

Canon Law as the Universal Law of the Catholic Church and the Proper Laws of Institutes of Consecrated Life

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Abstract

The law discussion regarding specifications, complements, and the adaptation of universal law aims to demonstrate the importance of particular law through its specificity, both in its theological foundation and its application in various juridical fields. One of the topics discussed is the relationship between the universal law of the Church and the particular law of the religious orders of consecrated life. The purpose of this research is to examine the relationship between canonical law, which functions as the universal law of the Church, and the particular law of the religious orders of consecrated life, thereby depicting how the Church recognizes the distinctive charisms and autonomy of these institutions while adhering to the basic principles of applying universal regulations as stated in canonical law. The method used is qualitative research, employing an analytical perspective and examining documents and canonical principles regarding consecrated life. This research finds that the 1983 Code of Canon Law provides a set of universal guidelines related to consecrated life in all its forms. Each religious order of consecrated life has its own unique law that encompasses its distinctive charism and specific mission within the Church. These specific regulations serve as the particular law of the religious orders of consecrated life.

Keywords: *Church, consecrated life, canon law, charism, autonomy*

Abstrak

Pembahasan hukum mengenai spesifikasi, pelengkap dan adaptasi hukum universal, bertujuan untuk menunjukkan pentingnya hukum partikular melalui kekhususannya baik dalam landasan teologisnya maupun dalam penerapannya di berbagai bidang yuridis. Salah satu topik yang dibahas adalah tentang hubungan antara hukum universal Gereja dan hukum partikular tarekat hidup bakti. Tujuan dari penelitian ini adalah untuk menguji hubungan antara hukum kanonik yang berfungsi sebagai undang-undang universal Gereja dan hukum partikular dari tarekat-tarekat hidup bakti, dengan demikian menggambarkan bagaimana Gereja mengakui karisma khas dan otonomi dari lembaga-lembaga ini, sekaligus berpegang pada prinsip-prinsip dasar penerapan regulasi universal yang tercantum dalam hukum kanonik. Metode yang digunakan adalah penelitian kualitatif, dengan menggunakan perspektif analitis dan mengkaji dokumen-dokumen dan prinsip-prinsip kanonik mengenai hidup bakti. Penelitian ini menemukan bahwa Kitab Hukum Kanonik 1983 memberi seperangkat pedoman universal yang berkaitan dengan hidup bakti dalam segala bentuknya. Setiap tarekat hidup bakti memiliki hukumnya sendiri yang khas, yang merangkum karismanya yang unik dan misinya yang khas di dalam Gereja. Regulasi khusus ini berfungsi sebagai hukum partikular dari tarekat-tarekat hidup bakti

Kata Kunci: Gereja, hidup bakti, hukum kanonik, kharisma, otonomi

1. Introduction

The Code of Canon Law addresses the consecrated life within the context of a distinct cohort possessing a unique set of circumstances. Belonging to an institute of consecrated life entails both a personal and public response to the summons of the Holy Spirit to pursue a more profound intimacy with Christ by means of a communal life that is dedicated to Jesus' mission in the Church, with the objective of salvaging the world. The consecrated life is a deepening of the baptismal consecration through a free and total self-dedication to God. The regulatory provisions pertaining to institutes of consecrated life and societies of apostolic life are encompassed in Part III of Book II of the 1983 Code of Canon Law. The Code of Canon Law generally outlines the canons that pertain to the consecrated life, whereas the appropriate legal measures for religious institutes are determined based on their distinctive applicability in regard to the charism and mission of the respective institutes. The primary aim of this article is to explicate the interconnection between canon law as a universal legal system of the Church and the specific legal framework governing the consecrated life namely the proper law. To promote the unique form of life and spirituality in alignment with the charisms that each institution is entitled to, the Church's laws must incorporate a certain degree of flexibility.

2. Methodology

This article will be formulated from an analytical perspective utilizing qualitative research techniques. Through research on the documental development and canonical principles, it becomes increasingly clear that the 1983 Code of Canon Law always promotes each charism and autonomy of the institutes of consecrated life, while continuing to reserve certain matters to the ecclesiastical hierarchy.

