

PROVINCIAL GOVERNMENT ACCORDING TO OUR O.C.D. CONSTITUTIONS

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It is a pleasure for me to fulfill the task given me, to speak at this Extraordinary Definitory on the theme of: PROVINCIAL GOVERNMENT ACCORDING TO THE CONSTITUTIONS OF OUR ORDER.

I would like to thank Fr. General and the Definitory for giving me the honour of collaborating at this Assembly of the Order, even though all of you, Provincials, have already had some experience in this area, from the moment you agreed to serve the Province or Circumscription in this particular way. Perhaps the very daily exercise, of being in contact with the situation of the Institution and life, has made you aware of the need for this kind of reflection together, in looking at our legislation according to our Constitutions and Norms, that in the present draft contain not only the norm but also the principles that animate it.

I was asked to explain the juridical aspect of Provincial government. The vision will be completed by Fr. Zdenko, the Vicar General, who will touch upon the more practical aspects that arise from the exercise of this kind of government.

1. A SHORT HISTORY OF OUR LAWS

The **Provincial Government** of our Order was confirmed in outline already in the 1590 and 1592 Constitutions, when the Discalced Carmelites were constituted as a Congregation (Brief of Sixtus V *Cum de statu* of 10.7. 1587) and the division into Provinces had already taken place (General Chapter of Madrid of 1588). Shortly afterwards we separated officially from the Carmelites of the Ancient Observance, our Discalced Constitutions became definitive and we became a canonically independent Order (Pope Clement VIII, *Pastoralis officij*, 20.12.1593). The following General Chapters, of 1694 and 1697 completed the work, without adding anything of particular importance.

The laws on Provincial government appear then under the chapter for Central Government, with the Provincial Chapter, the Provincial and the Provincial Council. The competence of the Provincial Council will be clarified and defined later. The Constitutions of the Italian Congregation of St. Elijah, approved by Urban VIII on 22nd March 1631, were important in defining the Provincial Government. With the suppression of the Spanish Congregation and the subsequent unification of the entire Order (1875), these Constitutions of the Italian Congregation, came to be the single constitutional text for the Order, which remained valid, with a few modifications introduced in 1926 in order to adapt to the Code of Canon Law of 1917, until the renewal that began after Vatican II.

Generally speaking the Provincial Government of the Order was characterized by a strong independence of the Provinces, which was the same for other Religious Orders like our own: the *Mendicant* Orders. Somehow the concept of autonomy that in monastic Institutes was centered on the Abbey, in the mendicant Orders, came to reside in the Provinces, which enjoyed a considerable autonomy, even dependent on the Superior General and his Council or Definitory, who conferred unity for the entire Institute. The modern Religious Congregations, born with greater apostolic and missionary breath, have felt, due to this apostolic and missionary commitment, the need to have a more centralized government, which could take on greater apostolic challenges on behalf of the whole Institute; a centralization, which in more recent times could have been considered excessive, with the constant recourse to a central authority that created obstacles for the development of subsidiary organisms of government.

2. THE RENEWAL FOLLOWING THE COUNCIL. FUNDAMENTAL CRITERIA

The directives for the renewal of the government of Institutes arose immediately after Vatican II. Such directives, safeguarding the necessary unity of life and of government, proposed that all Religious should have a greater say in the life and government of the Institutes, and that the principle of subsidiarity should be adequately respected, so that the Superiors and the organs of government, on their respective levels, should be given the necessary faculties to avoid the many times that they needlessly had to refer to a higher authority (PC 14; M.P. *Ecclesiae sanctae* 18).

In our Order the task of renewing and of adapting the texts of our norms took many years, both for the drawing up of drafts and for the periods of living, *ad experimentum*, with the renewed legislation: 20 years, if we count the last adaptation to the New Code of Canon Law. The work carried out by the General Chapter was fundamental, especially in the years 1967-1968, for the renewal of the legislation and life of the Order, following the criteria laid down by the Church.

Regarding the Government of the Order, the Decree *De Regimine* was important, published with the other Decrees in 1968. It was a document that we can describe as *exemplary*. The work, handled carefully and wisely, began from certain fundamental principles or criteria based on the directives of the Church.

1) *An evangelical sense* in the exercise of authority and obedience. Attempt to find together, Superiors and Religious, the project of the Father's love, in service to the brothers and work together to building up the Church according to the charism of the Order and the grace given to each one (N° 1). Government is a necessary service for the community, which allows the community to grow as a family, which has its own identity, its own specific apostolate and charism. The vocation to grow together means that those who are in positions of leadership should respect the identity and mission of the consecrated family. From here authority is described as a charitable service, following the Decree *Perfectae Caritatis* n° 14 and canons 618 and 619 of the new *Code of Canon Law*.

2) *Corresponsibility* on the part of all Religious, so that all take an active part in the organization of their community life, in a search for suitable ways of reaching common goals, save the authority of the Superiors to decide (n° 6).

3) *The Principle of subsidiarity*. Good government requires that, by definition, the Superiors and responsible bodies at whatever level, are given sufficient faculties so that they do not have to keep referring unnecessarily and all too frequently to a superior authority (n° 7.22).

