. Once the determined time has lapsed, he sets a time for the procurator-advocate of the respondent to enable him, after having inspected the documents provided by the petitioner, to present a *memorandum* and even new documents (cf. *Normae Speciales*, art. 112)[41].

Once these steps have been completed, the Promoter of Justice prepares his *votum pro rei veritate* (cf. *Lex propria*, art. 81). After the briefs have been communicated, the procurator-advocates have ten days within which they can respond. The Promoter of Justice is the last one to react (cf. *Lex propria*, art. 82).

Upon receipt of the responses of the procurator-advocates and of the *votum pro rei veritate* of the Promoter of Justice, the *Congresso*[42] is convoked and the Prefect decides whether the recourse is to be admitted for discussion or is to be rejected as manifestly lacking presupposition or foundation. In the latter case, the reasons are expressed. The *Congresso* communicates the decision in writing to the parties (cf. *Lex propria*, art. 83). Recourse to the College of Judges[43] against a decree of rejection is possible if the decree of the *Congresso* confirms an earlier decree of rejection by the Secretary. The recourse must be presented within the peremptory time limit of ten days, supported with argu-

[41] Cf. I. GORDON, «Normae Speciales», 156.

[42] For the definition of the *Congresso*, cf. *Lex propria*, art. 22. The *Congresso* consists of the Prefect, the Secretary, the Promoter of Justice, the Defender of the Bond, the Deputy Defender of the Bond and the Deputy Promoter of Justice.

[43] In principle, the College of Judges is usually made up of five judges; but in cases where the College has to deal with recourse against a decree of rejection, the College can be made up of only three judges instead of the usual five. Cf. *Lex propria*, art. 21.

ments. The parties are informed of the recourse and have the right to present observations within ten days. The recourse against the rejection of the recourse is presented to the College of Judges with the *votum* of the Promoter of Justice. No further recourse is possible against the decision of the College of Judges (cf. *Lex propria*, Art. 84, 76 §4 and 42).

The case moves to the next phase if it is admitted by the Secretary, by the *Congresso* or by the College of Judges.

2.2.3 The Second Phase: the discussion and decision regarding the recourse

Once the recourse is accepted, the Secretary convokes, as soon as possible, the procurator-advocates and the Promoter of Justice for a summary oral discussion. Attentive to their petitions and responses, he sets the limits of the controversy and confirms with his decree the agreement about the doubts. Recourse to the Prefect against this decree is possible within ten days, without any further recourse thereafter (cf. *Lex propria*, art. 85).

After the summary oral discussion, the Secretary, if the case so warrants, completes the instruction of the case. If the parties propose an exception, the Secretary must deal with the matter expeditiously (cf. *Lex propria*, art. 86). Once the summary of the case is made, the parties cannot produce more documents, unless the Prefect permits them to do so or if the College of Judges mandates a further instruction (cf. *Lex propria*, art. 87; 49).

After the summary of the case is made, the procurator-advocates each present his conclusions within the set time limits. The Promoter of Justice presents his *votum pro rei veritate* after the time limits have passed. The procurator-advocates then have ten days to respond, after which the Promoter of Justice has a new opportunity to intervene (cf. *Lex propria*, art. 88). Upon completion of this documentary exchange, the Prefect refers the case to the College of Judges. In the meeting of the judges, the judge *Ponens* or *Relator*[44] reports the contention and gives the reasons for and against the recourse. Then, with no one else in attendance, the judges come to conclusions with reasons in law and in fact (cf. *Lex propria*, art. 6

[44] The *Ponens* or *Relator* is one of the judges of the college designated by the president of a collegiate tribunal with the responsibility to report about the case at the meeting of the judges and put the sentence into writing. For a just cause, the Presiding Judge (*Praeses*) can substitute another in place of the original *Relator* (cf. can. 1429).

§2)[45]. These written conclusions are handed over to the *Ponens* so that he can redact the decision. The acts of the case are kept confidential. The sense of art. 47 §2 is that the written conclusions of the judges are the ones to be placed in the acts to be kept confidential (cf. can. 1609 §2). The confidentiality thus refers only to the conclusions, not all of the acts. Should a party petition for a *restitutio in integrum* against a sentence of the Signatura Apostolica, the procurator-advocates would be able to consult the acts, with the exception of the written conclusions of the judges. The dispositive part is put in writing by the judge *Ponens* or *Relator*, signed by the individual judges, and immediately handed to the Secretary. As soon as possible, the judge *Ponens* or *Relator* writes the text of the decision[46]. If instead of a decision, the College of Judges orders further investigation, the Secretary will carry it out (cf. *Lex propria*, art. 89 and 46-49).

If the definitive sentence is given, the CICLSAL, whose administrative act originated a decision or confirmed the lower Superior's administrative act against which recourse was presented, is to execute the sentence by itself or through another. If it neglects or delays beyond the agreed upon or determined time, the execution pertains to the Supreme Tribunal of Signatura Apostolica at the request of the interested party (cf. *Lex propria*, art. 92). Should a controversy arise about the method of executing the sentence, the *Congresso* resolves such a controversy without any delay (cf. *Lex propria*, art. 94; can. 1629, 5º).

2.3 *The Effect of an affirmative sentence of Signatura Apostolica*

An affirmative sentence of the Signatura Apostolica is that which declared that there is clear violation of law (*constat de violatione legis*). Essentially, the act in question would be considered null or at least to have been rescinded. The consequences vary depending on whether the violation of the law was found principally in the original act confirmed by the CICLSAL or in the act of the CICLSAL itself, and whether the violations were procedural (*in procedendo*) or substantial (*in decernendo*). To demonstrate this variation with examples[47]:

---

[45] Art. 6 §2, n. 5 allows the Secretary to explain the case to the judges, if needed. He has to leave before the judges each present their conclusions, cf. *Lex propria*, art. 47 §2.

[46] If the case so warrants, the Prefect of the Supreme Tribunal can decide that the reasons in law and in fact be put in writing by the Promoter of Justice.

[47] These examples are given with the caution that each individual sentence will have its own specific effects given specific circumstances.

If the original administrative act of the Superior involved only a violation of the law *in procedendo*, most likely the act could be repeated by the same Superior, with proper observance of the procedural requirements. The question of violation of the law *in procedendo* – in regard to the procedure – is pretty straightforward. The Superior either followed the procedures required by *CIC/1983* and basic principles of justice[48] as well as norms of proper law, or he did not. Procedural fairness is important to the protection of rights. For this reason, particular attention is given by the Signatura Apostolica to the procedure followed by Superiors when making decisions[49]. Among such violations would be the failure to give reasons for the decision (cf. can. 51) or when the author of the administrative act either omits a required action such as hearing the council or when he executes that act contrary to the mind of the Legislator as manifested in the current law.

The decision of Signatura Apostolica regarding the procedure followed will most likely not change the original decision due to the fact that, even if the Signatura Apostolica decides that it has been proven that the Superior did violate the law in the procedure followed, it is possible for the Superior to repeat his decision, this time observing the correct procedure[50]. For instance, if the Signatura Apostolica should judge that there has been a violation of the law only *in procedendo* concerning exclusion of a member from subsequent profession, then the Superior may still exclude the member again, this time, however, following the right procedure. For this reason, recourse to the Signatura Apostolica against an administrative act of a Superior as confirmed by the CICLSAL, if it concerns only an alleged violation of the law *in procedendo*, is not likely to change the outcome of the decision. Rather, it will only delay it, since the authority who issued the decision can issue the same decision again but this time, doing it according to the norm of law and in the way and under the conditions set forth in the sentence of the Signatura Apostolica.

This is not the case, however, in a violation of law *in decernendo*. When the original act of the Superior involved a violation of the law *in decernendo*, that is, if the illegitimacy of the Superior's decision was declared because of violation of substantive law, such as exclusion based on an illness acquired due to the negligence of the Institute, the authority who issued the decision can again deal with the matter but ac-

---

[48] Cf. J. PUNDERSON, «Hierarchical recourse», 41.
[49] Cf. J.H. PROVOST, «Recent experiences», 149.
[50] Cf. J. PUNDERSON, «Hierarchical recourse», 41.

cording to the norm of law and in the way and under the conditions set forth in the sentence of the Signatura Apostolica. In this case, however, the Superior cannot repeat the same decision (cf. *Lex propria*, art. 93). Indeed, a finding of a violation of the law *in decernendo* makes it much more difficult to repeat legitimately the same decision. Consequently, the question of an alleged violation of the law regarding the substance of the decision (*in decernendo*) is what is most likely to overturn the decision of the Superior if it is judged by the Signatura Apostolica that the Superior violated the law in the discretionary decision-making process.

A violation of law in the decision-making process arises when the author of the administrative act, for whatever reason, misapplies the law to the facts[51]. In such a case, the objection – contention – with the decision is the substantive legality of the act of the Superior. Therefore, the notion of «law» in such a situation is to be broadly understood, that is, it can be natural law, divine positive law, ecclesiastical written law[52] or proper law. Nevertheless, there must be some law[53] in existence upon which the recourse is based. Consequently, in order to make recourse to Signatura Apostolica, it is not sufficient that a person disagrees with the decision in question, even for reasons which appear to be sound based on merits. Rather, there must be specific law that is violated. For instance, if it could be proven that the reasons given by the Superior for the decision were substantially unfounded, as in the case of excluding a member who is mentally ill (cf. can. 689 §3), there could be some basis for an alleged violation of the law *in decernendo*[54]. Likewise, if the *CIC/1983* requires specific reasons for a particular type of decision, as in can. 689 §2, and if it could be proven that such reasons were lacking, then there it could be claimed that there was a violation of law in decernendo. Such would be the case, when a member is excluded without any expert's report on the health status of the member in question.

If the violation of law in *procedendo* was found by the Signatura Apostolic to be principally in the decision of the CICLSAL, then the

---

[51] For a detailed discussion on the violation of law, cf. M. CARDINALE, «L'"Error Iuris"», 111-139.

[52] Cf. Z. GROCHOLEWSKI, «La "Sectio Altera"», 70.

[53] But even when using the broader understanding of law, the formal object of contentious-administrative review is still narrower than that of hierarchical recourse which can be made for «any just motive» and can question the Superior's use of discretion, examining not only the legality of the act but also its advisability (cf. can. 1733; cf. also sec. 1 of this chapter).

[54] Cf. J. PUNDERSON, «Hierarchical recourse», 41.

matter would be returned to the CICLSAL for its further action. On the other hand, if a violation *in decernendo* was found in the decision of the CICLSAL to overturn or change the original act of the Superior, the original act would stand and would not be subject to further recourse.

In both the praxis of the CICLSAL and the Signatura Apostolica presented, two observations come out clearly. First, a person who claims to have been aggrieved by an act of administrative authority can make recourse for any just reason (cf. can. 1737 §1) to the CICLSAL and then, if still aggrieved, to the Signatura Apostolica. Second, hierarchical recourse is possible only against singular administrative acts in the sense of title IV of book I of the *CIC/1983*, which are given in the external forum (cf. cann. 35-93).

Two questions arise from these observations. One is on how the act of exclusion from subsequent profession would aggrieve a member and the second is on whether exclusion from subsequent profession falls within the scope of the CICLSAL and the Signatura Apostolica, given that one cannot make an administrative recourse directly to the Signatura without first making recourse to the CICLSAL and that an act of exclusion from subsequent profession does not meet the requirements of an administrative act in the sense of title IV of book I, except in clerical Religious Institutes of pontifical right where major Superiors possess ecclesiastical power of governance for both the external and internal forum (cf. can. 596 §2). Accordingly, it does not seem to meet the requirement for a hierarchical recourse in non clerical Religious Institutes. The next two sub-sections attempt to address these questions.

2.4 *How an act of exclusion would aggrieve a member*

The act of exclusion from subsequent profession can aggrieve a member when it violates a member's right to live religious life[55]. This can occur when a member is excluded from further profession for causes that are not proportionate to the gravity inherent to the act of exclusion from subsequent profession. That is to say, the excluded member is aggrieved when causes are not just or when the decision to exclude that member violates the law either *in procedendo* or *in decernendo*.

---

[55] «A member's right to live religious life» as used in this study includes a right to fulfil the vows they have made and to do so within the specific religious community according to universal and proper law. They do not have a right to subsequent profession *per se*. Rather, they have a right to request subsequent profession.

With the profession in a given Religious Institute, comes «acquired right» to live religious life. An «acquired right» is a canonical term used to designate a right someone has obtained by fulfilling the prerequisites indicated in law for possessing and enjoying the right[56]. When someone is incorporated into a Religious Institute through profession, in accordance with can. 654, that person obtains an acquired right to live religious life according to universal and proper law. This means, among other things, that the member has a right to the necessities for attaining the end of his vocation – derived from the Institute's obligation as described in can. 670. Possession of this acquired right also means that the member shares equally in the rights afforded all members except where restricted by law[57]. This implies that any restrictions of the fundamental right to live religious life or any restrictions of the rights involved in living the life must be strictly interpreted in accordance to can. 18. It further means that these rights cannot be arbitrarily limited or denied.

Exclusion from renewal of profession or from perpetual profession, however, is direct denial of the acquired right to live religious life and, as such, specific requirements are indicated in law for this exclusion: there must be just causes for such an exclusion and the council must be heard prior to the exclusion on the part of the competent major Superior (cf. can. 689 §1). Furthermore, in order to exclude anyone from subsequent profession on account of physical or psychic infirmity, even if contracted after incorporation into the Institute, it is required that the infirmity render the member inept for leading the life of the Institute, the ineptness be attested to by the judgment of experts and the infirmity cannot have been contracted on account of negligence of the Institute or from work carried out in the Institute (cf. can. 689 §2).

Moreover, can. 219 establishes that «all the Christian faithful have the right to be free from any kind of coercion in choosing a state of life». In accordance with this provision, this study is in agreement with G. Lobina that the law includes not only the freedom of choice of one's own vocation which no one should violate, but also the right to conserve it once chosen[58]. Therefore, departure from the Institute at the expiry of temporary vows may be effected only in compliance with the current norms, namely, for just causes. Consequently, if the competent Superior denies admission for unjust reasons, or if the competent Supe-

---

[56] Cf. F. WERNZ – P. VIDAL, *Ius Canonicum*, I, 122-123.

[57] An example of such restriction is found in can. 687 for members on exclaustration.

[58] Cf. G. LOBINA, «Separazione dei membri», 199.

rior has not complied with the clause provided for by can. 689 §2 with respect to disease caused through negligence of the Institute, the religious right to live religious life is considered to have been violated and such a member may consider himself aggrieved by the decision of an administrative authority.

2.5 *Whether exclusion is within the scope of the CICLSAL and the Signatura Apostolica*

In turning to consider the competence of the CICLSAL and the Signatura Apostolica, it is possible to say that exclusion falls with the scope of that competence. Recourse against any unjust act is always possible. It is a natural right inherent in the human person as well as the baptized according to can. 96. In the canonical order, duties and rights are upheld and exercised bearing in mind the condition of each of the faithful in the Church. In the *CIC/1983* the theological and juridical foundation of the right of defense is found in can. 208 which states that «from their rebirth in Christ, there exists among all the Christian faithful a true equality regarding dignity and action by which they all cooperate in the building up of the body of Christ according to each one's own condition and function».

This canon is attributed to the Church's desire to be faithful to the principles affirmed by Vatican II namely: the principles[59] on the protection of the human person and those on the dignity and mission of the religious in the Church and in the civil society. With regard to the human person, Vatican II made a general affirmation that «there is a growing awareness of the exalted dignity proper to the human person since [he] stands above all things, and [his] rights and duties are universal and inviolable» (*GS* 26).

Vatican II also reaffirmed the importance of human rights and their protection under the law (cf. *GS* 29). And in the process of translating the teaching of the Council into juridical language in the *CIC/1983*, these matters received special attention as clearly reflected in the ten principles guiding the revision. Before the process of revision of the *CIC/1917* started, ten guiding principles[60] were presented to the 1967 Synod of Bish-

---

[59] For a detailed discussion of these two principles, cf. J. LLOBELL, «Il sistema giudiziario», 501-546.

[60] For historical development of these principles, cf. PAUL VI, Allocution, 4 Feb. 1977, *AAS* 69 (1977) 147-153; Z. GROCHOLEWSKI, «Il sistema dei ricorsi», 461-499; J.L. GUTIÉRREZ, «La formazione dei principi», 13-29.

ops[61]. Among the principles approved by the Synod of Bishops for the revision of the *CIC/1917*, relevant to this study are principles six and seven:

i. Principle six regarded the protection of the rights of persons and stated that the exercise of power in the Church must never be arbitrary, since such would be contrary to both divine and church law[62]. According to the wording of the sixth principle, natural law, divine positive law, and canon law forbid the arbitrary use of power. Therefore, no power should be exercised arbitrarily. Still according to the same principle, the rights of every member of the faithful – irrespective of their status in the Church – must be recognized and protected.

ii. Principle seven regarded the need to provide procedures for the protection of subjective rights and stated that in canon law the juridic protection of rights is to be applied equally to Superiors and those subject to them so that any suspicion of arbitrariness may be eliminated[63]. The proposal contained in the seventh principle was mainly due to two considerations: the need for possibilities for the faithful to have recourse against administrative decisions and the strong conciliar emphasis on the dignity and inalienable rights of the human person[64]. Principle seven, therefore, attempted to protect subjective rights through a concrete procedure. The idea of such a procedure was to avoid every suspicion of arbitrariness. Therefore, recourse should be possible against any act of administrative authority so that everyone who feels that his right has been violated by a lower authority can appeal to the higher authority.

Based on these two principles, the range of administrative decisions to be challenged through hierarchical recourse seems to extend well beyond individual decrees (cf. can. 48) and rescripts (cf. can. 59) in the strict sense. Indeed, it seems to embrace «all kinds of administrative decisions» that share some of the essential elements of administrative acts[65].

With particular reference to can. 689, even though, in non clerical Religious Institutes, exclusion from subsequent profession is not an

---

[61] Cf. G. CAPRILE, *Il Sinodo dei Vescovi*, 7; R. LAURENTIN, *L'enjeu du Synode*, 149-153; For an analysis of and comparison between the guiding principles for the Latin and Eastern Codes, cf. T.J. GREEN, «The Latin and Eastern Codes», 235-279.

[62] *Comm*. 1 (1969) 82.

[63] *Comm*. 1 (1969) 83.

[64] Z. GROCHOLEWSKI, «Il sistema dei ricorsi», 461-499.

[65] Consequently, the term «act» as used in this chapter refers not only to administrative acts in a strict sense of the term, but to all kinds of administrative decisions that shares some of the essential elements of administrative acts and, therefore, qualify for hierarchical recourse.

administrative act in the sense of can. 35 read together with can. 129, the decision to exclude a member from subsequent profession appears to fall under these «all kinds of administrative decisions» because there is a right that can possibly be violated by such a decision. Since exclusion from subsequent profession denies an excluded member an acquired right to live religious life, there is a hypothesis that this right might be violated through exclusion for reasons which are not just or through violation of law and consequently need to be protected.

Consequently, the Church has made provisions for recourse for all Religious Institutes at three levels as mechanisms to protect this right: at the internal authority level, at the hierarchical authority level and at the supreme tribunal level. If the competent major Superior denies admission for unjust reasons or if the competent Superior has not complied with the prescriptions of can. 689, then the affected religious is entitled to present recourse to the Superior General who has authority over all members (cf. can. 622) or to the bishop of the diocese if the Institute is of Diocesan right (cf. can. 594). If, after this, the aggrieved religious feels that justice has been violated, he may make recourse to the CICLSAL[66]. In the case of Institutes of diocesan right, the aggrieved religious may make recourse to the bishop of the house of assignment (cf. can. 594). Eventually, if he still feels that justice has not been done, he can make further recourse to the Supreme Tribunal of Signatura Apostolica[67]. Therefore, like every other right, the Church equally protects this right with all mechanisms available for the protection of rights in the Church. This possibility for recourse in practice, however, faces a number of challenges as we shall see.

Having placed the study in its rightful context, the study now presents an analysis of cases in which recourse has been presented by a religious against a decision of the Superior to exclude him from subsequent profession. It also provides observations that arise from such analysis.

3. **Jurisprudence of the Holy See**

In this section, the study focuses on the analysis of a selection of definitive decisions, the reasons given by petitioners for presenting recourse and those given by competent Superiors in response to the re-

---

[66] Cf. N. DEL RE, ed., *La Curia Romana*, 174-182.

[67] Cf. A. CALABRESE, *Istituti di vita consacrata*, 291-292; N. DEL RE, *La Curia Romana*, 212-225.

course. It then presents observations which arise from the analysis and provides possible deductions which may be drawn from those observations. Finally, it concludes with forward-looking possibilities.

3.1 *Analysis of definitive decisions on cases of recourse against exclusion*

The cases of exclusion from subsequent profession studied were six[68]. In this study, they are referred to as:

i. Case A of prot. n. 16811/84 C.A.
ii. Case B of prot. n. 22576/91 C.A.
iii. Case C of prot. n. 20311/88 C.A.
iv. Case D of prot. n. 49514/14 C.A.
v. Case E of prot. n. 45144/11 VAR.
vi. Case F of prot. n. 30457/99 C.A.

In Case A, the CICLSAL considered the recourse on merits, studied the reasons given for the recourse and decided to confirm the decision of the Superior as being just[69]. A second recourse made by the complainant for reconsideration was rejected as manifestly unfounded[70]. The petitioner then presented recourse to the Signatura Apostolica which was rejected as manifestly unfounded[71] since it did not involve a case for an administrative tribunal, given that it was based on the merits of the case. Nevertheless, the Signatura Apostolica offered some advice on how to resolve the conflict at the Institute's level.

In Case B, the CICLSAL confirmed the legitimacy of the decision made by the Superior General[72]. The complainant made a second recourse to the CICLSAL for reconsideration of the decision but the CICLSAL reaffirmed its decision[73]. The petitioner then presented recourse to the Signatura Apostolica against the decision of the CICLSAL and the recourse was received and considered by the *Congresso*[74]. However, the *Congresso* decreed that the recourse was

---

[68] These were the only cases available for study at the time of this research. The acts of the cases studied were those available in the archive of the Supreme Tribunal of Signatura Apostolica.

[69] Cf. CICLSAL, Letter, 10 July 1984, prot. n. 60879/84.

[70] CICLSAL, Letter, 22 aug. 1984, prot. n. 60879/84.

[71] SSAT, Decree, 29 Apr. 1986, prot. n. 16811/84 C.A: «Recursus recipi nequit ob defectum praesuppositorum».

[72] Cf. CICLSAL, Decree, 17 Jan. 1991, prot. n. 17202/90.

[73] Cf. CICLSAL, Letter, 25 Mar. 1991, prot. n. 17202/90.

[74] Cf. SSAT, Decree, 29 Jul. 1991, prot. n. 22576/91 C.A.

not to be admitted to discussion by the College of Judges of the Signatura Apostolica on the basis that it manifestly lacked foundation[75]. The petitioner's advocate made recourse to the College of Judges against the decision of the *Congresso*. The Tribunal decreed payment for the new recourse[76] and the petitioner was notified of the peremptory period of ten useful days to make the payment from the receipt of the notification letter, otherwise, the case would be dropped. The petitioner did not respond within the peremptory period and the case was declared abated[77] and, with this declaration, the decision of the *Congresso* became definitive.

In Case C, the CICLSAL declared the recourse preposterous, that is, inadmissible because it was presented after the expiry of the peremptory period without any just reason[78]. The petitioner presented a recourse to the Signatura Apostolica against the decision of the CICLSAL and the recourse was admitted with a suspensive effect[79] and considered by the *Congresso*. However, the *Congresso* decreed that the recourse was not to be admitted to discussion by the College of Judges of the Signatura Apostolica on the basis that it manifestly lacked foundation since there was no mention of the alleged unlawfulness of the contested decision. The religious presented recourse against this decision, but again it was not admitted for the same reason[80]. The decisions of the CICLSAL became automatically effective, resulting in the termination of the suspensive effect which had been produced by the recourse while it was pending.

The remaining three cases were all rejected without any consideration by the *Congresso* because of some defect in the recourse itself.

In Case D, The Congregation for Propaganda Fide had declared the perpetual vows invalid on the ground that a member whose suitability was in question was admitted to perpetual vows through a canonically flawed process. That is, the canonical process through which the petitioner was admitted to final profession was invalid, rending the final profession itself

---

[75] SSAT, Decree, 6 Nov. 1992, prot. n. 22576/91 C.A.: «Recursus non admittitur ad disceptationem coram Em. mis Patribus Cardinalibus, utpote manifeste carens fundamento».

[76] Cf. SSAT, Decree, 2 Dec. 1992, prot. n. 22576/91 C.A.

[77] SSAT, Decree, 14 Jul. 1993, prot. n. 22576/91 C.A.: «Causam declarat peremptam».

[78] Cf. CICLSAL, Decree, 16 Mar. 1989, prot. n. 71620/87.

[79] Cf. SSAT, Decree, 24 Aug. 1989, prot. n. 20311 B/88 C.A.

[80] SSAT, Decree, 12 May 1993, prot. n. 20311B/88 C.A.: «Recursus non admittitur ad disceptationem quatenus ipse manifeste caret fundamento».

invalid[81]. The complainant presented recourse to the same Dicastery for reconsideration but the declaration was upheld[82]. The petitioner presented recourse to the Signatura Apostolica against the declaration of the Congregation for Propaganda Fide. However, the recourse was rejected since it lacked a signature.

In Case E, the CICLSAL confirmed the legitimacy of the decision made by the Superior General[83]. Not having discovered any violation of procedure nor the violation of any right, including that of self defense, CICLSAL held that the decision taken in his regard were totally legitimate and therefore there was no basis either in discernment or procedure for presenting hierarchical administrative recourse (can. 1737 §1) to CICLSAL against the decisions which had been made in his regard. The petitioner presented recourse to the Signatura Apostolica and the recourse was rejected on the ground that the object of the recourse was not an individual administrative act[84]. This was due to the fact that the petitioner had asked the Tribunal to decide on whether the petitioner had a right to recourse to the Holy See or not. The Signatura Apostolica pointed out that it acts only on a recourse that has been presented according to the requirements of the law. It further invited him to verify with the help of an expert in canon law, whether or not there were present in his case the necessary elements for making recourse to the Supreme Tribunal. In order to assist him in this, there was enclosed information sheet concerning contentious-administrative recourse to the Signatura Apostolica.

In Case F, Recourse was made to the Signatura Apostolica and the Tribunal declared itself incompetent to entertain the instance of the petitioner as the recourse did not refer to a singular administrative act issued or approved by a dicastery of the Roman Curia in accordance to *PB* 123 §1[85]. This was so because although the petitioner mentioned having presented recourse to the CICLSAL, there was no evidence that such was done since there was no any attachment to that effect.

---

[81] Cf. CONGREGATION FOR THE EVANGELIZATION OF PEOPLES, Letter, 20 Jun. 2014, prot. n. 2482/14.

[82] Cf. CONGREGATION FOR THE EVANGELIZATION OF PEOPLES, Letter, 28 Nov. 2013, prot. n. 4741/13.

[83] Cf. CICLSAL, Letter, 11 Jan. 2011, prot. n. 41483/2010.

[84] Cf. SSAT, Letter, 18 Mar. 2011, prot. n. 45144/11 VAR.

[85] Cf. SSAT, Letter, 20 Aug. 2001, prot. n. 30457/99 C.A.

3.2 *Analysis of the reasons given by petitioners and Superiors*

3.2.1 Reasons by petitioners for making recourse to the internal higher authority and to the Holy See

N.B.: «He» and «him» as used in this analysis refers to both male and female except where otherwise is evident from the nature of things.

Reasons given by petitioners for recourse	**From male Institutes**	**From female Institutes**
No reason was given by the competent Superior for exclusion.	Yes	Yes
The competent Superior said it was not necessary to give reasons.	No	Yes
No member of the petitioner's community was asked to give a report about him.	No	Yes
His exclusion was as a result of other level of the authority's interference.	Yes	Yes
He had never been informed of his unsatisfactory conduct or given opportunity to improve.	No	Yes
He was not given a hearing, giving rise to perception that the right for defense was denied.	Yes	Yes
His records did not contain any sign of unsuitability.	No	Yes
The reasons for his exclusion were the result of the views of one single member who was against him, or some members who did not wish him well.	No	Yes
Contradiction in the decision-making process suggested that the decision was unjust, e.g., being sent to prepare for final vows and then being excluded for unsuitability, council members giving positive vote and then a negative one, among others.	No	Yes
The reasons given for exclusion were too general, e.g., the petitioner was not prepared for perpetual vows.	No	Yes
Unequal treatment by the competent Superiors: some were admitted to final vows with fewer years of temporary profession while others were told to wait.	No	Yes
A lack of necessary qualities to live community life without giving specific instances.	No	Yes
The illness for which he was excluded was one he had contacted while doing the work of the Institute or due to negligence of the Institute.	Yes	Yes

From this analysis, it can be observed that both male and female Institutes are experiencing challenges of lack of clarity of varied magnitude in the application of can. 689. However, female Religious Institutes seem to be faced with a greater magnitude of conflicts arising from the following challenges than male Institute: Giving reasons that are too general or not giving reasons at all[86], using procedures that are riddled with contradictions, inconsistencies, perceived arbitrariness and lack of clarity on the competence of internal authority at various levels in the determination of suitability of members in the application of can. 689.

3.2.2 Reasons by competent Superiors for excluding the petitioners

Key: From RIfM From Religious Institutes for men
From RIfW From Religious Institutes for women
TG Too General
S Specific

Reasons given by competent Superiors for excluding the petitioners	**From RIfM**	**From RIfW**	**Remarks**
The members had been out for studies for long and so needed time to reintegrate themselves in the community but when this explanation was given to them, they were not ready to accept it raising questions as to the quality of their understanding of religious life.	No	Yes	S
The members were not prepared.	No	Yes	TG
Unwillingness of the members to accept any help either from Superiors, formators or specialists or to cooperate during such help, yet there was need for such help in the judgement of competent Superiors.	No	Yes	S
The members refused to permit any contact with the counsellors helping them. This was interpreted by the competent Superiors as a lack of openness and trust towards the Superiors and those responsible for their formation.	Yes	Yes	S
The members demonstrated unsatisfactory conduct.	No	Yes	TG

[86] In the acts of the cases studied, specific reasons tend to appear for the first time in the case in the response sent to the Holy See after a recourse has been made and become clearer as the case moves on from CICLSAL to Signatura Apostolica.

The Council's dissatisfaction with the members' attitude.	No	Yes	TG
The members' habits of confiding in other members who would sympathise with them without challenging them to grow.	No	Yes	S
A lack of openness in the members' relationship with the Superiors.	No	Yes	S
Psychological infirmity in the personality of the members.	Yes	No	S
Adamant refusal of transfer for personal reasons, a behaviour that was interpreted by competent Superiors to mean that during formation the members did not succeed in liberating themselves from their own will.	No	Yes	S
The members' inability to make independent decisions in grave matters which was interpreted by competent Superiors as lack of sufficient maturity to live religious life. The members were easily influenced by others.	No	Yes	S
The members had problem with obedience.	No	Yes	S
The members did not understand well the meaning of religious life and religious consecration to God through vows.	No	Yes	TG
Although the members had matured physically and in Christian life, they had not reached religious maturity.	No	Yes	TG
The members were not capable of working with other members.	No	Yes	S
Although the members had a vocation, it was not to that particular Institute for specific reasons given.	Yes	Yes	S
The members did not identify readily or comfortably with their various Institutes. There was a lack of joy and identification with members of their Institute.	Yes	No	S
The members did not participate in the corporate apostolic presence of their Institutes.	Yes	No	S
The members did not commit to Institutes' community life, choosing not to be present or engage in community, isolated themselves and chose not to engage with the Institutes' religious communal life in a meaningful way.	Yes	No	S

3.2.3 Analysis of cases of recourse in terms of number and gender

The number of cases studied were only six. Among the six, three petitioners were from male Religious Institutes and three were from female Institutes.

The lack of cases in the journals in which the Signatura Apostolica publishes some of its selected cases and given that the cases studied were only six suggest that recourse to the Supreme Tribunal against exclusion from subsequent profession is relatively a rare occurrence. It does not, however, necessarily imply that cases of grievances and conflicts arising from exclusion from subsequent profession are rare in Religious Institutes. It may as well suggest that, given the perception that discretion of the Superiors in this area is «too broad», members are not aware of the possibility of recourse against such decisions or that they simply do not expect any positive outcome from such recourse. Since the *CIC/1983* has no particular requirements concerning giving reasons for the decision, for such decisions, it is sufficient that there be just reasons[87] in the judgement of the competent Superior; the discretionary power of the Superior appears to be too broad.

The same number of cases from both male and female Religious Institutes seems to suggest that implementation of can. 689 is a common challenge to all Religious Institutes.

3.2.4 Analysis of reasons given by petitioners and Superiors in relation to proper law provisions on application of can. 689

The analysis of cases studied demonstrated that there was a *lacuna* in the proper law and/or lack of clarity on the juridical meaning of exclusion from subsequent profession. The acts of some cases demonstrated confusion among some members regarding the meaning of exclusion from subsequent profession. Among the petitioners in all the cases studied, exclusion seemed to have been understood to be equivalent to dismissal for they expected that due process be followed in their exclusion. In a number of cases studied, the petitioners explicitly cited viola-

---

[87] This, however, does not mean that not giving reasons is acceptable. Failure to express a reason for the decision is a violation of law *in procedendo*, while lack of a just reason for the decision is a violation of law *in decernendo*. However, the first violation (*in procedendo*) certainly would make it harder to defend oneself against an accusation of the second (*in decernendo*). Therefore, it is always safer to give reasons for the decision. When the reasons for exclusion are not given, then there is a just reason to recourse the decision.

tions of canons governing due process in dismissal as reasons for their recourse[88].

