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SOME ONGOING CONSIDERATIONS IN CANON LAW FOR TREASURERS GENERAL OF RELIGIOUS INSTITUTES

Treasurers general of religious institutes may wish to be aware of some of the various questions concerning praxis (i.e., interpretation in application) which have arisen in their field since the promulgation of the 1983 *Code of Canon Law*. These issues have different faces regionally around the world. Much if not all of what follows has been treated in canonical literature over the years since the appearance of the 1983 *Code*. Therefore, this is not intended as a primer of how canon law meets financial administration, but rather as a snapshot of some ongoing questions and evolving issues in "big picture" praxis for religious in 2006, with a look at often undervalued personnel matters. Certain threads bear a summary comment so that treasurers might have at least a fundamental familiarity with them[1].

1. An official response to one question

Of particular note is an official response of the Pontifical Council for Legislative Texts, which is the

[1] This paper was delivered on 11 February 2006 in Rome to a gathering of treasurers general of men's and women's religious institutes.

Holy See's organ for definitively clarifying important canonical, textual uncertainties. The following question was formally accepted for consideration by the Council: «Whether external schools of religious institutes of pontifical right are included under the words of can 1263 "public juridical persons subject to his authority"?» Canon 1263 allows a diocesan bishop, after hearing his finance committee and presbyteral council, to tax public juridic persons subject to his authority. The Council responded "no" on 24 January 1989, and this response was approved by the Holy Father on 20 May 1989[2]. The Council's approved authoritative answer clarified that a local diocesan bishop may not impose what amounts to an annual tax or assessment for schools of religious institutes which serve the public.

2. One open question concerning the creation of juridic persons, with the right to acquire, own, and alienate goods

One particularly vexing question which has made for some unresolved difficulties concerns the canonical creation of pious autonomous foundations. The regulations for this appeared to have changed quite significantly with the promulgation of the 1983 *Code of Canon Law*. A pious autonomous foundation[3] is a canonical juridic person which may own, invest, and sell its own goods independently, in accord with law. This conversation concerns the

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[2] *Acta Apostolicae Sedis* 81 (1989) 991.

[3] See *Acta Romana Societatis Iesu* 21 (1995) 26-27.

canonical realm exclusively, and not the ordering of institutions (e.g., schools, hospitals, social service centers) in the civil arena. Canonical juridic personality, however, can have civil implications if the state first requires (or it is otherwise opportune) that Church entities have autonomous canonical or ecclesiastical juridic identity before they have equivalent civil status.

Historically, so-called "non-collegial ecclesiastical institutions" of canons 1489-1494 of the 1917 *Code of Canon Law* were dependent on the local ordinary (*ordinarius loci*) alone for recognition. In the old *Code*, it was common for religious to consider their apostolic works as sharing in the juridic personality (or moral personality as it was more commonly known then) of whatever properly constituted juridic person with which it was linked. Often enough, this juridic person was an established canonical house of the institute, which *ipso iure* could acquire and possess temporal goods with fixed revenues and funds, unless prohibited or limited in the institute's proper law (*CIC* 1917 cann. 531-532). There generally was no distinct juridic identity, in the canonical forum, for apostolic works or institutions.

However, the 1983 *Code* appeared to open up new juridic identity possibilities for apostolic works of religious institutes. First, the "non-collegial ecclesiastical institutions" structure of the prior *Code* can be seen to have given way to other constructs, including pious autonomous foundations which clearly have independent juridic personality, with the right to own and alienate property and goods in accord with law (*CIC* 1983 can. 1303 §1, 1°). Further, the 1983 *Code* speaks generically of the "competent authority" or "ordinary" for creation (which could include a religious ordinary as noted in can. 134 §1), rather than the reference to a local ordinary found in the 1917 legislation. Canons 1303 §1, 1° and 114 §2 indicate that such foundations are to pertain to works of piety, the apostolate, or charity, whether spiritual or temporal. Canon 611, 2° addresses the right of an erected religious house to engage in works proper to the institute in accordance with law. Canon 117 further specifies that competent authority is not to confer juridic personality until that same authority has approved the foundation's statutes.

Some favor a variant interpretation in application, one not arising literally from any 1983 canon[4] (always of course honoring the right of the Holy See itself to canonically acknowledge or create juridic persons). Since canonical recognition of juridic personality can serve as a basis for parallel civil recognition (touching upon, for instance, tax-exemption and other benefits even internationally), there has been a recent argument advanced encouraging a return to dependence on the local ordinary. An effect, indeed the prompting motive of this would appear to be to not accept religious major superiors of clerical institutes of pontifical right and of clerical societies of apostolic life of pontifical right (ordinaries) as ecclesiastical authorities competent to erect juridic persons in the form of pious autonomous

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[4] By way of example, see *Circolare* n. 30 (14 March 2001) of the Italian Episcopal Conference, issued by their *Comitato per gli enti e i beni ecclesiastici e per la promozione del sostegno economico alla chiesa cattolica* and entitled «*Competenza dell'autorità ecclesiastica nelle procedure per il riconoscimento agli effetti civili degli enti ecclesiastici*».

foundations. This is an unresolved question, both academically and practically.