4) *A Balance* between the role of the Superiors, the cooperation of all the brothers and *the unity of the Governing Body of the Order*, in fidelity to the identity and charism of the founder. The present legislation, unlike former times, encourages the effective union between the Provinces and the Centre of the Order, and contains means that encourage the involvement and participation of the Religious and the Provinces to common projects and initiatives proposed by the Central government.

5) *Flexibility of the law*: it is an important characteristic of the law, particularly the basic Code of Canon Law or the Constitutions of an Institute, to establish principles and essential attitudes which one needs in order to maintain a certain identity, one's own lifestyle and apostolic service, leaving sufficient freedom for an alternative definition of the law in the complementary code, in agreement with the needs of the time and place. Our present legislation goes further in its application of this criterion of flexibility, in that it consigns quite a few particular definitions, beyond the legal codes, to the discretion of every Provincial Chapter.

Authority and corresponsibility, flexibility, subsidiarity and unity. These are criteria that should always be together, so that authority and obedience acquire the necessary balance for true government. A...all our Superiors, moved by the same Holy Spirit, should endeavour to exercise their authority at the service of their brothers...[this] authority in the Church comes from the Holy Spirit. It

must be guided by his supreme gift of charity, for the sole purpose of promoting the growth and unity of Christ's Mystical Body... (N° 143). The two things are equally necessary: to govern and to serve. To govern serving the brothers and encouraging their free and responsible cooperation, as fitting for children of God.

These fundamental principles, which are, in a sense, the heart of the new legislation, were expressed in the introduction to the third section of the new Constitutions, under the title of *Government*. This is a splendid description, in brief, of the spirit that animates government in religious fraternity.

In our explanation of Provincial Government, we would like you to notice how, in the different parts of its structure, the fundamental criteria have been applied that constitute the novelty of the post-conciliar legislation. It would surely be better to highlight how these renewed criteria came to be, rather than give a detailed explanation of each norm of provincial government, which could become boring and useless. This can help us have a better understanding of the present legislation, making clear at the same time the need, with an eventual revision of the legislation, to keep in mind these fundamental criteria.

3. THE PROVINCE. THE CONSTITUTIONS

Provincial government, in the Decree *De regimine* (DR), began with the chapter on *the establishment of Provinces*. In the new Constitutions this material has obviously been included in the first chapter of the third section, Government, the **organic constitution of the Order**.

It begins by confirming that our Order is composed of Provinces that are of immediate parts of the Order which have been duly set up with a sufficient number of houses under the same Major Superior for the purpose of fittingly promoting our life and with the common life, government and sufficient undertakings for rendering it present in some territory (Const. 144).

Besides highlighting the elements that integrate the idea of Province - a direct part of the Order, duly erected, with a sufficient number of houses under the same Major Superior - the text indicates two factors, which help us to understand the significance and function of the Province: the organic unity of the whole Order, which has in common the same basic charism, the same lifestyle and service to the Church; and the structures within Province, which are the direct parts of this organic entity, with a certain level of autonomy in government. The Provinces are the parts of the Order in which its charism and life become reality, and through them the religious family is made present at the service of the Church.

Number 147 extends the fundamental concept to other autonomous regions set up in view of the expansion of the Order and as a phase in the process of constituting a Province. This concerns a *Semiprovince and a Commissariat* (Norms 154-156). The *Semiprovince* in our laws enjoys the same autonomy as a Province. They are small Provinces, which remain such due to the small numbers in community, but are administered by the laws of a Province, with two exceptions indicated in number 154. A *Commissariat* already foreseen in the Decree *De regimine* (DR 143, 144), can be considered as an autonomous region in so far as it does not depend on a Province and has a system similar to that of a semiprovince, even if it is administered with its own particular statutes, approved by the Definitory (Norms 157).

The concern of our legislation in favouring the expansion of our Order and its implantation in other regions is noticeable. The beginning of this type of circumscription is a proof of this.

This same concern emerges in prevision of other types of demarcation, such as a *Regional Vicariate* and *General and Provincial Delegation*, even if, in these cases, we cannot speak of an autonomous territory. A *Regional Vicariate*, whose shape is found in the 1973 legislation (n° 463), is clearly part of a Province and the Major Superior is the Provincial, even if in the Norms already form the basic structure of a Vicariate (Norms 158). In the case of a *Provincial Delegation* it is even clearer that all the authority conferred to the Delegate is delegated authority, consisting of that authority which the

same Provincial or Provincial Council believes it is opportune to delegate.

Given the temporary nature of these circumscriptions, the Constitutions limited themselves to establishing the general principle that other autonomous regions may be established, besides Provinces (Const. 147), leaving the definition to the Norms, which are more flexible, and which can be revised and modified by the internal authority of the Order (i.e., the General Chapter: Const. 151).

It is also worthwhile underlining the *flexibility* of the present legislation with regards to the definition of the requirements for the establishment of a Province. While the previous Constitutions, like the Decree *De Regimine* (n° 141) and in the 1976 *Ad Experimentum* Directory (n° 144), defined the required number of Houses and Religious (5 & 50), the present legislation speaks in more general terms of a sufficient number of houses and personnel, leaving the definition to a case by case basis to the Definitory (Const. 146, Norms 151).

