



Vatican Expert Unpacks Canonical PJP Process

EDITOR'S NOTE: This is an updated version of a paper presented in 2009 at the annual conference of the Canon Law Society of Great Britain and Ireland. It also was published in *Sequela Christi* (2009/1) and is reprinted here with permission.

By Sr. SHARON HOLLAND, IHM, J.C.D.

A few years ago a small book was published entitled *After We're Gone*.¹ I instinctively disliked the title; it spoke of a future I was not willing to accept as fact. Fortunately, persons of a more pragmatic realism than mine had, for some time, already been exploring the implied question. What *would* become of Catholic hospitals and clinics, Catholic schools, and Catholic social services, when the number of religious men and women was too diminished to carry on?

The research of which I am aware began in the United States among those involved in Catholic health care and higher education. These were largely the domain of religious institutes. In his 2005 encyclical *Deus Caritas Est*, Pope Benedict

XVI recognized that the new religious orders of the 19th century had been the pioneers in combating “poverty, disease and the need for better education.”²

Before him, Pope John Paul II had spoken of



the “glorious tradition” of men and women religious in the field of health care. He challenged them to give special attention to those in greatest need and to victims of “new contagious diseases,” to “evangelize” health care centers, “to make the practice of medicine more human, and increase the knowledge of bioethics at the service of the Gospel of life.”³

In a similar vein, Benedict XVI, addressing the U.S. bishops in April 2008, expressed appreciation for generous services and spoke of the hope and the challenges created by advances in medical science, giving rise “to previously unimagined ethical challenges.”⁴ To educators, the Holy Father reaffirmed: “... the *diakonia* of truth takes on a heightened significance in societies where secularist ideology drives a wedge between truth and faith.”⁵

These messages are filled with appreciation and challenge. But the research underway regarding the future of such esteemed and challenging works recognized the severe diminishment in the numbers of active religious in North America and Western Europe. This, precisely at a time when the ministries were becoming more complex professionally, ethically, financially and legally.

The question really was, in a sense, “After we’re gone, how will these important works in the mission of Jesus Christ, entrusted to the church, continue to be carried out in the *name* of the church, and according to the doctrinal, ethical and juridic norms of the church?” With the works in the hands of religious institutes, they are understood to be “exercised in the name and by the mandate of the church” and to be carried out in ecclesial communion (*Code of Canon Law*, c. 675, para. 3). At the same time, canon 634, paragraph 1 specifically recognizes the juridic personality of institutes, their provinces and houses. As such “they fulfil in the name of the Church ... the proper function entrusted to them in view of the public good;” (c. 116, para. 1).⁶ But what if the religious institute does not continue the works?

The obvious answer, in some cases, is to pass the works to another religious institute or to the diocese. This, however, is not always possible. Other religious institutes often have similar difficulties. Dioceses may or may not be in a posi-

tion to take over the running of additional schools, even if they have a diocesan school system. It is even more rare that a diocese is ready to take over a hospital, much less a system of hospitals spread across dioceses. Religious began to seek a struc-

After we’re gone, how will these important works in the mission of Jesus Christ, entrusted to the church, continue to be carried out in the name of the church, and according to the doctrinal, ethical and juridic norms of the church?

ture which would preserve their spiritual and economic patrimony, as expressed in apostolic works, and which would satisfy the norms of both civil and canon law.

A seed of response was sown by the notion of a juridic person, which was neither a religious institute nor a diocese but which might work in the name of the church.⁷

EVOLUTION IN THE U.S. CONTEXT

Providentially, the way was being prepared. Over some decades in the U.S., stand-alone hospitals and other health care institutions run by religious had been organized into systems, consolidating their growing spiritual-charismatic identity and facilitating economic administration and management. Nevertheless, these institutions still pertained entirely to the religious institute which sponsored them; in canonical terms, the land, buildings and funds remained part of the stable patrimony of the institute.

A new challenge was presented when the government began to fund the care of elderly in Catholic hospitals. Understandably, accountability for Medicare and Medicaid funding required that the financial records and reports of the hospital or system be entirely distinct from those of the religious institute. In order to comply with federal and state requirements for vigilance over the funds provided, there could no longer be the min-

A new challenge was presented when the government began to fund the care of elderly in Catholic hospitals.

gling of apostolic funds with those of the sponsoring institute. In response to this necessity, separate civil corporations were formed. Subsequently, it was seen that this also provided a further protection for the institute in an increasingly litigious society.

However, the less positive implications of the separate civil incorporation of a religious apostolate had already become the object of serious study and concern when certain Catholic universities of religious, separately incorporated, transferred control to a civil board of directors no longer composed of the religious serving in provincial or general government. While it was still commonly perceived that the university pertained to the religious order, in fact, the religious no longer exercised the rights of ownership.⁸ Fidelity to the purpose of the entity, and the administration or alienation of the goods destined to the fulfilment of that purpose, were subject to a board composed all, or in part, of laypersons. While no one doubted the professional competence of these persons or their apostolic dedication, they were, in fact, acting in the role of owners of the patrimony involved. There had been, it appeared to some, a *de facto* alienation of the apostolate and the related ecclesiastical goods. Such an act, while civilly valid, if effected without the required formalities would be considered canonically invalid.⁹ As goods pertaining to the civil corporation in the hands of non-members of the religious congregation, their continued identity as ecclesiastical goods was doubtful.¹⁰ While it is not apparent that this was anyone's intention, concerns were raised that the religious institute was no longer directing the apostolate and that these institutions were at risk of losing their ecclesial identity.

