

Selected Pre-conciliar Juridical Elements of Lay Apostolate

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Abstract: Lay apostolate has gradually evolved since New Testament times. The zeal of baptized believers to spread the divine message of salvation in fidelity to the divine mandate and the ecclesial mission underwent many a challenge at every phase in Church history. This article seeks to review the development of lay involvement in the apostolate of the Church through the centuries and the 1917 code. The intent is to identify and highlight the pastoral and juridical role of the laity in Church history until it came to be officially recognized at the Second Vatican Council.

Keywords: Laity, Lay Apostolate, Magisterium, 1917 Code

Introduction

The Catholic Church is a communion of Christ's faithful which comprises of clerics, religious, and the lay faithful - called to evangelize the world in obedience to the command of Christ. To fulfill this task, the laity as 'one body of the Lord' are also called vis-à-vis the clergy or religious, to fulfill by 'lay apostolate,' the salvific mission of the Church. In the words of St. John Paul II: "We are witnessing a return to the authentic theology of the laity found in the New Testament, where the Church, the body of Christ, is the whole of the chosen race, the

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royal priesthood, the holy nation, God's own people (cf. 1 Pt 2:9), and not a portion of it."¹ To enable an understanding from a juridical perspective of the apostolic role of the lay faithful in pre-conciliar times, - until the Second Vatican Council - the history of the apostolate of the 'People of God' as it was first understood.² This includes a brief examination into the relevant canons concerning the apostolate of lay persons in the 1917 code.³

The 'People of God' in the Scriptures

The term 'laity' which is absent in the scriptures, has its roots in the Greek adjective 'λαϊκός' (*laikos*) whose Latin equivalent is '*laicus*'.⁴ However, the Greek noun form 'λαός,' is widely used in the Bible. In prominent passages of the Septuagint version of the Old Testament such as Exodus 19:4-7 and Deuteronomy 7:6-12, the term 'λαός' (*laos*) is generally used to qualify Israel as the 'People of God.' The significance of the term '*laos*' is that it differentiates the 'chosen people' or 'God's people,' from the peoples of other nations.⁵ In the New Testament, St. Peter alludes to the term in his address to the first Christian communities: "Once you were 'no people,' but now you are 'God's people.'"⁶ The ecclesiological understanding of this term, namely 'People of God,' has been articulated in dogmatic fashion by Pope Benedict XVI in an address to a pastoral convention of the vicariate of Rome:

The concept of 'People of God' came into being and was developed in the Old Testament: to enter into the reality of human history, God chose

¹ John Paul II, "speech to the Bishops of the Church in the States of Minnesota, North Dakota, and South Dakota (U.S.A)." *CLD* 14: 69

² E. Flameygh has divided the history of cleric-lay apostolate from a different perspective. He examines the cleric and lay dynamics of power tussle in six stages from 30 A.D. until the eve of the Second Vatican Council. These are 30-325 A.D.; 325-640 A.D.; 640-960 A.D.; 960-1517 A.D.; 1517-1830 A.D. 1830- Vatican II. "The laity in history." *EAPR* 23 (1986): 231-250. Also see J. Estrada, "Clerigos y laicos. Teología y balance de una relación difícil." *Sal Terrae* 75 (1987): 355-369.

³ *Codex iuris canonici, Pii X Pontificis Maximii iussu digestus, Benedicti Papae XV auctoritate promulgatus*. Vatican City: Typis polyglottis Vaticanis, 1917.

⁴ H. Frankemölle, 'λαός,' in *Exegetical Dictionary of the New Testament*, Horst Balz & Gerhard Schneider, ed. Translated by William B. Eerdmans, Volume 2 (Grand Rapids: William B. Eerdmans, 1991), 340 (= hereafter 'λαός,'). Opinions vary among theologians on the use of 'λαός.' Explaining the reason for this ambiguity Frankemölle explains that the understanding the usage of 'λαός' is determined by two factors: "context and the prior history of 'λαός' in Jewish literature." The meaning of 'λαός' in the New Testament covers the following areas (a) tribe, race, population, people, crowd of people (b) 'λαός' as a technical term for Israel as people of God with 'ἔθνος' (Gentile) as opposite term (c) 'λαός' as a designation of the Christian Church(es).

⁵ Frankemölle, 'λαός,' 339-340. Ralph Bucy, *The New Laity: Between Church and World* (Waco, Texas: Word Books, 1978), 15: "the term 'laos' as a whole is God's people, chosen for service [...]. Israel is called from among all the people to serve as a kingdom of priests and a holy nation on behalf of the kingdoms and nations of the world."

⁶ 1 Pt 2:10.

a specific people, the People of Israel, to be his People. The intention of this particular choice is to reach, through a few, many people and through them to reach all. In other words, the intention of God's specific choice is universality. Through this People, God enters into the reality of history [...]. In the communion of the 'Body of Christ' we all become one people, the People of God. Thus, we see that the two concepts 'People of God' and 'Body of Christ' complete each other and together form the New Testament concept of Church. And whereas 'People of God' expresses the continuity of the Church's history, 'Body of Christ' expresses the universality inaugurated in the Cross and in the Lord's Resurrection.⁷

On account of the consciousness of being 'God's people' by baptism, believers in the early church were not differentiated by their 'juridical condition' but by their common condition as baptised persons who were collectively focused on the spread of the Gospel and to practice works of charity. According to Schaff, "In the apostolic church preaching and teaching were not confined to a particular class, but every convert could proclaim the gospel to unbelievers, and every Christian who had the gift could pray and teach and exhort in the congregation."⁸ More importantly, among the believers who spread the Word of God, there were many military personnel. This has been acknowledged by Pius XII, in his encyclical *Evangelii Praecones*:

It can certainly be claimed that lay co-operation [...] has existed since the foundation of the Church [...]. Likewise, all know that the Gospel followed the great Roman roads and was spread not only by Bishops and priests but also by public officials, soldiers, and private citizens. Thousands of Christian neophytes, whose names are today unknown, were fired with zeal to promote the new religion they had embraced and endeavored to prepare the way for the coming of the Gospel. That explains why after about 100 years Christianity had penetrated into all the chief cities of the Roman Empire. St. Justinus, Minucius Felix, Aristides, the consul Acilius Glaber, the patrician Flavius Clemens, St. Tarsicius and countless holy martyrs of both sexes, who strengthened and enriched the growth of the Church by

⁷ Benedict XVI, "Address, church membership and pastoral co-responsibility." *L'Osservatore Romano*, (2009) [hereafter "Church membership and pastoral co-responsibility"]¹⁰; also see John Paul II, "catechesis. The Church is the New People of God;" English translation in *L'Osservatore Romano*, 14/1235 (1991): 11: "in her historical reality and theological mystery the Church comes from the People of God of the old covenant. Although designated by the term *qahal* (i.e., assembly), from the New Testament, it is clear that the Church is the People of God established in a new way through Christ and in virtue of the Holy Spirit [...]. All this clearly shows that from the beginning, the Church was conscious of the continuity and, at the same time, the newness of her own reality as the People of God."

⁸ P. Schaff, *History of the Christian Church, Volume II: Ante-Nicene Christianity. A.D. 100-325*. Grand Rapids, MI: Christian Classics Ethereal Library Publisher, 1882 [hereafter *History of the Christian Church*], 124; Ibid. "In the Jewish Synagogue the elder could ask any member of repute, even a stranger, to deliver a Scripture lesson."

their labors and the shedding of their blood, can in a certain sense be called the advance guard.⁹

The zeal to make the divine message known in fidelity to the divine commandment and the ecclesial salvific mission was the primary focus of all the believers. It extended from those who knew Christ, to those who had heard about him from the apostles, the disciples, and the baptised. The apostolate therefore was centered on the kerygmatic proclamation of the Word.

The Early Church to the 3rd Century

The category of ‘lay’ or ‘laity’ was non-existent even as the Church began to grow in the first century with the increase of persons seeking baptism. In the observation of Faivre, “there was more than a century and a half of Christianity without the use of the word ‘laity,’ despite the existence and availability of the terminology.”¹⁰ The term ‘*laikos*’ appears for the first time in a letter of St. Clement of Rome to the Corinthians, in the context of bringing order and restoring peace within a crisis situation in the Church of Corinth:

For his own peculiar services are assigned to the high priest, and their own proper place is prescribed to the priests, and their own special ministries devolve on the Levites. The layman is bound by the laws that pertain to laymen.¹¹

In the letter, the term ‘*laikos*’ appears two times. The context indicates that *laymen* were permitted to be involved in ecclesial activity, albeit in accordance with the rule:

Let every one of you, brethren, give thanks to God in his own order, living in all good conscience, with becoming gravity, and not going beyond the rule of the ministry prescribed to him (41:5).¹²

In the interpretation of the text by Pope Benedict XVI, we read:

⁹ Pius XII, encyclical *Evangelii Praecones* 31-33, June 2, 1951, AAS 43, (1951) 510-511.

¹⁰ A. Faivre, *The Emergence of the Laity in the Early Church*. Translated by David Smith (Mahwah, N.J.: Paulist Press, 1990) [hereafter *The Emergence of the Laity*] 19-20. Ibid.: “Is it possible, in such a context and with all the repressive images conveyed by the Old Testament analogy, to find any definition of the layman other than the Christian ‘who is forbidden’ or ‘who can or may not’ or ‘who is destined to passive obedience’?”