The consequence of such lack of clarity was the «perception» of a violation of law. Such perceptions generated feelings of unfairness which resulted in litigation and disputes and finally culminated in recourse presented to the Holy See. In such disputes, apart from the competent Superiors, other members and even non-members were involved[89] trying to argue in favour of the excluded members[90].

Such lack of clarity also made members think that the civil court was competent to judge on matters of a spiritual nature such as the determination of suitability of a member for life in a given Religious Institute. Consequently, in a number of cases, excluded members threatened to recourse to civil courts if the ruling was not given in their favour[91].

A *lacuna* in the proper law and/or a lack of clarity concerning the competent authority in the application of can. 689 was also observed. In a number of cases, conflict arose between Superiors regarding who was the competent Superior to admit a member to subsequent profession or to exclude a member from subsequent profession. This resulted in some perpetual professions being declared invalid[92].

A *lacuna* in the proper law and/or a lack of clarity on how the competent Superior is to proceed in the application of can. 689 was equally observed. Due to such lack of clarity, inconsistencies and contradictory opinions existed in all the acts of the cases studied with the exception of one.

3.2.5 Analysis of reasons given by the petitioners and the Superiors in relation to formation and the quality of understanding of religious life

The cases studied reflected a correlation between quality of formation of members during temporary vows period and quality of members' understanding of religious life. Where the competent Superiors gave insuf-

---

[88] Cf. Case B of prot. n. 22576/91 C.A.; Case D of prot. n. 49514/14 C.A.; Case E of prot. n. 45144/11 VAR.

[89] Cf. Competent Superior's letter to CICLSAL, 9 Oct. 1991 in Case B of prot. n. 22576/91 C.A.; cf. also Case C of prot. n. 20311/88 C.A.

[90] In all cases studied, there were disputes with some members on the side of the excluded member except in one case. Cf. Case E of prot. n. 45144/11 VAR.

[91] Cf. Case B of prot. n. 22576/91 C.A.

[92] Cf. Case B of prot. n. 22576/91 C.A.; Case C of prot. n. 20311/88 C.A.; Case D of prot. n. 49514/14 C.A.

ficient quality of the petitioners' understanding of religious life and the petitioners' understanding of vows especially obedience as reasons for excluding them from subsequent profession, it was also observed that such petitioners had been on their own for the greater part of temporary profession period without anyone responsible for their ongoing formation[93]. All the recourses were made against non-admission to profession of perpetual vows, except one, which was against exclusion from renewal of vows. This seems to raise questions as to with what seriousness do Institutes take this formative period as a period for determining suitability of members, since it appeared from the acts that members who were not suitable seemed to have been permitted to continue renewing their vows, without bringing to their awareness the signs of unsuitability in their behaviours, until the time for perpetual vows and then the Institute all of a sudden raised the question of unsuitability[94]. It also seems to suggest that non-admission to perpetual vows has more serious effects on the excluded members than early exclusion given that most of the cases of early exclusions received no recourse.

4. **Observations from the analysis of cases of recourse to the Holy See**

From the analysis of cases in which recourse was presented to the Holy See against exclusion from subsequent profession which were studied, a number of observations can be made. In the section that follows, these observations are explained.

4.1 *There are significant challenges facing recourse to the higher internal authority*

One of the mechanisms instituted by the Church to resolve disputes arising from application of can. 689 is recourse to the higher internal authority (cf. can. 1732 read together with can. 1737 §1 by analogy). The acts of the cases studied, however, revealed that there are a number of challenges with this first mechanism of dispute resolution.

---

[93] Cf. Case A of prot. n. 16811/84 C.A.

[94] Some competent Superiors in their responses to the recourse affirmed that the signs of unsuitability were noticed as early as the time of novitiate. It is not clear how signs which were noticed during the novitiate period would take five or more years until the time one was due for perpetual vows to be ascertained since one would expect that such a member would be given necessary help and monitored closely during the temporary profession period so as to ascertain whether the signs noticed were mere transitional weaknesses that could be overcome with time or were actual signs of unsuitability.

In the first place, the discipline of some Religious Institutes (cf. cann. 586 §1 and 587 §1) required endorsement of a decision to exclude a member from subsequent profession by the Superior General[95]. The challenge is that in such cases, if there is recourse, reluctance to reconsider the matter, even in the light of possible questionable «just» causes, would be more pronounced. This is so because the General Superior has an additional institutional moral responsibility to stand firm and defend the authority of the Superiors below him who made the decision (and which he endorsed) in order not to harm their reputation or to humiliate them before the members and jeopardize their moral authority.

Nevertheless, although it may be a discipline among some Religious Institutes, the purpose of such endorsement by the Superior General is not clear, unless specified in the proper law. Significantly, the determination of suitability is a decision uniquely vested in the internal authority of the Institute recognizing in all circumstances that the Superiors are in the best position to evaluate the suitability of the members for a given way of life unique to their Institute. However, the act itself of exclusion from further profession is an act of the will. The essence of the act is the expression of the will of the competent Superior who discretionally judges a member unsuitable and expresses his will in the decision to exclude such a member from subsequent profession (cf. can. 657 §1 read together with can. 689 §1). The decision, therefore, produces its effects without the need for the concurrence of any will other than that of the competent Superior who has exercised the discretion of judgement in order to complete the act. It produces a specific effect in a determined person, that is, one excluded ceases to be a member of the Institute at the expiry of vows.

---

[95] Cf. Response of the Superior General to the hierarchical recourse in Case A of prot. n. 16811/84 C.A. A similar challenge is faced by some Institutes known to the author, who suffer from lack of more than one level of governance. In such Institutes, within the internal governance, the Superiors General find themselves in a dilemma when it comes to recourse because they are the only major Superiors in the Institute. This is because even though the *CIC/1983* requires an immediate Superior (cf. can. 608) as well as at least one major Superior in the exercise of authority in a Religious Institute, in practice, only when the Institute is divided into provinces or their equivalent, will there be at least two levels of major Superiors: the Superior General and the provincial Superiors – and their vicars (cf. can. 620). Consequently, where the Institute has no provinces or its equivalent organs, the administrative structure is such that there is only a Superior General who is the only major Superior. In such circumstances, uncertainty in resolving disputes is brought about by the fact that it is in the human nature to stick to and defend a decision already made.

This raises the question as to what is the juridical purpose of endorsement by the Superior General. The spirit of can. 689 seems to be that the next level of internal authority serves as a possibility for recourse in case of need other than endorsing a decision already made, an endorsement which is juridically insignificant and may only contribute to causing conflict of competence and confusion[96].

A second observation can be made, namely, even where there is no such endorsement by the Superior General, there still exists a dilemma of competence. Juridically, the Superior General could overrule the act of competent major Superior in case of recourse[97], but – unless it is a case of violation of procedure[98] – it does not seem juridically possible that he can force the major Superior to act otherwise given that the decision is an act of discretionary authority. To admit such a candidate directly to vows by the Superior General against the evidence and declarative will of the competent major Superior who made the decision on exclusion is not acceptable[99]. Indeed, according to J. Torres, such admission would be very imprudent[100]. The dilemma, therefore, is, once the Superior General revokes the decision of the competent major Superior, what does he do with such member? The CICLSAL gives counsel on this that such a member can be transferred to another province of the Institute that is willing to accept him and to admit him to renewal of vows. However, the cases studied also revealed that the provinces are most likely not to accept such a controversial member and whom they do not know well[101].

Third, there seems to be a lack of proper guidelines in some Institutes on how to proceed in determining the justness of the cause. There also seems to be a lack of clarity on the nature and limits of the faculty of discretion in the decision-making process. In almost all the cases studied and which reached a definitive decision, the behaviour of the petitioners as reflected in the acts of each case seemed to strongly suggest that they actually either suffered psychological illness or had unsuitable char-

---

96 Cf. Case C of prot. n. 20311/88 C.A.

97 Cf. A letter of Superior General to the provincial Superior in Case C of prot. n. 20311/88 C.A.

98 But even in a case of violation of procedure, the competent major Superior would still repeat the process this time following the correct procedure and still exclude the said member.

99 Cf. CICLSAL, Letter, 3 Sept. 1987, Prot. n. 71620/87.

100 Cf. J. TORRES, «La dispensa dai voti», 362.

101 Cf. Superior General's recourse to Signatura Apostolica in Case C of prot. n. 20311/88 C.A.

acter and/or insufficient maturity required to live religious life. This is true beginning with the time the decision to exclude them from subsequent profession was made and continuing through the time the case was concluded at the Holy See. These are causes just enough to merit exclusion from subsequent profession. But the study also observed that the manner in which some Superiors arrived at the justness of these causes was unsystematic and so much riddled with a lack of clarity that their final decisions were perceived to be arbitrary and unjust not only by the excluded members but also by other parties with interest in the cases. This was due to the fact that, in some instances, clear evidence of unsuitability was manifested as early as the time of the novitiate but the Institute for some reasons that are juridically unacceptable, admitted the members to vows[102]. In others, some signs of a possible lack of vocation were observed right from the time of novitiate, but the mention of this fact appeared in the acts of the case for the first time only after recourse to the Holy See had been made and after the Superior had been asked to send a response to the recourse against his decision[103]. In some instances, after the novitiate, the candidates had affirmative reports throughout the period of temporary profession; but the report suddenly changed when the members were due for perpetual vows and had already been even sent for preparations for final profession[104]. In others, the same competent Superiors and their councils at various levels of governance – that is, local and provincial – each gave contradictory consultative votes on the same candidate within a very short time[105]. In which case, it is not possible to expect that a candidate could have made such a drastic change from unsuitability to suitability and then back to unsuitability. In other cases, the reasons given for exclusion were either too general to be comprehended by those excluded – such as a lack of necessary qualities to lead religious life; or the member needed more time for preparation. In others, there were no reasons given at all with the argument that the Superiors were not obliged by law to give reasons[106].

---

[102] Cf. Superior General's response to the hierarchical recourse in Case B of prot. n. 22576/91 C.A.

[103] Cf. Provincial Superior's response to the hierarchical recourse in Case C of prot. n. 20311/88 C.A.

[104] Cf. Competent Superiors' response to the hierarchical recourse and Councillors' votes on the petitioner in Case A of prot. n. 16811/84 C.A.

[105] Cf. Provincial council's votes on the petitioner in Case A of prot. n. 16811/84 C.A.

[106] Cf. Provincial Superior's communication to the petitioner on their decision to exclude the petitioner from subsequent profession in Case A of prot. n. 16811/84 C.A.

The study further observed that in some cases the decision to exclude a member was made by the entire council acting as a college[107]. In other instances, the competent Superiors required the consent of the council members[108] while in others, formators did not only give their report on members due for subsequent profession, but also gave a *votum* on whether a member was to be admitted to subsequent profession or not[109]. In some other instances, the competent Superiors went beyond the limits of their discretion[110] – supposedly presuming that their discretion was limitless – and ended up with invalid acts[111].

Such lack of clarity, however, may lead to undesirable consequences that is contrary to the spirit of can. 689 given that some of the effects[112] (cf. can. 701) of exclusion from subsequent profession are similar to those of dismissal, namely, with the expiry of vows, rights and obligations[113] cease *a iure* and the status of the person excluded from profession changes from religious to lay (cf. can. 702). This decision is, therefore, considered grave. Due to such gravity, a lack of clarity in the decision-making process may have grave consequences not only for the person excluded but also for the Superior who is bound both in law (cf. can. 128)[114] and in conscience to exercise his discretionary judgement justly, in a spirit of service, and with canonical equity (cf. can. 618). Therefore, both the individual members and the Superiors need protection from such consequences; for what is at stake is not just any personal good but also a vocation and one's state of life.

The right place for such protection is in the proper law. Therefore, in the absence of proper guidelines in the proper law concerning how to

---

[107] Cf. Cf. Provincial Superior's response to the petitioner's request to be admitted to perpetual vows in Case C of prot. n. 20311/88 C.A.

[108] Cf. Superior General's response to the hierarchical recourse to CICLSAL in Case A of prot. n. 16811/84 C.A.

[109] Cf. Junior directress report on the petitioner in Case C of prot. n. 20311/88 C.A.

[110] Cf. Letter of the Superior General to CICLSAL in response to CICLSAL's advice not to act in Case C of prot. n. 20311/88 C.A.

[111] cf. CICLSAL, Decree, 3 sept. 1987, confirmed on 4 march 1988, prot. n. 71620/87.

[112] For effects of departure in general, cf. E. MCDONOUGH, «Effects of Departure», 316-322.

[113] Among the obligations that cease are those relating to common life (cf. can. 665), observing the vows (cf. can. 668) and living the life of the Institute (cf. can. 663).

[114] For more information on recourse to can. 128, cf. M.P. CHALMERS, «The remedy of harm», 111-154.

proceed[115] in determining what really qualify as just causes for excluding a member from a given Institute and what roles are to be played by each one involved in the process, even a very prudent Superior at some point can become frustrated and overburdened in conscience by uncertainties, lack of clarity and contradictions surrounding his own choices and decisions. Furthermore, even though it may appear from the text of can. 689 that Superiors do not have any juridical obligation to account for their acts in the application of this canon, out of respect for the dignity of the human person which is a natural law that binds every human being and in pursuit for fairness and justice which is a fundamental aim of any law including can. 689, it seems proper that the Superiors make recourse to some explicit procedural guidelines and proceed systematically and coherently in these matters.

4.2 *Significance of proper law in determining the justness of the cause*

The study observed that the provisions of proper law are very significant in determining the justness of a cause for exclusion from subsequent profession. The cases studied revealed that both the CICLSAL and the Signatura Apostolica – while examining the recourses – explicitly made reference to the prescriptions of proper law in every case of exclusion from subsequent profession. The same cases studied also revealed that the proper law of some Institutes seemed to simply repeat the general principles given in the *CIC/1983* as just causes for suitability namely, lack of suitable character and lack of sufficient maturity to lead religious life (cf. can. 642), at times phrased with different words. Lack of determination in the proper law of what an Institute considers as signs of a lack of a vocation to the Institute leaves a *lacuna* with the following significant consequences.

In the first place, there appears to be an arbitrary manner of acting when making the decision to exclude a member. Since exclusion restricts the free exercise of the right to live religious life, the canon must be interpreted strictly so that its application is not extended beyond the matters actually intended by the Legislator. Consequently, the causes must be «just», considered under «the nature, character and apostolate of the Institute»[116].

---

[115] The experience of the author is that this seems to be the reality in many Religious Institutes, especially those of women, where many Constitutions often repeat the content of can. 689 as it is in the *CIC/1983* without any other additional procedural norms in place to guide the Superior in this grave decision.

[116] A. CALABRESE, *Istituti di vita consacrata*, 290: «in rapporto al tipo di vita e di apostolato dell'istituto». English Transl. is by the author.

Therefore, they cannot be given in the general terms of the *CIC/1983*. Rather, without such clarity in the proper law of the Institute, it becomes a challenge for competent Superiors to know how to arrive at the «justness» of the causes without appearing to act arbitrarily.

Secondly, inevitable controversies arise. From the wordings of can. 689 §1, the faculty granted is only to decide whether the causes – that presumably already exist – are just enough to justify non-admission to subsequent profession. This implies that existence of causes is prior to the discretionary judgement on whether the causes are actually just or not. But how the competent Superior arrives at these causes – upon which he is to exercise discretionary judgement on whether they are just enough and proportionate to merit exclusion – if not specified in the proper law, leaves a *lacuna* and with such a *lacuna*, controversies are inevitable. Logically, to arrive at any determinate cause implies gathering some information. And any information gathering implies some procedure and some knowledge of what kind of information one is seeking. Therefore, the essence of a «just cause» itself implies some procedures to acquire the causes prior to discretionary judgement.

Thirdly, making the faculty of discretionary judgement appears to be broader than is intended by can. 689 and provokes recourse based on perceptions. To pursue hierarchical recourse against an act of exclusion, one must submit a written petition to the hierarchical Superior – in this case the CICLSAL – either directly or through the author of the act being challenged (cf. can. 1737 §1). The petition should include:

i. A summary of the series of events that led to the issuing of the challenged decision and the reasons in law and in fact as to why the aggrieved member believes the act should be overturned.
ii. A copy of the decision being challenged should be attached to the petition.
iii. Since the burden of proof rests on the one challenging the legitimacy or opportuneness of the decision[117], the aggrieved member should also attach to the petition any documents in his possession that support the claim that the decision should be overturned or, if documentary evidence is unavailable, a list of the evidence that should be gathered by the hierarchical Superior before he decides the recourse[118].

Therefore, given the letter and spirit of can. 689, in the absence of specifications and clear guidelines outlining how to proceed in deter-

[117] Cf. J.R. PUNDERSON, «Hierarchical recourse», 22.
[118] Cf. J.P. BEAL, «Hierarchical recourse», 103.

mining the causes, the discretion of the Superior in this decision appears to be too broad and reduces every reason to perception if it is not based on any law. Consequently, it becomes almost impossible to arrive at just reasons to meet the threshold of recourse against exclusion from subsequent profession based on the merits of the case. At the same time, it is also impossible to avoid appearing to be acting in an arbitrary manner in such decisions because, then all parties in the case appear to be interpreting the general principles given in the *CIC/1983* of lack of suitability and lack of sufficient maturity according to their own understanding. Thus, a *lacuna* may lead to decisions and reactions based on perceptions.

In all the cases studied, reasons given for recourse were basically perceived arbitrariness and perceived violation of law given that there was no law actually violated. Consequently – apart from those that were rejected for a lack of essential elements – each of the decision of each of the competent Superiors was upheld by the CICLSAL as being just and further recourse to the Signatura Apostolica rejected as fundamentally lacking foundation after consideration by the *Congresso*. The reasons given for a recourse, in fact, must be «just» in order to meet the threshold of such recourse since canon 1737 §1 states clearly that one who feels aggrieved by a decision can have recourse for any «just reason». From the wording of this canon, it is clear that a petitioner has to indicate very clearly what that just reason is. Otherwise, asking a hierarchical Superior to overturn or change a decision of the Superior for no just reason would be equivalent to asking him to act in an arbitrary manner. But a reason can only be just when it refers to the act itself. So, personal differences with the author of the decision or the past actions of the Superior towards the petitioner are not just reasons for presenting recourse. The manner in which the petitioner is affected negatively by the decision based on some law is what must be presented in order to challenge a decision. What one perceives merely to be the «real» reasons behind Superior's decision is not helpful. This is because «perceptions» as reasons for making recourse are juridically irrelevant. When preparing a petition, one must focus on the reasons provided by his Superior in giving the decision. Therefore, reasons given by the Superior can be challenged by presenting recourse to the CICLSAL when the grievance is founded in some law. The member must claim that the reasons provided were insufficient, inappropriate, mistaken, contrary to the law or not based on the facts. Moreover, one can challenge a decision if no reasons are given at all by the Superior.

4.3 *The ratio legis for can. 689 limits the hierarchical Superior's judgement on merit*

Even though the CICLSAL judges on both legitimacy and on merits, the *ratio legis* for can. 689 limits the hierarchical Superior's judgement on merits. The study observed that the examination of a hierarchical recourse against exclusion from subsequent profession followed the same procedures as those of other administrative acts. In addition, the hierarchical Superior decided on both the merits of the decision and the legitimacy of the procedure followed in order to arrive at that decision. However, although the hierarchical Superior in law decides all cases for which recourse is presented to him both on merit and procedure, in fact, the decision on merits is limited by the *ratio legis* for can. 689[119].

Such limitations can initially be expressed by stating that an act that may qualify as having a just cause in a given Religious Institute is defined by each Institute's unique charism, the personal views and experiences of the founders and the Superiors' own perception of the Institute's values and morals. By expecting the hierarchical Superior to attempt to apply the universal standards of fairness and justice in a particular case of unsuitability, would, therefore, be expecting the external hierarchical authority to assume the function of internal authority. This would, in fact, be seen as disregarding the unique and autonomous nature of each Institute.

Secondly, given the fact that this is an administrative recourse on a decision concerning suitability, the hierarchical Superior cannot substitute his judgment for that of the Superior. This is so because, unless the aggrieved member can prove that he actually has vocation to that particular Institute, such a substitution would go against the principle of suitability[120]. Such attempt on the part of the aggrieved member however appears to be in futility since even though the Superior who issued the decision being challenged is equivalent to the «defendant» in a judicial process, his decision enjoys the presumption of validity and legitimacy «if it was placed correctly with respect to its external elements» (can. 124, §2). Consequently, the Superior does not have to prove that he acted legitimately. The onus of proving the illegitimacy of the decision belongs to the member. The burden of proving the illegitimacy of

---

[119] For information on *ratio legis* for can. 689, cf. chapter III, sec. 4.2.2 of this study.

[120] For discussion on this principle, cf. chapter III, sec. 2.1.3 of this study.

the challenged decision rests on the one initiating the recourse. But how does one find reasons to prove to an external authority that he has vocation, if the very Institute he claims to have vocation to – through its representative who actually has first-hand information about the member – claims otherwise?

A third expression of a limitation on the hierarchical Superior, can be seen in the fact that, since the hierarchical Superior is one step or more removed from the level at which the operational decisions about a member's suitability are concluded, he can only review what lower Superiors have done[121]. Since the hierarchical Superior does not have direct access to the merits of the decision, it seems that it can only review procedural defects[122]. While it was observed that the CICLSAL dealt with recourses with promptness and gave them the attention they deserved, it was also observed that the Apostolic See, being quite distant from the scene where the exclusions took place, was disadvantaged when it came to examining the socio-cultural complexities of the controversies that arose as a result of such exclusions and the consequent recourse. Distance from the scene could have impeded gathering of all the facts relevant to the resolution of recourse in terms of merits of the case. Consequently, although in law, the hierarchical Superior is entitled to substitute his own judgment for that of the authority below him (cf. can 1739) both on the merits of and the procedure followed in the case, in practice, this substitution seems possible only with respect to the violations of can. 689 §§2-3. Indeed, in the cases studied, since there was no violation in the procedures, the CICLSAL confirmed the decisions of the competent Superiors.

As a result of this distance, the presumption is that regarding the merits of the case, the hierarchical authority will often have much less information about the local circumstances that prompted the issuing of the challenged exclusion than the one who issued it. The hierarchical authority will also usually have a limited sense of the implication of the various alternative solutions to addressing the problem that prompted the act. As a result, conscious that his attempt to resolve a controversy by substituting his own solution may only make a bad situation worse,

---

[121] In all the cases studied, the decision of the CICLSAL was arrived at after examining the responses to the recourse sent by the competent major Superiors.

[122] It seems that it is for similar reasons that F.J. Ramos argues that the decision on whether to exclude one or not from further profession cannot be recoursed on the merits of the decision. However, procedural defects could be recoursed. Cf. F.J. Ramos, «Departure from the Institute», 1850-1851.

he may prudently limit himself to confirming[123], annulling[124], or rescinding challenged acts. In doing so, the hierarchical Superior bases his decision on the procedures followed. In the event that the hierarchical Superior annuls or rescinds the lower Superior's decision, he remands the matter to the lower authority for application of the appropriate procedure[125].

A fourth limitation of the hierarchical Superior's intervention follows. Given that the determination of just causes for exclusion from subsequent profession does not require any specific juridical procedure unless the provisions of such are given in the proper law of the Institute, it appears that the hierarchical Superior has very little to consider besides the competent Superior's report on the case. This is because the hierarchical authority is not expected to be a «fact finder» but rather one who reviews what major Superiors have already determined to be the facts by having followed the specific prescriptions given in their proper law. Therefore, by virtue of administrative discretion, elucidation of what a just cause means in a given situation is left to the judgment of the major Superior competent to make the decision. According to J. Torres, in fact, it would be unwise to judge the attitude of a candidate from a distance and through a simple recourse written against a protracted immediate experience of the competent Superior[126].

From these observations, it can be concluded that determining suitability of members and handling cases of unsuitability expeditiously and in a harmonious and dignified manner, is the sole responsibility of internal governance of the Institute. This is not to suggest that the hierarchical Superior is not exercising vigilance in protecting the vocations of members once they are admitted to profession in an Institute. Rather, the intervention comes as a mechanism for resolving conflicts arising from real violations of law and not from conflicts arising from perceptions which are juridically irrelevant but which cannot be ignored by the Institutes because, in the end, such conflicts become significantly damaging to an Institute. Moreover, as reflected in the cases studied, in responding to a recourse, the hierarchical Superior's intervention comes

---

[123] For example, cf. Case A of prot. n. 16811/84 C.A.; Case B of prot. n. 22576/91 C.A.

[124] For example, cf. Case C of prot. n. 20311/88 C.A.

[125] An example is found in Case C in which the act of the Superior General is annulled and then the CICLSAL gives the Superior General counsel on how to resolve the problem.

[126] Cf. J. TORRES, «La dispensa dai voti», 362.

as a remedy to a conflict that is far more diffused beyond the author of the decision and the aggrieved member and which requires much more to resolve than just the decision on the recourse. The general question then which arises from this analysis is how can Religious Institutes protect both their Superiors and their members from possible jeopardy that occurs with the «perceived arbitrariness»[127] – which cannot be challenged but whose harm cannot be underrated – in the application of can. 689, given that the determination of suitability of members is the sole responsibility of the Institute in accordance with the principles of subsidiarity, autonomy and suitability[128]. The study will try to address this question when giving forward-looking possibilities.

4.4 *Adequate protection against improper exercise of discretionary authority*

The Signatura Apostolica creates a possibility for an adequate protection against improper exercise of discretionary authority by granting a right of defense to the aggrieved member and by offering counsel to the lower competent Superior.

The two benefits of recourse to the Signatura Apostolica stand out clearly in its jurisprudence. First, it creates the possibility for an adequate protection against the improper exercise of discretionary authority through the right of defense[129]. Secondly, it tends to eliminate an arbitrary exercise of discretionary power by insisting on acting within the limits of the law and the following of proper procedures[130] as well as by offering counsel to the lower Superior.

---

[127] It is termed «perceived arbitrariness» because there is no actual law violated. Consequently, this is outside the scope of hierarchical recourse. The hierarchical Superior and the Signatura Apostolic handle real violations of law and not mere perceptions on the part of the member. Yet such perceptions, if left unattended, have the potential of leading an Institute into crisis.

[128] For discussion of these principles, cf. chapter III, sec. 2.1 of this study.

[129] For example, in Case B and Case C, petitioners were heard through their Procurator-advocates whom they were given opportunity to choose by themselves from the list provided. Cf. SSAT, Decree, 29 Jul. 1991, prot. n. 22576/91 C.A.; ID., Decree, 24 Aug. 1989, prot. n. 20311 B/88 C.A. Even when one of the Procurators allowed the case to be declared abated for some reasons, a recourse was presented against the decision to declare the case abated, and the case was reopened. The case in question was however rejected later by the *Congresso* as lacking foundation. Cf. SSAT, Decree, 12 May 1993, prot. n. 20311B/88 C.A.

[130] In all the cases rejected on the grounds that they lacked foundation, the authors of the decisions were considered to have followed the right procedure.

Even where the cases were not admitted to discussion, the Signatura Apostolica explained the issues[131] in question and gave counsel[132]. This seems to suggest that the jurisprudence of Signatura Apostolica with respect to recourses presented against exclusion from subsequent profession, if made available, would help Religious Institutes to ensure that they too have procedural guidelines to protect both major Superiors and members from possible frustrations and jeopardy caused by uncertainties in the application of can. 689. Such information by the Signatura Apostolica is useful, given that, even though the Signatura Apostolica decides only on lawfulness (cf. *Lex propria*, art. 34 §1) and not on merits of the case *per se*, the reasons leading to decisions concerning a violation of law *in decernendo* seem to oblige the Signatura Apostolica at times to examine the question of subjective rights as a means to

---

[131] For instance, it clarified that, even though the canon does not oblige the Superior General to give reasons for exclusion, it is evident that the religious after novitiate and admission to temporary vows for six years has an acquired right to be admitted to perpetual vows and consequently, to know the reasons for exclusion. Given that the exclusion must be based on just causes – with the hypothesis that this cause might be unjust, unreasonable or false etc – the excluded member needs to be given the opportunity to defend himself if he feels that the causes are unjust. Cf. SSAT, Votum pro rei veritate, 8 Apr. 1986, prot. n. 16811/84 C.A.

It also clarified that civil courts have absolutely no jurisdiction over the decisions of competent Church authorities in strictly spiritual matters, such as the suitability of a person for religious life. The Church has always safeguarded its exclusive rights over these matters and will continue to do so. Cf. SSAT, Decree, 29 Jul. 1991, prot. n. 22576/91 C.A.

[132] For instance, in Case A, the recourse was rejected as lacking foundation since there was no law that was violated either *in procedendo* or *in decernendo*. Rather, the Signatura Apostolica, realizing that the merits of the case were riddled with uncertainties and lacked clarity, gave counsel that the CICLSAL remand the case back to the new Superior General to reconsider the case with the new council. The Signatura Apostolica offered the following considerations: (a) The Superior General and her council are to reconsider the letters which had been sent to Signatura Apostolica in favour of the petitioner and the report sent to it by the previous office; (b) They may state clearly the causes against the petitioner for which the petitioner was excluded from subsequent profession; (c) They may meet with the petitioner and explain to him each cause and give him enough opportunity to respond so that he may be able to accept the decision. This could be done even by the Bishop if there was difficulty calling the petitioner to the Generalate given the distance; (d) if the petitioner is able to explain the points he claims that are unclear in the decision and he is able to demonstrate the falsity of the accusations etc., in a manner that leads to moral certainty of the petitioner's suitability for subsequent profession of vows, then secret voting may be done and the results be communicated to the petitioner. If the results are positive, [that is, in favour of the petitioner], then the CICLSAL is also to be notified. Cf. SSAT, Votum pro rei veritate, 8 Apr. 1986, prot. n. 16811/84 C.A.

arrive at a final decision. This is so because a prior judgment on the issue of the subjective right is necessary in order to assess the lawfulness *in decernendo* or, otherwise, of the act against which recourse has been presented[133]. It can, therefore, be presumed that the Signatura Apostolica enters into the merits of the case whenever necessary, taking care not to encroach upon the area of true discretion which the administrative authority requires in order to perform its task adequately. An explanation of «merit» in these contexts seems necessary to make this assertion clearer.

A «*violation on merit*» in a strict sense corresponds to situations of injustice arising from violations of substantive rights, for which only the ordinary courts have competence. «*Judging on the merits*» refers to «a judgment, decision or ruling of a court based upon the facts presented in evidence and the law applied to that evidence. A judge decides a case "on the merits" when he bases the decision on the fundamental issues and considers technical and procedural defenses as either inconsequential or overcome»[134]. However, the term «*merit*» is also used in a second way – a broad way – to refer to the various «non-juridical» assessments and evaluations upon which an administrative act is based. Therefore, it includes such factors as the «opportuneness», the «fittingness», or the «usefulness», of the act in particular circumstances. In other words, it refers to what might be termed as «good administration» which pertains to the exclusively discretionary area, which is the proper province of administration[135]. Accordingly, a decision in respect to «*merit*» can be taken to refer, on the one hand, to a decision based on the judgment of the facts and an assessment of the situation of injustice alleged to have been brought about by the administrative act. Or, on the other hand, it can refer to a decision based on the judgment as to

---

[133] This is demonstrated for example in Case A of prot. n. 16811/84 C.A. in which the Signatura Apostolica found the case to be manifestly lacking foundation but offered some counsel that would bring clarity in the merits of the case. Such obligation is also confirmed by some classic authors. For information on the practical difficulties involved in separating «lawfulness» from «merits», cf. F. D'OSTILIO, «Gli istituti della vita consacrata», 279-344; P. HAYWARD, «Changes in ecclesiastical administrative justice», 653-658; The first author, after consulting almost 90 decided cases, which he considered a representative of all the cases that had been decided by the Signatura Apostolica until then, concluded that these decisions consistently recognized and protected the rights of juridic persons as well as the rights of individuals. Cf. F. D'OSTILIO, «Gli istituti della vita consacrata», 292, 321-322.

[134] G.N. HILL – K.T. HILL, *The People's Law Dictionary*.

[135] Cf. P. HAYWARD, «Changes in ecclesiastical administrative justice», 648-649.

whether or not the administrative authority has made good use of his discretionary powers[136].

The Signatura Apostolica does not examine the merits of the case in the latter sense. Moreover, there is no difficulty in accepting the restriction upon the powers of the Signatura Apostolica, since as an independent judicial organ, it cannot take upon itself responsibilities and functions that are the exclusive concern of the administrative authority. However, it seems justified to judge on «merit» in the former sense. The counsel of the Signatura Apostolica in Case A of prot. n. 16811/84 C.A.[137] seems to suggest that it may be difficult, to justly determine lawfulness or otherwise of an act or decision *in decernendo* without examining the facts and assessing the situation of the alleged injustice. And this counsel of the Signatura Apostolica seems to suggest that the «objective lawfulness» without «substantive justice» is not what a member who claims to be aggrieved by an administrative decision is seeking in a recourse. Indeed, the reason why an individual is willing to go to the length of pursuing a contentious-administrative action is not a general desire on his part that the law should be observed. Rather, he is personally disadvantaged by the decision of the Superior which he wishes to be revoked.

This jurisprudence, if made known to Superiors of Religious Institutes, would help them in their exercise of discretionary authority to keep constantly in mind that it is not just lawfulness that is important when making such serious decisions as excluding a member from subsequent profession. More importantly, they need to consider the protection of the dignity of the human person, such that even those who must leave are excluded in a dignified manner that does not leave them feeling aggrieved or disadvantaged.