The search for a suitable structure for the future of Catholic health care systems was facilitated by the work surrounding the so-called McGrath-Maida debate, particularly between 1968 and 1975.¹¹ In essence, this focused on the status of separately incorporated religious apostolates such as the universities or health care institutions. Fr. John J. McGrath was, at the time, associate professor of comparative law at the Catholic University of America in Washington, D.C. Fr. Adam J. Maida, J.C.L., J.D., was, in this period, general counsel and

vice chancellor for the Diocese of Pittsburgh and later became Cardinal Archbishop of Detroit.

As pointed out in a 1990 article by Robert T. Kennedy, a professor of both civil and canon law, Fr. McGrath held that such an institution had a real and important relationship with the church, but not a juridic relationship; it was subject only to civil law.¹² Further, he did not seem to accept the possibility of these apostolic institutions receiving canonical juridic personality if, in fact, it had already received civil incorporation.¹³

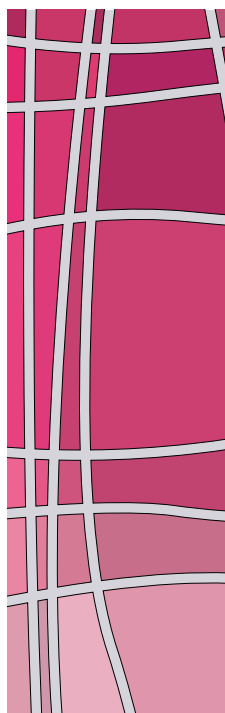
Fr. Maida, in contrast, insisted that the separate civil incorporation had no canonical effect and that ownership remained with the religious institute as a part of the stable patrimony of its canonical juridic person. As Kennedy points out, this first thesis of Fr. Maida did not yet discuss how the religious institute could maintain control over the educational philosophy or moral-ethical commitments of a Catholic institution to which it no longer held title of ownership.¹⁴ This observation named the crux of the problem.¹⁵

In this period prior to the discussion of separate canonical juridic personality, the theory and practice of "reserved powers" was developed in order to maintain the religious institute's control over its apostolates; that is, over those areas necessary for their Catholic identity and the financial administration of their ecclesiastical goods. By building into the civil documents of incorporation that certain decisions must be approved by the canonical stewards or sponsors, the apostolate and its related assets remained, canonically, a part of the religious institute's spiritual and economic patrimony. These were matters which would preserve the essential Catholic identity and the administrative stewardship.

The matters to be reserved to the religious superior and his or her council have been referred to as "faith obligations" and "administrative obligations." Those powers, more oriented to the protection of Catholic identity, include the right:

- To establish the philosophy according to which the corporation operates
- To amend the corporate charter and bylaws
- To appoint the board of trustees

Administrative reserve powers, protective of the stable patrimony of the congregation placed at the disposition of the apostolic work, are to lease,



sell or encumber corporate real estate (“alienation”) and to merge or dissolve the corporation. In some cases other matters might be reserved, but these were seen as most essential.¹⁶

Thus, separate civil incorporation, combined with the reservation of key powers to the reli-

There must be clarity on the meaning of the Catholic identity of the ministry, a clear canonical structure, a compatibility with civil legislation and personnel who are well prepared professionally and in the sense of mission.

gious sponsor, served to fulfill the requirements for accountability for the use of government funding without alienating the work and risking both its Catholic identity and the identity of its goods as ecclesiastical goods reserved for works of the church. As in the past, the religious superior with his or her council made these critical decisions regarding the works.

This measure solved the immediate risk posed by the benefit of state funding. It did not touch the unfolding problem of religious diminishment. The numbers of religious willing and able to combine the administration of apostolic works with religious governance declined, while the ministry itself, especially health care, became increasingly complex and demanding. As a result, decades after the separate civil incorporation of certain apostolates protected by reserve powers, U.S. religious, their canonists and civil lawyers began to search for other possibilities for the future. There must be clarity on the meaning of the Catholic identity of the ministry, a clear canonical structure, a compatibility with civil legislation and personnel who are well prepared professionally and in the sense of mission.

In examining the structures of new juridic persons, it will become evident that the experience of “reserved powers” has carried over into the new structure. The basic powers of canonical stewardship are reserved to the group which governs the juridic person, while some are still retained by the founding institute(s).¹⁷

CANONICAL JURIDIC PERSONS

A structural response to the challenge facing

the apostolates of religious seemed to be found in the *Code of Canon Law*, Book I, canons 113-123 on juridic persons. In canon 113, paragraph 2, it is recognized that there may be juridic persons — as well as physical persons — that are subjects of rights and obligations corresponding to their nature. The purpose of such juridic persons must be in keeping with the mission of the church and transcend the purpose of the individuals involved (c. 114, para. 1). Such purposes are understood to be those pertaining to “works of piety, of the apostolate, or of charity, whether spiritual or temporal” (c. 114, para. 2). When such entities have public juridic personal-

ity, “they fulfil in the name of the Church, according to the norm of the prescripts of law, the proper function entrusted to them in view of the public good” (c. 116, para. 1).¹⁸

Certainly the purposes of the proposed new juridic persons are in keeping with the church’s mission in providing Catholic health care, education or social services. At first, however, the structure was not clear.

Canon 115, paragraph 1, provides the basic description of a juridic person in the church as an aggregate of persons (*universitates personarum*) or an aggregate of things (*universitates rerum*). The aggregate of persons may be collegial if its members determine its action through participation in rendering decisions, whether by equal right or not; otherwise they are non-collegial (c. 115, para. 2).

A familiar example of a collegial aggregate of persons is the religious institute, its provinces and

In examining the structures of new juridic persons, it will become evident that the experience of “reserved powers” has carried over into the new structure.

houses, as recognized by the law itself in canon 634. Likewise, a public association of the faithful is constituted a public juridic person by the same decree with which it is erected (c. 312, para. 1, and c. 313).¹⁹

An aggregate of things or an autonomous foundation “consists of goods or things, whether spiritual or material, and either one or more physical persons or a college directs it according to the

norm of law and the statutes” (c. 115, para. 3). In the end, this has been the most frequently chosen figure for the transferred sponsorship of religious apostolates.

