

Clergy and new ecclesial movements. Juridical issues*

Prof. Luis Navarro
Pontifical University of the Holy Cross
Rome, Italy

1. Introduction
2. Fundamental elements deriving from ordination
3. Main characteristics of new ecclesial movements and new communities
4. The situation of priests who share the charism of a new ecclesial movement
 - a) Secular and religious clerics who encounter an ecclesial movement as ordained faithful
 - b) Secular clerics and religious who have discovered their vocation in an ecclesial movement and would like to maintain ties with it
 - c) Clergy who belong to the movement and want to dedicate their ministry to its service
 - A. Solutions that have been used in recent decades
 - B. Problems related to the different solutions
 - C. Is incardination within ecclesial movements possible?
 - D. A proposal: clerical associations (can. 302) as a new possibility for incardination in ecclesial movements
 - E. Criteria for granting the faculty to incardinate to the clerical association or the movement
5. Conclusion

1. Introduction

“What is emerging here is a new generation of the Church which I am watching with a great hope. I find it marvelous that the Spirit is once again stronger than our programs and brings himself into play in an altogether different way than we had imagined. In this sense the renewal, in a subdued but effective way, is afoot. Old forms that had run aground in self-contradiction and in the taste for negation are leaving the stage, and the new is making headway. Naturally it does not yet have its full voice in the great debate of dominant ideas. It grows in silence. Our task – the task of the

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office-holders in the Church and of theologians – is to keep the door open to them, to prepare room for them.”¹.

These words are Cardinal Ratzinger's and they refer to the new ecclesial movements and communities. At that time - the year was 1985 - , he was asking to keep the door open to them, to prepare room for them. This task is always present. It is not easy to do, because ecclesial movements and communities are something new. It is easy to react negatively when confronting new things: “I do not understand it, therefore, I forget about it”. But it is not only a problem of understanding something new. Often, a negative reaction comes from the difficulty of accepting a new travel companion: I resist opening the door to a person I do not know, because my heart is not yet ready to love him or her. It can be compared to an unexpected baby: parents may have him even though he was unwanted and react negatively at first, but, after some time, come to love and accept him. In the worst cases they may react so strongly against the unwanted pregnancy that they will abort the child. Ratzinger, before and after his election as Roman Pontiff, shows a different approach: an openness of mind and of heart². His predecessor, Blessed John Paul II, also had this openness. We, too, need this openness in our work as canon lawyers. We should be creative, finding solutions to new problems. We cannot stay behind the barricades of an old and rigid understanding of the Law of the Church.

Within my chosen theme, “The Clergy and New Ecclesial Movements,” there are many problems of a juridical nature: for instance, what happens when a priest identifies himself so much with the particular ecclesial movement or community to which he belongs that the bond of incardination to his diocese is forgotten? Are priests in ecclesial movements *de facto* dependent on the Ordinary when they exercise ministry or do they depend on the head of the movement? Who is responsible for the clergy of a movement, especially when a crisis appears in their lives? What happens when a priest who has been serving an ecclesial movement for many years quits it? What difficulties might the presence of a movement in a parish provoke and can this affect the unity of the parish community? If the parish priest belongs to an ecclesial

¹ J. RATZINGER-V. MESSORI, *The Ratzinger Report*, San Francisco 1986, p. 44.

² Cf. L. NAVARRO, *The new Ecclesial Movements in the Magisterium of Benedict XVI*, in *Philippine canonical Forum*, 12 (2010), p. 131-145, and ID., *I nuovi movimenti ecclesiali nel magistero di Benedetto XVI*, in *Ius Ecclesiae*, 21 (2009), p. 569-584. For the teaching of John Paul II, see L. NAVARRO, *New ecclesial movements and charisms: canonical dimensions*, in *Philippine canonical Forum*, 4 (2002), p. 39-51.

movement is there a danger that the parish community will be orientated only to that movement? As you can see these problems affect concrete people in their lives, in their rights and in their duties, and can become concrete existential problems.

In this paper, I would like to help clarify some of these problems and offer some perspectives. In doing so, I shall follow this outline: 1. Some fundamental elements deriving from ordination that are related to life and mission in the Church and that cannot be forgotten when clerics are in an ecclesial movement or community. 2. The main characteristic of ecclesial movements and new communities. These first two points can be considered an introduction to the main topic. 3. A presentation of the different kinds of relationships between clerics and movements. 4. Some juridical issues related to the incardination of these priests and their ministry.

2. Fundamental elements deriving from ordination

As is well known, after the suppression of minor Orders and the sub-diaconate, in the Latin Church the only way to enter the clergy is through the sacrament of Holy Orders. According to the consistent teaching of the Church and specifically the doctrine of the Second Vatican Council decree *Presbyterorum Ordinis*, the Sacrament of Holy Orders produces a special *configuration* with Christ through which those who are ordained share in the consecration of Christ and in his mission.

For the priest and the bishop, this configuration is a reference to Christ as *Priest*; they share, in a special way, in the Priesthood of Christ, distinct from the other faithful inasmuch as they have the ministerial priesthood. Bishops have the highest degree of priesthood, while those in the presbyterate have a priesthood of a degree subordinate to that of the episcopate. There is a new configuration with Christ that differs essentially from the configuration proper to the common priesthood³. Through the

³ Cf. SECOND VATICAN COUNCIL, const. *Lumen Gentium*, n. 10. On the distinction between the common and the ministerial priesthood and the relationship between them, cf. canonists such as E. CORECCO, *Profili istituzionali dei movimenti nella Chiesa*, in *I movimenti nella Chiesa negli anni '80*, ed. M. CAMISASCA and M. VITALI, Milano 1982, p. 203-234; D. LE TOURNEAU, *Le sacerdoce commun et son incidence sur les obligations et les droits des fidèles en général et des laïcs en particulier*, in *Revue de Droit Canonique*, 39 (1989), p. 155-194; and among theologians see A. ARANDA, *El sacerdocio de Jesucristo en los ministros y en los fieles. Estudio teológico sobre la distinción «essentia et non gradu tantum»*, in *La formación de los sacerdotes en las circunstancias actuales. Simposio internacional de teología*, Pamplona 1990, p. 207-246; and A. VANHOYE, *Sacerdoce commun et sacerdoce ministériel. Distinctions et rapports*, in *Nouvelle revue Théologique*, 97 (1975), p. 193-207. Also worth noting the doctrine contained in first part (theological principles) of the document by C. FOR THE CLERGY AND OTHER DICASTERIES, *Instruction on certain questions regarding the collaboration of the non-ordained*

sacrament of Orders “they receive the mission and faculties to act in the person of Christ the Head” in certain specific fields.

The one who receives the sacrament of Orders as a deacon is not a priest, but is ordained for a ministry of service⁴. He identifies himself with “Christ the Lord and Servant of all”⁵. The deacon does not act “*in persona Christi Capitis*, but *in persona Christi Servitoris*”⁶. The deacon receives in this sacrament the strength to dedicate himself “to the People of God, in conjunction with the bishop and his body of priests, in the service of the liturgy, of the Gospel and of works of charity”⁷.

Therefore, the Sacrament of Orders produces an *ontological transformation* of the ordained faithful: after the ordination and forever after, he is configured sacramentally to Christ the Priest or to Christ the Servant. The sacramental character means that he who is ordained will always be ordained, and that his consecration to God will never disappear, thus rendering him a priest or a deacon forever.

This special consecration and configuration with Christ does not have as its *final goal* the ordained person, as if it would benefit only him. This consecration is a *gift for all the People of God*, because the Sacrament of Orders allows the faithful to share in the mission of Christ and grants the capacity to fulfill certain functions regarding the *munera Christi*⁸. To each degree of the sacrament correspond specific functions which

faithful in the sacred ministry of priest, 15 August 1997, Vatican City 1997, in *Origins* 27 (1997-1998), p. 400-402.

⁴ This aspect has been confirmed by Benedict XVI in the mp. *Omnium in mentem*, 26 October 2009, which has introduced some modifications to canons 1008 and 1009. Deacons do not act *in persona Christi Capitis*, and they are not priests.

⁵ C. FOR CATHOLIC EDUCATION, *Basic norms for the formation of permanent deacons*, 22 February 1998, n. 5, in *Origins* 28 (1998), p. 182. "In virtue of ordination the deacon is truly called to act in conformity with Christ the Servant". C. FOR THE CLERGY, *Directory for the ministry and life of permanent deacons*, 22 February 1998, n. 47, in *Origins* 28 (1998), p. 197.

⁶ "Deacons share in Christ's mission and grace in a special way. The sacrament of Holy Orders marks them with an imprint ("character") which cannot be removed and which configures them to Christ, who made himself the "deacon" or servant of all". *Catechism of the Catholic Church*, with modifications from the *editio typica*, New York 1997, n. 1570.