¹¹ Clement of Rome, “The Letter of the Romans to the Corinthians, commonly known as First Clement,” in Michael Holmes, ed. in *The Apostolic Fathers. Greek Texts and English Translations* (Grand Rapids, Michigan: Baker Books, 1999) [hereafter *The Letter of the Romans to the Corinthians*] 73.

¹² St. Clement of Rome, *The Letter of the Romans to the Corinthians*, 74.

The clear distinction between the ‘lay person’ and the hierarchy in no way signifies opposition, but only this organic connection of a body, an organism with its different functions. The Church, in fact, is not a place of confusion and anarchy where one can do what one likes all the time: each one in this organism, with an articulated structure, exercises his ministry in accordance with the vocation he has received.¹³

The context does not indicate that the term ‘layman’ in a specific ministerial role as a juridic condition, rather it merely points to an ecclesial function, a form of service, that the layman has assumed in the ceremony, alongside the priest, and was now being informed of its limits. In the middle of the second century, Tertullian in his work *On Exhortation to Chastity* expresses his conviction for an active liturgical involvement of the lay faithful:

Are not we laymen priests also? It is written, he continues: ‘He hath made us kings and priests’ (Rev. 1:6). It is the authority of the church alone which has made a distinction between clergy and laity. Where there is no college of ministers, you administer the sacrament, you baptize, you are a priest for yourself alone. And where there are three of you, there is a church, though you be only laymen. For each one lives by his own faith, and there is no respect of persons with God.¹⁴

Interpreting the text, Schaff¹⁵ opines that for Tertullian, all which the clergy considered peculiar to them, Tertullian claimed should be the common priestly privilege of all Christians, subsequently hinting at the universal priesthood of the baptised. This was probably based upon his understanding that the distinction between the ‘ordo’ and ‘plebs’ is of ecclesiastical origin, and not of divine origin. By the middle of the third century, St. Hippolytus of Rome in his work the *Traditio apostolica* which is considered it to be of “incomparable importance as a source of information about Church life and liturgy in the third century,”¹⁶ mentions lay involvement in the form of non-sacramental service at liturgical celebrations and in temporal works of charity. These were performed by non-ordained persons such as lectors, widows, confessor-martyrs, virgins, sub-deacons and healers, alongside the *episkopos*, *presbyteros*, and *diakonos*.¹⁷ The *Traditio* mentions the apostolic zeal of the ‘confessor-martyr,’ who is a lay person in the Church and who, by virtue of

¹³ Pope Benedict XVI, “catechesis, St. Clement of Rome.” *L’Osservatore Romano*, 21/1995 (2007): 11.

¹⁴ Tertullian, *On Exhortation to Chastity*, 7. Translated by Le Saint William (Westminster, Maryland: Newman Press, 1951), 54.

¹⁵ Schaff, *History of the Christian Church*, 82-84.

¹⁶ G. Cuming, *Hippolytus A Text for Students* (Cambridge: Grove Books, 1976), 5.

¹⁷ Hippolytus of Rome, “Traditio Apostolica,” in *Ministry*. Joseph Lienhard, ed. (Wilmington, Delaware: Michael Glazier Inc., 1984), 42.

his arrest and death on account of the faith, could be raised to the honors of the diaconate or presbyterate, without any imposition of hands, but merely on the basis of his life testimony and sacrifice.¹⁸ The work also possesses the earliest documentary evidence on the sacrament of confirmation.¹⁹ Origen who lived in the similar period as Tertullian and Hippolytus²⁰ was - prior to his ordination - an active and zealous lay preacher at prayer services like the *lectio divina*, and at other non-liturgical ceremonies.²¹ The bishops of Jerusalem and Caesarea permitted him to expound the Bible to their congregations and to the clergy. The practice of laypersons preaching to the clergy however ended after the fourth general council at Carthage in 398, where it was decreed that "*Laicus praesentibus clericis nisi ipsis jubentibus, docere non audeat.*"²² For Origen, there was no ontological distinction between the priesthood of the ordained and that of all the baptised. In the words of Pope Benedict XVI, Origen taught and spoke about "the common priesthood of the faithful."²³ Origen also encouraged lay involvement in the healing ministry of the sick. In his teachings, he encouraged this spiritual work of mercy even if "it is uneducated people who do this kind of work."²⁴

Around the same period in the third century, St. Cyprian, the bishop of Carthage gave the consultative role of the non-ordained valued much needed significance. He encouraged the role and participation of the laity in specific ecclesial matters, including their say in the election of their bishops. His positive attitude concerning the apostolate of laypersons influenced his attitude to even accord the laity some role in temporal administration. This was evident in his pastoral administrative style of maintaining a respectful

¹⁸ Hippolytus of Rome, "The Apostolic Tradition," in *Sacraments and Worship*. P. Palmer, ed (Westminster: Newman, 1955), 46: "But a confessor, if he was in chains for the Lord, shall not have hands laid on him for the diaconate or the presbyterate, for he has the honor of the presbyterate by his confession. But if he is appointed bishop, hands shall be laid on him." Also see Donald Neville, "The Role of 'Confessor' in the Ministry of the Early Church." *Consensus* 20/1 (1994): 30-32.

¹⁹ *Ibid.*, 8.

²⁰ Tertullian c. 155-250 a.d; Hippolytus c. 170-245 a.d and Origen c. 180-255 a.d.

²¹ Benedict XVI, "catechesis, Origen of Alexandria (2)," *L'Osservatore Romano*, 18/1992 (2007): 12.

²² Schaff, *History of the Christian Church*, footnote 145: "There [in Caesarea] he [Origen] was also requested by the bishops to expound the sacred Scriptures publicly in the church, although he had not yet obtained the priesthood by the imposition of hands. It is true this was made the ground of a charge against him by Demetrius, bishop of Alexandria; but the charge was that Origen had preached "in the presence of bishops," not that he had preached as a layman. And the bishops of Jerusalem and Caesarea adduced several examples of holy bishops inviting capable laymen to preach to the people." (*Ibid.*, footnote 147). "At the same time Pope Leo I. (Ep 92 and 93) forbade lay preaching in the interest of ecclesiastical order. Charlemagne enacted a law that "a layman ought not to recite a lesson in church, nor to say the Hallelujah but only the Psalm or responses without the Hallelujah."

²³ Benedict XVI, "catechesis, Origen of Alexandria (2)," *L'Osservatore Romano*, (2007).

²⁴ S. Neill, and H.R. Weber, ed. *The Layman in Christian History* (Philadelphia: The Westminster Press, 1963) [hereafter *The Layman in Christian History*] 26.

and close relationship with the presbyters, deacons and the people and seeking their advice on several issues.²⁵

The Fourth Century to the Middle Ages

With the Edict of Milan in the year 313, the perception of the valuable capacities of the lay activity and their scope in ecclesial matters received an impetus. As a layperson himself, Emperor Constantine was actively involved in ecclesial matters. For instance, he convoked the Council of Nicaea, and presided over it.²⁶ In fact, the role of emperors - all of them laymen - in convoking future councils is well known.²⁷ During the fourth century, many laypersons occupied senior ecclesiastical positions in the Roman curia including papal envoys in the imperial offices of Constantinople, Alexandria, Antioch, and Milan-Ravenna.²⁸ Furthermore, the lay faithful were encouraged to educate themselves and contribute their knowledge and expertise to ecclesial matters. However, with education, the lay person was still not allowed to proclaim the Word without permission, as is evident from a fifth century letter that Gratian cites, which states that no one, whether monk or layman, was to preach without permission.²⁹ Ironically, those who could ill-afford an education from the vast majority of the believers, continued to remain uneducated.³⁰ Nevertheless, lay persons were encouraged to exercise spiritual practices of piety. They were invited by the clergy to provide manual care of church property, collecting of offerings and the presentation of the communion elements during liturgical ceremonies before consecration.³¹

²⁵ Ibid., 88: "Cyprian speaks of a 'conference held with bishops, presbyters, deacons, confessors and also with laymen who stood firm' (in persecution), Ep. 30, ad Rom."

²⁶ K. Baus, "Inner Life of the Church Between Nicea and Chalcedon," in *History of the Church*. Hubert Jedin and John Dolan ed. Volume II (London: Burns and Oates, 1980), 334.

²⁷ K. Osborne, *Orders and Ministry* (Maryknoll, New York: Orbis, 2006) [hereafter *Orders and Ministry*] 185. Emperor Theodosius I convoked the first Council of Constantinople, emperor Theodosius II, convoked the Council of Ephesus, and the emperor Marcian convoked the Council of Chalcedon. Emperor Justinian I convoked the Second Council of Constantinople, and emperor Constantine IV convoked the Third Council of Constantinople

²⁸ H. Anameje, *The Laity as Participants in the Mission of the Church: A Theological Reflection in the Light of the Ecclesiology of Vatican II with Particular Reference to the Church in Southeast Nigeria*. (Indiana: Bloomington Press, 2017, Kindle edition).

