

OPERA PROPRIA: PROPERTY OR PATRIMONY? CONSEQUENCES FOR MUTUAL RELATIONS¹ BETWEEN BISHOPS AND RELIGIOUS

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INTRODUCTION

There is a temptation to see the mutual relations between bishops and religious primarily in terms of the works entrusted to the religious institute by a bishop by means of a conventio entered into in accordance with can. 681.³ Clearly there are certain sorts of works – such as parishes – which will always depend directly on the bishop because of the nature of his office and the structure of the Church. In such cases the bishop will always retain a decisive role in the government of the work, even if the ordinary governance is entrusted to members of the religious institute.⁴

The religious and consecrated states do not, however, belong to the hierarchical structure of the Church,⁵ and the works which begin as initiatives of a religious institute will likely not be subject to the system of entrustment outlined in can. 681. Such apostolates are nevertheless actions of public

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³Valdir DOS SANTOS, “Il c. 681 e la convenzione tra vescovi e IVCRSVA: sfide e novità canonica” in *Commentarium pro Religiosis et Missionariis* 99 (2018) 49–77 and *id.*, “La convenzione e i suoi strumenti di controllo per un adeguato rapporto tra vescovi e religiosi” in *Commentarium* 100 (2019) 39–55.

⁴See, for example, can. 520 for the entrustment of a parish to a clerical religious institute.

⁵cf. can. 207 § 2.

juridical persons⁶ in the Church, acting in the name of the Church. The fundamental ecclesiological obligation of all Christians to proclaim the gospel⁷ and to preserve communion with the Church in their manner of acting⁸ is made juridically incarnate for the apostolate of religious in canons 673–683. Of these eleven canons, the last six all explicitly affirm the authority of the Diocesan Bishop; this is not limited to works he entrusts to religious (can. 681) and religious holding offices in the diocese (can. 682), but extends to other works which might in some sense be considered “proper” to the institute.

In the present article we shall examine that notion of a work which is “proper” to a religious institute, and seek to draw some conclusions about the way bishops and religious should proceed in establishing how such works should be governed.

THE DICHOTOMY OF *MUTUÆ RELATIONES* 57(A)

The “directive notes” *Mutuæ relationes*⁹ flesh out the notions present in the conciliar and immediate post-conciliar documents on mutual relations between bishops and religious,¹⁰ and at the time of writing are in the process of being revised by the Congregation for Bishops and the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life.¹¹ Article 57(a) of *Mutuæ relationes* sets out a distinction between what it terms “*opera propria*” (proper works) and “*opera concredita*” (entrusted works). The two expressions are printed in italics in the original text, and so are clearly intended to be taken as technical terms.

⁶cf. cann. 634 § 1 and 116 §§ 1–2.

⁷cf. can. 211; Matthew 28:19–20.

⁸cf. can. 209 § 1; John 17:21.

⁹SACRA CONGREGATIO PRO RELIGIOSIS ET INSTITUTIS SÆCULARIBUS et SACRA CONGREGATIO PRO EPISCOPIS, Notæ Directivæ *Mutuæ relationes* pro mutuis relationibus inter episcopis et religiosis in Ecclesia, 14-v-1978 in *AAS* 70 (1978) 473–506.

¹⁰cf. especially VATICAN II, decretum *Christus Dominus* de pastoralis episcoporum munere in ecclesia, 28-x-1965 in *AAS* 58 (1966) 673–696, aa. 33–35; *id.*, decretum *Perfectæ caritatis* de accommodata renovatione vitæ religiosæ, 28-x-1965 in *AAS* 58 (1966) 702–712, art. 8; PAULUS PP. VI, litteræ apostolicæ motu proprio datæ *Ecclesie Sanctæ*, 6-viii-1966 in *AAS* 58 (1966) 757–787, I, aa. 23–40.

According to the definition offered by *Mutuae relationes*, the opera propria “depend on the religious superiors in accordance with their Constitutions, even though as regards pastoral action they are subject to the jurisdiction of the local Ordinary according to the norm of law”¹². A key part of the definition is that the opus proprium is governed in accordance with the Constitutions of the religious institute.

Mutuae relationes predates the promulgation of the current canon 587 with its description of the Constitutions as the “fundamental code” containing both the description of the “patrimony” of the institute¹³ and the fundamental norms for governance, discipline, incorporation, formation and the object of the vows. Nevertheless, the Second Vatican Council had already ordered the renewal of the Constitutions of each institute,¹⁴ and with the *motu proprio Ecclesiae Sanctae* Pope Paul VI had specified¹⁵ that the Constitutions should ordinarily include both the evangelical and theological principles of the institute’s life and the necessary juridical norms, pervaded by the “true spirit and life-giving norm”¹⁶.

Thus when *Mutuae relationes* speaks of a work depending on superiors in accordance with the Constitutions, we should understand this as referring to both the spiritual patrimony of the institute and to its basic norms of governance, operating in harmony. Certainly the spiritual patrimony of the institute should be expressed in any apostolate exercised by religious, for their apostolate “consists primarily in the witness of their consecrated life”¹⁷. Where a work is considered “proper” to the institute, this patrimony should be manifest not only in the life of the individual religious, but also in the life of the institution itself. For example, a university of the Order

¹²*Mutuae relationes*, 57(a): “a Superioribus Religiosis dependent iuxta eorum Constitutiones, licet quoad rem pastorem subiciantur Ordinarii loci iurisdictioni ad normam iuris”.

