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ENTRUSTING OF PARISHES TO CLERICAL RELIGIOUS INSTITUTES PURSUANT TO CANON 520 WITH REFERENCE TO THE CATHOLIC ARCHDIOCESE OF KISUMU, KENYA

Thesis submitted to the Institute of Canon Law in Partial Fulfillment of the Requirements for the Licentiate Degree in Canon Law

By

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DECLARATION

TITLE OF THE THESIS

ENTRUSTING OF PARISHES TO CLERICAL RELIGIOUS INSTITUTES PURSUANT TO CANON 520 WITH REFERENCE TO THE CATHOLIC ARCHDIOCESE OF KISUMU, KENYA

I, the undersigned, hereby declare that this thesis is my original work. It has not been presented to any institution for any academic credit. All sources consulted have been duly acknowledged.

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DEDICATION

This thesis is dedicated to my parents Patrick Ochieng' Kowanga and Margaret Awuor Ochieng;' to my superiors, diocesan bishops and all members of Clerical Institutes as they endeavor to understand, appreciate and faithfully observe a proper written agreement in entrustment of parishes to Clerical Religious Institutes and Societies of Apostolic Life.

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ABBREVIATIONS

AAS	Acta Apostolicae Sedis, Commentarium officiale
Acts	Acts of the Apostles
AD	After the Christian era
AG	SECOND VATICAN COUNCIL, Decree on the Church's Missionary Activity Ad gentes
AMECEA	Association of Member Episcopal Conferences of Eastern Africa
Art./art.	Article/articles
ASS	Acta Sanctae Sedis (Acts of the Holy See. Publication containing the principal Public documents issued by the Pope himself or through the congregations of the of the Roman Curia until 1908).
Can./Cann.	Canon/Canons
C.C.C	Catechism of the Catholic Church
CCEO	Codex Canonum Ecclesiarum orientalium, (Code of Canons of the Eastern Churches).
Cf.	Confer
CCLA	E. CAPARROS et al. (eds.), Code of Canon Law Annotated
CD	SECOND VATICAN COUNCIL, Decree on the Pastoral Office of Bishops in the Church Christus Dominus
CIC/83	Codex Iuris Canonici 1983
CIC/17	Codex Iuris Canonici, 1917
CICLSAL	Congregation for Institutes of Consecrated Life and Societies of Apostolic Life
CLD	Canon Law Digest
CLSA	Canon Law Society of America
CLSAP	Canon Law Society of America Proceedings
DG	Decretum Gratiani
DR.	Doctor

ed.	Editor
eds.	Editors
et al	And others
ES	PAUL VI, letter Ecclesiae Sanctae Implementing the Decrees Christus Dominus, Presbyterorum ordinis and Perfectae Caritatis.
Ex	Exodus
GS	SECOND VATICAN COUNCIL, Pastoral Constitution on the Church in the Modern World Gaudium et spes
KCCB	Kenya Conference of Catholic Bishops
KCCR	Kenya Commission for Clergy and Religious
LG	SECOND VATICAN COUNCIL, Dogmatic Constitution on the Church Lumen Gentium
Mk.	The Gospel of Mark.
Mt.	The Gospel of Matthew
n./nn.	Number/Numbers
NY	New York
PB	JOHN PAUL II, Apostolic Constitution on the Roman Curia Pastor bonus
PI	CONGREGATION FOR INSTITUTES OF CONSECRATED LIFE AND SOCIETIES OF APOSTOLIC LIFE, Directives on Formation in Religious Institutes Potissimum Institutioni.
PC	SECOND VATICAN COUNCIL, Decree on the Up-to-date Renewal of Religious Life Perfectae Caritatis
PCCICOR	Pontificia Commissio Codici Iuris Canonici Orientalis Recognoscendo
P/pp	Page/Pages
PO	SECOND VATICAN COUNCIL, Decree on the Ministry and Life of Priests Presbyterorum ordinis
1 Pt.	Peter

RC	CONGREGATION FOR RELIGIOUS AND SECULAR INSTITUTES, Instruction on the Renewal and Adaptation of Formation for Living the Religious Life Renovationis Causam.
St.	Saint
s. v,	Sub Verbo
Trans.	Translation
Vatican II	Second Vatican Council
Vol.	Volume
Vols.	Volumes

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GENERAL INTRODUCTION

Institutes of Consecrated life and Societies of Apostolic Life (ICL and SAL) are founded each with a particular charism, a proper character and autonomy. Each charism of every institute is a gift for the service to the whole Church. The religious, therefore, exercise their ministry concretely in the particular churches whose pastoral authority is entrusted to bishops who are the visible source and foundations of unity of their own dioceses.[1]

A diocesan bishop as the Ordinary of the Diocese is responsible and is the coordinator of all the apostolic works, including those of the religious carried out in their respective dioceses. The exercise of the apostolic works by the religious in such particular churches is always enriching the mission of Christ in the diocese. Inspite of this enriching mission, there are however some conflicts and misunderstandings in the way and manner these apostolic works are done especially the parish ministry. The causes of these conflicts often lie in the non-fulfillment of the expectations from either side that are often presumed and not explicitly known to the other party. A written agreement between the diocesan bishop and the competent superior of an institute at the time of entrustment of parishes is, therefore, highly desirable and very useful for the welfare of the diocese and the religious institute.

Cognizant to how important a written agreement is to a diocese and a clerical institute, the Church has always emphasized on fidelity by a diocesan bishop and the competent superior and the members of the clerical institute to the content of a properly written agreement and other matters. The Congregation for Evangelization of peoples prescribed that a written agreement be made between the local ordinaries and missionary institutes or societies when undertaking mission works in a particular church. The document further had an "appendix" giving a schema for the

[1] Cf. SECOND VATICAN COUNCIL, Dogmatic Constitution on the Church *Lumen Gentium,* 21 November 1964, nn. 23; 45 in *AAS*, 57 (1964), pp. 28; 51. Hereafter cited as *Lumen Gentium*.

agreement (*Schemata contractuum*). The Vatican II gave great emphasis on a written agreement between the local ordinary and the competent superior of the institute for the work of apostolate entrusted to any religious institute by the diocesan bishop.[2] The conciliar desire found its way in the present Code in which Can. 520 and Can. 681§ 2 prescribes a written agreement to be drawn up between the diocesan bishop and the competent religious superior when the bishop entrusts works of apostolate to clerical institutes. In addition, according the CIC/1983 Can. 37, the administrative acts which concern external forum are to be effected in writing.

It is, therefore, in the light of the above consideration that this study makes a deeper inquiry into what could be some of the reasons why there are always conflicts and misunderstanding between the diocesan bishop and the clerical institutes entrusted with parishes in the diocese while there is a written agreement which should guide this process and the relationship. The study also intends to come up with some suggestions on how best the written agreement can be a tool for both the diocesan bishop and the clerical institute entrusted with a parish to enjoy positivity, cooperation, collaboration and unity for the building up and growth of the whole Church and or the good of the diocese.

1. The Background to the Problem

The Conciliar spirit and desire for a properly written agreement as captured in *Ecclesiae sanctaen*, n.1, and the norms for implementing the conciliar decree *Christus Dominus* was reinforced by the universal law which directs that the entrusting of a parish to a clerical religious institute or clerical society of apostolic life is to be made by way of a written agreement between the diocesan bishop and the competent superior of the institute or society, which expressly and

[2] Cf. PAUL VI, Motu Proprio *Ecclesiae Sanctae*, II: Norms for Implementing the Decree on the Adaptation and Renewal of Religious Life *Perfectae Caritatis*, 6 August 1966, in *AAS*, 58 (1966), pp. 778-782, English translation in A. Flannery, (gen.ed.), *Vatican Council II. The Conciliar and Post Conciliar Document*s, New rev. ed., Costello Publishing Company, New York 1992, p. 624-633. Hereafter cited as, *Ecclesiae Sanctae*.

accurately defines, among other things, the work to be accomplished, the persons to be assigned to the parish and the financial arrangements. (cf. Can. 520 § 2).

Despite the canonical provisions and the directives given by the Code, and with the changes introduced by the *Codex Iuris Canonici* concerning the entrustment of parishes to clerical institutes, the exercise of the apostolic work by the religious in a particular church is not often without any conflict and misunderstanding. Fidelity to the observance of the written agreement made when entrusting a parish or any entrusted apostolate is increasingly becoming a challenge. The diocesan bishops, the competent superiors of the clerical institutes and their members seem not to be aware of what they have agreed upon and the implication of the written agreement. It has been observed through experience that many times there are conflicts and misunderstanding between the members of religious institutes entrusted to a parish and the diocesan bishop who has entrusted the same to them.

In the light of the above understanding, this study endeavors to explore the extent to which the diocesan bishops and the competent authority of clerical institutes and their members have shown fidelity to the provision of the universal law on entrustment of parishes especially to the faithful observance of the written agreement in entrustment of parishes to clerical institutes. This is done in line with the aim of fostering positivity, cooperation, collaboration, harmonious relationship and a conducive working relationship whenever a parish is entrusted to clerical institutes.

2. The Purpose of the Thesis

The purpose of this thesis is to establish the extent to which diocesan bishops and the competent authority of clerical institutes and their members are faithful to the observance of the written agreement in entrustment of parishes as prescribed in Can. 520. It also hopes to understand

and appreciate a proper agreement to be concluded between the diocesan bishop and the major superior in the whole process of entrustment of parishes. It endevors to highlight the possible challenges which the diocesan bishop and the competent authority of clerical institutes and their members may encounter in observing the elements of the written agreement. Equally, it intends to encourage and strengthen the commitment to fidelity to the written agreement in accordance with the universal law, particular laws of the dioceses and the proper laws of the institutes, pursuant to Can. 520. By making reference to the Catholic Archdiocese of Kisumu and some sampled clerical institutes entrusted with parishes in the Archdiocese, the study presents a deep desire to dig deep into the underlying factors impeding the diocesan bishops, the competent superiors and their members from being faithful to the observance of the written agreement made during entrustment of parishes.

3. Rationale of the Thesis

The available literature indicates that a lot has been written about entrustment of apostolates to religious institutes: however, not much information exists about entrustment of parishes to clerical institutes through a written agreement. On the existing limited literature on entrustment of parishes to clerical institutes, none has focused on the Catholic Archdiocese of Kisumu and the clerical institutes entrusted with parishes in the Archdiocese.

This limitation in the information on the topic makes a justified call to canonists and others interested in this discipline to make efforts in providing more academic wisdom on this pertinent aspect of the relationship in apostolic works in the dioceses and the clerical institutes. The thesis is, therefore, a timely contribution to the limited existing canonical literature on the considered topic as it endeavors to contribute to that effort while focusing on the Catholic Archdiocese of Kisumu and sampled clerical institutes entrusted with parishes in the particular Archdiocese.

The outcome of this study hopefully will be of great importance to the diocesan bishops, and the competent superiors of clerical institutes and their members as a resource for deepening of the understanding of the written agreement. It will also benefit the Church at large especially the clergy and members of consecrated life who are interested in the discipline as a document of reference.

4. Central Question of Investigation

In order to address the research problem, this work is inspired by the following research question: "To what extent have the diocesan bishops and the competent authority of clerical institutes and their members been faithful to the observance of the written agreement in entrustment of parishes as prescribed in Can. 520?"

5. Working Hypotheses

In response to the research question, this study has, as its working hypotheses, the following assumptions:

Maybe if both the diocese and religious instiutes had clearly drawn up policies outlining the procedures of entrusting parishes, misunderstanding and tensions arising from such works would be minimimized.

Probably if the subjects involved in the entrustment of parishes remained faithful in observance of the written agreement, an effective collaborative ministry would be fostered between the diocesan bishop, competent superiors of clerical institutes and their members when entrusted with parishes.

Perhaps it is due to lack of proper knowledge of this canonical obligation and also ignorance of the role of the diocesan bishop and the competent superiors in the entrustment of parishes that there are many conflicts and misunderstandings in the apostolic works in the parishes.

Perhaps if there was a conflict resolution forum, there would be an amicable way of solving the conflicts and misunderstandings that arise on the entrusted works by taking recourse to the written agreement.

6. Methodological Considerations

Being itself a plan and structure of investigation, the research methodology conceived to obtain answers to the research question, is a blueprint that enables this study to come up with solutions to the research question and guides in its various stages. This thesis, therefore, applies the following research methods: historical-juridical approach, exegetical-analytical method, deductive method and the prospective method.

6.1 Method of Approach

Historical approach: This method has been used in chapter one of this thesis to explore the development of the notion of entrustment of parishes in the canonical tradition as depicted in the various documents and writings of the Church. It is also used in chapter two to trace the sources of Can. 520 on entrustment of parishes to clerical institutes using a written agreement. Finally, the method is employed in the same chapter two to trace the evolution and juridical *iter* of the norm to its final draft as promulgated in the CIC/1983.

Exegetical-analytical Approach: is used in chapter two to analyze and study Can. 520 together with other related canons in order to understand the mind of the legislator with regard to the duty to observe the written agreement made in entrustment of parishes to clerical institutes. The research applies the exegetical method to explain the canonical provision of the present law on entrustment in order to understand better the mind of the legislator.

Deductive method: This method has been employed in chapter three of this research to evaluate the provisions of the code on entrustment of parishes to clerical institutes from the universal law and its practicability in the particular law and the proper law. Lastly, it is used to give some significant recommendations on the practical ways on how the diocesan bishops, competent superiors of clerical institutes and their members are to strive to foster cooperation, collaboration and harmonious relationship by being faithful and honouring the written agreement.

6.2 Structure of the Thesis

This thesis consists of three chapters as follows:

Chapter One: Entrustment of a Parish to a Clerical Institute in the Canonical Tradition

Chapter one deals with the historical development on the entrustment of parishes to religious institutes throughout the history of the church. In this chapter the early Biblical Roots on entrustment are highlighted. The chapter then explores the historical background of the notion of entrustment and its development. It then studies the teaching of the Fathers of the Church about entrustment of parishes through a written agreement.

The chapter goes further to study the legislation of the *Corpus Iuris Canonici* on the entrustment of parishes to clerical institutes and the Tridentine Legislation. This chapter finally explores the legislation on entrustment of parishes in the 1917 Code and its development from Vatican II to the present legislation.

Chapter Two: Juridical Study of Can. 520 on the Entrustment of Parishes to Clerical Institutes

Chapter two deals with the juridical analysis of the norm of the entrustment of parishes to clerical institutes. The chapter treats the sources of Can. 520, its development and the juridical

formation. It then provides the textual analysis of the canon and finally looks at the related canons in both the *Codex Iuris Canonici* and *Codex Canonum Ecclesiarum Orientalium.*

Chapter Three: Practical Application of the Norms of Can. 520 on Entrustment of Parishes to Clerical Institutes in the Catholic Archdiocese of Kisumu-Kenya

This chapter treats the practical application of Can. 520 in a specific diocese by analyzing the extent to which it has been in conformity with the provision of the universal law. The chapter addresses the brief history of the Archdiocese of Kisumu, its particular statutes on entrustment of apostolate to clerical institutes. It scrutinizes the application in adherence to the written agreement in as much as Can. 520 is concerned and the proper laws of sampled clerical institutes entrusted with parishes in the archdiocese.

Based on the finding; the chapter offers some possible recommendations on how the application of the particular law of the Archdiocese of Kisumu and the proper law of the sampled clerical institutes can be in greater conformity with the demands of the law of the Church regulating the observance and faithfulness to the written agreement in the whole process of entrustment of parishes.

CHAPTER ONE

ENTRUSTMENT OF A PARISH TO A CLERICAL INSTITUTE IN THE CANONICAL TRADITION

Introduction

The Church is fundamentally a community of people with those who have been entrusted by the competent authority to lead. This implies that the concept of entrustment of particular people to lead the community of people has been in the conscience of the Church since its origin. As P. Pallath says, the faithful of Christ live the life of the Church first and foremost at the parish level, as members of parish community under their parish entrusted to their care.[3] The large community of the faithful was always divided in smaller groups and for each group a leader was assigned. Over the years these smaller groups developed to be what is now called a parish entrusted to particular persons as their leaders including members of religious institutes and societies of apostolic life.

This chapter traces the concept of entrustment of parishes to Religious Institutes and societies of apostolic life in the light of Can. 520. It examines the concept of entrustment from the biblical roots, within the community of the early Church, and the era of monasticism. It further studies the entrustment of parishes in the *Corupus Iuris Canonici*, the various Religious Orders and through the Council of Trent which was a decisive moment in the entrustment of parishes to religious institutes. It proceeds further to the legislation of CIC/1917, the teachings of Vatican Council II, CIC/1983 and finally the post coniliar period as found in recent papal and curial documents.

[3] Cf. P. PALLATH, "Parish in the Canonical Legislation," in *Eastern Legal Thought*, 4 (2005), p. 73.

1.1 The Etymological Concept of Parish

Etymologically, the word parish derives its roots from the Greek word παροικία (*paroikia)* which literally means to live near, next to or to live besides.[4] The Latin *paroecia* is the Latinization of the Ancient Greek παροικία, (*paroikia*) "sojourning in a foreign land," which is a compound of …. (para.),[5] "beside, by, near" (oikos), house. The Verb *paroikein* means "to dwell beside." In Latin, the word *parœcia* was used interchangeably for the parish and the diocese.[6] This usage continued until the thirteenth century, when the Council of Trent accepted the word *parœcia* in its present significance.[7]

The Greek word ἐκκλησία, accepted into Latin as *ecclesia,* is used in the New Testament to describe this gathering of Christians in each particular geographical place. St. Paul addresses his earliest epistle τῇἐκκλησίᾳ Θεσσαλονικέων (to the church of the Thessalonians, 1 Thess1:1), for example, and the visions of Revelation begin Ἰωάννης ταῖς ἑπτὰ ἐκκλησίαις ταῖς ἐν τῇ Ἀσίᾳ (John to the seven churches that are in Asia", Rev.1:4).

The word παροικία (parish) also has a scriptural origin. In classical Greek and the Septuagint (e.g. Gen 47: 9), the word παροικία meant essentially "a place of sojourn." 1 Pet 17 speaks of τὸντῆς παροικίας ὑμῶνχρόνον ("throughout the time of your exile.") This evokes a certain stability of the Christian people in a place, even though they are pilgrims, for "our homeland is in heaven" (Phil 3: 20).

From this root, a parish is seen as a community of exiles, a place for those exiled on earth and long for heavenly homeland. It is a place where they gather for that journey to home. It is

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[4] Cf. S.K. LUDWING, Parroikos/Parroikia/Parroikeo, In G. FRIEDRICH (ed.), *Theological Dictionary of the New Testament,* Vol. VI, Ferdmans Publishing Company, Michigan 1967, pp. 841-853.

[5] Cf. H.G. LIDDELL, -R. SCOTT, *A Greek-English Lexicon*, Clarendon Press, Oxford, 1940, pp. 213-219.

[6] Cf. COUNCIL OF NICAEA I (325), Can. 16, in N.P. Tanner (ed.), Decrees of the Ecumenical Councils, Vol. I, Sheed and Ward Press, WASHINGTON DC 1990, p. 13.

[7] Cf. J.I. ATTWOOD, *Canonical Implications in Parish Closings,* Pontificia Studiorum Universitas, Romae 1998, p. 3.

meant to be a gathering of aliens, exiles, and immigrants of people with no home because they are on a journey and are far from their true home just as the Jews in Diaspora. In this journey, the aliens, the exiles need one to whose care they are entrusted.

1.2 Biblical Roots of the Concept of Entrustment of the Parish

The life of the parish is the life of the Church[8] which has its foundation in Sacred Scriptures. The entrustment of parishes has its long history from the Sacred Scriptures. Even though the Sacred Scriptures do not have direct reference to the concept, there are many elements which show God as entrusting his people to a leader. The concept of call and entrustment of individuals and groups to a leader or groups of leaders are prevalent. God calls individuals and sends them to his chosen people to carry out a role of leading them to a destination (Exodus 3:6-10). Jesus called certain individuals and entrusted them with his people.

1.2.1 Understanding of the Concept of Entrustment in the Old Testament

Moses who was to lead the people of God from bondage of Egypt was a shepherd, tending the flock of Jethro. God told him to go, for he was sending him to Pharaoh to bring His people the Israelites out of Egypt (Exodus 3:10). He further sent him to go and assemble the elders of Israel (Exodus 3: 18). After the death of Moses, Israelite tribe is entrusted to Joshua to lead them in the conquest of Canaan (Numbers 13:1).

1.2.2 Understanding of the Concept of Entrustment in the New Testament

Jesus came into the world with a mission into which he summoned all without exception to the perfection of charity. This mission was to continue beyond his public ministry and so he

[8] Cf. A.B MICKELLS, *The Constitutuve Elements of Parishes: A Historical Synopsis and Commentary*, Catholic University of America Press, Washington DC 1950, p. 9.

called some people to himself whom he prepared to carry on the mission. He required a radical life-style from these apostles[9] since he was later to entrust to them the leadership of his church.

1.2.2.1 Entrustment of the Followers in the Mission of Christ

The New Testament passages do not directly offer theories on religious life neither do they offer theories on entrustment to religious institutes. Some foundations of the religious life can be found in the life and teachings of Christ. He invited his apostles who responded and he was their leader. The evangelist Mark writes: "He went up the mountain and called to himself those whom he wanted, and they came to him. He appointed the twelve whom he also named apostles, to be with him and to be sent out to proclaim the message and to have authority to cast out demons" (Mk 3:13-15). Jesus is here depicted as a teacher, a mentor, a leader who entrusted to himself this group of twelve and journeyed with them.

Among the apostles, Peter holds the first place as Jesus entrusted a unique mission and specific authority to him saying: "I will give you the keys of the kingdom of heaven, and whatever you bind on earth shall be bound in heaven, and whatever you loose on earth shall be loosed in heaven" (Mt. 16:19). Jesus, through this, entrusted the authority in the Church through the ministry of the apostles and in particular through the ministry of Peter, the only one to whom he specifically entrusted the keys of the kingdom (Mt. 18:18).

1.2.2.2 Entrustment of Ecclesial Community in the Apostolic Time

The first letter of St. Peter gives an account of Peter exhorting the presbyters as a fellow presbyter to tend the flock of God entrusted to them, overseeing them not by constraint but willingly, not for shameful profit but eagerly. The presbyters entrusted with the flock should do their work, not for mere pay, but from a real desire to serve. They should not try to rule over those

[9] Cf. H. SCHURMANN, "Le groupe des disciples de Jesus, signe pour Israel et prototype de la vie selon Ies conseils," in *Christus*, 50 (1966), pp. 187-189.

who have been put under their care, but should be good examples to the flock. Jesus assured them that when the Chief Shepherd appears, they will receive the glorious crown which will never lose its brightness (1 Peter 5:1-4). Acts 14:23 says that Paul and Barnabas "appointed elders . . . in every church." The apostles appointed James bishop of Jerusalem and Polycarp bishop of Smyrna, and John later traveled from city to city to appoint bishops. Later, bishops were appointed by other bishops. In Titus 1:5, Paul asked Titus, who was likely the bishop at Crete, to appoint elders (bishops) in surrounding cities (Titus 1:5) and Churches were entrusted to their care.

During the great persecutions of the first three centuries, Christians lived their faith with great fervor and austerity. The peace of the Church under Constantine, (4^{th}-7^{th} c) and the establishment by Theodosius of Christianity as the religion of the empire brought a dramatic change in perspective for the Church. Beginning with the Edict of Milan in the year 313,[10] the Church became a sort of "established Church" within one hundred years after the Peace of Constantine.[11] Becoming a Christian was a prestige and meant material advantage.[12] Unfortunately, the standard of Christian life and austerity went down and there was less adherence to the teachings of Christ and a neglect of sacramental life. Some individuals felt dissatisfied with this laxity and chose to withdraw to stay in caves and deserts where they lived an austere life, devoted to prayer and penance.[13]

[10] Edict of Milan, proclamation that permanently established religious toleration for Christianity within the Roman Empire. It was the outcome of a political agreement concluded in Mediolanum (modern Milan) between the Roman emperors Constantine I and Licinius in February 313. Ordinances hostile to Christians were lifted. The proclamation, made for the East by Licinius in June 313, granted all persons freedom to worship whatever deity they pleased, assured Christians of legal rights and directed the prompt return to Christians of confiscated property. (The New Catholic Encycopedia, Edict of Milan, Vol. IX, p. 838)

[11] Cf. J.A. CORIDEN, *The Parish in Catholic Tradition: History, Theology and Canon Law*, Paulist Press, New York 1997, pp. 22-23.

[12] Cf. D. KNOWLES, *Christian Monasticism*, Mc Graw-Hill Book Company, New York 1969, p.12.

[13] Cf. D. KNOWLES, *Christian Monasticism*, p.12.

1.3 The Concept of Entrustment in the Early Christian Church

The early Church was not a highly organized structure. Both Acts and the Epistles of Paul indicate that many Christians were expecting Jesus to return to earth at almost any time, and, therefore, the Church had no need for a highly organized structure. As the years passed and it became apparent that Jesus was not returning immediately, as the number of Christians grew, and as the various interpretations of Christianity increased, it became necessary for the church to organize more fully.

1.3.1 Entrustment of Parish during the Monastic Era (500-1200)

The origins of and inspiration for monasticism, an institution based on the Christian ideal of perfection, have traditionally been traced to the first apostolic community in Jerusalem which is described in the Acts of the Apostles (Acts 2:43-47) and to Jesus' sojourn in the wilderness (Matthew 4:1-3, Luke 4:1-2). In the early Church, monasticism was based on the identification of perfection with world-denying asceticism and on the view that the perfect Christian life would be centred on maximum love of God and neighbor. Monasticism emerged in the late 3rd century and had become an established institution in the Christian Church by the 4th century.

In the Early Christian Church, there were groups of widows and virgins who consecrated themselves and lived a life of prayer and asceticism.[14] The first Christian monks, who had developed an enthusiasm for asceticism, appeared in Egypt and Syria. Notable among them is St. Anthony (251-356), the founder of Christian monasticism and considered the founder and father of organized monasticism. He attracted a great number of men and women that he formed to the hermitical life. A former Roman soldier of the 4th century, Pachomius (292-346), created the first cenobitic, or communal, monastery. He set out to lead the life of a hermit near St. Antony of Egypt,

[14] Cf. R.F. SMITH, "Religious Life," in *New Catholic Encyclopedia*, Vol. XII, Catholic University of America, Washington DC 1967, pp. 287-294.

whose practices he imitated.[15] He created a monastic congregation with all the elements. New members joined and Pachomius gave them a rule.[16] Pachomius had explicitly forbidden monks to become priests on the ground that it is good not to covet power and glory. He headed the monastery until his death in 346.[17]

St. Basil (340-399), one of the three Cappadocian Fathers of the 4th century, definitively shaped monastic community life in the Byzantine Church. His ascetic writings furnished the theological and instructional foundation for the "common life" (cenobitism) of monks. By means of a special vow and a special ceremony, he enabled monks to cease being just laymen and to attain a position between clergy and laity. Infact Pachomius and Basil are two great founders of communal monasticism in the East.[18]

Western monasticism was founded and shaped by Benedict of Nursia (480-547). He formulated the Benedictine rule which became the standard in monasteries throughout Europe.[19] This rule was characterized by the development of clericalization and functional characteristics of its many orders. This new spiritual heroism brought in a new reality of *monasterium* in the Christian life. This did not necessarily mean a Benedictine Monastery but were mother-churches called *monasteria,*[20] which had the privilege of having a baptismal font and a smaller pastoral network called satellites. Some mother-churches were monasteries in the strict sense while others were communities of priests without formal monastic life. Parishes entrusted to monasteries were

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[15] Cf. T. G. KARDONG, *Pillars of Community. Four Rules of Pre-Benedictine Monastic Life*, Liturgical Press, Minnesota 2010, p. 64.

[16] Cf. D. KNOWLES, *Christian Monasticism*, pp. 13-14.

[17] Cf. M. DE BREUILLE, *Seeking the absolute life: The Founders of Christian Monasticism*, The Crossroad Publishing Co., New York 1999, p. 29.

[18] Cf. J.P. THOMAS, *et al.,* (eds.), *Byzantine Monastic Foundation Documents: A Complete Translation of the Surviving Founder's Typika and Testaments,* Vol., 1, Cambridge University Press, Cambridge 2008, p. 288.

[19] Cf. L. J. DALY, *Benedictine Monasticism. Its Formation and Development through the 12th Century*, Sheed and Ward, New York 1965, pp. 73-83.

[20] Cf. R. SHARPE, "Churches and Communities in Early Medieval Ireland: Towards a Pastoral Model," in J. BLAIR and R. SHARPE (eds.), *Pastoral Care before the Parish*, University Press, Leicester 1992, p. 101.

served by a secular priest presented by monks to the bishop for appointment as pastor with the monastery receiving the parish revenue and paying the pastor a suitable stipend.[21]

The monks played a critical role in pastoral care in the emerging parishes. Under the Carolingians for example, the number of places of worship increased which were served by monks.[22] These were, however, not yet parishes but just satellites of the mother-churches. It was only by the early tenth century or later that the use of the word parish started.[23]

1.3.2 Entrustment of Parishes and the Gregorian Reform

The term Gregorian Reform is traditionally used to designate the vast movement of reform of the Church associated with Pope Gregory VII (1073-1085), beginning in the tenth century and continuing into the 1st decade of the 12th century. Three lines along which the reformers were working include: reaffirmation of the papal primacy; the reform of the clergy and freeing the Church from lay ascendancy.[24] Lay intrusion into the assignment of bishoprics, abbeys and parishes had entailed two evils affecting the clergy namely acquisition of ecclesiastical dignities for money and immorality of the clergy.

By mid 11th century, the dominant institution of the propriety church allowed feudal lords to appoint and entrust the clergy serving such churches. Parochial functions were thus too often exercised by mercenary and ignorant priests who were married or living in concubinage. The goods

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[21]This is the origin of parishes united "*quoad temporalia tantum*" to a religious house. See *Codex iuris canonici, Pii X Pontificis Maximi iussu digestus, Benedicti Papæ XVauctoritate promulgatus,* Typis polyglottis Vaticanis, 1917, English translation in L. BOUSCAREN and A.C. ELLIS, Canon Law, Can. 1425, § 1.

[22] Cf. T. BLOT, *Le Curé, Pasteur: Des origines à la fin du XXe siècle – Étude historique et juridique*, Pierre Téqui, Paris 2000, 21. "Under the Carolingians, many places of worship were henceforth served by monks; these religious were integrated into the local churches and took up an apostolate for which they were responsible to the bishop." Similarly, PLATELLE cites a study showing that about three hundred of four hundred parish churches established in Carolingian lands between 840 and 987 pertained to monks (PLATELLE, "Le paroisse," 17).

[23] Cf. T. BLOT, *Le Curé, Pasteur: Des origines à la fin du XXe siècle – Étude historique et juridique*, Pierre Téqui, Paris 2000, p. 22.

[24] Cf. J. GAUDEMET, "Gregorian Reform," in *New Catholic Encyclopedia,* Vol. VI, Catholic University of America, Washington, D.C., 1967, pp.761-765.

of parishes, dioceses and abbyes were for the most part in the hands of laymen. The Gregorian reform strove to free the hierarchy and the goods of the Church from this lay control. Various measures had aimed at restoring the authority of the bishop over the local clergy.

The Councils of London (1106) and of Troyes (1107), forbade clerics to receive a church from the hands of a layman. The First Lateran Council (1123) removed episcopal elections and selection of pastors from lay interference.[25] Other important results of the reform period included collections of laws and treatises leading up to Gratian's *Decretum* in the twelfth century.

1.4 Entrustment of Parishes in the *Corpus Iuris Canonici* to the Council of Trent

The *Corpus Iuris Canonici* (Body of Canon Law)[26] is a collection of significant sources of the canon law of the Catholic Church that was applicable to the Latin Church from the 12th to 16th century before the codification of the 1917 Code. In the *Corpus Iuris Canonici*, religious life is discussed in the *Clementinae*, especially in Book V.[27] This Constitution treated the topic of discipline and privileges of religious.

Decretum Gratiani[28] is another part of *Corpus Iuris Canonici* which refers to religious life. It recognized the monastic way of religious life as a stable form of life. The laws proposed in the

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[25] Cf. N.P. TANNER, (ed.), *Decrees of The Ecumenical Councils*, Vol 1, (Necaea 1 to Lateran V), Sheel & Ward, London 1990, p. 190.

[26] This ecclesiastical system of law includes four official collections: the *Decretum Gratiani* (Decree of Gratian), written between 1141-1150: the *Decretals* of Pope Gregory IX (1234); The *Liber Sextus* (Book Six) of Pope Boniface VIII (1298); and the *Clementinae* of Pope Clement V (1317); and two private collections: the *Extravagantes* of Pope John XXII (1317-1324) and the *Extravagantes communes* (commonly circulating decretals); the decretals, or replies of the Pope to particular questions of church discipline, from Pope Boniface VIII to Pope Sixtus IV, Cf. C. VAN DE WIEL, *History of Canon Law*, Peters Press, Louvain 1991, pp. 98-112.

[27] Cf. A.L RICHTERI, (ed.), *Corpus Iuris Canonici, Decretum Magistri Gratiani,* Editio Lipsiensis Secundo, Pars Prior, Ex Officina Bernhardi Tauchnnitz, Lipsiae 1879, p. 1185.

[28] Cf. *Decretum Gratiani* also known as *Concordia Discordantium Canonum* is a collection of canon law compiled and written in the 12th century as a legal text byGratian, a jurist. It forms the first part of the collection of six legal texts, which together became what is known as *Corpus Iuris Canonici*. The collection was also a treatise attempting to resolve the apparent contradictions in the rules accumulated from different sources. It was used as a main source of law by canonists until decretals promulgated by Pope Gregory IX in 1234. See *Corpus Iuris Canonici*, Editio Lipsiensis Secunda, pars prior, *Decretum Magistri Gratiani*, *post* AEMILII LUDOUCI curas ad Librom Manu Scriptorum et editionis Romanae fidem Recognovit et adnotatione Critica, Intruxit AEMILIUS FRIEDBERG, ex Officiana Bernhardi Tauchnitz, Lipsiae MDCCCLXXXIX, D. 93, CL. See also VAN DE WIEL, *History of Canon Law*, pp. 98-101.

