

## SOCIAL ACTIVITIES STEMMING FROM RELIGIOUS INSPIRATION

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### I. INTRODUCTION

“No human being can say that he is not responsible for the destiny of his brother or sister” (see Gen. 4, 9; Luke 10, 29-37; Mat. 25, 31-46). This sentence from the encyclical “*Centesimus annus*” no. 51 of Pope John Paul II, dated 1 May 1991 formulates very summarily the position of each person in their society. The Pope bases his statement on the Scripture. It is the wisdom of the Jewish and Christian tradition. The most inspiring summary of this Jewish and Christian wisdom is given in Luke 10, 25-37:<sup>2</sup>

On one occasion a lawyer came forward to put this test question to Jesus: Master, what must I do to inherit eternal life? Jesus said: What is written in the Law? What is your reading of it? He replied: Love the Lord your God with all your heart, with all your soul, with all your strength, and with all your mind and your neighbour as yourself. “That is the right answer, said Jesus, do that and you will live” (Luke 10, 25-28).

The answer of the lawyer is a quotation from Deut. 6, 5 and Lev. 19, 18. The gospel of St. Luke goes on: “But he (the lawyer) wanted to vindicate himself, so he said to Jesus: And who is my neighbour?” (Luke 10, 29).

Replying to this question Jesus tells the story of a person who “was on his way from Jerusalem down to Jericho and fell in with robbers who stripped him, beat him, and went off leaving him half dead” (Luke 10, 30). Neither the priest nor the Levite took care of him, but only a Samaritan “saw him and was moved to pity” (Luke 10, 33). At the end the Lord asks: “Which of these three do you

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<sup>2</sup> The translation is from the New English Bible, Collins World, Oxford/ Cambridge 1970.

think was the neighbour to the man who fell into the hands of the robbers?" (Luke 10,36).

And the lawyer answers: "The one who showed him kindness". "Jesus said: Go and do as he did" (Luke 10,37). This is in the theology of Saint Luke the commentary of Jesus Christ on the order of Lev. 19,18: "You shall love your neighbour as a man like yourself. I am the Lord". The lawyer asks "Who is my neighbour?" Jesus asks "Who was the neighbour to the man who fell into the hands of the robbers?" So I have to become the neighbour of everybody who needs my help. Not: the other person is my neighbour, but I must become his neighbour, as God's Son through his incarnation has become our neighbour. Therefore Jesus said to his disciples just before the encounter with the lawyer: "Happy the eyes that see what you are seeing! I tell you, many prophets and kings wished to see what you now see, yet never saw it; to hear what you hear, yet never heard it" (Luke 10,23-24).

**Social activities.** Social activities based on a religious inspiration are inherent to the existence of each conscious Christian and of every Church. It is impossible to imagine Christian and Church life without these activities. They cannot be lacking. But what is meant with social activities? In this lecture I mean all the activities for the benefit of our fellow men for whom a Christian is ready to be his neighbour and who make an appeal to him, because they need his help. Who are these people? They are the poor, the sick, the defenceless, the physically and mentally handicapped persons, children, young people and old people.

**Restrictions.** Social activities form a vast field of operations. Therefore in this lecture I must restrict myself to well defined areas.

— I want to prescind here from activities regarding education, schools and culture as well as activities concerning instruments of social communication, which are being treated by other speakers.

— This lecture is concerned with social activities stemming from religious inspiration. This word "religious" is very broad. I am restricting myself to the Christian inspiration and specifically to that within the Catholic Church.

— The final restriction. I only want to talk about some of the many canonical implications of social activities stemming from religious inspiration. Aspects of this issue which deal with Church-State relationships will not be treated. They have been considered by Professor Brigitte Basdevant-Gaudemet in the eighth International Congress of Canon Law at Lublin (Poland) in September 1993.

My lecture contains the following sections:

- The mission of the Church and of all the Christian faithful
- The special mission of lay people in the Church
- Associations to meet social needs
- Catholic health care institutions

## II. THE MISSION OF THE CHURCH AND OF ALL THE CHRISTIAN FAITHFUL

In order to understand the mission of the Church and of all the Christian faithful in the 1983 Code I shall give in short a survey of the most relevant canons.

We all know the statement of c. 204, par. 1:

The Christian faithful are those who, inasmuch as they have been incorporated in Christ through baptism, have been constituted as the people of God; for this reason, since they have become sharers in Christ's priestly, prophetic and royal office in their own manner, they are called to exercise the mission which God has entrusted to the Church to fulfil in the world, in accord with the condition proper to each one.<sup>3</sup>

The Christian faithful share in the entire mission of Christ. They are sent by Him, as He is sent by his Father (John 20,21). They have to fulfil a mission, but the canon stipulates that it is the mission entrusted by God to the Church. Fulfilling their mission the faithful cannot work on their own. They are and remain bound by the laws and teachings of the Church. They do keep their own responsibility but they "are bound by Christian obedience to follow what the sacred pastors, as representatives of Christ, declare as teachers of the faith or determine as leaders of the Church" (c. 212, par.1).

Regarding social questions c. 747, par.2 states:

To the Church belongs the right always and everywhere to announce moral principles, including those pertaining to the social order, and to make judgements on any human affairs to the extent that they are required by the fundamental rights of the human person or the salvation of souls.

This canon is quite clear and formulates the statement of "Gaudium et spes" no.76. James A. Coriden comments:

The canon speaks in terms of announcing "moral principles" rather than discerning particular moral situations... This should neither be read as an arrogant claim of omniscience nor a license to meddle in anyone's affairs; it is an assertion of the Church's legitimate concern about the human condition, especially in matters bearing on salvation, and of its freedom to express itself on such issues.<sup>4</sup>

<sup>3</sup> I am using in this lecture the Code of Canon Law. Latin-English edition. Translation prepared under the auspices of the Canon Law Society of America, Washington, D.C. 20064, 1984 (third printing).

