

Essential Elements That Should Always Be Present in the Constitutions

by Alberto Vernaschi, C.M
Director of Rome and Siena
25-VII-2001

Introduction

The topic that I have been asked to present is very technical, clearly juridical.¹ I used some other studies, but the mandatory reference points logically remain the Code of Canon Law and its commentaries, some documents from the Apostolic See, in particular those from the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life, and finally, the Proper Law of the Company of the Daughters of Charity.

I have attempted to develop the topic in this way: part one will be a rapid, but necessary, review of the important judicial ideas; part two will reference the journey of revision of the Constitutions currently in progress in the Company; and in part three, I will focus attention on the essential elements that must always be present in the Constitutions.²

I. Basic Ideas

If I start off and devote some time with a review of some basic elements and ideas, it is because I consider this as necessary to face the main point with a sense of security. In fact, to understand what are the essential elements that must always be present in the Constitutions, the indispensable elements, one must know precisely what the documents of the Church require on this subject, what are the expressions used, what are the procedures followed by the Church for a first draft or revision of Constitutions.

¹ The documents from the Apostolic See that are the most important to remember are: *Perfectae Caritatis*, “Decree on the Adaptation and Renewal of Religious Life” of Vatican II (28 October 1965); *Ecclesiae Sanctae*, “Norms for implementing the Decree, On the Adaptation and Renewal of Religious Life (6 August 1966); *Renovationis causam*, “SCRSI Instruction on the Renewal of Religious Life” (6 January 1969); *Evangelica testificatio*, “Apostolic Exhortation on the Renewal of Religious Life” (29 June 1971); *Mutuae Relationes*, (14 May 1978) on “Mutual Relationship among Bishops and Religious”; *Essential Elements in the Church’s Teaching on Religious Life as Applied to Institutes Dedicated to Works of the Apostolate* (31 May 1983); *Redemptionis donum*, (25 March 1984) on “Religious Consecration in light of the Redemptive Mystery”; *Fraternal Life in Community* (2 February 1992); *Vita Consecrata*, (25 March 1996).

² For the sake of brevity, I will use the abbreviation IVC to mean Institutes of Consecrated Life and SVA to indicate Societies of Apostolic Life.

1. There exists, within the Church, three categories of law that can be divided as such:

1.1. Universal or Common Law. It consists of legislation promulgated by the supreme authority of the Church and is valid for the entire Church, such as the Code of Canon Law, the Documents of the Dicastries of the Apostolic See concerning the Universal Church or some of her members (laity, clerical, or consecrated).

1.2. Particular Law. It is the law(s) promulgated by some special Churches in the current language of the said local Churches (dioceses and the like) or their grouping together.

1.3. Proper Law. This concerns the legislation of the internal dictates of Institutes of Consecrated Life and Societies of Apostolic Life. It is composed of all the norms that regulate the life of an Institute, outside of Universal or Common Law. Such norms are of different types.

2. According to Canon 587, **Proper Law** – on the level of content – **comprises a double series of norms.**

2.1. The first is called *Fundamental Code* or *Constitutions*. They could be called the plan of general law (Constitutions, Traditions, Rules, etc.). It determines what constitutes the patrimony of the Institute (Canon 587, § 1 makes reference to Canon 578) and in addition “the basic norms about the governance of the institute, the discipline of the members, admission and formation, and the proper object of their sacred bonds” (Canon 587, § 1). The norms of Universal Law can also be included here, if the Institute does not determine its own norms.

The goal of the Constitutions is to guarantee, by suitable and reliable expressions, the spiritual aspect and basic structures of the charism proper to the institute, gathering together in them the characteristic traits; they have special canonical recognition and enjoy particular stability. That is why they must contain only things that have a permanent and universal value in time and space, only what one considers and one wishes to be valid for the institute everywhere and always.³

2.2. The second is called *other norms* ... collected in other codes (Canon 587, § 4). They can be statutes, directories,⁴ etc. They concern concrete applications,

³ See Gutiérrez A., *El Nuevo Código de Derecho Canónico y el derecho interno de los Institutos de vida consagrada*, in SCRIS IX (1983), 98-115.