¹³cf. can. 578.

¹⁴cf. *Perfectae caritatis*, 3.

¹⁵cf. *Ecclesiae Sanctae* II, 12–14.

¹⁶*ibid.*, 13.

¹⁷can. 673.

of Preachers will especially cherish the intellectual tradition of that Order (St Thomas Aquinas, etc.). It will be characterised by devotions proper to the Order (Rosary, Dominican saints, etc.) and the public celebration of the Eucharist and Liturgy of the Hours. That Order's tradition of a participation in governance by the community will be reflected in the Statutes of the University.

Some works of an institute will be “proper” to the institute and dependent on its Constitutions in a more fundamental sense than simply sharing in its spiritual patrimony. While a work of an institute may have various different configurations in terms of the civil law, including constitution as a distinct legal person in the local legal system,¹⁸ religious superiors do not normally¹⁹ seem to have the authority to erect ecclesiastical juridical persons distinct from the institute, province or religious house.²⁰ Therefore, unless other provision is made,²¹ it seems likely that a work initiated or assumed by a religious institute should be considered not merely as part of that institute's apostolate, but actually juridically part of the institute. The work would therefore be fully subject to the norms of the Constitutions and other proper law of the institute. The canonical juridical acts relating to the work would be acts of a juridical person within the institute (i.e. a religious house, a province or equivalent, or the institute itself), and that juridical person would be the owner, in canon

¹⁸cf. CONGREGAZIONE PER GLI ISTITUTI DI VITA CONSACRATA E LE SOCIETÀ DI VITA APOSTOLICA, orientamenti *Economia a servizio del carisma e della missione*, 6-i-2018 (Città del Vaticano, 2018), art. 89.

¹⁹That is, unless they have received it by apostolic privilege; an example of such a privilege would be the faculty to erect public associations proper to the institute or branches thereof, as alluded to by can. 312 § 1, 3° and § 2.

²⁰The institute, its provinces and its houses enjoy juridical personality *ipso iure* in virtue of canon 634 § 1. On the question of erection of other sorts of juridical person by a religious superior, see Velasio DE PAOLIS, “L'autorità competente ad erigere una persona giuridica nella Chiesa” in *Informationes SCRIS* 26 (2000/2) 59–86; Geraldina BONI and Manuel GANARIN, “In merito al problema se i Superiori maggiori degli istituti religiosi di diritto pontificio clericali possano erigere pie fondazioni autonome” in *Ius Canonicum* 58 (2018) 581–610.

²¹For example, the Holy See, the Bishops' Conference or the Diocesan bishop could be asked to erect a work of a religious institute as a distinct ecclesiastical juridical person (cf. canons 116 § 2, 312 § 1, 322 § 1); or the competent religious superior might by apostolic privilege have the authority to establish the work as an association or other form of juridical person.

law, of the temporal goods commonly understood to pertain to the work. In such a case the superiors and chapters of the institute would have authority over the work in the same way as they do over any other activity of the institute or its provinces or houses, even if ordinary day-to-day administration were delegated to the director or administrator of the work. In particular, canons 634–640 and the norms of Book V of the Code²² would apply, and – in crude terms – the “proper work” could be called the “property” of the institute or one of its constitutive parts. In the case of a clerical institute of pontifical right, when the canons of Book V refer to the Ordinary, the proper major superior of the institute would be understood.²³

The distinction drawn by *Mutuae relationes* 57(a) would seem to suggest that the second category of works, the “*opera concredita*” would not be subject to the superiors of the institute, or at least not “in accordance with their Constitutions”. Apart from general norms of law, the work would be governed by the *conventio* mentioned in art. 57(b) and subsequently in can. 681 § 2. It is clear that in the case of such works entrusted to the institute the superiors retain considerable responsibility and authority. The superiors will assign members of the institute to the work in accordance with the *conventio*;²⁴ when it comes to ecclesiastical offices, the superior will present the candidates to the bishop, or at least consent to their appointment,²⁵ and is free to remove them from office.²⁶ The religious remain subject to their superiors not only in what pertains to the internal life and governance of their institute, but also “in the exercise of the apostolate towards persons outside the institute”²⁷.

Nevertheless, the work entrusted to the institute is under “the authority and direction of the Bishop”²⁸, which implies that it

²²cf. cann. 635 § 1 and 1257 § 1.

²³cf. can. 134 § 1

²⁴cf. *Mutuae relationes* 57(c).

²⁵cf. can. 682 § 1.

²⁶cf. can. 682 § 2.

²⁷can. 678 § 1.

²⁸can. 681 § 1.

cannot be proper to the institute in the sense of actually being part of a juridical person of the institute. If the work is not erected as a juridical person in its own right, it should be made clear – whether in the *conventio* or elsewhere – to which juridical person the work pertains. If this is a public juridical person, the canons of Book V apply, and the functions entrusted to the Ordinary belong to the local Ordinary, even if the institute is clerical and of pontifical right. Whatever authority the superior has, it is exercised in virtue of and in accordance with the *conventio*.

