The Catholic Church, Temporal Goods and Church-State Relations

PART ONE

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According to divine positive law argument, the Church's right to temporal goods necessarily emanates from its visible structure as willed by Christ. The Church has this right since its inception and this right is not a result of any political concession on the part of any civil authority.

The natural law argument demonstrates that the Catholic Church has the inalienable right to own property, which is universally established as corresponding to the nature of the human person.

Gaudium et Spes affirms that the Church's right to temporal goods precisely proceeds from its autonomous and independent structure. But there exists a close link between the Church and the political community with regard to temporal goods. This reality demands a sound collaboration between the two communities especially because both are in the service of the personal and social vocation of the same human beings.

Dignitatis Humanae asserts that the Church's right to temporal goods is one of the fundamental manifestations of the natural right of religious communities to religious freedom which should be under the legal protection of the State. The right to religious freedom is not fully respected when the State imposes restrictions on the Church's right to temporal goods. Moreover, religious freedom functions as a means to achieve the *libertas Ecclesiae*.

The Catholic Church's right to temporal goods as an essential content of the right to religious freedom is protected by international law.

Through international juridical instruments the Church through the Holy See, as a subject of international law, asserts, maintains and defends its patrimonial right and at the

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same time achieves better relations with various political communities. However, the Holy See should be guided by the principles of Vatican II on Church-State relations to avoid the behavior of pre-eminence before political communities. The thesis of *Ius publicum* ecclesiasticum is no longer espoused by the Magisterium of the Church.

Keywords: *Church, State, right to temporal goods, divine positive law, natural law, religious freedom, international law*

I. Introduction

Lumen Gentium categorically affirms that the Church founded by Christ is simultaneously visible and spiritual possessing divine and human elements. But "the visible society and the spiritual community, the earthly Church and the Church endowed with heavenly riches are not to be thought of as two realities. On the contrary they form one complex reality."[1] This Church which subsists in the Catholic Church is not an extraterrestrial reality; in its visible form, it is a society hierarchically organized in this world.[2]

As an organized entity the Church "utilizes temporal realities as often as its mission requires it."[3] Its mission is spiritual but its realization needs temporal means.[4] The Church employs temporal goods precisely for the purpose of carrying out the same mission. *Presbyterorum Ordinis* concretizes the purposes for which the Church is allowed to own temporal goods: "the organization of divine worship, the provision of decent support for the clergy, and the exercise of works of the apostolate and of charity, especially for the benefit of those in need."[5] These purposes are similarly listed in c. 1254 § 2 of the 1983 Code.[6] The Magisterium justifies the right of the Church to own temporal goods arguing from both divine positive and natural law.

The doctrine on the Church's right to temporal goods finds its concrete juridical expression in c. 1254 § 1 of the 1983 Codification: "The Catholic Church has the inherent right, independently of any secular power, to acquire, retain, administer and alienate temporal goods, in pursuit of its proper objectives." This canon has almost the same formulation with c. 1495 § 1 of the previous Code.[7] Some

[1] *Lumen Gentium,* n. 8.

[2] Cf. Ibid.; *Lumen Gentium*, n. 14; *Gaudium et Spes,* n. 44.

[3] *Gaudium et Spes,* n. 76.

[4] Cf. Ibid., nn. 42, 76.

[5] *Presbyterorum Ordinis,* n. 17.

[6] C. 1254 § 2 of the 1983 Code: "These proper objectives are principally the regulation of divine worship, the provision of fitting support for the clergy and other ministers, and the carrying out of works of the sacred apostolate and of charity, especially for the needy."

[7] C. 1495 § 1 of the 1917 Code: *"Ecclesia catholica et Apostolica Sedes nativum ius habent libere et*

authors even affirm that the actual canon is based on the same ideas contained in the previous one, that is, that the *Ius publicum ecclesiasticum*[8] thesis is still evident in the formulation of the actual canonical provision. In his discussion regarding the foundation of the native and independent right of the Church to temporal goods as stipulated in the current text of c. 1254 § 1, F. Aznar Gil affirms that the Church is a *societas perfecta*, that is, sufficient and independent in its order and has all the means to attain its end. This perfect character of the Church as a society serves as a basis of its native and independent right to temporal goods.[9] M. López Alarcón in his commentary on the same canon states that the canonical text regarding the Church's native right to temporal goods independently of any secular power has a flavor of the school of *Ius publicum ecclesiasticum*.[10] In discussing the ecclesiological bases of the 1983 Code, E. Corecco asserts that c. 1254 § 1 stems from the ecclesiology of *societas* – an ecclesiology still overshadowed as it is by the notion of the *societas perfecta* through the school of Ius publicum ecclesiasticum.[11]

However, V. De Paolis clarifies that although the current norm may sound literally like the former Code laden with the *societas perfecta* mentality, still it needs to be interpreted in another context and in a diverse doctrinal perspective. The documents of Vatican II must constitute continually as the point of reference and interpretation.[12] G. Roche affirms the idea of V. De Paolis saying "even if Book V [of the 1983 Code] at times appears to reflect an older ecclesiology, it must be interpreted in the light of the image of the Church as proposed by the [Vatican II] council."[13] R.

independenter a civili potestate acquirendi, retinendi et administandi bona temporalia ad fines sibi proprios prosequendos." C. 1254 § 1 of the 1983 Code: *"Ecclesia catholica bona temporalia iure nativo, independenter a civili potestate, acquirere, retinere, administrare et alienare valet ad fines sibi proprios prosequendos."*

[8] The following are some of the essential theses of *Ius publicum ecceliasticum* assumed by the Magisterium before Vatican II: the obligation of the State to do a public profession of true religion which is the Catholic faith, the condemnation of the principle of freedom of religion, the doctrine of religious tolerance and the idea of perfect society to explain Church-State relations. Vatican II has already rejected the essential thesis of the school of *Ius publicum ecclesiasticum*. Recent magisterial teaching does not oblige the State to profess publicly the Catholic faith. The theme of perfect society to explain the relationship between Church and State has been abandoned. It does not anymore espouse the idea of the supremacy of the Church over the State. Besides, it fervently promotes the fundamental principles of liberty of conscience and religious freedom. Cf. C. Soler, *Iglesia y Estado en el Vaticano II*, EUNSA, Pamplona 2001, pp. 26-27.

[9] Cf. F. Aznar Gil, *La administración de los bienes temporales de la Iglesia*, 2ª Edición, Publicaciones Universidad Pontificia de Salamanca, Salamanca 1993, pp. 67-69.

[10] Cf. M. López Alarcón, "Comentario al c. 1254", in AA. VV., *Comentario Exegético al Código de Derecho Canónico*, Vol. 4/1, EUNSA, Pamplona 1996, p. 42.

[11] Cf. E Corecco, *Canon Law and Communio: Writings on the Constitutional Law of the Church*, Libreria Editrice Vaticana, Città del Vaticano 1999, pp. 284-289.

[12] Cf. V. De Paolis, "I beni temporali nel Codice di Diritto Canonico," in *Monitor Ecclesiasticus*, Vol. 111, 1986, pp. 14, 18.

[13] G. Roche, "The Poor and Temporal Goods in Book V of the Code," in *The Jurist,* Vol. 55, 1995, p. 304.

J. Castillo Lara, speaking about the newness of the 1983 Code, says that "in reading canons which repeat *ad litteram* canons from the previous Code, one cannot be satisfied solely with seeing and understanding them as if they were still part of the previous context."[14] He affirms that the 1983 Code "is marked by the same note of the Second Vatican Council... Whoever approaches it with an old mentality, considering it merely a retouching of the previous, tends perhaps unconsciously to ignore the new elements, to minimize them or to force them into a context of interpretation which does not correspond to the true nature of the new Code."[15] Moreover, in revising the law on temporal goods, the *Coetus studiorum de Iure Patrimoniali* had in mind the doctrinal principles of Vatican II.[16]

The background of the main problem of the study is already stated earlier: there are contemporary authors who claim that the old ecclesiological foundation of c. 1495 § 1 of the previous Code, i.e., the thesis of *Ius publicum ecclesiasticum* is still present in the formulation of the actual canon on the Catholic Church's inherent right independently of any secular power to acquire, retain, administer and alienate temporal goods. Although the current norm may sound literally like the former codicial provision laden with the *societas perfecta* mentality, nevertheless it needs to be interpreted in another context and in a diverse doctrinal perspective. Thus, the main problem of our study rests on the following: What are the foundations of the inherent and independent right of the Catholic Church to own temporal goods according to the teachings of Vatican II? Moreover, since the canonical norm on the Church's right to temporal goods necessarily involves a discussion regarding Church-State relations most especially that this inherent right exists and is exercised independently of any civil power,[17] we also present the following sub questions: What are the current teachings of the Church on Church-State relations particularly concerning the Church's patrimonial right? Are such teachings presented by the Church tenable in our society today?