<sup>4</sup> J.A. Coriden/T.J. Green/D.E. Heintschel (ed.), The Code of Canon Law. A Text and Commentary, New York, Mahwah 1985, 546-547 (CLSA-Commentary).

This right belongs, c. 747, par.2 says, to the Church. It is one of the components of the teaching office of the Church (Book 3 of the CIC/83). The term "Church" in the CIC/83 always means both the universal Church under the authority of the pope alone (c.331) and of the college of bishops together with him (c.336), and the particular Church "in which and from which exists the one and unique Catholic Church" (c.368).

Regarding social activities we have the encyclicals and other documents of the popes concerning the social and ethical teaching of the Church (c.752).<sup>5</sup> In the Roman Curia it is "the proper function of the Congregation for the Doctrine of Faith to promote and safeguard the doctrine on faith and morals in the whole Catholic world" ("Pastor Bonus", art.48). The study and spreading of the social teaching of the Church is entrusted to the Pontifical Council for Justice and Peace ("Pastor Bonus", art.142-144). The Pontifical Council for Pastoral Assistance to Health Care Workers "is to spread the Church's teaching on the spiritual and moral aspects of illness as well as the meaning of human suffering" ("Pastor Bonus", art. 153, par.1). The task of the Pontifical Council 'Cor Unum' "shows the solicitude of the Catholic Church for the needy, in order that human fraternity may be fostered and that the charity of Christ be made manifest" ("Pastor Bonus", art.145). "The Pontifical Council for the Family promotes the pastoral care of families, protects their rights and dignity in the Church and in civil society, so that they ever may be more able to fulfil their duties" ("Pastor Bonus", art.139).

These kinds of organisations and committees also exist on the level of conferences of bishops, nations, ecclesiastical provinces and dioceses. It is important not to forget the numerous letters, statements, declarations and the like of individual bishops, conferences of bishops and particular councils about social issues (c.753). An interesting study in this regard is the dissertation of my fellow countryman Jan van der Wal "Gerechtigheid, solidariteit, Rijk Gods" ("Justice, Solidarity and the Kingdom of God") published in The Netherlands in 1994.<sup>6</sup> The author studied 513 documents of individual bishops and conferences of bishops of eleven western, industrialised countries, about social

5 For example the encyclicals of Leo XIII "Rerum novarum" dated 15 May 1891; of Pius XI "Quadragesimo anno" dated 15 May 1931; of John XXIII "Mater et magistra" dated 15 May 1961; the apostolic letter of Paul VI "Octogesima adveniens" dated 14 May 1971; and the encyclicals of John Paul II "Laborem exercens" dated 14 Sept.1981; "Sollicitudo rei socialis" dated 30 Dec.1987; "Centesimus annus", dated 1 May 1991; "Veritatis splendor", dated 6 Aug.1993; "Evangelium vitae", dated 30 March 1995.

6 J.J.A.G.M. van der Wal, Gerechtigheid, solidariteit, Rijk Gods. Een studie naar thematiek, methode en doelstelling van het bisschoppelijk sociaal onderricht in elf westerse geïndustrialiseerde landen 1961-1990. Meppel 1994. In itare studied Letters, Declarations and Statements of bishops from the following countries: Belgium, Canada, France, Germany, Great-Britain, Ireland, Italy, The Netherlands, Portugal, Spain, United States of America.

questions during the years 1961-1990. These documents are an important implementation and supplementation of papal and conciliar social teaching.

It is quite obvious that the social and moral teaching of the Church is to be imparted to the faithful. Therefore we have the norm of c. 768, par. 2:

They [preachers] are to impart to the faithful the teaching which the magisterium of the Church proposes concerning the dignity and freedom of the human person, the unity and stability of the family and its duties, the obligations which men and women have from being joined together in society, and the ordering of temporal affairs according to God's plan.

This is a new canon in the Code, based on the conciliar document "Christus Dominus" no.12.

This missionary responsibility is further worked out in c. 781:

Since the entire Church is missionary by its nature and since the work of evangelization is to be viewed as a fundamental duty of the people of God, all the Christian faithful, conscious of their own responsibility in this area, are to assume their own role in missionary work.

The canon reproduces the Vatican II decree "Ad gentes" no.35. In c. 786 we find:

Missionary activity, properly so-called, by which the Church is implanted among peoples and groups in which it has not yet taken root, is accomplished by the Church especially by sending heralds of the gospel until the young churches are fully established to the point that they are able to perform the work of evangelization on their own with their own resources and sufficient means.

The conciliar basis is "Lumen gentium" no.17 and "Ad gentes" no.6. The interpretation of these canons together permits us to conclude:

a. There is a twofold concept of mission, i.e. mission in the initial sense of the word: "missionary activity, properly so-called, by which the Church is implanted" (c. 786) and mission in the permanent sense of the word: "they (the young Churches) are able to perform the work of evangelization on their own with their own resources and sufficient means" (c. 786).<sup>7</sup>

7 P. Stevens, "Wee mij als ik het evangelie niet verkondigde". Kerkrechtelijke kanttekeningen bij de missionaire opdracht van de Kerk, in: R.Houdijk/J.Pieper (red.), *Dienstaan mensen. Opstellen aangeboden aan Harry Spee ss. cc.*, Baarn 1995, 109-132, here 112 ("Woe to me, if I do not preach the gospel"). Canonical comments about the missionary task of the Church, in: R.Houdijk/J.Pieper (red.), *Service to people. Essays presented to Harry Spee*.

b. The Church is “missionary by its nature” (c. 781); that means the universal Church and the particular Churches.

c. All Christian faithful “are to assume their own role in missionary work” (c. 781), because they are co-responsible for the missionary activities of the Church.

What is the content of their mission? The Code is not clear in this matter. First of all it is the preaching of the gospel (c. 747, par.1) for the Christian faithful share “in Christ’s prophetic office” (c. 204, par. 1). But there is more. In the missionary activity of the Church we see, for example, that catechists “devote themselves to expounding the gospel teaching and organizing liturgical functions and works of charity” (c. 785, par.1). And c. 788, par. 2 says:

Through instruction and an apprenticeship in the Christian life catechumens are suitably to be initiated into the mystery of salvation and introduced to the life of faith, liturgy, charity of the people of God and the apostolate.