Decretum would reinforce monastic lifestyle which implied stability. In Can. X, the *Decretum* treats the matter of the role of ecclesiastical authority over religious. It prescribed that monasteries could only be erected with the permission of the bishop.[29] It foresaw the possibility of sanctions or punishment on any person who erected monastery or religious house and operated in the name of the Church without the knowledge and approval of the bishop of the city. The collection also affirmed the importance of obedience to the superiors and to the Roman Pontiff.[30]

The authority of the Church issued norms in the *Corpus Iuris Canonici* to regulate pastoral endevours in the new orders which had come up with the changes in Western Europe, especially the growth of cities. The old monastic orders were not adequate to deal with the new urban problems. By the end of the eleventh century, new religious orders with an urban essence emerged. This was because the newly emerging townships and communes were soon in conflict with an entrenched clergy. The poorer classes turned to those who were preaching that clerical affluence was a contradiction of the Gospel. They found an answer in the mendicant orders who after the Fourth Lateran Council (1215) blossomed into orders of great influence.[31]

1.4.1 The Mendicant Orders and Entrustment of Parishes

Roman Catholic monasticism extended all the way from the knightly orders to orders of mendicant friars. Mendicancy is a religious term, from the Latin verb *mendicare,* 'to beg' which denotes renunciation of all worldly possessions and the practice of begging alms from door to door. The mendicants were committed by vow to the renunciation of all possessions, common as well as individual."[32] They broke away with the prevalent monastic life by moving from place to

[29] Cf. G. FRANSEN, "La "date" du "decret" de "Gratien," in *Revue d'histoire Ecclesiastique*, 51 (1956), pp. 521-523.

[30] Cf. *Corpus Iuris Canonici*, Editio Lipesiensis Secunda, par prior, *Decretum Magistri Gratiani* MDCCCXXXIX, D. 93, CL.

[31] Cf. L.E. BOYLE, "Mendicant Orders," in W.J. MCDONALD, (ed.), *New Catholic Encyclopedia*, Vol. 9, New York 1967, pp. 648-649.

[32] Cf. L.E. BOYLE, "Mendicant Orders," p. 648.

place hence were not in any way attached to stable community. A good example to begin with are the Brahman mendicants in the Vedic period, who had precise rule for soliciting alms, and among the ancient Greeks, whose mendicant priests went from place to place in quest of alms on behalf of their favorite deities.[33] They included the Franciscans, Augustinians and Caemlites.[34] The Franciscans and Dominicans intended to live on alms and not being bound to parishes or other religious activities. They were free to preach the gospel through the streets, hear confessions and be the Church outside the Church, thus, favoring mobility under a central command over the monastic tradition of stability and local autonomy.[35]

The Order of Preachers (*Ordo praedictorum*) always had a somewhat ambivalent attitude towards parishes. Saint Dominic himself accepted the parish of Fanjeaux in the Diocese of Toulouse, in 1214, but this was not so much for the local ministry but rather to give him standing in the diocese.[36] By mid-April 1215, possibly earlier, he was setting up the Order in the house of Peter Seila in Toulouse.[37] Immediately after the publication of the new Code, the General Chapter made an attempt to delineate some characteristics of a Dominican parish, it summed up the history honestly: "It is noteworthy that, from the beginning, parishes were ignored in our legislation, and for a long time suspect; afterwards they were tolerated, and finally they were approved."[38]

The Franciscan apostolate at the beginning was popular and itinerant but later entered into a relationship with the parish. According to St. Francis, the friars had to go two by two into various regions of Italy and Europe to preach penance, but first they had to seek permission to preach from

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[33] Cf. S.R. MUNZER, "Heroism, Spiritual Development and Triadic Bonds in Jain and Christian Almsgiving," in *Numen*, 48 (2001), pp. 47-80.

[34] Cf. L.E. BOYLE, "Mendicant Orders," in *New Catholic Encyclopedia*, p. 649.

[35] Cf. C. GALLAGHER, "The Church and Institutes of Consecrated Life," in *The Way Suppement*, 50 (1984), p. 4.

[36] Cf. M.H. VICAIRE, *Saint Dominic and His Times*, Wisconsin, Alt Publishing Co., Green Bay 1964, pp. 150-151.

[37] Cf. M.H. VICAIRE, *Saint Dominic and His Times*, p.169.

[38] Cf. M.H. VICAIRE, *Saint Dominic and His Times*, p.169.

the bishop or the local pastor. It was, however, Franciscan missionaries in Bosnia, at the beginning of the XIV century, who obtained from the Pope the faculty to organize parishes and to remain as pastors, but only in missionary territories where there was no diocesan clergy.

There developed a great debate among the jurists of the time about whether or not to assign parishes to religious. The debate continued until the XVI century when the question was reserved to the decision of the Holy See.[39] Pope Benedict XIV, towards the middle of the 1700's decreed that the pastoral ministry in parishes was forbidden to religious except in the case of special necessity. With this imposition, the authorities accepted only those ecclesiastical ministers who would have a base of economic subsistence. And such was possible only thanks to the parishes. The religious, including the Franciscans, saw themselves often coerced to assume the parochial ministry for the mere question of survival.[40]

After the 1917 Code of Canon Law, which conferred on the parochial institution a more religious, pastoral and almost missionary dimension, the reference to parishes began to be inserted into the legislation of the Order of Friars Minor, among the decrees of general chapters, and in some articles of the general constitutions and statutes. In 1927, 623 parishes were counted as being under the care of the Order, even when it was clear that the temporary character of the service was requested because of the lack of diocesan clergy. After World War II, because of the great migration from Europe to the United States of America, the Franciscans, established "personal parishes," a practice which was repeated in many countries where immigration was considerable. In the new missions of Africa, almost all bishops permitted the friars to open fraternities provided they would assume the care of some parishes.[41]

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[39] Cf. SECRETARIAT GENERAL FOR EVANGELIZATION, *sent to Evangelize in Fraternity and Minority in the Parish*, General Curia OFM, Rome 2009, p. 23.

[40] Cf. *Sent to Evangelize in Fraternity and Minority in the Parish*, p. 23.

[41] *Sent to Evangelize in Fraternity and Minority in the Parish*, p. 23.

1.4.2 Entrustment of Parishes during the Fourth Lateran Council (1215)

The 12th century had witnessed the emergence of new forms of religious life which were outside the traditional monastic pattern. Some of these included the Templars, the Humiliati of Lombardy who had members belonging to different classes of people.[42] A number of them were charactized by state of clerical office and religious community. These took the model of Eusebius and St. Augustine. Those who followed norms of the Lateran council were called Canons Regular while the rest were called Secular Canons or Canons.[43] The fourth Lateran Council (1215) attempted to restore order by issuing a decree which prohibited anyone in the future from instituting a new form of religious orders. It states: "Lest too great a variety of religious orders lead to confusion in God's Church, we strictly forbid anyone henceforth to found a new religious order. Whoever wants to become a religious should enter one of the already approved orders. Likewise, whoever wishes to found a new religious house should take the rule and institutes from already approved religious orders."[44]

Pope Innocent III convoked this council with the purpose of building up the spiritual life of the Church because worldliness. The council observed that it often happened that bishops by themselves were not sufficient to minister the word of God to the people, especially in large and scattered dioceses. The council decreed:

> Bishops are to appoint suitable men to carry out with profit the duty of sacred preaching. Men who would visit with care the peoples entrusted to them in place of the bishops, and will build them up by word and example. The bishops shall suitably furnish them with what is necessary, when they are in need of it, lest for want of necessities they are forced to abandon what they have begun. It further ordered that there be appointed in both cathedral and other conventual churches suitable men whom the bishops can have as coadjutors and cooperators not only in the office of preaching but

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[42] Cf. D. A. WALSH, *The New Law on Secular Institutes: A Historical Synopsis and a Commentary*, Catholic University of America, Washington DC 1953, p. 17.

[43] Cf. C. EGGER, "Canonici Regolari," in G. PELLICCIA, - G. ROCCA, *Dizionario degli Institute di Perfezione*, vol. I, pp. 46-53.

[44] Cf. N.P. TANNER, (ed.), DECREES OF THE ECUMENICAL COUNCILS, no. 13, Vol 1, (Nicaea 1 to Lateran V), Sheel & Ward, London 1990, p. 242.

> also in hearing confessions and enjoining penances and in other matters which are conducive to the salvation of souls.[45]

1.4.3 Entrustment of Parishes in the 16th Century

The Sixteenth century was marked by the Protestant Reformation. This had come as a result of religious decline which called for the need for reform. This need was, however, thwarted by the self-interest of the hierarchy and of secular rulers who profited from the abuses. As a result, dissatisfaction and anticlericalism increased and climaxed in the spark of Martin Luther posting his Ninety-five Theses. This had an explosive influence in the Catholic Church to which the Church had to counter with several measures of reform. Congregations founded during this time were moved by the state of the Church that needed reform. Such congregations included the Society of Jesus, Camilians, Order of Friars Minor Capuchins, Ursuline, and Discalsed Carmelites.[46] Likewise, new institutes of women were founded for apostolic purposes. Such apostolic institutes had simple vows and were not recognized as 'religious.' The eighteenth and nineteenth centuries brought a huge flowering of new apostolic and missionary institutes in the Church. Pope Leo XIII recognized congregations with simple vows and dedicated to the active apostolate as 'religious' driven by the love of Christ. He further regulated the relationship of diocesan bishops to religious institutes of diocesan right.[47]

1.5 Council of Trent (1545 - 1563) on Entrustment of Parishes

The Council of Trent was the 19th ecumenical council of the Roman Catholic Church. It was prompted by the Reformation, hence, also known as the Council of Counter-Reformation. This council which receives its name from a town in Italy where it was held revolutionized the life

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[45] Cf. N.P. TANNER, (ed.), *Decrees of The Ecumenical Councils*, n. 10.

[46] Cf. G. BATTELLI, *Religious Life in the Light of the New Code of Canon Law*, St. Paul Publications, Nairobi 1996, p. 33.

[47] Cf. LEO XIII, Apostolic Constitution *Canditae in Christo*, 8 December 1900, in *ASS*, 33 (1900), pp. 341-347.

of the Church. The council was convoked by Pope Paul III and was held in three parts from 1545 to 1563, responding emphatically to the issues and doctrinal challenges of the Protestants. The doctrines of the church had been watered down by the reformers and there was need for the church to redefine and establish such doctrines, try to stop all abuses so that catholics could have a sure guide to follow.[48] These reforms did not leave out religious which too had been affected and needed some reforms to live their consecration.[49]

The council addressed the topic of Religious in the decree *De Regularibus et Monialibus* during its twenty-fifth session in 1563. The Council Fathers directed that all religious were to follow their rule, that is, observe the vows, and preserve the common life, food and clothing. It made it imperative that the ancient and regular discipline of monastic lifestyle be restored where it had laxed, and that it be pursued with greater fidelity where it has been preserved. "The ancient and regular discipline may be the more easily and promptly restored, where it has fallen away, and may be the more firmly maintained, where it has been preserved," the Council said. "All Regulars, as well men, as women, shall order and regulate their lives in accordance with the requirements of the rule which they have professed; and above all that they shall faithfully observe whatsoever belongs to the perfection of their profession."[50]

In relation to entrustment of parishes to religious, the first instinct of the council of Trent was to forbid the union of parishes to religious houses. In its decree *De Reformatione*, the council says:

> But in whatsoever unions may have to be made, whether for the causes aforesaid, or for others, parish churches shall not be united to any monasteries whatever, or abbeys, or dignities, or prebends of a cathedral or collegiate church, or to any other simple benefices, hospitals, or military orders; and those so united shall be again taken cognizance of by the Ordinaries, pursuant to the decree

[48] Cf. S. E. MURREL, *The Reformation and its Aftermath, Parts Three and Four*, Mount Zion Publications, Pensacola 2021, p. 78.

[49] Cf. S.E. MURREL, *The Reformation and its Aftermath*, p. 80.

[50] Cf. J. WATERWORTH, (ed.), The Council of Trent, *The Canons and Decrees of the Sacred and Ecumenical Council of Trent, Session XXV, De Regularibus et Monialibus*, Dolman, London 1848, p. 237.

> already made in this same Synod, under Paul III., of happy memory, which shall also be equally observed in regard of those unions that have been made from that time forth to the present; notwithstanding whatsoever form of words may have been used therein, which shall be accounted as being sufficiently expressed here.[51]

The council addressed this topic during its twenty-fourth session in 1563. The council here was concerned essentially with "benefices," that is, with finances. This, however, is not to say that finances were the Council's only focus.

One of the primary disciplinary objectives of the Tridentine Reform (1545-1563) was to strengthen the pastoral governance of the local ordinary in his diocese and to improve and expand the lines of communication between the bishop and his *parochi* in order that true pastoral care could be restored.[52] The Fathers of the Council, therefore, ordered that each diocese was to be divided into clear and distinct parishes in such a way that every *parochus* would be able to get to know his people, and that all the faithful of the parish could receive the sacraments from him in view of his guiding responsibility for the *cura animarum*. The council of Trent gave shape to the modern understanding of a parish as it is today. With the Tridentine Reform a universal "model" of a parish was formulated to include the following structures: a territory, an irremovable pastor, and a benefice.

With Trent, the parish for the first time took on a juridical aspect by making it become a legal entity.[53] To a large extent it did not so much restore the sense of a community but further reasserted the rights of a pastor and strengthened the benefice system.[54] The establishment, division and entrustment of new parishes were reserved to the bishop. After him, the parish priest who had been entrusted with the parish had exclusive authority over parishioners. The council

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[51] Cf. J. WATERWORTH, (ed.), The Council of Trent, p. 220.

[52] Cf. W. LA DUE, "Structural Arrangements for the Parish: A Brief History," in *The Jurist*, 30 (1970), p. 315.

[53] Cf. C.A. OJEMON, *The Catholic Parish, Canonical Structure in the Light of the Ecclesiology of the Second Vatican Council*, Floreat Systems, Benin City 2016, p. 28.

[54] Cf. A. BLOCHLINGER, *The Modern Parish Community*, Geoffrey Chapman, London 1965, p.75

reiterated the authority and duty of the bishop to visitate every institution of pastoral activity in his diocese, including those exempt religious.[55] It commanded the bishops to assign each parish its own individual rector if the care of souls is entrusted to a moral body. Like a chapter, it must be exercised by a vicar, perpetual as far as possible, who is called the "actual" curate, the chapter remaining the 'habitual" curate without right of interfering in any way in the parochial ministry.[56]

Coriden summarizes the effects of the decrees of Tridentine Reform saying:

> It was a long time before the decrees of the Council of Trent took effect throughout the Church, but they eventually brought about more uniform patterns of parish life. They eliminated the historical differences between urban and rural parishes and moved strongly in the direction of territorial parishes (as over against personal parishes). Unfortunately the Tridentine Reform stressed hierarchical authority and clerical leadership to such an extent that it left the lay members of the church in a purely passive role.[57]

This was in line with the Council's description of the Church as *Societas perfecta*. The Church was a perfect society, complete in itself, and subordinated to no other authority. This teaching developed from the previous teaching of Pope Gregory VII who had taught that the church as a Christian society was a perfect society. A society whose goal was supreme in its own sphere and which possessed at least all the means needed to achieve that goal.[58]

Robert Bellarmine helped craft this highly structured, defensive ecclesiology that emphasized on a Church of hierarchy that simply did not allow the sharing of power or service with the laity.[59] This Tridentine Reform continued with relatively minor alterations for about three

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[55]Even though Institutes of consecrated life enjoy autonomy in life and governance, they do not act independent of church authority. However according to canon 591 of the 1983 Code of Canon Law, refers there is a possibility of the pope exempting a religious or secular institute or a society of apostolic life from the governance of local ordinaries and subjecting it to himself alone or to another ecclesiastical authority. The popes were however careful to not that this exemption, while providing for the general good of the Church, did not preclude the obedience of religious to bishops in their exercise of Episcopal authority.

[56] Council of Trent VII, C. VII.

[57] Cf. J.A. CORIDEN, *The Parish in Catholic Tradition: History, Theology and Canon Law*, Paulist Press, New York 1997, pp. 31-32.

[58] Cf. F.D. LOGAN, *A History of the Church in the Middle Ages*, New Fetter Lane, London 2002, pp. 113-114.

[59] Cf. C.A. OJEMON, *The Catholic Parish,* p. 45.

and a half centuries until the promulgation of the first Code of Canon Law in 1917. The Tridentine model of a parish continued until the Second Vatican Council.

1.6 Entrustment of Parishes in the 1917 Code of Canon Law

With the onset of Industrialization (1760-1840) many people flocked the cities. Considerable changes that were taking place in towns with the growth of the cities had no corresponding change in the parish structure.[60] Despite the persecutions, and the whirlwind of change which came to parishes with the industrial revolution, the Code of Canon Law promulgated in 1917 maintained essentially the Tridentine vision. This code was built on the ecclesiology that dominated at both the Council of Trent (1545-1563) and the First Vatican Council (1869-1870), an ecclesiology that saw the Church established by Christ, as a perfect society.

The CIC/1917, also called the Pio-Benedictine Code is the first official comprehensive codification of the Latin Canon Law. It was ordered by Pope Pius X and promulgated on 27th May 1917 by Pope Benedict XV. It came into effect on 19th May 1918. Religious life was the subject of Book II, Part II, and Title IX-XIX *"De Personis"* of the 1917 Code.[61] The subject of religious, *"De religiosis"* which has 195 canons (Cann. 487-681) was put between 379 canons on clerics (Cann. 108-486) and eighteen canons on laity (Cann. 682-699).

The CIC/1917, emphasized on the territorial elements of a parish and the parish priests. This code did not define a parish but rather it proposed a number of juridic terms which, together, described the parish: A parish was understood to be a territorial section of the diocese (Can. 216 § 1), with a proper church edifice (Can. 859 § 3) to which a Catholic population was assigned under the leadership of a proper pastor who was removable or irremovable and who was responsible for

[60] Cf. A. BLOCHELINGER, *The Modern Parish Community*, pp. 100-101.

[61] Cf. *Codex Iuris Canonici*, PII X Pontificis Maximi iussu digestus, Benedicti XV Papae, auctoritate Promulgates, Romae 1917, in *AAS*, 9 (1917), pp. 3-521.

the care of souls.[62] The CIC/1917 treated the parish within the context of the legislation on the *parochus*. Can. 451 § 1 describes a pastor as a priest or moral person upon whom a parish is conferred in title along with the care of souls to be exercised under the authority of the local Ordinary.

J.I. Arrieta summarizes the understanding of the parish in the legislation of the 1917 Code as an institution and the *parochus* as administrator of the benefice when he states;

> The 1917 Code concentrated on the office and status of the *parochus*, obscuring the institutional nature of the parish as a community within the diocesan structure. It was primarily concerned with two points: a) determining the rights and duties of the *parochus*; and b) the administration of the parochial patrimony. The consideration of the parish as a canonical institution within the diocesan structure was less prevalent due to the benefice system in force. The benefice was connected with the person who held the title of the *parochus*, the benefice's administrator. Once the benefice system was superseded, the new Code began to focus attention of the parish as an organizational community of the particular Church.[63]

In order to facilitate entrustment of parishes to religious institutes, in 1930 the Congregation of the Council privately issued a sample agreement for entrusting parishes to religious families, and an updated version was circulated in 1960.[64] A further development came from the *motu proprio Cleri sanctitati* of Pope Pius XII and spoke of a written contract between the exarch and the religious in the oriental law.[65] It also allowed the union of parish with a religious house, but did not allow that a moral person be pastor: a priest had to be appointed.[66]

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[62] Cf. J.A. JANICKI, "Commentary on Canons 515-557," in *CLSA Comm1*, p. 415.

[63] Cf. J.I. ARRIETA, *Governance Structures within the Catholic Church*, Wilson and Lafleur, Montreal 2000, p. 246.

[64] Cf. S.E. KAIN, *Written Agreements between Bishops and Religious for Entrusted Diocesan Work*s, *Canon Law Studies 550*, Catholic University of America, Washington 1996, p.20.

[65] PIUS XII, *motu proprio Cleri sanctitati*, 2 June 1957, in *AAS*, 49(1957), c. 491, §1.

[66] Canon 490, § 1, 2º. These canons were a source for both the Fathers of the Second Vatican Council and the drafters of the new Code for the Latin Church.

1.7 The Impact of the Second Vatican Council (1962-1965) and the Entrustment of Parishes to Clerical Religious Institutes

Pope John XXIII who convoked the Vatican II Council referred to it as *aggiornamento*[67] and ressourcement of the Church.[68] This 21st ecumenical council of the Church aimed at bringing renewal to her every sphere of the life including religious life. The Council called for the overall renewal of religious life in all dimensions. The Council promulgated sixteen documents, which comprised of four constitutions, nine decrees and three declarations.[69]

Matters pertaining religious were mainly discussed in four of the Council documents namely: *Lumen Gentium, Christus Dominus, Ad Gentes,* and *Perfectae Caritatis.* The Dogmatic Constitution on the Church *Lumen Gentium,* stresses the symbolic character of religious life as part of the ecclesiastical reality. The Decree on the Pastoral Office of Bishops in the Church *Christus Dominus,* provides guidelines for the relationship between the orders and the diocese. The Decree on the Church's missionary activity *Ad Gentes,* describes the special tasks for members of religious communities in areas to be evangelized and the decree on up-to-date renewal of religious life, *Perfectae Caritatis,* highlights basic principles for a differentiated renewal of religious communities.

The Second Vatican Council has principles of doctrine which define in a new way the position of religious men and women in the Church and in the individual diocese. The principles

[67] The word *aggiornamento* was first used in 1959 by Pope John XXIII when announcing the Council in reference to the up-dating of the Code of Canon Law (*AAS* 51 [1959], 68). However, in 1961 he referred to the entire work of the Council as "aggiornamento della structure" ("updating of the structure") of the Church, (*AAS* 55 [1963], 232).

[68] The French origin of this word suggests the so-called nouvelle théologie which developed in the decades prior to the Council. It sought a renewal of the Church by a "return to the sources", namely Scriptures and the Fathers.

[69] Cf. A. HASTINGS, *A Concise Guide to the Documents of the Second Vatican Council,* Vol. 1, Darton, Longman & Todd, London 1968, pp. 15-24.

rely substantially on *Christus Dominus* and *Perfectae Caritatis* of Vatican II and the two post-conciliar documents *Ecclesiae Sanctae* and *Mutuae Relationes*.

1.7.1 *Lumen Gentium* (1964)

Lumen Gentium[70] treats religious life in the context of the people of God and the universal call to holiness. Everything said about the people of God applies equally to the laity, religious and clergy.[71] There being no express provision in this constitution on entrustment of parishes to clerical religious instistutes, a phenomenon pertaining to pastoral office of entrustment emerges when it says: "All priests, both diocesan and religious, participate in and exercise with the bishop the one priesthood of Christ and are thereby meant to be prudent collaborators of the Episcopal order. Just like any other priest, religious priests as collaborators of the Episcopal order can be entrusted to works in the diocese such as a parish pastor."[72]

Lumen Gentium indicates that the parish is the basic cell of the diocese, the local Church, and hence shares the ecclesiastical character of the universal Church. The parish is a community locally organized legitimately with their own pastor, with whom they are united in the Gospel of Christ and the celebration of the Eucharist.[73] In this local congregation, priests preside over the Eucharist, worship and act in the person of Christ. The priests make Christ present in a certain sense in the individual local congregations.[74]

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[70] Cf. CONCILIUM OECUMENICUM VATICANUM II, Constitutio Dogmatica de Ecclesia *Lumen Gentium* 21 Novembris 1964, in *AAS* 57 (1965), pp. 5-75; English translation in A. FLANNERY, (gen. ed.*), Vatican Council II. The Conciliar and Post Conciliar Documents,* New rev. ed., Vol.1, Costello Publishing Company, New York 1992, pp. 320-385. (Hereafter cited as, *Lumen Gentium).*

[71] Cf. *Lumen Gentium*, nn. 30-42.

[72] Cf. *Lumen Gentium*, n. 28.

[73] Cf. *Lumen Gentium*, n. 26.

[74] Cf. *Lumen Gentium*, n. 28.

1.7.2 *Christus Dominus* (1965)

Christus Dominus, describes how bishops exercise their office at three levels in the universal Church, in their own particular church or diocese, and at the regional or national level.[75] The Decree shows from the very definition of the diocese that the religious form a constitutive part of the diocese.[76] All religious, therefore, have the duty each according to his proper vocation of cooperating zealously and diligently in building up and increasing the whole church. It constitutes an obligation and a right for religious to undertake works of apostolate in the diocese. This obligation and right derive from various reasons.[77]

The Decree goes further to place the religious priests among the various collaborators of the diocesan bishop, especially in the exercise of his pastoral office in the diocese. It decrees that the religious can be called upon by bishops to assist in various pastoral ministries. This means that the bishop can invite a religious institute and entrust them with works that are not particular to their institute. In the concrete situatiton of the diocese there is need for consultation and coordination between the particular apostolate and the needs of the diocese.[78] The Decree furher says: "With respect to those works of apostolate which religious are to undertake, bishops or Episcopal conferences, and religious superiors or conferences of religious superiors should take action only after mutual consultations.[79]

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[75] Cf. CONCILIUM OECUMENICUM VATICANUM II, Decretum de pastorali episcoporum munere in Ecclesia *Christus Dominus*, 28 Octobris 1965, in *AAS*, 58 (1966), pp. 673-701; English translation in A. FLANNERY, (gen. ed.*), Vatican Council II. The Conciliar and Post Conciliar Documents,* New rev. ed., Vol.1, Costello Publishing Company, New York 1992, pp. 506-527. (Hereafter cited as, *Christus Dominus).*

[76] Cf. *Christus Dominus* n. 11: "A diocese is a portion of the people of God entrusted to a bishop to be guided by him… it constitutes one particular church in which the One, Holy, Catholic and Apostolic Church of Christ is truly present and active". 'Everything which has been said about the people of God applies equally to the laity, religious and clergy' (*Lumen Gentium*. no. 30).

[77] *Christus Dominus*, n. 33.

[78] *Christus Dominus*, n. 35.

[79] *Christus Dominus*, n. 33.

In the consultations, any matter as to the works of apostolate can be discussed at any time and amicable solutions can be found. In order to foster harmonious and fruitful relations between bishops and religious, at stated ties and as often as is deemed opportune, bishops and religious superiors should be willing to meet for discussion of those matters which pertain generally to their ministry.[80] The removal of a religious from an entrusted work and prohibiting a religious from living in the diocesan territory can all be subjects of mutual consultations, which help in avoiding misunderstandings and guarantees a fruitful collaboration.

1.7.3 *Perfectae Caritatis*

Perfectae Caritatis[81] underlines the importance of each religious institute returning to its original spirit, a return to the sources and the quest for adapting new ways of responding to the needs of the Church and of the world. It emphasized the necessity of revising the proper law of the institutes. The decree alludes to works entrusted to institutes in the Church which are for the good of the Church and an invitation to faithfully accept and retain the spirit and aims of each founder and the institute's tradition for all these constitute the patrimony of the institute. It declares: "It is for the good of the Church that institutes have their own proper character and functions. The spirit and aims of each founder, therefore, should be faithfully accepted and retained, as indeed each institute's sound traditions, for all these constitute the patrimony of an institute."[82]

The decree says that by the approval and acceptance of the charism of religious institute, the church confides the religious with a sacred ministry and a special work of charity which must be discharged in her name.[83] When a bishop gives consent to open a religious house in his diocese,

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[80] *Christus Dominus,* n. 36.

[81] Cf. CONCILIUM OECUMENICUM VATICANUM II, Decretum de accommodate renovation vitae religiosae *Perfectae Caritatis,* 28 Octobris 1965, in *AAS,* 58 (1966), pp. 702-712. English translation in A. FLANNERY, (gen. ed.*), Vatican Council II. The Conciliar and Post Conciliar Documents,* New rev. ed., Vol.1, Costello Publishing Company, New York 1992, pp. 611-623. (Hereafter cited as, *Perfectae Caritatis).*

[82] Cf. *Perfectae Caritatis,* n. 2 b.

[83] Cf. *Perfectae Caritatis,* n. 8.

it implies the right to exercise the works proper to the institute. It encourages the religious to retain their proper works, and at the same time ask them to make adjustments and adaptations according to the needs of times and places, including the use of new and appropriate means, and in favour of what will benefit the universal church and individual dioceses.[84] The decree emphasizes the principle of subsidiarity[85] which acknowledges and admits that institutes can best fulfill their mission when they carry out the apostolic work entrusted to them according to their special character, purpose, charism and nature.[86]

1.8 Post-Conciliar Documents on Entrustment of Parishes

The interim period between the Second Vatican Council and the promulgation of the CIC/1983 called for guidelines on the implementation of the conciliar documents which had decreed certain activities to be entrusted by the bishop to the religious. The Magisterium, therefore, issued some apostolic letters and documents as guidelines to help bishops and religious institutes in the entrustment processes. The two main post-conciliar documents were Norms for Implementing the Decreee on the Adaptation and Renewal of Relgious Life, Ecclesiae *Sanctae* which became a source of Can. 520, and Directives for the Mutual Relations Between Bishops and Religious in the Church, *Mutuae Relationes*.

1.8.1 *Ecclesiae Sanctae*

Ecclesiae Sanctae is an Apostolic Letter issued *motu proprio* by Pope Paul VI on the 6th August 1966 with an objective of implementing four conciliar documents.[87] The decree was given in two parts referred to as *Ecclesiae Sanctae* I, and *Ecclesiae Sanctae* II. The first part dealt with

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[84] Cf. *Perfectae Caritatis*, n.20.

[85]Subsidiarity was the sixth guideline for the Revision of the Code. This is the principle that what a lower hierarchical institution can accomplish for itself should not be reserved to a superior authority.

[86] Cf. E. O'CONNOR, "Vatican II and the Renewal of Religious Life," in *Review for Religious*, 26 (1967), p. 412.

[87] This decree was promulgated for the implementation of *Christus Dominus, Presbyterorum Ordinis, Perfectae Caritatis* and *Ad Gentes*.

the norms for the implementation of the Decrees: *Christus Dominus* and *Presbyterorum Ordinis*. The second title of the decree was intended for the implementation of Decree on Adaptation and Renewal of Religious Life *Perfectae Caritatis*.[88] The Decree specifies particular points on entrustment of apostolates and specifically, parishes to religious through a written agreement between the ordinary and the competent superior of the institute in article 33.

1.8.2 *Mutuae Relationes*

On May 14, 1978 the Roman Congregation for Bishops and Congregation for Religious for Secular Institutes jointly published the document entitled *Mutuae relations*. It proposed the fundamental practical criteria for more fruitful relations between bishops and religious in the Church.

Mutuae relationes centers on the requirements of consecrated life in its numbers 44-50. It calls on the need for bishops and their collaborators to understand the distinctive nature of institutes, their actual situation and criteria for renewal. The religious superiors also need to keep abreast of the doctrinal vision of the particular Church where they serve, and to inform the local ordinary of any difficulty regarding their service in the local Church.[89]

In order to have more fruitful relations between bishops and religious and to foster certain stability in pastoral cooperation, *Mutuae Relationes* advices that the difference existing between the distinctive works of an institute and works entrusted to an institute should be kept in mind by the local ordinary. In fact, the former depend on the religious superiors according to their

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[88] Cf. PAUL VI, Motu Proprio *Ecclesiae Sanctae*, II: Norms for Implementing the Decree on the Adaptation and Renewal of Religious Life *Perfectae Caritatis*, 6 August 1966, in *AAS*, 58 (1966), pp. 778-782, English translation in A. Flannery, (gen.ed.), *Vatican Council II*. *The Conciliar and Post Conciliar Document*s, New rev. ed., Costello Publishing Company, New York 1992, p. 624-633. Hereafter cited as, *Ecclesiae Sanctae*.

[89] SACRA CONGREGATIO PRO RELIGOSIS ET INSTITUTIS SECULARIBUS ET SACRA CONGREGATIO PRO EPISCOPI, Notae Directivae pro Mutuis Relationibus inter Episcopos et Religiosos in Ecclesia *Mutuae Relationes*, 23rd aprilis 1978, in *AAS*, 70 (1978) pp. 473-506; it is also found in English translation in A. FLANNERY, (gen.ed.), *Vatican Council II*. *The Conciliar and Post Conciliar Document*s, New rev. ed., Costello Publishing Company, New York 1992, pp. 209-343. (Hereafter cited as, *Mutuae Relationes).*

constitutions, even though in pastoral practice they are subject to the jurisdiction of the local ordinary according to law.[90]

The document proposes that whenever a work of the apostolate is entrusted to any religious institute by a local ordinary in accordance with the prescriptions of law, a written agreement shall be made between the local ordinary and the competent superior of the institute which, among other things, sets down precisely all that concerns the work to be done, the members of the institute assigned to it and the finances. For works of this nature, members of the religious institute who are really suitable should be selected by the religious superior after discussion with the local ordinary and, where an ecclesiastical office is to be conferred on a member of the institute, the religious should be nominated by the local ordinary himself for a definite time decided upon by mutual agreement, his own superior presenting the candidate or at least assenting to the nomination.[91]

Any religious member of an institute may for a grave cause be removed from an office entrusted to him either at the wish of the authority who entrusted him with the office, who should inform the religious superior, or by the superior, who should inform the authority who entrusted the office; this by equal right, the consent of the other party being required in neither case. Neither party is required to reveal to the other the reasons for his action, much less to justify them. There remains the right to appeal *in devolutivo* to the Apostolic See.[92]

1.9 Entrustment of Parishes in the 1983 Code of Canon Law

The 1983 Code of Canon Law was promulgated on 25th January 1983 by Pope John Paul II with the Apostolic Constitution *Sacrae Disciplinae Leges,* and took legal effect on 27 November

[90] *Mutuae Relationes,* n. 57.
[91] *Mutuae Relationes,* n. 57
[92] *Mutuae Relationes,* n. 58.

