



The Catholic Church, Temporal Goods and Church-State Relations

PART TWO

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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 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.

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

III. The Foundations of the Catholic Church's Right to Temporal Goods

This part of our study presents the essential foundations of the Catholic Church's right to temporal goods in pursuit of its proper objectives. The discussion on the foundations of the Church's particular right focuses on two fundamental arguments: divine positive law and natural law.¹

A. Divine Positive Law and Natural Law

To begin with, this part of our study discusses the meaning of divine positive law and of (divine) natural law to understand better both the divine positive and natural law arguments of the right of the Church concerning temporal goods as stipulated in c. 1254 § 1 of the 1983 Code.

Canon law or the law of the Church is not a system of rules whose only title of validity lies in the will of the ecclesiastical legislator. On the contrary, its prescriptions are based on a higher foundation: the divine law, that is, a set of legal factors all of which have God as their author, to which the elements of human canon law are subordinated.² This divine law "is to be considered as the substratum of (legal) truth that underlies positive canon law, and as the fundamental legal orientation for the life of a Christian and the Church."³ Within divine law two aspects need to be

¹ C. Begus affirms that, aside from divine positive law and natural law, the historical praxis serves also as a foundation of the right of the Church to temporal goods: "Il principio basilare per giustificare la proprietà di beni da parte della Chiesa è quello che lega strettamente diritto di proprietà e fini previsti al c. 1254 § 2, per il raggiungimento dei quali si deve necessariamente ricorrere a mezzi temporali. Attorno a questo principio ruotano tutte le teorie che legittimano il diritto ai beni in base a tre fondamenti: a) di diritto divino positivo o teologico; b) di diritto naturale; c) di prassi storica." Cf. C. Begus, *Diritto Patrimoniale Canonico*, Lateran University Press, Città del Vaticano 2007, pp. 27 – 29.

² Cf. D. Cenalmor – J. Miras, *El Derecho de la Iglesia: Curso básico de Derecho canónico*, EUNSA, Pamplona 2004, p. 51.

³ H. Pree, "Ius Divinum between Normative Text, Normative Content, and Material Value Structure", in *The Jurist*, Vol. 56, 1996, p. 50. E. Molano says: "Para la doctrina, el Derecho Divino suele ser considerado como fundamento del Derecho Canónico y como Norma Fundamental de toda la normativa eclesiástica." E. Molano, "Precisiones en torno al *Ius Divinum*", in *Ius Canonicum*, Vol. 22,

distinguished: (divine) natural law and divine positive law.⁴ H. Pree affirms this distinction when he says that the norms of ecclesiastical law based on divine law are given priority over merely ecclesiastical law:

“In the course of the history of ecclesiastical law, its fundamental points of orientation have solidified and concretized themselves in the institution of the so called *ius divinum*. Norms of ecclesiastical law whose content is seen as founded in revelation (*ius divinum positivum*), and those norms which have the highest principles of natural law (from the order of creation) as their content (*ius divinum naturale*) have been placed over against the *ius mere ecclesiasticum*. They have been given priority over, and superimposed on merely ecclesiastical law; they are considered valid irrespective of time and space, and as indispensable.”⁵

According to St. Thomas, natural law is the rational creature’s participation in the eternal law, written by God in the heart of man (cf. Rm. 2:15), which refers to the relations of justice.⁶ Besides, natural law is a set of legal factors inherent in human nature operating in the natural order.⁷ It is a law which corresponds to the human nature and it exists and is expressed in a human way. It is a rational expression of the exigencies of the nature of man.⁸ According to J. Hervada, “the prescriptions or precepts of Natural Law correspond to the demands of human nature. Reason grasps those demands and presents them as *obligatory prescriptions or statements*, that is, in the form of law.”⁹

1982, p. 783. P.J. Viladrich asserts that the divine law serves as the criterion of the authenticity of the law of the Church: “Con diversas expresiones terminológicas y desde distintas perspectivas conceptuales, la canonística coincide en el enunciado de las funciones del *ius divinum*: es “*fons primarius iuris quo Ecclesia catholica regitur*”, es base y fundamento del Derecho humano, “*iure divino positivo Ecclesia est instituta et in essentialibus ordinata*”, es principio o núcleo informador de todo el ordenamiento canónico (de la legislación, interpretación y aplicación), es cláusula límite, “*omnis potestas legilativa in Ecclesia in iure divino fundatur eodemque iure circumscribitur*”, es prueba de su carácter específicamente canónico o piedra de toque de la eclesialidad del entero sistema canónico, etc.” P.J. Viladrich, “El *ius divinum* como criterio de autenticidad en el Derecho de la Iglesia”, in *Ius Canonicum*, Vol. 16, 1976, p. 34.

⁴ Cf. D. Cenalmor – J. Miras, Loc. cit. This distinction is reflected in c. 27 § 1 of the 1917 Code and in c. 199, 1° of the 1983 Code. E. Molano affirms that this classic distinction has its roots from St. Thomas (cf. *Summa Theologica*, II – II, q. 57, a. 2). Cf. E. Molano, Ibid., p. 788.

⁵ H. Pree, Op. cit., pp. 48 – 49.

⁶ Cf. St. Thomas, *Summa Theologica*, I – II, q. 94.

⁷ Cf. D. Cenalmor – J. Miras, Op. cit., p. 51.

⁸ Cf. R. Pizzorni, *Diritto Naturale e Diritto Positivo in S. Tommaso d’Aquino*, Edizioni Studio Domenicano, Bologna 1999, p. 37; A. D. Busso, “El derecho natural”, in *Anuario Argentino de Derecho Canónico*, Vol. 6, 1999, pp. 17 – 18.

⁹ J. Hervada, *Critical Introduction to Natural Law*, Wilson & Lafleur Ltée, Montréal, Canada 2006, pp. 137 – 138.

From the perspective of St. Thomas, natural law is not something separate from divine law or God's plan for humanity. It is inherent in human nature written by God in the heart of man. Through natural law, man participates in God's divine wisdom which directs all actions and movements.¹⁰ Besides, natural law is part of the divine law because God is the creator of nature (and of human nature) and the author of the natural order.¹¹

Some prescriptions of canon law are based on natural law. An example of this is c. 220 of the New Code which says that "no one is permitted to harm illegitimately the good reputation which a person possesses nor to injure the right of any person to protect his or her own privacy." According to St. Thomas, a good reputation is the most precious temporal asset that a person possesses, the unlawful injury of which can be considered more serious than theft itself, since it is greater than material wealth, being closer to spiritual riches.¹² In fact, this particular right of all Christian faithful based on natural law is canonically protected to avoid the danger of infamy, to guarantee the right to defend oneself from slanderous allegations, to protect one's privacy, etc. (cf. c. 1361 § 3, c. 1455, c. 1548 § 2, 2.º, c. 1717 § 2 and c. 642). Besides, c. 1390 typifies the injury of reputation as a delict which obliges the calumniator to make suitable reparation.¹³

Although natural law and divine positive law are considered as aspects of divine law, however, in the Church, divine law is primarily understood as divine positive law promulgated through Revelation and is not derived from human nature.¹⁴ Its prescriptions do not correspond directly to the demands of human nature. Human reason alone cannot grasp such prescriptions. The precepts of divine positive law rest on the foundation of divine will.

D. Cenalmor and J. Miras define divine positive law as the dimension of justice of Christ's plan for the Church. It includes a set of rules, principles of order and other legal elements that are inherent in the people of God and in man's participation in the divine life. Divine positive law can be known only through Revelation, whose sources are the Sacred Scripture and Tradition safeguarded, presented and interpreted by the Church's Magisterium.¹⁵

¹⁰ Cf. St. Thomas, *Summa Theologica*, I – II, q. 93, a. 1; Pontifical Council for Justice and Peace, *Compendium of the Social Doctrine of the Church*, Libreria Editrice Vaticana, Città del Vaticano 2004, nn. 140 – 142.

¹¹ Cf. E. Molano, *Op. cit.*, p. 789.

¹² Cf. St. Thomas, *Summa Theologica* II – II, q. 73.

¹³ Cf. D. Cenalmor – J. Miras, *Op. cit.*, p. 52.

¹⁴ Cf. *Ibid.*, p. 52.

¹⁵ Cf. *Ibid.*, pp. 52 – 53.

But divine positive law and natural law are originally established in ways unrelated to the formal legal culture. The terms divine positive law and natural law are used not in a technical sense of formal law. For complete efficiency they need to be implemented through the proper techniques of law. They must be formally integrated into the juridical system and must be translated into rules and structures within the juridical system. Only then they acquire full legal force.¹⁶ In fact, c. 7 stipulates that “a law is established when it is promulgated.”¹⁷

B. Argument from Divine Positive Law

1. *The Denial of the Church's Divine Right to Temporal Goods*

History demonstrates the fact that there have been people who have claimed that Christ ordered his Church not to acquire temporal goods. In his *Adversus Haereses*, Epiphanius recorded that there were heretics of the second and third centuries who asserted that the Gospels prohibited the Church to possess property.¹⁸

Arnold of Brescia, born towards the end of the eleventh century, advocated the appropriation of the property of the clergy. His position was triggered by the bitter conflicts between the bishops and the civil authorities of Brescia. These conditions prompted him to find a solution. By reflecting always on the evils which afflicted both his city and Church, he arrived at the conclusion that their main causes were the wealth of the clergy and the temporal power of the bishop. He asserted that the Church had no right whatsoever to possess temporal goods and that only the temporal ruler had the exclusive right to have all earthly possessions. Moreover, he claimed that all bishops, clerics and monks who owned earthly possessions grievously violated the precepts of the Gospel. This serious violation would possibly lead them to eternal damnation because they were not practicing the evangelical perfection.

¹⁶ Cf. Ibid., p. 53; J. Hervada, Op. cit., pp. 157 – 165; J. Calvo – Alvarez, “Iglesia y Derecho”, in AA. VV., *Manual de Derecho Canónico*, 2ª Edición, EUNSA, Pamplona 1991, pp. 34 – 36.

¹⁷ Regarding material and formal concept of law and promulgation of canonical norm, kindly confer: J. Otaduy, *Fuentes, Interpretación, Personas: Estudios de Derecho canónico*, Navarra Gráfica Ediciones, Pamplona 2002, pp. 31 – 42; J. Otaduy – E. Labandeira, “Normas y Actos Jurídicos”, in AA. VV., *Manual de Derecho Canónico*, 2ª Edición, EUNSA, Pamplona 1991, pp. 283 – 287. J. Hervada and P. Lombardía affirm that “the principles and requirements of divine law in the Church act as shaping factors, as limits on the activity of the ecclesiastic hierarchy and as a necessary basis for human law; but they cannot have a greater juridical effect until they are developed into real norms because they are general and non-specific.” J. Hervada – P. Lombardía, “Prologue I: Introduction to Canon Law”, in AA. VV., *Exegetical Commentary on the Code of Canon Law*, Vol. 1, Wilson & Lafleur Ltée, Montréal 2004, p. 17.

¹⁸ Cf. J. Goodwine, *The Right of the Church to Acquire Temporal Goods*, The Catholic University of America Press, Washington, D.C. 1941, p. 13.

Arnold said that all temporal things belonged exclusively to the civil ruler who could not dispose of them except to the lay faithful.¹⁹ Because of this position, he was condemned by Innocent II at the Lateran Council in 1139. Silence and exile were the penalties imposed on him and he was forbidden to return to Brescia without the express permission of the Pope.²⁰

The Waldenses, a heretical sect which appeared in the second half of the twelfth century, taught that the ministers of the Gospel had no right to possess property. This teaching was influenced by their profession to extreme poverty a prominent feature of their own lives. They considered poverty as the only means of salvation. Besides, they viewed possession of temporal goods as an obstacle to eternal life. This particular teaching of the Waldenses was a reaction against the great grandeur and external display existing in the medieval Church. It was a practical protest against the worldly practices of some contemporary clerics. But by attacking the right of the churchmen the Waldenses indirectly attacked the right of the Church to own temporal goods.²¹ Pope Lucius included them among the heretics against whom he issued a Bull of excommunication at Verona in 1184.²²

The Albigenses, a neo-Manichaean sect that started in southern France in the twelfth and thirteenth centuries, taught that ownership of property was sinful. This particular teaching was a “logical deduction from their fundamental principle that all matter is evil.”²³ They claimed that the Church founded by Christ, which at the beginning rigorously followed his example of poverty, became corrupt when it accepted the donation of Constantine. They said that Pope Sylvester I (314–335), who was the Roman Pontiff during the era of Constantine the Great, violated the precepts of the Lord and can justly be called Anti-Christ when he accepted the gifts and benefits from the Emperor. During Sylvester’s pontificate there were great churches built in Rome by Constantine. Because of this new public position of the Church, the Albigenses advocated the complete suppression of all ecclesiastical property. They said that Church ownership of property could not be justified since it was directly prohibited by Christ.²⁴

The Fraticelli, a name given to various heretical sects that appeared in the fourteenth and fifteenth centuries principally in Italy, taught that Christ and the Apostles did not possess property and, consequently, the Church also could not own

¹⁹ Cf. Ibid.

²⁰ Cf. <http://www.newadvent.org/cathen/01747b.htm>.

²¹ Cf. J. Goodwine, Op. cit., pp. 13 – 14.

²² Cf. <http://www.newadvent.org/cathen/15527b.htm>.

²³ J. Goodwine, Op. cit., p. 14.

