

# EXCLAUSTRATION: CANONICAL PROVISIONS AND EFFECTS

## Introduction

Religious life is a gift to the Church and a call to an individual from God. It is a call to follow Christ more closely under the action of the Holy Spirit and to dedicate oneself totally to God (CIC c. 573 §1). It is to be a sign of holiness and to live in the communion of God and of men and women. It is accomplished through a stable manner of living in common in an institute under the authority of a superior observing the evangelical counsels of chastity, poverty, and obedience (CIC c. 573; CCEO c. 410). Every religious enters to this state of life with the hope of leading a life as stated above assuming all the obligations and commitments attached to this call. However, in his or her journey of life, a religious may find himself or herself unable to fulfill sincerely the commitments and obligations of religious life, may be because of personal reasons or because of some external factors. On the other hand, some times the institutes may find problems with some peculiar life of a member so much so that he or she becomes danger to the life of the community. Sometimes, a religious may fail to manage his or her life as per the expectations of the Church or the institute. With a provision of temporary separation from the religious community—called exclausturation—the Church, with maternal solicitude, offers a feasible and realistic solution for such difficult and extraordinary situations in the life of a religious. The Codes of canon law provide sufficient the universal or common norms for this canonical institution of exclausturation (CIC cc. 686-687; CCEO cc. 489-491 and 548). Many dissertations, good number of articles, and excellent commentaries are made on this topic. However, I think, we still lack a positive approach to this canonical provision and often we give little attention to its possibilities. Here I would like to present the canonical aspects of this institution found in both Codes as an attempt to invite your attention to these possibilities, which may helpful for us, especially for the religious.

## 1. Exclausturation: Meaning

Connected to common life in religious institutes, exists the fact of cloister (CIC c. 667; CCEO cc. 477 §1 and 541). Cloister refers both to the law which regulates the separation of religious from those outside the religious house and to the actual space of enclosure, that is, the space set aside for the exclusive use of the religious.<sup>1</sup> Both “cloister” and “exclausturation” are derived from the same Latin root, *clausura*, *clausurae* (f), meaning “walls” or

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<sup>1</sup> Rosemary Smith, “Institutes of Consecrated Life and Societies of Apostolic Life,” in *New Commentary on the Code of Canon Law*, ed. John P. Beal, James A. Coriden and Thomas J. Green, (Bangalore: Theological Publications in India, 2003) 833.

"enclosure." *Ex clausurā* means "from or out of the cloister" or "from or out of the enclosure." Through exclaustation a religious is allowed to remain "extra clausura." It can be described as the state of "living outside a religious community, with permission granted by legitimate authority, during which the exclaustated religious remains a member of the institute but with some alteration of the canonical relationship between the individual religious and the religious institute."<sup>2</sup>

Though it is included in the section of "departure," exclaustation is not a departure from the religious life but it is a partial and temporary separation from the institute, to which a religious belong, and that the religious can resume normal religious life in the community later.

## 2. Types of Exclaustation

Both CIC and CCEO indicate two types exclaustation: "voluntary exclaustation," and "imposed or involuntary exclaustation." However, based on the practices in the Universal Church, canonists identify other types of exclaustation, especially the following two: (1) "Qualified exclaustation," and (2) "Exclaustation *ad experimentum*."<sup>3</sup>

Both, "qualified exclaustation," and "exclaustation *ad experimentum*," are applicable to religious clerics in very particular circumstances. The first one is applicable to religious priests, who, are "experiencing a vocational crisis or have grown weary of priestly life,"<sup>4</sup> requested for reduction to the lay state. In such situation, an indult of exclaustation would be granted with special effects beyond those that are common to every exclaustation.<sup>5</sup> In this case, the indult essentially suspends the observance of the vows except chastity and deprives the priest of the right to exercise the priestly functions.<sup>6</sup>

Exclaustation *ad experimentum* is the status of a religious priest who seeks to be incardinated in a diocese. When a diocesan bishop receives a religious priest on probation, it is possible for the priest to ask for an indult of exclaustation for the entire probationary period. Until he is being incardinated into the diocese, the religious priest, is considered to be

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<sup>2</sup> Patrick T. Shea, "Exclaustation," *CLSA Proceedings* 59 (1997) 267.

<sup>3</sup> Madeleine Ruessmann, *Exclaustation: Its Nature and Use according to Current Law* (Rome: Pontificia Universita Gregoriana, 1995) 19; Elizabeth McDonough, "Exclaustation: Canonical Categories and Current Practice," *The Jurist* 49 (1989) 596-605; Patrick T. Shea, "Exclaustation," 268-271.

<sup>4</sup> Patrick T. Shea, "Exclaustation," 270.

<sup>5</sup> Jesus Torres, "Procedure for the Exclaustation of a Religious," *Consecrated Life* 18, 1 (1993) 57.

<sup>6</sup> Patrick T. Shea, "Exclaustation," 270.

on exclaustation. It ceases upon the grant of incardination or the return of the priest to the institute.<sup>7</sup>

In this study, we focus only on the general categories of exclaustation, provided in the Codes: voluntary exclaustation and imposed or involuntary exclaustation.

## 2.1. Voluntary Exclaustation

CIC c. 686 §§ 1,2 and CCEO cc. 489 and 548 provide for exclaustation, not imposed, commonly called as “voluntary” or “ordinary” exclaustation.

<p>CIC c. 686 §1 With the consent of the council, the supreme moderator for a grave cause can grant an indult of exclaustation to a member professed by perpetual vows, but not for more than three years, and if it concerns a cleric, with the prior consent of the ordinary of the place in which he must reside. To extend an indult or to grant it for more than three years is reserved to Holy See, or to the diocesan bishop if it concerns the institutes of diocesan right.</p> <p>§2 Only the Apostolic See can grant an indult of exclaustation for nuns.</p>	<p>CCEO c. 489 §1 The indult of exclaustation can be granted only to a member of a monastery <i>sui iuris</i> who is in perpetual vows. When the member himself or herself petitions, the indult can be granted by the authority to whom the monastery is subject, after having heard the superior of the monastery <i>sui iuris</i> along with the council.</p> <p>§2 The eparchial bishop can grant the indult only for up to three years.</p> <p>c. 548 §1 An indult of exclaustation can be conceded by the authority to which the order or congregation is subject, having heard the superior general along with his or her council. . .</p> <p>§2 In other respects, cann. 489-491 are to be observed regarding exclaustation.</p>
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### 2.1.1. Voluntary: At the Request of the Member

CCEO c. 489 §1 (Monasteries) explicitly states that “the member himself or herself” can petition for an indult of exclaustation. Whereas CIC c. 686 §1 is silent about the author of the petition. However, it is clear from the content of these canons that the indult is granted at the request of the member. A religious may make a formal request to live outside the cloister, to the competent authority.

### 2.1.2. Only Perpetually Professed Members

The indult of exclaustation is granted to perpetually professed members, according to both Codes. It is through perpetual profession a person become a full and permanent member of the religious institute.