II. The Inherent and Independent Right of the Catholic Church to Use Temporal Goods as Means to Fulfill Its Proper Objectives

This part presents temporal goods of the Church as instruments in carrying out its proper objectives. The discussion is important especially that the right of the

[14] R. J. Castillo Lara, "Some reflections on the proper way to approach the Code of Canon Law," in *Comm.*, Vol. 17, 1985, p. 277. R. J. Castillo Lara became Secretary and then President of the Commission for the Revision of the Code of Canon Law. He was also appointed President of the Office for the Administration of the Patrimony of the Holy See.

[15] Ibid.

[16] *"Perpensis imprimis quibusdam principiis ex documentis Concilii Vaticani II praesertim desumptis, quae in iure recognoscendo prae mente haberi debent, de singulis canonibus quaesitum est quaenam in eis mutanda, addenda aut supprimenda sint." Communicationes*, Vol. 5, 1973, p. 94.

[17] Cf. F. Aznar Gil, Op. cit., p. 93.

Church in using temporal goods is given focus in our study, and the same right is justified as long as the fulfillment of the Church's proper objectives is realized. This part of our study also deals with the question concerning which goods are really considered property of the Church. It also speaks of goods that are considered "*non bona ecclesiastica.*" Lastly, it briefly explains the juridical content of the Church's patrimonial capacity and presents the characteristics of the Church's right as stipulated in c. 1254 § 1.

A. Temporal Goods of the Church

1. Concept of Temporal Goods

Traditionally, all *res Ecclesiae* were divided into spiritual, temporal and mixed.[18] Spiritual things are those which have divine worship and salvation of souls as their direct and immediate end. Temporal things are those which are ordained for the procurement and conservation of the physical and temporal life of the Church. They have certain economic value and are not connected with any spiritual element. Those "mixed" things contain both spiritual and temporal elements.[19] This distinction has lost its importance in current legislation which does not reproduce c. 726 of the 1917 Code.[20]

Temporal goods have certain economic value regardless of its possible connection with other goods of spiritual character. If, in addition to their economic value, the spiritual element is also included in their valuation, in dealing with those goods it is necessary to respect their sacred character and make sure that simony is avoided. [21]

Canonical usage has historically divided temporal goods into three types: 1) corporeal or incorporeal; 2) movable or immovable; 3) fixed or free. Corporeal goods are tangible goods such as land and buildings. Incorporeal goods are intangibles such as goodwill or copyrights. Movable goods can be moved such as furniture or supplies. Immovable goods are corporeal goods that cannot be moved such as land or not to mention heavy machinery for use in a printing press, for instance. The distinction

[18] C. 726 of the 1917 Code: *"Res de quibus in hoc libro agitur quaeque totidem media sunt ad Ecclesiae finem consequendum, aliae sunt spirituals, aliae temporales, aliae mixtae."*

[19] Cf. F. Wernz – P. Vidal, *Ius Canonicum. Tomus IV De Rebus*, Vol. 1, Pontificia Universitas Gregoriana, Roma 1934, p. 3; U. Beste, *Introductio in Codicem*, Editio Tertia, St. John's Abbey Press, Collegeville, Minnesota 1946, p. 478.

[20] Cf. J. Schouppe, *Derecho patrimonial canónico*, EUNSA, Pamplona 2007, p. 55.

[21] Cf. Ibid. V. De Paolis says: "Neppure le cose sacre vengono di per sé poste fuori commercio. Esistono però dei limiti, in quanto devono essere trattate con rispetto e non possono essere adibite per un uso profano o non proprio." V. De Paolis, *I Beni Temporali della Chiesa*, Edizioni Dehoniane Bologna, Bologna 1995, p. 16.

between fixed and free goods is applied primarily to money or its equivalent, e.g., stocks. Fixed or stable goods have been attached to a specific purpose, e.g., stable patrimony of a juridical person. The capital is to be preserved and the income is to be spent for a particular purpose. Free or liquid goods are basically cash without any specified purpose attached to it, e.g., operating funds or petty cash amounts. [22] These distinctions are made in the 1917 Code (c. 1496), and the terms are used without definition in the 1983 Code (e.g., c. 1270, c. 1285, c.1291, c. 1305).[23]

2. Ecclesiastical Goods

The current text of c. 1257 § 1 says that "all temporal goods belonging to the universal Church, to the Apostolic See or to other public juridical persons in the Church, are ecclesiastical goods and are regulated by the canons which follow, as well as by their own statutes." This canon establishes that only the temporal goods owned by *moral and public juridical persons* in the Church are considered ecclesiastical goods. Moral persons refer to the Catholic Church and the Apostolic See as stipulated in c. 113 § 1. The distinction between moral and juridical persons is included in the new Code "not precisely however to acknowledge the existence of associations before their recognition in law… [but rather] to underline the fact that the presence of the Church in the juridical order is not constituted by human law; on the contrary, it exists *from a divine ordination*, since Christ willed a Church endowed with juridical structure."[24]

This current norm on the juridical nature of ecclesiastical goods differs from c. 1497 § 1 of the previous codicial provision which has this formulation: "Temporal goods, whether corporeal, both immovable and movable, or incorporeal, that belong to the universal Church and to the Apostolic See or to another moral person in the Church are ecclesiastical goods." In the 1917 Code, the terms *moral person* and *juridical person* are used equivalently.[25] According to the c. 1497 § 1, all moral persons are considered public and therefore possess ecclesiastical goods. To determine the

[22] Cf. N. Cafardi – A. Maida, *Church Property, Church Finances, and Church – Related Corporations*, The Catholic Health Association of the United States, St. Louis, MO 1984, pp. 78-79.

[23] Ibid., p. 83.

[24] A. Gauthier, "Juridical Persons in the Code of Canon Law," in *Studia Canonica*, Vol. 25, 1991, pp. 81 – 82; Cf. A. Gauthier, "Le persone giuridiche nel Codice del 1983", in *Angelicum*, Vol. 69, 1992, pp. 109 – 110; J. Fox, "Introductory Thoughts about Public Ecclesiastical Juridic Persons and their Civilly Incorporated Apostolates," in *Angelicum*, Vol. 76, 1999, p. 591; M. Cortés Diéguez, "La persona en la Iglesia y su actividad jurídica," in AA. VV., *Derecho Canónico I: El Derecho del Pueblo de Dios,* Biblioteca de Autores Cristianos, Madrid 2006, p. 350.

[25] Cf. A. Gauthier, "Juridical Persons...," Ibid., p. 81; A. Gauthier, "Le persone giuridiche…," Ibid., pp. 108 – 109. Regarding concept of moral personality in the Church according to the 1917 Code, kindly refer J. Goeke, *The Laws of the State of Kentucky Affecting Church Property*, Catholic University of America Press, Washington, D.C 1963, pp. 38-46.

ecclesiastical juridical character of a good it is sufficient to verify that its proprietor is a canonical juridical (moral) person. All goods possessed by juridical (moral) persons are considered automatically as property of the Church. The old Code does not make a distinction between public and private juridical persons. This means that temporal goods possessed by all juridical persons are considered ecclesiastical. In the new Code, not all juridical persons may possess ecclesiastical goods.