²⁴ Cf. Ibid.

property. In fact, these groups separated from the Franciscan order on account of the disputes concerning poverty.²⁵ According to them, the true Church of Christ should follow the example of Christ and the Apostles who owned nothing.²⁶

The aforementioned doctrinal errors have this in common: “They argued that the Catholic Church could not be the true Church of Christ because she owned temporal possessions, and the true Church of Christ had no right to own temporal possessions.”²⁷

John Wycliffe (1324–1384) had set himself in open opposition to the property of the Church.²⁸ He opposed ownership by clerics for two reasons: their personal sins and their obligation to practice poverty. Either one of these reasons justifies the appropriation of the property of churchmen. Besides, he claimed that because of the sins of churchmen the Church could not own property. His followers, the Lollards, applied his teachings and advocated that temporal lords could legitimately and meritoriously take away property from a sinful Church.²⁹

According to J. Goodwine, “the scriptural texts which have been alleged by the foregoing heretics against the right of the Church are from the Old as well as from the New Testament.”³⁰ Some of the important texts are the following: Numbers 18: 20-24; Deuteronomy 18: 1-2; Ezekiel 44: 28; Matthew 10: 9-10; Luke 14: 33.³¹

2. The Church's Patrimonial Right from Divine Positive Law Argument

a. Old Testament

Old Testament texts show that ownership of property by the clergy is not contrary to will of God.

Numbers 18: 8-9 is about the priests' portion according to the divine will. God established the right of the priests to first fruits:

“Then the Lord said to Aaron, “And behold, I have given you whatever is kept of the offerings made to me, all the consecrated things of the people of Israel; I have given them to you as a portion, and to your sons as a perpetual due. This shall be yours of the most holy things, reserved from

²⁵ Cf. <http://www.newadvent.org/cathen/06244b.htm>.

²⁶ Cf. J. Goodwine, Op. cit., p. 14.

²⁷ Ibid.

²⁸ Cf. <http://www.newadvent.org/cathen/15722a.htm>.

²⁹ Cf. J. Goodwine, Op. cit., pp. 14 – 15.

³⁰ Ibid., p. 16.

³¹ Cf. Ibid.

the fire; every offering of theirs, every cereal offering of theirs and every sin offering of theirs and every guilt offering of theirs, which they render to me, shall be most holy to you and to your sons.”

Upon entering the Promised Land the Levites were not given a portion of the land as were the other tribes, but by God’s will they received cities to dwell in and fields round about for their cattle and beasts.

The Lord said to Moses in the plains of Moab by the Jordan at Jericho, “Command the people of Israel, that they give to the Levites, from the inheritance of their possession, cities to dwell in; and you shall give to the Levites pasture lands round about the cities. The cities shall be theirs to dwell in, and their pasture lands shall be for their cattle and for their livestock and for all their beasts” (Numbers 35: 1-3).

“Then the heads of the fathers’ houses of the Levites came to Eleazar the priest and to Joshua the son of Nun and to the heads of the fathers’ houses of the tribes of the people of Israel; and they said to them at Shiloh in the land of Canaan, “The Lord commanded through Moses that we be given cities to dwell in, along with their pasture lands for our cattle.” So by command of the Lord the people of Israel gave to the Levites the following cities and pasture lands out of their inheritance” (Joshua 21: 1-3).

Moreover, although they were not allotted an inheritance with Israel, God gave them privileges regarding first fruits because they were chosen to stand and minister in his name.

“The Levitical priests, that is, all the tribe of Levi, shall have no portion or inheritance with Israel; they shall eat the offerings by fire to the Lord, and his rightful dues. They shall have no inheritance among their brethren; the Lord is their inheritance, as he promised them. And this shall be the priests’ due from the people, from those offering a sacrifice ... For the Lord your God has chosen him out of all your tribes, to stand and minister in the name of the Lord, him and his sons forever ... They shall have equal portions to eat, besides what he receives from the sale of his patrimony” (Deuteronomy 18: 1-8).

A text in Leviticus clearly demonstrates that the priests of Israel owned properties. This text talks about the year of Jubilee. Part of the legislation of the Old Law about Jubilee is the return of properties to its former owners. But the Levites have privileges regarding this law. They may redeem their properties at any time. They need not wait for the year of Jubilee to redeem their sold property.

“Nevertheless the cities of the Levites, the houses in the cities of their possession, the Levites may redeem at any time. And if one of the Levites

does not exercise his right of redemption, then the house that was sold in a city of their possession shall be released in the jubilee; for the houses in the cities of the Levites are their possession among the people of Israel. But the fields of common land belonging to their cities may not be sold; for that is their perpetual possession” (Leviticus 25: 32-34).

Besides, under the Old Law temporal goods were dedicated to the institution and maintenance of divine worship. There were places of worship such as the Temple and synagogues. The priests used ornaments, sacred vessels, sacred vestments and other things in the exercise of their ministry.³²

The Old Testament texts do not indicate definitely that the Jewish religious community, that is, as a religious society, has the right to temporal goods. However, they establish the fact that the priests and Levites have the right to own a certain amount of property. They do not prove categorically the right of the religious community of Israel to acquire property, yet they indicate God’s will that his Church possess enough temporal goods to pursue its ends. Besides, they also substantiate the argument that the Church and its ministers’ possession of some temporal goods is in conformity with the divine will.³³

b. New Testament

New Testament texts that are to be cited are divided into two groups: 1) those that confirm the fact that Christ, his Apostles and the early Church actually owned temporal goods; 2) those that corroborate the argument regarding the Church’s right to temporal goods.³⁴

The bible affirms the reality that Jesus and his Apostles possessed some amount of goods. Jesus used temporal goods as means to support himself and his Apostles and to aid the poor and the needy. The first to be considered is the event regarding the feeding of five thousand in Mark and Luke. The passages in Mark 6: 37-38 and Luke 9: 13 clearly show that Jesus and his Apostles had supply of food for themselves. But their meager resources were not enough to feed the people. In fact, the Apostles complained to Jesus that their supply of food was ludicrously inadequate unless they go and buy more.³⁵ These passages simply relate that Jesus and his Apostles possessed goods to support themselves and to help other people.

³² Cf. J. Goodwine, *Op. cit.*, pp. 16 – 20.

³³ Cf. *Ibid.*, pp. 19 – 20.

³⁴ Cf. *Ibid.*, pp. 20 – 21.

³⁵ Cf. R. Guelich, *Word Biblical Commentary: Mark 1-8:26*, Vol. 34a, Word Books, Dallas, Texas 1989, pp. 340 – 341; I. Howard Marshall, *Commentary on Luke*, William B. Eerdmans Publishing Company, Grand Rapids, Michigan 1986, pp. 360 – 361.

Moreover, John 4: 7-8 recounts that Jesus asked for water from a Samaritan woman while his disciples have gone into the city to buy food. Again, this passage illustrates that Jesus and his disciples had some resources to support themselves.

John 12: 6 and 13: 29 point to the fact that Jesus and his Apostles had a common fund (called money box) administered by Judas Iscariot being the treasurer of the group. In the passage of John 12: 1-8, Judas objected to Mary's wasteful spreading about of the precious ointment. Judas reasoned that it could have been sold for a large amount of money and the proceeds given to the poor. However, social concern was not the motivation of Judas' words. He was not interested in the poor. He wanted to take for himself the proceeds of such sale. He was a thief and had taken from the money box that he was supposed to administer.³⁶ In John 13: 21-30, a passage about Jesus foretelling his betrayal, when Judas left the group after Jesus has dipped the morsel and has given it to Judas to indicate that he was the one who would be going to betray him, the "best some of the disciples can do is guess that Jesus is telling Judas, the guardian of the money box, to make some purchases for the feast or give something to the poor."³⁷

The aforementioned passages demonstrate that Jesus and his Apostles had a common fund. But their common fund was used not only for their own needs. It was also used to help others especially the poor. Their common fund was not simply for their personal needs but also for social concerns.

After Christ's ascension, such practice was continued by the Apostles. "The Acts of the Apostles show that the early Church possessed a common fund from which were supplied the needs of the early Christians and the wants of the poor."³⁸ Many Christians sold their possessions and the proceeds of which served as a common fund administered by the Apostles. From this fund every person in want obtained what he needed. The common fund became the source of subsidy for everyone in the community according to the needs of each.³⁹ E. Haenchen, in his commentary regarding community of goods in the primitive Church, affirms that "the relief-work of the Christian community had begun even before the persecution of the year 44 – indeed before the controversy with the Hellenists"⁴⁰ regarding daily distribution of goods to the widows. This relief-work came from the common fund of the early Christian community. But this relief-work towards the need of early

³⁶ Cf. F. Moloney, *The Gospel of John*, The Liturgical Press, Collegeville, Minnesota 1998, p. 349.

³⁷ Ibid., p. 384.

³⁸ J. Goodwine, Op. cit., p. 56.

³⁹ Cf. J. Fitzmyer, *Gli Atti degli Apostoli: Introduzione e Commento*, Queriniana, Brescia 2003, pp. 306 – 308.

⁴⁰ E. Haenchen, *The Acts of the Apostles: A Commentary*, Basil Blackwell, Oxford 1971, p. 235.

Christians especially the poor was unstable, “and it is easy to understand why, at the Apostolic Council, the three pillars of the community of Jerusalem should have begged Barnabas and Paul, representing the community at Antioch, to collect for the poor of the parent congregation.”⁴¹

The following are some of the biblical texts that attest the fact that the early Church possessed some goods: Acts 2: 44-45; Acts 4: 34-35; Acts 6: 1-6; Acts 11: 28-30; Romans 15: 26; 1 Corinthians 16: 1-4.

The preceding texts of the Gospels only confirm the fact that Christ and his Apostles actually owned temporal goods. But they do not demonstrate the reality that by divine will the Church has the native right to temporal goods. According to J. Goodwine, “it is one thing, however, to say that Christ and the Apostles possessed money and temporal goods to satisfy their own needs and to aid the poor, and quite another thing to say that because of this fact the Church founded by Christ has the native right to acquire and hold property.”⁴² The texts do not establish that “Christ and the Apostles possessed their property not merely as private individuals but in their official capacity as superiors and officers of the ecclesiastical society which they had founded.”⁴³

Regarding the texts from Acts and some epistles of St. Paul, they attest a fact that the early Church actually possessed temporal goods. But, according to J. Goodwine, “to say that they demonstrate Christ’s desire that his Church possess property is, at the very least, questionable.”⁴⁴ However, they confirm the claim regarding Christ’s intention that his Church has the right to own property, although they do not establish categorically Christ’s direct will. J. Goodwine has this comment:

“[The texts] are not without value... They show how necessary the acquisition and possession of temporal goods are for the work of the Church. The quotations from the Acts imply that the early Church was conscious of its right to acquire property... It is not beyond the realm of possibility, either, that the Apostles were moved by the example of Christ to regulate the common possession of property in the early Church, although there is no direct testimony of this in the Scriptures. Consequently the texts... have value as confirming the argument that Christ intended His Church to have the right to property, even though they do not demonstrate Christ’s will.”⁴⁵

⁴¹ Ibid.

⁴² J. Goodwine, *Op.cit.*, p. 23.

⁴³ Ibid.

⁴⁴ Ibid. p. 24.

⁴⁵ Ibid.

The second group of biblical texts supports the argument regarding the Church's right to temporal goods. The following are the texts included in the second group: Matthew 10: 10, Luke 10: 7, 1 Corinthians 9: 13 -14 and 1 Timothy 5: 17-18.

Matthew 10: 10 says that the "laborer deserves his food" and Luke 10: 7 contains the same command of Jesus: "the laborer deserves his wages." The particular text of Matthew is to be found within Jesus' missionary discourse to his twelve apostles. They were commanded to proclaim the Gospel but they were not allowed to profit from it. There is no charge for the Gospel proclamation or the accompanying miraculous healings. However, Jesus willed that the basic needs of his disciples are met. Subsistence, but not profit, is the rightful expectation of those who proclaim the Gospel message.⁴⁶ St. Jerome, in his commentary on this particular text of Matthew, says that a disciple of Christ deserves a share of material goods not because of greediness but genuine need. St. John Chrysostom shares this same idea when he says that a disciple of Christ deserves his food but not beyond mere necessities.⁴⁷ The text according to Luke is situated in the Lord's sending of seventy other disciples. Jesus told them that they were to accept whatever would be provided for them since the workers of God's kingdom are worthy of their wages. "The spiritual benefit the worker brings with the kingdom message is worthy of support."⁴⁸

In 1 Cor. 9: 1-14, St. Paul talks about the rights of an apostle. One of these rights concerns the right to subsistence. As an apostle he has the right to receive financial support from the community to which he is sent. To support his argument, he cites examples taken from the religious sphere among which is this: "Do you not know that 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 offerings?" (1 Cor. 9: 13). St. Paul reminds the Christian community of Corinth that priests and those who work in the temple are sustained by gifts offered in sacrifice. Their religious function serves as the source of their subsistence. From this example, St. Paul articulates his decisive argument regarding the right of the ministers of the Gospel to be supported by the faithful for whom they labor. He says that in the same way that the Jewish religious functionaries earn their food as a result of their religious activity, the Lord commands that "those who proclaim the Gospel should get their living by the gospel" (1 Cor. 9: 14). In this argument, St. Paul emphasizes that the Lord has arranged things in this way, that is, that the ministers of the Gospel have

⁴⁶ Cf. D. Hagner, *Word Biblical Commentary*, Vol. 33A, Word Books, Dallas 1993, pp. 272, 274.

⁴⁷ Cf. M. Simonetti (ed.), *Ancient Christian Commentary on Scripture: New Testament*, Vol. 1A, InterVarsity Press, Downers Grove, Illinois 2001, pp. 196 – 197.