The law (CIC c. 686 §1; CCEO cc. 489, 548) restricts exclaustation to the perpetually professed members of a religious institute. Exclaustation is not available to the temporary

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<sup>7</sup> Patrirk T. Shea, “Exclaustation,” 271.

professed members because it is neither appropriate nor necessary to grant indult of exclaustation to them. The reason is that they are still in the process of formation to make perpetual profession. It is a period during which the religious learns to live the religious life of the institute in the community; a period in which the religious and the institute must discern the religious' vocation to that life. Therefore, there is an incompatibility between the period of temporary vows and exclaustation.<sup>8</sup> In addition, a temporary professed religious is free to leave the institute at the expiry of his/her vows (CIC c. 657§1). He or she can also request for an indult to leave the institute, by which he or she can totally separate from the institute at any time (CIC c. 688 §2; CCEO cc. 496 and 546).<sup>9</sup>

### **2.1.3. Indult of Exclaustation: A Favour**

An indult, canonically speaking, is in the category of administrative acts, and is considered as a favour. A favour (*gratia*) granted at someone's request and is communicated in a written response is called a rescript, which is an administrative act (CIC cc. 35, 59 §1; CCEO cc. 1510 § 2, 3°). An indult has the form of a rescript. A formal indult has to be in writing and in the proper form, specifying the request, the motive, the fulfilment of the required conditions, specification of the time, the obligation and the right to return, other obligations, etc.<sup>10</sup>

Since the indult of exclaustation is a favour, in the strict sense, the person requesting an indult does not have a right to receive it.<sup>11</sup> It is rightly observed that in the Codes the canons on exclaustation are "in the section on departure and not that of obligations and rights of institutes and their members."<sup>12</sup> It is a favour granted by the competent authority.

### **2.1.4. The Competent Authority to Grant the Indult in the Latin Code**

Regarding the competent authority to grant an indult of exclaustation to a perpetually professed member, there is a significant difference between the Latin and the Eastern Codes.

In the religious institutes of the Latin Church, voluntary exclaustation can be granted by the supreme moderator of the religious institute, the diocesan bishop, or the Apostolic See. The determination of the grantor depends on the following elements: (1) the period or term of the exclaustation requested; (2) the juridical status of the institute.

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<sup>8</sup> Jesus Torres, "Procedure for the Exclaustation of a Religious," 52.

<sup>9</sup> Elizabeth McDonough, "Voluntary Exclaustation," *Review for Religious* 51 (1992) 463.

<sup>10</sup> Jesus Torres, "Procedure for the Exclaustation of a Religious," 53.

<sup>11</sup> Elizabeth McDonough, "Communicating an Indult of Departure," *Review for Religious* 51 (1992) 783.

<sup>12</sup> Patrick T. Shea, "Exclaustation," 268.

1. The Supreme Moderator: In general, the supreme moderator of a religious institute is competent to grant an indult of excommunication to a perpetually professed member of his or her institute for not exceeding three years (CIC c. 686 §1). An exception to this general rule, as established in the universal law itself, is that, for nuns only the Apostolic See can grant an indult of excommunication.

2. The Diocesan Bishop: If the requested excommunication is for more than three years, the diocesan bishop is the competent authority to grant the indult to the members of religious institutes of diocesan right. Here the canon does not specify the “diocesan bishop.” According to F. J. Ramos, “Keeping in mind the interpretation of the corresponding canons of CIC/1917 (c. 638) and cc. 688 §2 and 700 [of CIC/1983], we infer that it is the bishop in whose diocese contains the house to which the person is assigned or attached.”<sup>13</sup>

3. The Apostolic See: For the members of religious institutes of pontifical right, if the excommunication is requested for more than three years, it is the Apostolic See, who is competent to grant it.

As stated above, according to CIC c. 686 §2, the Apostolic See alone can grant an indult of excommunication for nuns. The rationale for this reservation probably is that monastic nuns have an enclosure much more stricter than that of other religious (CIC c. 667 §§3-4). The canon applies to all nuns, whether belonging to the monasteries wholly devoted to the contemplative life or belonging to other monasteries.

### **2.1.5. Conditions Attached to the Supreme Moderator’s Power to Grant the Indult**

CIC 1983 empowers the supreme moderators of the religious institutes to grant an indult of excommunication, a power that had been reserved to the Holy See or the local ordinary in the previous Code (CIC-1917 c. 638). Considering the gravity of the matter, the canon establishes four conditions in the exercise of this power: (1) prior consent of the council; (2) grave reason; (3) only for a period not exceeding three years; (4) if it concerns a cleric, prior consent of the Ordinary of the place where the cleric must reside.

First of all, the supreme moderator can issue an indult of excommunication only with the consent of his or her council. The supreme moderator cannot grant it, if the consent has been

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<sup>13</sup> F. J. Ramos, “Departure from the Institute: cc. 686-693,” in *Exegetical Commentary on the Code of Canon Law*, ed. Angel Marzoa, Jorge Miras and Rafael R. Ocana, vol. II/2, (Montreal: Wilson & Lafleur, 2004) 1840-1841.

denied (cf. CIC c. 127 §2, 1°; CCEO c. 934 §2, 1°). If the supreme moderator issues the indult without the consent of the council, it will be invalid (cf. CIC c. 127 §2; CCEO c. 934 §2).

Secondly, the canon demands that there should be a grave reason to request for and to grant the indult of exclaustation. The evaluation of the gravity of the cause is the competence of the superior, who is entitled to grant the indult, and also of the council giving its consent. There must be an objectively grave reason.<sup>14</sup> According to J. Torres, “a too benign evaluation leads invariably to a confusion of ideas and makes religious government difficult.”<sup>15</sup> The Code does not mention any of the possible grave causes. Commentators list a variety of examples of the “grave causes,” such as, care of personal health, care or support of one’s parents, a vocational crisis and discernment, an external apostolate, etc.<sup>16</sup>

Thirdly, the supreme moderator cannot issue such an indult for more than three years. According to J. Torres, “the limit is not imposed on the exclaustation but on the power of the superior general to grant it.”<sup>17</sup> For a period exceeding three years, it is necessary to have recourse to the Apostolic See for the members of pontifical institute and to the diocesan bishop for the members of diocesan right. Here, it shall be noted that the wording of CIC c. 686 §1 has produced differing opinions among canonists regarding whether an initial indult granted for less than three years can be extended by the supreme moderator for a total duration of three continuous years.<sup>18</sup> The observation of Elizabeth McDonough seems relevant to this question: “While the Latin text of the canon is not entirely clear, recent

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<sup>14</sup> The reason for granting the indult cannot be simply a personal dispute between superiors and an individual religious or any other matter that could be handled through dialogue. Elizabeth McDonough says that the grave cause is not a matter of validity but of licity. Elizabeth McDonough, “Separation of Members from the Institute,” in *A Handbook on canons 573-746*, ed. J. Hite, Sharon Holland, D.Ward. (Collegeville, 1985) 236. Chiapetta states that, grave cause is required as a matter of validity; he observes that permission for absence requires a just cause, while exclaustation requires a grave cause, and adds that exclaustation involves a more serious matter in that it often leads to an indult of departure. L. Chiapetta, *Il Codice di Diritto Canonico*, vol. 1, (Napoli: Edizioni Dehoniane, 1988) 786-787.

<sup>15</sup> Jesus Torres, “Procedure for the Exclaustation of a Religious,” 67.

<sup>16</sup> Joseph F. Gallen, *Canon Law for Religious* (New York: Alba House, 1983) 193; George V. Lobo, *New Canon Law for Religious*, (Bombay: St. Paul Publications, 1986) 123; Gianfranco Ghirlanda, *Il diritto nella Chiesa mistero di comunione*, (Milano: Edizione San Paolo, 1993) 207; E. Gilbert, “Seperation from Religious Institutes,” *The Jurist* 44 (1984) 456- 468, 460; Elizabeth McDonough, “Exclaustation: Canonical Categories and Current Practices,” *The Jurist* 49 (1989)585.

