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The Concept of CHURCH In the 1954 Internal Revenue Code

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IS THE SOCIETY for the Propagation of the Faith, an association founded for the support of Catholic Missions throughout the world, entitled to the special tax treatment granted "churches" by the Internal Revenue Code of 1954? Indeed, what organizations of the Roman Catholic Church qualify as "churches" under the new law which grants favorable tax treatment for contributions made to a "church or a convention or association of churches,"[1] and continues to exempt "a church or a convention or association of churches" from the tax imposed on the "unrelated business income" of most other beneficent organizations?[2] Obviously, the institution which can establish its character as a "church" under these provisions of the Act will improve the tax standing of its contributors, a factor which may be reflected in more liberal contributtions, and will save itself payment of taxes on any "unrelated business income" it may have.

The first purpose of this article is to demonstrate, by an examination of the history of the legislation, that the phrase in question, "a church or a convention or association of churches," is to be characterized by the internal law of the denomination which controls the institution receiving the contribution or earning the income. Then, we shall show what institutions and organizations are entitled, under the Canon Law of the Roman Catholic Church, to be characterized as "churches."

Deduction for Gifts

The new law introduces an entirely new concept in the area of the deductibility of charitable contributions by raising the limit on the percentage of adjusted gross income which can be deducted by an individual as a contribution from 20 percent to 30 percent, provided the extra 10 percent is made up of contributions to "a church or a convention or association of churches," a tax-exempt educational organization, or a hospital. Thus, a taxpayer may now contribute 10 percent of his adjusted gross income to a church and in addition retain the ordinary limitation of 20 percent for other contributions which may be made to all types of exempt organizations, including churches.

For example, a taxpayer whose adjusted gross income is $10,000

*For a biographical sketch of the authors see page 78.

[1] 1954 Int. Rev. Code §170(b)(1)(A)(i).

[2] 1954 Int. Rev. Code §511(a)(2)(A), substantially unchanged from 1939 Int. Rev. Code §421(b)(1)(A).

may deduct $3,000 as charitable contributions if he has given at least $1,000 to "churches." More concretely, if the Society for the Propagation of the Faith is a "church," a $3,000 deduction would be permitted if his contributions were the following: Library Association, $1,000; Boy Scout Camp, $500; Society for the Propagation of the Faith, $1,500. If the Society for the Propagation of the Faith is not a "church," his allowable deduction would be only $2,000.[3]

Further, if the Society for the Propagation of the Faith is a "church," this $1,500 gift would actually cost an unmarried taxpayer only $1,050. Of course, as the adjusted gross income of our taxpayer increases, the amount of the allowable deduction and the tax saving increases with it. If his adjusted gross income were $25,000 and his contributions were made in the same proportion of adjusted gross income, his cost for the gift of $3,750 to the Society for the Propagation of the Faith would be only $1,776.

Unrelated Business Income

As noted above, the definition of the phrase is also meaningful because of the provisions exempting "a church or a convention or an association of churches" from the tax imposed on the unrelated business income of certain other exempt organizations. Unrelated business income is income derived by an exempt organization from the conduct of a trade or business "which is not substantially related (aside from the need of such organization for income or funds or the use it makes of the profits derived) to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption."[4] If such a business is regularly carried on, the income therefrom is taxable to most exempt organizations other than "a church or a convention or association of churches."

As an example, two farms are owned and operated by "Catholic organizations;" the first by X Post of the Catholic War Veterans, the second by the School Sisters of Notre Dame de Namour. We will suppose that, contrary to usual practice, in this case the ownership and operation of these farms are not substantially related to the basic functions of these organizations. Because the Post is an organization merely approved by the Catholic Church, its farm income is taxable. Because the congregation of Sisters is a corporate entity established by the law of the Church, as we shall show, the congregation is a "church" and its farm income is not taxable.