⁴⁸ D. Bock, *Luke*, Vol. 2, Baker Books, Grand Rapids, Michigan 1996, p. 999.

the right to subsistence, that their labors merit due recompense.⁴⁹ And this right rests on a command of the Lord.⁵⁰ However, St. Paul foregoes the exercise of this right. He adopts the practice of supporting himself. He decides to exercise his trade to provide for his livelihood. Indeed, he has the right to claim support from his converts instead of earning his living independently. He is free to insist on it if he chooses; nevertheless he exercises his freedom by not insisting on it.⁵¹

In 1 Tim. 5: 17-18, St. Paul says that the elders especially those who labor in preaching and teaching deserve wages. These elders are the presbyters who exercise leadership within the Church. St. Paul asserts that they deserve compensation and he justifies it by citing two texts from the scripture: “You shall not muzzle an ox when it is treading out the grain,” and, “The laborer deserves his wages” (1 Tim. 5: 18). The first text is taken from Deut. 25: 4. The same text has already been mentioned in 1 Cor. 9: 9 which has been “established for referring it to the rights of the preacher to receive benefit (financial support) from those to whom he preached.”⁵² Regarding the second text cited by St. Paul, “the precise wording of the statement is found in Luke 10: 7 (with the noted different wording in Matt. 10: 10).”⁵³

To apply this second group of biblical texts to justify the right of the Church to possess temporal goods would be to stretch the words beyond their clearly intended significance. However, in an indirect manner, they may serve as an indication of the Church’s right since the temporal goods received by the apostles were used to pursue the ends of the Church. They were not employed by the apostles as personal properties for their own advantage. They were considered as goods of the Christian community administered by the apostles for the benefit of the members especially the poor.⁵⁴

J. Goodwine asserts that “this indirect method of argumentation, however, has only a corroborative value. It does not decisively establish the right of the Church, but only the right of the clergy.”⁵⁵

⁴⁹ Cf. R. Collins, *First Corinthians*, The Liturgical Press, Collegeville, Minnesota 1999, pp. 327 – 334.

⁵⁰ Cf. D. Hill, (ed.), *The Gospel of Matthew*, Oliphants, London 1972, p. 186.

⁵¹ Cf. R. Collins, Op. cit., pp. 330 – 331; F. F. Bruce (ed.), *1 and 2 Corinthians*, Oliphants, London 1971, p. 83.

⁵² J. D. G. Dunn, “The First and Second Letters to Timothy and the Letter to Titus”, in AA. VV., *The New Interpreter’s Bible: A Commentary in Twelve Volumes*, Vol. 11, Abingdon Press, Nashville 2000, p. 822.

⁵³ L. T. Johnson, *The First and Second Letters to Timothy*, Doubleday, New York 2001, p. 278.

⁵⁴ Cf. J. Goodwine, Op. cit., p. 27.

⁵⁵ Ibid.

The Church's right to temporal goods is, therefore, not explicitly established in the New Testament. The fundamental basis of the divine positive law argument regarding such right rests on the fact of the establishment of the Church as a visible society in this world.⁵⁶

c. The Magisterium of the Church

The Church, as long as it exists and realizes its mission in this world, necessarily employs temporal goods. This necessity emanates from its very own visible structure as intended by its Founder who is Christ himself. Since Christ wills the visible structure of his Church, it follows that the Church's right to temporal goods, which emanates necessarily from such structure, has its source in the same will of Christ.⁵⁷ Christ founded his Church not only as a *corpus mysticum*, merely internal and spiritual, but also as an external and visible society with its proper ends. And among the means that the Church needs to pursue its ends, apart from purely spiritual (grace, sacraments, etc.), are the temporal goods. Without these goods it is not possible for the Church to pursue its proper objectives as stipulated in c. 1254 § 2: 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.⁵⁸

Lumen Gentium strongly emphasizes that the Church founded by Christ is composed not only of a divine reality but also of a human and visible element. It is not simply a spiritual assembly but also a visible society structured with hierarchical organs. But these divine and human elements of the Church should not be considered as two realities; rather they form one complex reality. This visible social structure of the Church serves the Spirit of Christ, who vivifies it, in the building up of his body, the Church considered as one complex reality. And this Church constituted and organized in this world as a society subsists in the Catholic Church governed by the

⁵⁶ J. Goodwine, in his discussion regarding the foundation of c. 1495 § 1 of the 1917 Code, affirms that the explicit proof of the Church's divine right to temporal goods is based upon the establishment of the Church as a perfect society. Cf. *Ibid.*

⁵⁷ Cf. V. De Paolis, "I beni temporali nel Codice di Diritto Canonico", in *Monitor Ecclesiasticus*, Vol. 111, 1986, p. 18.

⁵⁸ Cf. A. Mostaza Rodríguez, "Derecho patrimonial canónico", in AA. VV., *Derecho Canónico*, 2ª Edición, EUNSA, Pamplona 1975, pp. 315 – 316; 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; L. Chiappetta says: "Per volontà del suo Fondatore Divino, la Chiesa non ha soltanto una struttura intima, spirituale, quale Corpo Mistico di Cristo, ma anche una struttura esterna, visibile, sociale, che ha bisogno di adeguati mezzi economici, oltre che spirituali, per potere svolgere la sua missione e conseguire i suoi propri fini." L. Chiappetta, *Il Codice di Diritto Canonico: Commento Giuridico-Pastorale*, Vol. 2, Edizioni Dehoniane, Napoli 1988, p. 365.

Roman Pontiff and by the Bishops in communion with him.⁵⁹ Moreover, *Gaudium et Spes* also affirms that the Church has a visible and social structure.⁶⁰

As an organized society, the Church “utilizes temporal realities as often as its mission requires it.”⁶¹ It needs human resources to carry out its mission.⁶² Indeed, the Church’s mission is spiritual but its realization needs temporal means.⁶³ Apart from purely spiritual means, it also needs temporal goods to carry out its mission. As a matter of fact, *Gaudium et Spes* says that the Church, as part of her mission, should initiate activities such as works of mercy and similar undertakings to help especially those who are in need.⁶⁴ Obviously, this kind of initiatives could not be carried out without the employment of temporal goods.

Presbyterorum Ordinis says that the mission of the Church is fulfilled in the midst of the world and at the same time affirms that the created goods of this world are necessary for the personal development of man and that the temporal goods within the Church should be used only toward ends which are licit according to the teachings of Christ and the direction of the Church. Moreover, it emphasizes that it is licit for the Church to possess temporal goods insofar as they are employed to pursue the proper objectives of the Church, namely, carrying out of divine worship, procuring of honest sustenance for the clergy, and exercise of the works of the holy apostolate or works of charity, especially in behalf of the needy.⁶⁵

Apostolicam Actuositatem asserts that, according to the will of Christ, the works of apostolate should be motivated by charity in order for them to become signs of his messianic mission.⁶⁶ This conciliar document emphasizes the divine origin of the Church’s work of apostolate. And this kind of apostolate, according to *Presbyterorum Ordinis*, justifies the Church’s use of temporal goods. This means that since Christ wills that the works of apostolate should become signs of his messianic mission, it follows that he also wills the use of temporal goods to carry out the same works of apostolate and charity especially towards the needy. Without the employment of temporal means, the Church’s works of apostolate could hardly be carried out.

⁵⁹ Cf. *Lumen Gentium*, n. 8.

⁶⁰ Cf. *Gaudium et Spes*, n. 44. J. Hervada asserts that the conciliar teaching regarding Church as a society highlights the idea that the Church is an organically structured entity. Cf. J. Hervada *Diritto Costituzionale Canonico*, Giuffrè Editore, Milano 1989, p. 42.

⁶¹ *Gaudium et Spes*, n. 76.

⁶² Cf. *Lumen Gentium*, n. 8.

⁶³ Cf. *Gaudium et Spes*, nn. 42, 76.

⁶⁴ Cf. *Gaudium et Spes*, n. 42.

⁶⁵ Cf. *Presbyterorum Ordinis*, n. 17.

⁶⁶ Cf. *Apostolicam Auctositatem*, n. 8.

Ad Gentes stresses the need to furnish help and subsidies to some particular Churches who are mostly suffering from a very serious lack of priests and of material support.⁶⁷ The document expresses the reality of the Church's employment of temporal goods to realize its mission as emphasized in *Lumen Gentium* and *Gaudium et Spes*. Moreover, in *Gravissimum Educationis* the Magisterium proclaims the right of the Church to establish and conduct Catholic schools of every type and level as an aid to the fulfillment of the mission of the Church.⁶⁸ It clearly affirms the Church's right to use temporal means to accomplish its proper objectives.

In *Inter Mirifica*, the Magisterium declares that the Church has an inherent right to have at its disposal and to employ any means of social communication insofar as they are necessary or useful for the instruction of Christians and all its efforts for the welfare of souls.⁶⁹ In this conciliar document, the Magisterium asserts the inherent right of the Church to employ temporal goods for the fulfillment of its mission.

Indeed, Christ establishes his Church not simply as a spiritual reality; it is at the same time a visible society. He wills that the Church should be organized as a society in this world. The Church is a society whose claim to existence rests on a strong foundation, that is, the divine will. Since it is Christ's will that the Church has the right to exist as an organized society, it follows that the use of temporal goods, which necessarily emanates from its visible structure and is fundamental for the attainment of its mission, is also ultimately founded upon the divine will.⁷⁰ In establishing his Church as a spiritual assembly and a visible society for the salvation of all men and women, Christ also provides it with the right to possess temporal means necessary for the realization of its proper ends. L. Mistò affirms that this right of the Church depends not only from a theoretical reference to its salvific mission, but also from an effective fulfillment of such mission in this world.⁷¹ From its very own visible structure as intended by its Founder, the Church has the right to temporal goods.

⁶⁷ Cf. *Ad Gentes*, n. 19.

⁶⁸ Cf. *Gravissimum Educationis*, n. 8.

⁶⁹ Cf. *Inter Mirifica*, n. 3.

⁷⁰ Cf. I. Pérez de Heredia y Valle, *Libro V del CIC: Bienes Temporales de la Iglesia*, Instituto Diocesano de Estudios Canónicos, Valencia 2002, p. 48; 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. 72; A. Mostaza Rodríguez, *Op. cit.*, pp. 315 – 316.

⁷¹ Cf. L. Mistò, "I Beni Temporal della Chiesa", in AA. VV., *Il Diritto nel Mistero della Chiesa*, Vol. 3, Pontificia Università Lateranense, Roma 1992, pp. 351 – 354.

C. Argument from Natural Law

Catholic authors have developed the argument from natural law because the right of the Church to temporal goods is denied by those who do not believe the truth of revelation and reject assent to every argument that is not based on pure reason.⁷² The divine positive law argument rests primarily on faith and on reason. But this kind of argument can hardly be accepted in its full meaning from the perspective of a pluralistic and secular society which constructs itself apart from the Christian revelation and even from the idea of God. It is hardly plausible for those who proceed entirely according to human reason and natural law. Their rational argumentation prescind from every argument which is based on divine revelation.

This argumentation based on natural law, which prescind from revelation, establishes the right of the Church to acquire and possess temporal goods and “shows the proponents of rationalism that even according to their own principles they must logically acknowledge the Church’s property rights.”⁷³

The Church, as a human religious institution, has the right to association since this right is one of the fundamental rights of the human person. While the right to association corresponds to the Church as a human institution, the right to own and administer property, besides being a right of all society, is an exigency for the actual existence of the Church. This collective right to property is a natural right held in common by all associations of persons.⁷⁴ Moreover, the right to association presupposes a correlative faculty to possess and acquire those things which are necessary so that such association can exist and accomplish its proper objectives.⁷⁵ Indeed, the right of a society to acquire property is closely associated on its right to existence.

The Church’s Magisterium has consistently affirmed that the right to own property both for individuals and communities is inalienable and proper to the nature of the human person. It is a right based on natural law. This means that the Church as a community of men and women has the natural right to own property

⁷² Cf. J. Goodwine, *Op. cit.*, p. 28.

⁷³ *Ibid.*

⁷⁴ Cf. J. Schouppe, *Derecho patrimonial canónico*, EUNSA, Pamplona 2007, p. 38; P. Brown, “The 1983 Code and Vatican II Ecclesiology: The Principle of Subsidiarity in Book V”, in *The Jurist*, Vol. 69, 2009, pp. 608 – 609.

⁷⁵ Cf. F. Aznar Gil, *La administración de los bienes temporales de la Iglesia*, 2ª Edición, Publicaciones Universidad Pontificia de Salamanca, Salamanca 1993, p. 68; F. Aznar Gil, “Los bienes temporales de la Iglesia”, in AA. VV., *Derecho Canónico II: El Derecho en la misión de la Iglesia*, Biblioteca de Autores Cristianos, Madrid 2006, p. 196.

for the accomplishment of its proper objectives. However, this right is not absolute and unconditional. It is subordinated to the principle of the universal destination of goods.⁷⁶ Moreover, the conciliar document *Dignitatis Humanae* affirms that, as one of the essential manifestations of the right to religious freedom, the Church, as a religious association or community, has the right to acquire and use suitable funds or properties.⁷⁷ The document basically asserts that the right to religious freedom is based on the dignity of the human person.⁷⁸ Since the Church's right to temporal goods is a fundamental part of the right to religious freedom, it follows that such particular right is also based on the dignity of the human person. The foundation of the Church's right to temporal goods as a corollary to its right to religious freedom is the nature of the human person. In other words, the patrimonial right of the Church, as affirmed by *Dignitatis Humanae*, is fundamentally based on natural law.

Some articles of the Universal Declaration of Human Rights⁷⁹ adopted by the General Assembly of the United Nations on December 10, 1948 can be invoked to demonstrate that even from the natural law argument the Church has the right to own and acquire property. These universally declared inalienable rights rest on the dignity of the human person.⁸⁰ Article 18 says that "everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship

⁷⁶ Cf. *Rerum Novarum*, nn. 9, 13; *Quadragesimo Anno*, nn. 44 – 45; *Mater et Magistra*, nn. 19, 30; *Pacem in Terris*, n. 21; *Populorum Progressio*, nn. 23 – 24; *Laborem Exercens*, n. 14; *Sollicitudo Rei Socialis*, n. 42; *Centesimus Annus*, nn. 6 – 7; *Gaudium et Spes*, n. 71; Catechism of the Catholic Church, nn. 2402 – 2405.

⁷⁷ Cf. *Dignitatis Humanae*, n. 4.