“Works of charity”, also called “charity of the people of God”, belong to the mission and the apostolate of the Church and of the Christian faithful.

Another fundamental canon is c. 222, par. 1: “The Christian faithful are obliged to assist with the needs of the Church so that the Church has what is necessary for divine worship, for apostolic works and works of charity and for the decent sustenance of ministers”.

And c. 222, par. 2: “They (the Christian faithful) are obliged to promote social justice and, mindful of the precept of the Lord, to assist the poor from their own resources”. See for example Luke 10, 25-37.

Therefore it is quite understandable that one of the obligations of the pastor according to c. 528, par. 1 is: “to foster works by which the spirit of the gospel, including issues involving social justice, is promoted”.

Candidates for the priesthood must be instructed so that they are capable of fulfilling this obligation. So c. 256, par. 2 states:

The students are to be instructed in the needs of the universal Church so that they have a concern for the promotion of vocations, for missionary questions, for ecumenical concerns and other more urgent issues including those of a social nature.

Attention and dedication to questions of social justice is an essential part of the mission of the Church and the Christian faithful. This item of social justice in the 1983 Code is very well studied by Terence Grant.<sup>6</sup>

<sup>6</sup> T.T. Grant, Social justice in the 1983 Code of Canon Law: An examination of selected canons, in: The Jurist 49 (1989), 112-145.

It is evident that the same attention is to be paid to collaborators in the Church, whether clerics or lay. The Synod of bishops in 1971 stated frankly "The Church has to testify to justice, but she recognises that he who dares to speak about justice to the people, has first of all himself to practise justice". So we see in c. 384 the obligation of the diocesan bishop: "to attend to presbyters with special concern...; he is to make provision for their decent support and social assistance, in accord with the norm of law".

In c. 281, par. 1 it is stated:

When clerics dedicate themselves to the ecclesiastical ministry they deserve a remuneration which is consistent with their condition in accord with the nature of their responsibilities and with the conditions of time and place; this remuneration should enable them to provide for the needs of their own life and for the equitable payment of those whose services they need.

In c. 281, par. 2 we find: "Provision is likewise to be made that they (the clerics) possess that social assistance by which their needs are suitably provided for if they suffer from illness, incapacity or old age".

For lay collaborators in the Church c. 231, par. 2 stipulates:

With due regard for can. 230, par. 1, they (lay people), have the right to a decent remuneration suited to their condition, by such remuneration that they should be able to provide decently for their own needs and for those of their family with due regard for the prescriptions of civil law; they likewise have the right that their pension, social security and health benefits be duly provided.

For all persons working in the Church the prescriptions of c. 1286 apply: Administrators of goods:

no. 1 are to observe meticulously the civil laws pertaining to labour and social policy according to Church principles in the employment of workers;

no. 2 are to pay employees a just and decent wage so that they may provide appropriately for their needs and those of their family.

In conclusion we can say: According to the Code social activities also belong by definition to the mission of the Church, sometimes called responsibility for "the common good of societies" and "active participation in social life" (c. 795); "apostolic works and works of charity" (c. 222, par. 1); "to promote social justice...and to assist the poor from their own resources" (c. 222, par. 2); "works by which the spirit of the gospel, including issues involving social justice, is promoted" (c. 528, par. 1); and "urgent issues including those of

social nature” (c. 256, par. 1). It is an essential part of the mission of the universal Church, of every particular Church, and of all the Christian faithful in their own position and condition. For this reason we have special dicasteries of the Roman Curia, national and provincial organisations and diocesan organs to which this task is entrusted. This obligation is also expressed in the rules the Church leaders have to implement for presbyters (c. 384), clerics (c. 281, par. 2) and lay people (c. 231, par. 2), in short all collaborators in the Church (c. 1286).

### III. THE SPECIAL MISSION OF LAY PEOPLE IN THE CHURCH

The commitment for social justice in the world by means of concrete action is the characteristic mission of lay people in the Church. This is clear in c. 225, par. 2:

Each lay person in accord with his or her condition is bound by a special duty to imbue and perfect the order of temporal affairs with the spirit of the gospel; they thus give witness to Christ in a special way in carrying out those affairs and in exercising secular duties.

In this canon is worked out the statement of Vatican II “By reason of their special vocation it belongs to the laity to see the Kingdom of God by engaging in temporal affairs and directing them according to God’s will” (“Lumen gentium” no. 31).

In order to fulfil this obligation, c. 227 says:

Lay Christian faithful have the right to have recognised that freedom in the affairs of the earthly city which belongs to all citizens; when they exercise such freedom, however, they are to take care that their actions are imbued with the spirit of the gospel and take into account the doctrine set forth by the magisterium of the Church; but they are to avoid proposing their own opinions as the teaching of the Church in questions which are open to various opinions.

The English translation of the Commentary of the University of Navarra rightly says

The juridical situation of the lay person with regard to both ecclesiastical and civil society involves two fundamental rights: the right to religious freedom within the civil society and the right to freedom in secular matters within the ecclesiastical society. The State does not have competence in religious matters, nor does the Church in secular matters. The person who has been baptized is a lay person in the canonical sphere and a citizen in the civil sphere. For this reason “the faithful should learn to



distinguish carefully between the rights and duties which they have as belonging to the Church and those which fall to them as members of the human society" (*Lumen gentium* n. 30).<sup>9</sup>

The canonical problem here is: What is meant with the word "laicus"? As Peter Krämer explains,<sup>10</sup> the CIC/83 uses a twofold concept of lay person:

a. On the one hand a broad concept: all the Christian faithful who are not clerics, are lay people. So lay people are not clerics. Religious brothers and sisters who are not ordained, are also lay people (c. 207, par. 2). This negative concept of lay people is the basis of c. 207, par. 1, according to which lay people are called "other Christian faithful" ("ceteri"), as if they are rated lower than the other faithful. Such concept can only be substantially fleshed out by taking into account the fundamental description of all the Christian faithful according to c. 204, par. 1.

b. On the other hand a strict concept: lay people are those of the faithful who did not receive the sacrament of orders nor profess the evangelical counsels. This concept implicitly is the background of canons 224-231, but is also meant in cc. 463, par. 2; 512, par. 1; 1427, par. 3 and in the CCEO. CCEO c. 323, par. 2 states: "In virtue of sacred ordination clerics are distinguished from the other Christian faithful by divine institution". We have the same norm in CIC/17 c. 107.