C. 1257 § 1 of the 1983 Code determines the ecclesiastical juridical nature of the goods of public juridical persons. The difference between ecclesiastical goods and others are not found in their nature per se (money, table, chalice, etc.), nor in the purpose for which they are used, but in the *juridical nature* of the subjects which are the proprietors of such goods. In that way, the same money, the same table, the same chalice can be or cannot be an ecclesiastical good. It depends on the proprietor to which the goods pertain. If the proprietor is a moral or a public juridical person, then the goods are considered ecclesiastical or property of the Church.[26] The goods of private juridical persons, private associations of Christ's faithful not established as juridical persons and physical persons are not ecclesiastical goods. Although some of these goods may be consecrated for divine worship, nevertheless they are not considered as part of the patrimony of the Church.[27] This new conception about ecclesiastical goods responds to the introduction in the 1983 Code of the distinction between private and public juridical persons.[28]

The ecclesiastical goods of public juridical persons are regulated by the universal law especially the current Book V complemented by particular law and/or by the statutes of duly recognized entities. The second paragraph of the same canon establishes the juridical regime of the temporal goods of private juridical persons. These goods are regulated only by their statutes unless it is otherwise expressly provided by the Code.[29]

The Code of Canons of the Eastern Churches (*CCEO*) has a different concept of ecclesiastical goods. C. 1009 § 2 *CCEO* defines "ecclesiastical goods" as "all temporal goods which belong to juridical persons." All goods possessed by juridical persons are necessarily ecclesiastical goods. In the 1983 Code, on the other hand, not all goods of juridical persons are ecclesiastical. Only the goods of public juridical persons are considered ecclesiastical goods while the goods of private juridical

[26] Cf. J. Schouppe, Op. cit., p. 57.

[27] Cf. A. Mostaza Rodríguez, "El nuevo derecho patrimonial de la Iglesia (Libro V)," in *Estudios Eclesiásticos*, Vol. 58, 1983, p. 186.

[28] M. Moreno Antón, "Algunas consideraciones en torno al concepto de bienes eclesiásticos en el C.I.C. de 1983," in *Revista Española de Derecho Canónico*, Vol. 44, 1987, p. 80.

[29] Cf. H. Von Ustinov, "El Régimen Canónico de los Bienes de Propiedad de las Personas Jurídicas Privadas," in *Anuario Argentino de Derecho Canónico*, Vol. 13, 2006, pp. 187-213.

persons are not. But this is not the case with the Eastern Code precisely because public and private juridical persons do not exist by definition. There are only canons of the Eastern Code which regulate juridical persons (cc. 920-930 *CCEO*). The Eastern Code recognizes public associations of Christ's faithful as juridical persons but it does not with respect to private associations (c. 573 *CCEO*).[30] In the 1983 Code, private associations can be established as juridical persons but the goods they own are not considered ecclesiastical precisely because such persons are juridically private in nature.

3. Ecclesial Goods

Regarding the juridical nature of the temporal goods of private juridical persons, c. 1257 simply *implies* that they are not ecclesiastical goods.[31] It does not state *categorically* that the goods of private juridical persons "*non sunt bona ecclesiastica*."[32] Besides, it does not formulate a concept which qualifies them in a positive and more explicit manner.[33] But the goods of private juridical persons in the Church are also employed to pursue the proper objectives of the Church. Are they not also considered ecclesiastical in a certain way? But the problem here is that such term is used exclusively for the goods of public juridical persons. Hence, it is necessary to find another term to signify the goods of private juridical persons. The term proposed by P. A. Perlado has been considered sufficient by some authors. He employs the term *ecclesial* to qualify positively the goods of private juridical persons.[34] M. López Alarcón affirms the term proposed by P. A. Perlado:

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[30] Cf. J. Abbass, "The temporal goods of the Church: a comparative study of the Eastern and Latin Codes of Canon Law," in *Periodica*, Vol. 83, 1994, pp. 671- 672.

[31] C. 1257 of the 1983 Code: § 1: "All temporal goods which belong to the universal Church, the Apostolic See, or other public juridic persons in the Church are ecclesiastical goods and are governed by the following canons and their own statutes; § 2. The temporal goods of a private juridic person are governed by its own statutes but not by these canons unless other provision is expressly made."

[32] S. Mester says that "il nuovo codice non dice che i beni delle persone giuridiche private 'non sunt bona ecclesiastica,' ma afferma che sono esenti dalle disposizioni delle norme comuni contenute nel Libro V del Codice...". S. Mester, "I beni temporali della Chiesa (Le novità apportate dal nuovo codice)," in *Apollinaris*, Vol. 67, 1984, p. 58.

[33] Cf. J. Schouppe, Op. cit., p. 57.

[34] Cf. P. A. Perlado, "Sugerencias para una visión moderna del Derecho Patrimonial Canónico," in *Ius Canonicum*, Vol. 9, 1969, pp. 397-400; M. López Alarcón, "Commentary on c. 1257," in AA. VV., *Exegetical Commentary on the Code of Canon Law*, Vol. 4/1, Wilson & Lafleur Ltée, Montréal 2004, p. 37; M. Moreno Antón, Op. cit., pp. 91-92. J. Schouppe prefers the expression *ecclesial private goods* to qualify the goods of private juridical persons. Cf. J. Schouppe, Op. cit., p. 58. S. Mester simply says that the goods of a private juridical person are neither profane nor private, but goods of an *ecclesiastical* juridical person. Cf. S. Mester, Op. cit., p. 59. F. Aznar Gil distinguishes a double content of the term *bona ecclesiastica*: "Creo que cabe distinguir un doble contenido, al menos, bajo la fórmula bona ecclesiastica: a) un sentido lato o amplio, con el que se hace referencia a cualquier bien temporal perteneciente a cualquier persona jurídica eclesiástica; b) un sentido estricto, con el que se hace referencia a un régimen concreto de unos bienes temporales. Con el primer significado, en

> "The goods of private juridical persons are in fact ecclesial because they belong to juridical persons in communion with the Church, fulfilling the Church's proper objectives. What must not happen is to separate ecclesial from ecclesiastical, because the goods of public juridical persons are also ecclesial. An *ecclesial* species must be created that includes the goods of all juridical persons, and the *ecclesiastical* species must be legally reserved to the goods of public juridical persons."[35]

However, J. A. Fuentes says that there are not three types of goods: *ecclesial*, *ecclesiastical* and the rest. But that there are only two types: goods belonging to the Church, i.e., ecclesiastical goods, and goods not belonging to the Church, i.e., goods of private juridical persons, private associations of Christ's faithful without juridical personality and physical persons.[36] He further says:

> "Introducing an indefinite classification into property relations is either clearly useless, because ownership of material things requires a clear definition, or it leads us to an imprecision that may entail in practice equating all types of goods in associations, be they public or private, with what are technically referred to as *ecclesiastical goods*. But this intent is so clearly *contra ius* that it can have no effect whatsoever, at most it would only reverse the option assumed by the legislators in the Code of 1983."[37]

Although J. A. Fuentes is correct in affirming that juridically there are only two types of goods, namely, ecclesiastical and non-ecclesiastical, nevertheless it does not mean that it would be *contra ius* to qualify positively the goods of private juridical persons. There is no canonical legislation which prohibits scholars to describe positively the nature of these goods. Although the description of these goods in a positive way is not something juridical, nonetheless it is not against canonical legislation. Scholars just want to qualify these goods to distinguish

definitiva, se hace referencia fundamentalmente a la "eclesiasticidad" general de toda persona jurídica eclesiástica y en consecuencia de sus bienes temporales, mientras que con el segundo se hace relación a su regulación patrimonial concreta." F. Aznar Gil, Op. cit., p. 52.

[35] M. López Alarcón, Ibid.; V. De Paolis says: "Il fatto dunque che beni delle persone giuridiche private siano retti dagli statute, non invece dai canoni, non significa che i beni di tali persone non abbiano un significato ecclesiale o che la Chiesa sia incompetente." V. De Paolis, "I beni temporali nel Codice di Diritto Canonico," Op. cit., p. 22; J. T. Martin de Agar, following the idea of P. A. Perlado, affirms that the properties of private juridical persons of the Church can be designated as ecclesial. Cf. J. T. Martin de Agar, "Bienes Temporales y Misión de la Iglesia," AA. VV., *Manual de Derecho Canónico*. 2ª Edición, EUNSA, Pamplona 1991, pp. 711-713.