The juridic person that is an aggregate of things is also cross-referenced in the *Code of Canon Law*,

Juridic personality is granted either by the law itself or by an act of competent authority expressly granting it.

Book V, on the administration of temporal goods in the church, as an autonomous pious foundation (*scilicet universitates rerum*). These “things” are destined for the purposes, noted above, from canon 114, paragraph 2, and are erected as a juridic person by competent ecclesiastical authority.²⁰ By definition, the temporal goods of every *public* juridic person are ecclesiastical goods, subject to Book V of the code and its own statutes (c. 1257, para. 1).

COMPETENT AUTHORITY

Juridic personality is granted either by the law itself or by an act of competent authority expressly granting it. As seen above, the religious institute has this juridic personality in virtue of the law itself (c. 634).²¹ Canon 709 provides explicitly that the Holy See can grant juridic personality to conferences of major superiors of religious. In the case of the envisioned public juridic person destined to assume sponsorship of religious apostolic works, the competent authority soon became a question.

The canons immediately dealing with juridic persons speak, apparently interchangeably, of an act of the competent authority (c. 114, para. 1; c. 116, para. 2; c. 117) and of the competent *ecclesiastical* authority (c. 114, para. 3; c. 116, para. 1; c. 1303 para. 1. 1). In neither case is there any further identification of this authority.

Early in the U.S. search to find a future structure for religious apostolates, some perceived the new entity as an association of the faithful. In this case, the competent ecclesiastical authority to erect the public association and approve its statutes at the national level would clearly have been the episcopal conference, as provided for in canon 312, paragraph 1, and canon 314. Few, however, really saw the proposed new structure as an aggregate of persons in the sense of the canons on associations of the Christian faithful.

Perhaps those seeking to clarify the point had

recourse to canon 19 on a so-called *lacuna* in the law. Where there is a *lacuna*, or real absence of provision in the law, with the exception of matters of penal law, resolution is to be made “in light of laws issued in similar matters, general principles of law applied with canonical equity, the jurisprudence and practice of the Roman Curia, and the common and constant opinion of learned persons” (c. 19).

In the light of these principles it could have seemed clear to canonists that the solution lay in canon 312, paragraph 1, which provides for the erection of public associations of the faithful by the Apostolic See in the case of universal and international associations, the conference of bishops for its territory or the diocesan bishop for his territory, depending on the association’s extension as international, national or diocesan. By the same decree by which the erecting ecclesiastical authority constitutes the public association as a juridic person in the church, “it also thereby receives a mission to pursue the ends which it proposes for itself in the name of the Church” (c. 313).

Regarding the competent authority in the case of an aggregate of persons or of things, Ellsworth Kneal, in his commentary on canon 116, paragraph 2, refers the reader to the subsequent discussion of canon 312. There he notes: “The appropriate competent ecclesiastical authority for the chartering of public associations of the faithful (*and therefore of juridic persons within the Church*) is clearly designated.”²²

Early in the U.S. search to find a future structure for religious apostolates, some perceived the new entity as an association of the faithful.

Kennedy, noting the silence of the 1983 *Code of Canon Law*, advises recourse to canon 312 and related canons identifying the Holy See, episcopal conferences and diocesan bishops as the competent ecclesiastical authority. In this context, he adds that while the 1917 code granted competency to local ordinaries (*Codex Iuris Canonici* 1917, c. 1489 para. 1), the 1983 code is more limited. In fact, it is stated that not even a diocesan administrator is competent.²³

As will be seen later, there will still be a

question of when and why the Apostolic See is involved regarding the apostolic works located in one nation. Nevertheless, to date, when religious institutes have sought pontifical public juridic personality for a system of apostolic works extending beyond one diocese, the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life (CIVCSVA), hereafter “the dicastery,” has acted as the competent ecclesiastical authority at the level of the Holy See. To date, 18 such decrees have been granted: 11 in the U.S.; four in Canada, two in Australia and one in Ireland.²⁴

THE EXAMINATION OF A PETITION

Prior to a concession of juridic personality, the dicastery receives a number of documents from the founding institute(s) which will assist in evaluating if the various aspects of Catholic identity and structures to preserve it are in place. Among the documents typically included are:

- *The petition:* The general superior, with consent of his or her council, requests the concession of public juridic personality for the specific “aggregate” of apostolic works, identified by a chosen title. An abstract from the minutes of the council meeting at which consent was given provides juridic proof of the formalities required for the validity of alienations. If the request is on behalf of the province, the same document from the provincial level is included.

- *The process and motives:* It is important to know how this decision has been reached and the principal motivations for the solution chosen. The involvement of the members of the religious institute and of colleagues in the apostolate, as well as ongoing dialogue with the diocesan officials, avoids misunderstanding, oppositions and unnecessary fears. Where there is understanding of what is taking place and why, there is much more active collaboration.