The fact a work is “entrusted” to an institute rather than “proper” to it in the strict sense does not mean that the spiritual patrimony of the institute has nothing to contribute to the work. Naturally, due sensitivity needs to be exercised, especially when an institute takes over an existing work, or when the entrustment is for a fixed term. If the work involves ministry to a stable community – such as a parish or chaplaincy – it needs to be remembered that the members of that community have the right to follow the legitimate form of spiritual life to which they have become accustomed, and the spirituality²⁹ of the institute should not be imposed upon them. Nevertheless, the spiritual patrimony of the institute does pertain to the life and holiness of the Church;³⁰ therefore offering it to the faithful can and should, in communion with the Church, bring distinctive benefits to the apostolate.

The text of *Mutuae relationes* 57(a) refers the reader to *Ecclesiae Sanctae* I, 29. This earlier document, in the preceding art. 28, has a somewhat different definition of opera propria; here, “the proper or special works of each institute” are those which “with the approval of the Apostolic See, have been received from the foundation itself or from venerable traditions and then defined and ordered by the Constitutions

³⁰cf. can. 207 § 2.

³¹*Ecclesiae Sanctae* I, 28: “Opera cuiusque Instituti propria seu peculiararia, quae scilicet, probante Apostolica Sede, sive ab ipsa fundatione, sive ob venerandas traditiones suscepta et inde Constitutionibus aliisque propriis Instituti legibus definita et ordinata sunt”.

and other proper laws of the institute”³¹. In this sense a proper work of an institute is one which is in accord with its spiritual patrimony in the sense of can. 578; and therefore *Ecclesiae Sanctae* I, 29 § 2 is able to include works “proper or special to the institute” among those which might be “entrusted to the institute by the local Ordinary”³².

It seems therefore that we are in fact dealing with two different dichotomies. Whereas we have seen that *Mutuae relationes* distinguishes between “proper” and “entrusted” works, in *Ecclesiae Sanctae* the distinction would be between “proper” and “improper” works. These two dichotomies merit further attention.

OPERA PROPRIA AS AN EXPRESSION OF THE PATRIMONY OF THE INSTITUTE

St John Henry Newman (1801–1890) recounts in his letters his fascination with the Order of Preachers, declaring³³ that “[t]he idea [of the Order of Preachers] I like exceedingly” and that “what the world, or at least England, wants as much as anything, is Dominicans”³⁴. The saint nevertheless remained unimpressed with the works in which he learned that the Order was then engaged: the renown of the friars in Florence for producing perfumes was a particular cause of *admiratio*.³⁵ Newman concluded, “If indeed we could be Dominicans teaching, it were well. Meanwhile I am doubting whether the Dominicans have preserved their traditions – whether it is not a great idea extinct”³⁶.

³²*ibid.*, 29 § 2: “Opera vero, etiam Instituti propria seu peculiaria, quae ab Ordinario loci committuntur” (emphasis added).

³³John Henry NEWMAN, letter to J.D. Dalgains, 21-vii-1846 in C.S. DESSAIN (ed.), *The Letters and Diaries of John Henry Newman*, XI (London, 1961), p. 212.

³⁴*ibid.*, letter to T.T. Fox, 20-viii-1846, in DESSAIN, *Letters and Diaries*, p. 227.

³⁵cf. Frederick D. AQUINO and Benjamin J. KING (eds.), *The Oxford Handbook of John Henry Newman* (Oxford, 2018), p. 29.

³⁶NEWMAN, letter to J.D. Dalgains, 6-vii-1846, in DESSAIN, *Letters and Diaries*, p. 195. See also Paul MURRAY, *The New Wine of Dominican Spirituality: a drink called happiness* (London, 2006) 41–42.

While rumours of the demise of the Order of Preachers and its charism may have proved somewhat premature, Newman’s criticism was understandable. Religious institutes from their foundation and their legitimate traditions have a particular authentic spirit and charism at the service of the Church. As long as the charism is needed and a religious institute remains faithful to it, it is useful for the mission of the Church; if an institute abandons its authentic spirit it faces spiritual extinction, and the Church is the poorer for it.

The danger identified by Newman in the case of the Dominicans was addressed for religious institutes more generally over a century later at the Second Vatican Council. The notion of “proper works” is introduced by article 20 of the decree *Perfectæ caritatis*: [Religious] institutes are faithfully to retain and carry out their proper works, and, attentive to the usefulness for the universal Church and the dioceses, they should adapt them to the needs of times and places, adopting appropriate and even new means, and leave behind those works which today no longer correspond to the spirit and authentic character of the institute.³⁷

Proper works are therefore defined by a “*via negativa*”. The Council decrees that the works which no longer correspond to the spirit and authentic character of the institute – that is, its “patrimony” in the sense of *Perfectæ caritatis* 2(b) and can. 579 – should be left behind. We might say that such works are “improper” for the institute. Newman’s Florentine Dominican perfumery would be a clear example of the sort of “improper work” which the Council asks religious to abandon. Those works which remain are termed “proper” by the *conciliar* text, and are therefore precisely the works which do correspond to the spirit and authentic character of the institute.