1983 replacing the 1917 Code of Canon Law. It builds upon the CIC/1917, the teachings of Second Vatican Council and the Post-conciliar documents. The code situates entrustment of parishes to clerical Religious Institutes and Clerical Societies of Apostolic Life in Book II (People of God), Part II (The Hierarchical Constitution of the Church), and chapter VI (Parishes, Pastors, and Parochial Vicars). It treats entrustment of a parish with regard to the notion of parishes and pastors (Cann 515-544).[93]

Inspired by the Second Vatican Council and incorporating its concepts and emphasis, the CIC/1983 makes a major change from the CIC/1917 in regard to the juridic notion of a parish and defines it as a certain community of the Christian faithful stably constituted in the particular church, whose pastoral care is entrusted to a *parochus* as its proper pastor under the authority of the diocesan bishop (Can. 515, §1) with juridic personality by law (*personalitate iudicate ipso iure*) (Can. 515, §3). The parish is a public juridic person (Can.116), hence, the pastor alone who is entrusted with its pastoral care represents it in all juridic affairs according to the norm of law; he is to take care that parochial goods are administered according to the norms, (Can. 532, 515, §3).

In cases of lack of priests, the CIC/1983 permits the diocesan bishop to entrust participation in the pastoral care of a parish to a deacon, another person who is not a priest, or a community of persons who are not priests. These persons participate in pastoral care, but do not exercise the full care of souls, for such an office can be validly conferred only to a priest (Can.150). In this situation, the bishop is to appoint a priest, provided with the powers and faculties of a pastor, to direct the pastoral care.[94]

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[93] Cf. B. LUCAS, *et. al.*, (*eds.*,) *Church Administration Handbook*, St. Pauls Publications, Strathfield 2008, p. 159.

[94] CIC/1983, Can. 517 § 2.

Can. 519 gives a description of the *parochus* as the proper pastor (*pastore*) of a parish under the authority of the diocesan bishop: it states:

> *Parochus est pastor proprius paroeciae sibi commissae, cura pastorali communitatis sibi concreditae fungens sub auctoritate Episcopi dioecesani, cuius in partem ministerii Christi vocatus est, ut pro eadem communitate munera exsequatur docendi, sanctificandi et regendi, cooperantibus etiam aliis presbyteris vel diaconis atque operam conferentibus christifidelibus laicis, ad normam iuris.*[95]

1.10 Holy See Documents on Entrustment of Parishes After the 1983 Code

Since the Second Vatican Council, the Church's magisterum has continually provided important and valuable points to help dioceses and religious with regards to challenges and difficulties which they face with regard to their relationship especially on entrustment. The recent magisterium includes the teaching of Catholic Church by Popes and Roman Curia after the 1983 Code.

This section focuses on some of these curial papal documents issued after the promulgation of the CIC/1983 which have updated, explained and responded to some challenges facing dioceses and religious in the process of entrustement of parishes. The following are some of the documents under consideration: *Potissimum Institutioni*, *Vita Consecrata* and *Apostolorum Successores*.

1.10.1 *Potissimum Institutioni*

Potissimum Institutioni presents the theory, principles and norms for various levels and types of formation in religious institutes. Relying on conciliar and post-conciliar sources, the document emphasizes the Church's concern for the stability of religious life which plays a vital

[95] CIC/1983 Can. 519, English translation reads: The pastor (*parochus*) is the proper pastor (*pastor*) of the parish entrusted to him, exercising the pastoral care of the community committed to him under the authority of the diocesan bishop in whose ministry of Christ he has been called to share, so that for that same community he carries out the functions of teaching, sanctifying, and governing, also with the cooperation of other presbyters or deacons and with the assistance of lay members of the Christian faithful, according to the norm of law.

role in the life and mission of the Church. Its purpose is to help institutes in the planning of their formation programmes as directed by the 1983 Code of Canon law.[96]

The document elaborates on the formation of a religious priest in relation to his place within the diocesan presbyterate.The formation of a religious priest should take into account his future insertion into the presbyterate of a particular Church, above all if he must exercise a ministry there, taking into account however, the spirit of their own institute.[97]The basic principle, which governs this insertion is that Religious priests are cooperators with the episcopal order, and in a certain sense they belong to the diocesan clergy inasmuch as they share in the care of souls and in the practice of apostolic works under the authority of the bishops.[98] The document, further, explains that normally the position of a religious priest, or of an institute, to which the bishop has entrusted a mission or pastoral work within the particular Church must be regulated by a written agreement between the diocesan bishop and the competent superior of the institute or the religious concerned. The same would hold for a religious deacon in the same situation.[99]

1.10.2 *Vita Consecrata* (1996)

In *Vita consecrata*,[100] the second chapter, *Signum Fraternitatis*, treats consecrated life in the context of ecclesial communion. Even though it does not speak directly on entrustment, it however, gives directives on mutual relations between the diocesan bishop and the religious superior on entrusted works. It states that a significant role is played by consecrated persons within the particular Churches. This calls for a fundamental importance of cooperation between consecrated persons and Bishops for the organic development of diocesan pastoral life. The

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[96] Cf. CICSAL, Directives on Formation in Religious Institutes, *Potissimum Institutioni,* 2 February 1990, in *AAS*, 82 (1990), n. 4, in *AAS,* 82 (1990), p. 474. (Hereafter after cited as, *Potissimum Institutioni).*

[97] Cf. *Potissimum Institutioni*, n. 109.

[98] Cf. *Christus Dominus*, nn. 34-35.

[99] Cf. *Potissimum Institutioni*, n. 109.

[100] JOHN PAUL II, Adhortatio apostolica *Vita Consecrata*, 25 Martii 1996, in *AAS,* 88 (1996), pp. 377-486. (Hereafter cited as: *Vita Consecrata).*

charisms of the consecrated life can greatly contribute to the building up of charity in the particular Churches.[101]

The Bishops are, thus, asked to welcome and esteem the charisms of the consecrated life, and to give them a place in the pastoral plans of the Diocese. They should have a particular concern for Institutes of diocesan right, which are entrusted to the special care of the local Bishop. A Diocese which lacks the consecrated life would not only be deprived of many spiritual gifts, of suitable places for people to seek God, of specific apostolic activities and pastoral approaches, but it would also risk a great weakening of that missionary spirit which is characteristic of the majority of Institutes.There is a duty then, to respond to the gift of the consecrated life which the Spirit awakens in the particular Churches, by welcoming it with generosity and thanksgiving.[102]

Bishops should seek to support and help consecrated persons, so that, in communion with the Church, they open themselves to spiritual and pastoral initiatives responding to the needs of our time, while remaining faithful to their founding charism. For their part, consecrated persons will not fail to cooperate generously with the particular Churches as much as they can and with respect for their own charism, working in full communion with the Bishop in the areas of evangelization, catechesis and parish life.[103]

On dialogue with regard to apostolic undertakings, the Pope states: “Constant dialogue between Superiors of Institutes of Consecrated Life and Societies of Apostolic Life and Bishops is most valuable in order to promote mutual understanding, which is the necessary precondition for effective cooperation, especially in pastoral matters. Thanks to regular contacts of this kind,

[101] Cf. *Vita Consecrata*, n. 48.
[102] Cf. *Vita Consecrata*, n. 48.
[103] Cf. *Vita Consecrata*, n. 49.

superiors, both men and women, can inform bishops about the apostolic undertakings which they are planning in Dioceses, in order to agree on the necessary practical arrangements."[104]

1.10.3 *Apostolorum Successores*

Apostolorum Successores, was an updated version of the 1973 Directory, *Ecclesiae imago.*[105] The directory takes into account the documents of Vatican Council II, the 1983 Code of Canon Law, various pontifical documents published in recent years and above all, the Apostolic Exhortation, *Pastores gregis.*[106]

Part VI of Chapter IV of the document elaborates on the Consecrated Life and Societies of Apostolic Life in the Diocesan Community, their involvement in the Life of the Diocese, the power of the Bishop in relation to Consecrated life and different forms of Apostolic and Pastoral Cooperation between Consecrated Persons and the Diocese. The directory specifies that the bishop is to ensure that institutes are properly incorporated into the diocesan community through his support and encouragement. In this way, institutes of consecrated life, societies of apostolic life, hermits and consecrated virgins are fully a part of the diocesan family because they are resident in the diocese. Through the example and witness of their lives and their apostolic work, they bring an inestimable benefit to the diocese. Their priests should be considered partners of the diocesan presbyterate, co-workers with the bishop in the care of souls.[107]

The directory suggests the forms of apostolic and pastoral cooperation between consecrated persons and the diocese. These include works proper to the institutes by virtue of their charism and

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[104] Cf. *Vita Consecrata*, n. 50.

[105] Cf. *Ecclesiae imago* Directory of the Pastoral Ministry of Bishops published on 22 February 1973 by the Congregation for Bishops. It illustrates the concept of the Bishop and his Ministry in the particular Church.

[106] JOHN PAUL II, Post-Synodal Apostolic Exhortation *Pastores Gregis*, on The Bishop, Servant of the Gospel of Jesus Christ for the Hope of the World, 16 October 2003, in *AAS* 96 (2004), pp. 825-924.

[107] CONGREGATION FOR BISHOPS, Directory for the Pastoral Ministry of Bishops, *Apostolorum Successores*, 22 February 2004, Liberia Editrice Vaticana, Vatican City 2004, n. 98. (Hereafter cited as *Apostolorum Successores*).

directed by their respective superiors. Such works need to be situated within the overall programme of diocesan pastoral care, and for this reason, they should not be established unilaterally, but on the basis of an agreement between the bishop and the superiors. Constant dialogue is needed between both parties over the direction of such works, without prejudice to the rights conferred on each by canonical discipline.[108]

The second are the diocesan works and parishes entrusted to religious institutes or societies of apostolic life. These remain under the overall authority and direction of the bishop, although the consecrated persons responsible are still bound by the discipline of their institutes and under obedience to their superiors. The bishop should ensure that a written agreement is drawn up with the institute or the society clearly defining those things which pertain to the work to be accomplished, the members to be devoted to it and financial matters.[109]

Collaboration between the diocese and institutes or their members can be interrupted on the initiative of either party, with due regard for the rights and obligations established by norms or by agreements. In such a case, it is necessary to give due notice to the counterpart, the bishop or the institute. In this way, the necessary provision can be made for the good of the faithful, for example, by inviting another institute or person to assume responsibility for the work or the office in question, and by studying with due attention the human and financial consequences.[110]

[108] Cf. *Apostolorum Successores*, n.101.
[109] Cf. *Apostolorum Successores*, n. 101, b.
[110] Cf. *Apostolorum Successores*, n. 101, c.

Conclusion

This chapter has presented a historical synopsis of the concept of entrustment of parishes to clerical religious institutes from the earliest times in the biblical era. This coneept was not as well stated and clear as it is today but its traces can be seen at different moments in the course of development of the apostolate of religious Institutes in particular Churches. The traces of entrustment are found in the Old Testament and the New Testament and the early fathers of monasticism where parishes would be united with the religious houses and the religious there in would be entrusted with the pastoral care of the parish.

The chapter has demonstrated that the concept of entrustment has a long history in the ecclesial life. This has been seen in the early life of the Church, the monastic era all the way to the period of mendicant orders. The period of the *Corpus Iuris Canonici*, Lateran Council through to the Council of Trent. The Church regulated the issue of entrustment by issuing norms in the Pio-Benedictine Code which laid a foundation for the decrees formulated during the Second Vatican Council and the post-conciliar documents of the Popes and the Roman Curia. These paved ways for norms in the CIC/1983 on entrustment as we have them in the Church today.

CHAPTER TWO

JURIDICAL STUDY OF CAN. 520 ON ENTRUSTMENT OF PARISHES TO CLERICAL INSTITUTES

Introduction

The interpretation of law is a necessary task in order for one to be sure of the very meaning of the text. This includes not only understanding the textual formulation but also to use the means of interpretation to confirm the scope of the message. The first rule rightly considered, as contained in CIC/1983, Can.17, establishes that law must be understood according to the proper meaning of the words, both in the text and their context. Only if the text fails through obscurity, the canon says, that one makes recourse to the other interpretative aides. It must be borne in mind that according to the principle of simultaneity of the applicaton of rule, ordinarily, a law becomes clear only after corroborating its apparent textual clarity with the other means of interpretation and not just with the grammatical logic. It should always be clear that the primary purpose of the rule is to ensure that the interpretation depends or is based on the words used by the legislator, carefully and deliberately chosen, to manifest his will. One must not hence suppose that the intention of the legislator is other than the one manifested in his words.[111]

This chapter is focused on making a juridical analysis of Can. 520 of the 1983 Code on entrustment of parishes to religious institutes and societies of apostolic life. Canon 17 provides the fundamental rules for the correct interpretation of canon law. It is the guidepost for this thesis, in particular in this chapter two. The chapter consists of three sections. The first part treats the sources of Can. 520, followed by the presentation of the formation of the canon until its promulgation in 1983. This is followed by the textual juridical analysis of the canonical terminologies used in the

[111] Cf. F. SUAREZ, *Tractus de Legibus ac Deo Legislatore*, Lib. III, n. 7, TvhL, Coimbra 1962, p. 283.

canon. This sheds light on the meaning of the canon as intended by the legislator. The third part looks at the other related norms found in the same Code of Canon Law and the Code of Canons of the Eastern Churches.

2.1 Sources of Can. 520 of the 1983 Code

Can. 520 §§1&2 has its sources in: CIC/1917, Can. 452 § 1, SC Council Instr. A *chiarimento*, 23 ian. 1931: *Ecclesiae Sanctae* I, 33 §1 (1966). Taking recourse to the sources of the canon under study gives a deeper understanding and appreciation of its *iter* and the modifications it has undergone up to its final form.

2.1.1. Parishes United to Moral Persosns with an Indult of the Apostolic See (CIC/1917, Can. 452 §§1-2)

The entrustment of Parishes to clerical religious institutes has its sources in CIC/1917, Can. 452 §1 §2. This canon reads:

> *§ 1. Sine Apostolicae Sedis indulto paroecia nequit personae morali pleno iure uniri, ita nempe ut ipsamet persona moralis sit parochus, ad normam Can.1423, § 2.*
> *§ 2. Persona moralis, cui paroecia sit pleno iure unita, habitualem tantum curam animarum retinere potest, servato, quod ad actualem spectat, praescripto Can. 471.*[112]

The canon stipulates that without an indult of the Apostolic See, parishes cannot be fully united to moral persons such that the moral person would be the pastor according to the norm of CIC/1917, Can. 1423, § 2.[113] In case there is an indult of the Apostolic See, then a parish can be united to a moral person. In such a case, a moral person to which a parish is united by full right

[112] CIC/1917, Can. 452, English translation reads: Without an indult of the Apostolic See, parishes cannot be fully united to moral persons such that the moral person would be the pastor according to the norm of Canon 1423, § 2.

§ 2. A moral person to which a parish is united by full right can retain only the habitual care of souls, with due regard for the prescription of Canon 471 as to what applies to the actual [care of souls].

[113] Canon 1423§ 2. They cannot unite a parish with the capitular or episcopal table [or] with monasteries, the churches of religious, or other moral persons, or with dignities or cathedral or collegial church benefices; but with a cathedral or collegial church that is situated in the territory of a parish they can unite one so that the income of the parish falls to the use of that church, leaving to the pastor or vicar an appropriate amoun

can retain only the habitual care ofsouls, with due regard for the prescription of CIC/1917, Can. 471 as to what applies to the actual care of souls.

The office of parish priest was frequently conferred on a moral person (religious institute, monastery, chapter of canons, etc) up to the point that this possibility was included in the canonical notion itself: the priest or moral person to whom the parish was entrusted as holder with care of souls (CIC/1917, Can. 45I).[114] When the parish priest was a moral person, in order to avoid a possible uncertainty regarding the agent responsible for pastoral care, the prior regulatory system required the appointment of an assistant parish priest by the bishop. It distinguished, through a juridical fiction, between *habitual care* of souls, which corresponded to the moral person, and *present care* of souls, which was carried out by the assistant parish priest.[115]

In addition, the possible union of a parish with an institute of consecrated life or with a clerical association of the faithful was not excluded, although this could only be done by the diocesan bishop with the consent of the lawful and competent superior or the institute and not the diocesan administrator. It was required, however, that only one of the priests was to be appointed parish priest. In cases where the pastoral care was undertaken jointly by all or several, a moderator was appointed (Can. 517 § 1). Thus the distinction made in the CIC/1917 between the *habitual care* of souls (proper to the juridical person) and *actual* care of souls (proper to the priest, the *vicarious actualis*) is suppressed.

Can. 456 states:

> *Ad paroecias religiosis concreditas Superior, cui ex constitutionibus id competit, sacerdotem suae religionis praesentat Ordinario loci; qui eidem, servato praescripto can. 459, par. 2, institutionem concedit.*[116]

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[114] Cf. V. DE PAOLIS, "De paroeciis institutis religiosis commissis vel committendis," in *Periodica de Re Morali Canonica Liturgica,* 74 (1985), pp. 389-417.

[115] Can. 452 § 2.

[116] CIC/1917, Can. 456, English translation reads: It belongs to the Superior under the constitutions to present to the local Ordinary a priest of that religious [institute] for parishes entrusted to religious; who in turn, with due regard for the prescription of Canon 459, § 2, shall grant the institution.

This canon simply spoke of parishes confided to religious without making any further specifications. The specifications can be traced from Can.1425 which distinguished two kinds of union of a parish to a religious community: a union *ad temporalia tantum*, and a union *pleno iure.* Can. 1425 states:

> *§ 1. Si a Sede Apostolica paroecia domui religiosae uniatur ad temporalia tantum quod attinet, domus religiosa particeps fit solummodo fructuum paroeciae, et Superior religiosus sacerdotem e clero saeculari in eadem instituendum, assignata congrua portione, Ordinario loci praesentare debet.*
> *§ 2. Sin autem pleno iure, paroecia fit religiosa, et Superior potest sacerdotem e sua religione ad curam animarum exercendam nominare, sed Ordinarii loci est eundem probare et instituere, eiusque iurisdictioni, correctioni et visitationi ipse subesse debet in iis rebus quae ad curam animarum pertinent, ad normam Can. 631.*

In the former type, the religious house participated only in the fruits of the parish: the religious superior had to present to the local ordinary a secular priest to be named pastor. In this case, the parish did not become a religious parish. In a union *pleno iure* (completely) the *titular* of the parochial office is the religious community itself, which must, appoint a religious to be pastor who in the name of the community exercises the functions of pastor.[117]

The phrase "parishes entrusted to religious" in Can. 456, includes both parishes *ad temporalia tantum* (as to temporal matters) and those *pleno iure*. It also includes parishes entrusted either to religious institutes or to individual religious, evidently with the consent of the competent superior, without these parishes being united to the religious community.[118] Can. 402 of the 1917 Code admitted the possibility that the chapter could be the pastor. In such a case, a chapter had to appoint its vicar to be responsible for the care of souls (Can. 471). This was later abolished by the Motu Proprio *Ecclesia Sanctae.*[119]

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[117] Can. 471 § 1.

[118] Cf. V. DE PAOLIS, "Schema of an Agreement for the Assignment of a Parish to Religious," in *Consecrated Life: The Holy See Speaks to Religious and Members of Secular Institutes,* Vol. 12, n. 1 (1987), pp. 140.

[119] *Ecclesia Sanctae,* I, 21, n. 2, Parishes are no longer to be united *pleno iure* to chapters of canons. If such united parishes exist, they are to be divided, after consultation with both the chapter and the council of priests, and a

The code talked about a Church having its own rector as pastor who is over it for the necessary care of souls. CIC/1917, Can. 216 of the Code declared:

> *§1. Territorium cuiuslibet dioecesis dividatur in distinctas partes territoriales; unicuique autem parti sua peculiaris ecclesia cum populo determinato est assignanda, suusque peculiaris rector, tanquam proprius eiusdem pastor, est praeficiendus pro necessaria animarum cura.*
> *§2. Pari modo vicariatus apostolicus et praefectura apostolica, ubi commode fieri possit, dividantur.*[120]

The code defined the pastor either as a priest, *sacerdos*, or a moral person to whom a parish is entrusted in *titulum* (with rightful possession) with the care of souls to be exercised under the authority of the local ordinary.[121] The assigning of the rector to the parishes is according to CIC/1917 Can. 455 a prerogative of the local Ordinary. The canon declared:

> *§1. Ius nominandi et instituendi parochos competit Ordinario loci, exceptis paroeciis Sanctae Sedi reservatis, reprobata contraria consuetudine; sed salvo privilegio electionis aut praesentationis, si cui legitime competat*.[122]

CIC/1917, Can. 456 elaborated that it belonged to the superior under the constitutions to present to the local Ordinary a priest of that religious institute for parishes entrusted to religious; who in turn, with due regard for the prescription of Can. 459, § 2, shall grant the institution. A religious priest, with the agreement of his superior, could be appointed a parish priest, without any long-term commitment on either part.[123] Accordingly, the CIC/1917 in Can. 460 talkled the issue of multiple parishes assigned to a pastor. A pastor was entitled to only one parish. There was to be one pastor in one parish who had the care of souls.

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pastor appointed—whether chosen from the members of the chapter or not—who enjoys all the faculties which belong to pastors according to the prescriptions of the law.

[120] CIC/1917, Can. 216 § 1, English translation reads: The territory of every diocese is to be divided up into distinct territorial parts; to each part a specific church and determined population are assigned, with its own rector as its pastor, who is over it for the necessary care of souls.
§ 2 In an equivalent manner, an apostolic vicariate and an apostolic prelature should be divided where this can be done conveniently.

[121] CIC/1917, Can. 451 § 1.

[122] CIC/1917 Can. 455 § 1, English translation reads: The right of appointing and instituting pastors belongs to the local Ordinary, except for parishes reserved to the Holy See, reprobating any contrary custom, but with due regard for the privilege of election or presentation, where this legitimately applies.

[123] Cf. L. BOUSCAREN, -A.C. ELLIS, *Canon Law: A Text and Commentary*, 3rd ed., Bruce Publishing Company, Milwaukee 1957, p. 190.

A parish could be united with a religious congregation with an indult of the Apostolic See. This could be done in two possible ways: *ad temporalia tantum* (in which the religious presented a secular priest to be instituted as pastor) and *pleno iure* in which the moral person was its pastor. In this scenario the superior of the moral person nominated a priest, called a parochial vicar, who would exercise the actual care of souls, and presented him to the bishop for installation.[124] This, however, was something originally forbidden by the Council of Trent because it amounted to an alienation of the property of a diocese. It could not be done without an indult of the Apostolic See[125] and the prior consultation with the college of consultors.[126]

In order to facilitate entrustment of parishes to religious institutes, in 1930 the Congregation of the Council privately issued a sample agreement for entrusting parishes to religious families, and an updated version was circulated in 1960.[127] A further development came from the *motu proprio Cleri sanctitati* of Pope Pius XII and spoke of a written contract between the exarch and the religious in the oriental law.[128] It also allowed the union of parish with a religious house, but did not allow that a moral person be pastor: a priest had to be appointed.[129]

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[124] Cf. J.A. CORIDEN, *et al.*, (ed.,), *New Commentary on the Code of Canon Law*, Paulist Press, New York 2000, p. 691.

[125] CIC/1917, Can. 452 § 2. The requirement for the indult was removed by the motu proprio *Ecclesiae Sanctae* in 1966: *AAS* 58 (1966), pp. 757-77.

[126] CIC/1917, Cann. 1425 § 1 and § 2, English translation reads: If a parish is united to a religious house by the Apostolic See in what pertains *only to temporalities*, the religious house participates only in the proceeds of the parish, and the religious Superior must present to the local Ordinary a priest from the secular clergy for installment, assigning him a due proportion.

§ 2. But if it is [united] *in full right*, the parish becomes religious and the Superior can appoint a priest from his own religious [institute] to exercise the care of souls, but it is for the local Ordinary to approve and install him, and he remains under him with regard to jurisdiction, correction, and visitation [and those things] that pertain to the care of souls according to the norm of Can. 631.

[127] Cf. S.E. KAIN, *Written Agreements between Bishops and Religious for Entrusted Diocesan Work*s, *Canon Law Studies 550*, Catholic University of America, Washington 1996, p. 20.

[128] PIUS XII, *Motu Proprio Cleri sanctitati*, 2 June 1957, in *AAS*, 49 (1957), c. 491 § 1.

[129] Can. 490, § 1, 2º. These canons were a source for both the Fathers of the Second Vatican Council and the drafters of the new Code for the Latin Church.

2.1.2 Entrusting a Parish by Local Ordinary to a Religious Institute (*Motu Proprio Ecclesiae Sanctae* 1, n. 33)

The Decree *Ecclesiae Sanctae*[130] came as a follow up on the recommendations put forward by the commissions which had been established by the council to apply their expertise to determine, in the best way possible, how the norms of the four other decrees could be applied on a temporary basis awaiting definitive norms to be promulgated in the Code which was under revision.

The *motu proprio* speaks of certain activities which are entrusted by the bishop to the religious. An entrusted work does not mean a work that is not proper to the religious institute, nor in contradiction to it. A bishop can entrust to the religious works even proper to them.[131] An entrusted work is in contraposition to those works which the religious undertake on their own initiative thus the works entrusted by the bishop are generally not proper to the institute.

This document declares more explicitly that the local ordinary may by his own authority, with the consent of the competent superior, entrust a parish to a religious institute, even erecting it in the religious Church of the Institute itself. It continues to elaborate that a parish may be entrusted either in perpetuity or for a certain fixed period of time; in either case it should be effected by means of a written agreement between the ordinary and the competent superior of the institute, which would among other things indicate accurately and with precision the work to be undertaken, the persons assigned to it and the finances involved.[132] With these elaborations, *Ecclesae Sanctae*

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[130] *Ecclesiae Sanctae,* II was published as a decree issued in the form of *Motu proprio*. *Motu proprio* is a legislative document from the Roman Pontiff written on his own initiative, which specifies the manner in which a more general legislation is to be applied or interpreted. The document was to indicate how the general chapters, which had been mandated by *Perfectae caritatis* were to be implemented and being in the category of decree accorded it its legislative nature. See E. MCDONOUGH, "Conciliar and Post-Conciliar Documents on Consecrated Life," in Review for Religious, 52 (1993), p. 780.

[131] Cf. *Ecclesiae Sanctae* 1, n. 29.

[132] Cf. *Ecclesiae Sanctae* 1, n. 33, (1) states: "A local Ordinary can on his own authority, with the consent of the competent Religious superior, entrust a parish to a Religious institute even by establishing a parish in the Religious

not only defines the question of accepting parishes, already mentioned in *Christus Dominus*, 35, no.1,[133] but offers further indications useful for understanding the legislation of the Code and hence it is almost literally the source of Can. 520.

The *motu proprio* introduces another important distinction: a work entrusted to a religious institute,[134] and a parish entrusted to a religious institute or to a religious pastor.[135]. If the parish is confided to an institute, the institute is responsible and the parish can really be called a religious parish: if it is confided to a pastor who is a religious, it remains substantially a diocesan parish. Can. 520 speaks only of parishes entrusted to a religious institute.[136]

When an ecclesiastical office is entrusted or conferred to a religious, the choice of the candidate is made by the superior and the appointment is made by the bishop. Since the superior knows the qualities and abilities of his subjects he is to present a candidate who is best suited to fulfill the office in question such as a parish priest. A local Ordinary, moreover, can on his own authority, with the consent of the competent Religious superior, entrust a parish to a religious institute even by establishing a parish in the Religious Church of an institute.

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church of an institute. This assignment of a parish can be in perpetuity or for a certain specified time; in either case it must be done through a written agreement between the Ordinary and the competent superior of the institute. Among other things, this agreement is to define expressly and accurately those matters which pertain to carrying out the work, the assignment of personnel for the work and financial matters."
(2) The local Ordinary can also appoint a Religious, with the permission of his superior, as pastor of a parish which is not entrusted to Religious, entering into a special and suitable agreement with the competent Religious superior.

[133]*Christus Dominus*, n. 35, (1), states: "All Religious should always look upon the bishops, as upon successors of the Apostles, with devoted respect and reverence. Whenever they are legitimately called upon to undertake works of the apostolate, they are obliged to discharge their duties as active and obedient helpers of the bishops. (18) Indeed, Religious should consider it an honor to respond promptly andfaithfully to the requests and desires of the bishops and in such a way they may assume an even more ample role in the ministry of human salvation. This they should do with due respect for the character of their institute and in keeping with their constitutions which, if needs be, should be accommodated to this goal in accord with the principles of this conciliar decree. Especially in view of the urgent need of souls and the scarcity of diocesan clergy, Religious communities which the not dedicated exclusively to the contemplative life can be called upon by the bishops to assist in various pastoral ministries. They should, however, keep in mind the particular character of each community. Superiors should encourage this work to the utmost, by accepting parishes, even on a temporary basis."

[134] Cf. *Ecclesiae Sanctae* 1, n. 30-31.

[135] Cf. *Ecclesiae Sanctae* 1, n. 33.

[136] Cf. V. DE PAOLIS, "Schema of an Agreement for the Assignment of a Parish to Religious," p.139.

The local Ordinary can also appoint a Religious, with the permission of his superior, as pastor of a parish which is not entrusted to Religious, entering into a special and suitable agreement with the competent Religious superior. This decree removed the the requirement for the apostolic indult which had been put in place in the CIC/1917 in the case of a union *pleno iure*. *Ecclesiae sanctae*, nevertheless, decreed that parishes could nolonger be united to chapters of canons.[137]

Ecclesiae Sanctae goes on to stress on the need for mutual consultation or dialogue when it comes to the removal of a religious from an entrusted work. It says:

> For a grave reason any member of a Religious institute can be removed from the position assigned to him either at the will of the authority who made the appointment, after he has advised the Religious superior, or at the will of the superior after he has advised the one who made the appointment. In this matter the superior and the authority are legally equal and the action of the one does not require the consent of the other, nor is the one bound to make known to the other the reason for his judgment, much less prove it, though recourse to the Apostolic See, without suspensive effect (*in devolutivo*), remains open.[138]

2.2 The Juridical *Iter* of Can. 520 of the 1983 Code

The revision of the CIC/1983 marked the decisive phase in the legislative history of the Church. On 20th November 1965, before the conclusion of the Vatican Council II, Pope Paul VI inaugurated the revision work of the *Pontificia Commissio Codici recognoscendo of 1917 Codex Iuris Canonici*. He made it clear in his address that the revision work had to be faithful to the teachings of Vatican Council II, and that Canon Law must be adapted to the new mentality of the Council and the contemporary pastoral needs.[139] The revision began with the constitution of the pontifical Commission for the revision of the Code of Canon Law. The work of the Commision effectively began in January 1966. In 1969, groups of Consultors were appointed, updated in 1973 and 1976. The consultors of the commission organized themselves into ten study groups *(coetus*

[137] *Ecclesiae Sanctae*, n. 21, 2.
[138] *Ecclesiae Sanctae*, n. 32.
[139] Cf. PAUL VI, *Allocutio Ad Emos Patres Cardinales et ad Consultores Pontificii Consilii Codici Iuris Canonici Recognoscendo*, 20 Novembris 1965, in *AAS*, 57 (1965), p. 988.

studiorum) and each group was responsible for the revision of a certain section of the code.[140] The various *coetus studiorum* then prepared revision drafts, referred to as schemata of these sections.

Among the schemata sent out for consultation by the end of 1977 was the schema on the people of God (*Populo Dei*) which represented the work of several *coetus*, or committees of the Pontiffical Commission for the Revision of the Code of Canon Law.[141] The sections on parishes, pastors, and parochial vicars: vicars forane; and rectors of churches and chaplains which had within it among others, Can. 520, on the entrustment of parishes to religious institutes are the work of the *coetus* on the Sacred Hierarchy.[142] The other schemata on Can. 520 were: 1980 *Schema Codicis*, 1982 *Schema Codicis*, and finally the promulgated 1983 Code of Canon Law.

2.2.1 The Initial Discussions of the *Coetus de Populo Dei*

In 1976, the *Coetus de Populo Dei* worked on the revision of Cann. 451-470 of the 1917 Code based on the teaching of the Second Vatican Council on *parochi*, as found in *Christus Dominus* no. 30, and it proposed new norms on parishes and *parochi*.[143] The proposed norms *deparoeciis et de parochis* established clearly that only a physical person can be the *parochus* who can represent the public juridic person of the parish in all juridic affairs; this serves as the foundation of the discipline of canon 520. Firstly, the *coetus* proposed that the parish is to be entrusted only to a *sacerdos* as *parochus*.[144]

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[140] Cf. "Mense ianuario 1966 decem Coetus a studiis inter Consultores constitute sunt quibus commissum est examinare et recognoscere, prae oculis praesertim habitis praescriptis Decretorum Ss. Concilii Vatican II, leges vigentis Codicis Iuris Canonici, indeque schemata canonum exarare examine commissionis Cardinalium proponenda," in *Communicationes*, 1 (1969). p. 44.

[141] On January 25, 1959, Pope John XXIII called for the aggiornamento of canon law; at the same time, he announced he would convoke an ecumenical council the Pontificial Commission for the Revision of the Code of Canon Law was instituted by the same pope on 23rd March, 1963 with Cardinal Pietro Ciriaci named as its president.

[142] Cf. *Communicationes*, 8 (1976), pp. 23-31.

[143] Cf. *Communicationes*, 8 (1976), p. 23

[144] "*De ipsa paroecia inde proponitur notio quae sequitur: est certa quae in Ecclesia particulari constituitur populi Dei portio, cuius cura pastoralis, sub auctoritate Episcopi dioecesani, committitur uni sacerdoti, paroeciae parocho" Communicationes,* 8 (1976), p. 23.