- *The religious institute:* A brief historical background on the religious institute and its involvement in the particular ministry helps the dicastery understand and evaluate the petition. If there is significant experience in working with lay colleagues, this should be mentioned, since it suggests a level of preparation for the new structures. Because of the unique role of preserving and

promoting the Catholic identity of the ministry — quite beyond the professional — there is considerable interest in formation programs. These must involve all participants in the work. Beal notes: “Catholic identity depends on the presence of a ‘critical mass’ of strategically situated participants in the institution’s apostolic ministry who are dedicated to its redemptive ministry and see their participation in that mission as something more than a job.”²⁵

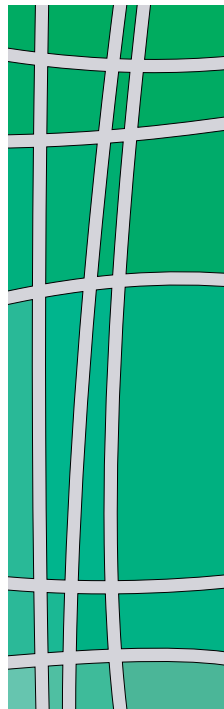
- *The specific ministries:* A list of the institutes being transferred and their location, including the diocese, clarifies what constitutes the “aggregate of goods” that will constitute the new juridic person and be administered by the designated governing body. The title of both the juridic person and of the civil entity through which it acts in the secular sphere should be given.

- *The financial status of the systems/works:* Since there is the alienation of ecclesiastical goods from the religious institute to the new juridic person, their value must be indicated. This does not mean, however, that it is expected the goods be purchased, or that the usual canonical norm of not alienating for less than the valued price (c. 1294, para. 1) will be applied. At the time of establishing the new juridic person, these goods are, in fact, the aggregate of goods that constitute it. There is no pre-existing entity to “buy” the works.

Usually the fundamental information from the most recent audit will identify the overall assets, annual operating revenue and debts. If the country has agencies which give a credit rating, this also is an indicator of the financial stability of the future juridic person.

- *Canonical statutes and by-laws:* As seen, the ecclesiastical authority which grants public juridic personality is responsible to also approve the canonical statutes (c. 117). These will provide for its governance, protecting its Catholic identity and the stewardship of its temporal goods according to the approved purposes.

- *The opinion of the bishops:* The bishops in whose dioceses the works are located are asked to express their opinion in the matter, as in the case of the alienation of properties. Apostolic works in the local church are involved and the diocesan bishop has obvious right and responsibility to



know what change is taking place. Dialogue with the bishop in a timely way greatly facilitates the transition, since the process and structure may not be entirely familiar to him.

■ *The parallel civil document:* In most countries, it is necessary that such an entity have distinct civil recognition in order to function in the civil arena as a corporation, company, trust or whatever is the applicable term in the country. The civil document that will regulate the entity must be in harmony with the canonical statutes, especially regarding such matters as the Catholic identity of the apostolate, the spheres of decision-making, dissolution and the disposition of goods in case of dissolution. When new, the document is written in this way; when a civil document pre-exists, it is helpful to see how it is to be adjusted in terminology, exercise of reserves and dissolution clauses. The canonical documents identify who is responsible to oversee the concordance of civil documents.

■ *Impact on the institute:* Initially in the examination of petitions, there was a fear that religious institutes were abandoning their charism or spiritual patrimony in turning over significant apostolic works, and that they were alienating their material patrimony in the transfer of the related buildings and properties. Consequently, it is very helpful when an institute includes information about other apostolates of the congregation, the potential for their sisters to continue involvement in the apostolates transferred to the new juridic persons and the attention the public juridic person (PJP) governing body gives to the spirituality of the founding institute.²⁶ Likewise, the effect of the alienation on the economic security of the institute can be further clarified. Sometimes this impact is limited due to existing separate civil incorporation, civil restrictions on the use of any sale proceeds and the continued income from the stipends of sisters employed in the works. Often too, there has been and remains some mechanism such as a “sponsorship fee” giving economic recognition to the institute’s long-term involvement in the works.

REVIEW OF THE STATUTES

Among all of the documents presented with a petition for the concession of public juridic

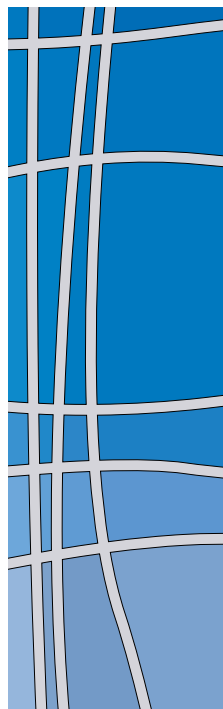
personality, the canonical statutes are the most important. In addition to the *Code of Canon Law* and pertinent civil law, the statutes are the proper law according to which the juridic person is governed. Upon that government depends the continued Catholic identity of the apostolate and the right stewardship of the ecclesiastical goods which exist precisely for the purpose of furthering that apostolate.

By following through the articles of a typical text of canonical statutes, the necessary contents can be reviewed. This format was not devised by the dicastery and does not have to be followed precisely. It is clear that there has been communication among congregations, and the documents have served well. Articles could be organized otherwise, and surely have been at the level of dioceses or an episcopal conference. Most important are the various elements of content:

Preamble — Serves to give the name of the new juridic person and to identify the establishing congregation or congregations whose apostolic works it will carry forward. It is identified as being a PJP of pontifical right, by a decree granted on a certain date, by the dicastery. Although it was not the practice earlier, it is advisable to insert reference to canon 115, paragraph 3, which identifies the juridic person as an aggregate of things.

Name and Office — An early article that normally gives the location of the PJP’s headquarters and the name of the civil law entity through which it acts in the secular sphere.

Purpose — Of primary importance. This is the purpose for which the new juridic person has been founded. Here may be found such phrases as “to carry forward the healing ministry of Jesus in the Church”; “to continue the mission of Jesus and assume responsibility to further the health and aged, education and welfare ministries of the Sisters of ...”; “to ensure the continuity of Catholic education in the tradition of” It is often in this article, among others, that one finds the commitment to operate in conformity with the teaching, discipline and law of the Catholic Church. Where there is an ecclesiastical document such as the *Ethical and Religious Directives for Catholic Health Care Services (ERDs)*,²⁷ it is mentioned here. Such directives are to be observed as applied by the diocesan bishop and



as amended from time to time.