3. Canonical links between works or apostolates and the religious institute

Treasurers of religious institutes may wish to encourage major superiors to keep in mind on an ongoing basis the fundamental query underlying the example concerning pious autonomous foundations, i.e., the canonical relationship of work or apostolate (however constituted) to the religious institute itself, whether at the level of house, region, province, or generalate. This complex question is made more so in its place-and-time specific context, as often local civil laws will impact greatly the identity of a given work. Over the course of the last quarter century (indeed, with seeds germinating already a couple of decades before that), in many parts of the world there has been an evolution in this regard. Whether a matter of outright, clear canonical and civil ownership of a work by a religious institute, or a version of "separate civil incorporation" of a work, or a question of a possibly ambiguous "sponsorship" of a work by a religious institute, treasurers and superiors will want to remain conscious of the canonical implications of existing and future relationships between works and the religious institute.

There has been much written on the question of how and in what way specific works of an institute are ecclesiastical goods canonically "owned" by that religious institute. In many parts of the world, already since the 1960s it can be said that gone are the days in which all works were unambiguously "owned" by religious institutes. For our purposes here, it may be enough to raise the question – with financial ramifications derived from possible answers – about the relationship of work to institute. Is the work completely owned (even civilly) and operated by the institute? Or, at the other end, is the work only loosely or nominally affiliated, perhaps only implicitly, with the institute?

Some entities might be indubitably works of the institute because the institute holds title to them in all ways, including all material assets pertinent to them. There is no question of who has full authority and administrative oversight, even as concerns non-members of the institute in the employ of that apostolate. In these cases, the religious institute has the power and the authority to close the work, unilaterally, in both civil and canonical senses. This would be spelled out in the statutes of the work.

Other works might be said to be owned in a different manner. These would be works in some way "of" the institute, often by way of some manner of sponsorship. The institute might direct a work entrusted to it, and manage its assets and personnel, but cannot be said to have full title to it. A variation on this would be a work directly linked to a given community, such that the work can be said to be dependent on a house or unit of the institute, with this dependency serving as the canonical link. (Upon canonical suppression of that house in accord with can. 616, the apostolic work would then need to be transferred to another canonical juridic person of the institute; failure to do so could constitute an unlawful alienation.) Another variation on this would be a work which is independent of any one religious community or house, instead being linked directly to a province of the institute, accountable to one of its major superiors. And yet another variation could be that there is no direct accountability to a religious superior but rather to some other organism of the institute. All of these might be generally considered (in greater to quite lesser degrees) to be works of the institute, with varying degrees of resulting autonomy for the work. History and statutes will be very informative in assessing the nature of the base canonical relationship of such works to the institute.

Another grouping would be those works neither "owned" nor truly and meaningfully "sponsored" by the institute. These, as above, may well have their own civil juridic identity, and indeed may even have autonomous canonical juridic status as well if (and only if) so granted by competent canonical authority. Such works may have been directly founded by, or simply inspired by, the institute or one or more of its members, but without any express institute ownership of the work. Even if previously owned (however understood) by the institute, at some time such a work may have passed on to other agents who now have all real control over – and title to – it. Yet other works may simply share spiritually or historically in the charism of the institute and nothing more, notwithstanding the possibilities that the institute may wield some influence over the work, or that the public may perceive there to be a stronger link than in fact there truly is. Finally, other works might not be related to the institute in any real way, not even by inspiration or perception, but might have some limited personal or perhaps financial link (i.e., a member may be involved in the work, even in a directive capacity, or there may be financial or technical support of the work by the institute)[5].

It may be that in some parts of the world, these questions of "links" (i.e., lines and strength of authority of the institute over a work, and conversely the degree of dependence of the work on the institute) may no longer seem relevant, whether for practical, theoretical, or even ideological reasons. Nonetheless, the ongoing awareness and assessment of these relationships between institute and work remain a canonical obligation in good administration and governance.

Turning to an important specification of one type of apostolic endeavor germane to this question of "links" would be religious who are present parochially in a diocese. An area in which treasurers general might be involved would be the review of contracts entered into with bishops. These may concern, for instance, religious who will be apostolically employed directly by a diocese, though concrete arrangements almost certainly will be decided primarily at the local level. Central institute governance, however, might well be involved in reviewing

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[5] For one canonist's treatment on categories and principles which might be helpful in thinking through institute-apostolate relationships (and much more), see Robert T. Kennedy's treatment of canons 113-123 and 1254-1310 in J. BEAL – J. CORIDEN – T. GREEN (eds.) *New Commentary on the Code of Canon Law*, Paulist Press, New York 2000, 154-176, 1451-1525. Many of Kennedy's comments might not appear to be directly relevant to religious life and ministry, and some are not internationally applicable; however, his analyses are widely recognized as balanced and trustworthy in delineating principles.

a contract with a bishop concerning the institute's assumption of specific works over which that bishop has entrustment and perhaps oversight authority.