Secondly, concerning the office of the *parochus*, a juridic person or a moral person cannot be a *parochus*; rather, only a physical person can be so appointed.[145] Consequently, when a parish is entrusted to a clerical religious institute or a clerical society of apostolic life, one *sacerdos* is to be its *parochus*; or, when the parish is entrusted to a group of priests, one of them should be a moderator.[146] Thirdly, when a group of priests (*coetus sacerdotum)* assumes the parochial office, the text made it clear that such a group of priests is not a juridic person. They are individual priests who assume the joint pastoral care of the parish in *solidum*. However, the moderator alone represents the parish or parishes entrusted to the group in juridic affairs.[147] The norms proposed by the *coetus* concerning parishes and *parochi* hence, made it clear that a parish is to be established as a juridic person *a iure* (Can. 515 §3), whose pastoral care is entrusted in a stable manner only to a physical person who is to hold the office of *parochus.*

2.2.2 The 1977 *Schema de Populo Dei* 353

The 1977 *schema* presented the first draft of the revised religious law.[148] The draft was structured in three sections. The first section, with the title Preliminary Canons, contained the essential elements of the consecrated life heavily influenced by *Lumen gentium* n. 44. Section Two

[145]In this regard, Huels explains: "Under the law of the 1917 Code, a juridic (moral) person could hold title to certain offices while a designated physical person exercised the office on behalf of the juridic person. Also benefices were offices that had juridic personality, which led not a few canonists to conclude that all offices werejuridic persons by nature. These practices and ideas are alien to the modern codes, even if they continue to bediscussed by some authors. Only a physical person [persona physica] can acquire and exercise an office" J.M. HUELS, "Towards Defining the Notion of 'Office' in Canon Law," in *The Jurist*, 70 (2010), p. 430.

[146]*"Normae propositae de parochis singulis: Secundum ius recognitum quod proponitur, persona iuridica seu moralis non potest esse parochus. In iure Codicis Iuris Canonici* (can. 452) *potest, de indulto Apostolicae Sedis, paroecia personae morali uniri, ita ut ipsamet persona iuridica sit parochus. Regula autem iuris recogniti est ut sola persona physica possit esse parochus. Hac autem norma non impeditur quominus quaedam paroecia alicui Instituto vitae consecratae aut Societati clericorum committatur, sed id ea tantum lege fieri potest ut unus sacerdos sit paroeciae parochus, aut, si pluribus insimul committatur, Moderator"* (*Communicationes*, 8 (1976), p. 25).

[147] *Normae propositae de coetu sacerdotum: Ceterum talis coetus non est persona iuridica. Sunt ergo singuli sacerdotes, qui autem insimul seu coniuncti eandem curam assumunt, in solidum officiis. […] Moderator, qui solus etiam in omnibus negotiis iuridicis personam gerit paroeciae aut paroeciarum coetui commissarum*" (*Communicationes*, 8 (1976), pp.29-31.

[148] Cf. *Communicationes*, 11 (1979), pp. 22-26, 296-346.

which was the longest, had 82 canons, grouped under the title, Norms Common to All Institutes.The last section, which focused on institutes of consecration by means of public profession of the evangelical counsels, had three subsections. The first subsection treated monastic institutes, the second dealt with apostolic institutes and the last looked at the secular institutes.[149]

Can. 520 of the CIC/1983 corresponds to Cann. 452 and 471 of the CIC/1917 but they differ on the fact that the norms of CIC/1917 make no allusion to agreements. The following norm was proposed at the 9th session of the work of the study group on the *Schem*a *De sacra Hierarchia*. It reads: "The instrument of a parish, as per § 1, can be done either in perpetuity or for a definite length of time: in both cases, it should be made by means of (through) a written agreement entered into between the diocesan Bishop and the competent Superior, in which are expressly and accurately defined, among other things what work is to be done, the persons to be assigned to it and the economic matters they expect."

The text of the first draft, of Can. 353 of the *Populo Dei* reads:

> *§1. Persona iuridica parochus ne esto. Episcopus antem dioecesanus non vero administrator dioecesanus nec sine speciali mandato vicarious generalis aut episcopalis, potest, de consensus competentis Moderatoris, paroeciam committere Instituto vitae consecratae Societative clericorum. Etiam in ecclesia lastituti aut Societatis eam erigendo, ea tamen lege ut unus sacerdos sit paroeciae parochus, aut si cura pastoralis pluribus in solidum committatur, moderator, de quo in can. 349 § 2.*
>
> *§ 2. Paroeciae commissio de qua in §1 fieri potest sive in perpetuum sive ad certum praefinitum tempus: in utroque casu fiat mediante conventione scripta inter Episcopum dioecesanum et competentem Moderatorem Instituti vel Societatis inita, qua, inter alia* ***expresse et accurate definiantur*** *quae ad opus explendum, ad personas eidem addicendas et ad res oeconomicas spectant*.[150]

[149] Cf. J.F. HITE, "Commentary on Institutes of Consecrated Life and Societies of Apostolic Life (Cann. 573- 746)," in J.A. CORIDEN, *et al*., (eds.), *The Code of Canon Law: A Text and Commentary*. Paulist Press, New York 1985, p. 450. See also J. WALSH, "Canon Law for Institutes of Consecrated Life," 27-105; J. BEYER, "Institutes of Perfection in the New Code," pp. 102; F. MORRISEY, "The Spirit of the Proposed New Law for Institutes of Consecrated Life," pp. 83-90.

[150] Cf. E.N. PETERS, *Incrementa in Progressu 1983 Codicis Iuris Canonici*, Wilson & Lafleur Limitée, Montréal 2005, pp. 476-477.

Compared to *Ecclesae Sanctae* where this norm takes its origin, two changes are noticed in the formulation of the text: instead of "*Ordinarius loci*" is "*Episcopus diocesnus*.[151]Secondly, while *Ecclesae Sanctae* talks of "*expresse et accurate indicentur*" the proposed norm reads *"expresse et accurate definiantur."*[152] This changes the concept moving from *"local ordinary" to "diocesan bishop"* which points to the quest for accuracy in stating who have responsibilities in the matter.The proposal did not receive any objection from any of the commissioners, thus paving way for its approval with little amendments. Beyond these notworthy observations, the proposed norm mandated the establishment of written agreements in regulating the relationship of the parties concerned, giving no argument of justification as to the reason for this decision.

The draft, when brought to the members of the Commission for discussion provoked several objections which led to the revision of the draft which resulted to the 1980 draft.

2.2.3 The 1980 *Schema Codicis* 459

In the 17th working session, the text of Can. 353 of the *Populo Dei* underwent some modifications in the subsequent schemata. The 1980 *Schema Codicis* was drawn in response to the objections raised in the 1977 draft. The intention of this draft was to retain what was considered positive by the Commision and to replace what had been opposed. In the *schema*, printed as Can. 459,[153] the words *nec sine speciali mandato Vicarius generalis au episcopalis*,[154] were omitted, as the 1980 *schema* had rejected the option of the mandate given to a general or episcopal vicar to entrust a parish to a juridic person.

Paragraph two did not have any changes in the 1980 draft. The text was, therefore, modified as:

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[151] Cf. *Communicationes,* 14 (1980), pp. 222-223.
[152] Cf. *Communicationes,* 14 (1980), pp. 222-223.
[153] Cf. E.N. PETERS, *Incrementa in Progressu 1983 Codicis Iuris Canonici,* pp. 476-477.
[154] Cf. *Communicationes,* 14 (1980), pp. 222-223.

> *§1. Persona iuridica parochus ne esto. Episcopus antem dioecesanus non vero administrator potest, de consensus competentis Moderatoris, paroeciam committere Instituto vitae consecratae Societative clericorum. Etiam in ecclesia lastituti aut Societatis eam erigendo, ea tamen lege ut unus sacerdos sit paroeciae parochus, aut si cura pastoralis pluribus in solidum committatur, moderator, de quo in can. 456 § 1.*
>
> *§ 2. Paroeciae commissio de qua in §1 fieri potest sive in perpetuum sive ad certum praefinitum tempus: in utroque casu fiat mediante conventione scripta inter Episcopum dioecesanum et competentem Moderatorem Instituti vel Societatis inita, qua, inter alia expresse et accurate definiantur quae ad opus explendum, ad personas eidem addicendas et ad res oeconomicas spectant.*

With all the hard work of the members of the Commission on the 1980 draft, after a thorough study of it, it was, once more subjected to some changes which resulted in the 1982 draft.

2.2.4 1982 *Schema Codicis* 520

The text of the 1982 *Schema* which is printed as Can. 520 underwent some changes in both paragraphs one and two. In this canon, the words *ne esto* were replaced with *ne sit* and the word *Moderatoris* was replaced with the word *Superioris.*[155] The words *vita*e *consecratae Societataive clericorum* were replaced with *religioso clericali vel societati clericali vitae apostolicae* on the basis of a suggestion by one consultor Card. Jubany, that it is said "…the association of clerics of the apostolic life", because the expression "the association of clerics" does not agree with the expression that is used in Can. 418 § 1; the observation was accepted.[156] Finally, instead of the "Moderator" we should say "Superior."[157] Paragraph one of the text, therefore, reads: "… with the consent of the competent Superior, to entrust the parish to the Religious Clerical Institute and Society of Apostolic Life, also.."[158]

Another consulator; Card. König suggested that in view of the historical circumstances, it would be necessary to give the Episcopal Conferences greater power in this matter, because of the

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[155] Cf. E.N. PETERS, *Incrementa in Progressu 1983 Codicis Iuris Canonici*, p. 477.
[156] Cf. *Communicationes,* 14 (1980), pp. 222-223.
[157] Cf. PONTIFICIA COMMISSIO CODICI CANONICI RECOGNOSCENDO, *in Relatio*, Typis Plyglottis Vaticanis, Vatican City p.123.
[158] Cf. *Communicationes,* 14 (1980), pp. 222-223.

implications of the economic order. This remark was however not accepted because it is a question which rather concerns the diocesan bishop.[159]

Paragraph two of the text underwent a slight modification with the word "*Moderatorem*" replaced with "*Superiorem*," that is "moderator replaced by "superior" and the word *spectant* changed to *spectent.*

The text of Can. 520 of the CIC/1983 thus reads:

> *§ 1. Persona iuridica **ne sit** parochus; Episcopus autem dioecesanus, non vero Administrator dioecesanus, de consensu competentis **Superioris**, potest paroeciam committere Instituto **religioso clericali vel societati clericali vitae apostolicae.** (eam erigendo etiam in ecclesia instituti aut Societatis) hac tamen lege ut unus sacerdos sit paroeciae parochus, aut, si cura pastoralis pluribus in solidum committatur, moderator, de quo in can. 517, § 1.*
>
> *§ 2. Paroeciae commissio de qua in § 1 fieri potest sive in perpetuum sive ad certum praefinitum tempus; in utroque casu fiat mediante conventione scripta inter Episcopum dioecesanum et competentem **Superiorem** Instituti vel Societatis inita, qua, inter alia expresse et accurate definiantur quae ad opus explendum, ad personas eidem addicendas et ad res oeconomicas spectent.*

2.2.5 Definitive Formation of Can. 520 in the 1983 Code

The text of the 1983 *Schema* which was promulgated as Can. 520 underwent slight modification only in paragraph one with the word *sacerdos* replaced with the word *presbyter* since *socerdos* refered to both bishops and priests while in this case the parish is entrusted to presbyter (Priest).[160] The text was then promulgated in the 1983 code.

The text promulgated as Can. 520 §§ 1 &2 in the CIC/1983 reads as follows:

> *§ 1. Persona iuridica ne sit parochus; Episcopus autem dioecesanus, non vero Administrator dioecesanus, de consensu competentis Superioris, potest paroeciam committere instituto religioso clericali vel societati clericali vitae apostolicae, eam erigendo etiam in ecclesia instituti aut societatis, hac tamen lege ut unus **presbyter** sit paroeciae parochus, aut, si cura pastoralis pluribus in solidum committatur, moderator, de quo in can. 517, § 1.*
> *§ 2. Paroeciae commissio, de qua in § 1, fieri potest sive in perpetuum sive ad certum praefinitum tempus; in utroque casu fiat mediante conventione scripta inter Episcopum dioecesanum et competentem Superiorem instituti vel societatis inita, qua inter alia expresse et accurate definiantur, quae ad opus explendum, ad personas eidem addicendas et ad res oeconomicas spectent.*[161]

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[159] Cf. PONTIFICIA COMMISSIO CODICI CANONICI RECOGNOSCENDO, *in Relatio*, Typis Plyglottis Vaticanis, Vatican City 1981, p.123.

[160] Cf. *Communicationes*, 14 (1980), pp. 222-223.

[161] E.N. PETERS, *Incrementa in Progressu 1983 Codicis Iuris Canonici*, p. 477.

2.3 Textual Analysis of Can. 520 § § 1- 2

A proper understanding of terminology lies at the very root analysis and interpretation of any canonical text. According to CIC/1983 Can. 17,[162] this explication of the text must also consider the textual context where canons are deliberately placed within a certain structure or framework which itself may help in the understanding of the mind of the legislator.[163] The legislator situates entrustment of parishes to clerical Religious Institutes and Clerical Societies of Apostolic Life in Book II (People of God), Part II (The Hierarchical Constitution of the Church), and chapter VI (Parishes, Pastors, and Parochial Vicars). It treats entrustment of a parish with regard to the notion of parishes and pastors (Cann. 515-544).

Can. 520 outlines who can be a pastor of a parish, the competent authority to entrust a parish to a clerical religious institute and the number of presbyters to be pastors. The second paragraph elaborates on the duration of entrustment of parishes to the institutes which requires a written agreement. For better understanding of the content of the canon and to appreciate this legislation, this section employs the exegetical analysis in order to examine the meaning of the terms used.[164]

The pertinent concepts requiring analysis include: a juridic person is not to be a pastor, consent of the competent superior, a diocesan bishop but not a diocesan administrator can entrust a parish, clerical religious institutes and clerical society of apostolic life, church of the institute, one presbyter is to be pastor of the parish, pastoral care entrusted to priests *in solidum*, entrustment of a parish in perpetuity or for a specified time, a written agreement, and other matters. Although

[162] Cf. CIC/1983, Can. 17 Ecclesiastical laws must be understood in accord with the proper meaning of the words considered in their text and context. If the meaning remains doubtful and obscure, recourse must be made to parallel places, if there are such, to the purpose and circumstances of the law, and to the mind of the legislator.

[163] Cf. GALLES, *Canon Law and Interpretation*, Old Leeds, Irondale 2012, p.7.

[164] Cf. R. TORFS, "Propria Verborum Significatio, De L'epistemologie a Hermeneutique," in *Studia Canonica*, 29 (1995), p. 179.

parish is a distinct part (*pars distincta*) of the diocese (Can. 374, §1), it is a juridic person distinct from the juridic person of the diocese (Can. 373). The parish, as a juridic person, is perpetual by nature (Can. 120, §1). As a juridic person, it can be legitimately suppressed by the competent authority according to Can. 120, §1. To suppress a parish, a just cause is sufficient and this does not need consultation of the parish and parishioners (Can. 515 §2).

2.3.1 Juridic Notion of A parish

The 1917 Code, explained that "The territory of every diocese is to be divided up into distinct territorial parts; to each part a specific church and determined population are assigned, with its own rector as its pastor (*parochus*), who is over it for the necessary care of souls" (*CIC*/17, Can. 216, §1). During the revision of the Code of Canon Law, the 1977 *Schema* Can. 349, §1 had described the parish as a "*populi Dei portio*."[165] The promulgated Can. 515, §1 offers an innovative description: "A parish is a certain community of the Christian faithful stably constituted in a particular church, whose pastoral care is entrusted to a pastor (*parochus*) as its proper pastor under the authority of the diocesan bishop."

From this description of the parish, A. Marzoa identifies its constitutive essential elements:[166] "the pastor (*parochus*) and community (material elements) and care of souls (formal element) and the integral non-essential elements: territory,[167]church,[168] and benefice.

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[165] PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECOGNOSCENDO, *Schema Canonum Libri II, De Populo Dei*, Civitate Vaticana, Typis polyglottis Vaticanis, Civitate Vaticana 1977. p. 134.

[166] A. MARZOA, "El concepto de parroquia y el nombramiento de parroco (cuestiones en torno a los cc. 515 y 522)," in *Ius Canonicum*, 29 (1989), pp. 451-452.

[167] By treating the territoriality of parishes in Can. 518 and not in this initial Can., the law clarifies the fact that, however important territorial factors are in parish organization, what really is constitutive of the parish is its being a community of persons. Likewise, a diocese is primarily described as a "portion of the people of God" (JANICKI, "Commentary on Canons 515-557," p. 416). Moreover, Can. 518 says that the territory is the usual determining factor for a parish. However, some other factors like rite, language, nationality, etc., can also be a determining factor. Besides, Can. 374, which states that a diocese must be divided into parishes, does not mention territory (see RENKEN, *Particular Churches*, p. 174).

[168] Can. 515, §1 does not identify a church as an element of a parish. Nonetheless, the 1983 Code makes several references to the parish church: see Cann. 510, §§ 2, 4; 857, § 2; 858, § 1; 859; 934, § 1, 1º; 1118, § 1; 1177, §§ 1, 3; 1217, § 2; 1248, § 2.

Calvo underscores two distinctive fundamental elements in the juridic concept of the structure of a parish community in which its reasons and purposes are implicitly stated: (1) A *community of the faithful*, with two features: its attachment to a particular Church and the note of stability appropriate to the ecclesial organization. (2) *Pastoral care*, in a dependent relationship with the diocesan bishop and conferred on a priest as its proper pastor.[169]

Renken also includes two fundamental distinctive elements of a parish: "it is (1) a certain community of the Christian faithful stably constituted within a particular Church, (2) whose pastoral care is entrusted to a pastor (*parochus*) as its proper *pastor* under the authority of the diocesan bishop."[170] Arrieta discerns four elements of the definition focusing on the parish community: a community of the faithful, the reason for the community (pastoral care), the juridical erection of the parish community, and the office of *parochus* for the full care of souls of the faithful of the community.[171]

Based on various authors concerning the juridical notion of a parish, we would deduce that the juridical elements contained in the canon depict the hierarchical nature of the parish community. There are two fundamental and distinct elements. Firstly, "the parish is a certain community of the Christian faithful stably constituted within a particular church;" this establishes its hierarchical relationship, since the parish is a part of the diocese, not an autonomous group or unit. Secondly, "its pastoral care

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[169] Cf. J. CALVO, "Commentary on Canons 515-572," in J.A. CORIDEN, *et al*., (eds.), *The Code of Canon Law: A Text and Commentary*. Paulist Press, New York 1985, p. 428.

[170] Cf. J.A. RENKEN, *Particular Churches: Their Internal Ordering*: *Commentary on Canons 460-572*, Saint Paul University, Ottawa, 2011, p. 173. Other authors identify the elements in the definition of the parish differently. Coccopalmerio mentions seven elements that constitute a parish: "(1) the community of the faithful (*communitas christifidelium*); (2) generally determined by territory (*regula generali solummodo per territorium determinata*); (3) in a particular Church (*in ecclesia particulari*); (4) permanent establishment (*stabiliter constituta*); (5) a pastor [*parochus*] as a proper pastor (*habens parochum, qui agit ut pastor proprius*); (6) under the authority of the diocesan bishop (*sub auctoritate Episcopi dioecesani*); (7) with the cooperation of presbyters, deacons, and laity (*cum cooperatione aliorum presbyterorum, diaconorum et christifidelium laicorum*)" (F. COCCOPALMERIO, *De paroecia*, Roma, Editrice Pontificia Università Gregoriana, 1991, pp. 3-12, English translation in RENKEN, *Particular Churches*, p. 173, fn. 28).
Sánchez-Gil discerns four elements

[171] See ARRIETA, *Governance Structures within the Catholic Church*, p. 248.

is entrusted to a pastor (*parochus*) as its proper pastor under the authority of the diocesan bishop;" this also exhibits the hierarchical relationship of the *parochus* with the diocesan bishop who confers on him the office of *parochus*.

Hence, "the community" which is a pastorally hierarchical part within the organizational structure of the diocese, and "the *parochus*" who is the hierarchical link with the diocesan bishop, essentially constitute the juridical definition of the parish. Since the parish is a pastoral structure established by the diocesan bishop, "the pastoral care of the parish is carried out under the authority of the diocesan bishop, apart from which no one can carry out the pastoral care of the souls of the parochial community."[172]

2.3.2 The Pastor is to be a Physical Person not a Juridic Person

The CIC/1983 makes reference to three types of persons:[173] (1) physical persons, those who become members of the Church through baptism (Can. 96); (2) moral persons,[174] which come into existence without any intervention from the Church authority (Can. 113 § 1), and (3) juridic persons, which are a creation of law (Can. 113, § 2) and which, in accord with their nature, are subjects of rights and obligations in canon law. Can. 515 §3 states that a legitimately erected parish possesses juridic personality by the law itself.

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[172] SÁNCHEZ-GIL, "Commentary on Canons 515-544," p. 1256.

[173] Cf. J. HITE, *et.al*., "*A Guide to Understanding Public Juridic Persons in the Catholic Health Ministry*, Catholic Health Association of the United States, Washington DC 2012, p. 27.

[174]When discussing juridic persons, the *coetus* did not initially intend to include in the Code the reference to moral persons contained in Can. 113, §1 since the Catholic Church and the Apostolic See are not creatures of positive law but are of divine origin. The Church pre-exists as a moral entity, before the intervention of human positive law. Except in the law of nations, the personality of the Catholic Church is not of the juridic order but of the moral order. Hence there exists no need to affirm its existence as a legal person in the Code. But the expression of moral person was reintroduced in the final revision of the text, after the last schema had been presented to the pope. By doing so, the legislator obviously intends to underline that the presence of the Church in the juridical order is not constituted by human law but it exists "from divine ordination," since Christ willed a Church endowed with a juridical structure (see *Communicationes*, 9 (1977), pp. 240-241; see A. GAUTHIER, "Juridical Persons in the Code of Canon Law," in *Studia Canonica*, 25 (1991), pp. 81-82.

A juridic person can be described as an aggregate of persons or things, whether public or private, established by law or by a competent ecclesiastical authority and ordered toward a purpose congruent with the mission of the Church that transcends the purpose of the individuals who comprise it; a canonically established Church corporation,[175] e.g., a diocese, a parish, a Catholic hospital, a charitable foundation, etc., (Cann. 113-123). The conferral of juridic personality always requires the action of competent ecclesiastical authority, whether the conferral is granted by law (*a iure*) or by a special grant of competent ecclesiastical authority through a decree (*ab homine*).[176]

Talking of juridic person in the context of civil society, W. King sees juridic person as resembling a corporation whose rights and obligations are distinct from those of the individuals who represent it hence the competent authority of the Church may impose certain restrictions when erecting each juridic person. King continues to explain that a juridic person is said to be collegial when, according to law or its statutes, all its members participate in decision-making which determines the actions of the juridic person, e.g., the episcopal conference, religious institutes. In a collegial juridic person, the members take part in the decision-making either with equal rights, as in many religious institutes, or with unequal right, as in the case of participation by auxiliary bishops in the decision-making of episcopal conference (Can. 454). On the contrary, in a non-

[175] Cf. J.M. HUELS, *The Pastoral Companion: A Canon Law Handbook for Catholic Ministry*, 4th rev. ed., Wilson & Lafleur, Montréal 2009, p. 449.

[176] The Code mentions a number of entities to which juridic personality is afforded *a iure*: dioceses (Can. 373), parishes (Can. 515, §3), religious institutes and each of their provinces and individual houses (Can. 634, §1), societies o apostolic life unless their constitutions provide otherwise, their parts and houses (Can. 741, §1), seminaries (Can. 238, §1), ecclesiastical provinces (Can. 432, §2), episcopal conferences (Can. 449, §2), and public associations of the faithful (Can. 313). Moreover, the Code identifies two ecclesiastical entities which achieve juridic personality by administrativedecree: an ecclesiastical region (Can. 433, §2) and a conference of major superiors (Can. 709). Other examples of entities to which juridic personality may be granted by decree are: Catholic colleges, universities, hospitals, and other apostolic oriented institutions (see J.A. RENKEN, Church Property: A Commentary on Canon Law Governing Temporal Goods in the United States and Canada, Alba House, New York 2009, p. 160).

collegial juridic person, the activity is not determined by the members in general but by the physical person competent to do so by law or the statutes.[177]

Another major distinction among juridic persons in the *ius vigens* is the distinction between public and private juridic persons (Can. 116, §§1-2). The key difference between them is that a public juridic person acts in the name of the Church (*nomine Ecclesiae*),[178] while a private juridic person acts in its own name and under the sole responsibility of its members. A juridic person, whether public or private, is perpetual by its nature. It continues to exist until it has been suppressed (Can. 123), amalgamated with another person (Can. 121), or divided into distinct parts (Can. 122).[179] A juridic person ceases to exist when it is legitimately suppressed by the competent authority or has ceased to act for one hundred years. A private juridic person, furthermore, ceases to exist if it is dissolved in accordance with its statutes or if, in the judgment of the competent authority, it has ceased to exist in accordance with the statutes (Can. 120, §1).

The canon begins by directing that *Persona iuridica ne sit parochus* (a juridic person is not to be a pastor). The implication is that a physical person is to be the pastor of a parish.[180] This is a consequence of the new ecclesiological aspect of the parish, the pastoral approach and purpose of the parish which requires a very specific responsibility incumbent on the presbyter appointed parish priest. The CIC/1917 had permitted, with an indult of the Apostolic See, a parish to be

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[177] Cf. W. J. KING., *Public and Private Juridic Personality: A Comparative Legal Analysis, JCD thesis,* Romae, Pontificia Università Gregoriana, Romae 2002, pp. 72-73.

[178] During the preparation of the text of the Code, the difficulty concerning the precise meaning of the expression of "to act in the name of the Church" (*nomine Ecclesiae*) was often raised: the study group was satisfied that, when applied to public juridic persons, to act "in the name of the Church" meant "to act in the name of the hierarchy," while private juridic persons acted in "their own name": "… *denuo quaerunt quid significet expression 'nomine Ecclesiae,' ... Confundenda enim non sunt, uti iam dicebatur, missio totius Ecclesiae atque munerahierarchica Sacrorum Pastorum propria. ... expressionem 'nomine Ecclesiae' significare 'nomine Auctoritatispublicae Ecclesiae.' Hoc in sensu personae iuridicae privatae dicuntur quae non 'officialiter' seu nomine Hierarchiaeagunt, quamvis propriam quidem habeant partem in missione unica totius Populi Dei." Communicationes,* 21 (1989), p. 145.

[179] Cf. J. HITE, *et al.*, *A Guide to Understanding Public Juridic Persons,* p. 27.

[180] Cf. J.A. RENKEN, "Commentary on Particular Churches and their Groupings (Cann.368-572)", in J. P. BEAL, *et al.*, (eds.), *New Commentary On the Code of Canon Law*, CLSA, Paulist Press, New York 2000, p. 691.

united *pleno iure* to a moral person, such as a religious house, a capitular Church, in such a fasion that the moral person was its pastor. The juridic person became the pastor of the parish.

The CIC/1917 Can. 451§2 stated that a moral person to which a parish is united by full right can retain only the habitual care of souls, with due regard for the prescription of Can. 471 as to what applies to the actual care of souls. The superior of the moral person nominated a priest, called a parochial vicar, who would exercise the actual care for souls, and presented him to the bishop for installation. "The care of souls, even if it must be confided to a pastor, a priest member of the institute, is the responsibility of the institute, and, therefore, the superiors, who are answerable to the bishop.

The requirement for the indult in the case of a union *pleno iure* was removed in 1966 by the motu proprio *Ecclesiæ Sanctæ*[181] and decreed that parishes could no longer be united to chapters of canons;[182] while nothing was said about parishes united *pleno iure* to religious institutes, logic required that only a natural person, and not an institution (a moral or juridical person) could be a pastor. CIC/1983, Can. 510, §1 makes it clear that the aforementioned arrangement is no longer permitted. Only physical persons can technically be pastor of parishes. A parish can no longer be joined to a chapter of canons and the diocesan bishop is to separate from a chapter those parishes which are united to it. The reason for this is the right of the Christian faithful to have a proper pastor, immediately available to them who, like the diocesan bishop, represents the invisible Lord.[183]

The parish is, therefore, to be entrusted to a pastor who as a rule is a physical person and not to a juridic person. The institute or society cannot be entrusted to a parish. This norm in the

[181] Cf. PAUL VI, Motu Proprio *Ecclesiæ Sanctae*, 6 August 1966, n. 33, §1, in *AAS*, 58 (1966), pp. 771-772.
[182] Cf. The content of *Ecclesiæ Sanctæ* 21 (2) was incorporated in Can. 510.
[183] Cf. *Christus Dominus*, n. 11: See also MORSDORF, "Decree on the Bishop's Pastoral Office in the Church," p. 230.

Ius Vigens has negated the provision of Can. 452 § 2 of 1917 Code which permitted with an indult from the Apostolic See a parish to be aggregated to entities like religious houses as such that entity would be its pastor and the superior of such a house would nominate one of the priests to be incharge of the parish acting and present to the bishop who would install him with all the powers of a *parochus*.

2.3.3 The Required Written Consent of the Competent Superior

In order to place a juridic act validly, a superior at times needs the consent or counsel of a third party. Such a third party is, therefore, someone who is hierarchically subordinate to the one who needs the consent or advice. Consent or counsel may be obtained from a college or group of persons or from individuals. All those who give consent or counsel are obliged to offer their opinion sincerely and, when the seriousness of the matter requires it, are asked to observe secrecy.[184]

The Second Vatican Council strengthened the position of the bishop in the Church. The fullness of the priesthood was predicated to the bishop,[185] and his authority as pastor was affirmed as belonging to him per se, not as a delegation from the pope.[186] At the same time, the diocesan bishop has limits designed to preserve communion and restrict arbitrariness: not just the reservation of certain powers to the pope, but the collegial bonds of the episcopal conference and the consultative bodies established the clergy and the laity.[187] One of the limits designed is seen in

[184] CIC/1983, Can.127 §§1-3.

[185] *Lumen Gentium*, n. 21: "The holy synod teaches, moreover, that the fullness of the sacrament of orders is conferred by episcopal consecration, that fullness which both in the liturgical tradition of the Church and in the language of the Fathers of the Church is called the high priesthood, the acme of the sacred ministry."

[186] *Christus Dominus*, n. 8: "Bishops, as the successors of the apostles, enjoy as of right in the dioceses assigned to them all ordinary, special, and immediate power which is necessary for the exercise of their pastoral office, but always without prejudice to the power which the Roman Pontiff possesses…"

[187] Cf. E. CORECCO, *Canon Law and Communio: Writings on the Constitutional Law of the Church*, Libreria editrice Vaticana, Vatican City 1999, p. 69.

his duty of the entrustment of a parish. He has to get the consent of the competent superior of the institute or society.

The bishop requires the consent of the competent superior before entrusting the parish either to the institute or the society. As De Paolis observes, "Since the bishop may not dispose of the religious insititutes and their members (Cann. 586, 593, 594), he cannot entrust a parish to an institute without the consent of the religious superior."[188] This requirement is mindful of the powers of the superiors over their members regarding works outside the institute pursuant to Can. 678 § 2 since inherent in the entrusting of a parish is the need for the superior to release a member to take up the office of *parochus*. Such permission, moreover, is foreseen in the requirement of 678 § 3 that in organizing works of apostolate of religious, the diocesan bishops and superiors are to proceed through mutual agreements. The Church is much aware of delicate nature of the relationship between religious instiutes or societies of apostolic life which at times can an experience of fruitful collaboration and at times be of tension and competion therefore the legislator has provided in several instances provisions which foster and safeguard this relationship. For instance, Can. 586 calls on ecclesiatical authority to acknowledge and respect the autonomy which each institute enjoys especially of governance. This autonomy which expresses the principle of subsidiarity, does not in any way imply an absolute and exlusive self directing manner of proceeding but a healthy balance between the exercise of governance by the internal authourity within the limits provided by the law and leaving those matters which are remiited to the eclessiatical authority (Can. 585).

The Code does not specify who the competent superior is; this is determined by the constitutions of the institute. The superior must always be a major superior, either the general or

[188] Cf. V. DE PAOLIS, "Schema of an Agreement for the Assignment of a Parish to Religious," in *Consecrated Life*, Vol 12/1 (1987), p. 220.

the provincial (Can. 620), or persons of equivalent authority. The implication is that the care of souls, even if it must be confided to a pastor, a priest member of the institute, is the responsibility of the institute, and, therefore, of the superiors, who are answerable to the bishop since the care of souls remains subject to the diocesan bishop (Can. 678, §1). The agreement is made between the diocese and the institute.[189]

2.3.4 Entrusting A Parish as Solely a Prerogative of a Diocesan Bishop

The Diocesan bishop canonically establishes parishes. A parish is a portion of a diocese under the authority of a priest legitimately appointed to secure in virtue of his office for the faithful dwelling therein. For a parish to be formed there must be a certain body of the faithful over whom pastoral authority is exercised. The faithful become parishioners by acquiring a domicile or quasi-domicile within the territory.[190] Travellers, however, may address themselves to the parish priest of the locality, though without detriment to the rights of their own pastor. Certain parishes coexist with others in the same territory, the respective parishes being distinguished by rite or nationality.

The diocesan bishop is the only one empowered to take the action of setting up, suppressing or notably altering a parish. He may not take such actions before he consults the presbyteral council on the matter (Can. 515 §2). The phrase "*Episcopus autem dioecesanus, non vero Administrator dioecesanus, de consensu competentis Superioris, potest paroeciam committere instituto religioso clericali vel societati clericali vitae apostolicae"* presents the parties concerned in the process of entrustment: on the one hand the diocese, represented by the bishop, and on the other hand the clerical religious institute or society of apostolic life, represented by the competent superior.[191]

[189] Cf. V. DE PAOLIS, "Schema of an Agreement for the Assignment of a Parish to Religious," p. 222.
[190] Cf. CIC/1983, Can. 102.
[191] Cf. V. DE PAOLIS, "Schema of an Agreement for the Assignment of a Parish to Religious," p. 218.