4.5 *The seriousness with which decisions on exclusion should be made*

The jurisprudence of the Holy See revealed the seriousness with which decisions on exclusion from subsequent profession should be made. In examining recourses against exclusion from subsequent pro-

---

[136] Cf. P. HAYWARD, «Changes in ecclesiastical administrative justice», 649.

[137] In this case, the Signatura Apostolica, realizing that the merits of the case were riddled with uncertainties and lacked clarity, gave counsel that the CICLSAL remand the case back to the new Superior General to reconsider the case with the new council that was in place at the time of recourse.

fession, both the CICLSAL and the Signatura Apostolica rigorously followed their procedures for examining each contentious-administrative recourse. The seriousness, patience and commitment with which the CICLSAL and the Signatura Apostolica handled recourses against exclusion from subsequent profession in order to resolve the disputes brought out the following facts as were also observed in the acts of the cases studied:

i. Although discretionary authority is indispensable and not necessarily injurious to the rights of members of the Institute, it is not without its dangers. Presumably, broad discretionary power may be a threat to justice and common good if it is not exercised prudently[138]. In addition, there is no guarantee that discretion will always be exercised prudently[139].

ii. Although discretionary authority is necessary to make decisions which adequately address unique circumstances, there is no guarantee that discretion will always be guided by the facts and circumstances which are truly relevant and significant to a case[140].

iii. Although discretionary authority is necessary to deal with unforeseen and unforeseeable situations, there is no guarantee that discretion will be exercised by all consistently, predictably, impartially and fairly when dealing with the foreseen situations and foreseeable ones[141].

iv. Although discretionary authority is necessary for dealing with cases for which available law does not exhaustively address, there is no guarantee that all Superiors will remain within the bounds of law where laws are available.

The very existence of the possibility to present recourse to the Signatura Apostolica suggests that disputes arising from the exercise of dis-

---

[138] For instance, the CICLSAL went as far as using the quickest means of communication possible to prevent an invalid act, in Case C of prot. n. 20311/88 C.A.

[139] Lack of prudence in the exercise of discretionary authority is manifested in Case C of prot. n. 20311/88 C.A. in which the competent Superior went ahead knowingly – because the Superior was forewarned by the hierarchical Superior – and wilfully to effect an invalid act.

[140] An example is found in Case C of prot. n. 20311/88 C.A. in which the Superior General attempted to overrule the decision of the Provincial Superior to exclude a member from subsequent profession not based on any violation of law or lack of just causes but based on competence controversy.

[141] An example is found in Case A of prot. n. 16811/84 C.A. where there was no consistency at all on how the decision regarding unsuitability was arrived at. Some elements of inconsistency are also found in Case B of prot. n. 22576/91 C.A. and in Case C of prot. n. 20311/88 C.A.

cretionary authority to exclude a member from subsequent profession are not potential but actual problems[142]. Those who feel adversely affected make recourse to hierarchical authority and, if necessary, make further recourse to the Signatura Apostolica if they are not satisfied with the hierarchical Superior's decision. The Study of the specific cases of recourse, however, revealed that what is contested in these cases is not the discretion of the Superior to decide. Rather, the more fundamental problem is that Superiors often exercise discretion in a manner that is arbitrary and capricious, or at least can easily be perceived as being arbitrary and capricious by members and, therefore, unjust. Yet, for Superiors who serve under such perceptions, the frustration is equally as great as that of the members who perceive them as acting arbitrarily. Explanations of these risks in the exercise of discretionary authority to Religious Institutes would help them to seriously think of how much support – in terms of proper guidelines and cooperation of members – the Superiors need in order to exercise with caution and prudence this useful, yet very delicate faculty.

4.6 *The necessity of proceeding in a systematic manner in the decision to exclude a member*

The jurisprudence of the Holy See showed the necessity of proceeding in a systematic manner in the decision to exclude a member. One of the procedural practices of the Signatura Apostolica is to inform the author of the challenged decision and all who intervened in that decision about the recourse so that they can participate by giving more information or clarification when necessary. This implies that whenever a Superior makes a decision, he assumes the burden of proving to the Tribunal of Signatura Apostolica that just causes actually existed (cf. can. 220). From the acts of the cases studied, the study found that, in order to meet this burden of proof, the competent Superior must come forward with probative evidence sufficient to convince any reasonable person acting in good faith that there were just causes. The Superior's proof in such instances must be in the form of evidence[143]. Arguments, assumptions, guesses, conjectures, allegations or speculations were not considered as evidence.

---

[142] Cf. W.L. DANIEL, *Ministerium Iustitiae*, 87-355; G.P. MONTINI, «Conspectus decisionum», 27-66.

[143] It is through such a requirement that significant inconsistencies and lack of clarity were revealed in the responses of the competent Superiors to the recourses. Such inconsistencies and lack of clarity made the Signatura Apostolic in one case to recommend remanding the case back to the Institute for a systematic proceeding.

Such evidence, however, can only be acquired through a systematic process. Therefore meeting the burden of proof seems to suggest that some procedural fairness in arriving at just causes is necessary in the decision to exclude a member from subsequent profession.

This jurisprudence of the Signatura Apostolica is useful since it acts as a reminder about the seriousness of the decision to exclude a member from subsequent profession. It is also important in preparing Superiors – and even canonists who assist them at the Institute's level – not only in cases of recourse to the Holy See but also in some other legal action that is not inevitable today considering the nature of the present-day society.

Moreover, in grave decisions such as those touching on the stability of one's state[144] of life (can. 573 §1; *VC* 29) and considering the gravity of the consequences of such decisions (cf. can. 701)[145], there is no middle ground or «near cause». One must be found unsuitable from facts and not just thought to be unsuitable in keeping with can. 223 §1. «The state» is «a stable condition of life, deriving from a permanent cause which is not easily changeable»[146]. And it is not by chance that the *CIC/1983* explicitly uses the word «state» in cann. 207 §2, 574 §§1-2 and 588 §1. The word is also found in *LG* 45. This stability derives from the consecration itself which by its very nature is perpetual. Whoever embraces consecrated life surrenders himself to the service of God and to the journey towards perfection (cf. can. 573). The same profession of the evangelical counsels, even if temporarily done, in accordance with common law and proper law, for a determinate period of time to be renewed either once or more than once at the expiry of

---

[144] By means of their vows, the religious profess the evangelical counsels of chastity, poverty, and obedience and, through the charity, to which the counsels lead, the religious are joined in a special way to the Church and its mystery (can. 573 §2; cf. also *VC* 29). The *Magisterium* of the Church confirms and enriches the full ecclesial nature of the profession of the evangelical counsels as a distinctive state (can. 574 §1). Cf. also J.C. CASTELLANO, «Lumen gentium – Perfectae caritatis», 164. Exclusion from subsequent profession results in change of this religious state of life to secular state. Cf. A. CALABRESE, *Istituti di vita consacrata*, 286.

[145] It not only results in loss of the religious state but also the cessation of rights and obligations deriving from profession follows ipso *facto*. Cf. J.P. BEAL – J.A. CORIDEN – T.J. GREEN, ed., *New Commentary*, 871; A. CALABRESE, *Istituti di vita consacrata*, 286; F.G. MORRISEY, «The dismissal of members», 1882.

[146] «Lo stato è una condizione stabile di vita, derivante da una causa permanente, non facilmente mutabile». A. CALABRESE, *Istituti di vita consacrata*, 11. English transl. is by the author.

the time determined by law, is said to be stable[147]. This is because renewal is a requirement of law while the intention, at least virtual, of the one professing the vows is to surrender himself totally and permanently to the service of God[148]. Consequently, after admitting a member to the profession of vows, if the Superior cannot prove with at least some evident facts[149] that just causes existed that were proportionate to the decision to exclude a member from subsequent profession, then a member is deemed to be unfairly excluded and the Superior is held responsible for failing to make the right decision in a «very grave» matter, both in law (cf. can. 128) and before the judgement of conscience[150]. It is considered a «very grave» matter because consecration from both the theological and the juridical point of view, means renouncing the world for the sake of the kingdom of God (cf. can. 573 §1)[151]. Due to the gravity of the matter, any decisions, if based on causes that are not just, undermine both the significance of the consecration and the integrity of can. 689. It also creates resentment and deprives the Institute of a good member, while causing the excluded member the pain of losing his vocation and at times disorients the future of the excluded member.

5. **Conclusion**

In this chapter on the jurisprudence of the Holy See, after presenting the general praxis of the Holy See in examining recourse against administrative acts, the study presented an analysis of the cases of recourse presented to the Holy See against the decision of a Superior to exclude a member from subsequent profession. This was done with a view to discover what kind of precautionary measures the Institutes had put into consideration during the application of can. 689 and to extract the jurisprudence of the Holy See concerning application of can. 689 in order to see how the jurisprudence helps to develop the exercise of administrative discretion in the application of can. 689.

---

147 Cf. SSAT, Votum pro rei veritate, prot. n. 20311/88 C.A.

148 Cf. A. CALABRESE, *Istituti di vita consacrata*, 12.

149 When there are doubts, a member is not to be admitted to vows in the first place (cf. can. 653 §2). Once admitted to vows, they are already incorporated into the Institute with rights and obligations (cf. can. 654) and justice demands that facts be used to exclude them from it, not just speculations. Just causes required by can. 689 if well established would preclude any possible speculations.

150 Cf. SSAT, Votum pro rei veritate, 28 Jun. 1985, Prot. n. 16811/84.

151 Cf. A. CALABRESE, *Istituti di vita consacrata*, 12.

The analysis of jurisprudence of the Holy See was focused on basic concepts and practical application. During the analysis, one thing stood out clearly: that the two possible remedies – hierarchical recourse and recourse to the Signatura Apostolica – are useful to Religious Institutes in resolving the grievances against discretionary decisions to exclude a member from subsequent profession. However, their delimited scope necessarily calls upon Religious Institutes to take responsibility in preventing unnecessary conflicts arising from perceptions.

This manner of challenging a decision was found useful to Religious Institutes in the following two ways. First, the very existence of the possibility of recourse to these organs and the procedures by which the CICLSAL and the Signatura Apostolica examine such recourse encourages Superiors entrusted with discretionary authority in Religious Institutes to exercise that authority in a prudent and deliberate manner, with due regard for the requirements of Canon Law and equity, and ultimately for the perfection of charity.

Secondly, the experience of recourse can help Superiors gain a better mastery of how certain issues are best addressed and how certain canonical actions are to be carried out procedurally. The same experience can also help canonists working directly with the Religious Institutes to develop their skills in assisting Superiors and their members to work for peaceful resolution of grievances and conflicts. These procedures, when known and followed, can be an effective means to avoid most suspicions and perceived arbitrariness in the exercise of discretionary authority, thereby promoting unity of purpose and fraternal community living in Religious Institutes.

Recourse, however, is delimited in its scope in that the member can only recourse real violations of law and not conflicts arising from a «perceived» violation of law. The study of acts of the cases of recourse presented to the Holy See, however, revealed that most of the disputes arising from application of can. 689 are grounded on «perceived» and not actual violation of law due to inconsistencies, lack of clarity and giving general reasons in the process of applying can. 689. The hierarchical Superior and the Signatura Apostolica provide a juridical solution. However, they should not be expected to solve the actual practical problems on the ground as a result of perceived arbitrariness because that would be expecting them to act arbitrarily. The Signatura Apostolica is committed to the administration of justice and, therefore, admits only recourse that meets the requirements for admission and in which it is contended that the impugned act violated some law either in the deci-

sion-making process or in the procedure used (cf. *PB* art. 123 §1). Consequently, there must be some law in place even in the Directory – not necessarily in the *CIC/1983* or in the Constitutions – that is violated whenever a recourse is made to the Signatura Apostolica.

The study, however, observed some *lacuna* in the proper law as reflected in the cases studied. In the presence of a *lacuna* in the proper law regarding how to proceed in determining just causes, any complaint about lack of just causes for exclusion translates into a «perception». To expect the Signatura Apostolica to rule against a decision in such a situation is to expect the Tribunal to act in an arbitrary manner. As a result of such *lacuna* in proper law, all the cases studied gave reasons for recourse which appeared to have been challenging basically opportuneness, the prudence and/or the appropriateness of the decision, given that there were no laws violated and so were not admitted to discussion by the College of Judges. Given that the Signatura Apostolica does not decide on the merits of the case; opportuneness, prudence and appropriateness of the decision belongs to merits of the case and as such can only be addressed by the internal higher authority or the hierarchical Superior. To this effect, this study considered it opportune to propose some forward-looking possibilities that may aid prevention and resolution of conflicts arising from grievances caused by «perceived arbitrariness». The next chapter gives these possibilities.

CHAPTER V

Deductions from jurisprudence of the Holy See and forward looking possibilities

With a view towards providing a practical method for preventing and resolving conflicts at Institute's level, arising from the application of can. 689, this study examined the interplay of law and jurisprudence to see how jurisprudence helps to better exercise discretionary authority in the application of can. 689. From that examination, three deductions were made as well as some forward-looking possibilities. This chapter presents those three deductions and the proposed forward-looking possibilities based on the findings of the study.

1. Deductions from the jurisprudence of the Holy See for the application of can. 689

First, with religious profession, a religious acquires a right to live religious life; and it is upon each Religious Institute to protect this right once it has allowed its members to acquire it by admitting them to profession. This right is to be protected both from members who lack a vocation by excluding such members from subsequent profession and from arbitrary exercise of discretionary authority by confining discretionary authority within the law, structuring its exercise and checking its exercise.

Secondly, both the hierarchical Superior and the Signatura Apostolica are necessary remedies whenever the right to live religious life is violated through the arbitrary exercise of discretionary authority. However, more importantly, the jurisprudence of the Holy See on recourse against exclusion from subsequent profession serves as a useful guide to Religious Institutes on how to structure and check the exercise of

discretionary authority in the application of can. 689. This is important because good exercise of discretionary authority is only realized where this authority is first confined, then structured and finally checked[1].

Third, an indispensable and logical step towards eliminating possible conflicts arising from the act of exclusion from subsequent profession is by first developing structures that guard against arbitrary exercise of this faculty before making recourse to remedies for correcting violations once they have occurred.

But what does it mean to «confine», «structure» and «check» discretionary authority in relation to can. 689? The next paragraphs try to answer this question.

«Confining» discretionary authority is the process which establishes the boundaries within which discretion may be exercised and provides substantive standards to guide the exercise of discretion within these boundaries[2]. With reference to can. 689, the *CIC/1983* has confined the exercise of authority to exclude a member from subsequent profession by limiting the scope of this canon to temporary professed religious who actually lack a vocation to a given Religious Institute. It also does so by expressly excluding those who are mentally ill and those who became sick as a result of negligence of the Institute or as a result of work done in the Institute from the scope of this canon.

«Structuring» discretionary authority is a process which puts in place procedures to govern and regularize the exercise of discretionary authority[3]. Such structuring promotes systematic proceedings, reasonableness and fairness in the administrative decision-making process that both the Superior and the member can make reference to as the case may be in an instance of recourse. With reference to can. 689, guided by the principles of subsidiarity (cf. can. 587 §1), autonomy (cf. can. 586 §1) and suitability (cf. can. 653 §2)[4], the *CIC/1983* has given two general guiding criteria namely, there must be just causes and the Superior must hear the council. Through this, the *CIC/1983* gives a serious responsibility – not a choice – to each Institute to translate these general criteria into more detailed and specific guidelines and procedures in order to protect both the Superior and the members from the jeopardy of arbitrary use of discretion.

---

[1] Cf. J.P. BEAL, «Confining and structuring», 76.
[2] Cf. J.P. BEAL, «Confining and structuring», 76.
[3] Cf. J.P. BEAL, «Confining and structuring», 76.
[4] For discussion of these principles, cf. chapter III, sec. 2.1 of this study.

These two are all necessary because there are significant differences in purpose between «confining» and «structuring» discretion. First, while the purpose of «confining» discretion is to limit the area within which discretion is exercised and to keep the exercise of discretion within that area, the purpose of «structuring» discretion is to guide the manner in which discretion is exercised. Second, while «confining» discretion seeks to eliminate unnecessary discretion that may qualify the discretion as «absolute» and to provide substantive criteria to guide the exercise of necessary discretion that qualifies discretion as «administrative», «structuring» seeks to regularize the exercise of necessary discretion through procedures that insure adequate testing of the facts on which Superiors rely for the justness of the causes and for respect for the dignity of the persons affected by such decisions.

These two, therefore, together provide procedures that minimize the likelihood of disputes arising from the exercise of discretionary authority that might lead to recourse. Consequently, where either of them is lacking, chances are that there are more grievances, conflicts and disputes arising from the exercise of discretionary authority.

«Checking» discretion, on the other hand, is the process which provides means and procedures to correct abuses of discretion once they have occurred[5]. With reference to can. 689, the *CIC/1983* has provided possibilities for presenting recourse first to the internal higher authority and then to both the hierarchical authority and the Signatura Apostolica. The same *CIC/1983* however, requires that some «checking» be done at the internal governance level. This is justified by the fact that according to the spirit of the *CIC/1983*, recourse is not the most preferable remedy for conflict resolution. This view is clear from the fact that – echoing the advice of Saint Paul to the fractious and feuding church in Corinth in the first century of the Christian era (cf. 1Cor 6:1-5) – the *CIC/1983* encourages parties engaged in administrative controversies to settle their disputes among themselves without the intervention of higher ecclesiastical authority (cf. can. 1733 §1). They are urged to «seek an equitable solution by common counsel, possibly using mediation and efforts of wise persons to avoid or settle the controversy in a suitable way» (can. 1733 §1). In the judicial arena, as a general rule, there is a requirement to seek reconsideration before proposing recourse (cf. can. 1734 §§1-2). A person must seek the revocation or emendation of the

[5] Cf. J.P. BEAL, «Confining and structuring», 76.

act from its author. This recommendation seems to extend canon law's strong preference for non-litigious resolution of conflicts in the judicial arena to the administrative domain.

Moreover, in the case of grievances against application of can. 689, recourse appears not to be the best conflict resolution remedy since an Institute is never obliged to accept one as a member, when such a member is considered as lacking vocation to that particular Institute. Consequently, Religious Institutes need to put in place means that prevent such recourses that may be quite time consuming and may as well injure reputation of an Institute, especially when the aggrieved member finally opts for civil means of conflict resolution as encountered in some of the cases studied.

Given these reductions and considering the challenges faced by major Superiors in handling cases of exclusion from subsequent profession, this study considers it important to conclude with some forward-looking possibilities for handling issues arising from the implementation of can. 689.

2. **Some forward-looking possibilities**

The following are proposed as some forward-looking possibilities:

i. Formulation of general guidelines on the exercise of «administrative discretion» probably in the form of an Instruction (cf. can. 34 §1).
ii. Structuring and checking the exercise of discretionary authority to exclude a member from subsequent profession (cf. can. 587 §4).
iii. Prescribing a requirement that the *votum* of the local Superior and consultative vote of council members be motivated.
iv. A practical model for systematically gathering facts that prove the existence of causes upon which the discretionary decision is to be based.

2.1 *Formulation of general guidelines on the exercise of «administrative discretion»*

Since the *CIC/1983* does not provide any definition for «discretion» and given the dynamics of the present-day society, there is need to give some general guidelines on what kind of «discretion» is intended by the *CIC/1983* in relation to the internal governance of Religious Institutes. In particular, there is need to explicitly give an explanation of what the Church means by «administrative discretion», probably through an Instruction emanated by the Holy See (cf. can. 34 §1). Being conscious of what it means to exercise «administrative discretion» is vital for those

granted this faculty – not because of any abuse, unfairness or misuse of discretionary authority[6] – but for protection. In particular, to provide protection for both the Superiors and the members from much elusiveness which today characterizes the term «discretion» when understood in its classical sense. This elusiveness emanates from the variety and generality of the meanings suggested by the word «discretion». Webster's New International Dictionary, for instance, lists about six definitions, some of which are clearly foreign to the exercise of authority in the Church[7]. Two of these definitions describe discretion as follows:

i. «The right to choose what should be done in a particular situation». It explains it further that «something that is done at your discretion is done if, how, when, etc., you choose to do it. For example[8], each artist in the gallery has discretion over the price that will be charged for his work». According to this definition, «discretion» is understood to mean an unrestrained exercise of the will in an absolute sense.
ii. It is «the quality of being careful about what you do and say so that people will not be embarrassed or offended – that is, the quality of being discreet». For example, «he always uses care and discretion when dealing with others; she handled the awkward situation with great discretion».

These dictionary definitions – although they provide a basis for understanding «discretion» in the classical sense of the term – are juridically irrelevant. In the context of authority exercised in the Church, «absolute discretion» as given in the first definition above is generally regarded as evil. This is because for persons in authority to «freely choose what is to be done without any limitation» is equivalent to tyranny and an authoritarianism which easily gives way to dictatorship. This kind of dictatorship is incompatible with the fundamental conceptions of authority as service. Absolute discretion – like corruption –

---

[6] The challenge facing Religious Institutes in relation to the application of can. 689 is not so much about unfairness or injustices but «perception» of unfairness, since most of the grievances in the cases studied were based on supposed unfairness – without prejudice to those cases that may be genuinely unfair. Therefore, the proposal to have clarity on administrative discretion is not aimed at protection of the members from the acts of Superiors. Rather, it seeks to provide protection for all the Religious, including the Superiors, from the effects of human frailty which inclines human beings to be suspicious of the unknown and the unclear.

[7] Authority exercised in the Church is basically intended to be a service.

[8] Other examples given are: the amount each person contributes will be left to the discretion of the individual – each person will decide how much he or she will contribute.

marks the beginning of the end of reasonableness and it becomes a monster which rules with no practical limits on its discretion if left unchecked[9].

As given in the second definition above, discretion is generally regarded as a moral virtue that is expected of every human being. Though highly recommended for every leader – including Superiors – its presence or absence is juridically irrelevant. One cannot present recourse against a decision on the ground that it was embarrassing, disappointing or offensive. On the other hand, if not used with caution, such discretion easily degenerates into practically absence of leadership – the chaotic kind of leadership in which the competent authority seeks to please everyone, whereas everyone – taking advantage of this «discretion» – seeks to do whatever pleases him, even if it has nothing to do with the common purpose of the Institute. In the process, the life of the Institute is replaced with individual lives in the Institute. Gradually, the mission and vision of the Institute disappears and is replaced with personal vocations without a common purpose. Likewise, fraternal life in common is replaced with a house of convenience where one can successfully achieve personal interest. In such circumstances, even a genuine vocation is put at stake because it is no longer clear what really makes one suitable for the life of the Institute.

Juridically understood, however, «discretionary decision» is a free decision or latitude of choice within certain juridical bounds. It is the quality of having or showing discernment or good judgment – the ability to make responsible decisions. This juridical discretion operates at two levels namely, judicial and administrative. The limits of its exercise are determined by these two levels. One can, therefore, speak of «judicial discretion»[10] and «administrative discretion» in the exercise of discretionary authority[11].

---

[9] For this very reason, the Church in her wisdom legislates that even the exercise of discretionary authority is subject to review by the hierarchical Superior and the Signatura Apostolica. Such review, of course, regards only the question as to whether such discretion violated some law. But even if only limited to the questions of a violation of law, such an intervention places direct restraints on the freedom of choice which may be exercised by any religious vested with discretionary authority. It is to the jurisprudence of these organs, therefore, that one must look for practical application of the restraints upon «administrative discretion» which modifies the concept from its definition, as «unrestrained exercise of will», to its understanding as «administrative discretion exercised within the limits of law».

[10] In «judicial discretion», judges are free to exercise a degree of discretion in ancillary matters, such as determining trial dates, the order of proofs or whether to grant

«Administrative discretion» refers to the power or right conferred upon one by law to act officially in certain circumstances guided by the law and according to the dictates of one's own judgment and conscience, uncontrolled by the judgment or conscience of others. The discretion is, therefore, not wilful or arbitrary but juridical. When it is said that decision is left to the discretion of judgement, it signifies that the one deciding ought to decide according to the rules of equity whose conditions are given in law and the nature of circumstances. It can, therefore, be said that «administrative discretion» implies something narrower than wholly unrestrained exercise of the will. That is to say, it is something broader than a close adherence to the rules of law.

Consequently, the exercise of discretionary power understood as «unrestrained exercise of the will» is alien to administrative discretion. Yet, where such clarity is lacking, the religious Chapters, assuming that the discretion is absolute, may simply repeat the text of can. 689 in the proper law leaving it upon the competent Superiors to proceed as guided by the Holy Spirit. The Superiors in turn may assume the same absoluteness of discretion and suffer frustrations when members do not appreciate the burden they go through to make such difficult decisions on their own without any guideline. And with such frustrations and a feeling that they have absolute discretion to act and are, therefore, not obliged to give reasons for their decisions; they may opt to endure all the blames silently as a cross they think they have to bear as Superiors (cf. *Faciem tuam* 28). Meanwhile, the members may only perceive arbitrariness in such decisions and read mischief into such silence, because in their understanding too, «discretion» is the absolute freedom to

---

extraordinary equitable remedies. However, it must be «judicial», meaning that the judge's freedom of choice is limited by established norms and standards. *Black's Law Dictionary* – which is considered one of the trusted legal dictionaries of law definitions and terms – defines «judicial discretion» as «a liberty or privilege allowed to a judge, within the confines of right and justice, but independent of narrow and unbending rules of positive law, to decide and act in accordance with what is fair, equitable and wholesome, as determined upon the peculiar circumstances of the case, and as discerned by his personal wisdom and experience, guided by the spirit, principles, and analogies of the law». Judicial discretion, however, is outside the scope of our study and we shall not go into its details.

[11] «Discretion», in its classical sense, is abhorrent to the fundamental conceptions of justice and, therefore, is unacceptable. But the fact that the complexities of life prohibit the formulation of specific rules to cover every contingency in the exercise of administrative authority, there has arisen a concept of «judicial discretion». Within this concept courts may act. Moreover, a concept of «administrative discretion» has arisen within which those with administrative power may act.

decide according to the will of the Superior. Consequently, any misunderstanding between them and the local Superior is believed to have been the cause for their exclusion or for giving a negative *votum* to the major Superior to exclude them[12]. Such feelings generate anxiety and anxiety generates a sense of insecurity and unfounded suspicions. This atmosphere gradually makes fraternal life in a community or in an Institute unbearable both for the Superiors and the members even when no recourse is made to Apostolic See.

However, with such guidelines in place, both the Superior and the members will be reading from the same script when it comes to understanding the nature of administrative discretion as exercised by Superiors in their Institutes.

2.2 *Structuring and checking the exercise of discretionary authority*

In view of the reconciliation urged by canon 1713, it seems recommendable that Superiors and members together – adhering to the Church's counsel for a non-litigious resolution of conflicts – try to avoid as much as possible the employment of judicial or hierarchical recourse procedures against exclusion from subsequent profession. This is because religious life can never be reduced merely to minimal canonical requirements or canonical consequences and still remain relevant. Therefore, for a Religious Institute, it seems that the real concern ought to be not just whether the Superior's decision to exclude a member from subsequent profession is upheld by the hierarchical authority as valid and legitimate, but how to deal, at the Institute's level, with possible litigiousness that may arise from such decisions when they are considered unfair, let alone when they are actually fair but only perceived to be unfair. One of the most effectives ways to meet this concern is to structure and check the exercise of discretionary authority. This concern is considered vital because, given the changes in present-day society, Institutes either restructure well the exercise of discretionary authority to avoid unnecessary litigations or risk finding themselves in the civil courts when those who claim that their rights have been violated by the actions of those in authority subsequently decide to translate their grievances into civil cases for action[13]. This is especially true

[12] A good example is found in the petitioner's recourse in Case C of prot. n. 20311/88 C.A.

[13] A good example is found in Case B of prot. n. 22576/91 C.A. Cf. also the case of A (CIV) NO.2/2013 in the court of appeal of Lesotho in the Appendix.

in the cases where the formation of members and the procedures for deciding on suitability of members are also wanting. This is because such circumstances may result in the situation in which there are some members who lack sufficient maturity to live the life of the Institute. Moreover, given the wide perception that Superiors' discretion in this matter is too broad, some members may feel that it is not helpful seeking a remedy through a hierarchical recourse. Therefore, they may opt for civil appeal. Even though civil courts have absolutely no jurisdiction over the decisions of competent Church authorities in strictly spiritual matters, such as the suitability of a person for religious life, such a move cannot be ignored because it not only has the effect of propagating the widespread perception that discretionary authority is exercised arbitrarily in Religious Institutes, but also contributes to a vocation crisis. This occurs precisely because such a perception erodes respect for religious life, ignites a struggle for power in Religious Institutes and compromises the vocation to Religious life as well as the mission to promote justice.

Based on this concern, this study proposes designing mechanisms at the Institute's level that prevent occurrence of conflicts and that mediate in such conflicts once they occur. This proposal is further motivated by the fact that – although very significant and relevant for handling cases of real violation of rights and ensuring restoration of justice – recourse to the CICLSAL and the Signatura Apostolica as remedies for resolving «perceived» injustices is largely insufficient[14]. This is due to the fact that such recourse made to these organs is often surrounded by internal litigations and polarity arising from perceptions and such grievances. Such internal litigations may not be known to the hierarchical Superior who is deciding on the recourse in order to provide a resolution to the conflict so as to restore fraternal life in communion among the members of the Institute. Consequently, practical internal mechanisms for preventing abuse of limits of discretion, once such limits have been established by law, are necessary. Such mechanisms have greater potential for improving the quality of community living by making justice and fairness visible in the exercise of discretionary au-

[14] This is without prejudice to the fact that the various recourses contribute some positive results equally important, namely a better respect for procedural and substantive law when a member is being excluded from subsequent profession. This, however, is a remedy after the damage is done. The argument of this study is that an Institute requires much more preventive measures than curative remedies in order to fulfil its mission effectively.

thority to exclude a member from subsequent profession. Three such mechanisms that this study considers as most effective, among others, are described as follows:

i. Before admitting candidates to religious profession, Religious Institutes need to be more selective in the candidates they accept for first profession. They also need to be more attentive to the candidates' character and problems during the novitiate formation and be more forming. That is, they need to strive to instil the attitudes and knowledge needed for the candidates to adapt well to religious life in the Institute once professed[15].

ii. Whereas the *CIC/1983* has structured the exercise of discretionary authority in terms of general principles; Religious Institutes need to structure the exercise of discretionary authority in specific terms in the proper law with clear and detailed guidelines on how to proceed. These guidelines should concretize the general principles provided in the *CIC/1983*.

iii. Whereas the *CIC/1983* has provided for recourse to Apostolic See as a mechanism for checking the exercise of discretionary authority when all other means to conflict resolution have failed; Religious Institutes need to provide for means to internally check the exercise of this authority by developing a governance structure that effectively and operationally provides for possible harmonious recourse to a higher internal authority[16] before making any recourse to Apostolic See.

All these mechanisms work simultaneously. Consequently, even with very good and clear substantive norms in place, as long as any of these three mechanisms is lacking or is inadequate, it seems that the exercise of discretionary authority without internal litigations is an illusion, even in its exercise to exclude a member from subsequent profession.

---

[15] In one of the cases studied, within six years of temporary profession, there were three years when no one was responsible for the ongoing formation of the petitioner. It is true that a member who lacks sufficient understanding of religious life should be excluded. But in such circumstances, it seems that the Institute is responsible to some extent for the inadequate understanding manifested by such a member who unfortunately has to be excluded for the sake of fraternal life in common necessary in every community.

[16] If not well-structured, such mechanisms become sources of confusion. In one case, among the cases studied, proper law provided for such recourse, but the implementation of that provision was riddled with a lot of unhealthy negative criticism, competence conflicts and unfounded suspicions, in a manner that it became a source of conflict instead of being a means to resolving conflicts. Cf. Case C of prot. n. 20311/88 C.A.

Given the possible danger of mechanizing the process of decision-making process at the cost of the uniqueness of each particular case, one may ask the purpose for proposing detailed guidelines on how to proceed. If the purpose is to mechanize the process of decision-making or to achieve efficiency and uniformity at the cost of the uniqueness of each particular case, it would not be worth the effort. If, on the other hand, the objective is to help Institutes in the determination of a just cause – a central concept around which so many decisions and not only can. 689 revolve – then it deserves the effort. This study, therefore, considers it important to give practical reasons for structuring the exercise of discretionary authority with clear and detailed guidelines on how to proceed.

2.3 *Practical reasons for structuring the exercise of discretionary authority*

The proposal to structure the exercise of discretionary authority in the application of can. 689 is motivated and informed by the real need deriving from the challenges the Superiors face in exercising their discretionary authority to exclude a member from subsequent profession as reflected in the acts of the cases studied. It is further motivated by the jurisprudence of the Holy See that examines keenly the procedures that the Superior followed in making the decision against which recourse was presented in order to find out whether there was a violation of law either *in procedendo* or *in decernendo*. It is also motivated by other practical reasons given below.

2.3.1 The just causes requirement of can. 689

In the first place, the just causes requirement of can. 689 necessitates a systematic manner of proceeding. From the wording of can. 689, it is true that this canon does not explicitly require any formality. However, the Legislator's requirement of just causes implicitly and necessarily requires some determined systematic manner of proceeding because decisions based on just causes are governed by natural justice which requires that any decision whose outcome may adversely affect another person be based on proven facts and be communicated to the person affected. Unlike legal justice which is bestowed upon a person by a given legal system, natural justice is not contingent upon the laws, customs, or beliefs of any particular group, culture or government. Therefore, it is universal and inalien-

able[17]. It would therefore be superfluous for the Legislator to legislate for the need for some procedures in arriving at just causes because it is already implied. Moreover, whenever authority cannot act except for a cause, there exists a corresponding duty (not faculty) to act fairly. The legislator's requirement of just causes in can. 689, therefore, implies acting fairly. And, the most effective way of ensuring natural justice is through procedural fairness. Therefore, there can be no fairness without clear procedures.