³⁷*Perfectæ caritatis*, 20: “Instituta, opera propria fideliter retineant et adimpleant atque, attenta utilitate universae Ecclesiae et dioecesium, temporum locorum necessitatibus ea accommodent, opportunis ac etiam novis mediis adhibitis, illis autem relictis operibus, quae instituti spiritui et germanae indoli hodie minus sint consentanea.”

Perfectæ caritatis 20 is clearly the principal source for the current can. 677 § 1: Superiors and members are faithfully to retain the mission and works which are proper to their institute; nevertheless, they are prudently to adapt them, attentive to the needs of times and places, even adopting new and appropriate means.³⁸

It is perhaps understandable that the “negative” part of the *conciliar* text on the abandonment of “improper” works has not found its way into the canon, which means that the text itself does not specify what precisely is meant by the term “proper”. Nevertheless, in the context of the conciliar decree the mind of the legislator seems clear, and a note of the Relator in the revision process removes any doubt that in this context the *opera propria* are those which belong to the spiritual patrimony of the institute: Which are the proper works of some institute will be evident from its own charisms, from the will of the founder and especially from the determinations given in the approval of the Church.³⁹

The ecclesial dimension to which the Relator alludes is not to be forgotten. It is for the competent ecclesiastical authority, the Diocesan Bishop or the Holy See according to the case, to discern the charismatic gifts at the beginning of the life of a religious institute, and throughout the authentic development of the institute’s tradition.⁴⁰ Ecclesial discernment is also necessary when it comes to particular instantiations of the charism of an institute. The Diocesan Bishop must intervene when a religious house is erected,⁴¹ thereby allowing the

³⁸ can. 677 § 1: “Superiores et sodales missionem et opera instituti propria fideliter retineant; ea tamen, attentis temporum et locorum necessitatibus, prudenter accommodent, novis etiam et opportunis mediis adhibitis.”

³⁹ PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECOGNOSCENDO, Coetus Studii “de Institutis Perfectionis” (Sessio XIV) in *Communicationes* 27 (1995) 298: “Quaenam sint opera propria alicuius Instituti apparet ex charismatibus ipsius, ex voluntate fundatoris et praesertim ex determinatione data in approbatione Ecclesiae.” The *relatio* bears the date 30 November 1972.

⁴⁰ cf. can. 578; CONGREGATIO PRO DOCTRINA FIDELI, litteræ *Iuvenescit Ecclesia* de relatione inter munera hierarchica et munera charismatica intercurrente apta ad vitam necnon missionem Ecclesiae, 15-v-2016, in *Communicationes* 48 (2016) 58–86

⁴¹ cf. can. 609 § 1..

institute to engage in the works proper to it, possibly subject to reasonable conditions.⁴² He must also intervene when there are notable changes to the apostolic works,⁴³ or when a house is to be suppressed.⁴⁴ If the works undertaken by religious are to be truly faithful to the patrimony of the institute, it is necessary that they serve the needs of Church's mission in a particular place.⁴⁵

Nevertheless, once the appropriate ecclesial discernment has taken place, both for the erection of a religious institute and for the erection of a particular house of that institute, the institute and the house have not only the obligation to be faithful to the works proper to the institute in accordance with can. 677 § 1, but also the right to engage in such works in accordance with can. 611, 2°.⁴⁶

OPERA PROPRIA AS “PROPERTY” OF THE INSTITUTE

Canon 1254, the opening canon of Book V of the Code of Canon Law on the temporal goods of the Church, asserts the Church's innate right “to acquire, retain, administer, and alienate temporal goods”, in order to “pursue her proper purposes”⁴⁷. This right which is proper to the Catholic Church as a body, is in fact exercised in her name by the various public juridical persons in the Church, as the following canons make clear.⁴⁸ In virtue of the law itself, religious institutes, provinces and houses are numbered among those public juridical persons.⁴⁹

⁴²cf. can. 611, 2°.

⁴³cf. can. 612.

⁴⁴cf. can. 616 § 1.

⁴⁵cf. 612, 616 § 1; *Economia a servizio* 32.

⁴⁶In the case of a clerical institute these rights explicitly include having a church and to exercise sacred ministry there (can. 611, 3°); in the case of religious institutes with associations proper to them, the rights extend to the establishment of a branch of the association in the religious house or attached church (can. 312 § 2).

⁴⁷can. 1254 § 1: “Ecclesia catholica bona temporalia iure nativo, independenter a civili potestate, acquirere, retinere, administrare et alienare valet ad fines sibi proprios prosequendos.”

⁴⁸cf. cann. 1255–1258.

⁴⁹cf. can. 634 § 1

The right to acquire, retain, administer, and alienate temporal goods is not enjoyed by the Church for arbitrary purposes; Christ's injunction is clear: Do not lay up for yourselves treasures on earth, where moth and rust consume and where thieves break in and steal, but lay up for yourselves treasures in heaven, where neither moth nor rust consumes and where thieves do not break in and steal. For where your treasure is, there will your heart be also.⁵⁰

Translating the divine positive law into ecclesiastical law, can. 1254 § 1 is clear that the acquisition, retention, administration and alienation of temporal goods by the Church is justified only for pursuing the Church's proper purposes, which are listed in § 2 of the same canon thus: The proper purposes are especially: ordering of divine worship, obtaining worthy support of the clergy and other ministers, and exercising works [opera] of the sacred apostolate and charity, especially towards the needy.⁵¹

The good news may indeed be received free of charge and proclaimed free of charge,⁵² but its cost is nonetheless considerable.⁵³ The "works of the sacred apostolate and charity" require temporal resources, which must be acquired, kept safe until needed, administered prudently, and expended justly in accordance with the purposes of the mission, and these activities are undertaken in the name of the Church by a public juridical person. Consequently, when it comes to an apostolic or charitable work it is legitimate to ask to whom it "belongs" or whose "property" that work is. This is not about amassing earthly treasures, but rather about ensuring that the gifts of creation are administered uprightly, prudently and responsibly for the purposes of the mission. This responsibility falls on the public juridical person to which the work in question belongs and those responsible for its government and administration.