De Paolis observes that "entrustment of a parish is distinct from the nomination of a pastor. Entrustment is an act performed by the bishop representing a diocese and the religious superior representing the institute. By this act, the parish becomes a religious parish, entrusted, that is, to the institute as uch which undertakes the responsibility of the agreement between the diocese and the institute. The bishop takes the initiative, as he is competent to dispose of the parishes according to pastoral needs of his diocese."[192]

Can. 520 stipulates that it is only the diocesan bishop and not the diocesan administrator who can entrust a parish to religious institutes and societies of apostolic life. When a diocesan see becomes vacant and the Apostolic See does not appoint an Apostolic Administrator, the consultors must elect a diocesan admininstrator within eight days of receiving notice of the vacancy (Can. 422, §1). Once elected, a diocesan administrator is bound by the obligations and possesses the power of a diocesan bishop, excluding those matters which are accepted by their nature or by the law itself (Can 427, §1).

The exclusion of the diocesan administrator is based on the principle of Can. 428 §1. "*Sede vacante nihil innoventur.*" (When the see is vacant there are to be no innovations). While the diocesan administrator has all the powers of the diocesan bishop, Can. 428, §1 states that nothing is to be altered during the vacancy and there is to be no innovations. The assignment of a parish to a religious in view of the complications involved is considered an innovation.[193] The diocesan administrator is holding power temporarily. Temporary provisions need to be made for the spiritual care of persons until the appointment of the new bishop, who then will make the major decisions. All who govern the diocese temporarily are specifically forbideen to do anything which could be prejudicial to the diocese or episcopal rights. Diocesan administrator is, therefore, to maintain the

[192] Cf. V. DE PAOLIS, "Schema of an Agreement for the Assignment of a Parish to Religious", p. 220.
[193] Cf. V. DE PAOLIS, "Schema of an Agreement for the Assignment of a Parish to Religious," p. 218.

status quo of the diocese until a new diocesan bishop is appointed and takes possession of the diocese.[194]

S. Antonysamy refers to the principle in the modern civil law that if an agent or representative enters into contract with a third party, he creates rights and duties directly between the principal and the third party, and himself incurs neither. He sees this principle to be applicable in the case of written agreement of this canon. So the vicar general or Episcopal vicar or any other person empowered by the diocesan bishop for the matter, and the competent superior or individual religious with the consent or with the delegated power of major superior in accord with the proper law of the institute, can very well constitute the competent party standing for juridical person of the diocese and religious institute.[195]

According to Can. 427 § 1, the diocesan administrator has the obligations and powers of a diocesan bishop, except for those which are excluded by the nature of the matter or by the law itself.[196] Some of the acts excluded from his powers by law itself include: approving diocesan associations of the faithful (Can. 312, § 1, 3º), conferring a canonry in places where canons exist in cathedral or collegial churches (Can. 509 § 1), entrusting a parish to a clerical religious institute and clerical society of apostolic life (Can. 520 § 1), and removing the judicial vicar and adjutant judicial vicars (Can.1420 §5). It is therefore to be concluded that it is only the diocesan bishop and

[194] Cf. J.A. RENKEN, "Commentary on Particular Churches and their Groupings (Cann. 368-572)", p. 556.

[195] Cf. S. ANTONYSAMY, *Contracts between a Diocesan Bishop and a Major Superior, Practical Guidelines*, St. Peter's Pontifical Institute, Bangalore 2019, p. 45.

[196] Several acts are excluded from the powers of a diocesan administrator by law itself. A diocesan administrator can never perform the following acts; approving diocesan associations of the faithful (Can. 312 § 1, 3º), conferring a canonry in places where canons exist in cathedral or collegial churches (Can. 509 § 1), entrusting a parish to a clerical religious institute and clerical society of apostolic life (Can. 520§1), and removing the judicial vicar and adjutant judicial vicars (Can.1420 § 5). a diocesan administrator can perform the following acts only with the consent of the college of consultors: to remove the chancellor and other notaries (Can. 485), to issue dimissorial letters for ordination, but never to those who have been denied orders by the diocesan bishop (Can. 1018). He can grant excardination, incardinaion or even permission to move to another particular church, only after the see is vacant for one year and with the consent of the college of consultors (Can. 272). He can name pastors only after the see has been vacant for one year (Can.525, 2º).

the competent superior who can enter into a written agreement when entrusting a parish to a clerical institute unless they have delegated the power. This is because when the See is vacant, the diocesan administrator cannot entrust a parish. Soler explains the application of the principle of *sede vacante nihil innovetur:*

> It seems that the diocesan administrator must, by virtue of this principle, seek to have everything function and continue to be decided in the same way that it was usually done when the See was occupied. That is, in all matters- be they pastoral, governmental, canonical etc.-the administrator must bear in mind that his functioin is to provisionally guarantee the continuity of the governance of the diocese, and that it is not appropriate for him to govern with an overly personal style.[197]

2.3.5 Clerical Religious Institute and Clerical Society of Apostolic life

Can. 520 talks of entrusting a parish to a Clerical Religious Institute and Clerical Societies of Apostolic Life. Each Institute of consecrated life is a unique being which can be identified by a set of personal traits or distinctive identity derived from the Holy Spirit. Can. 607 §1 defines the state of religious life as consecration of the whole person, while § 2 and § 3 specify the distinctive characteristics of religious life as: consecration by means of profession of public vows of evangelical counsels of chasity (Can. 599), poverty (Can. 600) and obedience (Can. 601). They also live fraternal life in common (Can. 602) and public witness which entails separation from the world (Can. 607 § 3).

There are different forms of consecrated life which are approved by the Church. These include: Religious institutes (Cann. 607-709), secular institutes (Cann. 710-730), and societies of Apostolic Life (Cann.731-746), Hermits (Can. 603) and the Order of Consecrated Virgins (Can. 604). A religious institute is a society, an organized group of persons with special nature, spirit and end. When canonically erected, a religious institute becomes a public juridical person in which members according to their proper law, pronounce public vows, either perpetual or temporary

[197]Cf. V. DE PAOLIS, "The Apostolate of Institutes," in A. MARZOA *et al*., *Exegetical Commentary on the Code of Canon Law*, Vol. II/2, Wilson & Lafleur Limitée, Montréal 2004, p. 918.

which are to be renewed, however, when the period of time has elapsed, and lead a life of brothers or sisters in common.[198]

Societies of apostolic life constitute that form of consecrated life in which members without religious vows, pursue the apostolic purpose proper to the society and, leading a life in common as brothers or sisters according to their proper manner of life, strive for the perfection of charity through the observance of the constitutions. Among them, there are those in which members assume the evangelical counsels by some bond defined in the constitutions.[199] Such a bond may be a vow, a promise, an oath, or a written contract where the constitutions state the more specific manner in which they are to be observed.[200]

Societies of Apostolic Life can be clerical or lay, male or female. In the CIC/1983, societies of apostolic life do not come under the title of religious institutes, not even institutes of consecrated life (Cann. 731-746), although they are "comparable" to institutes of consecrated life (Can. 731§1). Particularly applicable to societies of apostolic life are the canons on the distinction between clerical and lay institutes ((Can. 588), of Pontifical and Diocesan right (Can. 589), on the authority of superiors (Can. 596) as well as the norm concerning their autonomy and dependence on bishops (Can. 738).

Can. 588 brings a distinction between clerical and lay institutes. An institute is said to be clerical if by reason of the purpose or design intended by its founder or in virtue of legitimate tradition, it is under the governance of clerics, assumes the exercise of sacred orders and is recognized as such by ecclesiastical authority.[201]An institute is called lay if, in accord with the purpose of the founder and or legitimate tradition, its end or function does not include the exercise

[198] CIC/1983, Can.607 § 2.
[199] CIC/1983, Can.731§§ 1-2.
[200] Cf. J.A. RENKEN, "Commentary on Particular Churches and their Groupings (Cann.368-572)," p. 894.
[201] CIC/1983, Can. 588 § 2.

of sacred orders and it is recognized as lay by the ecclesiasitical authority.[202] If the spiritual heritage of an institute does not include the exercise of sacred orders then the institute is recognized by the Church as a lay institute (Can. 588 § 3).

In Can. 520, the parish is entrusted to a religious institute. This word "*entrusted*" is the same that is used of the *parochus* in Can. 515 §1. While the institute is not the parish priest, it has a responsibility for the parish, not only in the moment of presenting a priest to the bishop for appointment, but also in ensuring that the parish is well served by its pastor. One should note that it is still possible for the bishop, with the consent of the superior, to appoint, in accordance with Cann. 681 – 682, a religious priest as a parish priest without entrusting the parish to the institute. In this case the responsibilities of the religious superior are considerably less, and are essentially confined to Can. 678 §§ 2-3: to ensure that the religious is faithful to the discipline of the institute, and that the superior and the bishop act by way of mutual co-operation.

The possibilities of assigning a parish are limited to clerical institutes even though they may be merely of diocesan right. This possibility exists with reference to a clerical institute because the members receive the order of priesthood. Bearing in mind that when a parish is entrusted to a religious institute the pastor must be a religious of that institute, there can be no question of entrusting a parish to a nonclerical institute.[203] The phrase thus specifies merely a clerical religious institute without adding any other distinction. The possibility is open to all clerical religious institutes, monastic, conventual or apostolic. This norm is, however, neither exhaustive nor exclusive since it is silent on other institutes of consecrated life such as secular institutes, personal prelatures. What this canon does not cover is not prohibited but such possibilities can be determined according to Can. 681.

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[202] CIC/1983, Can. 588 § 3.

[203] Cf. V. DE PAOLIS, "Schema of an Agreement for the Assignment of a Parish to Religious," p. 219.

The parish entrusted to a religious institute becomes a religious parish in the sense that the religious institute has the responsibility in keeping with the terms of agreement made with the bishop. The individuals who direct the parish do so in the name of and for the institute. This is different from the case where a parish is confided to a religious alone according to Motu Proprio *Ecclesae Sanctae*[204] and the 1983 Code of Canon Law.[205] In this case, a religious, because of his personal qualifications is assigned to direct the parish. The institute is not involved by virtue of its charism. In this instance, the parish is not religious but diocesan in the full sense of the term and does not belong to an individual religious alone.

2.3.6 A Church Belonging to an Institute or A Society

The expression *eam erigendo etiam in ecclesia instituti aut societatis* (even by erecting it in a church of the institute or society) implies that members of clerical institute have the right to a Church. The entrusting can be by erecting the parish in a church of the institute or a society. This kind of church is foreseen in Can. 611 § 3. The law permits clerical institutes and societies to have a church with the permission of the diocesan bishop in accordance with Can. 1215 §3. This bishop is also to approve the exact site of this church.

This situation where a parish is erected in the Church and makes use of the buildings belonging to the institute must be taken into consideration in making the agreement especially in the financial arrangements.[206] Often clerical religious are entrusted with a parish Church, and waive this right. Such clerics would need faculties for hearing confessions and for assisting at marriages. They should observe any requirements of particular law with regard to preaching and liturgical laws as well as respect for parochial functions.[207] It is important that the consent of the

[204] Cf. *Ecclesiae Sanctae*, n. 33 § 2.
[205] CIC/1983, Can. 682 § 1.
[206] Cf. V. De PAOLIS, "Schema of an Agreement for the Assignment of a Parish to Religious", p. 136.
[207] CIC/1983, Can. 611, 3º.

bishop be most clear regarding any conditions or limitations placed on the works proper to a religious institute.

2.3.7 A Parish Entrusted to One Presbyter as Its Pastor

The notion of the parish priest (*parochus*) as the proper pastor (*pastore*) of a parish under the authority of the diocesan bishop is given clearly in the 1983 code under Can. 519 which states that;

> *Parochus est pastor proprius paroeciae sibi commissae, cura pastorali communitatis sibi concreditae fungens sub auctoritate Episcopi dioecesani, cuius in partem ministerii Christi vocatus est, ut pro eadem communitate munera exsequatur docendi, sanctificandi et regendi, cooperantibus etiam aliis presbyteris vel diaconis atque operam conferentibus christifidelibus laicis, ad normam iuris.*

The term proper denominates one who acts in the proper name of the power of governance to distinguish it from the person who acts vicariously.[208] The parish priest is considered the 'proper pastor' because he exercises pastoral care over the community of the faithful entrusted to him because of his sacramental participation in the pastoral ministry of Jesus Christ and also because of the office that he holds.[209]

The essential prerequisites for being appointed parish priest is that the individual must have been elevated to the order of priesthood according to Can. 453 §1 and must be in full communion with the Church (Can. 149 §1). The parish exists for the care of souls and therefore the office of the parish priest has the principal duty of fulfilling this purpose. It is thus of paramount importance that the office of a parish priest be conferred to a person who has been ordained to Holy Orders (Can. 521 §1). For the validity of nomination one has to be in sacred order of priesthood. The deacon or a lay person to whom the pastoral care of the parish has been entrusted according to

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[208] Cf. D. MOGAVERO, Il Parroco e I Sacerdoti Collaboratori, *in La Parrocchia e le sue Strutture*, Bologna, 1987, p. 121.

[209] Cf. J. A. MARQUES, El concepto de pastory function pastoral en el Vaticano II, *in Ius Canonicum*, 13 (1973), pp. 13-19.

Can. 517 §2, cannot call themselves as the parish priest or the proper pastor.[210] The parish priest must be a physical person and not a juridical person (Can. 520 §1), he is to be outstanding in sound doctrine and uprightness, endowed with zeal for souls and other virtues and qualities required by common law and particular law for the good of souls (Can. 521 §2).

The parish priest is the legitimate pastor of the local community and his appointment to this office belongs to diocesan bishop who is free to confer it to anyone unless someone possesses the right of presentation or election. The diocesan bishop is to appoint a *parochus* or his canonical equivalent in each parish (Cann. 150-151). Can. 523 stipulates that the provision of the office of *parochus* belongs to the diocesan bishop who confers the office by a singular decree, which is a public juridic act of executive power of governance (Can. 157).

Conferral is said to be free when it is done or made directly by the ecclesiastical authority and is not juridically dependent on any previous manifestation of the will.[211] If the priest is a member of a religious institute or is a member of a society of apostolic life, then either the priest is to be presented by his religious superior or the religious superior gives a written consent to the appointment of the priest before the diocesan bishop can appoint the priest as a pastor.[212]

The taking possession of an office and placement in possession of the office ends the process of canonical provision of the office of pastor. It is regulated in particular law that this act may take place only after the decree of nomination has been received and is necessary for the valid exercise of the authority related to the office (Can. 527, § 1). According to the Code, a pastor is placed in possession of the office by the local ordinary or a priest delegated by him (Can. 527, §

[210] Cf. P. VALDRINI, Ecclesiastes et ministerialitas missionis Christefidelis, *in Periodica De Re Canonica*, 87 (1998), p. 539.
[211] CIC/1983, Can. 148.
[212] CIC/1983, Can. 682 § 1.

2). The lawfulness of the exercise of parochial functions begins at the moment when the formal possession of the office is taken.[213]

2.3.8 A Parish Entrusted to Several Priests (in Solidum)

"When circumstances require it, the pastoral care of a parish or of several parishes together can be entrusted to several priests in solidum provided that one fo the priests is to be the coordinater of the pastoral care to be exercised and answer to the bishop for it."[214] The canon brings a case where the pastoral care is entrusted jointly to various priests. It states: *"hac tamen lege ut unus presbyter sit paroeciae parochus, aut, si cura pastoralis pluribus in solidum committatur, moderator, de quo* in Can. 517, § 1." This part of the canon states a very specific condition that modifies the juridical meaning of the prior situation: there must always be a priest to be the parish priest or the moderator, if the formula *in solidium* of Can. 517 § 1 is adopted. The term '*solidum*' (jointly) means that, each member of the group operating in *solidum* is personally responsible to see to it that all the obligations of the group are fulfilled. Each of them personally has all of the rights arising from the obligations of the group and membership of the group. It is required that only one of the priests be appointed parish priest. The only pastor, appointed according to the canon will be the moderator (Can. 517§1) and who will be responsible for the management of the parish or parishes entrusted to the group.

This situation shows that what is entrusted to the institute is no longer the office of parish priest, which must always be held by a priest, but the parish, and more specifically, the obligation of assuring that the pastoral care of the parish is well served. It is a fully juridical obligation, which

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[213] Cf. G. A. KELLY, *A Pastor's challenge: parish leadership in an age of division, Doubt, And Spiritual Hunger*, Our Sunday Visitor, Indiana 1994, p. 287.

[214] CONGREGAZIONE PER IL CLERO, Instruzione La Conversione Pastorle della Comunita parrocchiale al Servizio della Missione Evangelizzatrice della Chiesa, Libreria Editrice Vaticana, Citta del Vaticano, 2020, p 44.

is accompanied by appropriate rights to accomplish it, customarily including the right of presentation of the priest who carries out the pastoral care.[215]

This solution, in which the institute presents a priest to the bishop for appointment as pastor (or moderator of a team in *solidum*)[216] gives religious parish priests the full dignity of their role as pastors, which they genuinely exercise as parish priests and not as mere "vicars."[217] The Schema of an agreement stipulates that:

> The competent religious superior assumes the obligation of assigning to the parish a pastor, one or more vicars, full or part-time. The religious destined to work in the parish remain full-fledged members of their religious institute. Their assignment and their transfer are regulated by the constitutions of the institute. They enjoy a certain stability, in case of transfer, the concrete pastoral needs inherent in the care of souls will be taken into consideration.[218]

It remains true, nonetheless, that they do so in the name and on behalf of the institute, to which the parish has been entrusted. The priest appointed then is accountable to both the diocesan bishop and his superior, either of whom can remove him without the other's consent.[219] Since priests *in solidum* are equivalent in law to pastors, their qualifications, powers, obligations are the same as those specified for pastors. De Paolis, contends that there could be a coincidence in which the religious community coincides with the pastoral community. The coincidence of the body of priests with the religious community is even more accentuated if the superior of the community is the pastor of the parish and the pastoral care of the parish was given *in solidum*. De Paolis observes this as having advantage of guaranteeing perfect harmony, between the demands of religious life and pastoral life at least theoretically. He, however, notes that such a situation may occasion dangers, for instance a confusion of roles and negligence of the demands of religious life.[220]

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[215] CIC/1983, Can. 682 § 1, *Si de officio ecclesiastico in dioecesi alicui sodali religioso conferendo agatur, ab Episcopo dioecesano religiosus nominatur, praesentante vel saltem assentiente competenti Superiore*.

[216] CIC/1983, Cann. 523, 525, 1º, 682 § 1.

[217] Under the former Code, a religious parish priest was legally a vicar of the institute; see CIC/17, Can. 471.

[218] Cf. V. DE PAOLIS, *Schema for an Agreement for the Assignment of a Parish to Religious,* p. 220.

[219] Cf. CIC/1983, Can. 682 § 2; Can. 538, § 2.

[220] Cf. V. DE PAOLIS, *Schema for an Agreement for the Assignment of a Parish to Religious,* p. 225.

The code directs attention to the corresponding requirements for pastors such as possible term of office, appointment (Can. 524), taking possession of the parish (Can. 542, 3º), profession of faith (Can. 833, 6º) and inception of duties. The entire team is required to make the profession of faith, but the moderator is singled out in the investiture ceremony (Can. 542, 3º). The functions and duties of priests *in solidum* are equivalent to those which pertain to pastors.[221] These include preaching, instructing, and celebrating the sacraments,[222] meeting human concerns and collaborating with the bishop as well as with their parishioners,[223] offering the assigned Mass for the people,[224] and representing the parish in juridic affairs.[225] They would have by law the general delegation needed by law to enable them fulfill some of the above obligations. Because they act as one (*in solidum*), there should be a consensus among all the team members regarding their respective duties and functions so that these are exercised in harmony.

Since every team member is equivalent to a pastor, the provisions of Can. 538 apply regarding removal, transfer, resignation, retirement and expiration of term. Can. 544 provides that if any member of the group ceases from office or becomes incapable of functioning, the parish does not become vacant. The bishop is to fill the vacancy, but if the priest moderator is the one to be replaced, the office is automatically assumed by the other team member or the older by reason of assignment if there are two. If the remaining team members were all equal in terms of the length of their assignment, the oldest of the group in age would be in charge until another moderator is appointed.[226]

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[221] CIC/1983, Can. 543.
[222] CIC/1983, Can. 529.
[223] CIC/1983, Can. 530.
[224] CIC/1983, Can. 534.
[225] CIC/1983, Can. 532.
[226] CIC/1983, Can. 542 § 1.

2.3.9 Entrusting A Parish in Perpetuity or for a Specific Predetermined Time

For the fulfillment of the norm prescribed in Can. 520 §1, the special system of governance may be established either in perpetuity or for a specific predetermined time and in either case it is to be made by means of a written agreement between the diocesan bishop and the competent superior of the institute or society; the new norm allows for assignment in perpetuity.[227] Can. 520 § 2 envisages only perpetual assignment or for a determined period of time and how the assignment may be cancelled, renewed or modified. Assignment in perpetuity is the new form in place of the complete union (*iure pleno*) mentioned in the CIC/1917. The permission of the Apostolic See is no longer necessary.[228] If the entrustment is perpetual, or long-term, a general clause should include possible future institutions, and possibilities for ministry.

Can. 520 § 2 reads:

> *Paroeciae commissio, de qua in § 1, fieri potest sive in perpetuum sive ad certum praefinitum tempus; in utroque casu fiat mediante conventione scripta inter Episcopum dioecesanum et competentem Superiorem instituti vel societatis inita, qua inter alia expresse et accurate definiantur, quae ad opus explendum, ad personas eidem addicendas et ad res oeconomicas spectent*.

A pastor according to Can. 522 must possess stability of office for the good of souls.[229] As a rule therefore, a pastor is to be appointed for an indefinite period of time. The rule, however, admits an exception: if the conference of bishops has permitted it by a decree,[230] the diocesan bishop may appoint a pastor for a specific period of time.[231] Stability in the pastoral office has always been the norm so that the pastor could exercise the parochial office, get to know his people well, and receive adequate sustenance.

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[227] The term "Permanent" (*in perpetuum*) in Church law means that the assignment is irrevocable until such a time as compentent authority or one's successor(s) determins otherwise. Hence, perpetuity is determined by the will of the compentent superior.

[228] Cf. V. DE PAOLIS, "Schema of an Agreement for the Assignment of a Parish to Religious," p. 241.

[229] *Christus Dominus*, no. 31.

[230] Cf. L. SABBARESE, *Canon Law. An Overview*, Urbaniana University Press, Rome 2017, p. 161.

[231] CIC/1983, Can. 522.

The CIC/1917 had legislated that pastors should have stability, but they could be removed according to the norm of law. Not all pastors enjoyed the same stability. Some were designated as irremovable (enjoying greater stability) and others as removavle (with less stability). Since pastors of either category could be removed, there was technically no such thing as a true irremovable pastor. This provision was linked to the benefice system which envisioned in part the support of pastors. *Christus Dominus* called for the elimination of the distinction between irremovable and removable pastors, and the simplification of the procedure to remove or transfer pastors for the good of souls.[232] The CIC/1983 code has no distinction between irremovable and removable pastors. All pastors in the CIC/1983 enjoy the same kind of stability [233]in office and are subject to the same removal process.[234]

According to Can. 193 §1 such an individual who has been appointed to an office for an "indefinite period" cannot be removed from an office except for grave reasons and according to the procedures established by law.[235] If a pastor is appointed for a definite term, then he loses the office *de iure* when the period of time for which he was appointed lapses (Can. 184 §1) and from the moment the competent authority communicates to him that he has lost office by the expiration of the term (Can 186).

Stability of office also depends on the pastor himself, his health, and his age. A term of office whether indefinite or a definite period can also be brought to a close by a pastor who chooses to resign, but he is required to have a just cause of resigning. A pastor's resignation however does not become effective unless it is accepted by the diocesan bishop.[236] In accord with Can. 522,

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[232] *Christus Dominus*, n. 31.
[233] CIC/1983, Can. 522.
[234] CIC/1983, Cann. 1740-1747.
[235] Cf. J.T. MARTIN DE AGAR, *A Handbook on Canon Law*, Filiale de Communications Quebecor Inc, Montreal 1999, p. 206.
[236] Cf. M. HACK. *Stability of the office of the Parish Priest in the 1983 Code of Canon Law*, St. Paul University Press, Ottowa 1988, p. 43.

diocesan bishops may appoint pastors to a six-year term of office. The possibility of renewing this term is left to the discretion of the diocesan bishop.[237]

2.3.10 The Required Written Agreement between Competent Superior and the Diosecan Bishop

Can. 520 prescribes that the assignment is to be made by means of a written agreement which among other matters is to determine expressly and accurately define (though others are not excluded): *quae ad opus explendum, ad personas eidem addicendas et ad res oeconomicas spectent,* (the work to be accomplished, the persons to be assigned to the parish, and the financial arrangements). Ayuban explains this memorandum of agreement as a bilateral act in which the diocesan Bishop confers to a clerical religious institute or society of apostolic life the obligation to pastorally take care of the parish and the institute receives such faculty and commits itself to fulfill the obligations.[238] In the context of the bishop-religious relationship, Andres describes a written agreement ("*conventio scripta*") as a bilateral contract in a broader sense, made between the bishop and the competent religious superior, which sets forth norms of personal nature out of which there arise certain mutual obligations and rights. It is to establish, regulate or dissolve particular modes of bond between the bishop and religious in question.[239]

Antonysamy contends that a written agreement refered to in Can. 520 and Can. 681 § 2 is not strictly speaking, a legal contract canonized by CIC/1983 Can. 1290 and CCEO Can. 1034 and as such it cannot, and does not create obligations and rights in civil law. Consequently, there is no

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[237] Cf. Kenya Conference of Catholic Bishops, Comp., n. 5.

[238] Cf. E.L. AYUBAN, *Canonical Issues Related to Religious Life*, Claretian Communications Foundation, Inc., Quezon City 2008. p. 55.

[239] Cf. D.J. ANDRES, *El Derecho de los Religiosos*: *Comentario al Codigo*, 2nd ed., Publiciones Claretianas, Madrid 1983, p. 552-553.

question of seeking commutative justice before the civil court, nor file a suit in the court to solve the litigations arising form the issues of agreement.[240]

The provisions of Cann. 520 § 2 and 681 § 1 refers to a written agreement or contract which is a juridical instrument canonically institutionalized for the benefit of both bishop and religious in the apostolate of the diocese and for assuring the reciprocal rights and obligatiosn involved in it. According to CIC/1983 Can. 37, the administrative acts which concern external forum is to be effected in writing. The 1969 Sacred Congregation for Evangelization of peoples prescribed that a written agreement be made between the local ordinaries and missionary institutes of societies when undertaking mission works in a particular Church.

After the Second Vatican Council, *Ecclesiae sanctae* I, in 1966 required a written agreement between the local ordinary and the competent superior of the institute for a work of apostolate entrusted to any religious institute by the diocesan bishop.[241] Later, *Mutuae relations* also stipulated the requirement of the written agreement between the local ordinary and the competent superior of the institute for the apostolates entrusted to the religious by the bishop.[242] This agreement, the canon prescribes, should be in writing, not necessarily for the validity of the agreement (Can. 10), but because the written form implies without doubt a legal obligation based on valid reasons. "The purpose of this written agreement is not only to provide a permanent proof of the contract or to avoid lawsuits in the future. More importantly, it has a more profound meaning for it is a recognition of the unique gift of God to the Church, which are the institutes of consecrated life and societies of apostolic life. It also demonstrates the intention to willingly and faithfully take

[240] Cf. S. ANTONYSAMY, *Contracts between a Diocesan Bishop and a Major Superior, Practical Guidelines*, St. Peter's Pontifical Institute, Bangalore 2019, p. 44.
[241] Cf. *Ecclesiae Sanctae* I, 30, 1.
[242] Cf. *Mutuae Relationes*, n. 57, b.

care of such gift, safeguarding its identiy in the Church, be it guaranteeing the just autonomy of life (Can. 586)."[243]

Agreements once made stand on their own terms, without depending on the persons who stipulated them. To avoid misunderstandings and perhaps litigations, the agreement in writing is useful.[244] Agreement is a term much broader than a contract about financial arrangements. Can. 520 § 2, for that matter, mentions the elements of the agreement and speaks of "financial arrangements" as only one of the three to be determined.[245] The written agreement, therefore, should detail what precisely are the responsibilities of the parish for existing and possible future services within the parish: for example, chaplaincy to hospitals and retirement and nursing homes, existing and future schools (both Catholic and non- Catholic), prisons, tertiary institutions and other entities within the parish's territorial bounds.

A written agreement is required and is useful (not a must canonically) in other cases, especially when a religious house of an institute is erected in a diocese. Certain canons of CIC/1983 indirectly refer to such written agreements. Can. 612 speaks of the laws of foundation and the apostolic works for which a house was established. CIC/1983 611, 2º refers to conditions attached to the consent given by the diocesan bishop for the erection of a religious house as per CIC/1983 Can. 609. CIC/1983 Can. 790 § 1, 2º prescribes proper agreements between the diocesan bishop and the religious superior of an institute, when the religious work in mission territories. CIC/1983 Can. 801 concerning the school apostolate also stands for the desirability of written agreements. The making of a written agreement between the bishop of the mission-diocese and the institute engaged in the mission is prescribed in CIC/1983 Can. 790

[243] Cf. E.L. AYUBAN, *Canonical Issues Related to Religious Life*, p. 55.
[244] Cf. V. DE PAOLIS, "Schema of an Agreement for the Assignment of a Parish to Religious," p.135.
[245] Cf. V. DE PAOLIS, "Schema of an Agreement for the Assignment of a Parish to Religious," p. 135.

2.3.10.1 Work to be accomplished

With regards to the description of the apostolate and manner of its execution, the provision of CIC/1983 Can. 678 §1 (Can. 415 §1 CCEO) accords the Jurisdiction to the bishops over the religious in matters concerning the care of souls (*cura animarum*), the public exercise of divine worship and other works of apostolates. The agreement must define without ambiguity the type of ministry or apostolate which the bishop wants the religious to accomplish, how it is to be carried out concretely in the parish, the mission and goal of the work and the line of authority and responsibility expressly agreed upon. Accountability, evaluation and planning must also be added besides special conditions if any from the side of the bishop or of the superior. The works to be accomplished should express the charism of the institute.

2.3.10.2 Persons to be Assigned to the Parish

The clauses concerning persons to be assigned to the parish (*ad personas eidem addicendas*) pertains especially to the pastor and parochial vicar (s) who need the faculties of the diocese. In addition, the pastor needs formal confirmation by the diocesan bishop.[246] It would also specify the number of personnel and their qualifications to be assigned to the parish work, and whether any priests will be presented to the bishop for appointment by him as pastors in *solidum,*[247] or as parochial vicars.[248] Their rights and obligations, holidays, vacations, community prayer and retreat are to be included. It is useful to include the process of appointment and transfer. The appointment and the removal of the pastor and the parochial vicars shall take place according to Can. 682.

[246] CIC/1983, Can. 682.
[247] CIC/1983, Can. 517 § 1.
[248] CIC/1983, Cann. 547, 548 and 682 § 1.

2.3.10.3 Financial Arrangements

In the CIC/1917, religious community was entitled to receive the major portion of parish revenue.[249] The present CIC/1983 does not explicitate this matter. There is need, thefore, to clarify the assignment of revenues in the agreement. The financial arrangements vary, but could and should include the following: (1) investment and income are to be clearly dealt in the agreement; (2) The remuneration of the pastor, co-pastors in *solidum* and any *parochial vicars*; (3) The ownership of free offerings made by the faithful; (4) The diocesan taxes to which the parish is subject, and any exemptions from them; (5) The right of the religious congregation to hold special appeals in the parish for its own purposes, such as support of the missions, support of vocations promotion and the training of new religious, and any restrictions placed on such appeals without impinging on any established rights of the institute, such as the right of mendicant religious to quest.[250] (6) Arrangements for the use of buildings belonging to the diocese or the parish for the purposes of the institute; (7) The payment of rental to or by the institute for parish property used by the institute for its own purposes, or of property owned by the institute and used by the parish; (8) Arrangements in the event of the institute ceasing to serve the parish, for example, the terms on which the diocese might purchase the house adjoining the Church for use as a Presbytery, and any expectation that the diocese would be given "first option" for such a purpose; (9) The record-keeping obligation of the pastor in relation to sacraments conferred not only in the parish church but in other churches and chapels that might exist within the parish boundaries.

[249] CIC/1917, Can. 1423.
[250] CIC/1983, Can. 1265.

2.3.10.4 Other Matters

The canon obliges the three points to be expressely and accurately defined in the written agreement, it also reads 'among other things.'[251] This could mean that the list given in the canon is not exhaustive. The agreement can contain further matters as desired by the bishop and the religious superior according to each type pf agreement and circumstances of each case.

While it is not essential, then, it might serve to reduce possible confusion if the contract included certain rights and obligations which the institute possesses by law or privilege. These could include, for example, the right of mendicants to quest for alms, the right of the institute to establish within the Church entrusted to it the associations attached to it, and the obligation to obtain the written permission of the bishop to establish such associations elsewhere in the diocese.[252] The obligations of Can. 678 could well be recalled, namely that "the religious are subject to the power of bishops concerning the care of souls, the public exercise of divine worship, and other works of the apostolate"[253], saving the right of the institute to observe any liturgical forms proper to them, and that "in exercising an external apostolate, religious are also subject to their proper superiors and must remain faithful to the discipline of the institute."[254] Finally the agreement carries the date on which it will come into effect, the duration, and the signatures of the competent authorities of both the parties with at least two witnesses from both sides.[255]

[251] CIC/1983, Can. 520 § 2., Can. 681 § 2.
[252] CIC/1983, Can. 312 § 2.
[253] CIC/1983, Can. 678 § 1.
[254] CIC/1983, Can. 674 § 2.
[255] Cf. S. ANTONYSAMY, *Contracts between a Diocesan Bishop and a Major Superior, Practical Guidelines,* St. Peter's Pontifical Institute, Bangalore 2019, p. 31.

2.4 Other Related Norms on Entrustment of Parishes to Clerical Religious Institutes and Clerical Societies of Apostolic Life in the 1983 Code of Canon Law

The *Codex Iuris Canonici* is a system of norms which are interrelated to one another. This interrelation helps in the proper interpretation and application of individual norms. The interpretation and application of Can. 520 on the entrustment of Parishes to clerical Religious Institutes and clerical societies of apostolic life is directly and indirectly affected by other norms related to it. Some of the norms impacting on Can. 520 §1 include: Can 510 on union of parishes to chapters of Canons. The 1917 Code provided that a parish could be joined fully (*pleno iure*) to the chapter which would technically be the pastor although one member of the chapter would function as a parochial vicar and provide ordinary pastoral care. Can. 510 prohibits this kind of union.