⁴ In regards to the great variety of expressions used to indicate “other codes,” cf. Dortel-Claudot, M., *Le Code complémentaire*, in SCRIS IX (1983) 126-139. The author lists 20 or more expressions, for example: Directory, Complementary Code, Customs, Decrees, Ordinances, Complementary Books; additional expressions used by other authors regarding the same topic: Statutes, Appended Code,

according to circumstances, responding to determined historical conditions. They regulate the life, discipline, the activity in a detailed manner. They enjoy a margin of flexibility for considerable revision, leaving it to the judgment of the Institute which, however, should avoid too frequent changes.

The legislation does not dictate that each Institute have numerous books or separate codes, or that within one book or code, the basic code be separated from the others. What is important is the qualitative distinction: that it be clear and that one can easily distinguish what pertains to the fundamental code or constitutions and that which does not. An institute can also always have several secondary codes in accordance with different matters.

The Code of Canon Law often makes reference to the fundamental code or constitutions or proper law of Institutes of Consecrated Life and Societies of Apostolic Life, referring to such texts for many determinations.⁵

3. The **Concept of Patrimony of an Institute** is linked to that of Proper Law.

The Code speaks of patrimony “sic et simpliciter” (thus and in every respect) in what concerns true patrimony, the sole patrimony!⁶ It is the patrimony of the institute, but also that of the Church since each institute is a gift of the Spirit to the Church. Canon 578 specifies that it is made up of two sets of elements:

* The thoughts and plans of the Founders, which have been recognized by the competent ecclesiastical authority, concerning the nature, purpose, spirit and

Additional Code, Second Code, Secondary Code, Second Book, Book Two; still others taken from Institutes: Norms, Additions to the Rule of Life, Rules, Practical Additions, Modes, Complementary Book, Code of Life.

⁵ The system of reference is very much used in the present Code of Canon Law in so far as it leaves many provisions to particular legislation. Part III of Book II relative to the IVC and to SVA, indicate this situation: of the 153 canons dedicated to the IVC (Canons 577-730), 86 are referred to institutional or proper legislation and 32 to the constitutions or other codes. As far as the 16 specific Canons relative to the sections pertaining to the SVA (Canons 731-746), nine refer to the constitutions and three to proper legislation. (Cf., Gutiérrez, A., *op. cit.*).

⁶ This expression makes direct reference to the charism of the institute or of the founders, about which *Mutuae Relationes* speaks in no.11, where the charism of the founder is seen “as an experience of the Spirit, transmitted to their disciples to be lived, kept, made deeper by them and constantly developed by them in tune with the body of Christ, in continuous growth.” In this way, the charism does not end with the experience of the founder. Some documents (for example: *Evangelica Testificatio* and *Mutuae Relationes*) and some studies speak of the charism of the founders and the charism of the foundation or of the institute. However knowing that the term “charism” is used in so many varied ways (sometimes not in precise ways), the Code, in the wake of the Vatican II, prefers to speak of the “patrimony.” The binding reference is to the decree *Perfectae Caristatis*, which says: “It redounds to the good of the Church that institutes have their own particular characteristics and work. Therefore let their founders' spirit and special aims they set before them as well as their sound traditions – all of which make up the patrimony of each institute – be faithfully held in honor.” (No. 2b).

character of the institute. Not all of the experiences of the founders become part of the patrimony of the institute, but only that which is cited in the Canon listing, emphasizing “recognized by...,” an expression that refers to the approval of the Constitutions by the Apostolic See.

* Sound Traditions. Not all traditions become part of the patrimony of the institute, but only the “sound traditions.” The specification *sound* is guided by a great deal of prudence. What counts is the **T**radition. This is also made up of traditions (the sound ones), but it is not confined by them. In effect, the Tradition indicates more a line of evolution, an orientation, a spirit. It denotes a lifestyle, a manner of thinking, living, acting, looking back at a history that saw the institute travel a determined route.

4. At the level of **drawing up the texts** of the fundamental code or constitutions of the institute, the legislator established clear principles⁷ in Canon 587 § 3: “the spiritual and juridical elements are to be aptly harmonised” and “norms are not to be multiplied without necessity.”