3. Result and Discussion

3.1. Respect for The Various Forms of Charismatic Identity and How It Is Manifest in Different Institutions of Consecrated Life

The Church's Magisterium has emphasized the value and significance of consecrated life through its doctrinal documents, which serve to guide, enlighten, compare, and promote certain realities throughout history. This way of life, which demands and fulfills a mission within the Church, is focused on the transmission of the Gospel through the experience of fraternal life and the radical following of Christ. One such doctrinal document is the apostolic exhortation *Vita Consecrata*, published in 1996 by St John Paul II, which summarizes the reflections and requirements of the Synod of Bishops and Major Superiors of religious communities. This apostolic exhortation of Pope John Paul II stressed that the consecrated life is not something isolated and marginal, but a reality that affects the whole Church (VC 3). The consecrated life is a gift that God the Father has given to the church through the Spirit so that it might be present in the world and draw everyone toward the kingdom of God. Pope John Paul II, with this exhortation, wanted to focus on the identity of consecrated life through the profession of the evangelical counsels, both in itself and in relation to other states of life in the Church.¹

Besides underscoring the new and special identity of consecrated life, this apostolic exhortation also emphasizes the importance of the term "charism". This term is not found in the Code of Canon Law 1983. Until the final outline of the revision of the canons on the consecrated life of 1982, it was found indifferent canons. In the final text, however, it has been taken out and replaced in various ways, and the term is not used in the universal law of the institutes of consecrated life. The substitution in the Code of the term "charism" was made because from the juridical point of view,

¹ V. De Paolis, *La Vita Consacrata Nella Chiesa. Edizione rivista e ampliata a cura di Vincenzo Mosca*, (Venezia: Marcianum Press, 2015), 41.

it seemed to remain too vague and therefore scarcely determinable, something that does not occur with the nature, character, purpose, spirit, healthy traditions, and patrimony of the consecrated life.² However, the major importance of the concept of “charism” can be understood from this apostolic exhortation of Pope John Paul II. The term “charism” is used from all points of view, historical, theological, and juridical. It recurs 79 times directly and under its various nuances, such as the charism in general of the consecrated life, the charism of the founder, the charism of the institute, and the charism of the individual religious.³ The apostolic exhortation itself uses the term charism to mean fidelity to the inspiration of the founders and foundresses, an inspiration which is 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 (VC 36b).

In the Code of Canon Law, the term “charism” refers to the patrimony of an institution, which means 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 (can. 578). There are two realities that constitute the patrimony of an institute of consecrated life, *i.e.*, the mind (*mens*) and the projects (*proposita*) of the founders, and all healthy traditions. The *mens* of the founders concerns the intuition or general inspiration of the founder, while the *proposita* refers to the implementation of that general intuition.⁴

The mind and the projects of the founder have as a reference the nature, the end, the spirit, and the character of the institute. G. Ghirlanda explained that the “nature” of an institute indicates the genus to which it belongs, for example, a religious institute or a secular institute. On the other hand, the “character” is the species within the genus; for example, within the genre of a religious institute, we can understand the institutes dedicated to contemplation and those dedicated to apostolic works. The “end” means the purpose for which the institute has arisen and continues to live. The “spirit” means participating in the mystery of Christ, and therefore the concrete way of being in a relationship with God and working for the good of the brothers.⁵

Further, the text of the code speaks of “wholesome or authentic tradition” which are the various concrete ways of implementing the same original charism in space and time. In the Catholic Church, the concept of tradition has a time-honored place and involves the handing on, not only the content of the faith but also time-proven ways for living out that faith. Within the institution of consecrated life, the same could be said in terms of searching out its authentic or wholesome traditions.⁶ Finally, all that the founder or foundress intended regarding the nature, purpose, spirit, and character of the institute approved by competent ecclesiastical authority, as well as its wholesome tradition constitute the institute’s patrimony.⁷ Thus, a dialogue is established between the founders and the ecclesiastical authority competent to accept the gift of the spirit. The founders themselves can be helped by the mediation of ecclesiastical authority in interpreting the divine gift.

