

INFORMATION TO USERS

The most advanced technology has been used to photograph and reproduce this manuscript from the microfilm master. UMI films the text directly from the original or copy submitted. Thus, some thesis and dissertation copies are in typewriter face, while others may be from any type of computer printer.

The quality of this reproduction is dependent upon the quality of the copy submitted. Broken or indistinct print, colored or poor quality illustrations and photographs, print bleedthrough, substandard margins, and improper alignment can adversely affect reproduction.

In the unlikely event that the author did not send UMI a complete manuscript and there are missing pages, these will be noted. Also, if unauthorized copyright material had to be removed, a note will indicate the deletion.

Oversize materials (e.g., maps, drawings, charts) are reproduced by sectioning the original, beginning at the upper left-hand corner and continuing from left to right in equal sections with small overlaps. Each original is also photographed in one exposure and is included in reduced form at the back of the book.

Photographs included in the original manuscript have been reproduced xerographically in this copy. Higher quality 6" x 9" black and white photographic prints are available for any photographs or illustrations appearing in this copy for an additional charge. Contact UMI directly to order.

UMI

University Microfilms International
A Bell & Howell Information Company
300 North Zeeb Road, Ann Arbor, MI 48106-1346 USA
313/761-4700 800/521-0600

Order Number 9106376

**Episcopal power of governance in the diocesan church: From the
1017 Code of Canon Law to the present**

Bowers, **Ronald** Joseph, J.C.D.

The Catholic University of America, 1990

Copyright ©1991 by Bowers, Ronald Joseph. All rights reserved.

UMI

300 N. Zeeb Rd.
Ann Arbor, MI 48106

THE CATHOLIC UNIVERSITY OF AMERICA
CANON LAW STUDIES
No. 535

EPISCOPAL POWER OF GOVERNANCE IN THE DIOCESAN CHURCH:
FROM THE 1917 CODE OF CANON LAW TO THE PRESENT

A DISSERTATION
Submitted to the Faculty of the School of Religious Studies
of the Catholic University of America
in Partial Fulfillment of the Requirements for the
Degree of Doctorate in Canon Law

by
RONALD J. BOWERS, B.A., J.C.L.
A Priest of the
Archdiocese of Saint Paul and Minneapolis

Washington, D.C.

1990

This dissertation was approved by the Reverend John E. Lynch, C.S.P., M.S.L., Ph.D., Director and the Reverend Ladislav Orsy, S.J., S.T.L., M.A. Jurispr., J.C.D., and the Reverend James H. Provost, J.C.D., as Readers.

\$t<>-UU^3U (L*ZY, ^A

Reader

ACKNOWLEDGEMENTS

I wish to express by sincere thanks to Archbishop John R. Roach, the Archbishop of Saint Paul and Minneapolis, who, first as Vicar for the Clergy and then as Archbishop, made possible the educational opportunity which led to this doctoral dissertation and for his ongoing support throughout its preparation. I also wish to thank for their ongoing support the Very Reverend Charles Froehle, S.T.D., Rector/ice-President of the Saint Paul Seminary School of Divinity, and Dr. Victor Klimoski, its Academic Dean. The Staff of the Archdiocesan Tribunal also deserves recognition for its patience and encouragement throughout the years of preparation.

I am also aware that this dissertation would not be in existence were it not for the guidance of my Director, Professor John E. Lynch, and the two Readers Professors Ladislav Orsy and James Provost. Finally, I must recognize the typing and organizational skills of Mrs. Johanna Baboukis.

TABLE OF CONTENTS

INTRODUCTION	p- VIII
ABBREVIATIONS	p- xi
CHAPTER ONE: EPISCOPAL POWER IN THE 1917 CODE OF CANON LAW	p- 1
SECTION I: ECCLESIASTICAL POWER	p- 2
SECTION II: SUPREME POWER AND EPISCOPAL POWER	p. 9
SECTION III: THE SOURCE OF EPISCOPAL JURISDICTION	p. 19
SECTION IV: THE JURISDICTION OF THE RESIDENTIAL BISHOP	p. 22
A. The Bishop's Legislative Power	p. 23
B. The Bishop's Judicial Power	p. 27
C. The Bishop's Executive Power	p. 30
1. The Bishop's Governmental Power	p. 30
2. The Bishop's Administrative Power	p. 36
3. The Bishop's Coercive Power	p. 39

CHAPTER II: EPISCOPAL POWER OF GOVERNANCE IN THE ANTE-
PREPARATORY AND PREPARATORY STAGES OF THE
SECOND VATICAN COUNCIL p. 45

SECTION I: DOCTRINAL CONCERNS REFLECTED IN THE
BISHOPS' VOTA TO THE ANTEPREPARATORY
COMMISSION p. 48

SECTION II: CANONICAL CONCERNS IN THE BISHOPS' VOTA
TO THE ANTEPREPARATORY COMMISSION p. 50

- A. The Exemption of Religious p. 50
- B. The Reservation of Ecclesiastical Benefices p. 52
- C. The Bishop's Power to Dispense p. 53
- D. Alienation of Church Property p. 58

SECTION III: EPISCOPAL POWER IN THE SCHEMATA OF THE
PREPARATORY COMMISSION p. 61

- A. The Divine Institution of the Papacy and of the
Episcopate p- 66
- B. The Specific Function of the Episcopate p- 70
- C. The Source of Episcopal Jurisdiction p- 74
- D. The Juridic Status of Titular Bishops p- 79
- E. The Decentralization of Authority p. 82
- F. Canonical Concerns p- 90
 - 1. The Reservation of Ecclesiastical Benefices p- 91
 - 2. Alienation of Church Property p- 91
 - 3. The Exemption of Religious p- 93

CHAPTER III: EPISCOPAL POWER OF GOVERNANCE IN THE
DOGMATIC CONSTITUTION ON THE CHURCH
LUMEN GENTIUM AND THE NOTA PRAEVIA
EXPLICATIVA p. 100

SECTION I: THE DEVELOPMENT OF THE DOGMATIC
CONSTITUTION ON THE CHURCH AND
THE NOTA PRAEVIA EXPLICATIVA p. 102

- A. The Formation of Lumen Gentium p. 102
- B. The Nota Praevia Explicativa p. 113

SECTION II: THE CONCILIAR DISCUSSIONS

p. 117

- A. Episcopal Collegiality p. 118
- B. The Source of Episcopal Jurisdiction p. 129
- C. Titular Bishops and the Power of Governance p. 132

SECTION III: THE CONCILIAR TEACHING ON EPISCOPAL POWER p. 134

- A. The Mystery of the Church p. 134
- B. Ministerial Power p. 137
- C. The Ministry of Bishops p. 139
 - 1. Bishops as Unique Representatives of Christ p. 139
 - 2. The Office of Bishops is Conferred by the Holy Spirit p. 144
 - 3. Episcopal Consecration Bestows the Threefold Office p. 147
 - 4. The Office of the Bishop as the Fullness of the Priesthood p. 150

CHAPTER IV: CONCILIAR DOCUMENTS COMPLEMENTING THE TEACHING OF LUMEN GENTIUM ON EPISCOPAL JURISDICTION p. 154

SECTION I: THE DECREE ON THE BISHOPS' PASTORAL OFFICE IN THE CHURCH CHRISTUS DOMINUS p. 155

- A. The Formation of the Decree p. 156
- B. The Teaching of the Decree on Bishops p. 165

SECTION II: OTHER CONCILIAR DOCUMENTS REGARDING EPISCOPAL JURISDICTION p. 180

- A. The Constitution on the Sacred Liturgy p. 181
- B. The Decree on Ecumenism p. 183
- C. The Decree on the Eastern Catholic Churches p. 184
- D. The Decree on Priestly Formation p. 185
- E. The Decree on the Appropriate Renewal of Religious Life p. 185
- F. The Decree on the Apostolate of the Laity p. 188
- G. The Decree on the Ministry and Life of Priests p. 189
- H. The Decree on the Missionary Activity of the Church p. 191

CHAPTER V: POST-CONCILIAR DOCUMENTS ON EPISCOPAL
GOVERNMENTAL POWER p. 194

SECTION I: THE MOTU PROPRIQS PASTORALE MUNUS AND
DE EPISCOPORUM MUNERIBUS p. 195

A. Pastorale Munus p. 195

B. De episcoporum muneribus p. 200

SECTION II: THE MOTU PROPRIO ECCLESIAE SANCTAE p. 215

A. Episcopal Dispensing Power p. 217

B. The Faculties of Auxiliary Bishops p. 217

C. The Reservation of Ecclesiastical Benefices p. 219

D. The Canonical Exemption of Religious p. 220

E. The Erection and Suppression of Parishes p. 222

F. The Senate of Priests p. 223

SECTION III: THE MOTU PROPRIO EPISCOPALIS
POTESTATIS p. 224

SECTION IV: THE DIRECTORY ON THE PASTORAL
MINISTRY OF BISHOPS p. 227

SECTION V: THE DIRECTIVES FOR MUTUAL RELATIONS
BETWEEN BISHOPS AND RELIGIOUS IN THE
CHURCH p. 231

CHAPTER VI: THE 1983 CODE OF CANON LAW p. 239

SECTION I: ECCLESIASTICAL JURISDICTION IN THE
1983 CODE p. 242

SECTION II: THE HIERARCHICAL CONSTITUTION OF
THE CHURCH p. 245

SECTION III: THE JURISDICTION OF THE DIOCESAN BISHOP p. 251

- A. Legislative Power p. 256
- B. Judicial Power p. 258
- C. Executive Power p. 260
 - 1. The Bishop's Governmental Power p. 260
 - 2. Dispensations from the Law p. 267
 - a. General Principle p. 268
 - b. Reserved Dispensations p. 269
 - c. Dispensations in Reserved Cases p. 279
 - 3. The Administration of Church Property p. 283
 - 4. Coercive Power p. 288

SECTION IV: THE AUTHORITY OF COADJUTOR AND
AUXILIARY BISHOPS p. 292

CONCLUSIONS p. 306

SELECTED BIBLIOGRAPHY p. 315

INTRODUCTION

On January 25, 1959 Pope John XXIII announced his intention to convoke an ecumenical council and to establish a commission for the revision of the Code of Canon Law. In his mind there was an intimate connection between the council and the code. The code was to bring into the legislative life of the Church the renewed perception of its life and ministry derived from the council's teachings.

The Second Vatican Council gave new emphasis to the diocesan church which, in turn, led to a new appreciation of the ministry of the residential bishop. The Dogmatic Constitution on the Church *Lumen gentium* 23, after stating that the Roman Pontiff as the successor of blessed Peter is the perpetual and visible principle and foundation of unity of bishops and of the whole company of the faithful, proceeded to describe diocesan bishops as the visible principle and foundation of unity in their particular churches, from which the one, holy, catholic and apostolic Church comes into being.

With regard to the bishop's governmental role in the diocese the council made two significant contributions. *Lumen gentium* 21 affirmed that episcopal

consecration, together with the office of sanctifying, also conferred the offices of teaching and governing which, however, of their very nature can be exercised only in hierarchical communion with the head and the members of the college of bishops. In other words, through sacramental consecration a bishop is admitted to the episcopal college and as such receives the threefold munera. The decree on the bishops' pastoral office in the Church *Christus Dominus* 8a affirmed "bishops, as the successors of the apostles, enjoy as of right in the dioceses committed to them all ordinary, proper and immediate power that is necessary for the exercise of their pastoral office."¹

These two passages represent a considerable modification of the theology that underlies the 1917 Code of Canon Law and must of necessity find expression in the new code. It is the purpose of this dissertation to study the development in law of the bishop's *munus regendi* or governing power. The first chapter analyzes episcopal jurisdiction as it was treated in the 1917 code. The second chapter surveys the considerations of the bishop's power of governance in the planning stages of the council. The third chapter investigates the evolution of *Lumen gentium* and its teaching on episcopal jurisdiction. The next chapter pursues this doctrine through *Christus Dominus* and other conciliar documents. The fifth chapter examines the implementation of the conciliar teaching in postconciliar legislation. The final chapter evaluates the treatment of the bishop's governing power in the 1983 code. Since the new code

¹ AAS 58 (1966):676, "Episcopis, ut Apostolorum successoribus, in dioecesis ipsis commissis, per se omnis competit potestas ordinaria, propria ac immediata, quae ad exercitium eorum muneris pastoralis requiritur...."

continues to maintain that the pope enjoys "supreme, full, immediate and universal ordinary power in the Church, which he can always freely exercise" (c. 331), it is necessary throughout this work to attend to the relationship of papal and episcopal power in the diocese.

ABBREVIATIONS

Acta Apostolicae Sedis

Acta et documenta concilio oecumenico Vaticano II
apparando. Series I (Antepreparatorio)

Acta et documenta concilio oecumenico Vaticano II
apparando. Series II (Praeparatorio)

Acta Synodalia Sacrosancti Concilii Oecumenici
Vaticani Secundi

Canon Law Digest

Codex Iuris Canonici

Giuseppe Alberigo, Conciliorum oecumenicorum
decreta. Rome: Herder, 1962

Societas Goerresiana, Concilium Tridentinum.
Diarium. actuum. epistolarum. tractatum. nova
collectio. 13 Vols., Freiburg: Herder, 1901

Lex Ecclesiae fundamentalis

CHAPTER I

EPISCOPAL JURISDICTION IN THE 1917 CODE OF CANON LAW

The canons of the 1917 Code of Canon Law on episcopal jurisdiction are the concern of this chapter. It will review the underlying theory of jurisdiction, its nature and its application to the episcopacy. ¹ These canons are rooted in a theological view of power and of the episcopate which prevailed at the time of the formulation of the code.²

¹ An in-depth study of the underlying theory of jurisdiction reflected in the code is beyond the scope of this work. Major studies can be found in the works of Peter Kraemer, *Dienst und Vollmacht in der Kirche. Eine rechtstheologische Untersuchung zur Sacra Potestas-Lehre des II Vatikanischen Konzils*. Trier Theologische Studien, n. 28 (Trier: Paulinus Verlag, 1973); Urban Navarrete, "Potestas vicaria ecclesiae: evolutio historica conceptus atque observationes attenta doctrina concilii Vaticani II," *Periodica* 60 (1971): 414-486; Reinhold Schwarz, *Die Eigenberechtigte Gewalt der Kirche*. *Analecta Gregoriana*, n. 196 (Rome: Gregorian University, 1974); "De potestate propria Ecclesiae," *Periodica* 63 (1974): 429-445, is a synopsis of this work.

² The relation of canon law to theology is one of dependence. Though canon law is a science in its own right, operating according to its own principles and developing at its own pace, it must always remain in harmony with the Church's nature, for its purpose is to aid the Church in fulfilling its mission. The late nineteenth-century canonist George Phillips called canon law "practical" or

Section I: Ecclesiastical Power

The 1917 Code of Canon Law treats ecclesiastical power in the context of defining who exercises it and what limitations, if any, are placed on its exercise. The second book of the code, *De personis*, affirms the hierarchical structure of the Church. Part I (cc. 108-486) concentrates on clerics who, because they alone exercise the powers of orders and jurisdiction, are held to have an active sanctifying, teaching and governing role in the Church.³

Canon 108.3 delineates two hierarchies in the Church: a hierarchy of orders, which consists of bishops, priests and ministers; and a hierarchy of jurisdiction, consisting of the supreme pontificate, the subordinate episcopate and such other grades as the Church might add. Both hierarchies are held to

"structural" theology because its function is to give structure to what theology teaches about the nature of the Church. *Du droit ecclesiastique*, trans. from the German by J. P. Crouzet, 2nd rev. ed., 3 vols. (Paris: Lecoffre et Cie, 1855), 1:23. Also see Vincent Walsh, "The Theological and Juridical Role of the Bishop: Early Twentieth Century and Contemporary Views," *Apollinaris* 44 (1971): 39-82. This article, an extract of Walsh's doctoral dissertation, offers excellent insights into the interrelation of theology, canon law and history.

3 C. 118, "Soli clerici possunt potestatem sive ordinis sive iurisdictionis ecclesiasticae et beneficia ac pensiones ecclesiasticas obtinere." John Courtney Murray observes that canon 118 had its roots in the Church's adoption of the civil model of government. As a result, the relation of ruler and ruled or of "prince" and "citizen" characterized the relationship between clerics and laity in the Church, establishing clerics in an active teaching, sanctifying and governing role; laity, in a passive or receptive one ("Freedom, Authority, Community," in *We. the People of God. A Study of the Constitutional Government of the Church*. James Coriden, ed. [Huntington: Our Sunday Visitor Press, 1967], pp. 145-157). Also see Robert T. Kennedy, "Canonical Tradition and Christian Rights," in *The Case for Freedom: Human Rights in the Church*. James Coriden, ed. (Washington: Corpus Books, 1969), pp. 91-106.

be of divine institution/ The power of orders directly promotes the sanctification and salvation of the faithful through public worship; the power of jurisdiction governs the faithful in order that they may be brought to eternal life.^s The separation of the power of orders from that of jurisdiction is faithful to canonical tradition.

Alfonso Stickler traced the roots of this separation back to the fifth century. Until then, the prevailing practice of the Church had been to ordain clerics for a specified church or office, a practice canonists refer to as relative ordination. About the time of the Council of Chalcedon (451), there emerged the practice of absolute ordination, that is, ordination without reference to a particular church or office. Chalcedon attempted unsuccessfully to counteract this trend. Stickler concludes that the trend to absolute ordination began the theoretical separation of office (*munus*) and power (*potestas*).^s

4 "Ex divina institutione sacra hierarchia ratione ordinis constat Episcopis, presbyteris et ministris; ratione iurisdictionis, pontificatu supremo et episcopatu subordinato; ex Ecclesiae autem institutione alii quoque gradus accessere."

5 John Abbo and Jerome Hannan, *The Sacred Canons. A Concise Presentation of the Current Disciplinary Norms of the Church*, rev. ed., 2 vols. (St. Louis: B. Herder Book Co., 1957), 1:161.

6 "La biparticion de la potestad ecclesiastica en su perspectiva historica," *Ius canonicum* 15 (1975):47-54. Robert Benson recalls the classical definition of absolute ordination as "*ordinatio sine titulo*" and surveys the debate among medieval canonists on the validity of such ordinations in *The Bishop-Elect. A Study in Medieval Ecclesiastical Office* (Princeton: University Press, 1968), p. 53. Also see Cyrille Vogel, *Ordinations inconsistantes et caractere inadmissible* (*Etudes d'Histoire du culte et des institutions chr&iennes*) (Turin: Bottega

Another contributing factor to the separation of powers was the development of the theory of papal primacy. In the early Church, the power of the pope, the patriarch of the West, like that of the other four patriarchs, was seen as closely related to the power of orders, that is, to the episcopal office that was his as bishop of the church of Rome. Over the centuries, however, the theory of the papacy evolved until, according to Stickler, it was seen as a plenitude of governmental power. The essence of primatial power was seen to reside in this plenitude of governmental power, not in the power of orders. While the papal power of orders remained episcopal, his power of jurisdiction was independently extended to its fullness.?

A third contributing factor to the separation of powers was the emergence of the powerful office of archdeacon, which exerted great influence by the eighth century. Even though archdeacons were ordained to the order of deacons, they

d'Erasmus, 1978); Donald Heintschei, *The Medieval Concept of an Ecclesiastical Office*. *Canon Law Studies*, 363 (Washington: Catholic University Press, 1956), pp. 34-41; and Wilhelm Bertrams, "De differentia inter sacerdotium episcoporum et presbyterorum," *Periodica* 59 (1970):189-192.

7 "La biparticion," pp. 50-51 and 60. R. Benson also explores the evolution of the concept of papal plenitude of power. He observes that twelfth-century Decretalists were influential in developing the theory. They focused on the fact that the Roman Pontiff received plenitude of governmental power upon his acceptance of a legitimately conducted election, with no relation to episcopal consecration. Even if the candidate was not consecrated to the episcopacy, once he accepted election, he could exercise papal jurisdiction. *Bishop-Elect*, pp. 150-167.

exercised no special cultic function. Principally, they were an extension of episcopal governing power. 8

The code describes a power appropriate to each hierarchy, and affirms its distinct source: the power of orders is conferred by sacramental ordination; the power of jurisdiction, except for the papacy, by canonical mission. The pope receives the power of jurisdiction *iure divino* upon his legitimate election and acceptance of office.⁹

The code does not define the power of orders. Canon 109 refers only to its source, sacred ordination. Pietro Gasparri, who was mainly responsible for formulating the 1917 code, defines the power of orders as the power to perform sacred functions, especially ministry at the altar. 10 Holy orders, then, confers the sacred power which is directly ordered to the sanctification and eternal salvation of God's people. It is exercised primarily through the celebration of the sacraments.

Though the power of orders is requisite for holding particular offices in the Church, such as the office of pastor (canon 453.3), it remains, because of

8 A. Stickler, "La biparticion," pp. 48-49.

9 C. 109, "Qui in ecclesiasticam hierarchiam cooptantur, non ex populi vel potestatis saecularis consensu aut vocatione adleguntur; sed in gradibus potestatis ordinis constituuntur sacra ordinatione; in supremo pontificatu, ipsomet *iure divino*, adimpleta conditione legitimae electionis eiusdemque acceptationis; in reliquis gradibus iurisdictionis, canonica missione."

10 "Sacra ordinatione, aut ordinationis clericalis ... reservatur ad significandum ritum quo confertur potestas sacras perficiendi functiones praesertim ad altaris ministerium." *Tractatus canonicus de sacra ordinatione*. 2 vols. (Paris: Delhomme et Briquet, 1893), 1:2.

the absolute value of the ordination, distinct from the office. Instead, the power is related to the indelible character conferred by the sacrament of orders. An office can be lost in several ways but the power of orders perdures.¹¹

The code offers no comprehensive definition of jurisdiction. It describes it as a power (*potestas*). and relates it to the power of governing or ruling.¹² The commentaries often describe jurisdiction as public power. Vermeersch-Creusen, for example, define jurisdiction in general as "the public power of ruling subjects in order to obtain the proper end of a perfect society"; and ecclesiastical jurisdiction as "the public power of ruling the faithful in order to obtain a supernatural end."¹³ Wernz-Vidal describe jurisdiction as public power ordered to the maintenance of the common good, regulating social relations of the members of the Church and exercised publicly (*in facie ecclesiae*) with either juridical or social effect. Its exercise consists in legislative, judicial and

11 Francis Wernz and Peter Vidal, *Ius canonicum*. 5 vols., 2nd rev. ed. (Rome: Gregorian University, 1923), 2:55, n. 48.

12 C. 196, "*Potestas iurisdictionis seu regiminis quae ex divina institutione est in Ecclesia, alia est fori externi, alia fori interni seu conscientiae, sive sacramentalis sive extra-sacramentalis.*" Victor Tirado offers a helpful survey of synonyms used in the code to convey the meaning of jurisdiction: thirty-six canons use "*jys*," in the sense of "the right to act"; fifty-five canons use "*potestas*," as "empowered to act"; forty-six use "*auctoritas*," usually referring to the rights of office-holders; and twenty canons use "*facultas*," signifying a grant of power. *De iurisdictionis acceptatione in iure ecclesiastico* (Rome: International College, 1940), p. 179, n. 199.

13 "*Iurisdictio est potestas publica regendi subditos ad finem proprium societatis perfectae.*" "*Iurisdictio ecclesiastica est potestas publica regendi ad finem suum supernaturalem.*" *Epitome juris canonici*. 3 vols, 7th ed. (Rome: H. Dessain, 1949), 1:214, n. 233.

administrative acts, whose purpose is to order and structure the life and activity of the Church so that its salvific mission may be fulfilled in an orderly and effective manner.¹⁴

The description of jurisdiction as public power is based on the Church's understanding that it is a perfect society, possessing within itself the power and means needed to attain its proper end. Canon 109 states that this power does not come from the governed or from secular society (the state), but belongs to the Church by its very nature. Ultimately, its source is God. The public power of the Church parallels that of the state: each society has the authority to rule its subjects so that its respective end can be attained.^{is}

Canon 196 divides jurisdiction into that ordered to the external forum and that ordered to the internal forum. Some commentators perceived jurisdiction in the internal forum or the forum of conscience to be related solely to the private good of the individual, touching only the individual's relationship to God and not

¹⁴ Wernz-Vidal, *Ius canonicum* 2:357, n. 365.

^{is} For Church as a perfect society see Felix Cavagnis, *Institutiones Juris publici ecclesiastici*. 2 vols., 3rd rev. ed. (Rome: Desclee, Lefebvre and Cie, n.d.); Felix Cappello, *Summa juris publici ecclesiastici*. 6th rev. ed. (Rome: Gregorian University, 1954); Joseph Ferrante, *Summa juris constitutionalis ecclesiae* (Rome: Office of Catholic Books, 1964); Alfredo Ottaviani, *Institutiones juris publici ecclesiastici*. 2 vols, 3rd rev. ed. (Rome: Typis Polyglottis Vaticanis, 1947).

exercised publicly with juridic or social effect. 16 Klaus MOrsdorf, however, stresses the fact there is only one power of jurisdiction given to the Church by Jesus Christ. The internal and external fora are related to this one power as species to genus.¹⁷ Wilhelm Bertrams argues from the nature of the Church to the interrelationship of the two fora. It is within the context of the Church, a supernatural but human society, that individuals find the gift of salvation, for the means by which supernatural grace is obtained, preserved and increased have been committed to the Church.¹⁸ Velasio de Paolis observes that jurisdiction within the Church differs from jurisdiction exercised by the state insofar as its effect is beyond the public order. The Church is a human society, but it is also a community of salvation. From this perspective, de Paolis argues, jurisdiction in the internal forum is a true, not an equivocal, jurisdiction.¹⁹

16 Antonio Mostaza explores the history of the development of the concept of the two fora. analyzes the differences and reflects on their interrelationship in "Forum internum-forum externum," *Revisita Espanola de derecho canonico* 23 (1967):253-331; 24 (1968):339-364. Mostaza offers extensive references to authors who see only a minimal connection between the two fora. with emphasis on the internal forum as touching almost exclusively the individual's relationship to God on pp. 298-304.

17 "Der Rechtscharakter der iurisdictio fori interni," *Munchener Theologische Zeitschrift* 8 (1957):162.

18 "De natura iuridica fori interni ecclesiae," *Quaestiones fundamentales juris canonici* (Rome: Gregorian University, 1969), p. 185.

19 "Natura e funzione de foro interno," *Investigationes theologico-canonicae* (Rome: Gregorian University, 1978), pp. 127-129.

The terms "internal" and "external" fora describe where jurisdiction is exercised. But, its effect need not be restricted to one forum. The Sacred Penitentiary, for instance, may grant in the internal forum a dispensation from a matrimonial impediment which enables the recipient publicly to contract a valid marriage.

Canon 197.1 states that the power of jurisdiction is ordinary when it is attached by law to an office. It is delegated when it is committed either by law or by a person capable of doing so. The papal grant of quinquennial faculties to diocesan ordinaries enabling them to exercise specific papal authority is an example of personal delegated authority; canon 882, which grants priests, even if they are not approved for administering the sacrament of penance, the necessary jurisdiction to absolve licitly and validly a dying person from any sin or censure, is an example of delegation by law. Canon 118 prescribes that jurisdiction can be exercised only by clerics. This means that at least in theory a tonsured cleric who is not yet ordained could exercise the power of jurisdiction.

Though distinct, there are some similarities between the power of orders and that of jurisdiction. Both are conferred on the Church by Christ, ordered to the sanctification of God's people and their exercise is hierarchically structured.

Section II: Supreme Power and Episcopal Power

Canon 118 states that only clerics are capable of exercising the power of jurisdiction. Thus, jurisdiction could be held by the pope and, in theory, at least, by a merely tonsured cleric, as well as by all in the intermediary levels of the

clerical state. An exploration of how each level possesses and exercises jurisdiction is beyond the scope of this work. The focus of this section will be on the episcopate.

The first title of *De clericis in specie*, which is devoted to the hierarchical structure of the Church, is "On the Supreme Power and Those Who Participate in It by Ecclesiastical Law." According to canon 218.1, the Roman Pontiff possesses, not just a primacy of honor, but supreme and full jurisdiction over the universal Church in matters of faith and morals, as well as in discipline and government.²⁰ The code twice affirms the divine law as the source of this power: Canon 218.1 relates papal power to the power conferred by Christ on blessed Peter; canon 219 states that the pope possesses, by divine law, full power of jurisdiction immediately upon his election and acceptance of it, without any human intervention. Canons 218 and 219 summarize how the code understands the supreme power of the pope. No power on earth is superior or equal to it, for its source is the divine law. It extends everywhere and to all peoples. It is episcopal, ordinary and immediate power. Its object is faith and morals, as well as discipline and government.

The code drew its understanding of *plena potestas* from the teaching of the First Vatican Council. The Dogmatic Constitution *Pastor aeternus* defined

20 "Romanus Pontifex, Beati Petri in primatu Successor, habet non solum primatum honoris, sed supremam et plenam potestatem iurisdictionis in universam Ecclesiam turn in rebus quae ad fidem et mores, turn in iis quae ad disciplinam et regimen Ecclesiae per totum orbem diffusae pertinent."

".2: Haec potestas est vere episcopalis, ordinaria et immediata turn in omnes et singulas ecclesias, turn in omnes et singulos pastores et fideles, a quavis humana auctoritate independens."

the Roman Pontiff as successor of blessed Peter and true vicar of Christ, the head of the Church, to be the father and teacher of all Christians, and to him, in the person of blessed Peter, there was given by Our Lord Jesus Christ full power of feeding, ruling and governing the whole Church.²¹ It went on to say that shepherds of whatever rite and dignity and the faithful, individually and collectively, are bound by a duty of hierarchical subjection and of sincere obedience to this jurisdiction, which is ordinary, episcopal and immediate, not only in matters that pertain to faith and morals, but also in matters that pertain to the discipline and government of the Church throughout the world. Subjection to the supreme power of the pope is for the sake of unity of the Church.²²

The code does not include in its description of the hierarchy of orders a level above that of the episcopate; there are no acts which constitute a papal exercise of the power of orders. Whenever the pope consecrates or ordains, he

21 Cap. 3, COD., p. 789, "... Romanum Pontificem in universum orbem tenere primum, et ipsum Pontificem Romanum successorem esse beati Petri, principis Apostolorum, et verum Christi vicarium totiusque Ecclesiae caput et omnium Christianorum patrem et doctorem existere; et ipsi in beato Petro pascendi, regendi ac gubernandi universalem Ecclesiam a Domino nostra Iesu Christo plenam potestatem traditam esse...."

22 *ibid.*, pp. 789-790, "Docemus proinde et declaramus, Ecclesiam Romanam, disponente Domino, super omnes alias ordinariae potestatis obtinere principatum, et hanc Romani Pontificis iurisdictionis potestatem, quae vere episcopalis est, immediatam esse: erga quam cuiuscumque ritus et dignitatis pastores alque fideles, tam seorsum singuli quam simul omnes, officio hierarchicae subordinationis veraeque oboedientiae obstringuntur, non solum in rebus, quae ad fidem et mores, sed etiam in iis, quae ad disciplinam! et regimen Ecclesiae per totum orbem diffusae pertinent; ita ut, custodita cum Romano Pontifice tam communionis quam eiusdem fidei professionis unitate, Ecclesia Christi sit unus grex sub uno summo pastore."

does so by virtue of his participation in the episcopate as Bishop of Rome. The supreme power, then is a power of jurisdiction which belongs to the papal office.

Ecumenical Councils also hold supreme power over the universal Church (c. 228.1), exercising it in subordination to papal power. This subordination is manifested by the fact that the pope convokes, presides over and directs ecumenical councils, and confirms their decrees; he alone has the power to transfer, suspend or dissolve a council (c. 222.1 & 2). There is no appeal to a council from a decision of the Roman Pontiff (c. 228.2). Finally, a council is suspended upon the death of a reigning pontiff, for there can be no council if there is no pope to preside over it (c. 229).

Successive chapters of title seven deal with those who participate in this supreme power by ecclesiastical law: the college of cardinals, the Roman Curia, papal legates, patriarchs, primates, vicars and prefects apostolic, apostolic administrators and prelates nullius. It is clear why some of these institutes-the college of cardinals, the Roman Curia, and papal legates-participate in the supreme power of the pope: the college of cardinals is his senate, the curia and papal legates are his delegates or vicars. It is not so apparent why patriarchs, primates, metropolitans, plenary and provincial councils are held to share in it.

Traditionally, bishops of patriarchal and metropolitan sees have exercised jurisdiction over other dioceses in a particular region. The possession of supra-diocesan jurisdiction is explained on the basis of a

participation in the power of the Roman Pontiff. Their jurisdiction is completely subject to the Roman Pontiff who increases or diminishes its scope by expanding or contracting the territory over which it is exercised or the number of persons or cases subject to it.²³

These gradations in authority are accidental because they are of human origin. By divine law, all bishops are equal; only the Roman Pontiff exercises supreme and full jurisdiction over them.²⁴ The power one bishop exercises over another can only be a participation in papal power because the nature of episcopal jurisdiction limits its exercise to the diocesan church.²⁵

The same limitations apply to plenary and provincial councils. They do not constitute a middle grade of authority between the pope and the bishops. They derive their power from the positive law of the Church, not the divine law, and their convocation is fitting but not necessary.²⁶ The authority of such councils is not realized by a coalescence of the authority of the individual

²³ Wernz-Vidal, *Ius canonicum* 2:535-540, nn. 517-518; Joseph Gill, "The Definition of the Primacy of the Pope in the Council of Florence," *Hevthrop Journal* 2 (1961):14-29; Alphonse Popek, *The Rights and Obligations of Metropolitans*. Canon Law Studies, 260 (Washington: Catholic University Press, 1947).

²⁴ Wernz-Vidal, *Ius canonicum*. p. 539, n. 518.

²⁵ v. Walsh, "Role of Bishops," p. 61.

²⁶ Wernz-Vidal, *Ius canonicum* 2, p. 566, n. 532.

bishops. Thus, its only possible source is papal authority.²⁷ The code recognizes only two grades of jurisdiction, papal and episcopal. Whatever is not strictly episcopal can only come from the pope.

Title eight of book II (cc. 329-486) treats episcopal power and those who participate in it by ecclesiastical law: coadjutor and auxiliary bishops, diocesan synods, diocesan curias, vicars general, chancellors, diocesan chapters and consultors, rural deans and pastors. It begins with a dogmatic statement about the episcopate: "Bishops are successors of the apostles, and by divine institution preside over particular churches, which they rule with ordinary power under the authority of the Roman Pontiff."²⁸

Canon 329.1 can be divided into two parts. The first part reaffirms what was taught at the Council of Trent and at the First Vatican Council, namely, bishops are successors of the apostles and their office is of divine institution. Their pastoral ministry in the churches assigned to them is to be protected, strengthened and vindicated by the pastoral ministry of the supreme and universal pastor.²⁹ The second part declares that bishops exercise their power

²⁷ v. Walsh, "Role of Bishops," p. 62.

²⁸ c. 329.1, "Episcopi sunt Apostolorum successores atque ex divina institutione peculiaribus ecclesiis praeficiuntur quas cum potestate ordinaria regunt sub auctoritate Romani Pontificis."

²⁹ The teaching of the Council of Trent (Session 23), *Vera et catholica doctrina de sacramento ordinis ad condemnandas errores nostri temporis*. has two parts: one, doctrinal; the other, canonical. The first taught that bishops are the successors of the apostles, are placed over the Church by the Holy Spirit and are superior to priests. Cap. 4, COD, p. 719. The canons declared

under the authority of the Roman Pontiff. Canon 329, thus, illustrates a tension in the papal/episcopal relationship. Bishops are simultaneously successors of the apostles and subordinates of the pope; episcopal jurisdiction is ordinary and subordinate at the same time.

The code does not further elaborate on apostolic succession or divine institution. Two examples of episcopal subordination to the papacy are the right of the pope to name bishops (c. 329.2) and the requirement that bishops make a quinquennial report on the state of their dioceses to the Roman Pontiff (c. 340.1). The commentaries reveal two basic patterns of thought regarding episcopal subordination: those who emphasize the inferiority of episcopal power to papal power and those who concentrate on how this subordination is ordered to the unity of the Church. Wernz-Vidal, Felix Cappello, Charles Augustine Bachofen, Herbert Jone, Edward Regatillo and Abbo-Hannan are of the first school of thought; Vermeersch-Creusen, Raoul Naz and Stephanus Sipos represent the second.

anathema those who deny that there is a divinely instituted hierarchy in the Catholic Church. Cc. 6-7, COD, p. 720. This teaching was restated in the Dogmatic Constitution of the First Vatican Council *Pastor aeternus*. "Tantum autem abest, ut haec summi pontificis potestas officiat ordinariae ac immediatae illi episcopalis iurisdictionis potestati, qua episcopi, qui positi a Spiritu Sancto [cf. Act. 20, 28] in Apostolorum locum successerunt, tamquam veri pastores assignatos sibi greges singuli singulos pascunt et regunt ut eadem a supremo et universali pastore asseratur, roboretur ac vindicetur, secundum illud sancti Gregorii Magni: 'Meus honor est honor universalis ecclesiae. Meus honor est fratrum meorum solidus vigor. Turn ego vere honoratus sum cum singulis quibusque honor debitus non negatur.'" Cap. 3, COD, p. 790.

Wemz-Vidal's main argument can be succinctly stated: just as the apostolic college was subordinated by Christ to the authority of blessed Peter, the bishops, as successors of the apostles, are now subordinated to Peter's successor. Their second argument is more complex. The papal office has immutable power by virtue of its divine institution, for its scope cannot be increased or diminished quantitatively or with respect to subjects or territory. The episcopal office does not possess such determined power, for the extent of a bishop's power may be greater or lesser depending on the geographic or demographic size of his diocese. Furthermore, his competence to act can be amplified or restricted.^{so}

Felix Cappello argues that Peter's successor is divinely constituted as the universal pastor of the Church, and he commissions a portion of his flock to individual bishops. Since bishops receive from him only a portion of the pope's flock, their authority in their particular churches is subordinate to his.³¹

Charles Augustine Bachofen argues that the jurisdiction of the pope is coextensive with the Church itself, embracing all its members, whatever their rank or condition, and all ecclesiastical matters. The subordinate nature of

³⁰ *Ius canonicum* 2:607-608, n. 573. Jone uses the same arguments to demonstrate the divine institution of episcopal subordination to the papacy, *Commentarium in codicem iurii canonici*. 3 vols. (Paderbom: Schoningh, 1950), 1:275.

³¹ *Summa juris canonici*. 2 vols. (Rome: Gregorian University, 1928), 1:366. The same view is expressed by Edward Regatillo, *Institutiones juris canonici*. 2nd rev. ed., 2 vols. (Sal Terrae: Santander, 1946), 1:247.

episcopal jurisdiction derives from the fact it is conferred by the pope.³² Abbo-Hannan hold that the subordination of the episcopate to the papacy is derived from the monarchical nature of the Church. They note, at the same time, that this dependency does not prevent episcopal power from being ordinary, that is, granted to bishops, at least radicaliter by virtue of the episcopal office itself.³³

Vermeersch-Creusen and Stephanus Sipos, on the other hand, emphasize the divine institution of the episcopate. They hold that bishops possess the fullness of the power of orders and ordinary jurisdiction which enables them to fulfill their pastoral obligations on behalf of their particular churches. Since bishops possess their power by divine law, the pope's ability to expand or limit its exercise is itself limited, for the source and nature of episcopal power must always be respected.³⁴

The two schools of thought illustrate two different views of episcopal power. The first school sees it as a participation in papal power; the second, as a power in its own right. They also reveal different ecclesiological perspectives. Cappello's argument manifests an ecclesiology which perceives the diocese as a segment or administrative unit of the universal Church; the people as a

³² A Commentary on the Code of Canon Law. 8 vols. (St. Louis: B. Herder Co., 1918), 2:45-46.

³³ Sacred Canons 1:162.

³⁴ Epitome 1:337-338; Stephanus Sipos, *Enchiridion juris canonici*. 7th rev. ed. (Rome: Herder, 1960), p. 202, n. 50. The same position is held by Raoul Naz, *Traite de droit canonique*. 5 vols. (Paris: Letouzey and Ane, 1946), 1:429, n. 621.

portion of the pope's own flock. By analogy, bishops are subordinate to the pope as provincial governors are subordinate to an emperor. "Subordinate" is thus equivalent to "inferior."³⁵ The arguments of Vermeersch-Creusen and Sipos derive from an understanding of the Church as simultaneously a universal Church and particular churches. The subordination of the particular churches to the universal Church is ordered to unity of faith and practice.

The arguments of Wernz-Vidal present additional difficulties. The first argument presupposes that the scriptures are explicit in describing how blessed Peter related to the other members of the apostolic college. But, except for the account of the selection of Matthias to replace Judas in the college of the twelve (Acts 1) and the story of the conversion of the Gentile Cornelius (Acts 10-11), the Scriptures are generally silent about Peter's exercise of authority. Their second argument attempts to measure an abstract concept (papal/episcopal authority) by physical (geographical size) or demographical standards.

Regardless of how the word "subordinate" is interpreted, the subordination of the episcopacy to the papacy is relative. Pastor aeternus, an authentic teaching on the authority of the pope, states that the power of the supreme Pontiff does not impede episcopal jurisdiction by which bishops are established by the Holy Spirit in the place of the apostles to nourish and govern

³⁵ in fact, "inferior," not "subordinate," is the word used by Coronata to describe episcopal power. *Institutiones juris canonici*. 4th rev. ed., 3 vols. (Rome: Marietti, 1949), 1:460, n. 392.

the flocks entrusted to them, but rather protects, strengthens and vindicates it.³⁶ Charles Bachofen observes that it is beyond the scope of papal authority to set aside episcopal jurisdiction or to restrict it by undue reservations because the episcopate is established by God and forms part of the divine organism of the Church and thus has ordinary jurisdiction. Yet, subordination of episcopal jurisdiction to that of the supreme head is a necessary requirement of unity of faith and government.³⁷ Unity of faith and government of the Church is the ultimate reason for the subordination of bishops to the pope. The preservation of this unity is the essential function of the papal office; episcopal subordination is its correlative.

Section Hi; The Source of Episcopal Jurisdiction

Over the centuries the source of episcopal jurisdiction has been the subject of intense debate. The issue was whether this jurisdiction was conferred immediately by God through the sacrament of holy orders or by the Roman Pontiff through canonical mission. Cogent arguments were presented for both positions.³⁸ Those who held episcopal jurisdiction to be conferred by

³⁶ COD, p. 790. (Text quoted in footnote 29.)

³⁷ Commentary 2:46.

³⁸ The debate on this subject at the Council of Trent was so intense that Laynez, a staunch proponent of the theory of papal conferral of episcopal jurisdiction, urged the council not to resolve the question by a solemn declaration, lest such action cause open division in the Church. See Session VI, CJ IX:225. Hubert Jedin offers a detailed review of this debate in his

the sacrament of holy orders stressed the foundation of the apostolic college by Christ; the others argued from the theory of papal primacy, specifically the conferral on blessed Peter of the power of the keys. This enduring debate was important for it determined the extent to which the exercise of episcopal jurisdiction could be modified by the pope.

Canon 109 does more than acknowledge this debate; it takes a side by affirming canonical mission as the source of jurisdiction for all ecclesiastical offices, except the papacy. Even though the code favors this school of thought, it does not resolve the debate, for it continues in the commentaries.

Pietro Gasparri, the architect of the code, holds that the more common opinion is that the power of jurisdiction is conferred by the pope. He presents two arguments in support of this theory: first, jurisdiction requires a determination of subjects which is effected by canonical mission, not by episcopal consecration; second, a bishop-elect can exercise jurisdiction even before he is consecrated, for he is able to exercise jurisdiction validly

comprehensive work, *A History of the Council of Trent*, trans. by Ernest Graf, 2 vols. (St. Louis: Herder, 1957), 2:317-369. The source of episcopal jurisdiction was also debated at the First Vatican Council in the context of a discussion of the universal primacy of the pope: how can the pope and diocesan bishops exercise jurisdiction over the same people, without the jurisdiction of one cancelling out the other? Is it possible, then, that episcopal jurisdiction is merely a participation in papal jurisdiction? See Jean-Pierre Torrell, *La theologie de l'episcopat au premier concile du Vatican. Unam Sanctam*, n. 37 (Paris: Les Editions du Cerf, 1961), pp. 131-160.

immediately after taking canonical possession of his diocese.³⁹ This implies that the power of jurisdiction is conferred with the grant of a canonical mission.

Wernz-Vidal, however, hold that the conferral of jurisdiction is primarily a divine action, with the pope as a necessary intermediary. This opinion is rooted in the divine institution of the episcopate: bishops are constituted by Christ himself as the ordinary and immediate pastors of their flocks.⁴⁰

Vermeersch-Creusen propose that in one sense the debate is irrelevant. Whether jurisdiction comes immediately or mediately from the pope, it is exercised under his authority, for he assigns bishops to their dioceses, reserves major causes to himself and is able to restrict the jurisdiction of bishops.⁴¹ Charles Bachofen describes the problem of the source of episcopal jurisdiction as one that concerns only speculative theologians, not canonists. He observes that no bishop is constituted without the consent and confirmation of the Holy

³⁹ *Tractatus canonicus de sacra ordinatione*. 2 vols. (Paris: Delhomme and Briquet, 1893), 1:12. Gasparri's opinion is held also by Guido Cocchi, *Commentarium in codicem juris canonici*. 5th rev. ed., 8 vols. (Rome: Marietti, 1938), vol. 3:194-195; Dominic Prummer, ed., *Manuale juris canonici*. 4th and 5th eds. (Freiburg: Herder, 1927), p. 161; Coronata, *Institutiones* 1:460; Regatillo, *Institutiones* 1:247; Cappello, *Summa* 1:329; and Adrien Cance, *La code de droit canonique*. 8th rev. ed., 4 vols. (Paris: Gabalda et Cie., 1950) 1:302.

⁴⁰ *Ius canonicum* 2:603, n. 573. This opinion is shared by Jone, *Commentarium* 1:43; Naz, *Traite* 1:428; and Sipos, *Enchiridion*, p. 202.

⁴¹ *Epitome* 1:347-348, n. 444.

See. Hence, it can be said that all jurisdiction comes immediately from the pope.⁴²

Section IV: The Jurisdiction of the Residential Bishop

The code describes residential bishops as the ordinary and immediate pastors of the churches committed to them.⁴³ Canon 197.1 defines ordinary jurisdiction as that which is attached by law to an office. It does not reside in the person, but in the office, and enables the incumbent to fulfill with juridical effect the responsibilities of office.

The word "immediate" has a number of connotations. It connotes the direct care diocesan bishops have for each and every person and each and every case. They are true pastors of the entire flock and do not have to work through intermediaries. There is a personal relationship between bishops and the people committed to their pastoral care.⁴⁴ The term also means that the bishop is the free and independent judge of his inferiors and not responsible to them, but is subject only to the supreme lawgiver and the common law of the Church.⁴⁵

⁴² Commentary 2:45-46.

⁴³ c. 334.1, "Episcopi residentiales sunt ordinarii et immediati pastores in dioecesibus sibi commissis."

⁴⁴ S. Sipos, *Enchiridion*, pp. 206-207.

⁴⁵ C. Bachofen, *Commentary* 2:349.

Canon 335.1 divides episcopal governmental power into legislative, judicial and coercive power. Some commentators, however, divide it into three species: legislative, judicial and executive power, with governmental, administrative and coercive power as sub-species of executive power.⁴⁶ This division, rather than the one provided by the code, will be followed because it is more comprehensive.

A. The Bishop's Legislative Power

Vermeersch-Creusen define episcopal legislative power as the power to establish even permanent statutes beyond the common law which bind subjects.⁴⁷ Canon 362 describes the diocesan bishop as the sole legislator for his church. A diocesan synod has only a consultative vote. The bishop, not the synod, legislates. Insofar as he is the sole legislator for the diocesan church, there is a parallel with the legislative power of the Roman Pontiff for the universal Church. But, it does not go much further.

A decree of the Congregation of the Council (February 19, 1921) states that the legislative power of bishops means they can by their laws perfect, as it were, what the common law leaves less definite and fixed, but they cannot

⁴⁶ See, for example, Alfredo Ottaviani, *Compendium juris publici ecclesiastici*. 4th rev. ed. (Rome: Typis Polyglottis Vaticanis, 1954), p. 133, and Eloy Montero y Gutierrez, *Derecho publico ecclesiastico y normas generales*. 2nd ed., 2 vols. (Madrid: Imprenta Saez, 1948), 2:63-107.

⁴⁷ *Epitome* 1:351, n. 450, "Potestate legislativa episcopus potest condere statuta, etiam perpetua praeter ius commune, quibus obligantur subditi in eius territorio."

establish anything against the common law.⁴⁸ The commentators likewise maintain that diocesan law cannot conflict with the general law of the Church. Abbo-Hannan summarize episcopal legislative power by observing that bishops cannot make laws contrary to the common law (*contra ius commune*), but they can issue laws in accord with it (*secundum ius commune*) or in extension of it (*praeter ius commune*). Hence, bishops can by law particularize as to manner, place or time, general provisions of the common law, especially when this determination is expressly left to them.⁴⁹

Individual bishops are also impeded from legislating regarding matters which the Holy See has reserved to itself. Thus, for example, a bishop would exceed his legislative authority if he were to establish a new irregularity to sacred orders, contrary to the prescriptions of canon 983 that only the common law can establish perpetual impediments. The same is true with regard to the establishment of diriment impediments to marriage (c. 1040). A brief glance at the Code of Canon Law, which is not the sole source of disciplinary law for the

48 MS 13 (1921):228, "Exploratum hodie apud omnes est potestatem legislativam Episcoporum huc pertinere, ut legibus suis quasi perficiant quod ius commune reliquerit minus definitum et sancitum, ita ut nihil ab ipsis contra ius commune vel eius directionem statui possit. Inde quoque sequitur-ait Wernz, *Ius Decretalium* II, n. 756-Episcopos suis legibus nihil posse prohibere quod iure communi expresse et indubitanter est permissum, nisi ipsi sacri canones id eis aperte concedant."

49 Sacred Canons 1:361. Some examples of the law expressly granting bishops the authority to particularize the common law are: cc. 130, on junior clergy exams; 335.2, on the promulgation of diocesan laws; 1218.2, on the place for celebrating funeral rites; and 1234, on determining the offerings for funerals.

universal Church, so reveals immediately its extensive nature, which of itself limits the areas left to episcopal discretion.

The 1917 code relates the bishop's dispensing power to his legislative power. Canon 80 defines a dispensation as a relaxation of the law in a special case and declares that the lawgiver, his successor or his superior are able to relax the law. The Roman Pontiff, therefore, is able to dispense from all laws, including diocesan laws, because he is the residential bishop's superior. The diocesan bishop may relax the obligations imposed by diocesan laws.

Canon 81 deals with the diocesan bishop's power to dispense from the general law of the Church: he can do so only with specific authorization. The necessary delegation can come from the law itself or from a special faculty. Canon 1245 is an example of the law granting such a faculty. It delegates to local ordinaries the faculty to dispense a large number of people, even the whole diocese, from the observance of the laws governing fast and abstinence. The quinquennial faculties are special faculties given for a five-year period to ordinaries by the Apostolic See empowering them to dispense from specific

so The code refers to rescripts and privileges as legislative documents. Morrissey lists other legislative documents, such as apostolic constitutions, *motu proprio*s, decrees and instructions, in *The Canonical Significance of Papal and Curial Pronouncements* (Washington: Canon Law Society of America, 1974).

⁵¹ "Dispensatio, seu legis in casu speciali relaxatio, concedi potest a conditore legis, ab eius successore vel Superiore, nec non ab illo cui iidem facultatem dispensandi concesserint."

laws otherwise reserved to the Holy See.⁵² Canon 81 also sets forth three conditions to be met simultaneously before ordinaries can dispense from the general law in extraordinary circumstances: recourse to the Holy See is difficult, delay would cause grave harm and the matter is one from which the Holy See is accustomed to dispense.

In summary, the code regulates the bishop's dispensing power thus:

1. As the sole legislator for the diocesan church he is not restricted in his power to relax diocesan laws (c. 82)
2. He can dispense from the laws of provincial or plenary councils provided there is a just cause (c. 291.2)
3. The diocesan bishop cannot dispense from laws which the pope enacts for the territory unless the law itself or a special faculty permits it (c. 82)
4. Relative to the general law of the Church the bishop has the dispensing power given him by the code.⁵³ He may also have special faculties,

⁵² For examples of formulae of quinquennial faculties see: CLP 1:61-72; 2:30-42; 3:40-45.

⁵³ T. Lincoln Bouscaren and Adam Ellis, *Canon Law. A Text and Commentary*. 3rd rev. ed. (Milwaukee: Bruce, 1957), pp. 68-69, provide a list of cases where the code gives diocesan bishops power to dispense from the general law: (1) where the conditions mentioned in canon 15 concur, namely, there is a doubt of fact affecting the application of law, and the law is one from which the Holy See usually dispenses; (2) where the conditions of canon 81 concur; (3) when they dispense individuals or families subject to them, even outside the diocese, and others within it, from feasts, fast and abstinence, and in the case of a great concourse of people or for reasons of public health, they dispense the entire diocese from fast and abstinence (c. 1245); (4) when they dispense from non-reserved vows (c. 1313), promissory oaths (c. 1320), the observance of the legal intervals between ordinations (c. 978), the bans of

such as the quinquennial faculties and indults from the Holy See. He has no other dispensing power, except in extraordinary circumstances when the three conditions of canon 81 are fulfilled

5. In all cases ordinaries ought not dispense from ecclesiastical laws without a just and reasonable cause, proportionate to the gravity of the law dispensed from (c. 84.1).

The bishop's power to dispense from the general law of the Church and from laws which the pope enacts for the territory is greatly restricted. In ordinary circumstances he can dispense only by virtue of power delegated by the law itself or by special faculties; in extraordinary circumstances only after the fulfillment of the three conditions set forth in canon 81. In ordinary circumstances bishops dispense with delegated authority, which obscures the ordinary nature of episcopal jurisdiction.

B. The Bishop's Judicial Power

Judicial power resolves both spiritual and temporal cases of the Church.⁵⁴ its object is the protection or vindication of the rights of physical or

marriage (c. 1028), the form for marriage and certain marriage impediments in danger of death and urgent cases (cc. 1043 and 1045), irregularities to holy orders arising from occult delicts (c. 990), and certain penalties (c. 2237); (5) when they dispense from the law prohibiting books, but only as provided in canon 1402, that is, for certain books and in urgent cases; and (6) when they dispense from the examination required of a candidate for a parish as provided in canon 459.

