

DIMINISHMENT OF RELIGIOUS CONGREGATIONS AND STRATEGIES FOR THE FUTURE

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INTRODUCTION

Many religious institutes in Western Europe and in North America have had, in recent years, to reexamine their internal governance structures, and to foresee the eventual disappearance of their provinces and regions, if not that of the institute itself. After many years of sustained growth, their numbers have now diminished considerably, and the sponsorship of their apostolic works has often already passed to others, or the transfer will occur in the near future.

Demographic changes within an institute usually call for adaptations in governance structures. Indeed, as the number of retired members grows, the younger members, often few in numbers, feel less and less concerned about the issues that interest the older members, and the quality of their apostolic commitment can suffer from the lack of support they perceive from their community. Where there are younger religious, they often ask what would be the best means to regroup so that they can continue or even perfect the institute's mission.

This is a first sign of "trouble" on the horizon, because the internal structures no longer correspond to life, or even, on occasion, stifle it!

I could have taken the position that I would first look at internal re-structuring. But, since many institutes have already gone through this process, it is probably time to look at the next – and sometimes inevitable – step. It is not that I am pessimistic about the future of religious life, but I am, I hope, realistic about the current situation. We must keep in mind that, at the same time as many, if not most, of the older religious institutes and autonomous monasteries in Western Europe and in North America are completing their mission, there is new birth around the world. It seems, for instance, that more than 200 new groups that eventually hope to become recognized as some form of consecrated life in North America have been identified and are in various stages of formation. I presume that there are similar signs in Europe.

Some of these will last; perhaps others might not be successful; but, at least, we see that the desire for consecrated or dedicated life is still very strong – although perhaps not always in the forms in which it was traditionally lived in years gone by. For instance, some of the newer groups wish to espouse norms that, in law, are presently not applicable for members of religious institutes. For example, these groups often want to form a community of men and women living together; others do not want perpetual commitment; some are open to Christians of other denominations, and so forth. Although at the present time, such groups cannot be recognized as institutes of consecrated life; they can, however, be recognized as public associations of the Christian faithful (provided all the other conditions of the law are met).

But, coming back to the situation we are addressing, we should keep in mind that closing an institute is not something like the “flavour of the month”. The others are doing it, so I guess we should do so also !!! Nevertheless, any institute that is going to have to face the situation in the relatively near future should begin preparing for it now.

It might be important to begin by recalling some of the canonical criteria necessary to maintain a juridical person in the Church and review some of the basic forms of restructuring. I am limiting myself here to canonical criteria. Superiors would also have to keep in mind other criteria of a spiritual nature (reading the signs of the times), of a psychological nature (preparing the members for “death and dying”), of a financial nature (closing down or changing corporations, charitable trusts, etc.) and of a relational nature (making arrangements with previous benefactors and donors).

Then, I would like to address arrangements that have recently been made by the Holy See for certain religious institutes to provide for their future in those instances where it is not appropriate or feasible for them to enter into a union or fusion (merger).

We could then examine the ways some institutes are taking to perpetuate their charism and mission, either through certain persons, or through apostolic works which, in some way, they have endowed for the future.

I. CRITERIA APPLICABLE TO THE VIABILITY OF RELIGIOUS INSTITUTES

Since each religious institute is a juridical person in the Church (c. 634), it must meet a number of specified criteria. For, even though by its nature it is perpetual, there could come a time when it will be necessary to dissolve the entity, or have it merge with another one.

1. A first point to keep in mind is that there must be a major superior, by whatever name that person is known (Prior or Prioress General, Congregational Leader, Abbot or Abbess, Superior General, etc.). This person has personal authority over all the members, houses and works of the institute. In other words, a juridical person must have its own leadership.

At times, though, because of a lack of appropriate persons, it has become necessary to appoint a religious from another institute, or some other qualified person, to serve as leader, pending the outcome of negotiations with another institute or entity. The need to have an outside person designated is a sign that the institute, on its own, will most likely become non-viable in the near future.

2. A second criterion is that an entity must have sufficient financial resources to carry out its mission (c. 114.3). Fortunately, this has not been a general problem for many of our institutes.

3. Thirdly, an institute must have a certain internal autonomy to carry out the assigned mission (c. 114.3). When it is unable to assume responsibility for any specific apostolic works, but, rather, has become turned in on itself, and all the able-bodied members are occupied with internal responsibilities, then, again, it is time to prepare for the demise of the institute.

4. A fourth point to consider is that there must be sufficient persons available to carry out the mission. It is not only a question of numbers, but also of qualified persons. It often happens today that, for various reasons, Superiors cannot readily assign even the younger members to positions of responsibility.

To help in this discernment, the Holy See, on certain occasions, has listed various criteria to be taken into account when considering whether an institute or a monastery is still viable. Among these, we could mention four, which, to some extent correspond to those we have just noted:

- a. The median age is quite high (probably in the 80s).
- b. There has been no perpetual profession in the institute (or the autonomous monastery) for more than a quarter century.
- c. The community is no longer able to provide superiors and leaders for its works.
- d. No bishop is asking the community for members to assist in the apostolate.

When these criteria exist, it is time for the institute to consider seriously the question of its future, through a form of restructuring or reconfiguration, or through other appropriate means.

A very severe article in *The Catholic Herald*, "The Disappearance of Catholic Orders is Changing the Landscape of the Church", November 5, 2013, by Father Alexander Lucie-Smith, raised the issue of the demise of religious institutes, whether in theory or in fact. A few of his points could be mentioned here – to set a context.

[The] disappearance from the Catholic scene of the traditional religious orders will change the landscape of the Church. Indeed, it already has done so.

The Church owes an immense debt to the religious orders. During the last five hundred years, ever since the Counter-Reformation, the religious orders have been the backbone of the Church's mission both at home and abroad. But now, in Europe and North America at least, most of the religious orders seem to have run their course. Not all, but most; and there are of course new religious movements that have emerged: but the generational change is there for all to see. [...]

This is why so many younger religious are leaving their orders, because there is no real point in being part of a religious community that exists on paper only. It might be a 'canonical reality' as they love to say, but that is the equivalent of a marriage that is being kept going only for the sake of the children. Many religious orders continue, for the time being, but they are in fact dead in all but name, and just waiting for their surviving members to die off. [...]

