

TEMPORAL ADMINISTRATION IN THE NEW CODE

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BY LAW religious institutes are capable of acquiring, possessing, administering and alienating property, but they are instructed by canon 634 that in doing so they should avoid even the appearance of luxury, excessive profit and accumulation of possessions. This must be taken seriously by religious if their way of life is to retain credibility as a witness to the following of Christ. Witness to evangelical justice therefore calls for a regular review of one's style of living and one's use of property in the light of Christ's teaching about poverty and about justice. According to canon 640, religious institutes 'should give a collective witness to charity and poverty by contributing to the needs of the Church and of the poor'. The revised law does in fact display a clearer recognition than the 1917 Code of the positive obligation that all church administrators have to give alms according to their ability (cf cc. 1285 and 1293). This aspect is mentioned here at the outset to put the discussion of temporal administration in religious institutes within the context of poverty and charity.

Each religious institute is to draw up its own regulations on temporal administration and these should be designed to foster and express the poverty that is proper to each institute. The particular law has, of course, to be in harmony with the general law of the Church on this matter. In the section on religious institutes in Book II of the new Code there are seven canons which deal specifically with 'Temporal goods and their administration' (cc. 634-640). Moreover, since temporal goods of religious institutes are 'ecclesiastical goods', in the canonical sense of that expression, they are also subject to the general canonical provisions on ecclesiastical property 'unless there is express provision to the contrary' (c. 635,1). It is important to note here in passing that this legislation does *not* apply to the *personal* property of the individual priest or religious.

The revised Code of Canon Law has simplified and clarified the Church's legislation on temporal administration and a separate book has been given over to the subject — Book V. This consists of 57 canons which should be studied by all who have responsibility for the administration of ecclesiastical property whether they are secular

priests, laity or religious. In particular, attention should be given to canons 1273-1289 on such administration in general, and canons 1290-1298 which deal with the question of alienation (or conveyance). In addition, canons 492-494 on the diocesan finance committee will repay examination. What follows is a commentary on some of this revised legislation.

As in the rest of the 1983 Code of Canon Law, an attempt has been made here to be faithful to the teaching of the Second Vatican Council and subsequent developments within the Church. This has led to the introduction of a number of innovations or new emphases in the law and in this article I want to draw attention to three of these:

- (a) the stress on the need for consultation and co-operation at every level of administration;
- (b) the acknowledged importance of accountability both to superiors and to the faithful in general;
- (c) the more explicit concern expressed in the law for justice.

Temporal administration — a shared responsibility

In presenting the new Code of Canon Law to the Church, Pope John Paul II singled out as one of its most important aspects its attempt to reflect in legal language the vision of the Church that was set forth in the teaching of the Council. In this vision the Church is seen primarily as the People of God, in which all members are consecrated by baptism and confirmation to participate actively in the triple office of Christ as prophet, priest and king. In this vision the followers of Christ are seen as forming a 'communion' — that is to say, a union, a fellowship with Christ and with each other, graphically symbolized by Christ himself in the image of the vine and its branches. This is what is meant by holy communion: community, relationship, harmony and co-operation within the one Body of Christ. It is from this communion that there arises the fundamental dignity and equality of all the baptized. This communion entails, too, a shared responsibility for the life and the mission of the Church.

Such a vision of the Church could never, of course, be adequately expressed in the language of law — it can hardly be described in language of any kind. An attempt has been made, however, in the new Code to reflect this vision of the Church. An attempt has been made positively to foster — in so far as law can — the renewal of the Church in harmony with this vision of the Church as the communion of all the baptized in Christ. This is evident throughout the new Code. It can be seen in the systematic structure of the whole Code, which has been drawn up in such a way as to bring out the whole Church's share in Christ's three-fold mission of teaching,

sanctifying and ruling. It comes out clearly in the way the new Code has moved away from the somewhat too clerical approach of the 1917 Code to a more open recognition of the role of the laity in the Church's mission. This recognition of the laity's responsibilities is particularly clear in the revised legislation on temporal administration in the Church. This is now seen much more clearly than before as a joint responsibility of the whole Church — of the diocese, of the parish and of the religious community.