⁵⁴ Vermeersch-Creusen, *Epitome* 1:352, n. 450.

moral persons (contentious cases) or the infliction or declaration of a penalty for the commission of a delict (criminal cases).⁵⁵

The code considers the diocesan bishop to be the judge, in first instance, of all cases coming before the diocesan tribunal. He may exercise this office personally or through another (c. 1572.1). Even if he chooses to exercise this office personally, he is bound by law to appoint an *officialis* who constitutes with him one tribunal and enjoys ordinary jurisdiction in the exercise of his office (c. 1573.1). The appointment of an *officialis*, however, does not deprive the bishop of his own judicial competence. He can reserve some matters to himself or delegate his power to others to the exclusion of the *officialis*.⁵⁶

In cases where the bishop has an interest or where he is immediately involved as a party,⁵⁷ he may not serve as judge. In such cases, if the bishop consents, the exercise of the judicial office becomes the prerogative of a collegiate tribunal, consisting of the *officialis* and two synodal judges. If he does not consent, the case is remitted to the metropolitan in the case of a suffragan bishop, to the court chosen (according to the norms of canon 1594 once for all

55 C. 1552.2.

56 Abbo-Hannan, Sacred Canons 2:759.

57 c. 1572.2 declares that bishops can be summoned before the diocesan tribunal if there is a controversy over the rights or the temporal goods of the bishop, the episcopal mensa or the diocesan curia.

with the approval of the Apostolic See) as the appellate court in the case of an archbishop or to the bishop's immediate superior, the Holy See.⁵⁸

The law reserves some cases personally to the Roman Pontiff, namely, those involving: (1) heads of state, their sons and daughters and those who enjoy the right of succession; (2) cardinals of the Church; and (3) legates of the Holy See and bishops, even titular bishops, in criminal cases; others to the tribunals of the Apostolic See, namely, (1) contentious cases involving residential bishops, with due regard for the prescriptions of canon 1572.2, and (2) cases involving dioceses or other moral persons which have no superior below the Roman Pontiff, such as exempt religious and monastic congregations (c. 1557.1 & 2). These cases are reserved because of the civil or ecclesiastical dignity of these persons or their special relationship to the Roman Pontiff,⁵⁹ and the bishop is absolutely incompetent to render a decision in them (c. 1892.1). In all other cases, however, he enjoys judicial competence. Unlike episcopal dispensing power the exercise of judicial power is not restricted to matters of diocesan law. The bishop's judicial power has reference to the general law, except for the cases reserved to the Holy See.

⁵⁸ c. 1572.2; Stanislaus Woywod and Callistus Smith, *A Practical Commentary on the Code of Canon Law*. 2 vols., rev. ed. (New York: Wagner Inc., 1948), 2:230.

⁵⁹ Michael Lega, *Commentarius in iudicia ecclesiastica iuxta Codicem juris canonici*. Victor Bartocetti, ed., 3 vols. (Rome: Libreria Cattolica Italiana, 1950), 1:33-36.

The exercise of judicial power is governed by procedural law, the fourth book of the code, whose purpose is to protect the rights of individuals involved in contentious or criminal cases by preventing abuses of judicial power. In this sense there are restrictions on the bishop's exercise of judicial power, but they are there to protect the rights of individuals, not to circumscribe episcopal authority as such.

C. The Bishop's Executive Power

"Executive Power is the power of realizing the fulfillment of law, either positively, by the exercise of rulership relating to the observance of law, or negatively, by the exercise of rulership relating to the violation of law."⁶⁰ it is subdivided into governmental, administrative and coercive power.

1. The Bishop's Governmental Power

The bishop's governmental power (*potestas regiminis*) is concerned with ecclesiastical discipline or the ordering of the diocesan church. Its exercise includes summoning individuals to be ordained or incardinated into the service of the diocese; providing for diocesan and parochial offices; regulating the convocation, celebration and ordering of diocesan synods, clergy conferences and confraternities of the laity; erecting diocesan congregations of religious; directing, ordering and implementing ecclesiastical policy, whether of the

⁶⁰ Bernard Deutsch, *Jurisdiction of Pastors in the External Forum*. Canon Law Studies, 378 (Washington: Catholic University Press, 1957), p. 123.

diocesan or universal Church; and administering the property of the Church.⁶¹ Through the fulfillment of these various responsibilities the bishop directs the life and ministry of the diocesan church by virtue of his ordinary jurisdiction over it.

The canonical visitation is one of the means by which the diocesan bishop exercises his governmental power. Andrew Slafkovsky defines canonical visitation: "Visitation is the act of making an inquiry into existing excesses and defects, punishing what needs chastisement, and amending with suitable remedies what is in need of correction, preserving the observance of prevalent obligations according to the requirements of every person and place, and restoring matters to their former condition, wherever a relaxation has occurred."⁶² Canon 343.1 prescribes that the diocesan bishop make a canonical visitation of the diocese, partially or completely, annually, so that once every five years it is completed. He may do this personally or through the vicar general or some other delegate.

The canonical visitation is a governmental, not a judicial or penal, process. Therefore, the bishop is to act as father not as judge.⁶³ His right of visitation extends even to monasteries of nuns subject to himself or immediately

⁶¹ Wernz-Vidal, *Ius canonicum* 2:633, n. 599.

⁶² The Canonical Episcopal Visitation of the Diocese: An Historical Synopsis and Commentary. Canon Law Studies, 142 (Washington: Catholic University Press, 1941), p. 1.

⁶³ Abbo-Hannan, Sacred Canons 1:370.

to the Holy See (c. 512.1, n. 1), to religious institutes of diocesan right (c. 512.1, n. 2), to clerical congregations of pontifical right in matters related to public worship (c. 512.2, n. 2) and to lay congregations of pontifical right in matters of public worship and also internal discipline (c. 512.2, n. 3).⁶⁴

The Holy See claims a right to intervene in the government of dioceses. Historically an illustration of such intervention is the reservation of ecclesiastical benefices, a practice which can be traced back to the time of Pope Hadrian IV (1154-1159).⁶⁵ By reservation the Holy See preempts the right to fill a benefice upon its vacancy.⁶⁶

The reservation of benefices has been the source of controversy over the centuries. Those who argued against the practice claimed that it extended the power of the papacy too far and made bishops appear as vicars of the Roman Pontiff, that it often provided incompetent and unsuitable men to benefices and

⁶⁴ For further treatment of the bishop's right to visit exempt religious institutes see Thomas Reilly, *The Visitation of Religious*. Canon Law Studies, 112 (Washington: Catholic University Press, 1938). Also see cc. 615-619, 631, 690, 1261 and 1491.

⁵⁵ John Lynch, "Some Landmarks in the Development of Papal Reservations up to 1400 A.D.," *The Jurist* 30 (1970):171 -174; John Haydt, *Reserved Benefices*. Canon Law Studies, 161 (Washington: Catholic University Press, 1942), pp. 7-48. William Sebastianelli defined a benefice as a "lus perpetuum percipiendi fructus ex bonis ecclesiasticis auctoritate ecclesiastica constitutum competens clerico propter officium sacrum." *Praelectiones juris canonici*. 2nd rev. ed., 3 vols. (Rome: Pustet, 1905), 3:189, n. 184.

⁶⁶ Sebastianelli defined reservation: "Reservatio est 'ecclesiastici beneficii vacaturi' cuius provisio ad inferiorem collatorem spectat, per Rom. Pont, ad se facta avocatio." *Ibid.*, p. 206, n. 196.

that it made possible abuses of power on the part of members of the Roman Curia who facilitated appointments to vacancies.⁶⁷ Those who argued for the practice wanted to uphold the right of appointment to the supreme head of the Church. They also noted that this power has been advantageous when bishops were slow to fill a vacant benefice, for the Roman Pontiff then is able to intervene in an exercise of the *cura animarum* proper to his office.⁶⁸

Canon 1431 asserts the right of the Roman Pontiff of conferring benefices throughout the universal Church and of reserving their bestowal to himself. John Haydt observes that the mere announcement of this doctrine may not impress the reader with its potentially far-reaching consequences. The doctrine really means that the pope, if he deemed it advisable, could reserve every benefice in the Church. In practice no pope has exercised this prerogative and it is unlikely any future pope will ever exercise it. Haydt traces the source of this doctrine to the supreme power conferred by Christ on blessed Peter and his

67 J. Haydt, *Reserved Benefices*, pp. 16-21. A bibliography on complaints can be found in Joannes Sagmuller, *Lehrbuch des katholischen Kirchenrechts*. 4th ed., Vol. I, 4 fascicles (Freiburg: 1925-1934), part 4, p. 571, n. 1. At Trent, the reservation of benefices was denounced by many bishops as an intrusion upon the free exercise of their power insofar as they could not freely fill vacated benefices. See Jedin, *Council of Trent* 2:331 ff. and Francisco Garcia Guerrero, *El decreto sobre residencia de los obispos en la tercera asamblea del concilio Tridentino* (Cadiz: Imprenta Sucesor de M. Alvarez, 1943), pp. 16 ff.

68 w. Sebastianelli, *Praelectiones*. p. 206, n. 196.

successors and to the fact that Christ established a monarchical form of government for his Church.⁶⁹

Canon 1435.1 lists four classes of benefices reserved to the Holy See: (1) a benefice which becomes vacant through the death, resignation or translation of a cardinal, a papal legate, a major official of a Roman Congregation, tribunal or curial office or a member of the papal household; (2) a benefice outside the Roman Curia which becomes vacant through the death of the beneficiary in the City of Rome; (3) a benefice obtained invalidly through simony; and (4) one in which the Roman Pontiff has intervened either personally or through a delegate in the following cases: if the election to a benefice was declared invalid; if the Roman Pontiff permitted resignation from the benefice; if the Roman Pontiff translated, promoted or removed the beneficiary; if the benefice was conferred in commendam.⁷⁰ It provides a broad base for papal reservation of benefices.

On November 11, 1930, the Apostolic Datary promulgated detailed norms to be observed by diocesan bishops in asking the Holy See to fill vacant

⁶⁹ Reserved Benefices, p. 68. Haydt's first argument has validity; whether Christ established the monarchical form of government for his Church is subject to debate.

⁷⁰ Haydt defines conferral in commendam: "A benefice is bestowed in commendam when the appointee is authorized by the competent ecclesiastical authority to derive from the benefice its income and revenue apart from his exercise or performance of attached duties and obligations." Reserved Benefices, p. 101.

reserved benefices.⁷¹ While they offered bishops active participation in the selection of candidates for reserved benefices, they reaffirmed the practice itself.

A second way the papacy intervenes in the governmental life of diocesan churches is through the practice of the exemption of religious. Religious exemption is a canonical institute by which some religious institutes are removed from the jurisdiction of the diocesan bishop and placed under the immediate jurisdiction of the Apostolic See.⁷² The practice of exemption leads to problems. In some cases religious interpret exemption broadly so that, in effect, they claim to free themselves from the jurisdiction of diocesan bishops in practically all matters, even the apostolate;⁷³ in other cases bishops perceive

⁷¹M£22(1930):525.

⁷² c. 448, 2, defined "exempt religious": "religionis exemptae. religio sive votorum sollemnium sive simplicium, a iurisdictione Ordinarii loci subducta." Also see Joseph D. O'Brien, *The Exemption of Religious in Church Law* (Milwaukee: Bruce, 1943), p. 3. For monastic communities, exemption offers autonomy for internal affairs. The privilege of exemption is extended to mendicant orders which have a centralized government and whose members work in a number of dioceses in order to free them for ministry wherever they are needed in the universal Church. Emilio Fagliasso, *Dictionnaire de Droit canonique*. Raoul Naz, ed., 7 vols. (Paris: Letouzy and Ane\ 1935-1965), s.v. "Exemption canonique," 5:637.

⁷³ Such tensions seem perennial in the relationship between bishops and religious. Fogliasso describes them as the "vicissitudes of the liberty of religious with regard to local ordinaries." They are the basis for the fourth canon of the Council of Chalcedon, a source of canon 487, which requires hierarchical approval to establish religious communities, monasteries or houses. *Ibid.*, p. 647. At the Council of Trent bishops spoke vigorously against the privilege for it undermined episcopal authority by leading religious to believe they were

religious to interpret exemption in this manner.⁷⁴ At a minimum, then, exemption is perceived as weakening the authority of diocesan bishops and in some instances this authority may de facto be diminished by reason of a misinterpretation of the canonical institute.

2. The Bishop's Administrative Power

The bishop's administrative power is ordered to his supervision of ecclesiastical property.⁷⁵ Canon 1495.1 defends the right of the Church to acquire, retain and administer temporal goods in order to fulfill its mission. Canon 1496 asserts the right of individual juridical persons to acquire, retain and administer temporal goods, while canon 1518 upholds the right of the Apostolic See to exercise authority over all ecclesiastical goods, because they belong to the Church, that is, ownership never belongs to the body of believers but to a determined legal person, and are ordered to its mission. By virtue of his

exempt in all matters from episcopal jurisdiction. Jedin, Council of Trent. 2: p. 331; Garcia, Decreto residencia. pp. 16 ff.; and Antonio Melo, De exemptio regularium. Catholic University Canon Law Studies, 12 (Washington: Catholic University Press, 1921), pp. 22-25 and 68-77.

⁷⁴ Woywod-Smith observe that as religious orders wanted freedom to develop their organization and carry out their proper work, they naturally preferred to deal with one central authority, the Holy See. Bishops, however, saw their authority curtailed when the Holy See gave religious independent rights in their dioceses. "As is usual in such affairs, there was fault on both sides, the bishops exaggerating the interference with their rights and the regulars making at times unfair use of the privilege of exemption." Practical Commentary 1:300-301.

⁷⁵ Alfredo Ottaviani, Compendium juris publici ecclesiastici. 4th rev. ed. (Rome: Typis Polyglottis Vaticanis, 1954), p. 207.

office the Roman Pontiff has the right to make laws governing ecclesiastical goods, to limit possession of them and to consider of less account the rights of other juridical persons.⁷⁶

In practice the pope directly administers only the property belonging to the Apostolic See. The ordinary way in which he administers the property of other juridic persons is through legislation. By virtue of his supreme and ordinary jurisdiction, however, he could involve himself in the administration of such property if the need arose.⁷⁷

In the exercise of administrative power a distinction is made between administering ecclesiastical property and overseeing its administration. The diocesan bishop is the administrator of property that is diocesan; he oversees the administration of property of subordinate juridical persons by supervising the implementation of the general law of the Church (c. 1519.1). He does not enjoy the same prerogatives as the Roman Pontiff who, by virtue of his office, has power over subordinate bodies.⁷⁸ He is competent to establish diocesan legislation regarding the administration of property, such as statutes governing accountability, requiring observance of civil formalities and directing the filing of

⁷⁶ Some commentators cite Thomas Aquinas, *Summa theologiae*. IIa-IIae, q. 100, art. 1, ad. 7, as the foundation for holding the Supreme Pontiff to have dominium over all ecclesiastical property. See, for example, Cappello, *Summa* 2:570, n. 602; and Coronata, *Institutiones* 2:483, n. 1059.

⁷⁷ C. 1518; Vermeersch-Creusen, *Epitome* 2:591, n. 838; Abbo-Hannon, *Sacred Canons* 2:724, note 1.

⁷⁸ Abbo-Hannon, *Sacred Canons* 2:711 & 725.

documents in the diocesan chancery. This power is not limited to parochial property, for the Council of Trent empowered bishops to oversee the administration of diocesan hospitals, colleges, schools and confraternities.⁷⁹

Perhaps the most intricate form of administration is alienation of Church property. Alienation embraces more than the sale of property; it refers to any action by which the condition of the Church is held to be "weakened," including donation, sale or exchange of property, whereby direct ownership is transferred to another; rental lease or mortgage, whereby others establish a lawful claim upon Church property, even though ownership is still retained.^{so}

Bishops enjoyed broad authority for alienation until the mid-fifteenth century. There were abuses, however, and to correct them the apostolic constitution of Pope Paul II *Ambitosae* (March 1, 1468) decreed that permission of the Holy See was required for alienation of all immovable property,

⁷⁹ Sess. VII, de ref., cap. 15, COD, p. 689, and Sass. XXII, de ref., cap. 8 & 9, COD, p. 740. Individual canons of the code delineate the bishop's authority in this area: c. 535, his administrative authority over monasteries of nuns, even exempt communities; c. 1521, his right to conduct a visitation and prescribe the manner of administration for foundations directed by the laity; c. 1532.2, his authority to grant permission for the alienation of property which is neither "precious" in the canonical sense (c. 1497.2) nor worth more than 30,000 francs (c. 1532.1).

^{so} Cappello defines alienation: "Alienatio hic sumitur sensu lato et minus proprio et complectitur omnem actum quo dominium rei... transferetur in alterum sive titulo gratuito sive titulo oneroso, scil. quemlibet contractu quo conditio Ecclesiae peior fieri possit." *Summa* 2:578, n. 613.

regardless of its value.⁸¹ The apostolic constitution of Pope Pius IX *Apostolicae sedis* (October 12, 1869) restated these requirements.⁸² The provisions of *Ambitosae* and *Apostolicae sedis* remained the body of law on alienation until the promulgation of the 1917 code.⁸³

Canon 1532.1 decrees that consent of the Holy See is required if the property to be alienated is a precious object or has a value exceeding 30,000 francs.⁸⁴ Otherwise, the local ordinary has the authority to allow alienation, provided he obtains the consent of the cathedral chapter or the administrative council and those who have an interest in the matter. This provision represents a minor modification of the pre-code law, which prescribed that the permission of the Holy See was needed for all acts of alienation, regardless of the value.

3. The Bishop's Coercive Power

Coercive power belongs to the Church because it has the right and the need to legislate and to insure the enforcement of its legislation through the

⁸¹ C. 1, de rebus ecclesiae non alienandis, III, 4, in Extrav. Com., cited by Joseph Cleary, Canonical Limitations on the Alienation of Church Property. A **Historical Synopsis and Commentary, Canon Law Studies, 100 (Washington: Catholic University Press, 1936)**, p. 49. Cleary's historical synopsis is found on pp. 23-57.

⁸² Fontes III: N.552, p. 28, iv, n. 3. For a commentary on the apostolic constitution, cf. Joseph Pennacchi, *Commentarium in constitutionem Apostolicae sedis qua censurae latae sententiae limitantur*. 2 vols. (Rome: Typographia Polyglotta, 1883), 2:113-154.

⁸³ J. Cleary, Canonical Limitations, p. 51.

⁸⁴ 30,000 francs equaled \$6,000 in 1917.

application of suitable penalties in particular cases.^{ss} The exercise of coercive power is two-directional: it is ordered to the imposition of penalties and to their removal. Canon 2220.1 states that a superior who is able to enact laws or impose precepts can also attach penalties to them. Since bishops possess legislative power, they also have the power to impose and remove penalties.

The code admonishes bishops, in the exercise of their coercive power, to keep in mind their pastoral relationship to their flocks. It cites the Council of Trent's reminder that they are shepherds and not slave drivers, that members of their flock are sons and daughters and not subjects, that efforts must be made to deter wrongdoing lest bishops be obliged to administer due punishment, that reproof, entreaty and rebuke should precede the imposition of penalties and that sympathy and kindness always take precedence over severity or insistence on authority.⁸⁶

^{ss} A. Ottaviani, *Compendium*, pp. 178-179.

⁸⁶ Sess. XIII, de ref., cap. 1, as quoted in canon 2214: "Prae oculis autem habeatur monitum Cone. Trid., sess. XIII. de ref.. cap. 1: 'Meminerint Episcopi aliique Ordinarii se pastores non percussores esse, atque ita praeesse sibi subditis oportere, ut non in eis dominantur, sed illos tanquam filios et fratres diligant elaborantque ut hortando et monendo ab illicitis deterreant, ne, ubi deliquerint, debitum eos poenis coercere cogantur; quos tamen si quid per humanam fragilitatem peccare contigerit, illa Apostoli est ab eis servanda praeceptio ut illos arguant, obsecrent, increpent in omni bonitate et patientia, cum saepe plus erga corrigendos agat benevolentia quam austeritas, plus exhortatio quam comminatio, plus caritas quam potestas; sin autem ob delicti gravitatem virga opus erit, tunc cum mansuetudine rigor, cum misericordia iudicium, cum lenitate severitas adhibenda est, ut sine asperitate disciplina, populis salutaris ac necessaria, conservetur et qui correcti fuerint, emendentur aut, si resipiscere noluerint, ceteri, salubri in eos animadversionis exemplo, a vitiis deterreantur.'"

The power to inflict penalties is not limited to what is determined by the general law. Bishops have an inherent right to attach penalties to diocesan laws to insure their enforcement (c. 2220). Canon 2221 empowers them to increase penalties imposed by the common law, when the need arises.

Diocesan bishops are empowered to remit penalties through absolution of censures or dispensation from vindictive penalties (c. 2236.1). An axiom, comparable to one regarding their dispensing power over the general law, indicates the extent of this power, "He who is able to exempt from the law is also able to remit penalties imposed by the law."⁸⁷ The power to remit penalties, like the power to dispense from the common law, is greatly restricted by the reservation of many cases to the Holy See. Bishops do not have the power to remit penalties in criminal cases brought before a court or cases involving an incapacity for a benefice, office, function or honor, privation of active or passive voice, perpetual suspension, infamy of law or the deprivation of the right to patronage or of a privilege or concession from the Holy See.⁸⁸ They are unable to remit *latae sententiae* penalties reserved to the Holy See.⁸⁹ In occult cases

⁸⁷ c. 2236.2, "Qui potest a lege eximere, potest quoque poenam legi adnexam remittere."

⁸⁸ c. 2237.1. The penalties listed here are vindictive penalties, see c. 2291. The privation of the capacity to hold office, etc., is imposed only by the Holy See (c. 2296.1). Therefore, the removal of the incapacity pertains to the Holy See, according to the axiom cited in canon 2236.2. Infamy of law ceases only upon dispensation by the Apostolic See (c. 2295).

⁸⁹ Bouscaren-Ellis list 65 *latae sententiae* penalties, of which 45 are reserved to the Holy See, Canon Law, pp. 928-932.

bishops may remit *latae sententiae* penalties, except those reserved in a special or most special way to the Apostolic See.⁹⁰

CONCLUSION

The 1917 Code of Canon Law witnesses to the Church's consistent teaching that the papacy and the episcopate are divinely instituted. Just as the Roman Pontiff succeeds to the office conferred by Jesus on blessed Peter, bishops succeed to the place of the apostles. The code also describes the jurisdiction of the pope and of residential bishops as ordinary and immediate.

The code refers to papal jurisdiction as "supreme" and to episcopal jurisdictional power as "subordinate," which does not have to be understood in a pejorative sense, that is, denoting inferiority. Because of the nature of the Church there is a natural subordination of the diocesan church, presided over by its bishop, to the universal Church, which has as its head the Roman Pontiff, inasmuch as there is no such thing as a diocesan faith, and there must be disciplinary unity in essential matters. Yet, it must be recalled that some commentaries did interpret "subordinate" to mean "inferior."

The code recognizes bishops as unique diocesan legislators, primary judges, governors and administrators of their dioceses as well as the ones who impose or remit canonical penalties. They preside over their dioceses with

⁹⁰ c. 2237.2 Twenty-two *latae sententiae* penalties are reserved to the Holy See in a most special or special manner. See Bouscaren-Ellis, *Canon Law*, p. 926.

ordinary and immediate jurisdiction. In other words, bishops are not delegates of the Roman Pontiff.

In the practical order, however, a different picture emerges. An elaborate general law leaves little room for diocesan legislation. It also makes it often necessary to seek faculties from the Holy See. Episcopal power to dispense from the general law is greatly restricted, despite the broad scope of the universal law and the fact that the bishops' proximity often renders them better judges of a situation calling for a relaxation of the law. The code retains the post-fifteenth century restrictions on alienation introduced to correct abuses, but modifies them somewhat. These restrictions which constituted the pre-code legislation on alienation required bishops to seek permission for all acts of alienation, regardless of the amount, while the code requires bishops to obtain permission only if the amount of the alienation exceeds 30,000 francs. It retains the practice of the reservation of ecclesiastical benefices, which infringes on the governmental authority of diocesan bishops. The number of reserved *latae sententiae* penalties and other exceptions to episcopal power to remit penalties greatly restrict their exercise of coercive power.

The evidence leads to the conclusion that, while canonical theory describes the office of bishop as divinely instituted and episcopal jurisdiction as ordinary and immediate, the actual exercise of power by bishops appears to be dependent. Consequently, bishops would more readily be perceived as delegates of the Roman Pontiff than as full-fledged pastors instituted by the Holy Spirit to preside over particular churches.

The point at issue is more than who has the power to do what. There is the deeper need for church practice to reflect church teaching. When it is difficult to see episcopal power as proper, ordinary and immediate, the teaching of the Church on the nature of episcopal power is blurred.

CHAPTER II

EPISCOPAL POWER OF GOVERNANCE IN THE ANTE-PREPARATORY AND PREPARATORY STAGES OF THE SECOND VATICAN COUNCIL

To assess the teaching of the Second Vatican Council on the nature, scope and exercise of episcopal jurisdiction one must view it in the context of its development. Planning for the council began soon after January 25, 1959 when Pope John XXIII announced his intention to convoke an ecumenical council.¹ On the feast of Pentecost, May 17, 1959, he established the Antepreparatory Commission to prepare an agenda. Shortly thereafter, June 18, 1959, Cardinal Domenico Tardini, the President of the Commission, sent a letter to bishops and prelates throughout the world soliciting their observations, counsel and proposals regarding matters to be discussed at the council.² Pericle Felici, Secretary to the Antepreparatory Commission, sent a subsequent

¹ Allocution of Pope John XXIII (January 25, 1959) "Primus oecumenici Concilii Nuntius," *Acta et documenta concilio oecumenico Vaticano II apparando. Series I (Ante-praeparatoria)*. 4 vols (Rome: Typis Polyglottis Vaticanis, 1960-1961), I:3 [Henceforth I Acta Doc.].

² I Acta Doc. II. Pars I. p. x.

letter on March 21, 1960 to the bishops and prelates who did not respond to this initial communication.³

Some bishops never did respond to these two letters. Others simply stated that they had no specific recommendations. Still others presented carefully developed treatises. Many bishops focused on areas of special concern to them, such as social justice, a dogmatic tract or a matter of ecclesiastical discipline. Except for a few instances where bishops of a province prepared a joint statement, bishops replied individually. From the bishops' vota it appeared that only three national conferences replied as a conference.⁴

Despite the fact that the responses were not coordinated, common regional or national concerns appeared. For example, bishops of the United States were conscious of Catholic-Protestant tensions.⁵ African bishops

³ Ibid., p. xiii.

⁴ The letter of Bishop Klepacz, the Bishop of Lodz, Poland, referred to a meeting of the National Conference of Bishops of Poland. Ibid., Pars II, p. 650. There was also a response from the Episcopal Conference which met at Fulda, Germany, on January 24, 1960. Ibid., Pars I, p. 769, and a response from the Episcopal Conference of Indonesia which met on May 15, 1960. Ibid., Pars IV, p. 277. In 1959 episcopal conferences were not widespread and those which existed were often undeveloped. See Raymond Kutner, *The Development. Structure and Competence of the Episcopal Conference*. Canon Law Studies, 480 (Washington: Catholic University Press, 1972), pp. 3-24.

⁵ I Acta Doc. II, Pars VI, pp. 267-518.

stressed Catholic Action.⁶ Bishops from the Far East wanted greater freedom to adapt the liturgy to an oriental culture.⁷ while those from the Near East sought greater recognition of the rights of the Catholic Oriental Patriarchs and the establishment of better relations between the Catholic and Orthodox Churches.⁸ Many South American bishops focused their attention on social justice issues.⁹ While American bishops appeared pragmatic, Spanish bishops manifested concern for philosophical and theological questions.¹⁰

The focus of attention here is not on these general trends, but on how the bishops who expressed opinions viewed their own jurisdiction. How did they describe the nature and scope of the episcopal power committed to them for the pastoral care of their diocesan churches?¹¹

⁶ Ibid., Pars V, pp. 9-569.

⁷ Ibid., Pars IV, pp. 59-64; 73-98; 229-278.

^a Ibid., pp. 9-10; 351-373; 383-421; 437-463.

⁹ Ibid., Pars VII, pp. 9-576.

¹⁰ Ibid., Pars II, pp. 163-479.

¹¹ The Antepreparatory Commission also requested proposals for matters to be discussed at the council from superiors general of religious institutes and members of the Roman Curia. Because of the need for reasonable limits, this work will study only the responses of the bishops.

Section I: Doctrinal Concerns Reflected in the Bishops' Vota to the Antepreparatory Commission

The vota of many bishops asserted firm belief in papal primacy and its foundation by divine law. It is the visible unifying force of the Catholic Church. Without it there would be neither doctrinal nor disciplinary unity. Where there was a call to study the papal-episcopal relationship, there was no attempt to demean papal primacy but only a desire to bring into clearer focus the nature and scope of episcopal power.

Thirty-seven European bishops and fifteen bishops from other parts of the world called for completion of the study of the episcopate introduced at the First Vatican Council, where a second draft of the Dogmatic Constitution on the Church, *De ecclesia Christi*, included an extensive treatment of the episcopate.¹² Because the council was suspended before its work was completed, these chapters were never discussed.¹³ They wanted the forthcoming council to complete the work on these untouched chapters of *De*

¹² Schema constitutionis dogmaticae secundae "*De ecclesia Christi*" secundum reverendissimorum patrum animadversiones reformationum, especially chapters 3 and 4, pp. 309-310, in John Mansi, ed., *Sacrorum conciliorum nova et amplissima collectio* (Florence: 1759-1798, 31 vols.; 1900-1927, 28 vols.) 53:308-317.

¹³ A general history of Vatican I, including the political situation, is found in Roger Aubert, *Vatican I* (Paris: Editions de l'Orante), 1964. A treatment of the call for a study of the episcopate is found in Gustave Thils, *La primauté pontificale: la doctrine de Vatican I les voies d'une revision* (Gembloux: Editions J. Duculot, 1972) and in Jean-Pierre Torrell, *La theologie de l'episcopat au premier concile du Vatican. Unam Sanctam*, n. 37 (Paris: Les Editions du Cerf, 1961). Also see F. Donald Logan, "The 1875 Statement of the German Bishops on Episcopal Powers." *The Jurist* 21 (1961):285-295.

ecclesia Christi as a means of offering appropriate recognition to episcopal power. 14

The bishops demonstrated firm belief that the episcopate, like the papacy, is of divine institution. Bishops, as a body, are successors of the apostles and, by reason of apostolic succession, share in the triple power of teaching, sanctifying and governing. Some bishops touched upon the question of the source of episcopal jurisdiction, asserting that it is committed to the bishops by Christ. ¹⁵ Thirteen bishops requested that the council decide

14 I Acta Doc. II. Pars I: French Bishops: Card. Lienart, p. 298; Archbishop Lallier, p. 316; Bishops Bougon, p. 338; Villepelot, p. 342; de la Vacquiere, p. 360; Marmottin, p. 375; Bellec, p. 399; Douillard, p. 406; Petit, p. 446; Elchinger, p. 472; and Blanchet, p. 500. German Bishops: Card. Doepfner, p. 585; Archbishop Jaeger, p. 638; Bishops Hengsbach, p. 598; Kempf, p. 619; Keller, p. 631; Wittier, p. 634; Lieprecht, p. 658; Sedlmeier, p. 682; Angerhausen, p. 718; and Tenhumberg, p. 732. Pars II: Swiss Bishops: Von Streng, p. 22; Adam, p. 44; and Abbot nullius Tschudy, p. 47. Spanish Bishops Garcia de Sierra, p. 143 and Pont y Gol, p. 322. Bishop Lommel of Luxemburg, p. 512; Norwegian Bishop Maugers, p. 637; Polish Bishops Kowalski, p. 644; Chelmno, p. 644; Wilczynski, p. 753; and Drzazga, p. 762. Pars III: Italian Bishops: Archbishop Nicodemo, p. 93; Bishops Brustia, p. 46; Bolognini, p. 240; Bagnoli, p. 269 and Urs, p. 423. Pars IV: Archbishops Doi of Tokyo, p. 85, and Doumith of Lebanon, p. 410. Pars V: Archbishops Coucherausset and Bangini of Equatorial Africa, p. 15, and Bishop Pires of Angola, p. 124. Pars VI: Canadian Bishops: Card. Leger, p. 44, and Archbishop Cabana, p. 109. Mexican Archbishops Espino y Silva, p. 224, and Toriz, p. 229. American Bishop Gorman, p. 305.

¹⁵ See, for example, the vota of Archbishop Egidio Bignamini of Ancona, Italy, *ibid.*, Pars III, p. 44; Archbishop Vittore Righi, Apostolic Internuncio to Iran, Pars IV, p. 356; and Cardinal Joseph Van Roey of Malines, Belgium, Pars I, p. 110.

whether episcopal consecration is a sacrament or no¹⁶ This question too focuses on the source of episcopal jurisdiction.

While the theological issues which emerged from the vota of the bishops were few and often undeveloped, they were, at the same time, vital. The bishops were asking the council to explore further the meaning of the traditional teaching that the episcopate is of divine institution and that bishops are successors of the apostles, true pastors, teachers and high-priests.

Section II: Canonical Concerns in the Bishops' Vota to the Antepreparatory Commission

The bishops listed four canonical problems which severely restricted episcopal power: exemption of religious, reservation of ecclesiastical benefices to the Apostolic See, limitation of power to dispense from the general law of the Church and restrictions on episcopal authority to alienate Church property.

A. The Exemption of Religious

The most common canonical problem mentioned by bishops was the exemption of religious from their jurisdiction. Of the 311 Italian bishops who responded to the letters of the Antepreparatory Commission, sixty-six

¹⁶ I Acta Doc. II, Pars I: Belgian Bishop Charue, p. 113; French Bishops Rastouil, p. 307; Villepelet, p. 342; Garrone, p. 430; Vignancour, p. 439 and Rupp, p. 482. German Bishops Pohlschneider, p. 562; and Reuss, p. 729. Pars II: Swiss Abbot nullius Haller. p. 46. Pars III: Italian Card. Montini, p. 377; and Bishop Carli, p. 604. Pars VI: Canadian Bishop Coderre, p. 93; and American Bishop Dwyer, p. 359.

specifically referred to exemption as a problem affecting diocesan government. 17 Forty-four bishops from other European nations, 18 thirty-two South Americans, 1⁹ sixteen bishops from North American and three from Central America, four Asian, 22 four African 23 and three Australian bishops 24 called for a serious review of this structure.

They saw exemption as impinging on their freedom to supply priests to parishes. Once exempt religious took over the care of a parish, bishops lost control over the assignment of clergy. It fostered independence from diocesan bishops, even with regard to the apostolate. Bishops perceived their own

17 Ibid., Pars III, pp. 10-744.

18 Ibid., Pars I: Belgian Bishops, pp. 106-141; French Bishops, pp. 206-513; Free State of Danzig, p. 549. Pars II: Irish Bishops, pp. 77-159; Spanish Bishops, pp. 167-383; Dutch Bishops, p. 487; Yugoslavian Bishops, pp. 534-556; Polish Bishops, pp. 646-752; and the Bishop of Monaco, p. 779.

1⁹ Ibid., Pars VII, Bishops of: Ecuador, pp. 21-26; Argentina, pp. 51-69; Bolivia, p. 107; Brazil, pp. 144-313; Chile, pp. 349-393; Colombia, pp. 397-440; Paraguay, p. 479; Peru, p. 535; Uruguay, pp. 539-546; and Venezuela, p. 565.

20 Ibid., Pars VI: Canadian Bishops, pp. 23-152; Mexican Bishops, pp. 175-244; Bishops of the United States, pp. 394-515.

21 Ibid., Bishops of: Cuba, p. 537; Honduras, p. 585; and Nicaragua, p. 627.

22 Ibid., Pars IV, Bishops of: India, pp. 187 and 201; the Philippines, pp. 313 and 317.

23 Ibid., Pars V, Bishops of: Western Africa, p. 85; Mauritania, p. 319; the Sudan, p. 456; and Uganda, p. 524.

24 Ibid., Pars VII, pp. 592—602.

authority to govern their churches as restricted or weakened by this canonical privilege. Only two bishops, however, demanded its complete abolition.²⁵ The greater number were content to call for clarification of its scope, especially as it related to the exercise of the apostolate by religious. Archbishop Domenico Picchinenna of Cosenza, Italy proposed that in the spiritual formation of religious clergy they be reminded that there is but one priesthood in the Catholic Church and its wellspring is the episcopate.²⁶

B. The Reservation of Ecclesiastical Benefices

The second canonical problem identified by bishops was the reservation of benefices to the Holy See. Compared with the Fathers of the Council of Trent who charged that the practice rendered bishops impotent,²⁷ the reaction here was relatively moderate. The practice was criticized because of harmful delays involved in filling vacancies by reason of the need to approach the Holy See and because it prevented bishops from providing directly for the cura animarum. Cardinal Doepfner added that the amount of work devolving to the Roman Curia could be reduced by not extending the practice of reservation.²⁸ None of the

²⁵ Bishop Vincenzo Lojali of Emilia, Italy, *ibid.*, Pars III, p. 40, and Bishop Emilio Baroncelli of Recanati, Italy, *ibid.*, p. 560.

²⁶ *ibid.*, p. 10.

²⁷ Petitions of Bishops to Pope Paul III before the Council, £14:482 and Acts of the Council after Session V, *ibid.*, 5:771.

²⁸ I Acta Doc. II, Pars I, p. 592.

bishops called for the abolition of the practice. The Episcopal Conference held at Fulda called for its limitation.²⁹ Six European bishops joined in this request.^{so}

C. The Bishop's Power To Dispense

The third area of concern was the bishop's power to dispense from the Church's common law. In general, the majority of bishops who addressed the issue deemed this power to be too restricted. Half of them observed that episcopal dispensing power needed to be extended; half complained that the need for recourse to the Apostolic See arose too frequently. The phrases, "broaden bishops' faculties" and "give greater authority to bishops," appeared innumerable times.

Forty-seven bishops specifically referred to the problem of the persistent need for recourse to the Holy See.³¹ Cardinal Doepfner observed that the

²⁹ Ibid., p. 769.

³⁰ Ibid., Pars I: Bishop Wehr of Trier, p. 671. Pars II: Bishops Huibers and Van Dodewaard, the Bishop and Coadjutor-Bishop of Haarlem, Holland, p. 491. Pars III: Bishops Gargitter of Bressanone, Italy, p. 126; Marchesani of Chiavari, Italy, p. 206; and Benedetti of Lodi, Italy, p. 345.

³¹ Ibid., Pars I: Belgian Bishops: Cardinal Van Roey, p. 111; and Bishop Suenens, p. 141. French Bishops: Archbishops Marques, p. 183; and Martin, p. 386; Bishops Debray, p. 321; Theas, p. 421; LeCouedic, p. 434; and Lemaire, p. 526. German Bishops: Cardinal Doepfner, p. 585; Cardinal Frings, p. 617; Bishops Schroeffner, p. 597; and Hengsbach, p. 599. Pars II: Dutch Bishops: Nierman, p. 487; Moors, p. 494; and Jansen, p. 501. Bishop Gunnarson of Iceland, p. 528. Yugoslavian Bishops: Garkovic and Oblak, p. 549. Polish Bishops: Falkowski, p. 652; and Swirski, p. 672. Pars III: Italian Bishops:

bishops' more proximate and intimate knowledge of their churches called for broader decentralization of the Church.³² Two bishops described the need for recourse as diminishing the episcopal office³³ and one observed that some cases gave the impression that the restriction on episcopal power was arbitrary.³⁴ Twenty-one bishops and the Episcopal Conference of Indonesia proposed that the faculties normally delegated by the quinquennial faculties should be extended to bishops *ipso iure*.^{ss}

With regard to classes of cases, many bishops held that diocesan

Palatucci, p. 162; Ursi, p. 426; and Santin, p. 695. Pars IV: Japanese Bishops: Archbishop Doi, pp. 85-86; Bishops Taguchi, p. 80; and Roidrigues, p. 97. Indian Cardinal Gracias, p. 113. Iranian Archbishop Cheikho, p. 353. Chinese Bishop Velasco, p. 499. Pars V: Upper Volta, Bishop Durrieu, p. 67. Pars VII: Uruguayan Bishops: Cardinal Barbieri, p. 542; Bishops: Cavalleros, p. 539; and Viola, p. 546. Venezuelan Bishop Ramirez Salaverria, p. 565. Australian Bishops: Cardinal Gilroy, p. 602; Archbishop Young, p. 592; and Bishop Lyons, p. 600.

³² *ibid.*, Pars I, p. 585.

³³ Bishop Theas of Tarbes and Lourdes, *ibid.*, p. 421, and Bishop Lemaire, Superior of the Parisian Mission Society, p. 526.

³⁴ Bishop Suenens, Auxiliary of Malines, *ibid.*, p. 141.

³⁵ *Ibid.*, Pars I: Belgian Bishops: Archbishop Forni, p. 114; Bishops De Smedt, p. 104; Charue, p. 114; and Suenens, p. 141. French Bishops: Cardinal Gerlier, p. 314; and Archbishop de Provencheres, p. 179. German Bishops: Cardinal Doepfner, p. 592; Bishops Spulbeck, p. 627, Wehr, p. 668; and Neuhausler, p. 705. Pars II: Swiss Bishop Hasler, p. 42. Dutch Bishops: Huibers, and Van Dodewaard, p. 490. Yugoslavian Bishop Banic, p. 551. Polish Bishop Baziak, p. 654. Pars VI: American Cardinal Cushing, p. 284. Pars VII: Colombian Bishop Zombrano Camader, p. 459; and Venezuelan Bishop Benitez Fonturvel, p. 553.

ordinaries should have the power to dispense from all matrimonial impediments.³⁶ Ten bishops proposed that the power to dissolve marriages in favorem fidei be extended to diocesan bishops.³⁷ Five proposed that bishops be given power to dispense from non-consummated marriages.³⁸ Bishop Walmar Wichrowski, Auxiliary Bishop of Santos, Brazil, expressed the opinion that the faculty to reduce a priest to the lay state should rest with the diocesan bishop.³⁹

In some cases, pragmatic reasons were offered for broadening the scope of episcopal dispensing power. A Yugoslavian Bishop Matthaeus Garkovik, the Apostolic Administrator of Zadar, pointed to the difficulties bishops from his part of the world have communicating with the Holy See because freedom to do so

³⁶ This was a general statement made with no distinction between impedient or diriment impediments. See, for example, I Acta Doc. II, Pars I: Bishop Louis of Perigeux, p. 366; Pars IV: Archbishop Doi of Tokyo, p. 85; Pars VII: Bishop Mazzarotto of Ponta Grassa, Brazil, p. 236; and Archbishop de Tarso Campos of Campinas, Brazil, p. 150.

³⁷ *ibid.*, Pars II: Bishops Moors of Roermond, Holland, p. 494; Nierman of Groningen, Holland, p. 487; Jansen of Rotterdam, p. 501. Pars IV: Archbishop Doi of Tokyo, p. 85. Pars VI: Bishops Leipzig of Baker, p. 273; Babcock of Grand Rapids, p. 332; McEntegart of Brooklyn, p. 287; Noa of Marquette, p. 374; Reed of Oklahoma City-Tulsa, p. 399; and Lane of Rockford, p. 419.

³⁸ *ibid.*, Pars I: Archbishop Marques of Albi, France, p. 184. Pars II: Bishops Nierman, p. 487; Moors, p. 494; and Jansen, p. 501. Pars VII: Bishop Martin of Noumea, New Caledonia, p. 627.

³⁹ *Ibid.*, Pars VII, p. 328.

was restricted by the Communist governments Bishop Loras Lane of Rockford, Illinois, observed that the sheer number of requests for dispensations forwarded each year to the Holy See justified giving greater competence to residential bishops.⁴¹ Bishop Petrus Moors of Roermund, Holland, argued that bishops would be better judges in most cases of the suitability of the request for a dispensation because they are closer to the situation.⁴²

Bishops who observed that the need for recourse to the Apostolic See arose too frequently focused their attention either on the principle of subsidiarity or on a call for decentralization of church government. Bishop Joseph Schoiswohl of Seckau, Austria, best expressed the need for subsidiarity:

Correspondingly Roman centralism, which now is too intense, ought to be modified. This decentralization is required because of the special nature and varying conditions of the regions. The principle of subsidiarity ought to be realized in the Church above any other society. Thus, a bishop should be permitted to exercise his own jurisdiction and administrative power most broadly, insofar as it is not harmful to the unity of the Church.⁴³

40 *ibid.*, Pars II, p. 549.

41 *Ibid.*, p. 419.

42 *Ibid.*, p. 496.

43 *ibid.*, Pars I, p. 67: "Correspondenter etiam 'centralismus' Romanus iam nimis intensivus molliri deberet. Indoles propria regionum earumque diversae condiciones hoc exigit. Principium subsidiaritatis in Ecclesia prae aliis societatibus realizandum est. Ideo episcopo suam iurisdictionem et potestatem administrativam latissime exercere liceat, quatenus Ecclesiae unitati non repugnant."

The strongest call for decentralization of ecclesiastical government came from bishops of Africa and Asia.⁴⁴ They were joined by five Europeans,⁴⁵ one American Bishop Wendell Nold of Galveston-Houston,⁴⁶ and one Australian Bishop Lancelot Goody of Bunbury.⁴⁷ Archbishop Peter Doi of Tokyo expressed the underlying reason for such decentralization, namely, the ordinary life of a diocese should be able to be maintained without recourse to the Holy See.⁴⁸

While some bishops did not explicitly refer to decentralization of church government, they proposed means other than recourse to the Holy See for meeting difficulties entailed in the restricted dispensing power of bishops. Four bishops proposed that greater power in matters of discipline be given to

⁴⁴ *ibid.*, Pars IV: Cardinal Gracias of Bombay, India, p. 113; Archbishop Cheikho of Sehna, Iran, p. 353. Pars V: Archbishop Oddi, Internuncio to Egypt, p. 394; Bishops Durrieu of Ouahigouya, Upper Volta, p. 62; Wittebois of Wamba, Congo, p. 197; Sartre of Tananarive, Madagascar, p. 297; Hoffmann of Djibouti, Somalia, p. 442; and Reiterer of Lydenberg-Witbank, Basutoland, South Africa, p. 546.

⁴⁵ *Ibid.*, Pars I: Cardinal Doepfner of Berlin, p. 585; Bishops Schroeffer of -Eiehstatt, p. 597; Nierman of Groningen, Holland, p. 487; Suhr of Copenhagen, p. 159; and Cobben of Helsinki, p. 163.

⁴⁶ *Ibid.*, Pars IV, p. 327.

⁴⁷ *Ibid.*, Pars VII, p. 585.

⁴⁸ *Ibid.*, Pars IV, p. 85.

episcopal conferences.⁴⁹ Bishop Goody encouraged expanding the powers of primates and metropolitans.[^] One bishop referred to the reservation of major causes to the Holy See, implying that in all other cases bishops have the power to dispense from the general law of the Church.⁵¹

D. Alienation of Church Property

The fourth canonical problem to which eleven bishops made specific reference was the requirement that bishops receive approval from the Holy See for some acts of alienation of church property.⁵² None of these bishops questioned in principle the oversight of the Holy See or called for the abrogation of canon 1532.1. They simply proposed that the faculties of local

⁴⁹ Ibid., Pars I: Bishops Girbeau of NTmes, p. 357; Marmottin of Reims, p. 379; and Menard of Rodez, p. 383. Pars III: Bishop Bolognini of Cremona, p. 241.

so Ibid., Pars VII, p. 585.

⁵¹ Archbishop Picchinenna of Cosenza, Italy, *ibid.*, Pars III, p. 5.

⁵² *ibid.*, Pais I: Bishops De Smedt of Bruges, p. 105; Charue of Namur, p. 115; Archbishop de Provencheres, of Aix, p. 179; Bishop Megnin of Angouleme, p. 194; Bishop Wehr of Trier, p. 671. Pars II: Bishop Gulpide Beope of Bilboa, p. 156; Archbishop Gonzi of Malta, p. 632; Bishop Dudziec, Auxiliary Bishop of Plock, p. 698. Pars III: Archbishop Rossini of Amalfi, p. 38; and Bishop Marchesani of Chiavari, p. 207. Pars VII: Archbishop Gomez Tamayo of Popayan, Colombia, p. 431; and Bishop Builes of Santa Rosa de Osos, Colombia, p. 435.

ordinaries be expanded.⁵³ Bishops Charles de Provencheres and Jean Megnin urged that the law be changed so that permission would be required only if the property exceeded 30,000 silver francs.⁵⁴ Bishops Emile de Smedt and Andre Charue asked that recourse to the Holy See be required only when the property was "precious," as understood in the Code of Canon Law.⁵⁵

The observations made in the bishops' vota to the Antepreparatory Commission provide insights into how they perceived episcopal power. Because some bishops did not respond to the requests for suggestions, the representation of bishops was not universal numerically, but it was universal geographically. All five continents were represented. Vota were submitted by cardinals and by auxiliary bishops as well as by residential archbishops and bishops. The fact that bishops from every section of the world and with different levels of responsibility focused on the same problems speaks to the importance of the issues.

A large number of bishops perceived themselves as without authority to act before obtaining the assent of the Holy See. The innumerable times

⁵³ *ibid.*, Pars I: Bishops de Smedt of Bruges, Belgium, p. 105; Charue of Namur, Belgium, p. 115; de Provencheres of Aix, France, p. 179; Megnin of Angouleme, France, p. 194; Wehr of Trier, p. 671. Pars II: Bishops Gulpide Boepe of Bilboa, Spain, p. 156; Archbishop Gonzi of Malta and his auxiliary, Bishop Galea, p. 632; and Dudziec, the auxiliary bishop of Plock, Poland, p. 691. Pars III: Archbishop Rossini of Amalfi, p. 38; and Bishop Marchesani of Chiavari, p. 207. Pars VII: Archbishop Gomez Tamayo of Popayan, Colombia, p. 431; and Bishop Builes of Santa Rosa de Osos, Colombia, p. 435.

⁵⁴ *ibid.*, Pars I, p. 179 and 194.

⁵⁵ *Ibid.*, p. 105 and 115.

bishops called for the expansion of episcopal power witnesses to this conviction. They perceived their freedom to govern the churches committed to them to be impinged upon by the canonical institutes of exemption of religious and reservation of ecclesiastical benefices. These restrictions diminished the bishops' pastoral effectiveness.

Bishops manifested a fundamental respect for the right of the papacy, by reason of its divine institution, to exercise the power needed to govern the universal Church. Their observations, however, witnessed to a belief that specific rights belong also to bishops because their office succeeds to the place of the apostolic college and thus can also claim divine institution. Therefore, the vindication of these rights was deemed important.

At this stage of the council the majority of bishops appeared to be pragmatic in their attempt to deal with papal-episcopal relations. They approached canonical problems more from the vantage point of practicality than principle. More often than not they noted that episcopal power was too restricted, without considering reasons for the appropriateness of the restrictions. Often they were prepared more to make adjustments than to challenge principles. They proposed as acceptable solutions the broadening of episcopal faculties, adjusting the amounts for which permission to alienate property was necessary and limiting the practice of reservation of benefices.

Certainly, the bishops are not to be faulted for their approach. First of all, except in rare instances, they were writing as individuals. Also the context within which their vota were presented was one of proposing topics for

discussion at the council, not offering solutions to problems. Of particular significance is Archbishop Domenico Picchinenna's reference to a principle of reserving major causes to the Holy See, implying that in all other cases bishops have the authority to act. The distinction between bishops acting by virtue of their own authority, except in cases reserved to the Holy See, and bishops receiving from the Holy See broader faculties to dispense is important. In the former case they act by virtue of their own power; in the latter they act by virtue of delegated power.

Section III: Episcopal Power in the Schemata of the Preparatory Commission

Pope John entrusted the immediate preparation for the council to a commission of patriarchs, cardinals, archbishops, bishops, major superiors of religious institutes and experts in theology and canon law and appointed Archbishop Pericle Felici as the General Secretary of this Central Commission.⁶⁶ The Central Commission fulfilled its function through commissions, each responsible for a specified body of materials, such as the Theological Commission, the Commission on Bishops and on Diocesan Government. Between June 12, 1961 and June 20, 1962 the Central Commission met in seven sessions to consider and vote on the schemata prepared by the various commissions.

⁶⁶ The Commission received its mandate on November 14, 1960. *Acta et documenta concilio oecumenico Vaticano II apparando. Series II (Praeparatoria)*. 3 vols. (Rome: Typis Polyglottis Vaticanis, 1964-1969), I:32 [henceforth II Acta Doc.].

When the Central Commission met for the first time, seven procedural questions had to be resolved. The first dealt with an issue impinging on this study, namely, to whom, besides those summoned to the council by law, should a deliberative vote be extended and by what right?⁵⁷ This question led to a discussion of the right of titular bishops to a deliberative vote. The discussion focused on canon 223.2, which provided that a deliberative vote be given to titular bishops called to a council, unless the decree of convocation expressly provided otherwise. Vermeersch-Creusen explain why only residential bishops have a strict right to participate in an ecumenical council and render a deliberative vote: It constitutes an act of jurisdiction.⁵⁸

Several members of the Central Commission referred to the practice of the First Vatican Council where titular bishops were afforded the right to a deliberative vote. They argued that the 1917 Code of Canon Law had faithfully received this discipline.[^] Practical reasons were proposed for following this course of action. It was observed that titular bishops, although they lack the power of jurisdiction, possess knowledge and experience which they could share with the council fathers and often they have responsibilities

57 || Acta Doc. II, Pars I, pp. 21-22.

68 Epjlome 1:293, n. 343.

⁵⁹ Cf. Archbishop Staffa, II Acta Doc. II, Pars I, p. 42; Cardinal Jullien, p. 196; the Very Rev. Brennan, Dean of the Sacred Roman Rota, p. 69; and the Very Rev. Gusti, Prefect of the Vatican Secret Archives, p. 96.

corresponding to those of residential bishops.⁶⁰ Bishop Paul Phillipe, Secretary to the Congregation for Religious, observed that assessors and secretaries of the Roman Congregations, nuncios, internuncios and apostolic delegates probably would be invited to the council and a deliberative vote given to them, even if they lacked the episcopal character. If participation in the council and the right to a deliberative vote were to be extended to them because of their positions, then it was only fitting that titular bishops be afforded the same rights by virtue of their episcopal character.⁶¹

There was not universal agreement on the matter. Two Prelate Auditors Emeriti of the Roman Rota, Arthur Wynen and Albert Canestri, opposed providing titular bishops with a deliberative vote. Wynen argued that participation in a council entailed an exercise of jurisdiction. Only if a titular bishop had been granted jurisdiction by the residential bishop by reason of an appointment as vicar general, or if he were a vicar apostolic in mission lands and therefore enjoyed a grant of jurisdiction in virtue of an office held, should he be summoned to the council with a deliberative vote.⁶² Canestri proposed that only residential bishops were the proper judges of faith and true superiors of the

60 Cf. Archbishop DelPacqua, Under-Secretary of State, *ibid.*, p. 50, and Archbishop Samore, Secretary for External Affairs, *ibid.*, p. 40.

61 *Ibid.*, p. 57.

62 *Ibid.*, p. 83.

ordinary faithful.⁶³ The Abbot of Saint Jerome (Rome), Pietro Salmon, asserted that each church ought to be represented only by its unique representative, the residential bishop.⁶⁴

The final vote on the issue was: *placet*, ten; *placet iuxta modum*, six. Those who voted *placet iuxta modum* added the comment that a deliberative vote should be extended only to titular bishops who exercised jurisdiction by reason of an office, such as an apostolic administrator, nuncio, internuncio, apostolic delegate or vicar general.⁶⁵

Cardinal Andre Jullien, the relator for the Central Commission, offered three reasons why in the end a deliberative vote was given to titular bishops: a tradition had been established at the First Vatican Council; it had passed into the Code of Canon Law, which members and advisors of the Central Commission did not want to change; finally, the Commission interpreted the words of Pope John that the council was to be a council of bishops to mean that all who possessed the episcopal character were to be included.⁶⁶

⁶³ *ibid.*, p. 90.

⁶⁴ (*ibid.*, p. 101.

⁶⁵ *Ibid.*, p. 104. In the Normae for the Commission, *placet iuxta modum* was equivalent to an affirmative vote. *II Acta Doc.* I, p. 110, n. 8.

⁶⁶ *II Acta Doc.* II, Pars I, p. 169. Cardinal Jullien, referring to the *Annuario pontificio*. 1961. gave these statistics: In accord with the decision of the Central Commission, a deliberative vote would be given to 84 cardinals, 1,892 patriarchs, primates, archbishops and residential bishops, 907 titular bishops, 71 abbots or prelates nullius. two abbot primates, 44 abbots of monastic

The debate highlights an important issue in the Church, namely, the place of titular bishops. What does it mean to be a bishop without presiding over a particular church? Is there a relationship between the episcopal character and the habitual exercise of the power of jurisdiction? The resolution of the question, however, gave priority to the episcopal character over the canonical mission of an individual bishop.