When institutions are in decline, the surface is the last thing to go. Hence the Byzantine Empire had all the outward appearances of a great polity minutes before its collapse, although these realities had long ago been hollowed out from within. Similarly with religious orders today. Many (again, please note, not all) have Generals and Provincials and novitiates, and rule books and documents and all the outward appearances of the religious life, but they have long ago ceased to be the orders they once were. Only the surface remains. [...]

While it might not be necessary to subscribe to all of these points, he follows with this zinger:

What should be done? Given that many of these moribund institutions may still have a long shadow life left in them, and given that they are sometimes sitting on huge amounts of money and resources that may not be being used for their original purpose, the best thing is for the Vatican (which has this power) to suppress them and put their resources to better use – a use, incidentally, more in keeping with the intentions of the original donors. I am not confident that this will be done, as the vested interests are too strong. But it ought to be done.

But the question we will be asking today is: how can the existing resources be put to the best use possible, in line with the charism of each institute? How do we determine this charism? This leads us to our next point.

II. PREPARATION FOR THE RESTRUCTURING OR RECONFIGURATION OF INSTITUTES

There are a number of possibilities to consider when it comes time to dissolve an institute or to restructure or reconfigure it in a significant way. We can examine some of these here.

The most common forms are: (1) an aggregation with similar institutes, in order to share certain services; (2) a federation with other like-minded institutes, while preserving internal autonomy; (3) a merger or fusion with another institute and being, as it were, absorbed by it; (4) a union of two or more institutes to establish a new one; (5) dissolution of the institute by the Holy See, at the request of the members; (6) suppression by the Holy See (usually a penal action).

No matter which form is selected, there are a number of preliminary steps to be taken.

A. INITIAL QUESTIONS TO BE ANSWERED

Before any serious work is done on a reconfiguration, three basic questions must be answered:

1. Why is the “reconfiguration” taking place?

For instance, is it to support the mission, similarity of charism, to witness to unity in the Church, to broaden the scope of mission, to simplify structures, simplification of administration, best use of personnel, better service in the Church, to reduce expenses, or simply to prepare for death?

Of course, there can be a variety of reasons, and one is not necessarily more important than the others.

2. Does the group wish to do this in steps, or take a more radical solution once and for all?

For instance, are they satisfied now simply with greater cooperation with another institute, with a federation, with some shared programs, etc. They should, however, keep in mind that an interim solution most likely means that the entire question will have to be re-opened within a few years, with the resulting concern and insecurity for the members.

3. If the community intends to take a more definitive solution, which model does it then wish to follow: a fusion (merger), or a union, or even, in extreme cases, dissolution?

When the answers to these questions are assured, then the community can begin moving towards more definitive steps.

B. INTERMEDIATE MEASURES – COVENANTS AND OTHER ARRANGEMENTS

Today, it is found that unions and fusions are difficult when there are no apparent or historical ties between the institutes.

Also, older members find it difficult to consider making a new profession after 50 or more years in one community.

So, what is sometimes happening is that there is an agreement or “covenant” with a larger institute, which is willing to accept the other members into their community and infirmary, look after their financial matters, and provide a reasonable form of leadership. In this way, the religious remain members of their original institute, but they are cared for thanks to the kindness of the other community.

Property that is no longer being used by the community that is received is disposed of.

Upon the death of the last member, the receiving institute receives the assets of the former community, unless other provisions were made beforehand. Such arrangements could include setting up a foundation to support a work originally undertaken by the absorbed community, or making special donations to particular works of charity, and so forth.

To avoid difficulties along the way, such arrangements are usually made in advance with the approval of the Holy See, while there are still members available to participate in the decision-making process. Clear consultation with diocesan authorities and competent legal experts is strongly recommended to avoid disappointments or misunderstandings later.

In the case of a diocesan institute that is seeking the protection of a larger one, without there being question of a union or a fusion (merger), it is the diocesan bishop of the principal house who can authorize such arrangements. He can also arrange for the Constitutions to be suspended in part, or even revised, to address the new situation.

This method seems appreciated by those institutes that have adopted it. It avoids having someone else put a belt around you and leading you where you do not want to go !!! It respects the autonomy of the religious in question. However, we must keep in mind that not every institute is in a position to absorb other ones, even if there is no canonical fusion or union.

III. **A NEW PONTIFICAL PUBLIC JURIDIC PERSON FOR RELIGIOUS INSTITUTES UNABLE TO PROVIDE FOR THEMSELVES**

A. **THE CONTEXT**

Over the past number of years, the Holy See has taken a number of practical steps to ensure the continuity of various ministries carried out in the name of the Church, especially ministries that were originally sponsored by religious institutes. One of the more popular ways to do this was through the establishment of pontifical public juridic persons (PJPs) to assume the sponsorship responsibilities of institutes in the areas of healthcare, social services, and education. This mechanism has been used more particularly in the USA, Canada, Ireland, and Australia. In other countries, foundations and trusts were established to look after the temporal goods involved.

But, while creative steps were taken in regard to the continuity of the apostolic works, little was done to assure the life and continuity of the institutes themselves and the appropriate care of their members. In a certain number of instances, we witnessed fusions and unions of various institutes. But this method has not always worked out as expected. At times, it almost had the characteristics of a forced marriage. Not every community was really ready and willing to give up its heritage and the practical expressions of its charism.

B. **NEEDS TO BE ADDRESSED**

In Canada, where there are a number of smaller institutes, it was felt that something significant should be done (1) to assure that the members of these communities would be well protected, (2) to provide for good stewardship of their temporal goods, (3) to make certain that the personnel hired to care for the sick members would be duly organized, (4) to ensure that all applicable labour laws would be respected, and (5) to take steps to provide that even certain apostolic works which were not part of one

of the new PJPs could be carried on, if these works still responded to a need in society and in the Church.

For this reason, conversations were undertaken with the Holy See to see what could be done for communities that badly needed assistance, but did not feel called to merge with another institute, and to determine how best to protect their assets, particularly when it became opportune or necessary for them to divest themselves of properties and buildings that were no longer in use, or were too large for present-day needs.

C. NEGOTIATIONS WITH THE HOLY SEE

The means that was eventually considered appropriate was the establishment of a new pontifical PJP to assume some of these responsibilities and to assure the proper stewardship of Church assets.