Government — Since, as an aggregate of things, the juridic person is to be directed by one or more physical persons (c. 115, para. 3), an article of the statutes will identify these persons and how they are appointed. Those who exercise the canonical responsibility for the juridic person are variously called “members,” “trustees,” “councillors” or “sponsors.” They are most frequently appointed by the founding religious institute(s). Lists of fundamental qualifications are included. Typical would be that a member/sponsor, or at least a majority of them, be Catholic, have a sense of spirituality and mission specific to that of the founding institute (unless they are diversified) and possess an adequate understanding of the teaching, discipline and law of the Catholic Church. Recent statutes have frequently included a provision that those appointed must participate in an initial, and later in continuing, programs of formation.

Rights and Duties of the Members/Sponsors — Those who are responsible for the direction of the juridic person will, for all practical purposes, take on the powers that were reserved to the religious institute’s provincial or general government in the past. They are responsible, for example, for upholding the purpose of the juridic person and its fidelity to the teachings and law of the Catholic Church, to recommend any changes in the PJP’s statutes, to approve changes in the by-laws and to approve financial transactions,

including alienations, in accord with canon law. To avoid the fading of Catholic identity, canon law can serve institutional apostolates by “identifying those responsible for fostering their Catholic identity, delineating their rights and responsibilities and holding them accountable of their fulfilment.”²⁸

Relationship to the Founding Institute(s)

— In reading statutes, it is necessary to examine the use of terminology since it is by no means standardized. In some cases, the founding institute is referred to as the “members” and the governing body of the PJP the “trustees” or “sponsors.” In many cases, the religious congregations are referred to as the “participating entities” and the governing body as the “members.” When necessary to distinguish the original congregation or congregations, “founding participating entity(ties)” is used. Many, but not all, of the founding congregations have written into the statutes the possibility of other institutes, provinces or other canonical public juridic persons responsible for apostolic works becoming “participating entities” through a process established in the statutes.

In examining the role of the founding congregation(s), a particular note of the type of juridic persons under discussion is highlighted. These are entities identified also as “autonomous foundations” (c. 1303, para. 1.1) as distinct from non-autonomous foundations where goods have been given into the care of some other pub-

THE DECREE

The decree itself is normally brief, but precise. In essence, it declares:

“The Congregation for Institutes of Consecrated life ... having received the petition of the Superior General of the Sisters of ... and having heard the opinions of the interested Diocesan Bishops, in accordance with canon 114, paragraph 1, confers, by this decree, public juridic personality (cf. c. 115, para. 3) on NNN, with headquarters in NN. At the same time, the Statutes of NNN are approved, in accordance with canon 117.

“In virtue of this concession, NNN is subject to those rights and obligations which pertain to public juridic persons in the Church, and shall be governed in accordance with Canon Law and its own approved Statutes as it pursues its purpose of [... usually a statement from the statutes, referring to continuation of some aspect of the mission of Jesus Christ in the Catholic Church ... sometimes with reference to a particular spirit].”

The date, the seal and two qualified signatures complete the

document.

Some of the earliest decrees were less precise in their inclusion of canonical references. Later, when a doubt was raised about the exact nature of the proposed juridic person, more was added. In particular, the insertion of canon 115, paragraph 3, seemed important to clarify that the entity was an aggregate of things or, as also indicated in the same canon, an autonomous foundation, rather than an aggregate of persons or association. The reference to canon 114, paragraph 1, acknowledges the special concession by competent authority and the presence of purposes consonant with the mission of the church. Canon 117 recognizes that the statutes according to which the juridic person will be governed, together with canon law, must be approved by that same authority. A decree of an episcopal conference or of a diocesan bishop would therefore be similar, adjusting to the identity of the competent ecclesiastical authority.

lic juridic person (c. 1303, para. 1.2). Nevertheless, there has remained a significant link with the founding institute(s). Perhaps because of the

Perhaps because of the newness of the enterprise and perhaps as an interim provision, there are various decisions still reserved to the founding institute(s).

newness of the enterprise (the first such concession by the dicastery was in 1991) and perhaps as an interim provision, there are various decisions still reserved to the founding institute(s).²⁹ In this, too, there are variations.

Typically, in the earliest cases, the founding religious congregation(s) retained the right to appoint and remove the persons who would govern the juridic person, the right to approve any change presented in the statutes, philosophy, purpose or by-laws, the right to admit and remove new “participating entities” and the right to request the suppression of the juridic person. In more recent years, some congregations have reserved other powers such as the approval of the formation program for new members of the governing body and the approval of the annual report to the Apostolic See. Others have reserved less.

Relationship with the diocesan bishop — As has been seen, because of the apostolates and the alienation of properties involved, the diocesan bishops are involved in the preparation of the petition and have received explanations of the new structure. Gradually, the concept is becoming more familiar. In general, because the bishops truly value these Catholic apostolates in the local church, they are quite positive about this concrete plan for their future, clearly designed to maintain their Catholicity.

Statutes of the early pontifical juridic persons do not speak explicitly about the role of the bishop, except in the above-mentioned case of the ERDs in the United States. Today it is expected that a statement be included which recognizes the diocesan bishop’s overall responsibility for apostolic works in the diocese (c. 394). The role of the bishop has not changed. What does change is the person to whom he turns if there are questions, concerns or plans for pastoral visits. Rather than a provincial or general superior, he will be dealing

with the chair of the governing body of the PJP, who may be a religious or a layperson.