Can. 517 §1 on entrusting of parishes to several priests *in solidum,*is a new canon in the CIC/1983 code.[256] It permits the diocesan bishop, when circumstances require it, to entrust the pastoral care of one or more parishes to several priests *in solidum* (jointly), one of whom is the moderator of the group in the exercise of the pastoral care. Can. 611, 3° stipulates that the members of the clerical institute have the right to a church to which a diocesan bishop must agree to the site.

Can. 520 § 2 has related canons which include Can. 522 on stability of the office of the Pastor. This is a development for the CIC/1917 which had legislated that pastors should have stability, but they could be removed according to the norm of law. Some pastors were designated as irremovable and others as removable. The CIC/1983 does not distinguish between irremovable and removable pastors. Now all pastors enjoy the same kind of stability in office subject to the

[256] In the CIC/1917 code each parish could have only one pastor who had the actual care of souls: any contrary custom was reprobated and any contrary privilege whatsoever was revoked (CIC/460 § 2). A similar norm is found in Can. 526 §2 which explains that a parish may have only one pastor or one moderator according to the norm of Can. 517 §1.

same removal process. Cann. 681-682 show a relationship with Can.520 § 2 as they expound on the Works Entrusted to Religious (*opera concredita*), (Can. 681§1), Written Agreement or Contract for entrustment (Can. 681 § 2), Appointment of A Religious to an Ecclesiastical Office (Can. 682 § 1) and Removal of a religious from the office (Can. 682 § 2).

2.5 Related Canons on Entrustment of Parishes to Clerical Religious Institutes and Clerical Societies of Apostolic Life in the Code of Canons of the Eastern Churches

The Entrustment of Parishes to Clerical Religious Institutes and Clerical Societies of Apostolic Life canont be limited to the 1983 Code of Canon law, and therefore, this section aims at highlighting other norms which explicate the entrustment of parishes to clerical religious institutes in the *Codex Canonum Ecclesiarum Orientalium* which was promulgated by Pope John Paul II with the Apostolic Constitution *Sacri Canones* on 18 October 1990.[257] It acquired the force of law on I October 1991.[258] The CCEO treats the matter of entrustment of parish in Title VII entitled, Eparchies and Bishops, chapter one, Organs assisting the Eparchial Bishop in the Governance of the Eparchy, article V, on Protopresbyters. The important canons in this study which are related to Can. 520 are Cann. 281, 282 and 284.

CCEO/1990, Can. 281 § 2 states that a juridic person cannot validly be a pastor. Paragraph one of the same canon explains that the pastor is to be a presbyter to whom the care of souls is entrusted as their proper shephered.[259] The code accords the eparchial bishop but not the administrator of an eparchy, the right to erect a parish in the church of the institute or society after consulting the presbyteral council and with the consent of the major superior of a religious institute

[257] Cf. JOHN PAUL II, Constitutio Apostolica Sacri Canones, 18 Octobris 1990, in *AAS.* LXXXIII (1991), pp.1033-1044.

[258] Cf. JOHN PAUL II, Constitutio Apostolica Sacri Canones, p.1043.

[259] CCEO/1990, Can. 281 §§ 1-2.

or society of common life in the manner of religious.[260] Consequently, this erection must be done by means of a written agreement made between the eparchial bishop and the major superior of the religious institute or society of common life in the manner of religious. The agreement is to state precisely what parochial ministry is to be fulfilled, the person to be attached to the parish, the financial arrangements, and what are the rights and obligations of the members of the same institute or society in the church and what are those of the pastor.[261]

With regards to the appointment of the pastor and tenure of office, the provision of CCEO/1990, Can. 284 accords the Jurisdiction to the eparchial bishops to whom the naming of pastors solely belongs. The major superior is to propose a suitable priest of his institute to the eparchial bishop for the appointment with due regard to the agreement made. The pastor possesses stability of office; therefore, he is not to be named for a determined period of time unless there are special cases.[262]

Conclusion

This chapter has examined the juridic development of Can. 520, its formation journey, its meaning and relation to other canons in both the CIC/1983 and the CCEO/1990. The juridical *iter* of this canon elaborated on the legislative formation of the canon and how it developed from the CIC/1917 Can. 452 §1, the schemas of 1977, 1980, and 1982 until the time of its promulgation by His Holiness Pope John Paul II, on 25th January 1983.

From the exegetical analysis, Can. 520, which is a consequence of the new ecclesiological aspect of the parish as a community, prohibits the appointment of a juridical person as parish priest. The present canon grants the diocesan bishop and not the diocesan administsrator, the possibility

[260] CCEO/1990, Can. 282 § 1.
[261] CCEO/1990, Can. 282 § 2
[262] CCEO/1990, Can. 284 §§ 1, 2, 3.

of entrusting a parish to other kinds of juridical persons. Expressely mentioned are the clerical religious institutes and the clerical societies of apostolic life. This should be done by a written agreement between the diocesan bishop and the competent superior of the moral persons. The institute accepts responsibility for the pastoral care of the parish hence, the superior has an obligation to present suitable priests to the bishop for appointment throughout the term of the agreement and the institute has the responsibility to ensure that the care of the parish is being carried our properly in its name.

When circumstances require it, the pastoral care can be entrusted to several priests *in solidum* provided that one of the priests is to be the moderator of the pastoral care. The pastor(s) is thus responsible both to his superior and to the bishop for the proper exercise of his ministry. The institute itself is responsible to the bishop for the pastoral care and administration of the parish. Such a parish is, moreover, properly considered a religious parish.

The chapter has looked at some more related canons which have brought out the relationship between Can.520 and the entire Code. They highlight the union of parishes to chapters of Canons, entrusting of parishes to several priests *in solidum,* the right of the members of the clerical institute to have a church to which a diocesan bishop must agree to the site and stability of the office of the Pastor. Othere related canons expounds on the works entrusted to religious, written agreement, appointment and removal of a religious from the office.

On tracing the sources, the *iter* of the canon during the revision of the Code and its eventual promulgation in the present Code, the chapter has presented a deeper understanding of its text and the context. This has shed more light on the mind of the legislator. The next chapter will explore the practical application of the norms of Can. 520 in the Catholic Archdiocese of Kisumu, Kenya.

CHAPTER THREE

PRACTICAL APPLICATION OF THE NORMS OF CANON 520 ON ENTRUSTMENT OF PARISHES TO CLERICAL INSTITUTES IN THE CATHOLIC ARCHDIOCESE OF KISUMU-KENYA

Introduction

Evaluation of the practicality of Can. 520 in relation to the particular law of the Archdiocese of Kisumu and the proper law of the clerical religious institutes and societies of apostolic life is essential to this study. This chapter highlights and evaluates the extent to which universal canonical legislation on the entrustment of parishes to clerical institutes has been realized in the Catholic Archdiocese of Kisumu. It begins with a brief overview of the historical background of the Catholic Archdiocese of Kisumu. Then it explores some sampled Clerical Institutes who have been entrusted with parishes in the Archdiocese of Kisumu and their proper legislations. The chapter proceeds to study and evaluate the particular provisions and guidelines of the Archdiocese of Kisumu on entrustment of apostolates. The chapter also presents a comparative analysis of the provisions of the particular law from the Kenya Conference of Catholic Bishops (KCCB). Based on the foregoing, the chapter considers some underlining challenges related to the application of Can. 520 in the Catholic Archdiocese of Kisumu. Finaly, it proposes some practical canonical recommendations and suggestions on the topic.

3.1 The Judicial Status of the Catholic Archdiocese of Kisumu-Kenya

The Catholic Archdiocese of Kisumu is one of the Catholic dioceses in Kenya. Kenya is an African country situated in East Africa and took its name from the Kere-Nyaga (Mountain of Light), as the Kikuyu people call the 5,200-metre-high Mount Kenya. In the East, Kenya boarders on Somalia, in the north on Ethiopia and Sudan. Its neighbor in the west is Uganda and, in the

south-west, Tanzania, while the Indian Ocean washes its south-eastern coast.[263] The total population of Kenya as per the last census carried out in 2019 was 47,564,296. According to the same census, 9.7 million are catholics which accounts for 20.6% of the country's population.[264]

The evangelization undertaken by the Catholic Church began in Kenya with French Spiritans who opened a mission in Mombasa at the coast of Kenya in 1892. The pioneer missionaries in Western Kenya were the Society of St. Joseph of Mill Hill Missionaries. In 1894 they were entrusted with the Vicariate of the Upper Nile in which, as well as territories in Uganda, the west of Kenya was included.[265] In 1903, the Mill Hill Fathers (MHM) opened a mission in Kisumu, hence the foundation of what is now the Catholic Archdiocese of Kisumu. On July 25, 1925, the area covering Nyanza, Western, and North Rift Region was established as an Apostolic Prefecture of Kavirondo, still under the Apostolic Vicariate of Upper Nile in Uganda. It was put under its first Bishop Gorgonius Brandsman and was established on 15 Jul 1925 as Apostolic Prefecture of Kavirondo, on a territory split off from the then Apostolic Vicariate of Upper Nile in Uganda.[266]

On 27 May 1932, the prefecture became the Apostolic Vicariate of Kisumu and Brandsma its first bishop.[267] On 25 Mar 1953 it was erected as Diocese of Kisumu and on 21 May 1990 it was promoted as Metropolitan Archdiocese of Kisumu with the suffragan dioceses as Kisii, Homabay, Kakamega, Bungoma, Eldoret, Kitale and Turkana.[268] The Cathedral Archiepiscopal see is St. Theresa's Cathedral in Kisumu, Kisumu County. It is a juridical person and, therefore, it

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[263] Cf. J. DE ALBERT, *Mission and Politics in Eastern Africa, Dutch Missionaries and African Nationalism in Kenya, Tanzania and Malawi, 1945-1965,* Paulines Publications Africa, Nairobi 2000, p. 48.

[264] Kenya National Bureau of Statistics, https://www.knbs.or.ke.religious. (Accessed 28 December 2024).

[265] Cf. J. DE ALBERT, *Mission and Politics in Eastern Africa*, p. 51.

[266] Cf. J. BAUR, *The Catholic Church in Kenya, A Centenary History*, St. Paul Publications Africa, Nairobi 1990, p. 98.

[267] Cf. J. DE ALBERT, *Mission and Politics in Eastern Africa*, p.52.

[268] Cf. "Catholic Archdiocese of Kisumu," https://www.catholic-hierarchy.org/diocese/html> (20 September, 2024).

is a subject of rights and obligations which are according to its nature.[269] It is entrusted to a diocesan bishop's care,[270] to be nurtured by him, with the cooperation of the presbyterum and constitutes a particular Church.[271]

The diocese is located in the Western part of Kenya. It covers an area encompassing two county governemnts of Kisumu and Siaya with a square km of 4,616, (I,782 square miles) The total Catholic population according to the 2022 statistics is 2,159,850 which is 56.2% of the whole population within its jurisdiction,[272] with 78 diocesan priests and 42 religious priestss. The Catholic archdiocese of Kisumu is organized into 11 deanaries, made up of 64 parishes. The deanaries are Muhoroni, Nyabondo, Ahero, Kisumu Central, Kisumu East, Ojolla, Lwak, Bondo, Siaya, Aluor, and Rangala.

Fourteen parishes are entrusted to clerical institutes. These are: St. Joseph Ugunja and St John XXIII Rabuor (Consolata Missionary Institute), St Elizabeth of Hungary Nyadorera (The Religious Institute of the Little Work of Divine Providence), St. Kizito, Mutumbu and St Mathews Bar Ding (the Missionary Congregation of the Contemplative evangelizers), St John Paul II, Obambo (The Apostles of Jesus) St Pauls Kanyakwar, (The Order of Preachers) St. Dominic Kianja (OFM Capuchins), St. Peters Nanga (The Society of St Joseph of Mill Hill for Foreign Missions, commonly known as the Mill Hill Missionaries), St. Mary Gorrety Nyalenda (The Passionist Fathers), Sts Monica and Augustine Nyamasaria (The Order of St. Augustine), St Ignatius of Antioch Katolo (The Sons of St. Anne), St John the Apostle, Awasi (The Franciscan Missionaries of Hope) and St Benedict Tamu (The Order of St. Benedict)

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[269] Cf. CIC/1983, Can.113 § 2.
[270] Cf. CIC/1983, Can. 376.
[271] Cf. CIC/1983, Can. 369.
[272] Cf. "CATHOLIC ARCHDIOCESE OF KISUMU," https://www.catholic-hierarchy.org/diocese/html> (20 September, 2024).

3.2 Legislation on Entrustment of Parishes in the Convention and Agreement Documents of the Archdiocese of Kisumu

The bishop's legislative competence is a meaningful indicator of his legal-pastoral autonomy. In the diocesan church the legislative power belongs solely to the person of the bishop (CIC/1983 Can. 466) and cannot be validly delegated by him to another unless the law expressly provides otherwise (CIC/1983 Can. 135 § 2). The Catholic Archdiocese of Kisumu does not present a document such as directory, particular statutes or policy which directly legislates on the entrustment of parishes to clerical institutes in the Archdiocese. There are, however, conventions and agreements which have been drawn between the local ordinary and the clerical institutes entrusted with parishes. These conventions and agreements show some guidelines on entrustment of parishes and other apostolates to respective clerical institutes which have been entrusted with parishes in the Archdiocese. The purpose of these documents is to establish and to promote a fruitfull cooperation between the Ordinary of the Archdiocese and the Institutes, by defining their mutual rights and duties in order to ensure the real good of the people.[273] The guidelines enumerated in the convention documents include some which have been highlighted here below:

3.2.1 The Role of the Ordinary

The guidelines stipulate that the Archbishop is the head and the centre of unity of the archdiocesan apostolate and it is, therefore, his task to direct and coordinate all the apostolic activities in the Archdiocese. The agreement for the work of the clerical institute in the Archdiocese of Kisumu is entered into between the Archbishop of Kisumu and the competent

[273] Cf. ARCHDIOCESE OF KISUMU, *Convention between the Archdiocese of Kisumu and the Consolata Missionary Institute*, art. 2, Diocesan Archives, Kisumu 2019, p. 1.

superior of the institute,[274] to which the diocesan bishop confers on the institute the task of exercising the pastoral care and administration of the parish to the institute.[275]

The Ordinary achnowledges the religious superiors of the institutes through whom the cooperation of the institute with the Ordinary is regulated, fostered and guaranteed.[276] After consultation with the presbyterial council and the college of consultors of the Archdiocese, and with the consent of the competent superior, the Archbishop entrusts a parish to a clerical institute in accordance with the agreement made.

3.2.2 Agreements between Institutes and the Catholic Archdiocese of Kisumu

The Archbishop of Kisumu on behalf of the Archdiocese, enters into an agreement with the competent superiors of clerical institutes. In the agreements, the missionary institutes are free to express their charismatic identity with the witness of their lives, remaining faithful to the spirit of the institute in their pastoral activities, being particularly committed to detect, make known and alleviate the situations of poverty, suffering and misery around them. The parishes are entrusted to the institutes according to the rules set in Can. 520. The Parishes entrusted are to be run and animated by the Parish priest, who is the overall coordinator of the parish activities, according to the directives of Archbishop, to whom he must personally answer as regards the pastoral care of the faithful according to Can. 678. The Institutes entrusted with parishes exercise their ministry within the diocesan pastoral plan, in the fraternal collaboration with the diocesan clergy, following the spirit and style of the institute.[277]

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[274] CIC/1983, Can 681 § 2.

[275] CIC/1983, Can 681 § 1.

[276] Cf. ARCHDIOCESE OF KISUMU, *Convention between the Archdiocese of Kisumu and the Consolata Missionary Institutes,* p.1.

[277] Cf. ARCHDIOCESE OF KISUMU, *Convention between the Archdiocese of Kisumu and the Consalata Missionary Insitute,* p. 2.

3.2.3 Rights and Duties of the Members Assigned to the Entrusted Parish

The superiors of the Institutes commit themselves to assign at least two of their members on a full-time basis and to ensure their stability in as much as possible. The members, even though assigned to the entrusted parishes are to be considered full members of their institutes and both their activities and their reassignment are regulated by the constitutions of their institutes, by the Universal laws of the Church, and the policies of the Archdiocese. The assignment and removal of any of the members are regulated by Canon Law (Can. 682).[278]

The missionaries have a right to about four weeks of holidays every year, plus one week of their spiritual retreat, and the time needed to attend community meetings called by their competent superior. Every missionary in the parish will have one day every week in which he is free from pastoral duties. The institutes have the right to foster and recruit vocations of their own in the Archdiocese, so that each faithful may freely follow his way in answer to God's call. They shall diligently, however, foster vocations for the diocesan clergy and other religious institutes.[279] In promoting vocations, the institute shall have to conform to the regulations that the archbishop may direct to be followed in the Archdiocese.[280]

3.2.4 Respect for the Just Autonomy and Collaboration

The guidelines direct that the Ordinary is primarily responsible for all the pastoral work and for the running of the Archdiocese. The institute in giving their services, are obliged to observe the norms and the precepts issued by the Archbishop or the Episcopal Conference for pastoral and other activities, as well as for liturgical and ecclesiastical discipline. They are to follow the

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[278] Cf. ARCHDIOCESE OF KISUMU, *Convention between the Archdiocese of Kisumu and the Consolata Missionary Institutes,* p. 2.

[279] CIC/1983, Can. 385.

[280] Cf. ARCHDIOCESE OF KISUMU, *Convention between the Archdiocese of Kisumu and the Consolata Missionary Institutes,* p. 3.

directives of the Ordinary concerning the different tasks of the apostolate in obedience to and under the supervision of their religious superior. They should not implement on the entrusted parishes activities that affect the parishioners and parish without consultation with the Archdiocese (Cf. Can. 678 § 3).

The missionaries as far as they take part in the care of souls and in the pastoral activities, form an integral part of the presbyterium of the Archdiocese under the Archbishop's authority. They, however, preserve their own special character and legitimate autonomy except for cases foreseen by the prescriptions of canon law. The Archbishop does not interfere in the regular discipline concerning members of the institute. He does not implement on the missionaries' duties hardly compatible with the constitutions of the institute without having first consulted the competent superior.[281] He respects the distinctive character and charism of each institute entrusted with parish.[282]

3.2.5 Appointments and Transfers

The competent superior has authority over all the members[283] as far as the internal life and discipline of the institute are concerned and, therefore, it is his competence to assign the duties in accordance with the constitutions of the institutes.[284] The guidelines directs that the competent superior has the right to recall any missionary or to transfer him to another activity outside the Archdiocese by notifying the archbishop at least a month in advance. In the exercise of this right, however, he should take into account the safeguarding and maintaining of continuity in the pastoral

[281] Cf. ARCHDIOCESE OF KISUMU, *Convention between the Archdiocese of Kisumu and the Missionary Institutes*, p. 3.
[282] CIC/1983, Can. 380.
[283] CIC/1983, Can. 596 § 1.
[284] CIC/1983, Can. 618.

activities of the parish. The appointment of the parish priest is made by the archbishop after presentation by the competent superior.[285]

For a grave cause, any missionary working in the entrusted parishes can be dismissed from his office, both by the Ordinary, who must inform the competent superior, or the competent superior, who must inform the Ordinary. In this matter, both have equal rights: neither has to obtain the agreement of the other party, nor does one have to give reasons for his action, or to prove what he says. As far as possible, nevertheless, the Ordinary and the superior should act in common accord.[286] This removal must be in accordance with the law.[287]

3.2.6 Property Maintainance

The guidelines direct that the property of the Archdiocese is all the real estate (land and buidings) of the entrusted parishes, as well as the furniture and equipment (*bona mobilia*) contained in such buildings, except that which belongs expressly to the Institute, or is a property of the individual missionaries. All the property should be clearly specified in inventories as belonging either to the Archdiocese or to the Institute.

The property of the Institute are all goods given to the missionaries and all income generated by their work including: (a) offerings for masses celebrated by the missionaries and all income generated by their work, (b) stole fees and all contributions by the faithful for the support of the priests, (c) all salaries paid to missionaries as, service for their work; (d) gifts and donations to missionaries, given *'intuitu Personae del Instituti'*; and all income derived from scientific work

[285] CIC/1983, Can. 682 § 1.

[286] Cf. ARCHDIOCESE OF KISUMU, *Convention between the Archdiocese of Kisumu and the Consolata Missionary Institutes*, p. 3.

[287] CIC/1983 Can. 193.

or personal initiative; personal manuscripts of scientific value and literary studies of works of art.[288]

The Archdiocese of Kisumu is directly or through the Parish Council responsible for: (a) the expenses for courses of specialization, when these are requested or organized by the Archdiocese or one of its dependencies, (b) the construction of Churches, the lodging of missionaries, the furnishing and the construction of any other building approved by the Archdiocese and accompanied by previous estimates of the cost, (c) the upkeep of all real estate, (d) half of the travelling cost for home leaves, to and from the missionaries country of origin, after three years of missionary spirit is taken care of by the parish, (e) all allowance for the living expenses of the missionaries, is to be equal to that given to the diocesan clergy, (f) the salaries of catechists and other expenses related to the pastoral ministry and to the formation of Christian leaders.[289]

3.2.7 Donations to the Parish

For all donations received by the institute entrusted with the parish, the Archdiocese decrees that the following norms should be carefully kept in mind: (a) explicit and implicit intention of the donor shall always be respected, (c) donations received for parish activities are to be placed in the account of the parish itself. Donations received for undertaking, approved by the Ordinary, in agreement with the competent superior, must be destined for the same undertaking, (d) donations sent to a missionary personally, *'intuit personae'* belong to the institute.[290]

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[288] Cf. ARCHDIOCESE OF KISUMU, *Convention between the Archdiocese of Kisumu and the Consolata Missionary Institutes,* p. 4.

[289] Cf. C ARCHDIOCESE OF KISUMU, *Convention between the Archdiocese of Kisumu and the Consolata Missionary Institutes,* p. 5.

[290] Cf. ARCHDIOCESE OF KISUMU, *Convention between the Archdiocese of Kisumu and the Consolata Missionary Institutes,* p. 5.

3.2.8 Administration of the Parish

The entrusted parishes with all their property and real estate, listed in the inventory are property of the Archdiocese of Kisumu and are assigned free of charge to the institute with the onus of safekeeping and looking after their maintenance. The furniture is property of either the Archdiocese or the Institute according to what is stated in the inventory. The administration of the entrusted parish is performed according to canonical legislation and archdiocesan norms. According to the archdiocesan norms, the budgets and financial reports of the parish and any institutions under it shall be submitted to the competent diocesan offices, while the religious superior maintains the right of vigilance (Can. 678).

All offerings received from the faithful belong to the administration of the parish, unless they are due to the clergy or the donor expressly establishes otherwise. Parish administration pays all the expenses of ordinary maintenance of the grounds and buildings and furnishings, all the expenses of the services and the personnel assigned to the services, the expenses of pastoral activity, as well as the archdiocesan fees and contributions. Both signatories, the diocesan bishop and competent superior agree that extraordinary expenses are done in accordance with Cann. 638 § 3 and 1291.[291]

3.2.9 Duration of Agreement

The institute is entrusted with the parishes either in indefinite period of time[292] or for a period of five years beginning from the time it is signed by both parties. In the latter case, it is to

[291] Cf. ARCHDIOCESE OF KISUMU, *Convention between the Archdiocese of Kisumu and the Missionary Institutes,* p. 6.

[292] Cf. ARCHDIOCESE OF KISUMU, *Convention between the Archdiocese of Kisumu and the Consolata Missionary Insitute,* p. 6.

be renewed automatically after five years, unless a written notice is given by either party six months before the original or any subsequent renewal date of the agreement.[293]

3.3 Sampled Clerical Institutes in the Catholic Archdiocese of Kisumu Entrusted to Parishes

Parishes can be entrusted to the clerical religious institute (CIC 520, CCEO 281, 282). The diocesan bishop with the consent of the competent religious superior can entrust a parish to religious. He can also erect a parish in the church of the religious community, with the condition that one priest should be the proper pastor of the parish. It is, therefore, helpful to examine how some of the clerical institutes in the Catholic Archdiocese of Kisumu have attempted to define their relations to the parishes entrusted to them.

3.3.1 Entrustment of Parishes to the Mill Hill Missionaries

The society of St. Joseph of Mill Hill Missionaries commonly known as the Mill Hill Missionaries (MHM) was founded in 1866 by Archbishop of Westminster, Cardinal Vaughan, as the only Catholic Mission society.[294] The Mill Hill Fathers arrived in Western Kenya as soon as the railway reached Kisumu, then still called Port Florence in 1903 all the way from Mombasa. They founded the first parish of St Joseph's Milimani, in the year 1904, then, later moved to Ojolla in 1906 and to Aluor in 1913.[295] Aluor was to become the mother of all luo parishes west of Kisumu.

The Mill Hill Missionaries as the founders of the mission and parishes in the Archdiocese of Kisumu had all the initial parishes in the Archdiocese entrusted to them. They, however, slowly

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[293] Cf. ARCHDIOCESE OF KISUMU, *Agreement Between the Archdiocese of Kisumu and the Religious Institute of the Little Work of Divine Providence*, n. 15, Diocesan Archives, Kisumu, 2021, p. 3.

[294] Cf. B. JOHN, *The Catholic Church in Kenya, A Centenary History*, St. Paul Publications, Nairobi 1990, p. 97.

[295] Cf. B. JOHN, *2000 Years of Christianity in Africa*, 2nd ed., Paulines Publications Africa, Nairobi 2009, p. 239.

handed them over to the diocese as their numbers reduced and diocesan clergy increased in number. They are now entrusted with one parish of St Peter's Nanga which was created and entrusted to them when the mother parish of St. Joseph's Milimani Kisumu and the Archdiocese of Kisumu were celebrating centenary or 100 years of Catholic faith in the year 2003.[296] Since they were the founders of most of the parishes, there were no written agreements made at the time. For many years they managed the pioneer parishes without any written agreements made between the institute and the Archdiocese. The parish of Nanga, however, is entrusted to them with an agreement and for an indefinite period of time.

3.3.2 Entrustment of Parish to the Consolata Missionaries

The institute of Consolata Missionaries is a Catholic clerical religious congregation of pontifical right founded in Turin Italy, on 29th January 1901 by Joseph Allamano. In 1902 they came to Kenya and celebrated the first official Mass in Tuthu (now in the Catholic diocese of Muranga) on 29th June 1902. Their main activities include: evangelizing people who have not yet been evangelized, cooperating with local churches that are not yet self-sufficient and forming missionaries.

The consolata missionaries are entrusted with the parishes of St. Joseph Ugunja, St. John XXIII Rabuor and Consolata shrine Kisumu. The institute is entrusted with the mentioned parishes for an indefinite period of time.[297] The convention between the Archdiocese of Kisumu and the Consolata missionary Institute states that the purpose of the agreement is to promote fruitful cooperation between the Ordinary of the Archdiocese and the Institute, by defining their mutual

[296] Cf. MILIMANI CHURCH, "St. Joseph gives Birth to Churches," in *Milimani Church, News Letter,* December 2024, p. 9.

[297] Cf. ARCHDIOCESE OF KISUMU, *Convention between the Archdiocese of Kisumu and the Consolata Missionary Institute,* p. 6.

rights and duties.[298] The parishes of Ugunja and Rabuor are entrusted to the Consolata Missionary Institute according to the rules set in canon 520 while Consolata Shrine Kisumu is entrusted to the Consolata Missionary Institute perpertually.[299] The regional superior commits himself to assign at least two missionaries in each of the parishes in a full time basis and to assure their stability in as much as possible.[300] The Archbishop does not interfere in the regular discipline concerning the members of the Institute.[301] For a grave cause any missionary working in the mentioned parishes can be dismissed from his office, both by the Ordinary, who must inform the Regional Superior, or the Regional Superior, who must inform the Ordinary. In this matter, both have equal rights, neither has to obtain the agreement of the other party, nor does not have to give reasons for his action, or to prove what he says.[302]

3.3.3 Entrustment of Parish to the Order of Preachers

The Order of Preachers was founded in the 1216 by the Spanish Prreist by St. Dominic de Guzman. For 800 years, the mission of the Order of Preachers has been to preach, teach and live the Gospel in order to proclaim the Word of God to every corner of the world.[303] Saint Dominic accepted the parish of Fanjeaux in the Diocese of Toulouse, in 1214, but this was not so much for the local ministry but rather to give him standing in the diocese.[304] After the publication of the new

[298] Cf. ARCHDIOCESE OF KISUMU, *Convention between the Archdiocese of Kisumu and the Consolata Missionary Institute*, p. 1.
[299] Cf. ARCHDIOCESE OF KISUMU, *Convention between the Archdiocese of Kisumu and the Consolata Missionary Institute*, p. 2.
[300] Cf. ARCHDIOCESE OF KISUMU, *Convention between the Archdiocese of Kisumu and the Consolata Missionary Institute*, p. 2.
[301] Cf. ARCHDIOCESE OF KISUMU, *Convention between the Archdiocese of Kisumu and the Consolata Missionary Institute*, p. 3.
[302] Cf. ARCHDIOCESE OF KISUMU, *Convention between the Archdiocese of Kisumu and the Consolata Missionary Institute*, p. 3.
[303] Cf. ORDER OF PREACHERS<https://www.op.org/dominican-charism> (30 September 2024).
[304] Cf. M.H. VICAIRE, *Saint Dominic and His Times*, Alt Publishing Co., Wisconsin 1964, pp. 150-151.

Code, the general chapter of the Order of Preachers attempted to delineate some characteristics of a Dominican parish.

The 1983 chapter exhorted the friars working in parishes to exercise their ministry "in the spirit of the Order" and ended by assuring them that it was a "truly apostolic and Dominican work." The general chapter of 2010 referred positively to the 1983 Chapter, stated that the presence of the Order of Preachers in parishes required further reflection."[305] It made it clear that if they accept parishes, they should be ministered to in accord with the charism of the Order. The most recent Chapter of the Dominicans declared: "Bishops entrust parishes to provinces and vice provinces to take advantage of the Order's preaching charism. Although pastors are named, this apostolate ought to be assumed in a communitarian manner."[306]

In the Catholic Archdiocese of Kisumu, the Order or Preachers is entrusted with one parish, St. Paul's Kanyakwar which also serves as a Dominican shrine of our Lady of the Holy Rosary. The agreement and statutes between the Archdiocese and the Order of Preachers for entrustment of the parish and the shrine was approved and given a canonical status of a juridic person on 7th October in 2021.

Imbued with the charism proper to the Order of Preachers, the Friars and their collaborators avail to the faithful with all the necessary spiritual assistance.[307] The Rector of the Shrine/parish is required to submit annually to the Archbishop of Kisumu and to the Vicar Provincial of the Order of Preachers, the report on the economic management of the parish and the shrine.[308] The entrustment is in perpetuity and it is solely up to the Archbishop of Kisumu to suppress it. In the

[305] Cf. ORDO FRATRUM PRAEDICATORUM, *Liber Constitutionum et Ordinationum Fratrum Ordinis Praedicatorum, Curia Generalitia*, Rome 2017, p. 76:

[306] The Chapter of Bologna (2017), n, 114.

[307] Cf. ARCHDIOCESE OF KISUMU, *Dominican Shrine of Our Lady of the Holy Rozary Statutes, Archdiocese of Kisumu,* art. 4, Diocesan Archives, Kisumu 2021, p. 4.

[308] Cf. ARCHDIOCESE OF KISUMU, *Dominican Shrine of Our Lady of the Holy Rozary Statutes*, p. 5.

event of extinction of the shrine, the patrimony owned by it is to be devolved to the Order of Preachers, East Africa or donated to the Archdiocese of Kisumu or to another ecclesiastical body identified and agreed upon by the Archbishop of Kisumu and the Order of Preachers, East African Vicariate.[309]

3.3.4 Entrustment of Parishes to the Missionary Congregation of the Contemplative Evangelizers of the Heart of Christ

The Contemplative Evangelizers of the Heart of Christ, commonly known as the Contemplative Evangelizers, "is a clerical religious Institute of diocesan right, Contemplative, Evangelizing and Missionary, founded by Rev. Fr. John Marengoni, MCCJ, in Rongai-Nakuru on 15th April 1986."[310] Though clerical by reason of its foundation and recognition by Church authority, the Institute is open to lay brothers as members with full rights and duties as prescribed by the Constitutions and Directory, and in conformity to provisions of the Universal law.[311]

Under the direction of the Ordinary, they coordinate apostolic works and actions with the works of the local clergy with due respect for the character and the purpose of our Institute, and the laws of its foundation.[312] In matters concerning the care of souls, the public exercise of divine worship and other works of apostolate, the Contemplative Evangelizers are subject to the authority of the Bishop, to whom they are bound to offer sincere obedience and reverence[313] remaining faithful to the discipline of their Institute, and holding fast to the mission and works which are proper to the Institute.[314]

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[309] Cf. ARCHDIOCESE OF KISUMU, *Dominican Shrine of Our Lady of the Holy Rozary Statutes*, p. 5.

[310] Cf. MISSIONARY CONGREGATION OF THE CONTEMPLATIVE EVANGELIZERS of the Heart of Christ, (*Contemplativi Evangelizatores Cordis Christi*), Constitutions, Congregation Archives, Nakuru 1986, p. 1.

[311] Cf. Can. 588, § 1.

[312] Cf. Can. 680.

[313] Cf. Can. 687 § 1.

[314] Cf. Can. 678 § 2.

With the approval of the ordinary, they minister their Churches as Shrines.[315]Due to their Charism as Contemplatives, and because of the nature, aim and spirit of their Institute, they do not assume the management of a parish. They may, however, assume a parish only where there is a big center and the parish is not scattered and has very few outstations.[316]The Contemplative Evangelizers have been entrusted with two parishes in the Archdiocese of Kisumu. These are St. Kizito Mutumbu and St Mathews, Bar Ding. They have, however, not yet signed a written agreement for entrustment of the parishes.