Furthermore, even though preliminary decisions may not generally trigger the duty to prove that one actually acted fairly, decisions of a more final nature may have such an effect. Exclusion from subsequent profession is one such decision of a more final nature. Therefore, this canon is in no way deprived of all procedures in the general sense of the term. This study fully concurs with the view that no due process in its technical sense may be necessary. However, its argument is that even though no due process in its technical sense may be necessary, logical and systematic steps by which competent Superior arrives at just causes seems necessary.

2.3.2 The need to maintain unity of purpose among members

A second motivation for providing practical procedures is noted in the need to maintain unity of purpose among members. Clear procedures in determining just causes would help the competent Superior avoid improvisation and the suspicion of an arbitrary exercise of discretion in decisions of such magnitude which might result in application of can. 128[18] and jeopardize the unity of purpose among members. Just as it is proper for the competent authority – for the sake of the end sought by the Institute – to nurture and preserve the members who are found suitable and useful for carrying forward the mission of the Institute (cf. cann. 618-619), so it is also expedient for the same competent authority to exclude from further profession those who are found unsuitable and who, as time passes, make it evident that this is not their vocation or that their remaining in the Institute does not advance the common good (cf. can. 689). However, just as there should not be excessive readiness by authority to

---

[17] Cf. D.P. JONES – A.S. DE VILLARS, *Principles of Administrative Law*, 209; L. WOOLF – J. JOWELL – A. LE SUEUR, – AL., ed., *De Smith's Judicial Review*, 317-320.

[18] Can. 128 states that «whoever illegitimately inflicts damage upon someone by a juridic act or by any other act placed with malice or negligence is obliged to repair the damage inflicted».

admit candidates to vows without thorough examination of their suitability (cf. can. 653)[19], so there ought not to be excessive readiness after admitting them to vows to exclude them from further profession except for just causes. As a tangible manifestation of proof that just causes actually existed, a systematic manner of proceeding is necessary. For this reason, clear procedures for determining the existence of just causes should not be seen as a contradiction to the faculty of the Superior to discretionally judge suitability of a member, but rather as a true service to the Superior who makes the decision. This is because it is assumed that Superiors will be primarily interested in not only exercising the faculty, but also in exercising it in a lawful, just and timely manner, without causing any unnecessary damage.

2.3.3 Protecting competent Superiors from unnecessary frustrations and the Institute from possible damages

A third motivation is the need to protect competent Superiors from unnecessary frustrations and the Institute from possible damages caused by perceptions of arbitrariness. Since the cases studied revealed that for some Superiors, the continuing open-endedness of the concept of just causes remained a big challenge and at times a source of frustration, competence conflict and polarizing decisions, clear procedures would relieve them of such challenges. Furthermore, theoretically at least, just cause is so expansive a notion that fears are inevitably aroused about the broad discretion in determining just causes. If considered in the abstract, the prospect of unprincipled decision-making is highly unsettling both to the members and to some Superiors. And where there is no determined manner of proceeding, the members will often be at loggerheads over what makes for just causes. Leaving the determination of just causes to the discretion of a Superior without any determined manner of proceeding, therefore, leads to inexplicable results placing the Superior in danger.

2.3.4 Avoiding unnecessary litigation among Superiors and their members

The need to avoid unnecessary litigation among Superiors and their members is a fourth motivation for providing a manner of proceeding. The Church's desire to avoid contention among its members and to set-

[19] Cf. also, E. MCDONOUGH, «Conclusion of the Novitiate», 99-104; ID., «Requirements for temporary profession», 314-319.

tle conflicts as quickly as possible makes internal recourse the first most preferred avenue in administrative conflicts resolution (cf. can. 1446 §1) before the formal presentation of external hierarchical recourse. Requiring the petitioner to exhaust the available administrative remedies provides the author of the challenged act the opportunity to resolve the conflict at the local level and in light of local circumstances and internal procedures[20]. Failing in that, it encourages and provides a mechanism for mediation and/or arbitration (cf. cann. 1732-1739). If no resolution is found at the local level, the dicasteries of the Roman Curia, being specialized administrative departments, can provide relatively efficient processes, streamlined to fit the matter at hand. In this way, the administrative authority of the Church itself is given the opportunity to correct the challenged act if necessary, thereby removing the need for judicial review and avoiding the human and material costs of litigation[21]. And only if all these have failed should recourse be made to Signatura Apostolica as a last resort. Therefore, even though one is free to make recourse directly to the Signatura Apostolica, according to the spirit of the *CIC/1983*, it is not the function of the Signatura Apostolica to replace hierarchical recourse nor to provide an alternate route of appeal[22] for resolving internal conflicts. The Signatura Apostolica is seen as a supplement to hierarchical recourse and can be appealed to only after hierarchical recourse has been exhausted[23].

These mechanisms instituted by the Church imply that the mind of the Church is that any means that can lead to prevention of such litigations internally is more favourable. Moreover, the administrative discretion of can. 689 positions the Institute to protect both the competent Superiors and the members against possible jeopardy that a violation or the perceived violation of the right to live religious life can cause. This is because it implicitly permits the Institute to develop guidelines that are adopted to circumstances of the place where the Institute is located. In this way, conflicts are minimized and recourse to the hierarchical Superior and to the Signatura Apostolica would become not only the last resort but possibly a rare occurrence even when members are fully informed about the possibility of such recourse.

---

[20] Cf. A.C. AMAN – W.T. MAYTON, *Administrative Law*, 404.

[21] Cf. A.C. AMAN – W.T. MAYTON, *Administrative Law*, 404-405.

[22] Cf. Z. GROCHOLEWSKI, «La Sectio Altera», 68-69.

[23] Cf. Z. GROCHOLEWSKI, «La Sectio Altera», 69. J.A. SOUTO, «Algunas cuestiones basicas», 21.

2.3.5 The need to make members appreciate the rule of law as protective

A fifth motivating factor is observed in the need to make members appreciate the rule of law as protective and not Draconian. Inasmuch as one may argue that to the extent that a prescribed manner of proceeding is devised to aid determination of just causes, the values represented by the opportunity to exercise discretion freely begin to fade; there exists enough evidence that there is risk of damaging decisions if such discretion is not protected from possible arbitrariness. Although it is true that authorities cannot reach or express their judgments without exercising their will – since there are elements of discretion of judgment exercised by every kind of decision-making – there is a cautionary note that has a sobering relevance for anyone with the faculty to exercise discretion in decision-making. Indeed, justice demands that such exercise of discretion not be wholly unrestrained. Those who exercise authority, therefore, must evaluate the circumstances and make a reasoned and reasonable decision as required by can. 689. They can either choose to minimize the risk of damaging decisions by stripping themselves of the supposedly unlimited discretion or choose not to and increase the jeopardy of damaging decisions that may substantially distort the spirit of can. 689. In doing so, they may make the *CIC/1983* that grants this faculty to be perceived by the religious as odious and Draconian.

Moreover, the people who join Religious Institutes also possess a personal vocation. If the Institute is not to be torn apart or distracted from its proper charism while everyone follows his own vocation, there must be a moral authority to inspire these personal vocations toward the common good. The challenge is how to act above all as a moral authority – not just as a legitimate authority – which appeals to each member's sense of responsibility towards the life of the Institute. This is critical because the manner in which discretionary authority is exercised and the way in which persons affected by its exercise perceive it are not merely subjective considerations peripheral to justice. Discretionary authority perceived as unlimited can possibly create the climate in which Superiors can, in fact, be unjust, but more often, it creates a climate in which their actions are merely perceived to be unjust even if they are not. The perception of injustice, however, can easily erode the moral authority of the decisions even if its legitimacy is ascertained[24].

[24] That perceived injustice can undermine the legitimacy and moral authority of decisions of ecclesiastical officials is attested to by R. Kennedy. Cf. R. KENNEDY

And when Superiors exercise their discretion in a manner that is, in fact, unjust or when affected members and other members of good faith and reputation perceive the Superiors' discretionary decisions as unjust, the consequences of real or perceived injustice reach far beyond the individual case. The unity of purpose which is critical to the realization of the mission of the Institute is at stake. It equally makes law appear to be Draconian as opposed to protective since the faculty of discretion which they have a problem with is granted by law. Clear guidelines on how to proceed, therefore, are considered necessary because they can effectively serve as an apt instrument for the protection of the Institutes against unfortunate but possible arbitrary and capricious decisions and preserve the sanctity of law.

2.3.6 Nothing prevents following norms of procedure whenever such is deemed useful or necessary

Nothing prevents following certain norms of procedure whenever such is deemed useful or necessary because the *CIC/1983* does not prohibit such adherence to the rule of law. Moreover, even though the procedures for how Superiors should determine just causes do not exist in the *CIC/1983*, this is not unique to this canon. In the *CIC/1983*, regulations for administrative procedures in general have proven to be excessively minimal[25]. In other words, if we look only to the *CIC/1983* for procedures, no complete, unitary and clear regulation of these procedures exists in most of the acts of administration. Most of the procedural norms are left to particular and proper legislation (cf. can. 631-632). And the fact that the *CIC/1983* has provided only the most minimal procedural norms to guide the evolution of the procedure for excluding a member from subsequent profession may be purposeful, so that in the

---

«Address on due process», 16: «The problem is not that bishops or administrative authority act unfairly. The problem is that, due to lack of established structures and procedures, it is not known that people have been dealt with fairly, simply because people do not know what steps have preceded the administrative decision itself. The People of God need to know that authority hears before he acts, that there has been a fair hearing, a due process worth the dignity of Christian persons, and that whatever action is taken is consequent upon such a process».

[25] It is composed of a few indications that can be gleaned from the norms common to the administrative acts such as can. 124, some other norms that establish requisites to be fulfilled by the authority before taking a decision such as a request for opinions or advice or for hearing determined person (cf. can. 127) and a few norms that discuss procedure among the canons on singular decrees and rescripts (cf. cann. 50, 51, 54, 55, 56 and 57).

absence of universal norms to govern the procedure, Institutes are free to enact proper procedural norms to structure the process of excluding a member from subsequent profession in a way that is sensitive to local conditions, circumstances and resources. This is an obvious application of the principle of subsidiarity.

2.4 *Putting in place a requirement that consultative and decisive votes be motivated in specific terms*

Given that the actual exercise of discretion itself is an internal act of the will, it cannot be restrained by laws which operate in the external forum. It must be restrained by the very internal acts of the mind and the will. One such act of the mind and the will is reflection. Giving specific reasons for one's opinion or decision necessarily requires some reflection. Therefore, it is recommendable that Religious Institutes adopt the practice of giving consultative vote and decisive vote based on specific causes. This proposal is based on the fact that giving reasons based on specific causes calls forth some reflection to guide the decision or opinion-making process. Therefore, a reflected exercise of the will is not an «unrestrained exercise of will». Personal reflection act as means to minimize the possible inconsistencies[26] and personal frailties[27] that may possibly come into

---

[26] For instance, in one of the cases, the Superior General during a visitation was given favourable evaluation on the petitioner by the petitioner's local Superior and community members which actually reflected suitability, only to be informed by the provincial Superior shortly after the canonical visit that the same member had been excluded from subsequent profession due to unsuitability. Cf. Report of the Superior General on the petitioner in Case A of prot. n. 16811/84 C.A.

[27] Such frailties were witnessed in most of the cases studied in which councillors kept giving contradictory opinions on the petitioners leading to inconsistencies which made the petitioners believe that the decisions to exclude them from subsequent profession were arbitrary and unjust. For instance, in one case, throughout the time of temporary profession, the petitioner received all favourable consultative votes, only to be given an unfavourable vote and be considered unsuitable when due for perpetual vows. The council then explained that the petitioner had manifested signs of unsuitability from the time of novitiate. The fact that the petitioner showed signs of unsuitability from the novitiate appeared only in the response of the Superior to the Holy See after recourse had been launched. Such is not found in communications between the petitioner and the competent Superiors before the recourse to the Holy See, not even in the Decree of exclusion. Cf. Superior's response to the recourse in Case A of prot. n. 16811/84 C.A. The questions one may raise in such a case, however, are (i) why were councillors giving favourable consultative vote and at times contradictory opinions within a very short time that portrayed the petitioner as unsuitable, then suitable

play in such opinions and decisions. It is worth noting here that consultative and/or decisive votes are not the same as a collegial vote. Consequently, one report of reasons compiled by the competent Superior and duly signed by all councillors seems inappropriate in the application of can. 689 for such practice seems to convert consultative vote into a collegial vote[28].

Giving reasons based on specific causes is further considered useful because of the process that «facts» pass through before the final decision to exclude a member from subsequent profession. The «facts» upon which the competent major Superior bases his decision are not the «facts» as they occurred, but are rather the «facts» as understood by the major Superior from the presentation made to him by the local Superior. Therefore, if such causes are given in general terms, one cannot ignore the possibility of their generality being disputed. In addition, even though such disputes may be juridically irrelevant, they are potentially significant in destroying that which the law stands to protect, namely, the vocation of members and the fraternal life in communion[29]. For this reason, we conclude this section with a proposal of a model for systematic manner of proceeding in arriving at just causes. This model is considered useful due to the fact that one of the effective ways of avoiding consequences of real or perceived arbitrariness is by acting systematically, guided by some consistent guidelines.

---

and then again unsuitable; and (ii) why were the competent Superiors admitting the petitioner to subsequent renewal of vows without ever making it clear to the petitioner that there were certain behaviours that the petitioner needed to make progress on, otherwise, he risked being excluded, such that the petitioner was gradually prepared for the eventuality in case there was no significant improvement.

[28] There was a case in which a council member, having given unfavourable consultative vote on the petitioner, said that the vote was influenced by the provincial Superior who had insisted that they had to give a unanimous decision in that case. Cf. Acts of Case C of prot. n. 20311/88 C.A. This is a clear case where the council members did not take personal responsibility for their consultative votes but instead acted collegially.

[29] The acts of the cases studied revealed that due to inconsistencies, lack of clarity, giving too general reasons and competence conflicts, there arose factions within some Institutes of those who were on the side of the Superior General, those for the provincial Superior and those for the petitioner. At some instances, even the non-members got involved in favour of some petitioners. Even though every person has a responsibility to guard against injustices and violation of rights, such involvement also demonstrates how inconsistencies, lack of clarity, giving general reasons can create a situation where the Superior can be perceived, even by people of good faith, to be acting arbitrarily and this may generate mistrust, feelings of unfairness and discord in an Institute.

2.5 *Proposed model for a systematic gathering of facts that demonstrates that just causes for exclusion exist*

In order for just causes for exclusion to be arrived at, the major Superior needs to have put together[30] all the facts available prior to any discretionary judgement. This allows him to acquire sufficient arguments upon which to base his judgement. Sources of these facts include the following:

i. Opinions of the local Superiors who forward their report on members due for renewal of vows or perpetual vows to the competent major Superior.
ii. Past records of members normally kept in the provincial private archives.
iii. The member's own view about his vocation, normally given in form of self-evaluation, in addition to his request for admission to subsequent profession.

The systematic gathering of facts can be summarized in the following steps.

2.5.1 Step I: Local Superior forwards the report to the competent major Superior

When the local Superior has exhausted possible pastoral solicitude to help a member who seems to be showing signs of unsuitability, the matter is forwarded to the competent major Superior for consideration together with other reports on all other members under his charge who are also due for renewal of vows or perpetual vows. In the case of a member deemed unsuitable, which is the focus of this study, the report of the local Superior may include but not limited to the following:

i. The nature of the incompatible behaviour or causes proving incompatibility.
ii. The attempts so far made by the local Superior to help the member realize that his behaviour is incompatible with the life of the Institute.
iii. The concerned member's response to such attempts and proof of such response.

These details are important for determining the existence of just causes because the local Superior does not actually decide on the exclu-

[30] «Putting together facts» is not the same as investigation that is reserved to judicial process. This is simply organizing and studying facts already available in order to see whether they amount to just causes for exclusion from further profession or not.

sion of a member from subsequent profession but forwards the case which he feels needs the attention of the major Superior who alone is competent to decide to exclude a member from subsequent profession when just causes exist and after hearing the council but who may not be living in the same community with the member in question.

2.5.2 Step II: Identifying the provisions governing the matter

Once the competent major Superior has received the local Superior's reports, he studies them and identifies those with negative reports. He also identifies those who although have positive reports from the local Superior, he has some confidential information about them which are not known to the local Superior. He studies the reasons and other facts sent by the local Superior on such members and identifies the provisions governing the matter by considering the relevant constitutional provisions on the matter at hand, that is, is it a case of unsuitability or an offense, for example. He considers the «directives» of supplementary codes on how to proceed in such matters, if such are available, and reflects on the «practice» of the Institute in such cases. The term ***directive*** here refers to written guidelines by the Institute – also referred to by some Institutes as the Directory – to assist Superiors in their administrative tasks in making lawful, fair and consistent decisions[31]. The term ***practice*** refers to unwritten guidelines based on the way particular types of decisions have been made previously in the Institute. A directive must be consistent with the common law and Constitutions; and a practice must be consistent with common law, Constitutions and directives.

2.5.3 Step III: Examining past records of a member

Since, in principle, can. 689 is concerned with suitability, the objective of can. 653 §2 read together with cann. 655 and 642 seems to suggest that can. 689 cannot be applied instantaneously but that it requires a reasonable period of time for verifying suitability. Consequently, determination as to whether one has a vocation to a given Religious Institute begins right from the day that one joins the Institute. Discernment of vocation continues as long as one remains a member of the Institute. Therefore, one important place to turn to for more facts is past records of the member in question. But this will only bear fruit if records are accurately kept by the Institute[32].

---

[31] Cf. M. JOYCE – AL., ed., ***Procedural handbook***, 10.

[32] With reference to the archive, in line with respect for human dignity, no record unknown to the member should be kept in a member's record. He does not necessarily

Generally speaking, accurate record-keeping is an important component of good administrative practice for two reasons. First, it enhances the prudential discretional judgement by providing decision-makers with detailed information upon which to base their judgement. Second, it assists Superiors to prepare a comprehensive statement of reasons establishing how a particular decision was arrived at in the event that the decision is challenged in any forum.

Records should be made simultaneously or as soon as practicable following the communication, event or action to which they relate[33] and for authenticity, they need to be duly signed. With particular reference to can. 689, past records help to verify suitability by considering a member's progress since the time of novitiate[34]. Therefore, the period within which to determine if a cause is just begins to run from the time one joined the Institute (cf. can. 642). When one is admitted to first profession, it means that one has been judged suitable for the life of the Institute (cf. can. 653 §2)[35]. If there is any doubt[36], even just a slight one, it is advisable never to admit one to vows in the first place (cf. can. 653 §2)[37]. Once admitted to vows, when one is allowed to renew vows,

---

need to be consulted in order to have records about him kept; but he needs to be informed about any record being placed in his file. Such information is normally verified by the presence of a notification letter with a date of notification and duly signed by both the Superior keeping the record in a member's file and the member in whose file the record is kept.

[33] For instance, a record dated one month or more after an oral communication raises questions of its authenticity and veracity of its content.

[34] Given that Superiors leave office with the expiry of their term of office and that members may be transferred from one community to another, the local Superior forwarding the case may not have all the details about the member in question. It, therefore, seems justified that the competent Superior to decide upon the unsuitability is the major Superior who alone, during his term of office, has access to all the records of all members as found in the private archive. A private archive contains confidential information about members that are only accessed by competent Superiors and those permitted by Competent Superiors to access them for just reasons. General archive contains general information about the Institute. It is accessible to every member. Such information include history of the Institute or of the founders and the mission of the Institute among others.

[35] Cf. E. MCDONOUGH, «Requirements for temporary profession», 314-319.

[36] «Doubt» here regards a vocation to the life of the Institute, which is not synonymous with weaknesses, transitional immaturity or mistakes that can be overcome with necessary ongoing formation programmes. These latter do not render one unsuitable; they only reveal the need for more formation and guidance.

[37] In one of the cases studied, a candidate who was already considered unsuitable and the Institute had already decided that the candidate was to be excluded from first

one is further judged suitable for life in the Institute (cf. can. 657 §1)[38]. If there are doubts, one is already being prepared for eventualities by pastoral solicitude and appropriate remedies including bringing to the member's notice the fact that he is showing some signs that are not compatible with the life of the Institute and such might eventually lead to his exclusion if there is no significant progress observed. It is for this reason that just causes for exclusion demand that past records be reviewed in determining the suitability of a member and the proportionality of the decision to be made. But, on the other hand, when such determination takes too long, it may make it difficult to justify the proportionality of the causes to the decision and raise questions as to why the Institute was not able to identify the unsuitability of the member for such a long time. And it would be a scandal if – in spite of the exhortation by the Legislator that the Institute is to observe canonical equity[39] and the charity of the Gospel towards a member who is separated from it (cf. can. 702 §2) – such a member is excluded without any proper means to help him earn a living.

2.5.4 Step IV: Hearing the member

Considering the fact that the competent major Superior more often is at a distance away from the house where the member in question is assigned, he may be acting on a reported case in which he has no first-hand information. Consequently, justice demands that the member be heard by the competent major Superior before any decision is made. It violates the dignity of the human person to make a decision affecting the status of life of a person who has not been heard, considering that this person is only presumed to be unsuitable for life in this given Institute but he is still a human being. Moreover, a «just cause» requirement implicitly incorporates giving the opportunity to the person directly affected by the decision to be heard before a final decision is made.

Listening here is not just allowing a member to talk while the judgement is already made in the mind of the decision-maker, but it is listening in good faith. During this hearing, the competent Superior takes particular care to genuinely address the affected member's major concerns,

---

profession, was admitted to profession because the parents of the candidate intervened. Cf. Response of the Superior to the recourse in Case C of prot. n. 20311/88 C.A.

[38] Cf. E. McDonough, «Renewal of vows», 432-437.

[39] For more information on canonical equity, cf. V.R. Uy, «The Principle of equity» 65-106.

since even in this hearing, he is on a mission to save a soul who though may not be suitable for life in this particular Institute, is capable of reaching perfection and finding true happiness elsewhere if well-guided; and, this is the ultimate purpose of law in the Church, namely, the ***salus animarum*** (cf. can. 1752).

2.5.5 Step V: Verification of the doubtful facts

After putting together all the facts available and having heard the member, the competent Superior might see the need to verify some facts. This applies to the claims made by the member in which there may be need for clarity. For instance, in the case of illness, the Superior must verify whether it was due to the negligence of the Institute or not. And where a medical expert's report[40] is required, the competent Superior must obtain this. This also applies to any other facts in the record that may appear not to be clear to him. Collecting such preliminary data may be delegated to the local Superior or any other member deemed capable, even from another house if need be, depending on the sensitivity of the matter. Even though not stated in the *CIC/1983* and even if not given in proper law, as a matter of common sense, if the local Superior is also the only source of evidence to the facts submitted to the major Superior for consideration, someone else should collect the evidence needed to verify the facts. This verification is helpful because the competent Superior needs to make an informed decision since his decision is binding. Yet the competent Superior who decides on exclusion is a major Superior who in most cases does not live in the same house with the member in question.

2.5.6 Step VI: Hearing the council

Once the competent major Superior has all possible facts in place, he hears the council. Cf. ch. III sec. 4.4 of this study for a discussion on this.

2.5.7 Step VII: Discretionary deciding on the suitability of the member

The competent major Superior, having heard the council, weighs the matter before the Lord and discretionally judges the suitability of the member. In discretionary judgement, the competent Superior considers the incompatible conduct within the given circumstances. He does so in

---

[40] Physical or psychic illness of can. 689 §2 cannot be claimed as just causes for non-admission to further profession without help of such experts.

order to determine whether the causes result in the practical impossibility for one to remain a member of the Institute, or they are symptoms of some other limitations that can be remedied by pastoral solicitude, ongoing formation or other remedies. In the latter case, even though the misconduct exists, a member is nevertheless suitable.

If in his judgement, a member's behaviour does not warrant exclusion from subsequent profession, but there is need for help, the member is admitted to subsequent profession. However, the need is communicated to the member and other appropriate pastoral solicitude or remedies may be used to help the member overcome the weakness, resolve the problem or correct the questionable behaviour. And records of such pastoral remedies are kept for future reference when evaluating the progress of such a member.

If the competent Superior discretionally decides that just causes exist for not admitting a member to subsequent profession, he communicates the decision to the member.

2.5.8 Step VIII: Communicating the decision

For information on communicating the decision to the member, cf. ch. III, sec. 4.6 of this study.

Exclusion from subsequent profession is an act that causes anxiety and pain even to those who are rightfully and procedurally excluded. Therefore, exclusion can easily provoke hierarchical recourse even without a just cause whenever members are aware that such recourse is possible. Consequently, competent Superiors need to take safety measures throughout this process. Such measures include the following:

i. Keeping good records by documenting every step, indicating – as the competent Superior moves on – that this is the specific step he is taking; even citing the pertinent legislation both in the *CIC/1983* and the proper law.
ii. Following all canonical requirements rigorously and if there are specific details in the proper law, such should not be ignored at will.
iii. After following right procedures to get consultative vote, the Superior ensures that the vote has been properly recorded in the official minutes.
iv. Having proof of notification of the decisions, so that the starting point for time limits is certain, in the event recourse is made after the expiry of the peremptory time limit.
v. Being clear in his communication with the member about what he is doing and why he is doing it, especially when making a decision.

The clear statement of the specific reasons for his decision, expressed in the written decision itself, is his primary defense in case of recourse against that decision.

vi. Even though the nature of the decision in can. 689 does not call for it, when communicating the decision taken, it is not bad to indicate the possibility of having recourse and indicating the relevant time limits. Such openness can help diffuse hostility and suspicion and build confidence in members that their issues are being handled in good faith.

vii. A Superior needs to try to accept recourse against his decision gracefully, even if it is not offered gracefully, and always respond to the issues with facts and firmly and not to the personalities of the persons challenging the decision[41].

Once these steps have been completed and a decision is made legitimately and communicated, the member must accept the decision or decide to present recourse against the decision; if the latter occurs, then the Superior needs to prepare the proofs. In preparing proofs, he proceeds in the manner given below.

3. How the Superior need to prepare proofs once recourse is made to the internal higher authority or to the Holy See

The Superior needs to respond to the specific issues raised in the recourse and give the broader background appropriately. This is necessary because the recourse may be narrowly focused on one aspect or issue without concern for the broader context in which the decision was made since the member making recourse is only concerned with what he feels is not fair to him. A well-motivated decision is the best defense and is good enough once all the procedures have been followed. However, it is helpful to explain further those reasons given in the decision itself while responding to a recourse. As a general rule, focus is to be placed on the issues, not on the person who has made the recourse.

With the response the competent Superior needs to send the necessary documentation to prove and illustrate his defense, making sure that it is all legible if it is handwritten, well-organized and relevant. If he, as the

[41] An example was found in the cases studied, in which in some instances, requests and responses were made to the Signatura Apostolica in a very ungraceful manner, but the Signatura Apostolica responded very gracefully, responding to the issues firmly but with facts rather than to the personalities of the persons involved in the case. Cf. Case B of prot. n. 22576/91 C.A.

author of the decision, does not take time to remove irrelevant materials, put things in a logical order of events as they unfolded during the gathering of facts and decision-making process, and identify the more important documents, he should not expect the higher authority (especially at the Holy See) to be able to do so and make sense out of chaotic proofs. Since not all Institutes have a clear system of archive-keeping at all levels of governance and since Superiors come and go when their term of office ends, with each having his own way of keeping members' records, it is not surprising that at times such records can be chaotic. It is not, therefore, helpful just to photocopy everything in the file of a member who has made recourse and send to the Holy See. The Superior needs to send only what is relevant. He can seek the help of a good canonist in identifying what is relevant to case if he is not certain.

On the other hand, he should avoid sending too little documentation. When studying a case from a distance, it can be very frustrating to come across references to documents that have not been included among the documents sent to the Holy See. Such omissions may also prolong the process unnecessarily when the Holy See has to keep asking for missing documents and waiting for them to be sent and then have to set another date for examining the case.

At this moment, two questions may arise as to whether going to Rome to present one's case adds value to the case and whether such a recourse has a suspensive effect while the case is pending.

4. **Going to Apostolic See in person**

Throughout the examination of the recourse, it seems sufficient enough to communicate with the hierarchical Superior and the Signatura Apostolica through the local Papal Representative such as the Apostolic Nuncio or by reliable post mail. Going to the Holy See and being able to speak to some official of the dicastery or the Tribunal whether as the author of the decision or as the aggrieved party, does not seem to add any effect to the outcome of the recourse other than possibly create some suspicion on the side of the party who did not go to Rome. This seems so, given that the administrative examination of recourse is a documentary procedure and the parties or their advocates do not argue the case in person before the dicastery[42] whereas in the Tribunal of the Signatura Apostolica, every party must be represented by procurator-advocate. All these seem to sug-

[42] Cf. J. PUNDERSON, «Hierarchical recourse», 38-39.

gest that a well-written and well-documented recourse is of much more help than a personal visit to the Holy See.

5. **Suspension of the execution of the challenged decision**

The answer to the question of suspensive effect is negative in principle[43]. Like all juridic acts, individual administrative acts and all other administrative decisions that share most elements of administrative acts are presumed to be valid and licit if they are «placed correctly with respect to its external elements» (can. 124 §2). Consequently, recourse against an administrative act and such decisions do not normally result in the automatic suspension of the execution of the challenged decision[44], as does the appeal of a judicial sentence (cf. can. 1638) and in a few exceptions to the general norm[45]. Recourse against exclusion from subsequent profession is, therefore, non-suspensive unless granted in proper law for recourse to the higher internal authority[46] or by the Holy See[47].

---

[43] «In principle» because suspension of the execution of the act can be granted either by the administrative authority who issued the challenged act or by his hierarchical Superior after considering the circumstances of the case. Therefore, the petition to the author of the act or decision for reconsideration is presumed to include a petition for the suspension of its execution (cf. can. 1736 §1). Nevertheless, since administrative authorities may not be aware of the subtleties of the law, the aggrieved party would be well-advised to include in his petition for reconsideration an explicit request for suspension of the execution of the act.

[44] Historically, as with other types of appeals, the effect of *appellatio extraiudicialis* was – except for a few types of cases – to suspend the execution of the impugned administrative act if it had already been issued or to bar the issuance of the act if it had not. Cf. C. LEFEBVRE, «De recursibus administrativis», 198-201. Concerned that the suspensive effect of extrajudicial appeals was causing great confusion among the faithful, hobbling the administration of justice, and having adverse consequences on bishops' effort to promote the common good of the Church, the Council of Trent considerably expanded the catalogue of cases for which an extrajudicial appeal did not suspend the execution of impugned decrees. Cf. for example, COUNCIL OF TRENT (1545-1563), Decr. *Super reformatione*, Sess. 13, can. 1; sess 14, can. 4; sess. 22, can. l; sess. 24, can. 10. It is this expansive interpretation that we find in the *CIC/1983*.

[45] There are three exceptions to this general rule. Recourse does suspend the execution of (i) a decree by which a penalty is imposed extrajudicially (cf. can. 1353); (ii) a decree dismissing a religious from his Institute (cf. can. 700); and (iii) a decree removing a pastor from his office. Cf. PONTIFICAL COMMISSION FOR AUTHENTIC INTERPRETATION OF THE CODE OF CANON LAW, response, 1 July 1971, *AAS* 63 (1971) 860, n. II.

[46] «Se il religioso stima di essere espulso ingiustamente, può far ricorso ai superiori interni di grado più elevato; dopo di che, se crede di non aver avuto giustizia, può continuare il ricorso alla Congregazione per gli Istituti di Vita Consacrata e le Società

6. **Conclusion**

This chapter has presented deductions and the proposed forward-looking possibilities based on the findings of the study. The study found out that most of the disputes arising from the application of can. 689 are grounded on «perceived» injustices – and not actual violations of law – due to inconsistencies, lack of clarity and giving general reasons in the process of applying can. 689, and probably as a result of a *lacuna* in proper law, all of which cannot be resolved by making recourse to the Supreme Tribunal of Signatura Apostolica. Such reasons challenging the merit of the case can only be effectively addressed by the internal authority of the Institute and, to some extent, by the hierarchical Superior.

In a Religious Institute in which all members are active participants in the life and mission of the Institute, the potential for tension and conflict between members and their Superiors as a result of such «perceptions» is exponentially greater even where no law has been violated. And this potential is a concrete reality in everyday life and was clearly reflected in the cases studied. The significance of such conflicts – even though they arise more from perceptions than real facts – cannot be ignored or minimized even when there is no recourse presented to the Holy See or even in cases where no law has been violated and the Holy See has made a decision in favour of the competent Superior who made the decision. Such conflicts bear on the concrete capacity for members to fulfil their obligations as Religious and to witness to their consecration. Consequently, it seems that every Institute has a responsibility not only to put proper procedures in place in order to facilitate the administration of justice in cases of recourse, but also to design mechanisms for preventing such conflicts as much as possible. To this effect, this study has proposed forward-looking possibilities for minimizing[48]

---

di Vita Apostolica; e se anche dai summenzionati dicasteri riceve risposta negativa, può proseguire il ricorso alla Segnatura Apostolica. Ma il ricorso non è in sospensivo, salvo contraria disposizione del diritto proprio per quanto riguarda il ricorso ai superiori interni», A. CALABRESE, *Istituti di vita consacrata*, 291-192.

[47] An example of such grant by the Holy See is found in SSAT, Decree, 24 Aug. 1989, prot. n. 20311 B/88 C.A.