⁵⁰Mt 6:19–21 (RSVCE).

⁵¹can. 1254 § 2: "Fines vero proprii praecipue sunt: cultus divinus ordinandus, honesta cleri aliorumque ministrorum sustentatio procuranda, opera sacri apostolatus et caritatis, praesertim erga egenos, exercenda."

⁵²cf. Mt 10:8.

⁵³cf. Lk 14:25–33.

In a meeting of 26 January 1980, the study group “*de Institutis vitæ consecratæ per professionem consiliorum evangelicorum*” of the Pontifical Commission for the Revision of the Code of Canon Law was examining the text of what would ultimately become canon 681 § 1. The proposed text was as follows:

Opera, etiam Instituti propria, quae ab Ordinario loci committuntur religiosis, eiusdem Ordinarii auctoritati et directioni subsunt, firmo iure Superiorum religiosorum ad normam can. 1, §§ 1 et 3.⁵⁴

The text clearly finds its origin in *Ecclesiæ Sanctæ* I, 29 § 2, which reads:

Opera vero, etiam Instituti propria seu peculiariora, quae ab Ordinario loci committuntur, eiusdem Ordinarii auctoritati et directioni subsunt, firmo tamen manente iure Superiorum religiosorum invigilandi super sodalium vitam et etiam, cumulative cum Ordinario loci, super munerum ipsius commissorum adimpletionem.

One of the consultors expressed “a certain difficulty with the words *propria* and *committuntur*” found in both in the proposed text for the canon and its source. “The expression is ambiguous,” the consultor continued, “because if they are ‘proper’ works in the sense of ‘property’ of the institute, they are not ‘entrusted’”. The solution adopted by the study group, and ultimately in the promulgated text, was simply to delete the words *etiam Instituti propria*.

The potential for confusion is not surprising: property is called property precisely because it is proper to its proprietor. It is normal to expect one to be the owner of what is one’s own.

As individuals, religious are an exception to this rule.

⁵⁴PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECOGNOSCENDO, Cœtus Studii “*de Institutis vitæ consecratæ per professionem consiliorum evangelicorum*” (IX Sessio) in *Communicationes* 13 (1981) 206; the cited can. 1 §§ 1 and 3 would, with modification, become can. 678 §§ 1 and 3 of the promulgated Code.

Individual religious either renounce the capacity to own property altogether,⁵⁵ or at least the right to retain what they earn;⁵⁶ and yet they clearly possess temporal goods provided by their institute for their use, whether that be two habits and a bucket, or a well-stocked personal theological library. What an individual religious possesses is clearly in some sense proper to him or her in a way it is not proper to the other members of the institute, and it is proper that he or she should have these things if they are necessary or useful for the life or mission of the institute; yet these “proper” possessions do not become the “property” of the individual religious. Similarly, a religious institute can be entrusted with and take possession of some work, which is proper to it in the sense of being in accordance with its spiritual patrimony; and yet the temporal goods pertaining to that “proper” work are neither the “property” of the institute nor ultimately under its control.

Canon 586 § 1 recognises for each institute of consecrated life a just autonomy of life, especially of governance, allowing the institute its own discipline and enabling it to “preserve whole and entire the patrimony described in can. 578”⁵⁷. While that autonomy relates in particular to the internal governance of the institute, in the case of an institute⁵⁸ whose patrimony entails a particular commitment to the apostolate, it would be a perversion of the meaning of the word “autonomy” if it were limited strictly to exclusively internal matters. An institute oriented towards the apostolate cannot be said to enjoy autonomy if it has no autonomy regarding that apostolate. The law clearly insists that individual religious remain subject to their superiors in the exercise of the apostolate;⁵⁹ but there are indications that, at

⁵⁵ *ibid.*: “Il terzo Consultore: Vede al § 1 una certa difficoltà nelle parole « propria » e « committuntur »: l'espressione è ambigua, perché se sono opere « proprie » nel senso di « proprietà » dell'Istituto, non « committuntur ».”

⁵⁶ cf. can. 668 §§ 4–5, i.e. traditionally those religious making solemn profession.

⁵⁷ cf. can. 668 § 3, i.e. traditionally those religious making simple profession, whether temporary or perpetual.

⁵⁸ can. 586 § 1: “[...] integrum servare valeant suum patrimonium, de quo in can. 578.”