In spite of this flexibility, the laws are clear when they stipulate the indispensable requirements to safeguard autonomy for these regions; they must have a sufficient number of houses and personnel that will allow them to maintain a level of autonomy corresponding to their particular category, and offer sure hope of leading a fitting life *its spiritual and temporal resources and its vocation prospects*, should be such as to sufficiently guarantee this for the future (Const. 146). In the case where these requirements disappear, in such a way that the particular juridical and vital autonomy can no longer be maintained, and there is no hope of recovery for the foreseeable future, the laws foresee the modification of the juridical condition or the eventual suppression of the Province (Const. 145, Norms 151).

4. THE PROVINCIAL CHAPTER

The present legislation distinguishes better than the previous, the different functions of the Provincial Chapter, in studying the Province's situation and promoting its life. The Decree *De Regimine* expressed this when it spoke of Chapters, whose function is to decide the main business of the respective circumscriptions and to promote the spiritual and apostolic vitality of the Province (DR 28). This reflects the directives of the document *Ecclesiae sanctae*, which recommends careful preparation of the celebration of the Chapter, with the participation of the Religious of the Province (DR 29 Norms 207), so that the Chapter be run efficiently and be the basis for on-going renewal. The Chapter should be experienced as an event which concerns everyone, and whose decisions are the fruit of everyone's work, so that they will have an effect on the various communities.

In the previous directives, the Provincial Chapter dealt only with elections and the eventual approval of certain definitions or chapter Ordinances. The same drafting of the relative articles of the Constitutions gave greater care to the formal part of the celebration, rather than encouraging the task properly said of animating the life of the Province. In the present laws the Provincial Chapter is an important element in the texture of life and dynamism of the Order. It is also a opportunity for corresponsibility and fidelity to our own identity and mission as a religious family. The Chapter's capacity to function is a clear expression of subsidiarity in government and of the flexibility of the law.

The **celebration** of the Provincial Chapter takes place every three years, in the year that immediately precedes the General Chapter, so that it can also contribute in the preparation of the latter (Const. 193, Norms 206). There was a time when it was celebrated the year after the General Chapter (1590-1592 Const.), but by the 1631 Italian Constitutions it came to be celebrated the year before. Still today there are Institutes that prefer to hold their Provincial Chapters after that of the General, as a means of applying the latter.

Composition of the Chapter. Besides the participation of the Provincial and his Councillors, it is left up to the previous Provincial Chapter to decide which Superiors must be there, and how the Delegates of the Religious who do not by right participate at the Chapter must be elected (Const. 194b & c, Norms 208). The Priors participate by right of office. Actually, it is left up to the Chapter to make the same distinction between Priors and Residences, and, at the same time, to decide which

Superiors must take part in the Chapter. In the same way, it is left to the Chapter to determine the number of delegates to elect, how this is done and the time of the election; holding to the criterion of suitable proportion@ not necessarily mathematical, between the members who participate of right and the elected delegates. The concrete ways of applying this norm are varied. As regards Superiors of houses who go to the Chapter of right, this can refer to houses that have large numbers of Religious, or that are more important, such as houses of formation. As regards Delegates, it is possible that every community elect its own, perhaps joining together houses with small numbers, with the possibility - when it is necessary to complete the number of Delegates - that some are elected by all those who are not going to the Chapter of right. In some Provinces there are some sectors that would merit having representation at the Chapter, such as non-clerical Brothers, young Religious. There is also the possibility that the Superiors of the houses elect a fixed number of Superiors who will participate at the Chapter, and the other Religious who will not go *ex officio* elect an adequate number of Delegates, always keeping the balance between those *ex officio* and those elected.

The competence or function of the Provincial Chapter: the Constitutions stress three areas for these functions:

a) *To deal with and decide on the most important business of the Province*, in particular the promotion of the spiritual and apostolic life, which corresponds to the basic goal of Chapters according to the directives of the Church: maintain and renew the spiritual patrimony of the Institute (Can. 631 ' 1). We see that the function of the Chapter is to promote an authentic renewal of the Order's life, keeping in mind the circumstances and the needs of the Province. It is clear that this Chapter function requires, as something already understood, *the prior awareness of the state of the Province*, which the Chapter will fulfill as best it can with the information on the state of the Province, given by the Provincial and the other Councillors.

b) *Suggest suitable arrangements* within the limitations of its competence, for putting into effect this Chapter function. *Arrangements*, as such, are practical decisions and dispositions for the life of a circumscription; but in a broader sense, there are other kinds of documents which refer to the coordination and the organization of the life of the Province, which make the Chapter a kind of beating heart that constantly renews the Order, along the lines traced out by the General Chapter.

c) *Its task to elect*: the elections of the Provincial, Provincial Councillors, Socius to the General Chapter and his Substitute, the Superiors of the houses, according to the decisions made by the previous Provincial Chapter (Const. 195, N. 208).