For this reason, a representative number of institutes – male and female, pontifical and diocesan, English and French-speaking, priests, brothers and sisters, communities with provinces and those that were directly under a Superior General – presented a joint request to the Holy See for the establishment of a new PJP (these institutes became known as the “participating entities”).

After lengthy discussions, and with the constant assistance of the Holy See, the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life on December 8, 2010, granted pontifical juridical status to a new PJP to be known as “*Canadian Religious Stewardship*” (*CRS*). This would appear to be the first time that such a juridic person has been established. Time will tell whether the intended goals can be met expeditiously and whether this was the appropriate canonical means to be used. Because of the civil ramifications of such an undertaking, *CRS* carries out its apostolic works through various civil entities.

It might be time to consider similar arrangements for the U.K. and for Ireland.

D. THE PURPOSES OF CANADIAN RELIGIOUS STEWARDSHIP

One of the particular characteristics of this PJP is that participation in its activities is entirely voluntary. A community that wishes to become a participating entity of *Canadian Religious Stewardship* can opt to make use of one or more of the services it offers. The PJP has five major purposes:

- to assist religious institutes by managing and safeguarding their ecclesiastical temporal goods and assuring their proper administration in accordance with canon and civil law;
- to provide personal care programs and services for the membership of these institutes;

- to accept ownership of ecclesiastical temporal goods in those instances where the Institute wishes to divest itself of property, in accordance with the requirements of canon law;

- when opportune, to accept governance responsibilities for any or all healthcare, educational, religious and social service ministries presently supported by the institute;

- with the consent of the relevant diocesan bishop, and if appropriate, to accept sponsorship of a ministry of an institute.

One of the points that can be noted is that provision was made to accept governance responsibilities for services offered by religious institutes – services that did not fit into any of the more traditional categories, healthcare, education, social services. In particular, thought was given to retreat houses, publication works, and similar undertakings.

It is obvious that one delicate point that will have to be kept in mind when *CRS* assumes one or more of these responsibilities, is the establishment of good relations with the diocesan bishop, since, in many instances, we are dealing with apostolic works carried out in the name of the Church. In order to support the request, letters from a significant number of bishops who had motherhouses or provincial houses in their dioceses were part of the proposal presented to the Holy See.

E. THE PROVISION OF SERVICES

A participating entity can avail itself of one or more the services of the PJP for a given period of time. There is no question of the institute itself becoming integrated into the PJP. It is a stewardship entity, not a new religious institute or a part thereof.

Because this new entity has as its focus the support of religious institutes, of their members, and of their mission, we should not be surprised to see in the statutes the provision that the President of the Members shall be a perpetually professed member of an institute of consecrated life or society of apostolic life. The other members are to be in full communion with the Catholic Church, but may be religious or lay persons.

The members are selected by representatives of the participating entities. Once they were duly appointed, they began initial work on a number of inter-congregational projects, including, more particularly, establishing appropriate residences for religious who need a certain level of medical care and assistance. Not surprisingly, *CRS* has already received a number of requests for assistance.

As is the case with most of the other approved PJPs, the Statutes provide that members of *Canadian Religious Stewardship* shall satisfactorily complete an initial formation process and participate in a continuing formation process, the content of which shall be determined by the participating entities. This has been one of the best outgrowths of the new PJPs – a continued emphasis on the formation of those involved as members or sponsors. The number of persons who have completed such formation processes now creates a very significant pool of committed people who, in virtue of their baptism and

confirmation, are willing to assume additional responsibilities in the Church, and carry them out faithfully.

As is also the case with other PJPs, the Holy See is asking for an annual report of the activities of *Canadian Religious Stewardship*. Since this is a new type of undertaking, it will be important that clear and precise reports be presented.

Although the foundational documents do not specify that *CRS* can operate anywhere, or that its activities are restricted to Canada, these documents refer consistently to institutes carrying out their ministry in Canada. It might be possible for religious institutes in other countries to consider requesting some similar type of entity for their own country.

The major advantage of such an undertaking is that it provides that members of religious institutes that are diminishing or are even in their final stages, will be duly protected and provided for. It also means that even if certain institutes are no longer able to find qualified treasurers to oversee the proper administration of their temporal goods, there will be another mechanism available to assure that these responsibilities are carried out in an appropriate manner. Given the fact that, today, taxation and employment laws are becoming more and more complicated, it is opportune and even necessary for institutes to make certain that they are observing all applicable legislation, so that the ownership of goods and their civil status, as well as that of their lay employees, is not jeopardized.

This new entity constitutes a leap of faith. It is a sign of the concern of the Holy See for the well-being of institutes and their members, and also provides a possible model that could be considered elsewhere.

IV. IDENTIFYING THE SPIRITUAL AND TEMPORAL PATRIMONY OF A RELIGIOUS INSTITUTE

As we consider plans for the future, it is essential, I believe, to make certain that institutes have carefully identified their spiritual and their temporary patrimony, in order to be able to determine what they would want to leave as a legacy.

It is essential to keep in mind that our religious institutes function on two distinct, but overlapping, levels: the canonical and the civil. Although my primary focus here today is the “canonical”, we cannot abstract from the “civil” ramifications of canonical decisions.

Many of the institutes functioning in the U.K. have their generalate in France or in Italy, or in some other country. It follows that, in such circumstances, the laws of a number of countries might have to be kept in mind – depending on what the governing documents provide.

A. THE SPIRITUAL PATRIMONY (THE CHARISM OF THE INSTITUTE)

Can. 578 All must observe faithfully the mind and designs of the founders regarding the nature, purpose, spirit, and character of an institute, which have been sanctioned by competent ecclesiastical authority, and its sound traditions, all of which constitute the patrimony of the same institute.

The spiritual patrimony (not the economic patrimony) is the object of canon 578. This patrimony is composed of seven elements, which are not always totally distinct. The canon is based on *Perfectae caritatis*, No. 2b. Once identified, the elements are to be faithfully observed by all the members.

1. **THE MIND OF THE FOUNDER (FOUNDRESS)**

Many institutes have trouble defining clearly who their founder (foundress) is, because a number of them are break-offs from other groups, such as in the time of persecution or expulsion, or because bishops wanted diocesan institutes.

Likewise, some institutes of women do not wish to recognize a man as founder (for instance, the local parish priest, the bishop, etc.), or if they do, then they distinguish clearly between the founder of the work and the foundress of the community.