In addition to these two highly significant uses of the word "church," the new Internal Revenue Code also employs the term in other provisions of relatively narrow implication wherein the meaning is to a large extent controlled by the context.[5]

Revenue Act of 1950

The phrase, "a church or a convention or association of churches," first appeared in

[3] In addition, there are special provisions of the new law under which the income of a trust which would ordinarily be taxed to the grantor, as the substantial owner, is not taxable to him if the income of the trust is irrevocably payable for a period of two years or more to a church, an educational institution or a hospital, even though the grantor retains a reversionary interest (1954 Int. Rev. Code §673), or a power, exercisable at the end of such a period, to control the beneficial enjoyment (§674), or to revoke (§676).

[4] 1954 Int. Rev. Code §513 (a), substantially unchanged from 1939 Int. Rev. Code §422(b).

[5] For example: 1954 Int. Rev. Code §3121(b)(8)(A), substantially unchanged from 1939 Int. Rev. Code §1426(b)(9)(A), exempts from the Federal Insurance Contributions Act, "service performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such orders"; 1954 Int. Rev. Code §4233(a)(1)(A)(i), substantially unchanged from 1939 Int. Rev. Code §1701(a)(1)(A)(i), exempts from the Admissions Tax the proceeds of any entertainment inuring exclusively to the benefit of, "a church or a convention or association of churches"; and, 1954 Int. Rev. Code §5121(c), substantially unchanged from 1939 Int. Rev. Code §3250(e)(3), grants special alcoholic beverage tax treatment to fraternal, civic, church, labor, etc., organizations selling certain malt liquids on the occasion of any kind of entertainment, etc., held by them.

the Revenue Act of 1950[6] which originally imposed the tax on the unrelated business income of certain otherwise exempt organizations, but specifically exempted "a church or a convention or an association of churches." Unfortunately, the Committee Reports accompanying the 1950 Revenue Act and the regulations promulgated thereunder were confusing as to the precise meaning and scope of the phrase used in the legislation, "a church, a convention or association of churches." For example, the Senate Report accompanying the bill provided, "Religious organizations are subject to such tax even though organized under church auspices. This is also true of organizations with charitable, educational, etc., purposes which are organized under church auspices."[7] The Conference Committee Report stated that "[t]he tax does not apply to income of this type received by a church (or an association or convention of churches) even though the church is held in the name of a bishop or other church official. However, the tax does apply to other exempt institutions operating under the auspices of a "church."[8] The regulations provided: "Churches and associations or conventions of churches are exempt from the Supplement U tax. The exemption is applicable only to an organization which itself is a church or an association or a convention of churches. Religious organizations, including religious orders, *if not themselves churches* or associations or conventions of churches, and all other organizations which are organized or operated under church auspices, are subject to the Supplement U tax, whether or not they carry out a religious, educational, or charitable function approved by a church. For example, an incorporated university exempt from tax under section 101 (6) is subject to the Supplement U tax whether or not it was organized by or is operated under the auspices of a church." [9] (Emphasis supplied).

But, what religious orders and what religious organizations were "churches" so as to qualify for the exemption? This led to the further question — What law was to be used to characterize a church? Was it some Federal Common Law which may still survive the glancing blow of *Erie R.R. Co.* v. *Tompkins?*[10] Was it the local law of the state of incorporation, or formation, or principal headquarters of the religious organization? Or was it the internal local law of the ecclesiastical group itself? Any attempt to characterize the phrase under American common law was doomed to failure since the word church is found in the common law in a variety of circumstances, none of which are helpful in construing the term as used in the Internal Revenue Code.[11]

1951 Amendments

When amendments were made to the Excise Tax in the Revenue Act of 1951,[12] exemption from the admissions tax was granted for entertainments which were for the exclusive benefit of "a church or a convention or association of churches."[13] This constituted the second use of the phrase, but the Committee Reports remained silent as to its meaning. The regulations issued pursuant to this section,[14] however, provided that: "The term 'convention or association of

[6] Revenue Act of 1950, §301(a).

[7] Sen. Rep. No. 2375, 81st Cong., 2d Sess. (1950); 2 U. S. Code Cong. Serv. 3164 (1950).