²⁹ From a fifth century letter (453) of Pope Leo to the Bishop of Cyprus. [...] praeter Domini sacerdotes nullus audeat praedicare sive monachus sive laicus ille sit, qui cuiuslibet scientiae nomine gloriatur." A gloss added "[...] praedicare ponitur pro 'legere' - similiter laici praedicant." Quoted in A. Sigur, "Lay Co-operation with the Magisterium." *The Jurist* 13 (1953) [hereafter "Lay Co-operation with the Magisterium"] 271. Ibid., 272. The author mentions that Gratian also recorded a canon (29) of the IV Council of Carthage (398) forbidding women, however learned or holy, to teach in any gathering of men, and denying laymen in general the right to speak before clerics unless they expressly request it.

³⁰ S. Neill and H-R., Weber, ed. *The Layman in Christian History*, 14.

³¹ Osborne, *Orders and Ministry*, 187. Also see S. Neill and H-R. Weber, ed., *The Layman in*

The practice continued until the election of Pope Gregory VII in the sixth century when all lay involvement in ecclesiastical matters were ceased in his attempt to rid the Church of the problems of simony, lay investiture, and nicolaitism.³² During the pontifical reign, it became the right and duty of the local bishop to impose his decisions on the congregation, the lay faithful whose duty it was to obey, whatever their status or profession.³³ But the activity of the laity in the exercise of the spiritual practice of piety was never discouraged. The Pontiff promoted lay involvement in popular piety through the organization of processions, stations and rogations which sought to involve and edify other lay persons in the faith.³⁴ They still however could not preach in non-sacramental ceremonies. In the observation of Goyret, during this period in history the status of the laity shows “a typological description of the Church [...] as consisting of two categories: the shepherds and the flock of the faithful who were subject to the first, and the faithful who continued to be understood according to the negative paradigm of not being a cleric.”³⁵

The Middle Ages to the Nineteenth Century

The advent of the middle ages witnessed the rise of the mendicant Orders. The mendicant Orders relinquished the principal of stability of ancient monasticism for missionary travel in Europe, the Middle East and North Africa. In the words of Pope Benedict XVI, the mendicants were “teachers with their words, and witnesses with their example. They encouraged a stable and profound ecclesial renewal, because

Christian History, 16: “The professionalizing of all the churchly functions concurrent with the withdrawal of the ascetics into the wilderness left little dignity in the ordinary lay status. With the cessation of persecution, the layman was not even called upon to witness to his faith, unless it be in the riots between the various Arian and the Orthodox parties. To be reduced to the indignity of receiving communion from the lay person was a common form of punishment meted out to post-Nicene bishops.”

³² Nicolaitism is the technical term for clergy who were married or otherwise lived with women in concubinage. Also see F. Kempf, “The Gregorian Reform,” in *History of the Church*. H. Jedin and J. Dolan, ed. Volume 3 (London: Burns & Oates, 1980), 426-472; S. Kuttner, “Liber Canonicus: A Note on Dictatus Papae,” *Studi gregoriani* 2 (1947): 387-401.

³³ A. Sigur, “Lay Co-operation with the Magisterium,” 273-274. The author quotes a title in Pope Gregory’s Decretals which read: “*Laici non praedicent, nec occulta conventicula faciant, nec sacerdotes reprehendant.*”

³⁴ Congregation for Divine Worship and the Discipline of the Sacraments, *Directory On Popular Piety and the Liturgy. Principles and Guidelines*, no. 27 (Mumbai: Pauline Publications, 2002), [hereafter *Directory on Popular Piety and the Liturgy*] 25. Idem, no. 29: Between the seventh and the fifteenth century, a decisive differentiation between Liturgy and popular piety began to emerge which gradually became more pronounced, ending eventually in a dualism of celebration. Parallel with the Liturgy, celebrated in Latin, a communitarian popular piety celebrated in the vernacular emerged.”

³⁵ P. Goyret, “The Decree *Apostolicam actuositatem*. The Highlights of Vatican II’s teaching on Laity,” *Annales Theologici*, 31/1 (2017) [hereafter “The Highlights of Vatican II’s teaching on Laity”] 89.

they themselves were profoundly renewed, they were in touch with the real newness: God's presence in the world.”³⁶ The growth of monasticism attracted the lay faithful. It inspired the beginning of the Third Orders which attracted many lay persons. For example, the Franciscan lay tertiaries were considered as the ‘coronation’³⁷ of the Franciscan Order, and “messengers and apostles of peace,”³⁸ “who spend themselves with zeal for their own salvation and the salvation of their brothers.”³⁹ Another important example of lay involvement in ecclesial life during this period was the *Militia Jesu Christi* a lay movement, founded by St. Dominic, with the goal of defending the faith.⁴⁰ They were praised by Pope Benedict XV as “a truly great ornament and defense to the Church.”⁴¹

The monastic movements inspired a new form with a new content to the meaning of lay activity in the Church. This ‘*novus habitus mentis*’ of lay involvement in the Church attracted and inspired many lay men and women to spread the Gospel by their simplistic lifestyle, exemplary way of life, and personal holiness. Looking back at the immense involvement of the lay faithful in the Church during this period, Pope Benedict XVI acknowledges the link between the mendicant lay spirituality and its apostolic impact on lay ecclesial involvement both individually and in the form of associations:

It is hardly surprising that many of the faithful, men and women, chose to be accompanied on their Christian journey by Franciscan or Dominican Friars, who were much sought after and esteemed spiritual directors and confessors. In this way associations of lay faithful came into being, which drew inspiration from the spirituality of St Francis and St Dominic as it was adapted to their way of living. In other words, the proposal of a ‘lay holiness’ won many people over.⁴²

During the middle ages, lay persons with the encouragement of the clergy also promoted many forms of popular piety. They were called to organize and promote theatrical performances to depict the mysteries celebrated during the liturgical year. According to the Directory on Popular Piety:

³⁶ Benedict XVI, “catechesis. The Mendicant Orders.” *L'Osservatore Romano*, 3/2128 (2010 [hereafter “Mendicant”]) 11.

³⁷ Benedict XV, encyclical, *Sacra Propediem*, January 6, 1921.” AAS 13 (1921) 34.

³⁸ Ibid., 35.

³⁹ Ibid., 37.

⁴⁰ The Military order, called the *Militia Jesu Christi* was founded in 1209. http://www.vatican.va/roman_curia/pontifical_councils/laity/documents/rc_pc_laity_doc_20051114_associazioni_en.html#MILITIA_CHRISTI.

⁴¹ Benedict XV, encyclical, *Fausto Appetente Die*, June 29, 1921.” AAS 13 (1921) 332.

⁴² Benedict XVI, “Mendicant,” 11.

The participation of the faithful was encouraged by the emergence of poetry in the vernacular which was widely used in popular piety [...] various forms of Eucharistic adoration served to compensate for the rarity with which Holy Communion was received [...] the rosary tended to substitute for the psalter [...] the pious exercises of Good Friday became a substitute for the Liturgy proper to that day [...] to the rhythm of the liturgical year: sacred or profane fair days, tridua, octaves, novenas, months devoted to particular popular devotions.⁴³

The Middle Ages also saw the blossoming of mixed confraternities comprising of clergy and the laity. These were for example the Servites, the Carmelites, the Hermits of St. Augustine, the Williamites, and the Mercedonians whose lay members - in fidelity to the charism of their founders - exercise the works of preaching, pious acts of charity, and a simple way of life.⁴⁴ They lay and mixed confraternities spread their influence across Europe promoting apostolates of penance, catechesis, and constructing foyers for spiritual retreats.⁴⁵ In France, the growth of lay confraternities would have a bearing in the French-speaking areas of Canada.⁴⁶ Additionally, as a distinct subset of monasticism and the Third Orders in the Middle Ages *was the rise of the military orders*. According to Brodman, military orders were the offshoot of monasticism onto which was grafted, military life. It consisted of laymen, clerics, and consecrated lay brothers. Its members pursued either a monastic tradition or the canonical tradition.⁴⁷ A few others such as the Teutonic Order, combined the two rules. Within this military context of lay involvement in ecclesial life, is the holy witness of St. Saint Joan of Arc who, as a lay woman consecrated in virginity, a committed mystic not in the cloister, but in the midst of the most dramatic reality

⁴³ Directory on Popular Piety and the Liturgy, 30.

⁴⁴ A. Fontbone, "Dévotion et institution: Pour une histoire cohérente des confréries en Europe occidentale (XIIe-XVIIIe siècles)." *Archives de Sciences Sociales des Religions* 170 (2015): 191-208. Pope Benedict XVI, "Church membership and Pastoral Co-responsibility," 10: "Historians answer the question as to how the success of Christianity can be explained, the ascent of a presumed Jewish sect to the religion of the Empire, by saying that it was the experience of Christian charity in particular that convinced the world. Living charity is the primary form of missionary outreach. The word proclaimed and lived becomes credible if it is incarnate in behavior that demonstrates solidarity and sharing, in deeds that show the Face of Christ as man's true Friend."

⁴⁵ B. Newsome, "French Catholics, Women, and the Home. The Founding Generation of the Jeunesse ouvrière chrétienne féminine," *Historical Reflections* 37/1 (2011): 18-24.