[48] «Minimizing», because in every society – including Religious Institutes – there will always be those extreme cases that claim injuries even where there is none. Consequently, even with such well designed structures, there will still be recourses made to the hierarchical authority. But the difference lies in the fact that, unity of purpose of an Institute will not be jeopardized by such extreme cases when members are generally aware of how their systems operate and they have confidence in them.

possibilities of internal conflict arising from the exercise of discretionary authority to exclude a member from subsequent profession as follows:

i. Formulation of general guidelines on the exercise of «administrative discretion».
ii. Structuring and checking the exercise of discretionary authority to exclude a member from subsequent profession.
iii. Prescribing a requirement that consultative and decisive votes be motivated in specific terms.
iv. A practical model for a systematic gathering of facts necessary to determine the existence of just causes.

CONCLUSION

To facilitate the practical solutions to the problem of determining suitability of members, the *CIC/1983* in can. 655 provides legislation for temporary profession. In particular, it requires that the profession of vows be renewed at the expiry of the period before perpetual vows. Likewise, in can. 689, it provides for the exclusion from subsequent profession at the expiry of temporary profession when just causes exist.

However, as was stated in the introduction of this dissertation, application of these two canons poses a number of challenges. Experience has shown that there is difficulty in understanding the concept of «temporary profession» given that there seems to be a theological contradiction which raises the question as to what exactly is the essence of this «temporariness» if one commits himself to the service of God for life when making his first profession of vows? In the application of can. 689, universal law leaves it at the discretion of the competent major Superior to determine the lack of suitability of a member. This discretion is based on the assumption that Superiors will use their authority responsibly. Human beings in their historical existence, however, are both spiritual and human. Therefore, there is a possibility that assumption will not be met. Being a process whose strength and uniqueness appears to lie solely in the personal responsiveness of the decision maker – the Superior – whose discretional judgement in a decision of such gravity can possibly be unconsciously influenced by other factors such as suspicions, assumptions, fears and other frailties of human nature, questions are further raised as to how does the law support and protect superiors who are bound in conscience in such delicate decisions and members who are the subjects of such decisions.

Guided by these questions, a number of conclusions can be drawn from the examination, observations and analysis undertaken in this study. In chapter one, from the examination of the selected Church documents and writings of the Monastic Fathers, the study reveals that

the norms governing temporary profession and the faculty to exclude a member from subsequent profession are a result of a long historical evolution. From this finding, the study concludes that in order to understand the significance of temporary profession and the faculty to exclude a member from subsequent profession for just causes as well as the *ratio legis* for cann. 655 and 689, one must necessarily study what the Church has been teaching on temporary profession of vows in Religious Institutes throughout history. In order to adequately do so, it is necessary to adopt an interdisciplinary methodological approach within the context of theological-canonical tradition. A mere exegetical approach is not very helpful.

The study found out that the doctrine on temporary religious profession finds its remote origin in the religious profession of simple vows of the scholastics and coadjutors of the Society of Jesus in the sixteenth century. Pope Gregory XIII formally recognized the simple vows of the Society of Jesus as public vows and those who professed them as authentic and true religious. These simple vows were perpetual on the part of the religious but tacitly conditional on the part of the Society. And they were practiced with an aim of giving enough time for proper discernment of vocation and determination of suitability. Considering the needs of time, through various Church documents – consistently and explicitly repeating the nature and character of simple vows as perpetual on the part of the one professing but temporary on the part of the Institute – the privilege of the Jesuits to temporarily profess simple vows became a requirement for all male Orders. Eventually, the obligation to profess simple vows under penalty of nullity of the solemn profession was established and finally the obligation was extended to all religious, both men and women, and to this was added that those in temporary vows could be dismissed for just and reasonable causes. The *CIC/1917* when in force gave clear guidelines on exclusion from subsequent profession, stipulating the just cause requirement, the competent Superior, the procedure to be followed and the juridical effects of such exclusion.

Since the prescriptions of the documents emanated before the promulgation of the *CIC/1917* applied *expressly* to those who were temporarily professed with simple vows in both Orders and Congregations in preparation for profession of solemn vows, this study concludes that the discipline of these documents – in addition to the *CIC/1917* – can be considered as the sources of the norms in the *CIC/1983* with regard to temporary profession, exclusion from subsequent vows, the Superior

authorized to exclude a member from subsequent vows, the causes necessary to justify exclusion and the effects deriving from such exclusion.

In chapter two, while presenting Vatican Council II and post-conciliar documents issued prior to 1983 and focusing closely on temporary profession of vows and exclusion from subsequent profession, the study found out that religious life is born as a need for a personal response to the Lord's call. Consequently, before any religious consecration through profession of vows, there must be a call to religious life. Therefore, for any profession to have its theological effects, there must be a divine call first which is followed by a response by the one called who then joins the Religious Institute to which he is called. This response concludes with the consecration by God during religious profession through the ministry of the Church. From these findings, the study concludes that where there is no divine call, the response is faulty and religious profession does not have any theological effect even though it may produce the juridical effects of incorporating the one professed into the Institute and, thereby, bestowing rights and obligations which lasts as long as such a lack of vocation is not yet evident.

In chapter three, in the exploration of the legislations of the *CIC/1983* on temporary profession and exclusion from subsequent profession, the study found out that the *CIC/1983*, based on both the teaching of Vatican Council II and the canonical doctrine, establishes that temporary profession is a total donation of the whole life of a person which is intentionally (virtually, implicitly) perpetual. It is only under this condition – not otherwise – that the vows are accepted by the Church according to the spirit of *CIC/1983*. This intended perpetuity, for the one professing as well as for the Institute which accepts the profession, form part of the very essence of the vows professed in a Religious Institute. Therefore, regarding the notion of consecration brought about by religious profession, the term «consecration» does not designate the ceremony in which the professed, while expressing the total gift of self, through the ministry of the Church receives from the minister, «a spiritual consecration or blessing». Rather, the «consecration» connected with the profession of the evangelical counsels, is a moral reality, consisting of a specific orientation of life and action. It is an act by which some reality or actions are reserved exclusively to God and are directly dedicated to Him. It, therefore, consists in establishing a relationship with God according to his will which is manifested to each individual person. To consecrate oneself to God through religious profession – whether temporary or perpetual – is equivalent to committing

oneself to behave before God in accordance to what one perceives as his will. Such a solemn covenant and consecration, as well as the divine blessing that accompanies it, is irrevocable and the Church has been consistent in her teachings on this. Consequently, theologically, it is impossible for one who gives himself totally in response to God's call to go back to the world. Therefore, all who make profession – whether temporary or perpetual – consecrate themselves totally to God.

Accordingly, the study concludes that according to the mind of the Church, temporary profession is a total donation of self, a true consecration of life intentionally definitive. Therefore, by temporary profession, one becomes an authentic religious. And the «temporariness» of profession is a juridical element which is a consequence of the need to juridically address the fact that maturation is a gradual process and, therefore, there is a possibility of one being admitted to vows who actually lacks a vocation. Logically – and observing the principle *de internis non iudicat Ecclesia in foro externo* – it follows that a professed religious may become fully aware during the period of temporary vows and after some progress in personal and spiritual maturation, that God is not calling him to religious life or to life in a particular Institute. Such a religious is not just free to leave, but has a moral obligation to leave in order to find where he is called to serve. Remaining in such a state is futile because, in the one who is not called, God's graces do not yield any fruit and in the long run, such a member becomes disruptive since he lives a life that is not in consonance with God's will for him. Such a moral obligation necessarily requires freedom in order not to place an unbearable burden of guilt on the conscience of one who must leave due to his lack of a vocation. Moreover, the expiry of vows juridically sets a member free from the juridical effects of profession given that even where there is lack of vocation, the act of profession produces its juridical effect in the one professing.

In addition, while studying the basic elements of temporary profession of vows, the study found out that the motive for the period of temporary profession is not merely to give the candidates sufficient opportunity to acquire the necessary maturity for assuming the obligations of vowed life, as well as giving the Institute time enough to decide on the suitability of the candidate. Rather and, more importantly, this period allows the young professed religious enough time to assimilate and deepen that in which religious identity consists, without any prudent doubt on the authenticity of their vocation. From this finding, the study concludes that there is a very close connection between the temporary profession period

and the suitability of members. The effectiveness of formation during the period of temporary profession helps to identify those who lack a vocation early enough so that they can be excluded from subsequent profession. And more importantly, it gives the young religious an opportunity to assimilate and deepen that in which religious identity consists. This is important since it helps the young religious to attain religious maturity so that those who are actually suitable do not lose their vocation as a result of lack of necessary religious maturity required to live religious life. Given that growth and maturity are gradual, a newly professed religious is not expected to have attained full maturity for all the obligations of religious life at the time of first profession. Rather, he must have been judged as being capable of progressively doing so in order for him to have been admitted to vows. To be able to fully mature up and for the Institute to be able to evaluate that capacity justifies the time and means given to do so during the temporary profession period. Consequently, fostering the young religious' deeper knowledge of their divine vocation is one of the main goals of the temporary profession period. And discerning and proving suitability of members is one of the main tasks entrusted to the director of temporary professed religious, other collaborators in formation of the members and the competent Superiors. Therefore, the more effective the formation at this period, the more members will understand better religious life and appreciate fraternal life in common, and the less will be conflicts arising from decisions to exclude members deemed unsuitable from subsequent profession.

Another conclusion derived from the finding is that formation during the period of temporary vows is more necessary today because of the manner in which children and young people are raised. The challenge many young people face today is not immaturity of age or even intellect, but that of inadequate disposition for formation to religious life. Their socialization process has led them to acquire many ideologies some of which are in fact incompatible with religious life and consequently negate Christian values. As a result, they experience a more serious disposition gap which, if not attended to, easily makes them become unsuitable. Consequently, the challenge to nurturing a vocation to religious life is even greater than in the past because there is a need for a radical transformation from ideologies already acquired in order to allow for the attainment of a proper disposition for religious maturity. This is so because the response to mission as a religious goes beyond the boundaries of rationality and mere human logic. The real challenge today for determining and nurturing suitability of members, therefore,

lies in how to ensure that the young religious are well disposed. This is because, unless they are well-disposed, even a very good formation programme with excellent formators is unlikely to meet the objective of initial formation. This is for the reason that the full development of religious values and Christian sanctity in a soul is inconceivable if a man or woman does not start out with a healthy mind, well-balanced in its activities. Moreover, spiritual formation to religious life is also inconceivable if one does not start from a predisposed mind and heart. This implies that any deficiency in the disposition would be an obstacle to assimilating and deepening that in which religious identity consists and a hindrance to reaching the necessary religious maturity.

In chapter four, in the analysis of the jurisprudence of the Holy See in dealing with recourse against exclusion from subsequent profession, the study found out that while the development of the theology of consecration and of vocation has contributed to clarity in the understanding of temporary profession and the faculty to exclude a member who lacks vocation from subsequent profession and it has also clarified the seriousness and soberness with which a competent Superior needs to proceed in the exercise of this faculty; the jurisprudence reveals that there are serious practical challenges in the application of can. 689. It also found out that, even though this development in theology has further clarified how critical is the selection of candidates to religious life, their formation and the determination of their suitability for the growth, fructification and stability of a Religious Institute; the experience – as reflected in the recourse cases studied – shows that such critical factors are not always given the seriousness they deserve and, as a result, the discretionary decision to exclude a member from subsequent profession often results in considerable conflicts within and outside the Institute. The study also observed that more often the excluded member is more deeply affected by the decision even if just causes actually exist. Given the juridical effects of exclusion from subsequent profession, this observation is not surprising. The study further observed that some of these challenges could be addressed by adopting – with necessary adaptations – the jurisprudence of the Holy See.

Accordingly, four conclusions can be drawn from the findings and observations of this study which have just been summarized. In the first place, the mechanisms the Church has put in place as possible means of addressing conflicts arising from the decision of the competent Superior to exclude a member from subsequent profession are necessary and helpful. This is because the very existence of a possibility of presenting re-

course encourages the Superiors entrusted with discretionary authority in Religious Institutes to exercise that authority in a prudent and deliberate manner, with due regard for the requirements of the *CIC/1983* and equity, and ultimately for the perfection of charity. In addition, the experience of recourse presented against a decision to exclude a member from subsequent profession can help some Superiors gain a better mastery of how certain issues are best addressed and how certain canonical actions are to be carried out procedurally. The same experience can also help canonists working directly with the Religious Institutes to develop their skills in assisting Superiors and their members to work for peaceful resolution of grievances and conflicts. These procedures, when known and followed, can be an effective means to avoiding most suspicions and perceived arbitrariness in the exercise of discretionary authority, thereby, promoting unity of purpose and fraternal community living in Religious Institutes.

Secondly, given that these mechanisms, are delimited in their scope in that they can only address real violations of law since the hierarchical Superior and the Supreme Tribunal provide juridical solution, there must be some law in place even in the Directory – not necessarily in the *CIC/1983* or in the Constitutions – that is violated whenever recourse is made to the Holy See. In the presence of a *lacuna* in the proper law on how to proceed in determining just causes, any complaint about a lack of just causes for exclusion translates into a mere «perception». To expect the hierarchical Superior or the Supreme Tribunal of the Signatura Apostolica to rule against a decision in such a situation is to expect them to act in an arbitrary manner. It, therefore, seems that can. 689 places the responsibility upon each Religious Institute to have proper law in place in order to facilitate administration of justice.

Third, most of the disputes arising from the application of can. 689 are grounded on «perceived» injustices – and not actual violations of law – due to inconsistencies, lack of clarity and giving general reasons in the process of applying can. 689, and probably as a result of a *lacuna* in proper law. This makes the cases in which recourse is presented appear to be challenging basically the opportuneness, the prudence and the appropriateness of the decision when there is no law violated. The Supreme Tribunal should not be expected to solve the actual practical problems on the ground as a result of perceived arbitrariness because that would be expecting the Tribunal to act arbitrarily. Such reasons challenging the merit of the case can only be effectively addressed by the internal authority of the Institute and, to some extent, by the hierar-

chical Superior. However, in a Religious Institute in which all members are active participants in the life and mission of the Institute, the potential for tension and conflict between members and their Superiors as a result of such «perceptions» is exponentially greater. And this potential is not an abstract possibility raised by a cranky academic but a concrete reality in everyday life as was clearly reflected in the cases studied. So, the significance of such conflicts – even though they arise more from perceptions than real facts – cannot be ignored or minimized, for they bear on the concrete capacity for members to fulfil their obligations as Religious and to witness to their consecration. Consequently, it seems that every Institute has a responsibility not only to put proper procedures in place in order to facilitate the administration of justice in cases of recourse, but also to design mechanisms for preventing such conflicts as much as possible. To this effect, this study in chapter five proposed forward-looking possibilities for minimizing possibilities of internal conflict arising from the exercise of discretionary authority to exclude a member from subsequent profession as follows:

i. Formulation of general guidelines on the exercise of «administrative discretion».
ii. Structuring and checking the exercise of discretionary authority to exclude a member from subsequent profession.
iii. Prescribing a requirement that consultative and decisive votes be motivated in specific terms.
iv. A practical model for a systematic gathering of facts necessary to determine the existence of just causes.

Finally, given the nature of religious life, there can never be universal standards for addressing challenges experienced by all Religious Institutes. However, it is hoped that this dissertation has accomplished its intended purpose to shed more light on the challenges experienced in understanding the concept of temporary profession and the application of can. 689. It is also hoped that it will prove helpful to anyone seeking to deepen their understanding of the concept of temporary profession and the application of can. 689 in the decision to exclude a member from subsequent profession, especially – but not exclusively – the Superiors of Religious Institutes and their members.

APPENDIX

An appeal against exclusion from subsequent profession
C of A (CIV) NO.2/2013

IN THE COURT OF APPEAL OF LESOTHO
In the matter between

REV. FR. JOSEPH SEPHAMOLA O.M.I	1st Appellant
PROVINCIAL COUNCIL	2nd Appellant
REV. RAMOSA J. SALOOE O.M.I	3rd Appellant
FORMATION TEAM OBLATES OF MARY IMMACULATE	4th Appellant
OBLATES OF MARY IMMACULATE	5th Appellant

and

BROTHER METHODIUS T. PONYA Respondent

CORAM: SCOTT JA
HOWIE JA
HURT JA

Heard 2 April 2013
Delivered 19 April 2013

Summary

Review – entitlement to a hearing of a temporary member of a religious order before excluding him from renewing his vows – Court's power to intervene where the religious order in question fails to abide by the tenets of natural justice – the failure to hear the respondent before excluding him conflicted with such tenets and was reviewably irregular.

Judgment

HOWIE JA

[1] The respondent completed his sixth year as a student religious in the Oblate Scholasticate of the Oblates of Mary Immaculate at Maseru and was due to renew his annual vows on 24 January 2013 preparatory to his final year of religious study.

[2] Renewal required an application by him, which he duly made. In response he received a letter from the Major Superior, the Reverend Father Sephamola, dated 19 December 2012 informing him that his request for renewal had been declined. The decision so to decline was taken by Father Sephamola.

[3] As a result, the respondent went to see Father Sephamola, (also designated the Provincial Superior) who read to him from a written report of findings adverse to the respondent in relation to various misconduct allegations. The report, dated 16 December 2012, had been compiled by the Reverend Salooe with the assistance of members of Scholasticate. The report concluded with the recommendation that the respondent not be permitted to renew his vows, which recommendation was the basis of Father Sephamola's decision.

[4] Before the contents of the report were disclosed to him, the respondent was unaware of the report or its recommendation and before receipt of Father Sephamola's letter he was unaware that the decision to decline his request for renewal had been taken.

[5] On the ground that that decision was irregularly taken without first affording him the opportunity to be heard, the respondent succeeded in moving the High Court (Chaka - Makhooane J) for an order reviewing and setting the decision aside, the cited respondents being Father Sephamola, the Oblates' Provincial Council, Reverend Salooe, the Scholasticate's Formation Team and the Oblates (a juristic person) itself. Consequent upon that order, all the then respondents now appeal. For convenience I shall call them the appellants.

[6] Broadly put, the appellants' case is that as and when various misconduct accusations against the respondent emerged during 2012 he was questioned about them by members of the Oblates. However, apart from ascertaining his responses on those occasions, no provision of canon law, as incorporated into the rules of the Oblates, entitled him to be heard further whether before a report concerning his suitability for Oblate life would be compiled, or before his exclusion from further profession of vows was decided upon. In short, the appellants' argument was that the respondent's continuing membership of the Oblates was governed by contractual principles which made no provision for what natural justice might require.

[7] The record and the respondent's heads of argument on appeal each contain excerpts from the Code of Canon Law, with accompanying commentary. It would be a matter for diverting debate to essay conclusive findings on the

question whether and to what extent Canon 689 of that law, which deals with exclusion of a member from subsequent profession, requires or accommodates application of the ***audi alteram partem*** principle. In my view it suffices for the decision of the appeal to invoke the decision of this Court in Lesotho Evangelical Church v Pitso L.A.C (1990 – 1994) 474. An order of the Church involved in that matter purported to oust the jurisdiction of the courts but it was held (at 480E – 481B) that even if the parties to an agreement creating the domestic tribunal of a voluntary association can in certain respects exclude the jurisdiction of the courts, they cannot do so in all circumstances. More particularly they cannot do so where the act complained of is against the principles of natural justice.

[8] In the present case the respondent had completed six years of training and had one more year to complete. Exclusion from subsequent profession would render the completed years wasted and cause a substantial disruption of his chosen way of life. The allegations against him were serious and involved accusations of dishonesty and moral reprehensibility. In all the circumstances natural justice required that he be afforded a hearing before the accusations were accepted, the report acted upon and the decision excluding him pronounced.

[9] The decision of the High Court was accordingly right and the appeal must fail.

[10] As to the costs of appeal, the appellants sought costs in the event of their success and there is no good reason not to order costs against them now that the appeal has failed.

The appeal is dismissed, with costs.

_____

C. T. HOWIE
Justice of Appeal

I agree _____

D. G. SCOTT
Justice of Appeal

I agree _____

N.V. HURT
Justice of Appeal

For the Appellants : Adv. T. Matooane KC
For the Respondent: Adv. K. J. Nthontho

ACRONYMS AND ABBREVIATIONS

AAS	*Acta Apostolicae Sedis*
AS	*Acta synodalia sacrosancti Concilii Oecumenici*
AG	COUNCIL OF VATICAN II, Decr. *Ad gentes*, 7 Dec. 1965, *AAS* 58 (1966) 947-990.
AkKR	*Archiv für katholisches Kirchenrecht*
AL.	et alii
Alloc.	*Allocutiones*
Apoll.	*Apollinaris*
Ap. const.	Apostolic constitution
Ap. exhort.	Apostolic exhortation
Ap. lett.	Apostolic letter
Art(s).	article(s)
ASS	*Acta Sanctae Sedis*
BIZZARRI	BIZZARRI, A., ed., *Collectanea in usum secretariae Sacrae Congregationis Episcoporum et Regularium*, Romae 1885.
BR	*Bullarium romanum*
C.	Codex
C.A.	Contentiosus Administrativus
Can./cann.	Canon(s) of *CIC/1983*
CD	COUNCIL OF VATICAN II, *Christus Dominus*, Decr., 8 Oct. 1966, *AAS* 58 (1966) 673-696.
CDF	The Congregation for the Doctrine of Faith
Cf.	confer with
Ch(s)	Chapter(s)
CICLSAL	Congregation for Institutes of Consecrated Life and Societies of Apostolic Life.
CIC	*Codicis Iuris Canonici*
CICFontes	*Codicis Iuris Canonici Fontes*
Circ. lett.	Circular letter
CLD	*The Canon Law digest*
CLSA	Canon Law Society of America
Clem.	Clementinae

COD	*Conciliorum oecumenicorum decreta*
Comm	*Communicationes*
CpR	*Commentarium pro religiosis et missionariis*
D	Digesta
DEC	*Decrees of the Ecumenical Councils*
Declar.	Declaration
Decr.	Decree
DIP	ROCCA, G. – PELLICCIA, G., *Dizionario degli Istituti di perfezione*, I, VI, VIII, Roma 1974-2003.
DSP	LEVILLAIN, P. – SABA SARDI, F. – BOUTRY, P., *Dizionario storico del papato*, I-II, Milano 1996.
DTVC	GOFFI, T. – PALAZZINI, A., *Dizionario teologico della vita consacrata*, Milano 1994[2]
EE	*Essential elements*
Encycl.	Papal encyclical
Encykl. Katolicka	GRANAT, W. – AL., ed., *Encyklopedia katolicka*, IV, Lublin 1973-2014.
ES	*Ecclesiae sanctae*
ET	*Evangelica testificatio*
EVC	LORA, E., ed., *Enchiridion della Vita Consacrata. Dalle Decretali al rinnovamento post-conciliare* (*385-2000*), Milano 2001.
EV	LORA, E. – TESTACCI, B. – AL., ed., *Enchiridion vaticanum. Testo ufficiale e versione italiana*, Bologna 1980-2015.
Exegetical Comm	*Exegetical Commentary on the Code of Canon Law*
Extrav. Jo	Extravagantes [D.] Iohannis [Papae] XXII
Forum	*Philippine Canonical Forum*
GS	COUNCIL OF VATICAN II, *Gaudium et spes*, Past. const., 7 Dec. 1965, *AAS* 58 (1966) 1025-1115.
Id	Same author as the previous
IE	*Ius Ecclesiae*
Inf. SCRIS	*Informationes SCRIS*
Instr.	Instruction
IusCan	*Ius Canonicum*
Jurist	*The Jurist*
LE	*Leges Ecclesiae post Codicem Iuris Canonici editae*
LG	COUNCIL OF VATICAN II, *Lumen gentium*, Dog. const., 21 Nov. 1964, *AAS* 57 (1965) 5-75.
Le Canoniste	*Le Canoniste contemporain ou la discipline actuelle del'Église*
Lib.	libro
MANSI	MANSI, G.D., ed., *Sacrorum Conciliorum nova et amplissima collectio*, Florentiae 1759-1767, Venetiis 1769-1798.
ME	*Monitor Ecclesiasticus*

MR	*Mutuae relationes*
n. (nn.)	number(s)
OCE	*Original Catholic Encyclopedea*
OT	COUNCIL OF VATICAN II, *Optatam totius*, Decr., 28 Oct. 1965, *AAS* 58 (1966) 713-727.
PC	COUNCIL OF VATICAN II, *Perfectae caritatis*, Decr., 28 Oct. 1965, *AAS* 58 (1966) 702-712.
Periodica	*Periodica de re canonica*
PG	*Patrologiae cursus completus. Series Graeca*
PI	*Potissimum institutioni*
PK	*Prawo Kanoniczne*
PO	COUNCIL OF VATICAN II, *Presbyterorum ordinis*, Decr., 7 Dec. 1965, *AAS* 58 (1966) 991-1024.
PCCICR	Pontificia Commissio Codici Iuris Canonici Recognoscendo
PL	*Patrologiae cursus completus. Series latina*
Prot. n.	Proticol number
q (qq)	Question(s)
RD	*Redemptionis donum*
Rescr.	Rescript
Resp.	Response
RH	*Redemptor hominis*
RfR	*Review for Religious*
RI	*Religiosorum institutio*
S. Th.	*Summa Theologica*
SCDCS	*Schemata constitutionum et decretorum de quibus disceptabitur in Concilii sessionibus*
SCIC	*Schema Codicis Iuris Canonici*
SCRSI	Sacred Congregation for Religious and Secular Institutes
Sess.	Session
SSAT	*Supremum Signaturae Apostolicae Tribunal*
StCan	*Studia Canonica*
t	tomes
tit.	Title
Transl.	Translation
VAR	Variae
VC	*Vita Consacrata* (journal)/Ap. Exhort. Vita consecrata
VI°	*Liber Sextus*
X.	*Liber Extra*
§	paragraph

BIBLIOGRAPHY

1. **Primary Sources**

1.1 *Documents of Particular and Ecumenical Councils*

COUNCIL OF AGDE, can. 38, in *EVC*[1] 16.

COUNCIL OF ANCIRA, can. 19, in MANSI II, 513-522.

COUNCIL OF AUXERRE, can. 26, in MANSI IX, 914.

COUNCIL OF CHALCEDON, cann. 4, 16, in *DEC*, 75-103.

COUNCIL OF CARTHAGE I, cann. 3-4, in MANSI III, 143-151.

COUNCIL OF CARTHAGE IV, can. 104, in MANSI III, 959.

COUNCIL OF ELVIRA, cann. 13-14, in MANSI II, 8.

COUNCIL OF LATERAN I, can. 21 in *DEC* I, 194.

COUNCIL OF LATERAN II, cann. 6-8, in *DEC* I, 198.

COUNCIL OF LATERAN IV, const. 13, in *DEC* I, 242.

COUNCIL OF LYONS II, can. 23, in *DEC* I, 326-327.

COUNCIL OF MAINZ, can. 26, in MANSI XVIII, 71-72.

COUNCIL OF ORLEANS I, cann. 1, 21 in MANSI VIII, 355.

COUNCIL OF ORLEANS V, can. 19, in MANSI IX, 133.

COUNCIL OF ROME, ch. 3 in MANSI XII, 263.

COUNCIL OF TARRAGONA, can. 11, in MANSI VIII, 543.

COUNCIL OF TOLEDO IV, cann. 52-53 in MANSI X, 631-632.

COUNCIL OF TRENT, sess. XXV, Decr. *De regularibus et monialibus* 3-4 Dec. 1563, in *COD* 660-799.

COUNCIL OF TRIBUR, cann. 12-13, in MANSI XVIII, 144-145.

[1] References to *EVC* are made to numbers and not pages.

COUNCIL OF TRULLO, can. 47, in *EVC*, 30.

COUNCIL OF VALENCE, can. 2, in MANSI III, 491-492.

COUNCIL OF VANNES, can. 7, in MANSI VII, 954.

COUNCIL OF WORMS, cann. 20-23, in MANSI XV, 873.

COUNCIL OF VATICAN II, *Ad gentes*, Decr., 7 Dec. 1965, *AAS* 58 (1966) 947-990.

———, *Christus Dominus*, Decr., 8 Oct. 1966, *AAS* 58 (1966) 673-696.

———, *Gaudium et spes*, Past. const., 7 Dec. 1965, *AAS* 58 (1966) 1025-1115.

———, *Inter mirifica*, Decr., 4 Dec. 1964, *AAS* 56 (1964) 97-138.

———, *Lumen gentium*, Dog. const., 21 Nov. 1964, *AAS* 57 (1965) 5-75.

———, *Optatam totius*, Decr., 28 Oct. 1965, *AAS* 58 (1966) 713-727.

———, *Perfectae caritatis*, Decr., 28 Oct. 1965, *AAS* 58 (1966) 702-712.

———, *Presbyterorum ordinis*, Decr., 7 Dec. 1965, *AAS* 58 (1966) 991-1024.

———, *Sacrosanctum Concilium*, Const., 15 Feb. 1964, *AAS* 56 (1964) 97-138.

———, *Acta Synodalia sacrosancti Concilii Oecumenici Vaticano II*, I-V, Civitas Vaticana 1970-1999.

———, *Schemata constitutionum et decretorum de quibus disceptabitur in Concilii sessionibus*, I-IV, Civitas Vaticana 1962-1963.

1.2 *Pontifical Documents*

ALEXANDER III, *Meminimus*, Lett., X. 4, 6, 3.

ALEXANDER VII, *Sacrosancti apostolatus*, Const., 8 Jan. 1666, in *BR* XVII, 411-412.

ALEXANDER VIII, *Ex commissa nobis*, Const., 22 Sept. 1655, in *BR* XVI, 67-69.

BENEDICT XIII, *Pretiosus*, Const., 25 May 1727, in *BR* XXII, 522-554.

BENEDICT XIV, *Convocatis*, Const., 25 Nov. 1749, *CICFontes* II, 402.

———, *Cum sacrarum*, Encycl., 1 Jun. 1741, *CICFontes* I, 310.

———, *Quamvis justo*, Const., 30 Apr. 1749, *CICFontes* II, 398.

———, *Regularis disciplinae*, Const., 3 Jan. 1742, *CICFontes* I, 322.

BENEDICT XVI, *Ad Supremos Moderatores et Moderatrices Institutorum Vitae Consecratae et Societatum Vitae Apostolicae*, Speech, 22 May 2006, *AAS* 98 (2006) 455-458.

———, *Antiqua ordinatione*, Motu proprio, 21 Jun. 2008, *AAS* 100 (2008) 513-538.

BENEDICT XVI, *Expergiscere homo*, Speech, 22 Dec. 2005, *AAS* 98 (2006) 40-53.

BONIFACE VIII, *De statu regularium*, *CIC* II, VI° 3, 16, 1.

———, *Quod votum*, Decr., *CIC* II, VI° 3, 15, 1.

CLEMENT VIII, *Ex quo divina*, Const., 13 Oct. 1595, in *BR* X, 227-229.

———, *Exposcit debitum*, Const., 23 Dec. 1597, in *BR* X, 411-413.

———, *Nullus omnino* § 12, Const., 25 Jul. 1599, in *BR* X, 662-673.

CLEMENT XI, *Ex debito pastoralis*, Const., 3 April 1710 in *BR* XXI, 385-387.

CLEMENT XII, *Admonet nos*, Const., 11 Jan. 1735, in *BR* XXIV, 70-74.

FRANCIS, *Evangelii gaudium*, Ap. exhort., 24 Nov. 2013, *AAS* 105 (2013) 1019-1137.

———, *To all consecrated people on the occassion of the year of consecrated life*, Ap. lett., 12 Nov. 2014, *AAS* 106 (2014) 935-947.

GREGORY X, *De Religiosis domibus*, Decr., 4 May 1298, *CIC* II, VI° 3, 17, 1

GREGORY XIII, *Ascendente Domino*, Const., 25 May 1584, *CICFontes* I, 153.

———, *Quanto fructuosius*, Const., 1 Feb. 1583, *CICFontes* I, 150.

GREGORY XV, *In Supremo apostolatus*, Const., 3 Nov. 1621, in *BR* XII, 608-609.

———, *In Supremo apostolatus*, Const., 3 Nov. 1621, in *BR* XII, 627-628.

———, *Inscrutabili*, Const., 5 Feb. 1622, in *BR* XII, 656-659.

INNOCENT III, *Insinuante*, Lett., *CIC* II, X. 4, 6, 7.

INNOCENT XI, *Ecclesiae catholicae*, Const., 29 Mar. 1687 in *BR* XIX, 735.

INNOCENT XII, *Ex debito pastoralis*, Const., 20 May 1700, in *BR* XX, 931-934.

INNOCENT XIII, *Apostolici ministerii*, Const., 23 May 1723, in *BR* XXI, 934-938.

JOHN XXII, *De religiosis domibus*, 2 Jan. 1317, *CIC* II, Extrav. Jo. XXII 7, 1.

JOHN XXIII, *Humanae salutis*, Ap. const., 25 Dec. 1961, *AAS* 54 (1962) 5-13.

———, *Questa festiva*, Alloc., 25 Jan. 1959, *AAS* 51 (1959) 65-69.

JOHN PAUL II, Briefing, 21 Nov. 1983, *L'Osservatore Romano*, 21-22 Nov. 1983, 4.

———, *Christifideles laici*, Ap. exhort., 30 Dec. 1988, *AAS* 81 (1989) 393-521.

———, *Iustus iudex*, Motu proprio, 28 Jun. 1988, *AAS* 80 (1988)1258-1261.

———, *Pastor bonus*, Ap. const., 28, Jun. 1988, *AAS* 80 (1988) 841-934.

———, *Redemptionis donum*, Ap. exhort., 25 Mar. 1984, *AAS* 76 (1984) 513-546.

JOHN PAUL II, *Redemptor hominis*, Encycl., 4 Mar. 1979, *AAS* 71 (1979) 257-324.