⁵⁹ cf. *Christus Dominus* 35, 3°.”

least in some instances, the works of religious should also be subject institutionally to the institute. So can. 806 § 1 in particular indicates that religious retain autonomy in the internal government of their schools, albeit without prejudice to the diocesan Bishop's role of vigilance and regulation of schools in general.⁶¹ Likewise Catholic Universities may be established by a religious institute, remaining under its governance, always with the consent of the diocesan Bishop.⁶² If the spiritual richness of the tradition of a particular institute is to flourish, the institute must have the autonomy to govern and manage its schools and universities in accordance with its patrimony.

Clearly some works – such as parishes – pertain to the structure of the Church, and it would make little ecclesiological sense to exempt them from the governance of the diocesan Bishop or markedly limit his authority in them, even if they are entrusted to a religious institute and enjoy the benefits of the charism of that institute. For other apostolic and charitable works, perhaps especially in the areas of education, relief of poverty, and health care, it would seem in keeping with the mind of the legislator for the just autonomy in life and governance to be extended as far as is possible. In this way, the various authentic charisms of religious institutes recognised by ecclesiastical authority can truly contribute to the life and holiness of the Church in the works founded or taken on by those institutes.⁶³ The simplest way for such autonomy of life and governance to be brought about is for the works in question to be recognised as part of the structure of the religious institute, either being part of a juridical person of the institute, or at least being subject to the governance of superiors of the institute.

Naturally, such a step should never be seen merely in

⁶¹cf. *Christus Dominus* 35, 4°.

cf. IOANNES PAULUS II, constitutio apostolica *Ex corde Ecclesiae* de universitatibus catholicis, 15-viii-1990, in *AAS* 82 (1990)

⁶²1475–1509, art. 3 § 2.

⁶³cf. can. 207 § 2.

terms of handing over property, and still less as if it were a victory in some unseemly squabble between a diocese and a religious institute over temporal goods. Apostolic action is exercised in the name of the Church, and must be performed in communion with the Church; ultimately, any goods transferred remain ecclesiastical goods, at the service of the Church's mission. Rather the question is how best a work should be governed and administered for the increase in holiness of God's people, and therefore ultimately for the salvation of souls, always the supreme law in the Church⁶⁴

TERMINOLOGICAL PROPOSAL

We have already noted, as did the consultor in 1980, that there is an ambiguity about the term *opera propria*, which can indicate either works in accordance with the spiritual patrimony of the institute, or works which are subject to the governance structures of the institute and therefore its "property". In the light of the foregoing, the *opera propria* referred to in can. 611, 2° and can. 677 § 1 seem to be proper in the sense of belonging to the spiritual patrimony of the institute, and perhaps it is best to leave the term "proper" for that sense. Thus we might propose the following definitions:

(a) a work carried out by members of a religious institute in conformity with the nature, purpose, spirit and character of that institute as approved by the competent ecclesiastical authority, together with the sound traditions of the institute,⁶⁵ is termed a *proper work* of the institute;

(b) any other apostolic and charitable work carried out by members of the institute might be termed *improper work*.

The term "improper" is not meant to imply that the work is not *per se* worthy, but simply that it is not the sort of work that in ordinary circumstances properly forms part of the apostolate

⁶⁴ cf. can 1752.

⁶⁵ cf. can. 578.

of that particular institute. It might be that in special circumstances and for a limited time an institute takes on an apostolic work which is not “proper” to it for the good of the Church as a whole; but in general institutes should heed the call of *Perfectæ caritatis* 20 to leave those works which do not correspond to their spirit and genuine character.

At the same time, it should not be inferred that we have a simple binary distinction between “proper” and “improper” works. In reality, there is likely to be more of a spectrum; while some works will be fully in keeping with the patrimony of an institute, there will be others which, while not opposed to the patrimony of the institute, are less of a good fit with its charism.

Having used the term “proper” for those works in conformity with the spiritual patrimony of the religious institute, we appear to need a new terminology to describe those works which are subject to its governance structures. At the same time, it seems appropriate to recognise that the “proper” / “entrusted” dichotomy of *Mutuæ relationes* 57(a) does not seem to account for the full range of institutional configurations of works undertaken by religious. We therefore propose the following working definitions:

© a work which is carried out under the auspices of a religious house, a province, or the institute itself, and subject therefore to the governance of the superiors of the institute in accordance with the Constitutions, might be termed an *integrated work*,⁶⁶

(d) a work which is carried out by an ecclesiastical juridical person not part of the structure of the religious

⁶⁶An example might be a catholic school which is the principal apostolate of a religious house. Note that an integrated work in this sense might well be accounted for separately from the “domestic” side of the religious house, and in civil law might have a distinct juridical personality (cf. *Economia a servizio* 89); the governing documents of such a civil juridical person need to be prepared with care so as to recognise ecclesiastical governance

institute, but nevertheless subject to higher governance by the competent authorities of the institute in accordance with its statutes, might be termed a *dependent work*;⁶⁷

(e) a work which is a juridical person or part thereof, subject to the governance of the diocesan Bishop, Episcopal Conference, or Holy See, but which is directed by members of a religious institute in a stable manner regulated by a convention with the competent authority,⁶⁸ might be termed an *entrusted work*;⁶⁹

(f) a work which shares in the spiritual patrimony of the religious institute and has some links with it, but is not established under the governance of the institute, might be termed an *autonomous work*;⁷⁰

(g) a work which has no institutional link to the religious institute, and perhaps even no institutional link to the Church, but in which a religious may be engaged with the permission of the competent superior,⁷¹ might, from the point of view of the institute, be termed an *independent work*.⁷²

In this presentation the opera propria of *Mutuae relationes* 57(a) which depend on religious superiors in accordance with the Constitutions would seem to correspond directly with

⁶⁷For example, an ecclesiastical university or faculty *sui iuris* (a public juridical person *ipso iure* – cf. FRANCISCUS, *constitutio apostolica Veritatis gaudium*, 8-xii-2017, in *AAS* 110 (2018) 1–41, art. 62 § 3) dependent on a religious institute.