To these functions we can add the task that the present legislation entrusts to the Provincial Chapters, to determine or concretize later some provisions of the Constitutions and Norms, bearing in mind the situation and circumstances of each Province. We can say that this task involves the legislative function, which in Religious Institutes is a specific task of the General Chapter.

The practical instruction for the celebration of the General Chapter records precisely these further decisions of the Order's own laws: to decide practical ways of living the vow of poverty which encourage a simple lifestyle and a witness to Gospel values that we are called to give, in conformity with our lifestyle (N. 1); the laws on the use of the religious habit (N. 41); the laws governing travel of Religious (N 43c), the fixing of suffrages for the dead (N 45f), deciding on the type of habit for novices (N 82); on the exercise of active voice for non-clerical Brothers who have made solemn profession but not finished their ecclesial studies (N 108); laws on the opportunity to maintain or not preparatory colleges (N 118); on the suitability of establishing a Regional Vicariate with a group of houses located in a territory far away from the centre of the Province (N 158), to decide on the distinction between houses that are Priors and those that are residences and the requirements for each (N 160), to decide on the number of Superiors of houses and Delegates who will participate at the Provincial Chapter and how and when the Delegates are to be elected (Const. 194c N 208); laws on Superiors of houses, whose election will be left to the competence of the Provincial Chapter (Const. 195 b, N 216a); deciding on the way to consult Religious before the election of the Provincial, and on the juridical consequences of this consultation (Const 197 N 213); or, if there is a consultation, or more than one, if this consultation should be considered binding or simply a survey; laws on the opportunity to ask the Definitory - where particular conditions exist - permission for the Provincial to be elected by all the Religious who have active voice in the Province (N 215); to judge on the suitability of setting up

a Plenary Council for the entire Province or for at least part of it (Const 209); and to decide the frequency, the purpose and the right of attending these meetings (N 230); to establish norms according to which every house collaborates with the Provincial Bursar (N 245a).

These decisions or arrangements that the legislation requires of the Provincial Chapter within a legal framework, is further evidence of the flexibility of our present legislation. It can be that the task in every Chapter of revising all these determinations could prove tedious, yet with the evaluation that the full application deserves, among ourselves, from the flexibility of the laws, it would be possible to transfer some of these determinations, where there is a majority in favour among the Province, directly to the Norms, with the possibility of deciding other things at the Provincial Chapter, where circumstances would require it.

Note in particular the competence of the Chapter to decide the Superiors of houses, whose election will be the competence of the Provincial Chapter (Const 195c N 216a), and it depends on the same Chapter to decide, either permanently or not, to distinguish houses as priories or residences (N 160). In the former laws the Superiors of Priories were elected by the Provincial Chapter. Today, for example, the Superiors of the houses that contain a fixed number of Religious can be elected while leaving to the Council the appointment of Superiors of houses with less than the fixed number. It is also possible that the Chapter elect all the local Superiors, even if our former legislation maintained a parallelism between the Superiors elected at the Provincial Chapter and the same who went to the Chapter of right. But to leave the appointment of all the local Superiors to the Provincial Council would appear contrary to the contents of the present legislation, which provides that some Superiors are elected by the Chapter (Const 195c N 216a).

It has also been left to the Provincial Chapter to decide the manner of consulting the Province prior to the election of the Provincial and the juridical consequences of this consultation (Const 197 N 213): if it has binding value or if it is merely a survey, if it is a one-off consultation or more than one. It is evident that if the consultations are to be more than one then it does not make sense to prescribe that the consultation be carried out the month before the beginning of the Chapter.

The declaration in 115 of our Norms is also relevant, which provides for the possibility that the Provincial Chapter, where special conditions exist in a particular Province, may seek permission from the Definitory to have the election of the Provincial by all the Religious of the Province with active voice. It is obvious that if the Chapter can ask this then the Definitory may consent to it. The arrangement was introduced in the text of the 1976 Directory, D 209, once permission had already been given to a Province, with the authorization of the Apostolic See.

Let us leave out other numbers that are more technical and which are of no special interest to us just now, such as the presidency of the Chapter and its functions, rules and duties of the Chapter members, the canonical requirements for decision making. All of these are clearly fixed in the *Practical Instruction* of the Provincial Chapter, which was approved by the Definitory (N 217).

We would like to point out again the ruling in our Norms n° 211, where it says that the President, in moderating the discussions, must do it in such a manner that all the members can express their minds freely and sincerely, so that, as a result of mutual dialogue and consultation, more mature decisions may be reached (N 211); this recommendation corresponds to the competence of the Chapter in the new legislation. The same determination in the Norms, n° 216, responds to the same prospective, when it specifies that the Chapter, once it has concluded the elections, if it judges expedient, can summon the recently elected Superiors, who will have active voice in the remaining business to be considered in order that the business of the Province may be treated more effectively.

5. THE PROVINCIAL

The present Constitutions offer little difference to the Order's previous legislation with regard to the so called juridical elements. The Provincial is charged with the government of the Province according to the Constitutions. He has direct authority for the communities and Religious, but must exercise it

respecting the proper role of the other Superiors. He has also all the faculties which Canon Law attributes to Major Superiors and Religious Ordinaries (Const 199).