———, *Regolamento generale della Curia romana*, 30 April 1999, *AAS* 91 (1999) 629-699.

———, *Sacrae disciplinae leges*, Ap. cost., 25 Mar. 1983, *AAS* 75 (1983) VII-XIV.

———, *Vita Consecrata*, Ap. exhort., 25 Mar. 1996, *AAS* 88 (1996) 378-486.

LEO XIII, *Conditæ a Christo*, Const., 8 Dec. 1900, *ASS* 33 (1900-1901) 341-347.

NICHOLAS I, cann. 3, 6, in MANSI XV, 433-443.

PAUL V, *Ad ea*, Const., 6 Mar. 1617, in *BR* XII, 382.

PAUL VI. Allocution, 21 Sept. 1974, *AAS* 66 (1974) 542-545.

———, Allocution, 6 June 1975, *AAS* 67 (1975) 375-380.

———, *Cum admotae*, Rescr., 6 Nov. 1964, *AAS* 59 (1967) 374-378.

———, *De Episcoporum muneribus*, Motu proprio, 30 July 1966, *AAS* 58 (1966) 467-472.

———, *Ecclesiae Sanctae*, Motu proprio, 6 Aug. 1966, *AAS* 58 (1966) 757-787.

———, *Evangelica testificatio*, Ap. exhort., 29 Jun. 1971, *AAS* 63 (1971) 497-526.

———, *Magno gaudio*, Alloc., 23 May 1964, *AAS* 56 (1964) 565-571.

———, *Pastorale munus*, Motu proprio, 31 Jan. 1964, *AAS* 56 (1964) 5-12.

———, *Regimini ecclesiae universae*, Ap. Const., 15 Aug. 1967, *AAS* 59 (1967) 885-928.

PIUS V, *Circa pastoralis*, Const., 29 May 1566, *CICFontes* I, 112.

———, *Decori*, Const., 1 Feb. 1570, *CICFontes* I, 133.

———, *Lubricum vitae genus*, Bull, 17 Nov. 1568, in *BR* VII, 725-726.

———, *Romanus Pontifex*, Const., 14 Oct. 1568, *CICFontes* I, 129.

PIUS IX, *Ad universalis ecclesiae*, Ap. lett., 7 Feb. 1862, *CICFontes* II, 532.

———, *Ubi primum arcano*, Encycl. lett., 17 Jun. 1847, in BIZZARRI, 816-820.

PIUS X, *Dei providentis*, Motu proprio, 16 Jul. 1906, *CICFontes* III, 675.

———, *Sapienti consilio*, Ap. const., 29 Jun. 1908, *AAS* 1 (1909) 7-19.

PIUS XI, *Quadragesimo anno*, Encycl., 1 Jun. 1931, *AAS* 23 (1931) 177-232.

PIUS XII, Allocution, 1 April 1946, *AAS* 38 (1946) 141-151.

———, *Annus sacer* n. I, Alloc., 8 Dec. 1950, *AAS* 43 (1951) 26-36.

———, *Haud mediocre*, Alloc., 11 Feb. 1958, *AAS* 50 (1958) 153-161.

PIUS XII, *Nous vous*, Alloc., 15 Sept. 1952, *AAS* 44 (1952) 823-826.

———, *Primo feliciter*, Motu proprio, 12 Mar. 1948, *AAS* 40 (1948) 283-286.

———, *Provida Mater*, Ap. const., 2 Feb. 1947, *AAS* 39 (1947) 114-124.

———, *Sedes sapientiae*, Ap. const., 31 Mar. 1956, *AAS* 48 (1956) 354-365.

———, *Sponsa Christi*, Ap. const., 21 Nov. 1950, *AAS* 43 (1951) 5-21.

———, *Venerabilis Frater*, Lett., 12 Nov. 1950, *AAS* 43 (1951) 24-26.

SIXTUS V, *Ex omnibus*, Const., 18 Mar. 1586, in *BR* VIII, 669.

1.3 *Documents of the Roman Curia*

APOSTOLIC PENITENTIARY, 1 Dec. 1820, in BIZZARRI, 739.

APOSTOLIC TRIBUNAL OF THE ROMAN ROTA, Sententiae, 25 Mar. 1957, *Monitor Ecclesiasticus* 82 (1957) 417-426: English transl. in *CLD* V, 381-382.

CONGREGATION FOR BISHOPS[2], *Index facultatum quinquennalium ordinariis locorum tributarum*, 1 Jan. 1968, *CpR* 51 (1970) 179-181.

CONGREGATION FOR CLERGY, *Excalceat. SS. Crucis et Passionis D. N. I. C. Pro declaratione Super translatione ususfructus*, 15 Sept. 1837, in BIZZARRI, 74-75.

———, *Super privilegiis*, 16 Sept. 1864, in BIZZARRI, 740-746.

CONGREGATION FOR THE COUNCIL, Decree, 21 Sept. 1624, §§3-9, *CICFontes* V, 2454.

———, Decree, 24 July 1694, *CICFontes* V, 2942.

CONGREGATION FOR DIVINE WORSHIP AND THE DISCIPLINE OF THE SACRAMENTS, *Professionis ritus*, Decr., 2 Feb. 1970, *AAS* 62 (1970) 650-667.

CONGREGATION FOR THE DOCTRINE OF THE FAITH, *Normae. Antequam causam*, 13 Jan. 1971, *AAS* 63 (1971) 303-308.

CONGREGATION FOR THE EVANGELIZATION OF PEOPLES[3], *Formula facultatum decennalium. Ordinariis locorum in territoriis missionum tributarum*, 1 Jan. 1971, *CpR* 52 (1971) 270-273.

---

[2] This congregation was established by Sixtus V with the Const. *Immensa* of 22 Jan. 1588, under the name of *The Congregation for the erection of churches and Consultations*, then it changed into that of the *Sacred Consistorial Congregation*. Pius X with the Const. *Sapienti consilio* of 29 Jun. 1908 expanded its powers, assigning to it competence formerly belonging to other congregations (of Bishops and Regulars, the Council and the Holy Office) and abolished commissions. With the Ap. Const. *Regimini ecclesiae universae* of 15 Aug. 1967 Paul VI changed the name to *The Sacred Congregation for Bishops* with new specification of its powers.

CONGREGATION FOR THE EVANGELIZATION OF PEOPLES, Letter, 20 Jun. 2014, prot. n. 2482/14.

———, Letter, 28 Nov. 2013, prot. n. 4741/13.

———, *Quum in foederatis*, Decr., 15 Dec. 1840, *CICFontes* VI, 4786.

CONGREGATION FOR INSTITUTES OF CONSECRATED LIFE AND SOCIETIES OF APOSTOLIC LIFE[4], *Auctis admodum*, Decr., 4 Nov. 1892, *CICFontes* IV, 2020.

———, *Capuccinoum*, 10 March 1650, *CICFontes* IV, 1790.

———, *Circa acceptationem saecularizationis vel dispensationis votorum*, 1 Aug. 1922, *AAS* 14 (1922) 501.

———, *Circa decretum* «*Inter reliquas*», Resp., 15 Jul. 1919, *AAS* 11 (1919) 321-323.

———, *Circa professionem votorum simplicium*, 19 Mar. 1857, in BIZZARRI, 736-737.

———, *Clausura papalis cum votis simplicibus*, 6 Dec. 1839, in BIZZARRI, 88-89.

———, *Congregationis Presbyterorum*, Rescr., 16 Sept. 1864, *CICFontes* IV, 1993.

———, *Congregavit nos*, Doc., 19 Feb. 1994, *EV*/14, 345-537.

———, *Cum aliquando*, Resp., 5 Feb. 1925, *AAS* 17 (1925) 107.

———, *Cum Superiores*, Decr., 27 Nov. 1969, *AAS* 61 (1969) 738-739.

———, «Dati statistici. Sulle defezioni dei religiosi e delle religiose di voti perpetui dipendenti della "SCRIS", Decennio 1969-1978», *CpR* 61 (1980) 258-263.

———, *De auxilio praebendo*, Decr., 25, Jan. 1974, *EV*/5, 34-41; *CpR* 55 (1974) 73-75.

---

[3] *The Congregation for the Evangelization of Peoples* was established by Gregory XV with the Bull *Inscrutabili divinae providentiae* (22 Jun. 1622). Until 1982 it was known as *The Congregation for the Propagation of the Faith* or *Propaganda Fide*.

[4] Founded by Sixtus V on 27 May 1586 with the title *Sacred Congregation for Consultations about Regulars*, and confirmed by the Constitution *Immensa* (22 Jan. 1588), the Congregation was joined in 1601 to the *Congregation for Consultations about Bishops and Other Prelates*. Pius X, by the Constitution *Sapienti consilio* (29 Jun. 1908) separated the two institutions again and, placing the Bishops under the Consistorial Congregation, made the *Congregation for Regulars* autonomous. By the Constitution *Regimini ecclesiae universae* (15 Aug. 1967) of Paul VI, the Congregation for Regulars was named the *Sacred Congregation for Religious and Secular Institutes*. The Apostolic constitution *Pastor bonus* (28 Jun. 1988) of John Paul II changed the title to *The Congregation for Institutes of Consecrated Life and Societies of Apostolic Life*.

CONGREGATION FOR INSTITUTES OF CONSECRATED LIFE AND SOCIETIES OF APOSTOLIC LIFE, *De religiosorum institutione seu de novitiatu et votis temporariis. Coetus plenarius 25-26 Jun. 1968*, Prot. n. 1483/67, Consultationes apud superiores generales, VI, I, pars II, I, in archivo CIVCSVA 48-49.

———, *De Trappensium*, Decr., 24 Mar. 1837, in BIZZARRI, 73-74.

———, Declaration, 4 Jan. 1910, *AAS* 2 (1910) 36.

———, Declaration, 5 April 1910, *AAS* 2 (1910) 231-232.

———, Declaration, 19 May 1948, *EVC* 2142-2143.

———, Declaration, 7 Feb. 1862, *CICFontes* IV, 4387.

———, Decree, 20 Sept 1840, in BIZZARRI, 451-453.

———, Decree, 3 sept. 1987, prot. n. 71620/87.

———, Decree, 4 Mar. 1988, prot. n. 71620/87.

———, Decree, 16 Mar. 1989, prot. n. 71620/87.

———, Decree, 17 Jan. 1991, prot. n. 17202/90.

———, *Disceptatio synoptica*, 4 Feb. 1870, *ASS* 9 (1876) 153-161.

———, *Dubium circa professionem religiosorum laicorum in ordinibus regularibus*, Resp., 6 Oct. 1919, *AAS* 11 (1919) 420.

———, *Dum canonicarum*, Decr., 8 Dec. 1970, *AAS* 63 (1971) 318-319.

———, *Ecclesia Christi*, Decr., 7 Sept. 1909, *AAS* 1 (1909) 700-701.

———, *Essential elements*, Instr., 31 May 1983, *Origins* 13 (1983) 133-142.

———, «Expositio et petitio Unionis Superiorum Generalium ad Sacram Congregationem de Religiosis, 8 Dec. 1967», *CpR* 48 (1969) 284-287.

———, *Extābant*, 21 Apr. 1841, in BIZZARRI, 463-464.

———, *Experimenta circa*, Decr., 2 Feb. 1972, *AAS* 64 (1972) 393-394.

———, *Faciem tuam. The service of authority and obedience*, Instr., 11 May 2008, *Origins* 38 (2008-2009) 65-83.

———, «I religiosi nel mondo (statistiche al 31-12-1975)» *Inf. SCRIS* 1 (1975) 208-211; 2 (1976) 126-129, 260-261.

———, «I religiosi nel mondo (statistiche al 31-7-1975 e al 31-7-1980)», *Inf. SCRIS* 6 (1980) 363-368.

———, *Inter reliquas*, Decr., 1 Jan. 1911, *AAS* 3 (1911) 37-39.

———, Letter, 10 July 1984, prot. n. 60879/84.

———, Letter, 22 aug. 1984, prot. n. 60879/84.

———, Letter, 3 Sept. 1987, Prot. n. 71620/87.

———, Letter, 25 March 1991, prot. n. 17202/90.

CONGREGATION FOR INSTITUTES OF CONSECRATED LIFE AND SOCIETIES OF APOSTOLIC LIFE, Letter, 11 Jan. 2011, prot. n. 41483/2010.

———, *Methodus servatur in approbandis novis institutis votorum simplicium*, 22 Sept. 1854, in BIZZARRI, 772-773.

———, *Neminem latet*, Encycl., 19 Mar. 1857, *CICFontes* VI, 4381.

———, *Nemo est*, Decr., 19 Jun. 1750, *EVC*, 544-545.

———, *Normae* secundum quas sacra congregatio de religiosis in novis religiosis congregationibus approbandis procedere solet, 6 Mar. 1921, *AAS* 13 (1921) 312-319.

———, *Ordinis S. Benedicti*, 13 May 1904, *CICFontes* IV, 2048.

———, *Parisien*, Decr., 1 Aug. 1839, *CICFontes* IV, 1923.

———, *Perpensis*, Decr., 3 May 1902, *CICFontes* IV, 2039.

———, *Potissimum institutioni*, Direct., 2 Feb. 1990, *AAS* 82 (1990) 470-532.

———, *Pluribus*, Decr., 15 Jul. 1843, in BIZZARRI, 104.

———, *Pluribus*, Lett., 30, Sept. 1864, *CICFontes* IV, 1995.

———, *Quantum religiones*, Instr., 1 Dec. 1931, *AAS* 24 (1932) 74-81.

———, *Quum singulae*, Decr., 16 May 1911, *AAS* 3 (1911) 235-238.

———, *Regulari disciplinae*, Decr., 25 Jan. 1848, *CICFontes* VI, 4376.

———, *Religionum laicalium*, Decr., 31 May 1966, *AAS* 59 (1967) 362-364.

———, *Religiosorum institutio*, Instr., 2 Feb. 1961, *EVC*, 3451-3508.

———, *Renovationis causam*, Instr., 6 Jan. 1969, *AAS* 61 (1969) 103-120.

———, Rescript, 16 Aug. 1866, in *Collectanea* 866-867.

———, Response, 14 Apr. 1939, *CpR* 20 (1939) 213-214.

———, Response, 17 Nov. 1975, in *LE*[5], V, 4415, 7085.

———, Response, 21 Jul. 1748, *CICFontes* IV, 1862.

———, «Revisione delle Costituzioni», *Inf. SCRIS* 5 (1979) 233-342.

———, *Romani Pontifices*, Decr., 25 Jan. 1848, *CICFontes* VI, 4375.

———, *Sacrosancta Dei*, Decr., 1 Jan. 1911, *AAS* 3 (1911) 29-36.

———, *Sanctissimus*: *Super litt. Circ.* «*Neminem latet*», Decr., 12 Jun. 1858, *CICFontes* VI, 4383.

———, *Sororum charitatis*, 24 Sep. 1816, in BIZZARRI, 411-412.

———, *Starting afresh from Christ*, Instr., 19 May 2002, *Origins* 32 (2002-2003) 129-148.

———, «Statistica. Instituta religiosa virorum, quae numerum trium millium sodalium professorum superant», *CpR* 59 (1978) 259.

[5] Reference to *LE* are made to numbers and not pages.

CONGREGATION FOR INSTITUTES OF CONSECRATED LIFE AND SOCIETIES OF APOSTOLIC LIFE, *Subsidia dotalia pro monialibus*, Decr., 12 Nov. 1847, in BIZZARRI, 120.

———, *Super privilegiis*, 16 Sep. 1864, in BIZZARRI, 740-746.

———, *Votorum*, 13 Jan. 1845, in BIZZARRI, 487-489.

CONGREGATION FOR INSTITUTES OF CONSECRATED LIFE AND SOCIETIES OF APOSTOLIC LIFE AND CONGREGATION FOR BISHOPS, Direct. *Mutuae relationes*, 14 May 1978, *AAS* 70 (1978) 473-506.

PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECOGNOSCENDO, *Communicationes*, Roma 1969-

———, *Codex iuris canonici schema novissimum iuxta placita patrum commissionis emendatum atque summo pontifici praesentatum*, Civitas Vaticana 1982.

———, *Principia quae codicis iuris canonici recognitionem dirigant a pontificia commissione proposita et primi generalis coetus «synodi episcoporum» examini subiecta* (*sub secreto*), Civitas Vaticana 1967.

———, *Quaestiones fundamentales*, Civitas Vaticana 1967.

———, *Relatio complectens synthesim animadversionum ab Em.mis atque Exc.mis patribus commissions ad novissimum schema codicis iuris canonici exhibitarum, cum responsionibus a secretaria et consultoribus datis*, Civitas Vaticana 1981.

———, Response, 1 mar. 1921, *AAS* 13 (1921) 177-178.

———, *Schema canonum de institutis vitae consecratae per professionem consiliorum evangelicorum*, Civitas Vaticana 1977.

———, *Schema codicis iuris canonici iuxta animadversiones S.R.E. cardinalium, episcoporum conferentiarum, dicasteriorum curiae romanae, universitatum facultatumque ecclesiasticarum necnon superiorum institutorum vitae consecratae recognitum*, Civitas Vaticana 1980.

PONTIFICAL COMMISSION FOR AUTHENTIC INTERPRETATION OF THE CODE OF CANON LAW, Response, 12 Nov. 1922, *AAS* 14 (1922) 661-662.

———, Response, 1 Jul. 1971, *AAS* 63 (1971) 860.

SECRETARIAT OF STATE, *Ordinatio*, 23 Jul. 1990, *AAS* 82 (1990) 1630-1634.

SUPREME TRIBUNAL OF THE APOSTOLIC SIGNATURA, Decision, 6 Jul. 1971, *LE*, IV, 3988, 6132-6134.

———, Decree, 29 Apr. 1986, prot. n. 16811/84 C.A.

———, Decree, 24 Aug. 1989, prot. n. 20311 B/88 C.A.

———, Decree, 29 Jul. 1991, prot. n. 22576/91 C.A.

———, Decree, 6 Nov. 1992, prot. n. 22576/91 C.A.

SUPREME TRIBUNAL OF THE APOSTOLIC SIGNATURA, Decree, 2 Dec. 1992, prot. n. 22576/91 C.A.

———, Decree, 12 May 1993, prot. n. 20311B/88 C.A.

———, Decree, 14 Jul. 1993, prot. n. 22576/91 C.A.

———, Letter, 18 Mar. 2011, prot. n. 45144/11 VAR.

———, Letter, 20 Aug. 2001, prot. n. 30457/99 CA.

1.4 *Proper laws and secondary sources*

AMBROSE, ST., *De institutione virginis*, in *PL* 16, 305-334.

———, *De lapsu virginis consecratae* 5, in *PL* 16, 373; 7, in *PL* 16, 375; 8, in *PL* 16, 376-378; 9, in *PL* 16, 379.

———, *De virginibus*, in *PL* 16, 187-233.

BASIL, ST., *Admonitio ad filium spiritualem*, in *PL* 103, 689.

———, *Regulae fusius tractatae*, in *PG* 31, 949-952.

———, *Regula ad monachos*, in *PL* 103, 484-554.

BENEDICT, ST., *Regula monachorum*, in LENTINI, A., ed., *S. Benedetto. La Regola. Testo, versione e commento*, Montecassino 1980.

BIZZARRI, A., ed., *Collectanea in usum secretariae Sacrae Congregationis Episcoporum et Regularium*, Romae 1885.

BONAVENTURE, ST., *Constitutiones generales Narbonenses*, in PP. COLLEGII A S. BONAVENTURA, ed., *S. Bonaventurae Opera Omnia*, VIII, Claras Aquas 1898, 449-469.

BOUSCAREN, T.L. – O'CONNOR, J.I., ed., *The Canon Law digest*, I-XII, Milwaukee 1934-2005.

CIPRIAN, ST., *Lett. 62 ad Pomponium*, 2, in *PL* 4, 364-372.

FRIEDBERG, A., ed., *Corpus Iuris Canonici*, II, Graz 1955.

GASPARRI, P. – I. SERÉDI, ed., *Codicis Iuris Canonici Fontes*, I-IX, Civitas Vaticana 1926-1939.

GASPARRI, P., *Schema Codicis Iuris Canonici*, sub secreto pontificio, Roma 1912.

IGNATIUS, ST., *The Constitutions of the Society of Jesus*, English trans. G.E. Ganss, St. Louis 1970.

JEROME, ST., *Vita Malchi monachi*, in *PL*, 23, 53-59.

———, *Vita S. Hilarionis*, in *PL*, 23, 29-53.

KRÜGER, P. – SCHÖLL, R., ed., *Corpus Iuris Civilis*, II, Berolini 1954.

MANSI, G.D., ed., *Sacrorum Conciliorum nova et amplissima collectio*, Florentiae 1759-1767, Venetiis 1769-1798.

PACHOMIUS, ST., *Regula*, in *PL*, 23, 67-90.

PETERS, E.N., The *1917 Pio-Benedictine Code of Canon Law*, San Francesco 2001.

SCHNEEMANN, G. – GRANDERATH, T. ed., *Acta et decreta sacrorum conciliorum recentiorum*, *collectio Lacensis*, VII, Friburgi-Herder, 1870-1890.

TERTULLIAN, *De virginibus velandis* 16, in *PL* 2, 910-911.

TOMASSETTI, L. – AL., ed., *Bullarum Diplomatum et Privilegiorum Sanctorum Romanorum Pontijicum Taurinensis Editio*, 25 vols., Augustae Taurinorum, 1857-1872 (*Bullarium romanum* 440-1740).

UNIONE EDITORI E LIBRAI CATTOLICI ITALIANI, *Codice di Diritto Canonico*. *Testo ufficiale e versione italiana*, Roma 1997.

2. **Books and articles**

ALBERIGO, G. – JEDIN, H., ed., *Conciliorum oecumenicorum decreta*, Bologna 1962.

ALIJARD, I.L., «Super Tertio Ordine Regulari S. Francisci», *CpR* 2 (1921) 380-383.

AMAN, A.C. – MAYTON, W.T., *Administrative Law*, Barkeley 1993.

AMERIO, R., *Iota unum*. *Studio delle variazioni della Chiesa cattolica nel secolo XX*, Milano 1985.

ANASTASI, L.M. – ABAD, A., *Manual de novicios y nuevos profesos*, Madrid 1954.

ANATHARACKAL, M., *Psycho-spiritual dimensions of formation*: *for priests and religious. A study based on the writings of Carl Rogers*, Bangalore 2001.

ANTONIUTTI, I., *La vita religiosa nel post-Concilio*. *Discorsi e direttive alla XVI assemblea generale dell'Unione dei superiori maggiori d'Italia*, *gennaio 1968*, Milano 1968.

ANDRÉS, D.J., *Le forme di Vita Consacrata*. *Commentario Teologico-Giuridico al Codice di Diritto Canonico*, Roma, 2008[6].

———, «Religious profession», in *Exegetical Comm*. II/2,1736-1747.

———, «Admission to the novitiate», in *Exegetical Comm*. II/2, 1693-1709.

———, *Il diritto del religiosi*, Roma 1999[2].

———, «SCRIS: Decretum I et II: De iure proprio IVC et SVA CIC accommodando, 2 Feb. 1984. Commentarium canonicum», *CpR* 65 (1984) 167-186.

ANGELIS, P., *Praelectiones juris canonici*, Romae 1880.

ANTONIUS A SPIRITU SANCTO, *Directorium Regulari*, Lugduni 1661.

APARICIO, R.A – AL., *Dizionario teologico della vita consacrata*, Milano 1994.

ARRIETA, J.I., «Il valore giuridico della prassi nella Curia Romana», *IE* 8 (1996) 97-117.

ATTRIDGE HAROLD, H.W – GOHEI H., «The Origins of Monasticism», in *Ascetics, Society, and the Desert: Studies in Egyptian monasticism*. Harrisburg 1999.

AUBRY, J., *Teologia della vita religiosa alla luce del Vaticano II*, Torino 1980[2].

AUGE, M., «Dalle origini a S. Benedetto», in M. AUGÉ – E. SASTRE SANTOS – L. BORRIELLO, *Storia della vita religiosa*, Brescia 1988, 11-116.

AUGUSTINE, ST., «De moribus Ecclesiae catholicae, cap. 31», in *PL* 32, 1338.

AZAREDO, M.P., *Sacred Bonds. A study of the application of* «*Renovationis causam*», Rome 1983.

BAHILO, R.T.A., *Los religiosos ausentes de la casa religiosa segun el canon 665*, Roma 1994.

BAKER, T., *St. Teresa of Avila's The Interior Castle*, London 1921.

BALVO, C.D., «The hierachical constitution of the Church», in BEAL, J.P. – CORIDEN, J.A. –GREEN, T.J. ed., *New commentary on the Code of Canon Law*, Bangalore 2004, 490-561.

BANDERA, A., «La consacrazione a Dio per mezzo dei consigli evangelici», *VC* 7 (1971) 345-358, 431-441, 521-531, 609-616.

BALLAY, F., «Quaestiones quaedam de votis simplicibus, praesertim quae votis solennibus praemittuntur», *AkKR* 17 (1867) 3-42.

BARNES, J., ed., *The complete works of Aristotle. Nicomachean ethics*, Oxford 1984.

BASTIEN, P., *Directoire canonique à l'usage des Congrégations à voeux simples*, Bruges 1923[3], Roma 1926.

BATTANDIER, A., *Guide canonique pour les constitutions des instituts à voeux simples*, Paris 1923[6].

BEAL, J.P. – CORIDEN, J.A. – GREEN, T.J., ed., *New Commentary on the Code of Canon Law*, Bangalore 2004.

BEAL, J.P., «Hierarchical recourse. Procedures at the local level», *CLSA Proceedings* 62 (2000) 93-106.

———, «Administrative tribunals in the Church. An idea whose time has come or an idea whose time has gone», *CLSA Proceedings* 55 (1993) 39-71.

———, «Confining and structuring administrative discretion», *Jurist* 46 (1986) 70-106.

BEGHETTO, A., *Crescere insieme in Cristo. La formazione permanente del Religioso*, Rome 1989.

BELSOLE, K., «A question of models in ongoing formation», *Spirit and word* 17 (1995) 76-84.

BENNO G., «Relatio circa argumentum De Religiosis», *AS*/III, Periodus III, Pars III, Vatican 1974.

BERLIÈRE, U., *L'ordine monastico dalle origini al secolo XII*, Italian transl. M. Zappalà, Bari 1928.

BERTETTO, D., «La Consacrazione religiosa», *VC* 10 (1974) 321-326.

BEYER, J., *Il diritto della vita consacrata*, Milano 1990.

———, «Life consecrated by the evangelical counsels: Conciliar teaching and later developments», in R. LATOURELLE, ed., *Vatican II Assessment and Perspectives. Twenty-five Years After* (*1962-1987*), III, New York 1988, 64-89.

———, «Risposte a quesiti e dubbi sul nuovo diritto degli Istituti di Vita Consacrata», *VC* 21 (1985) 753-772.

———, «Le deuxième projet de droit pour la vie consacrée», *StCan* 15 (1981) 87-134.

———, «Una nuova disciplina della vita consacrata», in E. CAPPELLINI, ed., *Problemi e prospettive di Diritto Canonico*, Brescia 1977, 147-166.

———, *Verso un nuovo diritto degli istituti di vita consacrata*, Roma – Milano 1976.

———, «De institutorum vitae consecratae nova iure», *Periodica* 63 (1974) 179-222.

———, «Voti perpetui o temporanei. Consacrazione o impegno», *VC* 8 (1972) 832-842.

———, «La consacrazione nella Chiesa», *VC* 7 (1971) 138-150.

———, «De instructione "Renovationis causam". Commentarius», *Periodica* 59 (1970) 21-64.

———, «De statu vitae professione consiliorum evangelicorum», *Periodica* 55 (1966) 3-48.

———, *La consécration à Dieu dans les instituts séculiers*, Rome 1964.

BIEDERLACK, J.M – FUHRICH, M., *De religiosis. Codicis iuris canonici*, *libri II*, *pars II* (*can.487-681*), Aeniponte 1919.

BISIGNANO, S., «Itinerario di formazione alla vita religiosa», in J. AUBRY – S. BISIGNANO – AL., ed., *Vita consacrata. Un dono del Signore alla sua Chiesa*, Leumann 1993, 305-344.

BIZZARRI, A., ed., *Collectanea in usum secretariae Sacrae Congregationis Episcoporum et Regularium*, Romae 1885.

BLAT, A., *Commentarium textus Codicis iuris canonici. Liber II*, *partes II et III*, *Ius de religiosis et laicis*, Romae 1921-1927.

BÖHLER, H., *Il consigli evangelici in prospettiva trinitaria*, Cinisello Balsamo 1993.

———, «Consigli evangelici tra teologia e diritto. Dal Codice del 1917 al Codice del 1983», *Periodica* 82 (1993) 175-204.

BOLCHI, E.L., *La consacrazione nell'«Ordo virginum». Forma di vita e disciplina Canonica*, Roma 2002.

BONNET, P.A., «De laicorum notione adumbratio», *Periodica* 75 (1985) 227-271.

BONI, A., *Gli istituti religiosi e la loro potestà di governo, c. 607/c. 596*, Roma 1989.

———, «La vita consacrata nell'eta patristica», *VC* 20 (1984) 777-789.

———, «I vincoli della vita consacrata sono vincoli pubblici?», *VC* 15 (1979) 96-123.

———, «La vita religiosa nel suo contenuto teologale», *VC* 7 (1971) 265-276.

———, «Domino se specialiter devovent», *VC* 7 (1971) 764-781.

———, *I religiosi nella dottrina del Concilio Ecumenico Vaticano II*, Roma 1966.

———, «Professione – questioni giuridiche», *DIP*, 7, 947-965.

BORROMEO, A., «Gregorio XIII», *DSP*, I, 718-721.

BOUDINHON, A., «Les Congregations Religieuses a Voeux simples», *Le Canoniste* 25 (1902) 353-362; 417-429.

BOUIX, M.D., *Tractatus de jure regularium ubi et de religiosis familiis, quae vota solemnia, vel etiam simplicia perpetua non habent*, II, Parisiis 1867.

BRUCKER, J., *La Compagnie de Jésus*, Paris 1919.

CADA, L. – FITZ, R., *Shaping the coming age of religious life*, New York 1979.

CALABRESE, A., *Istituti di vita consacrata e società di vita apostolica*, Roma 2011[3].

———, *Diritto penale canonico*, Roma 2006.

CANALS, J.M., «Professione religiosa», *DTVC*, 1356-1373.

CANOSA, J., «La concessione di grazie attraverso i rescritti», *IE* 6 (1994) 237-257.

CAPARROS, E. – THÉRIAULT, M. – THORN, J., ed., *Code of Canon Law Annotated*, Montréal 2004.

CAPPELLO, F.M., *Summa iuris canonici in usum scholarum concinnata*, II, Romae 1932-1936.

CAPRILE, G., *Il Sinodo dei Vescovi. Prima assemblea straordinaria* (*11-28 ottobre 1969*), Roma 1970.

CARDINALE, M., «L'"Error Iuris" nella giurisprudenza della Sectio Altera», *Apoll* 54 (1981) 111-139.

CARMINATI, A., *I fini dello stato religioso e il servizio della Chiesa*: *studio storico-giuridico sui rapporti tra il fine generale e il fine speciale dello stato religioso*, Torino 1964.

CARMINATI, A. – SAID, M., «Diritto dei religiosi», in *DIP*, III, 620-665.

CASSINO, G., *XVIII Conferenza in Conferences de Cassien sur la perfection religieuse*, II, Poussielgue 1861.

CASTAÑO, J.F., *Gli Istituti di vita consacrata*, Roma 1995.

CASTELLANO, J., «Lumen gentium – Perfectae caritatis – Vita consecrata. Unità dinamica e novità di tre testi magisteriali sulla vita consacrata», *Inf. SCRIS* 22 (1996) 164-184.

———, «The founders today. A gift and a challenge for our time», in J. COTTON ed., *Growing together in Christ. Personal development in the religious life*, Dublin 1991.

CATTANA, V., «S. Benedetto», *VC* 4 (1968) 40-50.

CENCINI, A., «An Institution at the Service of Formation», in F. IMODA, ed., *A Journey to Freedom. An Interdisciplinary Approach to the Anthropology of Formation*, Leuven 2000, 433-451.

CHALMERS, M.P., «The remedy of harm in accord with Canon 128», *Studia Canonica* 38 (2004) 111-154.

CHELODI, G., *Jus matrimoniale juxta codicem iuris canonici*, Tridenti 1921.

CIARDI, F. *I fondatori uomini dello spirito. Per una teologia del carisma di fondatore*, Roma 1982.

CICCIMARRA, F., «Come conciliare il "dovere giuridico" dell'istituto a fornire a coloro che abbandonano legittimamente la vita religiosa. Presentazione varie ex caritate et aequitate, con il "non diritto" di costoro a ricevere alcunché per il lavoro svolto (c. 702)», *VC* 27 (1991) 888-892.

COCCHI, G., *Commentarium in codicem iuris canonici*, II. Taurino 1931-1940.

COCCOPALMERIO, F., «Introduzione al Nuovo Codice di Diritto Canonico», in F. COCCOPALMERIO – M. SAID – AL., ed., *Gli istituti religiosi nel nuovo Codice di diritto canonico. Atti del corso promosso dall'Istituto regionale lombardo di pastorale in collaborazione con il Comitato Lombardo CISM e con la delegazione USMI*, Milano 1984, 5-49.

CONTÉ DE CORONATA, M., *Institutiones iuris canonici ad usum utriusque cleri et scholarum*, I, Romae 1950-1962[4].

COLOMBÀS, G.M., «Asceti e ascete», in *DIP* I, 917-924.