⁷ SECOND VATICAN COUNCIL, const. *Lumen Gentium*, n. 29.

⁸ The Sacrament of Orders places the ordained faithful in a new position in the Church and in front of the faithful. "The priest is someone taken out from among the people of God, chosen and endowed with a special consecration who, because of the mission he has received, must live among and with the rest of men, understanding them, accompanying and guiding them on their journey; he acts on

the ordained person is destined to undertake. The Bishop is called to fulfill the episcopal functions: he is capable of administering *all* the sacraments (except the sacrament of marriage in the Latin Church, because the ministers of this sacrament are the spouses themselves⁹) and he is normally called to govern a particular Church. Presbyters can also administer the same sacraments as Bishops except the sacrament of Orders and are, as such, irreplaceable collaborators of the Bishops. Lastly, deacons can perform some functions of service related to the ministry of the Bishop and of his *presbyterium*¹⁰.

Apart from the personal effects of the sacrament, the distinction in levels of the Sacrament of Orders produces in the ordained person the incorporation within the *Ordo clericorum* (and within this to the corresponding *ordo*: *episcoporum*, *presbyterorum* or *diaconorum*¹¹), as well as the destination to the *functions* belonging to the *ordo* that has been received, and also the ability to perform those functions¹². At the same time, the distinction in different grades allows the communal dimension of the sacred ministry to be understood. The presbyteral functions are linked to the episcopal functions so that the presbyter acts in communion with his Bishop, because he is a *cooperator* of the Bishop¹³. Deacons, in turn, perform functions of service related to the mission of the Bishop and of his *presbyterium*.

behalf of God who consecrated him and sent him out, just as Jesus Christ, the Son of God, willed to be like men in all things except sin". A. DEL PORTILLO, *On priesthood*, Dublin 1974, p. 23.

⁹ See, *Catechism of the Catholic Church*, n. 1623 (new version).

¹⁰ C. FOR THE CLERGY, *Directory for the ministry and life of permanent deacons*, n. 22-38, cit., p. 193-196.

¹¹ For a wider treatment of the relationships between the Sacrament of Orders, ministries, *ordines*, and for the distinction between what is ministerial and what is personal concerning the cleric, see, J. HERVADA, *Elementos de Derecho Constitucional Canónico*, Pamplona 1987, p. 194-230. What Hervada says is essential for an adequate comprehension of the juridical status of the cleric: "what is called the *ordo clericorum* is, in fact, an organization or, more precisely still, an organized structure that constitutes the central point of ecclesiastical organization. Ministries are inseparable from the *ordo*, which should not be understood simply as a group or *coetus* of persons that, later, are designated to cover an office or ministry of the organization, seen as something distinct from the *ordo*. The *ordo episcoporum* is already the holder of a mission, with one cooperating order (the *ordo presbyterorum*) and one auxiliary order (the *ordo* of deacons)". *Ibid.*, p. 193.

¹² When studying the personal juridical status of clerics one must be careful to distinguish the personal and institutional effects of the Sacrament of Orders. On this distinction, see P. LOMBARDÍA, *El estatuto personal en el ordenamiento canónico. Fundamentos doctrinales*, in *Escritos de Derecho canónico*, vol. II, Pamplona 1973, p. 41.

¹³ "To achieve this purpose Christ, consecrated and sent by the Father, makes the Apostles and through them their successors, the bishops, sharers in his consecration and mission. This same

This *complementarity of ministries* demands that each cleric fulfills his mission *in* the Church and *for* the service of the Church. The sacred minister does not receive the Sacrament of Orders *for his own benefit, but to serve the Church*. He is a minister of the Church and his mission has a universal dimension, even though the cleric will perform the ministry in the service of specific members of the faithful. In the very moment in which a person is ordained deacon he is incardinated, and through this incardination the portion of the People of God the cleric will serve through his ministry is usually determined¹⁴. Because incardination is always present, it manifests in a juridical way that every cleric should act in communion above all with his Bishop, and with the *presbyterium* and the other clerics of his Particular Church. Nevertheless, each cleric is always open to the Universal Church and the needs of other Particular Churches. This openness is reflected in some juridical tools, like excardination, or the transfer of a cleric to serve in another Particular Church for a certain period of time without altering incardination. These are manifestations of the concern of the ordained minister for the whole Church and the needs of souls. He is not only a cleric of a Particular Church, but a minister to the whole Church.

Lastly, ordination also creates bonds of communion with the other faithful who have received the Sacrament of Orders of the same degree¹⁵. These are bonds of fraternity which have various juridical manifestations¹⁶.

consecration and mission are transmitted at a subordinate level to the presbyters who can then fulfill this mission from Jesus Christ as co-workers of the Order of bishops". A. DEL PORTILLO, *On priesthood*, cit., p. 21.

¹⁴Cf. can. 266 § 1 and 2. About the close relationship between the Vatican Council II doctrine on priests and the new concept of incardination, see J. HERVADA, *La incardinación en la perspectiva conciliar*, in *Vetera et nova*, vol. I, Pamplona 1991, p. 393-451; J. HERRANZ, *El nuevo concepto de incardinación*, in *Palabra* agosto-septiembre 1966, p. 26-28; and J.M. RIBAS, *Incardinación y distribución del clero*, Pamplona 1971, p. 208-223. See also L. NAVARRO (ed.) *L'istituto dell'incardinazione. Natura e prospettive*, Milano 2005.

¹⁵With regard to the case of bishops, see SECOND VATICAN COUNCIL, const. *Lumen Gentium*, no. 23. For the priest, these words of the decr. *Presbyterorum Ordinis*, no. 8 are relevant: "All priests, who are constituted in the order of priesthood by the Sacrament of Orders, are bound together by an intimate sacramental brotherhood". A similar relationship among deacons has been only recently underlined: "By virtue of their ordination, deacons are united to each other by a sacramental fraternity". C. FOR THE CLERGY, *Directory for the ministry and life of permanent deacons*, n. 6, cit., p. 192.

¹⁶Cf. J.I. ARRIETA, *Governance structures within the Catholic Church*, Montreal 2000, p. 47-49; and IDEM, *Conferenze episcopali e vincolo di comunione*, in *Ius Ecclesiae*, 1 (1989), p. 3-22. See also L.

3. Main characteristics of new ecclesial movements and new communities

It is not easy to describe what the new ecclesial movements and communities are, mainly because they are something new and among them there are many differences¹⁷. But they have some elements in common:

1. New ecclesial movements are a *gift of the Holy Spirit*: "After the Council, the Holy Spirit endowed us with the "movements" ", said Benedict XVI¹⁸. This means that, even if most of the new ecclesial movements are juridically considered associations of the faithful, the initiative does not only come from the bottom, but also comes from on High, and this gives a unique origin to the movement¹⁹. They "are like an outpouring of the Holy Spirit in the Church and in contemporary society"²⁰.
2. This charismatic origin carries the inherent demand of being at the service of the one Body that is the Church²¹: "Every gift of the Spirit is found originally and necessarily in the service of building up the Body of Christ, offering a witness of the immense charity of God for the life of each person."²²

A consequence of this charismatic origin is that every movement has its *raison d'être* in the building up of the Church, because as the movement itself is a part of her. The ecclesial movement is not the Church, since it does not build her up alone, but does so

NAVARRO, *Manifestazioni giuridiche della comunione fra i vescovi*, in *Ius Ecclesiae*, 3 (1991), p. 573-585.

¹⁷ Cf. M. DELGADO GALINDO, *Movimenti ecclesiali, ministero petrino e apostolicità*, Roma-Monopoli 2007 and S.B. SÁNCHEZ CARRIÓN, *Los movimientos eclesiales: status quaestionis*, Roma 2006.

¹⁸ BENEDICT XVI, Address to the Bishops of the Episcopal Conference of the Federal Republic of Germany during the *ad limina Apostolorum* visit, 18 November 2006.

¹⁹ "And it is beautiful that without an initiative of the hierarchy but with an initiative from below, as people say, but *which also truly comes from on High*, that is, as a gift of the Holy Spirit, new forms of life are being born in the Church just as, moreover, they have been born through the ages". BENEDICT XVI, Meeting with the Clergy of the Diocese of Rome, 22 February 2007.

²⁰ BENEDICT XVI, Address to participants in the 13th International Conference of the *Catholic Fraternity of Charismatic Covenant Communities and Fellowships*, 31 October 2008.

²¹ "Whatever their character - sometimes it is extraordinary, such as the gift of miracles or of tongues - charisms are oriented toward sanctifying grace and are intended for the common good of the Church. They are at the service of charity which builds up the Church." *Catechism of the Catholic Church*, § 2003.