[8] Statement of H.R. 8920 as agreed to by the Conferees, 2 U. S. Code Cong. Serv. 3240 (1950).

[9] U. S. Treas. Reg. 118, §39.421-2(a)3 (1950).

[10] 304 U. S. 64 (1938).

[11] See, *e.g.*, Robertson v. Bullions, 9 Barb. 64, 95 (N.Y. 1850) (a building consecrated to the honor of God or religion); Church of the Holy Faith, Inc. v. State Tax Comm'n, 39 N.M. 403, 48 P. 2d 777, 778 (1935) (a society of persons who profess the Christian religion); Trustees of the Baptist Society in Amwell v. Fisher, 18 N.J.L. 254, 257 (1841) (a spiritual or religious corporation); Doan v. Vestry of Parish of Ascension, 103 Md. 662, 64 Atl. 314, 316 (1906) (a body of Christians worshiping in a particular church edifice or constituting one congregation).

[12] Revenue Act of 1951, §402(b).

[13] 1939 Int. Rev. Code §1701(a)(1)(A)(i); retained in the new law, 1954 Int. Rev. Code §4233 (a)(1)(A)(i).

[14] U. S. Treas. Reg. 43, §101.15(b)2 (1941), as amended.

churches' includes a union of churches of the same denomination organized on a regional or other basis, or a union of churches of different denominations which meet and act in concert to further a particular religious purpose. Missions and missionary societies, Sunday school classes, choir groups and other organizations forming a functional part of the organization of a church fall within the exception." Thus, while the regulations under the admissions tax provisions of the former Internal Revenue Code did not clarify the definition of the phrase, they did appear to be somewhat broader in scope and application than the regulations issued regarding the unrelated business income of exempt organizations.

The New Code

The 1954 Internal Revenue Code and the committee reports accompanying it, however, laid to rest all doubt. They have established that the phrase, "a church or a convention or association of churches," is to be given a broad application and is to be characterized under the internal law of the ecclesiastical organization itself.

The House bill[15] authorized the special 10 percent additional limitation for charitable contributions when the contribution was to "a church or a convention or association of churches or a religious order." When the bill came before the Committee on Finance of the United States Senate, the phrase "or a religious order" was deleted from the provisions of the bill. The reason for this deletion is stated in the Report of the Committee on Finance[16] as follows: "Your committee understands that 'church' to some denominations includes religious orders as well as other organizations which, as integral parts of the church are engaged in carrying out the functions of the church whether as separate corporations or otherwise. It is believed that the term 'church' should be all inclusive. To retain the phrase 'or a religious order' in this section of the bill will tend to limit the term and may lead to confusion in the interpretation of other provisions of the bill relating to a church, or convention or association of churches. Accordingly, your committee believes that the section of the bill will be clarified by this amendment."[17]

The Intent of Congress

Thus, there is a clear manifestation of congressional intent that the phrase, "a church or a convention or association of churches," wherever appearing in the Internal Revenue Code, is to be characterized by the internal law of the denomination itself. It is of special interest to note that the action of the Senate Finance Committee was apparently induced by the testimony of Mr. Eugene J. Butler, Director, Legal Department, National Catholic Welfare Conference. In his statement,[18] Mr. Butler urged the committee to delete the phrase "or a religious order" from the House bill on the ground that the use of such term might tend to limit the scope of the word "church" as used in the Internal Revenue Code. Demonstrating that the fundamental law of the Roman Catholic Church, Canon Law, regarded religious orders and other organizations as integral parts of the Church, he requested that any implication that the term "church" was to be given only a limited application be avoided by eliminating the words "or a religious order" and that an appropriate explanation for the deletion be made part of the committee report. This is exactly what was done.

With the principle established that the phrase, "a church or a convention or association of churches," is to be characterized under the internal law of the appropriate ecclesiastical denomination, the only problem remaining is what organizations within any ecclesiastical group qualify as "churches" under this internal law. For purposes of this article, we shall consider the question only

[15] H.R. 8300, 83d Cong., 2d Sess., §170 (1954).