[36] Cf. J. A. Fuentes, "Commentary on c. 325," in AA. VV., *Exegetical Commentary on the Code of Canon Law*, Vol. 2/1, Wilson & Lafleur Ltée, Montréal 2004, p. 553.

[37] Ibid.

them positively from ecclesiastical goods. Besides, it is an undeniable fact that the ideas of some scholars have greatly contributed to the advancement of canonical legislation. In fact, c. 19 of the 1983 Code acknowledges the common and constant opinion of learned persons (*doctores*) as one of the recourses to remedy for a *lacuna legis* except for penal cases.

Moreover, although both public and private juridical persons in the Church have the juridical capacity to assume and exercise patrimonial rights, that is, they can acquire, retain, administer and alienate temporal goods, nevertheless not all temporal goods possessed by them are juridically considered as property of the Church. Only the goods owned by public juridical persons are considered ecclesiastical goods or Church property.[38] Certainly, private juridical persons are in communion with the Catholic Church and they have patrimonial rights. But, in view of c. 1257, their property is not officially or juridically considered Church property. However, this does not mean that their goods are *extra Ecclesiam* since the same goods are also employed in pursuit of the proper objectives of the Church. Hence, as proposed by P. A. Perlado, these goods are qualified positively as *ecclesial* since the term ecclesiastical is exclusively reserved to the goods of public juridical persons. As ecclesial goods, they can still be considered as Church property in a certain way but not juridically.

As regards the goods of private association of Christ's faithful not established as juridical person, they are also not considered ecclesiastical goods. Moreover, these goods do not belong to the private association as such. According to c. 310, a private association which has not been established as juridical person cannot be a subject of obligations and rights. As such, it cannot acquire and possess goods. However, its members can jointly acquire and possess goods as co-owners and co-possessors. But, in view of c. 1257 § 1, these goods are not ecclesiastical.

J. Schouppe says that, from the theological point of view, it is not impossible to talk about certain ecclesiality of the goods of all faithful. This means that the goods of the members of a private association can be considered ecclesial in a certain way. The obligation of Christ's faithful to contribute goods for the needs of the Church (c. 222 § 1 and c. 1261) is of moral nature. But, from the juridical point of view, the goods of the members of private association of Christ's faithful are simply private goods.[39]

[38] A. Maida says: "This notion of public juridic person is very important when we speak of Church property because it is only through the public juridic person that the Church holds property. All property belonging to public juridic persons is considered Church property and all Church property must be held by public juridic persons." A. Maida, "The Code of Canon Law of 1983 and the Property of the Local Church," in AA. VV., *The New Code of Canon Law II: Proceedings of the 5th International Congress of Canon Law,* St. Paul University, Ottawa 1986, p. 745.

[39] Cf. J. Schouppe, Op. cit., pp. 58-59.

To summarize what has been discussed above, only the goods of public juridical persons are considered ecclesiastical or Church property and the goods of private juridical persons can be qualified positively as ecclesial. The goods of the members of private association of Christ's faithful are simply private goods.

4. Temporal Goods as Means

The Church founded by Christ is simultaneously visible and spiritual having human and divine elements.[40] As an organized society the Church "utilizes temporal realities as often as its mission requires it."[41] Certainly, the Church's mission is spiritual but its realization needs temporal means.[42] Although the use of temporal goods is necessary for the realization of the Church's mission, nevertheless the Second Vatican Council emphasizes that the Church places its trust not on temporal means but on the power of the gospel.[43]

Temporal goods are to be used primarily as means to pursue the objectives in conformity with the mission entrusted by Jesus. There is a necessary correlation between temporal goods and proper ends of the Church.[44] *Presbyterorum Ordinis* concretizes such objectives for which the Church is allowed to own temporal goods: "the organization of divine worship, the provision of decent support for the clergy and the exercise of works of the apostolate and of charity, especially for the benefit of those in need."[45] With these objectives, the Church is justified in its assertion regarding its legitimacy to possess, retain, administer and alienate temporal goods.[46]

V. De Paolis comments that temporal goods "are to be used for Church's purposes, in the spirit of the Church's mission, not in the spirit and logic of profit and accumulation."[47] J. Renken affirms that "goods used for other purposes are not in keeping with the Church's mission."[48] He further says that "goods which are accumulated solely for the sake of wealth and security but not for one of the Church's

[40] Cf. *Lumen Gentium,* n. 8.

[41] *Gaudium et Spes,* n. 76.

[42] Cf. Ibid., nn. 42, 76.

[43] Cf. Ibid., n. 76; V. De Paolis, "I beni temporali nel Codice di Diritto Canonico," in *Monitor Ecclesiasticus*, Vol. 111, 1986, pp. 18 -19; T. Bertone, "Il Rapporto Giuridico tra la Chiesa e Comunità Politica," in AA. VV., *Il Diritto nel Mistero della Chiesa*, Vol. 3, Pontificia Università Lateranense, Roma 1992, p. 617.

[44] Cf. L. Mistò, Op .cit., pp. 351-354.

[45] *Presbyterorum Ordinis,* n. 17.

[46] Cf. C. Begus, *Diritto Patrimoniale Canonico*, Lateran University Press, Città del Vaticano 2007, p. 27.

[47] V. De Paolis, "Temporal Goods of the Church in the New Code with Particular Reference to Institutes of Consecrated Life," in *The Jurist*, Vol. 43, 1983, p. 352.

[48] J. Renken, "The Principles Guiding the Care of Church Property," in *The Jurist,* Vol. 68, 2008, p. 151.

proper purposes have no right to be called ecclesiastical goods."[49] N. Cafardi and A. Maida conclude that "property held for reasons other than these [purposes identified in c. 1254 § 2 of the 1983 Code] is not properly held by the Church."[50] F. Morrisey affirms that "goods which are not acquired and retained for one of these apostolic purposes are not being rightly held and should be conveyed to others."[51] In fact, *Presbyterorum Ordinis* emphasizes that goods need to be used only "for those purposes that justify the existence of the Church's temporal goods."[52] Moreover, A. Maida asserts that the Church has no business owning property for reasons other than what is stipulated in c. 1254 § 2:

> "The Church does not own property so that it can be powerful or so that it can have worldly influence or so that it can accumulate wealth for wealth's sake. If we are doing that, we are doing something wrong. Our own law tells us that. The Church can only hold property for those three specific reasons and property held for any other reason is improperly held."[53]

Technically speaking, the goods owned by public juridical persons that are used for purposes not in accordance with the Church's mission are still considered ecclesiastical. The juridical nature of ecclesiastical goods is determined by the juridical nature of its proprietor which should be a moral or a public juridical person as stipulated in c. 1257 § 1. However, in reality, these goods of public juridical persons used for purposes other than those identified by Church law have no right to be called ecclesiastical. The ownership of those goods is no longer justified. They no longer serve as instruments to carry out the mission of the Church.[54] A concrete example here is the development among administrators of public juridical persons of an excessive possessiveness. This reality is no longer in conformity with the Church's teaching that "the spirit of poverty and charity is the glory and authentication of the Church of Christ."[55] Indeed, "the Church is against the cumulation of goods that serve no other purpose than to provide *unnecessary* security."[56] Pope Paul VI once said: "The need for financial and material means… must never make us forget the idea

[49] Ibid., pp. 151-152.

[50] N. Cafardi – A. Maida, Op. cit., p. 10.

[51] F. Morrisey, "Acquiring Temporal Goods for the Church's Mission," in *The Jurist*, Vol. 56, 1996, p. 591.

[52] *Presbyterorum Ordinis,* n. 17.

[53] A. Maida, Op. cit., p. 744.

[54] Cf. Benedict XVI, *Apostolic Letter in the Form of a "Motu Proprio" for the Prevention and Countering of Illegal Activities in the Area of Monetary and Financial Dealings,* 30-XII-2010 at http://www.vatican.va/holy_ father /benedict_xvi/motu_proprio/index_en.htm.