⁷⁸ Cf. *Ibid.*, nn. 2, 9; Pope Benedict XVI says that "the right to religious freedom is rooted in the very dignity of the human person... This dignity, understood as a capacity to transcend one's own materiality and to seek truth, must be acknowledged as a universal good, indispensable for the building of a society directed to human fulfillment. Respect for essential elements of human dignity, such as the right to life and the right to religious freedom, is a condition for the moral legitimacy of every social and legal norm." Benedict XVI, *Message for the Celebration of the World Day of Peace*, 1-I-2011, Libreria Editrice Vaticana, Vatican City 2010, n. 2.

⁷⁹ "The Church's Magisterium has not failed to note the positive value of the *Universal Declaration of Human Rights*, adopted by the United Nations on 10 December 1948, which Pope John Paul II defined as a true milestone on the path of humanity's moral progress." Pontifical Council for Justice and Peace, *Op. cit.*, n. 152. "Already in 1963, John XXIII, in *Pacem in Terris* (n. 143), had publicly acknowledged the fundamental value of the United Nations' Declaration of Human Rights and had presented, in the first part of the Encyclical, a detailed description and a Christian interpretation of human rights... The Church has also contributed efficiently in interpreting the Declaration of Human Rights as a *continuous and growing process*." Cf. H. Carrier, *The Social Doctrine of the Church Revisited: A Guide for Study*, Pontifical Council for Justice and Peace, Vatican City 1990, pp. 35 – 36; T. Bertone, *Op. cit.*, p. 621.

⁸⁰ Cf. Preamble of the Universal Declaration of Human Rights.

and observance.” Article 20, 1 declares that “everyone has the right to freedom of peaceful assembly and association.” Besides, article 17, 1 says that “everyone has the right to own property alone as well as in association with others.”

These articles of the Universal Declaration of Human Rights recognize the truth based on natural law that all men and women have the right to freedom of religious association. Besides, individuals and associations also have the right to own property. From these articles it is very clear that the Catholic Church as a religious association of men and women has this inalienable right to own property which is universally established as corresponding to the nature of the human person.

Besides, the patrimonial right of every religious community and, accordingly, of the Catholic Church is an essential manifestation or content of the right to religious freedom. Recognition of the Church’s right to religious freedom without the correlative recognition of its patrimonial right means an actual violation of such fundamental right to religious freedom.⁸¹ Article 6 of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief adopted by the UN General Assembly on November 25, 1981 specifies the contents of the right to religious freedom proclaimed by the Universal Declaration of Human Rights. The patrimonial right of every religious community is recognized as one of the contents of the right to religious freedom.⁸²

The argument from natural law demonstrates that the Church as a legitimate religious association of men and women has the natural right to own temporal goods. In a pluralistic society which tends to refute any divine positive law argument, the Church does not need to rely on its divine foundation to demand recognition of such right. It only claims respect for the fundamental rights of individuals and communities.⁸³

According to J. Goodwine, this argument of the Church’s patrimonial right based on natural law only has a relative value.⁸⁴ It only presents a partial concept

⁸¹ Cf. J. Schouppe, *Op. cit.*, p. 38.

⁸² The contents as stipulated in article 6 of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief which have something to do with the religious communities’ right to acquire temporal goods are the following: 1) The freedom to establish and maintain places of worship; 2) The freedom to establish and maintain appropriate charitable or humanitarian institutions; 3) The freedom to make, acquire and use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief; 4) The freedom to write, issue and disseminate relevant publications in these areas; 5) The freedom to solicit and receive voluntary financial and other contributions from individuals and institutions.

⁸³ Cf. I. Pérez de Heredia y Valle, *Op. cit.*, p. 49.

⁸⁴ Cf. J. Goodwine, *Op. cit.*, p. 29.

of the true nature of the Church as taught by the Magisterium. “The notion of the Church that emerges from this mode of argument is that of a human society originating in the wills of its members and drawing from them its rights.”⁸⁵ This argument presents a partial image of the Church as a religious human society whose patrimonial right is fundamentally based on natural law. The right to temporal goods comes from the dignity of its members. The origin of this right is the human person. As aforementioned, the argument on natural law has only a relative value because the Church is not only a human community. It is also at the same time a spiritual community endowed with rights directly willed by its divine Founder.

However, the argument from natural law has a real value, although relative. As aforementioned, this kind of argument is directed towards those who do not believe the truth of revelation and reject assent to every argument that is not based on pure reason. This argument shows that “there exists no reason for the denial of the right of the Catholic Church to acquire property when that right is acknowledged and recognized in other associations”⁸⁶ of men and women. Although prescinding from divine revelation, this rational argumentation based solely on natural law demonstrates that the Church as an organized religious community of men and women has patrimonial rights. As mentioned earlier, there is no reason for the denial of the Church’s right to temporal goods.

IV. Church-State Relations on Temporal Goods

According to F. Aznar Gil, 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.⁸⁷ Hence, our study attempts to explain the relations between the Church and the political community concerning the right of the Church to temporal goods. This particular theme requires a discussion of the general principles regarding Church-State relations according to the teachings of the Second Vatican Council. The general thesis on Church-State relations according to Vatican II fundamentally serves as the basis of our discussion on Church-State relations on temporal goods. Moreover, we briefly discuss the Church’s relations with political communities concerning its patrimonial right from the perspective of international law.

⁸⁵ Ibid.

⁸⁶ Ibid., p. 37.

⁸⁷ Cf. F. Aznar Gil, *La administración...*, Op. cit., p. 93.

A. The Subjects of the Church's Right to Temporal Goods

Before discussing the subject regarding Church-State relations on temporal goods, our study attempts to explain first the meaning of the expression “Catholic Church”, as stipulated in c. 1254 § 1, to which corresponds the inherent right to temporal goods independently of any political community. Certainly, the Catholic Church has the inherent and independent patrimonial right; however, such right, in fact, is exercised through its various subjects as specified in c. 1255.

The meaning of the expression “Catholic Church” in c. 1254 § 1 is given in c. 204 § 2: this Catholic Church is the same Church of Christ which is constituted and organized in this world as a society and is “governed by the successor of Peter and the bishops in communion with him.” And this Church, according to c. 1254 § 1, is endowed with inherent right, as willed by its Founder, to acquire, retain, administer and alienate temporal goods independently of any civil authority in pursuit of its proper objectives.

But how shall the Catholic Church exercise its patrimonial right? C. 1255 specifies and determines the general principle stated in c. 1254 § 1. It says that “the universal Church and the Apostolic See, the particular churches, as well as any other juridical person, public or private, are subjects capable of acquiring, retaining, administering, and alienating temporal goods according to the norm of law.” The Catholic Church's right to temporal goods, therefore, is realized primarily through the universal Church and the Apostolic See⁸⁸ as the office of the Roman Pontiff, which represents the universal Church. Both have the character of a moral person by divine ordinance itself (c. 113 § 1). Moreover, such right of the Church is also exercised through particular Churches, as well as any other public and private juridical persons in the Church.⁸⁹

Indeed, all moral and juridical persons in the Church have patrimonial right the existence and exercise of which is independent from any civil authority. In the following discussion regarding Church-State relations on temporal goods, the term “Church” refers to the Catholic Church whose right to temporal goods independently of any civil authority is realized through its various moral and juridical persons.

⁸⁸ C. 361 of the 1983 Code says: “In this Code, the term Apostolic See or Holy See refers not only to the Roman Pontiff but also to the Secretariat of State, the Council for the Public Affairs of the Church, and other institutes of the Roman Curia, unless it is otherwise apparent from the nature of the matter or the context of the words.”

⁸⁹ Cf. V. De Paolis, *I Beni Temporal della Chiesa*, Edizioni Dehoniane Bologna, Bologna 1995, p. 53; V. De Paolis, “I beni temporal nel Codice di Diritto Canonico”, Op. cit., p. 20; I. Pérez de Heredia y Valle, Op. cit., p. 47.

B. Mutual Autonomy and Independence between the Church and the Political Community

1. Distinction between Church and Political Community

The conciliar document *Gaudium et Spes* declares that “the Church, by reason of her role and competence, is not identified in any way with the political community nor bound to any political system. She is at once a sign and a safeguard of the transcendent character of the human person.”⁹⁰ Moreover, it affirms the distinction between the Church and the political community: “The Church and the political community in their own fields are autonomous and independent from each other.”⁹¹ This conciliar document asserts the autonomy and independence of the two communities as an objective condition for the establishment of a fruitful and harmonious relation.⁹²

In the document, the Council Fathers employ the expression “political community”. However, the term “political community” can be identified with the notion of a “State” or a “political society”. These three expressions, according to the mind of the Council Fathers, correspond to a single concept. They all express the same juridical-political social reality.⁹³

The distinction between the Church and the political community can be summed up into three aspects: end, structure and efficient cause.

“The autonomy and independence of these two realities is particularly evident with regards to their ends.”⁹⁴ The purpose of the political community is for the sake of the common good of its members, in which it finds its full justification

⁹⁰ *Gaudium et Spes*, n. 76; Cf. Catechism of the Catholic Church, n. 2245.

⁹¹ *Gaudium et Spes*, n. 76.

⁹² Cf. T. Bertone, Op. cit., p. 620.

⁹³ H. Nowacki, *Rapporti tra Chiesa e Comunità Politica alla luce del n. 76 della “Gaudium et Spes”*, Pontificia Università San Tommaso D’Aquino, Roma 1983, pp. 184 – 199; I. Martín Martínez says: “Notemos en primer término, que en los documentos conciliares, al hablar de este tema no se emplea la expresión Estado, sino que se habla, preferentemente, de Comunidad política, y, a veces, de Poder político, Poder civil, Poder público y, en algún caso, de Ciudad terrena o Ciudad temporal. El uso de esta terminología muestra que no se trata de considerar sólo las relaciones de la Iglesia con el Estado considerado como un Poder, como el Estado-autoridad, sino con el Estado como comunidad de ciudadanos en los que éstos constituyen un elemento esencial de la vida política. Lo cual no excluye, naturalmente, la consideración del Estado como la autoridad gestora del bien común.” I. Martín Martínez, “Doctrina católica actual sobre las relaciones entre Iglesia y el Estado”, in AA. VV., *Derecho Canónico*, 2ª Edición, EUNSA, Pamplona 1975, p. 695.

⁹⁴ Pontifical Council for Justice and Peace, *Compendium of the Social Doctrine of the Church*, Libreria Editrice Vaticana, Città del Vaticano 2004, n. 424.

and significance, and the source of its inherent legitimacy.⁹⁵ The political community exists to achieve an end which is the full growth of each of its members.⁹⁶ However, its end is restricted within temporal spheres and is combined with precise historical, geographical and cultural situations. On the other hand, the end of the Church is metatemporal and projects its activities in eschatological perspective.⁹⁷ *Lumen Gentium*, n. 48 clearly affirms the eschatological nature of the Church saying that the Church “in which we acquire sanctity through the grace of God” and “in which we learn the meaning of our terrestrial life through our faith” will only have “its full perfection only in the glory of heaven, when there will come the time of the restoration of all things. At that time the human race as well as the entire world... will be perfectly reestablished in Christ.” The end of the Church as willed by its Founder is not restricted within this world. It is directed towards an eschatological perspective.

With regard to structure, the Church is very much different from the State. “The Church is organized in ways that are suitable to meet the spiritual needs of the faithful, while the different political communities give rise to relationships and institutions that are at the service of everything that is part of the temporal common good.”⁹⁸ Besides, the political community, according to T. Bertone, is a plurality of organic relations fixed by law, which, in institutional form, coordinates mind and will, projects and operational resources for the realization of the temporal common good.⁹⁹ On the other hand, the Church finds its fullness and eminent explanation in the concept of mystery and sacrament. As a visible (juridical) and invisible (spiritual) reality established by Christ and under the guidance of the Holy Spirit, it is a sign and sacrament of salvation. The Church is always a visible and spiritual community which forms a single complex reality. Moreover, the legislation of the Church is considered from a different perspective.¹⁰⁰ Canonical legislation is not a system of rules whose only title of validity lies in the will of the human legislators. On the contrary, its prescriptions are based on a higher foundation: the divine law, that is, a set of legal factors all of which have God as their author, to which the elements of human canon law are subordinated.¹⁰¹ Furthermore, the image of the Church as a community of Christ’s faithful cannot be restricted within the limits of a nation or a

⁹⁵ Cf. *Gaudium et Spes*, n. 74.

⁹⁶ Cf. Pontifical Council for Justice and Peace, *Op. cit.*, n. 384.

⁹⁷ Cf. T. Bertone, *Op. cit.*, p. 614.

⁹⁸ Pontifical Council for Justice and Peace, *Op. cit.*, n. 424.

⁹⁹ Cf. T. Bertone, *Loc. cit.*

¹⁰⁰ Cf. H. Nowacki, *Op. cit.*, pp. 223 – 224.

¹⁰¹ Cf. D. Cenalmor – J. Miras, *Op. cit.*, p. 51; H. Pree, *Op. cit.*, p. 48 – 50; E. Molano, *Op. cit.*, p. 783; P. J. Viladrich, *Op. cit.*, p. 34.

continent; it must be considered in its universal dimension. In contrast, the political community or the State has a value of a nation.¹⁰²

Lastly, the efficient cause of the State or the political community comes from natural, historical and cultural initiatives of men and women which give different characteristics to the various political communities. The efficient cause of the Church is the will of Christ who has established its nature, fundamental principles and hierarchical structure for the unity of faith and discipline.¹⁰³

The aforementioned discussion clearly demonstrates that the Church is not identified with any political community. These two realities are different. They are mutually independent and self-governing. G. Mattai asserts that the notion autonomy underlines the original sovereign power by which Church and State are able to meet their own needs through self-sufficiency; independence excludes any legal claim to exercise interference and subordination.¹⁰⁴ “The difference between the Church and the State as juridical institutions each in its own right is stated clearly, with the affirmation regarding the freedom which the Church should enjoy without the intrusion of the State, and on the other hand, the complete autonomy of the State in its own sphere.”¹⁰⁵

However, the distinction between the Church and the political community “does not mean that the Church should not pass moral judgment in matters relating to politics whenever the fundamental rights of man or the salvation of souls demand it.”¹⁰⁶ Thus, the Council declares: “At all times and in all places, the Church should have true freedom... to pass moral judgment in those matters which regard public order when the fundamental rights of a person or the salvation of souls require it.”¹⁰⁷

2. Necessary Collaboration between the Two Communities

Second Vatican Council affirms that there exists a distinction between the Church and the political community. Both communities are autonomous and independent. However, this distinction does not mean separation which rules out cooperation. The meeting point of this cooperation is the personal and social vocation of the same human beings. *Gaudium et Spes* has these words:

¹⁰² Cf. H. Nowacki, *Op. cit.*, p. 223.