[16] Sen. Rep. No. 1622, 83d Cong., 2d Sess. 30 (1954).

[17] See also, *id.* at 207.

[18] Part II, Hearings before Committee on Finance, U. S. Senate, on H.R. 8300, 83d Cong., 2d Sess. 1027 (1954).

as it affects the Roman Catholic Church; namely, what organizations in the Roman Catholic Church are classified as churches by Canon Law.

Church Property and Churches

Fortunately, there is perfect coordination between the Canon Law and the Internal Revenue Code. The Internal Revenue Code is concerned with property, of which money is but one instance,[19] given to or earned by a church. Since the Catholic Church as such, the "Church Universal," does not in fact acquire, or hold, or administer property, the question arises: what property is the property of the Roman Catholic Church?

Under Canon Law, any property owned by a moral person in the Church is "Church" property.[20] The phrase "moral persons in the Church" may have a strange sound to ears attuned to the language of the common law. Canon 99 declares that there are in the Church, besides physical persons, also moral persons, established by public authority. Writers on the civil law distinguish persons into "natural" and "juristic" classes. For the latter they use also the terms "moral bodies," "moral entities," "autonomous moral entities."[21] Analogously, English and American law dictionaries distinguish "natural" and "artificial" persons. Thus, a moral person in the Church is an entity, other than a natural person, endowed by law or by competent ecclesiastical authority with legal personality. A person at law is an entity in which inhere rights and obligations, the most basic of which are those relating to the ownership of property and to the capacity to sue and to be sued.

The Catholic Church, called also in the Canons, "the Church Universal,"[22] is by divine right a moral person.[23] It is explicitly declared to have the right to acquire, to hold and administer temporal goods as a means of achieving the purposes for which the Church exists.[24] As pointed out above, however, no property of any kind is held by the Church Universal. It follows, therefore, that, if there is any Church property at all, it is that which is held by the moral persons in the Church.

In fact, the moral persons holding Church property are so closely identified with the Church itself, that the very name "Church" is applied to these moral persons in some of the Canons. For example, Canon 1498 enacts that in the Canons which follow it (to Can. 1551, inclusive), the word "Ecclesia" (Church) signifies all moral persons in the Church, unless the context of a Canon or its subject matter indicates a more restricted sense of the term in that place. All the Canons numbered from 1498 to 1551 treat of Church property.

Conversely, no natural person may own Church property.[25] Even the Pope, who is the Head of the Church and the incumbent of the Apostolic See, the successor of St. Peter in the Bishopric of Rome, is not the owner of Church property, although the Apostolic See, a moral person, does in fact receive, hold and administer Church property. By virtue of his office, the Pope is declared in Church law to be the "supreme administrator and dispenser" of Church property.[26] But, he is not the owner of such property.

The exclusion of any natural person from ownership of Church property is no new concept. Writing about 1270, St. Thomas Aquinas discussed the problem of whether the "income of any church" could be considered the personal property of the Pope. Aquinas dismissed the suggestion: "Though the property of the Church is his [the Pope's] in the sense that he is the supreme dispenser thereof, it is not his in the sense of being in his own-

[19] For example: 1954 Int. Rev. Code §317(a) includes money within the meaning of property as used in Sub-chapter C.

[20] Can. 1497,§1.

[21] Ferrara, Le Persone Giuridiche, Turin, 1938, pp. 12, 13.

[22] Can. 1498.

[23] Can. 100,§1.

[24] Can. 1499,§1.

[25] *Cf.* Can. 1497,§1 (Church property is owned by moral persons in the Church); Can. 1499,§2 ("The ownership of property, subject to the supreme authority of the Apostolic See, belongs to that moral person in the Church which has legitimately acquired that property.").

[26] Can. 1518.

ership or possession."[27] Canonists generally agree that the Pope's power is that of exercising eminent domain, and of directing the activities of moral persons in the Church in the management of their property.[28]

The status of the Pope in regard to Church property is somewhat analogous to the relationship of the President of the United States to federal property. While the President, together with Congress and the Judiciary, has the power to exercise dominion and control over government property, he is in no sense the owner of such property.