[55] *Gaudium et Spes,* n. 88; Cf. R. Kennedy, "Commentary on c. 1254 § 2," in J. Beal et al. (eds.), *New Commentary on the Code of Canon Law*, Paulist Press, New Jersey 2000, p. 1455.

[56] F. Morrisey, Op. cit., p. 591.

of the purposes which these goods must serve and whose limiting brakes they must feel; nor make us forget a sense of generosity in their use nor their spiritual dimension."[57]

To ensure that temporal goods especially ecclesiastical goods are used in accordance with the Church's proper objectives, principles have been established to guide the care of Church property. These principles permeate the 1983 Code's legislation on ownership of temporal goods. J. Renken enumerates the following principles: *communio*, subsidiarity, proper purposes of temporal goods, collaboration, vigilance, justice in employment, respecting the intention of donors, observance of civil law, transparency and accountability, and protection and preservation of ecclesiastical goods.[58]

B. The Proper Objectives of the Church

1. Preliminary Notes

During the first centuries, the Church depended greatly on the contributions of its faithful for the fulfillment of its various ecclesial purposes (cf. Acts 4: 34-35, 1 Cor. 16: 1-13, Gal. 2: 10). Generally, the purposes for which the Church dedicated its goods were help for the poor, divine worship and support of the clergy.[59]

The Fathers of the Church did not mention any certain tripartite or quadripartite division of goods. Certain universal norms about such division were introduced later at the end of fourth or at the beginning of fifth century probably to surmount the problem of avarice of some ecclesiastical administrators.[60] The Edict of Milan in 313 already recognized and increased the juridical patrimonial capacity of the Church. Popes Simplicius in 474 and Gelasius in 494 imposed that the income from the goods of the Church be divided into four parts: the bishop, the clergy, the poor and the Church. It was an obligatory norm for the whole Church except in the Iberian Peninsula where, for various reasons, the tripartite division was practiced: bishop, clergy and Church.[61]

The poor, the widow, the orphans, the prisoners and the needy in general had a preeminent place in the various concerns of the primitive Church. The first

[57] Cited by V. De Paolis, "Temporal Goods of the Church…," Op. cit., p. 350.

[58] Cf. J. Renken, Op. cit., pp. 136 -177.

[59] Cf. J. Bozal Jiménez, *Función teológico-social de los bienes eclesiásticos en los primeros siglos de la Iglesia*, Universidad Pontificia de Comillas, Madrid 1961, p. 13; F. Aznar Gil, Op. cit., p. 75.

[60] Cf. J. Bozal Jiménez, Ibid., pp. 13-14.

[61] Cf. F. Aznar Gil, Op. cit., pp. 75-76; A. Mostaza Rodríguez, "Derecho patrimonial canónico," in AA. VV., *Derecho Canónico*, 2ª Edición, EUNSA, Pamplona 1975, pp. 317-319.

Christians observed faithfully the precepts of our Lord with regard to the needy. The Fathers of the Church emphasized in their writings the charitable purposes of the goods of the Church.[62] Each Church really showed concern towards the poor. In fact, St. Cyprian of Carthage in his treatise *Works and Almsgiving* in 253 urged "liberal works of charity at a time when so many were impoverished and in reduced circumstances because of the recent devastating plague."[63] G. Roche affirms that "there is no doubt that many of the Fathers insisted that the goods of the Church should be used for the poor."[64] Moreover, the goods of the Church were closely associated with the poor who, to a certain extent, were considered as proprietors. During this time until the fifth century, the patrimony of the Church was called *patrimonium pauperum, egentium substantia, hereditas pauperum,* etc. The Councils characterized those who usurped the goods of the Church as *necatores pauperum* or *egentium necatores*.[65]

As regards support for the ministers, St. Paul, in his first letter to the Corinthians, talked about the right of the ministers of the Gospel. He said that those who proclaim the Gospel should get their living by the Gospel just as those who are employed in the temple service get their food from the temple and those who serve at the altar share in the sacrificial offering (cf. 1 Cor. 9: 13-14). Moreover, chapter XIII of the *Didache* recognized the right of sacred ministers to be supported of their ministry. The faithful were reminded of their obligation to provide for the needs of the ministers. *Canones Apostolorum*[66] established the norm that oblations of the faithful which have no strictly cultual purpose should not be offered in the Church; rather,

[62] St. John Chrysostom in his *Homilies on St. Matthew* speaks about the Church's works of charity towards the poor: "Y porque comprendáis la inhumanidad de los ricos, considerad que la Iglesia, cuyas rentas no llegan a las de uno de esos grandes opulentos, ni aun de los no muy ricos, socorre diariamente a tantas viudas y vírgenes, como que su lista ha alcanzado la cifra de los tres mil. Y juntamente con viudas y vírgenes, ella socorre a los que están en las cárceles, a los que sufren en el hospital, a los que convalecen, a los caminantes, a los mutilados, a los que asisten al altar para ganarse el sustento y el vestido, y sin embargo, sus fondos no disminuyen en nada." Cited by J. Hervada, "La relación de propiedad en el patrimonio eclesiástico," in *Ius Canonicum*, Vol. 2, 1962, p. 430.

[63] W. Jurgens, *The Faith of the Early Fathers*, Vol. 1, The Liturgical Press, Collegeville, Minnesota 1970, p. 224.

[64] G. Roche, "The Poor and Temporal Goods in Book V of the Code," in *The Jurist,* Vol. 55, 1995, p. 307. Cf. I. Giordani, *The Social Message of the Early Church Fathers*, St. Anthony Guild Press, New Jersey 1944, pp. 253-320.

[65] Cf. G. Roche, Ibid., pp. 307-308; J. Bozal Jiménez, Op. cit., pp. 14-17; F. Aznar Gil, Op. cit., p. 75; J. Hervada, Op. cit., p. 431.

[66] A collection of ancient ecclesiastical decrees (eighty-five in the Eastern, fifty in the Western Church) concerning the government and discipline of the Christian Church, incorporated with the Apostolic Constitutions *(Constitutiones Apostolicae)* (VIII, 47). They deal mostly with the office and duties of a Christian bishop, the qualifications and conduct of the clergy, the religious life of the Christian flock (abstinence, fasting), its external administration (excommunication, synods, relations with pagans and Jews), the sacraments (Baptism, Eucharist, Marriage); in a word, they are a handy summary of the statutory legislation of the primitive Church. Cf. http://www.newadvent.org/cathen/03279a.htm.

they should be brought to the priests' residence for their distribution among the ministers. *Constitutiones Apostolicae*[67] also instituted norms regarding support of the clergy.[68] St. Jerome also recognized the right of the ministers to get their living by their ministry. However, he said that a priest should take only what is necessary for living. He is not allowed to lead a superfluous way of life.[69]

Another purpose of the goods of the Church according to tradition is divine worship. This means that some goods may be used for the construction, conservation and decoration of the Churches. But the Fathers of the Church reminded the early Christians that although they have the obligation to support for divine worship, they should not forget also the poor. Some Christians were excessively generous in their donations to embellish Churches but they frequently forgot the Lord's command of charity towards the poor. St. John Chrysostom said that offering golden amphoras to the Church and not giving alms to the poor is like letting the hungry sit before a table filled with expensive tableware without offering him food to satisfy his hunger. He further said that nobody has been condemned for not having adorned the Churches; however, many have been reproved for not having shown compassion to the poor.[70]

2. The 1917 Code

C. 1496 of the 1917 Code establishes three objectives of the goods of the Church: divine worship, support of clerics and other ministers, and other proper objectives of the Church. According to R. Kennedy, the vague term "other proper objectives" substituted the traditionally specific reference to charity as one of the justifications for the Church's ownership of temporal goods.[71] Although no specific mention is made regarding charity, nevertheless, according to A. Mostaza Rodríguez, c. 1496 is faithful to the tradition regarding the proper objectives of the Church by which it is justified to acquire temporal goods.[72] Besides, according to some authors, the term "other proper objectives" already includes works of charity and sacred apostolate.[73]

[67] A fourth-century pseudo-Apostolic collection, in eight books, of independent, though closely related, treatises on Christian discipline, worship, and doctrine, intended to serve as a manual of guidance for the clergy, and to some extent for the laity. Cf. http://www.newadvent.org/cathen/01636a.htm.