¹⁰³ Cf. T. Bertone, *Op. cit.*, p. 614.

¹⁰⁴ Cf. G. Mattai, “La Chiesa e la comunità politica”, in *La Chiesa nel mondo contemporaneo (Commento alla Cost. Gaudium et Spes)*, Torino 1966, p. 1046.

¹⁰⁵ J. Okolo, *The Holy See: A Moral Person*, Pontifical Urbaniana University, Rome 1990, p. 38.

¹⁰⁶ J. Ibegbu, “Right to religious freedom in international law: towards a convention”, in *Apollinaris*, Vol. 75, 2002, p. 215.

¹⁰⁷ *Gaudium et Spes*, n. 76.

“The Church and the political community in their own fields are autonomous and independent from each other. Yet both, under different titles, are devoted to the personal and social vocation of the same men. The more that both foster sounder cooperation between themselves with due consideration for the circumstances of time and place, the more effective will their service be exercised for the good of all. For man’s horizons are not limited only to the temporal order; while living in the context of human history, he preserves intact his eternal vocation. The Church, for her part, founded on the love of the Redeemer, contributes toward the reign of justice and charity within the borders of a nation and between nations. By preaching the truths of the Gospel, and bringing to bear on all fields of human endeavor the light of her doctrine and of a Christian witness, she respects and fosters the political freedom and responsibility of citizens.”¹⁰⁸

The conciliar document clearly rejects the principle of separation which advocates the idea that between Church and State there is no relation or link whatsoever. It asserts the principle of cooperation between the two communities because their tasks are focused towards the same human beings in their personal and social vocation by virtue of the universal principle of the primacy of the person in all human society.¹⁰⁹ Church and State assume responsibility for the cause of human beings, that is, for the promotion of the integral development of each man and woman: the State in historical-temporal perspective and the Church in metatemporal and transcendent perspective¹¹⁰ “for man’s horizons are not limited only to the temporal order; while living in the context of human history, he preserves intact his eternal vocation.”¹¹¹ In fact, “the Church and the political community express themselves in organized structures that are not ends in themselves but are intended for the service of man, to help him to exercise his rights fully, those inherent in his reality as a citizen and a Christian, and to fulfill correctly his corresponding duties.”¹¹²

Gaudium et Spes promotes a sound cooperation between Church and State so that their service for the good of all will be more effective.¹¹³ It no longer espouses the idea of competition between Church and State, that is, that the Church is an institution parallel to the State and contending for material and juridical equality.¹¹⁴

¹⁰⁸ Ibid.

¹⁰⁹ Cf. C. Corral, “Estado e Iglesia según el Vaticano II”, in J. G. M. Carvajal – C. Corral, *Relaciones de la Iglesia y el Estado*, Facultad de Ciencias Políticas, Universidad Complutense, Madrid 1976, p. 32; I. Martín Martínez, Op. cit., p. 696.

¹¹⁰ Cf. T. Bertone, Op. cit., p. 615; C. Soler, *Iglesia y Estado: La incidencia del concilio Vaticano II sobre el derecho público externo*, EUNSA, Pamplona 1993, p. 78.

¹¹¹ *Gaudium et Spes*, n. 76.

¹¹² Pontifical Council for Justice and Peace, Op. cit., n. 425.

¹¹³ Cf. *Gaudium et Spes*, n. 76.

¹¹⁴ Cf. J. Okolo, Op. cit., p. 38.

The Church today does not present itself to the world with a competitive attitude. It does not impose itself in terms of legal predominance derived from the primacy of the spiritual over the temporal.¹¹⁵ In fact, Pope Paul VI says that the Church exists in the world not to dominate but to serve.¹¹⁶ Besides, Pope Benedict XVI, in his encyclical *Deus Caritas Est*, affirms the interrelatedness between Church and State although both are distinct:

“Fundamental to Christianity is the distinction between what belongs to Caesar and what belongs to God (cf. Mt 22:21), in other words, the distinction between Church and State, or, as the Second Vatican Council puts it, the autonomy of the temporal sphere. The State may not impose religion, yet it must guarantee religious freedom and harmony between the followers of different religions. For her part, the Church, as the social expression of Christian faith, has a proper independence and is structured on the basis of her faith as a community which the State must recognize. The two spheres are distinct, yet always interrelated.”¹¹⁷

The principle of sound cooperation is concretized in stable forms of contact and suitable instruments to guarantee harmonious relations between the Church and the State. The Compendium of the Social Doctrine of the Church says something regarding prevention or attenuation of possible conflicts between the Church and the political community:

“In order to prevent or attenuate possible conflicts between the Church and the political community, the juridical experience of the Church and the State have variously defined stable forms of contact and suitable instruments for guaranteeing harmonious relations. This experience is an essential reference point for all cases in which the State has the presumption to invade the Church’s area of action, impairing the freedom of her activity to the point of openly persecuting her or, vice versa, for cases in which church organizations do not act properly with respect to the State.”¹¹⁸

3. *The Church and the State on Temporal Goods as Means*

The distinction between Church and State and their mutual autonomy and independence is especially evident in view of their ends.¹¹⁹ However, the Church’s activity is distinguished from the State not only because of their diverse ends, but

¹¹⁵ Cf. T. Bertone, Op. cit., p. 615.

¹¹⁶ Cf. Paolo VI, “Discorso del 7 febbraio 1965”, in *Insegnamenti di Paolo VI*, Vol. 3, Libreria Editrice Vaticana, Città del Vaticano 1966, p. 730.

¹¹⁷ Benedict XVI, *Deus Caritas Est*, Libreria Editrice Vaticana, Vatican City, 2005, n. 28.

¹¹⁸ Pontifical Council for Justice and Peace, Op. cit., n. 427.

¹¹⁹ Cf. Ibid., n. 424.

also because of the means employed.¹²⁰ The pastoral constitution *Gaudium et Spes* clearly articulates it: “All those dedicated to the ministry of God’s Word must use the ways and means proper to the Gospel which in a great many respects differ from the means proper to the earthly city.”¹²¹ But the means proper to the Church are not absolutely different from those of this world and, consequently, from that of the political community. *Gaudium et Spes* continues that “there are, indeed, close links between earthly things and those elements of man’s condition which transcend the world.”¹²² This conciliar affirmation is based on the fact that the Church founded by Christ is not exclusively a spiritual reality. The Church is a single complex reality with human and divine elements. It is a community constituted and organized in this world according to the will of its Founder. Hence, “the Church herself makes use of temporal things insofar as her own mission requires it.”¹²³

It is worth noting that *Gaudium et Spes* affirms the Church’s need of the use of temporal goods to pursue its mission immediately after it declares that the Church and the political community are autonomous and independent from each other. Here, the conciliar document implicitly asserts that the Church’s use of temporal goods or the Church’s patrimonial right emanates from its autonomous and independent structure. Such right is not dependent on the political community. It is not a result of any political concession on the part of the State. The Church’s right to temporal goods which is independent from the State precisely proceeds from its very own autonomous and independent structure as willed by its Founder.

Indeed, the Church and the political community are also distinguished by virtue of the means employed. They are means proper to each of them. However, there exists a close link between these means since both communities employ temporal goods. Besides, this close link is also based on the fact that the Church, using temporal means, carries out its mission within societies where political communities exist. The Church is not identified with any political community but it is situated in various political communities. But this close link does not mean that both communities share a common or single right to use temporal means in pursuit of their respective ends. Their right to property is completely independent from each other. Each community is self-governing and independent. Indeed, the Church’s right to acquire and use temporal goods has a close connection with the political community. And this fact demands an indispensable collaboration between the two communities in order to avoid or attenuate likely conflicts regarding questions on Church property.

¹²⁰ Cf. T. Bertone, Op. cit., p. 617.

¹²¹ *Gaudium et Spes*, n. 76.

¹²² Ibid.

¹²³ Ibid.

“The juridical experience of the Church and the State has variously defined stable forms of contact and suitable instruments for guaranteeing harmonious relations.”¹²⁴ Among the examples of these stable forms of contact and suitable instruments are the Concordats and other forms of international conventions.

C. Church-State Relations on Temporal Goods according to *Dignitatis Humanae*

The doctrine regarding the mutual autonomy and independence of the Church and the political community, which is fundamentally based on divine positive law, can hardly be accepted in its full meaning from the perspective of the contemporary State, pluralistic and secular, which constructs itself apart from Christian revelation and even from the idea of God. If the foundation on divine positive law is not recognized by the secular State and also by the Islamic state, the Second Vatican Council does not cease to invoke another title to claim the freedom of the Church as a community of people who should have the right to religious freedom in society. It defends the right to religious freedom, in its individual and collective dimensions, understood as a fundamental right which should be under the legal protection of the State. The Council bases this right on the dignity of the human person. It asserts that it is founded on natural law. Therefore, it demands that such right be recognized in the State as a civil right.¹²⁵

On this part of our study, we discuss the right of the Church to temporal goods from the perspective of the Vatican II Council’s declaration on religious freedom as a natural right of individuals and communities. Moreover, as asserted by R. Kennedy, knowledge of *Dignitatis Humanae* is very important for the correct interpretation of c. 1254 which is “one of several church-state canons which express the Church’s stance toward civil governments.”¹²⁶

1. The Content and Foundation of Religious Freedom

The content of the right to religious freedom is immunity from coercion which has two aspects. First, it is a protection from being forced to act contrary to one’s beliefs:

¹²⁴ Pontifical Council for Justice and Peace, Op. cit., n. 427.

¹²⁵ Cf. P. Lombardía, *Escritos de Derecho Canónico y de Derecho Eclesiástico del Estado*, Vol. 5, EUNSA, Pamplona 1991, pp. 450 – 451; M. Falcão, “La libertad religiosa en los escritos de Pedro Lombardía”, in *Revista Española de Derecho Canónico*, Vol. 54, 1997, pp. 748 – 751.

¹²⁶ 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, p. 480.

“This Vatican Council declares that the human person has a right to religious freedom. This freedom means that all men are to be immune from coercion on the part of individuals or of social groups and of any human power, in such wise that no one is to be forced to act in a manner contrary to his own beliefs, whether privately or publicly, whether alone or in association with others, within due limits.”¹²⁷

Second, it is a protection for one to be able to act according to his beliefs and to express them externally:¹²⁸

“Nor, on the other hand, is he to be restrained from acting in accordance with his conscience, especially in matters religious ... No merely human power can either command or prohibit acts of this kind. The social nature of man, however, itself requires that he should give external expression to his internal acts of religion: that he should share with others in matters religious; that he should profess his religion in community. Injury therefore is done to the human person and to the very order established by God for human life, if the free exercise of religion is denied in society, provided just public order is observed.”¹²⁹

The content of religious freedom is not the intrinsic composition of a particular religion or all the conditions and relationships arising from it, but, objectively, as emphasized by T. Bertone, it is a condition of liberty, a possession of a “safety zone” that guarantees the inviolability of a human space in which people can move and act freely and give external expression to their internal acts of religion without external pressures of individuals, social groups or any human authority.¹³⁰ It is the “absence of compulsion and impediment in the exercise or manifestation of one’s religion or belief.”¹³¹

The foundation of the right to religious freedom is the dignity of the human person. This right based on the human person should be recognized by the civil legislation as a civil right. *Dignitatis Humanae* has these words:

“The council further declares that the right to religious freedom has its foundation in the very dignity of the human person as this dignity is known through the revealed word of God and by reason itself. This right

¹²⁷ *Dignitatis Humanae*, n. 2.

¹²⁸ Cf. M. Carter, “*Dignitatis Humanae*: Declaration on Religious Freedom”, in *The Jurist*, Vol. 36, 1976, p. 344; O. De Bertolis, “La libertà religiosa: problema e prospettive”, in *Periodica*, Vol. 94, 2005, pp. 693 – 694.

¹²⁹ *Dignitatis Humanae*, n. 3.

¹³⁰ Cf. T. Bertone, Op. cit., p. 623.

¹³¹ J. Ibegbu, Op. cit., p. 194.

of the human person to religious freedom is to be recognized in the constitutional law whereby society is governed and thus it is to become a civil right.”¹³²

This declaration that the right to religious freedom is based on the dignity of the human person is repeated in n. 9 of the same conciliar document: “The declaration of this Vatican Council on the right of man to religious freedom has its foundation in the dignity of the person, whose exigencies have come to be are fully known to human reason through centuries of experience.”¹³³ This repetition emphasizes the basis of this right. The right to religious freedom is not a political concession and is not dependent on public authorities. It is inherent on the human nature. The political community has to recognize this inalienable right. Pope Benedict XVI, in his message for the celebration of the XLIV World Day of Peace, emphasizes that the dignity of the human person is the basis of the right to religious freedom:

“The right to religious freedom is rooted in the very dignity of the human person... This dignity, understood as a capacity to transcend one’s own materiality and to seek truth, must be acknowledged as a universal good, indispensable for the building of a society directed to human fulfillment. Respect for essential elements of human dignity, such as the right to life and the right to religious freedom, is a condition for the moral legitimacy of every social and legal norm.”¹³⁴

It is necessary to clarify that the right to religious freedom is a right of a human person before the civil society or the political community. The Council does not speak of a right to religious freedom before God or before the ecclesial community. It also does not consider religious freedom as religious indifferentism or doctrinal relativism which denies the existence of objective criteria of truth. It simply demands that the political community recognize this right founded on the nature of man. It is a natural right which should be acknowledged as a civil right by the State. The religious freedom proclaimed by the Council is essentially juridical. Its purpose is to guarantee all men and women freedom from any coercion in religious matters in civil society.¹³⁵ Thus the Council states:

“Religious freedom, in turn, which men demand as necessary to fulfill their duty to worship God, has to do with immunity from coercion in civil society. Therefore it leaves untouched traditional Catholic doctrine on the

¹³² *Dignitatis Humanae*, n. 2.