²² BENEDICT XVI, Address to the members of *Communion and Liberation* on the 25th anniversary of its Pontifical recognition, 24 March 2007.

together with all the Church's institutional and charismatic components. If they are not properly inserted in the universal Church and in the Particular Churches, the movements do not serve and they do not build up. Every ecclesial movement and each one of the faithful who are members must necessarily be not only aware of it, but also live in the Church.²³

3. As places where the Spirit is at work, movements are *for life*, are schools of freedom, and exist *for and in the unity of the Church*²⁴.
4. They are really important for the life of the Church, not only because many vocations to the priesthood or consecrated life come from them, but because they *are ways to follow Jesus*²⁵, they are a part of the *living structure of the Church*²⁶, and a privileged instrument of evangelization in all sectors of society²⁷. They are called to contribute to the enlivening of both dioceses and parishes, and therefore called to foster an indispensable relationship with Pastors. In general terms this relationship means dialogue and mutual understanding, i.e. openness to allowing the ecclesiastical authority to fulfill its task (mainly discernment of the charism²⁸ and guidance) and to allowing the movement to

²³ This aspect was strongly proposed by Card. Ratzinger in the colloquium with the Bishops held in 1999. Cf. *Dialogo con il Cardinale Joseph Ratzinger*, in PONTIFICIUM CONSILIIUM PRO LAICIS, *I movimenti ecclesiali nella sollecitudine pastorale dei vescovi*. Vatican City 2000, p. 232-234.

²⁴ Cf. BENEDICT XVI, Homily during the celebration of the first Vespers on the vigil of Pentecost, 3 June 2006.

²⁵ "through the founders and initiators of your Movements and Communities you have glimpsed the Face of Christ shining with special brightness and set out on your way. Christ still continues today to make resound in the hearts of so many that "come, follow me" which can decide their destiny. This normally happens through the witness of those who have had a personal experience of Christ's presence. On the faces and in the words of these "new creatures", his light becomes visible and his invitation audible." BENEDICT XVI Allocution, 22 May 2006.

²⁶ "Today, the Ecclesial Movements and New Communities are a luminous sign of the beauty of Christ and of the Church, his Bride. You belong to the living structure of the Church." BENEDICT XVI Allocution, 22 May 2006.

²⁷ Cf. BENEDICT XVI, Address to the Bishop-friends of the Focolare Movement and the St. Egidio Community, 8 February 2007; BENEDICT XVI, Address to the Bishops of the Episcopal Conference of Mozambique on their *ad limina* visit, 26 May 2007; BENEDICT XVI Address in the inaugural session of the Fifth General Conference of the Bishops of Latin America and the Caribbean at the Conference Hall of the Shrine of Aparecida, 13 May 2007.

²⁸ "The authenticity of new charisms is guaranteed by their readiness to submit to the discernment of the Ecclesiastical Authority." BENEDICT XVI, Address to participants in a Study Seminar organized by

maintain its identity and place in the Church. In fact, there is no conflict between the institutional dimension and the charismatic dimension in the Church: "both dimensions originate from the same Holy Spirit for the same Body of Christ, and together they concur to make present the mystery and the salvific work of Christ in the world".²⁹ The Roman Pontiff has insisted on the need of communion "between the local Churches and the movements, so that the local Churches recognize this particularity, which seems strange to many, and welcome it in itself as a treasure, understanding that in the Church there are many ways and that all together they converge in a symphony of faith. The local Churches and movements are not in opposition to one another, but constitute the living structure of the Church."

Concluding this section I would like to quote a description of these realities done by Blessed John Paul II:

"The term [movement] is often used to refer to realities that differ among themselves, sometimes even by reason of their canonical structure. Though the term certainly cannot exhaust or capture the wealth of forms aroused by the life-giving creativity of the Spirit of Christ, it does indicate a concrete ecclesial reality with a predominantly lay membership, a journey of faith and a Christian witness which bases its own pedagogical method on a precise charism given through the person of the founder in specific circumstances and ways"³⁰.

As a concluding remark I would like to stress that the charism of these new movements very often consists in deepening the basic elements of what it means to be a Christian: the sacrament of baptism is always at the basis of the spirituality of the movement. Just as being Christian is not something compartmentalized in the life of a person but instead affects his whole life, the same happens with movements: for those

the Pontifical Council for the Laity to reflect on the pastoral care of the Ecclesial Movements and New Communities, 17 May 2008.

²⁹BENEDICT XVI, Address to the participants in the pilgrimage organized by the Fraternity of Communion and Liberation on the occasion of the 25th anniversary of its Pontifical Recognition, 24 March 2007. On this point see Card. Ratzinger's allocution to the Congress of 1998 J. RATZINGER, *The Ecclesial movements: A Theological Reflection on Their Place in the Church*, in PONTIFICIUM CONSILIUM PRO LAICIS, *Movements in the Church*, Vatican City 1999, p. 23-51.

³⁰JOHN PAUL II, *Message*, 27 May 1998, no. 4, in PONTIFICIUM CONSILIUM PRO LAICIS, *Movements in the Church. Proceedings of the World Congress of the Ecclesial Movements*, Vatican City, 1999, p. 18.

attracted by some charism to a particular movement it does not simply mean dedicating a few hours of their week to the movement or community, but living Christian life according to the spirit of the movement: the way of praying, the way of living virtue, the Christian formation they receive, etc.³¹

4. The situation of priests who share the charism of a new ecclesial movement

It is evident that nowadays new ecclesial movements are a sign of hope for the Church, because in them we find many fruits of holiness and apostolate. Among them are not only many vocations to the priesthood and consecrated life or a strong renewal of the lay vocation to holiness, but also the rediscovery (like a new conversion) of the personal vocation of the individual members of the faithful, which might include the vocation to priesthood and consecrated life.

In this field we can distinguish two different situations for priests: one which is more external and the other more internal, with respect to the movement.

First scenario: clerics who get in touch with the ecclesial movement, come to know and to love the specific spirituality, and begin to participate in its activities, all the while retaining their own juridical relationship and ministry in the diocese or entity of incardination. In a quite similar situation are those who have discovered the call to the priesthood thanks to the participation in the life of the movement, and who then go to the diocesan seminary and are ordained in the service of the diocese, even if they retain a more or less strong relationship with the ecclesial movement.

Second scenario. It is quite a different situation when someone enters the clergy through a movement and with the intention of serving the ecclesial movement in pastoral ministry.

Let us focus on these situations.

a) Secular and religious clerics who encounter an ecclesial movement as ordained faithful

Even if in many cases the relationship between the clergy and the movement is quite informal or where there is no bond at all, it is quite normal to find secular clerics and religious who are attracted by the charism of a particular movement and would like to establish a relationship with the movement; to be linked to it without changing

³¹Cf. JOHN PAUL II, *Message*, 27 May 1998, no. 2, cit., p. 16.

their basic canonical situation. That is, they continue to be secular or religious, but at the same time they want to belong to the ecclesial movement. To make both elements compatible (to be members of the movement and to belong to the incardinating body) different degrees of membership are usually written into the statutes of movements.

The situation of these clerics with regard to an ecclesial movement does not affect their dedication to their ministry or their dependence on their Ordinary. In some cases, as in the *Focolare* (Work of Mary), the movement divides the members into different branches, with different levels of commitment³², but always respecting the link to the diocese or the religious institute. The character of this kind of membership is quite different from a membership that constitutes the very core of the movement. We could say that the former is a membership *latu sensu*.

From a canonical point of view, the position of these priests is not problematic: they are members of the movement by virtue of their right of association, explicitly delineated in can. 278 ("secular clerics have the right of association with others for the achievement of purposes befitting the clerical state") and at the same time they are fully members of the diocese. Membership of the ecclesial movement does not lessen their belonging to the *presbyterium* of the diocese³³.

³²Diocesan priests who follow the spirit of Chiara Lubich are divided into groups: 'priest and deacon Focolarini', the Gens Movement (New Priestly Generation), 'priest and deacon Volunteers' and the 'Priests Movement'. In all these cases "their involvement with the Movement does not detract from the life of their diocese, but stimulates it, in the midst of their normal active life, trying to make the spirit of unity grow among all, starting with the presbyterium, in full agreement with the Bishop and open to a universal dialogue".

There is also a branch for Bishops, called "Bishop-Friends of the Focolare Movement". In this case it is very clear that "the relationship of the bishops with the Focolare Movement is of a purely spiritual nature and it illuminates the many fields of action of their ministry: from pastoral activity to relations with their collaborators, from dialogue within and outside the church to evangelization". Finally there is a branch of men and women of Institutes of Consecrated Life and of Societies of Apostolic Life. Cf. <http://www.focolare.org>. See also the statutes of the Villareggia Missionary Community, an international public association established by the P. C. for the Laity on 26 May 2002. Diocesan clergy can adhere to what is called Third Nucleus, with a lesser bond. Cf. *Comunità Missionaria de Villareggia, Statuto*, 22 May 2002, Arts. 35 and 45.