COPPOLA, R., «Il tema di risarcimento del danno derivante da atto amministrativo», *Apoll* 46 (1973) 163-179.

COUGHLIN, J.J., «The Historical development and current procedural norms of administrative recourse to the Apostolic Signatura», *Periodica* 90 (2001) 455-496; 661-690.

CRAISSON, D., *Manuale totius juris canonici*, III, Pictavii 1872[3].

CREMASCHI, L., ed., *Pacomio e i suoi discepoli*. *Regole e scritti*, Magnano 1988.

———, *Le regole*: *regualae fusius tractatae*. *Regulae brevius tractatae di Basilio di Cesarea*, Magnano 1993.

DANILUK, M. – DUCHNIEWSKI, J., «Eremici», in *Encykl. Katolicka*, IV, 1069-1072.

DAMMERTZ, V., «Istituti di vita consacrata nel nuovo Codice di Diritto canonico», *VC* 19 (1983) 110-136.

DANIEL, W.L., *Ministerium Iustitiae*. *Jurisprudence of the Supreme Tribunal of the Apostolic Signatura*, Montréal 2011.

DE BUCK, V. – TINNEBROEK, A., *Examen historicum et canonicum*, Gandavi 1847.

DE BONHOMME, A., «La consacrazione per mezzo dei consigli è una consacrazione nuova?», *VC* 15 (1979) 35-47.

DE DIEGO-LORA, C., «The Promoter of Justice, the Defender of the Bond and the Notary», in *Exegetical Comm*, IV/1, 761-811.

DEL RE, N., *La Curia Romana*. *Lineamenti storico-giuridici*, Città del Vaticano 1998.

D'ONORIO, J., *Le pape et le gouvernement de l'Église*, Paris 1992.

D'OSTILIO, F., «Gli istituti della vita consacrata nelle decisioni del Supremo Tribunale della Segnatura Apostolica», *Claretianum* 27 (1987) 279-344.

DE PAOLIS, V., *La vita consacrata nella Chiesa*, Bologna 1992.

———, «Exemptio an autonomia institutorum vitae consecratae?» *Periodica* 71 (1982) 147-178.

DEL ROSARIO, A., *La vita religiosa nella Chiesa alla luce del Concilio Ecumenico Vaticano II*, Roma 1966.

DEVOTI, G., *Institutionum canonicarum libri IV*, Romae 1802.

DI MATTIA, G., «Separazione dei membri dall'Istituto e dalla Sociata di Vita Apostolica. Tipologia e procedura, (cann. 684-704; 726-731; 742-746)», *CpR* 74 (1993) 31-56.

DUBOIS, J., «Oblato», in *DIP* VI, 655-667.

DULLES, A., «True and False Reform» *First Things* 135 (August/September 2003)14-19.

DUNN, M., *The Emergence of Monasticism*: *From the Desert Fathers to the Early Middle Ages*, Malden 2000.

DUNSFORD, J.E., «Arbitral discretion: the tests of just cause» in G.W. GRUENBERG ed., *Arbitration 1989. The arbitrator's discretion during and after the hearing*, Chicago 1989, 23-49.

ECHAVE, A.J., *La profesion religiosa temporal*; *visión histórico-jurídica*, Romae 1993.

EGAN, A., «Religious Orders after Vatican II», *The Southern Cross*. *Southern Africa's Catholic Weekly*, 29 Jul. 2012, 7-8.

EGAÑA, F.J., «Dimissione dall'Istituto Religioso», in C.C. SALVADOR – V. DE PAOLIS – G. GHIRLANDA, ed., *Nuovo dizionario di diritto canonico*, Milano 1993, 345-349.

EILON, S., «What is a decision?» *Management Science INFORMS*, 16/4 (Dec. 1969) B163-B189.

ESCUDERO, G., ed., *Commento giuridico-pastorale all'Istruzione* «*Renovationis causam*», Roma 1969.

FAGOTHEY, A., *Right and Reason. Ethics in Theory and Practice Based on the Teachings of Aristotle and St. Thomas Aquinas*, Charlotte 2000.

FANFANI, L.G., *De iure religiosorum ad normam Codicis Iuris Canonici*, Taurinorum – Romae 1920.

———, *Chi sono i religiosi*, Roma 1949.

———, *Il diritto delle religiose*, *conforme al codice di diritto canonico*, Rovigo 1965[5].

FANFANI, L.G. – ARDANZA, T., *El derecho de las religiosas conforme al Código de derecho canónico*, Roma 1928.

FANFANI, L.G. – O'ROURKE, K.D., *Canon law for religious women*, Iowa 1961.

FARIS, J.D., «An overview of the Code of Canons of the Eastern Churches», in J.P. BEAL – J.A. CORIDEN – T.J. GREEN, ed., *New commentary on the Code of Canon Law*, Bangalore 2004, 27-44.

FAVALE, A., «Dinamica storica e ruolo delle principali forme di vita consacrata», *VC* 19 (1983) 39-55.

FELICIANI, G., *Le basi del diritto canonico. Dopo il codice del 1983*, Bologna 1990.

FERME, B.E., *Introduzione alla storia delle fonti del diritto canonico. Il diritto antico fino al Decretum di Graziano*, Roma 1998.

FERRARI, G.C., *Summa institutionum canonicarum*, I-II, Genuae 1908[8].

FERNÀNDEZ, J. – ROCCA, G., «Separazione dall'Istituto», *DIP* VIII, 1275-1281.

FITZPATRICK, M., «A Contemporary Understanding of the Vows», *RfR* 39 (1980) 378-388.

FOGLIASSO, E., ed., *Il decreto* «*Perfectae caritatis*» *sul rinnovamento della vita religiosa in rispondenza alle odierne circostanze*: *cronistoria del decreto*, *testo latino-italiano del decreto e delle norme per la sua attuazione*, *esposizione e commento*, Torino 1967.

FRIEDBERG, E., *Trattato del diritto ecclesiastico cattolico ed evangelico*, Torino 1893.

GALLEN, J., «Comments on the Instruction on Formation», *RfR* 28 (1969) 886-906.

GALOT, J., «La professione religiosa, consacrazione definitiva, e il problema dei voti temporanei», *VC* 17 (1981) 508-516.

———, «Gli obblighi della consacrazione e il valore del voto», *VC* 15 (1979) 27-53.

———, «De "promissione" in vita religiosa. De alia a votis possibili vinculum», *Periodica* 59 (1970) 167-176.

———, *Porteurs du souffle de l'Ésprit*. *Nouvelle optique de la vie consacrée*, Gembloux – Paris 1967.

GAMBARI, E., *I Religiosi nel Codice*, Milano 1986.

———, *Religious life according to Vatican II and the new Code of canon law*, Boston 1986.

———, *Vita religiosa secondo il Concilio Vaticano II e il nuovo diritto canonico*, Roma 1984[2].

———, *L'aggiornamento della formazione alla vita religiosa*. *Testo e commentario all'Istruzione* "*Renovationis causam*" *del 6 gennaio 1969*, Roma 1970[3].

———, *Manuale della vita religiosa alla luce del Vaticano II*, Roma 1970.

GARCIA MARTIN, J.M., *Le norme generali del Codex Iuris Canonici*, Roma 2006[5].

GARCIA PAREDES, J., «Confirmación y vida religiosa. A la luz de la consagración de las virgenes en la Iglesia Romana», *Vida Religiosa* 34 (1973) 275-286.

GAUDE, L., ed., Alphonsus Maria de Ligouri, *Theologia Moralis*, I-IV, Romae 1905-1912.

GHIRLANDA, G., «La giusta autonomia e l'esenzione degli istituti religiosi: fundamenti ed estensione», *VC* 25 (1989) 679-699.

GHIRLANDA, G., «La problematica della separazione del religioso dal proprio Istituto», in L. GUTIÉRREZ – AL., ed., *Il nuovo diritto dei religiosi*, Roma 1984, 153-193.

———, «Ecclesialita della vita consacrata», *VC* 12 (1976) 283-293; 13 (1977) 26-32, 231-237.

GIALLANZA, J., «Called to mission-called to unity», *RfR* 47 (1988) 227-232.

GILBERT, E.J., «Separation from religious institutes», *Jurist* 44 (1984) 456-468.

GIRARDI, O.G., «Vocazione e consacrazione nella esortazione Apostolica *Redemptionis donum*», *VC* 21 (1985) 399-415.

GISMONDI, P., *Il diritto della Chiesa dopo il Concilio*, Milano 1973.

GOFFI, T. – PALAZZINI, A., *Dizionario teologico della vita consacrata*, Milano 1994[2].

GORDON, I, «De procedura sequenda coram Signatura iustitiae inde a saeculo XVI ad saeculum XVIII», *Periodica* 74 (1985) 575-604.

———, «De Signaturae iustitiae competentia inde a saeculo XVI ad saeculum XVIII», *Periodica* 69 (1980) 351-386.

———, «De iustitia administrativa in Ecclesia tempore transacto», *Periodica* 61 (1972) 257-378.

———, «Normae speciales Supremi Tribunalis Signaturae Apostolicae», *Periodica* 59 (1970) 115-165.

GORRICHO, P.C., «De vinculis temporis (Instr. nn. 6, 34, 35, 36)», *CpR* 48 (1969) 185-192.

GOYENECHE, S., «Consultationes», *CpR* 1 (1920) 227-236; 3 (1922) 78-85.

———, «De egressu a religione» *CpR* 5 (1924) 50-55; 86-93; 211-216; 335-341.

———, «De votis simplicibus in fontibus et in doctrina in ordine ad statum religiosum constituendum» in *Acta Congressus Iuridici Internationalis*, IV, Romae 1937, 301-315.

GRANAT, W. – AL., ed., *Encyklopedia katolicka*, IV, Lublin 1973-2014.

GRANDCLAUDE, G., *Jus Canonicum*, I-III, Parisiis 1882-1883.

GRAZIANI, E., «De supremi organismi contentioso-administrativi natura», *Periodica* 67 (1978) 537-545.

GREEN, T.J., «The Latin and Eastern Codes. Guiding principles», *Jurist* 62 (2002) 235-279.

GRIBOMONT, J., «Eremitismo», *DIP*, III, 1224-1228.

———, «Regola di Basilio», *DIP*, VII, 1453-1454.

GROCHOLEWSKI, Z., «Il sistema dei ricorsi e la giurisdizione dei tribunali amministrativi», in J. CANOSA, ed., *I principi per la revisione del codice di diritto canonico. La ricezione giuridica del Concilio Vaticano II*, Milano 2000, 461-499.

———, «La giustizia amministrativa presso la Segnatura Apostolica», *IE* 4 (1992) 3-22.

———, «La Segnatura Apostolica nell'attuale fase di evoluzione», in Z. GROCHOLEWSKI – V.C. ORTÍ, ed., *Dilexit iustitiam*. Studia in honorem Aurelii card. Sabattani, Città del Vaticano 1984, 211-228.

———, «La "Sectio Altera" della Segnatura Apostolica con particolare riferimento alla procedura in essa seguita», *Apoll* 54 (1981) 65-110.

GUILLAUMONT, A., *Aux origines du monachisme chrétien. Pour une phénoménologie du Monachisme*, Bégrolles-en-Mauges 1979.

GULLO, C., «Procurators and advocates», in *Exegetical Comm*, IV/1, 973-977.

GUTIÉRREZ, A., «La consacrazione dei religiosi. Voti temporanei e voti perpetui», in A. GUTIÉRREZ – AL., *Il nuovo diritto dei religiosi*, Roma 1984, 61-96.

———, «De nova admissione egressi ab Istituto», *CpR* 64 (1983) 289-294.

———, «Professio religiosa ad tempus», *CpR* 63 (1982) 289-312; 64 (1983) 107-123; 67 (1986) 55-68, 249-276.

———, «Schema canonum de institutis vitae consecratae per professionem consiliorum evangelicorum», *CpR* 58 (1977) 3-34.

———, «De modo providendi inopiae exeuntium a religione», *CpR* 53 (1972) 289-301.

———, «El principio de subsidiariedad y la igualdad radical de los fieles», *Ius Canonicum* 11 (1971) 413-444.

———, «Facultas superiorum laicorum dispensandi vota subditorum», *CpR* 51 (1970) 6-19.

———, «Renovationis causam – Introductio», *CpR* 48 (1969) 28-55.

GUTIÉRREZ, J.L., «La formazione dei principi per la riforma del Codex Iuris Canonici» in J. CANOSA, ed., *I principi per la revisione del codice di diritto canonico. La ricezione giuridica del Concilio Vaticano II*, Milano 2000, 13-29.

HARMER, M.B., «Governance in religious congregations», *Human development* 16/1 (1995) 25-28.

HARVANEK, R., «The expectations of leadership», *The way* 15 (1975) 20-33.

HAYWARD, P., «Changes in ecclesiastical administrative justice brought about by the new competence of the "Sectio Altera" of the Apostolic Signatura to award damages», *IE* 5 (1993) 643-673.

HERBERMANN, C.G. – AL., *Original Catholic Encyclopedea*, IV, XII, New York 1907-1914.

HERRANZ, J., «Genesis and development of the New Code of Canon Law», in *Exegetical Comm*. I, 123-168.

HERWEGEN, I. – ROTHENHÄUSLER, M., *Zur Aufnahmeordnung der Regula S. Benedicti*, Münster 1912.

HESTON, E.L., «Temporary vows and promise», *RfR* 28 (1969) 355-378.

HILL, R., «Authority and Obedience in Consecrated Life», *CLSA Proceedings* 45 (1983) 223-225.

HOLLAND, S.L., «Separation of members from the Institute», in J.P. BEAL – J.A. CORIDEN – T.J. GREEN, ed., *New commentary on the Code of Canon Law*, Bangalore 2004, 851-873.

HORVAT, B., «La vita fraterna in comune negli istituti religiosi (I) and (II)», *CpR* 86 (2005) 211-248; 87 (2006) 77-129.

HUIZING, P., «Reflections on the system of Canon Law», *Jurist* 42 (1982) 239-276.

JANKOWIAK, F., «Codice di Diritto Canonico del 1917», *DSP*, I, 355.

JEDIN, H. – ALBERIGO, G., *Chiesa della fede, Chiesa della storia*, Brescia 1972.

JEDIN, H., *Storia del Concilio di Trento*, I-V, Brescia 1949-1981.

JONES, D.P. – VILLARS, A.S., *Principles of Administrative Law. Natural Justice and the Duty to be Fair*, Alberta 2009[5] 208-223.

JOYCE, M. – AL., ed., *Procedural handbook for Institutes of Consecrated Life and Societies of Apostolic Life*, Washington D.C. 2001.

JUNGMANN, B., *Dissertationes selectae in historiam ecclesiasticam*, III, Ratisbonae 1880-1887.

KENNEDY, R., «Address on due process to the National Conference of Catholic Bishops», *CLSA Proceedings* 31 (1969) 9-17.

KINDT, G., *De potestate dominativa in religione. Dissertatio historico-canonica*, Romae 1945.

KIRSCH, J.P., «Council of Trent», in *OCE*, IV, New York 1907-1914.

KOCH, K., *Virgines Christi*, Leipzig 1907.

KOWAL, J., «"Impedimentum voti" e dimissione dall'Istituto Religioso», *Periodica* 88 (1999) 29-60.

———, *Uscita definitiva dall'istituto religioso dei professi di voti perpetui. Evoluzione storica e disciplina attuale*, Roma 1997.

KRUKOWSKI, J., «Le domaine du controle judiciaire des actes administratifs ecclesiastiques selon l'article 106 de la Constitution apostolique

"Regimini Ecclesiae"», *Ephemerides Theologicae Lovanienses* 52/4 (Dec. 1976) 380-389.

LABANDEIRA, E., *Trattato di diritto amministrativo canonico*, Milano 1994.

———, *Cuestiones de Derecho Administrativo Canonico*, Pamplona 1992.

LARRAONA, A., «Commentarium Codicis, can. 488», *CpR* 2 (1921) 201-210.

LAURENTIN, R., *L'enjeu du Synode suite du Concile*, Paris 1967.

LECLERCQ, G., «Alle origini della vita religiosa e dei voti», *VC* 4 (1968) 3-10.

LEFEBVRE, C., «De recursibus administrativis in iure canonico: lineamenta historica», *ME* 99/4 (1974) 197-222.

LEVILLAIN, P. – SABA SARDI, F. – BOUTRY, P., *Dizionario storico del papato*, I-II, Milano 1996.

LINSCOTT, M., «The service of religious authority. Reflections on government in the revision of Constitutions», *RfR* 42 (1983) 197-225.

LISI, E.M., «Riammissione o reingresso?», *VC* 22 (1986) 63-65.

LLOBELL, J., «Il sistema giudiziario canonico di tutela del diritti. Riflessioni sull'attuazione del princìpi 6º e 7º approvati dal sinodo del 1967», in J. CANOSA, ed., *I principi per la revisione del codice di diritto canonico. La ricezione giuridica del Concilio Vaticano II*, Milano 2000, 501-546.

LOBINA, G., «Separazione dei membri dall'Istituto (cc. 684-704)», in F. COCCOPALMERIO – M. SAID – AL., ed., *Gli istituti religiosi nel nuovo Codice di diritto canonico*, Quaderni di vita consacrata 8, Milano 1984, 195-210.

———, «Rassegna di giurisprudenza della Sectio Altera del Supremo Tribunale della Segnatura Apostolica (1968-1973)», *ME* 98 (1973) 293-323.

———, *Elementi di procedura amministrativa canonica*, Roma 1973.

———, *La competenza del supremo tribunale della Segnatura Apostolica. Con particolare riferimento alla Sectio altera e alla problematica rispettiva*, Roma 1971.

LÓPEZ AMAT, A., La *vita consacrata*. *Le varie forme dalle origini ad oggi*, Roma 1991.

LORA, E., ed., *Enchiridion della Vita Consacrata. Dalle Decretali al rinnovamento post-conciliare* (*385-2000*), Milano 2001.

LOZANO, G.M., «Celibato e solitudine nel deserto», in B. PROIETTI – AL., ed., *Il celibato per il Regno*, Milano 1977, 170-207.

———, «La comunità pacomiana», *Claretianum* 15 (1975) 237-267.

MANZANARES, J., «El largo camino de la nueva codificaciòn canònica», *Salmaticensis* 29 (1982) 203-234.

MARCHESI, M., «Recorsi gerarchici presso i dicasteri della Curia Romana», *IE* 8 (1996) 71-96.

MAROTO, P., «Regulae et particulares constitutiones» in *Acta Congressus luridici Internationalis* IV, Romae 1937, 205-299.

MARTENS, K., «Protection of rights. Experiences with hierarchical recourse and possibilities for the future», *Jurist* 69 (2009) 646-702.

MARTIN, V., *Les cardinaux et la Curie La vacance du Siège Apostolique. Tribunaux et Offices*, Paris 1930.

MARX, J., *Lehrbuch der Kirchengeschichte*, Trier 1908.

MARZOA, A., «Those who are liable to penal sanctions», in *Exegetical Comm*. IV/1, 255-320.

MARZOA, A. – MIRAS, J. – RODRIGUEZ, R., ed., *Exegetical Commentary on the Code of Canon Law*, I-IV, Chicago 2004.

MASI, N., *Legittima assenza ed esclaustrazione*, Parma 1959.

MATTEUCCI, A., *Officialis curiae ecclesiasticae ad praxim pro foro ecclesiastico*, *tum saeculari*, *tum regulari*, Venetiis 1749.

MCALPIN, K., «Conversion. A Summons from the word of God», *RfR* 61 (2002) 39-50.

MCDERMOTT, R., «Community life supports mission», *CpR* 81 (2000) 189-205.

MCDONOUGH, E., «Discretionary Dismissal» *RfR* 62 (2003) 96-102; 204-210.

———, «Effects of Departure», *RfR* 62 (2003) 316-322.

———, «Conclusion of the Novitiate», *RfR* 60 (2001) 99-104.

———, «Requirements for Temporary Profession», *RfR* 60 (2001) 314-319.

———, «Renewal of Vows and Perpetual Profession», *RfR* 60 (2001) 432-437.

———, «Exclusion from profession at the expiration of temporary profession» *RfR* 60 (2001) 543-547.

———, «Incorporation into an Institute of Consecrated Life or a Society of Apostolic Life», *RfR* 60 (2001) 206-211.

MEYNARD, A.M., *Réponses canoniques et pratiques sur le gouvernement et les principaux devoirs des religieuses á voeux simple*, París 1891.

MEYER, E.C., «Is Religious Life a Sacrament?», *RfR* 33 (1974) 1100-1120.

MICHELE, T. – SALZANO, V., *Lezioni di diritto canonico pubblico e privato*, II, Napoli 1841.

MIDALI, M., «Il carisma della vita religiosa. Attuali correnti teologiche», *VC* 17 (1981) 386-387.

———, «La dimensione carismatica della vita religiosa», *VC* 17 (1981) 550-557.

MIGNE, J.P., ed., *Patrologiae cursus completus*. *Series latina*. *Supplementum*, I-V, (221 t., 218-221: Indici), Parigi 1958-1974.

———, ed., *Patrologiae cursus completus*. *Series Graeca*, I-VI, Lutetiae Parisiorum 1857.

MIRAS, J., «El Contencioso-administrativo canonico en la Constitucion Apostolica "Pastor Bonus"», *IusCan* 30 (1990) 409-422.

MISSEREY, L., «La profession religieuse et le voeu solennel», *Le Canoniste Contemporain* 46 (1924) 152-166.

MOCCHEGIANI, P., *Iurisprudentia ecclesiastica*, I-III, Ad Claras Aquas 1904-1905.

MOLINARI, P. – GUMPEL, P., *Il capitolo VI "De Religiosis" della Costituzione Dogmática sulla Chiesa*. Quaderni di vita consacrata 9, Milano 1985.

MOLINARI, P., «Il capitolo VI della nella Costituzione dogmatica sulla Chiesa», *VC* 20 (1984) 815-893.

———, «Domino se peculiariter devovet et divino obsequio intimitis consecratur», *VC* 8 (1972) 401-432.

———, «Divino obsequio intimius consecratur», *VC* 7 (1971) 417-430.

———, *La formazione nella vita religiosa*. *Commento all'istruzione* «*Renovationis causam*», Milano 1969.

MOLITOR, R., *Religiosi iuris capita selecta*, Ratisbonae 1909.

MONTINI, G.P., «Conspectus decisionum quae a Supremo Signaturae Apostolicae Tribunali in ambitu contentioso administrativo ab anno 1968 ad annum 2012», *Periodica* 103 (2014) 27-66.

MORAN, G. – HARRIS, M., *Experiences in community*. *Should religious life survive*? New York 1968.

MOREY, M. – PIDERIT, J., *Catholic higher education*. *A culture in crisis*, New York 2006.

MORLOT, F., «Consacrazione sacerdotale e consacrazione nei consigli evangelici», *VC* 7 (1971) 638-657.

MOROTO, P., «Annotationes», *CpR* 8 (1927) 420-424.

MORRISEY, F.G., «The dismissal of members», in *Exegetical Comm*, II/2, 1860-1888.

MUNERATI, D., *Iuris ecclesiastici publici et privati elementa*, Torino 1913.

MUZZARELLI, V.F., *De professione religiosa a primordiis ad saec. XII*, *seu*, *Virginum consecratio*, *monastica ac praesertim in decreto Gratiani religiosa professio*, Roma 1938.

NAGLE, C., *De elementis essentialibus status religiosi*, Romae 1964.

NASONI, A., «Il Codice del Diritto Canonico», *La Scuola Cattolica* 45 (1917) 95-111.

NEAL, M.A., *Catholic sisters in transition from the 1960s to the 1980s. Consecrated life studies, II*, Wilmington 1984.

NERI, U., ed., *Opere ascetiche di S. Basilio di Cesarea*, Italian transl. M.B. Artioli, Torino 1980.

NERVEGNA, J., *De Institutis votorum simplicium, religiosorum el monialium*. Romae 1904.

———, *De iure practico regularium*. Romae 1900.

NOLDIN, H. – SCHMITT, A., *Summa theologiae moralis*, I-VI, Oeniponte 1935-1936; 1962.

NOONAN, J., *Power to Dissolve: Lawyers and Marriages in the Courts of the Roman Curia*, Cambridge 1972.

OCHOA, X., «Excursus historico-doctrinalis circa sensum institutionalem consecrationis religiosae», *CpR* 55 (1974) 193-221, 289-312.

OCHOA, S.X. – ANDRES, D.J., ed., *Leges Ecclesiae post Codicem Iuris Canonici editae*, Romae 1966-2001.

O'CONNOR, D.F., *Witness and service. Questions about religious life today*, New York 1990.

OLPHE-GALLIARD, M., *Chrétiens consacrés: thèmes et documents*, Paris 1971.

OLIVARES, E., *Los votos de los escolares de la Compañía de Jesús, su evolución jurídica*, Roma 1961.

O'MURCHU, D., *Reframing religious life. An expanded vision for the future*, United Kingdom 1998.

———, *Religious life. A prophetic vision-hope and promise for tomorrow*, Notre Dame 1991.

OPONDO, J.A., «Shepherding the "Innocent Will" Towards Holistic Human Will», *African Christian Studies* 27/4 (2011) 78-106.

ORTH, C.R., *The Approbation of Religious Institutes*, Washington 1931.

ORTÍ, V.C., «Il Supremo Tribunale della Segnatura Apostolica. Ceni storici», in Z. GROCHOLEWSKI – V.C. ORTÍ, ed., *Dilexit iustitiam*. Fs. card. A. Sabattani, Città del Vaticano 1984, 168-195.

PALOMBO, G., *De dimissione religiosorum. Commentarium theoretico-practicum ad tit. XVI libri II Codicis iuris canonici*, Taurini – Romae 1931.

PARDILLA, A., *Christ's way of life at the centre of formation of religious life*, Rome 2005.

PARMA, A.A., «De saecularizatis et saecularizandis Instructio ad Fratres Ordinis Minorum», *Analecta Ecclesiastica* 2 (1894) 412-416; 468-475.

PASSERINI, P.M., *De hominum statibus, et officiis inspectiones morales ad ultimas septem quaestiones*, III, Lucae 1732.

PASTOR, L., *The history of the popes from the close of the middle ages*, XII, XIII, XVII, Wilmington 1977.

PELLIZZARI, F., *Manuale regularium constans ex decem tractatibus*, I, Lugduni 1653.

PETTINATO, S., «Esenzione e autonomia degli istituti di vita consacrata», *Il Diritto Ecclesiastico* 102 (1991) 194-229.

———, «Oaths», in *Exegetical Comm*, III/2, 1753-1770.

———, «Vows», in *Exegetical Comm*, III/2, 1726-1741.

PIAT DE MONT, F., *Praelectiones juris regularis*, I, Parisiis 1906.

PIGNA, A., «La consacrazione religiosa», in E. ANCELLI, ed., *Vita Religiosa. Bilancio e Prospettive*, Rome 1976, 117-149.

PINTO, P.V., *Diritto amministrativo canonico. La Chiesa mistero e istituzione*, Bologna 2006.

PIONTEK, C., *De Indulto Exclaustrationis necnon Saecularizationis*, Green Bay 1925.

PIRHING, E., *Jus canonicum*, III, Dilingae 1674-1678.

PIRONIO, E., «Intervento», in CONFERENZA ITALIANA SUPERIORI MAGGIORI, *Rinnovamento e futuro della vita religiosa*. Atti della XVIII Assemblea Generale C.I.S.M., 7-10 Novembre 1978, Roma 1978, 177-183.

POLI G.F., ed., *Supplemento al dizionario teologico della vita consacrata*, Milano 2003.

POLI, G.F. – AUBRY, J. – CRESPI, P., ed., *Documenti sulla vita religiosa, 1990-1996*, Torino 1998.

POMPEDDA, M.F., «L'amministrazione della giustizia nella Chiesa», *IE* 13 (2001) 675-691.

PROVOST, J.H., «Recent experiences of administrative recourse to the Apostolic See», *Jurist* 46 (1986) 142-163.

PUMA, V. LA, «Evoluzione del diritto dei religiosi de Pio IX a Pio XI» *Acta Congressus luridici Internationalis*, IV, Romae 1937, 193-203.

PUNDERSON, J.R., «Hierarchical recourse to the Holy See. Theory and practice», *CLSA Proceedings* 62 (2000) 19-47.

———, «Contentious-administrative recourse to the Second Section of the Supreme Tribunal of the Apostolic Signatura», *Forum*: *A Review of Canon Law and Jurisprudence* 7 (1996) 295-304.

QUERALT, A., «Value of "Religious" consecration», in R. LATOURELLE, ed., *Vatican II Assessment and Perspectives. Twenty-five Years After* (*1962-1987*), III, New York 1988, 27-63.

QUIÑONEZ, L.A. – TURNER, M.D., *The transformation of American Catholic sisters*, Philadelphia 1992.

RAHNER, K., «On Evangelical Counsels», in K. RAHNER, *Theological investigations*, VIII, New York 1971, 133-167.

RAMBALDI, G., «Consacrati a Dio in Cristo per evangelizzare», *VC* 14 (1978) 540-548.

RAMOS, F.J., «Departure from the Institute», in *Exegetical Comm*. II/2, 1838-1859.

RANQUET, J.G., *Consécration baptismale et consécration religieuse*, Paris 1965.

RAUS, J.B., *De sacrae oboedientiae virtute et voto secundum doctrinam Divi Thomae et S. Alphonsi*, Lugduni – Lutetiae Parisiorum 1923.

RAVASI, L.R., *De regulis et constitutionibus religiosorum*, Romae 1958.

RECCHI, S., *Consacrazione mediante i consigli evangelici. Dal Concilio al Codice*, Milano 1988.

RÉGAMEY, R., *Paul VI donne aux religieux leur charte. Exhortation «Evangelica testificatio»*, Paris 1971.

REGATILLO, E. F., *Institutiones Iuris Canonici*, I, Santander 1961[6].

REIFFENSTUEL A., *Jus canonicum universum juxta titulos quinque librorum decretalium in quaestiones distributum*, Editio novissima, I-IV, Romae 1831-1834.

RESTREPO, L.A., *De la vida religiosa a la vida consagrada*: *Una evolución teologica*, Rome 1981.

REZÀC, J., «Eremita», *DIP*, III, 1153-1154.

RICCERI, L., «II sussidio economico da concedrsi ai religiosi che lasciano il loro Istituto», *Inf. SCRIS* 1 (1975) 171-181.

RICHARD, H., «Denial of profession», *RfR* 47 (1988) 934-939.

RINALDI, G., «I voti religiosi», *VC* 4 (1968) 107-124.

———, «Voti semplici e solenni nel codice di diritto canonico», *VC* 4 (1968) 561-576.

———, «Voti solenni e semplici», *VC* 4 (1968) 333-351.

RINCÓN-PÉREZ, T., «The norms common to all Institutes of consecrated life», in *Exegetical Comm*. II/2, 1549-1576.

ROBERTI, F., *De processibus. De actione, de praesuppositis processus et sententiae de merito*, I, Civitas Vaticana 1956

ROCCA, G. – PELLICCIA, G., *Dizionario degli Istituti di perfezione*, I, VI, VIII, Roma 1974-2003.

ROCCO, U., «Battesimo e professione religiosa», *Perfice Munus* 40 (1965) 157-162.

RODE, F., «From Past to Present: Religious Life Before and After Vatican II», *L'Osservatore Romano*, 28 Jan. 2009, 8-10.

RODRIGUES, M., *Quaestiones regulares et canonicae*, Lugduni 1613.

ROMANO, A., *The Charism of the founders*, Slough 1994.

ROTHENHÄUSLER, M. – HERWEGEN, I., *Zur Aufnahmeordnung der Regula S. Benedicti. Geschichte der Benediktinischen Professformel*, Münster in Westfalen 1912.

ROVIRA, J., «L'impegno definitivo nella vita religiosa. Il perché di una crisi», *Claretianum* 18 (1978) 57-124.

RUIZ, J.M., «Consecrated life and Charism of the founders», in R. LATOURELLE, ed., *Vatican II Assessment and Perspectives. Twenty-five Years After* (*1962-1987*), III, New York 1988, 3-26.

RUSSO, B., «L'uscita dalle religioni», *Palestra del Clero* 33 (1954) 662-671.

SADOCK, B.J. – SADOCK, V.A., *Synopsis of Psychiatry*, New York 2007.

SAID, M., «La vita consacrata mediante la professione dei consigli evangelici», *VC* 15 (1979) 27-34.

SALERNO, F., «Il Giudizio prezzo la "Sectio Altera" del S.T. della Segnatura Apostolica» in P.A. BONNET – AL., *La Giustizia amministrativa nella Chiesa*, Studi Giuridici 24, Vatican 1991, 125-178.

SALZANO, T.M.V., *Lezioni di diritto canonico pubblico, e privato considerato in sè stesso e secondo l'attual polizia del Regno delle Due Sicilie*, II, Napoli 1838-1839.

SANABRIA, J.R., *Derecho de religiosas*, Méjico 1956.

SANGUINETI, S., *Iuris ecclesiastici institutiones in usum praelectionum*, Romae 1901[4].

SASTRE SANTOS, E., *La vita religiosa nella storia della Chiesa e della società*, Milano 1997.

———, «Institución y "crisis de identidad" en un instituto de perfección», *Claretianum* 23 (1983) 211-270.

———, «De normis ad codices congregationum religiosarum congruenter recognoscendos», *CpR* 59 (1978) 138-186.

SCALVINI, G., «La mistica del voto religioso», *Nuova Rivista di Ascetica e Mistica* 2 (1977) 193-215.

SCHÄFER, K.H., *Die Kanonissenstifter im Deutschen Mittelalter*, Stuttgart 1907.

SCHÄFER, T., *De Religiosis ad normam Codicis luris Canonici*, Romae 1947[4].