A number agree to recognize more than one founder (such as the Seven Founders of the Servite Order).

In the long run what counts is that there be some identification of the person or persons who were directly involved in establishing the institute as a separate community within the Church, so that their example can be followed.

2. **THE INTENT OF THE FOUNDER (FOUNDRESS)**

Some founders and foundresses intended to have specialized works; others had a more general intention (for instance, to respond to all needs of the diocese). Some did not intend initially that their institutes would become missionary communities, but circumstances dictated otherwise.

The intention is not something intended once and for all. For this reason, John Paul II in *Vita consecrata*, speaks of a "founding charism" rather than of the "founder's charism" (No. 36).

In Christian discipleship and love for the person of Christ there are a number of points concerning the growth of holiness in the consecrated life which merit particular emphasis today.

In the first place, there is the need for fidelity to the founding charism and subsequent spiritual heritage of each Institute. It is precisely in this fidelity to the inspiration of the founders and foundresses, an inspiration which is itself a gift of the Holy Spirit, that

the essential elements of the consecrated life can be more readily discerned and more fervently put into practice.

Fundamental to every charism is a threefold orientation.

First, charisms lead to the Father, in the filial desire to seek his will through a process of unceasing conversion, wherein obedience is the source of true freedom, chastity expresses the yearning of a heart unsatisfied by any finite love, and poverty nourishes that hunger and thirst for justice which God has promised to satisfy (cf. Mt 5:6). Consequently the charism of each Institute will lead the consecrated person to belong wholly to God, to speak with God or about God, as is said of Saint Dominic, so that he or she can taste the goodness of the Lord (cf. Ps 34:8) in every situation.

Secondly, the charisms of the consecrated life also lead to the Son, fostering an intimate and joyful communion of life with him, in the school of his generous service of God and neighbour. Thus the attitude of consecrated persons "is progressively conformed to Christ; they learn detachment from externals, from the tumult of the senses, from all that keeps man from that freedom which allows him to be grasped by the Spirit". As a result, consecrated persons are enabled to take up the mission of Christ, working and suffering with him in the spreading of his Kingdom.

Finally, every charism leads to the Holy Spirit, insofar as it prepares individuals to let themselves be guided and sustained by him, both in their personal spiritual journeys and in their lives of communion and apostolic work, in order to embody that attitude of service which should inspire the true Christian's every choice.

In fact it is this threefold relationship which emerges in every founding charism, though with the specific nuances of the various patterns of living. This is so because in every charism there predominates "a profound desire to be conformed to Christ to give witness to some aspect of his mystery". This specific aspect is meant to take shape and develop according to the most authentic tradition of the Institute, as present in its Rule, Constitutions and Statutes.

If an institute intends to perpetuate its patrimony, this is one of the principal areas to consider.

3. THE NATURE OF THE INSTITUTE

Some institutes are clerical, others lay. Some are contemplative, others active. Some changed along the way, with the intervention of ecclesial authorities, others remained the same. Some had cloister at the beginning, but changed it later.

There are numerous difficulties today in regard to the nature of some "mendicant" or "monastic" communities. They would like to see a new category of institute defined, which would not be related to the exercise of the power of orders (some are speaking of "mixed" institutes). No definitive answer

has yet been given to this request, but a special commission is to be established to review the matter (see *Vita consecrata*, No. 61).

Some Religious Institutes, which in the founder's original design were envisaged as a brotherhood in which all the members, priests and those who were not priests, were considered equal among themselves, have acquired a different form with the passing of time. It is necessary that these Institutes, known as "mixed", evaluate on the basis of a deeper understanding of their founding charism whether it is appropriate and possible to return to their original inspiration.

The Synod Fathers expressed the hope that in these Institutes all the Religious would be recognized as having equal rights and obligations, with the exception of those which stem from Holy Orders. A special Commission has been established to examine and resolve the problems connected with this issue; it is necessary to await this Commission's conclusions before coming to suitable decisions in accordance with what will be authoritatively determined.

4. THE PURPOSE OF THE INSTITUTE

Every duly-established entity in the church has a mission or a special purpose. A general purpose, found in any church entity, consists in making the presence and message of Christ better known, loved, and lived.

In addition, for those involved in the active ministry, the mission is usually centered around works of health care, education, or social services. These are generally grouped together under the general term of spiritual and corporal works of mercy. Of course, there are many other activities outside these three specific areas, such as offering spiritual care and direction, liturgical services, the communications apostolate, and various other works of mercy.

In all entities, the mission is outward; that is, it is not centered on the person who is carrying out the service, but rather on the service itself and its long-term goal – to bring people closer to Christ.

The offering of such services implies that there are sufficient resources available to sustain the mission.

Obviously, with time, purposes change. What were needs in the XVIIIth century might no longer be such today. Therefore, there has to be some flexibility, but in the line of the original approval.

When an institute wishes to perpetuate its patrimony, this too is one of the points to consider.

5. THE SPIRIT OF THE INSTITUTE

The spirit of the institute is often identified with its “spirituality”. For instance, some institutes are penitential; others are based on thanksgiving. Some have a spirit of service, of caring for the most abandoned, etc.

This is something intangible, like a family spirit, but it is seen by its fruits, especially when an institute is international or has a number of branches arising from the same original foundation (for instance, Srs of St. Joseph, Sisters of Mercy, Presentation Sisters, etc.).

Vita consecrata, in n. 93, addresses the issue of the spirituality of an institute:

... a concrete programme of relations with God and one’s surroundings, marked by specific spiritual emphases and choices of apostolate, which accentuate and re-present one or another aspect of the one mystery of Christ. When the Church approves a form of consecrated life or an Institute, she confirms that in its spiritual and apostolic charism are found all the objective requisites for achieving personal and communal perfection according to the Gospel.

6. THE CHARACTER OF THE INSTITUTE

The character is probably the most difficult point to determine, even though quite a number of canons refer to the “character” of the institute (see, for instance, cc. 659, 667, etc.).

In the drafts of the Code, it was proposed that apostolic institutes choose between being “conventual” or “integrally apostolic”. This was almost impossible to do, and the proposal was dropped in the promulgated version. Nevertheless, it is important for institutes to know what is their character.

Conventual institutes insist more on group apostolate, prayer in common, stability, poverty, collegial forms of government, and so forth.