¹³³ *Ibid.*, n. 9.

¹³⁴ Benedict XVI, *Message for the Celebration of the World Day of Peace*, 1-I-2011, Libreria Editrice Vaticana, Vatican City 2010, n. 2.

¹³⁵ Cf. T. Bertone, *Op. cit.*, pp. 623 – 624; J. Ibegbu, *Op. cit.*, pp. 192 – 194.

moral duty of men and societies toward the true religion and toward the one Church of Christ.”¹³⁶

2. *Subjects of Religious Freedom*

Primarily, the right to religious freedom is inherent in every human being. By virtue of his human nature, each person has the immunity from coercion in matters of religion.¹³⁷

Secondly, this right also belongs to the religious community, not only as individuals but as a group of people or as moral or juridical persons who are subjects of law. *Dignitatis Humanae* says:

“The freedom or immunity from coercion in matters religious which is the endowment of persons as individuals is also to be recognized as their right when they act in community...

Provided the just demands of public order are observed, religious communities rightfully claim freedom in order that they may govern themselves according to their own norms...

Religious communities also have the right not to be hindered, either by legal measures or by administrative action on the part of government, in the selection, training, appointment, and transferral of their own ministers, in communicating with religious authorities and communities abroad, in erecting buildings for religious purposes, and in the acquisition and use of suitable funds or properties.

Religious communities also have the right not to be hindered in their public teaching and witness to their faith, whether by the spoken or by the written word...

Religious communities should not be prohibited from freely undertaking to show the special value of their doctrine in what concerns the organization of society and the inspiration of the whole of human activity. Finally, the social nature of man and the very nature of religion afford the foundation of the right of men freely to hold meetings and to establish educational, cultural, charitable and social organizations, under the impulse of their own religious sense.”¹³⁸

Thirdly, the family, as a society in its own original right, is also a subject of the right to religious freedom:

¹³⁶ *Dignitatis Humanae*, n. 1.

¹³⁷ Cf. *Ibid.*, n. 2

¹³⁸ *Ibid.*, n. 4.

“The family, since it is a society in its own original right, has the right freely to live its own domestic religious life under the guidance of parents. Parents, moreover, have the right to determine, in accordance with their own religious beliefs, the kind of religious education that their children are to receive. Government, in consequence, must acknowledge the right of parents to make a genuinely free choice of schools and of other means of education, and the use of this freedom of choice is not to be made a reason for imposing unjust burdens on parents, whether directly or indirectly. Besides, the right of parents are violated, if their children are forced to attend lessons or instructions which are not in agreement with their religious beliefs, or if a single system of education, from which all religious formation is excluded, is imposed upon all.”¹³⁹

3. *Religious Freedom and Civil Authorities*

Dignitatis Humanae generally outlines the task of the public authority particularly concerning the fundamental right to religious freedom.¹⁴⁰ In the first place, the Council demands that the political community recognize the right to religious freedom. Such right is inherent in human nature and is not a result of any political concession. Every human being has this right. Therefore, the State must recognize it especially in its constitutional law: “This right of the human person to religious freedom is to be recognized in the constitutional law whereby society is governed and thus it is to become a civil right.”¹⁴¹

In situations in which the State gives special recognition to a particular religious community in its Constitution, the Council insists that such State also recognize the right to religious freedom of all citizens and other religious communities.¹⁴²

The State also has to protect juridically the fundamental right to religious freedom. Just laws need to be enacted to safeguard such right. Besides, other appropriate means may be employed by public authorities to protect the religious freedom all of their citizens: “Government is to assume the safeguard of the religious freedom of all its citizens, in an effective manner, by just laws and by other appropriate means.”¹⁴³

¹³⁹ Ibid., n. 5.

¹⁴⁰ Cf. T. Bertone, Op. cit., pp. 626 – 627.

¹⁴¹ *Dignitatis Humanae*, n. 2.

¹⁴² Cf. Ibid., n. 6.

¹⁴³ Ibid.

Another duty of the civil authorities is to promote the right to religious freedom. T. Bertone asserts that if the end of the State is the common good which is fundamental towards the integral development of every human person, and if religious value has an important place in this development, it is also the responsibility of the civil authorities to promote the right to religious freedom.¹⁴⁴ *Dignitatis Humanae* says: “Government is also to help create conditions favorable to the fostering of religious life, in order that the people may be truly enabled to exercise their religious rights and to fulfill their religious duties.”¹⁴⁵

Moreover, civil authorities should not discriminate their citizens for religious reasons. The Council clearly asserts that all citizens are equal before the law. Religious motives can never be invoked by any government to violate such equality: “Government is to see to it that equality of citizens before the law, which is itself an element of the common good, is never violated, whether openly or covertly, for religious reasons. Nor is there to be discrimination among citizens.”¹⁴⁶ The Council also condemns the government’s use of violence to impose upon its people the profession or repudiation of any religion, to hinder men and women from joining or leaving a religious community and to destroy or repress religion.¹⁴⁷

4. Not an Absolute Right

Although the right to religious freedom is founded on the dignity of the human person, which should be recognized and protected by the State, nevertheless, like all other rights, its exercise is not absolute. It is subject to some regulatory norms. According to the conciliar document, “the right to religious freedom is exercised in human society; hence its exercise is subject to certain regulatory norms.”¹⁴⁸

Dignitatis Humanae emphasizes that individuals and communities, in their exercise of the right to religious freedom, have to observe the moral principle of personal and social responsibility. They “are bound by the moral law to have respect both for the rights of others and for their own duties toward others and for the common welfare of all.”¹⁴⁹ In fact, the same conciliar document urges everyone, especially those in the field of education, to form men and women to respect the moral order, to be obedient to lawful authority and to be lovers of true freedom. It

¹⁴⁴ Cf. T. Bertone, *Op. cit.*, p. 627.

¹⁴⁵ *Dignitatis Humanae*, n. 6.

¹⁴⁶ *Ibid.*

¹⁴⁷ Cf. *Ibid.*

¹⁴⁸ *Ibid.*, n. 7.

¹⁴⁹ *Ibid.*

further says that “religious freedom therefore ought to have this further purpose and aim, namely, that men may come to act with greater responsibility in fulfilling their duties in community life.”¹⁵⁰

Moreover, the government has to provide protection to defend society from abuses of individuals and religious communities in their use of the right to religious freedom. Legal norms are necessary to prevent any abusive and violent exercise of such right which certainly disturbs the social order. However, in providing this essential protection, the “government is not to act in an arbitrary fashion ... Its action is to be controlled by juridical norms which are in conformity with the objective moral order. These norms arise out of the need for the effective safeguard of the rights of all citizens and for the peaceful settlement of conflicts of rights.”¹⁵¹

R. Kennedy comments that the religious freedom or independence spoken of in *Dignitatis Humanae* is not the absolute freedom or independence referred to in the 1917 Code and in other past Church declarations:

“The independence of the Church spoken of in the Declaration on Religious Liberty, then, is not the absolute independence spoken of in the 1917 code and in several earlier ecclesiastical pronouncements. It is, rather, a qualified or responsible independence, a claim of freedom from all *arbitrary* interference by civil authority, but not freedom from all reasonable regulation by civil authority in the interests of justice, peace, and public morality. It is an independence necessary for the fulfillment of the Church’s divine mission, but not an absolute independence denying all regulatory authority in civil government.”¹⁵²

5. The Church’s Right to Temporal Goods based on the Right to Religious Freedom before the Political Community

The right to religious freedom is inherent in every human person. Every individual is a subject of this right. Besides, as emphasized by *Dignitatis Humanae* this right also belongs to the religious community, not only as individuals but as a group of people or as moral or juridical persons who are subjects of law.

The conciliar document asserts that, as part of the content of the right to religious freedom, religious communities “have the right not to be hindered, either by legal measures or by administrative action on the part of government ... in the

¹⁵⁰ Ibid., n. 8.

¹⁵¹ Ibid., n. 7.

¹⁵² R. Kennedy, Op. cit., p. 482.

acquisition and use of suitable funds or properties.”¹⁵³ This assertion basically means that every religious community has the right to acquire temporal goods. This particular right is one of the manifestations of the inalienable right of religious communities to religious freedom.

In *Dignitatis Humanae*, the Magisterium, principally on the basis of natural law, affirms the right of the Catholic Church, as a religious community, to acquire temporal goods. The political community has to recognize this right in the same way as it should recognize the Church’s right to religious freedom. Recognition of the Church’s right to religious freedom without the correlative recognition of its patrimonial right means an actual violation of the fundamental right to religious freedom.¹⁵⁴ Indeed, the right to religious freedom is not fully respected when the State imposes restrictions on the Church’s right to temporal goods.

The conciliar document primarily bases this right of the Church to temporal goods as a consequence of its right to religious freedom on the dignity of the human person. In other words, the patrimonial right of the Church, as affirmed by *Dignitatis Humanae*, is fundamentally founded on natural law. In a pluralistic and secular society which tends to reject a divine positive law foundation of the Church’s right, the Second Vatican Council invokes another title based on natural law to claim the right of every religious community and, accordingly, of the Catholic Church to acquire and use temporal goods as a necessary consequence of its right to religious freedom.

But the argument on the patrimonial right of the Church based on the right to religious freedom does not emphatically state the independence of such particular right from the political community. It only affirms that the Church has patrimonial right as a consequence of its right to religious freedom. *Dignitatis Humanae* does not make a categorical position that such right to temporal goods is independent from the State. It only asserts that the State has to juridically recognize and protect the religious community’s right to temporal goods as one of the essential elements of the natural right to religious freedom.

The Church’s patrimonial right independently of any political power is fundamentally based on the Church’s autonomous and independent structure. The assertion that the Church’s right to temporal goods is independent from the State simply means that the Church is autonomous and independent from the State. But the argument on the Church’s autonomous and independent structure

¹⁵³ *Dignitatis Humanae*, n. 4.

¹⁵⁴ Cf. J. Schouppe, Op. cit., p. 38.

is principally founded on divine positive law. The argument of *Dignitatis Humanae* primarily proceeds from natural law considering the reality of pluralistic and secular societies. The conciliar document attempts to present and defend the natural right to religious freedom of individuals and communities before contemporary political communities which tend to construct itself apart from the Christian revelation and even from the idea of God. A pluralistic and secular State should, at least, recognize the right to religious freedom just as it recognizes other human rights.

With regard to the patrimonial right of the Church, *Dignitatis Humanae* simply affirms that the Church, as a religious community, has this natural right which the State should juridically recognize, protect and promote. As aforementioned, the conciliar document does not categorically affirm that such right is independent from any civil authority.

However, the conciliar document says that “where the principle of religious freedom is not only proclaimed in words or simply incorporated in law but also given sincere and practical application, there the Church succeeds in achieving a stable situation of right as well as of fact and the independence which is necessary for the fulfillment of her divine mission.”¹⁵⁵ This statement signifies that, for the Church, religious freedom functions as a means to achieve the *libertas Ecclesiae* or the freedom and independence of the Church in pluralistic and secular societies. A State which does not recognize the divine foundation of the Church’s autonomy and independence, at least, should recognize the Church’s religious freedom. And a true and sincere juridical recognition and application of the principle of religion freedom guarantees, in fact, the independence which is “precisely what the authorities of the Church claim in society.”¹⁵⁶ “The desired independence of the Church is said to flow from the practical application of the principle of religious freedom.”¹⁵⁷ For that reason, the conciliar document says that “a harmony exists between the freedom of the Church and the religious freedom which is to be recognized as the right of all men and communities and sanctioned by constitutional law.”¹⁵⁸

Although the document does not emphatically affirm the independence of the Church’s patrimonial right, nevertheless it implicitly proclaims it. As mentioned earlier, the independence of the Church and, consequently, the independence of its right to temporal goods from any civil authority flows from the real, sincere and practical application of the Church’s right to religious freedom.

¹⁵⁵ *Dignitatis Humanae*, n. 13.

¹⁵⁶ *Ibid.*

¹⁵⁷ R. Kennedy, *Op. cit.*, p. 482.

¹⁵⁸ *Dignitatis Humanae*, n. 13.

Moreover, as aforementioned, the right to religious freedom is not absolute. This means that the Church's patrimonial right as an essential manifestation of religious freedom is also not absolute. R. Kennedy says that "*Dignitatis Humanae* itself, in speaking of the rights of religious bodies, including their right to acquire and use suitable funds and properties, prefaces its assertions with the words 'provided the just requirements of public order are observed'."¹⁵⁹ He affirms that the interpretation of the Church's right to temporal goods independent from any civil authority as stipulated in c. 1254 § 1 needs to be based on this conciliar teaching. The claim to independence of the Church's patrimonial right should "be understood in the same qualified sense in which the claim is made in *Dignitatis Humanae*."¹⁶⁰ The independence is not absolute. If not so interpreted according to the perspective of the conciliar document, "the claim will continue to spawn in some church administrators attitudes of defiance of civil law, ranging from ignoring the provisions of civil law to open hostility toward civil authority, both of which are contrary to the teaching and welfare of the Church."¹⁶¹

Even though *Dignitatis Humanae* principally appeals to natural law argument to defend the Church's right to religious freedom and, consequently, the Church's patrimonial right, nevertheless it affirms that this fundamental right has its roots in divine revelation. In other words, the right to religious freedom is not only based in natural law, but also in divine law. The conciliar document has these words:

"This doctrine of freedom has roots in divine revelation, and for this reason Christians are bound to respect it all the more conscientiously. Revelation does not indeed affirm in so many words the right of man to immunity from external coercion in matters religious. It does, however, disclose the dignity of the human person in its full dimensions. It gives evidence of the respect which Christ showed toward the freedom with which man is to fulfill his duty of belief in the word of God.