³³ On a cleric's right of association and on associations of clerics, cf. A. DEL PORTILLO, *Le associazioni sacerdotali*, in AA.VV., *Liber amicorum Monseigneur Onclin*, Glembox 1976, p. 133 ss; A. DE LA HERA, *El derecho de asociación de los clérigos y sus limitaciones en Ius Canonicum*, 23 (1983), p. 171 ss.; and R. RODRÍGUEZ-OCAÑA, *Las asociaciones de clérigos en la Iglesia*, Pamplona 1989. On the relationship between *presbyterium* and priestly associations, cf. R. RODRÍGUEZ-OCAÑA, *El lugar teológico-canónico de las asociaciones de clérigos*, in *Das konsoziative Element in der Kirche. Akten*

This kind of membership has been very positively evaluated by Blessed John Paul II. In June 2001, in a message to Cardinal Stafford, he stressed that to be involved with an ecclesial movement would offer priests the opportunity for pastoral and spiritual enrichment. By participating in a movement, priests can more fully experience and learn to better live communion within the Church, in that being attracted by the same charism and sharing in the same history, lay people and clergy will share the same experience of communion among *christifideles* who edify one another³⁴.

In the case of religious clerics, they also exercise their right of association after having obtained the consent of the Superior, according to can. 307 § 3³⁵. The consent of the respective Superior is required in order to prevent any detriment to the primary vocation for members of religious institutes due to membership in other associations. Here, what is meant by 'primary vocation' is the pursuit of holiness according to the spirit of the respective religious institute.³⁶

The relationship of a religious with an ecclesial movement can be very positive, as John Paul II has underlined in the Ap. Ex. *Vita Consecrata*: "in recent years, many consecrated persons have become members of one or another of the ecclesial movements which have spread in our time. From these experiences those involved usually draw benefit, especially in the area of spiritual renewal". But in some cases difficulties can just as easily arise. Immediately afterwards, the Pope adds: "Nonetheless, it cannot be denied that in certain cases this involvement causes uneasiness and disorientation at the personal or community level, especially when these experiences come into conflict with the demands of the common life or of the Institute's spirituality. It is therefore necessary to take care that membership in these ecclesial movements does not endanger the charism or discipline of the Institute of

des VI. Internationalen Kongresses für Kanonisches Recht, München, 14-19 September 1987, (eds. W. Aymans-K.T. Geringer-H. Schmitz), St. Ottilien, 1989, p. 210-217.

³⁴Cf. JOHN PAUL II, Message to Card. J. F. Stafford on the occasion of the theological pastoral convention on "Ecclesial movements for the new evangelization", an initiative of the Focolari Movement, 21 June 2001, no. 3, in http://www.vatican.va/holy_father/john_paul_ii/speeches/2001/documents/hf_jp-ii_spe_20010627_stafford_en.html.

³⁵"In accordance to their own law, members of religious institutes may, with the consent of their superior, join associations".

³⁶L. NAVARRO, *Commentary to can. 307*, in *Exegetical Commentary on the Code of Canon Law*, (ed. Institute Martin de Azpilcueta), vol. II/1, Montreal-Chicago 2004, p. 478. See also S. DA COSTA GOMES, *O direito de associação na vida religiosa*, in *Commentarium pro religiosis*, 69 (1988), p. 267-270.

origin, and that all is done with the permission of Superiors and with the full intention of accepting their decisions”³⁷.

For both religious and secular clergy participating in ecclesial movements, enthusiasm and attraction to the movement and the charism might lead to an emotional and effective distance from the diocese or the religious institute and this can provoke a very serious personal crisis³⁸. This danger would disappear if the cleric is aware that his primary spirituality is contained in the act of being a priest. A spirituality that, as Rincón writes, is “based on the configuration with Christ, Head and Shepherd, coming from Sacred Orders”³⁹. In other cases the problems may be more practical, like when participation in the activities of the movement may lead to a disregard for the pastoral ministry entrusted to the cleric.

In these difficult situations there is a need for balancing the rights of the clergy (including the right of association) and the lawful demands of pastoral ministry. Eventually it may become impossible for a priest to exercise his right of association or his right of reunion (when such a very heavy burden of ministry is placed on his shoulders that he has no time to take care of his spiritual life). This should be considered not only a violation of his rights, but also a great harm to the People of

³⁷ JOHN PAUL II, Ap. Ex. *Vita Consecrata*, 25 March 1996, no. 56.

³⁸ With strong words Favale describes the inner uneasiness that can emerge in the cleric who, “enflamed” by the charism of the movement, is not able to make it compatible with his identity. “The priest, be he diocesan or religious, who makes his own the spirituality of an ecclesial movement or new community in an a-critical and indistinct way, could encounter an interior conflict that can be expressed as follows. In name, he belongs to the diocese or the religious institute, but in fact his heart beats for the movement or new community to which he has adhered, and his thoughts and interests are focused on one or on the other. The parish or religious community is the environment where he ordinarily carries out his pastoral or educational work, but the method and style used is inspired by the movement or new community. The *presbyterium* or the religious community is the formal gathering place, but the movement or new community becomes the place of communication, dialogue, friendship and fraternity. The diocesan bishop or the religious superior is the authority upon whom it is incumbent to give indications and orientations, but their assimilation and interpretation are filtered through a mentality shaped in contact with the movement or new community. The diocese or the religious community is the environment guaranteeing material security, but the movement is the environment for a human and religious experience that truly vivifies and revitalizes.”. A. FAVALE, *Presbiteri, movimenti e nuove comunità*, in *Salesianum*, 62 (2000), p. 563.

³⁹ A spirituality that “has been grounded in the configuration to Christ, Head and Pastor of the Church, flowing from Holy Orders.” T. RINCÓN-PÉREZ, *Sobre algunas cuestiones canónicas a la luz de la Exh. Apost. “Pastores dabo vobis”*, in *Ius Canonicum*, 33 (1993), p. 344.

L. Navarro

God, in that souls do not benefit from the ministry of a priest who is not full of God's love and zealous for souls.

b) Secular clerics and religious who have discovered their vocation in an ecclesial movement and would like to maintain ties with it

It is commonplace that vocations to the priesthood and religious life develop within ecclesial movements. What is their canonical situation?

In cases of candidates who enter diocesan seminaries to become diocesan priests, Blessed John Paul II has indicated that, concerning their relationship with the movement, "young people who have received their basic formation in such groups and look to them for their experience of the Church, should not feel they are being asked to uproot themselves from their past or to break their links with the environment which has contributed to their decision to respond to their vocation, nor should they erase the characteristic traits of the spirituality which they have learned and lived there in all that they contain that is good, edifying and rich"⁴⁰.

Therefore candidates of diocesan seminaries should be not only allowed, but also encouraged to keep these links. Because "the fact that seminarians and diocesan priests take part in particular spiritualities or ecclesial groupings is indeed, in itself, a factor which helps growth and priestly fraternity. Such participation, however, should not be an obstacle, but rather a help to the ministry and spiritual life which are proper to the diocesan priest"⁴¹. To achieve that goal the seminary should provide the formation that may expand the outlook of these seminarians to include all ecclesial realities. And of course, after being ordained, they may continue to have a certain relationship with the movement.

What about the vocations to religious institutes arising from ecclesial movements? In these cases, as the discernment of the religious vocations belongs in a very specific way to the religious institute that is expected to evaluate the suitability of the candidate to live the spirituality and charism of the institute, the Church is more prudent. In official documents of the Church it is required that the candidate ends the relationship with the movement:

"In order to retain a positive relationship between these movements and religious institutes, and all the more so because numerous religious vocations have come from

⁴⁰JOHN PAUL II, Ap. Ex. *Pastores dabo vobis*, no. 68.

⁴¹*Ibidem*.

these movements, it is important to reflect upon the following requirements and the concrete consequences which these involve for members of these institutes. (...) candidates for the religious life who have come from one or other of these ecclesial movements place themselves freely under the authority of the Superiors and formators legitimately commissioned for their formation when they enter the novitiate. Therefore, they cannot simultaneously be dependent upon someone apart from the institute to which they now pertain, even though they belonged to this movement before their entrance. This is a matter of the unity of the religious institute and the unity of life of its novices”⁴².