This power of the Pope over the administration of the property of moral persons in the Church, as well as the explicit designation of ecclesiastical moral persons as "churches," makes the conclusion inescapable that the property of moral persons in the Church is the property of the Church itself.

Control of Church Property

The Pope is the "Ordinary" of the whole Church. He has, however, communicated by law some of his powers as "supreme administrator and dispenser of Church property" to inferior ordinaries. Ordinaries are persons who, by virtue of their office, exercise jurisdiction over the Church in specified territories, such as Bishops and their Vicars General, or within specified groups of persons in the Church, such as major religious superiors.[29]

The law of the Church requires that the Ordinaries shall: supervise the administration of all Church property in their territories;[30] make rules for such administration and, usually, appoint the administrators thereof;[31] direct investment of surplus funds and reinvestment of all funds;[32] receive annual accounting from all adminstrators;[33] authorize the administrators to bring or defend suits affecting the property in their charge.[34] The license of the Ordinary, and in cases where the value exceeds a certain limit, the permission of the Holy See, is required for alienation of Church property. Alienation includes not only sale and gift by which title passes, but even engagements which render title or possession of capital property somewhat limited or insecure, e.g., long leases, mortgages, pledges, and certain other types of debt.[35] Similar permission is required for an administrator to refuse a gift to his Church.[36] Where property represents a gift whose donor has indicated a specific purpose, the dedication of the property to that purpose is to be supervised by the Ordinary.[37] His duties are even more exigent when the gift is held in trust by a moral person which may use only the income produced by the gift property.[38]

Consideration of these safeguards and controls over the property of moral persons in the Church makes even more evident and more meaningful the fact that the property of such moral persons is Church property.

Moral Persons in the Church

Moral persons in the Church are of two types, collegiate and non-collegiate. Collegiate moral persons are founded on a group of natural persons, such as the members of a religious order, and non-collegiate moral persons are founded on a specific piece of property, such as a shrine.

The collegiate moral person (corporation or *universitas personarum*) has its origin in Roman Law, and is described in the Digest of Justinian.[39] That text recognizes certain *collegii* and *societates* which have a *corpus,* hold property in common through a common treasury, and which have standing in court through their syndics (*actor sive syndicus*). The text declares that their property rights and their *jus standi* are modeled on the analogous rights of the state itself. Modern writers say that the juristic personality of such cor-

[27] Summa Theologica II^a-II^{ae}, q. 100, a. 1, ad 7.
[28] Can. 1499,§2 (see n. 25 *supra*).
[29] Can. 197; 198.
[30] Can. 1519,§1.
[31] Can. 1519,§2; 1521.
[32] Can. 1523, n. 4; 1539,§2.
[33] Can. 1525.
[34] Can. 1526.
[35] Can. 1530-32; 1281; 1533; 1538; 1541-42.
[36] Can. 1536.
[37] Can. 1491,§1; 1493.
[38] Can. 1546,§1; 44.
[39] L. 1, Sec. 1, D. quod cuiusc. univ. nom. 3, 4.

porations is erected by the authority of the state upon the substratum of the group of natural persons who are members thereof.

The non-collegiate moral person may have taken its origin from the pious foundations of late Roman Law, but there is reason to believe that these *fundationes*, which included funds for redemption of captives as well as such welfare institutions as orphanages and hospitals, had not a juristic personality of their own. Whatever may have been the juridical status of such *universitates bonorum* in Roman Law, there is no doubt that there were in the Middle Ages, especially in the ecclesiastical law, juristic persons founded upon a substratum not of persons but of property. These were called *universitates bonorum,* and they certainly had autonomous property rights and rights of suit. It may be that the Church doctrine which holds Her to be the mystical body of Christ inspired the medieval jurists to recognize a juristic personality abstracted from any membership held by natural persons.[40] Or this concept may have had its genesis in the Germanic notion that the very edifice which was the center of a religious or charitable activity owned the lands which were given for the use of the charity, or in the older concept which held the titular saint to be owner of the property.[41]