And in CCEO c. 399 we read:

In this Code, the name of lay persons is applied to the Christian faithful whose proper and special state is secular and who, living in the world, participate in the mission of the Church, and are not in holy orders nor enrolled in the religious state.

The religious state is described in CCEO c. 410. Confer CIC/83 c. 573, par. 1. We easily recognise in this strict concept the doctrine of Vatican II, more precisely the typical description of lay persons in "*Lumen gentium*" no. 31:<sup>11</sup> "A secular character is proper and special to laymen". According to this conciliar teaching lay people are characterised by three elements:

- in a general sense: participation in the threefold office of Christ and in the mission of the entire People of God within the Church and the world;
- in a restrictive sense: participation as non-clerics and non-religious;

<sup>9</sup> E. Caparros/M. Thériault/J. Thorn (ed.), *Code of Canon Law annotated*, Montréal 1993, 199.

<sup>10</sup> P. Krämer, *Kirchenrecht III, Ortskirche - Gesamtkirche*, Stuttgart/Berlin/ Cologne 1993 (Kohlhammer Studienbücher Theologie Band 24.2), 23-25.

<sup>11</sup> P. Krämer, *Dienst und Vollmacht in der Kirche. Eine rechtstheologische Untersuchung zur Sacra Potestas - Lehre des II. Vatikanischen Konzils*, Trier 1973 (Trierer Theologische Studien Band 28), 57-60. J. Beyer, *Renouveau du Droit et du Laicat dans l'Église*, Éditions Tardy 1993, 103-114.

— in a specific sense: participation, which is qualified by their secular character (“*indoles saecularis*”).

This secular character is the background of the prescription of c. 225, par. 2. It would be better to describe the proper position of the lay person as follows: a lay is a someone who in his or her commitment to the world has no other ecclesiastical bond to the Church than baptism (and confirmation). Therefore the lay person is characterised primarily by his secular character. Elizabeth Braunbeck states

“*indoles saecularis*” means the Christian relationship to the world (*saeculum*) and mission for the world, which emanate from baptism and confirmation and which for the lay person (because of his permanent full commitment to relations and functions of the world) decisively marks the exercise of his common priesthood in the Church and in the world.<sup>12</sup>

This theological and legal position of lay people gives them the freedom of c. 227, which is restricted for clerics and religious.

For clerics we see the norms of c. 285:

no.1 the prescription “to refrain completely from all those things which are unbecoming to their state”;

no.2 the rule “to avoid those things which, although not unbecoming, are nevertheless alien to the clerical state”;

no.3 the prohibition “to assume public offices which entail a participation in the exercise of civil power”;

no.4 the prohibition “without the permission of their ordinary to become agents for goods belonging to lay persons nor to assume secular offices which entail an obligation to render accounts; to act as surety, even on behalf of their own goods, without consultation with their proper ordinary”; and the rule “to refrain from signing promissory notes whereby they undertake the obligation to pay an amount of money without any determined reason”.

There is also c. 286 which states: “Clerics are forbidden personally or through others to conduct business or trade either for their own benefit or that of others without the permission of legitimate authority”.

<sup>12</sup> “*Indoles saecularis* bezeichnet... die aus der Taufe und Firmung erwachsende spezifische christliche Beziehung zur Welt und Sendung für die Welt, die für den Laien (aufgrund seiner bleibenden vollen Verflechtung in Bezüge und Aufgaben der Welt) die Ausübung seines gemeinsamen Priestertums in Kirche und Welt entscheidend prägt” (E. Braunbeck, *Der Weltcharacter des Laien. Eine theologisch-rechtliche Untersuchung im Lichte des II. Vatikanischen Konzils, Regensburg 1993, 94*). See also her statement on p. 261.

Because clerics, according to c. 287, par. 1, “are always to foster that peace and harmony based on justice which is to be observed among all persons”, c. 287, par. 2 states:

Clerics are not to have an active role in political parties and in the direction of labour unions unless the need to protect the rights of the Church or to promote the common good requires it in the judgement of the competent ecclesiastical authority.

An exception is given in c. 288: “Permanent deacons are not bound by the prescriptions of can. 285, par. 3 and 4; 286, 287, par. 2, unless particular law determines otherwise”.

In order to analyse and clarify actual conflicts a lot of studies have been written about the involvement of clerics in politics and labour unions.<sup>13</sup>

Regarding to religious we have c. 672 which states: “Religious are bound by the prescriptions of can....285, 286, 287...”.<sup>14</sup>

Therefore members of a religious institute are not allowed “to assume public offices which entail a participation in the exercise of civil power” (c. 285, par. 3).