The various commissions prepared twelve schemata which directly or indirectly treated the episcopate: "The Dogmatic Constitution on the Church"; "On the Care of Souls"; "On the Sacrament of Orders"; "On the Oriental Patriarchs"; "On Coadjutor and Auxiliary Bishops and on the Resignation of Bishops from the Pastoral Office"; "On the Relations between Bishops and the Sacred Congregations of the Roman Curia"; "On the Relations between Bishops and Pastors"; "On the Assembly or Conference of Bishops"; "On the Relations between Bishops and Religious, Especially with Regard to the Exercise of the Apostolate"; "On the Faculties of Bishops"; "On the Division of Dioceses"; and "On Ecclesiastical Offices and Benefices and on the Administration of Ecclesiastical Goods."⁶⁷

congregations, 76 supreme moderators of clerical exempt religious and 93 moderators of other religious institutes, a total of 3,169 voting members. A consultative vote was given to theological and canonical experts.

⁶⁷ *De officiis et beneficiis ecclesiasticis deque personarum ecclesiasticarum administratione*. II Acta Doc. II, Pars I, pp. 685-689; *De sacramento ordinis*. *ibid.*, Pars II, pp. 138-150; *De patriarchis orientalibus*. *ibid.*, pp. 197-200; *De dioeceseon partitione*, *ibid.*, pp. 496-498; *De episcoporum coetu seu conferentia*. *ibid.*, pp. 518-522; *De relationibus inter episcopos et SS. curiae*

These documents represent another step in the evolution of the conciliar teaching on the episcopate. Hence, this section will review the discussions of them which took place during the seven sessions of the Central Commission. This review will focus on the following issues: How is the divine institution of the papacy and the episcopate treated in the schemata? How do they describe the specific function of bishops? Do they attempt to resolve the debate on the source of episcopal jurisdiction? What is the juridic status of titular bishops? How do the schemata respond to the canonical concerns raised in the bishops' vota to the Antepreparatory Commission, that is, the bishop's power to dispense from the common law, the reservation of ecclesiastical benefices, the alienation of Church property and the exemption of religious?

A. The Divine Institution of the Papacy and of the Episcopate

During the fifth session the Theological Commission presented to the Central Commission a draft of "The Dogmatic Constitution on the Church De ecclesia Christi." The schema was relatively silent about the Roman Pontiff. The fourth chapter reflected briefly on papal primacy, focusing more on the

Romanae congregationes. *ibid.*, pp. 541-546; De relationibus inter episcopos et **pastores**, *ibid.*, pp. 577-581; **Pe episcoporum coadiutoribus et auxiliariis** deque episcoporum cessatione a munere pastorali. *ibid.*, Pars III, pp. 643-646; De animamm CMra in genere, *ibid.*, pp. 676-695 and De animarum cura in particulari. pp. 724-738; "De Episcopatu ut supremo gradu sacramentali ordinis et de sacerdotio," De Ecclesia Christi. *ibid.*, pp. 1038-1047; De facultatibus episcoporum. *ibid.*, pp. 1280-1282; and De relationibus inter episcopos et religiosos praesertim quoad apostolatus opera exercenda. *ibid.*, Pars IV, pp. 220-231.

jurisdiction of the Roman Pontiff than on the source of his authority.⁶⁸ The relatio of the president of the Theological Commission, Cardinal Ottaviani, offered an explanation for the lack of a more extensive treatment of the papacy, namely, the position taken by the commission that it was continuing and perfecting the work of the First Vatican Council which had offered an extensive treatment of the papacy. A detailed treatment of the source of primatial power was deemed superfluous.⁶⁹

The schema explicitly treated the divine institution of the episcopate and its implications. Christ wills the teaching and pastoral office of the successors of the apostles to perdure in the Church until the end of time. The Holy Spirit places bishops over the Church of God, each one as a vicar and legate of Christ. They preside over the churches committed to them with proper, ordinary and immediate episcopal power under the authority of the Roman Pontiff. Therefore, bishops are able to direct their churches not only by counsel, persuasion and example, but also by possessing true power, properly speaking, which touches not only the internal or sacramental forum, but also the external or public forum. They have the power to bind consciences not just in matters pertaining to teaching and morals or which looked to worship and

⁶⁸1| Acta Doc. II. Pars III, p. 1040, n. 2.

⁶⁹ Ibid., p. 1047.

sanctification, but also in matters pertaining to external ecclesiastical discipline and administration.⁷⁰

Other schemata also taught the divine institution of the papacy and episcopate. The schema, "On the Relation between Bishops and the Sacred Congregations of the Roman Curia," began with the assertion that, in addition to the primacy of the Roman Pontiff, the office of bishop has Christ himself as its immediate author.⁷¹ The schema, "On the Care of Souls," described the Roman Pontiff as having responsibility for the care of souls because the divinely instituted primacy of office confers on him ordinary, immediate and episcopal power over all churches and is the foundation for his pastoral solicitude for them.⁷² It then observed that bishops preside over their diocesan churches, by

⁷⁰ *ibid.*, p. 1039: "1. [Episcoporum munus et dignitas.] Quos ipse Christus, qui 'non venit ministrari, sed ministrare' (Mt. 20, 28), voluit usque ad finem temporum successores Apostolorum in munere doctorum et pastorum ad aedificationem et in ministerium Ecclesiae suae, eisdem Spiritus Sanctus posuit Episcopos regere Ecclesiam Dei (cf. Acts 20, 28), qui Episcopi singuli tamquam vicarii et legati Christi singulas sibi commissas Ecclesias propria, ordinaria et immediata potestate episcopali sub auctoritate Romani Pontificis regunt.... Episcopi non solum dirigere possunt et debent per consilia, suasiones, exempla, sed etiam veram et proprie dictam potestatem habent, quae non tantum est fori interni et sacramentalis, sed etiam externi et publici; habent enim potestatem iubendi per leges conscientiam obligantes, et quidem non in iis dumtaxat quae ad doctrinam et mores, ad cultum et sanctificationem spectant, sed in iis quoque quae ad disciplinam et administrationem ecclesiasticam externam pertinent...."

⁷¹ *Ibid.*, Pars II, p. 541.

⁷² *Ibid.*, Pars III, p. 680.

divine law, as successors of the apostles and exercise a threefold ministry, namely, a ministry of grace, of worship and of service on their behalf.⁷³

The Central Commission did not discuss the divine institution of the papacy and episcopate, for it was not a matter of controversy. Its discussion of *De ecclesia Christi* concentrated on the source of episcopal jurisdiction and on the relation of bishops to one another. But, in the discussion of the schema, "On the Relations between Bishops and the Sacred Congregations of the Roman Curia," Cardinal Marella, the relator for the Commission on Bishops and Diocesan Government which prepared the schema, noted the sensitivity of the issue. The doctrine of the divine institution of the episcopacy was the basis for holding that bishops were ordinary and immediate pastors of the churches over which they presided. This doctrine, however, always stood in relation to the primacy of the Roman Pontiff, to whom bishops owed obedience because he was the visible and necessary center of the unity of faith, worship and government of the Church. Cardinal Marella recalled that the bishops, in their vota, referred to the problems they had dealing with the congregations of the Roman Curia. Though the subject was the Roman Curia, the matter still directly touched the supreme authority of the Church because it was through the curia that the pope expedited the business of the Church. Yet the faithful must be

⁷³ Ibid., p. 681.

able to see clearly that their bishops were true pastors of the diocesan churches.⁷⁴

B. The Specific Function of the Episcopate

Three schemata prepared by the Commission on Bishops and on Diocesan Government, "On the Care of Souls," "On the Division of Dioceses" and "On the Relations between Bishops and Pastors," described in detail the bishop's pastoral role in the Church. The schema, "On the Care of Souls," consisted of two parts: "On the Care of Souls in General" and "On the Episcopal Exercise of the Cura animarum." The latter part listed the various ways bishops fulfilled the threefold functions of teaching, sanctifying and governing. They exercised their teaching function by preaching, by ordering the preaching of the Gospel throughout the diocese, by teaching Catholic doctrine through pastoral letters, declarations and admonitions, by establishing catechetical schools, by appointing a competent faculty to their own seminary and by working to establish a Catholic University in the nation.⁷⁵ They fulfilled their sanctifying function by celebrating Mass for and with the people, by promoting active and intelligent participation in the liturgy, by fostering Eucharistic piety, frequent confessions and a general reverence for holy things. The schema challenged bishops to supervise the correct observance of liturgical laws, to establish

⁷⁴ Ibid., Pars II, pp. 546-547.

⁷⁵ Ibid., Pars III, pp. 685-686.

diocesan commissions on music and liturgy and to work with the episcopal conference to produce a national book of prayers and proper Masses.⁷⁶

The treatment of the bishop's governing power moved beyond a mere listing of activities. Bishops, as fathers, pastors and servants of the churches committed to their care, were exhorted to know their priests well and to be concerned about their spiritual welfare as a means of effectively presiding over their dioceses. They were encouraged to become acquainted with their people. Residential bishops were urged to delegate administrative tasks to their auxiliaries or to their vicars general in order to free themselves to work with their priests and people.⁷⁷

The final article of "On the Episcopal Exercise of the Cura animarum" referred to episcopal responsibility toward the universal Church. Bishops were called to respond to the needs of the universal Church by collaborating with the Holy See in relieving the sufferings of the persecuted, by collaborating with their fellow bishops in evangelization through supplying other jurisdictions with priests, religious and dedicated laypersons-even temporarily--in schools, Catholic Action and the apostolate. Finally, bishops were urged to establish and cooperate with national episcopal conferences.⁷⁸

⁷⁶ Ibid., pp. 686-687.

⁷⁷ Ibid., pp. 688-693.

⁷⁸ Ibid., pp 393-694.

The members of the Central Commission found the schema to be doctrinally sound in its treatment of episcopal authority and praised the Commission on Bishops and Diocesan Government for it. Except for minor revisions, which often only clarified the text, it received universal approval.

The schema, "On the Division of Dioceses," focused on norms governing the division, reorganization, erection and suppression of dioceses.⁷⁹ Cardinal Marella, the President of the Commission on Bishops and Diocesan Government, described the schema as responding to the need, verbalized by many bishops in their vota to the Antepreparatory Commission, to have the council grapple with the question of the appropriate size for a diocese. He described size as having a direct impact on ministry. If it is too vast geographically or demographically, the bishop is not able to give personal care to it; if it is too small, he is unable to meet the needs of the priests and people and to sustain diocesan structures and offices needed for proper diocesan government.^{so} The discussion of the schema by the Central Commission centered on the pastoral issues it raised. The members of the commission affirmed the need of a bishop to know his flock well and they deemed the norms established by the schema adequate for meeting pastoral needs.

The schema, "On the Relations between Bishops and Pastors," was concerned primarily with the obligations of pastors toward their bishops which

⁷⁹ Ibid., Pars II, pp. 496-497, nn. 12-13.

^{so} Ibid., pp. 499-501.

flowed from two sources: the bishop's relation to the diocese and his relation to them. The schema described the bishop's relation to the diocese:

Since the bishop is by divine law the ordinary and immediate pastor in his diocese (can. 334, CIC), and has the right and duty of governing the diocese in spiritual and in temporal matters with legislative, judicial and coercive power, exercised according to the norms of the sacred canons, each pastor is bound to render obedience, reverence and fidelity to his bishop and to carry out promptly and sincerely his mandates, decrees and counsels.⁸¹

A commentary on the text offered by Cardinal Marella described the bishop's relation to pastors. He observed that bishops have a relation of paternity or filiation with pastors because they bring them into ministry with them through sacred ordination or incardination. Bishops are their pastors for they are members of the flock committed to their care. They are the supreme moderators of the churches' *cura animarum* and, by divine law, they are the teachers and rectors of their dioceses. Because of these relationships, pastors owe them love, respect and obedience and are bound to pray for them.⁸² The Central Commission's discussion of the schema did not focus on the bishop/pastor relationship. Rather, it concentrated on such canonical issues as the stability of pastors and their role in the parish.

⁸¹ Ibid., p. 578,1, n. 2, "Cum Episcopus iure divino sit ordinarius et immediatus pastor in dioecesi sua (can. 334 CIC), habeatque ius et officium gubernandi dioecesem turn in spiritualibus turn in temporalibus cum potestate legislativa, iudiciaria et coactiva ad normam sacrorum canonum exercenda, unusquisque parochus tenetur oboedientiam, reverentiam et fidelitatem Episcopo praestare et eius mandatis, decretis et consiliis prompte et sincere parere."

⁸² Ibid., p. 581.

C. The Source of Episcopal Jurisdiction

During the preparatory stage of the council a number of attempts were made to define the source of episcopal jurisdiction. The schemata generally tried to resolve the traditional debate in favor of the school which held the pope to be its source.

In the third session the Central Commission considered the schema prepared by the Commission on the Oriental Churches, "On the Oriental Patriarchs." The introduction reasserted the Church's teaching that the Roman Pontiff received directly and immediately from Christ the fullness of power to govern the faithful throughout the world. It then stated that bishops as successors of the apostles possessed by divine right full power of governance of the faithful in the eparchies or dioceses committed to them, but this power was possessed "mediately from the Roman Pontiff."⁸³

This description of episcopal jurisdiction was immediately seen by some members of the Central Commission as an attempt to resolve by conciliar teaching the longstanding debate on the source of this power. Cardinal Frings referred to it as a "new formula." He wondered if the expression, "mediately

⁸³ *ibid.*, p. 197, "Romanus Pontifex, iure divino, et quidem directe et immediate a Christo Domino, Divino Ecclesiae Conditore, plenitudinem recipit potestatis regendi fideles totius orbis terrarum ad finem assequendum, qui Ecclesiae in terris praestitutus...."

"Episcopi quoque, Apostolorum successores, ex iure divino, mediante tamen Romano Pontifice, plena pollent potestate in sua quisque eparchia gubernandi fideles in iis quae ad sanctitatem et salutem aeternam assequendam pertinent."

from the Roman Pontiff," was to be taken in a dogmatic sense, that is, as a fact always and everywhere verified, or in a juridical sense, that is, as a position able to be changed with the passage of time. He totally rejected the former interpretation, but was willing to concede the acceptability of the latter.⁸⁴

The issue was raised again in the discussion of the schema, "On the Relations between Bishops and the Sacred Congregations of the Roman Curia," which referred to the Roman Pontiff as the proximate cause of episcopal jurisdiction. The schema asserted the pope's right, by reason of papal primacy, to amplify or restrict episcopal jurisdiction and to reserve major causes to himself because he was its proximate cause.⁸⁵

Cardinal Bea immediately asked for a clarification of the words, "proximate cause." Did they mean that the pope was the source of episcopal jurisdiction? If so, how did the Commission on Bishops and Diocesan Government reach this conclusion?⁸⁶

Chapter four of the schema of "The dogmatic constitution on the Church *De ecclesia Christi*" explicitly taught that episcopal jurisdiction did not come

⁸⁴ *ibid.*, p. 204, "Expressio 'mediante tamen Romano Pontifice' est formula nova; quaeritur an habeat sensum dogmaticum, proinde semper et ubique sit fuerit verificata, an sensum iuridicum, ideoque decursu temporum variabilem. In primo sensu sumptam negarem, in secundo concederem." Four members of the Central Commission voted against the schema, referring to the arguments of Cardinal Frings as their reason for doing so. Others voted *placet iuxta modum*, but the *modi* concerned the schema's treatment of the patriarchs, which they thought was inadequate. *Ibid.*, pp. 218-229.

⁸⁵ *Ibid.*, pp. 541-542.

⁸⁶ *ibid.*, p. 563.

from the sacrament of holy orders, but came directly or indirectly from the canonical mission each bishop received from the successor of blessed Peter. Because episcopal jurisdiction was subordinate to the supreme power of the Roman Pontiff, he was able to amplify or restrict its exercise even by the exemption of subjects. "The Roman Pontiff has primacy over other ordinary powers and immediate and episcopal power of jurisdiction over each and every pastor and member of the faithful."⁸⁷

Cardinal Ottaviani clarified the intent of the schema. The Theological Commission intended to exclude the opinion that bishops received power over the flocks committed to their care in the same way the pope received power over the universal Church, and papal designation was merely a condition sine qua non for God to give the designated bishop power of jurisdiction.^{ss}

The Melkite Patriarch Maximus Saigh reacted strongly against the schema. He referred to the theory that the pope was the final source of all power in the Church as a "new teaching" and offered five arguments against it:

87 *ibid.*, Pars III, p. 1040, n. 2, "[Primatus et Episcopi]. Episcopi iurisdictionem suam actualem non ipsa ordinatione sacra, sed directe vel indirecte, missione iuridica, et quidem non ab Ecclesia, ut est congregatio fidelium, vel a fidelibus, etiam quam plurimus congregatis, neque a potestate civili, sed a regimine Ecclesiae, et quidem ab ipso successore Petri accipiunt. . Subsunt insuper ita supremæ potestati Romani Pontificis, ut ipse actualem eorum iurisdictionem ordinariam ampliare vel restringere possit, etiam subditorum exemptione: habet enim Romanus Pontifex super alias ordinarias potestates principatum et potestatem iurisdictionis immediatam et episcopalem in omnes et singulos pastores et fideles."

88 *ibid.*, p. 1048.

1. The Holy Scriptures affirm of Peter a primacy of power over the other apostles and over the whole Church. But, the Holy Scriptures never affirm that bishops are only constituted in the Church by the direct or indirect intervention of Peter and his successors, the bishops of Rome. One sees explicitly the other apostles constituting bishops without any reference to Peter. Likewise this is true of their disciples such as Titus or Timothy

2. When one looks to tradition ... one can even say that the majority of the Fathers, especially in the East, are of the contrary opinion. While recognizing a power of primacy in the Roman Pontiff they do not concede he is the source of all power of jurisdiction in the Church to the extent that no bishop could be constituted except by him

3. The practice of the Church ... shows that in the West bishops were not always nominated and invested directly or indirectly by the Roman Pontiffs.... But the East has never recognized that only the popes of Rome could directly or indirectly nominate bishops

4. The tradition of the East is the practice of electing bishops

5. The supporters of the opinion we are opposing resort to another deduction. They pretend that their opinion is a logical conclusion from the dogma of Roman primacy.... To this we respond: The First Vatican Council's definition never included that the pope was the ultimate, unique source of all power in the Church.⁸⁹

⁸⁹ Ibid., p. 1060, "Non seulement ce chapitre est de caractere dogmatique, mais il avance une theorie que, sauf erreur, nous considerons comme etant un vrai dogme nouveau: le dogme du Pontife Romain source derniere de tout pouvoir dans l'Eglise.

"1. L'Ecriture Sainte affirme un pouvoir de primaute en faveur de Pierre, sur le reste des Apotres et sur toute l'Eglise. Mais l'Ecriture n'affirme nullement qu'aucun Eveque ne peut etre constitue" dans l'Eglise que par l'intervention, directe ou indirecte, de Pierre et des successeurs, les Eveques de Rome. On voit meme explicitement les autres Apotres constituer des Eveques sans en referer nullement a Pierre. De meme leurs disciples, comme Titus ou Timothee.

"2. Quant a la Tradition ... on peut meme dire que, dans leur majorite les Peres, surtout d'Orient, sont d'un avis contraire. Tout en reconnaissant un pouvoir de primaute au Pontife Romain, iis n'admettent pas qu'il soit la source de tout pouvoir de juridiction dans l'Eglise, a tei point qu'aucun Eveque ne puisse etre constituS que par lui.

"3. La pratique de l'Eglise ... en Occident, les Eveques ne furent pas

The three schemata, "On the Oriental Patriarchs," "On the Relations between Bishops and the Sacred Congregations of the Roman Curia" and "The Dogmatic Constitution on the Church," attempted to resolve the debate on the source of episcopal jurisdiction in favor of the school which held the pope was its source. The pope was seen as the font of this power who thus had the right to amplify or restrict its exercise. They did not advert to the other position, namely, that the sacrament of orders is the font of episcopal jurisdiction. In the third session the Commission on the Discipline of the Sacraments presented for discussion the schema, "On the Sacrament of Orders." The preamble taught that Christ willed to establish a sacred hierarchy in the Church which would have power conferred by divine grace through the imposition of hands for the administration of the sacraments and the care of souls.⁹⁰ Even though the schema referred to the sacrament of orders as conferring power for the care of souls (the *cura animarum*), it cannot be concluded that the authors of the

toujours nommés et investis, directement ou indirectement, par les Pontifes Romains.... Mais, l'Orient n'a jamais soupçonné que seuls les Papes de Rome pouvaient, directement ou indirectement, nommer les Evêques.

"4. La tradition d'Orient est choisir par election les Evêques.

"5. Les partisans de l'opinion que nous combattons recourent à une autre deduction, ils prétendent que leur opinion est une conclusion logique du dogme de la primauté romaine.... À cela répondons: La définition du premier Concile du Vatican n'inclut nullement que le Pape est source dernière, unique de tout pouvoir dans l'Eglise."

⁹⁰ *ibid.*, Pars II, p. 138, "Christus Dominus hierarchiam in Ecclesia constituere voluit, quae Episcopis, presbyteris et ministris constaret. Officiis, enim, in sacrorum administrationem et animarum cura fungi illos oportebat, qui potestatem haberent gratia divina concessa per manuum impositionem."

preamble intended to teach that holy orders was the source of jurisdiction.

References consistently were to the hierarchy of orders. The schema quoted the apostolic constitution of Pope Pius XII *Sacramentorum ordinis* which described the sacrament of orders as the source of spiritual power and of grace to fulfill rightly an ecclesiastical office.⁹¹ Terms such as "spiritual power" and "grace" are rarely applicable to empowerment to act in the external forum.

The implications of this reference to the *cura animarum* were not discussed by the Central Commission. Instead, its treatment of the schema focused on the chapter which dealt with the restoration of the permanent diaconate.

D. The Juridic Status of Titular Bishops

The discussion of the juridic status of titular bishops gets to the heart of the matter: Does being a bishop mean presiding over a particular church? Can the exercise of governing power be separated from the episcopal character?

The schema of "The constitution on the Church *De ecclesia Christi*" stated that the episcopacy, which certainly is called the summit of sacred ministry in the writings of the holy fathers and the usage of the rites of the Church, pertained, without doubt, to the sacrament of orders and is the

⁹¹ Ibid.

preeminent grade of the priesthood.⁹² The president of the Theological Commission which prepared the schema observed that the evidence of the episcopacy as a sacrament is well established and thus there was no problem incorporating it into the constitution.[^]

Cardinal Richaud was the only member of the Central Commission to comment on titular bishops in light of this teaching. He noted, first of all, that they share in the fullness of the priesthood which the power of orders confers on the episcopacy. He offered two reasons for proposing that episcopal consecration was ordered in every case, at least radically, to the power of jurisdiction: it was evident from the rite of consecration itself where even titular bishops were enthroned; and titular bishops were to be summoned to the Second Vatican Council. The cardinal praised the schema because it recognized the value of episcopal consecration as a true sacrament and it accurately showed the sacerdotal character of the bishop to be superior to that of the presbyter.⁹⁴

⁹² Ibid., Pars III, p. 1038, n. 1, "Episcopatus ergo, procul dubio, ad sacramentum ordinis pertinet, atque est praecellenti gradu sacerdotium, quod nimirum et voce sanctorum Patrum et rituali Ecclesiae consuetudine summum sacerdotium sacri ministerii summa nuncupatur."

⁹³ Ibid., p. 1047.

⁹⁴ Ibid., p. 1051, "Causa enim Episcoporum Titularium posset singulariter lumen proicere quod plenitudinem sacerdotii quam affert potestas ordinis in episcopatu. Nonne pariter ordinis collata in omni consecratione episcopali, sit reapse intenta, saltem radicaliter, ad potestatem aliquam iurisdictionis, ut patet in ipso ritu consecrationis, ubi Titulares pariter in sede inthronisunt. Nonne

The juridic status of titular bishops was also discussed in the sixth session when the Central Commission considered the schema, "On Coadjutor and Auxiliary Bishops and on the Resignation of Bishops from the Pastoral Office," which proposed that coadjutor bishops receive ordinary power with jurisdiction in spiritual and temporal matters throughout the diocese.⁹⁵ While auxiliary bishops were called to exercise their office dependently, doing nothing of great importance without first consulting and gaining the approval of the residential bishop, the schema urged that they be given by law the powers and faculties of vicars general. Additionally, the Holy See reserved to itself the right to confer even broader faculties on individual auxiliary bishops.⁹⁶ Cardinal Marella explained that it was the unanimous opinion of the Commission on Bishops and Diocesan Government that the juridic status of auxiliary bishops be amplified so that the episcopal character they possessed be given proper recognition.⁹⁷

The reaction of the Central Commission was not unanimous. A number of residential bishops objected to the provision that by law auxiliary bishops were to be conceded the faculties enjoyed by vicars general. The ensuing

Titulares ipsi omnes convocentur ad Concilium Vaticanum II? Nonne istud schema optime recognoscit valorem consecrationis episcopalis ut verum sacramentum et praecise ostendit characterem sacerdotalem episcopi esse superiorem per respectum ad characterem presbyteri."

⁹⁵ Ibid., p. 644.

⁹⁶ Ibid.

⁹⁷ Ibid., p. 648.

discussion focused on such practical matters as the protection of the rights of diocesan ordinaries to grant faculties according to their own discretion⁹⁸ and the potential for disunity in the government of dioceses which would follow upon the presence of a number of auxiliaries, each having the faculties of a vicar general.⁹⁹ Neither the discussion nor the schema sought to clarify the meaning of the conferral of the episcopal character on auxiliary bishops.

E. The Decentralization of Authority

Two schemata were presented to the Central Commission as a response to the call for decentralization of authority made by many bishops in their vota to the Antepreparatory Commission: "On the Relations between Bishops and the Sacred Congregations of the Roman Curia," prepared by the Commission on Bishops and Diocesan Government; and "On the Faculties of Bishops," prepared by the Commission on the Oriental Churches. In preparation for the discussion of the first schema Cardinal Marella noted that, whereas formerly it was necessary to reserve many matters to the Holy See, the number of reserved cases could now be diminished. While no reason was offered to explain the former state of affairs, the principal reason offered to justify the diminution of such cases was a theological one, namely, bishops ought to be

⁹⁸ Cf., for example, the observations of Cardinal Spellman, *ibid.*, p. 65, and Cardinal Siri, *ibid.*, p. 658.

⁹⁹ Cf. Cardinal Doepfner's observations, *ibid.*, p. 661.

seen as true shepherds of their dioceses and as true members of the episcopal college to which they belong.¹ oo

In light of this theological reason the schema proposed the following complex, fundamental principle:

1. Since bishops are the successors of the apostles by divine law and preside over particular Churches, which they rule with ordinary power under the authority of the Roman Pontiff (can. 329 CIC) who is, by the will of Christ, the visible and necessary center of unity of faith, worship and government of the Catholic Church; and
2. since bishops are the ordinary and immediate pastors of the dioceses committed to them (can. 334, n. 1, CIC). in which therefore they have the right and duty to govern the diocese in spiritual and temporal matters with legislative, judicial and coercive power exercised according to the norms of the sacred canons (can. 335, n. 1, CIC). it is fitting that they have by law the faculties required for the more appropriate and expeditious exercise of ordinary power under the universal primacy of jurisdiction of the Roman Pontiff;
3. therefore, broader faculties should be extended to bishops, with due regard for the rights and privileges of the Oriental Churches.¹⁰¹

100 *ibid.*, Pars II, p. 542.

101 *Ibid.*, p. 533, n. 1, "Principium fundamentale:

"1. Cum episcopi iure divino sint Apostolorum Successores atque peculiaribus Ecclesiis praeficiantur, quas cum potestate ordinaria regunt sub auctoritate Romani Pontificis (can. 329 C.I.C), qui ex positiva voluntate Christi est centrum visibile et necessarium unitatis fidei, cultus et regiminis Ecclesiae Catholicae;

"2. Cumque Episcopi sint ordinarii et immediati pastores in dioecesibus sibi commissis (can. 334, n. 1 C.I.C), quibus proinde ius et officium est gubernandi dioecesim turn in spiritualibus turn in temporalibus cum potestate legislativa, iudiciaria et coactiva ad normam sacrorum canonum exercenda (can. 335, n. 1, C.I.C), convenit ut ipso iure habeant facultates quas aptius et expeditius exercitium ordinariae potestatis, sub primatu iurisdictionali universali Romani Pontificis expostulant;

"3. Quapropter Episcopis facultates ampliores tribuantur, salvis iuribus et

The schema directed the dicasteries of the Roman Curia, each according to its own competence, to revise the list of quinquennial faculties granted to bishops in light of this principle. To help the dicasteries judge which faculties ought to be conceded permanently to bishops, two criteria were set down: those faculties and favors which the Holy See always granted and those which could have no other basis for determining the merits of the petition but the bishop's recommendation. 102

There were mixed reactions to the schema. Cardinal Ferretto observed that it probably would offend many bishops who had demonstrated over the

privilegiis Ecclesiae Orientalis."

¹⁰² Ibid., p. 543, "Videantur ipsa SS. Dicasteria ut stabiliter Episcopis concedatur facultas per se consulendi casibus: (a) in quibus facultas vel gratia semper conceditur; (b) in quibus S. Dicasterium competens, ex natura rei, aliud fundamentum habere non potest ad Judicium ferendum de merito petitionis nisi commendationem Episcopi." The schema provided examples of faculties the Holy See was accustomed to concede and favors granted on the bishop's recommendation: permission to read or keep forbidden books, to allow priests to confirm in danger of death, to use a portable altar, to permit infirm or elderly priests to celebrate Mass in private oratories or in their homes, to permit blind or otherwise impaired priests to use only the votive Masses of the Blessed Virgin and of the faithful departed, to commute the divine office for sick or blind priests, to dispense from irregularities for orders ex defectu (c. 984) and from the irregularity incurred by conversion from heresy or schism (c. 985), to dispense from the impediment to orders incurred by reason of non-Catholic parents (c. 987.1), to dispense from certain impediments to marriage, to permit entrance into a papal cloister or exit from it, to permit women religious to carry out the first washings of corporals and purificators and to grant priests the faculties to erect stations of the cross. Ibid., pp. 543-544.

years filial loyalty to the Roman Congregations. 103 Cardinal Ottaviani concentrated on the problems he envisioned would arise if it were left to bishops to dispense from irregularities incurred by reason of heresy or schism. 1⁰⁴ Cardinal Lienart rejected the schema because of its inconsistency: the first part correctly recognized and taught the ordinary authority of diocesan bishops; the latter part proposed that the Roman Congregations extend broader faculties to them as if they were favors. He argued that it was not a case of favors to be granted but of episcopal rights. The pope could reserve to himself major matters, but should not do so unless the reservation promoted the common good of the Church.¹⁰⁵ Cardinal Confalonieri likewise rejected the schema. He bluntly stated that Rome must recognize that bishops were not mere functionaries of a central power-an opinion which he attributed to many-but, by divine right, they governed their churches with ordinary power as authentic teachers, episcopal ministers and pastoral governors¹⁰⁶

The observations of Cardinal Lienart and Cardinal Confalonieri indicate that the mere extension of faculties was not seen as an appropriate recognition of episcopal authority. Even with the extension of faculties bishops would still

103 *ibid.*, p. 551.

104 *ibid.*, p. 561.

10⁵ *Ibid.*, p. 551. Also see the statement of Cardinal Alfrink, pp. 559-560.

106 *ibid.*, p. 555.

be seen as acting by virtue of delegated power instead of power that was truly theirs.

Most bishops on the Central Commission voted *placet iuxta modum* on the schema. The *modi* which were related to the question of episcopal power either directly or indirectly referred to Cardinal Lienart's observations regarding the inconsistency of the document, or they openly rejected the concept of conceding faculties to bishops insofar as it was an inappropriate means of recognizing episcopal jurisdiction.¹⁰⁷

The second schema, "On the Faculties of Bishops," offered a different approach to decentralization of authority. After restating the Church's understanding of papal primacy, the introduction focused on the divine institution of the episcopacy, insofar as it succeeded to the place of the apostolic college. The Holy Spirit placed bishops over the churches as true pastors who govern and shepherd their flocks with proper and ordinary power, under the authority of the Roman Pontiff. Since it is by the will of Christ that episcopal power was subject to the pope, he could modify its exercise. For the sake of the universal good of the Church the supreme authority has often restricted the exercise of episcopal power through limitations and reservations established by ecumenical councils or by the popes.¹⁰⁸

¹⁰⁷ Ibid., pp. 566-576.

¹⁰⁸ Ibid., Pars III, pp. 1280-1281, "Praeter Petri primatum, etiam Collegium Apostolorum Christus instituit, quorum successores sunt Episcopi, qui a Spiritu Sancto positi sunt, ut singuli tamquam veri pastores assignatos sibi

For the sake of prompt and effective ecclesiastical government and to expand episcopal pastoral authority the schema proposed:

1. Bishops, legitimately instituted, possess proper and ordinary power of jurisdiction for governing their churches
2. The power of bishops to rule their churches and to procure the good of their people should not be restricted by limitations or reservations other than those proved necessary or appropriate for the common good of the Church in contemporary times
3. Each bishop should have the faculty to dispense in individual cases from the general law of the Church whenever he judges that a dispensation is for the spiritual good of souls, provided the matter is one for which the Holy See is accustomed to grant a dispensation and there is no special reservation to the Apostolic See, to a patriarch or to some other authority
4. In a doubt of law or of fact regarding reservation or limitation, the presumption favors episcopal ordinary power, until a contrary declaration by the Roman Pontiff intervenes.¹⁰⁹

greges, potestate quidem propria, atque ordinaria, pascant et gubernent, sub auctoritate Romani Pontificis.... Neminem etiam latet Episcoporum potestatem ex ipsa Christi voluntate subiectam esse supremae Romani Pontificis iurisdictioni et auctoritati, cuius est omne exercitium iurisdictionis in Ecclesia moderari. Bonum vero universalis Ecclesiae assequendam non raro causa fuit cur Suprema Auctoritas ambitum auctoritatis Episcoporum in exercitio potestatis ecclesiastici coarcteret, limitationibus et reservationibus inductis, quae sive a Conciliis Oecumenicis, sive ab ipsis Romanis Pontificis statutae sunt."

109 Ibid., p. 1281, "Quemobrem haec Sancta Synodus sequentia decernere statuit:

"I. Episcopi legitimi instituti propria et ordinaria iurisdictionis potestate ad suam Ecclesiam gubernandam pollent.

"II. Episcoporum potestas in regendis suis Ecclesiis et in bono fidelium procurando non aliis limitationibus ac reservationibus restringatur, nisi quas temporibus hodiernis bonum commune Ecclesiae necessarias aut convenientes esse probaverit.

"III. Episcopis singulis facultas sit a lege generali Ecclesiae in peculiari dispensandi, quoties id ad bonum spirituale animarum conferre iudicent,

This proposal was a definite alternative to that set forth in the schema, "On the Relations between Bishops and the Sacred Congregations of the Roman Curia." First of all, it did not speak of expanding episcopal faculties, which only broadens the scope of episcopal delegated power. Rather, it referred to bishops as having ordinary power to dispense in individual cases from the common law, except in those cases reserved to the Holy See or to some other ecclesiastical authority. This position protected the authority of the pope and of bishops. Second, it established as a principle that the preservation of the common good was the foundation for papal limitations and reservations.

Among the proposals found in the bishops' vota to the Antepreparatory Commission for the decentralization of authority was the proposal that greater authority be given to the national conferences of bishops. The schema, "On the Assembly or Conference of Bishops," stated the purpose of episcopal conferences was "to foster frequent and mutual communication among the bishops thereby helping them to a more fruitful and effective exercise of the pastoral office."no The legislative segment of the schema carefully protected

dummodo agatur de re in qua Sancta Sedes petitiam dispensationem concedere solita sit, nee specialis reservatio a Sede Apostolica sibi vel Patriarchis vel alii Auctoritati facta fuerit.

"IV. In dubio iuris vel facti de reservationibus vel limitationibus, praesumptio stat pro ordinaria Episcoporum potestate, donec interveniat Romani Pontificis contrarium declaration

no Ibid., Pars II, p. 518, "Ad officium pastorale fructuositatem et efficax gerendum multum confert frequens ac mutua inter Episcopos communicatio."

the relative autonomy of residential bishops by presenting four norms governing the binding force of the decisions of such conferences:

1. Decisions reached by the assembly or conference of bishops do not bind juridically, but morally, and therefore, for the sake of unity, they are to be received with special reverence and religiously observed
2. An individual bishop intending to act in a particular case contrary to the decisions of the conference should inform its president, in writing, his reasons for doing so
3. In those matters requiring a juridical norm, the Holy See should be approached and its judgement followed
4. Each bishop, in his prudence and discretion, may in his diocese give juridic force to the decisions of the episcopal conference.¹ n

Cardinal Marella described the intense debate in the Commission on Bishops and Diocesan Government over the binding force of such decisions. Some bishops feared that affirming such an obligation would be a blow to episcopal authority for the bishop is the unique diocesan legislator; others sought recognition of juridical binding force at least in important matters. He described the norms as a media via between these two positions, especially the

111 Ibid., p. 521, "1. Decisiones, a Coetu seu Conferentia Episcoporum prolatae, iuridice non obligant sed moraliter; ideoque ratione unitatis maxima reverentia accipiendae sunt ac religiose servandae. 2. Episcopus in dioecesi in casu aliquo particulari prater decisiones Conferentiae agere intendens, antea scripto certiore faciat Praesidem Conferentiae de suis agendi rationibus. 3. In rebus pro quarum solutione oporteat normas iuridicas ferre, adeatur Sancta Sedes eiusque iudicio standum erit. 4. Unusquisque Episcopus pro sua prudentia et discretione normas in Coetu Episcoporum latas, vi iuridica in propria dioecesi fulcire potest.

first norm, which proposed only a moral obligation. The basis of such an obligation was the end to be attained, unity of action.¹¹²

The members of the Central Commission were likewise divided on the binding force of conference decisions. Cardinal Frings asserted that the decisions of an episcopal conference cannot have juridical force because the bishop, not the conference, is placed over the diocesan church by the Holy Spirit.¹¹³ Cardinal Gracias, however, noted that episcopal conferences, once approved by the Apostolic See, have an extraordinary office which renders their decisions juridically binding, for implicit in the approval of the conference is the approval of its decisions.¹¹⁴ The vote on the schema did not indicate how the issue was resolved because other concerns, such as the structure and competence of conferences, affected the vote and it is impossible to sort out the issues.

F. Canonical Concerns

The bishops' vota to the Antepreparatory Commission identified four canonical concerns: the bishop's power to dispense from the common law of the Church, the reservation of ecclesiastical benefices, the alienation of Church property and the privilege of exemption of religious. Each was seen to affect the

¹¹² *ibid.*, p. 525.

¹¹³ *ibid.*, p. 528.

¹¹⁴ *Ibid.*, p. 529.

diocesan bishop's freedom to govern his church. These concerns were addressed in the schemata presented to the Central Commission.¹¹⁵

1. The Reservation of Ecclesiastical Benefices

The schema, "On Ecclesiastical Office and Benefices and on the Administration of Ecclesiastical Goods," prepared by the Commission on the Discipline of the Clergy and Christian Peoples focused on the obligations of officeholders and beneficiaries, especially on their obligations toward the cura animarum. Despite the fact that the reservation of benefices had been identified by bishops as a serious problem, no reference was made to it in the schema.¹¹⁶

2. The Alienation of Church Property

With regard to alienation of Church property, the schema proposed that local circumstances determine when bishops, in virtue of their quinquennial faculties, can alienate Church goods or incur substantial debt without prior recourse to the Apostolic See. National and regional conferences of bishops were to determine what should be proposed to the Holy See on this matter.¹¹⁷

While some members of the Central Commission approved the proposal of extending episcopal faculties through the expansion of the quinquennial

¹¹⁵ The bishop's power to dispense from the common law of the Church will not be treated in this section because it was addressed in the previous section on the decentralization of authority.

¹¹⁶ Ibid., Pars I, pp. 685-698.

¹¹⁷ Ibid., p. 687.

faculties to approve the alienation of church property or to incur debts, Cardinal Ciriaci, the president of the Commission which had prepared the schema, was critical of it. The amount specified in the code to determine the necessity for recourse to the Holy See was judged to be unrealistic, especially in Europe where schools, churches and hospitals still had to be rebuilt because of the devastation brought about by the Second World War. Moreover, the taxa that accompanied permission was deemed to be an added strain on already burdened diocesan budgets.¹ Cardinal Alfrink expressed incredulity that the far-distant Curia could be a better judge than diocesan bishops with regard to alienation.¹¹⁹

Relative to the suggestion that episcopal faculties be extended, Cardinal Alfrink expressed the hope that the post-conciliar age would see a disappearance of quinquennial faculties since they infringed on episcopal authority. He proposed that what was usually conceded to bishops by such faculties be committed to them by the general law.¹²⁰ Many members of the Central Commission voiced agreement with him. In the end, fifty-three

ne Ibid., p. 690.

us Ibid., p. 698.

¹²⁰ Ibid.

members voted *placet iuxta modum*. with many of the *modi* referring to his observations as the basis for their own reservations. 121

3. The Exemption of Religious

Relations between bishops and religious dominated the discussion during the final session of the Central Commission. A mixed commission, comprised of members of the Commission on Bishops and Diocesan Government and the Commission on Religious, presented the schema, "On the Relations between Bishops and Religious Especially as to the Exercise of the Apostolate." Two principles were highlighted in the introduction: bishops, as successors of the apostles, whom the Holy Spirit placed over churches for their government, presided over the apostolate and priests, whether diocesan or religious, were their cooperators; and, while bishops must respect the religious life and the purpose of individual religious institutes, they must also recognize that they need the assistance of both clergies in the work of the apostolate, and therefore should encourage the involvement of religious.¹²²

The introduction also addressed the right of the Roman Pontiff, by virtue of his ordinary and immediate authority, to withdraw religious from the jurisdiction of diocesan ordinaries, placing them under his own jurisdiction. Exemption, however, was not seen as absolute. Insofar as religious cooperate

¹²¹ Ibid.

¹²² *ibid.*, Pars IV, p. 221.

in the apostolate of diocesan churches, religious of both sexes should do nothing in carrying out the apostolate without the bishop.¹²³

The schema provided specific norms on the subjection of religious to diocesan ordinaries. In the Latin Church all religious, even exempt, were subject to diocesan bishops in those things related to divine worship, the cura animarum and works of the apostolate carried out within the diocese. If the faithful habitually attended sacred services in the churches of religious institutes, bishops could command that episcopal documents be read, that the gospel be proclaimed to the people and that catechetical instructions be given to them. Bishops also had the right to conduct canonical visitations of the churches and oratories of religious accessible to the faithful to determine whether the general law and episcopal decrees on worship were being fulfilled.¹²⁴

The president of the Commission on Bishops and Diocesan Government, Cardinal Marella, observed that the schema's purpose was to bring even exempt religious under episcopal moderation with regard to apostolic works and to foster greater cooperation between diocesan and religious clerics. The text was formulated in response to concerns expressed by many bishops over the impact of religious exemption on pastoral authority. At the same time it

¹²³ *ibid.*

¹²⁴ *ibid.*, p. 227, norms 25 and 27.

prohibited bishops from involving themselves in the internal life of religious communities.¹²⁵

The president of the Commission on Religious, Cardinal Valeri, stressed the prerogatives of religious and reminded the Central Commission that they were valuable helpers of diocesan bishops and clergy. He urged that every possible step be taken to insure that the spirit of each religious institute be carefully protected even though religious would be under episcopal moderation in the work of the apostolate.¹²⁶

The episcopal members of the Central Commission generally accepted the proposed schema. The two Major Superiors on the Commission, however, were not so ready to do so. The Superior General of the Friars Minor, Augustine Sepinski, and the Superior General of the Jesuits, Johann Janssens, noted that the schema did not take into account the care of souls which pertained to the papal office, which was responsible for the pastoral care of the whole Church, and formed the primary basis for religious exemption. ¹²⁷

CONCLUSION

The vota of the bishops to the Antepreparatory Commission and the schemata prepared for the Central Commission in the preparatory stage of the council reaffirmed belief in the primacy of jurisdiction and honor of the Roman

¹²⁵ Ibid., pp. 231-232.

¹²⁶ Ibid., p. 234.

¹²⁷ Ibid., pp. 264-265.

Pontiff. Christ committed to Peter and his successors the task of shepherding the universal Church and conferred on them the office of pastor and teacher. Their power was ordinary, immediate and episcopal over each and every pastor and member of the faithful including the bishops.

At the same time the divine institution of the office of bishop was also asserted. Bishops were successors of the apostles, placed over the churches committed to them by the Holy Spirit. Their power was ordinary, immediate and episcopal. They were true pastors and teachers of the faithful.

The discussions of the various schemata displayed general acceptance of this theology of the papacy and the episcopate. There was, however, disagreement on the papal-episcopal relationship, that is, on how these two divinely instituted powers relate to one another. This disagreement appeared in the schemata and in the discussions of the Central Commission.

In the discussion of the schemata "On the Faculties of Bishops" and "On the Relation between Bishops and the Sacred Congregations of the Roman Curia," some members of the Central Commission promptly noted that its proposal of the expansion of episcopal faculties stressed the dependence of bishops on the Holy See, for regardless of the degree to which faculties might be extended bishops still act by virtue of delegated authority. Attempts in the schemata "On the Oriental Patriarchs," "On the Relations between Bishops and the Sacred Congregations of the Roman Curia" and "The Dogmatic Constitution on the Church" to resolve the traditional debate on the source of episcopal jurisdiction in favor of the school of thought which professed the pope to be its

source likewise made bishops appear as if they were delegates of the Roman Pontiff, for if the pope was the font of such power he could also restrict its exercise.

The schema "On the Assembly or Conference of Bishops" carefully protected the relative autonomy of residential bishops in its treatment of the binding force of decisions of the national conferences. The schema "On the Relation between Bishops and Religious Especially as to the Exercise of the Apostolate" emphasized the bishop's responsibility for all aspects of the cura animarum and consequently the subjection of even exempt religious to them in the apostolate. The preeminence of the episcopal character and of the episcopal office was clearly evident in the schema "On the Relation between Bishops and Pastors." The bishops who were members of the Central Commission found no major problems with the teachings and legislation of these schemata.

The topic of a schema obviously set its frame of reference. The schemata which treated the papal-episcopal relationship emphasized episcopal dependence, while those which were concerned with the relation of bishops to their dioceses, to religious or to national conferences stressed episcopal power.

The members of the Central Commission bypassed opportunities to develop a theology of the episcopate by their tendency to focus on practical issues at the expense of deeper theological matters. The discussion of the schema "On the Sacrament of Orders," for example, concentrated on the restoration of the permanent diaconate while ignoring the meaning of the power

received through the imposition of hands for the cura animarum. With regard to titular bishops attention centered on the consequences of auxiliaries receiving the faculties of vicars general, and, as a result, no attempt was made to define in detail what, besides the power to ordain, confirm and consecrate, was conferred by the imposition of hands.

Four positive developments need to be highlighted:

1. As the Central Commission discussed the schemata, occasional references to another means of recognizing the authority of the bishop's rule in his diocese other than by expanding episcopal faculties emerged, namely, by limiting it only through papal reservation of major causes affecting the universal Church. The correlative principle is that bishops are empowered to act in all other cases

2. The intense debate on the source of episcopal jurisdiction precluded the simple insertion of the view of either school into a proposed conciliar document, and thus enabled the debate to continue

3. A pastoral tone prevailed during the discussions of the office of bishop. In the schema "On the Division of Dioceses" effective pastoral ministry was the benchmark for determining whether dioceses should be united or divided, erected or suppressed. The same criterion was used in the schema "On Coadjutor and Auxiliary Bishops and on the Resignation of Bishops from the Pastoral Office" to determine a residential bishop's need for an auxiliary or coadjutor bishop. The schema "On the Care of Souls" studied the episcopal office from the vantage point of its ministry to people

4. The priority of the episcopal character over canonical mission emerged on three occasions: (1) in the debate on the right of titular bishops to be invited to the council with a deliberative vote; (2) in the discussion of the schema, "The Constitution on the Church," which highlighted the sacramental nature of the episcopacy prescinding from canonical mission; (3) in the controversy over the proposal of the schema "On Coadjutor and Auxiliary Bishops and On Resignation from the Pastoral Office" that auxiliary bishops receive at least the faculties of vicars general to provide appropriate recognition to the episcopal character.

CHAPTER III

EPISCOPAL POWER OF GOVERNANCE IN THE DOGMATIC CONSTITUTION ON THE CHURCH LUMEN GENTIUM AND THE NOTA PRAEVIA EXPLICATIVA

The celebration of the Second Vatican Council began on October 11, 1962, the feast of the Maternity of the Blessed Virgin Mary. Pope John XXIII had already appointed Archbishop Pericle Felici, the Secretary of the Antepreparatory and Preparatory Commissions, to the office of General Secretary of the council.¹ 2,358 patriarchs, cardinals, archbishops, bishops, abbots, prelates nullius and superiors general were present for the opening session.²

At the beginning of the first period of the council, December 5, 1962, twenty schemata, approved by the Preparatory Commission, were distributed to the council fathers. They touched practically every aspect of the Church's life

¹ The appointment was announced on September 4, 1962. AAS 54 (1962):688.

² Acta synodalia sacrosancti concilii oecumenici Vaticani Secundi. 4 vols. (Rome: Typis Polyglottis Vaticanis, 1970-1971) I, Pars I, p. 101 [Henceforth Acta Syn.].

and ministry and its relation to the world.³ Three of these schemata are of particular interest to this study because they treat the nature and function of the episcopal office: "The Dogmatic Constitution on the Church *De ecclesia Christi*": "The Decree on Bishops and on Diocesan Government *De Episcopis et Dioecesean Reaimine*": and "The Decree on the Care of Souls *De Cura animarum*." The council's teaching on the episcopate emerged from these schemata. It is now found in The Dogmatic Constitution on the Church *Lumen gentium* and the Decree on the bishops' pastoral office in the Church *Christus Dominus*.

This chapter will first survey the evolutionary process by which the schema *De Ecclesia Christi* became the conciliar document *Lumen gentium*: then it will reflect on its teaching regarding the office of bishops. The next chapter will examine the Decree on the bishops' pastoral office in the Church *Christus Dominus*. From the conciliar process emerged a renewed conception of the Church, of the relation of bishops to one another and to the pope (collegiality) and of episcopal power itself.

³ The twenty schemata were: (1) Dogmatic Constitutions: *De Divina Revelatione*. *De Ecclesia Christi*. *De B. Maria Virgine Matre Dei et Matre Hominum*, **De deposito fidei pure ousodiendo**, **Pe ordine moraii**, **De castitate**. *virginitate*. *matrimonio*. *familia*: (2) A Doctrinal Constitution *De ordine sociali et de communitate gentium*; (3) Decrees: *De Ecclesiis Orientalibus*. *D^cjericis*, *De episcopis et dioecesean regimine*. *De statibus perfectionis acquirendae*. *De laicis*. *De Matrimonio Sacramento*. *De cura animarum*. *De missionibus*. *De unione fovenda inter Christianos*: (4) Constitutions: *De sacra liturgia*. *D_£ sacrorum alumnis formandis*. *De studiis academicis et de scholis Catholicis*. *De instrumentis communicationis socialis*. *Ibid.*, pp. 90-95.

Section I: The Development of the Dogmatic Constitution on the Church and the Nota Praevia Explicativa

This section will trace the development of the Dogmatic Constitution on the Church *Lumen gentium* and the *Nota praevia explicativa*. It will focus on the evolution of the text of *Lumen gentium* with only minimal reference to its content, which will be explored in greater detail later in the chapter, and on the reasons for the addition of the *Nota praevia*. Reference will be made to content only insofar as the acceptance or rejection of the work of the Preparatory Commission is concerned.

A. The Formation of *Lumen gentium*

The conciliar discussion of the first schema of the Dogmatic Constitution on the Church *De ecclesia Christi* began on December 1, 1962 near the end of the first period of the council. The schema presented to the council fathers contained eleven chapters: "On the Nature of the Church Militant"; "On the Members of the Church Militant and on the Necessity of the Church for Salvation"; "On the Episcopate as the Highest Degree of the Sacrament of Orders and on the Priesthood"; "On Residential Bishops"; "On the States of Perfection"; "On the Laity"; "On the Church's Magisterium"; "On Authority and Obedience in the Church"; "On Relations Between Church and State"; "On the

Necessity of Announcing the Gospel to All People of the Earth"; and "On Ecumenism."⁴

Cardinal Ottaviani, the president of the Conciliar Commission on the Doctrine of Faith and Morals and president of the Preparatory Commission's Theological Commission, anticipated criticism of the schema. He expressed awareness of a call for revision issued before the schema was even distributed.⁵

Some council fathers produced outlines for a complete rewriting of the Dogmatic Constitution almost immediately after it was presented for discussion;⁶ others commented on its content or viewpoint. Bishop Emile de Smedt of Bruges described the schema *De ecclesia Christi* as affected by triumphalism, clericalism and juridicism. It presented the traditional pyramidal view of the Church in which clerics were seen as the active members of the Church, laity as passive members. He insisted that it was necessary to express

4 *ibid.*, p. 90, Ch. 1, *Pe Ecclesiae militantis naturae*; Ch. 2, *Pe membris Ecclesiae militantis eiusdemque necessitate ad salutem*; Ch. 3, *De episcopatu ut supremo oradu sacramenti ordinis et de sacerdotio*; Ch. 4, *De episcopis residentialis*; Ch. 5, *De statibus evangelicae acquirendae perfectionis*. Ch. 6, *De laicis*; Ch. 7, *De Ecclesiae maoisterio*. ; Ch. 8, *De auctoritate et oboedientia in Ecclesia*; Ch. 9, *De relationibus inter Ecclesiam et statum*; Ch. 10, *De necessitate Ecclesiae annuntiandi Evangelium omnibus gentibus et ubique terrarum*; Ch. 11, *De oecumenismo*.

⁵ *Ibid.*, Pars IV, p. 121.

⁶ See the outlines and observations of Cardinal Ruffini, *ibid.*, p. 128; Cardinal Alfrinck, p. 136; Archbishop Cooray of Colombo, in Ceylon, p. 443; and Bishop Fiordelli of Prato, Italy, p. 309.

the relation of all the baptized to the Church instead of the juridic description of membership which prevailed in *De ecclesia Christi*.⁷

The ecclesiology of the First Vatican Council concentrated on the Church as a society. Bellarmine's classic definition of the Church as a body of persons united in the profession of the same faith and in communion of the same sacraments, under the rule of their legitimate pastors, especially the Roman Pontiff, the vicar of Christ on earth, characterized the view of the Church held by many theologians, especially those of the Roman School.⁸ Although this definition made it possible to delineate clearly who is and who is not a member of the Church, two criticisms can be levelled against it. First, it was too external, that is, it viewed the Church as a society like any other society. The supernatural end of the Church was only implicitly included. Second, it was too

⁷ Ibid., pp. 142-143. Gerard Philips and Robert Roquette identify Cardinal Suenens and Bishop de Smedt as the more significant contributors to the direction of the council because of their vision and their clarity in expressing it. See Robert Roquette, "La vie de l'Eglise, Bilan du Concile," *Etudes* 316 (1963):106; and Gerard Philips, "Dogmatic Constitution on the Church, History of the Constitution," in *Commentary on the Documents of Vatican II*. ed. Herbert Vorgrimler, vol. 1 (New York: Herder and Herder, 1967), p. 109.