Other characteristics of the new legislation are the prospects that relate to the exercise of authority:

- as *animator and coordinator* of the life and activity of the Province, he must work zealously so that all the Religious, each with his work and responsibility, work together for the common good (Const 201).

- he must maintain *close ties with the central government of the Order*, and willingly give his support to any projects for the common good of the Order, which have the backing of the Superior General or Definitory. He must inform the General of the state of his Province, particularly after the pastoral visitation (N 218). This is an aspect that the new legislation has quite clearly fostered, with new juridical means, for the participation of Provincials not only at the General Chapter but also at an Extraordinary Definitory and at other Order-wide meetings that help communication between Provinces and the Definitory and promote the unity and collaboration between all the Provinces (Const 187-188, N 199-200).

- A particular stress, in his function as animator of the Province, is given to his *visits to the communities*: be that a *pastoral or canonical* visitation, which must be made to the communities at least once during the triennium; which may also be a *fraternal* visitation allowing an on-going contact with the communities. The goal of both kinds of visitation is clearly defined: *promoting the spiritual good of each community and fostering a genuine fraternal spirit* (Const 201).

- Even if the visitation can be made by some one else, when for just reasons this is necessary, the Provincial should personally visit all the houses, especially the houses of formation, allowing a good length of time for the visit, and participate for a few days in their community life (N 218), in such a way as to verify, animate and encourage, personally, the life and work of the community.

More concretely, in speaking of the pastoral visitation, the Norms specify the goal of the visit: to look for the *welfare of the Order* the ways of religious life and service to the Church proper to our charism and mission of the Order, so that the religious life may be strengthened and defects, if there be any, may be corrected with charity and the way to arrive at this: *by means of frank dialogue with the religious* (N 172) and with the community.

The knowledge of the real state of the community also requires checking the books which mirror the way of life, the punctual fulfilment of duties, and the administration of finances (*beni*). The General Definitory, in recent times, has proposed guidelines in order that the visitation of the Definitors does not simply repeat the Provincial visitation, leaving to the latter especially the direct and detailed care of the Religious and the administration of the communities.

The Visitor will also verify the pastoral apostolate of the Religious, also those entrusted to them by the Diocesan Bishop, such as Parishes, so that even in the exercise of the apostolate our Religious will look to their Religious Superior and not just to the Bishop (Can. 678 ' 2). The way our Religious fulfill their ministry of pastoral care and their fidelity to Religious life and discipline will also have to be verified (N 68).

The Religious, for their part, are invited to deal in confidence with the Visitor, and respond truthfully and charitably to the questions which he lawfully asks, so that he can have a true understanding of the personal and community situations, collaborating in such a way to make the visitation a success. The precept of obedience, which in the past was imposed at the beginning of the visitation, is now left to the discretion of the visitor, to special cases that he judges opportune. It is not lawful for anyone in any way to divert the members from this obligation or otherwise hinder the scope of the visitation (N 172, Can.628).

I believe that it is not necessary, in this setting, to recall the laws relating to the election of the Provincial (Const 157-9, 202) and the requirements for this office (200).

6. THE PROVINCIAL COUNCIL

The two functions of the Council

In our laws, the Provincial Council has a *double function*:

a) **the function proper to Councils in general**, see Canon Law N° 627: as bodies of qualified consultation. It deals with factors which enter within the competence of the Religious Superior, who acts with personal authority, even if, in order to act lawfully, in specific cases determined by common law or proper authority, he must seek the intervention of the Council: be that with a consultative vote (counsel), or be it with a deliberative vote (consensus). It is the task of the Provincial Council, as described in n° 206 of our Constitutions: *To help the Provincial with their advice and services in all that concerns religious life and apostolic activity in the province@ The consultation is particularly through consensus or counsel; and then collaboration which can be through the assumption of tasks in the different areas that are entrusted to them, under the direction of the Provincial and the same Council.*

b) *Its function as a collegial governing body.* The General Definitors and Provincials in our Order are also bodies of collegial government, with well defined powers. Within this area of competence authority is exercised collegially. The subject of authority is the same Council.

The function of the General Definitory has been clearly defined since the Madrid Constitutions of 1590 and 1592. Then, as we have already indicated, the function of the Provincial Council or Provincial Definitory was not really well defined, then at that time the authority of the General Definitory or Consulta embraced almost everything. In contrast in the 1631 Italian Constitutions of St. Elijah, the Provincial Council (Definitory) was already established as a collegial governing body with its own powers, but subject to the authority of the Provincial, outside the Provincial Chapter. *Definitorium provinciale, quod ex Patre Provinciali et quatuor Definitoribus componitur, post Capitulum Provinciale habet primam auctoritatem in Provincia@*

The laws that were passed in the Constitutions operative for the whole Order, with the unification in 1875 (n. 557) have been maintained in the present Constitutions: *The Provincial Council is made up of the Provincial and four Councillors. Outside the Provincial Chapter this is the highest authority in the province, in accordance with these Constitutions@ (Const. 204).*

This is quite common in the laws of Institutes similar to our own and born around the same time (Mendicant Orders), while in the more modern Institutes Councils only have the character of Counsel (a consultative body). In this sense the Council, in the ancient Orders, were called Definitories, as they had their own authority as a governing body, within well defined limits of their competence.