The charism of an institute of a life consecrated will be an important point in the relationship between universal and particular law in consecrated life. The law of consecrated life is based on the premise that the Holy Spirit, in distributing charisms in the Church, has been directly involved in the founding and development of consecrated life and its various forms. One of the principles

² G. Ghirlanda, “Carisma collettivo di un istituto di vita consacrata”, in Salvador., V. De Paolis., G. Ghirlanda, (ed.), *Nuovo Dizionario di Diritto Canonico*, (Cinisello Balsamo 1993), 131.

³ V. Mosca., “Il diritto della vita consacrata tra universale e particolare”, *Quaderni della mendola* 21 (2013), 179.

⁴ *Ibid.*, 205.

⁵ G. Ghirlanda, *Op.Cit.*, 131

⁶ E. O’Hara, “Norms common to all Institutes of Consecrated Life”, in J. Hite., S. Holland., D. Ward, (ed.), *A Handbook on Canons 573-746*, (Minnesota, 1985), 37.

⁷ R. M. Mcdermott, “Institutes of consecrated life and societies of apostolic life”, in J.P. Beal, J.A. Coriden, T.J. Green, (ed.), *New Commentary on the Code of Canon Law. An entirely new and comprehensive commentary by canonists from North America and Europe, with a revised English translation of the code*, (New York, 2000), 747.

used in preparing the 1983 Code of Canon Law for institutes of consecrated life and societies of apostolic life was that the common law should contain only the general principles leaving to the institutes or societies suitable freedom to apply the principles in accordance with their own particular purpose and spirit or their own charism.⁸

Historical considerations show that the part dedicated by the Code to the institutes of consecrated life and to societies of apostolic life has had a very difficult process of elaboration. In this way, the 1977 draft of the canons on the institutes of consecrated life through the profession of the evangelical counsels has been particularly important.⁹ It appears that much criticism was directed at the 1977 draft for its 'leveling' of all institutes and attempting to categorize a variety of religious institutes.¹⁰ Therefore, the legislation was to respect; the harmonization of the elements (legal, doctrinal, and spiritual), protection of proper charism, the flexibility of universal law in favor of proper law, and participation of members in the life of the institute and its organisms.¹¹

The Second Vatican Council also paid close attention to the charismatic aspects of Church life. The hierarchy, following with docility the prompting of the Holy Spirit, accepts the rules presented by outstanding men and women and authentically approves these rules after further adjustments. It also aids by its vigilant and safeguarding authority those institutes variously established for the building up of Christ's Body in order that these same institutes may grow and flourish according to the spirit of the founders (LG 45). This same attention to the inspiration of the Holy Spirit is plainly evident in The Decree on the Renewal of Religious Life *Perfectae Caritatis*. This decree states that it is for the good of the Church that institutes have their own proper character and functions. Therefore, the spirit and aims of each founder should be faithfully accepted and retained, as indeed each institute's sound traditions, for all of these constitute the patrimony of an institute (PC 2). Thus, the Church has always believed, of course, in the guidance of the Holy Spirit, but the Vatican Council's emphasis on this marked a considerable departure from the canonical legislation which was incorporated in those General Norms which controlled all forms of religious life until recently.¹²

Pope Francis in his Apostolic Exhortation *Evangelii Gaudium* also underscores the importance of charism. Although speaking in general terms, this papal teaching may become a reference point for the institution of consecrated life in living out its charism. This document states that a sure sign of the authenticity of a charism is its ecclesial character, its ability to be integrated harmoniously into the life of God's holy and faithful people for the good of all. Something truly new brought about by the Spirit need not overshadow other gifts and spiritualities in making itself felt. To the extent that charism is better directed to the heart of the Gospel, its exercise will be more ecclesial. It is in communion, even when this proves painful, that a charism is seen to be authentic and mysteriously fruitful. Based on her response to this challenge, the Church can be a model of peace in our world (EG 130).