<sup>17</sup> Jesus Torres, “Procedure for the Exclaustation of a Religious,” 53.

<sup>18</sup> Commentators, like D. J. Andres and J. Beyer, have interpreted the words of the canon “Extending the indult or granting it for more than three years is reserved to the Holy See,” in the strict, literal sense, affirming that any kind of a prolongation is reserved to the Holy See or to the bishop. But according to the majority, the practical interpretation of the prescription on the basis of the constant praxis of the Apostolic See points out that the supreme moderators are accorded with the faculty to grant an exclaustation up to three years, either in one single grant or better in concessions for a shorter time to keep the exclaustated in contact with the institute. Jesus Torres “Procedure for Exclaustation of a Religious,” ( note 26) 68; Patrick T. Shea, “Exclaustation,” 269; Madeleine Ruessmann, “Aspects of Exclaustation,” *Periodica de Re Canonica*, 84 (1995) 239; Elizabeth McDonough, “Voluntary Exclaustation,” *Review for Religious*, vol. 51/3 (1992) 465.

practice indicates that three continuous years in any combination of consecutive time segments is the limit intended and also permitted by canon 686 §1, as being within the competence of the supreme moderator.”<sup>19</sup>

Lastly, CIC c. 686 §1 establishes a special condition to be fulfilled by the supreme moderator in granting the indult of exclaustation to a religious, who is cleric. The canon demands that “in the case of a cleric, the indult requires the prior consent of the Ordinary of the place where the cleric must reside.” The following two factors would be the rationale for this condition: first, such a cleric would be practically outside the religious governance of his own superior; and secondly, as a cleric he would perform public ministry, which is under the supervision of the local ordinaries. The supreme moderator is bound to seek this consent, for the validity of his action.

### **2.1.6. The Competent Authority to Grant the Indult of Exclaustation in CCEO**

In the Eastern Code, the competent authority to grant the indult of exclaustation upon the petition of a member in perpetual vows is the authority to whom the religious institute is subject (CCEO cc. 489 §1, 548 §1). Corresponding to the hierarchical structure of the Eastern Catholic Churches, the religious institutes can be of eparchial, patriarchal (major archiepiscopal) and pontifical. Therefore, the eparchial bishop, patriarch (major archbishop) and the Apostolic See are the authorities who can grant the indult of exclaustation in the Eastern Churches depending on whether the member petitioning for exclaustation belongs to a religious institute of eparchial, patriarchal (major archiepiscopal) or pontifical right. Unlike the Latin code, the Eastern code gives no power to the superiors general of religious institutes to grant the indult of exclaustation of any length.<sup>20</sup>

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<sup>19</sup> Elizabeth McDonough, "Voluntary Exclaustation," 465.

<sup>20</sup> The previous laws, CIC-1917 c. 638 and PAL c. 188, had the same rule that the See granted the indult of exclaustation in institutes of pontifical right while the local ordinary (hierarchy) granted it in institutes of diocesan (eparchial) right. In the revision of the Latin Code (1977 Schema c. 77), it was proposed that the supreme moderator of a religious institute, for a grave reason and having heard the council, could grant such an indult for up to three years. Though there were some objections against this proposal with the arguments that conferring such faculty to the supreme moderator would lend itself to abuses and it has no basis in the *ius vigens*. It was pointed out that the canon requires “the consent of the council and also, if it is a question of priests, the consent of the ordinary of the place where the religious will reside.” In the reporting session of the special study group no one opposed giving the supreme moderator the faculty to grant exclaustation nor was the observation made that such an act of governance required the power of orders. See *Communicationes* 13 (1981) 329-330.

Although the Latin Commission saw no obstacle in granting the supreme moderator the power to issue an indult of exclaustation, the Eastern study group viewed granting such an indult as an act of governance that required the power of orders. In deciding to return to the former rule expressed in PAL c. 188, the study group

### 2.1.7. Conditions in Granting the Voluntary Exclaustration in CCEO

As seen above, in CIC c. 686 §1, the power of a supreme moderator to grant an indult of exclaustration is conditioned by four factors. These factors are not found in the parallel Eastern norms. On the contrary, the Eastern Code states that the authority to which the monastery, order or congregation is subjected to, concedes the indult of exclaustration after having heard the superior of the monastery *sui iuris* along with the council, or the superior general of the order or congregation along with his or her council (CCEO cc. 489 §1, 548 §1). The external hierarchical authorities can grant this only after having heard the internal highest superior of the institute along with his or her council.

Another condition found in the Eastern Code in this regard is the limitation of time placed upon the indult granted by an Eastern eparchial bishop. While the Apostolic See and patriarch (major archbishop) may grant such an indult for any period of years, the Eastern eparchial bishop, unlike his Latin counterpart, can grant this indult only for up to three years. It was added to the Eastern norm by the special study group in the revision process, but in the reported proceedings of PCCICOR, no subsequent motion appears to have been made to allow Eastern bishops to grant an indult of exclaustration for a period longer than three years.<sup>21</sup> Since the power of the eparchial bishop to concede an indult of exclaustration is limited to a concession of three years (CCEO c. 489 §2), in order to obtain an indult of exclaustration for more than three years, or to extend it after three years, a member of an eparchial religious institute should approach patriarch (major archbishop), if the institute is within the proper territory of the patriarchal (major archiepiscopal) Church or the Apostolic See in other cases.

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experts reported: “ex officio it is also noted that both the granting of the *indultum exclaustrationis* and the decree by which the *exclaustrationis* imposed on a member of a monastery are administrative acts in the strict sense of the word, and therefore can only be carried out by those who have *potestas regiminis*. In short, the study group decides to return to the *ius vigens* where the granting of this indult is reserved to the Holy See, the patriarch or the local hierarch.” *Nuntia* 16 (1983) 64, c. 76.

<sup>21</sup> Jobe Abbass, *The Consecrated Life: A Comparative Commentary of the Eastern and Latin Codes* (Ottawa: St. Paul University, 2008) 215.



### **2.1.8. Latin and Eastern Norms on Voluntary Exclaustration: A Comparison**

Jobe Abbass comments that the current Latin norms on exclaustration (CIC c. 686) reflect the spirit of subsidiarity and are more practical comparing to the Eastern norms on the same.<sup>22</sup> According to him, “Regarding the crises or vocational doubts that may have provoked a petition for exclaustration, the supreme moderator of a Latin religious institute of pontifical right, for example, is most likely closer than the competent Roman congregation to the member’s situation in order to make an assessment as to its possible solutions. The moderator’s consideration of the matter, also in the light of the institute’s gifts and founding charisms, is enhanced by the deliberations of council members, whose consent is necessary if, after a review of all the options, exclaustration appears to be the most appropriate. If these observations are valid for Latin religious institutes of pontifical right, they would seem to be especially true in their Eastern counterparts, which are most often smaller and governed directly by the superior general. In such cases, the general is more likely to know the religious personally and have first-hand knowledge of the circumstances that led to the petition for exclaustration. Moreover, the general and council are most often geographically, as well as culturally, closer to the member’s situation that now requires a charitable and just solution. Give all these things, it would seem logical to suggest that a future revision of Eastern canons 489 and 548 allow the indult in case of voluntary exclaustration to be granted by the superior of the monastery *sui iuris* or the superior general of an order or congregation.”<sup>23</sup>

### **2.1.9. The Cessation of Voluntary Exclaustration or the Return of the Religious to Institute**

A voluntary exclaustration clearly ceases when the term of the indult expires. At the same time, it is generally opined that a voluntary exclaustrated religious is free to return to the institute before the expiry of the indult.<sup>24</sup> According to Ruessmann, since voluntary exclaustration is a favour and no one is obliged to make use of a favour (CIC c.80§2; CCEO c. 1533 §2), a religious who starts to use an indult of voluntary exclaustration does not have

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<sup>22</sup> Jobe Abbass, “Exclaustration and Separation from the Monastery cc. 489-496,” in *A Practical Commentary to the Code of Canons of the Eastern Churches*, ed. John D. Faris and Jobe Abbass, Vol. 1 (Montreal: Wilson & Lafleur, 2019) 489.