⁴⁶ A. Graus, "French mystic laywomen and the lay apostolate before Vatican II." *Women's History Review* 29/1 (2020): 56-73.

⁴⁷ J. Brodman, "Rule and Identity: The Case of the Military Orders." *The Catholic Historical Review*, 87/3 (2001) [hereafter "The Case of the Military Orders"] 167. S. Hayes, "Strange Bedfellows. The Rise of the Military Religious Orders in the Twelfth Century." *The Gettysburg Historical Journal* 13 (2014): 1-16.

of the Church and the world of their time... For a whole year, Joan lived with the soldiers, carrying out among them a true mission of evangelization. Many of them testified to her goodness, her courage and her extraordinary purity.⁴⁸

Worthy of mention in this context, is the Sovereign Order of Malta, one of the two juridical bodies that are still recognized and protected by the Holy See. The Sovereign Order of Malta is a lay religious military order whose members in the Middle Ages assisted wounded persons by providing them with medical assistance regardless of their ethnic origin or religion.⁴⁹ The second lay institute is the Equestrian Order of the Holy Sepulchre of Jerusalem, also called the Knights of the Holy Sepulchre with the Supreme Pontiff as its sovereign. It is the only lay institution of the Vatican State.⁵⁰ Acknowledging the apostolate of lay movements in the Church during the Middle Ages until the nineteenth century, the Pontifical Council for the Laity notes:

Even a cursory glance at the history of the Church reveals the magnitude of the work performed by lay associations at crucial moments in its existence, and the wealth of charisms generated in all ages by lay movements created for the renewal of the Christian life. The development of monasticism in the first millennium, and the emergence of the mendicant Orders in the 13th century stand as evidence of the work of the laity. In the 16th century, before and after the Council of Trent, in the wake of Church reform, a vast network of lay associations was created [...] and which were to flow into the Catholic movement of social and welfare organizations which Leo XIII did so much to encourage.⁵¹

⁴⁸ Benedict XVI, "catechesis, St. Joan of Arc." *L'Osservatore Romano*, 5/2180 (2011): 11.

⁴⁹ This 900-year history is reflected in its full name: Sovereign Military Hospitaller Order of St John of Jerusalem of Rhodes and of Malta. Since 1834 the Order of Malta's government seat has been in Rome, where it is guaranteed extraterritorial rights. <http://www.orderofmalta.int/sovereign-order-of-malta/mission/>; Also see https://www.international.gc.ca/world-monde/international_relations-relations_internationales/order_malta-ordre_malte/index.aspx?lang=e. In 2008, Canada established official relations with the Sovereign Military Hospitaller Order of St. John of Jerusalem, of Rhodes and of Malta, through an exchange of letters between Canada's Minister of Foreign Affairs and the Order's Grand Master.

⁵⁰ http://www.vatican.va/roman_curia/institutions_connected/oessh/en/subindex_en.html. Founded as *Milites Sancti Sepulchri* attached to the Augustinian Canons Regular of the Holy Sepulchre in Jerusalem, recognised in 1113 by Papal bull of Pope Paschal II and of Pope Calistus II in 1122. In 1847, the Latin Patriarchate of Jerusalem was restored by Pope Pius IX, and the chivalric order was reorganized based on legal and spiritual ties to the Holy See. From 1949, Grand Masters have been Cardinals.

⁵¹ Pontifical Council for the Laity, *International Associations of the Faithful Directory* (Vatican City: Typis Polyglottis Vaticanis, 2006), Preface.

The Twentieth Century to the Second Vatican Council

The pontificate of Pope Leo XIII contributed to the promotion of the identity and apostolate of the laity as it was later developed at the Second Vatican Council, in two principal ways. The Pontiff vigorously promoted the role of the lay faithful to spread faith and be involved to permeate and perfect temporal realities. In his encyclical *Sapientiae Christianae*,⁵² he explicitly rallied all faithful Christians to cooperate with their pastors to propagate Christian teachings and to promote catechism. He considered this form of lay apostolate as being “opportune and fruitful.” He recognized and appreciated the worth of the laity to combat and eliminate doctrinal errors, in return for the spread of “undefiled faith.”

The magisterial response to the prevalent temporal realities is evident in the social encyclical *Rerum Novarum*,⁵³ which was inspired by “scientific studies promoted by members of the laity, from the work of Catholic movements and associations, and from the Church’s practical achievements in the social field during the second half of the nineteenth century.”⁵⁴ A hundred years later, St. John Paul II attributed the social encyclical of Pope Leo XIII for “creating a lasting paradigm for the Church,”⁵⁵ and for having made the world take notice “of the Church’s right and duty”⁵⁶ concerning the temporal realities of Catholic workers, and “formulating a genuine doctrine for these situations, a *corpus* which enables her to analyze social realities, to make judgments about them and to indicate directions to be taken for the just resolution of the problems involved.”⁵⁷ In sum, Pope Leo XIII advocated the protection of the human and labor rights of the laity, inasmuch as he appreciated their teaching apostolate to spread the divine message of Christ.

His successor, Pope Pius X, continued to promote the lay apostolate in multiple ways. He encouraged lay liturgical participation in the Church. The expression ‘*actuoso participatio*’ originates with Pope Pius X. In his 1903 *motu proprio*

⁵² Leo XIII, encyclical *Sapientiae Christianae* 16, January 10, 1890. ASS 22 (1889-1890) 392.

⁵³ Leo XIII, encyclical *Rerum Novarum*, May 15, 1891. ASS 23 (1890-1891) 641-670. Several succeeding Roman Pontiffs have made the social document a point of reference with dates of publication that coincide with its anniversary: Pius XI, encyclical *Quadragesimo Anno*, May 15, 1931. AAS 23 (1931) 177-228; John XXIII, encyclical *Mater et Magistra*, May 15, 1961. AAS 53 (1961) 401-464; Paul VI, apostolic letter *Octogesima Adveniens* May 14, 1971: AAS 63 (1971) 401-441; John Paul II, encyclical *Laborem Exercens* September 14, 1981. AAS 73 (1981) 577-647. Pius XII delivered a radio message on June 1, 1941 for the fiftieth anniversary of the encyclical of Leo XIII. AAS 33 (1941) 195-205.

⁵⁴ *Centesimus Annus* 4. AAS 83 (1991) 798.

⁵⁵ *Ibid.*, 799.

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*

*Tra le sollecitudini*⁵⁸ which he considered to be a “*codex iuris sacrorum musicorum*,” the Pontiff asserted that “the foremost and indispensable fount” of true Christian spirit is “the active participation [of lay persons] in the holy mysteries and the public and solemn prayer of the Church.”⁵⁹ In the document, he also provides active ways for lay faithful to participate in liturgical music.⁶⁰ In 1905, Pope Pius X approved a decree by the Sacred Congregation of the Council for the daily reception of holy communion by “all the faithful, of whatever rank and condition of life.”⁶¹ In 1910, as a logical follow-up to the decree, the Pontiff approved the first reception of Holy Communion at the age of reason for those who were about seven years of age.⁶²

The Pontiff promoted lay involvement in the Catholic social movement which was a movement “of Catholics to deal with a problem of human society by using inspiration derived from Christian belief [...] social concerns, involvement with the poor, internal renewal within the Church and renewed attention to the Gospel message.”⁶³ In his letter of June 11, 1905, *Il fermo proposito*, he provided the title of ‘Catholic Action’⁶⁴ to identify the lay apostolate in the Church. In this way, Pope Pius X is considered to be a protagonist of group lay apostolate. His encouragement laid the foundation for lay catholic movements in the Church to take on an ecclesial personality of their own under ecclesiastical supervision.

Pope Pius XI continued the liturgical and apostolic initiatives of Pope Pius X. In his apostolic constitution *Divini cultus* on the twenty-fifth anniversary of *Tra le sollecitudini*, the Pope invited the laity to take a more active part in the liturgy, more precisely, in the singing of the Gregorian chants.⁶⁵ Secondly, the Pontiff also sought to promote individual and group lay apostolate. In the encyclical *Ubi Arcano Dei Consilio*, he informs the “faithful children of the laity that when, united with their pastors and their bishops, they participate in the works of the apostolate, both individual and social, the end purpose of which is to make Jesus Christ better

⁵⁸ Pius X, *motu proprio Tra le sollecitudini* Introduction. November 22, 1903. ASS 36 (1903) 331.

⁵⁹ Ibid.

⁶⁰ Ibid. 333.

⁶¹ Sacred Congregation of the Council, decree *De dispositionibus requisitis ad frequentem et quotidianam Communionem eucharisticam sumendam*, 1. December 22, 1905. ASS 38 (1905-1906) 404.

⁶² Sacred Congregation of the Sacraments, *Quam singulari*, August 8, 1910. AAS 2 (1910) 577-583.

⁶³ J. Moody, “Catholic Social Movement,” in *New Catholic Encyclopedia*. Volume 13 (New York: McGraw-Hill, 1974), 321. The 2002 edition of the *New Catholic Encyclopedia*, “Catholic Social Movement” does not provide a detailed treatment as is the case with the 1974 edition.

⁶⁴ Pius X, encyclical *Il Fermo Proposito*, June 11, 1905. ASS 37 (1904-1905) 761-762.