It is one of the major tenets of Catholic doctrine that man's response to God in faith must be free: no one therefore is to be forced to embrace the Christian faith against his own will. This doctrine is contained in the word of God and it was constantly proclaimed by the Fathers of the Church. The act of faith is of its very nature a free act... It is therefore completely in accord with the nature of faith that in matters religious every manner of coercion on the part of men should be excluded."¹⁶²

¹⁵⁹ R. Kennedy, Op. cit., p. 483.

¹⁶⁰ Ibid.

¹⁶¹ Ibid.

¹⁶² *Dignitatis Humanae*, nn. 9 – 10.

D. Church-State Relations on Temporal Goods from the Perspective of International Law

This part of our study concisely discusses the right of the Church to temporal goods based on the inalienable right to religious freedom from the perspective of international law. Besides, it briefly talks about the Holy See, a supreme authority and organ of government of the Catholic Church, as a subject of international law. The international juridical status of the Holy See is an effective means to have fruitful and harmonious relations with various political communities and to assert, maintain and defend the right of the Church to temporal goods.

1. The Right of the Church to Temporal Goods based on the Right to Religious Freedom

On December 10, 1948 the General Assembly of the United Nations (UN) adopted and proclaimed the Universal Declaration of Human Rights. The Preamble of this Declaration emphasizes that these equal and inalienable rights are founded on the inherent dignity of the human person. This means that these rights are not a result of any political concession. They are based on the nature of the human person. They are prior to any constitutional and juridical recognition on the part of the political community.

Article 18 of this Declaration is relevant for this particular theme of the dissertation. It proclaims the right to religious freedom of individuals and communities.¹⁶³

The International Covenant on Civil and Political Rights adopted by the UN General Assembly on December 16, 1966, in its article 18, also proclaims the right to religious freedom of individuals and communities as one of the civil rights.¹⁶⁴

¹⁶³ Article 18 of the Universal Declaration of Human Rights: "Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance."

¹⁶⁴ Article 18 of the International Covenant on Civil and Political Rights: "1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching; 2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice; 3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. 4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions."

The Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief adopted by the UN General Assembly on November 25, 1981 reiterates, especially in its article 1, the right to religious freedom proclaimed by the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.¹⁶⁵ Article 6 of the Declaration specifies the contents of the right to religious freedom. The right of every religious community to acquire temporal goods is included as an essential manifestation or content of the right to religious freedom. The contents as stipulated in article 6 which have something to do with the religious communities' right to acquire temporal goods are the following: 1) The freedom to establish and maintain places of worship; 2) The freedom to establish and maintain appropriate charitable or humanitarian institutions; 3) The freedom to make, acquire and use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief; 4) The freedom to write, issue and disseminate relevant publications in these areas; 5) The freedom to solicit and receive voluntary financial and other contributions from individuals and institutions.

The aforementioned manifestations of the right to religious freedom refer to the right of every religious community to acquire temporal goods to pursue their proper ends. Thus, from the perspective of international law, the Catholic Church as a religious association or community of men and women as well as any religious group has the right to own temporal goods as one of the collective manifestations of the right to religious freedom.¹⁶⁶ Its right to temporal goods based on the right to religious freedom is proclaimed and protected by international law.

J. Ibegbu says that his study of 126 constitutions of the different countries of the world on the provisions on the right to religious freedom reveals that "this

¹⁶⁵ Article 1 of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief: "1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have a religion or whatever belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching; 2. No one shall be subject to coercion which would impair his freedom to have a religion or belief of his choice; 3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others." J. Ibegbu comments that "although the *Declaration* does not define the right of the individual to religious freedom, however article 1 contains the fundamental elements of this right ... The following essential elements of the right to religious freedom are contained in this article; that is, choice, manifestation of religion or belief, the absence of coercion, and it implicitly contains the absence of impediment. In the light of the preceding considerations, we shall define its religious freedom ... as the absence of any compulsion or impediment in all matters dealing with one's religion or belief both with regard to internal acts and external manifestations of such acts." J. Ibegbu, *Op. cit.*, p. 195.

¹⁶⁶ Cf. J. Schouppe, *Op. cit.*, p. 38.

right is protected by the majority of the States and therefore it has become a general principle of Law recognized by civilized nations.”¹⁶⁷ The right to religious freedom proclaimed and protected by international law is already binding on many States. This means that the right to acquire temporal goods of the religious communities, and accordingly of the Catholic Church, as an essential manifestation of the inalienable right to religious freedom is constitutionally recognized by the majority of the political communities.

The Council of Europe (COE),¹⁶⁸ on November 4, 1950, signed the European Convention on the Protection of Human Rights and Fundamental Freedoms¹⁶⁹ so as to meet the goals adopted and proposed by the UN Universal Declaration on Human Rights. Article 9 of the Convention contains the right to religious freedom.¹⁷⁰

The Concluding Document of the Vienna Meeting of the Organization for Security and Cooperation in Europe (OSCE)¹⁷¹ on January 15, 1989, in its article 16, contains the fundamental right to religious freedom. Aside from proclaiming the inalienable right to religious freedom, the Document also specifies some aspects of the right of religious communities to acquire temporal goods. Article 16.4 stipulates that the religious communities have the right to “establish and maintain freely accessible places of worship or assembly, solicit and receive voluntary financial and other contributions.” Article 16.9 says that the religious communities have the freedom “to acquire, possess, and use sacred books, religious

¹⁶⁷ J. Ibegbu, *Op. cit.*, p. 191.

¹⁶⁸ The Council of Europe (COE) was founded after the Second World War to ensure that democracy would reign on the continent. Its core mandate is the human rights regime but also includes social cohesion and culture. The European Court of Human Rights in Strasbourg is its legal machinery for the promotion of human rights. Cf. J. H. Matlár, *Intervention for Human Rights in Europe*, Palgrave, New York 2002, pp. 116 – 123.

¹⁶⁹ The Convention was amended by the Third Protocol of May 6, 1963, the Fifth Protocol of January 20, 1966 and the Eight Protocol of March 19, 1985. Cf. F. Ermacora et al. (eds.), *International Human Rights: Documents and Introductory Notes*, Law Books in Europe, Vienna 1993, p. 195.

¹⁷⁰ Article 9 of the European Convention on the Protection of Human Rights and Fundamental Freedoms: “1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance; 2. Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.”

¹⁷¹ “The Organization for Security and Cooperation in Europe (OSCE) was originally the CSCE, the C denoting ‘conference’, not ‘organization’. The CSCE was, as this name indicates, a process rather than an organization. It was only in 1992 that the name changed, and the degree of institutionalization changed from an ad hoc process to organization. The OSCE is a security organization.” J. H. Matlár, *Op. cit.*, p. 135.

publications... and other articles and materials related to the practice of religion or belief.” Article 16.10 specifies that religious faiths, institutions and organizations have the freedom “to produce, import and disseminate religious publications and materials.”

On December 7, 2000, the European Parliament, the Council of the European Union and the European Commission solemnly proclaimed the Charter of Fundamental Rights of the European Union.¹⁷² Article 10 of the Charter proclaims the right to religious freedom.¹⁷³

Indeed, the patrimonial right of religious communities and, accordingly, of the Catholic Church, as one of the essential contents of the right to religious freedom, is proclaimed and protected by the COE, the OSCE and the European Union (EU). Moreover, the EU Charter of Fundamental Rights is politically binding to all States within EU. All member States should comply with the elements of the human rights regime.¹⁷⁴

“As in other world regions, efforts to establish human rights promotion and protection schemes within the specific regional context were also undertaken in Africa. The Organization of African Unity (OAU), which came into existence in 1963, provided the institutional framework for these efforts.”¹⁷⁵ After two years of drafting, on June 27, 1981, it adopted the African Charter of Human and People’s Rights. It entered into force on October 21, 1986 and on January 1, 1993, 49 of the 51 member States had ratified the Charter.¹⁷⁶ Article 8 of the Charter stipulates the right to religious freedom.¹⁷⁷ Since the Charter is also based on the UN Universal Declaration of Human Rights,¹⁷⁸ the right to religious freedom of the Charter also contains the patrimonial right of every religious community.

¹⁷² J. H. Matlárý comments that the Charter reinforces the common stance of the COE, the OSCE and the EU with regard to human rights issues. She further says that “the human rights regime in Europe is complete with this charter – it sends a strong signal to all states within or aspiring to get within these organizations that they must comply with the elements of the regime.” *Ibid.*, p. 187.

¹⁷³ Article 10 of the Charter of Fundamental Rights of the European Union: “1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance; 2. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.”

¹⁷⁴ Cf. J. H. Matlárý, *Op. cit.*, pp. 186 – 187.

¹⁷⁵ Cf. F. Ermacora et al. (eds.), *Op. cit.*, p. 270.

¹⁷⁶ Cf. *Ibid.*

¹⁷⁷ Article 8 of the African Charter on Human and Peoples’ Rights: “Freedom of conscience, the profession and free practice of religion shall be guaranteed. No one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms.”

¹⁷⁸ Cf. Preamble of the African Charter on Human and Peoples’ Rights.

The Inter-American Human system for the protection and promotion of human rights has two legal sources: the American Declaration of the Rights and Duties of Man of May 2, 1948 and the American Convention on Human Rights of November 22, 1969. Hence, there are two institutional structures of human rights protection in the Americas. While the former which is a Charter-based system is applicable to all members of the Organization of American States (OAS), the latter legally binds only the American States signatory to it.¹⁷⁹ Article 3 of the American Declaration of the Rights and Duties of Man protects the right to religious freedom¹⁸⁰ and article 12 of the American Convention on Human Rights stipulates the individual and communal right to freedom of religion.¹⁸¹

The discussion above presents a reality that the right to religious freedom of every religious community is protected and promoted by international law.¹⁸² This protection of the right to religious freedom includes the protection of the patrimonial right of the religious groups as an essential content or manifestation of the right to religious freedom. Besides, this universal value protected and promoted by international law is constitutionally and legally recognized and adopted by numerous States.

Certainly, with regard to the present theme of this dissertation, the Catholic Church's patrimonial right, as one of the fundamental contents of the right to religious freedom, is protected by international law. Besides, various political communities legally recognize and protect this particular right of the Church.

¹⁷⁹ Cf. F. Ermacora et al. (eds.), *Op. cit.*, p. 282.

¹⁸⁰ Article 3 of the American Declaration of the Rights and Duties of Man: "Every person has the right freely to profess a religious faith, and to manifest and practice it both in public and in private."

¹⁸¹ Article 12 of the American Convention on Human Rights: "1. Everyone has the right to freedom of conscience and of religion. This right includes freedom to maintain or to change one's religion or beliefs, and freedom to profess or disseminate one's religion or beliefs, either individually or together with others, in public or in private; 2. No one shall be subject to restrictions that might impair his freedom to maintain or to change his religion or beliefs; 3. Freedom to manifest one's religion and beliefs may be subject only to the limitations prescribed by law that are necessary to protect public safety, order, health, or morals, or the rights or freedoms of others; 4. Parents or guardians, as the case may be, have the right to provide for the religious and moral education of their children or wards that is in accord with their own convictions."

¹⁸² Pope Benedict XVI says that "international law is a model and an essential point of reference of states, insofar as it allows no derogation from religious freedom, as long as the just requirements of public order are observed. The international order thus recognizes that rights of a religious nature have the same status as the right to life and to personal freedom, as proof of the fact that they belong to the *essential core* of human rights, to those universal and natural rights which human law can never deny." Benedict XVI, *Message for the Celebration of the World Day of Peace*, 1-I-2011, Libreria Editrice Vaticana, Vatican City 2010, n. 5.

2. Church-State Relations on Temporal Goods: *The Holy See as Interlocutor*

The patrimonial right of every religious community based on the right to religious freedom is protected by international law. Besides, such particular right is constitutionally and legally adopted by various political communities.

With regard to the Catholic Church as a religious community, through the Holy See, it has the privilege of employing the mediums of international law to relate and cooperate with various States concerning its patrimonial right. The Catholic Church, through the Holy See which is its supreme authority and organ of government, is the only religious confession which is a subject of international law.¹⁸³ The Holy See which is a constitutive element of the Catholic Church exercises the rights and duties pertaining to the international subjectivity. These rights are recognized by the States comprising the international community.¹⁸⁴

The international subjectivity of the Holy See facilitates the Church's relations with various political communities especially regarding its patrimonial right. The Holy See has the international juridical capacity to participate in bilateral and multilateral treaties be they through Concordats or through other forms of international conventions governed by international law.¹⁸⁵ Through these international juridical instruments the Church through the Holy See asserts, maintains and defends its patrimonial right and at the same time achieves better relations with various political communities.¹⁸⁶ Pope Benedict XVI, in his address to the members of the Diplomatic Corps on January 10, 2011, emphasizes the importance of international conventions as a means of establishing harmonious relations between the political community and the Catholic Church:

¹⁸³ Cf. C. García Martín, "El estatuto jurídico de la Santa Sede en las Naciones Unidas", in *Ius Canonicum*, Vol. 38, 1998, p. 257; J. Okolo, Op. cit., pp. 273 – 274.

¹⁸⁴ Cf. V. Buonomo, "Considerazioni sul rapporto Santa Sede-Comunità Internazionale alla luce del diritto e della prassi internazionale", in *Ius Ecclesiae*, Vol. 8, 1996, pp. 6 – 13; M. R. Saulle, *Lezioni di Diritto Internazionale*, Edizioni Scientifiche Italiane, Napoli 1998, pp. 129 – 131; M. V. Brito de Macedo, *La Diplomacia Pontificia como servicio Petrino y su participación en la Organización de las Naciones Unidas*, Libreria Editrice Vaticana, Città del Vaticano 2010, pp. 38 – 50; C. García Martín, *Ibid.*, pp. 252 – 256.