<sup>23</sup> Jobe Abbass, “Exclaustration and Separation from the Monastery cc. 489-496,” 489.

<sup>24</sup> George Lobo, *New Canon Law for Religious*, 124; Elizabeth McDonough “Exclaustration,” 579; Madeleine Ruessmann, *Exclaustration: Its Nature and Use according to Current Law*, 123.

to continue using it. He/she could return to his/her institute at any time and the institute would have to take him/her back.<sup>25</sup> An exclaustated religious can also return when the reason for the exclaustation becomes ceased.

Here comes a question whether the authority of the institute can withdraw a favour (exclaustation) issued by a higher authority or not. It is commonly opined that the institute has the right of recall only if the institute was the authority that granted the exclaustation.<sup>26</sup> The superiors cannot withdraw an indult granted by the authority to whom the institute is subject. In such cases the superiors should require the religious to cancel the indult so as to preclude instability.<sup>27</sup>

Since the religious is expected to return to the institute on the expiration of the indult, the religious need to apply for another indult well ahead of time, if he or she foresees that he or she needs more time. It seems that the Holy See may well grant one extension (i.e., up to six years), but it is unusual for it to grant successive extensions.<sup>28</sup>

### 3. Involuntary or Imposed Exclaustation

Both Codes contain the provision for imposing exclaustation upon a religious based upon the petition of the religious institute through a decree by the authority to which the religious institute is subject. According to J. Torres, this form of exclaustation arose among monks and nuns one or two decade ago chiefly out of the necessity to provide for the fraternal life in monasteries, where the presence of a member made living together extremely difficult or dangerous. It was imposed by the Holy See alone. As a rule, it had no time limit, and the religious might not return to community nor could the institute receive him/her without the permission of the Apostolic See.<sup>29</sup> The previous laws, CIC-1917 for the Latin religious and the *motu proprio, Postquam Apostolicis Litteris* for the Eastern religious, did not speak about such a form of exclaustation. However, the revised canons, both in CIC and CCEO, incorporated it, applying to all religious, and attributing its concession not only to the Holy See but other ecclesiastical authorities, to whom the religious institutes are subject.

CIC c. 686§ 3. At the petition of the supreme moderator	CCEO c. 490. Exclaustation can be imposed at the request of the superior of the monastery sui iuris with the
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<sup>25</sup> Madeleine Ruessmann, *Exclaustation: Its Nature and Use according to Current Law*, 123.

<sup>26</sup> M.O. Reilly, "Permission of Absence from the Community," *Consecrated Life* 10 (1985) 181-189, 186.

<sup>27</sup> Javier Gonzalez, "Basic Procedures Pertinent to Religious Institutes," *Philippine Canonical Forum* 5 (2003) 162.

<sup>28</sup> Patrick T. Shea, "Exclaustation," 276.

<sup>29</sup> Jesus Torres, "Procedure for the Exclaustation of a Religious," 55, 71

<p>with the consent of the council, exclaustation can be imposed by the Holy See on a member of an institute of pontifical right, or by a diocesan bishop on a member of an institute of diocesan right, for grave cause, with equity and charity observed.</p>	<p>consent of the council by the authority to which the monastery is subject for a grave cause, with equity and charity observed.</p> <p>c. 548 §1. An indult of exclaustation can be conceded by the authority to which the order or congregation is subject, having heard the superior general along with his or her council; <i>the imposition of exclaustation is made by the same authority, at the petition of the superior general with the consent of his or her council.</i></p> <p>§2. In other respects, cann. 489-491 are to be observed regarding exclaustation.</p>
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Unlike the differences regarding voluntary exclaustation, the norms concerning imposed exclaustation are very much similar in the Latin and Eastern Codes. Therefore, we treat them together.

### **3.1. The Competent Authority to Impose Exclaustation**

In Latin and Eastern religious institutes, the competent authority to impose exclaustation upon a religious is the authority to which the religious institute is subject. Therefore, the competence to impose exclaustation lies with the Holy See on a member of an institute of pontifical right; with the patriarch (major archbishop) on a member of an institute of patriarchal (major archiepiscopal) right and with the diocesan (eparchial bishop) on a member of an institute of diocesan (eparchial) right. The Congregation for Institutes of Consecrated Life and for Societies of Apostolic Life and the Congregation for the Eastern Churches are the competent dicasteries in the Vatican Curia in this regard.

Regarding the diocesan (eparchial) institutes, CIC says “the diocesan bishop” is competent; where as CCEO says, the bishop to whom the institute is subject. CIC does not specify who the competent bishop is. However, since the petition is submitted by the supreme moderator, it would be the diocesan bishop where the principal house of the institute exists.

### **3.2. Conditions for Imposing Exclaustation**

Both Codes attach the following conditions for the imposition of exclaustation:

1) Only the supreme moderator (superior of a monastery *sui iuris* and superior general of an order or congregation in the Eastern law) of the religious institute may request the authority to which the institute is subject for imposing exclaustation upon a member of his or her institute.

2) The supreme moderator is to submit the petition only with the prior consent of his or her council. The supreme moderator, writing to the competent higher authority, needs to establish that he or she has the consent of his or her council for the exclaustation request.

3) There should be a grave reason to impose an exclaustation upon a religious. Only if there are some grave reasons on the part of the religious, the supreme moderator can request for and the competent ecclesiastical authority can impose an exclaustation on the respective religious. Therefore, the supreme moderator, writing to the competent higher authority, has to provide the proofs for a grave reason for an exclaustation. The competent authority may evaluate the gravity of the reasons presented.

In a Decision, given in 1990, the Apostolic Signatura stated that the “grave cause” for an imposed exclaustation could be “non-observances, disobediences or a seditious or a very difficult character, which do not merit dismissal, but seriously disturb the peace of the community.”<sup>30</sup> According to Ruessmann, the praxis of the Apostolic Signatura indicates that “the purpose of imposed exclaustation is generally to avoid harm to the community (institute); to prevent the daily life of the community from being rendered intolerable.”<sup>31</sup> Case studies on imposed exclaustation, provide examples of grave reasons, such as, persistent refusal of obedience, refusal to submit to superiors, serious violations of the vow of poverty, a character of provoking fights and quarrels, etc. These have been considered as causes for imposing exclaustation, especially when they do not suffice as a cause for dismissal of a perpetually professed member.<sup>32</sup> Javier Gonzalez includes the following situations also as grave reasons for imposing exclaustation: a derogatory witness to religious life causing scandal, unwillingness to overcome problems arising from personality disorders, child hood abuse or substance abuse, etc.<sup>33</sup>

4) Finally the law demands that what is carried out be done observing "equity and charity." The expression ‘equity and charity are to be observed’ is of high religious relevance. Canonical equity, as an intermediate reality between justice and charity, renders more humane the interpretation and application of the law.<sup>34</sup> It is “justice tempered with mercy,” as

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<sup>30</sup> «In concreto causae contingere possunt [...] cum inobservantibus, inoboedientibus, seditiosis aut characteris valde difficilis, qui dimissionem non merentur, sed graviter perturbant pacem communitatis», in Decisions of Apostolic Signatura, 5 May 1990, “Re Imposed Exclaustation,” in *Monitor Ecclesiasticus* 115 (1990) 488, quoted in Madeleine Ruessmann, *Exclaustation: Its Nature and Use according to Current Law*, 106.