In all financial matters the clergy are responsible to the Church, and they have a direct responsibility to the community that is in their care. If the key concept of the Church as the People of God is to be taken seriously, then this responsibility has to be shared as much as possible with the laity. The Vatican Council was quite explicit on the matter: 'Priests are to manage ecclesiastical property, properly so called, according to the nature of the case and the norm of ecclesiastical laws and with the help, as far as possible, of skilled laymen'.¹ This idea has been well expressed in a recent booklet published in the Church of Scotland: 'Since the care of the church building and its furnishings is the responsibility of the local congregation, the privilege of keeping all things in a condition which befits God's house must be shared by everyone who worships there'.² In this matter the more information that is shared with the faithful the greater will be the participation that is fostered. The revised Code of Canon Law gives positive encouragement in a number of places to this idea of shared responsibility. It can be seen for example in the law that requires a 'financial administrator' to be appointed both at the province level and at the local level in religious institutes (c. 636). The local administrator is to be distinct from the local superior, though he or she is to work under the authority of the local superior. It is left to the particular law of each institute to determine whether this office is to be simply that of financial administrator or treasurer, or whether it should extend to the care of all ordinary temporal matters.

The importance of shared responsibility can be seen even more clearly in the legislation that encourages consultation at every level of administration. The revised Code requires every diocese to have a diocesan finance council (c. 492). In every parish also 'there is to be a finance committee to help the parish priest in the administration of the goods of the parish' (c. 537). Moreover, every juridical person in the Church 'is to have its own finance committee, or at least two counsellors, who are to assist in the performance of the administrator's duties, in accordance with the statutes' (c. 1280). What this means is that every parish, every religious province and every religious house has to have *some sort of finance council*, membership of which is open to lay men and lay women. It will be

useful, therefore, to look carefully at the qualities that the law calls for in those who are appointed to such committees. They are to be 'expert in financial affairs and civil law' and of 'outstanding integrity' (c. 492).

The general legislation on the diocesan finance committee provides sound guidance for religious institutes, not only on the qualities required in the members of such committees but also on their mode of operation. There must be at least three members, and they are appointed by the bishop to a five-year term of office which may be renewed. The main task of the diocesan committee would appear to be to prepare each year a budget for the coming year for the governance of the whole diocese and to account at the end of the year for income and expenditure (c. 493). The finance committee has also the duty of examining the accounts sent in to the bishop by the parishes (c. 1287). The finance committee must be consulted by the bishop on a number of matters: before taxes are imposed on the diocese (c. 1263); before taking any financial decisions of major importance (c. 1277). At times too the bishop has to have the *consent* of the diocesan finance committee: that is to say for certain contracts of alienation and for acts of 'extraordinary' administration in the canonical sense of that expression. The new Code makes much of consultation and where this is stipulated in the law it is required for validity. According to canon 127, if consultation is called for by law before a decision can be taken, then the decision is invalid if it is taken without such prior consultation. Similarly if the consent of a group is required. In all this the Code is clearly recommending management by consultation as the style that should generally be followed in the administration of church property, while at the same time allowing for the exercise of a considerable degree of discretion on the part of the bishop, the parish priest or the religious superior. The revised legislation brings out clearly that the bishop (or the religious superior) is no longer considered in canon law to be the sole administrator of the Church's temporal goods. Each is expected to share his or her responsibility with competent advisers from among the faithful.

The importance of accountability

The new Code acknowledges the importance of accountability in two directions: to the competent authority on the one hand, and to the faithful who have contributed to the Church on the other. Canon 636 stipulates that 'at the time and in the manner determined in the institute's own law, the financial administrator and others with financial responsibilities are to render an account of their administration to the competent authority'. Autonomous monasteries are to render an account annually of their administration to the local

ordinary (c. 637). Reports by financial administrators in religious orders are regulated by the particular law of the religious institute. These are commonly once a year. In many institutes, however, it has been the practice that the accounts of the general and the provincial treasurers are examined every six months, and those of the local treasurer monthly, by the respective superiors and their councils. In addition to this, a number of institutes have introduced the practice of presenting regular financial statements to all the members of the institute. Such reports and statements allow all concerned to understand the financial condition of the province and of the houses.