Integrally apostolic institutes insist more on personal apostolates, personal prayer, mobility, obedience, forms of government identified with a superior, and so forth.

In practice, a number of institutes have taken elements from both. What counts most is that they not choose all elements; this would be like choosing twelve desserts in a cafeteria, and then paying the consequences...

It is usually very painful for institutes to agree on their character, at times because of polarization caused by age groups, by cultural differences, by lack of historical clarity, by an unwillingness to choose, etc. But, until the choice is made, it is almost impossible to organize proper formation programmes for new members, or to integrate new members into the group because the expectations are so different.

When perpetuating a charism, however, this element is usually not that significant.

7. **THE SOUND TRADITIONS**

When Vatican II spoke of “sound” traditions, it did not mean little practices, but points that have marked the institute from the very beginning. For instance, particular devotion to Mary, hospitality, and so forth.

Not all traditions are “sound”, because they can be dangerous to one’s health. It is a question of discerning.

B. **THE TEMPORAL PATRIMONY OF THE INSTITUTE**

Since, ordinarily, it will be through methods of financing that the spiritual patrimony will be perpetuated, it is important that we be clear about what constitutes the financial patrimony of an institute. I ended yesterday’s presentation on this theme, and would now like to delve further into it.

1. **WHAT CONSTITUTES THE TEMPORAL PATRIMONY OF AN INSTITUTE?**

Indeed, as we saw yesterday afternoon, the patrimony or temporal goods of a religious institute is usually classified either as “free” or “liquid” capital, or as “stable” capital or patrimony. Stable patrimony is that which is destined for the long-term security of the members (in the case of a religious institute) and of the sponsored works, even if the institute itself ceases to exist.

2. **THE INVENTORY OF STABLE PATRIMONY**

The *Catholic Health Association of the United States* has recently (2017) published a new book entitled “*Temporal Goods at the Service of the Mission of Ministerial Juridic Persons*”. What follows in this section is based to a great extent on ideas found in this publication which follows a question-and-answer format.

a. **WHAT IS AN INVENTORY OF ECCLESIASTICAL GOODS?**

An inventory is a listing of the temporal patrimony of a juridic person (a religious institute), which includes goods that have been classified as stable and those that are not.

Canon 1283 notes that the inventory should list (1) all immovable goods (such as real estate, land, buildings), (2) movable goods which are precious, (3) moveable goods which are of significant cultural value, and (4) other goods. There is to be a description of each item, and a determination of its approximate value (oftentimes as listed on insurance policies).

It is to be revised periodically, particularly when there is a change of superior (the canonical administrator).

It is also important to distinguish clearly between goods which belong to the institute, and those which have been entrusted to it (for instance, when a religious community is tasked with operating a community hospital that does not belong to the church). While there would be civil responsibilities relating to entrusted goods, these assets are not considered to be ecclesiastical goods.

There is another category that could be entered into the inventory, and this is a listing of the various civil trusts or corporations used by the institute to further its mission. Some of these might be directly involved in the mission itself, while others might serve the role of being a supporting operation. Examining the purposes of each of these trusts might be a good way to determine whether or not their activities could be classified as being directly church-related and, as a consequence, whether or not their temporal goods should be considered as ecclesiastical goods, no matter how they are registered civilly. (This will take on importance when we consider making donations to perpetuate an institute's charism and mission).

b. **WHO IS RESPONSIBLE FOR DRAWING UP THIS INVENTORY?**

Canon 1283 states that the administrator (i.e., the superior in a religious institute) is to draw up the inventory.

Obviously, the administrator can be assisted by others, but the ultimate responsibility lies with the office holder (superior, treasurer, etc.).

c. **ARE THERE SPECIAL NORMS GOVERNING THE PREPARATION OF THE INVENTORY?**

In addition to the requirements mentioned above in relation to categories of goods to be included, it could be recognized that, on many occasions, a similar listing has been prepared for insurance purposes, sometimes accompanied by photographs of a specific object.

This listing can easily be integrated into the canonical inventory, thus making it easier to prepare.

It follows, then, that the superior must draw up the inventory, try to determine an approximate value of the goods in question, submit a copy to the central archives, and keep it updated as necessary. The

inventory would also list any conditions attached to the goods by donors. Once goods have been listed, the superior would then have the duty to see that they are duly protected (see canon 1284).

In addition, the institute's leadership could determine special policies applicable throughout the entire congregation. These could include, for instance, recognition of any applicable civil law regulations (for instance, listing easements or other restrictions on property that is owned, protection of heritage sites that have been recognized as such, and so forth).

It is obvious that this is one area where the canonical leaders and the civil administrators would have to work in close collaboration.

d. **HOW OFTEN SHOULD THE INVENTORY BE REVISED?**

Canon 1283 notes that an inventory is to be drawn up before a new administrator (i.e., superior) assumes the duties of the office, if there is not already one in place. Where an inventory already exists, the new incumbent is to review its contents and sign off on it.

The same canon notes that any changes should be inscribed, preferably when they occur.

An institute could determine a regular schedule for the updating of its inventory (as, for instance, after each general chapter).

e. **WHAT CATEGORIES OF GOODS NEED TO BE LISTED IN THE INVENTORY?**

As noted earlier, there are four categories of goods to be listed in the inventory: (1) all immovable goods, (2) movable goods which are precious, (3) moveable goods which are of significant cultural value, and (4) other goods.

This presupposes, obviously, that a prior determination has been made of the goods which are to be listed under each of the separate categories.

f. **WHO DETERMINES WHETHER GOODS ARE OF SIGNIFICANT CULTURAL OR HISTORICAL VALUE AND WHICH CRITERIA ARE USED TO MAKE THIS DECISION?**

If this has not already been done, it is the superior who determines which goods are to be considered of significant cultural or historical value.

In the case of buildings, it is sometimes easier to make this determination because of “heritage” designation attached to the property by the competent civil authorities.

For other goods, it will be a judgment call. For instance, a particular book in and of itself might be of little historical or cultural value, but, because it belonged to the foundress of the community which originally sponsored the work, or was used regularly by her, it takes on special value.