The first element marks a turning point and is of fundamental importance for the very conception of the constitutions. In effect, by this harmonious fusion of evangelical and theological elements with juridical elements, the constitutions acquire solidity. They truly reflect, before the Church and before its members, the exact physiognomy of the institute. They are its true identity card. It concerns a remarkable step forward from the time when the constitutions were exclusively a juridical text and, according to the 1921 “Norms” of the Congregation for Religious (which went back to those of 1901 and 1917), they could not contain “citations from the Bible, the Holy Fathers and theologians, nor ascetical, spiritual and mystical instructions, nor theological and moral questions...” Admitted even less was reference to the institutional charism and expressions of the Founders. Now, on the contrary, it is precisely the original inspirations of the Founders that must animate the terms of the fundamental code. We could say then that the modern constitutions are, in this way, getting closer to the former Rules, and are truly “rules of life.”⁸

The second element states that the constitutions must not be too detailed and go into the least of the particulars, even if a necessary preciseness is required. “In effect, it is inconceivable that a fundamental Code that is the authentic “Rule of life” only puts forward theological principles and ascetical orientations. The doctrinal principle is alive in all its richness when it matures in the corresponding norm.”⁹

⁷ Such principles were already clearly indicated in the *motu proprio Ecclesiae Sanctae*.

⁸ In this respect, the study of Macca, V., *Le costituzioni tra teologia e diritto*, in SCRIS IX (1983) 116-125, is interesting. See also, Iglesias, F., *Orientamenti conciliari e del magistero*, in SCRIS IX (1983) 46-60.

⁹ Macca, V., *op. cit.*, 122.

II. Revision in progress

As Fr. Maloney observed in his presentation to the Visitatrixes of the Daughters of Charity on 22 May 2000,¹⁰ the prospective of a change at the level of law can bring about an attitude of condemnation of the change itself as well as an attitude of impatience to change. On the juridical plane, stability of the law is more justifiable than continuous change. In fact, one of the characteristics of law is its stability. This stability risks diminishing if the laws which govern common life continually change (as happens not uncommonly in some countries). That is why one should not be too eager to change unless this is useful or necessary.

Law must follow and facilitate the development of life, and its stability is not equivalent to immutability. If the term “patrimony,” calls for a certain stability on the one hand, on the other, it does not mean something permanent, static or unchanging. On the contrary, it is a living and dynamic reality. When the Code speaks of the duty of Chapters (Canon 631, §1), it brings together both protection of the patrimony and promotion and appropriate renewal, indicating that they are one and the same: true protection of patrimony of the institute cannot disregard promotion of appropriate renewal. Provided that renewal is in harmony with the patrimony, this is then a guarantee, safeguard and protection of the vitality and perpetual validity of the patrimony itself.¹¹

The Constitutions of the Company of the Daughters of Charity can therefore be modified if it is judged necessary or appropriate, even if they have only been in place for 20 years. The Holy See, in fact, approved them on 2 February 1983¹² after some modifications to the text according to the criteria established by the *motu proprio Ecclesiae Sanctae*,¹³ and after the experimental phase of the texts developed and studied by various Assemblies.

As Constitution 3.60 states: “The present Constitutions, as well as the Statutes which follow, form the particular law of the Company of the Daughters of Charity.” That is why “they are to be faithfully observed by all the sisters as being the expression of the will of God for them.” Following then, is an

¹⁰ Maloney R., “The Importance of the Constitutions and Statutes in the Life of the Company,” in *Echos of the Company*, 2000, pp.283-290.

¹¹ The keeping of the patrimony of the institute and the adequate renewal harmonized with it constitute the aspect and the substantial duty of every general chapter: defense of the patrimony which is the defense of identity of the institute, its place in the Church and which has to have the characteristics of integrity and fidelity; promotion of renewal which is not the theme only for today, but a continual concern; conditions of survival, of vitality, of maturity in the vocation and in the mission. (Cf., Andres, D.J., *Il diritto dei religiosi*, Rome, 1984, nos. 215-216).

¹² The text of the Decree of approval on the part of the Congregation for Religious and Institutes of Secular Life, which had the competence also for Societies of Apostolic Life, is referred to at the beginning of the Constitutions: pp. III-IV.