For instance, parishes or their equivalents (e.g., missions, stations, sanctuaries, shrines) are in a category of their own, though they are also by nature "entrusted" works once such a relationship is established in their regard between bishop and major superior. Contractual attention should be judiciously rendered to more than just the erection of the canonical house (can. 609), the rights of such a house (can. 611), or a change in its apostolic end (can. 612), all of which necessarily involve the diocesan bishop. For clerical religious institutes or societies of apostolic life entrusted with a parish (cann. 520 and 681), by way of example, treasurers should encourage major superiors to be particularly attentive to the delineation of the juridic persons involved (e.g., diocese, province, parish, house), the sustenance of the religious serving there (e.g., housing, transportation, insurance, personal and health expenses, stipends[6]), the property divisions (e.g., who owns what), the respective responsibilities for property upkeep (especially as regards unusual or significant expenses), and the division of income between community, parish, and diocese, always in accord with canon law, proper law, and reasonably applicable diocesan policy. Also, the prospect of litigation which may involve the parish and the institute gives rise to other concerns and permissions (can. 1288), which is why

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[6] The topic of stipends and clerics is treated in cann. 947-958. Several of these canons are directly applicable to religious even apart from those assigned to a parish on a stable basis.

a note concerning the amicable resolution of disputes apart from civil court is always worthy of insertion in such contracts.

4. Ecclesiastical goods, or not? canonically but not civilly, or neither?

Regardless of the ownership, sponsorship, or "other" relationship of the institute to a work, in each and every case the question of apostolic responsibility and practical liability will be important. In discerning works, the nature of the canonical link and the status of every involved juridic person should remain clear. The protection of assets in the civil arena is of heightened interest in recent years. From a canonical perspective, the line to be drawn is a fairly stark one. Is this work sufficiently "of the institute" to be called ecclesiastical goods of the institute (cann. 22; 635; 1257; 1282)?

In many parts of the world, complex issues of ownership, sponsorship, and relationships between works and institutes arise from the fact that civil structures have developed naturally and in a considered fashion, though not always in a manner overtly compatible with the 1983 *Code of Canon Law*[7]. Two

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[7] The principles suggested here concern relationships between works and the institute, though attention may need to be paid at certain times to the canonical juridic persons which are the units of the institute itself. For instance, legitimately constituted provinces of the institute are themselves juridic persons (can. 634 §1), and special financial care is warranted as they are suppressed, or are fused, amalgamated, or united (cann. 120-123).

obvious examples of this would be universities and hospitals. This evolution may be due in part to the fact that the mechanisms of boards (e.g., Board of Members, Board of Regents, Board of Trustees) in the civil arena were developing already after the 1917 *Code* had effectively fallen into desuetude (understandably or not), but before the 1983 *Code* was promulgated. Works that previously would have been considered "owned" by the institute (i.e., by one of its juridic persons) might be no longer considered as such, civilly. Indeed, the institute itself might vigorously argue for such a perception, citing "separate" or "civil" incorporation, even while at the same time and with equal zeal wanting to call the work a "work of the institute". There may have been a "two-tiered" board earlier, one of which was a board whose members (also members of the religious institute) had "reserved powers", for instance, but perhaps over time this gave way to a single board composed of lay persons and some few members of the institute. This might include, for instance, an arrangement whereby the institute members retain a veto power; as to whether or not such a veto could realistically be utilized would depend on circumstances. (A distinct but related issue concerns the relationship of the director of the work to the religious superiors ultimately responsible for its oversight, which may have yet another attendant layer of complexity if that director is not a member of the institute.)

A perplexing query might emerge in time as to whether and when a work was effectively alienated, and if so, if that was done invalidly as canonically understood. Invalid alienations are subject to penalty, as noted in can. 1377. Such uncertainty often demands attention as institutes with diminishing membership wish to divest themselves in all senses – morally, humanly, financially, canonically – of a given work, handing it over entirely to the civil structure created some time ago. Local or even Vatican ecclesiastical authority may question the liceity and validity of this, and may insist on some type of oversight mechanism whereby the Catholic apostolic character of the work will remain intact if indeed the work will continue to serve as it had been, or is to have any tangible or recognizable Catholic future.

In sum, ecclesiastical goods remain just that until competent ecclesiastical authority allows otherwise, in accord with canon law and practice, regardless of what may have already occurred in the civil arena. On the other hand, in some situations one would have a hard time arguing realistically that a given work or apostolate could be considered as ecclesiastical goods, because there is (simply put) no governing or practical controlling authority of the institute over the entity. This could be true even if the work was never canonically alienated. Even if it may be true that canonical and civil constructions of the same single entity can exist in harmony though quite different, and even prescinding from can. 22, canonical common sense argues that the civil status of ecclesiastical goods should match the canonical reality as much as possible, and vice versa.