There is also a question here of underlying integrity. While it is much easier to dispose of goods which have not been classified as historical or of cultural value, to avoid doing so opens the door to the risk that the object will eventually be lost, thus depriving the church and society of items that can be significant for an interpretation of their history.

g. **IN THE INVENTORY, SHOULD SPECIAL MENTION BE MADE OF RESERVED FUNDS, ENDOWMENTS AND RESTRICTED FUNDS?**

Canon 1283 does not enter into details about the various types of funds to be distinguished in the inventory. Nevertheless, it would be essential for an administrator to be aware of any conditions attached to a fund. For instance, has the fund been reserved exclusively for one purpose, or can this purpose be modified as new conditions arise?

Restricted funds are often accompanied by special intentions or conditions spelled out by the donor; these too must be respected once the gift has been accepted.

Sometimes, goods are simply set aside for an eventual purpose – earmarked for a possible construction project – but without being specifically reserved for this purpose. This designation does not make the fund a reserved fund, and, if circumstances change, the money might be used for another purpose. So, such funds should not be listed among the goods belonging to the stable patrimony.

h. **DO THE NORMS ON THE INVENTORY APPLY ALSO TO ECCLESIASTICAL GOODS THAT HAVE NOT BEEN DECLARED TO BE PART OF STABLE PATRIMONY?**

Yes, all temporal goods owned by a religious institute or entrusted to it are to be listed. It might not be necessary that each book or chair be specifically mentioned. Much would depend on the policies adopted by the sponsoring organization.

Goods specifically listed for insurance purposes could provide a reasonable starting point.

V. THE DISSOLUTION OF A RELIGIOUS INSTITUTE AND ITS DISTRIBUTION PLAN (“CONGREGATIONAL WILL”)

Can. 584 The suppression of an institute pertains only to the Apostolic See; a decision regarding the temporal goods of the institute is also reserved to the Apostolic See.

Canon 584 is quite definitive in its formulation; there are no “exception” clauses in the norm. However, in the years following the promulgation of the *Code of Canon Law*, a distinction was introduced into the vocabulary. The term “dissolution” is now used when it is a case of voluntary ceasing of the institute, or when the last member dies; the term “suppression” is used more as a penal term – a penalty imposed for non observance of the Constitutions, and so forth.

Each religious institute, by law, is a juridic person (see canon 634, §1), and, therefore, is considered to be perpetual (see canon 120, §1).

The canon is not speaking of civil suppression as occurred on numerous occasions in Europe at the time of the Reformation (Henry VIII) or during the French Revolution (Napoleon), to mention but two examples, and not overlooking situations that occurred in Eastern Europe after World War II. Such action on the part of civil authorities does not change the canonical nature of the institute or monastery, which, in the eyes of the Church, continues to exist.

The canon applies even in the case of a diocesan institute (see canon 616, §2). In the case of a “pious union” or of an association of the faithful, a bishop may suppress it without going first to the Holy See. The groups that have been “suppressed” recently are really associations of the faithful, and not religious institutes. (At one point in time, though, there was talk about suppressing the Legionaries of Christ, a religious institute, but this was not the intention of the Holy See).

There have been suppressions in the course of history; among the most notable were those of the Knights Templar and of the Society of Jesus (in many parts of the world). In 2011, for instance, Pope Benedict ordered the suppression of the “Monastery of the Holy Cross in Jerusalem”, in Rome, for questionable behaviour and a lack of moral discipline.

The second part of the canon notes that when an institute is suppressed, the Holy See determines what is to be done with its temporal goods, since these are ecclesiastical goods (see canon 635, §1). In particular, intentions of donors must be respected, as well as acquired rights. Provision must also be made for surviving members who are otherwise unable to provide for themselves.

However, because it cannot be reasonably expected for the Holy See to be aware of all the details relating to the finances of a religious institute that no longer exists, the institute can assist in this task by preparing a distribution plan, or what we have come to call a “Congregational will”.

When speaking of a “distribution plan”, it is essential to keep in mind that the superiors of religious institutes are not the “owners” of the goods of the institute. These goods are identified as “ecclesiastical goods” and, therefore, must be used in accordance with the purposes for which church entities can acquire and retain temporal goods.

It would be important also to keep in the back of our minds that, in some instances, the distribution of assets belonging to an institute might trigger canonical alienation procedures, if the funds being distributed are taken from the stable patrimony and exceed the maximum sum authorized by the Holy See for the region. (I do not intend to enter into the particular area today, because it would be a day’s talk in itself).

Another point to keep in mind is that sometimes the existing trust agreements contain a specific dissolution clause, determining where any remaining assets are to distributed.

A. **THE INTENTION TO PERPETUATE ELEMENTS OF THE CHARISM AND MISSION OF THE INSTITUTE**

When an institute foresees that, before too long, it will cease to exist because the last member will have died, it is good for it to decide which of its previous apostolic activities it would like to see continued.

The choice of such apostolates would, normally, be based on the intentions of the founders as well as on the purposes of the institute. Sometimes, for instance, institutes found themselves caught up in apostolic works that they had not really espoused, but were asked to sponsor. They probably wouldn’t be as interested in perpetuating these works as they would be for others.

Then, once they have decided which ones they would like to help into the future, they have to evaluate the financial resources that would be available for such a purpose. This usually calls for an actuarial study.

In preparing a “Congregational will”, then, the first step is to evaluate carefully those expressions of mission which are in conformity with the charism of the institute.

Secondly, there could be other works of charity or apostolic works that the community would like to support, even though they weren’t initially part of its mission.

Likewise, if the community was assisted in its final days by another institute, usually a significant donation is made to that institute.

Finally, it is important to think of the diocese where the community was founded, or of dioceses where it exercised its apostolate.

Instead of leaving actual sums, the tendency today is for the institute to designate percentages, so that X% will go to this activity, and Y% to another, and so forth. The principal reason for this is that a

community does not know for sure how much will be available for distribution after the last member dies.

B. VARIOUS POSSIBILITIES

When it comes to what will follow here, it is essential to keep in mind that I am not a civil lawyer, nor am I familiar with the various laws that are operative in the UK. For this reason, I intend to limit myself to general principles. So, before a community would act of any of these possibilities, it would be essential that a qualified legal professional be consulted beforehand.