Therefore during the time of formation they cannot participate in formation activities of the movements. But after their religious profession, as we have seen, they could certainly, with the consent of the Superior, resume their relationship with the movement.

c) Clergy who belong to the movement and want to dedicate their ministry to its service

The situation of clerics whose vocation to the priesthood is born in a movement and want to dedicate themselves and their ministry to the service of the movement is a very delicate one, because the exercise of sacred ministry is not by nature associative, and incardination has not been granted by the CIC to associations of the faithful (most of the ecclesial movements are configured as associations of the faithful, usually private ones).

A. Solutions that have been used in recent decades

There are two main solutions that have been put into practice in the last decade⁴³.

- a) Incardinating the cleric in particular Churches, while establishing some agreements between the ecclesial movement and the diocese. These agreements would determine what part of the cleric’s ministry would be given to the diocese and what part to the members of the movement and its activities. Usually the agreement foresees some years at the service of the diocese and other years working for the movement. These agreements or contracts are established *mutatis mutandis* according to what is indicated in can. 271 (the cleric is on loan, in the service of a

⁴²C. FOR INSTITUTES OF CONSECRATED LIFE AND SOCIETIES OF APOSTOLIC LIFE, *Normae directivae Potissimum institutioni*, 2 February 1990, no. 93.

⁴³ Certainly, the configuration of new forms of institutes for consecrated life (cf. can. 305) may also be taken into account.

diocese with a shortage of priests⁴⁴). However, the Superior can never be compared to the Head of a Particular Church.

On the one hand everyone is aware that the priest belongs to the ecclesial movement, though on the other, they know that he is not incardinated in the movement, rather in the diocese. This means that there is a shared responsibility between the diocesan Bishop and the ecclesial movement⁴⁵. It is usual that in the statutes of ecclesial movements it is foreseen that a priest is responsible for everything related to the clergy of the movement. If the president is a priest he will be the one responsible for the priests. But if the president is a lay person, then a priest receives that task⁴⁶. Furthermore, in some cases the statutes of an ecclesial movement call for the sustenance of the clergy: the movement assumes this task, even if the priest is incardinated in the diocese⁴⁷.

Moreover, in those cases where there is an agreement with regard to a pastoral task between the Bishop and the person responsible for the movement, we often see that the priest is sent to another diocese to exercise the ministry, either for the needs of that particular Church or for the development of the movement⁴⁸. In these situations

⁴⁴ Can. 271 § 1. Except for a grave need of his own particular Church, a Bishop is not to refuse clerics, seeking permission to move, whom he knows to be prepared and considers suitable to exercise the ministry in regions which suffer from a grave shortage of clergy. He is to ensure, however, that the rights and duties of these clerics are determined by written agreement with the diocesan Bishop of the place to which they wish to move.

⁴⁵ This is clearly expressed in the Statutes of Adsis, an international association of the faithful recognized by the P. Council for the Laity in 1997: "The Bishop gives assignments to the priests of the Association. In dialogue with them and the General Moderator or his appointed delegate for such cases, he will try to harmonize the needs of the Church and respect for the specific charism of presence among the youth and the poor, taking into account their community life. The Bishop may, through (written) agreement, coordinate these realities."). *Adsis, Statutes*, art. 5.3.

⁴⁶ "Ordained missionaries have their Coordinator in the CMV in the person of the President or, if this person is not a priest, in the person of the Presbyter Counselor who acts, for them, as the President's deputy." *Comunità Missionaria di Villaregia, Statutes*, cit., Art. 116, p. 117. In the Emmanuel Community, a priest of the Community, member of the International Council, is responsible for the ministry and the way priests live the charism of the community. Cf. Statutes of the Emmanuel Community, art. 25.

⁴⁷ "The CMV takes charge of the material needs of its priest members and of their social security contributions, according to the dispositions of the relevant Bishops' Conference and State." *Comunità Missionaria di Villaregia, Statutes*, cit., art. 117, p. 117.

⁴⁸ This is explicitly foreseen in the Statutes of Adsis: "The General Moderator can ask the Bishop to assign some priests for internal service with partial or full-time dedication. He can also request the

is normal to use agreements according to the general model provided in can. 271. When this happens, one finds represented not only the will of the two Ordinaries (*a quo* and *ad quem*), and of the priest, but also the will of the person responsible in the community to which the priest belongs⁴⁹.

The praxis of these agreements has become more relevant in recent years, because, in the statutes of some ecclesial movements approved by the Holy See, it is established that the Ordinary of incardination and the president or moderator of the ecclesial movement will agree on the ministry of the cleric. In some cases there is even an instruction on how to distribute the ministry of the cleric⁵⁰. The significance of this is that, because the statutes are approved by the Holy See, whenever a movement reaches a diocese the Ordinary has to respect their identity as it appears in the statutes. So the choice the Bishop is faced with is either to accept the ecclesial movement as it is, including the dispositions regarding the clergy, or not to accept it at all.

b) The second solution has been to create, inside the movement, a Society of Apostolic Life or a Religious Institute with the faculty of incardinating the clerics of

transfer to other dioceses (cf. CIC 271), either for missionary service or to strengthen the birth or growth of the association" *Adsis, Statutes*, 15 June 1997, art. 5.4.

⁴⁹ For the itinerant priests of the Neocatechumenal Way, there are agreements between the bishop of incardination, the Ordinary *ad quem* and the priest. Cf. art. 32 of the Statutes of the Neocatechumenal Way, 2002. Perhaps it would be good to also include the Leadership of the Way in the agreement.

⁵⁰ Statutes of the Emmanuel Community, Article 28. "(ii) Clerics are incardinated in a diocese which respects their membership in the Community. In incardinating by ordination a priest or deacon of the Emmanuel Community, the Bishop accepts his community commitment according to the present statutes. The same situation applies when he accepts the commitment to the Community of a priest already incardinated (cf. article 7).

(iii) The assignment of clerics is decided by the Bishop after consulting the Moderator of the Emmanuel Community. The proper charism of the Community and the concrete possibilities of Community life and apostolate are to be taken into account.

(iv) In agreement between the Bishop and the Moderator, a certain portion of the ministry and time of each priest and deacon is devoted to the works of the Community and becomes the responsibility of the Moderator.

This time is determined in the following manner:

- the priest can be assigned alternately for a given period for the diocese and, at other times, for works proper to the Community;
- or, the priest is assigned to diocesan work on a part-time basis, remaining available for the remainder of his time for works proper to the Community.

the movement. Related to the Communion and Liberation movement there is a Clerical Society of Apostolic Life of pontifical right, wherein clerics are incardinated.⁵¹ Here the Ordinary is the Major Superior. Logically, to exercise a ministry in favor of those not belonging to the associative body, the permission of the diocesan Bishop is needed, unless the law establishes otherwise (cf. can. 967-969).

B. Problems related to the different solutions

a) In the case of incardination into a diocese, it can happen that the Bishop supports the movement and agrees that the priest will be serving the movement, even in another place. This means that the cleric is not *de facto* attached to the diocese, and does not feel any link to it. The incardination could be understood as a mere formal requirement without any relevance. This would be a *fictitious* incardination. Practical problems arise when the Bishop changes and all the clergy outside the diocese are recalled.

The new Bishop has the right to recall his clergy, and grave problems certainly appear when the former, benevolent, Bishop has not established any written agreement regarding these matters.

When there is a written agreement, things are much clearer. On the one hand, the priest is truly aware of being incardinated into the diocese, and also that he is serving the ecclesial movement in another place because the Bishop has accepted the agreement. Likewise, the diocesan Bishop is aware that this agreement is not simply his personal choice: the diocese, as such, is engaged. Finally, the movement is also involved. Therefore, the contract has to be respected by all the three parties: diocese, priest and movement. These are legitimate agreements to which is applied the juridical principle of *Pacta sunt servanda*.

b) As regards incardination into Institutes of Consecrated Life or into Societies of Apostolic Life, there certainly is no problem with being able to incardinate. The cleric depends on the Superior for all that the life of the institute entails, and his ministry is also attached to the institute or the society. Instead, problems can appear from the point of view of the unity of the movement, because different elements of the

⁵¹ “The members of the Fraternity are incardinated in the Society in order to carry out apostolate according to the Society’s ends. Clerics who have asked to become members of the Fraternity are incardinated *ipso iure* in the Society at the time of their definitive incorporation”. *Fraternità Sacerdotale dei Missionari di San Carlo Borromeo, Constitutions*, March 19 1999, art. 68.

movement may have different juridical configurations (two religious institutes, an association of lay people, etc). The real danger is that these elements may take separate roads and provoke the division of the movement. Another element which may be at risk is the nature of the charism: if it is truly secular, then it is not safe to open the movement up to a certain religious life for priests just because there is a need to incardinate them into the movement.