As a postscript to this point, treasurers general should be aware that clarity concerning separation of juridic persons ought to be pursued in those countries in which deep pockets are sought for big payouts. The most obvious example would be financial liability for damages arising from founded allegations concerning sexual misconduct or other abuse by members[8]. Civil lawyers seeking damages on behalf of clients may pursue inquiry into the assets of a member and the particular community of which the accused is a member, which could then lead to the resources of the apostolate with which the accused is affiliated. Experience shows that fairly quickly, if not immediately, the provincial or regional superior and curia will become involved, and often enough the matter is resolved at this level, perhaps in a private manner. As to when and if to "settle" in the civil legal sense so as to avoid trial, that in the end is a governance decision taken by those with canonical authority to decide, having consulted on the matter. However, as attorneys assess how best to serve their clients (often justly) and themselves in terms of maximal financial compensation, there always remains the prospect that lawyers will seek a yet longer money trail, perhaps even with an eye to the assets of other apostolates of the province or region not in any way related to the alleged offender. That is to say, if the logic one attempts is that the province bears an ultimate responsibility for the activity of a member, all property and assets belonging civilly *or* canonically to the province – however likely specious an argument –

[8] Though more a matter of governance than fiscal oversight, the appropriate consideration and application of cann. 695 and 1395, as well as the *motu proprio Sacramentorum sanctitatis tutela* and its companion norms (*Acta Apostolicae Sedis* 93 [2001] 737-739 and 785-788), can redound to the favor of the institute even financially.

could be considered as part of the overall pot from which damages could be drawn[9].

While the limits of these money trails are being tested in different ways in different parts of the world, the question of who owns what (from both canonical as well as civil perspectives) is one which ought always remain in the background as an institute maintains the vigilance typical of good stewards, among whom are treasurers general.

5. Alienations, and an important letter

Ownership confusion is sometimes heightened when discussion begins toward a proposed alienation (cann. 1290-1298), whether canonical, civil, or both. Ecclesiastical goods which are directly of the institute form part of its patrimony, which can be damaged or potentially damaged not only by outright sale but also by other transactions such as the incurral of debt to external agents (cann. 639 and 1295). Long-term leasing may be considered by the competent episcopal conference (can. 1297). Debts are often called a type of alienation in the broad sense, as opposed to an outright sale, which is an

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[9] In the diocesan world, this question is also being asked concerning parishes and dioceses, involving for example the derivative question of the bishop as a type of so-called "corporation sole" and his control over diocesan assets and those of parishes. While lawfully established parishes are autonomous juridic persons (can. 515 §3), they are necessarily related to the diocese to which they pertain. The protecting limits of that autonomy are delineated in the *Code* in ways not assuring certain, indisputable interpretation.

alienation in the strict sense. Just as incurred debts can be said to threaten the patrimony, at least potentially, so it is that long-term leasing can be considered a type of alienation, depending on the circumstances. If the institute is surrendering real control of the property for a period of time (e.g., 99 years), even without the prospect of losing it indefinitely, then in theory the patrimony can be said to be threatened. This would be distinct, of course, from the passive renting of property or a portion of it by the institute for use by others, whereby income is earned but the institute itself is not engaging improperly in any commercial enterprise (can. 672).

Canon 1293 §1, 1° sets forth the requirement that there be a good reason for the alienation (which, again, may impact the institute's patrimony). A solid pastoral reason could be that the institute no longer can staff a given work, for instance, such that it will withdraw completely and sell a given property in accord with law. Or it may be that the work will no longer enjoy any substantive link with the institute, even if the work continues to exist and operate; the breaking of this link can constitute an alienation, though it must have a sound, grave pastoral reason prompting it. The decline in member numbers within an institute, in various parts of the world, can be serious cause in itself to spur a given alienation. Sometimes this is coupled with a positive desire to hand the work over to the control, in all senses, of competent lay leadership. It also may be that the passage of time combines with an adjusted sense of apostolic priorities to suggest that, for instance, a given province's *fincas* or tea plantations are no longer a fitting investment, and should be sold at a propitious time.

Canon 1293 §1, 1° also points to the possibility that an alienation might be urgent. It may happen, for instance, that civil authorities threaten to seize ecclesiastical property owned by an institute, sometimes for reasons which may be understandable (e.g., creation of roads) or not (e.g., inimical attitudes toward agents of the Church). An alienation may be the only real way to protect institute assets facing imminent seizure in current form.

Another reason implied in the canon would be simple justice. One example might arise, for instance, in an area previously under communist control. One or another property of the institute seized during a time of oppression might be later returned to the institute. Given the passage of decades, the institute may no longer have use for the structures or land, or may lack the funds to restore or develop what might be quite dilapidated or simply unusable property or buildings. Its sale and the application of proceeds could be applied justly to contemporary works of the institute as it seeks to reestablish itself and move forward in an era of greater political, civil, or religious freedom.