David F. O’Connor remarks:

It should be noted that the canon has been changed since the 1980 draft which indicated who could grant permission. It appears that in doing this the intent is to tighten the canon and make exceptions to it more extraordinary. Religious are to undertake an apostolate that is in accordance with their constitutions and the charism of their institute. Generally, this will exclude public positions because religious are at the service of people as heralds of the gospel in the name of the Church.<sup>15</sup>

This prohibition is to my opinion connected with the emphasis on the eschatological dimension of their life (cf. c. 573, par. 1). Furthermore, religious “are not to have an active role in political parties and in the direction of labour

13 See for example J.A. Komonchak, Clergy, Laity and the Church’s Mission in the world, in: *The Jurist* 41 (1981), 422-447. J. Provost, Clergy and Religious in Political Office: Comments in the American Context, in: *The Jurist* 44 (1984), 276-303. J. Herranz, Circa la possibilità di assumere uffici pubblici da parte di chierici, in: *Apollinaris* 57 (1984), 512-516. A. Piamonte, Involvement of Clerics in Politics and Public Administration. Legislation, Papal Pronouncements and Local Experience, in: *Boletín Eclesiástico de Filipinas* 52 (1986), 521-531. W.S. Ipapo, Clerics and Religious in Business, in: *Philippina Sacra* 28 (1988), 225-245. Southern African Bishops Conference, *Statement on Priests and Religious in Politics*, 25 January 1994.

14 D. O’Connor, Ecclesiastical Intervention, in: *Authority, Community and Conflict*, Kansas City, 1986, 79-95. J. Koonamparampil, Clerical obligations applied to the Religious. An exegesis of canon 672, in: *Commentarium pro Religiosis* 3 (1988), 111-144. Idem, Clerical obligations applied to Religious. An exegetical Study of canon 672, Rome 1990 (doctoral dissertation, Pontificia Universitas Lateranensis).

15 D. O’Connor, in: J. Hite/S. Holland/D. Ward (ed.), *Religious Institutes, Secular Institutes, Societies of the Apostolic Life. A Handbook on Canons 573-746*, Minnesota 56321, 192.

unions unless the need to protect the rights of the Church or to promote the common good requires it in the judgement of the competent ecclesiastical authority” (c. 287).

It would seem that the prophetic dimension of religious life demands that they stand apart and be critical of the limitations of all politic movements. They are not to be “of a party”. They are to be concerned with fostering peace and justice as agents of reconciliation, not division. This will preclude, ordinarily, their direct involvement in partisan politics where divisions are inevitable. When permission is requested, it is given not only by the proper religious superior, but also by ecclesiastical authority. This could be not only the local Ordinary but the SCRS as well. The Church has discouraged all such involvement because priests and religious are not social or political figures or officials of a temporal power. They should be recognised as servants of Christ and stewards of the mysteries of God.<sup>16</sup>

In my eyes the background of these norms is also to be found in the norm of c. 607, par. 3: “The public witness to be rendered by religious to Christ and to the Church entails a separation from the world proper to the character and purpose of each institute”. This is according to “Lumen gentium” no.44; and “Perfectae caritatis” no.5.

The necessity of “a separation from the world proper to the character and purpose of each institute” is worked out in c. 608 “A religious community must live in a house legitimately constituted..”; in c. 665, par. 1 regarding the “observing of common life”; in c. 665, par. 2 forbidding the unlawful absence from the religious house; and in c. 667, par. 1 the necessity and observation of the cloister.<sup>17</sup>

So it is the special mission of all the lay people in the Church, also lay members of religious institutes (cc. 675, 676, 681), to develop, in accordance to their legal position, social activities in order to help persons who are in need. Because of their “indoles saecularis” (“secular character”) it is the proper responsibility of lay persons in the strict sense of the word (CCEO c. 399) for all social activities in the world. It is their specific mission, based on their baptism and confirmation. In the sacrament of confirmation they “are enriched by the gift of the Holy Spirit and bound more perfectly to the Church; it strengthens them and obliges them more firmly to be witnesses to Christ by word and deed...” (c. 879). This distinguishes them from clerics and religious, whose legal possibilities are limited, although all the Christian faithful share in Christ’s mission for the needy.

<sup>16</sup> Idem, o.c., 193

<sup>17</sup> See for example Comité Canonique des Religieux, *Directoire Canonique. Vie consacrée & sociétés de vie apostolique*, Paris 1986, 107-110.

#### IV. ASSOCIATIONS TO MEET SOCIAL NEEDS

Christian faithful can exercise their responsibility in different ways. They enjoy the fundamental rights of endeavour and of association and meeting. This becomes quite clear from the following fundamental canons.

In c. 216 we see the right of endeavour or undertaking:

All the Christian faithful, since they participate in the mission of the Church, have the right to promote or to sustain apostolic action by their own undertakings in accord with each one's state and condition (so for lay people in the strict sense in accord with their secular position, PS); however, no undertaking shall assume the name Catholic unless the consent of competent ecclesiastical authority is given".

Different conciliar statements form the basis of this canon: "Lumen gentium" no. 37; "Apostolicam actuositatem", nos. 24, 25; and "Presbyterorum ordinis" no. 9.

In c. 215 the right of association and meeting is formulated:

The Christian faithful are at liberty freely to found and to govern associations for charitable and religious purposes or for the promotion of the Christian vocation in the world; they are free to hold meetings to pursue these purposes in common.

The conciliar sources are "Apostolicam actuositatem" nos. 18-21; "Presbyterorum ordinis" no. 8; and "Gaudium et spes" no. 68.

In c. 217 the right to human and Christian education:

The Christian faithful since they are called by baptism to lead a life in conformity with the teaching of the gospel, have the right to a Christian education by which they will be properly instructed so as to develop the maturity of a human person and at the same time come to know and live the mystery of salvation.

Here we meet the conciliar declaration on Christian education "Gravissimum educationis" no. 2.

In connection with c. 217 the definition of education is given in c. 795:

Since a true education must strive for the integral formation of the human person, a formation which looks toward the person's final end, and at the same time toward the common good of societies, children and young people are to be so reared that they can develop harmoniously their physical, moral and intellectual talents, that they acquire a more perfect sense of responsibility and a correct use of freedom, and that they be educated for active participation in social life.

The canon is based on “Gravissimum educationis” no.1.  
In this context the norm of c. 229, par. 1 must not be forgotten:

Lay persons are bound by the obligation and possess the right to acquire a knowledge of Christian doctrine adapted to their capacity and condition so that they can live in accord with that doctrine, announce it, defend it when necessary, and be enabled to assume their role in exercising the apostolate.