⁸ *Opera Omnia*. Xisto Sforza, ed., 8 vols. (Naples: C. Pedrone Lauriel, 1872), II:75, "Ecclesiam unam tantum esse coetum hominum eiusdem Christianae fidei professione, et eorundem sacramentorum communione colligatum, sub regimine legitimorum, ac praecipue unius Christi in tern's vicarii Romani Pontificis." See the writings of Henry Pezzani, *Codex Sanctae Catholicae Romanae Ecclesiae*. 3 vols. (Rome: E. Bemardi, 1893), I:23; Dominico Palmieri, *Tractatus de Romano Pontifice* (Rome: Typographia Polyglotta, 1877), p. 117; Jean Baptiste Franzelin, *De Ecclesia Christi* (Rome: Typographia Polyglottis), p. 50; Adolphe Tanquery, *Synopsis theologiae dogmaticae fundamental*. 3 vols. (Turin: Desclee and LeFebvre, 1896), 1:418; and Alfredo Ottaviani, *Institutiones Juris publici ecclesiastici*. 3rd ed., 2 vols. (Rome: Typis Polyglottis Vaticanis, 1947), 1:157.

anthropocentric, that is, it concentrated on human actions, not those of the Holy Spirit, as the source of ecclesial membership.⁹

Some council fathers wanted to move away from this ecclesiological view. Instead of concentrating on the Church militant, as the schema *De Ecclesia Christi* did, they wanted to emphasize the Church as mystery. Cardinal Suenens, the Archbishop of Malines, was the first to introduce the theme of the Church as mystery into the public discussion of *De Ecclesia Christi*. He observed that the central contribution of the Second Vatican Council ought to be a clear statement that the Church is the Church of Christ, who is the light of the world, just as the primacy of the Petrine office was the characteristic mark of the First Vatican Council.¹⁰

Many council fathers welcomed this emphasis on the Church as mystery. Others expressed reservations that such an ecclesiology would open the way to

⁹ This is Herbert Mühlen's criticism of Bellarmine's definition of the Church: "Il est toutefois indéniable, que, prise en elle-même sans considération du contexte, la 'définition' de Bellarmine offre des éléments de départ assez nets pour un anthropocentrisme ecclesiologique. L'Eglise est un rassemblement d'hommes (*coetus hominum*) reliés (*colligatum*) par la profession de la même foi, la communion aux mêmes sacrements, et la reconnaissance du pouvoir de gouvernement du pape, seul vicaire du Christ sur terre. Il n'y est pas question de l'Esprit Saint comme principe incréé de l'unité de l'Eglise." *L'Esprit dans l'Eglise*. 2 vols. (Paris: Les Editions du Cerf, 1969), 1:21, n. 1.13.

¹⁰ *Acta Syn. I, Pars IV*, p. 222. Seamus Ryan describes the rediscovery of the Church as mystery as the foundation for the rediscovery of the episcopate: "The theology of the episcopate elaborated by the Council has deeper roots; it is part of that more fundamental 're-discovery' of the Church which has been under way since the early 19th century. ... signalling a return to the ecclesiology of the early Fathers who saw the Church as the mystery of the Spirit and the community of salvation." "Vatican II: The Re-Discovery of the Episcopate," *Irish Theological Quarterly* 33 (1966):216.

abandoning the truth of a visible Church, replacing it with an invisible one.

They objected that the term "mystery" did not apply to the Church because it was a visible institution.¹¹ The development of this theme was not intended to detract from the teaching that the Church was also a visible society. Rather, it was a call to see the Church as constituted by these two elements: the one mystical; the other visible. The relationship between them was so intimate that it was itself a mystery.¹²

During the thirty-sixth general congregation of the council (December 7, 1962) Cardinal Julius Döpfner, the Archbishop of Munich and the president of the German-Austrian Episcopal Conference, acting on behalf of the German-speaking bishops, submitted directly to the pope two fascicles: a critique of the schema *De Ecclesia Christi* and an outline and proposed text of a schema of a

¹¹ Grillmeier recounts these objections and comments on them: "Behind such objections there was a concept of very limited value, which restricted it (Mystery) to the secret or abstruse. The truth was that an effort was being made to arrive at a more adequate view of the complex reality of the Church." "The Mystery of the Church," in Vorgrimler 1:138. Kevin McNamara traces the history of the pre-conciliar development of the theology of Church as mystery in "From Mohler to Vatican II: The Modern Movement in Ecclesiology," in *Vatican II: The Constitution on the Church*, ed. Kevin McNamara (Chicago: Franciscan Herald Press, 1963), pp. 9-35.

¹² See the observations of Bishop Hakim, Melkite Bishop of Akka, Israel, *Acta Syn. I, Pars IV*, p. 359; Cardinal Lefebvre, *ibid.*, p. 371; and Cardinal Suenens, p. 222. Congar used the term "immanence" to describe this unique relationship between Christ and the Church: "The Church is, in the first place, the Body of Christ; it forms with him a single entity.... The immanence of the living Christ in the Church, his Body, is what is expressed by St. Paul by the formula 'in Christ Jesus.' (It occurs 164x.)" *The Mystery of the Church*. 2nd rev. ed. (Baltimore: Helicon Press, 1965), pp. 25-26.

dogmatic constitution on the Church. 13 His letter, which accompanied the fascicles, indicated that the German-speaking council fathers met on February 5 and 6, 1962 to discuss drafting such a schema and he was presenting the outcome of these discussions and the work of the episcopal conference to the pope for his consideration.¹⁴

The critique objected that *De ecclesia Christi* depicted "the Church as a reality established and perfected once for all times" instead of as an historical reality whose essence is ever being realized by the work of the Holy Spirit. It noted the "silence of the schema about the fact that revealed truth and the reality instituted by Christ were not always completely realized in the course of history." Certain elements which pertain to the Church were at times almost consigned to oblivion while others were excessively stressed.¹⁵

The critique also observed that *De ecclesia Christi* did not present an organic doctrine of the Church. While individual statements in the schema were true, there was a deficiency insofar as the truths were not expressed as part of a

13 *Acta Syn. I, Pars IV, "Adnotationes criticae ad schema de Ecclesia,"* pp. 602-608; *"Adumbratio schematis Constitutionis Dogmaticae 'De Ecclesia,'"* pp. 608-639.

14 *ibid-*, p. 601.

¹⁵ *Ibid.*, p. 603, "Ecclesiam proponit ut realitatem semel pro semper aedificatam et perfectam. Nihil dicitur de Ecclesia ut realitate historica, quae essentiam suam operatione Sancti Spiritus, sed etiam, humana, realizare debet.... Schema tacet de eo, quod in decursu historiae Veritas revelata et realitas a Christo instituta non semper aequae complete realizantur. Quaedam elementa, quae ad Ecclesiam pertinent, quibusdam temporibus fere oblivioni tradi possunt, cum alias nimis efferantur."

whole. For example, reference was made to bishops, sacred ministers and laity but not to the "faithful," a term which embraced all these categories. It also objected to the schema's negative tone, to the fact that exegetical and dogmatic studies of recent decades were inadequately used and to the failure of the Preparatory Commission to order the chapters so as to show their interrelationship.¹⁶

The substitute schema submitted by the German-speaking council fathers entitled *Lumen gentium* had as its central theme the church as mystery. The first chapter used the images of the people of God, the temple or household built by the Holy Spirit, God's family and a priestly and kingly people to describe the Church. These images, derived from sacred scripture, conveyed aspects of the visible and invisible Church. A treatment of membership in the Church preceded any statement on ecclesiastical ministries.¹⁷

The definition of the Church was by no means the only objectionable feature of the schema *De ecclesia Christi*. The council fathers also criticized its treatment of the episcopate. Cardinal Montini, the future pope who would later promulgate *Lumen gentium*, objected to the fact that the schema manifested a solely juridical understanding of the episcopate. It ignored other dimensions of a bishop's relationship to his church. As an illustration he referred to the

¹⁶ Ibid. According to Roquette, Cardinal Suenens characterized the council as lost in an ocean of subjects ("le concile se perd dans un ocean de sujets") as it dealt with the schema *De Ecclesia Christi*. "Bilan," p. 106.

¹⁷ *ActaSyn. I, Pars IV, p. 603.*

images used by the early Church fathers to describe the bishop, such as father and vicar of Christ to his local church.¹⁹ Archbishop Guerry of Cambrai, France elaborated further on these images. The bishop's primary function was as a father to hand on life and to reveal the Father's love manifested in Christ.²⁰

Cardinal Alfrink noted that *De ecclesia Christi* referred only to residential bishops and not to the episcopal office as such. The context within which he made his observation is relevant: standing on the council floor, he observed that the council had brought together the entire episcopate, and the fact that one-third of the assembled bishops were titular bishops could not be ignored.²⁰ Cardinal Feltin, speaking in the name of eleven French bishops, addressed the same issue, noting the schema made no reference to titular bishops who are truly bishops, successors of the apostles, by virtue of the consecration they have received.²¹

Between the first and second periods of the council the Doctrinal Commission rewrote the schema of the Dogmatic Constitution on the Church, adopting the structure suggested by Cardinal Suenens and drawing from the suggested schema provided by the Conference of German-speaking bishops. A new schema was distributed to the council fathers at the beginning of the

¹⁹ Ibid., p. 293.

²⁰ Ibid., p. 241.

²¹ Ibid., p. 134.

²² Ibid., p. 409.

second period (September 30, 1963). It consisted of four chapters: "The Mystery of the Church"; "The Hierarchical Constitution of the Church and the Episcopate in Particular"; "The People of God and the Laity in Particular"; and "The Call to Holiness."²² The revised draft received a warm welcome. A vote for its acceptance as the basis for discussion taken on October 1, 1963 was 2,231 in favor; 43 against.²³

Despite this initial general acceptance, the second draft was the subject of intense debate. This was especially true in two areas: the collegiality of the episcopacy and the significance of incorporating the council's teaching on the blessed virgin Mary either into the Dogmatic Constitution on the Church or into a distinct conciliar document.²⁴

Perhaps the most intense debate at the council was the debate on the

²² Acta Syn. II, Pars I, pp. 215-281.

²³ G. Philips, in Vorgrimler 1:111. Also see Yves Congar, *Vatican II. Le Concile au jour le jour*. 4 vols. (Paris: Editions du Cerf, 1963-1966), vol. 2:91-99.

²⁴ For the significance of incorporating Mariology in the Dogmatic Constitution on the Church see Jose Antonio de Aldama, "Typus et Exemplar in capite VIII Constitutionis dogmaticae 'Lumen gentium,'" pp. 198-203; Carolus Balic, "De vi ac momento conceptus 'maternitatis' accommodati muneri B. Mariae Vg. in Ecclesia," pp. 204-224; Francois Braun, "Annotationes circa cap. VIM Constitutionis dogmaticae de Ecclesia," pp. 238-244; and Otto Semmelroth, "Quomodo Mariologiae cum Ecclesiologia coniuncto adiuvet utriusque mysterii interpretationem," pp. 266-270 in Adolph Schonmetzer, ed., *Acta Congressus Internationalis de Theologia Concilii Vaticani II* (Rome: Typis Polyglottis Vaticanis, 1968); and Rene Laurentin, "Bilan," pp. 36-43.

collegiality of bishops.²⁵ The weightiest objections against collegiality came from those who saw this doctrine as endangering papal primacy. On October 30, 1963 the moderators of the discussion placed five propositions before the assembly, not in order to decide anything but to learn the mind of the council fathers as exactly as possible. They were asked to indicate whether they wished the draft to declare:

1. that the episcopal consecration forms the highest degree of the sacrament of orders
2. that every bishop legitimately consecrated, in union with the bishops and the pope, who is the head and principle of their unity, is a member of the whole body of bishops
3. that the body (corpus[^] or college of bishops succeeds to the college of the apostles in the charge of preaching the gospel, in sanctifying and in governing and that this body, in union with its head, the bishop of Rome, and never without this head (whose primacy over all pastors and faithful remains whole and intact), possesses full and supreme authority in the universal Church
4. that this authority belongs to the college of bishops itself in union with its head by divine law (iure divino)
5. that the draft should deal with the opportuneness of restoring the

²⁵ The substance of this debate will be explored in detail later in this chapter.

diaconate as a special and stable degree of the sacred ministry (officium) as demanded by the needs of the Church in various lands.²⁶

The results of the vote were announced in the fifty-eighth general congregation (October 30, 1963):

Question:	Votes:	Placet:	Non-Placet:	Invalid:
1	2157	2123	34	...
2	2154	2049	104	1
3	2148	1808	336	4
4	2138	1717	408	13
5	2120	1588	525	7 27

Between the second and third periods of the council the Doctrinal Commission worked to bring the schema still further into conformity with the desires of the council fathers.²⁸ At the beginning of the third period (September 15, 1964) a third draft of the schema was distributed to the council fathers.

26 G. Philips in Vorgrimler 1:116. Also see Y. Congar, *Le Concile*. 2:120-142.

27 G. Philips in Vorgrimler 1:116; and Y. Congar, *Le Concile*. 2:120-121.

28 Ren6 Laurentin, a consultant to the Theological Commission, noted that the intersession between the second and third periods of the council was more fruitful than any other time of the council because the members of the various commissions were now in tune with the mind of the council fathers and had extensive written materials at their disposal. The Doepfner Plan, named after Cardinal Doepfner who was on the Coordinating Commission, also provided better coordination of the work of the commissions by establishing priorities. *L'Enjeu du Concile. Bilan de la troisieme session* (Paris: Edition du Seuil, 1965), pp. 11-12.

Substantially the same as the second, it was not the subject of extensive debate²⁹ except for its third chapter, "On the Episcopate." The council secretariat, therefore, divided its text into 39 sections (*suffraganea*) to be voted on separately. The votes were taken from September 21 to 30, 1964. Philips noted that the opposition concentrated on the collegiality of the apostles (*non placet* 191), on the collegiality of the bishops (*non placet* 322) and on the quality of episcopal consecration (*non placet* 328). This was the full extent of the opposition.³⁰

B. The *Nota praevia explicativa*

On November 16, 1964 at general congregation 123, before the final vote on chapter three was taken, a memorandum from the General Secretary of the council, Archbishop Felici, was distributed to the council fathers. The memorandum contained the *Nota praevia explicativa* preceded by a brief exposition of its significance: "From a higher authority there is communicated to the Fathers an explanatory prefatory note on the *modi* concerning chapter III of

²⁹ G. Philips in Vorgrimler 1:127. A second chapter, "On the People of God," was inserted between the chapters on the Church as mystery and the hierarchical nature of the Church. Yves Congar described its insertion as one of the most decisive initiatives of the council because the new chapter expounded what is common to all members of the Church, emphasizing Christian existence over all distinctions of office and recognizing the priority and primacy of being a Christian with the consequent responsibilities of worshipping, witnessing and serving. *Le Concile de Vatican II. son Eglise peuple de Dieu et corps du Christ. Theologie Historique*. n. 71 (Paris: Beauchesne, 1984), p. 109.

³⁰ "History," in Vorgrimler 1:128. The treatment of the *Nota praevia explicativa* which follows will reflect on this opposition in greater detail.

the schema, *De ecclesia*. The doctrine of this same chapter III is to be interpreted according to the mind and opinion of this note."³¹

Joseph Ratzinger pointed out that the *Nota* was the Theological Commission's response to the vote on *modus 10* of the 39 *modi* which treated episcopal collegiality,³² which read:

[Concerning the College of Bishops and Its Head]. As established by the Lord, blessed Peter and the other apostles constitute one apostolic College; for the same reason the Roman Pontiff, the successor of blessed Peter, and the bishops, the successors of the apostles, are united among themselves.³³

This text was approved with the necessary two-thirds majority but with considerable opposition: 1,918 *placet*: 322 *placet iuxta modum*: and one non-*placet*.³⁴ The size of the opposition to so weighty a matter meant that there was

³¹ Ibid., p. 10, "Superiore denique Auctoritate communicatur Patribus nota explicativa praevia ad Modos circa caput tertium Schematis *De ecclesia*. ad cuius notae mentem atque sententiam explicari et intelligi debet doctrina in eodem capite tertio exposita." The translation is that of Walter Abbott, gen. ed., and Joseph Gallagher, trans, ed., *The Documents of Vatican II* (Baltimore: America Press, 1966), p. 98.

³² "Announcements and Prefatory Notes of Explanation," in Vorgrimler 1:298; also see Umberto Betti, "Relations entre le pape et les autres membres du college episcopal," in *L'Eglise de Vatican II. Unam Sanctam*, 51, b, ed. Guilherme Barauna, 3 vols. (Paris: Les Editions du Cerf, 1966), vol. 2:791-803. A bibliography on collegiality and on the *Nota praevia* can be found on p. 803.

³³ *Acta Syn. III, Pars I*, p. 400, Suffr. 10, "22. (olim n. 16). [De Collegio Episcoporum eiusque Capite]. Sicut statuente Domino, sanctus Petrus et ceteri Apostoli unum Collegium apostolicum constituunt, eadem ratione Romanus Pontifex, successor Petri, et Episcopi, successores Apostolorum, inter se coniuguntur."

³⁴ *ibid.*, *Pars II*, vote on *modus 10*. p. 265.

not moral unanimity on collegiality. The Theological Commission, therefore, concluded that a routine reaction to the vote would be inappropriate.³⁵

The pope had a hand in drafting the *Nota explicativa* because it was his concern that the shape of the doctrine incorporated into the constitution should meet with the general approval of the council. He hoped to avoid the tension further debate on collegiality would provoke and to encourage the minority to accept *Lumen gentium* by showing that their fears were unfounded.³⁶ The memorandum represented an official interpretation of the conciliar text on episcopal collegiality: "The doctrine of this same chapter III is to be interpreted according to the mind and opinion of this note."³⁷

Pope Paul's goals of forestalling further debate and encouraging the dissenting minority to accept the text were obviously achieved. This can be discerned by comparing the earlier votes on individual *modi* and the final voting on chapter three. On November 17, 1964, the day after the *Nota explicativa*

35 J. Ratzinger, "Prefatory Notes," in *Vorgrimler* 1:297.

36 *ibid.*, pp. 297-298. Laurentin pointed out that the *Nota explicativa* showed the sensitivity of Pope Paul VI to the convictions of those holding the minority position. *L'Enjeu du Concile*. p. 259.

37 *Acta Syn. III, Pars VIII*, p. 10, "circa caput tertium Schematis de Ecclesia, ad cuius notae mentem atque sententiam explicari et intelligi debet doctrina in eodem tertio capite exposita." Laurentin noted that the *Nota Explicativa* was not intended as a modification of the schema but an explanation of it; that it was not a simple proposition but a statement of the mind of the pope on the issues. "Bilan," p. 259. Umberto Betti viewed the *Nota* as clarifying the doctrinal points which were subject to various interpretations. "Qualification theologique de la constitution," pp. 211-218 in *L'Eglise de Vatican M, Unam Sanctam*, n. 51, ed. Guilherme Barauna, 3 vols. (Paris: Les Editions du Cerf, 1967), vol. 2:211.

was distributed, the General Secretary of the council provided a schematic report on the votes on the 39 modi. The votes demonstrated serious opposition to: modus 8 which stated that episcopal consecration conferred the fullness of the sacrament of orders; modus 10 which treated the collegiality of the apostles and of the bishops; modus 11 which described episcopal consecration as incorporating bishops into the body of bishops; and modi 37, 38 and 39 which dealt with the restoration of the order of permanent deacons.³⁸ The votes on these modi were:

Modus	Votes;	Placet:	Non-Placet:	Invalid:
8	2247	1917	328	2
10	2243	1918	322	3
11	2213	1898	313	2
37	2228	1523	702	3
38	2229	1598	629	2
39	2211	839	1364	839

Six weeks before, on September 30, 1964, the council fathers had agreed to a plan for voting on the text of chapter three. It was to be divided into two sections: articles 18 to 23 (modi 1-21) and articles 24 to 29 (modi 22-39). The final vote was taken on November 17, 1964 with the results:

³⁸ Acta Syn. III, Pars I, pp. 400-414. The strong negative reaction to modus 39 was directed at the textual proposal that the law of celibacy be imposed on permanent deacons. Acta Syn. III, Pars VIII, pp. 54-55.

³⁹ Ibid., p. 53.

PgU Votes Placet Non-Placet Placet iuxta modum Invalid

One 2242 1624 42 572 4

Two 2240 1704 53 481 2 40

The opposition to the chapter was considerably diminished. The final vote on chapter three (November 21, 1964) indicated practical unanimity: placet 2151. non-placet 5.⁴¹ The final version of the dogmatic constitution was promulgated on November 21, 1964 at the end of the third period.⁴²

The development of the text of *Lumen gentium* extended over three periods of the council and occasioned vigorous discussion of the source of episcopal power, its nature and its extent. These were not new issues but had been discussed at Trent and at Vatican I, as well as by theologians and canonists over the centuries. It is on these questions that the remainder of this chapter will focus.

Section II: The Conciliar Discussions

Many aspects of the papal/episcopal relationship and of the office of bishops were discussed on the council floor. Three, however, are of importance to this work: episcopal collegiality, the source of episcopal jurisdiction and titular bishops.

⁴⁰ Ibid., p. 54.

⁴¹ Ibid., p. 782.

⁴² Ibid., pp. 784-836.

A. Episcopal Collegiality

The conciliar debate on episcopal collegiality, one of the most intense during the council, was intimately related to the question of the source of episcopal power. Many important issues emerged: How does one become a member of the episcopal college? Is a bishop first a member of the college and then head of a particular church, or is he a member of the college because he heads a diocesan church? Is the college constituted only by residential bishops? Does episcopal power derive from incorporation into the college? What then of those theories which refer to the pope as the source of episcopal jurisdiction? How is the Bishop of Rome related to the college? Is he outside it and, as some canonists would hold, above it?

A vigorous debate on episcopal collegiality began with the council fathers' discussion of the first schema of *De ecclesia Christi* and continued throughout their discussions of the various drafts of *Lumen gentium* and *Christus Dominus*. Basically, there were two schools of thought: the majority who favored the doctrine of collegiality and the Roman school. Though the latter were numerically a minority, the clarity and weight of their arguments made them a force which could not be ignored. The debate illustrated that those who favored the doctrine of collegiality used the word "college" in a broad sense to express the unity of the members of episcopal body with their head

and with one another. It was this use of the word that presented the greatest difficulty to those who opposed the doctrine.⁴³

In Roman Law the term "college" was a juridical concept, more complex than a moral body. It postulated a corporate solidarity of all members so that all had equal rights, for it was the body which always and everywhere acted.⁴⁴

⁴³ Ladislav Orsy analyzed succinctly how the two schools interpreted the word "college": "When responsible theologians first raised the issue of collegiality, they intended mainly to express the deep unity of the episcopal body. It was for this purpose that they used the word college. Since they were not versed in Roman Law, they did not see that by asserting unity through the term college, they would convey to many a claim that asserts the equality of the members of the body, and the absolute necessity to reach a decision by the legal consent of the majority." "Collegiality: Its Meaning," *America* 112 (1965):707. Another analysis of the term "college" is found in Joseph Ratzinger, "La collegialite episcopale: developpement theologique," in *Barauna* 3:763-790.

⁴⁴ According to Fritz Schulz, "The words collegium and corpus were used to designate certain kinds of corporations.... For the classical lawyers, the corporation is simply an organized body of human persons. Classical law knows only two kinds of such bodies:

"1. Societas (partnership). This is an organized body of persons with a fixed number of members, each having a disposable share of the common property.

"2. Corporation. In contrast to societas. this is an organized body of persons with a variable number of members, no member having a fixed or disposable share of the common property.... It is the members and not a fictitious 'legal person' who are the owners of the property though not as single persons but rather as 'joint tenants' (zur gesamten Hand, with joint hands), and they can make use and dispose of the property only within the framework of the corporation." *Classical Roman Law* (Oxford: Clarendon Press, 1951), pp. 86-87. Schulz describes 'joint tenancy' thus: "Suppose that two men are carrying a beam of timber which one of them alone would not be able to bear. Both are carrying the same beam and the share of the burden borne cannot be fixed. Nevertheless, it is true that two men 'with joint hands' (zu gesamter Hand) are carrying the beam, and not a mysterious third person." *Ibid.*, p. 87. Also cf. Gino Luzzato, s.v. "Corporazione (storia)," *Enciclopedia del diritto* X:669-676.

This understanding of "college" led the members of the Roman School to reject its application to the body of bishops. Since it was the body which acted in all matters, the president only acted in the name of the corporation. But, in reality the pope had jurisdictional primacy, not just primacy of honor, over the college. His authority was immediate, not mediated by the college, that is, not conferred on him by it, and he was empowered to enjoin binding legislation on the Church without its consent.⁴⁵

The council fathers who favored the doctrine of collegiality maintained that the authority possessed by the apostles continued to exist by the will of Christ in the body which succeeded to their place, namely, the episcopal college. The apostles exercised authority on behalf of the whole Church and this practice provided a pattern for its exercise by the episcopal college.⁴⁶

⁴⁵ See the observations of Bishop Marcello Gonzalez of Astorga, Spain, *Acta Syn.* II, Pars I, p. 420; Archbishop de Proenca Sigaud, from Brazil, *ibid.*; Archbishop Slipyi, *ibid.*, p. 444; Cardinal Browne of Galway, *ibid.*, Pars IV, p. 626. Bertrams observes that papal power over the universal Church would not be supreme if the pope were the head of the Church in the name of the college. If this were true, papal power over the universal Church would be less than a bishop's power over a particular church, insofar as a bishop heads the diocesan church in his own right and not as a delegate of the college. "De analogia quoad structuram hierarchiam inter ecclesiam particularem," *Periodica* 56 (1957):288.

⁴⁶ See the Observations of Cardinal Bea, *Acta Syn.* I, Pars IV, p. 228; Cardinal Meyer of Chicago, *ibid.*, p. 233; Cardinal Doepfner, *ibid.*, pp. 184-185; Cardinal Alfrink, *ibid.*, p. 135; the Melkite Patriarch Maximos Saigh, *ibid.*, pp. 296-297; and Archbishop Parente, *ibid.*, Pars II, p. 498. After the council, Parente wrote an excellent summary of the doctrine of collegiality, *Saggio di una ecclesiologia alla luce del Vaticano secondo* (Rome: Citta Nuova Editrice, 1968).

These same council fathers were critical of the first schema of *De ecclesia Christi* with its emphasis on residential bishops and the assertion that no bishop, residential or titular, could belong to the college without receiving a mission or the tacit consent of the successor of Peter.⁴⁷ Membership in the college was seen as so dependent on the action of the Roman Pontiff that one could conclude that it was his grant of jurisdiction over a local church which constituted a bishop as a member of the college. The college, thus, appeared to be a creation of the pope.⁴⁸

Finally, the bishops who maintained a collegiate understanding of the episcopate professed that episcopal power was conferred by sacramental consecration which incorporated bishops into the episcopal ordo. Cardinal Peter Doi of Tokyo noted that it was necessary for the council to show that the sacred powers which Christ conferred on the apostolic college were now found

47 *Acta Syn. I, Pars IV, p. 27, art. 16.*

48 See the observations of Cardinal Alfrink, *ibid.*, p. 135, and of Cardinal Doepfner, *ibid.*, pp. 184-185. Ryan observed that, though *De ecclesia* proposed that the episcopal college succeeded the apostolic college and held supreme power over the universal Church, its significance was eroded by maintaining that the exercise of collegial power was possible only in an ecumenical council and that only residential bishops could be regarded as members of the college. "This latter proposition would have entailed that it was really the pope's grant of jurisdiction over a local Church which constituted a bishop as a member of the college. In this case, it would be difficult to see how the episcopal college could be regarded as anything other than a creation of the pope." "Re-Discovery," p. 219.

in the episcopal college and that episcopal consecration incorporated bishops into it.⁴⁹

Another aspect of the debate was whether or not the doctrine of collegiality had any roots in sacred scripture or in the writings of the early fathers of the Church. Cardinal Ottaviani and Cardinal Siri argued that the only scriptural basis for the doctrine would be a single instance, namely, the council at Jerusalem. so Archbishop Marcello Gonzalez and Bishop Demetrio Mansilla Reoyo of Ciudad Rodrigo, Spain, asserted that there was no patristic basis for it.⁵¹

Bishop Temino Saiz of Orsene, Spain, argued from scripture that episcopal collegiality meant only solicitude on the part of the bishops for the universal Church. Christ commanded the apostles, and therefore their successors, to preach the Gospel to all creatures. But, when Christ promised and conferred universal primacy, it was given only to Peter. In no respect did he assign the other apostles as active subjects of this universal authority.⁵²

49 Acta Syn. I, Pars IV, p. 400; see also the observations of Cardinal Feltin (in the name of eleven French bishops), *ibid.*, p. 406.

so Cardinal Ottaviani, *ibid.*, Pars II, pp. 624-625, and Cardinal Siri, *ibid.*, Pars I, p. 551.

si Bishop Marcello Gonzalez, *ibid.*, Pars II, p. 421. Bishop Mansilla Reoyo surveyed the writings of Clement of Rome, Irenaeus, Tertullian, Cyprian and Ignatius to demonstrate that none of these early Church Fathers held that the episcopal college had any power over the universal Church. *Ibid.*, p. 409.

S2 *Ibid.*, p. 473.

The peritus Barnabas Ahern, a scripture scholar, submitted an extended written animadversion "Witness of Sacred Scripture to the Collegiality of the Apostles and Bishops." It represented a response to those who claimed there was no scriptural basis for collegiality. Ahern remarked that it would be futile to search the scriptures for the term "college" or for an explicit and scientifically complete theology of the doctrine of collegiality. This should not be interpreted to mean that the doctrine itself is absent from the New Testament. He referred to the continual New Testament references to the Twelve: "It can clearly be shown that our Lord founded the Church on the Twelve apostles and intended this collegiality to endure."⁵³

Cardinal Frings insisted that it would be an abuse of the argument from tradition to conclude that collegiality did not exist in the early Church simply because the concept of collegiality in the strictly juridical sense cannot be found in the writings of the early church fathers. If the absence of a concept in a strict sense is used to prove its non-existence in any form, then it would have to be concluded that other concepts, such as the primacy of jurisdiction, likewise did not exist in the first centuries. He went on to identify the concept of collegiality with *communio*. Scripture itself, he argued, witnessed to the fact the ancient Church was built of many churches, united among themselves in the Word and in the Body of the Lord. As the one and unique Church was built from many

⁵³ Ibid., Pars I, p. 566 (Ahern's Adnimadversion was written in English).

churches united under the Bishop of Rome, so also from the beginning bishops were joined to one another in an intimate bond of unity.⁵⁴

Those who favored the development of the doctrine of collegiality did not intend to oppose papal primacy nor to arrogate to the college power which was proper to the pope as head of the Church. They firmly believed that the pope, as successor of blessed Peter, enjoyed ordinary and immediate authority over the whole Church. In governing the Church the college, whether assembled in a council or morally united while physically dispersed throughout the world, exercised its power only in union with its head and under his direction.

Collegial power, when joined to that of the universal pastor, was not merely strengthened but also legitimated. There seemed to be no possibility of accord in the debate until the *Nota explicativa praevia* which Pope Paul VI directed be appended to the Acts of the council offered necessary clarifications.

⁵⁴ Ibid., Pars III, p. 493, "Verum est conceptum collegialitatis in sensu iuridico stricte determinato non invenire in antiquissimis Patribus. Qui nunc concluderet talem collegialitatem in primis saeculis revera non existisse omnino falsam methodum adhiberet in inquirenda veritate ex sacra traditione. Hoc modo neque primatus iurisdictionis Summi Pontificis, qui est Veritas firmissima fidei nostrae, ex sacra traditione priorum saeculorum cognosci potest, quia tunc primatus Summi Pontificis Romani aliis formis se manifestabat... Antiqua ecclesia, sicut iam ex sacra Scriptura elucet, ex multis ecclesiis aedificabatur. Et sicut una et unica ecclesia aedificabatur ex multis ecclesiis inter se communicationibus sub Romano Pontifice, sic etiam episcopi arcto foedere ab initio inter se coniuncti erant." For further study of the scriptural and traditional witnesses regarding the concept of collegiality, cf. Jean Colson, *L'évêque dans les communautés primitives. Unam Sanctam*, n. 21 (Paris: Les Editions du Cerf, 1951); J. Colson, *L'épiscopat catholique collegialité et primauté dans les trois premiers siècles de l'Église. Unam Sanctam*, n. 43 (Paris: Les Editions du Cerf, 1963); Yves Congar, "De la communion des églises, une ecclesiologie de l'église universelle," in *L'épiscopat et l'église universelle. Unam Sanctam*, n. 39, eds. Yves Congar and Bernard Dupuy (Paris: Les Editions du Cerf, 1962).

Part I of the Nota explicativa interpreted the word "college": "College is not understood in a strictly juridical sense, namely, of a group of equals who entrust their power to their president, but of a stable group whose structure and authority is to be deduced from revelation."⁵⁵ In order to emphasize further that this broader sense of "college" was intended, the Nota stated that the words "order" and "body" were also occasionally used to describe the college of bishops. The use of the words "ordo" and "corpus" as variations for "collegium" was intended to call attention to the fact that "college" was not to be understood as a juridical unity in which all members had the same power, for these terms implied a hierarchy.[^]

The Nota added that the term "college" as applied to the bishops meant that they form a stable body or permanent community. Ladislav Orsy emphasized the theological implications of this interpretation, observing that it was Catholic doctrine that bishops were not so many individuals working for the good of the Church, but rather formed by divine right a permanent body in which there was more power than was to be found in the sum of all the power given to the individual bishops. Christ gave power to the body as such. From him the

⁵⁵ Acta Syn. III, Pars VIII, p. 11, "Collegium non intelligitur sensu stricte iuridico. scilicet de coetu aequalium, qui potestatem suam praesidi suo demandarent, sed de coetu stabili, cuius structura et auctoritas ex Revelatione deduci debent." Abbott-Gallagher, pp. 98-99.

se Acta Syn. III, Pars VIII, p. 11, "Ob eandem rationem, de Collegio Episcoporum passim etiam adhibentur vocabula ordo vel corpus."

S7 Karl Rahner, "The Hierarchical Structure of the Church with Special Reference to the Episcopate," in Vorgrimler 1:197-198.

apostles received in common as God's sacred trust the Word of God, the power to bind and loose and the gift of the Spirit who makes them one.^{5s}

The second difficulty resolved by Part I of the Nota explicativa was that of differentiating the relationship between Peter and the apostles from that of the pope and the college of bishops. The distinction clarifies further what membership in the episcopal college entails. Section 10a of the third draft of *Lumen gentium* stated that the Roman Pontiff, as the successor of blessed Peter, and the bishops, as successors of the apostles, formed by divine institution a college just as blessed Peter and the other apostles were constituted a college by divine institution.⁵⁹ In the modi submitted to the Doctrinal Commission, 381 council fathers argued against drawing such a close parallel between the apostolic and episcopal colleges. They proposed that such a position could easily lead to the conclusion that the episcopal college enjoyed all the power and prerogatives of the apostolic college, a position for which there was little scriptural foundation. Moreover, they argued, if it were possible to attribute jurisdiction over the whole Church to all the apostles, then, if the parallel were established, it would be possible to argue that each bishop

ss "Collegiality," *America* 112:706.

⁵⁹ *Acta Syn. III, Pars I*, p. 400, "Sicut statuente Domino, sanctus Petrus et ceteri Apostoli unum collegium constituunt, eadem ratione Romanus Pontifex, successor Petri, et Episcopi, successores Apostolorum, inter se coniunguntur."

enjoys the same universal jurisdiction, a position contrary to the teaching on papal primacy of Vatican I.⁶⁰

The Nota clearly addressed this issue:

The parallel between Peter and the other apostles on the one hand, and the Supreme Pontiff and the bishops on the other, does not imply a transmission of the extraordinary power of the apostles to their successors, nor, as is clear, any equality between the head and members of the college, but only a proportionality between the first relationship (Peter/apostles) and the second (Pope/bishops).⁶¹

Though the bishops succeeded the apostolic college, they were not the apostles and so they cannot claim the extraordinary powers of the apostles. Membership in the college, therefore, entailed only a participation in the ordinary powers conferred by Christ on the apostolic college.

The nature of these ordinary powers was further clarified in Part II of the Nota which described what was conferred by episcopal consecration: an ontological participation in sacred functions as tradition, especially the liturgical tradition, bore witness.⁶² In other words, episcopal consecration, not canonical mission, conferred on bishops a participation in the teaching, sanctifying and

60 "Modi a patribus conciliaribus propositi a commissione doctrinali examinati," *ibid.*, Pars VIII, pp. 66-67, n. 57-59, and pp. 88-89, n. 89.

61 *Ibid.*, p. 11, "Parallelismus inter Petrum ceterosque Apostolos ex una parte, et Summum Pontificem et Episcopos ex altera parte, non implicat transmissionem potestatis extraordinariae Apostolorum ad successores eorum, neque, uti patet, aequalitatem inter Caput et membra Collegii, sed solam proportionalitatem inter primam relationem (Petrus-Apostoli) et alteram (Papa-Episcopi)." Abbott-Gallagher, p. 99.

62 Acta Syn. III, Pars VIII, p. 11, "In consecratione datur ontologica participatio sacrorum munerum, ut indubie constat ex Traditione, etiam liturgica."

governing functions of the Church. The Nota stated that the word "function" ("munus") was deliberately used instead of "power" ("potestas") which could have the sense of power ordered to action.⁶³ To possess such ready power, canonical mission or juridical determination of office must be given by competent hierarchical authority. Juridical determination of office consisted in concession of an office or assignment of subjects according to the norms approved by the supreme authority.⁶⁴

Finally, Part II of the Nota explicativa dealt with membership in the episcopal college. One became a member by episcopal consecration and by

⁶³ The Nota and other conciliar documents distinguish "function" and "office." In Latin texts, "munus" designates functions or roles. For example, article 21 of *Lumen gentium* uses "munera" to describe the threefold functions which constitute the episcopal office, namely, teaching, ruling and sanctifying. Part II of the Nota praevia asserts that episcopal consecration confers an ontological participation in sacred functions (*sacrorum munerum*). The word "office" (*officium*) is a juridical term describing one's place within the structure of the Church. For example, Part II states that canonical determination can come through appointment to a particular office (*particularis officii*). Morsdorf clarifies the distinction between function (*munus*) and power (*potestas*): *munus* concerns what is to be done while *potestas* refers to the active principle or to the authority exercised in the fulfillment of office. "Munus regendi et potestas iurisdictionis," *Acta conventus internationalis canonistarum pontificia commissio juris canonici reconoscendo* (Rome: Typis Polyglottis Vaticanis, 1970), p. 199.

⁶⁴ *Acta Svn. III, Pars VIII, p. 11, "Consulto adhibetur vocabulum munerum. non vero potestatem. quia haec ultima vox de potestate ad actum expedita intelligi potest. Ut vero talis expedita potestas habeatur, accedere debet canonica seu iuridica determinatio per auctoritatem hierarchicam. Quae determinatio potestatis consistere potest in concessione particularis officii vel in assignatione subditorum, et datur iuxta normas a suprema auctoritate adprobata."*

hierarchical communion with the head and members of the collegers Here the Nota addressed the concerns raised by those who described earlier drafts of the dogmatic constitution as rendering the college a creation of the pope insofar as membership in it was intimately related to canonical mission.

The discussion of collegiality led to a clarification of the source of episcopal power. Membership in the episcopal college, which entailed a participation in the teaching, sanctifying and governing functions of the Church, was conferred through episcopal consecration and hierarchical communion with the head and members of the college. The bestowal of office through canonical mission or through the assignment of subjects rendered this participation in the power to teach, to sanctify and to govern exerciseable power to be exercised for the benefit of a designated community.

B. The Source of Episcopal Jurisdiction

In the midst of the discussion of collegiality Archbishop Michael Browne of Galway called for a discussion of the source of episcopal jurisdiction. He proposed that such a discussion had more than historic importance because the real question was dogmatic in nature: Was the system by which bishops preside over particular churches as proper, immediate and ordinary pastors and rectors under the primacy of the Roman Pontiff a matter of divine or human law?

6s Ibid., "Aliquis fit membrum collegii vi consecratione episcopalis et communione hierarchica cum Collegii Capite et membris."

Did it pertain to the divine constitution of the Church or to the human and therefore mutable order?⁶⁶

Traditionally since the late middle ages ecclesiastical power has been divided into the power of orders and that of jurisdiction. The power of orders was held to be conferred by the sacrament of orders; the power of jurisdiction, which included the power to teach, by the pope. This traditional position supported the arguments of the council fathers who opposed the doctrine of collegiality. Those who favored a collegiate understanding of the episcopacy generally held that sacred power was unified and had sacramental ordination as its source.

Bishop Helmut Wittier of Osnabruck, Germany and Bishop Michael Doumith of Lebanon were among those who saw ecclesiastical power as unified. Bishop Wittier observed that episcopal consecration has a Christological and an ecclesiological dimension. Its Christological dimension was found in the fact episcopal consecration was a vicarious act of Christ; its ecclesiological dimension, in the fact it was conferred for the benefit of the Church (*propter ecclesiam*). The power was Christ's conferred for the benefit of the Church. The fullness of the priesthood, therefore, consisted in all the

⁶⁶ Acta Syn. II, Pars II, p. 374. Rahner observed that the conciliar discussion of hierarchical power never resolved the question of whether power existed in the Church to meet the human need for offices or that offices existed by divine right. The council only traced offices to the will of Christ but this positive derivation did not decide the question, since ministerial service did not replace the action of Christ but only made it sacramentally and historically tangible. It is always Christ's presence, not the office, which guarantees fruitfulness of ministry. "Hierarchical Structure," in Vorgrimler 1:189-192.

faculties required to fulfill the episcopal office, that is, celebrating worship, administering the sacraments, teaching and governing.⁶⁷

The ancient discipline of the Church, according to Bishop Doumith, the liturgical texts which expressed the significance of the sacrament of orders and the intention of the Church attested to the intimate bond between the power of sanctifying and the powers of teaching and governing. These sources bore witness to the fact that bishops, once consecrated, exercised their office without any other condition and that the episcopal office conferred by consecration contained all episcopal prerogatives without restriction or discrimination.⁶⁸

Archbishop Dino Staffa, however, argued that it was the common teaching of the early church fathers, of the popes, of numerous doctors of the Church, theologians and canonists that bishops received the power of jurisdiction from the Roman Pontiff.⁶⁹ The school of thought which he represented perceived sacred power to be divided, with the division forming the basis for the claim that the power of orders came from sacramental ordination, while the power of jurisdiction was conferred on bishops by the pope.

⁶⁷ Acta Svn. I, Pars IV, p. 454. Anciaux interpreted the Christological dimension of episcopal power to mean that the bishop is identified with Christ in the work of redemption: "A man called to participate in the mission of the Church as a member of the hierarchy (a savior with Christ)." *The Episcopate in the Church* (Staten Island: Alba House, 1965), p. 47.

⁶⁸ Acta Syn. II, Pars II, p. 376.

eg Acta Svn. III, Pars III, pp. 584-595.

Part II of the *Nota explicativa* distinguished sacred functions from power. Episcopal consecration conferred an ontological participation in sacred functions; canonical mission empowered bishops to exercise these functions on behalf of designated communities⁷⁰ In other words, the ontological participation in sacred functions together with the granting of an office by legitimate authority rendered the power conferred by ordination exerciseable power.

"Jurisdiction" can be used in two senses. Part II of the *Nota explicativa* employs it not so much as a power, but as an empowerment, that is, a grant of a right to exercise power on behalf of a designated community. The term has a relational sense, linking an officeholder to a community on whose behalf a function was performed. From this perspective the pope is the source of episcopal jurisdiction because he confers canonical or juridical mission. In a second sense, "jurisdiction" is a power possessed by an officeholder to fulfill a specific function, namely, governing a designated community. Part II of the *Nota explicativa* does not resolve the question of the source of episcopal jurisdiction in this second understanding of the term.

C. Titular Bishops and the Power of Governance

The nature of episcopal governmental power cannot be determined without reference to titular bishops. Bishop Volk of Mainz correctly summarized the difficulty in defining the office of titular bishops as the inability to relate them

⁷⁰ Ibid., Pars VIII, p. 11, Part II. (The text is found in footnote 93.)

to a specified community. Since the episcopal office was a pastoral office bishops ought to be thought of, before all else, as pastors of a determined flock or particular church. The powers of orders and of jurisdiction were intimately joined together in the diocesan bishop. The full form of the episcopal office postulated both powers being present, but this was not true in the case of titular bishops.⁷¹

Bishop Reuss of Germany focused on the effects of sacramental ordination as a means of explaining the office of titular bishops. By consecration they became members of the episcopal college, which succeeded to the functions of the apostolic college of teaching, sanctifying and governing and which possessed by divine right with its head, the Roman Pontiff, full and supreme power over the universal Church. He noted that all members of the college were not equal. The inequality, however, pointed to grades, dignity or power, not to membership, for all bishops, without exception, were members of the college or body of bishops through episcopal consecration. All members of the college, by reason of membership, participated at least in the fundamental office and power of the college. Therefore, even auxiliary bishops had a part in its teaching, sanctifying and governing functions and in its full and supreme power over the Church. This followed upon episcopal consecration.⁷²

⁷¹ Ibid., Pars V, p. 22.

⁷² Ibid., pp. 32-33.

Part II of the *Nota praevia* did not distinguish between residential and titular bishops when it stated that episcopal consecration conferred an ontological participation in the episcopal function.⁷³ It existed without regard to how or where that function would be carried out. Canonical mission determined the subjects on whose behalf this participation in the episcopal function would be exercised. In the case of coadjutor or auxiliary bishops the canonical mission limited its exercise in reference to the jurisdiction of the residential bishop whose office was emphasized throughout the discussion of titular bishops.

Section III: The Conciliar Teaching on Episcopal Power

A. The Mystery of the Church

The mystery of Christ is the starting point of the ecclesiology of *Lumen gentium*:

Christ is the light of all nations. Hence this most sacred Synod, which has been gathered in the Holy Spirit, eagerly desires to shed on all men that radiance of His which brightens the countenance of the Church. This it will do by proclaiming the gospel to every creature (cf. Mk. 16:15)⁷⁴

⁷³ *ibid.*, Pars VIII, p. 11.

⁷⁴ AAS 57 (1965):5, art. 1, "*Lumen gentium cum sit Christus, haec Sacrosancta Synodus, in Spiritu Sancto congregata, omnes homines claritate Eius, super faciem Ecclesiae resplendente, illuminare vehementer exoptat, omni creaturae evangelium annuntiando (Cf. Mk. 16, 15).*" Abbott-Gallagher, pp. 14-15. For further study of the mystery of the Church see Yves Congar, *The Mystery of the Church*. 2nd. rev. ed. (Baltimore: Helicon Press, 1965); Y. Congar, *Jalons pour une theologie du la'icat*. *Unam Sanctam*, n. 23 (Paris: Les Editions du Cerf, 1953), pp. 46-58. H. Muhlen describes clericalism as a forgetfulness of the Spirit which developed during the last century so that the

Because of its unique relationship to Christ the Church is a kind of sacrament of intimate union with God as well as of the unity of the human family.⁷⁵

Lumen gentium teaches that the mystery of Christ present in the

Eucharist establishes the Church:

In any community existing around an altar, under the sacred ministry of the bishop, there is manifested a symbol of that charity and "unity of the mystical body, without which there can be no salvation." In these communities, though frequently small and poor, or living far from any other, Christ is present. By virtue of Him, the one, holy, catholic and apostolic Church gathers together. For the partaking of the Body and Blood of Christ does nothing other than transform us into that which we consume.⁷⁶

Each community gathered around the altar under the presidency of its bishop is

transmission of ministry was considered to be a juridic act and not a spiritual event. L'Esprit. 1:27.

⁷⁵ AAS 57:5-6, LG_, 1 & 3. The writings of Edward Schillebeeckx provide a developed theology of Christ as the primary sacrament and the Church as the **sacrament of Christ. See Christ, the Sacrament of the Encounter with God** (New York: Sheed and Ward, 1963), pp. 47-82, and L'Eglise du Christ et l'homme d'aujourd'hui selon Vatican II (LePuy: Mappus, 1965), pp. 142-149. Also Henri DeLubac, The Splendor of the Church (New York: Sheed and Ward, 1956).

⁷⁶ AAS 57:31-32, art. 26, "In quavis altaris communitate, sub Episcopi sacro ministerio, exhibetur symbolum illius caritatis et unitatis Corporis mystici, sine qua non potest esse salus. In his communitatibus, licet saepe exiguis et pauperibus, vel in dispersione degentibus, praesens est Christus, cuius virtute consociatur una, sancta, catholica et apostolica Ecclesia. Etenim, non aliud agit participatio corporis et sanguinis Christi, quam ut in id quod sumimus transeamus." Abbott-Gallagher, p. 50.

a church in the strict sense of the word, and it is "in and from such individual Churches that there comes into being the one and only Catholic Church."⁷⁷

Seamus Ryan explores the significance of this ecclesiological shift by comparing pre-conciliar and post-conciliar ecclesiologies. Post-Tridentine theology tends to see the Church as institution rather than as mystery, as organization rather than as community, which causes ecclesiology to reflect on the Church in sociological instead of theological categories. This leads to the perception of the diocesan church as a region, administrative unit or partial segment of an undivided perfect society. The rediscovery of the Church as mystery and the consequent recognition of the many churches within the one Church is basic to an understanding of episcopal collegiality for it shows how the episcopal office is part of the structure and inner mystery of the Church.⁷⁸ The diocesan church, therefore, cannot be seen as a mere administrative unit of the universal Church and its bishop cannot be viewed as a mere vicar of the pope if the Church is realized and made present where the Eucharist is celebrated and if the Church of Christ is present in all its mystery and reality in the local church. God's people are a people because they are a Eucharistic community.⁷⁹

⁷⁷ AAS 57:27, L(a, 23, "... in quibus et ex quibus una et unica Ecclesia catholica existit." Abbott-Gallagher, p. 44.

⁷⁸ Ryan refers to LQ, 3 & 26 and C_Q, 11 as the basis for his observations. "Re-Discovery," pp. 227-229.

⁷⁹ Ibid., pp. 229-230.

Herbert Muhlen also describes the importance of this ecclesiological shift. The many churches which form the one Church do so not just because of a relationship to the bishop of Rome but also because the Spirit of God is completely present to each of them, making each of them a representation of the whole.⁸¹

B. Ministerial Power

The teaching on the Church as mystery affects the concept of power in the Church. Lumen gentium 18 which begins the third chapter, "The Hierarchical Structure of the Church, with Special Reference to the Episcopate," describes all ministerial power as a participation in Christ's own power which is ordered to service unto salvation:

For the nurturing and constant growth of the people of God, Christ the Lord instituted in the Church a variety of ministries, which work for the good of the whole body. For those ministers who are endowed with sacred power are servants of their brethren, so that all who are of the people of God, and therefore, enjoy a true Christian dignity, can work toward a common goal freely and in an orderly way, and arrive at salvation.⁸¹

Sacred power with which the ministers of the Church are endowed is never an end in itself but a means ordered to building up this people. Power entrusted to

eoL'Esprit 1:211.

⁸¹ AAS 57:21-22, "Christus Dominus, ad Populum Dei pascendum semperque augendum, in Ecclesia sua varia ministeria instituit, quae ad bonum totius Corporis tendunt. Ministri enim, qui sacra potestate pollent, fratribus suis inserviunt, ut omnes qui de Populo Dei sunt, ideoque vera dignitate Christiana gaudent, ad eundem finem libere et ordinatim conspirantes, ad salutem perveniant." Abbott-Gallagher, p. 37.

bishops must be seen in this context because the mission of proclaiming the kingdom and the gifts needed to fulfill that mission are given to the Church, not just to the hierarchy.⁸²

Article 18 does not offer a formal explanation of "sacred power" but it avoids the classical division between the power of orders and that of jurisdiction. The whole chapter maintains the distinction between office (*munus*) and power (*potestas*). Its description of the episcopal office is a presentation of the three offices of teaching, sanctifying and governing which avoids speaking of three powers. Karl Rahner states:

The distinction between office (*munus*) and power (*potestas*) is not further elaborated. It is simply stated that the ministries (*ministeria*, *munera* or offices) are based on a "sacred power," and this power, which is ultimately one, is not differentiated into its intrinsic components. The relationship of the two distinguishable elements of the sacred power (the power of orders and the power of jurisdiction) to the three offices (*munera*) is not given any further clarification.⁸³

⁸² *ibid.*, p. 8, LjQ, 5, "Unde Ecclesia, donis sui Fundatoris instructa fideliterque eiusdem praecepta caritatis, humilitatis et abnegationes servans, missionem accipit regnum Christi et Dei annuntiandi et in omnibus gentibus instaurandi, huiusque regni in terris germen et initium constituit." For a detailed study of gifts given to the whole Church, see Henri Holstein, *Hierarchie et Peuple de Dieu d'après Lumen Gentium*. *Theologie Historique* 12 (Paris: Beauchesne, 1970); Seamus Ryan, "The Hierarchical Structure of the Church," in McNamara, p. 164.

⁸³ "Hierarchical Structure," in Vorgrimler 1:188-189. Rahner interpreted Part II of the *Nota explicativa* which distinguished power (*potestas*) from office (*munus*) as not adding further clarity for it did not explain whether power (*potestas actu expedita*) was identical with the power of jurisdiction or how it stands in relation to the threefold function conferred by consecration if it is not. For more precision, the Decree on bishops will have to be consulted. Also see Adriano Celaghin, "Sacra Potestas: Quaestio post Conciliaris," *Periodica* 74

Seamus Ryan too finds significance in the fact no mention is made of the classical division of the powers of orders and of jurisdiction. The council's reference to one sacred power favors an approach to ecclesiology which stresses the basic unity of hierarchical power instead of its complex subdivisions. Its significance is found in article 21 where the constitution upholds the view that the three functions or ministries of teaching, sanctifying and governing are rooted in the one sacrament which confers the ministry of bishop.⁸⁴

C. The Ministry of Bishops

Lumen gentium affirms that bishops participate in the mystery of the Church in a unique way. Article 21 describes this participation: they represent Christ, the head of the Church; the ministry of bishops is conferred by the Holy Spirit; sacramental ordination confers a participation in the threefold office of Christ; and the episcopal office is the fullness of the priesthood.

1. Bishops As Unique Representatives of Christ

Article 21 describes bishops as called to make Christ sacramentally present to his Church:

In the bishops, therefore, for whom priests are assistants, our Lord Jesus Christ, the supreme High Priest, is present in the midst of those who

(1985):165-225; and Alfonso Stickler, "De potestate sacrae naturae et origine," *Periodica* 71 (1982):65-91.

⁸⁴ "Structure," in McNamara, p. 164.

believe. For sitting at the right hand of the Father, He is not absent from the gathering of His high priests, but above all through their excellent service he is preaching the Word of God to all nations, and constantly administering the sacraments of faith to those who believe. By their paternal role (cf. 1 Cor. 4:15), He incorporates new members into His body by a heavenly regeneration, and finally by their wisdom and prudence He directs and guides the people of the New Testament in its pilgrimage toward eternal happiness

The longstanding tradition of the Church holds firmly that Christ is present to the Church in its sacraments. This tradition is restated in the Constitution on the sacred liturgy *Sacrosanctum Concilium* 7 which sees Christ as present in the celebration of the sacraments, in the sacred scriptures, in the ministry of priests and especially under the Eucharistic species. But, his sacramental presence is not limited to these liturgical actions. *Lumen gentium* 21 illustrates how the office of bishop is one of the means by which Christ is made sacramentally present and historically tangible to the Church.⁸⁶

The belief that the episcopate is a sacrament of Christ, the head of the Church, flows from the sacramental nature of the Church. All members of the

⁸⁵ AAS 57:24, "In Episcopis igitur, quibus presbyteri assistunt, adest in medio credentium Dominus Iesus Christus, Pontifex Summus. Sedens enim ad dexteram Dei Patris, non deest a suorum congregatione pontificum, sed imprimis per eorum eximium servitium verbum Dei omnibus gentibus praedicat et credentibus sacramenta fidei continuo administrat, eorum paterno munere (cfr. 1 Cor. 4, 15) nova membra Corpori suo regeneratione superna incorporat, eorum denique sapientia et prudentia Populum Novi Testamenti in sua ad aeternam beatitudinem peregrinatione dirigit at ordinat." Abbott-Gallagher, pp. 40-41.