3.2. Appreciating The Autonomy of Institutes of Consecrated Life

In harmony with the recognition of the charismatic inspiration of each institute, the Code of Canon Law grants a measure of autonomy to institutes of consecrated life. Mosca in his article considered this element as one of the important principles in attracting the universal and relationship of consecrated life, that is, the autonomy of life, of legislation, and especially that of government.¹³

The code of canon law affirms that a just autonomy of life, especially of governance, is acknowledged for individual institutes, by which they possess their own discipline in the Church

⁸ J. Hite, "Canons that refer to the constitution and proper law of institutes of consecrated life and societies of apostolic life, in J. Hite., S. Holland., D. Ward, (ed), *A Handbook on Canons 573-746*, (Minnesota 1985), 371.

⁹ V. De Paolis., *Op.Cit.*, 43.

¹⁰ R. M. Mcdermott, *Op.Cit.*, 742.

¹¹ V. Mosca, *Op.Cit.*, 184-186.

¹² C. Gallagher, "The Church and Institutes of Consecrated Life", *The Way Supplement* 50 (1984), 9.

¹³ V. Mosca, *Op.Cit.*, 194.

and can preserve their own patrimony intact, as mentioned in can. 578 (can. 586 §1). According to V. De Paolis this autonomy does not mean independence at all. Independence from the hierarchy in the Church is unthinkable.¹⁴ A. Calabrese otherwise asserted that the code speaks of just autonomy (*giusta autonomia*), that is to affirm the necessary or convenient independence, so that the institute may preserve the discipline, structures, organization, and patrimony which are mentioned in can. 578, so it may lead its typical life and carry out its characteristic mission in the Church.¹⁵ Can. 586 § 2 states that it is the task of the ordinary of places to conserve and protect such autonomy. All institutions of consecrated life have their own autonomy. The autonomy of the institutes of consecrated life is not a concession of ecclesiastical authority, but a right of the institute that springs above all from its charismatic origin, hence from the specific nature of its foundational charism and from its degree of development and incidence in the life of the Church.¹⁶

3.2.1. Proper Law (*Ius Proprium*) As the Embodiment of Normative Autonomy

The term proper law calls for some explanations. There are many levels of proper law in an institute. Proper law (*ius proprium*) is the term used by the *Codex* to indicate the whole constituted by the fundamental code and by the other normative texts of an institute of consecrated life.¹⁷ Can. 587 of the code lists the elements that constitute the *ius proprium*, understood as the fundamental code or constitutions that contains the constitutive law of the institute (§1), and the other norms that are collected in the statutes or directory of the institute (§4). An institute should carefully attend to the provisions in the code when composing or reviewing its own proper law.¹⁸

The Fundamental Code or Constitution (Rule)

The fundamental Code or Constitutions of an institute determine what constitutes the patrimony of the Institute and in addition the basic norms about the governance of the institute, the discipline of the members, admission, and formation, and the proper object of their sacred bonds (can. 587, §1). Consecrated persons commit themselves to live according to the prescriptions of the constitutions of their institute and recognize in these the authentic expression of the spirit, traditions, and style of life of their institute, approved by the Church.¹⁹ The objective of the fundamental code or constitution is to preserve the vocation and identity of the institution, by suitable and reliable expressions.²⁰

The fundamental code or constitution enjoys special canonical recognition, provides stability, and contains only things that have a permanent and universal value in time and space. This code must be approved by the Church and cannot be changed without the consent of the same authority (can. 587, §2). The competent authority to approve the fundamental code and any change to it, is the authority that erected the institution, the diocesan bishop, or the Holy See.²¹ Further, the third paragraph of the canon under consideration states that in the constitutions, the spiritual and juridical elements are to be aptly harmonized. Norms, however, are not to be multiplied without

¹⁴ V. De Paolis, *Op.Cit.*, 221.

¹⁵ A. Calabrese, *Istituti di vita consacrata e società di vita apostolica*, (Città del Vaticano, 1997), 39.

¹⁶ G. Ghirlanda, *Op.Cit.*, 72.