¹³ The *Motu proprio Ecclesiae Sanctae* fixed the general criteria of renewal and adaptation of the Constitutions and indicated also some particular themes, as mental prayer, poverty, practice of common life, formation.

important detail: “While the statutes can be modified or repealed by a General Assembly (cf. C 3.50), the Constitutions cannot be modified except by the Holy See if 2/3 of the General Assembly request it. It is also the responsibility of the Holy See to give them their authentic interpretation.”

The Company of the Daughters of Charity, responding to the suggestion of the General Assembly of 1997 put underway the following process with these goals: above all, personally and as a community, to study and deepen the Constitutions in order to interiorize them and live them; this is a work that can be beneficial both for the sisters individually and for the Company in general. From this will emerge on the one hand, the richness of the contents of the Constitutions and on the other, the insufficient knowledge of them.

Following this work will flow the necessity or appropriateness of proceeding with some change. In this case, it would be necessary to follow the procedures provided for by the Constitutions themselves in the aforementioned C. 3.60.

In light of what criteria? Which elements should be stressed...? The General Assembly of 1997 had recognized the necessity of a revision in the light of inculturation. In order to proceed with this revision, Fr. Robert Maloney highlighted three criteria and five beams of light that must shine in a special way in the Constitutions:¹⁴

1. Criteria (I will use some expressions and ideas of Fr. Maloney.)

1.1. Inculturation. The Company of the Daughters of Charity extends throughout the entire world. Its members come from differing cultures. This is a matter of bringing together two requirements: unity and diversity. Examining an article of the Constitutions, it is necessary to ask oneself if this is a general norm, applicable to the entire Company or, on this subject, it can have cultural differences.¹⁵ If it is a general norm, valid throughout the Company, it must be part of the Constitutions. Otherwise, it will be necessary to leave the decisions to the provinces in other instances. When this concerns a basic value, it will always be necessary to be attentive to both the necessity of adapting and incarnating this value in the culture and the necessity of evangelizing a particular aspect of this same culture.

1.2. Subsidiarity. Each level of government should have the necessary powers for exercising authority appropriately at that level (cf., C. 3.26).

¹⁴ It is clear that, in the process of revision, before sticking to the criteria indicated by Fr. Maloney, it is necessary to guarantee a triple fidelity: fidelity to the Gospel, to the proper charism and to the signs of the times. Cf., Iglesias, F. *op.cit.*

¹⁵ The sharing of opinions and of experience among the Directors of the Daughters of Charity of various nations, during this Vincentian Month 2001 in Paris, has underlined the cultural diversity relative to the different aspects of the life of the Company.

Restudying the juridical articles, in particular, one must evaluate if it is better that a specific subject be decided by the Superior General or by the Superioress General and her Council or by the Visitatrix and her Council or by the Sister Servant after consultation with the local community. In the past, perhaps centralization was exaggerated (this was a general attitude in the Church). However, it is necessary to have a balance between centralization and decentralization: for matters of great importance both spiritual and administrative, a certain higher supervision offers some safeguards. At times it may happen that the local level may not have the necessary competence.

1.3. Key values. The key values must shine forth like beams of light in the Constitutions and Statutes. These have been greatly and accurately treated during this Vincentian month.¹⁶ The issue is to see if these values are expressed accurately in the Constitutions and Statutes or if the wording of some should be improved so as to have more effect on the Daughter of Charity in the world of today.

2. The five beams of light

Fr. Maloney reminds us that these are: the person of Christ, simplicity, mutual love, prayer and communal service of the poor. Perhaps we could add others. Assuming we all know what he said and wrote, I am not going to take time to go into detail on this point.¹⁷

III. Elements that must be in Proper Law

As we have already indicated, according to Canon Law, there is an important series of elements that must be part of the Proper Law of Institutes of Consecrated Life and Societies of Apostolic Life. It is necessary to distinguish, however, between what must necessarily appear in the fundamental code or constitutions, and what, on the contrary, can be contained in other norms. Nonetheless, this distinction is not always easy. This also depends on the manner of a Society's perception of a specific subject. In any case, some basic guidelines should always be indisputable:

* When the Code says that such or such point is defined by proper law (Constitutions or Statutes), proper law must be concerned with this.