Relationship with the Apostolic See — In the case of PJPs of pontifical right, the Apostolic See has a more significant role. This would be adjusted accordingly if juridic personality is granted by the episcopal conference or the diocesan bishop. In the cases which have gone to the CIVCSVA as the granting authority, it remains with that dicastery to approve changes in the purpose or in the statutes which it approved. It likewise belongs to the Apostolic See, through the dicastery, to suppress the PJP if it fails to live by its statutes, or if suppression is requested in the manner provided for in the statutes. The Apostolic See can request a meeting with officials to discuss the apostolate but is recognized as having no financial responsibility for it.

Alienations, beyond the sum established for the region, would be submitted to the Apostolic See (c. 1292, para. 2). These continue to go to the CIVCSVA since, at first they were the goods of the religious institute and later because the CIVCSVA granted the juridic personality.³⁰

Built into the statutes also is the requirement of an annual report to the Apostolic See. This is to be evidence that the integrity of faith and morals is being preserved in its activities and that the use of

The role of the diocesan bishop has not changed. What does change is the person to whom he turns if there are questions, concerns or plans for pastoral visits.

temporal goods and its apostolic activities are in accord with the expressed purpose. The external audit is requested as a part of this report.

This requirement of an annual report is drawn, by analogy, from canon 1287, paragraph 1, which requires that administrators of ecclesiastical goods “which have not been legitimately exempted from the power of governance of the diocesan bishop” must present an annual report. The concept was present in the first petition received. At the level of the Apostolic See, pontifical religious institutes present periodic reports to the dicastery at the end of the superior general’s term of office (five, six or eight years). PJPs with longer experience have tentatively raised the

question of less frequent reports being required.

Temporal goods — References to temporal goods come in various places in the statutes. They include acknowledgement that these are ecclesiastical goods, and consequently that they are administered in accordance with the *Code of Canon Law*. Their alienation above the amount for the region must be submitted to the Apostolic See, following the required internal consents. Each juridic person has a finance council, in the sense of canon 1280.

Suppression and disposition of goods — Causes for suppression and the competency to act have been seen above. In the event of the suppression, how the distribution of any remaining goods, patrimonial rights and obligations will be determined is expressed in various ways. Decisions rest with the governing body of the PJP in consultation with the founding and/or participating religious institutes or other juridic persons. In one case, the founding religious institutes have the right to make these decisions. The usual provisions for the observance of the will of donors and previous agreements among participating entities, as well as the norms of civil and canon law, are respected. The formulation of this article is affected by the norms of civil law and must be expressed in the same manner in the civil document.

ONGOING QUESTIONS

Are the laity prepared? From the beginning of the dicastery's experience with examining petitions of this type, there was a sense that the PJP might be a provisional, or even an immediate, step toward total lay responsibility for the apostolates long in the hands of religious.

Congregations neither affirmed nor denied the possibility of an eventual lay responsibility for the ministry. However, most intended to retain qualified religious in the governing group for the immediate future. The goal was to preserve the future of the apostolic works in the church, and to do so while the religious still had choices about how to proceed and while there were still active and expert members who could mentor a new beginning.

Some institutes have retained more reserve powers than others and/or have structured gov-

erning bodies deliberately to manifest religious/lay collaboration. Many health and educational systems came to these decisions with a long experience of valued lay professional collaboration.

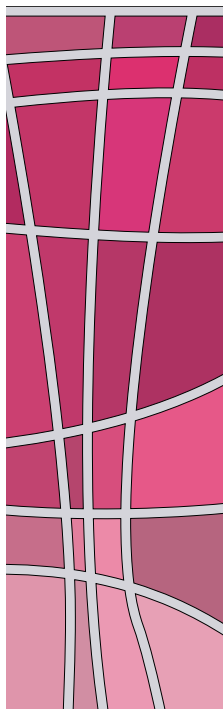
The question of the laity's readiness for such responsibilities has been posed, sometimes by those not experienced with such lay collaboration and sometimes by lay professionals themselves, aware of the implications of such a role. The existence of lay professional expertise, at least in some parts of the world, is without question, as is the dedication of such laity to the mission of the church. For many, the call of Vatican II for recognition of the laity's full role in the church's mission has been taken very seriously.

Nevertheless, as evidenced by the unfolding of formation programs for PJP executives and employees, whether religious or lay, serious attention is being given to the need for deeper insertion in the spirit of an institute or system, for learning to consciously distinguish mission from business or merely commercial enterprise, for absorbing the meaning of sponsoring "in the name of the

Church" and learning the necessary particulars of canon law as well as civil law. Roles and offices of mission effectiveness seek to influence the entire fabric of sponsored institutions so that framed mission statements are real, not only in a pastoral care department, but also in the finance office, the personnel office, among nurses, housekeepers, technicians and throughout the institution.

It can be expected that as these programs bear fruit in permeating the works of the PJP with a spirituality and sense of mission in ecclesial communion, the day will come when the decisions now reserved to the founding religious institutes will be placed more fully in the hands of the governing body of the juridic person.

Why is the CIVCSVA competent for national systems? As has been seen in the U.S. experience, in a first petition presented in 1979 and granted in 1991, the episcopal conference referred the petitioners to the Holy See. The concept was still essentially unknown. It is evident now, both from the canons and from actions taken in other countries, that a conference of bishops has competence in the case of works spread through their country.



In nations which are very large, it could appear cumbersome both for the conference and for the religious institute involved to have the concession of juridic personality and the resultant accountability at the level of the conference. Where pontifical religious institutes have been involved — which is the majority of cases to date — they have considered the dicastery the normal place for handling matters beyond their internal authority.³¹

The Pontifical Council for the Laity clearly could receive a petition for juridic personality of an entity entirely in the hands of laity. Canon 312, paragraph 1, section 1, on the Holy See's competency for the erection of international and universal associations of the faithful is further specified in the Apostolic Constitution on the Roman Curia, *Pastor Bonus*. It belongs to the Pontifical Council for the Laity to erect "associations of an international character" and to "provide approval or *recognitio* for their statutes ..." ³² To date, however, petitions for apostolic works have not come from laity and are not in international systems.