The revised Code states that all administrators are to perform their duties 'with the diligence of a good householder' (c. 1284), and it goes on to list how he or she ought to approach temporal administration. This general directive on good administration deserves careful study by all treasurers. They must:

- (1) be vigilant that no goods placed in their care in any way perish or suffer damage: to this end they are, to the extent necessary, to arrange insurance contracts;
- (2) ensure that the ownership of the ecclesiastical goods is safeguarded in ways which are valid in civil law;
- (3) observe the provisions of canon and civil law, and the stipulations of the founder or donor or local authority; they are to take special care that damage will not be suffered by the Church through the non-observance of the civil law;
- (4) seek accurately and at the proper time the income and produce of the goods, guard them securely and expend them in accordance with the wishes of the founder or lawful laws;
- (5) at the proper time pay the interest which is due by reason of a loan or pledge, and take care that in due time the capital is repaid;
- (6) with the consent of the ordinary make use of money which is surplus after payment of expenses and which can be profitably invested for the purposes of the juridical person;
- (7) keep accurate records of income and expenditure;
- (8) draw up an account of their administration at the end of each year;
- (9) keep in order and preserve in a convenient and suitable archive the documents and records establishing the rights of the Church or institute to its goods (c. 1284).

The last paragraph of this same canon earnestly recommends 'that administrators draw up each year a budget of income and expenditure. However, it is left to particular law to make this an obligation and to determine more precisely how it is to be presented' (c. 1284,3). Moreover, all administrators, before they undertake

their duties, 'are to draw up a clear and accurate inventory, to be signed by themselves, of all immovable goods, of those movable goods which are precious or of a high cultural value, and of all other goods, with a description and an estimate of their value' (c. 1283,2). Good administration calls for such inventories. They are particularly necessary in establishments owned by others — in parish houses run by religious priests, for example, and in parish convents. In these cases an inventory should be kept of all property that is owned by the religious community. This should be kept up to date and a copy should be kept in the province archives as well as in the curial archives.

On the question of responsible administration a word should be said here on the contracting of debts and on alienation. Alienation, or conveyancing, as it is called in English law, is dealt with in canon 638 (for religious) and in canons 1291-1294, and may be defined as a contract by which the whole or part of the stable patrimony of a public juridical person is transferred to another, or by which the ownership of the patrimony is restricted in some way or endangered. The canonical legislation on this matter is meant to protect church property from irresponsibility on the part of administrators. It therefore stipulates that certain formalities have to be observed for the validity of such transactions: that is to say, a just reason, written expert evaluation and permission from the competent authority (cf cc. 1291-1294). Canon 638 deals with this same matter from the point of view of religious institutes:

For the validity of alienation, and of any transaction by which the patrimonial condition of the juridical person could be adversely affected, there is required the written permission of the competent superior, given with the consent of his or her council. Moreover, the permission of the Holy See is required if the transaction involves a sum exceeding that which the Holy See has determined for each region, or if it concerns things donated to the Church as a result of a vow, or objects which are precious by reason of their artistic or historical value (c. 638,3).

Similar safeguards concerning debts are provided by law in canon 639. Debts are no longer expressly mentioned along with alienation, as they were in the 1917 Code, but the canonical legislation on alienation applies to debts in so far as these are in fact alienations, that is to say debts that considerably burden the stable patrimony. Canon 639 deals with the question of responsibility for debts contracted by religious:

1. A juridical person is answerable for debts incurred by itself.
2. An individual member is liable for debts on his or her behalf with

the permission of the superior; but if the individual is acting for the institute on the mandate of a superior, the institute is responsible.

3. If a religious has entered into a contract without any permission, the religious is personally responsible, not the institute.

The Code counsels caution over granting permission to contract debts: 'Superiors are to be careful not to allow debts to be contracted unless they are certain that *normal income can service the interest on the debt*, and that the debt itself can be repaid *within a period that is not too long*' (c. 639,5). This is important legislation which should be carefully observed.

In all these detailed prescriptions the Code of Canon Law is making clear the duty of financial administrators to act as responsible stewards of the property committed to their care. They are trustees, not owners, and are therefore accountable for their stewardship. This in turn implies that particular law in religious institutes should be both clear and exigent on who is responsible for various acts of administration, and on the formalities of consultation and permission required for the validity of such acts. Moreover, an important innovation has been introduced by the revised Code, by which all administrators of church property are instructed 'to render accounts *to the faithful* concerning the goods they have given to the Church' (c. 1287,2). This is to be done 'in accordance with the norms to be laid down by particular law' (c. 1287) but it has to be done by all administrators. The new Code has made this mandatory.