¹⁷ M. Dortel-Claudot, "Diritto proprio", in Salvador., V. De Paolis., G. Ghirlanda, (ed.), *Nuovo Dizionario di Diritto Canonico*, (Cinisello Balsamo 1993), 413.

¹⁸ There are references to "proper law" at cc. 597 §1, 598 §2, 600, 607 §2, 616 §1, 617, 622, 623, 624 §2 and §3, 626, 627 §2, 628 §1, 629, 630 §2, 631 §2 and §3, 632, 633 §1, 636 §1 and §2, 638 §1 and §2, 641, 643 §2, 645 §3, 650 §1, 653 §2, 655, 657 §2 and §3, 659 §2, 663 §3, 667 §1, 668 §2, §3, §4 and §5, 669 §1, 684 §3 and §4, 696 §1 and §2, 716 §1, 718, 719 §1, 735 §1 and §3, 740, 741 §1 and §2. Other canons refer to the "fundamental code" or "constitutions" of the institute.

¹⁹ Y. Sugawara, "Il ruolo delle costituzioni", *Periodica* 98 (2009), 664.

²⁰ M. Dortel-Claudot, *Codice fondamentale*, Salvador., V. De Paolis., G. Ghirlanda, (ed.), *Nuovo Dizionario di Diritto Canonico*, (Cinisello Balsamo, 1993), 200.

²¹ V. De Paolis, *Op.Cit.*, 226.

necessity (can. 587 §3).

Other Normative Documents

C. 587 §4 provides that other norms established by an institute's competent authority are to be collected suitably in other codes and, moreover, can be reviewed appropriately and adapted according to the needs of places and times. These are specific rules of an applicative or integrative character, issued by the internal authority of the institute. The code speaks about the complementary code, which concerns concrete applications, according to circumstances, and responding to determined historical conditions. They are the accessory code or the non-fundamental or proper norms of an institute of consecrated life, which contain subsidiary and practical rules, relatively stable, integral, and organic applications of the constitutions; generally developed, approved, and promulgated by the general chapter, and whose content can be recognized and adapted by the competent internal authority of the institute.²² These other norms can be of various kinds and from various sources. They can be the chapter norms for the whole institute or capitulary norms for the province or the house, according to whether the chapter is general, provincial, or local.²³

Texts Regarding Legal Patrimony, Customs, and Traditions

The proper law integrated by the fundamental code, by the general accessory code, by the particular codes, by the rules and documents of the Chapter, by the executive dispositions of the superiors and by the set of traditions and customs, and other legal patrimony text even if not written, form the historical memory as an indispensable basis for understanding and living the actuality of a charism.²⁴

3.2.2. The Autonomy of Government

Regarding the diversity of charisms and services which institutes of consecrated life offer to the Church, can. 577 gives both acknowledgment and legitimacy to the diversity of institutes of consecrated life. The reference to the multiplicity of institutes and their different gifts is a corrective to any attempt at a univocal concept of institutes of consecrated life. The *Sequela Christi* or following of Christ is pointed out as that which unifies institutes of consecrated life, despite their diversity.²⁵ This diversity helps in understanding the normative power of particular laws and their specificities.

The just autonomy (*giusta autonomia*) of an institute of consecrated life is indicated also by the autonomy of government. Superiors and chapters of institutes possess that power over members that are defined in universal law and the constitutions (can. 596 §1). This autonomy is less regarding the external apostolate, and broader as regards internal, spiritual, and disciplinary matters. It has gradualness for each individual institute and is more or less broad with respect to certain categories of institutes (pontifical right or diocesan, clerical or lay institution).²⁶

It is clear in the Code that superiors have personal authority (cf. can. 617). The central element in religious government is the personal authority of the superior, an authority that is ongoing and executive, carefully circumscribed in duration and exercise, and humanly limited in its possession and implementation.²⁷ It comes from God through the Church and is to be exercised in a spirit of service (cf. can. 618). The Code attributes supreme authority also to the general chapter (c. 631 n 1) in the substantive nature of its responsibilities: protecting the patrimony of the institute (its nature, purpose, spirit, character, and sound traditions as described in c. 578); electing the supreme

²² D.J. Andres, *El derecho de los religiosos: comentario al código*, (Madrid, 1983), 27.