⁸⁶ K. Rahner commented that Christ works primarily, though not exclusively, through the ministry of bishops. "Hierarchical Structure," in Vorgrimler 1:192; also see J. Lecuyer, "L'Episcopat comme sacrement," in Barauna 2:741-743.

people of God enjoy the same Christian dignity and have a part in the threefold mission of the Church. But, because the Church is a sacrament it has to have a visible structure.⁸⁷ it is also rooted in the council's return to a more biblical ecclesiology wherein Christ is seen as always with his people through the Holy Spirit. Thus, the bishop is not to be thought of as replacing Christ, continuing his work or representing a Christ who is elsewhere; rather he makes visible and tangible in his own person the risen Christ who is always present to his people.⁸⁸

Article 21 deals with the sacramental nature of the episcopal office. The individual bishop, not just the college of bishops, makes Christ sacramentally and historically present.⁸⁹ This teaching is the basis for the description of diocesan bishops as vicars of Christ to the churches over which they preside found in *Lumen gentium* 27: "Bishops govern the particular churches entrusted

⁸⁷ Klaus Mbrsdorf, "De sacra potestate," *Apollinaris* 40 (1967):45-46. Piero Bonnet surveyed the extensive writings of Morsdorf on the sacramental nature of the Church in "Diritto e potere nel momento originario della 'potestas hierarchia' nella Chiesa: stato della dottrina in una questione canonisticamente disputata," *Ius canonicum* 15 (1975):119-126. He developed his own thoughts on the demand for structure that flows from the sacramental nature of the Church on pp. 145-157. Also see Wilhelm Bertrams, *De Relatione inter Episcopatum et Primatum* (Rome: Gregorian University, 1963), pp. 35-38, and "De analogia," pp. 267-308.

⁸⁸ s. Ryan, "Structure," in McNamara, pp. 173-174.

⁸⁹ K. Rahner, "Hierarchical Structure," in Vorgrimler 1:192.

to them as vicars and ambassadors of Christ."⁹⁰ Article 27 also notes that bishops are not to be regarded as vicars of the Roman Pontiff, "for they exercise an authority which is proper to them, and are quite correctly called 'prelates,' heads of the people whom they govern."⁹¹

Each diocesan bishop, in spite of being subordinate to the pope, is not a lower official of the pope. He is not the pope's representative since he governs his church in his own right which is given with his office. By divine institution, the bishop has personal responsibility for his diocese.⁹²

Gregory Baum addresses the difficult problem of two jurisdictions, papal and episcopal, exercised in the diocesan church without cancelling or inhibiting one another. The pope has immediate and ordinary jurisdiction in every diocese of the world; diocesan bishops have immediate and ordinary jurisdiction in the dioceses committed to their pastoral care. These two

⁹⁰ AAS 57:32-33, "Episcopi Ecclesias particulars sibi commissas ut vicarii et legati Christi regunt."

⁹¹ Ibid., "Ipsis munus pastorle seu habitualis et cotidiana cura ovium suarum plene committitur, neque vicarii Romanorum Pontificum putandi sunt, quia potestatem gerunt sibi propriam verissimeque populorum quos regunt, Antistites dicuntur."

⁹² "Hierarchical Structure," in Vorgrimler 1:217. Seamus Ryan sees the conciliar approach to the bishop's responsibility as closer to the patristic and liturgical evidence of the early Church than the approach immediately before the council. He notes that the early liturgical prayers see the bishop as primarily destined for the charge of a particular church, a commission fulfilled in communion with his fellow bishops. "Once we understand the real nature of the local Church as the concrete realization of the universal Church, it is possible to see here the seed and the kernel of all later developments in the concept of the episcopal office." "Structure," in McNamara, p. 215.

jurisdictions do not conflict with one another; on the contrary, they are meant to help and reinforce one another. The ultimate force which guarantees the harmonious coordination of these two jurisdictions is charity. But, the function of the papal office also serves as a source of harmony: "While papal power is supreme and extends over the bishop as well as his flock, the pope must use this power to build up God's kingdom, to foster the life of the diocese and therefore to safeguard the scope of the bishop in the exercise of his pastoral authority."⁹³

The conciliar teaching on episcopal collegiality also provides a balance in the exercise of papal and episcopal jurisdiction. A bishop has a role in the Church which includes more than being the head of a diocese; as a member of the college of bishops he is, at the same time, co-responsible for teaching and shepherding the universal Church. Although a bishop's jurisdiction is confined to his diocese, as a member of the college he has far more extensive responsibility. "His relationship to the pope is not only that of an episcopal subject ruling his diocese in conformity with papal legislation, but as a member of the body of bishops he is an episcopal brother of the pope engaged in dialogue with him."⁹⁴

⁹³ "Primacy and Episcopacy: A Doctrinal Reflection," in Vatican II. The Theological Dimension, ed. Anthony Lee (St. Joseph Province: The Thomist Press, 1963), pp. 212-213.

⁹⁴ *ibid.*, p. 218.

Karl Rahner provides a helpful distinction. To the extent that the pope, as head of the universal Church, is empowered to exercise authority over particular churches insofar as they are part of the universal Church, "the individual bishop is also an executive organ of papal power."⁹⁵ Rahner emphasizes the words "is also" and thus expresses concern that bishops be seen also as executive organs, not *just* as executive organs of papal power.

2. The Office of Bishops Is Conferred by the Holy Spirit

Bishops are signs of Christ in a unique way because of the gift of the Holy Spirit conferred by the laying on of hands. This gift of the Holy Spirit is at the same time a conferral of the ministry of bishops.⁹⁶ The tradition of imparting the gifts of the Holy Spirit through the imposition of hands is of apostolic origin. This action has a twofold effect: it confers the grace of the Holy Spirit and the sacramental character, the latter regarded as enabling the bishop to represent

⁹⁵ Karl Rahner and Joseph Ratzinger, eds., *The Episcopate and the Primacy* (New York: Herder and Herder, 1962), p. 32.

⁹⁶ AAS 57:24-25, *LQ.*, 21, "Ad tanta munera explenda, Apostoli speciali effusione supervenientis Spiritus Sancti a Christo ditati sunt (cfr. Act. 1, 8; 2, 4; Io. 20, 22-23), et ipsi adiutoribus suis per impositionem manuum donum spirituale tradiderunt (cfr. 1 Tim. 4, 14; 2 Tim. 1, 6-7), quod usque ad nos in episcopali consecratione transmissum est." Abbott-Gallagher, p. 41. The source of the council's teaching on the sacramental nature of episcopal consecration was the Council of Trent. K. Rahner referred to LG footnote 54: "Cone. Trid., sess. 23, cap. 3, citat verba 2 Tim. 1, 6-7, ut demonstret Ordinem esse verum sacramentum: Denz. 959 (1766)," in "Hierarchical Structure," in *Vorgirimler* 1:192.

Christ in a special and historically symbolic manner according to his threefold office; and it bestows the threefold office (munus).⁹⁷

All the council fathers who voted to incorporate this teaching on the sacramental nature of episcopal consecration may not have understood fully that they were reversing the theological opinion held almost unanimously by theologians for five hundred years (the tenth to the fourteenth centuries). Seamus Ryan notes that most scholastic theologians followed Peter Lombard in teaching that episcopal consecration was neither a sacrament nor an order. The theology of orders held by the scholastics was built on the priesthood founded on Aaron and linked closely to the cultic priesthood of the Old Testament. Bishops were considered in this same narrow cultic context of priesthood which led to an impoverished theology of the episcopate, namely, the bishop is simply the priest who has the added power of confirming and ordaining.⁹⁸ *Lumen gentium*, according to Ryan, presents a very different perspective of the office of bishop:

The salient concept of the priest which emerges is certainly not that of the ritualist but of the pastor, of an apostle sent to build up the people of God and whose first priestly task is the ministry of the Word. Where the priesthood is realized in its fullness, i.e. in the bishop, its apostolic and pastoral dimension is most clearly evident. The priesthood cannot be defined solely in terms of the cultic power to offer Mass, but includes also

⁹⁷ LG. 21. K. Rahner, "Hierarchical Structure," in *Vorgrimler* 1:193; J. Lecuyer, "Sacrament," in *Barauna* 2:746-748; S. Ryan, "Structure," in McNamara, p. 174.

as *ibid.*, pp. 174-175.

the prophetic ministry of the Word and the pastoral ministry of presiding over the people of God."

Lumen gentium 21 which teaches that ordination confers the episcopal office makes the sacrament of holy orders the foundation of all hierarchical power in the Church. Those who hold the office of pope, patriarch or metropolitan, like any residential bishop, are heads of dioceses to which these offices are attached. Episcopal consecration is common to all of them; hierarchical distinctions are determined by the office within which the episcopal function is fulfilled.¹⁰⁰

While episcopal ordination imparts a fundamental equality among all bishops, it also establishes a basis for the subordination of one bishop to another. This subordination is related to the function attached to an office. The primatial office, by virtue of which the pope exercises full, supreme and universal power over all the faithful, is ordered to the unity of the Church. By virtue of this unifying function and his presidency over the college of bishops he also has the authority to determine the office of other members of the college. Part II of the Nota explicativa states, "Such an ulterior norm is demanded by the nature of the case, since there is question of functions which must be exercised

"Ibid., p. 175.

¹⁰⁰ Morsdorf, "De sacra potestate," *Apollinaris* 40 (1967):55-56. Muhlen observes that by situating the pope into the diocesan structure of the Church his role as visible principle of unity is more clearly shown. He is the visible principle of unity between the bishops and their particular churches. The Holy Spirit remains the invisible and uncreated principle of unity for the Church. *L'Esprit* 11:208-209.

by several subjects working together by Christ's will in a hierarchical manner."ioi Part II of the Nota further clarifies the role of canonical mission or juridical determination of office: it renders the ontological participation in sacred functions given in consecration exerciseable power. 102

3. Episcopal Consecration Bestows the Threefold Office

Article 21 affirms the conferral of the threefold office through episcopal consecration:

But episcopal consecration, together with the office of sanctifying, also confers the office of teaching and of governing. (These, however, of their very nature, can be exercised only in hierarchical communion with the head and the members of the college.)io3

This teaching has implications for bishops as members of the episcopal college and as individuals. The constitution's affirmation that all three offices are

101 AAS 57:73, "Quae determinatio potestatis consistere potest in concessione particularis officii vel in assignatione subditorum, et datur iuxta normas a suprema auctoritate adprobatas. Huiusmodi ulterior norma ex natura rei requiritur, quia agitur de muneribus quae a pluribus subiectis, hierarchice ex voluntate Christi cooperantibus, exerceri debent."

102 *ibid.* For further commentary see J. Ratzinger, "Prefatory Notes," in *Vorgrimler* 1:301. Ratzinger credits W. Bertrams for the background of the position taken by the Nota praevia. *De Relatione inter Episcopatum et Primatum. principia philosophica et theologica quibus relatio iuridica fundatur inter officium episcopale et primatiale* (Rome: Gregorian University, 1963). Also see Kevin McNamara, "The Prefatory Note of Explanation," in McNamara, p. 358.

103 AAS 57:21. "Episcopalis autem consecratio, cum munere sanctificandi, munera quoque confert docendi et regendi, quae tamen natura sua nonnisi in hierarchica communione cum Collegii Capite et membris exerceri possunt." Abbott-Gallagher, p. 41.

conferred by consecration implies that all bishops, not just residential bishops, participate in these offices. Subsequent articles of the third chapter of *Lumen gentium* speak of the episcopate as a whole and of its functions without any reference to the distinction between diocesan and other bishops and affirms that all belong to the episcopal college. Article 21, therefore, provides a theological justification for permitting titular bishops to take part in an ecumenical council or in episcopal conferences insofar as they share responsibility for the region in question. 104

The conciliar doctrine that the church's offices of ruling and teaching are rooted in the sacrament of orders is one of the most important contributions of the Second Vatican Council to the theology of the Church. The bishops receive their pastoral role as authentic leaders and teachers in the Church as a special gift of the Holy Spirit from the power of orders. Juridical terms cannot exhaust or analyze completely the meaning of this pastoral power. "If a bishop or priest governs his people well, he does so not simply because his power of government is legitimate, but because he governs in the power of the Holy Spirit which was given to him in the sacrament of orders."¹⁰⁵ The recipient of the sacrament of orders is set aside, sanctified and perfected for the whole ministry to which he is called whether it be as priest, as teacher or as shepherd.

¹⁰⁴ K. Rahner, "Hierarchical Structure," in Vorgrimler 1:193-194. Also see Joseph Lecuyer, "La Triple charge de l'évêque," in Barauna 2:891-914.

¹⁰⁵ s. Ryan, "Structure," in McNamara, p. 176.

This ministry is summed up in the title "Vicar of Christ," for the individual bishop is sent to act in the name and person of Christ.¹⁰⁶

The qualification that the munera of the bishop "by their very nature, can be exercised only in hierarchical communion with the head and members of the college" was, according to Karl Rahner, inserted at the will of the pope. The teaching and governing offices can be exercised only in full unity with the whole episcopate and the pope. Full communion with the college and its head is necessary because all authority in the Church is united and possesses a sacramental and pneumatic basis. 107

The requirement that the teaching and governing offices be executed in hierarchical communion with the head and members of the episcopal college flows from the purpose or end of the episcopal office, a ministry instituted by Christ for the good of the Church. It is to continue the work of its founder, uniting the children of God dispersed throughout the world. This unity is to be manifested visibly by the communion of the bishops. It must be much more than a mere communion of the heart or of sentiment; hierarchical communion, that is, unity manifested by accepting the coordination willed by Christ between the members of the body of bishops and by subordination to the successor of

106 s. Ryan, "Re-Discovery," p. 218.

107 K. Rahner, "Hierarchical Structure," in Vorgrimler 1:194.

blessed Peter, is required lest the power given by Christ be the source of division within the Church. 108

Hierarchical communion is contained in the sacramental foundation of the college since through the reception of a sacrament the bishop is admitted to the college or communion of bishops. Acceptance into the college is of its very nature a commission to work in communion with fellow bishops. Jurisdiction can never be seen as a purely external *potestas regendi* comparable to profane governing power and liable to absolute centralization because of what episcopal jurisdiction is, whence it comes and how it is exercised which are determined by the nature of the Church as a plurality of churches in communion with one another. 109

4. The Office of Bishop As the Fullness of the Priesthood

Karl Rahner perceives the teaching on the sacramental nature of episcopal consecration to provide a complete reorientation of how priesthood is conceived. The episcopate is no longer regarded in light of the "simple" priesthood but is itself envisaged as the full priesthood in all regards:

¹⁰⁸ j. Lecuyer, "Sacrement," in Barauna 3:753. Also see Prudentius DeLetter, "Primacy and Episcopacy: Doctrinal and Practical Implications," in Lee, pp. 229-233.

¹⁰⁹ S. Ryan, "Structure," in McNamara, p. 181; and J. Ratzinger, "Prefatory Notes," in Vorgrimler 1:302. Charles Moeller describes the council's linking of sacramentality and collegiality as a "Copemican revolution." "History of Lumen gentium's Structure and Ideas," in Vatican II An Interfaith Appraisal. International Theological Conference University of Notre Dame: March 20-26, 1966, ed. John Miller (Notre Dame: Notre Dame Press, 1966), p. 132.

"Episcopal consecration is the primary and comprehensive instance of sacramental ordination to office."¹⁰ The ordinary priesthood is a limited share of the full priesthood. This means that it would be valid to consecrate a bishop without previous priestly ordination, a process of which there are examples in history.^m

The teaching that the office of bishop is the fullness of priesthood radically affects the council's teaching on presbyteral ministry. Presbyters are now seen as collaborators with their bishops. It is now necessary to describe the presbyteral function with reference to the episcopal function, not the opposite.¹¹²

CONCLUSIONS

The teaching of *Lumen gentium* on the governmental power of the diocesan bishop is derived from the council's renewed appreciation of the Church as a mystery, the debate on collegiality and the teaching on hierarchical communion found in *Lumen gentium* and the *Nota explicativa praevia*. Its essential elements are:

1. The episcopate is a sacrament
2. Bishops are the vicars of Christ to the particular churches committed to their care

no "Hierarchical Structure," in *Vorgrimler* 1:193.

m *Ibid.*; also see J. Lecuyer, "Sacrament," in *Barauna* 3:749-750.

¹¹² *Ibid.*, pp. 750-751.

3. The episcopal office is conferred by sacramental ordination and thus all hierarchical power in the Church has episcopal ordination as its foundation

4. Bishops fulfill Christ's threefold office of teaching, sanctifying and governing in hierarchical communion with the head and members of the episcopal college

5. The episcopal office is the fullness of the priesthood and thus the presbyteral function is defined with reference to the episcopal function, not the opposite.

The power to fulfill the threefold office of Christ resides in the college of bishops and in its head, the Roman Pontiff. Its source is the Holy Spirit. Sacramental ordination and hierarchical communion with the head and members of the body of bishops incorporates individual bishops into the college and thus they share in its power. Canonical mission or juridical determination of subjects renders this power exerciseable. The bishop's function as an individual and as a member of the college is reciprocal.

Canonical appointment to an office determines both the function a bishop will fulfill on behalf of his own church and of the universal Church. He is the visible principle and foundation of unity for the diocesan church and Christ's vicar to it. Designation to a particular diocese may, from the constitution of the Church, also determine a specific function relative to the universal Church, as is true in the case of the bishop of Rome, a patriarch or metropolitan. But, underlying these offices is the basic principle that all episcopal officeholders are

first bishops endowed by Christ through sacramental ordination with his threefold offices of teaching, sanctifying and governing.

The concept of hierarchical communion and the nature of the episcopal office create what might be called a healthy tension in the Church. The unifying function that belongs to the primatial office cannot destroy the power that belongs to diocesan bishops because it, like the power of the pope, comes from Christ. A significant addition to the understanding of episcopal jurisdiction is that it is proper power in addition to being ordinary and immediate. This means that it is episcopal power, not delegated papal power. Thus, the supreme and universal power must affirm, strengthen and vindicate the power of diocesan bishops.

The next chapter will study the Decree on the bishops' pastoral office in the Church and other conciliar documents. Then the post-conciliar documents will be reviewed. Finally, the last chapter will analyze the 1983 Code of Canon Law. The focus will be on how these documents implement the conciliar teaching on the office of the residential bishop.

CHAPTER IV

CONCILIAR DOCUMENTS COMPLEMENTING THE TEACHING OF LUMEN GENTIUM ON EPISCOPAL JURISDICTION

In light of the Dogmatic Constitution on the Church *Lumen gentium*, this chapter will analyze the council's Decree on the bishops' pastoral office in the Church *Christus Dominus* and other conciliar documents which deal with episcopal jurisdiction. The objective here is a modest one, dealing only with the governing power of the diocesan bishop. It recognizes the momentous contribution to the theology of the episcopate of *Lumen gentium* 21 where the council teaches the interconnectedness of the teaching, sanctifying and governing offices of the bishop. Through each of these offices diocesan bishops exercise their pastoral office on behalf of the particular churches committed to their care. Their ministry is itself one ministry. There is an integral relation between the bishops' proclamation of the Gospel, their celebration of the Eucharist and their presiding over diocesan churches. It is through the proclamation of the Gospel that people are called to faith which gathers them

around the altar where the Church is formed. A substantial study of each of these offices is beyond the scope of this work.¹

Section I: The Decree on the Bishops' Pastoral Office in the Church Christus Dominus

The Decree on the bishops' pastoral office in the Church Christus Dominus, because of its concentration on the ministry of bishops, is the most significant conciliar document developing the teaching on episcopal jurisdiction found in Lumen gentium. Its formation parallels that of Lumen gentium in time,

¹ The sanctifying office of the bishop has been studied by David Walkowiak, *The Diocesan Bishop and the Munus Sanctificandi: A Study of Its Legal Development*. Canon Law Studies, 520 (Washington: Catholic University, 1986). For a study of the teaching office of bishops see Francis Urrutia, *De Ecclesiae munere docendi* (Rome: Gregorian University, 1983); Juan Arrieta, "The Active Subject of the Church's Teaching Office (Canons 747-748)," *Studia canonica* 23 (1989):243-256; Leo O'Donovan, ed., *Cooperation between Theologians and the Ecclesiastical Magisterium. A Report of the Joint Committee of the Canon Law Society of America and the Catholic Theological Society of America* (Washington: Canon Law Society, 1982); James Hickey, "The Bishop as Teacher," in *The Ministry of Bishops: Papers from the Collegeville Assembly* (Washington: USCC Publications, 1982), pp. 15-20; John O'Connor, "The Bishop as Teacher of the Faith," in *Evangelization in the Culture and Society of the United States and the Bishop as Teacher of the Faith* (Washington: USCC Publications, 1989), pp. 18-31; Joseph Ratzinger, "The Bishops as Teacher of the Faith," in *Evangelization*, pp. 13-15; Francis Thomas, "The Bishop in His Teaching Office and Those Who Assist Him," *Studia canonica* 21 (1987):229-238. For a study of the interconnectedness between the Eucharist and the power of jurisdiction see Giuseppe Alberigo, "La jurisdiction," *Irenikon* 49 (1976):167-180 and Olysius Robleda, "Iurisdictio--Officium Ecclesiasticum," *Periodica* 59 (1970):674-689.

procedure and substance. The discussion of collegiality in the development of the dogmatic constitution greatly affected the content of the decree on bishops.²

A. The Formation of the Decree

Christus Dominus was the outcome of the conciliar discussion of two schemata: "The Decree on Bishops and on Diocesan Government" and "The Decree on the Care of Souls." Both schemata were distributed on November 5, 1963 during the second period of the council.

"The Decree on Bishops and on Diocesan Government" contained five chapters: "On the Relation Between Bishops and the Sacred Congregations of the Roman Curia," "On Coadjutor and Auxiliary Bishops," "On the National Body or Conference of Bishops," "On the Suitable Division of Dioceses and of Ecclesiastical Provinces," and "On the Erection of Parishes." Two appendices were attached: "On the Relation Between Bishops and the Sacred Congregations of the Roman Curia," which contained a list of twenty-nine faculties to be conceded stably and ipso jure to residential bishops; and "On the Practice of the Sacred Congregations with regard to the Bishops," which explained the competence of the various Roman Congregations, their method

² Klaus Morsdorf, "The Decree on the Bishops' Pastoral Office in the Church," in Vorgrimler 2:166, "The changes made in the schema on the Constitution on the Church regarding bishops naturally affected the work of the Commission for Bishops, so that development of the schema on the bishops is intimately connected with that of Chapter III of the Constitution on the Church." Laurentin observes that the progress made in the discussion of collegiality during the first period treatment of the constitution made it an "irresistible" topic in the discussion of the decree. *L'enjeu de Concile* 2:233-234. Also see Congar, *Le Concile* 2:125-136.

of operation, suggested means for communicating with them and a proposal for the abolition of various taxes.³

Cardinal Paolo Marella, the president of the Commission on Bishops and Diocesan Government, observed that the schema was intended to be a pastoral document. Since the theological aspects of the episcopate were under discussion as the council fathers debated *De ecclesia Christi*, juridical and pastoral norms concerning matters common to the universal episcopate formed the core of this document.⁴

Many of the criticisms levelled against *De ecclesia Christi* were repeated here. It was noted, for example, that there was no unifying theme. Instead, the schema consisted of a number of chapters which merely followed one another.⁵ Its juridical tone was also criticized. Reference was made to the fact that the schema spoke of the Church in societal tones, neglecting the concept of the Church as a mystery. Its portrayal of the bishop was that of an administrator or governor who ruled his flock at a distance in separation from them.⁶

The schema was held to be inconsistent. Archbishop Louis de Bazelaire de Ruppierre of Chambéry noted that in the introduction bishops were

³ Acta Svn. II, Pars IV, pp. 364-392.

⁴ Relatio of Cardinal Marella, *ibid.*, p. 435.

⁵ See, for example, the observations of Archbishop de Bazelaire de Ruppierre of Chambéry, *ibid.*, p. 460.

⁶ See, for example, the observations of Archbishop Gomes dos Santos (speaking in the name of sixty Brazilian bishops, *ibid.*, p. 489.

described as true pastors of their churches, possessing power for the fulfillment of their office, while in the document itself bishops were seen as recipients of faculties. In some cases, the amplification of faculties was fictitious because many of the powers listed in the appendix were already possessed by virtue of the quinquennial faculties.⁷ Archbishop Fernando Gomes dos Santos of Goiania, Brazil, speaking in the name of sixty Brazilian bishops, observed that the document seemed to emphasize episcopal submission to the Roman Curia by its frequent reference to the concession of faculties to bishops. It was argued that, even if there were an extensive amplification of faculties extended to them, the episcopal office would not be duly respected because bishops would still be seen as the recipients of faculties as opposed to true heads of their diocesan churches.⁸

Cardinal Alfrink argued on the council floor, as he had at meetings of the Central Commission, that papal reservation of major causes rather than papal

⁷ Ibid., p. 461.

⁸ Ibid., p. 489. The same opinion was voiced by Bishop Correa Leon of Cucuta, Colombia, *ibid.*, p. 464; by Archbishop Gomes dos Santos, *ibid.*, p. 490. Cardinal Ritter of St. Louis, speaking in the name of "many bishops of the United States," called for the end of the practice of granting faculties and indulgences. Those laws which restricted the bishops' ordinary authority should either be abrogated or derogated so that the power proper to the episcopal office would be restored. *Ibid.*, p. 557. Bishop Khoreiche, the Maronite bishop of Sidon, observed that many religious had greater power than Latin Rite bishops for so many cases were reserved to the Holy See that it was hard to believe that bishops actually ruled their churches. *Ibid.*, pp. 628-629. Laurentin explored in greater detail the discussion of the bishops' relation to the Roman Curia, *L'enjeu de Concile 2*:120-131, and the problem of conceding faculties, pp. 112-120.

concession of faculties would better respect the episcopal office. Thus, only those matters which affected the unity of discipline and teaching in the universal Church should be under the authority of the Roman Pontiff while all else would pertain to the diocesan bishop.⁹ Cardinal Ruffini argued vigorously against the principle of reserving major causes to the Holy See in place of conceding faculties to bishops. He held that the concession of quinquennial faculties and of indults constituted an act of supreme power proper to the pope as the universal shepherd of the Church.¹⁰

The council fathers were already discussing a second schema of the Dogmatic Constitution on the Church. The interrelation of the two documents was constantly pointed out, with speakers emphasizing that the legal order must reflect the theology of the episcopate. The absence of a comprehensive treatment of collegiality was noted by Cardinal Alfrink, Cardinal Garcia of Bombay and Archbishop Gomes dos Santos (in the name of sixty Brazilian bishops).¹¹ Cardinal Ruffini, Cardinal Ottaviani and Cardinal Browne, however, emphasized that nothing had yet been decided about the doctrine of collegiality

⁹ Acta Svn. II, Pars IV, p. 459.

¹⁰ Ibid., p. 477.

¹¹ Cardinal Alfrink, *ibid.*, p. 479; Cardinal Garcia, *ibid.*, p. 448; Archbishop Gomes dos Santos, *ibid.*, p. 489.

and noted that those who fostered the development of this doctrine could be suspected of wanting to limit papal primacy, at least in practice. 12

The chapter, "On Coadjutor and Auxiliary Bishops," generated a vigorous discussion. It proposed that coadjutor bishops, since they enjoy the right of succession, ought to have all the faculties the general law conceded to vicar generals.¹³ It was vague about the authority of auxiliaries, proposing that the documents which constituted them as auxiliaries ought to concede the faculties needed to fulfill their office. Residential bishops, then, were to delegate the necessary faculties for those areas not provided for in the letters of appointment. Faculties conferred by the letters of appointment would not expire when the see became vacant; those granted by the residential bishops would cease. 14

There was a strong negative reaction to the schema's proposal that residential bishops ought to retire instead of seeking auxiliaries when they were no longer able to care for their dioceses. There was also considerable discussion of the faculties to be conceded to coadjutor and auxiliary bishops. The fear was expressed that too much authority would be given to them by the general law of the Church so that it would appear that a diocese had two or more heads, depending on the number of auxiliary bishops appointed to it.

12 K. Morsdorf, "Decree," in Vorgrimler 2:170; R. Laurentin, *L'enjeu de C_pjiciJe_ 2*:131-132.

13 Acta Syn. II, Pars II, p. 368, art. 8.

14 Ibid., art. 9 and p. 369, art. 15. The footnote to article 15 stated that it abrogated c. 355.2 & 3 of the 1917 code.

Some council fathers saw a rationale for auxiliary bishops only insofar as they performed pontifical functions, the administration of confirmation and ordination.

The second schema, "The Decree on the Care of Souls," was concerned with the bishop's pastoral ministry within the diocese. It had three chapters: "On the Pastoral Office of Bishops," "On the Pastoral Office of Pastors," and "On the Relation between Bishops and Religious, Especially with regard to Apostolic Works," and two appendices: "On the Pastoral Office of Bishops, Norms and Prescriptions to be Placed in a Code of Canon Law," and "On the Pastoral Office of Bishops, Norms for a General Directory for Bishops."is The schema was never discussed because of a lack of time. It was proposed that its more important matters be incorporated into the schema "On Bishops and on Diocesan Government."¹⁶

The proposal that the schemata be united began initially on the council floor the same day the two schemata were distributed (November 5, 1963). Bishop Narciso Jubany Arnau, Bishop of Gerona, Spain, submitted an outline of a new draft which suggested that the two schemata be combined to produce

is Acta Syn. II, Pars IV, pp. 751-786. When Pope John announced the council he also indicated his intention of establishing a commission for the revision of the Code of Canon Law, so that practical applications of changes in the life of the Church, inspired by the Holy Spirit, would be incorporated into its discipline. AAS 51 (1959):68-69.

16 K. Morsdorf, "Decree," in Vorgrimler 2:187.

one "truly pastoral document."¹⁷ The Brazilian hierarchy as a corporate body made the same proposal.¹⁸ By the end of the second period of the council it was agreed that a new schema, combining the two earlier schemata, would be prepared. Early in the third period of the council (September 18, 1964) a new schema "The Decree on the bishops' pastoral office in the Church" was presented to the council fathers for discussion.¹⁹

In his *Relatio* Cardinal Marella highlighted the changes incorporated into the new schema. The preface linked its contents to the teaching of *Lumen gentium*: that bishops are the successors of the apostles in the care of souls and participate in the apostolic mandate to teach all nations and to sanctify all in the truth; and that the episcopal office, received through consecration, gives bishops a share in solicitude for the Church in communion with the Roman Pontiff and the members of the college of bishops. The new schema distinguished the bishops' office in relation to the universal Church and to the diocesan church, asserting an episcopal function with regard to each. Their pastoral office was considered under three ministries: teaching, sanctifying and ruling. Cardinal Marella observed that of greatest importance was the fact the new schema enunciated the general principle that bishops, as successors of

¹⁷ *Acta Syn.* II, Pars IV, p. 456. The suggested outline is found on pp. 456-458.

¹⁸ *Ibid.*, p. 490.

¹⁹ *Acta Syn.* III, Pars II, pp. 22-44. Also see R. Laurentin, *L'enjeu de Concile* 3:45-49.

the apostles and as immediate and ordinary heads of dioceses, possessed all the power needed to fulfill their pastoral office. The new schema did not refer to faculties conferred on bishops, a concept which many council fathers found objectionable.²⁰

There was an attempt to limit discussion of the new draft to materials not discussed in the earlier period of the council, namely, to those matters taken from the schema "On the Care of Souls" and those added by the Commission on Bishops. On September 16 the council fathers received an agenda of issues to be discussed: the notion of the diocese and the diocesan bishop's threefold office of teaching, sanctifying and governing (articles 11-18); the diocesan curia, the pastoral council and the diocesan clergy, especially parish priests (articles 25-30); and the relation of the bishop to the religious in his diocese (articles 31-33). Some council fathers did not follow these directives. Cardinal Richaud, who spoke first, protested that some matters referred to the commission for the reform of the Code of Canon Law would not be discussed on the council floor. Cardinal Browne objected to the proposition that the authoritative office of teaching and governing was conferred by sacramental ordination and that the college of bishops was the permanent bearer of the highest plenary power over the Church, since nothing had as yet been decided about the theological foundations of these teachings. Bishop Carli held that the draft went beyond the schema of the Constitution on the Church because it granted all bishops

²⁰ *ibid.*, pp. 45-48.

membership in an ecumenical council by virtue of ordination.²¹ By the end of the discussion four hundred alterations were suggested.²²

An amended text was presented to the council fathers on October 30, 1964.²³ Voting on the amended text took place from November 4 to 6, 1964. Chapter two, which treated the bishops' relation to their particular churches, was put to the vote on November 5. It did not receive the necessary majority of votes. There were 1219 affirmative, 19 negative and 889 votes of "yes" with reservations. The main problem was the chapter's treatment of the relation between bishops and religious. Both bishops and religious suggested modifications.²⁴

The *textus recognitus* was presented to the council fathers on October 6, 1965 in the fourth period of the council. The final vote on the decree was taken on October 30, 1965. The vote was: 2319 placet: 2 non placet: 1 invalid.²⁵ The Decree on the pastoral office of bishops in the Church was promulgated on October 28, 1965.²⁶

21 K. Mbrsdorf, "Decree," in Vorgrimler 2:188-190.

22 *ibid.*, 192.

23 *Acta Syn.* III, Pars VI, pp. 112-196.

24 K. Morsdorf, "Decree," in Vorgrimler 2:193.

25 *Acta Syn.* IV, Pars V, p. 673.

26 *ibid.*, Pars V, pp. 564-584. Also see Y. Congar, *Le Concile* 4:72-74.

B. The Teaching of the Decree on Bishops

The preface to the Decree on the bishops' pastoral office in the Church *Christus Dominus* describes three ways in which bishops carry out their function: united in the episcopal college they work for the whole Church; individually each bishop works for the flock entrusted to his care; and occasionally some of them collaborate to care for the needs of their several particular churches.²⁷ The decree is then organized according to this threefold aspect.²⁸

Chapter one deals with the relationship of bishops to the universal Church. Article 4 states:

By virtue of sacramental consecration and hierarchical communion with the head and other members of the college, a bishop becomes a part of the episcopal body. The order of bishops is the successor to the college of the apostles in teaching authority and pastoral rule; or, rather, in the episcopal college the apostolic body continues without a break. Together with its head, the Roman Pontiff, and never without this head, the episcopal order is the subject of supreme and full power over the universal Church. But this power can be exercised only with the consent

²⁷ AAS 58 (1966):673, art. 3. Mbrsdorf's comments on the distinction between collegiate and collective collaboration are important: "We may remark, however, that contrasting *uniti in Collegio* with *quandoque aliqui coniunctum* is hardly defensible, for at best it reflects the mistaken idea that episcopal collegiality is confined to works in *Collegio* for the universal Church and that the common action on behalf of several particular churches (dioceses) is not collegiate but collective." "Decree," in Vorgrimler 2:200.

²⁸ Morsdorf observes that no greater significance should be given to this article of the decree. Ibid. For further comments on the structure of *Christus Dominus* see William Onclin, "La genese du decret, le titre et la structure du decret," in *Vatican II: La Charge pastorale des eveques. texte. traduction et commentaires. Unam Sanctam* 74 (Paris: Les editions du Cerf, 1969), pp. 73-83.

of the Roman Pontiff. This power "is exercised in a solemn manner in an Ecumenical Council." Therefore, this most sacred Synod decrees that bishops who are members of the episcopal college have the right to be present at an Ecumenical Council.²⁹

Article 4 consists largely of quotations from *Lumen gentium*. The only new point is that all bishops, whether residential or titular, have a right to attend an ecumenical council. so Nevertheless, article 4 is important because it affirms the teaching that sacramental consecration incorporates bishops into the episcopal college and that ordination, together with hierarchical communion with the head and members of the episcopal college, empowers them as members of the college, not as individuals, to exercise supreme power over the universal Church.

Article 6 of the decree deals with the solicitude of bishops for the whole Church which follows upon their membership in the episcopal college:

²⁹ AAS 58:674-675, "Episcopi, vi sacramentalis consecrationis et hierarchica communione cum Collegii Capite atque membris, constituuntur membra Corporis episcopalis. Ordo autem Episcoporum, qui collegio Apostolorum in magisterio et regimine pastoralis succedit, immo in quo corpus apostolicum continuo perseverat, una cum Capite suo Romano Pontifice, et nunquam sine hoc Capite, subiectum quoque supremæ ac plenæ potestatis in universam Ecclesiam existit, quæ quidem potestas non nisi consentiente Romano Pontifice exerceri potest. Haec vero potestas sollemni modo in Concilio Oecumenico exercetur: ideo Sacrosancta Synodus decernit omnibus Episcopis, qui sint membra Collegii episcopalis, ius esse ut Concilio Oecumenico intersint." Abbott-Gallagher, pp. 398-399.

30 K. Morsdorf, "Decree," in Vorgrimler 2:201-203. Paul Hallinan describes article 4 of *Christus Dominus* as applying the doctrine on bishops found in *Lumen gentium* to the bishop's relationship to the universal Church, his particular church and the coordinated programs of the dioceses of a region. "Bishops," in Abbott-Gallagher, p. 390. For further comments on the juridic effect of episcopal consecration see William Onclin, "Les eveques et l'Eglise universelle," in *La Charge pastorale*, pp. 88-89.

As lawful successors of the apostles and as members of the episcopal college, bishops should always realize that they are linked one to the other, and should show concern for all the churches. For by divine institution and the requirement of their apostolic office, each one in concert with his fellow bishops is responsible for the Church.³¹

Bishops have a responsibility for the whole Church which does not flow from any juridical competence or power but from the responsibility bishops have for the universal Church which is composed of the individual churches.³²

Article 8 deals with the power of the diocesan bishop to fulfill his pastoral ministry on behalf of the people committed to his care. It is significant that this article is in the chapter which treats the relationship of bishops to the universal Church. The exercise of episcopal power within the diocese manifests the hierarchical communion of individual bishops with the head and members of the episcopal college.

Christus Dominus 8a describes episcopal power:

As successors of the apostles, bishops automatically enjoy in the dioceses entrusted to them all the ordinary, proper and immediate authority required for the exercise of their pastoral office. But this authority never infringes upon the power which the Roman Pontiff has, by

31 AAS 58:675, "Episcopa, qua legitimi Apostolorum successores et Collegii episcopalis membra, inter se coniunctos semper se sciant atque omnium Ecclesiarum sollicitos sese exhibeant, cum ex Dei institutione et praecepto apostolici muneris unusquisque Ecclesiae una cum ceteris Episcopis sponsor sit." Abbott-Gallagher, p. 400.

32 K. Morsdorf, "Decree," in Vorgrimler 2:203; W. Onclin, "Les eveques," in *La Charge pastorale*, pp. 94-95.

virtue of his office, of reserving cases to himself or to some other authority.³³

There is a distinct relationship between a bishop's pastoral ministry and apostolic succession: "Pastoral ministry is what actually turns them into continuators of the apostolic work."³⁴ "if the ritual of consecration puts the 'new creature,' the bishop, in charge of ministry or pastorate of a flock, Thomistic theology points out the reasons for this. The pastoral mission is the final cause of the episcopacy."³⁵

Article 8a embodies the theology of the episcopate found in *Lumen gentium* and the *Nota praevia explicativa*. Episcopal consecration confers on bishops the offices of teaching, sanctifying and governing which, by their very nature, can be exercised only in hierarchical communion with the head and members of the episcopal college.³⁶ Canonical or juridical determination of office, which consists in the granting of an office or the assignment of subjects,

33 AAS 58:676, "Episcopis, ut Apostolorum successoribus, in dioecesisibus ipsis commissis, per se omnis competit potestas ordinaria, propria ac immediata, quae ad exercitium eorum muneris pastoralis requiritur, firma semper in omnibus potestate quam, vi muneris sui, Romanis Pontifex habet sibi vel alii Auctoritati causas reservandi." Abbott-Gallagher, p. 401.

34 Alvaro Huerga, "The Bishop in His Own Diocese," in Lee, p. 247.

35 Ibid. Huerga refers to St. Thomas Aquinas, *Summa Theologiae*. IIa-IIae, q. 185, a. 5.

36 LQ, 21.

renders the power of bishops exerciseable power.³⁷ Bishops govern the dioceses committed to their care as vicars of Christ, not as vicars of the Roman Pontiff.³⁸ Hence, as successors of the apostles, bishops possess the power needed to carry out their pastoral ministry.

Morsdorf clarifies what is meant by saying "bishops automatically (per se) enjoy" in the dioceses entrusted to them all necessary authority:

The *per se* means that the power of the diocesan bishop does not derive from the power of the Pope but is a power of divine right, with an existence of its own apart from the papacy. That the power, as the decree specifies, is ordinary, proper, and immediate, is traditional doctrine; but now the fact that the bishop has his "own power" (*potestas propria*) comes to mean that the local ordinary's jurisdiction is a power given him by God, even though he is appointed to his concrete office by the appropriate ecclesiastical authority-in the Latin Church by the Pope-and that authority is competent to withdraw the office from him according to law.³⁹

The various gradations of episcopal ministry, however, must be based not on consecration but on office, "for consecration must always produce the same effect."⁴⁰ The gradations of episcopal ministry flow from the Church's constituent power; the substance of each ministry remains of divine law because the episcopal office is of divine law. "Thus the competent ecclesiastical authority enters into bestowal of this power as the instrumental

³⁷ *Nota praevia*. Part II.

³⁸ L£, 27.

³⁹ "Decree," in *Vorgrimler* 2:207-208.

⁴⁰ *ibid.*, p. 208.

cause; that is, giving nothing of its own it merely passes on the gift of Christ, in whose name the diocesan bishop wields his office."⁴¹ The power is the power to fulfill the threefold offices of the diocesan bishop, teaching, sanctifying and governing, which Morsdorf attributes to the doctrine of the unity of ecclesiastical power.⁴²

Article 8a really establishes two principles: diocesan bishops as of right enjoy the power needed to fulfill their pastoral office; the Roman Pontiff has the prerogative of reserving major causes to the Apostolic See or to some other authority. Together these two principles give full recognition to the office of bishops, for their correlative is that bishops are presumed to have exercisable authority in all cases not reserved to the Holy See or to some other authority. This article brings to an end, for the most part, the traditional practice of conferring faculties on diocesan bishops, a practice which received much negative comment in the antepreparatory and preparatory stages of the council and in the conciliar discussions of episcopal power. The number of matters reserved to the Holy See or to another ecclesiastical authority will ultimately determine the extent to which this traditional practice has been maintained.

Morsdorf notes that article 8a lays down a working principle; it does not confer an operative right. Because a bishop's sphere of activity is vast his sphere of competence is vast. He argues that implementation of the article can

⁴¹ Ibid.

⁴² Ibid., W. Onclin, in *La Charge pastorale*, pp. 96-97.

be effected only through the reform of canon law for almost every canon of the Code of Canon Law relates directly or indirectly to the exercise of episcopal power.⁴³

Christus Dominus 8b is concerned with the diocesan bishops' power to dispense from the general law of the Church. Their dispensing power parallels their power in general:

Except when it is a question of a matter reserved to the supreme authority of the Church, the general law of the Church gives each diocesan bishop the faculty to grant dispensations in particular cases to the faithful over whom he exercises authority according to the norms of law, provided he judges it helpful for their spiritual welfare.⁴⁴

In the motu proprio *De episcoporum muneribus* Pope Paul VI refers to Christus Dominus 8b as granting to diocesan bishops the faculty of dispensing the faithful over whom they exercise authority, according to the norms of law, from a general law of the Church.⁴⁵ The faculty to dispense from the general law of the Church constitutes a part of the ordinary power of diocesan bishops because the council connected it with their office:

The faculty of dispensing from the general law-unless a special reservation has been made-constitutes a part of the ordinary power of bishops, provided the case is not by its nature a major cause. For a case which by its nature is major is not able to constitute the ordinary power of

⁴³ "Decree," in Vorgrimler 2:209.

⁴⁴ AAS 58:676, "Singulis Episcopis dioecesanis facultas fit a lege generali Ecclesiae in casu particulari dispensandi fideles in quos ad normam iuris exercent auctoritatem, quoties id ad eorum bonum spirituale conferre iudicent, nisi a Suprema Ecclesiae Auctoritate specialis reservatio facta fuerit." Abbott-Gallagher, p. 401.

⁴⁵ AAS 58:468.

bishops; as to other matters, however, the faculty to dispense has been definitively attached to the episcopal office, unless there is a reservation.⁴⁶

Article 8b "fits effortlessly into the declaration of canon 81 of the code; it leaves intact the principle there enunciated that ordinaries beneath the pope may not dispense from the general laws of the Church even in individual cases unless this power has been explicitly or implicitly conferred on them." "The power (*facultas*) given in Article 8b is a power (*potestas*) in terms of canon 81; the fact that it is not limited to particular matters and is therefore a general power makes no difference, because the *potestas* of can. 81 includes every kind of *facultas*."⁴⁷ it is unimportant whether the power is conferred by law or by an administrative act, for in either case the power derives from the authority of the legislator who attaches it to the bishop's office, and thus it is acquired with the office and lost with the loss of office.⁴⁸

Article 8b reverses the underlying principle of the bishop's power to dispense. According to the 1917 code, the faculty to dispense from the common law is not enjoyed unless the power to grant dispensations is positively given to

⁴⁶ Wilhelm Bertrams, "De episcopis quoad universam Ecclesiam," *Periodica* 55 (1966):166, "Facultas dispensandi a lege generali-nisi specialis reservatio facta est-constituit potestatem ordinariam Episcoporum, dummodo non agatur de cause maiore natura sua. Causa enim maior natura sua non potest constituere potestatem ordinariam Episcoporum; quoad alias autem causas facultas dispensandi officio episcopali definitive per Concilium adnectitur, nisi reservatio habeatur."

⁴⁷ Klaus Morsdorf, "The Diocesan Bishop's Power of Dispensation according to the Decree 'Christus Dominus'. Article 8b," in *Vorgrimler* 2:221.

⁴⁸ *ibid.*

bishops. Now the diocesan bishop enjoys the power of dispensing except for those cases which are reserved.⁴⁹

Refinements of the text of article 8b are helpful in understanding the scope of episcopal authority to dispense from the general law of the Church.

The first draft of *Christus Dominus* (September 18, 1964) reads:

The faculty for dispensing from the general law of the Church in particular cases is given to each bishop, whenever it is judged that a dispensation is for the spiritual good of the faithful, provided the matter is such that the Apostolic See is accustomed to grant a dispensation, and the matter is not subject to a special reservation to the Apostolic See or some other authority.^{so}

This draft was broad in its determination of the active and passive subjects of dispensing power. No distinction was made between diocesan and titular bishops nor was there any reference to a requirement that the person requesting the dispensation be the bishop's subject.

⁴⁹ W. Bertrams, "De episcopis," pp. 165-166; also see Richard Ryan, *The Authority of the Residential Bishop in the Latin Rite to Dispense from the General Laws of the Church*. Canon Law Studies, 482 (Washington: Catholic University, 1973); Jacques Denis, "L'Exercice du pouvoir de dispense des Diocésains depuis Vatican II," *L'Année canonique* 13 (1969):65-78; Eduardo Regatillo, "Facultad de los Obispos para dispensar de las leyes generales de la Iglesia," *Sal Terrae* 55 (1967):754-778; Jan Reitmeijer, "The Competence of Bishops in Matters of Dispensation," *Concilium* 48 (1969):101-114; William LaDue, "De Episcoporum Muneribus," *The Jurist* 27 (1967):418-419. Onclin observes that a *vacatio legis* was imposed on the implementation of article 8b to provide adequate time to the Holy See to draft a list of cases reserved to the Holy See or to another authority. "Les eveques," in *La Charge pastorale*, p. 100.

⁵⁰ *Acta Syn. III, Pars II*, p. 25, "Insuper singulis Episcopis facultas fit a lege generali Ecclesiae in casu particulari dispensandi, quoties id ad bonum spirituale fidelium conferre iudicent, dummodo agatur de re in qua Sedes Apostolica dispensare solet, nee specialis reservatio a Sede Apostolica sibi vel alii Auctoritati facta fuerit."

As a consequence of the call by many of the council fathers for clarification, the second draft (October 30, 1964) was more restrictive with regard to active and passive subjects of dispensing power:

The faculty of dispensing from the general law of the Church the faithful over whom they have authority is given to diocesan bishops, whenever they judge the dispensation is for the faithfuls' spiritual good, provided the matter is such that the Apostolic See is accustomed to grant a dispensation and the matter is not subject to a special reservation to the Apostolic See or some other authority.⁵¹

The second draft specifically refers to diocesan bishops as the active subjects of this power; to their own subjects as its recipients. The restrictions found in the second draft appear in the final text of article 8b.

The restriction of this power to diocesan bishops who exercise it on behalf of their subjects flows naturally from the distinction made in Part II of the *Nota explicativa* between *munus* and *potestas*. Episcopal power conferred by consecration and membership in the episcopal college becomes exercisable power only after a canonical mission has been granted by competent ecclesiastical authority, because such power, which is exercised on behalf of a

⁵¹ Ibid., Pars VI, p. 123, "Insuper singulis Episcopis dioecesanis facultas fit a lege generali Ecclesiae in casu particulari dispensandi fideles in quos ad normam iuris habent auctoritatem, quoties id ad eorum bonum spirituale conferre iudicent, dummodo agatur de re in qua Sedes Apostolica dispensare solet, nee specialis reservatio a Sede Apostolica sibi vel alii Auctoritate facta fuerit." Bishop Joseph Gargitter, the relator, observed that the clarification of the active and passive subjects of the Church's dispensing power was called for by a large number of bishops. Ibid., p. 128. The diocesan bishop's authority to dispense his own subjects, peregrini and vagi is determined by canons 13 and 14 of the 1917 code.

particular church, is always exercised in hierarchical communion with the head and members of the college.

The matter for dispensation is broader in the final text than in the earlier drafts which referred to matters from which the Holy See was accustomed to grant a dispensation. The final text contains no such limitation. In principle, therefore, the bishop's power of dispensation touches the entire general law of the Church except for those areas specifically reserved to the Holy See.

Article 8 resolves a serious problem to which numerous bishops referred in their vota to the Antepreparatory Commission and on which there was frequent and occasionally heated debate by members of the Preparatory Commission and by the council fathers, namely, the system of conceding faculties to bishops. This system, regardless of how far it was extended, was seen as demeaning the episcopal office for bishops would still act under delegated authority. The displacement of this system with one of reserving major causes to the pope contributed substantially to a new understanding and appreciation of the episcopal office. The episcopal office is now defined positively, that is, in terms of the possession of the power needed for ministry; not negatively, that is, in terms of what bishops are incapable of doing.⁵²

Christus Dominus 8 clearly teaches that episcopal power is not derived

⁵² K. Morsdorf, "Decree," in Vorgrimler 2:209-210. Onclin observes that article 8 constitutes an inversion of the rule which prevailed until the present of granting faculties to diocesan bishops. "Les eveques," in *La Charge Pastorale*, p. 97.

from papal power. It has an existence of its own apart from papal powers. This would be true even of the bishop's power to dispense from the general laws of the Church, for it is not the pope who confers this power but the supreme authority of the Church exercised in a collegial fashion in an ecumenical council.

Morsdorf perceives the designation of episcopal power in article 8 as "proper" power (*potestas propria*) as significant. He observes that it means that the local ordinary's jurisdiction is a power given him by God even though he is appointed to his office by the appropriate ecclesiastical authority.⁵⁴ Here, however, Morsdorf seems to have taken a different-much broader-interpretation of "proper" than is usual. In his commentary on article 8 Wilhelm Bertrams describes "proper" to mean that it is the bishop's own power, that is, he exercises it in his own name and not in the name of another, and it is his by virtue of his office.⁵⁵ This means that a bishop, in exercising his authority, is not an agent of the Roman Pontiff.

Hierarchical subordination of one bishop to another does not flow from episcopal consecration which has the same effect in each and every case, but rather from a function attached to a particular see. All hierarchical offices,

⁵³ K. Morsdorf, "Decree," in Vorgrimler 2:207.

⁵⁴ Ibid., p. 208.

⁵⁵ "De Episcopis," p. 165, "*Potestas Episcoporum est propria, quatenus haec potestas ipsis vi officii regendi dioecesim competit, ideoque nomine proprio, non nomine aliorum, agunt.*"

including the papacy, exist only for the unity of God's people. Law and custom have determined rather extensively how the pope fulfills his unitive function for the whole Church and in this sense it is possible to say that the Church's constituent power determines papal ministry.⁵⁶

Article 8 illustrates the position of the diocesan bishop in the Church's hierarchical structure. On the one hand, he has all the power needed for his ministry; on the other, his ministry is within a hierarchical structure. The provision for the reservation of major causes to the pope safeguards papal prerogatives without diminishing the bishop's power to provide episcopal ministry to the church committed to his care.

The teaching of *Christus Dominus* on the nature of particular churches further clarifies its teaching on episcopal power. Article II describes the diocesan church and its bishop:

A diocese is that portion of God's people which is entrusted to a bishop to be shepherded by him with the cooperation of the presbytery. Adhering thus to its pastor and gathered together by him in the Holy Spirit through the gospel and the Eucharist, this portion constitutes a particular Church in which the one, holy, catholic, and apostolic Church is truly present and operative.

The individual bishops, to each of whom the care of a particular church has been entrusted, are, under the authority of the Supreme Pontiff, the proper, ordinary and immediate pastors of these churches. They feed

⁵⁶ K. Morsdorf, "Decree," in Vorgrimler 2:208.

their sheep in the name of the Lord, and exercise in their regard the office of teaching, sanctifying and governing.⁵⁷

The diocesan church is "church" in the strict sense of the word. It has within it all the constitutive elements of church: the presence and dynamic activity of the Holy Spirit, charisms, Word, sacrament and ministries. Here Christus Dominus reiterates what is said in *Lumen gentium* 26 which describes the Church as formed around the altar, under the sacred ministry of a bishop, and article 23, which defines the one, holy, catholic and apostolic Church as a "Church of churches." If the diocesan church is conceived of as a "church" then it cannot be thought of as a subdivision or administrative unit of the universal Church. Rather, the particular church is a presence and manifestation of the Church of Christ.⁵⁸

Article 11 describes two significant aspects of the diocesan bishop's relationship to his church. First, he is its proper, ordinary and immediate pastor. Second, he exercises his teaching, sanctifying and governing functions "in the name of the Lord." Hence, the diocesan bishop, who is inseparably related to

⁵⁷ AAS 58:677, "Dioecesis est Populi Deo portio, quae Episcopo cum cooperatione presbyterii pascenda concreditur, ita ut, pastori suo adhaerens ab eoque per Evangelium et Eucharistiam in Spiritu Sancto congregata, Ecclesiam particularem constituat, in qua vere inest et operatur Una Sancta Catholica et Apostolica Christi Ecclesia.

"Singuli Episcopi, quibus Ecclesiae particularis cura commissa est, sub auctoritate Summi Pontificis, tamquam proprii, ordinarii et immediati earum pastores, oves suas in nomine Domini pascunt, munus docendi, sanctificandi et regendi in eas exercentes." Abbott-Gallagher, p. 403.

⁵⁸ Herve-Marie Legrand, "Nature de l'Eglise particuliere et role de l'evêque dans l'Eglise," in *La Charge pastorale*, pp. 106-111.

the diocesan church, cannot be seen as a regional administrator but rather as a true vicar of Christ to the diocesan church as the pope is the true vicar of Christ to the universal Church.