[68] Cf. V. De Reina, *El sistema beneficial*, Universidad de Navarra 1965, pp. 46-49.

[69] Cf. J. Bozal Jiménez, Op. cit., p. 18.

[70] Cf. Ibid., pp. 19-20.

[71] Cf. R. Kennedy, "Commentary on c. 1254 § 2", Op. cit., p. 1455.

[72] Cf. A. Mostaza Rodríguez, "Derecho patrimonial canónico," Op. cit., p. 319.

[73] Cf. Ibid.; G. Cocchi, *Commentarium in Codicem Iuris Canonici. Liber III, De Rebus,* Taurinorum Augustae 1927, p. 338.

The same c. 1496 specifically mentions the proper objectives of the Church generally referred to in c. 1495 § 1 of the same Code.[74] It has this formulation: "The Church also has the right, independently of civil power, of requiring from the faithful what is necessary for divine cult, the honest sustenance of clerics and other ministers, and for the remaining ends proper to her." However, it seems that the focus of this particular canon is more on the right of the Church to demand from the faithful what is necessary for its proper objectives. Hence, some commentaries on this canon, especially of F. Wernz and P. Vidal, M. Pistocchi, G. Cocchi, and C. Berruti discussed more on the Church's *ius exigendi* rather than the proper objectives of the Church.[75]

In the 1983 Code, the Church's *ius exigendi* is placed in c. 1260 and the list of the proper objectives of the Church is separated and placed in another canon (c. 1254 § 2).

3. The 1983 Code

C. 1254 § 2 particularly mentions the proper objectives of the Church in this formulation: "These proper objectives are principally the regulation of divine worship, the provision of fitting support for the clergy and other ministers and the carrying out of works of the sacred apostolate and of charity especially for the needy."

These proper objectives are also *listed* or *mentioned* in different canons of the same Code. C. 222 § 1 enumerates these same objectives but differently arranged when it speaks about the obligation of Christ's faithful "to provide for the needs of the Church, so that the Church has available to it those things which are necessary for divine worship, for works of the apostolate and of charity and for the worthy support of its ministers." C. 298 § 1 lists some objectives of the Church which the associations of Christ's faithful have to pursue: fostering the perfection of Christian life, promoting public worship or Christian teaching, initiatives for evangelization, works of piety or charity and efforts to animate the temporal order with the Christian spirit. C. 114 § 2 states the purposes of the Church's mission: works of piety, of the apostolate or of charity, whether spiritual or temporal.

[74] C. 1495 § 1 of the 1917 Code: *"Ecclesia catholica et Apostolica Sedes nativum ius habent libere et independenter a civili potestate acquirendi, retinendi et administrandi bona temporalia ad fines sibi proprios prosequendos."*

[75] Cf. F. Wernz, – P. Vidal, *Ius Canonicum. Tomus IV De Rebus*, Vol. 2, Pontificia Universitas Gregoriana, Roma 1935, pp. 202-204; M. Pistocchi, *De Bonis Ecclesiae Temporalibus*, Marietti, Taurini 1932, pp. 31-42; G. Cocchi, Op. cit., pp. 337-338; C. Berruti, *Institutiones Iuris Canonici*, Vol. 4, Taurini, Roma 1940, pp. 465-466.

Moreover, according to M. López Alarcón, these proper objectives are to some extent described in the other canons of the 1983 Code.[76] Some examples may be cited. The concept of divine worship includes also the sanctifying function of the Church which is carried out in a special way in the sacred liturgy (c. 834 § 1).[77] Regarding support for the clergy, c. 281 establishes that clerics deserve remuneration that befits their condition and other suitable provision in case of infirmity, sickness or old age. Married deacons who dedicate themselves full-time to the ministry also deserve remuneration, unless they already receive secular remuneration. With regard to this right, c. 1274 § 1 establishes the corresponding obligation of the Bishop to create a special institute in his diocese which is to bring together goods or offerings for the purpose of providing for the support of clerics who offer service for the benefit of the diocese. Besides, when such social provision for the support of clergy has not yet been arranged, c. 1274 § 2 stipulates that the Conference of Bishops has to establish an institute which provides sufficiently for the social security of clerics. Concerning apostolate, c. 211 affirms the fundamental right of the faithful to sacred apostolate. It says that "all Christ's faithful have the obligation and the right to strive so that the divine message of salvation may more and more reach all people of all times and all places." With regard to works of charity, c. 1285 stipulates that administrators are allowed to make donations for purposes of piety or Christian charity. Donation for the needy or the poor is implicitly included in this canon.[78] Besides, c. 222 § 2 emphasizes the obligation of Christ's faithful to assist the poor from their own resources, and c. 282 § 2 exhorts the clergy to use any excess goods for the good of the Church and for works of charity.

The direct doctrinal source of the actual legislation on the proper objectives of the Church is *Presbyterorum Ordinis*, n. 17 which concretizes the purposes for which the Church is allowed to own temporal goods: "the organization of divine worship, the provision of decent support for the clergy, and the exercise of works of the apostolate and of charity, especially for the benefit of those in need." However, other texts from Vatican II have indicated other objectives of the Church: founding and directing schools (*GE*, n. 8, 2), using and owning social media (*IM*, nn. 3, 2), erecting buildings for religious purposes (*DH*, n. 4), promoting missionary activity (*AG*, nn. 4, 19, 28), helping the poor and promoting peace and justice (*PC*, n. 13; *AA*, n. 8; *GS*, nn. 42, 44, 69; *AG*, n. 12).[79]

[76] Cf. M. López Alarcón, "Commentary on c. 1254," in AA. VV., *Exegetical Commentary on the Code of Canon Law*, Vol. 4/1, Wilson & Lafleur Ltée, Montréal 2004, pp. 21-22.

[77] Cf. J. Manzanares, "Principios informadores del Nuevo Derecho sacramental," in *Temas fundamentales en el Nuevo Código. XVIII Semana española de Derecho canónico*, Publicaciones Universidad de Salamanca, Salamanca 1984, p. 237.

[78] Cf. G. Roche, Op. cit., p. 328.

[79] Cf. Ibid., pp. 310, 315; M. López Alarcón, "Commentary on c. 1254," Op. cit., p. 20; F. Aznar Gil, Op. cit., pp. 77-78.

Because of these seemingly other objectives of the Church some authors have differed as to whether or not the list of the Church's proper objectives in c. 1254 § 2 is taxative. R. Kennedy says something about this:

> Insertion of the word 'principally' [in c. 1254 § 2] indicates, for some, the existence of other purposes,[80] while others suggest that the insertion was made solely because the paragraph speaks generally of the purposes of the Church, not just of the ownership of temporal goods by the Church, and that the purposes of church ownership are, in fact taxatively stated.[81] In any event, in light of the conciliar definition of the apostolate as all activity of the Church directed to bringing the world to Christ, it would be difficult to conceive of any ecclesial purpose not included in 'works of the apostolate.'[82]

The *Coetus studiorum de Iure Patrimoniali* discussed the proposal of adding more specific objectives like promotion of missionary works and of culture, etc. But almost all Consultores considered that all other purposes which could be added are nothing but the development of the purposes already contained under the more general formulation "*opera sacri apostolatus et caritatis.*"[83]

[80] F. Morrisey says that "the listing [in c. 1254 § 2], which is based on *Presbyterorum ordinis* 17, is not exclusive, since the code adds the word 'principally' so as not to exclude other possibilities." F. Morrisey, Op. cit., p. 591. F. Salerno says that "l'elecazione della finalità ecclesiali da perseguire con i beni temporali… è solo indicativa." F. Salerno, "Liber V: De bonis ecclesiae temporalibus," in *Commento al Codice di Dirritto Canonico*, P. Vito Pinto (ed.), Urbaniana University Press, Rome 1985, p. 714. G. Roche is of the opinion that the list is not taxative: "What is important is not to lose sight of the fact that even if the list is not taxative, these three purposes are the *chief* purposes for which the Church can own and use temporal goods, and as such they should be given clear priority over other possibly legitimate purposes." G. Roche, Op. cit., p.315. J. Schouppe asserts that c. 1254 § 2 "indica – aunque no de modo exhaustivo, sino anteponiendo el adverbio *praecipue*: "principalmente" – cuáles son esos "otros fines proprios"… No cabe duda de que la predicación de la verdad y la formación de las conciencias – con todos los medios necesarios, desde escuelas hasta los medios de comunicación social –, así como la actividad misional de la Iglesia, forman parte también de las finalidades eclesiales." J. Scouppe, Op. cit., p. 31.