There are at least two different ways of assuring the unity of the movement. The most common way is to insure that all members of the different parts of the movement are members of the same institution. This unites the movement and guarantees the unity of the charism. If the general configuration given to the movement is as an association of the faithful, then a basic requirement can be established: any member of any part should be a member of the association. This means that a priest can be incardinated into the institute or society if he is a member of the wider association and will continue in the institute insofar as he does not lose the membership in the association.

Another solution is to establish a confederation of bodies which constitute the ecclesial movement. The government of the confederation must assure fidelity to the charism and the unity of all the parts. This implies that the composition of the government should have representatives of the various branches of which the movement is composed. Each part accepts that the central government will give directives and dispositions regarding the charism, as well as general guidelines. Behind the confederation there is a free will of all parts of the movement, including those who are Institutes of Consecrated Life or Societies of Apostolic Life, to give a part of their autonomy to the confederation.

C. Is incardination within ecclesial movements possible?

Some authors insist on the need to grant such a faculty to these movements, because they have vocations to the priesthood and those priests would like to serve the movement⁵². Before tackling the issue of incardination as such, we should bear in

⁵² Cf. J. BEYER, *Il movimento ecclesiale: questioni attuali*, in *Vita Consacrata*, 26 (1990), p. 491-493; ID., *Vita associativa e corresponsabilità ecclesiale*, in *Vita Consacrata*, 26 (1990), p. 940; ID., *I movimenti nuovi nella Chiesa*, in *Vita Consacrata*, 27 (1991), p. 70-71; G. GHIRLANDA, *I movimenti nella comunione ecclesiale e loro giusta autonomia*, in *Christifideles laici: spunti per uno studio*, *Laici oggi* 32-33 (1989-1990), p. 55-56; ID. *Questioni irrisolte sulle associazioni di fedeli*, in *Ephemerides Iuris Canonici*, 49 (1993), p. 91-96; C.I. HEREDIA, *La naturaleza de los movimientos eclesiales en el Derecho de la Iglesia*, Buenos Aires 1994, p. 155-159; B. ZADRA, *I movimenti ecclesiali e i loro statuti*, Roma

mind that not all movements need to have priests incardinated within them. For the pastoral care of the members of any movement, the one most responsible is the Ordinary of the diocese where they have their domicile or quasi-domicile, because these faithful belong to the diocese, just like any other member of that portion of the People of God. What makes the members of the movement special is that they have a special charism, and even a certain spirituality, and this can require specific pastoral care, in accordance with their identity. Therefore, the Bishop should look for priests who know the spirit and the charism of the movement, and so could be chaplains of these faithful. What better chaplain than a priest who already belongs to the movement? This is the solution applied to the Communion and Liberation movement. Diocesan priests who share that spirit are assigned by their Bishops as chaplains, dedicating what time remains after they have fulfilled the other ministries attached to their other diocesan offices⁵³. Often this solution is enough to protect the rights of the faithful belonging to movements, especially the right to follow their own spirituality (can. 214).

But let us proceed to a closer view of the regulation of incardination in the legislation of the Church. This might give us some interesting insights through which to better understand that the presence of a cleric in an association does not lead automatically to the granting of incardination. There is much caution within the Church pertaining to the discipline of which institutions are permitted to incardinate.

In fact, the regulation of incardination shows that there are some bodies which have *always* (or almost always) had the faculty of incardinating, while others have it in an exceptional way. All bodies belonging to the hierarchical structure of the Church have the faculty to incardinate clerics: all major territorial circumscriptions (the diocese, the territorial prelate, the apostolic vicariate, as well as the apostolic administration)

1997, p. 134-135; C. HEGGE, *I movimenti ecclesiali e la ricezione del Concilio Vaticano II*, in *Periodica*, 88 (1999), p. 521-523; S. RECCHI, *I movimenti ecclesiali e l'incardinazione dei sacerdoti membri*, in *Quaderni di diritto ecclesiale*, 15 (2002), p. 168-176, R. CABRERA LÓPEZ, *El derecho de asociación del presbítero diocesano*, Roma 2002, 172-180; J.J. ETXEBERRIA, *La consagración de vida en los movimientos eclesiales*, in *Informationes SCRIS*, 25 (1999), p. 132-133; Id. *Los movimientos eclesiales: fenomenología y cuestiones abiertas*, in *Estudios eclesiásticos*, 76 (2001), p. 26-29; and D. DI GIORGIO, *Struttura e configurazione giuridica dei movimenti ecclesiali*, in *Archivio giuridico*, 224 (2005), p. 390.

⁵³Cf. P. SOTTOPIETRA, *Sacerdoti e movimenti. La realtà della Fraternità Sacerdotale dei Missionari di San Carlo Borromeo*, in *Sacrum Ministerium*, 6 (2001), p. 64-73.

have this faculty⁵⁴; the personal circumscriptions (military ordinariates, personal apostolic administrations, personal prelatures, and Ordinariates for former Anglicans⁵⁵) have it as well. In all these cases there is a close link between the incardinating body and ministry. Usually, along with incardination, the portion of the People of God to be served with ministry is established. The cleric is ordained to serve the People of God belonging to that particular circumscription. In these entities can be found the mutual bonds that link the clergy and the faithful for the salvific goods⁵⁶.

Conversely, in the associative institutions, the key principle is different. Religious Institutes incardinate their priest members, Societies of Apostolic Life usually incardinate them as well (exceptionally they may be incardinated in the dioceses⁵⁷), while Secular Institutes do not incardinate, as a rule. The exception is the incardination into the institute *vi concessionis Sedis Apostolicae*⁵⁸, but the general rule for Secular Institutes is the incardination into a particular Church.

In the CCEO this trend is also present. In comparison with the CIC, the specificity of the Oriental legislation is that it allows the possibility of incardination into some

⁵⁴ Incardination in these hierarchical entities is paradigmatic: in them are found the fundamental elements of incardination. The pastoral dimension of this institution is typical in hierarchical bodies: by means of incardination the portion of the People of God whom the clergy will serve is specified. An ecclesiastical circumscription without the faculty to incardinate cannot be envisaged. Schmitz is right when he says that because incardination is essential to particular Churches and Personal Prelatures these entities incardinate as something ordinary, while other bodies (religious institutes and Societies of Apostolic Life, do it as something extraordinary. Cf. H. SCHMITZ, *Die Inkardination im Hinblick auf die konsoziativen Strukturen*, in *Das konsoziative Element in der Kirche. Akten des VI Internationale Kongresses für kanonisches Recht*, cit., p. 703.

⁵⁵ Cf. JOHN PAUL II, Ap. Const. *Spirituali militum curae*, 21 April 1986, art. VI § 3; C. FOR BISHOPS, *Decreto di erezione dell'Amministrazione apostolica personale S. Giovanni Maria Vianney*, 18 January 2002, art. VII, § 1 e 2, in *Ius Ecclesiae*, 14 (2002), p. 850; and BENEDICT XVI, m.p. *Anglicanorum coetibus*, 4 November 2009, art. VI. On incardination in Military Ordinariates, see. E. BAURA, *Legislazione sugli Ordinariati castrensi*, Milano 1992, p. 39-42.

⁵⁶ Cf. C.J. ERRÁZURIZ, *Corso fondamentale sul diritto della Chiesa. I. Introduzione. I soggetti ecclesiali di diritto*, Milano 2009, p. 291-295.

⁵⁷ There are Societies of Apostolic Life in which clerics are incardinated in the dioceses of origin, in order to underline the missionary dimension of the diocese and the secular character of the clergy. To avoid problems and conflicts it is normal to establish agreements between Institute and diocese. On this subject, cf. O. STOFFEL, *Die 'doppelte Inkardination' bei den Missionsgesellschaften*, in *Recht im Dienste des Menschen: ein Festgabe Hugo Schwendenwein zum 60. Geburtstag*, Graz-Wien-Styria 1987, p. 547-560.

⁵⁸ Can. 266 § 3.

associations by way of a special concession from the Holy See or the Patriarch, as indicated in can. 579⁵⁹.

The Latin and Oriental praxis, therefore, is *not* to grant this faculty to *all* bodies with priests. Moreover there is a tendency to be restrictive in this concession. Besides, there are important differences among these associative institutions: in some (the clerical entities of pontifical right⁶⁰), the power of jurisdiction needed for the governance of some aspects of the ministry of the clergy is granted together with the faculty to incardinate, because, in these bodies, there are sufficient guarantees of the ministerial dignity of those clerics and of their capability for ministry. In other entities, such as diocesan religious institutes or in non-clerical institutes of pontifical right, the faculty to incardinate is granted, but their Superiors are not Ordinaries⁶¹.