⁶⁵ Pius XI, apostolic constitution *Divini cultus*, December 20, 1928. AAS 21 (1928) 33-41.

known and better loved.”⁶⁶ In the encyclical Pius XI, *Non abbiamo bisogno*, he defines ‘Catholic Action,’ as “the participation and the collaboration of the laity with the Apostolic Hierarchy.”⁶⁷ In this classical definition, the Pontiff highlights two terms that concern lay apostolate. These are: participation and hierarchy. An in-depth study of these classical terms is beyond the scope of the work, yet these terms indicate the pre-conciliar understanding of lay apostolate in the Church.

Pope Pius XI also invited the laity to missionary co-operation with clerics in mission areas, where it was often impossible for priests to visit for the purpose of evangelization and teaching.⁶⁸ The mindset of the papal zeal to foster lay apostolate can probably be summed up in his own words:

The Church, the mystical Body of Christ, has become a monstrosity. The head is very large, but the body is shrunken. The only way that you can rebuild it is to mobilize the lay people. You must call upon the lay people to become, along with you, the witnesses of Christ.⁶⁹

Pope Pius XII was the Secretary of State for nine years, to Pope Pius XI. As Pontiff, he continued to develop the pastoral initiatives of his immediate predecessors. Pope Benedict XVI reminds us that lay apostolate was “one of his constant pastoral concerns [...] so that the ecclesial community could avail itself of all available energies and resources. For this too, the Church and the world are grateful to him.”⁷⁰ Concerning the active participation of the laity in liturgical matters, Pope Pius XII, in his 1947 encyclical ‘*Mediator Dei*’ recognized the need for “the use of the mother tongue in connection with several of the rites for the advantage of the people;”⁷¹ and for “the idea of getting the Christian people to take part more easily and more fruitfully in the Mass, to familiarize them with the Roman Missal, so that they can pray together.”⁷² The Pontiff encouraged lay participation at the ‘dialogue Mass.’⁷³ In

⁶⁶ Pius XI encyclical *Ubi Nos Arcano Dei Consilio*, 58, December 23, 1922. AAS 14 (1922) 690.

⁶⁷ Pius XI, encyclical *Non abbiamo bisogno* 5. June 29, 1931. AAS 28 (1931) 290: “non vuole né può essere se non la partecipazione e collaborazione del laicato all’Apostolato Gerarchico.”

⁶⁸ M. de la Bédoyère, *The Layman in the Church* (London: Burns and Oates, 1954), 77. In a North American and Canadian context, the Catholic Worker Movement was founded in 1933 by Dorothy Day. For more readings on the subject see D. McKanan, *The Catholic Worker after Dorothy: Practicing the Works of Mercy in a New Generation* (Collegeville, MN: Liturgical Press, 2008).

⁶⁹ A. Carter, *A Canadian Bishop’s Memoirs* (North Bay, ON: Tomiko Publications, 1994), 50-51.

⁷⁰ Benedict XVI, “Homily to commemorate the fiftieth anniversary of the death of Pope Pius XII.” *L’Osservatore Romano* 42/2065, (2008): 6.

⁷¹ Pius XII, *Mediator Dei*, 60. November 20, 1947. AAS 39 (1947) 545.

⁷² *Ibid.*, 105. AAS 39 (1947) 560.

⁷³ *Ibid.*, 106. AAS 39 (1947) 561. The liceity of the dialogue Mass was already grudgingly acknowledged in a private rescript of the Congregation for Sacred Rites on February 18, 1921; English translation, *CLD* 2: 198: “Things which are in themselves licit are sometimes not expedient, because

the encyclical *Musicae sacrae*, he encouraged mixed choirs.⁷⁴ With reference to non-liturgical lay activity, the first encyclical of Pope Pius XII in 1939, *Summi Pontificatus* reveals the attitude of the Pontiff for lay collaboration in the Church, or as he coined it “the collaboration of the laity in the apostolate of the hierarchy.”⁷⁵ The two world lay congresses in 1951 and 1957 were a direct pastoral implication of the 1939 encyclical, and his continued interest and motive for the spread and development of lay apostolate. This sentiment was voiced at the First World Congress:

The apostolate of the laity, in its proper sense, is without doubt to a large extent organized in Catholic Action and in other forms of apostolic activity approved by the Church; but, apart from these, there can be and actually are, lay apostles, those men and women who see all the good to be done and the possibilities and means of doing it; and they do it with only one desire: the winning of souls to truth and grace.⁷⁶

At the second World Congress in 1957, the Pontiff granted juridical status to the Catholic Action movement and defined it as “the official lay apostolate”⁷⁷ of the Church. For the Pontiff, the layperson and their apostolate “not only belong to the Church, of being the Church...These are the Church.”⁷⁸ At the Congress, emphasis was also laid on the essential element of lay formation and lay holiness. In sum, the impetus given to the ecclesial understanding and appreciation of lay apostolate by Pope Pius XII is visible by the nearly thirty-one references to his teachings in the decree *Apostolicam actuositatem*,⁷⁹ so as to merit being called “a precursor to the Second Vatican Council.”⁸⁰

of some difficulty, such as, for example, if such a practice should confuse and distract the one or several priests who are celebrating.”

⁷⁴ Pius XII, encyclical *Musicae sacra disciplina*, 74, December 25, 1955. *The Pope Speaks* Spring/Summer, (1956): 11: “Where it is impossible to have schools of singers or where there are not enough choir boys, it is allowed that “a group of men and women or girls, located in a place outside the sanctuary set apart for the exclusive use of this group, can sing the liturgical texts at Solemn Mass, as long as the men are completely separated from the women and girls and everything unbecoming is avoided. The Ordinary is bound in conscience in this matter.”

⁷⁵ Pius XII, encyclical *Summi Pontificatus* 89. October 20, 1939. AAS 31 (1939) 443.

⁷⁶ Pius XII, “Address to the First World Congress.” AAS 43 (1951) 787. et femmes, qui regardent le bien à faire, les possibilités et les moyens de le faire; et ils le font, uniquement soucieux de gagner des âmes à la vérité et à la grâce.”

⁷⁷ Pius XII, “Address to the Second World Congress.” AAS 49 (1957) [hereafter, “Second World Congress.”] 929: “L’Action catholique porte toujours le caractère d’un apostolat officiel des laïcs.”

⁷⁸ Pius XII, “Address to new cardinals.” AAS 38, (1946): 149.

⁷⁹ Goyret, “The Highlights Of Vatican II’s Teaching On Laity.” 94.

⁸⁰ Paul VI, “Angelus, March 10, 1974.”: “E sotto questo aspetto Noi lo possiamo considerare come un precursore del Concilio Vaticano II.” Quoted by Pope Benedict XVI, “Homily to commemorate the 50th death anniversary, of Pope Pius XII,” AAS 100 (2008) 765.

The pre-conciliar pontificate of Pope John XXII understandably did not give rise to substantive papal initiatives concerning lay apostolate or their liturgical participation. Yet worthy of mention is the 1963 encyclical *Pacem in terris* which indicates the importance of believers to actively involve themselves as a personal right and duty in temporal affairs in order to effect a thorough integration of principal spiritual values.⁸¹ On the liturgical side, the 1960 *motu proprio Rubricarum instructum* enacted into codified law the basic principles for liturgical participation which by its normative changes, reflected the magisterial mind for active lay liturgical participation.⁸²

The 1917 Pio Benedictine Code

Pope Pius X undertook the task to collect and reform all ecclesiastical laws,⁸³ at the request of the fathers of the First Vatican Council.⁸⁴ After his demise, Pope Benedict XV continued this magisterial initiative and on May 27, 1917, promulgated the Pio-Benedictine code of canon law.⁸⁵ It took effect on May 19, 1918. The canons that refer to ‘laici’ and ‘christifideles,’ in the code, do not offer any definition nor is there any explicit listing of the rights of the faithful.⁸⁶ Commenting on this fact, De Paolis states this is because the code reflects the ecclesiology of the time, where the Church was understood as a perfect society and its members divided in two groups: the clerics and the lay people.⁸⁷ This ecclesiological notion was evident in its schema

⁸¹ John XXIII, encyclical *Pacem in terris*, 150, April 11, 1963. AAS 55 (1963) 297.

⁸² John XXIII, *motu proprio Rubricarum instructum*, July 25, 1960. AAS 52 (1960) 593-595. The *motu proprio* was promulgated by the Sacred Congregation for Sacred Rites by a decree of July 26, 1960, *ibid.*, 596. The text of the full *Corpus rubricarum* appeared in AAS 52 (1960) 597-740. Also see F. McManus *Handbook for the New Rubrics* (Baltimore: Helicon Press, 1961), 8: “In general, everything in the new rubrics [...] is intended to develop sounder participation, internal and external, by the faithful and the clergy.”

⁸³ Pius X, *motu proprio Arduum sane munus*, March 19, 1904. ASS 36 (1904) 549.

⁸⁴ *Codex iuris canonici, Pii X Pontificis Maximii iussu digestus, Benedicti Papae XV auctoritate promulgatus* (Vatican City: Typis polyglottis Vaticanis, 1917); English translation E. Peters, *The 1917 Pio-Benedictine Code of Canon Law* (San Francisco, Ignatius Press, 2001) [hereafter 1917 Code] xxxii.