SCHARNAGL, A., *Das Feierliche Gelübde als Ehehinderniss*, Freiburg 1908.

SCHMALZGRUEBER, F., *Jus ecclesiasticum universum brevi methodo ad discentium utilitatem explicatum*, Romae 1843-1845.

SCHNEEMANN, G – GRANDERATH, T., *Acta et decreta sacrorum conciliorum recentiorum, collectio Lacensis*, VII, Friburgi 1870-1890.

SCHNEIDERS, S., *Prophets in their own country. Women religious bearing witness to the Gospel in a troubled Church*, New York 2011.

———, *Finding the treasure*, New York 2000.

SCHOENMAECKERS, M.J., *Genèse du chaptîre VI «De religiosis» de la Constitution dogmatique sur l'Eglise «Lumen gentium»*, Roma 1983.

SCHOUPPE, J.P., «Les procédures administratives face aux dysfonctionnements dans les communautés ecclésiales», *L'année canonique* 46 (2004) 103-124.

SCHROEDER, H.J., ed., *Canons and decrees of the council of Trent. Original text with English translation*, London 1941.

SCHWANGER, K.K., «Contentious-administrative recourse before the Supreme Tribunal of the Apostolic Signatura», *Jurist* 58 (1998) 171-197.

SCHWARTZ, D., *Aquinas on friendship*, Oxford 2007.

SEBASTIAN, F., «Historia capitis VI Constitutionis "Lumen gentium"», *CpR* 45 (1966) 349-363.

SEBASTIANELLI, G., *Praelectiones Juris Canonici. De Personis*, Romae 1905[2].

SETIEN, J.M., *Naturaleza jurídica del estado de perfección en los institutos seculares*, Romae 1957.

SIPOS, S., *Enchiridion iuris canonici*, Pécs 1931.

SOUTO, J.A., «Algunas cuestiones basicas en torno a una posible ley de procedimiento administrativo, n. 28», *IusCan* 14 (1974) 14-23.

STAFFA, D., «De distinctione inter iurisdictionem ordinariam et administrativam in lure Canonico», *Periodica* 65 (1976) 5-11.

STEIGER, A.P., «De Propagatione et diffusione Vitae Religiosae. Synopsis historica», *Periodica* 13 (1924) 29-72; 153-180.

STURNER, S.J., *The vow of poverty*, Washington 1929.

SUÁREZ, F., *Operis de religion*, IV, Lugduni 1630-1634.

SUÁREZ, F., «De religion», tract. V, lib. III, c. XVI, n. 10, in C. BERTON, ed., *Opera omnia*, t. XIV, Paris 1859, 717-718.

SUGAWARA, Y., «Il ruolo delle costituzioni negli istituti di vita consacrata (can. 587)», *Periodica* 98 (2009) 663-691.

———, *Religious poverty. From Vatican Council II to the 1994 Synod of Bishops*, Roma 1997.

SVOBODA, J., «Quotation for community», *RfR* 47 (1988) 85-88.

SYLA, A., «Voti temporanei o vincoli diversi?», *Vita Religiosa* 5 (1969) 452-457.

TABERA, A. – DE ANTOÑANA, G.M. – ESCUDERO, G., *Il diritto dei religiosi. Manuale teorico pratico sugli stati di perfezione*, Roma 1961.

TABERA, A., «De dimissione religiosorum», *CpR* 12 (1931) 140-148.

TANNER, N.P., ed., *Decrees of the Ecumenical Councils*, II, London 1990.

THÉRIAULT, M., «Juridical acts», in *Exegetical Comm*. I, 796-814.

THOMAS AQUINAS, ST., *Summa Theologica*, Romae 1888-1905.

TING PONG LEE, I., «Quaestiones de iure religiosorum in missionibus», *CpR* 56 (1975) 61-81.

TOMASSI, F., *Il comandamento dell'amore fondamento del Diritto Canonico*, Roma 1999.

TORRES, J., «La dispensa dai voti e dal giuramento», in P.A. BONNET – R. BURKE – O. BUTTINELLI – AL., ed., *I procedimenti speciali nel diritto canonico*, Città del Vaticano 1992, 357-370.

TOMASSETTI, L. – BILIO, L. – GAUDE, F., ed., *Bullarium romanum 440-1740*, I-XXV, Taurino 1857-1872.

TURBESSI, G., «Introduction allo studio delle antiche regole», *VC* 4 (1968) 150-162.

———, «Legislazione pacomiana. La legislazione monastica di S. Basilio Magno», in G. TURBESSI, ed., *Regole monastiche antiche*, Roma 1974, 91-130; 133-267.

TURNER, S.J., *The vow of poverty*, Washington 1929.

UY, V.R., «The Principle of equity in the Code of Canon Law», *Forum* 8 (2006) 65-106.

VANIER, J., *Community and Growth*, London 2007.

VERMEERSCH, A. – CREUSEN, J., *Epitome iuris canonici cum commentariis ad scholas et ad usum privatum*, I, Mechliniae 1933-1936[5].

VERMEERSCH, A., «Religious life», in *OCE*, XII, 748-762.

———, *De religiosis institutis et personis. Tractatus canonico-moralis*, I, Brugis 1902-1909.

VERNAY, J., *Il diritto nella Chiesa cattolica. Iniziazione al diritto canonico*, Città del Vaticano 1998.

WACHS, J.M., *Obsequium in the Church. Sacred Tradition, Second Vatican Council, 1983 Code and Sacred Liturgy*, Montréal 2014.

WALTER, F., *Lehrbuch des Kirchenrechts aller christlichen Confessionen*, Bonn 1871.

WERNZ, F.X., *Ius decretalium ad usum praelectionum in scholis textus canonici sive iuris decretalium*, Romae – Prati 1905-1914.

WERNZ, F.X. – VIDAL, P., *Ius canonicum*, I, III, Romae 1923-1952.

WITTBERG, P. – CLARK ROOF, W., *The rise and fall of catholic religious orders. A social movement perspective*, Albany 1994.

WOOLF, L. – JOWELL, J. – LE SUEUR, A. – AL., ed., *De Smith's Judicial Review. Procedural Fairness: Introduction, History and Comparative Perspectives*, Indiana 2007[6].

WOUTERS, H.W., *Historiae ecclesiasticae compendium*, II, Neapoli 1862.

WOYWOD, S., *A Practical Commentary on the Code of Canon Law*, New York 1948.

WULF F., «The call of the whole Church to Holiness», in H. VORGRIMLER, ed., *Commentary on the Documents of Vatican II*, I, New York 1967, 261-279.

INDEX OF AUTHORS CITED

Adam: 82
Alexander III: 34, 402
Alexander VII: 50
Alexander VIII: 48, 49, 402
Alijard: 39
Aman: 368
Ambrose: 18, 410
Amerio: 146
Anatharackal: 142
Andrés: 103, 218, 222, 223, 227, 230, 231, 234, 235, 236, 237, 238, 241, 245, 252, 254, 276, 286, 288
Antonana: 97
Antoniutti: 136
Ardanza: 103
Arrieta: 299
Aubry: 164
Auge: 18, 23, 25, 26
Azaredo: 149, 151, 152, 153, 157, 169
Bahilo: 265
Ballay: 37
Balvo: 280
Bandera: 119
Barnes: 265, 268
Basilio: 25
Bastien: 50, 104
Battandier: 74, 81, 82
Beal: 280, 306, 339, 350, 356, 357
Beghetto: 142
Belsole: 142
Benedict: 23, 26, 27, 28, 31, 49, 57, 58, 59, 60, 65, 80, 83, 88, 94, 185, 189, 307, 402, 403, 410
Benedict XIII: 49, 58
Benedict XIV: 35, 49, 57, 58, 59, 60, 80, 94, 402
Benedict XVI: 189, 307
Benno Gut: 138
Berlière: 18, 21
Bertetto: 119
Beyer: 114, 115, 119, 123, 126, 147, 149, 151, 152, 153, 157, 164, 165, 167, 171, 172, 173, 201, 202, 206, 207, 234, 252, 253, 284, 285, 286, 288
Biederlack: 103, 104
Bisignano: 142
Böhler: 115, 124
Bolchi: 18, 414
Boni: 17, 28, 103, 119, 171, 236, 414
Boniface VIII: 35, 36, 43, 47, 56
Bonnet: 139
Boudinhon: 47, 62
Bouix: 35, 37, 41, 42, 50, 58, 72, 94
Brucker: 51
Burke: 30
Cada: 188
Calabrese: 225, 241, 242, 245, 251, 254, 273, 286, 287, 288, 324, 338, 350, 351, 382

Canosa: 280
Caparros: 300
Cappello: 103
Caprile: 323
Cardinale: 319
Carminati: 21, 23, 40, 64, 65, 73, 74
Castaño: 287
Castellano: 350
Cattana: 26
Chalmers: 337
Chelodi: 37
Ciardi: 140
Ciccimarra: 283
Ciprian: 18, 410
Clark: 186, 187
Clement VIII: 48, 49, 60
Clement XI: 42, 50, 58, 59
Clement XII: 60
Cocchi: 103, 104
Coccopalmerio: 199
Colombàs: 18, 19, 416
Conté De Coronata: 104
Coppola: 307
Coughlin: 307
Craisson: 50
Cremaschi: 24
Creusen: 98, 103
D'Ostilio: 308, 346
Dammertz: 232
Daniel: 349
Daniluk: 20
De Antoñana: 104
De Bonhomme: 119
De Diego-Lora: 313
De Paolis: 219, 220, 234, 235, 253, 276, 283, 286, 287
De Villars: 366
Del Re: 324
Devoti: 37
Dubois: 31
Duchniewski: 20
Dulles: 140, 185
Dunsford: 245
Echave: 70
Egan: 188
Egaña: 242, 243, 417
Eilon: 277
Escudero: 97, 101, 104, 148, 149, 150, 151, 152, 153, 157, 160, 162, 163
Fanfani: 103, 104
Faris: 216
Favale: 19, 20, 23
Feliciani: 199
Ferme: 31
Fernàndez: 19, 95
Fitz: 188
Fitzpatrick: 119
Fogliasso: 186
Francis: 265
Fuhrich: 103
Führich: 104
Gallen: 162, 171
Galot: 140, 161, 163, 164, 172, 173, 230
Gambari: 103, 201, 202, 234, 235, 242, 254, 283, 286
Garcia Martin: 245, 265, 418
Ghirlanda: 119, 219, 242, 283, 286
Giallanza: 249
Gilbert: 287
Girardi: 119
Gismondi: 199
Gordon: 306, 307, 315
Gorricho: 170
Goyeneche: 49, 81
Granderath: 62
Graziani: 307
Green: 323, 350
Gregory X: 34, 36
Gregory XIII: 41, 50, 52, 53, 54, 55, 56, 107, 386
Gregory XV: 42, 50, 60
Gribomont: 19
Grocholewski: 306, 307, 308, 319, 322, 323, 368
Guillaumont: 139

Gullo: 310
Gumpel: 115, 116, 120, 127, 129
Gutiérrez: 38, 70, 158, 161, 217, 232, 233, 235, 238, 282, 287
Harmer: 141
Harris: 147
Harvanek: 188
Hayward: 346, 347
Heimbucher: 49
Herranz: 197, 198, 421
Herwegen: 27
Heston: 162, 163, 174
Hill: 226
Holland: 242, 251
Horvat: 260, 271
Huizing: 199, 201
Ignatius: 21, 38, 39, 40, 51, 70, 107, 410
Innocent III: 34, 403
Innocent XI: 42
Innocent XII: 42, 50, 403
Innocent XIII: 60
Jankowiak: 83
Jedin: 43
John Paul II: 113, 123, 124, 197, 198, 210, 215, 248, 302
John XXII: 34, 36, 403
John XXIII: 114, 193, 197, 198
Jones: 366
Jowell: 366
Joyce: 374
Jungmann: 60
Jurado: 127
Kennedy: 369
Kindt: 103
Kirsch: 43
Kowal: 18, 20, 21, 23, 26, 27, 31, 32, 95, 210, 286, 287, 288
Krukowski: 306
Labandeira: 300, 301, 311
Lafont: 140
Larraona: 41, 48, 49, 57, 58, 62, 73, 105
Laurentin: 323
Le Sueur: 366
Leclercq: 17, 19, 422
Lefebvre: 381
Leipoldt: 24
Lentini: 26, 27
Leo XIII: 60, 61, 65, 72, 73, 74
Lesage: 171, 173
Leuren: 50
Lincoln: 82
Linscott: 220
Lisi: 286
Llobell: 322
Lobina: 281, 282, 284, 306, 307, 314, 321
Lòpez Amat: 18, 22, 26, 30, 422
Lozano: 20, 23
Lucidi: 57, 62, 63, 72
Manzanares: 199
Marchesi: 304, 307
Maroto: 74
Martens: 303
Martin: 306
Martinez: 101
Marx: 61
Marzoa: 250
Masi: 95
Mattia: 241
Mayton: 368
Mcalpin: 142
McDermott: 270
McDonough: 237, 245, 249, 251, 267, 272, 273, 280, 337, 367, 375, 376
Meyer: 119
Michele: 52
Midali: 140
Miras: 307
Misserey: 62
Mocchegiani: 35
Molinari: 57, 115, 116, 119, 120, 127, 129, 163, 173, 176, 209
Montini: 349
Moran: 147
Morey: 186

Morlot: 119
Morrisey: 350
Muzzarelli: 103
Nasoni: 83
Neal: 186
Neri: 25
Niccolò: 306
Noldin: 172
Noonan: 82
O'Murchu: 249
Ochoa: 258
Olivares: 38
Opondo: 179, 425
Orth: 41, 48
Orti: 306
Palombo: 81, 82
Pardilla: 142
Parma: 94
Passerini: 103
Pastor: 39, 51
Paul V: 48, 49
Paul VI: 118, 123, 127, 129, 133, 138, 145, 146, 152, 184, 185, 189, 191, 198, 217, 306, 322
Pellizzari: 52, 103, 105
Pennacchi: 46
Peters: 82, 83, 88
Pettinato: 173, 219
Piat: 50, 80, 82
Piderit: 186
Pigna: 119
Pinto: 308
Piontek: 24, 61
Pirhing: 36, 50
Pius IX: 33, 62, 65, 66, 71, 72, 108
Pius V: 46, 47, 48, 49, 51, 57, 58, 59, 63
Pius X: 61, 65, 77, 82, 83, 88, 306
Pius XI: 216
Pius XII: 114, 129, 138, 144, 178, 216
Plöchl: 21, 31, 32
Pointek: 24
Provost: 318
Puma: 66
Punderson: 305, 307, 308, 309, 310, 312, 313, 318, 319, 339, 380
Queralt: 124, 136, 139, 140
Quiñonez: 186, 187, 188
Rahner: 127
Ramos: 243, 342
Raus: 20
Ravasi: 84
Recchi: 121
Regatillo: 97, 98
Reiffenstuel: 36, 50
Rezàc: 19
Roberti: 306
Rode: 185, 187
Romano: 190
Rosario: 129
Rothenhäusler: 27
Russo: 94, 97
Sadock: 253
Said: 21, 23, 114
Salerno: 307
Salzano: 52
Sanabria: 105
Sastre Santos: 16, 68, 141, 145, 146, 147, 185, 412, 428
Schäfer: 66, 97, 103, 232, 428
Schmalzgrueber: 35, 36
Schmitt: 172
Schneemann: 62
Schneiders: 249
Schoenmaeckers: 115
Schroeder: 43
Schwanger: 307
Sebastian: 121
Sebastianelli: 35, 50, 82
Sipos: 80
Sixtus V: 48, 49
Souto: 368
Spiritu Sancto: 50
Staffa: 307
Steiger: 18, 23, 24, 25, 48, 62, 73
Suárez: 52

Sugawara: 116, 126, 128, 221, 227
Svoboda: 249
Tabera: 76, 97, 101, 104
Tamburrino: 23
Tanner: 114
Tertullian: 17
Thériault: 272, 300
Thomas Aquinas: 263, 264, 267
Thorn: 300
Torres: 213, 255, 276, 335, 343
Turbessi: 22, 23
Turner: 16, 57, 58, 73, 186, 187, 188
Uy: 376, 430
Vanier: 224, 260, 266
Vermeersch: 16, 18, 37, 41, 57, 62, 64, 66, 74, 97, 98, 103
Vernay: 199
Vidal: 37, 103, 104, 321
Wernz: 37, 49, 64, 81, 82, 95, 103, 104, 321
Wittberg: 186, 187
Woolf: 366
Wouters: 61
Woywod: 96, 97, 98, 106, 107
Wulf: 115, 119
Zaka: 23

GENERAL INDEX

INTRODUCTION 5

1. Scope, originality and limits of the study 7
2. Methodology 9

CHAPTER I: *Historical evolution of temporary profession of vows and the faculty to exclude a member from subsequent profession* 15

1. Religious profession from its origin to the Lateran Council I (I-XII century) 15
   1.1 The virgins, ascetics, hermits and anchorites and religious profession 16
   1.2 The cenobites and religious profession 20
      1.2.1 The Rule of Pacomius on religious profession 23
      1.2.2 The Rule of Basil on religious profession 25
      1.2.3 The Rule of Benedict on religious profession 26
   1.3 Papal and Particular Councils' legislations until the Council of Lateran I 29
2. From Lateran Council I to Pope Pius IX (XII-XIX century) 33
   2.1 Implicit declaration of all religious vows as solemn by Lateran Councils 33
   2.2 Explicit declaration of all religious vows as solemn and imposition of cloister on all religious 35
   2.3 From profession of solemn vows to profession of simple vows before solemn vows 37
      2.3.1 The genesis of the distinction between solemn and simple vows 37
      2.3.2 The origin of temporary profession of simple vows in Religious Institutes approved by the Holy See 38
      2.3.3 Development and rapid growth of Institutes of simple vows .. 40

2.3.4 The Decrees of the Council of Trent relative to religious profession 42
2.3.5 The outlaw of all communities not professing solemn vows by Pius V (1566-1572) 46
2.3.6 Ratification of temporary profession of simple vows by Pope Gregory XIII 50
2.3.7 An act of tolerance for female Congregations with only simple vows during Pontificate of Benedict XIV 57
2.3.8 From mere tolerance to approbation of female Congregations of simple vows 60
3. From Pope Pius IX to Pope Pius X (XIX-XX century) 65
3.1 Ratification of temporary profession before perpetual vows for all male Institutes by Pope Pius IX 66
3.2 The faculty to exclude from subsequent profession for just causes in all male Institutes 68
3.3 An invalidating clause to an obligation to profess temporary vows in male Institutes 70
3.4 Uniformity of discipline in Religious Institutes based upon the jurisprudence 72
3.5 Obligatory temporary profession prior to solemn vows for all religious ad validitatem 75
3.6 Determination of nine years for initial formation 77
3.7 The use of the term «Institute» before the promulgation of the CIC/1917 80
3.8 The distinction between dismissal and expulsion before the promulgation of CIC/1917 81
4. The 1917 Code of Canon Law 82
4.1 The aim of codification of Canon Law 82
4.2 Redaction of the CIC/1917 83
4.2.1 The schema of 1912 83
4.2.2 The schemata of 1914 and 1916 85
4.3 Temporary Profession of vows and exclusion from subsequent profession in the CIC/1917 88
4.3.1 Innovations brought by CIC/1917 on temporary profession . 88
4.3.2 Exclusion from subsequent profession at the expiry of the period of temporary profession 92
4.4 The Juridical debate on the nature of religious profession 103
4.4.1 Religious profession as a bilateral contract 104
4.4.2 Religious profession as a quasi-contract or contract of incorporation 104
5. Conclusion 107

CHAPTER II: *The teachings of Vatican Council II and Post-conciliar documents* 113

1. Temporary profession of vows in the teachings of the Vatican II 114
1.1 Dogmatic constitution *Lumen gentium* (1964) 115
1.1.1 The Preparation process of chapters V and VI of *Lumen gentium* 115
1.1.2 Theological Identity of religious life and religious profession in the light of the Dogmatic constitution *Lumen gentium* 120
1.1.3 Profession of evangelical counsels can either be by vows or by other sacred bonds 128
1.2 *Perfectae caritatis* (1965): Decree on renewal of religious life 130
1.2.1 The Preparation process of *Perfectae caritatis* 131
1.2.2 The doctrine of the Decree *Perfectae caritatis* on religious profession and exclusion from subsequent profession 134
1.3 Motu proprio *Ecclesiae sanctae* (1966) 141
2. Temporary profession and exclusion in the post-conciliar document *Renovationis causam* (1969) 145
2.1 The process of redaction of the Instruction *Renovationis causam* ... 147
2.1.1 Proposals from the Superiors General 148
2.1.2 Questions for the Consultants 153
2.1.3 Opinions of consultants 154
2.1.4 A meeting of consultants 157
2.2 Instruction *Renovationis causam* 158
2.3 *Renovationis causam* on temporary profession 160
2.3.1 The nature of religious profession and level of maturity of candidates to religious profession 161
2.3.2 Replacement of temporary vows with other sacred bonds 161
2.3.3 Opinion of various authors on the possible replacement of vows 163
2.3.4 Positive reception of the Instruction *Renovationis causam* and the consequent challenges 167
2.4 Renovationis causam on the importance of proper law and responsible leadership in developing vocation 169
2.5 *Renovationis causam* on exclusion from subsequent profession 175
2.6 *Renovationis causam* on re-admission after legitimate departure ... 180
2.7 Theological doctrine of *Renovationis causam* and its contribution in determining just causes for exclusion 181
3. Profession of temporary vows and exclusion in other post-conciliar documents 184
3.1 Decree *Dum canonicarum* (1970) 184

3.2 Interpretations unfamiliar with the spirit of the Council on renewal by some Religious Institutes 185
3.3 Apostolic exhortation *Evangelica testificatio* (1971) 189
3.4 Directive *Mutuae relationes* (1978)..... 192
4. Conclusion 192

CHAPTER III: *Norms of the CIC/1983*..... 197

1. Revision of canons on temporary profession and exclusion from subsequent profession..... 197
1.1 The first schema of 1977 202
1.2 Second (1980) and third (1982) schemata 208
2. Norms of the CIC/1983 on temporary profession and exclusion from subsequent profession 215
2.1 Three general principles that guided the revision process and their implication for application of can. 689..... 216
2.1.1 The Principle of subsidiarity..... 216
2.1.2 The Principle of autonomy 219
2.1.3 The Principle of suitability 222
2.2 Challenges deriving from the three principles in the exercise of discretionary authority..... 225
3. The basic elements of temporary profession of vows (can. 655)..... 227
3.1 Public vows to observe the three evangelical counsels 228
3.2 Consecration to God through the mediation of the ministry of the Church 229
3.2.1 The problem of «temporariness»..... 230
3.2.2 Classic authors' opinion on the doctrine of temporary profession in the post-conciliar documents..... 234
3.3 Incorporation into the Institute 236
3.4 On the period of temporary profession 238
4. Definitive departure during the period of temporary vows..... 239
4.1 Voluntary departure at the expiry of temporary vows and departure during the period of temporary vows..... 240
4.2 Exclusion from subsequent profession 241
4.2.1 Nature of can. 689 241
4.2.2 Ratio legis for can. 689 §1 and conditions and requirements for its application..... 243
4.3 The concept of a just cause..... 245
4.3.1 The two elements that determine the justness of a cause 246
4.3.2 Relevance of just causes requirement in can. 689 §1 247
4.3.3 An offense as a just cause for exclusion from subsequent profession 250

4.3.4 Illness as a just cause for exclusion from subsequent profession (can. 689 §2) 252
4.3.5 Insufficient qualities of maturity and unsuitable character as just causes for exclusion (cann. 689 §1 and 642) 255
4.4 Hearing the council ad validitatem 271
4.5 The faculty of discretionary judgement in can. 689 §1 274
4.5.1 Rationale for discretionary judgement granted by can. 689 §1 275
4.5.2 Does discretionary judgement in can. 689 §1 require any systematic manner of proceeding? 276
4.6 Communicating the motivation for the decision..... 278
4.7 Assistance to be given to those who depart from the Institute 281
4.8 Readmission into the Institute..... 285
5. Conclusion 288

CHAPTER IV: *The jurisprudence of the Holy See*..... 297

1. The hierarchical administrative recourse to the CICLSAL 300
1.1 The praxis of the CICLSAL in examining recourse against Superiors' acts of discretionary authority 301
1.2 If either of the parties is not satisfied with the decision of CICLSAL.. 305
2. Contentious-administrative recourse to the Signatura Apostolica..... 306
2.1 Some main differences between hierarchical recourse and contentious-administrative recourse 308
2.2 The actual process before the Signatura Apostolica 311
2.2.1 The petition for recourse..... 311
2.2.2 The First Phase: Whether the recourse is to be admitted or rejected 313
2.2.3 The Second Phase: the discussion and decision regarding the recourse..... 316
2.3 The Effect of an affirmative sentence of Signatura Apostolica..... 317
2.4 How an act of exclusion would aggrieve a member 320
2.5 Whether exclusion is within the scope of the CICLSAL and the Signatura Apostolica..... 322
3. Jurisprudence of the Holy See 324
3.1 Analysis of definitive decisions on cases of recourse against exclusion 325
3.2 Analysis of the reasons given by petitioners and Superiors 328
3.2.1 Reasons by petitioners for making recourse to the internal higher authority and to the Holy See 328
3.2.2 Reasons by competent Superiors for excluding the petitioners . 329
3.2.3 Analysis of cases of recourse in terms of number and gender... 331

3.2.4 Analysis of reasons given by petitioners and Superiors in relation to proper law provisions on application of can. 689 . 331
3.2.5 Analysis of reasons given by the petitioners and the Superiors in relation to formation and the quality of understanding of religious life 332
4. Observations from the analysis of cases of recourse to the Holy See..... 333
4.1 There are significant challenges facing recourse to the higher internal authority 333
4.2 Significance of proper law in determining the justness of the cause.... 338
4.3 The ratio legis for can. 689 limits the hierarchical Superior's judgement on merit..... 341
4.4 Adequate protection against improper exercise of discretionary authority..... 344
4.5 The seriousness with which decisions on exclusion should be made 347
4.6 The necessity of proceeding in a systematic manner in the decision to exclude a member 349
5. Conclusion 351

CHAPTER V: *Deductions from jurisprudence of the Holy See and forward looking possibilities* 355

1. Deductions from the jurisprudence of the Holy See for the application of can. 689 355
2. Some forward-looking possibilities 358
2.1 Formulation of general guidelines on the exercise of «administrative discretion» 358
2.2 Structuring and checking the exercise of discretionary authority.... 362
2.3 Practical reasons for structuring the exercise of discretionary authority..... 365
2.3.1 The just causes requirement of can. 689..... 365
2.3.2 The need to maintain unity of purpose among members..... 366
2.3.3 Protecting competent Superiors from unnecessary frustrations and the Institute from possible damages..... 367
2.3.4 Avoiding unnecessary litigation among Superiors and their members..... 367
2.3.5 The need to make members appreciate the rule of law as protective 369
2.3.6 Nothing prevents following norms of procedure whenever such is deemed useful or necessary..... 370
2.4 Putting in place a requirement that consultative and decisive votes be motivated in specific terms..... 371

2.5 Proposed model for a systematic gathering of facts that demonstrates that just causes for exclusion exist 373
2.5.1 Step I: Local Superior forwards the report to the competent major Superior 373
2.5.2 Step II: Identifying the provisions governing the matter 374
2.5.3 Step III: Examining past records of a member 374
2.5.4 Step IV: Hearing the member 376
2.5.5 Step V: Verification of the doubtful facts 377
2.5.6 Step VI: Hearing the council 377
2.5.7 Step VII: Discretionary deciding on the suitability of the member 377
2.5.8 Step VIII: Communicating the decision 378
3. How the Superior need to prepare proofs once recourse is made to the internal higher authority or to the Holy See 379
4. Going to Apostolic See in person 380
5. Suspension of the execution of the challenged decision 381
6. Conclusion 382

CONCLUSION 385

APPENDIX 393

ACRONNYMS AND ABBREVIATIONS 397

BIBLIOGRAPHY 401

INDEX OF AUTHORS CITED 433

GENERAL INDEX 439

TESI GREGORIANA

Since 1995, the series «Tesi Gregoriana» has made available to the general public some of the best doctoral theses done at the Pontifical Gregorian University. The typesetting is done by the authors themselves following norms established and controlled by the University.

Published Volumes [Series: Canon Law]

[Voll. 1-79 cf. *http://www.unigre.it/TG/Diritto_canonico/index.php*]

80. SMITH, Gregory N., *The Canonical Visitation of Parishes. History, Law and Contemporary Concerns*, 2008, pp. 366.
81. GORBATYKH, Vitaliy, *L'impedimento della parentela spirituale nella Chiesa Latina e nelle Chiese Orientali. Studio storico-canonico*, 2008, pp. 352.
82. HUBERT, Patrick, «*De praesumptionibus iurisprudentiae*». *Zur Entwicklung ständiger richterlicher Vermutungen in der neueren Rota-Rechtsprechung und deren Anwendung an untergeordneten Gerichten*, 2009, pp. 320.
83. HALLEIN, Philippe, *Le défenseur du lien dans les causes de nullité de mariage. Étude synoptique entre le code et l'Instruction «Dignitas connubii», fondée sur les travaux des commissions préparatoires de l'Instruction*, 2009, pp. 728.
84. CEREZUELA GARCÍA, Carlos A., *El contenido esencial del* bonum prolis. *Estudio histórico-jurídico de Doctrina y Jurisprudencia*, 2009, pp. 364.
85. PETIT, Emmanuel, *Consentement matrimonial et fiction du droit. Étude sur l'efficacité juridique du consentement après l'introduction de la fiction en droit canonique*, 2010, pp. 410.
86. GRIGORIȚĂ, Georgică, *L'autonomie ecclésiastique selon la législation canonique actuelle de l'Eglise orthodoxe et de l'Eglise catholique. Étude canonique comparative*, 2011, pp. 612.
87. SCOPONI, Paolo, *I divieti matrimoniali in casi singoli*, 2011, pp. 346.
88. IVANDIC, Petar, *Die verbindlich vorgeschriebenen Konsultationsorgane des Diözesanbischofs im universalen Recht der lateinischen Kirche und deren Verwirklichung in den Partikularnormen der Diözese Eisenstadt. Eine kanonistische Studie unter besonderer Berücksichtigung der diözesanen Gesetzgebung*, 2011, pp. 272.

89. POCAŁUJKO, Tomasz Paweł, *La prevenzione della nullità del matrimonio nella preparazione e nell'ammissione alle nozze con una considerazione del contributo dei tribunali ecclesiastici*, 2011, pp. 362.
90. SARTOR, Roberto, *Le convenzioni tra il Vescovo diocesano e il Superiore di un Istituto missionario a norma del can. 790 §1, 2° del CIC. Prassi della Congregazione dei Missionari Oblati di Maria Immacolata*, 2011, pp. 382.
91. FRANCHETTO, Fabio, *«Error in persona» (can. 1097 §1). Il dibattito sul concetto di persona nella trattazione dell'*error facti. *Analisi della dottrina e della giurisprudenza*, 2011, pp. 514.
92. MEZZOGORI, Ciro, *Vocazione sacerdotale e incardinazione nei movimenti ecclesiali. Una questione aperta*, 2012, pp. 520.
93. DANTO, Ludovic, *Le pouvoir des évêques en matière de dispense matrimoniale. Etude historico-canonique du Concile de Trente au Code de Droit Canonique de 1983*, 2012, pp. 336.
94. ALEXANDRE, Hélder Miranda, *A figura do penitenciário no desenvolvimento histórico-canónico do sacramento da penitência*, 2013, pp. 324.
95. NORD, Aaron Paul, Sede Vacante *Diocesan Administration*, 2014, pp. 396.
96. MILLOT, Guillaume, *La négligence dans l'exercice des charges. Approche en droit canonique pénal*, 2014, pp. 330.
97. HANSEN, Fredrik, *The Unity and Threefold Expression of the* Potestas Regiminis *of the Diocesan Bishop – Cann. 381 §1 And 391*, 2014, pp. 238.
98. ALBANESE, Emanuele, *Pornografia e consenso matrimoniale. La fruizione di pornografia oggi e il suo influsso sul consenso matrimoniale canonico*, 2014, pp. 270.
99. AROH, Prudentius Emeka, *Priestly Celibacy: A Gift and a Commitment (can. 277 §1). Adaptation to Igbo culture*, Nigeria, 2014, pp. 413.
100. DOHNALIK, Jan, *Il precetto pasquale. La normativa sulla Comunione e la confessione annuale (cann. 920 e 989) alla luce della tradizione canonica*, 2015, pp. 478.
101. RZECZEWSKA, Jolanta, *Les charismes dans l'Eglise et leur institutionnalisation canonique*, 2016, pp. 520.
102. SANGIANI, Fausto, *Comunità di famiglie: nuovo orizzonte dell'associazionismo nella Chiesa*, 2016, pp. 434.
103. INTERLANDI, R., *Potestà sacramentale e potestà di governo nel primo millennio. Esercizio di esse e loro distinzione*, 2016, pp. 728.
104. LOHSE, Edward, *Restricting the Right of the Faithful to Enter a Church for Divine Worship: Law and Jurisprudence*, 2016, pp. 442.
105. DOKTORCZYK, Stephen S., *Persistent Disobedience to Church Authority: History, Analysis and Application of Canon 1371, 2º*, 2016, pp. 336.
106. OPONDO, Jacinta Auma, *Temporary profession and exclusion from subsequent profession (cann. 655; 689). Theological-Juridical Study*, 2016, pp. 448.

Finito di stampare nel mese di gennaio 2017
presso Mediagraf spa - Noventa Padovana (PD)