Here a lot of conciliar statements are taken together “Lumen gentium” no.35; “Dignitatis humanae” no.14; “Apostolicam actuositatem” no.29; “Ad gentes” no.26; “Gaudium et spes” no.43.

The CIC/83 gives a broad legislation regarding associations of the Christian faithful in the cc.298-326 and special norms for associations of the laity in cc.327-329.<sup>18</sup> As Libero Gerosa and Peter Krämer work out, in the associations the charism in the Church is expressed.<sup>19</sup>

The purposes to be pursued by associations are mentioned in c. 298, par. 1:

...The Christian faithful strive by common effort to promote a more perfect life or to foster public worship or Christian doctrine or to exercise other apostolic works, namely to engage in efforts of evangelization, to exercise works of piety or charity and to animate the temporal order with the Christian spirit

Nearly the same purpose we come across in c. 225, par. 2.

According to c. 299, par. 1: “Christian faithful are free, by means of a private agreement made among themselves, to establish associations to attain the aims mentioned in c. 298, par. 1, with due regard for the prescriptions of can. 301, par. 1”.

In c. 299, par. 2 we hear: “Such associations are called private associations even though they are praised or recommended by ecclesiastical authority”. Cf. c. 298, par. 2.

<sup>18</sup> Commentaries on the law of associations in the Church are among other things: W. Schulz, *Der neue Codex und die kirchlichen Vereine*, Paderborn 1986; W. Aymans, *Kirchliche Vereinigungen. Ein Kommentar zu den vereinigungsrechtlichen Bestimmungen des Codex Iuris Canonici*, Paderborn 1988; T. Meijers, *Das katholische Vereinsrecht entsprechend dem neuen kirchlichen Gesetzbuch. Unter besonderer Berücksichtigung der Beziehung zwischen der Freiheit der Christgläubigen und der Aufgabe der kirchlichen Hierarchie*, Rome 1989; R. Torfs (in collaboration with F. Dewallens), *Congregationale Gezondheidsinstellingen. Toekomstige structuren naar profaan en kerkelijk recht*, Leuven 1992, 139-257 (Health Care Institutions of Religious Congregations. Future structures according to secular and canon law).

<sup>19</sup> L. Gerosa, *Charisma und Recht. Kirchenrechtliche Überlegungen zum “Urcharisma” der neuen Vereinigungsformen in der Kirche*, Einsiedeln/Trier 1989; P. Krämer, *Kirchenrecht I*, 144-152.

And c. 299, par. 3 adds: “No private association of the Christian faithful in the Church is recognized unless its statutes are reviewed by competent authority”.

For c.299 “Apostolicam actuositatem” no.24 is very important.

In this area we meet the normal tension between the freedom of association and meeting on the one hand and the competence of the ecclesiastical authorities on the other. “Ecclesiastical associations should have a relationship of fruitful tension with the constitutive structures of the Church, in order that ‘a healing effect against rigidity and immobility’<sup>20</sup> is brought about”.<sup>21</sup> Erection of associations for social needs is not reserved to the Church authorities. These associations are normally private associations. They need however according to c. 322, par. 1-2 “a formal decree of the competent ecclesiastical authority mentioned in can.312” in order to receive juridic personality in accordance with c. 116 par. 2. These associations can only assume the name “Catholic” with the consent of the competent ecclesiastical authority in accord with the norm of c. 312. This also occurs in the norms about undertaking mentioned in c.216 and schools mentioned in c. 803, par. 3.

The norm of c. 323 is also important:

Although private associations of the Christian faithful enjoy autonomy in accord with the norm of c. 321, they are subject to the vigilance of ecclesiastical authority in accord with the norm of can.305, and subject to the governance of the same authority.

The object of this supervision is:

— the observance of ecclesiastical teaching regarding social and moral issues (cc. 747, par. 2; 752; 753, 212, par. 1);

— the correct administration of their goods, since the competent Church leaders have the right “to be watchful that the goods are used for the purposes of the association” (c. 325, par.1). Moreover c. 325, par. 2 determines: “An association is subject to the authority of the local ordinary in accord with the norm of can.1301 concerning administration and disposition of funds which have been donated to it or left to it for pious causes”;

— “that their energies are not dissipated and that their exercise of their apostolate is ordered toward the common good” (c. 323, par. 2);

20 W. Aymans, Das konsoziative Element in der Kirche, in: AfkKR 156 (1987), 337-366, here 340. He uses the terms “Verkrustung und Immobilismus”.

21 P. Krämer, Kirchenrecht I, 144.

— that “they cooperate with other associations of the Christian faithful, where it is expedient, and willingly assist the various Christian works especially those in the same territory” (c. 328);

— that “moderators of associations of the laity are to see to it that the members of the association are duly formed for the exercise of the apostolate which is proper to the laity” (c. 329). Therefore the right to education and formation is formulated in cc. 217; 229, par.1.

The authority of the Church is also competent to suppress a private association, “if its activity causes serious harm to ecclesiastical doctrine or discipline or is a scandal to the faithful” (c. 326, par. 1). This penal sanction can only be imposed in accord with the norms of penal law (cc. 1341-1353).

To sum up we can say that the Code does provide the legal possibilities of lay persons to pursue their aims concerning social needs not only individually but also by means of particular endeavours and private associations. These enjoy more freedom than the public ones. In order to regulate and eventually to improve the discharge of their apostolic mission private associations are subject to the supervision of the Church authorities in well defined areas.

## V. CATHOLIC HEALTH CARE INSTITUTIONS

One of the most characteristic social activities stemming from religious inspiration is the care for sick and handicapped persons, an admirable and long-standing tradition in the Church. Mostly it was one of the apostolic works of religious institutes and their members. We meet it in the Code in c. 676

Lay institutes, whether of men or women, share in the pastoral office of the Church through spiritual and corporal works of mercy and offer the most diverse services to men and women; therefore they are to persevere faithfully in the grace of their vocation.