<sup>31</sup> Madeleine Ruessmann, *Exclaustation: Its Nature and Use according to Current Law*, 106.

<sup>32</sup> Madeleine Ruessmann, *Exclaustation: Its Nature and Use according to Current Law*, 106.

<sup>33</sup> Javier Gonzalez, “Basic Procedures Pertinent to Religious Institutes,” 158.

<sup>34</sup> Javier Gonzalez, “Basic Procedures Pertinent to Religious Institutes,” 159.

defined by Pope Paul VI.<sup>35</sup> In his or her request for imposing the exclaustation upon a member of the institute, the supreme moderator, has to confirm that the institute has observed and will observe equity and charity with regard to the member. According to Torres, “Frequently the grave cause for imposed exclaustation on the one hand borders between an abnormal, psychically sick personality and morally and humanly culpable behaviour; and on the other hand it borders between the right of the community to live its life of service to God serenely and the desire, perhaps vindictive, to be rid of a noisy and dangerous disturbance, also for the good name of the institute. The problem must be solved with the necessary balance between charity and equity.”<sup>36</sup> In other words, an exclaustation should not be imposed to take advantage of the occasion to get rid of problematic members, especially those who are suffering from some psychological sickness, etc.

### 3.3. The Procedure for Imposing Exclaustation

Imposed exclaustation is a disciplinary measure and this provision is normally resorted to in the case of religious who deserve to be dismissed from the institute, but are such that the process according to the canonical norms is difficult. Therefore, imposed exclaustation has very evidently a penal character.<sup>37</sup> Since it is a disciplinary measure, imposed exclaustation is to be employed only if it is the only remedy and with proper procedure. A religious family cannot detach a member from the life of the community unless it is the only way for the benefit of the member as well as of the community.<sup>38</sup> It is to be taken into account that imposed exclaustation is something that goes against the will of the religious concerned. Therefore, although the law does not say it, those religious members affected must be previously warned and corrected, and must be given the opportunity to explain their conduct and defend themselves.<sup>39</sup>

Many commentators indicate that to obtain an imposed exclaustation, the institute should generally follow the procedures for a dismissal, including the collection of proofs, the issuing

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<sup>35</sup> Paul VI, Allocution, 19 February 1977, AAS 69 (1977) 210. Pope quotes from *Summa Aurea* of Henry of Susa (Hostiensis), the famous Italian Scholastic canonist of 13th century (1190-1271) and says "iustitia dulcore misericordiae temperata."

<sup>36</sup> Jesus Torres, "Procedure for the Exclaustation of a Religious," 56.

<sup>37</sup> Jesus Torres, "Procedure for the Exclaustation of a Religious," 71

<sup>38</sup> Elio Gambari, *Vita religiosa: secondo il concilio e il nuovo diritto canonico*, 1985, English translation is taken from Daughters of St. Paul, *Religious Life: According to Vatican II and the New Code of Canon Law* (Boston: St. Pauls, 1986) 584-585.

<sup>39</sup> Javier Gonzalez, "Basic Procedures Pertinent to Religious Institutes," 159.

of warnings and the provision of the opportunity for defence.<sup>40</sup> The Apostolic Signatura has stated that the procedures to be used for effecting an imposed excommunication are the same as those for a dismissal, but they may be less rigorously applied because imposed excommunication is less of a privation than a dismissal by which ceases all the rights and obligations arising from profession cease definitively.<sup>41</sup> In case of imposed excommunication, the concerned religious has the right to have recourse against the decree.<sup>42</sup>

### 3.4. The Cessation of an Imposed Excommunication

Both Codes are silent with regard to the manner and conditions under which an imposed excommunication ends. Generally an imposed excommunication is for an indefinite term, and ends only when the authority that imposed the excommunication decides to terminate it.<sup>43</sup> A religious, who is under imposed excommunication, cannot return to his or her institute without a decree of revocation from the authority that issued the decree of excommunication.<sup>44</sup> There arises the question that, since the excommunication was imposed upon the request of the supreme moderator with the consent of the council, in order to terminate the imposed excommunication whether the supreme moderator and his/her council must agree or not. It is opined that, the consent of the institute to the termination of the imposed excommunication is not necessary for either the liceity or the validity of the decision to terminate the excommunication. Consequently, the competent hierarchical authority can terminate imposed excommunication despite the contrary will of the institute.<sup>45</sup> But, J. Beyer demands that the return of an imposed excommunicated member should not be allowed against the will of his or her institute. He gives the reasons of justice and analogy to CIC cc. 641 and 690, which require the consent of the competent superior for someone to be admitted or readmitted to the institute.<sup>46</sup>

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<sup>40</sup> Luigi Chiappetta, *Il codice di diritto canonico*, vol. 1 (Napoli: Editione Dehoniane, 1988) 787; Andrés J. Domingo, *Il diritto dei religiosi*, 483; George V. Lobo, *New Canon Law for Religious*, 124; David F. O'Connor, *Witness and Service: Questions about Religious Life Today* (Mahwah: Paulist Press, 1990) 86-87.

<sup>41</sup> Decisions of Apostolic Signatura, 5 May 1990, "Re Imposed Excommunication," *Monitor Ecclesiasticus* 115 (1990), 488.

<sup>42</sup> Jesus Torres, "Procedure for the Excommunication of a Religious," 71.

<sup>43</sup> Domingo Andres, *Il diritto dei religiosi*, (Roma: Editrice Com Pro Rel. 1984) 482; F. D'Ostilio, "De separazione sodalium," 578; Joseph F. Gallen, *Canon Law for Religious* (New York: Alba House, 1983) 194-195; Madeliene Ruessmann, *Excommunication: Its Nature and Use according to Current Law*, 132.

<sup>44</sup> Javier Gonzalez, "Basic Procedures Pertinent to Religious Institutes," 162.

<sup>45</sup> Madeleine Ruessmann, *Excommunication: Its Nature and Use according to Current Law*, 133. A decree of imposed excommunication could be considered as a favour conceded to the religious institute, and grantor of a favour can revoke it at any time, even if the recipient (the institute) were unwilling (to take back the excommunicated member).

<sup>46</sup> J. Beyer, "Risposte a quesiti," *Vita Consecrata* 23 (1987) 62. Madeleine Ruessmann, *Excommunication: Its Nature and Use according to Current Law*, 134-135.

## 4. Effects of Exclaustration

Both the Latin Code and the Eastern Code effectively state that an exclausted religious is still truly a religious, a member of his or her institute and remains bound by the obligations tied to the vows and religious profession.<sup>47</sup> However, taking into consideration his or her special situation, the law allows some relaxations in his or her manner of living the religious life. CIC c. 687 and CCEO c. 491 enumerate the effects of exclaustration, both voluntary and imposed. There are some essential differences as well as similarities between the Latin and Eastern norms regarding these effects.