A distinct difficulty may arise as the institute seeks civil juridic recognition in an unwelcoming or hesitantly accepting nation where the institute and its entities want to own, buy, and sell in ways civilly recognized by the state. This is another variation on the theme of ideally having complementary canonical and civil identities whenever possible, while acknowledging the limiting factor that in some places the state is hostile to religious works and their free, autonomous existence, thereby making civil juridic recognition for the institute's activities unlikely if not impossible.

Of particular relevance to procedures concerning alienation is a circular letter of the Congregation for Institutes of Consecrated Life and for Societies of Apostolic life, dated 21 December 2004 (Protocol Number 971/2004). Signed by Archbishop Piergiorgio Silvano Nesti, C.P., secretary of the dicastery, the two and a half page letter begins by introducing the congregation's observations about internal reconfiguration of religious institutes' works and communities, inclusive of alienations of property often of considerable value, especially in Europe and North America. Various reminders of fundamental principles and norms follow.

The secretary calls attention to can. 1284 §2, 1° which notes the necessary vigilance that administrators are to have over their works. He further particularly cites can. 1292 §2 (correlated with can. 638) in noting that (1) when the value of the goods to be alienated exceeds the established allowed limit, (2) when they are goods of the Church *ex votis*, or (3) when they are precious objects of artistic or historical worth, for validity the alienation must have the approval of the Holy See. He goes on to remark that such limits are fixed by the relative episcopal conference and subsequently received or accepted by the Congregation[10].

The circular letter then specifies what is required in approaching the Congregation for Institutes of

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[10] Treasurers will wish to remain informed as to maximum levels set by local episcopal conferences in different nations and zones and approved by the Holy See. A list is available from the dicastery, as current as its last correctly informed compilation.

Consecrated Life and for Societies of Apostolic Life for the required permission. First, any proposed alienation must be supported by serious reasons as outlined in can. 1293 §1, 1°, with the consent of the respective institute council, in accord with law. Second, a professional evaluation and appraisal of the property's worth is to be made by a professional civil expert or firm[11]. Third, always respecting the full autonomy of institute governance (which the *ordinarius loci* must honor) as regards disposition of its own goods, the Congregation has established the practice of requesting the local ordinary's opinion of the proposed sale, even though this is not required by canon law (cann. 586-593; 634-638). Therefore, in the spirit of can. 1293 §2, the dicastery asks that the institute inform the local ordinary of the place of alienation so as to hear from him should he have any opinion, especially if he himself were to have interest in acquiring the property for pastoral needs in his own diocese[12]. This ideally serves not only the mutual relations between institute and bishops, but also may lessen the risk of impoverishing the relative ecclesiastical patrimony.

Fourth, the letter continues, the above norms are to be followed also in the case of the sale of goods of historic or artistic worth (can. 638 §3), paying particular attention to whatever civil regulations

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[11] On this point, the letter cites can. 1293 §2, though it seems that can. 1293 §1, 2° is intended.

[12] The dicastery has expected for several years now that the institute inform the local ordinary in writing about the sale, and hear his response. This letter formalizes, explains, and publicizes a developing expectation which is now clearly a *praxis curiae* requirement.

might be in place, seeking approval from civil authorities should local legislation warrant it. Fifth, institutes of diocesan right and *sui iuris* monasteries (can. 615) which are not federated or associated with a men's religious institute must obtain the written consent of the local ordinary of the place where the goods to be alienated are located (can. 638 §4). Sixth, concerning donations whether of money or of immobile goods, it is necessary to assess if the donation is associated with a pious will (can. 1299 ff.), and if there are obligations placed on the donation which the beneficiary may not unilaterally absolve or lift.

The final point of the dicastery's letter is a direct reminder to treasurers, under the direction of superiors, that they must administer goods as an upright parent would care for family belongings. It is important to remember, the letter continues, that all the goods possessed by an institute of consecrated life or a society of apostolic life are to be considered juridically as ecclesiastical goods. These goods are to be administered in accord with the principles enunciated in can. 1254 §2: that their proper objectives are the ordering of divine worship, temporal sustenance for clergy and other ministers, and the exercise of works of sacred apostolate and charity, especially among the needy. In this regard, can. 634 §2 calls to mind the exhortation that the appearance of luxury, any immoderate gain, and the accumulation of goods are to be avoided, and can. 635 §2 calls to mind the importance of religious poverty, which is to be fostered, defended, and expressed in appropriate norms for the institute's use and administration of goods. Further, in addition to safeguarding and testifying to a fundamental spirit of poverty, any commercial, speculative, or profit-seeking motives or ends are to be avoided (cann. 286 and 672).

The Congregation's letter reinforces the prudence of maintaining good relations with the local ordinary even in financial affairs, at least as concerns alienations. By all means, of course, the canonical autonomy of the institute is to be protected at each level of governance in financial matters, excepting those specified in law, noting the third point denoted above in *praxis curiae*.