There are a number of options for different civil law possibilities that can be used to create and implement a distribution plan for surplus assets when the time comes: (1) a restricted charitable purpose trust, (2) amendment of existing governance documents, (3) a legacy foundation, (4) using existing foundations, (5) a separate charitable trust, or (6) an unrestricted gift. Each option has advantages and disadvantages and should involve a registered charity. The various options are subject to change depending on the structure and facts pertaining to a particular congregation and corporate legislation. Each option would, of course, have to comply with the applicable civil law.

Whichever option is selected, it is good to provide the congregations with the freedom to change the features of the option up to and until a particular event occurs (sometimes called a “Triggering Event”), which would trigger changes in membership of the trust and distribution of the assets in accordance with a pre-determined plan (sometimes called a “Distribution Plan”). This approach is in keeping with the analogy of wills for individuals, which are always variable up to the time of death.

It will take some care to define the Triggering Event properly. Some possibilities that come to mind are: a) there are only x members of the congregation still alive or b) there are only x members of the congregation who are capable of managing its affairs. There will be other examples available from the experience of congregations who have already reached the point of needing someone to manage their affairs and distribute their assets as part of their legacy.

To ensure maximum flexibility, as noted above, it would be preferable to fashion a “Distribution Plan” that refers to percentages of assets instead of precise amounts and, where possible, identifies fields of pastoral endeavours or apostolic works rather than specific organizations. If a transfer of all existing funds is taking place (in one form or another) it should also be made clear that the first priority placed on these funds will be the care of the remaining members of the congregation in accordance with the charitable purposes of that congregation and discharge of its liabilities.

Whatever option is selected, the Triggering Event and distribution plan will have to be carefully defined in the documents.

Here are some possibilities that could be considered. However, because there are so many possible entities, I am using the term “corporation” here in its broadest sense, depending on the law in effect in the territory (so what I’m saying could most likely be applied with appropriate adaptations to a society, an association, a société anonyme, a company, a foundation, a charitable trust, and so forth).

Likewise, when I refer to a “Charity”, I’m referring to an entity that has been duly recognized by Government authorities as carrying out an activity that is in accordance with the law governing not-for-profit entities, by whatever name they are called in the country.

I realize that what follows is highly technical. However, since institutes are facing the various possibilities today (or will soon be facing them), I thought it would be helpful to have the material spelled out here for future reference.

1. **OPTION 1: ESTABLISHING A RESTRICTED CHARITABLE PURPOSE TRUST WITHIN A RECOGNIZED CHARITABLE ENTITY**

Since this option seems to be more fundamental, I will describe it in more detail. The other possible options would then build on some of the provisions outlined under this “Option 1” heading.

With this option, the trustees, members, board of directors, etc., of another trust would agree to accept a notional gift from a religious institute, and, in accordance with the terms of a declaration of trust to accompany the gift would agree to hold the gift as a trust (“Trust”) for the restricted charitable purposes set out in the declaration of trust to be signed by the donor and the trustees.

This might be preferable to setting up a separate trust outside the original “corporation” (religious institute) because in the case of a separate trust the assets of the trust could be subject to the liabilities of the trustees, since the trustees would be the legal owner of its assets. As well, with a separate trust, there would be the complexities involved with appointing successor trustees.

Those who have had any dealings with the establishment of new “associations” in France, know how difficult it can be at times to set up such entities there...

The terms of the Trust could include the following:

- a) A description of the restricted charitable purposes that would apply before the Triggering Event, which would presumably be the existing purposes of the congregation, or at least some of them;
- b) A description of the Triggering Event;
- c) A description of the restricted charitable purposes that would apply upon the occurrence of the Triggering Event, which would reflect the distribution plan;
- d) The assets of the Trust would be distributed in accordance with the applicable charitable purposes that would apply before the Triggering Event, and in accordance with the applicable charitable purposes (i.e. the distribution plan) that would apply after the Triggering Event;

e) A provision could be added that would provide for a mandatory change of trustee of the Trust upon the occurrence of the Triggering Event from the “corporation” to whatever charity the congregation would like to be responsible for ensuring compliance with the terms of the Trust; or, alternatively, the “corporation” could remain as trustee of the Trust with a change of members and directors occurring;

f) The right of the “corporation”, as the trustee of the Trust, to vary any term of the Trust in its discretion up to the point in time of the Triggering Event;

g) Following the initial donation by the donor to establish the Trust, the board and members of the “corporation” would approve the “corporation” holding all or some of the assets as trust assets in accordance with the terms of the Trust, which could be accomplished by resolution of the board and members without the need to transfer the property of the “corporation” by deed or other transfer agreements, since the “corporation” would already be the legal owner of the assets in question; instead the resolution would simply change the nature of the “corporation” owning its assets from owning them legally and beneficially for its corporate purposes to owning such assets as trustee in accordance with the terms of the restricted charitable purpose trust as set out in the Declaration of Trust.

The advantage of a restricted charitable purpose trust is that the trustee, whether it be a successor charity that would be automatically appointed upon the occurrence of the Triggering Event or the corporation itself continuing as the trustee of the Trust, would be obligated to distribute the remaining assets of the corporation in accordance with the terms of the charitable purposes of the Trust that would take effect upon the Triggering Event. There could be no change to the terms of the Trust after the Triggering Event (similar to a will after the testator has died), unless court authorisation was to be sought. Prior to the Triggering Event, anything would still be possible, including making an unrestricted gift to another registered charity. After the Triggering Event, an unrestricted gift to another registered charity would be possible only if it is in accordance with the Distribution Plan that would be reflected in the terms of the Trust that would be part of the Declaration of Trust.

Presumably, all of the corporation’s remaining assets would have been made subject to the restricted charitable purpose of the Trust by board resolution by the time of the Triggering Event.

2. **OPTION 2: AMENDMENT OF EXISTING GOVERNANCE DOCUMENTS**

According to canonical tradition, it has been customary to insist that, where possible, the civil trustees of a recognized trust related to a religious institute, be the current leadership of the community.

This has proven to be of significant value. However, there is no provision making such an approach binding or mandatory. If, for instance, there are no longer any members of the community available to carry out the responsibilities of the trust in a competent manner, it might be preferable to provide for other trustees to be appointed.

This is where the second possibility could enter into play.