<p>CIC c. 687. An exclausted member is considered freed from the obligations which cannot be reconciled with the new conditions of his or her life, yet remains dependent upon and under the care of the superiors and also of the local ordinary, especially if the member is a cleric. The member can wear the habit of the institute unless the indult determine otherwise. Nevertheless, the member lacks active and passive voice.</p>	<p>CCEO c. 491. The exclausted member remains bound by the vows and other obligations of monastic profession which can be reconciled with his or her state; the member must put off the habit; during the time of the exclaustration he or she lacks active and passive voice and is subject to the eparchial bishop of the place where he or she resides in place of the superiors of his or her own monastery also in virtue of the vow of obedience.</p>
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Based upon the canons in both Codes, the effects of exclaustration can be attached mainly to the following elements of religious life: common life, observation of the vows, and some other rights and obligations of religious life.

### 4.1. Exemption from Common Life

Common life is an essential element of religious state. It characterizes religious life and distinguishes it from that of secular institutes.<sup>48</sup> CIC c. 607 §2 states that religious institute is a society in which the members “lead a life of brothers or sisters in common.” In describing the religious state CCEO c. 410 begins with the statement that it is “a stable manner of living in common.” Therefore, we can say that common life is “an important obligation and right of religious life.”<sup>49</sup> By common life, it is meant that the members of a religious institute “live together in a house of the institute, share its sources, receive support from the institute, and

<sup>47</sup> Jobe Abbass, *The Consecrated Life: A Comparative Commentary of the Eastern and Latin Codes*, 222.

<sup>48</sup> Elio Gambari, *Vita religiosa: secondo il concilio e il nuovo diritto canonico*, 1985, English translation is taken from Daughters of St. Paul, *Religious Life: According to Vatican II and the New Code of Canon Law*, 342.

<sup>49</sup> Patrick T. Shea, “Exclaustration,” *CLSA Proceedings* 55 (1997) 267. CIC cc. 602, 607 §2, 665 §1, 668 §3, 670, 678 §2 and CCEO cc. 410, 468 §1, 478, 495, 529 §3, 540, 550, etc. prescribes the common life for religious institutes. The proper law of each religious institute stipulates detailed norms of common life in accordance with these canons and with the nature of the institute.

are missioned to an apostolate in the name of the institute.”<sup>50</sup> Living in a community under the authority of a designated superior is the ordinary way of life that flows from profession of evangelical counsels. The law demands that the religious are to live in their own religious house, observing common life (CIC c. 665; CCEO cc. 478, 495, 550). They are not to be absent from their house except with the permission of the superior. Thus, the common life lived in a religious house is intrinsic to the religious state and no one can be said to enter religious life unless he/she embraces community life.<sup>51</sup> Connected to common life, as seen above, there exist the laws on cloister in every religious house (CIC c. 667; CCEO cc. 477 §1, 541). The law of cloister means the prohibition of the religious going outside the house without proper permission and the prohibition of the outsiders entering into the space of enclosure.

Exclaustration provides an exception to this essential element of religious life. As the term indicates, a religious on exclaustration is freed, although temporarily, from common life, from living common life with his or her fellow religious. In other words he or she is dispensed from the rule of cloister. He or she is to live outside of his or her religious institute according to the permission or the order of the competent authority. Therefore, he or she can have a separate residence and can live on his or her own.

#### **4.2. Relaxation in the Observance of the Vows**

The exclaustrated member continues to be a member of the religious institute and is also bound by religious vows and other obligations taken in his/her definitive profession. However, CIC c. 687 provides that an exclaustrated religious "are considered as dispensed from those obligations which are incompatible with their new situation of life." CCEO says almost the same thing in a different style as it states that the exclaustrated member "remains bound by the vows and the other obligations of monastic [religious] profession that can be reconciled with his or her state" (CCEO c. 491).

Obligations which are incompatible with his or her new condition of life, besides the common life, can include the obligations inherent in the vows, those related to spiritual life, especially the daily spiritual exercises, and those related to the special charism and apostolate of the institutes. Commentators state that, for a religious on exclaustration, these obligations

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<sup>50</sup> Rose M. McDermott, "Norms Common to All Institutes of Consecrated Life [cc. 573-606]," in *New Commentary on the Code of Canon Law*, ed. John P. Beal, James A. Coriden and Thomas J. Green, Bangalore: Theological Publications in India, 2003, 767.

<sup>51</sup> T. Lincoln Bouscaren & Adam C. Ellis, *Canon Law: A Text and Commentary*, Vol. 1, (Milwaukee: The Bruce Publishing Co., 1946) 229-230.



are relaxed, except for the obligation of chastity.<sup>52</sup> The obligations under the vow of chastity would continue to oblige the same as before. They are not affected or relaxed by exclaustation. There is no mitigation possible with respect to the observance of vow of chastity.

Regarding the obligation flowing from the vow of obedience, CIC c. 687 says that the exclaustated religious remains dependent upon and under the care of the superiors and also of the local ordinary, especially if the member is a cleric. The previous law, both Latin and Eastern, established that an exclaustated religious would be subject to ordinary (hierarchy) of the territory where he or she resided, instead of his or her religious superiors (CIC-1917 c. 639; PAL c. 189). History proved its ineffectiveness since it was not always easy to provide proper pastoral care and attention by the local ordinaries (hierarchs), to the exclaustated religious residing in the diocese, especially in the big cities.<sup>53</sup> Therefore, the revised Latin Code evidently affirms that the exclaustated religious remain first and foremost dependent upon and under the care of their superiors.<sup>54</sup> An additional dependence upon the local ordinary is also established, especially if the exclaustated member is a cleric.<sup>55</sup> Therefore, the religious superior and the local ordinary, both, have some sort of authority or care over the religious on exclaustation. To facilitate these roles of local ordinary and the superior in an effective manner, it is suggested that the institute as well as the religious on exclaustation keep some sort of contact with the bishop's vicar or delegate for religious.<sup>56</sup>

The Eastern Code, on the other hand, follows the prior norm in this regard and categorically affirms that an exclaustated religious is subject to the eparchial bishop of the place where he or she resides, in place of the superior of his or her own institute also in virtue of the vow of obedience (CCEO cc. 491, 548 §2). An exclaustated eastern religious is to obey, in place of the religious superior, the bishop of the place where he or she has the residence during the period of exclaustation. This Eastern norm echoes a cut-off between the institute and the

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<sup>52</sup> Patrick T. Shea, "Exclaustation," 268.

<sup>53</sup> Jean Beyer, *Le droit de la vie consacrée*, (Paris: Editions Tardy, 1988) 142, note 35 as cited in Jobe Abbass, *The Consecrated Life: A Comparative Commentary on the Eastern and Latin Codes*, 219.

<sup>54</sup> Javier Gonzalez points out that the canon says "Superiors" without making any distinction between Superior General, provincial or local; henceforth, the exclaustated member is under the dependence and the care of his or her Superiors at all levels. Javier Gonzalez, "Basic Procedures Pertinent to Religious Institutes," 160.

<sup>55</sup> The subjection to the local ordinary is required in the context that, in case, he is not forbidden by the rescript, such a religious may engage in diaconal or priestly in ministry. The practice of the Apostolic See seems to be to insert in rescripts for exclaustation granted to priests, a clause prohibiting the priest from exercising priestly ministry, including the celebration of Holy Mass, without the permission of the ordinary of the place where he is residing. Madeleine Ruessmann, "Aspects of Exclaustation," 249.