¹⁶ See the interventions of Sr. Juana Elizondo in the presentation of the Company of the Daughters of Charity, of Fr. Fernando Quintano on "Mission and Charity" and on "The Vows of the Daughter of Charity: Identity and Specificity," of Sr. Wivine Kisu on "Daughter of Charity Identity: Characteristic and Distinctive Elements. How does a Daughter of Charity live in today's world?," and that of Sr. Anne Prévost on "The Spirituality of the Daughters of Charity."

¹⁷ Cf., Maloney, R. *op. cit.*

* When the Code specifies that a subject is defined by the Constitutions, then these substantial elements are placed in the Constitutions, leaving to the Statutes more particular propositions.

* If proper law accepts a certain subject straightforwardly, or refers it to Universal Law, such a decision cannot be modified without the intervention of the Apostolic See (even if this is part of the Statutes).

A. Matter that must necessarily appear in the Constitutions

Already, with all that has been said, a specific enough response should appear. Fr. Pérez Flores, for his part, asserts that all the elements that are currently found in the Constitutions of the Daughters of Charity are essential and need to be there. These elements can certainly be improved or specified, but, in substance, however, they are valid. I am in full agreement with this assertion.

Taking into account the directives of the Code, the various documents of the Apostolic See and the practice of the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life, I would like to be more specific. The Congregation for Institutes of Consecrated Life and Societies of Apostolic Life has a “general outline for the drawing up of Constitutions” that it provides to religious institutes desiring to make or revise their own constitutions. It is not, however, an outline for Societies of Apostolic Life. In this case, the society itself must define its identity, using the freedom given by common law, the texts of the founders and by its tradition. Usually, the Congregation respects the formulations and interpretations adopted by the society, especially a society with a solid tradition, where the content is clear and complete, especially with regard to the charism, the nature and end and the particular and specific elements.¹⁸

1. The **general principle** is established in Canons 578 and 587 §1.

2. Considering the **details** and speaking solely of Societies of Apostolic life, one must determine

2.1. The *nature*: if it treats of a Society of Apostolic Life clerical or lay (Canon 588), of diocesan or pontifical right (Canons 589, 593, 594, 595), of a Society of Apostolic Life exclusively missionary or not, or dedicated to some other specific activity in the Church (Canons 731 and 732).

2.2. The *purpose* is not to be confused with the concrete activities or the objectives that the chapters generate or other bodies of government can assign to a Society of Apostolic Life in keeping with particular circumstances. The

¹⁸ In the presentation, I basically follow the way traced by Bonfils, J. which can be found in *Les sociétés de vie apostolique*, (Ed. du Cerf: 1990) 169-174.

activities and works must flow from the purpose, as traditions, but not ends in themselves. This last point indicates rather, the basic direction that determines everything, and from which, one cannot deviate without changing the identity. To put this in a Vincentian framework, it is necessary to “follow Christ, the evangelizer of the poor” (C.M.), “to honor Jesus Christ as the source and model of all charity, serving him corporally and spiritually in the person of the poor” (D.C.).

2.3. The *spirit* is understood generally as the manner of being, the way of acting, the lifestyle, the spirituality that animates the life of all the members and which distinguishes the Society of Apostolic Life from any secular group. For example: the interior characteristics, proper virtues....

2.4. *Sound traditions* are not so much about variable disciplinary details, but rather, elements deeply rooted in the nature and purpose, of which one has gradually become aware and which have contributed to molding the spirit of the Institute.

2.5. *The fundamental rules which govern the institute* (Canon 734):

- can divide the Society of Apostolic Life into parts (provinces, districts, regions...), establish new parts, unite them, otherwise modify those in existence;
- empower superiors and chapters to have authority over the members taking into account also Canons 131, 133, 137-144, 598 § 1, 734, 617-633;
- appointment of a superior to an office and the exercise of this office: Canons 617-619, 626;
- the authority of the superior general and other superiors: Canon 622;
- who is a major superior in a Society of Apostolic Life: Canon 620;
- the number of years members must be definitively professed in order to be a major superior: Canon 623;
- the duration of the appointment of superior general: Canon 624 §1;
- the method of election of superior general: Canon 625 §1;
- the method of naming other superiors, by preliminary consultation or confirmation of the competent major superior: Canon 625 §3;
- the creation and composition of councils of superiors and the need to make use of them: Canons 627 § 1; 127 § 1, § 3;
- the composition, duties and authority of the General Assembly: Canon 631 § 1, § 2;
- only the Apostolic See can modify what has been approved: Canons 583, 587 § 2;
- the need for superiors to visit the communities: Canon 628;
- the need for superiors to reside in their houses: Canon 629;