6. Various personnel issues

The above sections tend to address larger canonical questions with developing answers as the 1983 *Code* continues to unfold, i.e., issues arising at the generalate level of the institute or that of a given province or region. However, treasurers general might also wish to be aware, if only peripherally, of certain canonical-financial issues related to individual members and their relationship to the institute. While such issues are usually decided at the local governance level, policy or interpretation-in-application of institute proper law could well involve a treasurer general in formulation or implementation. Recent years have brought to the fore issues perhaps not previously as relevant. The following represent several examples.

6.1 *Debts of candidates and members in formation*

In some parts of the world, candidates for religious life bring with them particular financial concerns. Graduates of universities or professional schools may have incurred significant debts which could take years to retire. This phenomenon is more evident in those regions in which the institute is more likely, for whatever reason, to be accepting candidates who are further into adulthood and who have sought to train themselves toward a given career path. While can. 644 explicitly admonishes superiors not to accept candidates who cannot meet their debts, there are distinctions to be made. A graduate student or young professional who in the normal course of events would be able to repay debts (to banks, schools, family, etc.) is distinct from a candidate who has a proven history of financial irresponsibility (e.g., anything from a poorly managed small business to over-zealous race-track recreation). Depending on the resources of the province or region of the institute in question, creative yet prudent accommodations might be made for the former while perhaps none could or should be made for the latter.

6.2 *Personal wealth of candidates and members in formation*

On the other hand, older candidates might have a problem quite the reverse of being indebted: a candidate to the institute may have considerable financial resources (e.g., earned or inherited capital and investments; property; personal possessions of significant economic or artistic value). While the proper law of the institute will prevail in this regard, universal law offers clearly enunciated principles. Treasurers general will wish to pay particular attention to can. 668, a substantive canon which should be incorporated into the institute's policy and practice if not its proper law, always according to the type and charism of the institute, to be applied as fitting local cultural practices. Special care should be given to the practicalities concerning loss of administration and usufruct of individual members' property, and likely outright loss in accord with proper law upon a member's definitive incorporation, i.e., the moment in which the religious assumes full canonical membership and therefore all rights and obligations thereby accorded.

6.3 *Goods acquired in religious life*

As a principle of the poverty of consecrated life, a member in final vows does not own material goods of worth, though superiors might allow a member's use of some. Before final vows, and before any formal renunciation of goods in conformity with the institute's proper law and practice, a religious (in light of the vow of poverty) does not administer the goods of which he or she might still be the true owner. Depending on internal proper legislation, likely the moment will arrive when any grey area diminishes considerably, perhaps completely. All that is materially produced by the member belongs in one manner or another to the institute, though she or he might have control of certain goods in day-to-day life. However, they remain properly so only with the knowledge and at least presumed consent of superiors. Of note in can. 668 is the reference to perpetual profession, with no distinction as to simple or solemn vows.

The provisions of can. 668, it can be argued, extend also to what may less evidently appear to be temporal goods. If the member's academic or popular writing (for instance) is of value, then he or she must realize that the writings are part of the patrimony of the institute generally and the juridic person to which he or she pertains specifically. This could apply to the personal or unpublished writings of a religious theologian, or semi-private correspondence of one of the more famous in the institute. Negotiations concerning the future or even present destination of these items certainly call for the involvement of the competent religious superior, since the material is not the member's – or at least is not primarily the member's – to destine. While we might not be speaking of a canonical alienation (i.e., sale or donation of a portion of the institute's patrimony), we *are* speaking of something beyond the member's own personal competence. This depends on the precise nature of the goods in question, and presumes that the member is definitively incorporated into the institute, with all of the poverty implications that this brings with it in accord with the institute's proper law.

6.4 *Wills and testaments*

In principle, it is not within a definitively incorporated religious's right – unilaterally and excluding consultation with superiors – to name an executor of his or her goods, whether by means of a "last will and testament" or some other declaration. What belongs to the institute or to one of its juridic persons requires the appropriate involvement of competent superiors, even as regards the naming of an executor. Canon 1299, for instance, does not override the vows of poverty and obedience, and/or any freely assumed renunciation of property. This represents a separate question from what a member may appropriately destroy, or the member's giving of particular items to specific persons in a limited way. Depending upon the approved practices and proper law of an institute, it may be that a member also commits her or his poverty intentions to a civil will prior to definitive incorporation (can. 668). However, questions can arise even after that, especially if a member acts unilaterally and without permission of superiors in concrete disposition of effects before death.

The goods in question may not necessarily be of quantifiable economic worth. For instance, the tangible product of a member's apostolic service, if of real value, may be at issue. Writers or poets come to mind as a prime example, with their rights and royalties as well as papers, correspondence, and unpublished texts. Religious artists would be another category relevant to this question of who controls what. A canonically interesting debate can be held as to how much right, if any, a religious enjoys to determine who will receive his or her papers upon death. Clearly the vow of poverty represents a commitment to not personally owning material goods of value. (Sometimes it can be difficult to assess what is of value or not, as standards for such an assessment will vary from person to person, era to era, or culture to culture.) It has been known to happen that a religious will take it upon herself or himself, without asking or even informing superiors and with no implied permission, to determine who will receive these papers or other items in possession upon death. The plot can thicken if the religious is an academic of repute such that one or another university or faculty may enter the conversation. All the more reason for these members in particular to have clear, approved, and written directives concerning who gets what, undertaken with superiors.