¹⁸⁵ "Concordats, just like other forms of treaties, whether bilateral or multilateral, serve as evidence of the state of customary international law. They are an evidence as well as a source of international law, created by the will of States." J. Okolo, Op. cit., p. 39. International convention is another name for treaty which is an agreement between subjects of international law governed by international law. Cf. N. A. Maryan Green, *International Law*, 3rd Edition, Pitman Publishing, London 1987, pp. 14, 163.

¹⁸⁶ A concrete relevant example is the recent Agreement between the Holy See and the Republic of the Philippines on the Cultural Heritage of the Catholic Church signed on April 17, 2007 and entered into full force on May 29, 2008, following the exchange of instruments of ratification.

“Promoting the full religious freedom of Catholic communities is also the aim of the Holy See in signing Concordats and other agreements. I am gratified that states in different parts of the world, and of different religious, cultural and juridical traditions, choose international conventions as a means of organizing relations between the political community and the Catholic Church, thus establishing through dialogue a framework of cooperation and respect for reciprocal areas of competence.”¹⁸⁷

Indeed, the Holy See as a subject of international law facilitates the Church’s relations with various political communities. However, in relating with these political communities through international juridical means, the Holy See needs to act according to the principles set forth by the Second Vatican Council regarding Church-State relations. Gone are those days when the Church presented itself as a rival to the political societies and even superior to them. J. Okolo says:

“In the face of juridical pluralism and formal equality within the International community, in the face of non-interference in the internal affairs of sovereign states, in the face of reciprocity in mutual dealings, especially, within a society of religious pluralism in which some states do not yet have diplomatic relationship with the Holy See (because of political and religious ideologies), there is no more insistence on a position of pre-eminence which canonists have always upheld...”¹⁸⁸

In the face of formal equality in the international community, we cannot but re-evaluate the traditional affirmations of the Church as a ‘perfect society’ in order to see how it harmonizes with and fits into these current notions. Formulated as a theory based on juridical inequality especially between the Church and States even on temporal matters..., the thesis of the *societas iuridice perfecta* which arose within apologetic circumstances, cannot but be affected when the Holy See decides to meet States within their own camp as equal juridical partners in diplomatic dialogue. Actually, the traditional assertion of the Church being a ‘perfect society’ seems to have been overtaken.”¹⁸⁹

The Church’s right to temporal goods independent from the civil authority has to be interpreted based on the Council’s teachings on Church-State relations. Although the Church through the Holy See has the privilege to employ the mediums of international law in relating with the political communities in affirming its inherent and independent patrimonial right, nevertheless such privilege should always be

¹⁸⁷ Benedict XVI, *Address to the Members of the Diplomatic Corps*, 10-I-2011 at http://www.vatican.va/holy_father/benedict_xvi/speeches/2011/january/index_en.htm.

¹⁸⁸ J. Okolo, *Op. cit.*, p. 17.

¹⁸⁹ *Ibid.*, p. 34.

guided by the principles of Vatican II to avoid the demeanor of pre-eminence as has been in the past.

V. Conclusion

The Second Vatican Council declares that the Church is not only a spiritual community; it is also an organized society in this world. The divine and human elements form a single complex reality. Moreover, it affirms that the Church's mission is principally spiritual but its realization needs temporal means. To carry out efficiently its mission in this world, the Church also employs temporal goods. The use of temporal goods necessarily emanates from the visible structure of the Church as willed by its Founder. The Church has the right to temporal goods since its inception and this right is not a result of any political concession on the part of any civil authority. However, the Church is justified in its right to temporal goods insofar as they are employed to pursue its proper objectives. The Church may own substantial temporal goods but always in keeping with its mission. The spirit of profit and accumulation should not be part of the motive. The proper objectives outlined by the Second Vatican Council and juridically stipulated in the 1983 Code serve as the limiting brakes of the Church's need for financial and material means.

The doctrine on the Church's patrimonial right is juridically expressed in c. 1254 § 1 of the 1983 Code. As emphasized in the introduction of our study, the formulation of this particular canon is almost similar to its normative counterpart in the 1917 Code. Hence, some authors claim that the current canon contains the same ecclesiological doctrine as the basis of the previous canonical norm. This dissertation refutes such a claim. The interpretation of the text containing the canon should no longer be based on the old school of *Ius publicum ecclesiasticum*. In fact, the legislators were guided by the principles taken from the documents of the Second Vatican Council which already rejected the thesis of such old school. Recent magisterial teaching does not oblige the State to profess publicly the Catholic faith. The notion of a "perfect society" in explaining the relationship between the Church and the political community has been abandoned. The Council does not anymore espouse the idea of the supremacy of the Church over the State. It fervently promotes the fundamental principle of religious freedom. The interpretation of this particular canon should also be based on the Council's declaration on religious freedom. Moreover, M. V. Brito de Macedo affirms that the Second Vatican Council no longer refers to the idea of two sovereign and juridically perfect societies to discuss the relations between the Church and the State. It views such relations from the perspective of autonomy, collaboration, dialogue and religious freedom. From this perspective it is possible

to outline the legitimate forms of relationship between the Church and the political community.¹⁹⁰

With regard to the foundations of the Church's patrimonial right, we present the divine positive and natural law arguments to prove that there exists no reason to deny the Church's right to temporal goods. The divine positive law argument moves within the realm of faith and reason to explain the foundation of such right. A solid argument is based on the fact that the Church, as clearly affirmed by the Second Vatican Council, is also a visibly organized society in this world. The visible structure of the Church is directly willed by its divine Founder. The Church, as long as it exists and realizes its mission in this world, necessarily employs temporal goods. This necessity emanates from its very own visible structure as intended by its Founder who is Christ himself. Since Christ wills the visible structure of his Church, it follows that the Church's right to temporal goods, which emanates necessarily from such structure, has its source in the same will of Christ. Christ founded his Church not only as a *corpus mysticum*, merely internal and spiritual, but also as an external and visible society with its proper ends. And among the means that the Church needs to pursue its ends, apart from purely spiritual (grace, sacraments, etc.), are the temporal goods. Without these goods it is not possible for the Church to pursue its proper objectives as stipulated in c. 1254 § 2 of the 1983 Code. In establishing his Church as a spiritual and visible reality for the salvation of all men and women, Christ also provides it with the right to possess and use temporal means necessary for the accomplishment of its proper ends. This right of the Church depends not only from a theoretical reference to its salvific mission, but also from an efficient fulfillment of its mission in this world. Indeed, from its very own visible structure as intended by its Founder, the Church has the right to temporal goods. In our study, various scriptural texts are cited to corroborate the argument that the Church has patrimonial right as willed by its Founder.

The natural law argument prescind from principles which are based on divine revelation. This argumentation is especially directed to the proponents of rationalism who do not believe the truth of revelation and reject assent to every argument that is not based on pure reason. Besides, in a pluralistic and secular society which constructs itself apart from the Christian revelation and even from the idea of God, the Church uses the natural law argument to prove its patrimonial right. This kind of argument demonstrates that the Church, as a human religious institution, has the right to association since this right is one of the fundamental rights of the human person. While the right to association corresponds to the Church as a human

¹⁹⁰ Cf. M. V. Brito de Macedo, Op. cit., p. 102.

institution, the right to own and administer property is a necessity for the actual existence of the Church. This collective right to property is a natural right held in common by all associations of persons. The Magisterium has consistently affirmed that the right to own property both for individuals and communities is inalienable and proper to the nature of the human person. This means that the Church as a community of men and women has the natural and inalienable right to own property for the accomplishment of its proper objectives.

International law recognizes the truth based on natural law that all men and women have the right to religious freedom both in its individual and collective dimensions. It also affirms the inalienable right to association and the right to property of individuals and communities. From the perspective of international law, the Catholic Church, as a legitimate religious association or community of men and women, has the inalienable right to own property, which is universally established as corresponding to the nature of the human person. Besides, the patrimonial right of every religious community and, accordingly, of the Catholic Church is considered by international law as an essential manifestation or content of the right to religious freedom. Recognition of the Church's right to religious freedom without the correlative recognition of its patrimonial right means an actual violation of such fundamental right to religious freedom.

Indeed, in a pluralistic society which tends to refute any divine positive law argument, the Church does not need to rely on its divine foundation to demand recognition of its patrimonial right. It only claims respect for the fundamental rights of individuals and communities.

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. Hence, our study attempts to discuss the Church-State relations especially concerning the Church's patrimonial right. The general theme on Church-State relations according to Vatican II fundamentally serves as the basis of this dissertation's discussion on Church-State relations on temporal goods. In *Gaudium et Spes*, the Council affirms the Church's need of the use of temporal goods to pursue its mission immediately after it declares that the Church and the political community are autonomous and independent from each other. This means that the Church's use of temporal goods or the Church's patrimonial right emanates from its autonomous and independent structure. Such right is not a result of any political concession on the part of the State. The Church's right to temporal goods which is independent from the State precisely proceeds from its very own autonomous and independent structure.

However, there exists a close link between the Church and the political community with regard to temporal goods. This close link is based on the fact that the Church, using temporal means, carries out its mission within societies where political communities exist. The Church is not identified with any political community but it is situated in various political communities. The Church's right to acquire and use temporal goods has a close connection with the political community. This reality demands a necessary collaboration between the two communities in order to guarantee harmonious relations and avoid or attenuate possible conflicts regarding issues on Church property. Besides, this important collaboration between the two communities is declared by the Second Vatican Council because both are in the service of the personal and social vocation of the same human beings.

The Council's teaching regarding mutual autonomy and independence of the Church and the political community, which is fundamentally based on divine positive law argument, can hardly be accepted in its full meaning from the perspective of the contemporary State, pluralistic and secular, which constructs itself apart from the Christian revelation and even from the idea of God. If the foundation on divine positive law is not recognized by the secular State and also by the Islamic state, the Second Vatican Council, through its document *Dignitatis Humanae*, does not cease to invoke another title to claim the freedom of the Church as a community of people who should have the right to religious freedom in society. It defends the right to religious freedom, in its individual and collective dimensions, understood as a fundamental right which should be under the legal protection of the State. The Council bases this right on the dignity of the human person. It affirms that it is founded on natural law. Therefore, it demands that such right be recognized in the State as a civil right.

The conciliar document asserts that the Church's patrimonial right is one of the fundamental manifestations of the inalienable right of religious communities to religious freedom. The political community has to recognize this particular right to temporal goods in the same way as it should recognize the Church's right to religious freedom. Acknowledgment of the Church's right to religious freedom without the corresponding acknowledgment of its patrimonial right signifies an actual violation of the fundamental right to religious freedom. *Dignitatis Humanae* primarily bases this right of the Church to temporal goods as an essential consequence of its right to religious freedom on the dignity of the human person. In other words, the patrimonial right of the Church is also fundamentally founded on natural law. In a pluralistic and secular society which tends to reject a divine foundation of the Church's right, the Second Vatican Council invokes another title based on natural law to claim the

patrimonial right of the Church as a necessary consequence of its right to religious freedom. Moreover, a real, sincere and practical application of the Church's right to religious freedom guarantees the independence of the Church from the civil authority and, consequently, the independence of its patrimonial right. However, as emphasized by the conciliar document, the right to religious freedom is not absolute. Hence, the Church's patrimonial right as an essential manifestation of the right to religious freedom is also not absolute. The principle of sound collaboration between the Church and the political community is necessary.

Our study also discusses the right of the Church to temporal goods based on the right to religious freedom from the perspective of international law. The right to religious freedom of every religious community is protected and promoted by international law. This protection of the right to religious freedom includes the protection of the patrimonial right of every religious group as an essential content or manifestation of the right to religious freedom. Besides, this universal value protected and promoted by international law is constitutionally and legally recognized and adopted by various States. Consequently, the Catholic Church's patrimonial right, as one of the fundamental contents of the right to religious freedom, is protected by international law.

Moreover, the Holy See as a subject of international law facilitates the Church's relations with various political communities especially regarding its patrimonial right. It has the international juridical capacity to participate in bilateral and multilateral treaties governed by international law. Through these international juridical instruments the Church through the Holy See asserts, maintains and defends its patrimonial right and at the same time achieves better relations with various political communities. Although the Church through the Holy See has the privilege to employ the mediums of international law in relating with various political communities in affirming its inherent and independent patrimonial right, nevertheless such privilege should always be guided by the principles of Vatican II to avoid the behavior of pre-eminence before political communities as has been in the past. Gone are those days when the Church presented itself as a rival to the political societies and even superior to them. The thesis of *Ius publicum ecclesiasticum* is no longer espoused by the Magisterium of the Church. The inherent patrimonial right of the Church independent from the civil authority has to be interpreted and exercised based on the Second Vatican Council's doctrine on Church-State relations.

The current teaching of the Church regarding its inherent right to temporal goods independently of any civil authority is still relevant and tenable in our society

today. The foundation of such canonical doctrine rests on divine positive and natural law arguments. The divine positive law argument is basically an *ad intra* argument. It constantly reminds the Church that its patrimonial right has a strong foundation: the divine will. This fundamental right continues to exist even in situations in which the civil power actually denies its existence.

The natural law argument can be considered as an *ad extra* argument. It is directed towards those who reject any argument based on divine revelation. It shows that even according to their own principles there is no reason to deny the Church's patrimonial right. The argument is also addressed to a pluralistic and secular society. The Church's right to temporal goods is an essential dimension of the inalienable right to religious freedom which should be legally protected by the political community as a civil right. As mentioned earlier, in a pluralistic and secular society which has a tendency to reject any divine establishment of the Church's patrimonial right, the Church does not need to rely on its divine foundation to demand recognition of its patrimonial right. It only claims respect for the fundamental rights of individuals and communities. ■



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