- the need for superiors to acknowledge the freedom due to the members concerning the sacrament of penance: Canon 630 § 2;
- the ability for provinces, local communities and any individual member to freely submit their wishes and suggestions to the General Assembly: Canon 631 § 3;
- the provision for other assemblies in the Society: Canon 632;
- the establishment or suppression of a house: Canon 733 § 1;
- the capacity of the Society and its subsidiaries to administer temporal goods and fundamental rules for the administration of these goods: Canon 634 ff.

2.6. *The communities and their members*

a. The physical persons (members of all Societies of Apostolic Life)

- admission, probation, incorporation and formation of members, taking into account Canons 735, 642-645, 797 and in accord with the purpose and nature of the Society;
- propositions desired by Canon 739, relative to the pursuit of holiness, prayer life, sacramental life, simplicity of life, appropriate attire, etc. (application with appropriate adjustment for clerics in Canons 273-289);
- observation of common life, presence in a community and laws regarding absences: Canon 740;
- ability of members to acquire, possess, administer and dispose of temporal goods in accordance with their own law: Canon 741 § 2.
- rights and obligations of incorporated members and the obligations of the Society toward them: Canon 737;
- obedience to superiors for all that concerns the internal life and discipline of the Society: Canon 738 § 1.
- departure and dismissal of members who are not definitively incorporated: Canon 742;
- departure of a member who is definitively incorporated whether to go to another institute, or to live outside the Society, but not beyond three years: Canons 743-745;
- dismissal of a member who is definitively incorporated: Canons 746, 694-704.

b. The physical persons: members of Societies of Apostolic Life included in Canon 731 § 2)

Norms relative to the observance of the three evangelical counsels of chastity, poverty and obedience, as well as the observance of community life: Canons 598-602.

c. The juridical persons

- who are the juridical persons in the Society: Canons 741 § 1;
- their capacities with regard to temporal goods: Canons 741 § 1, 636, 638, 639.

2.7 - Relationships with the successors of the Apostles: Pope, Apostolic See, Bishops

- submission to the supreme authority of the Church and obedience to the Pope by reason of incorporation into a Society of Apostolic Life: Canon 590;
- exemption or not from the authority of the local ordinaries: Canon 591; N.B. It is necessary to distinguish between a true autonomy (Canon 586) and an exemption (Canon 591);
- periodic reports to the Apostolic See on the state of the Society: Canon 592 § 1;
- the duty of superiors to make known to the members of the Society the documents of the Apostolic See and to assure that they are observed: Canon 592 § 2;
- Submission to the diocesan bishop (general principle and its applications) Canons 738 § 2, 679-683.

B. What must be present in the proper law (constitutions or other norms)

1. With regard to government

- the definitive number of years of incorporation in order to be named superior (not major): Canon 623;
- practical arrangements in order to carry out the established norm in Canon 624 § 2 (not remaining in charge of government for too long of a time);
- other than cases foreseen by universal Law, to determine in what other cases is the approbation or the advice of the council necessary for the validity of the acts, according to Canon 127, and taking into account the responses of the Commission for the interpretation of the legislative texts of 14 May 1985 (in the AAS 77 [1985], 771);
- rules for carrying out the assembly (or chapter), especially concerning elections and the order of day for the questions to be treated: Canon 631 § 2;
- arrangements with regard to participatory and consultative bodies: Canon 633;
- periodicity for visits of superiors and behavior of members: Canon 628 § 1, § 3;

2. With regard to members

All that is considered necessary to be codified in order to support the physical, moral, spiritual and community life of the members, if it not be but from one Assembly to another.

Conclusion

After having spoken for so long, I conclude with a great regret: that of not having resolved all of your doubts. If this is any consolation, I have not resolved my own. For this reason, before presiding over the Provincial Assemblies in our provinces, it would be worthwhile to attentively reread the Code of Canon Law relative to Societies of Apostolic Life, with the help of a good commentary.

(Translation: Translation Center – Daughters of Charity, Paris)
(Translation of the notes: Rolando DelaGoza, C.M.)