⁸⁵ The 1917 Code is subdivided into parts, titles and chapters. Book I (cc. 1-86). It establishes general norms. Book II ‘On Persons’ (cc. 87-725) treats clerics, religious, and laypersons. Book III ‘On Things’ deals with Sacraments (cc. 731-1153); sacred times and places (cc. 1154-1254); divine worship (cc. 1255-1321); the ecclesiastical magisterium (cc. 1322-1408); benefices (cc. 1409-1494); and ecclesiastical goods (1495-1551). Book IV ‘On Processes’ concerns the judicial system (cc. 1552-1998) and the beatification and canonization of saints (cc. 1999-2141). Book V ‘On Crimes and Penalties’ (cc. 2195-2414) lays down the penal law of the Church.

⁸⁶ ‘Laici’ in cc. 119; 166; 373 §3; 682; 684; 948; 1263; 1342; 1521 §2; 1592; 1931; 1933, §3; ‘christifideles’ in cc. 87; 682; 1273; 1276; 1325 §1; 1372 §1; 1496.

⁸⁷ Velasio de Paolis, *Le norme generali. Commento al codice di diritto canonico. Libro primo* (Rome: Urbaniana University Press, 2008), 426: “Il Codice del 1917 vedeva i laici alla luce proprio

De Ecclesia that had been prepared, but not acted on, at the First Vatican Council.⁸⁸ Forty canons (cc. 682-725) expressly dealt with lay persons though only from the point of view of the religious societies they could form or join, such as the Third orders or confraternities. Furthermore, canons 108 and 118 explicitly restricted the exercise of the power of jurisdiction only to clerics.⁸⁹ It totally excluded the laity from the power of governance. Beal summing up the pro-cleric attitude innate in the code and in the prevalent ecclesiastical perspective of the time states:

All public ecclesiastical functions, which in virtue of the common canon law can be conferred on lay people are to be considered functions entailing mere ministry or mere administration, and consequently that acts posited in virtue of such a function are to be considered according to the mind of the legislator as non-jurisdictional, not only if *de facto* they are exercised by lay people, but even if they are exercised by clerics.⁹⁰

This section will focus on a brief analysis of cc. 87, 107 and 682 due to their association to the identity of the laity and their ecclesial activity. At the same time, it is worth noting that despite a minimal juridical importance to the identity and apostolate of the laity in the code, yet, it does contain some canons which with a closer study point to the implicit rights of the laity. In the opinion of Maddineni who has made a study on the implicit and explicit rights of the lay faithful:

nel periodo in cui tale problematica era molto viva [...] la Chiesa una società perfetta e, anche se non si identifica assolutamente con la gerarchia, ha tuttavia in essa il suo più alto punto di riferimento: una Chiesa clericale.” Pius X, encyclical *Vehementer Nos* February 11, 1906. ASS 39 (1906) 8; English translation *The Papal Encyclicals*, 47-48: “It follows that the Church is essentially an unequal society, that is, a society comprising two categories of persons, the Pastors and the flock, those who occupy a rank in the different degrees of the hierarchy and the multitude of the faithful.”

⁸⁸ J. Beal, “The exercise of the power of governance by lay people: State of the question,” *The Jurist* 55 (1995) [hereafter “The Exercise of the Power of Governance”] 2.

⁸⁹ Canon 108 §1. Clerics included “all who had been devoted to divine ministries through at least first tonsure.” Canon 118 “Clerics alone can obtain power either of orders or of ecclesiastical jurisdiction and ecclesiastical benefices and pensions.”

⁹⁰ Beal, “The Exercise of the Power of Governance,” 4. According to Beal, the norms of the code wiped away some longstanding customs that had permitted the exercise of power of governance by lay people in some places. *Ibid.*, 5: “For example, for 170 years prior to the promulgation of the 1917 code, it had been customary in the Diocese of Breslau to allow lay canonists to serve as judges, assessors, and auditors in matrimonial cases and other non-penal contentious cases before ecclesiastical tribunals. The Bishop of Breslau inquired of the Congregation for the Council whether this centenary custom could continue despite canons 1574, 1575 and 1581 of the 1917 code, which reserved these tribunal roles to priests. The congregation responded that, since the functions of judge and auditor entail the exercise of jurisdiction and since ‘laymen are declared incapable of spiritual jurisdiction’ by canon 118, the code had reprobated contrary customs that permitted lay people to serve in these roles. However, the custom of allowing lay people to serve in the role of assessor, which did not involve the exercise of jurisdiction, could be tolerated.”

There are a number of implicit rights of the faithful in the 1917 Code. The faithful had the implicit right to go for the exercise of divine cult in sacred buildings dedicated for worship (c. 1161). This canon actually coined the term ‘all the Christian faithful.’ The faithful also had an implicit right to just wages and fair treatment for Church workers (c. 1524).⁹¹

The faithful also had an implicit right to spread the Word. This right can be derived from Title 20 of Book III⁹² entitled ‘De divini verbi praedicatione.’⁹³ Within the same title, chapter one entitled ‘de catechetica institutione’ presents the norms for catechetical instructions as a specific form of preaching, that occurs outside the liturgy. In order to fulfill this office, the pastor had the option of admitting clerics living in the parish territory or even, if necessary, admitting ‘piorum laicorum’ to offer catechetical instructions (c. 1333 §1).⁹⁴ With these canonical observations, one can infer that the 1917 code does admit some form of lay apostolate in the area of spreading the Word of God. The study will now briefly examine cc. 87, 107 and 682.

Canon 87

By baptism a man is constituted a person in the Church of Christ with all of the rights and duties of a Christians, unless, in what applies to rights some bar obstructs, impeding the bond of ecclesiastical communion, or there is a censure laid down by the Church.⁹⁵

The canon concerns the personhood of a baptised person. The text makes no mention of the term ‘lay.’ By baptism, one becomes a person “with all rights and duties in the Church of Christ.” By juridical inference, baptism authorizes every individual

⁹¹ S. Maddineni, *Explicit and Implicit Rights Common to all The Faithful in The Code of Canon Law*. JCD Thesis (Ottawa: St. Paul University, 2018) [hereafter *Explicit and Implicit Rights*] 50. Canon 1161: “Ecclesiae nomine intelligitur aedes sacra divino cultui dedicata eum potissimum in finem ut omnibus Christifidelibus usui sit ad divinum cultum publice exercendum.” Canon 1524: “Omnes, et praesertim clerici, religiosi ac rerum ecclesiasticarum administratores, in operum locatione debent assignare operariis honestam iustamque mercedem; curare ut iidem pietati, idoneo temporis spatio, vacent; nullo pacto eos abducere a domestica cura Partimoniaeque studio, neque plus eisdem imponere operis quam vires ferre queant neque id genus quod cum aetate sexuque dissideat.”

⁹² cc. 1327-1351.

⁹³ J. McVann, *The Canon Law on Sermon Preaching* (New York: Paulist Press, 1940) [hereafter *The Canon Law on Sermon Preaching*] 3.

⁹⁴ Canon 1329: “Proprium ac gravissimum officium pastorum praesertim animarum, est catecheticae populi christiani institutionem curare. Canon 1333 §1 “Parochus in religiosa puerorum institutione potest, imo, si legitime impeditus, debet operam adhibere clericorum, in paroeciae territorio degentium, aut etiam, si necesse sit, piorum laicorum, potissimum illorum qui in pium sodalium doctrinae christianae aliudve simile in paroecia erectum adscripti sint.”

⁹⁵ Canon 87: “Baptismate homo constituitur in Ecclesia Christi persona cum omnibus christianorum iuribus et officiis, nisi, ad iura quod attinet, obstet obex, ecclesiasticae communionis vinculum impediens, vel lata ab Ecclesia censura.”

to enjoy rights in the Church, unless the baptised individual is under ecclesiastical or penal restrictions. In brief, the principal focus of the canon is the juridical condition of the baptised, and his status as a juridical ‘person’ in the Church, with the explicit obligation to maintain a ‘bond of communion’ with the Church which according to Abbo and Hannan is a juridical effect for becoming through a valid baptism a ‘*persona in Ecclesia*.’⁹⁶ However, the canon nor the later canons in the code, mention the rights of the baptised.⁹⁷ Filling this gap, Del Portillo in his commentary on the notion of rights and duties of a baptised person in the 1917 code, provides a broad spectrum of what the layperson could have implied as his rights in the Church:

All the faithful, from the Pope to the most recently baptised, share one and the same vocation, the same faith, the same Spirit, the same grace. They all need the appropriate sacramental and spiritual aids; they must all live a full Christian life, under the same evangelical teachings; they are to have a personal life of basic piety—that of children of God, brothers and disciples of Christ - which is obligatory for them before and above any specific distinctions which may come from the diversity of ecclesial functions. They all have an active and co-responsible share in the single mission of Christ and of the Church.⁹⁸

Canon 107

By divine institution there are in the Church clerics distinct from laity, although not all clerics possess orders that are of divine institution; either of them can be religious.⁹⁹

The text of c. 107 introduces a distinction between clerics and laypersons, with the expression ‘*ex divina institutione*.’ Here the canon projects an understanding of the Church as composed of two distinct groups that are divinely ordained. Commenting on this fact, Prew-Winters notes that “the placement of the canon in the 1917 code indicates that the code is concerned with clergy and the ordering of the hierarchy, not with matters of the laity. Thus, old Canon Law defined the laity as those who are powerless and linked to the secular realm in a negative view.”¹⁰⁰

⁹⁶ J. Abbo and J. Hannan, *The Sacred Canons: A Concise Presentation of the Current Disciplinary Norms of the Church* (St. Louis: Herder Book Co., 1952) 125.