In parenthesis, the question can be asked: whether these lay institutes share in the pastoral office of the Church (*pastorale munus Ecclesiae*), since the term “*pastorale munus*” is used for the special task of priests and bishops?<sup>22</sup> In any case, their apostolic work is concerned with the “spiritual and corporal works of mercy” (c. 676).

It is not my intention to treat these works from the theological or spiritual point of view, but only from the canonical one. In several countries, including Western Europe, Catholic health care institutions, mostly begun by religious

<sup>22</sup> See cc. 358 (cardinals); 381, par. 1 and 412 (diocesan bishops); 447 (conference of bishops); 539 and 541, par. 1 (pastor); 544 (team of priests in a parish); 550, par. 1 (parochial vicar); 571 (chaplain).



institutes, more and more have in recent times been taken over and managed by lay people in the sense of CCEO c. 399, so by people who are neither clerics nor members of religious institutes. Whether they are administered by religious or by these lay people, the canonical question is: how these institutions function in a correctly autonomous way and at the same time have an effective legal bond with the authority of the Church? This is especially important in matters of ethics, such as in vitro fertilization, abortion, euthanasia and aids prevention, where the standards of the Catholic Church are to be observed. But there are also questions of justice toward the personnel and patients. We can think about just labour relations for the personnel and about correct treatment of patients according to the procedures established by civil law and/or by regulations of the health care institutions involved.

We enter here the field of the so called Catholic identity of civil institutions, which is a very much discussed item in my country. The Society of Dutch speaking canonists discussed this subject on its congress of November 1988.<sup>23</sup> Here universal law is not sufficient. Particular law must be developed so that according to different cultural and legal traditions rules of law are provided. The 57th Annual Convention of the Canon Law Society of America organised a pre-convention workshop "Changing United States Catholic Healthcare: Canonical implications, market realities and civil structures" in Montréal (Québec) on 15-16 October 1995. My colleague R. Torfs of the Faculty of Canon Law of the Catholic University of Leuven wrote a study to present several legal models to ensure the Catholic identity of health care institutions in Belgium,<sup>24</sup> but the Belgian Catholic Bishops until now have not accepted his proposals.

At this point it could be instructive to cite the particular legislation of the Dutch diocesan Catholic Bishops, which they recently unanimously promulgated.<sup>25</sup> In the Netherlands Catholic health care institutions, like hospitals,

<sup>23</sup> R. Torfs/P. de Roo/H. Warnink, *De katholieke identiteit van instellingen en organisaties in het recht*, Leuven 1990 (Werkgroep Nederlandstalige Canonisten). See especially the lecture of R.G.W. Huysmans, *De kerkrechtelijke verankering van katholieke instellingen en organisaties in de zending van de Kerk*, p. 51-66 (The canonical anchoring of catholic institutions and organisations in the mission of the Church).

<sup>24</sup> R. Torfs (in collaboration with F. Dewallens), *Congregationele Gezondheidsinstellingen. Toekomstige structuren naar profaan en kerkelijk recht*, Leuven 1992 (Health Care Institutions of Religious Congregations. Future structures according to secular and canon law). He designs the so called double structure in order to provide a workable situation: a civil juridic person (being an association without pursuit of benefit) administers the catholic hospital, but the association is at the same time a private ecclesiastical association, so supervised by the Church authorities in order to protect and to guarantee the catholic values, see p. 277-315.

<sup>25</sup> *Algemene Bepalingen voor kerkelijke rechtspersonen en katholieke burgerlijke rechtspersonen in de R.-K. Kerkprovincie in Nederland* (12/13 december 1994), Utrecht 1995 (Regelingen R.-K. Kerkgenootschap in Nederland, Nr.11) (General Regulations for ecclesiastical juridic persons and catholic civil juridic persons in the Roman Catholic ecclesiastical province of the Netherlands). This document is the partial substitution of the *Algemene Bepalingen voor Katholieke Instellingen op pastoraal, charitatief of*

institutions for physically and/or mentally handicapped persons, psychiatric institutions, nursing homes etc. are today administered by Catholic civil juridic persons. Personnel is employed by this juridic person. What is meant by the term "Catholic civil juridic person"? The legislation of the bishops distinguishes between ecclesiastical juridic persons and Catholic civil juridic persons, each having a different bond with the competent Church authorities. *Mutatis mutandis* this distinction looks like the canonical distinction between ecclesiastical universities (cc. 815-821) and Catholic universities (cc. 807-814). Ecclesiastical juridic persons are known to canonists. Catholic civil juridic persons, both private associations and autonomous foundations, are erected and governed according to the Dutch civil law. They commit themselves to carry out their mission in accordance with the doctrine and ethics of the Catholic Church. This decision is also recognised at civil law. The technical civil term is "zelfbinding" (selfcommitment) of these juridic persons to a certain Church or religious institution, in our case the Catholic Church. They are civil juridic persons with a Catholic identity. According to the Dutch Code of civil law the decision to carry out the mission in accordance with the teaching of the Catholic Church is binding also for civil instances.

The main items of the legislation concern:

- 1) erection and approval as a Catholic juridic person
- 2) statutory description of the aims of the juridic person
- 3) composition of the board
- 4) provision of pastoral care
- 5) supervision of the competent ecclesiastical authorities
- 6) penal sanctions.

### *1. Erection and approval as a Catholic juridic person*

The Dutch diocesan bishops stated that these juridic persons, if they want to be Catholic juridic persons, must present their statutes to the bishops in order to get their approval. In art. 28.2 is stated:

This approval confines itself to the articles dealing with the name of the juridic person, its aims and composition of the board, amendments to its statutes, its dissolution and in that instance the episcopal approval of the allocation of its credit balance.

maatschappelijk gebied of op het terrein van onderwijs of vorming in de R.K. Kerkprovincie in Nederland (3 November 1978), Utrecht 1979 (General Regulations for Catholic institutions in the pastoral, charitable or societal field or in the field of education and formation in the Roman Catholic ecclesiastical province of the Netherlands).