Norms are different for religious bishops and cardinals. Canons 705-707 detail how the observances of their religious poverty and religious obedience are amended. Less clear would be the rare situation of religious cardinals who are not bishops.

6.5 *Administration of temporal goods of externs*

Canon 285 §4 offers important norms which derive from can. 672 their applicability to women and men religious. To take up one point raised therein, the formal and exceptional administration of the goods of others (including parents or other family members; friends; employees; benefactors) in the civil legal forum can begin as an act of kindness or a gesture toward maintaining harmony within a family or group, but can go expensively awry. This is especially true in situations in which a family business or commonly held land may be involved. Human nature being what it is, a definitively incorporated member who ostensibly wishes to preserve familial harmony through insertion into such temporal affairs is likely to become enmeshed in ways not true to religious poverty. Conflicting allegiances, hidden agendas, or even outright duplicity can develop all too fluidly. Notably different and laudable is the honorable care extended by a member to elderly parents who may need assistance managing temporal affairs in the absence of others.

6.6 *Accountability in particular circumstances*

Some institute members may create financial tensions for religious major superiors who are canonically responsible for their oversight. Members earning high salaries and having high expenses may be as difficult to monitor as needy of it, especially if living detached from community life either physically or in spirit. Also, salaries not submitted directly to the community coffers in accord with established practice may be an indication of an encroaching and serious problem.

Other members who might find helpful particular accountability can include the following: a student member of the institute living abroad, particularly one unaccustomed to the receiving culture and its lifestyle especially if richer than previously experienced by the member; a definitively incorporated member missioned to a sabbatical at a notably difficult time; or a member on a leave of absence or an exclaustration, especially one seeking to live outside her or his native territory for reasons apostolic, vocational, or otherwise personal. Concerning the latter, the institute is financially responsible for those living outside a house of same, whether by means of a leave of absence granted by a competent major superior in accord with law (can. 665 §1) or by means of an exclaustration granted by the Supreme Moderator (can. 686), always depending on specific circumstances especially in cases of the latter.

6.7 *Finances regarding members absent with permission*

In all charity, treasurers general can be of canonical assistance to Superiors General in reminding them that members not living in a house of the institute continue to be a financial and moral obligation for the institute in terms of pastoral and temporal care, and also remain a potential liability. Good governance encourages contact with the member who is exclaustrated or on a leave.

Treasurers general should be aware that one very significant difference between a leave of absence and an exclaustration concerns the member's obligations regarding the living of religious poverty. In the latter case, observance of the vow of poverty is modified. Though not expressly stated in can. 687, a formally exclaustrated member (whether by way of voluntary request or unrequested imposition) is generally understood to have permission to live by her or his work and to handle ordinary expenses (such as lodging, tools for work, recreation), but is not understood to have permission to incur "extraordinary" personal expenses (such as buying a house or property)[13]. Other requirements of the poverty proper to the institute would remain in force; thus the member could not have the use, usufruct, or administration of her or his temporal goods without permission of the competent major superior. In case of need, this same superior should provide the exclaustrated member with a charitable subsidy.

A member on a leave of absence rather than an exclaustration does not experience any *ipso iure* amendment of poverty obligations. Therefore, the institute experiences no amendment in its financial obligations in her or his regard.

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[13] Here of course I do not intend the sense of "extraordinary expense" or extraordinary administration of cann. 638, 1277, and 1281.

A member on some sort of "administrative leave" or "temporary withdrawal from active ministry" similarly enjoys the institute's obligation to assist with sustenance until whatever difficulty occasioning the leave or withdrawal is resolved.

6.8 *Finances regarding members illegitimately absent (i.e., without permission)*

Along the same line of those who have permission from competent authority to be absent from a house of the institute, one must recognize that there are those who are illegitimately absent if they have failed (without just cause) to return to the designated religious house upon expiration of permission, or simply have freely abandoned religious residence in some other external manner. A member's illegitimate (unlawful) absence for longer than six months can be cause for dismissal from the institute (cann. 665 §2; 696 §1), if there is manifest intent to withdraw from the authority of religious superiors. In some limited situations, the institute could find itself liable for certain financial havoc wreaked by the member in the meantime (can. 639).

6.9 *Poverty violations as cause for dismissal from the institute*

Ever recognizing that treasurers general are usually not direct participants in governance but rather are at the service of the generalate and the institute's highest authority, it nonetheless behooves treasurers to be aware that governance authority need not, and likely should not, tolerate putting the institute's resources at risk as a result of members' disregard of their vowed obligations concerning money.