Our present laws clearly distinguish the interventions of a Provincial Council as a assistant body to the Provincial by means of a deliberative vote (consensus) or consultative vote (counsel). Number 225 of our Norms refers to this advisory function of the Provincial Council, and gives a list of some cases when the Council acts giving its deliberative or consultative vote. It should be noticed that in all these cases they speak of *appointment*, which is a way of conferring offices by personal authority, even when they require the Council to vote (we can see the contents of canon 147). Besides this we should add all the other cases where common and personal law require the Provincial, before he can act to have the consensus or the opinion of his Council. We can see these cases listed alphabetically in the contents of the Constitutions - Norms, under *Provincial Council*.

The cases that define the competence of the Provincial Council as a governing body are to be found in number 226 of our Norms :

- a) to designate novitiate houses and other houses of formation
- b) to dispense some communities in matters of religious discipline, but not for more than three months.

- c) to accept someone's resignation from an office whose election pertains to the Council itself or even to the Provincial Chapter when the latter is not in session, except the resignation of the Provincial and of the Delegate and Substitute to the General Chapter.
- d) to designate successors to those same vacant offices
- e) to elect Superiors for newly established houses
- f) to transfer local Superiors from one house to another, according to n. 163 of the Constitutions, if the welfare of the province so requires
- g) to remove from office Superiors, the Master of Novices, Master of Students and First Councillors of houses in accordance with the law Cf. Can.624 ' 3, and for what refers to Superiors N.146-148.
- h) to propose to the Definitory for approval an assistant to the Postulator General
- i) to grant permission for friars to teach in public schools or to assume some other regular position outside our houses, always respecting the needs of the common life.

Other determinations

Regarding the requirements to elect a Provincial Councillor, besides age (more than 30 years old) and having to be solemnly professed for at least three years, the first Councillor must be a Priest. The reason is that the Superior and the Vicar, in the Order, have an authority that is jurisdictional, which is reserved for clerics (Can. 129 ' 1, N. 224).

It is possible to re-elect someone for a second consecutive three year term, with a simple absolute majority. Not for a third (Const 205). Postulation is not excluded.

Regarding the *frequency* of the celebration of the Council meetings : apart from the celebration at the end of the Provincial Chapter, it must be celebrated at least twice a year, whenever something reserved by law to the Council must be decided in a hurry and when three Councillors request a meeting (Const 207). In the Semiprovinces when two Councillors request a meeting (practical declaration of the Definitory, in the Appendix to the Norms).

The Provincial Council must be complete, with all its members, to discuss matters of major importance (Const 208). The Norms specify: for decisions involving designation for, removal from or privation of office (N 227).

On the other hand, the law must be borne in mind according to which there cannot be a Council meeting unless at least three members are present (Const 208). The declaration of the General Definitory excludes, once the Council is convoked, a Councillor who was unable to attend being substituted so as to complete the number required of three Council members, except in Semiprovinces (appendix).

Ways of conducting a Council Meeting

Regarding the ways of conducting a Provincial Council:

- the business matters can be decided by an oral vote (show of hands), at least for some resolutions there needs to be a secret ballot (with slips of paper or with beans@- Const 156), or when a Councillor asks for it (N 228).

- In the more urgent cases, or when dealing with material of minor importance and it is difficult to convoke a Council meeting, the vote can be given by post or telephone, but only when dealing with a consultative vote (opinion): N 228. When dealing with a deliberative vote, or consensus, the Council must be convoked, according to canon law number 127 ' 1. Without doubt, according to canon 10, we are not dealing with a requirement for the *Validity*@of the act.

- When the law decrees that for an act to be fulfilled the Superior needs the consensus of the Council, for the validity of the Act he needs the vote to be in favour by an absolute majority of those present. When the law requires counsel (consultative vote) for an Act to be valid the Superior must ask the opinion of all the Councillors, even though he is not obliged to follow their opinion (can 127 ' 1).

We should pay particular attention to a disputed question: if when the law requires that the Superior needs to have a consensus or an opinion to act, can he vote himself together with the Councillors.

Even when the Provincial calls and presides at the Council meeting, we can ask if he is in effect a member of the Council and if, in consequence, he can vote or not, when the Council must give its consensus or its opinion. Given that canon 627, paragraph 2, which refers directly to a Council, refers to canon 127, which deals with the personal acts of the Superior, and not to 119 that deals with the acts of the Council, some authors consider that the Superior is not properly speaking a member of the Council and does not give his vote, not even when there is an equal number of votes. The Commission that authentically interprets canon law, regarding the doubt on canon 127, gave this same interpretation (14.5.1985).