[81] N. Cafardi and A. Maida comment that the "statement of the church's ends, given its location in Book V, obviously refers to those ends for which property is used. It is an illustrative, and not an exhaustive, list of the church's purposes. It is, however, an exhaustive list of the purposes for which property can be held." N. Cafardi – A. Maida, Op. cit., p. 10. J. Renken says: "The text of canon 1254 § 2 is taken from *Presbyterorum ordinis* 17… This canon adds the adverb "principally" to the conciliar text. This may lead some to the conclusion that the list of these three purposes is not taxative, that is, that other activities may exist which justify the Church's ownership of goods. Yet, given the breadth of activities which may be considered "works of the sacred apostolate," one may reasonably conclude that this list is indeed taxative and that any activity not somehow a manifestation of one of these three purposes is not in keeping with the Church's mission." J. Renken, Op. cit., pp. 149-150.

[82] R. Kennedy, "Commentary on c. 1254 § 2," Op. cit., p. 1455.

[83] Cf. *Communicationes*, Vol. 12, 1980, pp. 396-397.

The 2004 Directory for the Pastoral Ministry of Bishops (DPMB)[84] talks about proper objectives of the Church in relation to the administration of temporal goods: "In the administration of goods, always presupposing that justice is observed, the Bishop concerns himself first of all with providing for divine worship, charity, the apostolate and the support of clergy: these ends are given precedence over all others."[85] J. Renken comments on this text:

> "Although this text does not make specific mention of the needy, the Directory explains elsewhere that an 'ascetic' criterion guiding the diocesan bishop's administration would result in generosity to the poor: In keeping with the spirit of the Gospel, this [ascetic criterion] demands that the disciples of Christ 'make use of the world, as though they were not using it' (cf. 1 Cor 7: 31). Therefore, they should be moderate and detached, trusting in divine providence and generous towards the needy, always preserving the bond of love [DPMB, n. 189]."[86]

The above author clarifies that the list of proper objectives of the Church contained in DPMB also includes works of charity especially to the needy. Hence, the objectives listed here are truly faithful to the list provided in *Presbyterorum Ordinis,* n. 17 which is juridically expressed in c. 1254 § 2.

Now the question is whether or not the Church's proper objectives are listed in order of priority. The same canon has this list: *divine worship, support for the clergy and other ministers, works of sacred apostolate and of charity especially towards the needy*. The answer is clearly negative if we consider c. 222 § 1 of the 1983 Code and c. 1007 of the Eastern Code. C. 222 § 1 has the same list of the proper objectives of the Church but in different order: "Christ's faithful have the obligation to provide for the needs of the Church, so that the Church has available to it those things which are necessary *for divine worship, for works of the apostolate and of charity and for the worthy support of its ministers*." Besides, these proper objectives established in c. 1254 § 2 are also stated, but differently arranged, in c. 1007 CCEO: "In looking after the spiritual well-being of people, the Church needs and uses temporal goods… that are necessary to pursue its proper ends, especially for *divine worship, works of the apostolate and of charity and fitting support of ministers.*" It is worth noting here that the parallel canon in the Eastern Code does not mention the phrase "especially towards the needy."

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[84] This 2004 Directory for the Pastoral Ministry of Bishops, formally entitled *Apostolorum successores*, published by the Congregation for Bishops is an updated version of the 1973 Directory Ecclesiae imago. Cf. http://www.vatican.va/roman_curia/congregations/cbishops/documents/rc_con_cbishops_doc_20040222_apostolorum-successores_ en.html.

[85] DPMB, n. 188.

[86] J. Renken, Op. cit., p. 150.

Although c. 1254 § 2 does not emphasize an order of priority in its list of the proper objectives, nevertheless some authors have considered certain preference among the proper objectives. J. Schouppe says that c. 1254 § 2 manifests a certain preference on the works of sacred apostolate and of charity especially for the needy. He bases this assertion on the consideration of the *Consultores* that all other purposes which could be added are nothing but the development of the purposes already contained under the more general formulation "*opera sacri apostolatus et caritatis.*"[87] S. Mester, in discussing about the ends of the ecclesiastical goods, seems to have given priority on the works of charity especially for the poor.[88] V. De Paolis simply says that the proper objectives are placed in a hierarchical way. But they are equal concerns of the mission of the Church including the works of charity especially toward the poor.[89] J. M. Piñero Carrión, in his extensive and documented work about support of the clergy, insists on the importance of the poor as the principal objective of the goods of the Church.[90] J. Bozal Jiménez considers that the principal function of the temporal goods of the Church is concern for the poor, help for the needy.[91] On their part, V. De Reina and A. Mostaza Rodríguez assert that the primary objectives of the Church are those which are most associated directly with the proper mission of the Church, namely, divine worship and support for the clergy. They say that the specific mission of the Church is not to resolve the material needs of the poor but preach the Gospel to all humanity, continuing the redemptive work of Christ on earth. Besides, it is the command of the Lord that those who proclaim the Gospel should get their living by the Gospel.[92]

According to R. Navarro Valls, the problem on the prevailing objective of the goods of the Church is rather historic, that is, it is subject to the necessities of each period. If in a given historic moment divine worship takes precedence, in others it is charity or support for the clergy which is given priority. He further says that to give an ontological prevalence to one of the proper objectives implies minimizing the flexibility of the goods of the Church which must respond with greater intensity to what may be most needed in each historic period: either support for the clergy or divine worship or works of apostolate or of charity especially for the needy. Definitely, the issue here deals with the problem of prudence and interpretation of the more

[87] Cf. J. Schouppe, Op. cit., p. 31.

[88] Cf. S. Mester, Op. cit., p. 53.

[89] Cf. V. De Paolis, "I beni temporale nel Codice di Diritto Canonico," Op. cit., p. 19.

[90] Cf. J. M. Piñero Carrión, *La sustentación del clero: síntesis histórica y estudio jurídico*, Escuela Gráfica Salesiana, Sevilla 1963, pp. 126, 131, 212, 309.

[91] Cf. J. Bozal Jiménez, Op. cit., pp. 13-20.

[92] Cf. V. De Reina, Op. cit., pp. 64-67; A. Mostaza Rodríguez, "Derecho patrimonial canónico," Op. cit., pp. 319-320.

urgent needs of the Church in a particular moment.[93] G. Roche has some comments regarding such issue:

> "Perhaps it is the actual needs of each place and time that set the priority. Where the needs of the poor are great, their needs come before the needs of worship and maintenance of the clergy. Ambrose of Milan sold church treasures to aid the poor. Paul VI donated his tiara for the poor. John Paul II has stated that in some circumstances in could be desirable to sell church ornaments and costly furnishings to provide food, drink, clothing and shelter for the needy. Existing needs then may establish the priority."[94]

However, "while circumstances may dictate that one or another purpose be given priority at a given time, church administrators need to be vigilant that none of the purposes becomes so dominant as to preclude fulfillment of the others."[95]

C. Juridical Content of the Right of the Church Regarding Temporal Goods

This part of our study discusses briefly the juridical content of the Church's patrimonial capacity. C. 1254 § 1 regulates the juridical content of this capacity, expressing it in four terms which have something to do with theme of property law: acquire, retain, administer and alienate.[96]

1) To acquire means to obtain "title of temporal goods. Title may consist in the right to ownership in the strict sense and also in other rights and obligations by other subjects."[97]

2) To retain is to conserve the title or the right to ownership and includes also the legal right to use and derive profit or benefit from the property. It does not differ much with the concept of possession.[98]

During the preparatory works, there was a suggestion that the word "*possidere*" be mentioned in place of "*retinere,*" consistent with c. 2 of the 1977 *Schema*. But the *Consultores* preferred "*retinere.*" They even made a suggestion that the same word

[93] Cf. R. Navarro Valls, "La licencia en la enajenación canónica y el derecho español," in *Ius Canonicum*, Vol. 10, 1970, pp. 322-323; F. Aznar Gil, Op. cit., pp. 79-80; M. Moreno Antón, Op. cit., p. 75.