In all events, modern writers on the civil law clearly recognize the distinction between *corporations,* whose juristic personality is founded on their *membership of natural persons,* and *institutes* whose juristic personality finds its substratum in a *patrimony of property.*[42]

Whatever be the substratum upon which a moral person in the Church may be erected, the Canon Law clearly requires that juristic personality shall be conferred by competent authority.[43] Thus not every association of Catholics, and not every enterprise which serves a distinctly Catholic religious purpose, is a moral person in the Church. Moral persons in the Church are juristic personalities which are either: recognized as such by the law of the Church, constituted such by the law of the Church, or constituted such by authority competent under the law of the Church. Canon 100 indicates the manner in which the authority of the Church acts in these matters.

Status Conferred by Law

Certain collegiate groups in the Church, and certain institutes, are explicitly or implicitly recognized or constituted by law as juristic personalities.[44] For example Canon 100, §1 explicity recognizes the Catholic Church and the Apostolic See as moral persons by divine right. Not by divine right, but by explicit declaration of the Canon Law, juristic personality is conferred upon all dioceses,[45] all parishes[46] and seminaries.[47] Similar explicit attribution of moral personality in the Church is made to all religious orders and religious congregations, and to their provinces and their houses.[48] One should note that "religious" is here taken in the strict sense of Canon 488, and applies only to institutes whose members, in pursuit of Christian perfection, live their lives in common and make their vows publicly.[49] The religious orders of men include, in addition to the Benedictine and other monastic institutes, the Franciscan and Dominican mendicants, and the Jesuits; among the orders of women are the Poor Clares, the Carmelite and Dominican nuns. Some of the larger religious congregations are the Brothers of the Christian Schools, the Salesians, the Sisters of St. Joseph and the Sisters of Mercy.

In other cases, the Canon Law confers juristic personality upon various classes of ecclesiastical entities, not by declaring ex-

[40] Ferrara, *op. cit. supra* note 21, at p. 10.

[41] *Cf.* 1 Pollock and Maitland, The History of England Before the Time of Edward I 497-502 (2d ed. 1899).

[42] Ferrara, *op cit. supra* note 21, at pp. 40-45.

[43] Can. 99.

[44] Can. 100,§1.

[45] Can. 1557,§2, n. 2.

[46] Can. 1209,§1.

[47] Can. 99; 1409.

[48] Can. 536.

[49] Every vow is a promise made to God; a public vow is accepted by an ecclesiastical superior acting for the Church; vows not thus officially accepted are private.

plicitly that these entities are moral persons in the Church, but making the same declaration implicitly. The attribution of juristic personality is implied in a law which declares that certain ecclesiastical entities are capable of holding property in their own dominion, or that they are capable of suing or of being sued in the courts of the Church. This is the case with public oratories[50] and with pious places such as shrines.[51] Thus also is moral personality conferred by the law upon the societies which pursue the life of perfection by living in common without public vows.[52] The Vincentian Fathers, the Maryknoll Fathers, the Sulpicians, the Daughters of Charity of St. Vincent de Paul, are societies of the common life.

We have not indicated all the classes of moral persons in the Church so constituted by operation of law, but have restricted our consideration here, as we shall in the following section, to those types of ecclesiastical entities which commonly receive and hold property in the United States.

Status Conferred by Decree

The last clause of Canon 100, §1 indicates the method by which ecclesiastical authority acts to confer juristic personality on individual corporations and institutes which have not that character by operation of law. The Canon provides that any such grant of moral personality in the Church shall be made by formal decree of a competent ecclesiastical superior. The superior is, of course, an Ordinary or his delegate, since the act to be accomplished is one of true jurisdiction. Most canonists insist that the decree must make the grant of juristic personality in explicit terms, or at least imply the grant by making attribution of the right to hold property or the right of suit.[53]

[50] Can. 1188,§2,n. 1; 1191; 1298.

[51] Can. 1298,§1.

[52] Can. 676,§1, cum. 536.