<sup>56</sup> Patric T. Shea, "Exclaustation," 274.

religious on exclaustation. Perhaps, in a future revision, the Eastern Code would also follow the Latin, as that seems more practicable and reasonable.

Regarding the observance of the vow of poverty, it can be stated that the effects of the vow remain theoretically, unless some of them can be considered incompatible with the new situation in the life of the exclaustated religious.<sup>57</sup> That is to say, he or she is expected to live some style of poverty, albeit relaxed, and to live a simple lifestyle. Since the religious is not living in the community, he or she need not give the earnings to the superior and need not seek permission to spend for necessary expenses. However, he or she would have to make reports, turn over any excess money to the community, and seek permission for extraordinary expenses.<sup>58</sup> He or she would continue to be bound to the rules about patrimonial goods, except to the extent that the rules are incompatible with his or her condition of exclaustation.<sup>59</sup> He or she can also obtain from the superior the proper dispensation for the changes of the dispositions about administrations, use and usufruct of patrimonial goods, the personal use of stipends, pensions, etc.<sup>60</sup>

### **4.3. The Right and Obligation of Wearing the Religious Habit**

The previous law stated that, during the period of exclaustation, the religious must not wear the religious habit or style of the religious institute (CIC-1917 c. 639; PAL c. 189). CIC 1983 abrogates this norm and allows the exclaustated religious to wear the habit of the institute unless the indult of exclaustation determines otherwise (CIC c. 687). On the contrary, the Eastern Code preserves the previous norm and obliges the exclaustated religious to put off the religious habit (CCEO cc. 491, 548 §2).<sup>61</sup>

According to the current Latin norm, the supreme moderators who grant the indult of exclaustation or the authority which imposes exclaustation may prohibit exclaustated members to wear the institute's habit, depending on the reason for the exclaustation and the living situations of the religious; but this has to be done at the moment of granting or imposing the exclaustation.<sup>62</sup> For example, if the religious is troublesome and is likely to

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<sup>57</sup> Jesus Torres, "Procedure for the Exclaustation of a Religious," 59.

<sup>58</sup> Patric T Shea, "Exclaustation," *CLSA Proceedings* 59 (1997) 273.

<sup>59</sup> CCEO c. 525 §2 speaks about the giving up of the administration of patrimonial goods for all the time that the member is under vows. Clemente Pujol, *La vita religiosa orientale: Commento al codice del diritto canonico orientale* (Roma: PIO, 1994) 367.

<sup>60</sup> Jesus Torres, "Procedure for the Exclaustation of a Religious," 60.

<sup>61</sup> Although the initial formulation of the norm made no reference to this issue, when the group of experts decided to return to PAL cc.188-189, the requirement to put off the habit appeared again. *Nuntia* 11 (1980) 34, c. 76 §1; Jobe Abbass, "Exclaustation and Separation from the Monastery cc. 489-496," 491.

<sup>62</sup> Javier Gonzalez, "Basic Procedures Pertinent to Religious Institutes," 161.

bring some sort of dishonour on the institute, or the institute does not want the person publicly identified with the institute, then the institute should see that the matter is dealt within the indult.<sup>63</sup> According to Chiappetta, if the indult does not prohibit it, the exclaustated religious is obliged to wear the habit.<sup>64</sup> But Shea says that the Code allows, but does not require, exclaustated members to wear the habit.<sup>65</sup> Therefore, it would be better to specify the matter in the indult.

#### **4.4. The Right to Have Active and Passive Voice**

Another effect of exclaustation according to current canonical norms (CIC c. 687; CCEO c. 491 and c. 548 §2) is that an exclaustated religious lacks active and passive voice. In this matter, the parallel norms in CIC and CCEO agree. The suspension of passive voice means that one cannot be voted in the elections of the institute, that is, in filling an office or in choosing the delegates to a chapter. The suspension of active voice signifies that one cannot vote in such elections in the institute.<sup>66</sup> Such deprivation, however, is not considered a punishment, but only a logical consequence of the new situation, as the exclaustated religious is living outside the community and no longer participates fully in the life of the institute.<sup>67</sup> It is appropriate that since a religious has distanced himself or herself from the institute by applying for exclaustation, or is being asked to distance oneself by the competent authorities through the imposition of exclaustation, he or she would not be able to appreciate in deciding the governance of the institute.<sup>68</sup>

### **5. Relationship between an Exclaustated Member and the Institute**

In general, it can be stated that the nature of the relationships between an exclaustated member and the institute, such as the support of the institute to the member, the dependence

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<sup>63</sup> Patric T. Shea, "Exclaustation," *CLSA Proceedings* 59 (1997) 275. Madeleine Ruessmann analysing the case of exclaustation granted by the Holy See, finds that in some cases the Congregation has prohibited the member from wearing the habit during the exclaustation, and states that the reasons for such prohibition were different. See, Madeleine Ruessmann, *Exclaustation: Its Nature and Use according to Current Law*, 429-430.

<sup>64</sup> «Per sé, deve anzi portarlo (can. 669, §1), se nulla é disposto a tal riguardo.» Chiappetta, *Il codice di diritto canonico: Commento giuridico-pastorale*, (note 32)I:834; English translation is taken from Jobe Abbass, *The Consecrated Life: A Comparative Commentary of the Eastern and Latin Codes*, 222.

<sup>65</sup> Patric T Shea, "Exclaustation," 275.

<sup>66</sup> Chas Augustine, *A Commentary on the New Code of Canon Law*, vol.3, Second Edition (London: B. Herder Book, 1919) 375.

<sup>67</sup> Actually the right to active and passive voice, which gives the member responsibility for the internal government of the institute, is suspended; the member is free to concentrate on the grave cause which prompted the petition for exclaustation. However the prohibition is valid only for the period of exclaustation; once the latter is over, the religious regains both voices. Rose McDermott, "Separation of Members from the Institute (cc.684-704)," in *The Code of Canon Law: A text and Commentary*, ed. James A. Coriden, Thomas J. Green, Donald Heintschel (Bangalore: TPI, 1986) 516.

<sup>68</sup> Madeleine Ruessmann, *Exclaustation: Its Nature and Use According to Current Law*, 175.

of the member on the institute, communications, visits, etc., also depend upon the reasons and purposes of the exclaustation and the type of exclaustation.

While, according to the Latin Code an exclaustated religious remains "dependent on and under the care of their superiors" (CIC c. 687), CCEO c. 491 does not oblige superiors of Eastern religious institutes to care for an exclaustated member. Therefore, according to Jobe Abbass, the Eastern canon signals a certain estrangement of an exclaustated religious from the institute at least regarding the aspect of dependence.<sup>69</sup> In fact, every exclaustated religious juridically remains a member of his or her own institute. Therefore, the norms should perhaps be read, not in a literal sense, but rather in the light of the duty that arises from the bond of equity and charity.<sup>70</sup> Clemente Pujol rightly states, "the religious superior, however, is not completely free, since the religious, even though exclaustated, remains a member of the institute and must in no way be considered as outsider; the religious is to be helped spiritually and even, if necessary materially."<sup>71</sup>

The religious institute has to decide what contact it should have with the religious during this period. It should make sure the residence of the religious and may send the customary mailings and newsletters, etc. It is always better to designate another member responsible for regular contacts with the exclaustated member.<sup>72</sup>

The participation of the exclaustated member in community programs and events also depend on the type of exclaustation. According to Shea, if the religious is on imposed exclaustation, the institute may want to prevent the religious from such programs, and from ordinary visits to the community.<sup>73</sup>

## 6. Financial Support to the Exclaustated Member

The law demands that the religious institute must supply the members with everything that is necessary to fulfil the purpose of their vocation (CIC c. 670). A religious on exclaustation is still a member of the institute. Nevertheless, exclaustated member are supposed to earn income and support themselves from their earnings. If he or she is in economic difficulty and

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<sup>69</sup> Jobe Abbass, *The Consecrated Life: A Comparative Commentary of the Eastern and Latin Codes*, 221.