The bishop serves as the visible principle and foundation of the diocesan church's unity. It is also in and through him that the particular church is united in a bond of communion to the Church of Rome and the other churches which form the catholic Church.

The nature of the Church as a communion of churches and the fact that individual bishops are, under the authority of the Roman Pontiff, the proper, ordinary and immediate pastors of these churches, establishes a certain mutuality between the individual bishop and the head and members of the college of bishops. On the one hand, the pope is the supreme pastor of the whole Church. His primacy of jurisdiction empowers him to govern the whole Church in order to foster and protect its unity. The diocesan bishop's subordination to him is in service to this unity. On the other hand, the diocesan bishop's solicitude for the Church means he has responsibility for it. Whatever happens in the diocesan church must be in communion with the whole Church and should also be a point of departure from which God's impulses can spread to it.⁵⁹ While the individual bishop cannot legislate for the whole Church, for that is beyond the scope of his authority, the laws he promulgates should

⁵⁹ K. Rahner, *Episcopate-Primacy*, pp. 33-34. Legrand describes in detail how the council fathers gradually broadened their understanding of the solicitude of bishops for the universal Church as they broadened their understanding of collegiality. "Nature," in *La Charge pastorale*, pp. 115-119.

establish principles which not only bring good order to the particular church but also contribute to the well-being of other churches or of the Church at large.⁶⁰ The proclamation of the mysteries of salvation should enrich the faith of the diocesan church and, insofar as possible, that of other churches and of the whole Church.⁶¹

Section II: Other Conciliar Documents Regarding Episcopal Jurisdiction

The Decree on the bishops' pastoral office in the Church *Christus Dominus* is the most significant conciliar document developing the teaching of *Lumen gentium* on episcopal jurisdiction. Other conciliar documents also deal with issues related to episcopal governance. They will be surveyed in this section.

60 The sharing of insights and of experience by bishops was one of the reasons given for calling for new life for particular councils and for the establishment of national conferences. CD. arts. 37 and 38.1. In the U.S. bishops often use *Origins* and other publications to share with the larger church norms they have promulgated. See, for example, Cardinal Szoka, "Norms and Specific Indicators of a Viable Parish Community," *Origins* 18 (1989):517-518; and The New Jersey Conference of Bishops, "Aids Policy for New Jersey Dioceses," *Origins* 17 (1987):101-107.

61 See James Provost, "Particular Councils," in *Procedures of the Fifth International Congress on Canon Law* (Ottawa, 1986), p. 544, e. Here too bishops in the U.S. often use *Origins* to share their pastoral letters with the broader church. See, for example, Archbishop John Roach, "Sexuality, Parents and Teens," *Origins* 17 (1988):690-692; and Bishop Michael Pfeifer, "The Family and the Kingdom of God," *Origins* 17 (1988):625-630.

A. The Constitution on the Sacred Liturgy

The Constitution on the sacred liturgy *Sacrosanctum concilium* 22.1 prescribes that the regulation of the sacred liturgy depends solely on the authority of the Church, that is, on the Apostolic See and, as laws may determine, on the bishop.⁶² This article is noteworthy here because it presents the constitution's teaching on the bishop's regulatory role as distinguished from his cultic role with regard to the Church's worship.

David Walkowiak traced the development of article 22.1. He concluded that the final text preserved the authority of the diocesan bishop to regulate the liturgy and distinguished it from the authority of the bishops acting in a collegial manner to which there were numerous references in the constitution. He proposed two reasons that underlie the direction taken by the council: first, a number of bishops expressed concern over the relationship between episcopal conferences and individual bishops within their own dioceses; second, while the document frequently referred to episcopal conferences, at that stage of the council their existence was still quite embryonic.⁶³

⁶² AAS 56 (1964):106, "Sacrae Liturgiae moderatio ab Ecclesiae auctoritate unice pendet: qui quidem est apud Apostolicam Sedem et, ad normam iuris, apud Episcopum." Abbott-Gallagher, p. 146.

⁶³ Bishop/Munus sanctificandi. pp. 101-107. For a detailed treatment of the history of episcopal conferences, see R. Kuttner, *Episcopal Conferences*. CU, 480; Peter Huizing, "The Structure of Episcopal Conferences," *The Jurist* 28 (1968):163-176; Frederick McManus, "The Scope of Authority of Episcopal Conferences," in *The Once and Future Church: A Communion of Freedom*, ed. James Coriden (Staten Island, New York: Alba House, 1971), pp. 140-149; and Thomas Reese, ed., *Episcopal Conferences* (Washington: Georgetown

Article 22, according to Josef Jungmann, put the law of liturgical regulation on a new footing. The strict centralization which followed the Council of Trent was relaxed. Article 22 modified canon 1257 of the 1917 code which prescribed that the Holy See alone ordered the sacred liturgy and approved the liturgical texts; according to the norms of law, bishops and competent territorial bodies now share in this right.⁶⁴ The constitution enacted explicit norms permitting bishops to moderate the liturgy: article 13 allowed bishops to mandate devotions proper to individual churches; article 57.2 directed bishops to establish regulations for concelebration; article 97 empowered bishops to dispense, in particular cases and for a just cause, from the obligation of reciting the divine office or to commute it to some other obligatory form of prayer; and article 101.1 permitted bishops to allow the recitation of the office in the vernacular.

Article 42 of the constitution treats the relationship between bishops and parishes. Parishes are local expressions of the diocese and of the entire Church. Here the Church becomes "event"; here the Church realizes itself.^{6s} The pastor of a parish takes the place of the bishop. For this reason, the University Press, 1989).

⁶⁴ "Constitution on the Liturgy," in Vorgrimler 1:19. Article 22.2 of the constitution refers to the national conferences as the "competent bodies of bishops." Also see Walter Kelly, "The Authority of Liturgical Laws," *The Jurist* 28 (1968):419-424; Frederick McManus, "The Juridical Power of the Bishop in the Constitution on the Liturgy," *Concilium* 2 (1965):33-49; and Ignatius Gordon, "Constitutio de S. Liturgia et canones 1256-1257," *Periodica* 54 (1965):89-140.

^{6s} J. Jungmann, in Vorgrimler 1:25.

liturgical life of the parish and its relationship to the bishop must be fostered in the thinking and in the practice of both the laity and the clergy.⁶⁶

B. The Decree on Ecumenism

The Decree on ecumenism *Unitatis redintegratio* encouraged the practice of ecumenism but left the practical course to be adopted to the prudent decision of the local episcopal authority, unless the national conference or the Holy See determines otherwise.⁶⁷ The vota of the bishops to the Antepreparatory Commission of the council revealed how relations between the Catholic Church and other Christian churches differed from nation to nation. Bishops of the near East, for example, were concerned about the relationship between Catholics and the Orthodox Christians; the bishops of the United States, the relationship between Catholics and Protestants. The decree avoided centralism, and thus declared the diocesan bishop to be responsible and competent to direct the ecumenical activities of the particular church.⁶⁸

⁶⁶ SC. 42. AAS 56:111-112.

⁶⁷ US. 8, AAS 57 (1965): 98, "Significatio unitatis "plerum vetat communicationes. Gratia procuranda quandoque illam commendat. De modo concreto agendi, attentis omnibus circumstantibus temporum, locorum et personarum, prudenter decernat auctoritas episcopalis localis, nisi aliud a conferentia episcopali, ad normam proprium statutorum, vel a Sancta Sede statuatur."

⁶⁸ Johannes Feiner, "The Decree on Ecumenism: Commentary on the Decree," in Vorgrimler 2:106-107. Also see Joseph Ratzinger, "Ecumenism at the Local Level," in *The Secretariat for Promoting Christian Unity: Meeting of the Ecumenical Commission Representatives*. Rome. November 15. 1972. ed.

C. The Decree on the Eastern Catholic Churches

The Decree on the Eastern Catholic Churches *Orientalium Ecclesiarum* includes a practical application of the principle enunciated in *Lumen gentium* 21, namely, episcopal consecration confers on all bishops the threefold functions of teaching, sanctifying and governing. Gradations of episcopal ministry are not based on consecration but on office. This principle applies even to the ancient institute of the patriarchs.⁶⁹ It is as heads of historically determined sees that they exercise special jurisdiction in the eparchies within the patriarchate in addition to the ordinary power they exercise in their own dioceses.⁷⁰ This jurisdiction, however, does not prejudice the rights of the individual bishops within the patriarchate to exercise the proper, ordinary and

Johannes Willebrands (April, 1973/11), pp. 4-9.

⁶⁹ Meletius Wojnar comments on the institute of patriarchs in "The Decree on the Oriental Catholic Churches," *The Jurist* 25 (1965):192-193. Also see Jean Meyendorff, ed., *La primauté de Pierre dans l'Eglise Orthodoxe* (Neuchatel: Editions Delachaux et Niestle, 1960); Wilhelm de Vries, "The Origin of the Eastern Patriarchates," *One in Christ* 1 (1966):50-69; W. de Vries, "The Eastern Patriarchates and Their Relationship to the Power of the Pope," *One in Christ* 2 (1966):130-142; W. de Vries, "Primacy of Peter as Seen by the Eastern Church," *Diakonia* 6 (1971):221-231; and Joseph Hajjar, "La collegialite episcopale dans la tradition orientale," in *Barauna* 3:847-870.

⁷⁰ M. Wojnar, "Decree on Oriental Churches," p. 193. Wojnar lists some of the prerogatives of the patriarchs: proposing candidates for vacant episcopal sees (*Cleri sanctitati*. c. 252.2); presiding over the permanent patriarchal synod; naming or removing an eparchial oecome (Cleri sanctitati. c. 481.4) in "The Code of Oriental Canon Law *De ritibus Orientalibus* and *De personis*." *The Jurist* 19 (1959):193.

immediate power they possess by virtue of their ordination and reception of a canonical mission.⁷¹

D. The Decree on Priestly Formation

The Decree on priestly formation *Optatam totius* involves bishops directly in the formation of priests because they are prudent cooperators with the episcopal order and constitute one priesthood with their bishop.⁷² They approve the pastoral training programs of the seminary,⁷³ select suitable teachers, directors and professors for the seminary faculty and work closely with them.⁷⁴

E. The Decree on the Appropriate Renewal of Religious Life

The Decree on the appropriate renewal of religious life *Perfectae caritatis* concentrates on the interior renovation of the spirit by which the essence of religious life, the deeper association with and consecration of religious to Christ,

⁷¹ Part II of the *Nota explicativa* stated that the granting of a particular office or the assignment of subjects was given according to the norms approved by the highest authority. It thus makes provision for someone other than the pope to concede canonical mission. His promulgation of the Decree on the Oriental Churches affirmed the right of the patriarchs to appoint bishops. OJE, 9, AAS 57 (1965):89. For further commentary on the rights of the patriarchs see James Hoeck, "The Decree on the Eastern Catholic Churches," in Vorgrimler 1:315-321.

⁷² LQ, 28.

⁷³ OX 21, AAS 58 (1966):726. For a commentary on *Optatam totius* see Josef Neuner, "Decree on Priestly Formation," in Vorgrimler 2:371-404.

⁷⁴ AAS, 58:716-717, QI, 5.

would be lived more profoundly. This renewal is aimed at making religious institutes fertile and indispensable elements of the spiritual life of the Church and bringing this same spiritual fertility to their apostolic ministries.⁷⁵ Religious institutes relate to bishops sometimes in their government and always in their apostolate.⁷⁶

A common concern of bishops in the antepreparatory and preparatory stages of the council and of council fathers during the council was the canonical institute of exemption, which removes the internal life of religious from the jurisdiction of the diocesan bishop and places some religious institutes under the immediate jurisdiction of the Roman Pontiff to assist him in his pastoral care for the universal Church. Some bishops perceived religious to interpret exemption too broadly so as to remove themselves from their jurisdiction even in the apostolate.

The institute of exemption is not mentioned in the decree. References to the apostolate focus on the development by religious of an apostolic spirit,⁷⁷ on the collaboration of conferences or councils of major superiors with the

⁷⁵ John McEleney, "Religious Life," in Abbott-Gallagher, pp. 464-465.

⁷⁶ A detailed treatment of the canonical institute of exemption is to be found in chapter one.

⁷⁷ AAS 58 (1966):706, art. 8.

episcopal conferences⁷⁸ and on the need for a willing spirit to respond to the divine calling that they be involved in the Church's mission.⁷⁹

Christus Dominus 35.1 establishes the principle that the unity of the apostolate and of diocesan discipline demand subjection of religious to diocesan bishops in carrying out the apostolate. It lays down the rule that religious, legitimately called to the apostolate, are subject to the diocesan bishop. They are hierarchically attached to him because of their diocesan duties. The term "legitimately" states that the diocesan bishop can entrust a religious with apostolic activities only if the competent religious superior agrees. In this case, the religious institute as represented by the superior is a partner with the bishop.^{so} The unity of the apostolate itself calls for this subjection of religious to diocesan bishops, for bishops, as successors of the apostles, are responsible for the total pastoral care of the diocesan churches.⁸¹

Article 35.3 of Christus Dominus is clear in teaching that the privilege of exemption of religious from the jurisdiction of diocesan bishops applies chiefly to the internal order of their communities so that it may be more aptly coordinated and the growth and depth of religious life can be better served. Exemption is also a means by which the Roman Pontiff is able to use religious

⁷⁸ Ibid., p. 711, art. 23.

⁷⁹ Ibid., p. 712, art. 25.

^{so} Ibid., pp. 690-691; K. Morsdorf, "Decree," in Vorgrimler 2:268-269.

^{si} N. Jubany, "Les religieux, collaborateurs du ministere pastorale des §veques," in La Charge pastorale, p. 312.

in the pastoral care of the universal Church proper to his office. But then, the article states:

This exemption, however, does not exclude religious in individual dioceses from the jurisdiction of the bishop in accordance with the norms of law, insofar as the performance of his pastoral office and the right ordering of the care of souls requires.⁸²

F. The Decree on the Apostolate of the Laity

The Decree on the apostolate of the laity *Apostolicam actuositatem* begins by restating the consistent teaching of the council that Christ conferred on the apostles and on their successors the duty of teaching, sanctifying and ruling in his name and power. The laity share in the priestly, prophetic and royal office of Christ "and therefore have their own role to play in the mission of the whole People of God in the Church and in the world."⁸³ *Lumen gentium* 31

82 AAS 58:691, "Haec autem exemptio non impedit quominus Religiosi in singulis dioecesebus Episcoporum iurisdictioni subsint ad normam iuris, prout horum pastorale munus perfungendum et animarum rite ordinanda curatio requirunt." Abbott-Gallagher, p. 422. Morsdorf observes that this treatment of exemption adds nothing new to the traditional understanding of the institute. "Decree," in Vorgrimler 2:269. Jubany would see this as a blessing since some council fathers called for its suppression, which would have been harmful to religious life. "Les religieux," in *La Charge pastorale*, pp. 315-318.

83 MS 58 (1966):838-839, art. 2, "Est in Ecclesia diversitas ministerii, sed unitas missionis. Apostolis eorumque successoribus a Christo collatum est munus in ipsius nomine et potestate docendi, sanctificandi et regendi. At laici, muneris sacerdotalis, prophetici et regalis Christi participes effecti, suas partes in missione totius populi Dei explent in Ecclesia et in mundo." For a theology of the laity and their participation in the Church's mission see Jerome Hamer, *The Church is a Communion* (New York: Sheed and Ward, 1964), pp. 97-158; Gene Scapanski, *The Role of the Laity in the Context of Communio and Mission in Selected Vatican and World Council of Churches Documents: 1967-1987*

states that baptism is the source of the laity's participation in Christ's priestly, prophetic and royal offices.

Among the various forms of the apostolate the decree refers to Catholic Action. It is defined as the collaboration of the laity in the apostolate of the hierarchy.⁸⁴ The various forms of the apostolate of the laity distinguish between what a Christian conscience leads the laity to do in their own name, either as individuals or as associations, and what they do in the name of the Church and in union with their shepherds.⁸⁵

G. The Decree on the Ministry and Life of Priests

The Decree on the ministry and life of priests *Presbyterorum ordinis* has a rich theology of the presbyterate and its relationship to the episcopacy. Joseph Lécuyer observes that the discussion of the episcopate during the formation of the Constitution on the Church had a great impact on the direction of the decree.⁸⁶

(Rome: Pontificia Studiorum Universita a S. Thoma Aq. in Urbe, 1988).

⁸⁴ AAS 58:854, art. 20, "Ab eis nomen Actionis Catholicae acceperunt, et saepissime ut cooperatione laicorum in apostolatu hierarchico describebantur." Also see Address of Pope Pius XII to the Second World Congress for the Apostolate of the Laity, AAS 49 (1957):928.

⁸⁵ Ferdinand Klostermann, "Decree on the Apostolate of the Laity," in *Vorgrimler* 3:349.

⁸⁶ "Decree on the Ministry and Life of Priests: History of the Decree," in *Vorgrimler* 4:199.

The decree develops the theology of the episcopate as the fullness of the sacrament of orders found in *Lumen gentium* 21. Priests are co-workers of the episcopal order, receiving from it a limited share in the ministerial function. Through its connection with the episcopal order the order of presbyters shares in the authority by which Christ builds up, sanctifies and rules the Church.⁸⁷ One of the four chief marks of the decree's theology of the priesthood is its relationship to the order of bishops:

Whereas from the Middle Ages until Vatican II the presbyterate was seen as the fundamental priestly order, to which something extra was added by jurisdiction in order to produce the episcopate, now it is the episcopate that is seen as basic, the presbyterate being a participation in the episcopate as the plenitude of the official ministry.⁸⁸

Subsequent articles of the decree apply this theology of presbyters participating in the ministry of their bishops to the proclamation of the gospel,⁸⁹ to the sacramental ministry of priests,⁹⁰ to the leadership ministry of presbyters⁹¹ and

⁸⁷ AAS 58 (1966):992, art. 2. Robert Schwartz develops the theology of the presbyterate in *In Christ and the Church: An Ecclesial Spirituality for American Priests Founded on the Magisterium of the Bishops of the United States* (Rome: Gregorian University, 1987), pp. 59-91. Also see Raymond Brown, *Priest and Bishop. Biblical Reflections* (New York: Paulist Press, 1970) and Antoine-Marie Charue, *The Diocesan Clergy. History and Spirituality* (New York: Desclee, 1963), pp. 60-110.

⁸⁸ Friedrich Wulf, "Decree on the Ministry and Life of Priests: Commentary on the Decree, arts. 1-6," in *Vorgrimler* 4:221. The theology of the episcopate as the fullness of the sacrament of orders was treated in greater detail in chapter 3 in its commentary on LQ, 21.

⁸⁹ AAS 58:995-996, art. 4.

⁹⁰ *Ibid.*, pp. 997-998, art. 5.

⁹¹ *Ibid.*, pp. 999-1000, art. 6.

to the underlying relationship of bishops and presbyters and of presbyters to one another.⁹²

H. The Decree on the Missionary Activity of the Church

The Decree on the Church's missionary activity *Ad gentes* reminds all bishops that their solicitude for the Church, which is rooted in their membership in the episcopal college, must prompt them to be concerned about the missionary activity of the Church on behalf of all peoples and nations. In a general way, this solicitude is expressed by their prayers and by their co-operation with the universal shepherd of the Church, the Roman Pontiff." In particular, it is expressed by stimulating, promoting and supporting the work for the missions and by providing ministers, both ordained and lay, for missionary work.⁹⁴

The decree manifests the council's clear preference that missionary territories be constituted and function as particular churches as soon as

⁹² Ibid., pp. 1001-1002, art. 7.

⁹³ Ibid., pp. 951-955, arts. 5 & 6.

⁹⁴ Ibid., pp. 984-986, art. 38.

possible.⁹⁵ This preference underlines the normative nature of the particular church.

CONCLUSIONS

The Second Vatican Council's Decree on the bishops' pastoral office in the Church *Christus Dominus* faithfully develops the theology of the episcopate found in *Lumen gentium*. It clearly asserts that bishops, as successors of the apostles, have proper, ordinary and immediate authority to govern the dioceses committed to their pastoral care. By virtue of this power bishops can act in all matters except those reserved to the supreme authority of the Church.

The restoration of the principle of reserving only major causes reflects the insistence of many bishops, in the preparatory stages of the council, and of many council fathers that the council clearly affirm the authority proper to the episcopal office. The mere expansion of faculties, no matter how extensive, could not adequately manifest the true nature of episcopal power because bishops would still act by virtue of power delegated to them. The replacement of the policy of conceding faculties by a return to the more ancient practice of recourse to the Holy See only in major causes represents a major contribution toward a true appreciation of episcopal governing power. Bishops are now

⁹⁵ Ibid., pp. 969-972, arts. 19 & 20. Suso Brechter, "Decree on the Church's Missionary Activity," in Vorgrimler 4:145.

seen to possess all necessary power to rule their dioceses, except in the more extraordinary situations.

Other conciliar documents help develop this theology of the episcopate by applying these principles to the bishop's regulation of the sacred liturgy, the ecumenical activity of the diocese, the formation of priests and Catholic Action. The Decree on Eastern Catholic Churches applies the theology of *Lumen gentium* 21, namely, hierarchical distinctions are determined by office, not by sacramental ordination, even to the institute of the patriarchs. By doing so, it affirms the fundamental equality of all residential bishops. The Decree on the ministry and life of priests provides a theology of presbyteral ministry which expresses the teaching of *Lumen gentium* on the episcopate as the fullness of the priesthood. Finally, *Christus Dominus* articulates a proper understanding of the canonical institute of religious exemption and thus affirms the authority of the bishop over religious in their fulfillment of the apostolate.

CHAPTER V

POST-CONCILIAR DOCUMENTS ON EPISCOPAL GOVERNMENTAL POWER

Christus Dominus is consistent with Lumen gentium in its treatment of episcopal power. In addition to developing the theology of the episcopate it establishes general norms and principles which apply this theology to episcopal ministry. Its primary principle is that bishops govern their dioceses with a teaching, sanctifying and governing authority that is ordinary, proper and immediate, which is exercised in hierarchical communion with the head and members of the college of bishops.

In order to see how this principle is transferred into the day-by-day life of the Church it is necessary to examine post-conciliar documents which implement Christus Dominus. These post-conciliar documents, for the most part, are interim in nature, assisting in the implementation of the conciliar decrees until the completion of the revision of the Code of Canon Law.

Section I: The Motu Proprios Pastorale Munus and De Episcoporum Muneribus

A. Pastorale Munus

The motu proprio *Pastorale munus* was not a post-conciliar document for it was promulgated by Pope Paul VI toward the end of the second period of the council on November 30, 1963. During the second period of the council, the schema "The Decree on Bishops and on Diocesan Government" was distributed. The council fathers began their discussion of it on November 5, 1963. Two appendices were attached to the schema: the first contained a list of twenty-nine faculties to be conceded *ipso iure* to residential bishops; the second explained the competence of the various Congregations of the Roman Curia.¹ Because the second period was rapidly drawing to a close, the council fathers were advised not to discuss the first appendix. The powers listed in it constituted the major portion of *Pastorale munus*.²

Many bishops who wrote to the council's Antepreparatory Commission called for decentralization of authority.³ This call echoed on the council floor. The motu proprio could thus be regarded as the first fruits of these efforts to restore episcopal rights. The granting of forty faculties to diocesan bishops was

¹ Acta Syn. II, Pars IV, pp. 383-392.

² K. Morsdorf, "Decree," in Vorgrimler 2:183-184.

³ See chapter two of this work.

of great practical importance because it allowed them to resolve many matters which until then had to be submitted to the Holy See.⁴

The *motu proprio* was divided into two parts: The first conceded forty faculties to residential bishops; the second extended eight privileges to all bishops, including titular bishops. Canonists debated the nature of the faculties. Some held them to belong to the ordinary power of residential bishops; others maintained that they remained delegated powers, that is, a participation in the power belonging to a higher authority.

Jean Bemhard offered three arguments that these faculties belonged to the residential bishop's ordinary power. First, the repeated use of the word *ad iure* in the *motu proprio* was intended to indicate that they were not delegated powers. Second, the *motu proprio* stated that these powers could be delegated. Only ordinary power can be delegated; delegated power must be subdelegated. Third, the restoration of the dignity and authority proper to the episcopal office, a major objective of the council, would not be served by granting faculties to residential bishops.⁵

Klaus Morsdorf agreed that these faculties had the character of ordinary faculties because they were connected by papal law to the office of the

4 K. Morsdorf, "Decree," in Vorgrimler 2:184.

⁵ "Commentaire (le *motu proprio* 'Pastorale munus')," *Revue du droit canonique* 15 (1965):61-62.

residential bishop. They were acquired with the office and ceased with its loss.⁶ Florentius Romita held that these faculties were ordinary but vicarious, that is, bishops acting by virtue of these faculties did so in place of the Roman Pontiff.⁷

Wilhelm Bertrams, on the other hand, maintained that they were delegated powers, that is, a participation in the power belonging to a higher authority. He argued that dispensations from major causes, by their very nature, cannot be held to be granted by virtue of the ordinary power of diocesan bishops. He also disputed that power conferred *ipso iure* could be the bishops' proper power.⁸

There is a problem, however, with Bertrams' argument. His underlying premise emphasizes major causes, but would he hold that all forty faculties of *Pastorale munus* are of sufficient significance to constitute major causes? For

6 "Decree," in Vorgrimler 2:184. This position is also held by George Graham, "The Powers of Bishops in Recent Documents," *The Jurist* 28 (1968):428; Bartholomaeus Belluco, *Novissimae Ordinariorum Locorum Facultates: commentarium in motu-proprio 'Pastorale munus'* (Rome: Pontificium Athenaeum Antonianum, 1964), p. 28; Louis Buijs, "Litterae Apostolicae motu proprio datae quibus facultates et privilegia quaedam Episcopis conceduntur, Adnotationes," *Periodica* 53 (1965):285-322; and is explored in greater detail by Morsdorf in "Neue Vollmachten und Privilegien der Bischöfe," *Archiv für Katholische Kirchenrecht* 133 (1964):82-101.

7 "Adnotationes Acta S. Sedis," *Monitor Ecclesiasticus* 88 (1963):547.

s See Wilhelm Bertrams, "De episcopis quoad universam ecclesiam," *Periodica* 55 (1966):153-169; Olysius Robleda holds the same position. See "Delegationes a iure in Tridentino Synodo," *Periodica* 52 (1963):477. The position that the faculties of *Pastorale munus* are delegated is also held by Jean Beyer, "De potestate ordinaria et delegata animadversiones," *Periodica* 53 (1964):482-502; Ignatius Ting Pong Lee, "In litteris apostolicis Pauli VI 'Pastorale munus', motu proprio datas excursus doctrinalis," *Commentarium pro religiosis* 43 (1964):49-66.

example, dispensing a priest who must celebrate two or three Masses on a given day from the eucharistic fast⁹ and allowing minor clerics, lay religious or pious women to perform the first rinsing of palls, corporals and purificatorsio do not appear to be matters of great importance. To dispense from the impediment of illegitimacy preventing admission to religious life ordered to priestly ordination is not comparable with permitting a religious to transfer from one religious institute of diocesan law to another. 11 Bertrams, however, does not comment on the individual faculties conferred by *Pastorale munus*.

The *motu proprio* placed some restrictions on the bishops' freedom to delegate the faculties it extended. They could be delegated only to coadjutors, auxiliaries or vicar generals. 12 A year later (November 24, 1964) the Secretary of State, Cardinal Cicognani, notified the prefect of the Congregation for the Propagation of the Faith that in territories under its jurisdiction the ordinary could delegate these faculties to the episcopal delegate, if the ordinary had no vicar general, to the priest who takes the vicar general's place according to the norms of canon 366.3 when he is absent or to pro-vicars general who assist

⁹ AAS. 56 (1964):7, faculty 3.

10 Ibid., p. 10, faculty 28.

11 Ibid., p. 11, faculties 36 & 38.

12 Ibid., p. 6, n. I.

vicars general in larger dioceses. 13 A letter from the apostolic delegate to the bishops of the United States (December 3, 1964) informed them that the faculties of the *motu proprio* could be delegated to chancellors because of the special role they fulfilled in the dioceses of the United States. 14 The restrictions on delegation and the manner of their derogation speak to the delegated nature of the faculties.

The privileges contained in the second part of the *motu proprio* were also granted by law. They did not constitute ordinary power because they were not granted to an office in the strict sense but to all bishops.¹⁵

Pastorale munus represents a serious attempt on the part of Pope Paul VI to respond to the calls for decentralization of authority in the Church and to locate power where it properly belongs, that is, with the residential bishops. It is regrettable that it was situated in the economy of the 1917 code and not in the perspective of the council. It retains the language of conferral of faculties.¹⁶ The arguments favoring the ordinary nature of these faculties lose their weight by reason of the restrictions placed on their delegation. Klaus Morsdorf, however, argues that the limitation of delegating powers cannot of itself be used

13 Reported in CLP 6:386.

14 Ibid., p. 385.

¹⁵ Morsdorf, "Decree," in Vorgrimler 2:185; also see G. Graham, "Powers of Bishops," p. 429 and B. Belluco, *Facultates*, p. 45.

16 J. Bernhard, "Commentaire," p. 67.

to dispute the ordinary character of the authority conferred by the *motu proprio*.

But then he goes on to state:

It should not be overlooked, however, that in the case of the quinquennial faculties it is sometimes stated that they may be exercised only by the diocesan personally, hence cannot be delegated to others. This practice has evidently influenced the limitation of delegating powers, as perhaps also the wish to remind bishops that these faculties were given by the Pope. Thus it has not yet been realized that the diocesan bishop has a divine right to all the powers needed for properly carrying out his episcopal duties. ¹⁷

The arguments for the delegated nature of the faculties seem more compelling than those to the contrary. From this it may be concluded that the *motu proprio* only extended the scope of episcopal delegated authority.

B. De Episcoporum Muneribus

The *motu proprio De episcoporum muneribus* (June 15, 1966) implements *Christus Dominus* 8b. Its focus, then, is on the bishop's power to dispense. It begins by restating the principle enunciated in *Lumen gentium* 27 that individual churches are ruled with sacred authority by the bishops to whom they have been entrusted as ambassadors of Christ. The pastoral office is fully committed to them along with proper, ordinary and immediate authority, which confers on them the sacred right and duty, before the Lord, of making laws, rendering judgments and moderating all that pertains to the order of worship or

¹⁷ "Decree," in Vorgrimler 2:185.

the apostolate.¹⁸ It also cites *Christus Dominus* 8a which affirms that all power required for the exercise of the pastoral office in the dioceses entrusted to them belongs per se to the bishops and declares the pope's inherent authority to reserve to himself cases which affect the good of the whole flock of the Lord.¹⁹

The Second Vatican Council is cited as the source of the bishops' power to dispense their subjects from the general law of the Church:

As is clear, in order that the consolations of religion may be more readily available to men living in a new and extraordinary rapid pace in these our days, the Ecumenical Council grants to bishops this faculty among others of dispensing the faithful over whom they exercise authority according to the norms of the law from a general law of the Church in a particular case as often as they judge that it contributes to their spiritual good, unless a special reservation has been made by the supreme authority.²⁰

18 AAS 58 (1967):467, "De episcoporum muneribus doctrina, quam Nobis feliciter contigit in Concilio Oecumenico Vaticano II sollemni ritu promulgare, perspicue tradit, Ecclesias particulares ab Episcopis, quibus tamquam Christi legatis concreditae sunt, auctoritate et sacra potestate regi; iisdem pastorale officium- ..., plene committi cum potestate propria, ordinaria, et immediata, propter quam sacrum ius et coram Domino officium habent in suos subditos leges ferendi, iudicium faciendi, atque omnia quae ad cultum apostolatusque ordinem pertinent, moderandi.... (cfr. Const, dogmatica *Lumen aentium*. n. 27)."

¹⁹ Ibid.

20 *ibid.*, p. 468, "Quemadmodum est in comperto, Concilium Oecumenicum, ut promptiora religionis solacia hominibus, nostris hisce diebus nova singularique incitatione viventibus, praebeantur, hanc inter alias Episcopis dioecesanis facultatem facit: dispensandi a lege generali Ecclesiae in casu particulari fideles, in quos ad normam iuris exercent auctoritatem, quoties id ad eorum bonum spirituale conferre iudicent, nisi a Suprema Auctoritate specialis reservatio facta fuerit (*ibid.*, n. 8, b)." Translated by USCC Publications, 1966, pp. 6-7. Richard Ryan finds the USCC translation of the pertinent words of *Christus Dominus* inadequate. He offers "a better"

Richard Ryan observes that *Christus Dominus* 8b leaves unresolved the question of the origin of the diocesan bishop's faculty to dispense from the general law of the Church. "Is the Second Vatican Council granting the faculty to residential or diocesan bishops? Or is the council acknowledging the fact that the residential bishop already possesses the faculty in virtue of his office?²¹ He chooses the position that the council is acknowledging that bishops already possess the authority to dispense from the general law of the Church, for it has already stated the principle that residential bishops, as successors of the apostles, possess all the ordinary, immediate and proper power that is required to carry out their pastoral office.²² George Graham takes the same position. He bases his stance on the fact the dispensing power of bishops belongs *per se* to the episcopal office, a teaching clearly stated by *Christus Dominus*.²³

Klaus Morsdorf takes a different view. He sees this power as derived from the supreme authority:

translation, "(b) For the diocesan bishops there exists the faculty of dispensing from the general law of the Church in a particular case, the faithful over whom they exercise authority " The focus here is on the faithful over whom the bishop exercises authority, not on the law from which the dispensation is granted. "The Dispensing Authority of the Residential Bishop of the Latin Rite Regarding the General Laws of the Church," *The Jurist* 35 (1975):186. (This article is based on Ryan's doctoral dissertation which was cited earlier.)

²¹ *Ibid.*, p. 187.

²² *ibid.*

²³ "Powers of Bishops," p. 436.

Although the power now acknowledged in the diocesan bishop and local ordinaries equated with him is one deriving from the supreme authority, it is an ordinary power—that is, a power attached to the office of a local ordinary, acquired along with the office and lost when the office is lost.²⁴

His position seems to be more in accord with that of Pope Paul VI in the *motu proprio*. In this, the *motu proprio* witnesses to the governmental power over the universal Church exercised by the episcopal college when it is united to its head, the Roman Pontiff. Regardless of the source, the commentators universally hold that the residential bishops' power to dispense from the general law is ordinary in character because, as Morsdorf observes, it is attached to their office.²⁵

In general, bishops are held to be empowered by law to dispense from general prescriptive and prohibitive laws of the Church, except for those cases reserved to the supreme authority of the Church. Twenty reserved cases are listed:

Eight of the major causes are related to the sacrament of holy orders:

1. Dispensation from the obligation of celibacy or from the prohibition to contract marriage which binds deacons and priests, even if they have been legitimately reduced to the lay state or have returned to it (c. 213.2) (IX.1)

²⁴ "Power of Dispensation," in Vorgrimler 2:221.

²⁵ See also G. Graham, "Powers of Bishops," p. 436; R. Ryan, "Dispensing Authority," p. 187; and W. LaDue, "De Episcoporum Muneribus," p. 420.

2. Dispensation from the prohibition to exercise the order of priesthood by married men who have received the same order without receiving a dispensation from the Apostolic See (IX, 2)

3. Dispensation from the prohibition of clerics in sacred orders to practice medicine or surgery; to assume public offices which carry with them the exercise of lay jurisdiction or administration; to run for, or to assume the office of senator or legislative deputy in places where a pontifical prohibition has intervened; to carry on through themselves or through others business or commerce either for their own advantage or that of others (IX, 3)

4. Dispensation from the lack of canonical age in those to be ordained which is in excess of one year (IX, 6)

5. Dispensation from the course of studies of the philosophical and theological curriculum set forth in the Decree of the Second Vatican Council *Optatam totius*, 12 (ix, 7)

6. Dispensation from all irregularities which have been brought before the judicial forum (IX, 8)

7. Dispensation from specific irregularities and impediments to the reception of holy orders:

- a. irregularities arising from defect: sons born of adulterous or sacrilegious marriages, defects of the body, epileptics and the insane
- b. irregularities arising from a public delict such as apostasy, heresy or schism

- c. irregularity arising from the public delict of attempting marriage or only performing the civil ceremony while bound by matrimony, sacred orders or religious vows, or attempting marriage with a woman bound by sacred vows or a valid marriage
- d. irregularity arising from a delict, either public or occult, by commission of voluntary homicide or the effective procurement of the abortion of a human fetus, or having collaborated in such acts
- e. the impediment to orders arising from matrimony, i.e., being married (IX, 9)

8. Dispensation for one who has already received an order from the impediments mentioned in canon 985.3, in public cases only, and from the irregularities in canon 985.4, even in occult cases, unless recourse to the Sacred Penitentiary is possible (IX, 10).²⁶

Eight concern the sacrament of matrimony:

- 1. Dispensation from the impediment of canonical age as often as the defect of age exceeds one year (IX, 11)
- 2. Dispensation from the impediment that arises from ordination to the diaconate or the priesthood or from solemn religious profession (IX, 12)

²⁶ C. 985, 3, referred to the irregularity arising from attempting marriage, even civilly, while bound by a valid marriage bond, by holy orders or public religious vows, or attempting marriage with a woman bound by public religious vows or a valid marriage. C. 984, 4, referred to the irregularity arising from the commission of voluntary homicide, the effective procurement of an abortion or cooperation in these acts.

3. Dispensation from the impediment of crime mentioned in canon 1075.2 and 3 (IX, 13)
4. Dispensation from the impediment of consanguinity in the direct line and in the collateral line up to the second degree mixed with the first (IX, 14)
5. Dispensation arising from affinity in the direct line (IX, 15)
6. Dispensation from all matrimonial impediments if there is a question of a mixed marriage as often as the conditions required by *Matrimonii sacramentum* I (MS 58 (1966):237) cannot be observed (IX, 16)²⁷
7. Dispensation from the form prescribed by law for validly contracting marriage (IX, 17)²⁸
8. Dispensation from the law of renewing matrimonial consent in a *sanatio in radice*: as often as there is required a dispensation from an impediment reserved to the Holy See; there is a case of an impediment of the natural or divine law which now has ceased; there is a case of a mixed

²⁷ Morsdorf observed that the reservation is based on the general principle of the law on dispensations that where several dispensations are sought the whole case must be referred to the superior who has all the necessary faculties. The chief aim of the reservation is to assure that there will be no tampering with the divine law. "Power of Dispensation," in Vorgrimler 2:228.

²⁸ Number 17 has been derogated by subsequent legislation. The Decree of the Sacred Congregation for the Oriental Churches *Crescens matrimonium* (February 22, 1967) declared that canonical form for the celebration of marriages between Catholics, whether Oriental or Latin, and members of the Orthodox Churches obliges only for liceity. AAS 59 (1967):165-166. The *motu proprio Matrimonia mixta* (March 31, 1971) stated that ordinaries have the right to dispense from canonical form in any mixed marriage. AAS 62 (1970):261, n. 9.

marriage where the conditions set forth by the Instruction *Matrimonii sacramentum* I have not been observed (IX, 18).

Two reserved causes deal with the sacraments of penance and eucharist:

1. Dispensation from the obligation of denouncing a priest guilty of the offense of soliciting in the confessional which is treated in canon 904 (IX, 5)
2. Dispensation from the time prescribed for the Eucharistic fast (IX, 20).²⁹

One concerns religious:

Dispensation from the general law of the Church affecting religious as such (IX, 4).

Finally, one concerns penal law:

Dispensation from a vindictive penalty established by common law which has been declared or inflicted by the Apostolic See itself (IX, 19).³⁰

The twenty reserved causes are not the only restrictions placed on episcopal dispensing power. Section VIM of the *motu proprio* cites canon 84 of the Code of Canon Law which prescribes that a just and reasonable cause, proportionate to the law from which a dispensation is given, is needed for

²⁹ Morsdorf questioned the inclusion of this case. He noted that it appears as an afterthought, for it is out of sequence. All other reservations follow the sequence of the 1917 Code of Canon Law. "Power of Dispensation," in *Vorgimmler* 2:227.

so Each of these reserved cases is worthy of separate treatment, but that is beyond the scope of this work. For further study see Richard Ryan, *Authority to Dispense*, pp. 134-198.

validity. It also indicates the spiritual good of the faithful as a legitimate cause for dispensing and cites *Christus Dominus* 8b as the basis for this condition.

Klaus Morsdorf views this prescription as limiting episcopal power to dispense. *De episcoporum muneribus* should not be seen as a general emancipation from the common law of the Church. The insertion of the qualification that the dispensation must be for the spiritual good of the faithful automatically removes some laws from the bishops' dispensing power. As an example of laws thus excluded, Morsdorf refers to those which require bishops and their fellow workers (clerics) to carry out certain responsibilities unless it can be established that there is a direct bearing on the spiritual good of the faithful.³¹

Louis Buijs comments that the *motu proprio* continues the tradition of requiring a just cause for the valid granting of a dispensation. Now, however, "just cause" is not determined by criteria established by law or recommended by the praxis of the Congregations of the Roman Curia. The judgment is grounded in the bishop's evaluation of what contributes best to the spiritual good of the faithful.³²

Section IV of the *motu proprio* adds a more obvious limitation. It states that *Christus Dominus* 8b applies only to laws that prescribe or forbid, that is, to

³¹ "Power of Dispensation," in Vorgrimler 2:223.

³² "De potestate Episcoporum dispensandi," *Periodica* 56 (1967):112. Also see G. Graham, "Power of Bishops," p. 444.

prescriptive and prohibitive laws. It explicitly excludes constitutive and procedural laws from episcopal dispensing power.

What is excluded from episcopal dispensing power by the exclusion of constitutive laws is difficult to determine. William LaDue writes, "Perhaps many had the same feeling, but I must confess that the term, *lex constitutiva*, was somewhat new to me. The only author who treats this species of law at any length is F. Michiels-and he does so per accidens-in his explanation of canon 11."³³ Thomas Pazhayampallil defines constitutive laws as laws whose primary purpose and direct object is to constitute juridical entities, to grant power or to establish rights.³⁴ The fonts of constitutive law are the divine natural or positive law, dogmatic laws insofar as they are doctrinal, ritual texts and their authentic interpretation, the Code of Canon Law and its authentic interpretation, concordats, vested rights and privileges, centenary and immemorial customs which have not been revoked, the decree of the Holy Office of March 22, 1919 concerning the oath against Modernism, the decree of the Congregation of Religious of July 15, 1919 regarding military service by religious and customs beyond the general law of the Church.³⁵

³³ "De episcoporum muneribus," p. 421. LaDue refers to Michiels, *Normae Generales* 1:340-341.

³⁴ *An Outline of Public Ecclesiastical Law* (Madras: Siga, 1971), p. 87.

³⁵ Alphonse Hove, *De legibus ecclesiasticis* (Mechelen: H. Dessain, 1930), p. 78.

George Graham considers different kinds of laws to determine whether they should be seen as constitutive laws. He includes permissive laws which provide a freedom or a capacity to do something and thus establish vested rights³⁶ and invalidating laws which set up either required conditions or a structure of formalities around certain acts; he excludes invalidating and incapacitating laws, as such, and penal laws which are prohibitory in nature.³⁷ In summary, diocesan bishops can dispense from prescriptive and prohibitive laws, from invalidating and incapacitating laws, except those which set up required conditions or structures of formalities for certain acts, and from penal laws.

Section IV of the *motu proprio* exempts procedural laws from episcopal dispensing power because their object is the protection of rights and a dispensation from them does not directly affect the spiritual good of the faithful.³⁸ This exemption, like the exemption of constitutional laws, is not altogether clear and therefore there is some doubt about its extent.

Procedural law is found in the fourth book of the code which provides procedures for adjudicating contentious and criminal cases (cc. 1552-1998), for

³⁶ Richard Ryan disagrees with Graham and lists permissive laws as subject to the dispensing power of bishops, but provides no reasons for his position. *Authority to Dispense*, p. 155.

³⁷ "Power of Bishops," p. 442-443; R. Ryan, *Authority to Dispense*, p. 154.

³⁸ AAS 58:469, IV, "Leges ad processus spectantes, cum ad iurium defensionem sint constitutae, et dispensatio ab iis bonum spiritualem fidelium directe non respiciat, non sunt obiectum facultatis, de qua agitur in Decreto Christus Dominus. n. 8, b."

the beatification and canonization of saints (cc. 1999-2141) and for imposing ecclesiastical penalties and other disciplinary acts (cc. 2142-2194). But, not all the laws in the fourth book are procedural laws. Some are prescriptive or prohibitive. Canon 1574, for example, which prescribes that ecclesiastical judges be priests of sound morals and skilled in law, focuses on qualities for judges, not on how they exercise their office. Is it included in the exemption or are only de facto procedural laws included?

Subsequent documents, issued or approved by Pope Paul VI, call into question the basis for the exclusion, namely, procedural laws do not directly concern the spiritual good of the faithful. The motu proprio *Causas matrimoniales* (March 28, 1971) indicates "the pastoral charity of the Church, which knows so well how greatly the salvation of souls is involved in matrimonial trials," as the basis for expediting marriage cases.³⁹ The American Procedural Norms, approved by Pope Paul VI on April 28, 1970 for use in the tribunals of the United States, were devised in response to the pressing pastoral need to find a more expeditious way of handling formal marriage cases. Pastoral concern for the spiritual well-being of the members of their churches prompted the bishops of the United States to prepare and seek

³⁹ AAS 63 (1971):441, "Ecclesiasticorum enim iudicium ministerium aperte ostendit-etsi modo sibi proprio-pastoralem caritatem Ecclesiae, quae probe novit quantopere in iudiciis matrimonialibus animarum saluti consulatur."

approval for these procedural norms.⁴⁰ The document of the National Conference of Catholic Bishops *On Due Process*, which received a nihil obstat from the Apostolic See on October 23, 1971, explicitly describes the protection of the fundamental rights of Christians as an important part of pastoral service. It is seen as a persuasive sign of the just freedom proclaimed by the gospel as belonging to all people.⁴¹

The lack of clarity concerning whether all or some of the laws found in the fourth book of the code and the questioning of the stated premise for excluding procedural laws from the dispensing power of bishops, namely, they do not directly concern the spiritual good of the faithful, seriously call the exclusion itself into question. It is difficult to conclude that all procedural laws should be excluded.

Section II of the *motu proprio* indicates that *Christus Dominus* 8b

⁴⁰ "Foreword," in NCCB, *Procedural Norms for the Processing of Formal Marriage Cases* (Washington: USCC Publications, 1970), p. 1.

⁴¹ NCCB, *On Due Process*, rev. ed. (Washington: USCC Publications, 1972), p. 9. A more extensive treatment of the relation between structures which protect rights and the well-being of Christians can be found in James Coriden, ed., *The Case for Freedom: Human Rights in the Church* (Washington: Corpus Books, 1969). A bibliography of articles on the subject by European authors can be found in Robert Kennedy, "The Early Republic's Challenge to Catholic Church Governance: Bicentennial Reflections of an American Canonist," *Proceedings of the Canon Law Society of America* 38 (1976):16.

derogates canon 81 of the 1917 code.⁴² Canon 81 has two parts: the first prohibits bishops from dispensing from the general laws of the Church; the second provides exceptions to the prohibition, namely, if faculties are explicitly or implicitly granted or if recourse to the Holy See is difficult and at the same time grave harm would be caused by delay and the case is one where the Holy See is accustomed to grant a dispensation. Article 8b suppresses only the first part of the canon, for the ordination of bishops and their canonical mission empowers them to dispense from the general law, except for those cases reserved to the supreme authority of the Church. The second part of canon 81 remains intact. Bishops can dispense from the cases reserved to the supreme power of the Church when faculties are granted to them or when recourse to the Holy See is difficult and at the same time grave harm would result from delay and the case is one where the Holy See is accustomed to grant a dispensation.⁴³

Pastorale munus grants bishops the faculties to dispense from some laws governing religious despite their reservation in *De episcoporum*

42 AAS 58:468, "II. Praescripto Decreti Conciliaris Christus Dominus. n. 8, b) canon C.I.C. tantummodo derogatur." It should be noted that the English translation prepared by the USCC incorrectly translates section II, describing it as "abrogating" canon 81. On the Power to Grant Dispensations (Washington: USCC Publications, 1966), p. 7.

43 L. Buijs, "De potestate episcoporum," pp. 92-94; and R. Ryan, "Dispensing Authority," p. 206. The question, "Can the bishop dispense validly from reserved cases when these three conditions are not present?", will be treated in the next chapter under the canons of the 1983 Code of Canon Law which reserve cases to the Holy See.

muneribus IX, 4, namely, from the impediment to admission to religious life incurred by adherence to a non-Catholic sect,⁴⁴ from the impediment of illegitimacy when it concerns a religious destined for ordination⁴⁵ and from the dowry, in whole or in part, required for admission to a monastery of nuns.⁴⁶ The rescript of the Congregation for Religious Cum admotae (November 6, 1964), which concedes faculties to superiors general of pontifical clerical religious institutes and to abbots president of monastic congregations permitting them to dispense their own subjects from the impediments which bar admission to religious life arising from adherence to a non-Catholic sect or illegitimacy, states that the decision of the bishop prevails if a conflict arises between the bishop and the superior general or abbot president.⁴⁷

Despite its lack of clarity in relation to constitutive and procedural laws *De episcoporum muneribus* represents a major contribution to the implementation of the teaching of *Christus Dominus* on the office of bishops, especially because of its underlying principle that bishops enjoy the proper, ordinary and immediate authority to dispense from all prescriptive and prohibitive laws, except those reserved to the supreme authority of the Church. The legal adoption of this principle displaces the traditional practice of

⁴⁴ AAS 56:11, n. 35.

⁴⁵ Ibid., n. 36.

⁴⁶ Ibid., n. 37.

⁴⁷ AAS 59(1964):375, n. 7

conferring faculties on diocesan bishops which does not adequately respect episcopal power, regardless of how extensive the faculties might be, for their conferral still means that bishops exercise their ministry by virtue of delegated authority.

On the practical level *De episcoporum muneribus* responded to the pastoral concern expressed by numerous bishops in their vota to the Antepreparatory Commission about the need to have recourse to the Holy See on matters related to the day-by-day life of diocesan churches. More than once the question was raised: Who but the diocesan bishop, on the scene, is able to discern the real need for a dispensation from the common law of the Church? The *motu proprio* recognized this insight and, in doing so, said something about the expected quality of those called by the Church to be members of the episcopal college and successors of the apostles.

Section II: The *Motu Proprio Ecclesiae Sanctae*

Pope Paul VI recognized the need for new norms and new organizational adjustments as a consequence of the new goals and new areas of the apostolate the council opened for the Church. Shortly after the completion of the council, therefore, he appointed study commissions to draft norms which would implement the conciliar decrees.⁴⁸ On August 6, 1966 he promulgated the *motu proprio Ecclesiae sanctae* which contained norms for implementing the Decree on the bishops' pastoral office in the Church *Christus*

⁴⁸ *Motu proprio Ecclesiae sanctae*. AAS 58 (1966).757.

Dominus. the Decree on the ministry and life of priests *Presbyterorum ordinis*. the Decree on the appropriate renewal of the religious life *Perfectae caritatis* and the Decree on the missionary activity of the Church *Ad gentes divinitus*. He explicitly described these norms as experimental in nature for they were to be observed until the promulgation of the new Code of Canon Law, unless in the meantime other provisions were made by the Apostolic See.⁴⁹

Ecclesiae sanctae addressed the issues that surfaced in the vota of the bishops to the Antepreparatory Commission of the council, in the observations of members of the Preparatory Commission and the interventions of the council fathers. They were: the dispensing power of diocesan bishops, faculties for auxiliary bishops, reservation of ecclesiastical benefices and the canonical exemption of religious. It also legislated on other matters related either to the episcopal office or to the government of dioceses such as the erection and suppression of parishes, the senate of priests and the solicitude of bishops for the universal Church.

⁴⁹ Ibid., p. 758, "Itaque, re mature perpensa, motu proprio atque apostolica Nostra auctoritate normas, quae sequuntur, ad exsequenda Concilii Decreta a verbis incipientia: *Christus Dominus* (de pastorali Episcoporum munere in Ecclesia), *Presbyterorum ordinis* (de Presbyterorum ministerio et vita), *Perfectae caritatis* (de accommodata renovatione vitae religiosae), et *Ad gentes divinitus* (de activitate missionali Ecclesiae) decernimus ac promulgamus, easque ad experimentum observari praecipimus, scilicet donec novus iuris Canonici Codex promulgetur, nisi interdum ab Apostolica Sede aliter providendum sit."

A. Episcopal Dispensing Power

Ecclesiae sanctae said little about the dispensing power of bishops. Pope Paul VI simply referred to the recently promulgated *motu proprio De episcoporum muneribus* (June 15, 1966) stating that it contained the norms for the implementation of *Christus Dominus* 8b.so

B. The Faculties of Auxiliary Bishops

The *motu proprio* began its treatment of the auxiliary bishop by acknowledging the practical need for one in some dioceses. Four principles must be kept in mind when dealing with the power to be given the auxiliary bishop: the well-being of the Lord's flock which must be fed; the unity of government in the administration of the diocese; the status of the auxiliary as a member of the episcopal college; his effective cooperation with the diocesan bishop.si

Ecclesiae sanctae prescribed that a diocesan bishop appoint the auxiliary as either vicar general or episcopal vicar with the understanding that

so Ibid., p. 761, art. 6.

si Ibid., p. 764, art. 13, n. 1, "Episcopos Auxiliares pro aliqua dioecesi constituere necesse est, quoties id exigant verae necessitates apostolatus in illa exercendi. Iamvero, pascendi dominici gregis bonum, unitas regiminis in dioecesi moderanda, condicio membri Collegii Episcopalis, qua Auxiliaris decoratur, necnon efficax cum Episcopo dioecesano cooperatio, principia constituunt praecipua prae oculis habenda, quando de potestate Episcopo Auxiliari tribuenda agitur."

he is under the authority of the residential bishop.⁵² This prescription derived from the conciliar teaching on the episcopal dignity of the auxiliary bishop.⁵³ It remedied an earlier situation wherein the auxiliary often had no authority whatsoever except what he might have had by virtue of a non-episcopal office, such as pastor of a parish or a position in the diocesan curia.

As a further means of safeguarding the episcopal dignity of the auxiliary bishop, *Ecclesiae sanctae* expressed a desire that when the see is vacant the government of the diocese be entrusted by those who have the right to do so to him. It also provided that, even if this did not happen, he did not lose the powers and faculties held by virtue of the office of vicar general or episcopal vicar.⁵⁴

While the *motu proprio* provided no profound theology of the auxiliary bishop, it made a significant statement about him through its legislation. Membership of the auxiliary in the episcopal college and his participation in the episcopal function had to be taken into consideration by the residential bishop in the conferral of canonical offices within the diocese. Its legislation was also significant relative to residential bishops: its goal was to safeguard the unity of governance in diocesan churches and the authority of the residential bishops.

⁵² Ibid., n. 2.

⁵³ Jean Bernhard, "Les premières normes d'application de quatre décrets du concile: Les *motu proprio* 'Ecclesiae sanctae' et 'De episcoporum muneribus,' in *La Charge pastorale*, p. 370.

⁵⁴ AAS 58:764, n. 3.

C. The Reservation of Ecclesiastical Benefices

Over the centuries the reservation of ecclesiastical benefices had been described as an invasion of episcopal authority. It prevented bishops from exercising their governmental power by removing their authority to appoint qualified clerics to reserved benefices. Hence, it diminished their exercise of episcopal pastoral care.