3.3.5 Entrustment of Parishes to the Religious Institute of the Little Work of Divine Providence (Sons of Divine Providence)

The Sons of Divine Providence is a clerical religious congregation of Pontifical right founded in Italy in 1903 by Luigi Orione (1872-1940). It is dedicated to helping the poor. The Don Orione Missionaries as they are commoly known have been present in Kenya since the arrival in 1996 of the first Italian missionary Fr. Giuseppe Valllauri. He settled in Langata South Road in the outskirts of Nairobi.[317]

The Sons of Divine Providence accepted the Parish of St. Peters in Kaburugi about 75km north of Nairobi in 1988 and in Kandisi, catholic diocese of Ngong in 1999. In the year 2021 the institute was welcomed to the Archdiocese of Kisumu and entrusted with St. Elizabeth of Hungary Parish in Nyadorera. Their invitation and agreement of entrustment of the parish was written and signed on 17th of November 2021. The parish entrusted to them was officially established on 21st

[315] Cf. Can. 1230. By the term shrine is understood a church or other sacred place to which numerous members of the faithful make pilgrimage for a special reason of piety, with the approval of the local ordinary.

[316] Cf. MISSIONARY CONGREGATION OF THE CONTEMPLATIVE EVANGELIZERS of the Heart of Christ, (*Contemplativi Evangelizatores Cordis Christi*), Constitutions, Congregation Archives, Nakuru 1986, p. 48.

[317] Cf. <http://www.sonsofdivineprovidence.org.> (Accessed on 8th January 2025).

December 2021. Their apostolate includes parish apostolate, working with AIDS victims, working with people with disabilities, the elderly and in schools.

The agreement between the Archdiocese of Kisumu and the Sons of Divine Providence binds for a period of five years beginning from the time it was signed by both parties. It is to be reviewed automatically every five years, unless a written notice is given by either party six months before the original or any subsequent renewal date of the agreement.[318] Should either party desire a deletion, addition or change in any of the provisions of the agreement, the revisions may be effected with the consent of both parties to the extent allowed by Canon Law with at least three months prior notice for its validity.[319]

3.4 Relevant Auxiliary Legislation of Particular Churches on Entrustment of Parishes to Religious Institutes: A comparative Study

Apart from the particular law of the Catholic Archdiocese of Kisumu, and the proper laws of the clerical institutes entrusted with parishes in the Archdioese, there are other particular and proper legislations that can offer beneficial insights to the acts of entrustment of parishes to clerical institutes in the Archdiocese of Kisumu. Some of these legislations are upheld by various particular Churches and Dioceses and other clerical institutes.

3.4.1 Legislations of the Kenya Conference of Catholic Bishops (KCCB)

The Catholic Archdiocese of Kisumu belongs to the National Assembly of Bishops of Kenya called the Kenya Conference of Catholic Bishops (KCCB). By virtue of being a member in this conference, it also belongs to the grouping of the international regional assembly of bishops

[318] Cf. ARCHDIOCESE OF KISUMU, *Agreement Between the Archdiocese of Kisumu and the Religious Institute of the Little Work of Divine Providence,* Diocesan Archives, Kisumu 2021, p. 3.

[319] ARCHDIOCESE OF KISUMU, *Agreement Between the Archdiocese of Kisumu and the Religious Institute of the Little Work of Divine Providence,* p. 3.

called the Association of Member Episcopal Conferences in Eastern Africa (AMECEA). It is in correlation to this, that this chapter includes some provisions by the KCCB.

The Code of canon law, establishes specific norms regulating the objectives and the powers of the episcopal conferences, as well as their erection, membership and functioning.[320] Can. 447 mentioned in *Apostolos Suos*,[321] offers a description of the nature of the Conferences which is inspired by *Christus Dominus* 38, §1. The CIC/1983 gives a precise description based on *Christus Dominus* stating:

> *Episcoporum conferentia, institutum quidem permanens, est coetus Episcoporum alicuius nationis vel certi territorii, munera quaedam pastoralia coniunctim pro christifidelibus sui territorii exercentium, ad maius bonum provehendum, quod hominibus praebet Ecclesia, praesertim per apostolatus formas et rationes temporis et loci adiunctis apte accommodatas, ad normam iuris.*[322]

The KCCB exercising its pastoral offices over Christ's faithful in Kenya, seeks to promote common action by forms and means of apostolate suitable to the circumstances of place and time, in accordance with the law, and to promote the greater good which the Church offers to all mankind.[323] Currently there are 27 local Churches spread over 4 ecclesiastical provinces constituting 4 Archdioceses, 22 sufragans and one military Ordinariate.[324]

The conference has always upheld and promoted the vocation to consecrated life as a gift of God to the universal Church.[325] The bishops acknowledge the presence of many institutes of consecrated life in Kenya and appreciate the role they play in the Catholic Church in Kenya. In

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[320] CIC/1983, Cann. 447-459.

[321] Cf. JOHN PAUL II, Apostolic Letter Motu Proprio *Apostolos Suos*, 21 May 1998, n. 7.

[322] Cf. CIC/1983 Can. 447: English translation reads: A conference of bishops, a permanent institution, is a group of bishops of some nation or certain territory who jointly exercise certain pastoral functions for the Christian faithful of their territory in order to promote the greater good which the Church offers to humanity, especially through forms and programs of the apostolate fittingly adapted to the circumstances of time and place, according to the norm of law. See also *Christus Dominus* 37 § 1, p. 693.

[323] CIC/1983 Can. 447.

[324] Cf. Members of the Kenya Conference of the Catholic Bishops, <https://kccb.or.ke/index.php/members-of-the-conference.com> (20 September, 2024).

[325] Cf. KENYA CONFERENCE OF CATHOLIC BISHOPS, *Guidelines to Safeguard Some Aspects of Consecrated Life in Kenya*, Paulines Publications Africa, Nairobi 2014, p.5.

observing the statutes of the Conference, Art, XVII (I) states: "In pursuit of its mission, the conference has a mandate to promote all forms of evangelization in its own region."[326]

The Commission for Clergy and Religious (KCCR), one of the Commissions in the KCCB provides guidelines to safeguard some aspects of consecrated life including entrustment of apostolates. The conference, does not tackle in a specific way the subject of entrustment of parishes to clerical religious or societies but looks at entrustment of apostolates to institutes in general. From these, can be deduced some aspects which refer to entrustment of parishes to clerical religious institutes and societies of apostolic life.

Observing the provisions of *Lumen Gentium*,[327] the Conference recognizes its role to judge the genuineness and proper use of the different charisms so that they hold fast to what is good. The conference stresses on the preservation of the patrimony of each institute,[328] when entrusted to an apostolate in a particular Church. They emphasize on the integration in both preparation and formation of candidates for religious life.[329] In addition, according to Can. 522, the KCCB has issued general decrees on the matter according to common law, in which a parish priest has the benefit of stability and, therefore, he is to be appointed for an indeterminate period of time. The conference further issues decrees permitting the bishops to appoint a parish priest including one from a religious institute for a fixed period of time.

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[326] Cf. KENYA CONFERENCE OF CATHOLIC BISHOPS, THE COMMISSION FOR THE CLERGY AND RELIGIOUS, *Guidelines to Safeguard Some Aspects of Consecrated Life in Kenya,* Don Bosco Printing Press, Nairobi 2014, p. 5.

[327] *Lumen Gentium,* nn.12 and 14.

[328] Cf. KENYA CONFERENCE OF CATHOLIC BISHOPS, *Guidelines to Safeguard Some Aspects of Consecrated Life in Kenya,* Paulines Publications Africa, Nairobi 2014, p. 5.

[329] Cf. KENYA CONFERENCE OF CATHOLIC BISHOPS, p. 5.

3.4.2 Entrustment of Apostolate to Clerical Institutes in the Catholic Archdiocese of Nairobi

The establishement of a religious institutes or societies' presence in the Catholic Archdiocese of Archdiocese of Nairobi involves a procedure which emphasizes collaborative dialogue and mutual understanding between the institute and the local ordinary.[330] This procedure would be important as a reference for the Archdiocese of Kisumu and other dioceses in the process of entrusment of parishes. The process of entrustment of apostolate ensures alignment with the archdiocesan mission and pastoral needs, seeks canonical approval, and fosters ongoing communication and collaboration. Specific details may vary based on the charism, norms and policies of the institute entrusted with the parish. The Archdiocese invites an institute/society or the institute/society requests for the presence through a formal letter.

When an Institute makes the request to be present in the Archdiocese of Nairobi, it begins with a dialogue between the archbishop and the competent superior of the institute. Both parties discuss the nature and purpose of the institutes' presence in the diocese, as well as the specific ministry or apostolate they intend to take when entrusted with a parish. The institute seeks formal approval from the diocesan bishop to establish a presence in the diocese and entrustment of a parish. This approval is granted by the Archbishop in the form of a decree or letter of permission from the bishop.[331]

On the other hand, when the Archbishop invites a religious institute or society to establish a presence or to undertake the ministry in a parish, the competent superiors of the institute engage

[330] Cf. M. OJIL, *Procedural Handbook for Institutes of Consecrated Life and Societies of Apostolic Life: Canonical Procedures and Sample Formularies*, Aura Publishers, Nairobi 2024, p. 38.

[331] Cf. M. OJIL, *Procedural Handbook for Institutes of Consecrated Life and Societies of Apostolic Life:* p. 38.

in a dialogue with the Archbishop to discuss the details of the invitation. If they accept the invitation, they respond in writing and both the institute and the diocese after some period of probation, enter into a formal written agreement outlining the terms and conditions of the institute's presence in the Archdiocese.[332] The agreement is made in accordance with the CIC/1983 Can. 681. In interpreting the agreement made, consideration is given not only to the general principles of canon law, but also to the directives laid down by Dicastery for the Evangelization of Peoples, the constitution of the institute, and the special statutes and circumstances of the Diocese.[333]

The consent of the diocesan bishop for the clerical institutes to erect a religious house of the institute in the Archdiocese of Nairobi entails the right to lead a life according to the character and proper purposes of the institute. It further entails the right to exercise the works proper to the institute according to the norm of law and without prejudice to the conditions attached to the consent. The right to have a church and to perform sacred ministries after the requirements of the law have been observed.[334]

3.5 The Extent of Conformity of Particular Law of the Archdiocese of Kisumu to the Universal Law on Entrustment of Parishes

CIC/1983, Can. 520 § 2 states that entrusting of a parish is to be made by means of a written agreement between the diocesan bishop and the competent superior of the institute. This section evaluates the extent to which the Particular Law of the Archdiocese of Kisumu and its application conforms to that of universal law on the various aspects of entrusting of parishes to clerical institute.

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[332] Cf. M. OJIL, *Procedural Handbook*: p. 38.

[333] Cf. ARCHDIOCESE OF KISUMU, *Convention between the Archdiocese of Kisumu and the Consolata Missionary Institutes,* p. 1.

[334] Cf. M. OJIL, *Procedural Handbook*: p. 39.

On entrusting of a parish, the universal law Cann. 520 § 2, and 681§ 2, prescribes the means of a written agreement between the diocesan bishop and the competent superior of the institute or society which should expressly and accurately define, among other things, the work to be accomplished, the persons to be assigned to the parish, and the financial arrangements. In welcoming the clerical institutes and entrusting them with parishes, the Archidiocese has drawn conventions and agreements with the institutes. Can. 520 considers it the responsibility of the diocesan bishop and the competent superior to define the works to be accomplished. The conventions and agreements directs that the institutes administer the parish in spiritual and temporal matters in accordance with the prescription of Canon Law and the diocesan norms, directives and customs except in what concerns the norms of observance according to the nature and purpose of the institute as specified in its proper law.[335] On conferring of ecclesiastical office such as a parish priest upon a religious, Can. 682 §1 prescribes that the diocesan bishop appoints the religious with the competent superior making presentation, or at least assenting to the appointment. The agreements written between the Archdiocese of Kisumu and the clerical institutes direct that the competent superior assigns at least two missionaries to the parish on a full time basis and to ensure their stability. The appointment of the *parochus* is made by the Archbishop after the presentation by the competent superior. The directives of the KCCB reiterates that the parish priest has the benefit of stability. The bishop is, therefore, permitted to appoint a parish priest including one from a religious institute for a fixed period of time.

With regard to the financial arrangements and other matters, Can. 520 requires the written agreement to include financial arrangements. The agreements stipulate that "the income from any parish function or liturgical celebrations, parish related activities, or bequests, legacies or

[335] Cf. ARCHDIOCESE OF KISUMU, *Agreement between The Archdiocese of Kisumu and the Religious Institute of the Little Work of Divine Providence*, p. 1.

foundations belongs to the parish unless they are due to the clergy or the donor expressly establishes otherwise."[336] On other matters as Can. 520 § 2, prescribes entrusting of a parish either in perpetuity or for a specific predetermined time. The convention documents states that entrustment is either for an indefinite period of time,[337] or for a period of five years which is reviewed automatically every five years.[338] They further elaborate on the roles of the Local Ordinary and the competent superior, the rights and duties, property and administration.

3.6 Some Challenges Affecting the Application of Can. 520 in the Catholic Archdiocese of Kisumu

There are various challenges affecting the application of the norm on entrustment of parishes according to Can. 520 in the Catholic Archdiocese of Kisumu which could be the case in other dioceses as well. Can. 520 requires that bishops and competent superiors follow the requirements of law especially on agreements made between them for the sake of the juridic persons they represent. Some of the challenges observed are (1) inadequate formation of the clergy both diocesan and religious on the meaning of entrustment of parishes to religious in a particular Church, (2) lack of specific norms, directives or policies for entrustment of parishes, (3) Lack of adequate understanding of the of particular and proper law on entrustment of parishes, (4) short duration for agreements made for predetermined time, (5) apostolic Initiatives by religious institutes which are not in conformity with the agreements, (6) misconception on the notion of entrustment of parishes as means of economic gain, and (7) religious entrusted with the parishes seen as outsiders.

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[336] ARCHDIOCESE OF KISUMU, *Agreement with the Religious institute of the Little Work of Divine Province,* p. 1. (see also Convention Between the Archdiocese of Kisumu and the Consolata Missionary Institute, n. 28, p. 6.

[337] Cf. Convention with Consolata Missionariy Institute, n. 32, p. 6.

[338] Cf. Agreement with Little Work of Divine Province, n.15, p. 3.

3.6.1 Inadequate Formation of the Clergy on the Entrustment of Parishes to Religious in a Particular Church

The ecclesiastical law requires a proper and appropriate formation and training for all who "permanently or temporarily devote themselves to special service of the Church" in order that they "fulfil their function properly and carry this function conscientiously, eagerly and diligently."[339] In emphasizing the necessity of formation, John Paul II wrote: "In all areas of Church life, the formation is of primary importance. People who have never had the chance to learn cannot really know the truths of faith, nor can they perform actions which they have never been taught."[340] Consequently, where formation is lacking, clerics may not know their responsibilities and thus their reception and participation in the whole of process of entrustement of parishes is compromised. On the other hand, some diocesan clergy do not see the meaning of having religious clergy in their dioceses if they have enough diocesan priests to serve in the parishes.

3.6.2 Lack of Specific Norms, Directives or Policies on Entrustment of Parishes

Ad Gentes states that it is "the responsibility of the bishop, as the head of the diocesan apostolate and its centre of unity, to promote missionary activity, guide and coordinate it."[341] Can. 782 § 2 prescribes that "individual bishops are to have special solicitude for missionary work especially by initiating, fostering and sustaining missionary endeavors in their own particular Churches." Even though the Archdiocese of Kisumu and other diocese studied have conventions and agreements with the clerical institutes, particular legislations, directives specifically on entrustment of parishes to clerical institutes which can serve as a guide in the writing of conventions and agreements with the institutes entrusted with parishes. Consequently, most of the

[339] Cf. CIC/1983, Cann. 231 § 1, 234, 235, 646.
[340] Cf. *Ecclesia* in Africa, n. 75.
[341] *Ad Gentes*, n. 30.

clerical institutes do not have proper norms and directives on entrustment of parishes in their proper laws. Where such concrete legislations or directives are lacking the people of God specifically the clerical institutes who come to the diocese may not know what to do, when to do it, or how to act.

3.5.3 Lack of Adequate Understanding of the Particular Law and the Universal law on Entrustment of Parishes to Clerical Institutes

The universal law and the proper laws of Institutes oblige all members to observe faithfully the patrimony of the institute.[342] In the same manner, members of an institute entrusted with apostolate in the particular Church are subject to the authority and direction of the bishop and are obliged to adhere to the particular norms of the diocese.[343] This requires authority of the institutes to ensure that the members have understanding of the identity of the institute and the guidelines and legislation of the diocese including the content of the agreement made between the bishop and the superior.

The reality on the ground, however, shows that a number of members of the institutes lack the knowledge and understanding of the particular guidelines and the universal law on entrustment of parishes. The consequences of this are numerous. The mission and works proper to the institute in Can. 677 §1 (*modus apostolatum exercendi*) are forgotten. Experience in the Catholic Archdiocese of Kisumu indicates that along the way, some clerical institutes have adopted or started apostolates which are alien to the agreements which they made with the Archdiocese. Some have started apostolates alien or not aligned to the works proper to their institutes, or those which do not bear sentiments of their charism. These include establishing retreat or prayer houses in the parishes entrusted to them.

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[342] CIC/1983, Can. 578.
[343] CIC/1983, Can. 681 § 1.

3.5.4 Religious Carry out Extra Ordinary Administration in the Entrusted parishes without Consultation

Canon Law distinguishes two types of acts of administration in relation to parishes: acts of ordinary administration and acts of extraordinary administration.[344] In addition, there are specific canon law requirements in relation to the alienation of property and leasing out of parish goods. The parish priest does not require authorization, or the advice or consent of others to carry out acts of ordinary administration. Acts of extraordinary administration require the parish priest to consult and even seek the Archbishhop's approval before proceeding.

CIC/1983 Can. 1276 §1 prescibes that it is for the ordinary to exercise careful vigilance over the administration of all the goods which belong to public juridic persons subject to him, without prejudice to the legitimate titles which attribute more significant rights to him. In his apostolic letter addressed to all major superiors with communities in the Archdiocese of Kisumu, the Archbishop's attention was drawn to a worrying trend of attempts by religious institutes to annex, transfer, register or sell property of the archdiocese under the pretext that it is theirs. He observed that the spirit of collaboration between the Archdiocese and the religious institutes serving in the archdiocese is gravely undermined by behind-the-scenes mechinations to appropriate property belonging to the Archdiocese of Kisumu, for personal use or for use by particular institute. The archbishop directed that in cases where land was reserved for a particular institution or purpose, that portion of land should always be set aside for that specific use and should not be transferred to that institution or institute. In the case of religious priests or priests of Societies of Apostolic Life, he added, if there is property of their institute in the parish where they

[344] CIC/1983, Can. 1281 §1.

are working, a separate list of such property should be prepared with supporting documentation.[345] In addition, if the clerical institute stops their mission in the parish entrusted to them, the land should be returned to the Archdiocese.

This directive came as a result of some institutes entrusted with a parish and other apostolates carrying out acts of extraordinary administration without consultation or consent of the Archbishop. Such acts included changing the use of the portion of land and transferring it to the institute. Some institutes, moreover, changed the ownership of the property of the parish to their own name without any documentation.

3.5.5 Short Duration for Agreements between the Archdiocese and the Clerical Institutes

Can. 520 § 2 provides that the entrustment can be made either perpetually or for a specific predetermined time. Universal law is, however, silent on how long should the duration be. In the Catholic Archdiocese of Kisumu, some new institutes are granted an agreement of five years which are reviewed automatically every five years[346] while others begin their apostolate in the entrusted parishes without any written agreement. This could be because, like other dioceses, the local ordinary finds himself in a difficult situation to grant a parish to a new institute for a predetermined time or in perpetuity without knowing exactly who they are.

On the other hand, the institute feels that it should be given a long-term contract from the onset. This is because, most of the institutes build the parishes entrusted to them through donations and grants.[347] Most of the donors require proper and stable agreements from the institutes they are dealing with. No one would wish to put his money in an institute which has a five-year agreement

[345]Cf. M. MAKUMBA, Archdiocese of Kisumu, *letter to all Major Superiors with Communities in the Archdiocese of Kisumu,* May 23, 2024.

[346] Cf. ARCHDIOCESE OF KISUMU, *Agreement between the Archdiocese of Kisumu and the Religious Institute of the Little Work of Divine Providence*, p. 3.

[347] Cf. Can. 1300 The legitimately accepted wills of the faithful who give or leave their resources for pious causes, whether through an act *inter vivos* or through an act *mortis causa*, are to be fulfilled most diligently even regarding the manner of administration and distribution of goods, without prejudice to the prescript of can. 1301, § 3.

with the diocese. This challenge is observed in the Archdiocese of Kisumu wheres some institutes have an initial agreement of entrustment for five years. There is no much development in such parishes which have been entrusted to clerical institutes with a predetermind agreements.

3.5.6 Misconception on the Notion of Entrusting of Parishes as Means of Economical Gain

V. DE Paolis reiteriates in the schema of an agreement for the assignment of a parish to religious that a parish is to be administered according to the norms of the code and of the diocese. This administration is entirely distinct from the administration of the goods of the religious community. According to the diocesan regulations, the income and expenses of the parochial administration are to be submitted to the inspection of the competent official of the curia, with due regard to the right of the religious superior to inspect the administration (Can. 678).[348]

This research has shown that there is tension in entrustment of parishes because some diocesan priests have a feeling that religious institutes are missionaries by the traditional understanding of the word, i.e, missionaries going for the first evangelization where the people have not received the gospel message as such are more financially able to take of rurual parishes which are poor. [349] Fr. Teddy Njaya whose apostolate involves promoting missionary experience in Kenya under the Pontifical Mission Societies (PMS) has the same view that religious life is a calling to reach out to the marginalized people and that members of the clergy and religious men and women have no business leading comfortable lives in urban missions. "None of your charisms speaks about staying in towns," the PMS official said, and added, "You, therefore, have no business concentrating in towns when people in hardship places go for months without receiving

[348] V. DE PAOLIS, "Schema of an Agreement for the Assignment of a parish to Religious," n. 9.

[349] Cf. CIC/1983, Can. 787 § 1. By the witness of their life and word, missionaries are to establish a sincere dialogue with those who do not believe in Christ so that, in a manner adapted to their own temperament and culture, avenues are opened enabling them to understand the message of the gospel. §2. Missionaries are to take care that they teach the truths of faith to those whom they consider prepared to receive the gospel message so that they can be admitted to receive baptism when they freely request it.

services of a priest. He added, "Most of these congregations were formed in the 18th and 20th centuries to serve the poor. I challenge their members to reach out to the poor where they are needed most."[350]Most of the diocesan clergy, therefore, believe that religious institutes should be entrusted with parishes in the remote areas of the dioceses since they have sources of funds to build and carry out apostolate in such remote areas for initial evangelization.

On the other hand, the competent superiors and the members of the religious institutes believe that they are part of the community of the diocese and the church and hence need to be in urban parishes also. They view entrustment of parishes in the Archdiocese of Kisumu as a means of sustaining their institutes through income and thus focus more on the proprietorship aimed at profit making forgetting that the ministry is for service to the people. Infact if a member is appointed to a parish in a marginalized area, mostly it is viewed as a purnishment.

3.5.7 The Religious Entrusted to the Parish Seen as Outsiders

The guidelines of the Archdiocese of Kisumu, refers to the universal law and states that as far as the missionaries take part in the care of souls and in the pastoral activities, they form an integral part of the presbyterium of the Archdiocese under the Archbishop's authority.[351] On the contrary, even though the religious are found within the territory of the diocese, they are often considered as outsiders, having nothing to do with the life and activity of the diocese. Very often recourse is made to them in times of necessity such as in contribution of some money. The religious in the parishes too seem to contribute to this attitude and mentality since they separate themselves. They close themselves in the parishes entrusted to them without sharing the problems of the

[350] Cf. Clergy, Religious in Kenya Challenged to Leave Comfort Zones, to Venture into Peripheries, https://www.aciafrica.org/ clergy-religious-in-kenya-challenged-to-leave-comfort-zones-to-venture-into-peripheries, (Accessed 14th January 2025).

[351] CIC/1983, Can. 498 § 1, 2°

diocesan community and the diocesan social life of the presbyterium. They fail to attend diocesan meetings and functions like any other priests working in the dioceses.[352]

3.5.8 Taxation for the Needs of the Diocese

The diocesan bishop, after consulting the finance committee and the prebyteral council, has the right to impose a moderate tax for the needs of the diocese upon public juridic persons subject to his governance. He can also impose an extraordinary and moderate taxaction upon other physical or juridic persons in cases of grave necessity.[353] In this regard doubt is raised whether this should apply to clerical institutes entrusted with parishes in the Archdiocese with regard to contribution for the diocesan seminarians, the diocesan minor seminary and other contributions such as diocesan clergy insurance funds where the religious clergy working in the entrusted parishes are not included.

3.6 Recommendations and Suggestions

The universal and particular prescriptions have set the principles and enacted norms that enable the diocesan bishops and the competent superiors of clerical religious institutes and societies of apostolic life to assume their part in the entrustment of parishes. Without prejudice to these juridical provisions, and conscious of the principle "*Ubi lex non distinguit, nec nos distinguere debemus,*" (where the law does not distinguish neither should we distinguish), the research hereof in response to the research question makes some recommendations and suggestions. These include how the process of entrustment of parishes to clerical institutes should be done smoothly not only in the Catholic Archdiocese of Kisumu but in all the dioceses for the good of the dioceses, the institutes, the universal Church and for the salvation of souls.

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[352] Cf. V. AZHAKETH, *The Apostolate of Religious Institutes in the Diocese*, <https://www.canonlawsocietyofindia.org/research/the-apostolate-of-religious-institutes-in-the-diocese.com> (Accessed on 26th December 2024).

[353] CIC/1983, Can. 1263

3.6.1 Familiarity with Canonical Requirements on Written Agreements

Stressing the need for well informed members of Christ's faithful, the code prescribes that to the extent that the good of a diocese, a religious institute, or even the universal Church itself requires it, diocesan bishops or the competent superiors of the institutes must send to ecclesiasitical universities or faculties, youth, clerics, and members, who are outstanding in character, virtue, and talent.[354] Adequate study and understanding of the directives of the code of canon law goes along way in helping superiors of institues to be imbued with what is needed for the whole process of accepting and managing parishes entrusted to them.

There is need for both members and superiors, including priests in the dioceses to familiarize themselves with the canonical requirements, documents of the Holy See with regard to agreements between bishops and institutes which are invited to serve in the parishes. G. Lobo in his book observes that the relationship between religious and bishops which is at times unnecessarily strained, needs to be understood according to the basic doctrinal principles presented in the agreement made between them.[355]

Some documents provide more information that may be lacking in the universal laws and yet very essential in responding to emerging issues that affect and influence the process of entrustment of parishes and the implementation of the agreement made. Can. 592 § 2 directs moderators to promote knowledge of documents of Holy See among members. These are important in updating members with the current information on the directives of the Church and present trends of apostolate in local Churches.

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[354] Cf. CIC/1983, Can. 819.

[355] Cf. G. LOBO, *New Canon Law for Religious,* St. Pauls Publications, New Delhi 1986, p. 39.

3.6.2 Specific Particular and Proper Legislation on Entrustment of Parishes

In Aristotle's politics, the key phrase *"Ubi societas ibi ius"* suggests that any community, regardless of size, generates its own individual system of law because wherever there is a society, there is law. Law is, therefore, a necessary component of society, of social life and social relations: it is necessary for the regulation of the exercise of obligations and rights of individuals in a society. It is a standard that makes known what is mine and what is yours in the society. C. Burke says: "A people without law are not a people. It is no more than a horde or a mob. It is the possession and observance of a common law that turns a group of individuals into a people, with shared ideals, customs and destiny, who treat one another with justice and respect under an authority that they look up to as the guardian of the common good and the protector of popular rights."[356]

The diocesan community, as a society of believers in a specific territory and with a particular culture and customs, needs its own laws which govern relations among its members, protect the right of members, prescribe the obligations of each member according to his or her condition and function, and which take into consideration the context and circumstance of the community. The bishop is empowered, in accordance with norms of law,[357] to enact the laws suitable and proper to his diocese which promote, direct and coordinate missionary endavours and works. It is a recommendation that the bishops put in place specific particular norms, directives or policies, written down that regulate specifically the entrustment of parishes in the diocese. Clerical institute too, should have specific and clear norms of entrustment written down if they are aware that their charism calls them to accept parishes for their apostolate. Such norms should include the methods of action in order to initiate, guide, coordinate and sustain the entrustment of parishes to

[356] Cf. C. BURKE, *The Lawless People of God? Authority and Freedom in the Church,* Scepter Publishers Kenya, Limuru 2009, p. 25.

[357] CIC/1983 Cann. 381 § 1 and 790.

clerical institutes from the very moment they are welcomed and entrusted with a parish even if it is done in probation.

When such norms are put in place, the directives for the mutual relations between bishops and religious in the Church reminds all religious that they are bound by laws, decrees and ordinances laid down by the local ordinary affecting the works, in those matters which concern the exercise of the sacred apostolate as well as pastoral and social activities presecribed or recommended by the local ordinary.[358]

3.6.3 Emphasis on Agreements Made in Writing and Honoured

As Cann. 520 and 681 state, all agreements should always be in writing. A written agreement (*Conventio scripta*) is a bilateral contract in a broader sense made between the bishop and the competent religious superior, which sets forth norms of personal nature out of which there arise certain mutual obligations and rights in the way of offer and acceptance. According to CIC/1983, Can.37, the administrative acts which concern the external forum are to be effected in writing. CIC/1983 Can. 681§2 prescribes a written agreement to be drawn up between the diocesan bishop and the competent religious superior.

J.L Brian reiterates that the canonical obligation of the arrangement between the bishop and the superior of a religious institute should be in writing, expressely and accurately defining among other things, the work to be done, the persons to be assigned and the financial arrangements with respect to the offerings of the faithful, what is taken for the support of the institute, and what pertains to the parish administration.[359]

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[358] Cf. *Mutuae Relationes* n. 53, § 1.

[359] Cf. J.L BRIAN, (eds.,) *et. al., Church Administration Handbook*, St. Pauls Publications, Strathfield 2008, p. 179.

The written agreement, which is a must in the case of entrusted works, should include also matters concerning the assignment, transfer, removal of persons connected with the works (Can. 681§1). It is a prerogative of the bishop to see that agreements are not only signed but also honoured even by the subsequent persons who come later. The drafting of the memorandum of agreement (Can. 681§2) helps to promote mutual relations as it establishes and defines collaborative agreements between the local church and the institute. It is also a recognition of the authenticity of the charism of the institute to which the work in the diocese is entrusted.

A written agreement is required and is useful in other cases especially when a religious house of an institute is erected in a diocese. Certain canons of the CIC/1983 indirectly refer to such written agreements. CIC/1983 Can. 612 speaks of "the laws of foundation" and "the apostolic works for which a house was established."

3.6.4 Fidelity on the Part of Superiors to the Just Autonomy of the Institute When Accepting an Entrusted Parish

There is need to note that the authority over the work entrusted and in this case the parish, is the bishop and the authority over the constituted parish priest is their superior. "The activities even proper or particular to the society which are entrusted to it by the local ordinary are under his authority and direction: however, the religious superiors' right of supervising their members' lives remain unaffected, also together with the local ordinary, their fulfillment of the tasks entrusted to them."[360] The agreement, therefore, regulates only the apostolic activity of a religious engaged in the entrusted work. It does not, in view of Can. 678 § 2 govern the internal life of the religious institute entrusted to the parish.

[360] Cf. *Ecclesiae Sanctae* 1, 29, § 2, CIC/1983 Can. 681 § 1.

Can. 209 § 2 exhorts every christian faithful that with great diligence they are to fulfill the duties whech they owe to the universal Church and the particular church to which they belong according to the prescripts of the law. In fulfillilng their duties with regard to the process of entrustment of parishes, the competent superior should be vigilant of cases of undue pressure of urgency to undertake the entrusted parish. At the same time, the local ordinary should also be vigilant of such cases from the clerical religious institutes. One should also do due diligence (take reasonable steps to avoid committing offence) where there is a reluctance by the one entrusting to draw the written agreement. He should further obtain correct and adequate information in cases where another institute abandoned the same parish or were asked to leave. The due diligence can be exercised by considering a possible remedy prescribed by the Code that "in directing the apostolic works of religious, diocesan bishops and religious superiors must proceed by way of mutual consultation."[361]

3.6.5 Commitment by Both the Bishops and Religious Institutes on Fostering Mutual Relations

CIC/1983 Can. 232 states that the Church has the duty and the proper and exclusive right to form those who are designated for the sacred ministries. Seminarians, both for the dioceses and the clerical institutes, as future leaders should be formed in order to be conversant with the constitution of the Body of Christ, the Church, as well as the nature and function and usefulness of each part and especially with the understanding of the Church as "communion."[362] Without this knowledge or neglect of the same, may lead to selfishness, competition and isolation between the

[361] CIC/1983 Can. 678 § 3.

[362] Cf. CONCILIUM VATICANUM II, Constitutio dogmatica de Ecclesia, *Lumen Gentium*, 21 Novembris, 1964, nn.5-7.

members of clerical institutes entrusted with works in the dioceses and diocesan clergy. These may create disagreements, tensions and disharmony which often cause scandal among the faithful.

Desirable ways of ensuring this formation in view of developing such mutual relationship are stated in *Mutuae relationes*:[363] They include: (1) Meetings of bishops and religious superiors to study these[364] topics together; (2) Special courses for diocesan priests, for religious engaged in the active apostolate in the diocese, in order to arrive at new and more appropriate adaptations; (3) Studies and experiments especially appropriate for the formation of clerical religious men who are prepared for future ministry in the parishes entrusted to the their institutes, (4) The preparation of suitable pastoral documents for the diocese, the region or the nation, that present these subjects in a challenging way for the reflection of those concerned with the process of entrustment.