²³ V. De Paolis, *Op.Cit.*, 228.

²⁴ V. Mosca, *Op.Cit.*, 216.

²⁵ E. O'hara, *Op.Cit.*, 36.

²⁶ V. Mosca, *Op.Cit.*, 195.

²⁷ E. McDonough, "Religious Superiors and Government", *The Way Supplement* 50 (1984), 63-64.

moderator; handling matters of great importance and issuing binding norms for the institute. Its authority, however, neither derogates nor conflicts with the ordinary authority of the superior, who by right is the president of the chapter.²⁸

The principle of the autonomy of life and government of the institutes is based on the nature of the power of governance enjoyed by their superiors and their chapters. However, in lay institutes and societies, of both diocesan or pontifical right, and the clerical institutes of diocesan right, and in secular institutes of every kind, the power of proper government in the Church is received and exercised in a limited way. Special attention is given to the government of pontifical clerical institutes, which is received and exercised in a fuller way and is technically called ecclesiastical power of government. The clerical institutes of pontifical rights as well as the powers mentioned in the first paragraph of the can. 596, which are generally applicable to all institutions of consecrated life, also possess ecclesiastical power of governance for both the external and internal forum (can 596 § 2).²⁹

4. Conclusion

There is no doubt that the universal law respects the gift of consecrated life in the church, recognizes the unique character of each institute, provides for flexibility and subsidiarity, and offers means of promoting the participation of all members in the life and mission of the institute. The present Code of Canon Law requires the religious to live a common life, according to their proper law. Religious life, thus conceived, is essentially a life lived in dependence on the internal Superiors of the institute, and its rule and constitution, which determine its canonical structure and particular spirit, according to the special vocation and the special graces of the founder.³⁰ Replacing a rigid universalist view of religious life, the Code has relied on the "proper law" of the individual institutes as the way of capturing and putting into practice its charism. The clarification of the general categories of religious institutes and secular institutes, and societies of apostolic life has helped communities appreciate their special identity and to update their constitutions and directories in a democratic manner that serves as a model of communal discernment and accountability.

The universal law considers the fact that at the origin of each institute, there was a particular gift or charism of the Spirit, which varies somewhat from institute to institute, and finds its expression, not only in the lifestyle of the members but also in their mission. The laws of the Church must allow flexibility so that each institute may live its own form of life and spirituality in accord with its charism.³¹ There are many Religious Institutes in the Church, each differing from the other according to its proper character. Each, however, contributes its own vocation as a gift raised up by the Spirit through the work of outstanding men and women, and authentically approved by the sacred hierarchy. The very charism of the Founders appears as an "experience of the Spirit," transmitted to their disciples to be lived, safeguarded, deepened, and constantly developed by them, in harmony with the Body of Christ continually in the process of growth (MR 11; cf. VC 48).

The conclusion is that clarifying the relationship between universal law and the proper law of individual institutes of consecrated life is no simple task. Divergent views of world culture, diverse images of the Church, differing theologies of religious life, and changing perceptions of the role and purpose of law all contribute to the complexity of the problem. It seems important then not to attempt to explore the question except within a broad conceptual framework.³² However, most of

²⁸ M. M. Modde, "Religious house and governance", in J. Hite., S. Holland., D. Ward, (ed), *A Handbook on Canons 573-746*, (Minnesota, 1985), 90.

²⁹ V. De Paolis, *Op.Cit.*, 231.

³⁰ J. Beyer, *Religious Life or Secular Institute*, (Rome, 1970), 17.

³¹ F. G. Morrissey, "Introduction", in J. Hite., S. Holland., D. Ward, (ed), *A Handbook on Canons 573-746*, (Minnesota, 1985), 16.

³² B. L. Thomas, "Canon law and the constitutions of religious congregations", *The Way Supplement* 50 (1984), 47.

all, it traces a sure path that enables each member of an institute or society to respond to God's calling in fidelity and love.

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