Pope Paul VI addressed the problem directly. In *Ecclesiae sanctae* he stated that the good of souls demanded that bishops have appropriate freedom in suitably and equitably conferring on more qualified clerics offices and benefices, even those to which the care of souls was not attached. The *motu proprio*, therefore, decreed that the Apostolic See would no longer reserve to itself the bestowal of offices or benefices, except those which were consistorial.⁵⁵ This legislation curtailed the practice of reservation of benefices and thus assured diocesan bishops of the freedom to exercise their governmental authority in this regard.

The *motu proprio* went even further in upholding episcopal authority by prohibiting any other practices which infringed on the bishops' freedom to

⁵⁵ AAS 58:767. art. 18, n. 1, "Bonum animarum postulat, ut Episcopus congrua libertate gaudeat ad officia et beneficia, etiam non curata, apte et aeque clericis magis idoneis conferenda. Ipsa Apostolica Sedes non amplius sibi reservat collationem officiorum aut beneficiorum, curata sint vel non curata, nisi sint consistorialia." Abbo-Hannan described consistorial benefices as those conferred in consistories. Not all reserved benefices were consistorial, but all benefices to which episcopal power is attached (e.g., a diocese) were. Sacred Canons II:649.

bestow benefices and offices. It abrogated any privileges granted to physical or juridical persons to elect, nominate or present candidates for a vacant non-consistorial office or benefice and any rights and customs of nominating, electing or presenting priests for parochial offices or benefices.[^]

Jean Bemhard observed that the *motu proprio* upheld the ideal stated in canon 152, namely, that bishops are to freely confer within their dioceses ecclesiastical offices and benefices. Canons 396.1, 1433 and 1435, which reserved benefices to the Apostolic See, obstructed this free conferral. The abrogation of these canons by the *motu proprio* restored the principle of free conferral. The suppression of the intervention of other third parties, such as those who elect, postulate, present or nominate candidates for canonical benefices likewise assured this freedom.[^]

D. The Canonical Exemption of Religious

The exemption of religious from the jurisdiction of diocesan bishops was seen by many bishops in their *vota* to the Antepreparatory Commission as a serious problem. Yet only a few suggested that the privilege of exemption be abolished. The greater number of bishops called for clarification of its nature and extent.

⁵⁶ AAS 58:767, art. 18, n. 1. Article 18, n. 2, provided for rights and privileges in this matter established by an agreement between the Apostolic See and a nation or by a contract made with physical or juridic persons. Special arrangements for their cessation must be made with the interested parties.

⁵⁷ "Premieres normes," in *La Charge pastorale*, pp. 364-366.

Paul VI provided such clarification in *Ecclesiae sanctae*. He decreed that all religious, even exempt, were bound by laws, decrees and ordinances of local ordinaries in those matters which touched upon the exercise of the apostolate or pastoral and social action. Religious were also bound by laws and decrees of diocesan bishops regarding the public exercise of worship in their own public or semi-public oratories which the faithful ordinarily attended.⁵⁸

The *motu proprio* further upheld the episcopal office by prescribing that in areas affecting the common good of the Church religious, even exempt, were bound by laws, decrees and ordinances of diocesan bishops. It listed such areas as the public use of all media of social communication, attendance at public entertainment, enrollment in or cooperation with societies or associations which either the diocesan bishop or the national conference decreed should be avoided and the observance of the prescriptions of the diocesan bishop or of the national conference on ecclesiastical attire.⁵⁹

The legislation of *Ecclesiae Sanctae* regarding religious also clarified the nature of exemption. It protected the life and ministry of religious qua religious. As communities and individuals participating in the life and ministry of the Church, however, they fell under the jurisdiction of the diocesan bishops, the chief pastors of the diocese.⁶⁰

⁵⁸ MS 58:770, arts. 25, n. 1, and 26.

⁵⁹ *Ibid.*, art. 25, n. 2.

⁶⁰ J. Bernhard, "Premieres normes," in *La Charge pastorale*, p. 378.

E. The Erection and Suppression of Parishes

Article 21.3 of *Ecclesiae sanctae* increased the power of diocesan bishops in the establishment, suppression and change of parishes. The legislation of the code reserved to the Holy See the extinctive union and the suppression of parishes, the union of a diocesan parish and one attached to a religious institute and the translation, division or dismemberment of a parish belonging to religious.⁶¹

The bishop of the diocese on his own authority can establish or suppress parishes or change them in any way after consultation with the council of priests in such a way, however, that, if there be agreement between the Apostolic See and the civil government, or rights acquired by other physical or moral persons, the matter be suitably settled with them by the competent authority.⁶²

The primary focus of article 21.3 is on the authority of the diocesan bishop as is indicated by the restrictive clause at the end. This clause should be read in light of article 18.2 of the *motu proprio*:

If however rights and privileges in this matter [conferring of benefices] have been established by means of an agreement between the Apostolic See and a nation, or by means of a contract entered into with physical or

⁶¹ Ibid., p. 369. Bernhard cites cc. 1423-1426 of the 1917 code. Also see Olysius Robleda, "Innovationes Concilii Vaticani II in theoria de officiis et beneficiis ecclesiasticis," *Periodica* 59 (1970):277-314.

⁶² AAS 58:769, art. 21.3, "Paroecias erigere aut supprimere vel eas quoquo modo innovare Episcopus dioecesanus propria auctoritate, audito Consilio Presbyterali, potest, ita tamen ut, si sint conventiones inter Apostolicam Sedem et Gubernium civile vel iura aliis personis physicis vel moralibus quaesita, cum iisdem a competent!" Auctoritate res apte componantur." Pope Paul VI, *Norms for Implementation of Four Council Decrees* (Washington: NCWC, 1966), p. 19.

moral persons, arrangements should be made with the interested parties for their cessation.⁶³

Anthony Bevilacqua viewed article 21.3 as applicable to practices common in dioceses in the United States, namely, the establishment of parishes for immigrants. Canon 216.4 which had reserved the establishment of national parishes to the Holy See was abrogated because the *motu proprio* placed no limitations on the bishop's authority over parishes.⁶⁴

F. The Senate of Priests

The consistent teaching of the council is that priests are prudent cooperators with their bishop in the pastoral care of the people of God. They constitute one priesthood with their bishop.⁶⁵ *Presbyterorum ordinis* 7 urges the establishment of a senate of priests in each diocese to provide bishops with assistance in the government of their churches. Hence, *Ecclesiae sanctae* I, 15.1 states that in each diocese there should be established a council or senate

⁶³ AAS 58:768, "Si tamen iura et privilegia, in hac materia, constituta fuerint vi conventionibus inter Apostolicam Sedem et Nationem aut vi contractus cum personis sive physicis sive moralibus initi, de illorum cessatione cum iis, quorum interest, agendum est." Norms for Implementation, p. 17.

⁶⁴ "Some Problems regarding Episcopal Faculties," *The Jurist* 31 (1974):654-655. Bevilacqua notes that the instruction of the Congregation for Bishops on the pastoral care of emigrants, *Cura pastoralis migratorum*, cites art. 21.3 of *Ecclesiae sanctae* as the basis for directing that ordinaries erect personal parishes for immigrants when circumstances dictate. AAS 61 (1969):630, art. 33.1.

⁶⁵ SL& 28;£D, 28; and £Q, 7.

of priests.⁶⁶ Subsequent sections of article 15 further affirm the bishop's preeminent place in the pastoral care of his diocese. Section 3 prescribes that the council of priests enjoys only a consultative vote.⁶⁷ Section 5 states that the council ceases when the see is vacant because its purpose is to express solidarity with the bishop in the pastoral care of the diocese.⁶⁸

The norms promulgated in *Ecclesiae sanctae* were significant for expanding episcopal authority in diocesan churches. They affirmed the authority of diocesan bishops by abrogating laws which often restricted their freedom to govern their dioceses.

Section III: The Motu Proprio *Episcopalis Potestatis*

On May 2, 1967 Pope Paul VI promulgated the motu proprio *Episcopalis potestatis* which regulated the dispensing power of the bishops of the Oriental

⁶⁶ AAS 58:766.

⁶⁷ A Circular Letter on priests' councils was sent by the Congregation for the Clergy to the presidents of the national episcopal conferences on April 11, 1970. It described the establishment of such councils as obligatory in light of the hierarchical communion between bishops and priests. AAS 62 (1970):461-462, art. 5. It also provided that bishops could, in individual cases, give to their senates a deliberative vote. Ibid., p. 463, art. 9. The Circular Letter was not a legislative document for it contained no norms. Rather it was an expression of the intention of the Roman Congregation. See Francis Morrissey, *The Canonical Significance of Papal and Curial Pronouncements* (Washington: CLSA Publications, 1974), p. 11. Also see Anthony Padovano, "Ecclesiastical Authority and the Senate of Priests," in *Shared Responsibility in the Local Church*. Charles Curran and George Dyer, eds. (A project of the Catholic Theological Society of America sponsored by the National Federation of Priests' Councils in conjunction with Chicago Studies. 1970), pp. 91-110.

⁶⁸ J. Bemhard, "Premieres normes," in *La Charge pastorale*, p. 373.

Catholic Churches. In style and content it paralleled *De episcoporum muneribus*. except for appropriate adaptations to the circumstances of the Oriental Churches.

Pope Paul noted that, at the request of the pro-prefect of the Congregation for the Oriental Churches, he had extended for those Churches the period of suspension of the law expressed in *Christus Dominus* 8b. He did so in order to prepare a list of reserved cases similar to that of *De episcoporum muneribus* but which would respect the variety of discipline found in the Oriental Churches.⁶⁹

As was the case with *De episcoporum muneribus*. the *motu proprio Episcopalis potestatis* specifically excluded from the dispensing power of the Oriental bishops constitutive and procedural laws.⁷⁰ It stated that bishops could dispense from laws which command or forbid, that is, prescriptive and prohibitive laws.⁷¹ A just cause, proportionate to the law from which a dispensation was granted, was required. The spiritual good of the faithful was a legitimate cause for dispensing.⁷²

The *motu proprio* restated the principles enunciated in *Christus Dominus* 8: bishops automatically enjoy in the dioceses entrusted to them all the

⁶⁹ AAS 59 (1967):386.

⁷⁰ MS59(1967):387, n. III.

⁷¹ Ibid., n. II.

⁷² Ibid., p. 388, n. VIII.

ordinary, proper and immediate authority required for the exercise of their pastoral office; each diocesan bishop has the faculty to dispense the faithful over whom they exercise authority from the general law of the Church, except those cases which are reserved to the supreme authority of the Church.⁷³

The *motu proprio* reserved fifteen cases to the Apostolic See. Except for minor adjustments for the discipline of the Oriental Churches regarding celibacy, they were also found in *De episcoporum muneribus*. *Episcopalis potestatis*, however, did not include in its list of reserved cases: (1) the dispensation from the lack of canonical age in those to be ordained which is in excess of one year;⁷⁴ (2) the dispensation from the course of studies of the philosophical and theological curriculum⁷⁵ (3) the dispensation from irregularities brought before the judicial forum;⁷⁶ (4) the dispensation from certain irregularities to receiving orders arising from defect or public delict and

⁷³ Ibid., p. 385.

⁷⁴ *De episcoporum muneribus*. IX, 6. Ioannes Rezac observes that the individual Oriental Churches have different legislation regarding canonical age for the various orders, and dispensation from these requirements is left to the patriarchs. "De potestate dispensandi Episcoporum Orientalium," *Periodica* 57 (1968):36-38.

⁷⁵ *De episcoporum muneribus*, IX, 7. Rezac notes that *Postquam apostolicis litteris* contains prescriptions regarding the philosophical and theological formation of religious priests. The diocesan clergy, however, follow the prescriptions of their respective patriarchs. "Potestas dispensandi," pp. 38-40.

⁷⁶ *De episcoporum muneribus*. IX, 8.

the impediment of matrimony;⁷⁷ and (5) the dispensation from irregularities mentioned in canons 985.3, in public cases only, and 985.4 (voluntary homicide and successful procurement of an abortion) even in occult cases, when they occur after the reception of an order.⁷⁸

The same conclusions can be drawn about the provisions of *Episcopalis potestatis* as were drawn regarding *De episcoporum muneribus*. It faithfully implemented *Christus Dominus* 8b by stating clearly the bishops' power to dispense from the general law of the Church, except for those cases which were reserved to the supreme authority of the Church, Ioannes Rezac observed that the reserved cases do not greatly restrict the bishops' power to dispense. By comparison with the *ius viciens* of the Oriental Churches before the promulgation of the *motu proprio*, the bishops' power was greatly amplified.⁷⁹

Section IV: The Directory on the Pastoral Ministry of Bishops

On February 22, 1973 the Congregation for Bishops published the Directory on the Pastoral Ministry of Bishops. The purpose of the directory was

⁷⁷ Ibid., IX, 9. The general law of the Oriental Churches does not distinguish between irregularities (perpetual impediments) and impediments. The irregularities found in the general law are treated in *Episcopalis potestatis*. Impediments are determined by the various churches, and thus are subject to the patriarchs. I. Rezac, "Potestas dispensandi," pp. 40-44.

⁷⁸ *De episcoporum muneribus*. IX, 10. Rezac states that the papal legates have the faculties to deal with these cases. "Potestas dispensandi," p. 44.

⁷⁹ Ibid., p. 75. As an example, Rezac compares the legislation regarding matrimonial impediments before and after the *motu proprio*.

to provide bishops with a guide for their pastoral ministry. so Francis Morrissey describes directories, in general, as tools for giving assistance in practical matters: "The intent of a directory is to provide the basic principles of pastoral theology, taken from the Magisterium of the Church, and in a special way from the Second Vatican Council, by which pastoral action in the ministry can be more fittingly directed and governed."⁸¹ The impetus for preparing the directory was provided by the council which prescribed that general directories concerning the care of souls be drawn up for bishops and pastors to help them discharge their pastoral offices with greater facility and success.⁸²

Part III of the directory deals with the ministry of the bishop in the local church. The introduction to part three enunciates the underlying principle: the bishop teaches, sanctifies and rules the diocesan church in the name and by the authority of Christ.⁸³ The third chapter of Section I, "The Bishop as Father and Shepherd in the Hierarchically Ordered Community," treats the bishop's governing ministry. It restates the principle that the bishop governs his particular church as a vicar and ambassador of Christ. He fulfills the governing

so *Directorium de pastorali ministerio Episcoporum* (Rome: Typis Polyglottis Vaticanis, 1973); **Directory on the Pastoral Ministry of Bishops**, trans. by the Monks of the Seminary of Christ the King, Mission, B.C. (Ottawa: Canadian Catholic Conference, 1974), p. 7.

⁸¹ Canonical Significance, p. 12.

⁸² AAS 59:696, CJJ, 44.

⁸³ Directory, p. 31, art. 54.

ministry by counsel, exhortation and example, as well as by the authority and sacred power which he exercises in the name of Christ.⁸⁴

Article one provides general principles of pastoral rule to guide the bishop in his exercise of the power of governance and to provide insights into episcopal ministry. The principle of the common good ⁸⁵ and the principle of unity⁸⁶ see the bishop as the visible principle and foundation of unity for the diocesan church. Other principles, such as the principle of responsible cooperation,⁸⁷ of subsidiarity⁸⁸ and the principle of coordination,⁸⁹ describe how the bishop works to achieve this unity within the church. He is challenged to adapt pastoral activity to the needs of the people⁹⁰ and to organize pastoral action so that it truly meets these needs.⁹¹

The directory is specific about the relationship between bishops and religious. On the one hand, it calls bishops to be respectful of the exemption of

⁸⁴ *ibid.*, pp. 49-50, art. 92.

⁸⁵ *Ibid.*, p. 50, art. 93.

⁸⁶ *ibid.*, art. 94.

⁸⁷ *ibid.*, art. 95.

⁸⁸ *ibid.*, art. 96.

⁸⁹ *Ibid.*, art. 97.

⁹⁰ *Ibid.*, art. 99.

⁹¹ *Ibid.*, pp. 53-54, arts. 103-105.

religious by which they can be removed from the jurisdiction of the bishop by the Roman Pontiff by virtue of his primacy over the universal Church; on the other hand, it asserts that religious owe reverence and obedience to the bishops who possess pastoral authority over their churches because of the demands of unity and harmony in apostolic labors.⁹²

The directory follows in time the *motu proprio Ecclesiae sanctae*. Its abrogation of the reservation of ecclesiastical benefices affirms the bishop's freedom to confer offices. Article 116 notes this freedom.

Often a significant part of the bishop's governance of the diocese involves his administration of church property. The directory urges him to insure that the purposes for ownership of property, namely, ordering divine worship, care for the Church's ministers and fulfillment of the Church's mission through the apostolate and works of charity, be known and fulfilled.⁹³ He is to see to it that the respective diocesan and parish councils are established.⁹⁴ The directory provides no insights into how the bishop is to fulfill his judicial or coercive functions, except to advise him to appoint qualified persons to the diocesan curia to assist him.⁹⁵

⁹² Ibid., p. 56, art. 118.

⁹³ Ibid., pp. 68-69, arts. 133-134.

⁹⁴ Ibid., p. 69, art. 135.

⁹⁵ Ibid., p. 102, art. 200.

The pastoral visitation is one of the principal ways by which the bishop comes into personal contact with the clergy and laity of the diocese. It is also the means by which he lets his people know that he is the visible source and foundation of unity in his particular church.⁹⁵ There are two aspects of the visitation: one pastoral, the other directive. The pastoral dimension invites the bishop to celebrate the sacraments, speak with the clergy, religious and laity who care for the parish, visit the sick and be with the people. The directive dimension enables the bishop or his delegate to inspect church buildings, vessels and furnishings, look through the parish books and registries and examine the administration of temporalities.⁹⁶

In general, the directory provides an appropriate treatment of the office of bishop. It clearly defines the bishop as head of the church committed to his pastoral care and provides examples of how he might fulfill the unifying function that is his.

Section V: Directives for Mutual Relations between Bishops and Religious in the Church

The Apostolic Letter *Ecclesiae Sanctae* prescribed that religious, even exempt, were bound by the laws, decrees and ordinances of diocesan bishops affecting the exercise of the apostolate, public worship, pastoral and social actions. But it did not provide a rationale for such legislation, other than

⁹⁵ Ibid., p. 85, art. 166.

⁹⁶ Ibid., p. 86, art. 168.

referring to *Christus Dominus* 33 to 35. The Directives for Mutual Relations Between Bishops and Religious in the Church, drafted jointly by the Congregation for Religious and Secular Institutes and the Congregation for Bishops (May 14, 1978),⁹⁸ remedied this lack by providing a rationale for the legislation. The directives provide two foundations for this prescription: the nature of organic communion within the Church and the episcopal function.

The organic communion of the members of the Church is a fruit of the Holy Spirit. The nature of the Church, however, dictates that this organic communion is not exclusively spiritual but is simultaneously spiritual and hierarchical because the gifts of the Spirit are always ordered to the good of the whole Body of Christ. The spiritual aspects and the hierarchical nature of this organic communion cannot be separated because their origin and vitality simultaneously derive from the Spirit of Christ."

Within the Church there is a variety of offices and ministries, but the ministry of bishops is fundamental to all of them. The bishops, in hierarchic

⁹⁸ The details of the deliberations of the two Roman Congregations are reported in Joseph Gallen, "Canon Law for Religious after Vatican II," *Review for Religious* 36 (1977) :136-138. For another history of the directives see Jan Snijders, "Bishops and Religious: The Document on the Mutual Relations between Bishops and Religious," *Review for Religious* 39 (1980) :115-118. For a study of the nature of the directives see John Jukes, "A Commentary on the 'Notae Directivae' on the mutual relations between Bishops and Religious in the Church," *Clergy Review* 63 (1978):475, and "A Commentary on the 'Notae Directivae' on the mutual relations between Bishops and Religious in the Church: II." *Clergy Review* 64 (1979):21-22.

⁹⁹ Congregation for Religious and Secular Institutes and Congregation for Bishops, "Normae directivae pro mutuis relationibus inter episcopos et religiosos in Ecclesia," *AAS* 70 (1978):477, art. 5.

communion with the pope, make up the episcopal college in such a way that jointly they manifest and carry out in the Church-Sacrament the function of Christ, the Head of the Church. Therefore, bishops carry out an organic function of fecundity, unity and spiritual authority which is so basic that it influences all ecclesial activity. Even though the exercise of many tasks and initiatives is distributed among the people of God, the pope and the bishops have the ministry of discernment and harmony which involves an abundance of special gifts of the Holy Spirit and the distinctive charism of ordering the various roles in intimate docility of mind to the one and only vivifying Spirit.¹⁰⁰

This notion of organic communion is the foundation for understanding the coordinating function of bishops. Under the guidance of the Holy Spirit their function is to discern what is of the Spirit and to order the various offices and ministries of the Church so that they can harmoniously contribute to the fulfillment of the Church's mission.

¹⁰⁰ *ibid.*, pp. 477-478, art. 6, "Dominus ipse in Ecclesia sua varia ministeria instituit, quae ad bonum totius Corporis tendunt (LQ, 18); ex quibus episcopale ministerium est ceterorum omnium fundamentum. Episcopi autem, in communione hierarchica cum Romano Pontifice, Collegium Episcopale constituunt, ita ut in solidum manifestent et ad effectum perducant Christi-Capitis munus in Ecclesia-Sacramento.... Nemo alius nisi Episcopus in Ecclesia organicam fecunditatis (cfr. JLCa, 18; 19) unitatis (cfr. LG, 23) et spiritualis potestatis (cfr. LJi, 22) functionem adeo fundamentalem explicat, ut in omnem ecclesiam activitatem influat. Quamvis enim in Populo Dei plurima alia munera ac incepta tribuantur explenda, tamen Romano Pontifici et Episcopis, sicut Capite in Corpore, ministerium competit discriminandi vel componendi (cfr. LJi, 21), quod secum fert specialium Spiritus donorum abundantiam ac peculiare charisma ordinandi diversa munera in intima animi docilitate erga unicum vivificantem Spiritum (cfr. L&, 12; 24, etc.)." Snijders refers to the directives as providing the finest theology of the bishops' role in the Church. "Bishops and Religious," p. 120.

The other basis for the coordinating function of bishops is the fact that the pope and the bishops are sacramentally constituted as vicars of Christ to the universal and diocesan churches respectively. No one else has the power to exercise any function in these churches, whether of teaching, sanctifying or governing, except by participation and in communion with them. ¹⁰¹ They are given by Christ the duty of discerning gifts and competencies, of coordinating multiple energies and of guiding the whole people of God living in the world as a sign and instrument of salvation. Therefore, they are also entrusted with the duty of caring for religious charisms.¹⁰²

The directives describe exemption as a privilege conceded by the Roman Pontiff on religious families. It does not of itself create an obstacle to pastoral coordination or to mutually good relations among the people of God because it relates to the internal organization of religious institutes. Its purpose is to ensure that everything is suitably and harmoniously arranged within them and that the perfection of religious life is promoted. It also ensures the right of

¹⁰¹ AAS 70:479, art. 9, a, "Caput Corporis ecclesialis est Christus, Pastor aeternus, qui Petrum et Apostolos eorumque successores, videlicet Romanum Pontificem et Episcopos, praeposuit eos sacramental iter constituens ut sui ipsius Vicarios (cfr. Lj£, 18; 22; 27) atque congruis charismatibus replens; nee quisquam alius potestatem habet exercendi in populum Dei ullum sive magisterii sive sanctificationis sive gubernationis munus, nisi cum illis participando et communicando."

¹⁰² *ibid.*, art. 9, c, "Episcopi, in communione cum Romano Pontifice, a Christo-Capite munus (JLG, 21) accipiunt discemendi dona et competencias, multiplices vires simul ordinandi, Populum totum dirigendi, ut in mundo tamquam signum ac salutis instrumentum vivat. Ipsis igitur concreditum quoque est munus curandi religiosa charismata."

the Roman Pontiff to employ such religious for the good of the universal Church. 103

The role of bishops and the nature of religious life in the Church create a relationship of interdependence between bishops and religious. 104 Bishops are to guarantee the fidelity of religious to their vocation as they carry out their service for the diocesan church; religious are to consider bishops as shepherds of the whole diocesan community. Hence, they should promptly and faithfully comply with the bishops' requests or desires that they undertake a greater share in the ministry of salvation, always provided that due consideration is given to the character and constitution of each religious institute. 105 The directives urge that the office of episcopal vicar be established in each diocese

103 *ibid.*, p. 487, art. 22, "Exemptio vero nullum impedimentum perse infert sive pastorali coordinationi sive mutuis bonisque relationibus inter Populi Dei membra. Ipsa enim ordinem Institutorum internum potissimum respicit, quo melius in iisdem omnia sint inter se apta et conexa atque incremento et perfectioni religiosae conversationis consulatur; necnon ut de illis disponere possit Summus Pontifex in bonum Ecclesiae universae, alia vero competens Auctoritas in bonum Ecclesiarum propriae iurisdictionis (CD. 35, 3; cfr. C_D 35, 4; Eccl. Sanctae. I, 25-40; Evang. nunt.. 69)." Snijders sees a bishop's appreciation of exemption as an expression of his solicitude for the whole Church which flows from his membership in the episcopal college. "Bishops and Religious," p. 125.

104 AAS 70:493, art. 34.

105 *Ibid.*, pp. 500-501, art. 52.

as a means of assuring collaboration of religious with the pastoral ministry of bishops.¹⁰⁶

The directives clarify the nature and extent of the privilege of exemption and provide a clear description of the role of bishops with regard to religious. They therefore protect the prerogatives of bishops and of religious in their relations with one another.

CONCLUSIONS

The Second Vatican Council's Decree on the bishops' pastoral office in the Church *Christus Dominus* clearly asserts that bishops, as successors of the apostles, have proper, ordinary and immediate authority to govern the dioceses committed to their pastoral care. By virtue of this power bishops can act in all matters except those reserved to the supreme authority.

The experience of the *motu proprio Pastorale munus*, promulgated midway through the council, illustrated the inefficacy of conferring broad faculties as a means of giving appropriate recognition to the power of bishops. The purpose of the *motu proprio* was to decentralize ecclesiastical government. To effect this decentralization it expanded the faculties of bishops. While it diminished the number of instances in which bishops had to apply to Rome for

¹⁰⁶ *ibid.*, p. 501, art. 54. Jukes explains the role of the episcopal vicar for religious, "Commentary II," pp. 26-28. For a more detailed explanation of episcopal vicars see Joseph Penna, *The Episcopal Vicar*. Canon Law Studies, 475 (Washington: Catholic University, 1971); Thomas Swift, "The Pastoral Office of Episcopal Vicar: Changing Role and Powers," *The Jurist* 40 (1980):225-256; and William Bassett, "The Office of Episcopal Vicar," *The Jurist* 30 (1970):285-313.

dispensations, thus realizing a practical decentralization, it did not effect a more basic reversal in discipline required to show the proper and ordinary nature of episcopal power. It merely expanded the delegated authority of bishops.

The motu proprio *De episcoporum muneribus*, which implemented *Christus Dominus* 8b, carefully followed the conciliar decree in principle and in practice. It enunciated again the principle of the reservation of major causes to the Apostolic See and applied it to the bishops' dispensing power. In effect, bishops could dispense from the general law of the Church in all cases, except those reserved to the supreme authority of the Church. The motu proprio limited the number of such reserved cases to twenty-one. This relatively small number of reserved cases was an index of the serious consideration the Holy See gave to episcopal authority. The power to dispense was ordinary and proper because it was clearly and inseparably joined by the council and by the motu proprio to the office of the diocesan bishop. The principles enunciated in *De episcoporum muneribus* were reiterated in the motu proprio *Episcopalis potestatis* which delineated the dispensing power of bishops of the Oriental Churches. These enactments highlighted the firmness with which the pope held these principles.

The motu proprio *Ecclesiae sanctae*, in its treatment of faculties to be conceded to auxiliary bishops, emphasized their participation in the episcopal college with all that membership entailed and observed that their status had to be taken into consideration by residential bishops in assigning responsibilities to them. The office of bishop was given a certain preeminence over canonical

mission. At the same time the *motu proprio* called attention indirectly to the authority of diocesan bishops when it stressed that the authority given to auxiliaries ought not jeopardize in any way that primary authority.

Ecclesiae sanctae curtailed the practice of reservation of ecclesiastical benefices and defined the authority diocesan bishops had over religious, even exempt. In the preparatory stages of the council and during the council itself bishops described the reservation of benefices and the exemption of religious as impeding their pastoral care and diminishing their authority in the diocesan churches. By legislating on these matters the pope affirmed the pastoral authority of bishops. The *Directives for Mutual Relations between Bishops and Religious in the Church* further clarified the specific role bishops had in the churches committed to their care and provided a substantial rationale for the profound need of an appropriate sense of interrelationship between bishops and religious.

These implementing and experimental documents, promulgated by the Church's supreme authority, firmly established the proper, ordinary and immediate authority of bishops to govern the dioceses committed to their care. The legislation of the 1983 Code of Canon Law, the outcome of a revision process set into motion by Pope John XXIII at the same time as the conciliar process, is the final stage in the study of episcopal power. The code, which touches almost every aspect of the Church's life and ministry, seeks to bring the council's teaching into the present day-by-day life of the Church.

CHAPTER VI

THE 1983 CODE OF CANON LAW

Pope John Paul II promulgated the new Code of Canon Law on January 25, 1983, exactly twenty-four years after his predecessor, Pope John XXIII, announced his decision to reform the 1917 Code of Canon Law. The Apostolic Constitution *Sacrae disciplinae leges* described the code as complementing the work of the council. The pope noted that the new code represented a great effort to translate the conciliar doctrine and ecclesiology into canonical language and to bring the solemn teachings of the council into the juridical life of the Church.¹

Pope John XXIII established the Pontifical Commission for the Revision of the Code of Canon Law in 1963. After the completion of the council the

¹ The Code of Canon Law Latin-English Edition, trans, under the auspices of the Canon Law Society of America (Washington: CLSA Publications, 1983), pp. xii-xiv; a translation of *Codex juris canonici* (Vatican City: Libreria Editrice Vaticana, 1983). [All Latin and English citations of the canons of the code will be taken from this text unless otherwise noted.] Annotations on the apostolic constitution edited by Jean Beyer are in *Periodica* 72 (1983):181-204.

Pontifical Commission, in collaboration with theologians and canonists of various schools and nations, initiated a study of the conciliar decrees and general principles of reform of the law which were presented to the first general synod of bishops convoked by Pope Paul VI in 1967. The synod expressed its desire for an entirely new Code of Canon Law which would be in harmony with the council and modern conditions everywhere.² It affirmed the principles drafted by the Pontifical Commission, and Pope Paul VI directed that these principles guide the commission in its work.³ There were ten principles:

1. that the new code be juridical in character, not just broad-based moral principles
2. that it be primarily for the external forum, rather than for the internal forum, that is, it should deal with determinable facts
3. that it be pastoral in spirit
4. that it incorporate the faculties bishops need in their work
5. that it reflect subsidiarity in the Church
6. that it reflect individual rights
7. that it contain clear administrative procedures
8. that it be based on the principle of territoriality
9. that it de-emphasize penalties

² Richard Cunningham, "The Principles Guiding the Revision of the Code of Canon Law," *The Jurist* 30 (1970):447.

³ "Synodus Episcoporum," *Communicationes* 1 (1969):55.

10. that there be a new systematic arrangement of the code.⁴

The third, fourth, and fifth principles are germane to this study.

The third principle is intimately connected to the mission of the Church. All of its structures and institutions are to promote the supernatural life and foster communion among the faithful. Bishops and others who have the care of souls need suitable discretionary power to determine the responsibilities of the faithful dependent on the circumstances of each place.⁵ Laws are general; situations are always particular. Bishops, therefore, need a certain amount of discretionary authority to apply the law to the circumstances.

The fourth principle focuses on the office of bishop. The new code must define that office and its powers in a positive manner according to the prescriptions of *Christus Dominus*. The greatest freedom possible should be allowed to ordinaries, especially with regard to dispensations, so that the pastoral nature of canon law is evident. The cases reserved to the Holy Father or to another authority are to be thoroughly reviewed.⁶

4 Ibid. Also see Acta Commissionis, "Principia quae Codicis iuris canonici recognitionem dirigant," *Communicationes* 1 (1969):77-85; R. Cunningham, "Principles Guiding Revision," pp. 447-454; and Adam Maida, "The Spirit of the New Code of Canon Law," in *The New Canon Law: Perspectives on the Law. Religious life and the Laity* (St. Louis: Catholic Health Association, 1983), p. 71.

s Acta Commissionis, "Principia," pp. 79-80; R. Cunningham, "Principles Guiding Revision," pp. 448-449.

6 Acta Commissionis, "Principia," p. 80; R. Cunningham, "Principles Guiding Revision," pp. 449-450.

The fifth principle, the principle of subsidiarity, affects the balance between papal and episcopal jurisdiction. The Roman Pontiff has the right to reserve cases to himself or to another authority and to circumscribe the exercise of episcopal power within certain limits when it serves the good of the Church or of the faithful. Yet, according to *Christus Dominus* 8a, bishops have the ordinary, proper and immediate power needed for the government of their dioceses. While there is a need for one system of canon law to provide for the common good of the whole Church, the new code should confine itself to general legislation, leaving particular areas and rites to regulate their own affairs.⁷

This chapter analyzes the bishops' governing office as it is treated in the 1983 Code of Canon Law to discern how closely these conciliar and synodal principles are translated into canonical legislation. It also takes account of the fact that many post-conciliar documents implementing the decrees of the council were experimental pending the definitive formulation of the code. It is significant to determine the extent to which they are incorporated into the 1983 Code of Canon Law.

Section I: Ecclesiastical Jurisdiction in the 1983 Code of Canon Law

The treatment of the power of jurisdiction in the 1983 Code of Canon Law differs considerably from its treatment in the 1917 code. In the 1917 code jurisdiction is treated in the second book of the code which deals with the rights

⁷ Acta Commissionis, "Principia," pp. 80-82; R. Cunningham, "Principles Guiding Revision," pp. 450-452.

and duties of the clergy. The new code deals with the power of governance in its first book, General Norms. The placement of the canons governing jurisdiction is significant: the 1917 code would indicate that the exercise of jurisdiction is restricted to the clergy; the 1983 code would suggest the possibility of its extension to the laity.⁸ Canon 118 of the 1917 code states explicitly that only the clergy are able to exercise ecclesiastical jurisdiction, while canon 129.2 of the 1983 code states that lay members of the Christian faithful can cooperate in its exercise.

The new code is also clearer in its treatment of the exercise of jurisdiction in the internal forum. Canon 196 of the 1917 code made only a passing

⁸ The provision for lay members of the Christian faithful to cooperate in the exercise of the power of jurisdiction was not achieved without a debate which never really achieved consensus. An exploration of this debate, however, is beyond the scope of this work. See Joseph Ratzinger, "Die 'potestas sacra' im Schema CIC zu den Canones 126, 244, 1373, n. 2," in Pontificio Commissio Codici iuris canonici recognoscendo congregatione plenaria (October 20, 1981), Prat. Num.: 4747/81; Alphonse Stickler, "De potestatis sacrae natura et origine," *Periodica* 71 (1982):65-91; Richard Hill, "Title VIM: The Power of governance [cc. 129-144]," in *The Code of Canon Law: A Text and Commentary*, ed. James Coriden et al. (New York/Mahwah: Paulist Press, 1985), p. 94 [Henceforth Coriden, *Commentary*]; Elizabeth McDonough, "Laity and the Inner Workings of the Church," *The Jurist* 47 (1987):231-237; James Provost, "The Participation of the Laity in the Governance of the Church," *Studia canonica* 17 (1983):417-448; Julian Herranz, "Le statut juridic des laics: l'apport des documents conciliaires et du Code de droit canonique," *Studia canonica* 19 (1985):229-257. This provision confirms the position that the powers of orders and of jurisdiction are separable. See Gianfranco Ghilarda, "De natura, origine et exercitio potestatis regiminis iuxta novum codicem," *Periodica* 74 (1985):109-164; Adriano Celeghin, "Sacra potestas: quaestio post-conciliaris," *Periodica* 74 (1985): 165-225; and Jean Beyer, "Iudex laicus vir vel mulier," *Periodica* 75 (1986):29-60. Beyer shows how the twofold power is in practice united in the bishops, reflecting the common origin of each in Christ. "De natura potestatis regiminis seu iurisdictionis recte in Codice Renovato enuntianda," *Periodica* 71 (1982):93-145.

reference to its exercise in the internal forum. The new code states that "the power of governance is normally exercised in the external forum, but sometimes it is exercised in the internal forum only."⁹ In other words, the exercise of jurisdiction in the internal forum constitutes a true exercise of the power of governance.

Canon 131 follows canonical tradition in its definition of ordinary and delegated power: ordinary power is that which is joined to an office by virtue of the law itself; delegated power is power granted to a person, but not by means of an office. One who confers an office on another cannot remove ordinary power without amendment of the law itself because of the interconnection of office and ordinary power. 10

⁹ C. 130, "Potestas regiminis de se exercetur pro foro externo, quandoque tamen pro solo foro interno ...," pp. 41-43. R. Hill describes the 1983 code as having a clarity on this issue lacking in the 1917 code. When jurisdiction is exercised in the internal forum, circumstances direct that its exercise not be made known to others. But, its effects are acknowledged in the external forum as in the case of dispensing from an occult matrimonial impediment. "Power of Governance," in Coriden, Commentary, p. 93. See notes 16-19 of chapter one for further references on the relation of the internal and external fora.

10 R. Hill observes, "Furthermore, ordinary power, since it pertains to an office by reason of a law, cannot be restricted or removed by the person conferring such power without amendment of the law itself." Ibid., p. 94. It is possible, however, for ordinary power to be restricted without amending the law. The reservation of major causes to the supreme authority of the Church is the primary example of restricting ordinary power. The imposition of an ecclesiastical penalty can restrict the exercise of a power of office without any removal from office.

Section II: The Hierarchical Constitution of the Church

The universal Church is structured as a communion of particular churches presided over by bishops who are joined in a college with the pope as its head. The highest authority in the Church, therefore, is held by the Roman Pontiff and by the college of bishops.¹¹ It is exercised at times by the pope alone, at other times by the episcopal college united with him as its head. The pope has the right of determining whether he will act personally or will call on the universal episcopate to act with him collegially.¹²

According to canon 331, the bishop of the Church of Rome, as successor to blessed Peter, the first of the apostles, is head of the college of bishops, the

¹¹ C. 330. The canon restates, almost verbatim, LG_, 22. Also see encyclical of Paul VI, *Redemptor hominis* (March 4, 1979), AAS 71 (1979):457, art. 5. The 1980 schema of the code contained no legislation governing the supreme power of the Church. See Pontificia Commissio Codici iuris canonici recognoscendo, *Schema Codicis iuris canonici* (Rome: Libreria Editrice Vaticana, 1980), c. 277. It was treated in the *Lex Ecclesiae Fundamental*, cc. 32-36 and 39-46. See Pontificia Commissio CIC recognoscenda, *Schema Lex Ecclesiae Fundamental* (Rome: Typis Polyglottis Vaticanis, 1971), pp. 22-29. The commission concluded that incorporating into the new code material found in the LEF would constitute unnecessary duplication. *Acta Commissionis*, "Sectio II: De Ecclesiae Constitutione Hierarchica," *Communicationes* 14 (1982):89. Later the commission decided to incorporate into the code matters which beforehand were in the schemata of the LEF and never promulgated. *Ibid.*, p. 179. For further study of the *Lex Fundamental* see Jean Beyer, "De Legis Ecclesiae Fundamental Redactione, natura et crisi," *Periodica* 61 (1972):525-552; and Paulus Weber, "De Legis Ecclesiae Fundamental studio a coetu peritorum Heidelbergensi Iohanne Dombois duce institute" *Periodica* 62 (1973):423-466; William LaDue, "A General Analysis of the Proposed Schema on the *Lex Fundamental*." *Proceedings of the Canon Law Society of America* 41 (1979):29-46 and Julio Manzanares, "De schemate legis Ecclesiae Fundamental in Colloquio Hispano-Germanico adnotationes," *Periodica* 61 (1972):647-662.

¹² C. 333.2

vicar of Christ and the pastor of the universal Church on earth. By virtue of his office he enjoys supreme, full, immediate and universal ordinary power in the Church which he can exercise freely.¹³ Each of the titles accorded the bishop of Rome describes an aspect of the primacy as well as the pope's relationship to the bishops: head of the college and pastor of these pastors of the Church. ¹⁴ The supremacy of papal power derives from the primacy Christ gave to Peter and his successors. Papal power is subordinate to no other human power but only to Christ.¹⁵ Papal jurisdiction is "full" because it contains all the sacred power needed to teach, govern and sanctify;¹⁶ "immediate" because it is not

13 "Ecclesiae Romanae Episcopus, in quo permanet munus a Domino singulariter Petro, primo Apostolorum, concessum et successoribus eius transmittendum, Collegii Episcoporum est caput, Vicarius Christi atque universae Ecclesiae his in terris Pastor; qui ideo vi muneris sui suprema, plena, immediata et universali in Ecclesia gaudet ordinaria potestate, quam semper libere exercere valet." P. 119.

14 Antonio Abate, "Sectio I: De suprema Ecclesiae auctoritate," in *Commento al Codice di diritto canonico*. ed. Pio Vito Pinto (Rome: Urbaniana University Press, 1985), p. 195 [Henceforth: Pinto, *Commento*]. James Provost, "Chapter I: The Roman Pontiff and the College of Bishops [cc. 330-341]," in Coriden, *Commentary*, p. 267. Provost analyzes each of the papal titles, pp. 267-268.

is This subjection solely to Christ is true both within and outside the Church. The First Vatican Council applied this understanding of papal supremacy to the relationship between the Church and civil governments. *Ibid.* For further study of Vatican I see Giuseppe Alberigo, *Lo Sviluppo della dottrina sui poteri nella Chiesa universale: Mometi essenziali tra il XVI e il XIX secolo* (Rome: Herder, 1964); Gustave Thiis, *Primaute pontificale et prerogatives episcopales; "Potestas Ordinaria" au Concile du Vatican* (Louvain: E. Warny, 1961); V. Walsh, "Role of Bishops," pp. 39-92.

16 A. Abate, "De suprema," in Pinto, *Commento*. p. 195.

conditioned by the need to act through intermediaries or mediation;¹⁷ and "ordinary" by virtue of its attachment by law to the office of the papacy. ¹⁸

There is an inseparable connection between the episcopal character and the papal office because it is as a bishop in the college of bishops that the pope exercises his particular ministry on behalf of the Church. Canon 332.1, therefore, provides that one who is already a bishop obtains full and supreme power the moment he accepts his election to the pontificate. If he lacks the episcopal character he is to be ordained a bishop immediately.¹⁹

The college of bishops also holds full and supreme power over the universal Church. Canon 336 states:

The college of bishops, whose head is the Supreme Pontiff and whose members are the bishops by virtue of sacramental consecration and hierarchical communion with the head and members of the college, and in which the apostolic body endures, together with its head, and never without its head, is also the subject of supreme and full power over the universal Church.²⁰

¹⁷ J. Provost, "The Roman Pontiff," in Coriden, *Commentary*, pp. 268-269; A. Abate, "De suprema," in Pinto, *Commento*. p. 195.

¹⁸ C. 131.1.

¹⁹ The code repeats the provisions of the apostolic constitution of Pope Paul VI *Romano Pontifice eligendo* (October 1, 1975), AAS 67 (1975):644, art. 88.

²⁰ "Collegium Episcoporum, cuius caput est Summus Pontifex cuiusque membra sunt Episcopi vi sacramentalis consecrationis et hierarchica communione cum Collegii capite et membris, et in quo corpus apostolicum continuo perseverat, una cum capite suo, et numquam sine hoc capite, subiectum quoque supremæ et plenæ potestatis in universam Ecclesiam existit." P. 121.

Here the code is faithful to *Lumen gentium* 21 which teaches that episcopal consecration is a sacrament through which every bishop participates in the episcopal functions of teaching, sanctifying and ruling and is incorporated into the episcopal body. Thus even a bishop without a canonical mission to a particular church, as long as he is in hierarchical communion with the head and members of the episcopal college, participates in this supreme power over the universal Church, for its source is episcopal consecration, not canonical mission. Consequently, canon 336 affirms the right of all members of the episcopal college to a deliberative vote in an ecumenical council through which the college of bishops exercises power over the universal Church in a solemn manner. The pre-conciliar debate over the deliberative vote of titular bishops is, therefore, resolved in their favor.

The theology of the episcopate is further developed in canon 375.1 which teaches that through the power of the Holy Spirit who has been given to them bishops are the successors of the apostles by divine institution and are constituted pastors within the Church.²¹ Episcopal consecration confers not only a sanctifying function on bishops, but also the teaching and governing functions which can be exercised only when they are in hierarchical

²¹ "Episcopi, qui ex divina institutione in Apostolorum locum succedunt per Spiritum Sanctum qui datus est eis, in Ecclesia Pastores constituuntur, ut sint et ipsi doctrinae magistri, sacri cultus sacerdotes et gubernationis ministri." P. 139.

communion with the head of the college and its members.²² Canon 375 makes no distinction between kinds of bishops. All bishops, whether diocesan or titular, metropolitan or suffragan, participate in the threefold functions of Christ. Thus, at least by virtue of consecration and membership in the episcopal college, there is a certain fundamental equality among all bishops.

As members of the episcopal college all bishops participate in its supreme power over the universal Church. Although according to canon 333.1 the Roman Pontiff possesses "a primacy of ordinary power over all particular churches and groupings of churches," the authority of the bishops in their particular churches is not diminished but "strengthened and safeguarded" by it.²³ Supreme authority, which is exercised by the pope and by the college of bishops over the universal Church, and episcopal authority, which is exercised in the particular churches, are not in competition with each other. The terminology of the new code is radically different from that of the 1917 code. It

22 C. 375.2, "Episcopi ipsa consecratione episcopali recipiunt cum munere sanctificandi munera quoque docendi et regendi, quae tamen natura sua non nisi in hierarchica communione cum Collegii capite et membris exercere possunt." P. 139.

23 "Romanus Pontifex, vi sui muneris, non modo in universam Ecclesiam potestate gaudet, sed et super omnes Ecclesias particulares earumque coetus ordinariae potestatis obtinet principatum, quo quidem insimul roboratur atque vindicatur potestas propria, ordinaria et immediata, qua in Ecclesias particulares suae curae commissas Episcopi pollent." P. 119.

has no parallel to canon 108.3 of the 1917 code, which refers to "the supreme pontificate and the subordinated episcopacy."²⁴

This profound respect for papal and episcopal authority and this description of their parameters is firmly rooted in the teachings of the First and Second Vatican Councils.²⁵ Papal power cannot replace the ordinary, proper and immediate power which bishops as successors of the apostles enjoy in the dioceses entrusted to their pastoral care.²⁶

The 1917 code included patriarchs, primates, metropolitans, plenary and provincial councils among those who by ecclesiastical law participate in supreme power over the Church. Any jurisdiction above the level of the diocese was vicarious papal power. The 1983 code presented these canonical institutes as elements of the relationship between particular churches, that is, part of their mutual cooperation and functioning. "This does not detract from the authority of metropolitans or particular councils, but it places a different light on

²⁴ Thomas Green describes the significance of the code's recognition of particular churches, "The highly centralized pre-conciliar ecclesiology and legal system highlighted the universal Church and tended to view the particular churches merely as useful administrative subdivisions of that universal Church. On the contrary the revised law reflects a central figure of conciliar ecclesiology, namely, that particular churches are not field offices of a giant multi-national corporation, but local realizations of the one church of Christ." "Section II: Particular Churches and Their Groupings [cc. 368-572]," in Coriden, Commentary, p. 311. Green cites as sources of the conciliar teaching on particular churches: LC3, 23; C_D, 11; UR, 15; and AG, 19.

²⁵ Constitution of the First Vatican Council *Pastor aeternus*. COD, p. 790, cap. 3; LG. 27.

²⁶ C_D, 8.

the source of that authority: it is rooted in the communion of churches and collegial interaction of bishops and does not strictly devolve from the pope."²⁷

Section III; The Jurisdiction of the Diocesan Bishop

Canon 369 describes a diocese: "A diocese is a portion of the people of God which is entrusted for its pastoral care to a bishop.... it constitutes a particular Church in which the one, holy, catholic and apostolic Church of Christ is truly present and operative."²⁸ This theologically rich description simply restates *Christus Dominus* 11, which, in turn, is firmly rooted in *Lumen gentium* 23 and 26. The code's description of a diocese is essential to appreciating the role of the diocesan bishop, for it is in the context of the diocesan church that the code reflects on the diocesan bishop.

A diocese is a participation in the mystery of the Church. It is constituted as a church: by the proclamation of the gospel; by the celebration of the Eucharist by a community gathered around the altar under the sacred ministry of its bishop; and by the presence of the Holy Spirit, the principle of the unity of its life, its renewal and its holiness. In it there is present the one, holy, catholic and apostolic Church of Christ which is constituted by these same elements. A

²⁷ James Provost, "Part II: The Hierarchical Constitution of the Church [cc. 330-572]," in Coriden, *Commentary*, p. 258.

²⁸ "Dioecesis est populi Dei portio, quae Episcopo cum cooperatione presbyterii pascenda concreditur, ita ut, pastori suo adhaerens ab eoque per Evangelium et Eucharistiam in Spiritu Sancto congregata, Ecclesiam particularem constituat, in qua vere inest et operatur una sancta catholica et apostolica Christi Ecclesia." P. 137.

diocese is not first and foremost a geographical or demographical entity. The territorial factor is determinative, not constitutive, of the people of God.²⁹

A bishop is the visible principle and foundation of the unity of a diocese. Canon 369 must be read in conjunction with canon 381.1 which states that the bishop is the ordinary, proper and immediate pastor of the church committed to his care. He governs and represents his particular church and acts in its name in the communion of churches, represents the universal Church among his fellow believers, and the universal Church is present through the preaching of the gospel and the celebration of the sacraments mediated by the bishop. He does not function alone in his ministry. Comparable to the college of bishops, there is a college of presbyters in a hierarchically structured exercise of the teaching, sanctifying and governing ministries.³¹

Canon 379 requires a bishop to be consecrated before he takes canonical possession of his diocese. This requirement represents a major shift from the legislation of the 1917 code (c. 334.3) which permitted a diocesan bishop to take canonical possession of his diocese before he was consecrated. Such a position was possible then because of the separation of the power of orders from that of jurisdiction. The current legislation is faithful to Lumen

²⁹ T. Green, "Particular Churches," in Coriden, Commentary, p. 316; Antonio Sousa Costa, "Caput I: De Ecclesiis particularibus," in Pinto, Commento. p. 223.

so T. Green, "Particular Churches," in Coriden, Commentary, p. 316.

³¹ Ibid.; A. Sousa Costa, "Ecclesiis particularibus," in Pinto, Commento. pp. 222-223.

gentium 21, which describes episcopal consecration as conferring the teaching, sanctifying and governing functions.

Canon 381.1 reiterates the principle affirmed in *Lumen gentium* 27 and *Christus Dominus* 8a:

A diocesan bishop in the diocese committed to him possesses all the ordinary, proper and immediate power which is required for the exercise of his pastoral office except for those cases which the law or a decree of the Supreme Pontiff reserves to the supreme authority of the Church or to some other ecclesiastical authority.³²

Ordinary power is power attached to an office, as opposed to power conferred by one capable of delegating it (c. 131). Proper power is power that bishops exercise in their own name.³³ Immediate power is power they exercise on behalf of those entrusted to their care with no intermediaries. Since episcopal power is indivisible, bishops exercise ordinary, proper and immediate power in their teaching, sanctifying and governing functions.

The principle of reservation of major causes enunciated in canon 381.1 protects the prerogatives of the pope and of diocesan bishops. It enables the pope to retain authority over those matters which affect the life and discipline of the whole Church, while empowering bishops to exercise episcopal jurisdiction

32 "Episcopo Dioecesano in dioecesi ipsi commissa omnis competit potestas ordinaria, propria et immediata, quae ad exercitium eius muneris pastoralis requiritur, exceptis causis quae iure aut Summi Pontificis decreto supremae aut alii auctoritati ecclesiasticae reserventur." P. 141.

33 w. Bertrams, "De episcopis," p. 165. For further development of the notion of proper power see chapter 4, section I. The addition of the term "proper" in canon 381.1 represents the code's fidelity to the council's view of episcopal power. The 1917 code, canon 334.1, only designated it as ordinary and immediate.

in all matters which are not reserved to the Roman Pontiff or to some other authority of the Church. In other words, diocesan bishops are competent to act in all areas that are not reserved.

Maintaining a balance between supreme and episcopal power generates an ongoing tension within the constitutional life of the Church. The bishop is to enjoy increased discretion in the daily exercise of his office while situated in a hierarchical structure. Papal prerogatives must be safeguarded so that the pope can exercise properly his role of fostering the unity of all the churches.³⁴ Because bishops exercise their power in hierarchical communion with the head and members of the college of bishops, its exercise may be limited by the Roman Pontiff. Because episcopal power is given to the diocesan bishops by Christ himself, any limitations placed on it must derive from the demands of hierarchical communion.

The principle of reservation replaces the pre-conciliar practice of papal delegation of faculties to bishops which was correctly described, in the preparatory stages of the council and on the council floor, as obscuring the true nature of episcopal power, because no matter how broadly faculties were extended it was still by virtue of delegated power that bishops acted. How this

³⁴ T. Green, "Particular Churches," in Coriden, *Commentary*, p. 325. Also see Giuseppe Damizia, "Caput II: De episcopis," in Pinto, *Commento*, p. 230. Marcello Morgante approaches the reservation of major causes from the vantage point of papal prerogatives and relates the principle to the pope's solicitude for all the churches. *La Chiesa particolare nel Codice di diritto canonico. commento giuridico-pastorale* (Turin: Edizioni Paoline, 1987), p. 47.

principle is applied in the code measures its respect for the teaching of the council on episcopal power.³⁵

Canon 391 states that the diocesan bishop rules the particular church committed to his pastoral care with legislative, executive and judicial power in accord with the norms of law. The phrase, "in accord with the norms of law," is complex. First, in light of canon 381.1, the bishop exercises this legislative, executive and judicial power by virtue of ordinary and proper jurisdiction. Second, because all power is exercised in hierarchical communion with the head and members of the episcopal college, the supreme authority can place limitations on its exercise particularly by the reservation of major causes. Third, the bishop must take into account the collegial nature of his own ministry, that is, it is exercised in union with his co-workers, the presbyters, and with lay members of the Christian Faithful who, by virtue of baptism, share in the prophetic, priestly and royal offices of Christ (c. 204.1).

This division of the diocesan bishop's power into legislative, executive and judicial power is more comprehensive than the 1917 code's division into legislative, judicial and coercive power (c. 335.1). Some authors hold coercive

³⁵ Green notes that a thorough examination of the code is required to appreciate the implications of the shift in legal relationships established by the move from a system of delegating faculties to a system of reservation of major causes. "Particular Churches," in Coriden, *Commentary*, p. 325.

power, along with governmental and administrative power, to be only a sub-species of executive power.³⁶

A. Legislative Power

Canon 391.2 specifies that the bishop's legislative power is exercised personally. It restates the principle enunciated in canon 362 of the 1917 code that the diocesan bishop is the sole legislator for the diocesan church but does so with greater clarity. The 1917 code did not treat the matter directly but only in conjunction with the competence of the diocesan synod.³⁷

The bishop is competent to enact laws which concretize the legislation of the code or assist in its application, as well as to apply penalties to existing laws, even general ones, to assure their implementation. He authentically interprets, applies or abrogates diocesan laws and determines the means of their promulgation.³⁸

He may receive assistance in formulating legislation, especially through a diocesan synod. Synods as such, however, are consultative only. Even in a

³⁶ See A. Ottaviani, *Compendium*, p. 133 and Montero y Gutierrez, *Derecho publico*, pp. 63-107.