⁵⁹Can. 579: “Nulla consociatio christifidelium propria membra ut clericos sibi ascribere potest nisi ex speciali concessione a Sede Apostolica vel, si de consociatione, de qua in can. 575, § 1, n. 2, agitur, a Patriarcha de consensu Synodi permanentis data”. Some authors have considered that this possibility was peacefully accepted in the drafting of the CCEO (cf. for instance, G. GHIRLANDA, *Questioni irrisolte sulle associazioni di fedeli*, cit., p. 93-94; and R. CABRERA LÓPEZ, *El derecho de asociación del presbítero diocesano*, cit., p. 179). Perhaps they have reached this conclusion because the text of what is the present can. 579, which appears for the first time as can. 575 of Schema CICO 1986 (in *Nuntia*, 24-25 [1987], p. 109), was not substantially changed. Before that, there is no reference to this issue in the drafts on associations of the faithful (Cf. *Relatio denua recognitione tituli XII “De Christifidelium consociationibus”*, in *Nuntia*, 21 (1985), p. 25-39). Nevertheless, the origin of can. 575 is found in the modifications to the canon dealing with ascription of clergy in general. From the discussions on the authority who could grant this faculty to a society, one can conclude the extraordinary and exceptional character of that concession, and that it will not be easily given to an association. Cf. *Nuntia*, 20 (1985), p. 96. Abbas is right in saying that the canon that allows some associations to ascribe clerics “is undoubtedly explained as a corollary of CCEO c. 357 § 1”. J. ABBAS, *Associations of the Christian Faithful in CIC and CCEO*, in *Apollinaris*, 73 (2000), p. 240. This canon says: “Quilibet clericus debet esse ut clericus ascriptus aut alicui eparchiae aut exarchiae aut instituto religioso aut societati vitae communis ad instar religiosorum aut instituto vel consociationi, quae ius clericos sibi ascribendi adepta sunt a Sede Apostolica vel intra fines territorii Ecclesiae, cui praeest, a Patriarcha de consensu Synodi permanentis”.

⁶⁰ These institutes receive the denomination of clerical if, besides other requirements, they have assumed, by tradition or charism, the exercise of Holy Orders (cf. can. 588 § 2). This element means that in these institutes, when they are of pontifical right, there is power of jurisdiction, in the internal and external forum, within the limits of the universal law and their proper constitutions (cf. can. 596 § 2).

⁶¹ Cf. can. 134.

In other cases the faculty *is not granted*, because, even if there is a permanent bond of the cleric with the institution (a normal requirement for any incardination in an associative body), the ministry of that cleric is not related to the association (to be a member is just a personal fact of the cleric's life, and it does not affect his ministry). When the faculty to incardinate is granted it means that there is a close relationship between the ministry of the cleric and the associative institution: for instance when the charism affects the way of exercising the ministry, or the aim of the associative body demands full availability to serve, exercising sacred orders in remote areas in which the *implantatio Ecclesiae is to be carried out*, or for similar reasons⁶².

This relationship between ministry and association is demonstrated in the fact that the ministry is performed in harmony with the charism of the association.

Therefore, it would not be logical that a priest could be incardinated in an association where his bond is only one of fraternity or of spirituality, and his ministry has no relationship at all with to association⁶³.

⁶² According to Bañares, the presence of the ministry in associative bodies facilitates the unity of government and apostolic initiatives, if this is requested by the charism or the historical tradition of the institute. Cf. J.I. BAÑARES, *Algunas consideraciones a propósito de la incardinación*, in *Scripta Theologica*, 23 (1991), p. 254.

⁶³ It is important to distinguish between what is ministerial and what is purely personal in the clergy. What is ministerial, as such, is subject to the hierarchy and therefore wherever there is exercise of ministry there is power of jurisdiction (which may be exercised by different authorities, depending on the areas of exercise of ministry). What is personal, instead, is characterized by the exercise of the free will of the cleric (for example, spirituality, formation, becoming a member of an association, etc. is always free). Logically these areas of freedom are compatible with clerical status and, as such, are not subject to the power of jurisdiction. This distinction of levels appears for example in cases where a priest, member of a Secular Institute, is incardinated in a diocese (cf. can. 715 § 1): for ministry he depends on the diocesan Bishop, and for consecrated life itself, on the Superior of the Institute. As Rincón has stated, with regards to this canon, "the bond of incardination, while being a complete bond, is so only in relation to sacred ministry and all the aspects of personal life that directly or indirectly affect ministry. Outside of this, there are many domains of an incardinated priest's personal and spiritual life and formation that are not subject to the Bishop and are nor, as such, the object of the priest's duty to obey. This is recognized by § 1 when it excludes from dependency on the bishop all the things referring to consecrated life within an institute.". T. RINCÓN-PÉREZ, *La vida consagrada en la Iglesia: estatuto teológico-canónico*, Pamplona 2001, p. 290.

D. A proposal: clerical associations (can. 302) as a new possibility for incardination in ecclesial movements

Since 2008, there have been new entities which have received the faculty to incardinate. Clerical associations are foreseen in can. 302. Until now, four of these associations have requested and obtained this faculty⁶⁴. It is important to note that none of these associations is a ecclesial movement. Thus reads the *“Annuario Pontificio”*: “some clerical associations feel the need to be able to incardinate some or all of its members, according to the situation, in order to ensure the stability of their charism and the effective operation of their structure”⁶⁵. However, the CIC is silent on this issue. Currently, “in order to respond to a legitimate demand, on January 11th, 2008, the Holy Father accorded to the Congregation for the Clergy the privilege to be able to grant to some clerical associations the faculty to incardinate the members who had requested it”⁶⁶.

⁶⁴ These are: Communauté Saint Martin, Opera di Gesù Sommo Sacerdote (Opus J.S.S.), Société cléricale Saint Jean-Marie Vianney, and Hermandad de Sacerdotes Operarios Diocesanos del Corazón de Jesús. In the decree of erection of the Hermandad we read: “establishes according to canons 302 and 312 § 1 of the CIC and according to canon 278 § 1 and 2, the international public Clerical Association Hermandad de Sacerdotes Operarios Diocesanos del Corazón de Jesús, granting the faculty to incardinate the clerics needed for the service of the apostolate proper to the association, and approving its Statutes. C. FOR THE CLERGY, Decree 22 May 2008, in Estatutos. Directorio. Reglamentos de la Hermandad de Sacerdotes Operarios diocesanos. Roma 2008, p. 10-11. Incardination is regulated in art. 29. Article 28 establishes that for those incardinated in a diocese, the Bishop and the Superior should find a case by case agreement. Art. 35 applies to the clerical association what the CIC foresees for the exit of religious clerics: they cannot exercise ministry unless they have found a benevolent Bishop. In the case of the Opera di Gesù Sommo Sacerdote (Opus J.S.S.) the decree states: “this Congregation ... establishes according to canons 278 § 1-2, 302 and 312 § 1 the international public Clerical Association: “Opera di Gesù Sommo Sacerdote”, granting the faculty to incardinate, and approving its Statutes and Foundational Charter. With this act the clerical Superior of the Association becomes proper Ordinary with all the corresponding rights and duties”. C. FOR THE CLERGY, Decree 22 May 2008. “From 29th June 2008, the Société cléricale Jean-Marie Vianney has been granted the possibility of incardinating some of its members. The definitive Statutes, which include the possibility of incardination, were recognized on the 22nd August 2009”. In <http://www.sjmv.net>. The San Martin community has also received this faculty in 2009. Cf. <http://www.communautesaintmartin.org>.

⁶⁵ “talune associazioni clericali sentono l'esigenza di poter incardinare alcuni o tutti i membri, a seconda delle situazioni, per assicurare la stabilità del loro carisma e l'efficacia operativa delle loro strutture”. *Annuario Pontificio*, 2012, p. 1892.

⁶⁶ “Per rispondere a tale legittima esigenza, l’11 genn. 2008, il Santo Padre ha concesso alla Congregazione per il Clero il privilegio di poter concedere ad alcune associazioni clericali la facoltà di incardinare i membri che ne fanno richiesta” *Annuario Pontificio*, 2012, p. 1892.

In this way, there opens up a new path which had remained unexplored since the promulgation of the CIC. As a matter of fact, during the drafting of the CIC there was a provision for some clerical associations to be able to incardinate⁶⁷. The project was not carried to completion, but remained open to the possibility of the concession of the faculty through an apostolic privilege⁶⁸.

This new possibility having been taken into account, I would like to propose the application of the figure of clerical associations in can. 302 as a partial solution for juridical configurations of movements in the Church.

Perhaps in reading this canon (all that remains of a wider regulation on clerical associations) what I have just said may surprise you:

“Associations of Christ’s faithful are called clerical when they are under the direction of clerics, imply the exercise of sacred orders, and are acknowledged as such by the competent authority”.