<sup>70</sup> Jobe Abbass, "Exclaustation and Separation from the Monastery cc. 489-496," 491.

<sup>71</sup> «Il superior religioso, però non è del tutto libero, perché il religioso anche se esclaustato rimane membro dell'Istituto, e in nessun modo deve essere considerate come estraneo; va aiutato spiritualmente e anche, se occorre, materialmente». Clemente Pujol, *La vita religiosa orientale: commento al codice del diritto canonico orientale*, 368. English translation is taken from Jobe Abbass, *The Consecrated Life: A Comparative Commentary of the Eastern and Latin Codes*, 221.

<sup>72</sup> Patric T. Shea, "Exclaustation," 274.

<sup>73</sup> Patric T. Shea, "Exclaustation," 274.

cannot maintain a decent standard of living or are in need due to unseen circumstances, then the institute has to help the member financially as part of showing equity and charity. The institute can do it by lending loans, giving some initial subsidy, etc.<sup>74</sup>

In this regard, Javier Gonzalez gives the following guidelines: 1) a religious on exclaustation is in principle obliged to self support and a simple life style is required by the vow of poverty; 2) whatever the member earns belongs to the institute, but the person on exclaustation must first provide for himself or herself; 3) if the member cannot provide a decent living, the institute should assist; 4) the religious institute is obliged to support the member on imposed exclaustation if circumstances so warrant.<sup>75</sup>

## **7. Issues Related to Exclaustation**

### **7.1. When the Religious Is not Ready to Accept an imposed exclaustation**

If the member is aggrieved by the decree of exclaustation imposed on him or her, he/she can go for recourse against the decree following the procedure for recourse against administrative acts (CIC cc. 1732-1739; CCEO cc. 996-1006). In case the decree is issued by the Apostolic See, the religious can have recourse to the Congregation itself that imposed the exclaustation and then to the Signatura Apostolica (PB art. 123), according to the norms in the proper law of the Signatura.<sup>76</sup> The recourse has no suspensive power unless it is explicitly granted in the decree.<sup>77</sup>

In case a religious is not ready to accept the decree of exclaustation imposed on him or her by the competent authority, the superiors can induce the member to obey it. Still the member is not ready to obey, after repeated warning, the institute can look to the possibility of initiating the process to dismiss the member.

### **7.2. If the Religious not Returns to the Institute at the Expiration of the Exclaustation**

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<sup>74</sup> Patric T. Shea, "Exclaustation," 275. Shea also suggests that the additional assistance should be in keeping with the standard of living in the institute and a serious case of need could even mean expecting that the religious return to the community so that he or she can be properly supported.

<sup>75</sup> Javier Gonzalez, "Basic Procedures Pertinent to Religious Institutes," 163.

<sup>76</sup> Benedict XVI, m.p., *Antiqua Ordinatione*, Proper Law of the Supreme Tribunal of the Apostolic Signatura, 21 June 2008, AAS 100 (2008) 513-538; English transl. by William L. Daniel, "Proper Law of the Supreme Tribunal of the Apostolic Signatura," *The Jurist* 75 (2015) 619-657. According to J. Torres, this is a hierarchical recourse before a Dicastery of the Roman Curia. Jesus Torres, "Procedure for the Exclaustation of a Religious," 71.

<sup>77</sup> Jesus Torres, "Procedure for the Exclaustation of a Religious," 71.

A religious on exclaustation, especially in the case of voluntary exclaustation, is obliged to return to the institute when the period of exclaustation is expired, or if the reason for the exclaustation has ceased. According to Shea, a religious who does not return to the institute, would seem to remain a religious, although not in good standing.<sup>78</sup> It is necessary, from the part of the institute, to regularise canonically the situation of those who live separated from their religious community. Since such a situation is a kind of illegitimate absence, the provisions of CIC c. 665 §2 and of the motu proprio *Communis Vita* can be applied for the religious belonging to Latin institutes; for the Eastern religious, the norms of CCEO cc. 495 and 550 are to be observed. Accordingly, the institute should solicitously seek out the member and if the member does not return, even after repeated summons, he or she can be punished, even dismissed, in accord with the norm of law (CIC c. 665 §2; CCEO cc. 495, 550; *Communis Vita* art. 1).<sup>79</sup>

## Conclusion

As I mentioned in the introduction, the provision of "exclaustation" is often considered or even practiced with a negative approach in the religious institutes. It is to be remembered that Sr. Theresa, who was granted with the indult of exclaustation from the Apostolic See to discern her new vocation and to live for that in 1948, later became the great saint Mother Theresa.

We can say that the provision of exclaustation is not an end in itself, but rather it is a possibility, a door for a new beginning. As seen above, exclaustation can be either voluntary or imposed. The first one is a favour and the other is a precept. The favour is granted for the betterment of the individual, to handle an extraordinary situation in his or her life. The precept is given as a medicine, providing the religious a possibility to renew himself or herself and a possibility for the institute to maintain its rights and obligations. It should be remembered by the religious on exclaustation as well as the institute, that he or she is still truly a religious, a member of his or her institute. Both have the responsibility to maintain it. The religious is to avoid any kind of aggressiveness to the institute or negligence to his or her

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<sup>78</sup> Patric T. Shea, "Exclaustation," 276.

<sup>79</sup> The best way for the major superiors to deal with the matter is showing a fatherly or motherly concern towards the exclaustated member also with a firm determination to apply the law. Give a written formal warning with the invitation to incorporate themselves to the institute if such is still possible and wish. This warning should include the following reminders: a) that if within a period of time (fifteen days or month) there is no answer to such invitation, the canonical process of separation from the institute should be commenced (or continued) in accordance with CIC c. 697, CCEO cc. 495 and 550 (unlawful absence which exceeds for a period of six months constitute a ground to start the process of dismissal) b) that there is always readiness to help in the process of dispensation from the religious vows or from the obligations of priesthood; and c) that he/she 'always retains the right to communicate with, and send replies directly to the supreme moderator' (CIC c.698), defending his or her stand. Javier Gonzalez, "Basic Procedures Pertinent to Religious Institutes," 164.

religious life. On the other side, the institute should take care to avoid any kind of discrimination towards the religious.

Lastly, it can be stated that the superiors should possess and practice the pastoral approach of "accompanying, discerning, and integrating weakness" (*Amoris Laetitia*, 291-292) in their religious governance. They should be able to discern the particular situation of a member as well as the interests of the institute and decide whether it would be better to opt for the provision of imposing exclaustation, rather than going for any penal procedure. Since imposed exclaustation carries with it a hope and possibility of the renewal of an erring religious, this canonical provision can be made use of, wherever it is possible, with the hope that it would have some positive outcome, since everything is possible for God.