If the statutes have been approved by the conference of bishops or the competent diocesan bishop, the juridic person has the right to assume the name “Catholic”, as is stated in art. 33.

### *2. Statutory description of the aims of the juridic person*

The description of the aims is very important; and so it is established that: “In its aims the Catholic civil juridic person acknowledges that it will carry out its task according to the doctrine of the Catholic Church and be inspired by the Catholic community” (art. 30).

This implies for example that a Catholic hospital is obliged to act in accordance with the ethical teaching of the Catholic Church. In the document of appointment personnel must subscribe to carry out their task with due regard for the aims of the juridic person involved.

### *3. Composition of the board*

A juridic person is governed by a board and it is important that its members are prepared to carry out their duties according to its statutes. In art. 31 it is stated that “in consultation with the conference of bishops or the competent diocesan bishop” it can be determined “that at least one member of the board in consultation with the conference of bishops or the competent diocesan bishop or another competent ecclesiastical authority (such as the major superior of a religious institute P.S.), is appointed, selected or dismissed”. This (board) member is then “particularly encumbered of its religious aspects”. Normally this board member is a priest or a deacon or a member of a religious institute / society of apostolic life, sometimes a lay theologian in the strict sense.

### *4. Provision of pastoral care*

In the statutes must be stated: “The juridic person is to provide for the necessary pastoral care or support of those on whose behalf the juridic person carries out its activities” (art. 30).

Priests, deacons and pastoral workers, working in health care institutions, are employees appointed by the board of the institution after obtaining the consent or mandate of the competent local ordinary (cf. cc. 157; 517, par. 2; 565) and if applicable, of the competent major superior (c. 682, par. 1). They are paid by the board of the institution, but they have to function under the supervision of the competent local ordinary. If the (local) ordinary withdraws

his consent or mandate, the priest, deacon or pastoral worker must be dismissed by the board.

### 5. Supervision of the competent ecclesiastical authorities

Art. 35 states:

The conference of bishops or the competent diocesan bishop supervises, in accordance with these General Regulations and with due consideration for the autonomy of the Catholic civil juridic person, the activities of the juridic person, which directly or indirectly concern its Catholic basis.

This is also a point of special concern of the member of the board appointed or selected "in consultation with the conference of bishops, the competent diocesan bishop or another competent ecclesiastical authority" (see art. 31). Regular dialogue between the board and certainly of this appointed or selected member and these Church authorities guarantees the avoidance of abuses, difficulties and complications.

### 6. Penal sanctions

The sanctions are twofold, namely warning and withdrawal of approval. In art. 36 it is stipulated:

In the event of a Catholic civil juridic person:

- a) no longer complying with its aims; or
- b) not ensuring the observance of its aims; or
- c) acting in conflict with Canon law and/or its own statutes

the conference of bishops or the diocesan bishop can decide to withdraw the approval mentioned in art. 33, unless in consultation with the conference of bishops or the diocesan bishop, the required measures are taken by this juridic person.

Application of penal sanctions is regulated by universal penal law (cc. 1341-1353). Therefore the penal sanction of withdrawal of approval can only be imposed after a serious warning which threatens its withdrawal (c. 1341).

I am conscious that conflict cannot always be avoided, since there also exist different opinions in our Church regarding ethical and social matters. It is the task of canon law to define clear and just rules and procedures in order to protect the rights and duties of all the persons and institutions involved and to be in control of and to solve eventual problems and conflicts. Carefully maintained and effective relations between the bishops and both the competent dicasteries

of the Roman Curia (Congregation for the Doctrine of Faith and Pontifical Council for Pastoral Assistance to Health Care Workers) and the responsible persons and instances of the Catholic health care institutions are of great importance here.

To sum up this section, I must say that Catholic health care institutions, which are typical expressions of Christian concern for sick and handicapped persons, do carry out social activities which stem from a religious inspiration. Their relationship with the Church authorities is to be expressed in clear rules as a guarantee both for their rightful autonomy and their explicit bond with the authorities of the Catholic Church. The goal is always to assure the correct exercise of their duties in accordance with the social and ethical teaching of the Church. As an example of the required particular law I have given the recent legislation of the Dutch diocesan bishops.

## VI. CONCLUSION

1. To conclude we can say: according to the Code social activities also belong intrinsically to the mission of the Church, indicated in different terms. Commitment to activities of social justice is an essential part of the mission of the universal Church and of every particular Church, and of all the Christian faithful according to their own position and condition. This obligation is also expressed in the laws which Church leaders have to implement for all their collaborators.

2. Canon law recognises explicitly the proper responsibility of lay persons for all social activities in the world. This regards both lay persons in the broad sense: all who are not clerics, and in the strict sense of the word: all who are neither clerics nor religious. The last category is determined by their secular character ("indoles saecularis"). This distinguishes them from clerics and religious and gives them wider legal possibilities. It is their specific mission, based on their baptism and confirmation.

3. The Christian faithful can exercise their responsibility for social needs in different ways. They enjoy the fundamental right of endeavour. The Code provides the legal possibilities for lay persons to pursue their aims concerning social needs not only individually but also by means of private associations. They enjoy more freedom than the public associations. In order to regulate, to guarantee and eventually to improve the exercising of these apostolic tasks the private associations are subject to the supervision of Church authorities in well defined areas.

4. Catholic health care institutions form a characteristic expression of Christian concern for sick and handicapped persons. They carry out genuine social activities which stem from a religious inspiration. Their relationship to

the Church authorities is to be expressed in clear rules which guarantee both their rightful autonomy and their regular bond with the leaders of the Church. The goal is always to ensure the correct fulfilment of their duties in accordance with the social and ethical teachings of the Church. As an example of the required particular law I have given the 1995 legislation of the Dutch diocesan bishops.

According to these legal norms, briefly described and commented on, the mission our Lord entrusted to the Church and every Christian person: to be the neighbour of everyone who is in need, can and must be fulfilled.