At present, the Pontifical Council for the Pastoral Care of Health Care Workers seems a less likely office. As its title suggests, the council is primarily concerned with assisting health care workers through teaching, encouraging their spiritual care and promoting studies and promulgating new developments in health care.³³

CONCLUSION

No one has claimed that the PJP is the only way forward for the apostolates that religious can no longer manage independently. Nevertheless, it is a seriously studied, and now experienced, possibility. In the life of the institutes and of the church, 20 years is a short time, but it is providing valuable experience. One of the most successful alternate models to the PJP has been cosponsorship through civil collaboration among institutes, with a consolidation of funds for purchasing and credit purposes and a sponsors' council with certain decision-making and vigilance roles, while the properties remain part of the stable patrimony of the participating religious institutes. This obviously requires the presence of well prepared religious for their necessary participation, as well as a large cadre of lay collaborators.

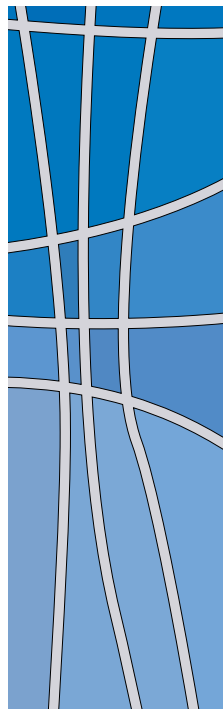
Reflection on the model of the PJP has raised questions for other institutes affected by the diminishment of religious. Serious questions must be studied before attempting to use this structure in different contexts. Where health care delivery is still largely through stand-alone hospitals rather than systems, it is not clear if the new structure would really help. Where civil law does not readily grant recognition of an apostolate

separated from the juridic person of the religious institute, there is another obstacle. Where there is little experience of working with professionally and ministerially prepared laity, the time may not be right.

Where there is the creation of a separate civil corporation or foundation with neither powers reserved to the religious institute, nor distinct canonical juridic personality, there seems to be *de facto* alienation, with the responsibility for Catholic identity and stewardship of ecclesiastical goods left to good will, without juridic obligation. The actual transfer of the "business" of an apostolate to another organization while retaining ownership of land and buildings seems also to place at risk any right of vigilance over Catholic teaching and ethics and to leave the institute with properties that, although not technically alienated, it can neither use nor sell.

The brief but intense experience of PJPs sponsoring Catholic institutes of health care, education and social services promises there is a future for these apostolates, once totally in the hands of religious institutes. Dedicated to their mission in the church, religious have taken seriously the teaching of Vatican II that there is "a true equality between all with regard to the dignity and the activity which is common to all the faithful in building up the Body of Christ"³⁴

Sacred ministers and all of the faithful are called to close collaboration. The *Code of Canon Law* itself recognizes that by baptism all share, in their own manner, in the priestly, prophetic and royal office of Christ; all have their role in the mission God has entrusted to the church (c. 204, para. 1; c. 208). Religious and laity assisted by experts in both civil and canon law have worked together with generosity, creativity and insight in shaping the "new" PJPs. They have begun to chart a way toward a future which will continue to unfold.



SR. SHARON HOLLAND, IHM, an internationally recognized expert in canon law, was one of the highest ranking women in the Vatican where she served from 1988 to 2009 at the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life. Upon her 2009 retirement from the Vatican, she was awarded the *Pro Ecclesia et Pontifice* Cross, a papal honor for service to the church. Sr. Holland lives in Monroe, Mich.

NOTES

1. Kate Grant and Patricia Vandenberg, *After We're Gone: Creating Sustainable Sponsorship*, (Mishawaka, Ind.: Ministry Development Resources, 1998).
2. Pope Benedict XVI, encyclical letter *Deus Caritas Est*, (Vatican: Libreria Editrice Vaticana, 2005) 27.
3. Pope John Paul II, apostolic exhortation *Vita Consecrata*, (Vatican: Libreria Editrice Vaticana, 1996) 83.
4. Pope Benedict XVI, Address to U.S. Bishops (April 16, 2008), *L'Osservatore Romano*, English Ed., (April 23, 2008) 3.
5. Pope Benedict XVI, Catholic University of America address (April 17, 2008), *L'Osservatore Romano*, English Ed., (April 23, 2008), 8.
6. The juridic personality flows from the ecclesial erection of the institute and the mandate in the mission of the church, from the approval of the institute's constitutions.
7. For a brief but fascinating account of the first U.S. petition for public juridic personality, submitted in 1979 and granted in 1991, see Patricia Cahill, "Public Juridic Person — the Charter for the Vision," in *Catholic Health Initiatives: A Spirit of Innovation, a Legacy of Care*, edited by Patricia A. Cahill and Marianna Coyle (Denver: CHI, 2006) 77-87.
8. The code provides that, as a rule, the administration of ecclesiastical goods "pertains to the one who immediately governs the person to which the goods belong" (c. 1279, para. 1.) Each juridic person is also expected to have a finance council to assist the administrator (c. 1280). The normal application of these norms to religious congregations and consequently to their apostolates is that the religious superior (provincial or general) is the administrator, assisted by his or her council. Even if a separate financial advisory council exists, it is the superior's council that has a formal role in decision-making. Likewise, while a treasurer is required for the administration of goods in every province and congregation, this role is exercised under the direction of the superior, who in specified cases must have the advice or consent of the council (c. 636, c. 638, para. 3).
9. Canons 1291-1292.
10. Canon 1257 defines as ecclesiastical goods, those

which belong to the universal church, the Apostolic See and other public juridic persons. These are subject to the canons of Book V of the *Code of Canon Law*. Canon 1254 lists the purposes for which temporal goods may be owned by the church: "to order divine worship, to care for the decent support of the clergy and other ministers, and to exercise works of the sacred apostolate and of charity, especially toward the needy."