[53] A few canonists see an exception to this rule in some special cases. *Cf.* Gillet, La personalite juridique en droit ecclesiastique, Malines, 1927, p. 249; Ciprotti, De formali decreto quo persona moralis constituitur, in Consultationes Iuris Canonici, Rome, 1939, vol. II, p. 23.

Canon 100 does not leave the Ordinaries free to make these grants of juristic personality to any group or institute without distinction. It requires that the decree of the Ordinary shall issue for a "religious or charitable purpose." The Ordinary is, therefore, obliged to restrict such grants to those groups and institutes whose work he shall determine, upon investigation, to be "pious" in the canonical sense.[54] The canonical standard of piety is objective. A group or an institute for which a decree is petitioned is not to be judged pious or religious or charitable in the sense of the Canons merely because its sponsors have subjective motives stemming from the virtues of piety, religion, or charity. The internal motive of a man's act may please God, but so long as that motive is purely internal even the Canon Law cannot judge it pious.[55]

The character of the works undertaken rather than the subjective dispositions of their sponsors and executors governs the judgment of the Ordinary in these matters. If the work has for its direct effect the worship of God, as would be the case, for example, in a society whose purpose is to arrange for celebration of Masses for the dead, then the institute carrying on such work has an objectively religious purpose. Where the activity contemplated is one of the spiritual works of mercy, as for example, the visitation of the sick for the purpose of instructing and encouraging them in the performance of acts of religious obligation or devotion, the purpose of the institute is obviously one of charity in a distinctly religious sense. Here the economic or social status of the beneficiaries is not a factor

[54] The canonical concept of "piety" has been defined classically by Molina: "Therefore, whatever is done principally for God's sake, or for a supernatural motive, to merit grace or glory in God's sight, or to make satisfaction for one's own sins or for those of others, is rightly called pious." (De iustitia et iure, Opera Omnia, Cologne, 1733, Tom I, disp. 134).

[55] As Navarrus said, "Sometimes what God takes for piety, is found profane by the judges, and conversely what is profane in the sight of His Divine Majesty, is reputed pious among men." (Tractatus de Reditibus Beneficiorum Ecclesiasticorum, Rome, 1568, n. 61, p. 74).

in the adjudication that this institute is a canonically pious one, for all men are in spiritual need.

But when the good work to be accomplished addresses itself directly to the relief of physical necessity, a two-fold test of its canonically religious, charitable, or pious character must be applied. First there must be in the beneficiaries a real need.[56] Secondly, there is to be applied here the test of religious purpose.[57] Thus, an institution for the relief of poverty or ignorance or illness whose aim is simply to relieve the social ills consequent upon such misfortune cannot become a moral person in the Church. The creation of corporations for such merely humanitarian purposes is exclusively in the province of the civil power. But if an institution is set up to relieve these material necessities and is planned at the same time to effect religious formation in its beneficiaries, then, these joint aims will warrant issuance of an Ordinary's decree by which that establishment shall be brought within the class of ecclesiastical moral persons. A Bishop examining such an institution will have ground for an affirmative finding that the two-fold test described above has here been met.

When Is Decree Needed?

Grant of juristic personality in the Church, not by operation of law, but by special decree of a competent ecclesiastical superior, affects principally three general types of institutions or organizations within the Church: "ecclesiastical institutes," whose purpose is religious or charitable;[58] associations of the faithful, formed for the purpose of advancing the religious life of their members, or for works of piety and charity, or to promote the public worship of the Church;[59] and secular institutes.

The Pontifical Society for the Propagation of the Faith exists throughout the Catholic world in virtue of the Motu Proprio of our late Holy Father, Pope Pius XI, given 3 May 1922. This charter grants to the Society the status of a moral person in the Church. The grant of juristic personality is not expressed, but is implicit in the Statutes granted to the Society which make mention of the rights to receive, administer, and disburse all kinds of property for the benefit of Catholic Missions; for example, Statua Generalia, VI, IX, X, XI.[60] Thus, there can be no question but that the Society for the Propagation of the Faith qualifies as a "church" under the Internal Revenue Code of 1954 and that contributions to it are subject to the increased percentage limitation and that the income from any unrelated business activity is not taxed to it.