It would seem that this kind of association is composed only of clerics, and therefore, does not constitute a step forward for the juridical configuration of movements.

The promulgated text of can. 302 is not easy to understand and because of that it has received various interpretations. For some, these associations are bodies of clerics who exercise ministry⁶⁹.

⁶⁷ Cf. *Communicationes*, 12 (1980), p. 92; *Communicationes*, 15 (1983), p. 86, P. COMMISSION FOR THE INTERPRETATION OF CIC, Answer “*Riscontro la sua pregiata*”, for an opinion on the juridical nature of mission societies (can. 731-746), prot. n. 71/84, 2 May 1984, in *Enchiridion Vaticanum*, Supplementum 1, Bologna 1990, p. 811-813; and C. FOR EVANGELIZATION OF PEOPLES, Official answer “*L’ecc.mo mons. Rosalio*”, on the juridical nature of mission societies, prot. 2051/84, 28 May 1984, in *Enchiridion Vaticanum*, Supplementum 1, cit., p. 813-815.

⁶⁸ Even if the C. for Evangelization of Peoples has declared that “this Sacred Congregation considers it its duty to indicate that it does not intend, through the concession of special faculties, to extend to associations that which is proper to societies of apostolic life, because in doing so it would create a new category of institutes not provided for in the current Code.” (C. FOR EVANGELIZATION OF PEOPLES, Official answer “*L’ecc.mo mons. Rosalio*”, on the juridical nature of mission societies, prot. 2051/84, 28 May 1984, in *Enchiridion Vaticanum*, Supplementum 1, p. 815), it remains possible to receive this faculty through special concession of the Holy See. De Paolis recalls that “in a few cases this faculty has been granted by the Apostolic See, but only concerning associations with public juridical person, and where already in a definitive configuration at least analogous to a Particular Church or an institute of consecrated life”. V. DE PAOLIS, *Le associazioni nate con l’intento di divenire istituti religiosi*, in *Informationes SCRIS*, 21 (1995) p. 172.

⁶⁹ Cf. J. HERVADA, *Pensamientos de un canonista en la hora presente*, Pamplona 1989, p. 180.

My understanding is that clerical associations need to be interpreted within the original framework, otherwise they do not make sense. The main intention of those projected canons was to create an environment suitable for bodies of clergy, as well as laity, with a missionary goal to achieve. Incardination and the power of jurisdiction were considered precisely in this context⁷⁰.

Moving from this original configuration, we could say that:

a) we are dealing with associations which can be composed of clerics and lay people. Therefore, with some faithful who are ordained and others who are not ordained. This openness with regard to the members would justify the phrase of the canon "they are under the direction of clerics": if all were members are clergy, this would be superfluous. The reason for these words, then, is to avoid lay people, who are also members of the clerical association, attaining a governmental role because, given the nature of the association, it would be illogical for one of the lay faithful to be the president.

Along the same lines, we find the disposition that it is the Authority who determines that these associations are clerical. It is not an issue of clerical membership. We are confronted with a *technical* concept which is similar to the one used for the Institutes of Consecrated Life⁷¹. An institute is clerical because Authority says it is, not because all its members are clergy.

b) We are dealing with associations in which the exercise of Holy Orders, the ministry, has a specific value with regards to the finality and the activity of the association.

However, this is not the main purpose of the clerical association: "the ministry does not constitute the goal of the association, but is an element at the service of the missionary goal; the apostolate in mission areas would require the presence and exercise of the ministerial priesthood"⁷².

Therefore if an ecclesial movement is composed of clerics and laity, it could be configured as a clerical association. In this case the head of the movement should be always a cleric. This solution would also respect the secular character of the movement. In fact these clerical associations depend on the Congregation for the

⁷⁰For the evolution of the texts regarding clerical associations, see R. RODRÍGUEZ-OCAÑA, *Las asociaciones de clérigos en la Iglesia*, Pamplona 1989, p. 247-254 and 257-269.

⁷¹Cf. can. 588.

⁷² Cf. L. NAVARRO, *Commentary to can. 302*, in *Exegetical commentary*, cit. p. 461.

Clergy and not on the Congregation for Institutes of Consecrated life and Societies of Apostolic Life.

E. Criteria for granting the faculty to incardinate to the clerical association or the movement

But is it sufficient, in order to establish a clerical association with the faculty to incardinate, that the head is a cleric and that there are clerics and lay people in the movement? Are these the only requirements for granting incardination? Of course not. As I have pointed out, the Church is very cautious in granting this faculty to any associative body. There is much wisdom behind this attitude. Some important elements should be taken into account: they are related to what incardination means and specifically to the capacity to discern suitability of the candidates to sacred Orders; and the capacity to provide for the needs deriving from the rights of clerics.

1. From the point of view of the capacity of an institution to discern the suitability of the candidate and to guarantee the rights of the clergy:

a) Guaranteeing this aspect means that the moderators of the clerical association have a sufficient degree of ecclesial maturity to determine whether or not a candidate is qualified for the priesthood. In other words, the moderators should, of course, guarantee the suitable formation of candidates to the priesthood (by means of seminaries or also specific houses of formation where the *Ratio Studiorum* is followed), but must have a good level of discernment regarding those who will become sacred ministers of the Church (they are not only ministers of the movement). The moderators should discern if the person is capable of fulfilling what is required of a sacred minister: he needs to have many human qualities (including psychological stability), doctrinal knowledge and virtues already acquired. In order to certify this fundamental aspect, I would think that it would be necessary to focus not only on good intentions, but on the experience which is lived out on a daily basis. That is, the reality of the lives of clerics in the movement, and their real situation: each individual life and ministry (if they have abandoned the priesthood, if they have asked for excommunication and for what reasons, if they have obtained the dispensation of their obligations, if they have been dismissed from the clerical state, etc.).

b) The remuneration of the clergy.

It is not enough that the association declare that it will provide for the remuneration along with social care, or that it will do what is provided for in the statutes. It is necessary to understand whether the association is capable of doing this, taking into account its resources and the number of clergy it intends to incardinate.

c) The ongoing formation of the clergy.

The association should have a program of continuing formation for the clergy of the ecclesial movement, or at least know how to provide this by way of other institutions (giving the clergy the possibility to attend the formative programs of the diocese, or the activities organized by ecclesiastical universities, etc.). The way in which this aspect of the life of clergy is addressed in the movement must be assessed.

d) The relationship between ministry and movement. There should be a connection between ministerial priesthood and the charism of the movement. Why the association implies the exercise of Holy Orders (cf. can. 302) should be properly explained. Most likely it is not a definitive argument that the members of a movement need a specific pastoral care which would be more effectively guaranteed by priests from the same association, and that the incardination of these candidates in the movement would make this responsibility easier. This line of reasoning is indifferent to what I have previously stated: the primary responsibility of caring for souls lies with the diocesan Bishop and his presbyterate, and this also holds true for the members of movements present in the diocese.

The presence of all these requirements constitutes a guarantee of the way in which the Church wants to protect not only the rights of the lay members of the movement but also those of the clergy of the movement. It is not the caprice of a Founder or of the leaders of a movement that will guide these issues, but rather the good of the movement seen within the common good of the Church. To be rigorous in this work of discernment is a great service, on one hand to the movement, because it will help its growth in ecclesial maturity and, on the other hand to the whole people of God, insofar as it will make the different charisms shine in the communion of the Church. Each charism will enrich the Church, Universal and Particular.

5. Conclusion

At the end of this presentation, I think it is very clear that the clergy can be members of ecclesial movements, can exercise their ministry in the service of the movement, and can even be incardinated in the movement. But the clergy must always be aware that they are ministers of the Church, open to appreciating the good done by others in the People of God, without allowing the formation of isolated groups. Not everything is mature in the new ecclesial movements and communities and many things are still evolving. The role of the Hierarchy is to help these new realities live in the communion of the Church. As canon lawyers in the service of the

movements and communities and of the competent ecclesiastical authorities, we are called to contribute with our advice and direction so that movements and communities might find their correct place -also in juridical terms- within the Church, and so that they might serve the People of God, fully respecting their identity and charism. For this we need to be open-minded and have an open heart, in order to understand where the Holy Spirit is guiding the Church, in the way that Cardinal Ratzinger expressed it in the words quoted at the opening of this paper. This openness leads, for example, to giving more space to agreements between ecclesial movements and dioceses for the pastoral ministry of clerics, and to the presentation of new ways of fostering unity and coordination among different bodies of a movement (some of them with priests), and the possible creation of a movement as clerical association. In this specific area of canon law, work is still in progress and at its base we should always have the essential elements recalled at the beginning of this paper, related to the clergy and to new movements and communities.