For those definitively incorporated religious who concretely fail to respect the vow of poverty or in some manner violate it in ways which are grave, external, imputable, and juridically provable, the major superior (after having heard her or his council on the matter) may patiently but firmly proceed – for the religious and economic good of the institute – with dismissal in accord with cann. 696-702. Those not yet definitively incorporated can be dismissed in a more summary fashion from the institute for even lesser poverty violations deemed in prudential governance to be unacceptable (cann. 696 §2; 689 §1), as specified in law applicable to the institute.

Treasurers general may wish to encourage those with governing authority to be particularly vigilant as regards individual members whose activities could have negative financial impact for the institute. In addition to the provisions of can. 639 concerning the incurring of debts by members, much to be recommended is an ongoing attentiveness to the provisions of can. 672, especially concerning highly independent members who operate aggressively or furtively in the apostolate. While superiors wish to presume the best poverty practices by members, the rare situation may arise which can only be called embezzlement, in which a member creatively channels apostolate or institute funds for personal avocational use, or to family members.

Definitively incorporated members may have a right to canonical recourse against their dismissal for poverty violations, all the way to the highest levels of appeal in the Church (i.e., the Supreme Tribunal of the Apostolic Signatura). Precise attentiveness will be required of superiors of the institute in both substantive and procedural details concerning the member's dismissal from the very beginning of the process, lest the dismissal not be upheld on appeal. Recourse processes are lengthy (sometimes taking years and years) and, in the interim, the member remains a member of the institute, since her or his appeal has a "suspensive effect" on the dismissal (can. 700). This implies that the member retains a canonical right to temporal support and sustenance.

6.10 *A member is a member until no longer a member*

Continuing yet further into the topics of dismissal and of those illegitimately absent from a religious house for extended periods, it can happen – unfortunately – that governing authorities may consider an absent member to somehow be definitively separated from the institute simply due to his or her freely chosen absence. This is a mistaken perception.

A member is a member until no longer a member. A religious who has not canonically but only apparently left the institute could well be, and likely is, still a member. This canonical (and possibly civil or even criminal) reality could come back to haunt the institute, and be costly in every sense of the word. A member who has effectively but not canonically left the institute maintains a link to it, and not only in theory. Depending on circumstances, the institute may still be canonically liable for that member.

Conversely, sometimes major superiors are unaware that a member already is *ipso facto* no longer a member due to her or his notorious defection from the Catholic faith (can. 694 §1, 1°) or attempted marriage, even a civil one (can. 694 §1, 2°), thereby ending temporal and financial obligations of the institute toward the member, though the norms of can. 702 still oblige.

6.11 *Infirmity and possible dismissal, with attendant financial and moral obligations*

Treasurers general might also profit from a careful reading of can. 689 §2, which addresses the unlikely but entirely possible situation in which an infirmity or disability of a member in formation is contracted (1) due to the negligence or other moral culpability of the institute, or (2) due to some work undertaken by the member for the institute. The canon graphically indicates the moral and temporal obligation that the institute may have toward such a member, equally true of course for one already definitively incorporated.

Experience shows that members asked to leave the institute against their will for reasons not under the can. 689 §2 umbrella might still allege mistreatment even in civil court. Good financial stewardship should encourage complete records at the local level concerning the member's difficulties. If ever a former member were to allege some poor treatment which he or she says took place while still in the religious institute (e.g., concerning illness allegedly caused or not treated by the institute, or some apostolate-related negligence with lasting impact), it will be important for leadership to have documentation which refutes such a claim, if untrue. The question of status here revolves not around whether or not the dismissal was sound or correct (e.g., can. 689 §2), but whether the institute was negligent or not. Canonical and perhaps even civil defenses and claims obviously can rise or fall depending on what supportive documentation has been retained. Settlements or awarded claims can be expensive.

6.12 *Equity and evangelical charity for those definitively separating from the institute*

In seeking separation from the institute, a member might insist upon significant financial assistance to begin anew. Requests (some perhaps unreasonable) may include tuition payments until a degree is finished; maintenance on a health insurance program for a shorter or longer period of time; an automobile; several months' apartment rent; counseling fees paid; and/or what is commonly known as a "lump sum" for "start up" purposes in adjusting to life after departure from the institute. Such agreements will ultimately depend on the resources of the local province or region, determined by competent authority in conjunction with those responsible for financial affairs. Always mindful that the institute does not canonically owe the departing member anything (can. 702 §1), the institute is morally and canonically obligated to show "equity and evangelical charity" toward the departing member (can. 702 §2). The departing member may not demand financial resources from the institute, or refuse to finalize departure arrangements until satisfied with the offering. Further, a former member has no canonical argument before civil authorities or tribunals, as if seeking compensation for a ruptured employer/employee relationship or a breach of contract.

Conclusion

These pages are intended to offer a practical overview with some guiding principles concerning developing canonical questions in the realm of financial care for religious institutes and their members. Treasurers general may be of greater help in their important work if they at least are aware, along with those charged with governance, that canon law might have norms which could be helpfully or even obligatorily directive on a given issue.

ROBERT GEISINGER, S.J.