Concern for justice

The Vatican Council in several of its decrees had underlined the importance of providing equitable remuneration and social insurance for priests and for others who serve the Church in different ways. Pope Paul VI took this up in his Apostolic Letter, *Ecclesiae sanctae*, in 1966. This instructed episcopal conferences to see that 'norms shall be laid down for the provision of a proper living for all clerics who are, or have been, engaged in ministering to the People of God'. Bishops were told 'to see that revenues are equitably distributed'. It was laid down too that provision must be made for the maintenance of the clergy in sickness and old age. Paul VI added that it would be for the revised Code of Canon Law to determine the conditions for the establishment in each diocese of *another common fund* to enable bishops to meet other obligations towards deserving persons in the Church and towards various needs in the diocese, and by means of which also richer dioceses would be able to assist poorer ones.

An attempt to meet these requirements can be seen in several of the enactments in the new Code. Canon 281, for example, stipulates:

1. Since clerics dedicate themselves to the ecclesiastical ministry, they deserve the remuneration that befits their condition, taking into account both the nature of their office and the conditions of time and place. It is to be such that it provides for the necessities of their life and for the just remuneration of those whose services they need.
2. Suitable provision is likewise to be made for such social welfare as they may need in infirmity, sickness or old age.
3. Married deacons who dedicate themselves full-time to the ecclesiastical ministry deserve remuneration sufficient to provide for themselves and their families (c. 281).

Canon 1274, in Book V, indicates a number of ways and means of providing for the clergy or for other persons who serve the Church. A special fund is to be set up in every diocese for the support of the clergy. Adequate social security is to be provided and a fund should be established for this purpose. Moreover, to the extent that it is required 'a common reserve is to be established in every diocese by which the bishop is enabled to fulfil his obligations towards other persons who serve the Church and to meet various needs of the diocese; this can also be the means by which wealthier dioceses may help poorer ones'.

It should be noted that these canons are concerned not only with the clergy but also with others who serve the Church and who should be given a just remuneration for their services. This includes all who work for the Church whether it be for priests or in the houses of religious. The same idea is expressed in canon 1286 where all administrators are instructed to observe the civil law in drawing up contracts of employment; and they are to pay those who work for them 'a just and honest wage which will be sufficient to provide for their needs and those of their dependants'. This recalls the teaching of the Council that a just wage must be paid to all employees. Canon 1286 goes beyond wages: a person's just needs are to be provided for. All this is in harmony with the current stress on social justice. It should be noted too that this legislation is binding on religious administrators as well as diocesan ones.

The stress on justice can also be seen in canon 1284 in which administrators are told to 'seek accurately and at the proper time the income and produce of the goods, guard them securely and expend them in accordance with the wishes of the founder or lawful norms'. This implies that funds belonging to the juridical person should be invested in a way that is both safe and profitable, and which will ensure that the property retains its value even in a period of inflation.

On the acquisition of goods, canon 1259 states simply that the 'Church may acquire temporal goods in any way in which, by either natural or positive law, it is lawful for others to do this'. The Code also lists the objectives of the Church in its administration of temporal goods. It acknowledges that the Church has to be involved in money, in investment and administration if it is to pursue its proper objectives of providing for divine worship, of caring for the poor and of ensuring a fitting standard of living for the clergy and other ministers (c. 1254). Perhaps the law should have made some mention here of the dangers that can surround investment of church funds. The administration of church property should faithfully reflect actual pastoral needs and concerns, and church administrators cannot ignore the social environment in which they live if they are to retain credibility as Christians. Attention too must be given to the source of income for the Church so that there is not even a semblance of making profit from injustice. In accepting legacies too, attention should be given to difficult situations that could arise for impoverished heirs who may have been dispossessed. In all these matters — remuneration of clergy and other people who work for the Church, looking after church property and the mode of acquiring funds — the new Code does alert church administrators to the importance of justice and social justice in particular.

This article has dealt with only part of the revised law on temporal administration. Enough has been said, however, to show that quite a successful attempt has been made in the new Code to incorporate the insights and the directives of the Second Vatican Council. More expression has been given to the principle of subsidiarity, and religious institutes have been left scope to draw up their own legislation on temporal administration as on many other matters. In doing so, careful attention should be given to the points raised in this article. Particular law should reflect the general concern that temporal administration be seen to be a shared responsibility, that administrators be encouraged to give an account of their stewardship not only to superiors but also to their communities, and that justice must be seen to be a central concern in all church administration. If these directives provided by Book V of the new Code of Canon Law are carefully followed, then temporal administration will be both effective and of great assistance to the Church.

NOTES

¹ Decree on the ministry and life of priests, n 17.

² Church of Scotland: *Care for your church* (St Andrew's Press, Edinburgh, 1983), p 1.