11. See Robert T. Kennedy, "McGrath, Maida, Michiels: Introduction to a Study of the Canonical and Civil-Law Status of Church-Related Institutions in the United States," *The Jurist* 50 (1990) 351-401. See also, John P. Beal, "From the Heart of the Church to the Heart of the World: Ownership, Control and Catholic Identity of Institutional Apostolates in the United States," in *Sponsorship in the United States Context*, edited by Rosemary Smith, Warren Brown and Nancy Reynolds, (Alexandria, Va.: Canon Law Society of America, 2006) 36-38.
12. Kennedy, 357.
13. Kennedy, 355.
14. Kennedy, 370-372.
15. In 1998, a colloquium was held in Rome, sponsored by the Pontifical University of St. Thomas Aquinas (Rome) and Duquesne University School of Law (Pittsburgh), entitled "Public Ecclesiastical Juridic Persons and Their Civilly Incorporated Apostolates in the Catholic Church in the U.S.A.: Canonical-Civil Aspects." The *Acts of the Colloquium* were jointly published by the two universities in 1998.
16. Adam J. Maida and Nicholas P. Cafardi, *Church Property, Church Finances and Church-Related Corporations* (St. Louis: Catholic Health Association, 1984) 157. See also, Beal, 42. Here he summarizes the usual reserve powers, citing, additional sources as well as Maida-Cafardi.
17. On this development see Jordan Hite, *A Primer on Public and Private Juridic Persons: Applications to the Health Care Ministry* (St. Louis: Catholic Health Association, 2000) and Francis Morrisey, "Toward Juridic Personality," *Health Progress*, 82 vol. 4 (July-August 2001) 27-31.
18. On the concepts of *munus* and "in the name of the Church," see William J. King, "Sponsorship by Juridic Persons" in *Sponsorship*, 57-60.
19. In discussing the distinction presented in canon 115, paragraph 1, with reference to the assumption of apostolic works, William J. King notes the possibility of an "aggregate of persons" being, in fact, an aggregate of juridic persons in collaboration. See King, "Sponsorship by Juridic Persons" in *Sponsorship*, 57, n. 15.
20. Canon 1303, paragraph 1.2 states the autonomous pious foundations are "aggregates of things

destined for all the purposes mentioned in canon 114, paragraph 2 and erected as a juridic person by competent ecclesiastical authority.”

21. The same is true of the ecclesiastical province (c. 432, para. 2) and the parish (c. 515, para. 3).

22. Ellsworth Kneal, “Associations of the Faithful,” in *The Code of Canon Law, A Text and Commentary*, ed. by James A. Coriden, Thomas J. Green and Donald E. Heintschel, (New York: Paulist Press, 1985) 249. Emphasis added.

23. Robert T. Kennedy, “Juridic Persons” in *New Commentary on the Code of Canon Law*, ed. John P. Beal, James A. Coriden and Thomas J. Green (New York: Paulist Press, 2000) 157-158, n. 23.

24. In one case, under particular circumstances, *private* juridic personality was granted.

25. Beal, 46.

26. This continued accent on a particular spirituality obviously is more possible where one institute is involved. Where there are multiple “Participating Entities,” the central focus may be on Catholic identity without further specification.

27. United States Conference of Catholic Bishops, *Ethical and Religious Directives for Catholic Health Care Services*, Revised ed. *Origins* 31 (July 19, 2001) 153, 155-163.

28. Beal, 44.

29. In one case to date, a PJP received the approval of a statute change that removed the final power reserved to the founding institute, that of appointing the members. This was done after some 10 years of experience, and with a process for the selection and preparation of new members tested and in place. It

was fully supported by the religious congregation.

30. If juridic personality was granted by the diocesan bishop or a conference of bishops, it would appear that alienations and other transactions described in canon 1295, above the sum approved for the region, would be presented to the Holy See through the Congregation for Clergy. As Pope John Paul II, Apostolic Constitution on the Roman Curia, *Pastor Bonus* (June 28, 1983), n. 98 states: “The Congregation carries out everything that pertains to the Holy See regarding the regulation of ecclesiastical goods, and especially their correct administration.” *Pastor Bonus*, n. 108.1 includes the administration of goods in the listing of competencies for the CIVCSVA for matters which belong to the Holy See.

31. The question of whether clerical major superiors of religious and societies of apostolic life have the authority to grant juridic personality, in virtue of their being defined in canon 134, paragraph 1 as “ordinaries” (but not “local ordinaries”), has been raised. The matter requires further study, however, even the canon’s qualification, “for their own members” raises doubts about the applicability to them of the canons’ designation of “competent ecclesiastical authority” (c. 116, para. 1; c. 1303, para.1.1). Petitions to date have involved congregations of religious sisters or brothers.

32. *Pastor Bonus*, article 124.

33. *Pastor Bonus*, articles 152-153.

34. Constitution of the Second Vatican Council, *Lumen Gentium* (Nov. 21, 1964) chapter 4, para. 32:195.

JOURNAL OF THE CATHOLIC HEALTH ASSOCIATION OF THE UNITED STATES

www.chausa.org

HEALTH PROGRESS®

Reprinted from *Health Progress*, September-October 2011
Copyright © 2011 by The Catholic Health Association of the United States