⁹⁷ Maddineni, *Explicit and Implicit Rights*, 49.

⁹⁸ A. del Portillo, *Fieles y Laicos en la Iglesia: Bases de Sus Respective Estatutos Juridicos* (Pamplona: Ediciones Universidad de Navarra, 1991), 40. [Authors’s translation].

⁹⁹ Canon 107: “*Ex divina institutione sunt in Ecclesia clerici a laicis distincti, licet non omnes clerici sint divinae institutionis; utrique autem possunt esse religiosi.*”

¹⁰⁰ A. Prew-Winters, “Who is a layperson?” *The Jurist* 47 (1987) [hereafter “Who is a layperson?”] 53.

A closer reading of c. 107, indicates a matter of the internal ordering of the Church. According to *Fornés*, from a juridical point of view, the text of the canon makes a distinction among clerics and laity on the basis of their canonical states (status), arising, not from the radical equality of persons in the Church, but from the distinct configuration of their rights and duties according to the group or class (rank, status) in which they found themselves. That is to say, this distinction is based on the juridical concept of ‘personhood,’ which at that time, prevailed in both canonical and civil doctrine.¹⁰¹ On the other hand, Wernz-Vidal interprets the bi-partite attitude of the canon as the product of the letter and spirit of the Gratian decretals, and the prevalent world view of society.¹⁰² In sum, c. 107 provides a contrastive understanding of the laity. It separates the ordained from the non-ordained and in doing so, demonstrates a lack of openness to the apostolic value of the lay person despite the juridical status of being ‘lay’ ‘persons’ capable of collaborating in the mission of the Church.

Canon 682

The laity has the right of receiving from the clergy according to the norm of ecclesiastical discipline, spiritual goods and especially that aid necessary for salvation.¹⁰³

The third part of Book Two titled ‘*De personis*’ comprises of forty-three canons (cc. 682-725), forty-one of which relate to associations of the faithful which are not exclusively on the laity, and include clerics and religious, as well.¹⁰⁴ According to Maddineni, the canon does not give “explicit recognition to the rights of all the faithful, only to the lay faithful.”¹⁰⁵ However, Kennedy considers the canon as the pivot for the protection of the rights and duties of the laity:

¹⁰¹ For more consideration of the question, see J. *Fornés*, *La noción de ‘status’ en Derecho canónico* (Pamplona: Ediciones Universidad de Navarra, 1975), 244-250.

¹⁰² F. Wernz, and P. Vidal, ed. *Ius canonicum. ad Codicis normam exactum opera* (Rome: Gregorian University, 1928), 71.

¹⁰³ Canon 682: “Laici ius habent recipiendi a clero, ad normam ecclesiasticae disciplinae, spiritualia bona et potissimum adiumenta ad salutem necessaria.”

¹⁰⁴ G. dalla Torre, *Considerazioni preliminari sui laici in diritto canonico* (Modena: Mucchi Editore) 33. In his opinion, Book II of the 1917 code does devote its third part (canons 682-725) to lay people, but nonetheless offers minimal information concerning description or definition.

¹⁰⁵ Maddineni, *Explicit and Implicit Rights*, 49. P. Lombardia, “Los laicos en el Derecho de la Iglesia.” *Ius Canonicum* 6 (1966): 341 “In the 1983 code, the confusion existing between lay and faithful lead to the negative concept of lay person (not cleric nor religious) and to attribute to the laity what belong to all faithful as did c. 682 of the 1917 code, which proclaimed the right to receive spiritual goods for the laity.”

[...] much of the structure of the [1917] Code and very many of the individual canons are precisely ordered to the implementation of canon 682. The large sections of the Code devoted to delineating the duties and obligations of bishops, pastors, and clerics to whom has been entrusted the care of souls, are for the most part specifications of the laity's right to receive from the clergy the Church's spiritual goods. Though phrased in the language of obligation, these laws are in fact protective of the co-relative rights of the laity in whose behalf the obligations are placed on clerics.¹⁰⁶

Canon 682 establishes the right of the laity to receive spiritual goods from clerics. The canon protects their Christian and spiritual rights. It speaks of an entitlement 'debet,' and of 'spiritualia bona' that a layperson *must* receive from the priest. It therefore implies that a lay person with apostolic zeal could encourage, invite, and lead another lay person to exercise his rights to receive spiritual goods. The pastoral strength of the canon in the area of lay apostolate is mentioned by Pope Pius XII at the Second World Congress for Lay Apostolate:

The layman is entitled to receive from the priest all those spiritual benefits which are necessary if he is to achieve the salvation of his soul and attain Christian perfection. (Canons 87 and 682). [...] the meaning and aim of the Church's whole life is involved here, as well as the responsibility before God of the priest and the lay man.¹⁰⁷

From a liturgical perspective, the 1917 Code did address the liturgical participation of the laity in terms of their reception of Holy Communion; suitability of Mass timings to encourage lay attendance and participation, and the Eucharistic fast for the sick.¹⁰⁸

Pastoral Conclusions

The term 'laity' does not appear either in the Old Testament nor in the New Testament. It is the 'baptised' or the 'believers' who contribute in their own way to spread the gospel. The pre-conciliar survey of the history of lay apostolate indicates that in the early Church, the term 'laity' was commonly understood as a category pertaining to the non-ordained baptised faithful. Until the end of the second century there existed no dichotomy between the ministers of the altar and the people, given that the ministerial priesthood was not viewed as a contrast to the universal

¹⁰⁶ R. Kennedy, "Canonical Tradition and Christian Rights," in *The Case for Freedom: Human Rights in the Church*. James Coriden ed. (Washington DC: Corpus Press, 1969), 96.

¹⁰⁷ Pius XII, "Second World Congress," 926.

¹⁰⁸ J. Huels, "Participation by the faithful in the liturgy-1903-1962." *The Jurist* 48 (1988): 615-616.

priesthood. In the third century, the distinction of the ordained and the non-ordained was a factor that both limited and marginalized lay involvement in the mission of the Church such that in the Constantinian era and immediately after, the power of education became the exclusive point of reference for the Church and the term 'cleric' became synonymous with 'literate.' As Brooke notes: The laity were excluded from greater participation in the life of the Church [...], it took away from the layman all initiative and almost every opportunity for the Church's service.¹⁰⁹ The apostolate of the laity received a tremendous impetus with the beginning of monasticism and the Third Orders as is summed up by Pope John Paul II "The laity's participation in the growth of Christ's kingdom is a historical reality in every age - from the gathering in apostolic times; to the Christian communities of the early centuries; to the groups, movements, unions, fraternities and societies of the Middle Ages [...]."¹¹⁰ The 1917 Code despite its minimal recognition for lay apostolate, entails no negative connotation of the laity, but a positive indication of their spiritual rights, as well as of their juridical status of being 'persons' in the Church. This aspect must be considered significant in the context of an ecclesiological notion of an 'unequal ecclesial society,' when clerical powers were pre-dominant. In the opinion of Congar, the code was not the place to look for adequate answers to questions about the laity. This is because in "in its origins, history and very nature, canon law is principally a systematizing of sacramental *cultus*, and it is normal that it should be only a code for clerics and sacred ministers."¹¹¹

The magisterial encouragement for lay apostolate further evolved in the twentieth century. Lay persons were invited to more liturgical participation, and there were also indications of the need for lay formation. On lay apostolate and of academic note, "the transitions in vocabulary from Catholic Movement to Catholic Action and Lay Apostolate marked the three phases in the apostolic evolution leading up to the council."¹¹² 'Catholic Action' was now a juridical entity, whose structure was not only diocesan, but also national and international,¹¹³ and lay groups were encouraged to organize and promote the apostolate with hierarchical supervision. The laity did exercise some power of governance, albeit prior to the 1917 code. Christian emperors convoked the ecumenical councils and enacted laws

¹⁰⁹ C. Brooke, et al., ed. *Church Government in the Early Ages* (Cambridge: Cambridge University Press, 2008), 113.

¹¹⁰ John Paul II "Catechesis. The laity witness to Christ in the world." *L'Osservatore Romano*, 12/1333 (1994): 11.

¹¹¹ Congar, *Lay People in the Church*, xxvi.

¹¹² Pontifical Council for the Laity, *International Associations of The Faithful Directory*, Vatican City: Typis Polyglottis Vaticanis, 2006.