For, if congregations do not wish to set up a restricted charitable purpose trust as described above in Option 1, there are other options which they could adopt, either singly or in combination. For example, there is the possibility of amending the existing governance documents of the corporation as set out below to provide for the designation of new trustees.

a) The membership conditions in the by-law of the “corporation” could be changed to allow for another entity to become the sole member upon the Triggering Event. This would permit this new entity to elect new directors if the current directors are unable to act.

b) The charitable trust deeds, letters patent/articles of incorporation could be amended now to enlarge the charitable purposes to include what the congregation would like to do with its remaining assets in a Distribution Plan following the Triggering Event. They would not have to distribute the funds in this way at the present time but would be ready to do so when the time comes. It is probable that the approval of the respective Charity Commissioners would have to be obtained for the amendment of the charitable purposes in the letters patent/articles of incorporation and any subsequent amendment of them.

c) Instead of amending their corporate purposes, the congregation could make its wishes known with respect to the distribution plan by adopting a succession planning policy, which they could even call a “Congregational Will” if they wished and which could be updated from time to time.

d) As the Triggering Event approaches, the congregation could also amend its corporate by-law to provide for a modified open membership corporation that would permit lay people and members of other congregations to be on the board of directors of the “corporation”.

The possibilities in Option 2 are relatively simple to implement but the succession planning policy would not be enforceable as the restricted charitable purpose would be. This is because the board of directors in place after the Triggering Event would have the corporate authority to amend the bylaws and/or the letters patent/articles of incorporation as may be applicable, (subject to membership approval of course) and thereby alter the succession planning policy of the corporation.

3. **OPTION 3: ESTABLISH A SEPARATE LEGACY FOUNDATION**

A separate “legacy” foundation could be incorporated civilly (through an appropriate form) with charitable purposes that reflect what the congregation wishes to do with the remaining assets of the corporation in its distribution plan and the percentages of the assets which would support each purpose.

The membership conditions could be similar to what is described under Option 1 above. Qualifications for directors could be broadened to include lay people or members of other

congregations. Assets could be transferred from the congregation's "corporation" incrementally or all at once depending on how soon the Triggering Date is expected to occur.

However, this option would require the preparation of legal documents and an application for charitable status for the legacy foundation, which would take time.

Alternatively, if a congregation has an existing foundation, it could also amend its current purposes and by-law so that it could function as the platform for distribution of the surplus assets in accordance with its distribution plan.

The disadvantage of this option, though, is that, the corporate purposes of the legacy foundation that would be receiving the remaining assets of the "corporation" could be changed by articles of amendment after the Triggering Event by the directors and members of the legacy foundation. While case law would suggest that the funds then in place could not be used for a charitable purpose that was different than what was in effect at the time that the gift was made to the legacy foundation, there is no assurance that the distribution plan would in fact be followed after the Triggering Event or that all of the assets of the congregation will necessarily have been transferred over to the legacy foundation at the time of the Triggering Event.

4. **OPTION 4: BECOMING PART OF AN EXISTING FOUNDATION**

Canon Law recognizes two types of foundations.

The first one, known as an "autonomous foundation" is perpetual and the principal may never be touched. The foundation operates on the revenues produced.

The second, a non-autonomous foundation, is one that is long-lasting, but which has a cut-off date. Until the cut-off date, only the revenues can be used; after the date, then the capital itself may be used for the purposes of the foundation.

The civil law in a country might see things differently and provide for other eventualities.

A separate charitable purpose trust could be established within an existing foundation through the execution of a trust declaration whereby certain named individuals or a corporate entity would be appointed to act as trustees to hold property of the "corporation" and operate the charity until the Triggering Event and then subsequently distribute the remaining assets in accordance with a stated distribution plan to be reflected in the charitable purposes of the separate trust.

The trust property would be held by the trustees for the beneficiaries of the charitable purposes of the trust. The trust could be made variable by the corporation up to the point of the Triggering Event and would generally include the other provisions mentioned under Option 1.

In comparison, the use of a gift from a congregation to a separate legacy foundation by means of a restricted gift agreement (i.e. a restricted charitable purpose trust) would mean that the congregation

would lose control of the assets that it gifts to the foundation, it would not have the right to change unilaterally the terms of the distribution plan in the restricted charitable purpose trust, and any remaining assets held by the congregational corporation at the time of the Triggering Event would be left unaccounted for and would not be subject to an enforceable distribution plan. As such, while the option of a gift to a foundation is an important alternative to mention in comparison to the separate legacy foundation in Option 3, and offers the simplicity of one foundation as distinct from many legacy foundations, it does not accomplish all that is possible with Option 1 as a viable “Congregational Will”.

5. **OPTION 5: A TRUST WITH AN INDEPENDENT TRUSTEE**

A separate charitable purpose trust could be established through the execution of a trust declaration whereby certain named individuals or a corporate entity would be appointed to act as trustees to hold property of the corporation (to be transferred to the separate trust all at once or on an incremental basis as indicated in Option 3 above) and operate the charity until the Triggering Event and then subsequently distribute the remaining assets in accordance with a stated distribution plan to be reflected in the charitable purposes of the separate trust. The trust property would be held by the trustees for the beneficiaries of the charitable purposes of the trust. The trust could be made variable by the corporation up to the point of the Triggering Event and would generally include the other provisions in Option 1.

The main advantage of this option is that like Option 1, there could be no change to the terms of the trust after the Triggering Event. However, the disadvantage of setting up a separate trust is that the congregation would lose control of the Trust and the assets of the corporation when transferred to the separate trust. As well, since the assets of the separate trust would be legally owned by the trustees, the trust assets would be subject to the liabilities of the trustees in a way that the property of a corporation, including one holding a restricted charitable purpose trust within a corporation as described in Option 1 above, would not be subject to the liabilities of its directors or members.

6. **AN UNRESTRICTED GIFT TO A RECOGNIZED CHARITY**

A religious institute can decide to make an outright gift to another recognized charity, with no restrictions attached, other than that the assets are to be used for the purposes of the receiving charity.

In such cases, once the gift has been made, the religious institute can no longer direct the use of the funds, but it makes it easier for the receiving entity to carry out its activities.

CONCLUSION

On the surface, it is painful to have to consider such situations. But, instead of looking at the “death and dying” perspective, perhaps we could use a more positive approach – how can we ensure that

works that have been dear to us and which are important for the Church's mission today, and, hopefully, tomorrow, are well supported?

Or, how can an institute express its gratitude for the gifts received through the course of its history and how can it make sure that these gifts are being put to good use and not simply squandered along the way?

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