But against this way of interpreting the question, there is the historical fact of a good number of Religious Institutes, which for many centuries and with the approval of the Apostolic See, considered the Superior as a member of the Council that he presided, recognizing his right to place his vote with the other Councillors. For this reason other authors consider that the relation between the Superior and the Council in the Church in general must hold with canon 127, but not in the laws for Religious, from the moment that canon 627 ' 1, which establishes the duty of Superiors to hold their own council, they do not refer to canon 127 but to the Constitutions, which can describe the Council as formed of Superior and Councillors, all having a right to vote. Paragraph 2 of canon 627, which refers back to 127, refers to the definition of cases where the Superior must ask for consent or counsel to act. In fact, many Institutes like our own have established in the Constitutions a Council formed jointly of a Superior and Councillors, all with the right to vote, and this continues to be approved by the CIVCSVA.

They do not, therefore, lack a juridical basis for their opinion those authors who consider the Superior a member of his own Council of Religious with a right to vote like the others, and also to resolve a tie vote, according to canon 119 ' 2, at least that this right is not limited to his proper right.

7. THE PLENARY COUNCIL

The introduction of a *Plenary Council* into our legislation had already been in the Decree *De Regimine*, as a consultative body, on a Provincial level (DR 180). It is a means to enhance the union and communication between communities and the Provincial Council.

The goal is clearly shown in the Constitutions: *To promote better communications and foster cooperation between the houses for the good of the Province* (Const 209).

The competent body to constitute a Plenary Council is the Provincial Chapter. Its institution is not obligatory, rather it is optional. It can be constituted for the whole Province or for a part thereof (Const 209), as would be a Provincial Delegation.

Its nature is that of a larger Provincial Council, as a consultative body. It does not have its own competence, but it is possible that some decisions can be entrusted to it, as proposed by the Provincial Council, in analogy with the Extraordinary Definitory (N 200a) that instead, without a doubt, has its own competence in some matters (Const 188, N 200b).

The Norms leave to the Provincial Chapter the decision as to the frequency, the goal of the meeting and the right to assist (who can participate): N 230. It is a further example of the flexibility of the law in general, which leaves to the Provincial Council the decision to constitute a Plenary Council, its composition and its objectives.

The Provincial Council must prepare for its celebration in good time, communicating the agenda to the participants. All the Religious have a right to make their own suggestions (N 230).

Number 76 of our Norms fixes that no house of formation can be established, changed, transferred or suppressed without the consent of the Provincial Council after consultation with the Plenary Council,

where this exists.

8 CONFERENCE OF THE SUPERIORS

This also deals with something introduced into our Laws by the Decree of the Special Chapter *De Regimine* (DR 185 - 193), following the criteria for renewal and adaptation proposed by the Church.

Formerly they used to speak of a *Conference of Provincials*. In fact the members of the Conference were for the most part Provincials. If the minimum number of members of the Conference was fixed to three, two of these had to be Provincials or Commissars (DR 188). The 1976 Directory allows for a broader participation, of the members of the Conference, who can be Superiors of other Circumscriptions (Superiors of Missions, Regional Vicars, and Provincial Delegates): D 233; yet, according to the 1981 Norms, it is preferable to speak of a *Conference of Superiors*.

The goal of these Conferences is to promote mutual communication and cooperation among provinces and other territories of the Order (N 231), and with the Centre of the Order, as is implied by number 234, where it is defined that the General can convoke these Conferences and preside. It is emphasized how appropriate it would be for the General and the Definitory to participate from time to time at the meetings of these Conferences, evidently to promote communication between Provinces and Definitory.

It is the Definitory that constitutes the Conferences, after having listened to all the Religious involved (N 231). By contrast with the Plenary Council, whose constitution is left to the judgement of the Provincial Chapter, when dealing with a Conference of Superiors, the Constitutions use the imperative form. The Definitory shall set up Conferences of Superiors (N 231). The decree *De Regimine* establishes that the rule of assigning to every Province of the Order a fixed Conference, if not for a special reason, is not opportune (DR 187).

The Conferences are governed by their own statutes that must be approved by the Definitory (N 232).

The conferences are organizational bodies to communicate and to mutually help Provinces, with great scope for collaboration on common interests, in circumstances and conditions of a fixed territory. In all our legislation, it is determined that the Conferences of Superiors express their opinion on important matters for the life of the Province: it is foreseen that, in collaboration with Provincial Councils, they are responsible for deciding concrete ways for a more efficient apostolic formation for our Religious (N 47); cooperate in providing each Region with a special programme of studies for those preparing to receive sacred orders, and for agreeing the general laws of the Church and the Order (*Ratio institutionis*) adapting and complementing the programme to the special circumstances of the region; they also cooperate in preparing the pastoral year that the aspirants to the priesthood must complete after their theological formation of (N 128), and again in preparing the Carmelite and Religious formation of our Religious (N 113). They have besides a right to prepare some questions which will be treated by the Extraordinary Definitory (N 199).

They can also with the consent of the Definitory, establish obligatory norms for inter-provincial houses and projects only (N 233).

Number 234 leaves open the door to a fruitful collaboration of the Conferences of Superiors in the business of the whole Order, when it affirms: It is also appropriate for the General and the Definitory to listen willingly to the Conferences of Superiors concerning matters that involve them or, in the matters relating to the promotion of the life and good government of the Order, which goes back to the limits of the competence and functions of the General Government, as it can be useful, at times, to listen to the opinion of the Conferences.