⁶⁸i.e. in accordance with can. 681 in the case of a work entrusted by a diocesan Bishop.

⁶⁹For example, a parish entrusted to a religious institute in accordance with can. 520.

⁷⁰Such a work might be undertaken under the auspices of some private or public association of the faithful, or be erected as another sort of public juridical person by the competent ecclesiastical authority. It might take one of various legal forms in the civil law of the place.

⁷¹cf. can. 671 and, where applicable, can. 682.

⁷²For example, a school or university which has no institutional link to the religious institute, but in which a religious teaches in a personal capacity. It is perhaps useful to note here the distinction made implicitly by can. 665 § 1 between apostolate “exercised in the name of the institute” and other apostolate for the purposes of granting leave of absence beyond a year. It is at least arguable that engagement in what we have termed an “independent work” is not apostolate “exercised in the name of the institute”, and therefore cannot justify such an extended leave of absence.

“integrated” works, and indirectly with “dependent” works.

Particular care needs to be taken when individual religious, alone or with others, initiate some apostolate. It is important that there be clarity about the responsibilities of the superior, the individual religious, and possible structures outside of the institute. If the competent superior accepts that the temporal aspects of the work be managed within the structures of the religious institute, then the work likely becomes, in the above terminology, an “integrated work”, even if in the mind of the superior it is “autonomous” or “independent”⁷³. Where a notable work is undertaken as a joint initiative involving one or more religious and other members of the faithful, but without the intention that the work be “integrated” in the structures of the institute, it might be appropriate to establish at least a private association of the faithful, draw up statutes, and seek the ecclesiastical recognition mentioned in can. 299 § 3. It should be borne in mind that, in accordance with can. 307 § 3, religious can join an association only with the consent of their superior in accordance with the proper law of the institute.

TOWARDS A HARMONY

In the foregoing we have developed what might be called two “axes” for describing works in which religious are engaged. The first, or “patrimonial”, axis concerns whether the work is proper or improper for the institute. The second, or “integrational” axis, concerns the manner in which the work is integrated into the structures of the institute. While the two axes are distinct, they are not independent.

⁷³cf. Orlando MANZO (ed.), “Distinzione tra opera propria e attività personale del religioso in un recente caso trattato dal dicastero” in *Sequela Christi* 39 (2013/02) 241–255. The case concerned a work founded by an individual religious, funded by a highly imprudent mortgage of provincial property. The mortgage, while civilly binding, was canonically invalid because undertaken without the necessary permissions of the superior general and the Holy See (cf. can. 638 § 3). The provincial resigned, and both he and the founder of the work were subsequently disciplined. Although the founder had originated the proposal, the competent Dicastery judged that the work had been assumed by the major superior in the name of the province; and therefore that it became a “proper work” (in our terminology, an “integrated work”) of the institute. It was the major superior, and not the founder, who had violated the law by failing to seek the proper canonical permissions. The disciplinary measures imposed on the founder were therefore rescinded.

In general terms, the more “proper” a work is to a religious institute, the more appropriate it is that the work be either integrated into the structures of that institute or established as dependent on the institute. The “proper” work, by definition, will be a work in harmony with the spirituality, charism and traditions of the institute as recognised by the ecclesiastical authority, and so it is appropriate that the institutional structures be ones which reflect that charism and which enable it to imbue and enrich the whole of the work. Whether the work is integrated in the religious institute or dependent on it will depend on the circumstances; if the work is of a moderate size and mainly staffed by members of the institute, integration into the institute might be most appropriate. Larger and more complex works mostly staffed by lay employees – for example, a large hospital or university – might be more appropriately established as distinct structures dependent on the institute, but with a clear statement of its identity as a proper work of the institute in the governing document, and indicating the governance role of the institute in the work.⁷⁴

Certain works, while proper to an institute, might for ecclesiological or historical reasons, or the circumstances of the case, not be integrated or fully dependent upon it. Parishes as such – that is, the “certain community of Christ’s faithful stably established within a particular Church”⁷⁵ – will at most be “entrusted” to a religious institute; nevertheless, the places where that community of the faithful comes together, including the parish church itself, might well be the property of the institute, and therefore integrated into its governance

⁷⁴cf. *Economia a servizio* 85.

⁷⁵can. 515 § 1: “certa communitas christifidelium in Ecclesia particulari stabiliter constituta”. This is without prejudice to the continued existence (in virtue of can. 4) of historical *pleno iure* parishes mentioned in can. 452 § 1 of the 1917 *Codex Iuris Canonici*.

structures.⁷⁶ In general, the just autonomy of the institute in ordering its internal life and in carrying out the apostolate should be a phenomenon which enhances the life and holiness of the Church, strengthening and not damaging her communion. Subject to appropriate safeguards and to the extent possible it seems appropriate that the proper works of an institute be subject in some way to the governance of the institute. If, however, there is not yet certainty that a religious institute will be able to take a proper work forward in a stable manner, it might be appropriate that the work be more detached from the institute and simply entrusted to it.