[94] G Roche, Op. cit., pp. 316-317.

[95] R. Kennedy, "Commentary on c. 1254 § 2," Op. cit., p. 1455.

[96] Cf. J. Schouppe, Op. cit., p. 33.

[97] D. Tirapu, "Commentary on c. 1259," in AA. VV., *Exegetical Commentary on the Code of Canon Law*, Vol. 4/1, Wilson & Lafleur Ltée, Montréal 2004, p. 44.

[98] Cf. J. Schouppe, Loc. cit.

ought to be mentioned in the other canons in place of "*possidere*."[99] However, in the end, the harmonization was not completely realized because in some canonical norms the term "*possidere*" is used instead of "*retinere*" (cf. c. 634 § 1 and c. 741).

3) In its strict juridical sense, to administer indicates the realization of acts and operations suitable for the care, conservation and improvement of goods. It also includes the collection and apportionment of the fruits and income of such goods. In its wider sense, it has something to do with ordinary administration, extraordinary administration, acts equivalent to alienation and acts of major importance.[100]

4) To alienate is to transfer ownership of property, whether by sale or gift, deed or will. It is an act by which the title or rights of an owner with respect to property, real or personal, is transferred from one party to another.[101]

This fourth juridical content of the Church's right to temporal goods was added after the 1977 Schema. One of the *Consultores* proposed that the word "*alienare*" be added in c. 1 of the 1977 *Schema*. He reasoned that alienation is different from the act of administration.[102]

D. Characteristics of the Right of the Church in c. 1254 § 1

According to c. 1254 § 1, the right of the Catholic Church with regard to temporal goods is inherent and independent from any civil authority. This part of the thesis discusses the attributes of this particular right of the Church, namely, native and independent. The latter will be discussed thoroughly in the next chapter.

The attribute inherent or native means that it is a right in accordance with the nature of the Church as willed by its Founder. It emanates from the nature of the Church founded by Christ. It is a right whose origin rests on the divine will.[103] This

[99] Cf. *Communicationes*, Vol. 12, 1980, p. 396.

[100] Cf. J. Schouppe, Op. cit., pp. 33, 154-155; F. Aznar Gil, Op. cit., pp. 377-378; F. Wernz – P. Vidal, *Ius Canonicum…*, Vol. 2, Op. cit., p. 211-212; , F. Testera, "The Administration of Church Property," in *Companion Readings for the Diocesan Treasurer*, Archdiocesan Office for Research and Development, Archdiocese of Manila 1982, p. 12. About the idea of administration in its wider sense in contrast with its juridical sense kindly see the doctrinal synthesis of M. López Alarcón, "La administración de los bienes eclesiásticos," in *Ius Canonicum*, Vol. 24, 1984, pp. 87-121.

[101] Cf. J. Lynton, *Ballentine's Legal Dictionary and Thesaurus*, Delmar Publishers Inc., New York, 1995, pp. 28, 669.

[102] Cf. *Communicationes*, Vol. 12, 1980, pp. 395-396.

[103] V. De Paolis says something about the adjective native: "Tale diritto viene qualificato come "nativo." Con tale aggetivo si vuol dire che esso nasce con la stessa Chiesa, e perciò proviene dallo stesso Fondatore, non invece da altri poteri umani o dalla loro tolleranza." V. De Paolis, *I Beni Temporali della Chiesa*, Op. cit., p. 52; Cf. I. Pérez de Heredia y Valle, *Libro V del CIC: Bienes Temporales de la Iglesia*, Instituto Diocesano de Estudios Canónicos, Valencia 2002, p. 46.

means the Church has the right to temporal goods since its inception and this right is not a result of a concession by any civil authority. It is inherent in the nature of the Church. The Church established by Christ has always this native right even in the hypothesis in which the political community denies the existence of such right.[104]

Moreover, this particular right of the Catholic Church is not only inherent. By virtue of divine concession, the Church also claims independence from any civil authority in the existence and in the exercise of such right.[105] Such exercise presupposes independence from subordination to and control of any secular power. R. Kennedy comments that the Church's claim of independence from civil authority both in the origin and the exercise of its right to property means a claim of separation of Church and State:

> "If canon 1254 means what it seems to say, it makes a remarkable claim. Independence from civil power is claimed not just for the *origin* of the Catholic Church's rights to own property, but for the *exercise* of those rights as well. A claim of independent origin, alone, would not be particularly noteworthy; such a claim could rightly be made by any association of human beings or, indeed, by any individual human being, in whom the right to acquire and use temporal goods is derived not from concession by civil authority but from the dignity of the human person. Canon 1254, however, claims more; it claims, for the Catholic Church, independence from civil authority even in the exercise of its property rights. It is a startling claim of separation of church and state made by the Roman Catholic Church."[106]

However, this independence affirmed by the Church is not absolute. It is a kind of independence in line with the teaching of the Magisterium that the Church claims for itself the freedom to own and use temporal goods to the extent that the fulfillment of its religious mission requires it.[107] While affirming its native and independent patrimonial right, the Church respects and coordinates with the laws of the State.

According to M. López Alarcón, the native and independent right of the Church to temporal goods has *ad intra* and *ad extra* justifications. The background of

[104] Cf. J. Schouppe, Op. cit., p. 35; G. Nedungatt, Op. cit., p. 288.

[105] Cf. R. Kennedy, "Commentary on c. 1254 § 1," in J. Beal et al. (eds.), *New Commentary on the Code of Canon Law*, Paulist Press, New Jersey 2000, p. 1453; L. Chiappetta, Op. cit., p. 365; F. Aznar Gil, Op. cit., p. 71; V. De Paolis says:"Il suo esercizio è indipendente dalla potestà civile, ossia non è sottoposto alla potestà civile, sia legislativa che giudiziaria e amministrativa: questo implica... che i beni temporali sono retti dal potere ecclesiastico." V. De Paolis, *I Beni Temporali della Chiesa,* Op. cit., p. 52.

[106] R. Kennedy, "The Declaration on Religious Liberty Thirty Years Later: Challenges to the Church-State Relationship in the United States," in *The Jurist,* Vol. 55, 1995, pp. 480-481.

[107] Cf. J. Schouppe, Op. cit., pp. 35-36.

the *ad intra* justification is the existence of doctrinal errors in history which deny this right, especially Arnold of Brescia, the Waldenses and the Albigenses. The *ad intra* justification is directed towards the Church itself or its members. The Church reaffirms its patrimonial right based on divine positive and natural law arguments to avoid the errors of the past. The *ad extra* justification is directed towards the civil authority. The independence of this right from any civil authority is reaffirmed so that there would be no occasion to interpret the omission of such particular characteristic as the Church's subjection to secular law in matters of administrative organization.[108]

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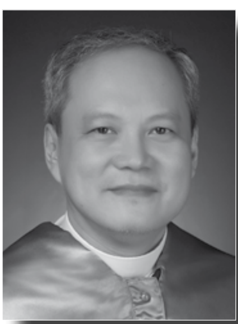

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[108] Cf. Ibid., pp. 36-37; M. López Alarcón, "Comentario al c. 1254," Op. cit., p. 41; M. López Alarcón, "Comentario al c. 1254," in P. Lombardía – J. I. Arrieta, *Codice di Diritto Canonico*, Vol. 2, Edizioni Logos, Roma 1987, p. 887; *Communicationes*, Vol. 12, 1980, pp. 395-396.