Apostolorum Successores directs bishops to make sure that the clergy and seminarians sincerely value consecrated persons, not only for the contribution they can make in diocesan pastoral work, but most of all for the strength of their witness of consecrated life and for the richness they introduce into the local and universal Church by their vocation and their manner of life.[365] Pope John Paul II stressed the necessity for collaboration in the work of evangelization saying: "Everything must be done in communion and dialogue with all other sectors of the church. The challenges of evangelization are such that they cannot be effectively faced without the cooperation both in discernment and action of all the church's members. It is difficult for individuals to provide a definitive answer; but such an answer can arise from encounter and dialogue."[366]

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[363] Cf. *Mutuae relations*, no. 29.

[364] The following are topics proposed for study by bishops and religious superiors: each party is required to promote knowledge of the teaching of Vatican II and pontifical pronouncements regarding the episcopacy, regarding consecrated life and on the local Church and the relationship expected to exist among them. See MR, no. 29, p. 321.

[365] Cf. *Apostolorum Successores* no. 99 b, p. 110.

[366] Cf. *Vita Consecrata*, no. 74, p. 393.

In His address in the meeting with bishops, priests, deacons, consecrated persons and seminarians, Pope Francis said:

> "Let me repeat this important word: together. Let us never forget it: together, bishops and priests, priests and deacons, pastors and seminarians, ordained ministers and religious – always showing respect for the marvelous specificity of religious life. Let us make every effort to banish the temptation to individualism, to partisan interests. How sad it is when the Church's pastors are incapable of communion, when they fail to cooperate, and even ignore one another! Let us cultivate mutual respect, closeness and practical cooperation. If we fail to do this ourselves, how can we preach it to others?"[367]

Sharing in an interview with AMECEA Online after a workshop that brought together the clergy, deacons, consecrated men and women within the Archdiocese of Kisumu, Archbishop Maurice Muhatia Makumba, stressed that "collaborative ministry helps to draw the consciousness for the agents of evangelization working in the same Archdiocese to realize that we stand to be more successful when we collaborate more closely."[368]

The Archbishop stressed the significance of collaboration saying: "It is important for people working especially in an institution like the Church and in the same diocese to truly collaborate and share experiences and have that mutual respect and expression of mutual love among themselves. Since God has called each and every one of us to participate and work in his vineyard," he continued, "The more we encourage collaboration, interact and realize the importance of each other and the benefit of working together in unity, the more we stand to be successful as agents of evangelization."[369] As one way of ongoing formation among agents of evangelization in the Archdiocese, the Archbishop hopes to have such encounters biannually

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[367] Cf. POPE FRANCIS, "*Meeting with Bishops, Priests, Deacons, Consecrated Persons and Seminarians"* 4 February 2023 <https://mficgen.org/index.php/evofp-social-issues/171-pope-francis-in-south-sudan> (2 October 2024).

[368] Cf. J.A. Okoth, *"Agents of Evangelization in Kisumu Archdiocese Embrace Collaborative Ministry,"* 26 May 2023. <https://communications.amecea.orghtml> (25 September 2024).

[369] Cf. J.A. Okoth, *"Agents of Evangelization in Kisumu Archdiocese Embrace Collaborative Ministry,"* 26 May 2023. <https://communications.amecea.orghtml> (25 September 2024).

where the priests, deacons and religious discuss various contemporary topics depending with the signs.

As *mutuae Relationes* suggests, it would be better that theology of consecrated life be made part and parcel of the seminary and institutes for theological formation's academic curriculum so that they are aware of the nature, place and functions of consecrated pesons in the church. The course should have both theological and pastoral orientation and should necessarily incorporate canonical regulations on the issue of contracts/agreements between the dioceses and religious institutes as juridical persons.[370]

In addition, pastoral visitation by the bishop and the competent superior would serve as a great platform for fostering mutual relations. For the religious it is an occasion to personally come into contact with the diocesan bishop and ameliorate their relations with him. Visitation is an ancient practice in the Church, with apostolic origins.[371] It is said to represent a privileged moment of encounter between the bishop and the parish community, a privileged moment of ecclesial communion and grace.[372] Church, with apostolic origins.[373] It is said to represent a privileged moment of encounter between the bishop and the parish community, a privileged moment of ecclesial communion and grace.[374] Luigi Chiapetta contents that pastoral visitation offers the

[370] Cf. *Mutuae Relationes,* n. 36.

[371] Cf. G. SMITH, *The Canonical Visitation of Parishes: History, Law, and Contemporary Concerns*, Rome, Editrice Pontificia Università Gregoriana, 2008, p. 120.

[372] Cf. PARTIDA, Accountability, 338. See also CONGREGATION FOR BISHOPS, *Directory for the Pastoral Ministry of Bishops Apostolorum Successores,* Libreria Editrice Vaticana, Vatican City, 2004, n. 220: "For the communities or institutions visited by the Bishop, it is an event of grace, reflecting in some measure that great visit with which the "chief Shepherd" (1 Pet 5:4) and Guardian of our souls (cf. 1 Pet 2:25), Jesus Christ, has visited and redeemed his people (Lk 1:68)."

[373] Cf. G. SMITH, *The Canonical Visitation of Parishes: History, Law, and Contemporary Concerns*, Rome, Editrice Pontificia Università Gregoriana, 2008, p. 120.

[374] Cf. PARTIDA, Accountability, 338. See also CONGREGATION FOR BISHOPS, *Directory for the Pastoral Ministry of Bishops Apostolorum Successores,* Libreria Editrice Vaticana, Vatican City, 2004, n. 220: "For the communities or institutions visited by the Bishop, it is an event of grace, reflecting in some measure that great visit with which the "chief Shepherd" (1 Pet 5:4) and Guardian of our souls (cf. 1 Pet 2:25), Jesus Christ, has visited and redeemed his people (Lk 1:68)."

bishop a good opportunity to praise, stimulate and support the Gospel workers and to see the difficulties in apostolate. The visitation enables the bishop to reignite flagging enthusiasm, and to call the brothers and sisters to a new awareness of self and to a more diligent apostolic action.[375]

The directory for the pastoral ministry of bishops, *Apostolorum Successores* explicitly deals with the "Pastoral Visit."[376] The directory outlines the purpose of the visitation as one of the ways, through which the bishop maintains personal contact with the clergy and with other members of the People of God. It is an occasion to rejuvenate the energies of those engaged in evangelization, to praise, encourage and reassure them.[377] CIC/1983 directs that the bishop has the obligation to make the pastoral visitation of his entire diocese at least every five years.[378]

The bishop can also make possible visits for the sake of courtesy, cordiality, fraternity, friendship and esteem for the religious entrusted with the parish in the diocese. The Archbishop visits these parishes officially once a year which is connected with the confering of the sacrament of confirmation. In his visits, he meets different groups of the faithful in the parish, reviews the parish books including the registration books for sacraments, financial books and the mass intention books.

As with a bishop, so for a competent superior, visitation will be the normal means by which an evaluation of performance is made. Since the parish has been entrusted to the institute, the major

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[375] Cf. L. CHIAPPETTA, *II Manuale del Parroco: Commento Giuridico-pastorale*, Edizioni Dehoniane, Roma 1997, p. 196. (Translation of the author. Original text: "La Visita pastorale, poiche riguarda tutta la diocesi nelle sue varie associazioni, luoghi sacre, strutture ed istituzioni, offre al Vescovo una buona occasione per lodare, stimolare, confortare gli operai evangelici, per vedere con i propri occhi le difficolta dell'evangelizzazione e dell'apostolato, per indagare e soppesare, ancora una volta l'efficacia *dell'azionepastorale organica*, per venire a contatto con il cuore dei fratelli, per eccitare le energie casualmente illanguidite, per richiamare, infine, i fratelli ad una nuova coscienza di se e ad una piu diligente azione apostolica.")

[376] Cf. CONGREGATION FOR BISHOPS, *Apostolorum Successores*, Vatican City, Libreria editrice Vaticana, 2004, nn. 220 - 224. (Hereafter cited as *Apostolorum Successores*).

[377] Cf. CONGREGATION FOR BISHOPS, *Apostolorum Successores*, n. 220.

[378] CIC/1983, Can. 397.

superior has every right to see the parish books.[379] The institute which accepted the parish is answerable *coram episcopo* for its proper management. The major superior's aegis, moreover, is not limited to financial matters, but extends to the whole pastoral good of the parish. In the spirit of communio, this means extending to the parish a share in the patrimony of the institute. This is because when the bishops ask an institute to care for a parish, he asks it to do so as members of that institute, with all its spiritual patrimony and charisms.

3.6.6 Faithfulness to the Patrimony of the Institute Entrusted with a Parish

Entrustment of a parish to an institute places the diocese in direct contact with the institute's charism. Beyer Jean in his article, "Religious and the Local Church," raises the question concerning charism: its nature, specificity, spirit, structures and identity, which must be inserted into the life of the particular Churches. The diocesan bishop has the duty to receive the charism of the institute as a gift for the universal Church and which the faithful have a right to share.[380]

It is for the good of the Church that institutes have their own proper characters and functions. The spirit and aims of each founder, therefore, should be faithfully accepted and retained, as indeed should each institute's sound traditions, for all of these constitute the patrimony of an institute.[381] The General Statutes of the Order of Friars Minor demand that "in accepting parishes, the Minister Provincial is to have preference for those in which the witness to minority and fraternity can better shine forth.[382] CIC/1983 gives an invitation for all to observe faithfully the mind and designs of the founders and their dispositions concerning the nature, purpose, spirit

[379] Cf. E. GARCIA, "Ecclesiastical Books," *Boletín Eclesiástico de Filipinas*, 66 (1990), pp. 676-677.
[380] Cf. B. JEAN, "Religious and the Local Church," in *The Way Supplement*, 50 (1984), pp.80-92.
[381] Cf. *Perfectae Caritatis*, 2 (b), FLANNERY 1, 612.
[382] Cf. STATUTA GENERALIA, ORDINIS FRATRUM MINORUM, General Curia OFM, Rome 2010, 54, § 1.

and character of the institute, which have been approved by the competent ecclesiastical authority, together with its sound traditions, all of which comprise the patrimony of the institute itself.[383]

The identity of an institute is what gives it the purpose of existence and a distinct character. All members of the institute and in a particular way, those in authority, have the obligation of observing with fidelity that which is proper and characteristic of the institute, that is, all the elements which constitute its reason for existence as approved by the ecclesiastical authority.[384] Having its roots in *Perfectae caritatis*, n. 2 (b), Can. 578 outlines seven basic distinguishing elements of an institute of consecrated life which constitute its unique identity.These elements also constitute the spiritual patrimony of an institute which every member is to be helped to understand and assimilate during their formation. The canon lists these elements as: intention of the founder(s), the dispositions of the founder(s), nature of the institute, its purpose, spirit, character and sound traditions.

An understanding of the institute's identity and patrimony clearly articulated to members during their formation enriches their personal sense of belonging and their confidence to be identified with the institute even when they are entrusted with a parish in the diocese. It helps the diocesan bishop to understand the institutes well when he is entrusting and trusting them with a parish in order to help preserve its identity. Pope Francis in his letter to all the consecrated persons on the occasion of the inauguration of the year of consecrated life, states that knowledge of the historical background of a religious family is essential for preserving its identity and for strengthening its unity as well as for reinforcing the common sense of belonging of its members.[385]

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[383] CIC/1983, Can. 578.

[384] Cf. T. RINCÓN-PÉREZ, "Commentary on Faithfulness to the Patrimony of Each Institute (Can. 578)," in *Exegetical Commentary*, vol. 2/2, p. 1482.

[385] Cf. *Scrivo a voi*, no. I (2), in *AAS*, 106 (2014), 938, in *L'Osservatore Romano,* December 5, 2014, 17. Cf. Can. 578.

Given the significance of mission in the life of the Institute, it is of importance that those involved in the contract of entrustment of parishes understand and appreciate it in all its facets. This includes learning it in its ecclesial and historical context, its rootedness in the charism of the Institute, its expression in the many diverse ministries and appreciating the continuous endeavours of interpreting it according to the signs of times. According to Pope John Paul II, Fidelity to the founding charism and to the subsequent spiritual heritage of each institute are to be the first criteria for decisions and actions with regard to choice of works of institutes because the nature of the charism directs their energies, sustain their fidelity and direct the apostolic works of all towards the one mission.[386]

It would be a good thing that a segment dedicated to the content of the spiritual patrimony of the Institute be included in the agreement made between the diocesan bishop and the institute. This is to enable the diocesan bishop and all those invoved to be familiar with the various elements which make up the identity of that particular institute and to identify its uniqueness in relation to other institutes who have also been entrusted with parishes to avoid competition and comparison with other institutes.

3.6.7 Fidelity to the Observance of the Terms of the Written Agreement by Members Assigned to Parishes

According to CIC/1983 Can. 381, a diocesan bishop in the diocese entrusted to him has all ordinary, proper and immediate power which is required for the exercise of his pastoral function except for the cases which the law or a decree of the Supreme Pontiff reserves to the supreme authority or to another ecclesiastical authority. It is for the diocesan bishop to govern the particular Church entrusted to him with legislative, executive and judicial power according to the norm of

[386] Cf. *Vita Consecrata*, n. 45.

law.[387] The diocesan bishop is the sole legislator of his diocese. He is competent to make particular laws in his diocese binding every person including religious provided they are not contrary to universal law. The bishop is also bound to promote the common discipline of the whole Church and, therefore, to urge the observance of all ecclesiastical laws. He is to exercise vigilance so that abuses do not creep into ecclesiastical discipline, especially regarding the ministry of the word, the celebration of the sacraments and sacramental, the worship of God and the veneration of the saints, and the administration of goods.[388]

Among particular laws binding religious in the diocesan administration are: (1) the obligation to avoid things which, although not unbecoming, are nevertheless foreign to the religious state,[389] (2) the obligation to behave with due prudence towards persons whose company can endanger their obligation to observe continence or give rise to scandal among the faithful,[390] (3) the obligation to refrain completely from all those things which are unbecoming to their state. In this case a diocesan bishop or those in law are equivalent to diocesan bishops can make particular laws in their dioceses specifying what is implied by behaving with due prudence, situations in which the religious can cause scandal and specific things which are unbecoming and foreign to religious state of life in their areas of jurisdiction.

The code prescribes: "In all matters in which they come under the authority of the local ordinary, religious can be constrained by him with penalties."[391] For a very grave reason, "*urgente gravissima causa*," therefore, a diocesan bishop can forbid a member of a religious institute to

[387] CIC/1983, Can. 391 § 1.
[388] CIC/1983, Can. 392 §§1, 2.
[389] CIC/1983, Can. 285 § 2.
[390] CIC/1983, Can. 277 § 2.
[391] CIC/1983, Can. 1320.

remain in his diocese, provided the person's major superior has been informed and has failed to act: the matter must immediately be reported to the Holy See.[392]

In the application of this penalty, Can. 679 demands the that the bishop must notify the major superior of the "*urgente gravissima causa*" of the religious in question, the major superior has failed to act and the bishop should report the matter to the Apostolic See. Accordingly, to rectify the delinquent situation of religious in the parish, in the diocese, the bishop can make use of other pastoral means according to the agreement made during the entrustment of the parish.

3.6.8 Promotion of A True Spirit of Communio between the Institutes Entrusted with Parishes and the Entire Diocesan Family

Vatican II has furnished the Church with principal doctrines to define in a new way the position of religious in the Church and in the individual dioceses. The religious form a constitutive part of the diocese, which is clear from the very definition of the diocese in *Christus Dominus*: "A diocese is a portion of the people of God entrusted to a bishop to be guided by him… it constitutes one particular Church in which the One, Holy, Catholic and Apostolic Church of Christ is truly present and active."[393] All priests, both diocesan and religious, participate in and exercise with the bishop the one priesthood of Christ and are thereby meant to be prudent collaborators of the Episcopal order.[394] Other members of religious communities both men and women also belong in a special way to the diocesan family.[395]

G. Lobo in his book; New Canon Law for Religious, observes that all members within the one people of God, that is pastors, religious and lay people are united in one body as "sacrament

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[392] CIC/1983, Can. 679, when a most grave cause demands it, a diocesan bishop can prohibit a member of a religious institute from residing in the diocese if his or her major superior, after having been informed, has neglected to make provision; moreover, the matter is to be referred immediately to the Holy See.

[393] Cf. *Christus Dominus*, n. 11. CIC/1983 Can. 369.

[394] Cf. *Lumen Gentium*, n. 28.

[395] Cf. *Lumen Gentium*, n. 34.

of the saving unity of the whold of mankind." He, therefore, suggests that the mission of religious should not be looked at as foreign in the particular Church. He encourages the religious to regard themselves as true members of the diocesan family. He continues that all should realize that religious priests too belong to the clergy of the diocese and so if entrusted to the parish they are part of the bigger diocesan family. In addition, since the bishop is often influenced by the diocesan clergy, he is to clarify the role of the religious to the diocesan clergy so that they take them as members of one family.[396] All as a family of the diocese should strive to foster this true spirit of *communion* which the teaching of the Council has reflected, by new or renewed structures at the universal, diocesan and parochial levels.[397]

3.6.9 Accountability of the Pastors to the Bishops and his Institutes

The entrustment of a parish to an institute brings with it an accountability of the institute to the diocesan bishop. Accountability is one reason for conflicts between the members of the institutes in a parish and the diocesan bishop. The institute through its legitimate superiors is ultimately answerable to the bishop for its management of and ministry to the parish.[398] This is not merely a matter of nominating a suitable pastor.

The CIC 1983 makes it clear that in matters concerning the care of souls, the public exercise of divine worship and the other works of the apostolate, religious are subject to the authority of the bishops, whom they are bound to treat with sincere submission and reverence.[399] This

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[396] Cf. G. LOBO, *New Canon Law for Religious*, St. Pauls Publications, New Delhi 1986, p. 19.

[397] JOHN PAUL II, APOSTOLIC CONSTITUTION Sacrae Disciplinae Leges, 25th January, 1983, in AAS 75, 1983.

[398] "The institute itself, or the religious community, has a certain responsibility for the parish before the diocesan bishop. … It is therefore not merely a question of nominating a pastor, who happens to be a religious, in a certain parish, but of assuming pastoral responsibility on its part by the institute per se." DE PAOLIS, "De Parœciis," P.408. (Translation of the author. Original text: "Institutum ipsum, seu communitas religiosa, habet quamdam responsibilitatem parœciae coram Episcopo diocesano. ... Quaestio est ergo non simpliciter de nominando paracho, qui sit religiosus, in aliqua parœcia, sed de assumption responsibilitatis pastoralis ex parte ipsius instituti qua talis.")

[399] Cf. CIC/1983, Can. 678, § 1.

statement, is in complete harmony with Can. 519, which provides that the pastor exercises his ministry "under the authority of the diocesan Bishop, whose ministry of Christ he is called to share." The subjection to the bishop in Cann. 519 and 678 §1 implies accountability to him for the pastoral ministry; this is so, whether the pastor is a diocesan priest or the member of an institute. Gallen J. F notes that transparency and accountability of the pastor to the Bishop is one consequence of entrustment.[400] Canon law does provide formal instruments given to the bishop to put such accountability into practice. This is through visitation, which is required in each parish once every five years. This applies to parishes entrusted to religious and secular institutes. [401]

The competent Superior does not make detailed regulations about pastoral matters, but he is to make sure that the parish is being administered efficiently and well, in accordance with the diocesan guidelines, and he will be concerned if a parish priest under his jurisdiction is, for example, displaying a lifestyle in his ministry which does not fit the expectation of the institute. We must remember that the parish has been entrusted to the institute by the diocese and the institute must, therefore, be confident that its nominee is fulfilling his responsibilities: if not, the Superior, like the bishop, has complete discretion to remove him.

To re-phrase the matter, the parish priest exercises his ministry under the direction of the bishop, but this does not give him a "space" to be anything other than a religious of his particular institute, nor is his ministry, any more than his religious life, free from his superior's scrutiny.[402]

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[400] Cf. J.F. GALLEN, *Canon Law for Religious: An Explanation,* Alba House, New York 1983, p. 24.

[401] Cf. CIC/1983, Cann. 396-398. See Can. 535 § 4, on the right and obligation of the bishop to examine the parish books.

[402] V. DE PAOLIS puts it this way: "Religious are always religious under the power of the superior: there is no space provided where religious superiors cannot intervene in the lives of their subjects." DE PAOLIS, "De Parœciis," p. 413. (Translation of the author. Original text: "Religiosi semper sunt religiosi sub potestate superiorum: non datur spatium ubi superiores religiosi non possint intervenire in vita suorum subditorum".)

Finally, superiors cannot insist on pastoral activities contrary to the will of the bishop, and on the other that a bishop cannot insist on activities contrary to the nature of the institute or society, nor prohibit those essential to it. [403]

> In parishes entrusted to religious institutes, the parish priest is a member of the institute, which has the responsibility of presenting and removing the pastor, and also, coram episcopo, responsibility for its pastoral care. The parish priest is answerable not only to the bishop, but also to his own religious superior: the parish may be called a "religious" parish, for so it effectively is, inasmuch as it has been entrusted to a religious community.[404]

To put the matter simply, to foster mutuality between these parishes entrusted to clerical institutes and the diocesan bishop, the superior is accountable to the bishop for the pastoral care of the parish. As a result, the parish priest is accountable to the superior not only for how he conducts himself as a religious, but also for the pastoral care and stewardship he exercises as pastor of a "religious" parish, a parish entrusted to the institute.

3.6.10 Creation of Conflict Resolution Fora

The implementation of the agreements and dual accountability to the bishop and to the competent superior by the pastor at times creates disagreements, tensions and disharmony. For instance, at the time of visitation the bishop may discover an abuse or certain abuses. The only possible answer from the code is to handle this through co-operation and dialogue. Can. 678 §3 says: "In directing the apostolic works of religious, diocesan bishops and religious superiors must proceed by way of mutual consultation." In this spirit of consultation, the bishop is to first notify the matter to the competent religious superior, according to the gravity of the abuse and person

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[403] For this reason, the major Superior can erect chapters of the confraternities of the institute within its houses and churches without reference to the bishop, whereas the bishop's written consent is required for validity in erecting a chapter elsewhere. By entrusting the parish to an institute, the bishop is accepting and approving, ipso facto, the institute's proper nature, which includes such confraternities. See Can. 312 § 2.

[404] V. DE PAOLIS, "De Parœciis," p. 409. (Translation of the author. Original text: In parœciis religiosis institutis comissis, parochus est membrum institutis, parœcia committitur instituto, quod resposibilitatem habet in praesentando parochum et amovendo, et etiam coram Episcopo quoad pastoralem. Parochus respondere debet non tantum Episcopo sed etiam proprio superiori religioso: parœcia dici potest, sicut effective est, parœcia religiosa, in quantum commissa communitati religiosæ.")

involved and to advice the superior that the situation be corrected. But if after having been notified of the situation of abuse, the superior concerned has not taken any necessary measures, or if the superior's action proves to be ineffective, then the bishop can provide or take remedial action on his own authority.[405]A conflict resolution forum would foster dialogue in following the demands of the code. This would help to prevent abuses and conceivably avoid possible civil litigation by the institute, thus safeguarding communion in the particular Church.

A different issue arising from the norm of Can. 681 § 2 concerns what should be done when contracts are breached, e.g, if a diocese fails to fulfill its duty to the institute as indicated in a contract between the diocese and the institute when entrusting the parish. A statement could be made in the agreement on the course of action in such a situation, especially in light of each party's obligation in preserving communion in the Church. Some areas of concern worth recalling include the need for the constitutions and other codes of the proper law to indicate the way forward in situations of non-fulfillment of agreements.

3.6.11 Other Matters to be Added in the Agreement

As seen in Chapter two, Cann. 520 §1 obliges the three points to be expressely and accurately defined in the written agreement. Other things to be considered in such contracts may include: (1) the obligation to respect the intention of donors, and particularly their intention to donate to the parish or the institute which are separate juridic persons could be mentioned; (2) The right and obligation of the institute to share its spiritual patrimony with the people of the parish could be noted, including the promotion of its typical devotions, the veneration of its saints and the observance of its calendar, while always observing the feasts and solemnities of the local Church according to law; (3) The rights and obligations concerning accountability, notably the

[405] CIC/1983, Can. 683 § 2.

right of both the major superior and the bishop to conduct visitation and have access to the financial records of the parish would be especially useful to mention; (4) The acts of extraordinary administration (5) The means of solving the possible disputes arising from agreement and avoiding civil litigations in certain contentious cases could be included.[406] Procedures for making changes in agreement, its reward, withdrawal or cessation could be indicated (5) the period of time in advance to inform the other party should find its place in the agreement.

Conclusion

This chapter has analysed the application of Can. 520 with specific focus on the guidelines of the Archdiocese of Kisumu and some of the clerical religious institutes and clerical societies of apostolic life entrusted with parishes in the Archdiocese. It has made reference to the norms in the particular law and proper law which address the topic of entrustment of parishes to a clerical institute in order to highlight the significance of addressing the issues which lead to lack of faithful observance of the agreements made between the diocesan bishops and the competent superiors. The chapter has also examined the challenges encountered in the efforts to faithfully observe the agreement made.

As a way of addressing these challenges, the chapter has proposed some recommendations that would eliminate some of the challenges as well as empowering the bishops, competent superiors, diocesan clergy and religious clergy assigned to the entrusted parishes. They are called upon to remain faithful and committed to the agreement and fulfill the expectations from either side as stipulated in the agreement. This should, ultimately, improve the relationship between the diocesan bishop and the clerical institutes entrusted with parishes in the diocese. As the local ordinary of the Archdiocese of Kisumu once said during his interview with AMECEA Online

[406] CIC/1983, Can. 1446 § 1.

while emphasizing the need for collaborative ministry aimed at enhancing synodality and working together by agents of evangelization: "We, therefore, need to interact with each other in a friendly and loving way. We need to support each other and to reduce disagreement among ourselves especially in the course of the performance of our apostolates and when interacting with our people."[407]

[407] J. A., OKOTH <https://communications.amecea.org> *"Agents of Evangelization in Kisumu Archdiocese Embrace Collaborative Ministry*, 26/5/2023, (Accessed 27th December 2024).

GENERAL CONCLUSION

Fidelity to the proper written agreement drawn between the diocesan bishop and the competent superior of a clerical institute is essential for the stability of the entrusted mission and fostering mutual relationship between the diocesan bishop and the clerical religious institute or the clerical society of apostolic life entrusted with a parish in the diocese. To accept the responsibility for a parish brings with it certain obligations. The bishop does not offer a parish to a religious order or an institute or society of apostolic life so that the said parishes becomes an island. The bishop hopes that members of the parish community experience themselves as part of the diocese and that the ministers live in communion with the bishop and the diocesan clergy.

It is hoped, therefore, that members of the institutes entrusted with a parish integrate themselves into the activities of the diocese, participate in diocesan gatherings, and thus experience themselves as priests who are part of the presbyterate that gathers around the bishop and acts in accord with his desires. At the same time, a bishop who requests the help of a clerical institute to minister in a specific place for an agreed upon time realizes that the institute or society must minister in accord with its own spirit and thus leave the imprint of its proper spirituality on the parish. To forget one of these two realities, would demand a readjustment, and would provoke a situation of disorder and in fact would create an unjust situation with regard to the diocesan spirit as well as the spirit of the institute or society. When a clerical institute accepts the call of a bishop and commits itself to minister in a specific parish it ought to be aware of the twofold commitment that it acquires, a commitment that could be summed up with the following words: a diocesan commitment and a commitment to the institute. As this study has demonstrated, a proper written agreement serves to accomplish these purposes.

Historically, this research has shown that entrustment of a parish through an agreement has a long history, tracing its roots in the scriptures and in the life of the early Church. The tradition goes back to the monasteries which provided pastoral care to parishes. With the Tridentine reform of the sixteenth century, a universal "model" of a parish was formulated to include a territory, an irremovable pastor, and a benefice. After the Council of Trent, however, it was by way of exception that a religious institute would have care of a parish. The CIC/1917 made provision for a parish to be entrusted to a religious priest, or to an institute. The second Vatican Council urged clerical religious to take part in the apostolate of the diocese and form part of the clergy of the diocese.[408] The post-conciliar period came to an end with the promulgation of the revised Code of Canon Law in 1983 and the issuance by the Congregation for Religious and Secular Institutes of the decree *Iuris Canonici Codice*. The CIC/1983 specifically prescribes in entrustment, an arrangement between the bishop and the superior of the institute which must be in writing. It must expressly and accurately define, among other things, the work to be done, the persons to be assigned and the financial arrangements. The arrangement can be in perpetuity or for a fixed period.

The research has demonstrated in chapter one, that the concept of entrustment has a long history in the ecclesial life. This has been seen in the early life of the Church, the monastic era all the way to the period of mendicant orders, the period of the *Corpus Iuris Canonici*, Lateran Council through to the Council of Trent. The Church regulated the issue of entrustment by issuing norms in the Pio-Benedictine Code which laid a foundation for the decrees formulated during the Second Vatican Council and the post-conciliar documents of the Popes and the Roman Curia. After the Council of Trent, however, it was by way of exception that a religious congregation would have

[408] Cf. *Christus Dominus*, n. 34.

care of a parish. This paved way for norms in the CIC/1983 on entrustment as we have them in the church today.

Chapter two of this research has presented and examined the juridic development of Can. 520 of the 1983 Code on entrustment of a parish to a clerical religious institute and society of apostolic life, its formation journey, its meaning and relation to other canons in both the CIC/1983 and the CCEO/1990. The juridical *iter* of this canon elaborated on the legislative formation of the canon and how it developed from the CIC/1917, Can.452 §1, the schemas of 1977, 1980, and 1982 until the time of its promulgation by His Holiness Pope John Paul II, on 25th January 1983. It has analyzed the text of Can. 520 on entrustment of parishes to clerical institutes. It has also examined its meaning, it's possible motivation, juridical effects and its implications. It has dealt with the written agreement with its content. Finally, it has demonstrated its relationship with other canons of both the CIC/1983 and the Code of the Canons of the Eastern Churches.

The third Chapter of this research has discussed the application of Can. 520 in relation to the particular legislation and provisions of the Catholic Archdiocese of Kisumu-Kenya. The chapter makes reference to the guidelines of particular law of the archdiocese and proper law of some selected institutes. As a comparative study, Auxiliary Legislation of the KCCB and Particular Churches such as the Archdiocese of Nairobi-Kenya are briefly investigated. The main objective of the chapter was to establish how the Archdiocese of Kisumu and other particular churches have applied the norm of Can. 520 in the process of entrusting parishes to clerical religious institutes and clerical societies of apostolic life which have been welcomed and entrusted with parishes.

This chapter has also pointed out some of the challenges encountered by the archdiocese and the institutes in the effort to put into practice the agreements made during the entrustment of parishes. The chapter has shown that even though the bishops and the competent superiors are

meant to faithfully observe the agreements made, many factors such as lack of understanding of the particular law of the diocese, and proper law of the institute, lack of adequate understanding of the universal law and the Holy See documents on entrustment of apostolate to religious, apostolic activities, which are not in conformity with the charism and the agreement, affect this initiative.

Finally, conscious of the principle "*Ubi lex non distinguit, nec nos distinguere debemus*," the research makes some recommendations as responses to the challenges encountered in the entrusment process. These include familiarity with the norms on entrustment and magisterial documents on entrustment of apostolate to clerical religious institutes or society of apostolic life and the relationship between the diocesan bishops and the religious institutes, and making sure that all agreements are in writing. In conclusion, the study has pointed out the need to emphasize the importance of drawing up of proper agreements which are to be signed and honored from the very beginning of the entrustment of a parish. Such signed and honored agreements help the diocesan bishop to recognize the charisms of the institutes or society of apostolic life; and for the institutes or society to be faithfully committed to the diocesan norms and to its own spiritual patrimony while accepting and ministering in the diocese.

The topic of entrustment of apostolates to religious institutes has been researched widely in the canonical discipline. Some of these studies addressed only specific aspects on elements of entrustments. This study is distinct and unique since it focuses on one aspect of entrustment of parishes to clerical religious institutes and clerical societies of apostolic life, Can. 520, specifically with its reference to the Catholic Archdiocese of Kisumu, Kenya. The novelty of this study is, as already mentioned, in the title: "Entrusting of parishes to clerical religious institutes with reference to the Catholic Archdiocese of Kisumu, Kenya."

The study has also provided the foundations for answering the main question of the thesis on the extent to which the diocesan bishops and the competent authority of clerical institutes together with their members have been faithful to the observance of the written agreement made during entrustment of parishes as prescribed in Can. 520. Faithfulness to the observance of the written agreement fosters cooperation, collaboration, harmonious relationship and a conducive working relationship whenever a parish is entrusted to clerical institutes. It has also provided recommendations and means of how to deal with the challenges that arise. These include creating awareness to the Local Ordinaries, competent superiors of religious institutes and their members on various issues such as familiarity with the norms and magisterial documents on entrustment. Others include faithfulness to the charism and spiritual patrimony of the institute, to the provisions and guidelines of the dioceses, and the need to emphasize the study of the relationship between the diocesan bishop and the religious institutes during formation.

The thesis, therefore, adds value to the existing canonical literature on the entrustment of parishes to clerical religious institutes focusing on a precise topic which has never been addressed. The major contribution of this study, given the nature of the entrustment process and the nature of the written agreement contained in the canonical discipline, it is evident that there cannot be a universal way of addressing the challenges of faithfulness to the observance of the written agreement in the whole process of entrustment. It is with great hope, however, that the thesis has accomplished its intended objective in creating awareness to the Diocesan bishops, competent superiors of clerical institutes and their members. It is with great hope that the thesis will be of benefit to other dioceses and clerical institutes as they enter into agreements while entrusting and accepting parishes. The thesis together with other resources available on entrustment of parishes to clerical institutes are of significant importance. It offers insight to all clergy, and religious men

and women interested in the topic. The topic, nevertheless, carries many challenges, which the research has not exhaustively addressed such as the procedure for conflict solution in case of the breach of the agreement and the question of entrustment of parishes to secular institutes or to lay institutes which have sufficient number of priests or even to personal prelature. It is a concern that prompts further research to enhance mutual relations and cooperation between the diocesan bishop and the clerical institutes and the other institutes of consecrated life.

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