Conversely the less “proper” a work is to the religious institute, the greater the institutional distance it is appropriate to keep. If, for the good of the Church, an institute agrees to undertake a work which is peripheral to its core charism, it might appropriately have an autonomous or independent structure which would allow the institute to withdraw from the work once its presence is no longer required. If the work is established under the auspices of the diocesan Bishop or some other ecclesiastical authority, he might entrust it to the religious institute for a fixed period, after which time it would revert to him.

CONCLUSION: CONSEQUENCES FOR RELATIONS BETWEEN BISHOPS AND RELIGIOUS

We have seen that the expression *opera propria* in relation to the works of religious institutes is not one that has been employed univocally in the Church’s normative documents, sometimes referring to works proper to the spiritual patrimony of the institute, and sometimes to those in some manner under the governance of the institute. It seems better – and in keeping

⁷⁶cf. can. 520, which explicitly acknowledges the possibility of erecting a parish in a church of the institute. In such a case the pastoral care of the faithful and the celebration of parochial functions is entrusted to the *parochus* under the jurisdiction of the diocesan Bishop; but the maintenance of the church building and the governance of other works based there remain subject to the structures of the institute, presumably with an appropriate financial contribution from the parish. It would be prudent for these distinctions to be made explicit in the convention mentioned in can. 520 § 2.

with the language of the 1983 Codex Iuris Canonici – to reserve the term “proper” for the former, and use other expressions (“integrated”, “dependent”, “entrusted” etc.) to describe the governance relationship between a work and the structures of the institute engaged in it. Nevertheless it is necessary to remain alert to potentially ambiguous terminology.

Just as the spirituality of an institute should be manifest in its fundamental code of governance,⁷⁷ so it should be present in the apostolic works of the institute.⁷⁸ In order that that genuine spirit may be manifest and enrich the Church it is appropriate that those works which are more “proper” to an institute should be more closely connected with its structures of governance.

Canon 678 recognises in its first paragraph the legitimate authority of the ecclesiastical authority in matters concerning care of souls, public exercise of divine worship and other works of the apostolate; in its second paragraph it recognises the just autonomy of religious institutes not just in their internal affairs, but also in their apostolate. It is logical, therefore, that in its third paragraph the canon insists on mutual consultation between bishops and religious superiors. Clearly this mutual consultation is particularly important when it comes to determining the appropriate form an apostolic work should take, whether that be at the moment of establishing a presence of the institute in the diocese,⁷⁹ at a moment of notable changes in apostolate,⁸⁰ or at the moment when an institute must withdraw from a particular place.⁸¹

There will also be other moments when it is appropriate for a bishop and the superiors of an institute to reflect together on the appropriate form for a work. A work at first entrusted to a religious institute for a fixed period and/or ad experimentum might very well prove fruitful and successful, to the mutual

⁷⁷cf. can. 587 § 1.

⁷⁸cf. can. 677 § 1.

⁷⁹cf. can. 609 § 1 and 611, 2°.

⁸⁰cf. can. 612.

⁸¹cf. can. 616 § 1.

satisfaction of both bishop and institute. At such a point the work might be integrated into the institute's structures or established as dependent upon it in a stable way. From the point of view of the institute, this indicates a firm ongoing commitment, and the added autonomy better enables the religious to live their proper charism in carrying out their apostolate; from the point of view of the diocese, this enriches the diversity of charisms in the local church and frees diocesan structures from some burdens of governance and administration.

In other situations, an institute might begin to fear that an integrated or dependent work is not going to be sustainable in the longer term, despite being fully in keeping with the institute's patrimony; often this is because of a diminishing number of members able to take on such work. In such situations it is appropriate for the bishop and the institute to explore alternative structures, whether that be a greater role for the bishop, or establishing an association or foundation which can continue the work autonomously.⁸²

The administrators of any institution are quite rightly required to act in the best interests of the institution and take appropriate measures to safeguard its patrimony, including its temporal goods.⁸³ But in the Church, and especially in religious institutes, temporal goods are not the primary consideration in terms of patrimony. The principal patrimony of the Church is the gospel she is called to live and to proclaim; what temporal goods the Church has, she has only to further that mission.⁸⁴ This ecclesial and missionary principle has to be central to the consideration of appropriate structures for apostolic works in the Church. Temporal goods must be safeguarded, but only so they can be employed in the Church's mission. Appropriate autonomy is to be promoted in ecclesiastical structures, but only so the life and holiness of the Church can be enriched. An attitude which is possessive or – worse – proprietorial has no

⁸²cf. *Economia a servizio* 34–37, 85.

⁸³cf. in particular can. 1284 for public juridical persons in the Church.

⁸⁴cf. can. 1254.

place in any Church structure, and would be positively scandalous in a religious institute whose members seek to be “strangers to earthly riches”⁸⁵ by their profession of evangelical poverty.

⁸⁵can. 600: “a terrenis divitiis alienam”.