Secular institutes are too new to the Canon Law to have found a place in the Code promulgated in 1917, and those few secular institutes which exist in the United States are still in an experimental stage of development. Yet, because these organizations may play a very large part in the activity of the Church in America, we feel it necessary to make special mention of them and their standing as moral persons in the Church. They are societies of persons within the Church, whose members bind themselves by public vows to the pursuit of Christian perfection in their own lives, and also dedicate themselves under the rule of their institute to various works of religion and charity. They do not live in communities as do the members of religious institutes and members of societies of the common life. Yet, the members of the secular institutes, through their vows and the rule by which they are bound, devote their lives to religion with a completeness and stability which set these institutes distinctly apart from mere associations of the laity. The canonical status of the

[56] That is postulated by the teaching of Christ and His Apostles regarding these corporal works of mercy. Christ speaks of the hungry and the naked (Matt. 25, 35); St. James also emphasizes need in those who are the proper objects of good works: "naked and in want of daily food" (James 2, 15).

[57] Christ's words (Matt. 25, 34-46) demand an identification of the needy with Himself. The essential point of St. James' discourse (James 2, 14-26) is that the works of practical charity are an expression of religious faith.

[58] Can. 1489,§1; 1375.

[59] Can. 685; 687.

[60] Acta Apostolicae Sedis, Vol. XIV, p. 327.

secular institutes is based upon the Constitution given by our present Pope, Pius XII, on February 2, 1947. Article V, section 1, of that Constitution, reserves to Bishops, excluding other Ordinaries, the power to grant, by special decree, the status of a moral person in the Church, to a secular institute.[61]

The Canons[62] clearly distinguish decrees of approval and decrees of erection given such institutes and associations from the decree by which moral personality in the Church is conferred upon these entities. That distinction has great practical importance. For example, a lay association merely approved by the Church and an institute erected in the property of a parish or a religious house enjoy no juristic personality; property destined for the use of either unincorporated entity must be held in trust. The trustee will be either an ecclesiastical moral person, such as the parish or religious house, or a natural person, or civil corporation. If the trustee is not an ecclesiastical moral person, the trust property is not church property and its management is subject to ecclesiastical supervision only indirectly, insofar as the Ordinary is by law executor of pious wills and trusts.[63]

[61] 3 Bouscaren, Canon Law Digest 144 (1954).

[62] *Cf.* Can. 686; 1491,§2; 1412,§2.

Conclusion

This highly abbreviated exposition of the nature, the rights and obligations, and the method of creation of moral persons in the Church should make it evident that these moral persons are "churches" within the contemplation of the Internal Revenue Code and are specific illustrations of the proposition expressed in the Committee Report that " 'church' to some denominations includes religious orders as well as other organizations which, as integral parts of the church are engaged in carrying out functions of the church whether as separate corporations or otherwise."

[63] Can. 1515-1517.

Contributions Through A Fund-Raising Foundation

A recent revenue ruling, Revenue Rule 55-1, Internal Revenue Bulletin 1955-1,6, provides that the special additional 10% limitation on contributions made to churches, certain educational organizations and hospitals will be applicable, under certain conditions, to gifts made through an organized non-profit independent charity fund-raising foundation. If the donor, in satisfaction of a general pledge, delivers to the foundation a check drawn to the order of a specific organization which qualifies for the special tax treatment and the check is directly and unconditionally forwarded to that organization by the foundation without charge, in accordance with the rules and practices of the foundation, the additional 10% limitation will apply to the amount of the contribution.

Substantiation of Special Treatment

The new ruling also provides that claims for deductions subject to the special limitation must be substantiated, when required by the Commissioner, by a statement from the organization to which the contribution or gift was made showing whether the organization is of the type qualified for special treatment, the name and address of the contributor or donor, the amount of the contribution or gift and the date of the actual payment thereof, and other special information as the Commissioner may deem necessary.