¹¹³ J. Illanes, "Consejo Pontificio para los Laicos," *Ius Canonicum* 60 (1990): 495.

for the internal discipline of the Church; feudal landlords freely appointed pastors for churches located on their lands; popes granted jurisdiction to lay persons for various ecclesial tasks, such as to act as their legates or to serve as senior officials in the Roman Curia to the extent, even if a lay person was elected pope.¹¹⁴ In the words of Pius XII:

Not all Christians are called to engage in the lay apostolate in its strict sense. We have already said that the bishop should be able to choose co-workers from those whom he finds willing and able, for willingness alone is not sufficient. Lay apostles will, therefore, always form an elite, not because they stand apart from others but, quite the contrary, because they are capable of attracting and influencing others. We thus understand that they must possess, besides the apostolic spirit which animates them, a quality without which they would do more harm than good tact.¹¹⁵

These instances demonstrate a form of evolution in the exercise of the power of governance by the laity in the Church. In sum, the section has identified the gradual and steady pre-conciliar evolution of the worth and value of the understanding of lay apostolate in the church. These also include the involvement of lay military personnel in the apostolate, in times of conflict. With this background, it is logical to conclude the extraordinary apostolate of lay men and women in pre-conciliar times in the mission of the church:

During the barbarian invasions, we see men and women of royal rank and even workmen and valiant Christian women of the common people using every endeavor to convert their fellow citizens to the religion of Jesus Christ and to fashion their morals according to its pattern, so as to safeguard both religion and the state from approaching danger. Tradition tells us that when our immortal Predecessor, Leo the Great, courageously opposed Attila, when he invaded Italy, two Roman consuls stood by his side. When formidable hordes of Huns were besieging Paris, the holy virgin Genevieve who was given to a life of continuous prayer and austere penance, cared for the souls and bodies of her fellow citizens with wondrous charity. Theodolinda, Queen of the Lombards, zealously summoned her people

¹¹⁴ A. Stickler, "De potestatis sacrae natura et origine." *Periodica* 71 (1982): 73-74. Stickler gives several specific examples of the exercise of episcopal or papal jurisdiction by the non-ordained and insists that the teaching about their possession of authority before their ordination was quite clear. It had been the official teaching that should a lay person be elected pope he would possess the full authority of the papal office, even the charism of infallibility, immediately upon acceptance, before he was ordained. Similarly, a layman appointed, or elected bishop received the full power of jurisdiction from the time of taking possession of the diocese, even if it was prior to his ordination. See Pius XII, "Quelques aspects fondamentaux de l'apostolat des laïcs." AAS 49 (1957) 924; Idem, apostolic constitution *Vacantis Apostolicae Sedis* 101, December 8, 1945. AAS 38 (1946) 65-99.

¹¹⁵ Pius XII, "Address to the Second World Lay Congress." AAS 49 (1957) 931.

to embrace the Christian religion. King Reccaredus of Spain endeavored to rescue his people from the Arian heresy and to lead them back to the true Faith. In France, there were not only bishops [...] but queens also can be found during that period who taught the truths of Christianity to the untutored masses and who gave food and shelter and renewed strength to the sick, the hungry, and the victims of every human misfortune. For example, Clotilda so influenced Clovis in favor of the Catholic religion that she had the great joy of bringing him into the true Church. Radegunda and Bathilda cared for the sick with supreme charity and even restored lepers to health. In England, Queen Bertha welcomed St. Augustine when he came to evangelize that nation and earnestly exhorted her husband Ethelbert to accept the teachings of the Gospel [...]. In Germany, we witness the admirable spectacle of St. Boniface and his companions traversing those regions in their apostolic journeys and making them fruitful by their generous labors. The sons and daughters of that valiant and noble land felt inspired to offer their efficient collaboration to monks, priests and Bishops in order that the light of the Gospel might be daily more widely diffused [...]. Thus in every age, thanks to the tireless labors of the clergy and also to the co-operation of the laity, the Catholic Church has not only advanced its spiritual kingdom, but has also led nations to increased social prosperity. Everybody knows the social reforms of St. Elizabeth in Hungary, of St. Ferdinand in Castile and of St. Louis IX in France [...]. Nor are we unaware of the excellent merits of the guilds during the Middle Ages. In these guilds, artisans and skilled workers of both sexes were enrolled, who, notwithstanding the fact that they lived in the world, kept their eyes fixed upon the sublime ideal of evangelical perfection. Not only did they eagerly pursue this ideal, but together with the clergy they exerted every effort to bring all others to do the same.”¹¹⁶ **PS**

References

- Abbo, J., and Hannan, J. *The Sacred Canons: A Concise Presentation of the Current Disciplinary Norms of the Church*. St. Louis: Herder Book Co., 1952.
- Balz, H. and Schneider, Gerhard. ed. Translated by William B. Eerdmans, *Exegetical Dictionary of the New Testament*, Volume 2. Grand Rapids: William B. Eerdmans, 1991.
- Beal, John. “The exercise of the power of governance by lay people: State of the question.” *The Jurist* 55 (1995): 1-92.

¹¹⁶ Pius XII, encyclical *Evangelii Praecones*, 34-36, June 2, 1951. AAS 43 (1951) 511-513.

Benedict XV, encyclical, *Fausto Appetente Die*, June 29, 1921." AAS 13 (1921) 329-335.

_____. encyclical, *Sacra Propediem*, January 6, 1921." AAS 13 (1921): 33-41.

Benedict XVI, "Catechesis, Origen of Alexandria (2)." *L'Osservatore Romano* 18 (2007): 12.

_____. "Catechesis, St. Joan of Arc." *L'Osservatore Romano*, 5 (2011): 11.

_____. "Catechesis. The Mendicant Orders." *L'Osservatore Romano*, 3 (2010):11.

_____. "Homily to commemorate the 50th death anniversary, of Pope Pius XII." AAS 100 (2008) 765.

_____. "Homily to commemorate the fiftieth anniversary of the death of Pope Pius XII."

L'Osservatore Romano 42 (2008): 6.

_____. "Catechesis, St. Clement of Rome." *L'Osservatore Romano* 21 (2007): 11.

Brodman, J. "Rule and Identity: The Case of the Military Orders." *The Catholic Historical Review* 87/3 (2001). 383-400.

Bucy, Ralph. *The New Laity: Between Church and World*. Waco, Texas: Word Books, 1978.

Carter, C. A Canadian Bishop's Memoirs. North Bay, ON: Tomiko Publications, 1994.

Codex iuris canonici, Pii X Pontificis Maximii iussu digestus, Benedicti Papae XV auctoritate promulgatus. Vatican City: Typis polyglottis Vaticanis, 1917.

Coriden, James. ed. *Case for Freedom: Human Rights in the Church*. Washington DC: Corpus Press, 1969.

Cuming, G. *Hippolytus A Text for Students*. Cambridge: Grove Books, 1976.

Dalla Torre, Giuseppe. *Considerazioni preliminari sui laici in diritto canonico*. Modena: Mucchi Editore, 1983.

- De la Bédoyère, M. *The Layman in the Church*. London: Burns and Oates, 1954.
- De Paolis, Velasio. *Le norme generali. Commento al codice di diritto canonico*. Libro primo. Rome: Urbaniana University Press, 2008.
- Del Portillo, Alvaro. *Fieles y laicos en la Iglesia*. Universidad de Navarra: Pamplona, 1991.
- _____. *Fieles y Laicos en la Iglesia: Bases de Sus Respectivos Estatutos Juridicos*. Pamplona: Ediciones Universidad de Navarra, 1991.
- Dicastery for Laity, Family and Life. Francis, *motu proprio Sedula Mater*, August 15, 2016. AAS 108 (2016): 963-967.
- Faivre, A. *The Emergence of the Laity in the Early Church*. Translated by David Smith. Mahwah, N.J.: Paulist Press, 1990.
- Flameygh, E. "The laity in history." *EAPR* 23 (1986): 231-250.
- Fontbone, A. "Dévotion et institution: Pour une histoire cohérente des confréries en Europe occidentale (XIIe-XVIIIe siècles)." *Archives de Sciences Sociales des Religions* 170 (2015): 191-208.
- Fornés, J. *La noción de 'status' en Derecho canónico*. Pamplona: Ediciones Universidad de Navarra, 1975.
- Goyret, Phillip. "The Decree *Apostolicam actuositatem*. The Highlights of Vatican II's teaching on Laity." *Annales Theologici* 31/1 (2017): 87-99.
- Hagstrom, Anne. *The Concepts of the Vocation and Mission of the Laity*. San Francisco: Catholic Press, 1994.
- Hayes, S. "Strange Bedfellows. The Rise of the Military Religious Orders in the Twelfth Century." *The Gettysburg Historical Journal* 13 (2014): 1-16.
- Holmes, Michael. ed. *The Apostolic Fathers. Greek Texts and English Translations*. Grand Rapids, Michigan: Baker Books, 1999.
- Huels, John. "Participation by the faithful in the liturgy-1903-1962." *The Jurist* 48 (1988): 615-616.
- Jedin H. and Dolan, J. ed. *History of the Church*. Volume 3. London: Burns & Oates, 1980.

John Paul II. "Address to the Bishops of the Church in the States of Minnesota, North Dakota and South Dakota (U.S.A)." *CLD* 14: 69.

_____. "Catechesis. The Church is the New People of God." *L'Osservatore Romano* 14 (1991): 11.