9. PROVINCIAL ADMINISTRATION

The administration of goods is part of government, as it looks after the things necessary for community life and ministry of the Religious. The administrator, *per se*, is the Religious Superior, even if the complexities of administration usually means that he needs the help of a Bursar, who works under his direction.

The presence of a Bursar is obligatory in the case of the Major Superior. Even in the local communities there must be a Bursar as distinct from the Superior, but in this case the rule allows for exceptions. In the text of the canon, the norm is binding, with the clause *to the extent that it is possible* (Can. 636 ' 1). This means that in small communities, and for valid reasons, the Superiors can also be the Financial Officer (Bursar).

According to what we are saying, it is not possible to speak of Provincial Government without reference to the Provincial Administration of goods. On the other hand, the complexity of the material to which we are referring could lead us too far from this concise consideration of Provincial Government. I will try to limit myself to concepts and principles that relate more directly to government.

The Province, as the Order and also a Religious House, insofar as they are juridic persons by the law itself, are capable of acquiring, possessing, administering and alienating temporal goods, in conformity with the norms of canon law and those of the Order (can. 634 ' 1 Const 220). Even if to fulfill Acts and stipulate contracts which are determined in civil law we must bear in mind the above mentioned norms; regarding contracts the Code has adopted the civil law of the territory where a contract was made (Can. 1290).

The right and the duty to administer goods is the competence of the Superiors and their Councils. Under their authority, the bursars look after the immediate administration, exercising this task which has been entrusted to them as a service for their brothers (Const 222). The Decree *De bonorum administratione* recommends that when necessary, i.e., when problems are too complicated, we should seek advice from experts (n.7), which can be an on-going necessity, above all when considering civil law, which gets more complicated all the time and is always being altered.

Both the Superiors and the Bursars, as well as others who have been appointed by the legitimate authority, can, with at least the tacit consent of their Superiors, validly perform Acts of *ordinary administration*. However, for validity of Acts of extraordinary administration they need the explicit authority of the Superior, in accordance with what is laid down by the law (Can. 638 ' 2 Const 223).

The Code of Canon Law and our Constitutions have maintained the traditional terminology, even though it is not easy to define the precise content of *ordinary and extraordinary* administration nor to underline the boundaries between one and the other; there is no agreement between authors, not even in the use that they make of the proper laws of Institutes.

In the Discalced Carmelite Constitutions certain guidelines are offered to the Sisters that reflect the concept of ordinary administration as used by the Order. Ordinary administration includes all expenditure for food, lodging, ordinary maintenance of the monastery and buildings attached to it, fees and taxes, wages for employees, payment for ministry, and the usual offerings for the needs of the poor (Nun-s Const 250). Even though this text reflects the situation of our nuns, the guidelines can also be useful for us.

It is up to the Definitory to define the competence of Superiors for every nation or region with regard to ordinary spending, alienation of property and incurring of debts. But there remains the obligation to ask permission from the Holy See regarding alienation and incurring of debts which exceed the limit fixed for each country, or items given to the Church in virtue of a vow, or items of precious art or of historical value (Can. 638 ' 3 Const 224, N 249). We should note that for an Act to be valid, in these cases, the written permission of the competent Superior is required.

When the permission or consent of a Superior authority is required, the consent of lower bodies of government (local Chapter, Provincial Council) must first be obtained.

The Provincial Council has the authority to determine the faculties of the Provincial and Provincial Council regarding *ordinary expenses* (what can be done alone and what needs the permission of the Council), and equally to fix the faculties of the local Superiors even for ordinary expenses.

The Provincial and his Council have the authority to coordinate the administration of goods in the Province, in such a way that all the houses contribute in due proportion to the expenses of the Province, and that there is an effective sharing of temporal goods between all the houses (Const 228).

In this regard, the special Chapter has made a considerable effort to centralize to some extent local and provincial administration, with some measures that make an adequate sharing of goods not only possible but also make it possible to take on common initiatives for the good of the Province or Order. The instructions, taken from the Decree *De bonorum administratione*, have been included in number 258 of our present Norms. The Provincial Council can:

- a) impose taxes on houses for the support of formation houses and for other expenses for the common welfare of the province, preserving due proportion and equity.
- b) transfer assets from one house to another, after consulting the Chapter of the house from which they are being taken, whenever the common good requires it.
- c) take superfluous or excessive income, and even immovable goods, from a particular house and use them for the welfare of the Province, after consulting the Conventual Chapter.

The new legislation gives particular importance to information and transparency in administration, with the goal of developing a spirit of mutual help and the adequate sharing of goods. The Superiors must keep the Friars properly informed of the financial state of the Houses, the Province and the Order (N 245b). Every six months the Provincial Bursar must present to the Council a report on the administration entrusted to him. Every year, with the approval of the Council, he will inform the communities on the financial state of the Province; a report will be sent every three years to the General Bursar (N 260).

The Provincial Council can also suggest particular names for the administration of the Reviews, the Associations attached to our houses and Churches, etc. safeguarding the common law and the eventual deliberations coming from the General Definitory with regard to this material.

I believe that what I have said is enough regarding our theme rather than going into other laws with a more technical character.