³⁷ Thomas Green describes the fear of the *coetus de populi Dei* that reference to the synod or other institutes in this context might lead to undue pressure on bishops to formulate diocesan policy in conjunction with these structures. "Particular Churches," in Coriden, *Commentary*, p. 329. Also see G. Damizia, in Pinto, *Commento*, pp.235-236. Diocesan bishops also exercise legislative power in particular councils (c. 445) and episcopal conferences (c. 455).

³⁸ T. Green, "Particular Churches," in Coriden, *Commentary*, p. 330; also see M. Morgante, *La Chiesa particolare*, pp. 81 -86.

synod the bishop is the sole diocesan legislator. He alone signs the synodal decrees and promulgates them.³⁹ He may also consult the presbyteral council⁴⁰ or the pastoral council.⁴¹

There are some limitations on the bishop's legislative power. Canon 135.2 prescribes that a lower level legislator cannot validly enact laws contrary to higher law. A diocesan bishop, therefore, cannot promulgate legislation which contradicts that found in the general law of the church. He may not permit something which is prohibited by the common law, nor prohibit something it permits.⁴²

39 C. 466. For further study of diocesan synods, see John Alesandro, "Title III: The Internal Ordering of Particular Churches [cc. 460-572]," in Coriden, Commentary, pp. 378-382; Patrick Collins, "The Diocesan Synod--An Assembly of the People of God," *The Jurist* 33 (1973):399-411; James Coriden, "The Diocesan Synod: An Instrument of Renewal for the Local Church," *The Jurist* 34 (1974):68-93.

40 C. 495.1. Also see J. Alesandro, "Internal Ordering," in Coriden, Commentary, pp. 400-417; Congregation for the Clergy, Circular Letter on Priests' Councils (April 11, 1970), in CLP 7:383-390; Joseph Purcell, "The Institute of the Senate of Priests," *The Jurist* 38 (1978):132-152.

41 C. 511. Also see James Provost, "The Working Together of Consultative Bodies--Great Expectations," *The Jurist* 40 (1980):257-281; Roch Page, *The Diocesan Pastoral Council* (Paramus: Newman Press, 1970).

42 Thomas Green uses as an example of the former a bishop permitting a deacon to be a pastor, which is contrary to canon 521.1; as an example of the latter, prohibiting parents from having an integral part in the sacramental formation of their children which contradicts canons 226.1, 774.2, 776 and 913. "Particular Churches," in Coriden, Commentary, p. 330.

B. Judicial Power

The diocesan bishop exercises judicial power either personally or through a judicial vicar and judges.⁴³ Each diocesan bishop must appoint a judicial vicar with ordinary power, who constitutes one tribunal with the bishop.⁴⁴ Even with this appointment, the bishop retains the right to exercise the judicial office personally.⁴⁵

The diocesan bishop is the judge of first instance in his diocese for contentious and criminal cases (c. 1419.1) not expressly excepted by law. He is, for example, competent to instruct cases petitioning the dispensation from a ratified but not consummated marriage⁴⁶ to adjudicate cases attacking the validity of orders,⁴⁷ to conduct the procedures permitting the separation of spouses (cc. 1692-1696) or determining the presumed death of a spouse (c.

⁴³ Cc. 391.2 and 1419.1.

⁴⁴ C. 1420.1 &2.

⁴⁵ M. Morgante, *La Chiesa particolare*. p. 90.

⁴⁶ c. 1699.1. While the 1983 code, c. 1698.1, continues to hold that only the Holy See can adjudicate cases of ratified but not consummated marriages, it differs from the 1917 code insofar as the 1983 code affirms the right of bishops to instruct the case. The 1917 code (c. 1963.1) required them to obtain faculties from the Holy See to do so.

⁴⁷ Canon 1993.1 of the 1917 code and cc. 1709.1 and 1710 of the 1983 code require that the libellus be sent beforehand to the Holy See, and provide the Holy See the right of withdrawing the case from the jurisdiction of the diocesan bishop. William O'Connell observes that this requirement exists because there is a sacramental/theological question involved in addition to the juridical question. "Titulus II: De Causis ad sacrae ordinationis nullitatis declarandam," in Pinto, *Commento*. p. 979.

1707), to conduct penal processes (cc. 1717-1731) and the procedures for the removal of pastors (cc. 1740-1752).

By virtue of his right to reserve major causes to the supreme authority of the Church, the pope has reserved to the Holy See cases involving those who hold the highest civil office in a state, members of the college of cardinals, legates of the Holy See, bishops in penal cases and others which he has called to his own judgement.⁴⁸ The special relationship between the pope and the college of cardinals, papal legates and bishops explains the reservation of their cases. The reservation of cases involving heads of states is not to provide them with a privilege but to remove the possibility of a local judge being pressured to give a favorable decision.⁴⁹

The limitations placed by the code on the bishop's judicial power are ordered to the protection of diocesan tribunals from undue pressure and to protect the rights of those who come before the bishop and his court seeking to vindicate their rights. They do not differ greatly from those found in the 1917 code, except for the removal of the requirement that bishops obtain faculties to

48 Canon 1405.1. Great discretion must be used in invoking the provision for reserving other cases "which he calls to his own judgement" lest the pope take to himself matters which really should be resolved on the level of the diocesan church, thus violating the principle of subsidiarity.

49 Lawrence Wrenn, "Book VII: Processes [cc. 1400-1752]," in Coriden, Commentary, p. 951. The coetus on procedures had a broad discussion of this reservation. Some saw it as a vestige of medieval times and urged its suppression; others argued that it should be retained because the Roman Pontiff enjoys what local tribunals might not enjoy, sufficient independence to judge well. *Coetus de studiorum processibus*, Communicationes 10 (1978):220-221.

instruct cases involving ratified but not consummated marriages, a change which obviously respects episcopal jurisdiction.

C. Executive Power

The bishop's executive power extends to every aspect of diocesan governance that is not legislative or judicial. It includes the pastoral governance of the faithful, the erection of and provision for ecclesiastical offices, the erection and supervision of diocesan religious communities and of associations of the faithful, dispensations from the law, the administration of church property and the imposition and removal of ecclesiastical penalties.⁵⁰ The bishop exercises this power personally or through vicar generals and episcopal vicars.⁵¹

1. The Bishop's Governmental Power

Various aspects of the bishop's governmental power are described in the canons of the code. He must protect the unity of the Church and thus is bound to promote its common discipline by urging the observance of all ecclesiastical laws (c. 392.1). He is to be vigilant lest abuses creep into ecclesiastical

so M. Morgante, *La Chiesa particolare*. pp. 86-90; T. Green, "Particular Churches," in Coriden, *Commentary*, pp. 330-331. Chapter one of this work used the classification of A. Ottaviani and E. Montero y Gutierrez (see note 52) of governmental, administrative and coercive power as sub-species of executive power. The elements of executive power derived from the comments of Morgante and Green coincide with this division and thus it will be used in this chapter as well.

⁵¹ C. 391.2. In some dioceses of the U.S. chancellors assist bishops in the exercise of executive power by virtue of delegated jurisdiction.

discipline, especially with regard to the ministry of the word, the celebration of sacraments and of sacramentals, the worship of God and devotion to the saints or the administration of church property (c. 392.2). He is also to foster and to coordinate the various aspects of the apostolate within the diocese, urging the Christian faithful, according to their own condition, to participate in it (c. 394.1 & 2). The canonical visitation of parishes, institutions, sacred places and things is one of the means by which the bishop carries out this executive power.⁵²

The right of visitation extends, under certain conditions, even to religious. The diocesan bishop enjoys the right of visitation in communities of religious of diocesan right because he is their juridic superior.⁵³ Canon 683.1 affirms the residential bishop's right to make a visitation of the churches and oratories of religious which the Christian faithful habitually attend, as well as schools and other works of religion or charity, whether temporal or spiritual, entrusted to religious. This right does not extend to the schools which are open only to students belonging to the religious institute. Finally, if abuses are pointed out

⁵² c. 397.1 T. Green describes persons, institutions, sacred places and things in "Particular Churches," in Coriden, Commentary, p. 334.

⁵³ Cc. 589, 593 and 595. Elizabeth McDonough explores further the right of visitation and other rights of diocesan bishops with regard to religious. See "Relationship between Bishops and Religious: Mutual Rights and Duties," Bulletin on Issues of Religious Law 5 (October, 1989):1-8.

and the religious superior takes no corrective action, the bishop may exercise a right of visitation.⁵⁴

The code provides the diocesan bishop extensive authority over religious institutes of diocesan right. He erects diocesan institutes (c. 579), approves their constitutions and confirms changes legitimately introduced into them (c. 595.1), establishes and suppresses religious houses (cc. 609 and 616), presides at the election of superiors (c. 625.2) and oversees their exercise of the apostolate (c. 678.1). He has a more limited authority over religious of pontifical right. His approval is needed to establish a religious house within the diocese (c. 609.1), to alter the apostolate of a religious house (c. 612) or to suppress a house (c. 616.1). He appoints confessors for lay institutes whether of diocesan or pontifical right (c. 630.3). He is to be consulted about the admission of secular clerics to religious institutes of pontifical right (c. 644). For a sufficient reason, a diocesan bishop can prohibit a member of any religious institute from living in his diocese (c. 679).

The canons governing the formation of clerics (cc. 232-264) call for the bishop's personal oversight. Canon 237 proposes that each bishop have a diocesan seminary. Where this is not possible, the bishop may send candidates to other seminaries, but this does not absolve him of his responsibility for their formation. The diocesan bishop permits the

⁵⁴ c. 683.2 These provisions regarding religious incorporate in the legislation of the Church the teaching on the bishop's responsibility for the apostolate found in C_D, 35, *Ecclesiae sanctae* I, 25, and the Directives for Mutual Relations between Bishops and Religious in the Church.

excardination or incardination of clerics (cc. 265-272), ordains candidates to the diaconate or presbyterate or issues the dimissorial letters allowing another bishop to do so (c. 1015.1 & 2).

Canon 835.1 describes the bishop as the principal dispenser of the mysteries of God and the moderator, promoter and custodian of the liturgical life of the diocesan church. Thus, he has an essential role in determining the discipline for the celebration of the sacraments, according to the norms of the general and liturgical laws. In the absence of an ordinary minister of baptism (c. 861.1), he can depute a catechist or other person to confer baptism licitly (c. 861.2). The diocesan bishop can provide a mandate permitting a presbyter to administer the sacrament of confirmation (c. 883, n. 2). The local ordinary alone is competent to confer upon any presbyter the faculty to hear the confessions of the faithful (c. 969.1). He permits the celebration of marriages when the code requires prior permissionss and dispenses from the impediments to marriage which are not reserved to the Holy See.⁵⁶ The diocesan bishop delegates to presbyters and deacons the faculty to assist at marriages (c. 1111.1) and is able

55 c. 1071.1, "Excepto casu necessitatis, sine licentia Ordinarii loci ne quis assistat: (1) matrimonio vagorum; (2) matrimonio quod ad normam legis civilis agnosci vel celebrari nequeat; (3) matrimonio eius qui obligationibus teneatur naturalibus erga aliam partem filiosve ex praecedenti unione ortis; (4) matrimonio eius qui notorie catholicam fidem abiecerit; (5) matrimonio eius qui censura innodatus sit; (6) matrimonio filii familias minoris, insciis aut rationabiliter invitis parentibus; (7) matrimonio per procuratorem ineundo, de quo in can. 1105."

56 c. 1078.1. The reserved impediments will be treated in the next section which deals with the bishop's dispensing power.

to dispense his subjects in individual cases from the canonical form for marriage (c. 1127.1).

Three issues related to the bishop's governing power are reserved to the Holy See: the erection, change or suppression of cathedral chapters (c. 504); merging or uniting institutes of consecrated life (c. 582), suppressing them and determining the distribution of their temporal goods (c. 584); and the reduction of Mass obligations (1308.1). The appointment of lay witnesses to assist at marriages requires the prior permission of the Holy See and the favorable opinion of the national conference (c. 1112).

In earlier eras cathedral chapters enjoyed considerable power.⁵⁷ Now their function as a senate to the bishop is assumed by presbyteral councils (c. 495.1). Only a remnant of their power is found in the office of canon penitentiary.⁵⁸ The only basis for the reservation seems to be the fact that historically the establishment of a cathedral chapter has been reserved to the Holy See. Even if they still enjoyed broad authority, the reservation is questionable because they are diocesan liturgical and governmental structures. The reservation appears to violate the principle of subsidiarity.

⁵⁷ J. Alesandro, "Internal Ordering," in Coriden, *Commentary*, p. 407; Torquebiau traces the origin of the reservation back to the time of Gregory III (721-741). It was founded on the scope of the chapter's power. "Chapitre des Chanoines," in *Dictionnaire* 3:572.

⁵⁸ According to canon 508.1, the canon penitentiary has ordinary power to absolve in the sacramental forum *latae sententiae* penalties not reserved to the Holy See. See also the debate of the *coetus de populi Dei*, *Communicationes* 13 (1981):135.

The reservation of merging or uniting institutes of consecrated life or of suppressing them and determining the distribution of their temporal goods seems appropriate when the institutes are of pontifical right or are exempt institutes. Canons 582 and 584, however, do not distinguish institutes of pontifical right from institutes of diocesan right. The juridic superior for institutes of diocesan right is the residential bishop.⁵⁹ The reservation in cases involving religious of diocesan right is an exception to the principle that the authority which creates can also extinguish. In this case, a bishop can erect a diocesan institute but cannot suppress it.⁶⁰ The provision of canon 584 that the Apostolic See determine what is to be done with the temporal goods of a suppressed religious institute is an exception to canon 123 when it is an institute of diocesan right.⁶¹

The reduction of obligations to which canon 1308.1 refers is a reduction of the number of Masses to be offered for a stated intention where the obligation

59 Cc. 589, 593 and 595.

eo Ellen O'Hara, "Norms Common to All Institutes of Consecrated Life, Canons 573-606," in *Religious Institutes, Secular Institutes. Societies of the Apostolic Life. A Handbook on Canons 573-746*. ed. Jordan Hite et al. (Collegeville: Liturgical Pres, 1985), p. 41.

61 Ibid. Canon 123 prescribes that when a public juridic person is extinguished, the allocation of its goods, patrimonial rights and obligations is ruled by law and statute; if these give no indication, they go to the juridic person's immediate superior. In the case of religious of diocesan right, the religious superior is the diocesan bishop. Also see Sharon Holland, "Section I: Institutes of Consecrated Life [cc. 573-730]," in Coriden, *Commentary*, p. 458.

arises from a pious foundation.⁶² The only possible reason for the reservation seems to be the serious nature of the obligations incurred by accepting the foundation. Yet the bishop seems to be in a better position to judge the merits of the case.

Canon 1112 states that the permission of the Holy See, along with the favorable opinion of the conference of bishops, is required before diocesan bishops can delegate lay persons to assist at marriages where priests or deacons are lacking. While this prior permission is not a grant of jurisdiction, it is necessary for its exercise.⁶³ The provision of canon 1112 is an exceptional

62 C. 1303 describes pious foundations. Also see John Myers, "Book V: The Temporal Goods of the Church [cc. 1254-1310]," in Coriden, *Commentary*, pp. 886-888 and Francesco Salerno, "De bonis ecclesiae temporalibus," in Pinto, *Commento*, pp. 739-747. The reservation does not apply when the person who established the foundation permits a reduction or the articles of foundation provide for the alteration of the obligation (c. 1308.2); when the income diminishes, and it is a case of altering the obligation to conform to the level of the offering legitimately established in the diocese (c. 1308.3); or when the income proves insufficient to pursue successfully the proper goal of the institute (c. 1308.4). These exceptions lead to the conclusion that the reservation applies only when there is no just cause for reducing the obligation or the cause is other than financial. The exceptions affirm the bishop's proper right to make alterations. Articles 11 and 12 of *Pastorale munus* provided them faculties to do so. See also the notification from the Papal Secretary of State (September 29, 1971) (AAS 63 (1971):841) and the apostolic letter of Paul VI *Firma in traditione* (June 13, 1974) (AAS 66 (1974):310-311) for further treatment of the faculties of *Pastorale munus*.

63 J. Jombart, "Approbation," in *Dictionnaire* 1:857. The official witness of marriages acts in the name of the Church, inviting the couple to exchange their consent and receiving it. See *The Rites of the Catholic Church as Revised by Decree of the Second Vatican Ecumenical Council and Published by the Authority of Pope Paul VI*, trans. International Commission on English in the Liturgy (New York: Pueblo Publishing Co., 1976), pp. 540-542, nn. 25-26. It is

option not intended as an alternative to priests and deacons as the ordinary witnesses of marriage. It is a concession provided by the law to respond to pastoral need and is to be requested only when a priest or deacon cannot witness marriages. Such need can arise by reason of the scarcity of ordained ministers or the unavailability of ministers who understand the language of immigrants.⁶⁴ It is significant that this provision is placed in the code. Bishops, following the prescriptions of canon 1112, appoint such assistants for marriage by virtue of their own power, not by virtue of an indult or faculty conceded by the Holy See as was the case prior to the promulgation of the new code.

2. Dispensations from the Law

Canon 85 of the new code relates the power of dispensing from the general law of the Church to executive rather than to legislative power as in canon 80 of the 1917 code. The *coetus* on general norms explained this was done because the distinction among the three functions of the power of governance, the legislative, executive and judicial, was now clearly established. Ordinary power to dispense from the law no longer rests solely with the lawgiver

not an act which requires sacred orders, nor is it an act of jurisdiction in the strict sense. See Thomas Doyle, "Title VII: Marriage [cc. 1055-1165]," in Coriden, *Commentary*, p. 795.

⁶⁴ *ibid.* The provision now found in canon 1112 was initially instituted in response to requests from diocesan bishops who suffered from a lack of priests and deacons. The instruction of the Congregation for the Sacraments *Sacramentum indolem* (May 15, 1974) saw it as a response to unusual circumstances and restricted the right to use the indult to cases where neither a priest or deacon could be present, thus maintaining the norm that priests and deacons ordinarily assist at marriages. CLP 8:817, a.

but also with others who enjoy executive power, such as vicars general or episcopal vicars.⁶⁵ Canon 85 defines a dispensation as "the relaxation of a merely ecclesiastical law in a particular case," which "can be granted by those who enjoy executive power, within the limits of their competence, as well as by those to whom the power of dispensing has been given explicitly or implicitly either by the law itself or by lawful delegation."⁶⁶

a. General Principle

Canon 87.1 implements *Christus Dominus* 8b which holds the diocesan bishop to have the faculty to dispense in particular cases the faithful over whom he has lawful authority from a general law unless the matter has been especially reserved to the supreme authority of the Church. This faculty derives from the fact that a bishop in his diocese has *per se* all the proper, ordinary and immediate power that is necessary for his pastoral duty.⁶⁷ This principle dramatically reverses the stance of the 1917 code where the diocesan bishop's power over the general law was greatly restricted. He could not dispense from

⁶⁵ *Opera Consultorum*, "III. De Recognoscendis normis generalis I.e.," *Communicationes* 3 (1971):89-90. Also see Francis Urrutia, "Delegation of the Executive Power of Governance," *Studia canonica* 19 (1985):345.

⁶⁶ "Dispensatio, seu legis mere ecclesiasticae in casu particulari, concedi potest ab iis qui potestate gaudent exsecutiva intra limites suae competentiae, necnon ab illis quibus potestas dispensandi explicite vel implicate competit sive ipso iure sive vi legitimae delegationis."

⁶⁷C_D.,8, a.

it unless specific faculties were granted by the Holy See or by the law itself or there was an emergency situation as defined in canon 81.

Canons 85, 86 and 87 of the new code retain the restrictions of the *motu proprio De episcoporum muneribus*. Dispensations are applicable only to ecclesiastical disciplinary laws, not to natural or positive divine laws.

Constitutive and procedural laws are not subject to dispensation.⁶⁸ Canon 87 adds a further restriction, namely, penal laws which are excluded because they are established for the protection of the more important rights of the Christian faithful.⁶⁹ In summary, the 1983 code holds that the diocesan bishop has the power to dispense from ecclesiastical, general and particular, disciplinary and prohibitive laws, except those specifically reserved to the Apostolic See or some other authority.

b. Reserved Dispensations

The code contains six reserved dispensations affecting the jurisdiction of the diocesan bishop. A seventh, a dispensation from the law requiring co-consecrators for the ordination of a bishop (c. 1014), which exists because of the inseparable connection between episcopal consecration and incorporation into the college of bishops, does not.

⁶⁸ The exclusions were treated in detail in chapter five in the study of *De episcoporum muneribus*.

⁶⁹ James Risk, "Title IV: Individual Administrative Acts [cc. 35-93]," in Coriden, Commentary, p. 66; Pio Pinto, "De normis generalibus," in Pinto, Commento. p. 56.

(1) According to canon 291, a dispensation from the obligation of clerical celibacy is reserved to the Roman Pontiff alone.⁷⁰ The Code Commission chose to reserve this dispensation to the Roman Pontiff personally because of the serious nature of the matter.⁷¹ The dispensation was reserved to the pope by the *motu proprio De episcoporum muneribus*.⁷²

⁷⁰ This dispensation differs from all others insofar as it is reserved personally to the pope. The terms "Roman Pontiff" and "Apostolic See" are not always coextensive. See canon 361, "Nomine Sedis Apostolicae vel Sanctae Sedis in hoc Codice veniunt non solum Romanus Pontifex, sed etiam, nisi ex rei natura vel sermonis contextu aliud appareat, Secretaria Status, Consilium pro publicis Ecclesiae negotiis, aliaque Romanae Curiae Instituta." (emphasis added)

⁷¹ *Coetus studiorum de populo Dei*, *Communicationes* 14 (1982):137. For further study of the pre-conciliar practice regarding laicization see Decree of the Sacred Penitentiary (April 18, 1936), AAS 28 (1936):242; Francis Sweeney, *The Reduction of Clerics to the Lay State*. *Canon Law Studies*, 223 (Washington: Catholic University, 1945). John Lynch connects the willingness to grant dispensations after the council to the Church's desire to find a pastoral solution for priests who left active ministry but wanted to be reconciled to the Church, "Chapter IV: Loss of the Clerical State [cc. 290-293]," in Coriden, *Commentary*, p. 233. The conciliar teaching on celibacy is found in LQ, 42 and PP. 16. Also see the encyclical of Pope Paul VI *Sacerdotalis caelibatus* (June 24, 1967), AAS 59 (1967):657-697; Congregation for the Doctrine of the Faith, "De modo procedendi in examine et resolutione petitionum quae dispensationem a caelibatu respiciunt," AAS 72 (1980):1132, n. 1; Joseph Komanchak, "Celibacy and Tradition," *Chicago Studies* 20 (Spring 1981):5-17 and Martin Pable, "Priesthood and Celibacy," *ibid.*, pp. 59-77.

⁷² Art. IX, 1. The *coetus* on the norms governing clerics debated whether the laicization of deacons could be granted by the diocesan bishop. Some argued that a change of the law could leave the impression that such a dispensation was easily obtained. There were some who argued that the diaconate was of divine law. Therefore, the reservation remained. *Coetus studiorum recognoscendis normis de clericis*, *Communicationes* 17 (1985):76. The text does not explore further the assertion that the diaconate is of divine law. The *motu proprio* of Pope Paul VI *Ad pascendam* describes the diaconate

Is the reservation inherently necessary? Laicization does not parallel the dissolution of a ratified but not consummated marriage or a marriage between a baptized and an unbaptized party where the Church traditionally requires the exercise of the vicarious power that belongs only to the successor of blessed Peter. The obligation of clerical celibacy is one of ecclesiastical law, more specifically, ecclesiastical law of the Latin Rite of the Catholic Church. Celibacy is not essential to ministerial priesthood. The council's arguments for priestly celibacy spoke only of its fittingness.⁷³ Finally, some would argue that the diocesan church should have the power to permit departure from ordained ministry because it calls people to it.⁷⁴

The correlative action, namely, reintegration into the clerical state after its

as of apostolic origin. AAS 64 (1972):534. For further study of this history see Bishops Committee on the Liturgy, *The Deacon: Minister of Word and Sacrament. Study Text VI* (Washington: USCC Publications, 1979), pp. 11-23; Edward Echlin, "The Origins of the Permanent Diaconate," *The American Ecclesiastical Record* (August 1970), pp. 92-106; Edward Echlin, *The Deacon in the Church: Past and Future* (Staten Island: Alba House, 1971); Joseph Pokusa, "The Diaconate: A History of Law Following Practice," *The Jurist* 45 (1985):95-135.

73 EO_, 16.

⁷⁴ "Priestly Ministry and Celibacy in the United States: Report of the Symposium on 'The Future Discipline of Priestly Celibacy,' Douglaston, New York, August 18-22, 1971," *The Jurist* 32 (1972):283 and Jan Reitmeijer, "The Competence of Bishops in Matters of Dispensation," *Concilium* 48 (1969):101-114.

loss, is also reserved to the Apostolic See.⁷⁵ The reservation exists because of the serious consequences which follow the loss of the clerical state and because the Holy See granted the rescript of laicization.⁷⁶

(2) Canon 1031.4 restricts to the Apostolic See dispensation from the canonical age for ordination when it is a question of more than one year. The general restriction of the bishop's power to dispense which characterized the 1917 code prevented him from ever dispensing from the canonical age for ordination (c. 975). Article 15 of the *motu proprio* *Pastorale munus* conceded to bishops the faculty of dispensing provided the lack of canonical age did not exceed six months. *De episcoporum muneribus* IX, 6 reserved the dispensation to the Holy See whenever the lack exceeded one year. This legislation was carried over into the 1983 code. Edward Gilbert described the reservation as "simply a norm of control by the Holy See."⁷⁷ Whether such a norm of control is necessary or fitting is subject to debate. As in the case of clerical celibacy,

⁷⁵ C. 293. The canon does not differentiate whether the loss of the clerical state was a consequence of an action of the Holy See, that is, a rescript (c. 290, n. 3), or of an action of the diocesan bishop, a judicial decision or an administrative decree declaring the invalidity of orders or the legitimate infliction of the canonical penalty of dismissal from the clerical state (c. 290, nn. 1 & 2).

⁷⁶ Dario Camposta, "Titulus III: De ministris sacris," in Pinto, *Commento*, pp. 170-171; Ulpianus Lopez, "De reconciliacione sacerdotis qui matrimonium attentare praesumpsit," *Periodica* 26 (1937):501-506. The Holy See is involved from the beginning even in cases of declaration of the nullity of orders. See canon 1709.1.

⁷⁷ "Title VI: Orders [cc. 1008-1054]," in Coriden, *Commentary*, p. 726.

arguments can be developed about the right of the diocesan church to take responsibility for directing the life and ministry of priests.

(3) Dispensation from certain irregularities and impediments to sacred orders is reserved to the Apostolic See (c. 1047). An irregularity is a perpetual impediment to the reception or the exercise of sacred orders; an impediment is a temporary disqualification.⁷⁸

All irregularities, even if they are not otherwise reserved, are reserved to the Holy See if the fact upon which they are based has been brought to the judicial forum (c. 1047, n. 1). Reserved irregularities to the reception of orders arise from the public crimes of apostasy, schism and attempted marriage, the public or occult crimes of voluntary homicide and effective abortion, and a man having a wife (c. 1047, n. 2). Reserved irregularities to the exercise of orders already received arise from the public crime of attempting marriage and the public or occult crimes of voluntary homicide or the effective procurement of an abortion (c. 1047, n. 3). The ordinary can dispense from irregularities and impediments not reserved to the Holy See (c. 1047, n. 4), such as serious and malicious mutilation of self or another, or attempted suicide (c. 1041, n. 5), performing an act of orders reserved to those in the episcopal or presbyteral orders while lacking them or being forbidden its exercise by some declared or

⁷⁸ *ibid.*, p. 729. The concept of irregularities for sacred orders is rooted in the Church's concern that its ministers, to whom sacred things are commended, possess a natural fittingness and reverence for their ministry. Wernz-Vidal, *Ius canonicum* IV:304, n. 230.

inflicted canonical penalty (c. 1041, n. 6) or the irregularity arising from insanity or psychic defect (c. 1041, n. 1)JQ

Canon 1047.2, n. 1, permits ordinaries to dispense from some reserved irregularities, namely, an occult irregularity arising from the crime of apostasy, heresy, schism or attempted marriage. Canon 1047.3 empowers the ordinary to dispense from the occult irregularity precluding the exercise of an order already received arising from an attempted marriage.

In the 1917 code all irregularities were excluded from the bishop's dispensing power. The emergency circumstances described in canon 81 could on occasion be invoked. *Pastorale munus* granted the faculties to dispense from some irregularities of the 1917 code, namely, the impediment of illegitimacy in the case of seminarians (art. 31) and in the case of religious who were destined for ordination (art. 36). They were also granted faculties to dispense from all irregularities by defect incurred after the reception of sacred orders (art. 17). *De episcoporum muneribus* reserved to the Holy See all irregularities brought before a judicial forum (IX, 8), irregularities arising from defect (sons born of adulterous or sacrilegious unions, defects of body,

79 During the revision process, some members of the *coetus* proposed that everything related to impediments be remanded to the national conferences. The majority, however, concluded that the gravity of the matter called for leaving it to the Apostolic See, except for matters of minor importance. "Coetus de sacramentis--De ordine," *Communicationes* 10 (1978):195-196. The reservation of all irregularities brought to a judicial forum (c. 1047.1) is derived from a law of the Council of Trent. Cone. Trid., sess. xxiv, de ref., c. 6, C.O.D., p. 740; also see John Hickey, *Irregularities and Simple Impediments in the New Code of Canon Law*. Canon Law Studies, 7 (Washington: Catholic University Press, 1920), p. 87.

epileptics and the insane), irregularities arising from the public delicts of apostasy, heresy, schism or attempted marriage, or from the public or occult delicts of voluntary homicide or successful procurement of an abortion and the impediment to orders arising from a valid matrimonial bond (IX, 9, a-e). In the case of those already ordained the Holy See reserved to itself the irregularities of attempted marriage, in public cases only, and public and occult cases of homicide or the effective procurement of an abortion (IX, 10).

The 1983 code extends the dispensing power of bishops beyond that of the prior legislation, though not dramatically. Is there a basis for questioning the reservation of these dispensations? The reserved dispensations, except for the discipline of clerical celibacy and, in more notorious cases, the delict of apostasy, heresy or schism, concern issues that do not affect the universal Church and the impact on the whole Church is no different in reserved cases than in non-reserved cases.

(4) A diriment impediment renders one incapable of contracting marriage validly (c. 1073). The 1983 code contains twelve: want of age (c. 1083); impotence (c. 1084); existing bond of prior marriage (c. 1085); disparity of cult (c. 1086); sacred orders (c. 1087); public, perpetual vow of chastity (c. 1088); abduction (c. 1089); crime (c. 1090); consanguinity (c. 1091); affinity (c. 1092); public propriety (c. 1093); and legal relationship through adoption (c. 1094). The reserved are those arising from sacred orders or from a public perpetual vow of chastity in a religious institute of pontifical right and from

crimen, procuring the death of a spouse in order to contract another marriage (c. 1078.2).

The coetus on matrimonial law was divided on whether any impediments to marriage should be reserved. A small number wanted to remove all reservations. The greater number, however, wanted to diminish only the number of reserved cases and their arguments prevailed. The number of reserved impediments was greatly reduced.⁸⁰ The two reserved impediments are reserved because of their serious nature. With reference to the impediment of crime, "There is an obvious incompatibility between the taking of a life and entrance into marriage as a result of that prior crime."⁸¹ Another indication of their serious nature is the fact the code attaches an ecclesiastical penalty to each of them.⁸²

so Coetus studiorum de iure matrimoniale, *Communicationes* 9 (1977):346. De episcoporum muneribus reserved to the Holy See the impediments of canonical age when the lack extended beyond one year (IX, 11), sacred orders or solemn religious profession (IX, 12), crime (IX, 13), consanguinity in the direct line and in the collateral line up to the second degree mixed with the first (IX, 14) and affinity in the direct line (IX, 15).

⁸¹ T. Doyle, in Coriden, *Commentary*, p. 771.

⁸² c. 1394.1 prescribes that a cleric who attempts even a civil marriage incurs a *latae sententiae* suspension, and can be punished with more serious penalties; c. 1394.2 prescribes that a religious in perpetual vows who is not a cleric and who attempts even a civil marriage incurs a *latae sententiae* interdict; c. 1397 prescribes that one who commits homicide is to be punished with the deprivations and prohibitions mentioned in canon 1336. For the principles governing the work of the Coetus de iure poenalis see Thomas Green, "The Future of Penal Law in the Church," *The Jurist* 35 (1975):235-240.

According to canon 1079.1, when there is a danger of death, local ordinaries can dispense from the obligation of observing canonical form and from all impediments of ecclesiastical law, public or occult, except the impediment arising from the sacred order of presbyter. This means that the law itself empowers diocesan bishops to dispense even from the reserved impediments of the sacred order of deacon, perpetual vow of chastity in a religious institute of pontifical right and crime, when persons bound by such impediments or their spouses are in danger of death.

According to canon 1080.1, whenever an impediment is discovered after all the wedding preparations have been made and the marriage cannot be deferred without probable danger of serious harm until a dispensation can be obtained, local ordinaries can dispense from all impediments, provided they are occult, except those mentioned in canon 1078.2, n. 1, that is, the impediments arising from sacred orders and from public perpetual vow of chastity. In an urgent case, therefore, bishops can also dispense from the occult reserved impediment of crime.

(5) Canon 1142 states that the Roman Pontiff can dissolve a non-consummated marriage between baptized persons or between a baptized party and a non-baptized party.⁸³ The 1917 code described the papal action in these

⁸³ For further study of the exercise of papal vicarious power see the Apostolic Letter of Boniface VIII *Unam sanctam* inc. 1, v. 8, in *Extrav. comm.*, *Corpus iuris canonici: Encyclical of Pope Pius XII* *Mystici corporis*. AAS 25 (1943):211; Address of Pius XII to the Auditors of the Roman Rota (October 31, 1941), AAS 23 (1941):424-425; *Coetus de iure matrimoniale*, *Communicationes* 10 (1978):108. The history of the question of the exercise of papal vicarious power can be found in John T. Noonan, "The Seventh Class,"

cases as a dissolution by dispensation.⁸⁴ The coetus on matrimonial law discussed retaining this language. Some members argued that the marriage was not actually dissolved but rather the obligations flowing from it were dispensed or suspended. The coetus, however, rejected this opinion because it lacked foundation. The wording of canon 1142 appears to indicate that the intent of the legislator is to show that the Roman Pontiff actually dissolves the bond.⁸⁵ This conclusion affirms the reason for the papal reservation.

pp. 341-404 in *Power to Dissolve* (Cambridge: Belknap Press of Harvard University, 1972); Donald Gregory, *The Pauline Privilege: An Historical Synopsis and Commentary*. Canon Law Studies, 68 (Washington: Catholic University, 1931); Ferdinando Lambruschini, "Disputatio de potestate vicaria Romani Pontificis in matrimonium infidelium," *Apollinaris* 26 (1953):175-197; Giovanni Batista LoGrosso, ed., *Ecclesia et Status: Fontes selecti historiae iuris publici ecclesiastici*. 2nd ed. (Rome: Gregorian University Press, 1952); Rene Leguerrier, "Recent Practice of the Holy See in Regard the Dissolution of Marriages Between Non-Baptized Persons without Conversion," *The Jurist* 25 (1965):453-465; and T. Doyle, in Coriden, *Commentary*, pp. 811-814.

84 c. 1119, "Matrimonium non consummatus inter baptizatos vel inter partem baptizatam et partem non baptizatam, dissolvitur turn ipso iure per sollemnem professionem religiosam, turn per dispensationem a Sede Apostolica ex iusta causa concessam, utraque parte rogante vel alterutra, etsi altera sit invita." Jose Maria Serrano notes the difference between canons 1119(1917 code) and 1142 (1983 code). The latter omits the provision of dissolution by solemn profession of religious vows. He observes that a ratified but not consummated marriage is in intention a sacramental bond. A ratified and consummated marriage between a baptized person and an unbaptized person is a valid bond. Thus, both must be dissolved by papal power. He also notes that the provisions of the 1917 code were rooted in difficulty of access to the Holy See and in a more limited view of establishing in the external forum the fact of non-consummation. "De separatione coniugum," in Pinto, *Commento*. pp. 667-668.

85 *Coetus de iure matrimonio*, *Communicationes* 10 (1978):108, referred to by T. Doyle, in Coriden, *Commentary*, p. 813, note 211.

(6) Ordinarily bishops can suspend, dispense or commute the obligations incurred by a promissary oath. Suspension, dispensation or commutation of the obligations incurred, however, is reserved to the Holy See when the dispensation tends to prejudice the rights of others who refuse to remit the obligation (c. 1203).

The reservation is rooted in the nature of a promissary oath. Canon 1316.1 of the 1917 code and canon 1199.1 of the 1983 code describe an oath as an invocation of the divine name as a witness to truth. To call upon God's name as a witness to the sincerity of a promise and then reverse the decision regarding what was promised so as to cause harm to third parties constitutes grave matter.⁸⁶ Canon 1203, however, makes no reference to gravity of matter. Dispensation is reserved whether what is promised is major or not. Moreover, the principle of subsidiarity would hold that the diocesan bishop who is closer to the situation would be better able to judge the gravity of the matter from which a dispensation is sought.

c. Dispensations in Reserved Cases

An important question remains: Can diocesan bishops ever legally and validly dispense from any of the reserved cases outside the special circumstances described in canons 1079 and 1080 which apply only to marriage? Canon 87.2 provides:

⁸⁶ Abbo-Hannan, *Sacred Canons* 2:553; Woywod-Smith, *Concise Commentary* 2:103.

If recourse to the Holy See is difficult and, at the same time, there is danger of grave harm in delay, any ordinary can dispense from the above-mentioned disciplinary laws, even if the dispensation is reserved to the Holy See, provided the matter concerns a dispensation which the Holy See is wont to grant under the same circumstances with due regard for the prescription of canon 291.⁸⁷

This canon applies to reserved laws the same conditions canon 81 of the 1917 code applied to the common law. First, in the prudent judgement of the bishop it must be difficult, not impossible, to have recourse to the Holy See. Second, there must be in the judgement of the bishop probable, not certain, danger of grave harm in delay. The grave harm to be avoided may be either physical or spiritual. Third, it must be a dispensation which the Holy See is wont to grant. The customary practice of the Holy See in dispensing in the same type of case is the norm to be followed.⁸⁸ The dispensation from clerical celibacy, however, is absolutely reserved to the Roman Pontiff alone (c. 291).

There is always the danger that such a broad faculty to dispense would result in arbitrary decisions and abuses so that the universal law and the whole canonical system would be undermined. The central theological principle of

⁸⁷ "Si difficilis sit recursus ad Sanctam Sedem et simul in mora sit periculum gravis damni, Ordinarius quicumque dispensare valet in iisdem legibus, etiam si dispensatio reservatur Sanctae Sedi, dummodo agatur de dispensatione quam ipsa in iisdem adiunctis concedere solet, firmo praescripto can. 291." P. 27.

⁸⁸ J. Risk, "Administrative Acts," in Coriden, Commentary, p. 66. P. Pinto applies canon 1079.4 which states that the ordinary is not thought to be accessible if the only means of reaching him is by telephone or telegraph to contacting the Holy See. He notes that the telephone and telegraph are often inadequate for preserving confidentiality. "De normis generalis," in Pinto, Commento. p. 56.

ecclesiastical communion, however, acts as a safeguard. By virtue of this principle bishops recognize that the power to dispense is not an absolute power. Certain laws promulgated by the supreme authority of the Church are excluded from their power: constitutive, procedural and penal laws, and disciplinary laws whose dispensation is reserved to the Apostolic See or some other authority.⁸⁹

The fact that a just and reasonable cause is required (c. 90.1) demonstrates the traditional doctrine that dispensations are extraordinary in nature, that is, exceptions to the rule. This tradition obliges the diocesan bishop to protect the unity of the universal Church and to promote its common discipline by urging the observance of the Church's laws. The bishop must take into account the purpose of the law and the values it protects. Otherwise he runs the risk of being arbitrary, thereby upsetting the stability of the whole canonical system and possibly harming the common good of the faithful.⁹⁰

If diocesan bishops were to dispense from a reserved case outside the provisions of canons 87.2, 1079.1 or 1080.1 would the dispensation be valid? Everything that has been said thus far about episcopal power is involved in responding to this question.

Through episcopal consecration, individual bishops are incorporated into the episcopal college and become participants in the authority it possesses by

⁸⁹ Julian Herranz, "The Personal Power of Governance of the Diocesan Bishop," *Proceedings of the Canon Law Society of America* 49 (1987):27.

⁹⁰ Ibid.

reason of its succession to the place of the apostolic college. Episcopal consecration also confers an ontological participation in the threefold functions which constitute the episcopal office, teaching, sanctifying and governing.[^] By divine institution the Church is governed hierarchically, not monarchically. For this reason, *Lumen gentium* 37 teaches that the daily care of their flocks is entrusted completely to diocesan bishops. They are vicars of Christ, not of the Roman Pontiff, and they exercise an authority that is their own (proper). Their power is not destroyed by the supreme power but affirmed and strengthened by it.

The supreme power of the Church, therefore, cannot order the exercise of episcopal power in such a way that it is destroyed, which would be the case if some actions related to church discipline involving the exercise of episcopal power were declared invalid. If the reservation of major causes to the Holy See is in service to ecclesial unity, which must be presumed, then a dispensation from a reserved case by a diocesan bishop would constitute a violation of ecclesiastical law. In other words, the bishop's action would be illicit, not invalid. Richard Ryan observes:

The residential bishop can always act validly in his own apostolic administration. He acts validly fundamentally in virtue of his divinely constituted position in apostolic succession, and specifically in virtue of his particular *missio canonica* of being the head of his own diocese,

wherein he makes use of his own *sacra potestas* with its munera of teaching, sanctifying, and governing.⁹²

The only way the supreme authority can prevent residential bishops from validly exercising their sacred power with regard to reserved general ecclesiastical law is by withdrawing the canonical mission from them, for without it episcopal power is no longer exercisable powers. Such serious action on the part of the Roman Pontiff would be a response to a rupture of ecclesial communion. The action of the bishop would provoke the exercise of the papal function of protecting the unity of the Church.⁹⁴

3. The Administration of Church Property

For the most part the 1983 code parallels the 1917 code in its treatment of the bishop's power to administer church property. Canon 1254.1 describes the Church's innate right to acquire, retain, administer and alienate temporal goods in the pursuit of its proper ends, which are: to order divine worship, to provide decent support for the clergy and other ministers of the Church and to

⁹² Authority to Dispense, p. 193.

⁹³ R.Ryan, *ibid.*, p. 195.

⁹⁴ J. Herranz, "Personal power," p. 21.

perform the works of the apostolate and of charity, especially towards the needy.⁹⁵

The new code recognizes the right of individual juridic persons to own and administer property. Canon 1256 states that the right of ownership over goods under the supreme authority of the Roman Pontiff belongs to the juridic person that has lawfully acquired them. Thus the Holy See owns and manages the property that belongs to it; dioceses own and manage diocesan property; and other juridic persons own and manage the property that is theirs. What then does "under the supreme authority of the Roman Pontiff" mean?

By virtue of papal primacy, the Roman Pontiff is the supreme administrator and steward of all ecclesiastical goods (c. 1273). This is not to say that the pope owns all ecclesiastical goods, for that would contradict canon 1256; nor is it saying that he personally administers the goods of all juridic persons within the Church. It does, however, make it clear that the Roman Pontiff could personally direct the administration of all church property should the well-being of the Church dictate the need and that he might be called upon to correct abuses or require sacrifice on the part of some for the greater good. Ordinarily the pope exercises his administrative power through legislation on

⁹⁵ 1917 code, c. 1496; 1983 code, c. 1254.2 This canon must be read in light of the expanded legislation regarding the support of the Church's ministers: c. 231.2, the right of lay employees to decent remuneration; c. 281.3, permanent deacons involved completely in ministry; c. 1274, the rights of the ordained; and c. 1286.1, the requirement of observing civil law regarding unemployment insurance, workmens compensation, etc.

⁹⁵ J. Myers, in Coriden, *Commentary*, pp. 870-871.

the administration of church property;⁹⁷ extraordinarily he can directly intervene in the administration of the property of individual juridic persons when the needs of the Church require it.

The rights of the diocesan bishop on the level of the particular church are parallel to those of the pope on the level of the universal Church. According to canon 1276.1, the diocesan bishop has the responsibility of carefully supervising the administration of all goods belonging to the public juridic persons subject to him. This supervisory authority empowers him to exercise a right of visitation and inspection, as well as a right to receive a full accounting for the administration of church property by those who administer the property of juridic persons within the diocese.⁹⁸ He also administers all property that is diocesan (c. 1276.1).

Like the pope, the diocesan bishop cannot claim rights of ownership to property acquired by individual juridic persons nor does he directly administer such property. The primary means by which he exercises his administrative power is by issuing instructions with the limits of the universal and particular laws with due regard for rights, legitimate customs and circumstances."

⁹⁷ Book V of the Code of Canon Law is the primary example of such universal legislation.

⁹⁸ J. Myers, in Coriden, *Commentary*, p. 872.

⁹⁹ The 1983 code frequently invokes the principle of subsidiarity in the administration of church property. It leaves some power to legislate to the national conferences. For a list of the competency of the national conferences see Francis Morrissey, "New Canon Law on Temporal Goods Reflects Vatican

Additionally, individual juridic persons need the permission of the diocesan ordinary to refuse a freewill offering in matters of great importance (c. 1267.2).

The bishop also enjoys the rights of assessing public juridic persons for the support of the diocesan church (c. 1263); of imposing taxes for acts of discretionary executive power or for the execution of rescripts of the Holy See (c. 1264, n. 1); of prescribing special collections in all churches and oratories where the faithful habitually assemble, even those belonging to exempt religious (c. 1266); of issuing diocesan legislation regarding the administration of church property (c. 1276.2); and of permitting certain acts of alienation (c. 1292.1 & 2).

Adam Maida and Nicholas Cafardi define alienation, "Alienation is the conveyance to another party, the incumbrance or the placing in jeopardy of loss of any interest in a public juridic person's stable patrimony (immoveable goods or fixed capital)." ¹⁰⁰ This means that the sale, mortgage, rental, lease, compromise, settlement or the placing a lien, easement or option on church property constitutes alienation. ¹⁰¹

Canon 1292 prescribes that the diocesan bishop is the competent authority to permit acts of alienation when it is within the range of the minimum

Influence," in *The New Code of Canon Law*, pp. 50-51.

¹⁰⁰ Church Property. Church Finances, and Church-Related Corporations. *A Canon Law Handbook* (St. Louis: The Catholic Health Association, 1984), p. 85.

¹⁰¹ J. Myers, in Coriden, *Commentary*, p. 879.

and maximum amounts determined by the conference of bishops. The National Conference of Catholic Bishops of the United States, in conjunction with the Congregation for the Clergy, determined that the permission of the Holy See is required when the alienation exceeds one million dollars.¹⁰² Since the conference has not set a minimum amount, the diocesan bishop may do so.¹⁰³ In any act of alienation within the minimum and maximum amounts the diocesan bishop is the competent authority to approve the action. Acts of alienation which exceed the maximum amount require prior approval of the Holy See.

Canon 1190.2 and 3 prescribes that the permission of the Holy See is also required before significant relics or images honored with great reverence by the faithful can validly be alienated or perpetually transferred. The reservation exists because of the devotion given to such relics or images and out of recognition to the Church's artistic heritage.¹⁰⁴

Because of the potential for harm, the code includes a number of checks and balances for all acts of alienation. Canon 1292.1 requires the bishop to

¹⁰² Letter of the Congregation of the Clergy, July 3, 1981, Prot. Num.: 165967/111, reported in CLP 9:44-45. The limit values for other nations are reported on pp. 45-46.

¹⁰³ in the Archdiocese of St. Paul and Minneapolis, the minimum amount is \$5,000. Clergy Bulletin 11 (October 7, 1985), n. 5:359-360.

¹⁰⁴ Giuseppe Sirna, "Pe cultu sanctorum, sacrarum imaginem et reliquiarum," in Pinto, *Commento*, p. 690; J. Myers, in Coriden, *Commentary*, p. 881; and Royce Thomas, "Part II: Other Acts of Pivine Worship [cc. 1166-1204]," in Coriden, *Commentary*, p. 841.

obtain the consent of the finance council, the college of consultors and the parties involved before alienating or permitting the alienation of church property. In cases where the permission of the Holy See is required, this consent must be obtained before requesting permission. ¹⁰⁵ The code retains an ecclesiastical penalty to be imposed whenever the alienation of property is enacted without the required approval.¹⁰⁶

The 1983 code is quite specific in describing the rights of diocesan bishops in the exercise of their administrative power. The intervention of the Holy See is minimal. In fact, under ordinary circumstances the Holy See is involved in the administration of property only in the more important acts of alienation of church property.

4. Coercive Power

The 1983 code, like its predecessor, holds that the Church enjoys an innate right to coerce offending members of the Christian faithful by means of penal sanctions. ¹⁰⁷ The penalties the Church imposes are always to be seen in the context of the greater mission of the Church, that is, an instrument of salvation. They are not ends in themselves but means by which offenders might

¹⁰⁵ Maida-Cafardi, *Church Property*, pp. 94-95.

¹⁰⁶ c. 1377 prescribes that a just penalty be imposed. See T. Green, "Sanctions," in Coriden, *Commentary*, p. 924.

¹⁰⁷ 1917 code, c. 2214.1; 1983 code, c. 1311.

be called to conversion. 108 The bishop's exercise of coercive power is two-directional; it is ordered to the imposition of ecclesiastical penalties and to their removal.

The 1983 code does not differ from the 1917 code with regard to the imposition of ecclesiastical penalties. The competence to legislate includes the right to attach penal remedies for the violation of the laws.¹⁰⁹ Because bishops are legislators for their churches they also possess coercive power. They are able to use penalties for the enforcement of their own legislation and to add penalties for the infringement of universal laws. If the universal law contains a penalty that is indeterminate or facultative, particular law can establish penalties that are determinate or obligatory (c. 1315.3).

Though the bishop's coercive power is related to his legislative power which he exercises personally, he may share the exercise of coercive power with others. In cases which call for judicial proceedings, the bishop himself or those whom he has appointed to the office of judge conduct the canonical trial and impose the penalty.^{no}

While the new code does not contain the lengthy admonition of the Council of Trent that bishops be true shepherds in their exercise of coercive

108 Francesco Nigra, "Liber VI: Pe sanctionibus in Ecclesia," in Pinto, *Commento*. p. 750.

109 1917 code, c. 2220.1; 1983 code, c. 1315.1.

no The procedures for penal cases are found in cc. 1717-1731.

power. It does retain a pastoral tone. It urges that the bishop's exercise of power be fair (c. 1316) and limited to those cases where it is truly needed (c. 1317). Censures are to be established with the greatest moderation and only for the most serious offenses (c. 1318). Bishops are prohibited from using the canonical penalty of dismissal from the clerical state as a penalty for the violation of particular law.¹¹²

The diocesan bishop is also competent to remove ecclesiastical penalties inflicted by a sentence (*ferendae sententiae*) whenever the penalty is not reserved to the Apostolic See (c. 1355.1). He can do so if he is the ordinary who set into motion the trial by which the penalty was imposed or declared or if he imposed or declared it by decree (c. 1355.1, n. 1) or if he is the ordinary of the place where the offender now lives, after consulting, if possible, the ordinary who imposed the penalty (c. 1355.1, n. 2). He is also competent to remit automatic penalties (*latae sententiae*) for his own subjects, those who are living in his territory or those who committed the crime within his territory, unless the penalty is reserved to the Holy See (c. 1355.2).

¹¹¹ 1917 code, c. 2214.2.

¹¹² The 1983 code has only five instances where dismissal from the clerical state can be an ecclesiastical penalty: c. 1364.2, contumacy in heresy, apostasy or schism; c. 1367, throwing away or retaining the sacred species for a sacrilegious purpose; c. 1370.1, the use of physical force against the person of the pope; c. 1387, soliciting a penitent to sin against the sixth commandment in the celebration of the sacrament of penance; and c. 1395, concubinage and forced sexual sins or an offense against the sixth commandment with a minor under sixteen years of age.

The coetus responsible for the revision of penal law held as a working principle that the reservation of *latae sententiae* penalties should be greatly limited.¹¹³ The reservation is intended to emphasize the gravity of the offense.¹¹⁴ There are only five *latae sententiae* penalties reserved to the Holy See: the violation of the sacred species (c. 1367); the use of physical force against the person of the Roman Pontiff (c. 1370.1); outside the danger of death, the absolution of an accomplice in a sin against the sixth commandment of the decalogue (c. 1378.1); the consecration of a bishop without a papal mandate (c. 1382); and the direct violation of the seal of confession (c. 1388.1). By comparison with the 1917 code which included forty reserved *latae sententiae* penalties, the number of reserved cases has been greatly reduced.

The reservation of the penalties incurred by the use of physical force against the person of the Roman Pontiff and consecrating a bishop without a papal mandate obviously follow from the nature of the cases. The coetus on penal laws was unanimous in its view that the reservation be retained in the case of harming the pope because special gravity of punishment was needed for the public good. A grave crime like this requires grave punishment as a teaching device.¹¹⁵ The consecration of a bishop without a papal mandate is reserved because it disregards the principle of hierarchical communion as well

¹¹³ Coetus studiorum de iure poenali, *Communicationes* 2 (1970):101 & 106.

¹¹⁴ T. Green, "Sanctions," in Coriden, *Commentary*, p. 916.

¹¹⁵ Coetus studiorum de iure poenali, *Communicationes* 2:101.

as the pope's headship of the episcopal college into which one is incorporated by consecration. In the other cases, the gravity of the matter is the basis for the reservation.¹¹⁶

Section IV: The Authority of Coadjutor and Auxiliary Bishops

The 1917 code referred to all titular bishops assigned to assist residential bishops as coadjutors. Abbo-Hannan defined the term: "Coadjutor bishops are titular bishops who subordinately assist a residential bishop either in the administration of his diocese or in the exercise of the duties arising from the episcopal rank, or in both."¹¹⁷ There were three kinds of coadjutors: coadjutors given to the see, coadjutors given to the bishop with the right of succession and coadjutors given to the person of the bishop (auxiliaries).^{ns}

Puring the preparatory stage of the council the place of auxiliaries received considerable attention in the sixth session when the Central Commission discussed the schema "On Coadjutor and Auxiliary Bishops." Some residential bishops reacted strongly against the proposal that auxiliaries be granted the faculties of vicar generals or episcopal vicars. They alleged the potential for disunity which would follow upon a number of auxiliaries enjoying

¹¹⁶ ne T. Green, "Sanctions," in Coriden, Commentary, pp. 921, 924-925, 927.

¹¹⁷ Sacred Canons 1:374-375.

^{ns} C. 350.2 & 3.

the faculties of vicar generals in a diocese.¹¹⁹ This discussion led to a modification. The schema "The Decree on Bishops and on Diocesan Government" presented to the council fathers during the second period of the council proposed that coadjutor bishops, since they enjoy the right of succession, should be given the faculties the law concedes to vicar generals; it was vague about the faculties of auxiliary bishops.¹²⁰

Christus Pominus 25 provides the conciliar resolution of the status of these bishops. The welfare of the flock is the primary concern:

That this welfare may be duly secured, auxiliary bishops must frequently be appointed because the diocesan bishop cannot personally fulfill all his episcopal duties as the good of souls demands. ... Sometimes, in fact, a particular need requires that a coadjutor bishop be appointed to assist the diocesan bishop. Coadjutor and auxiliary bishops should be granted those faculties necessary for rendering their work more effective and for safeguarding the dignity proper to bishops.¹²¹

No faculties can be deduced for a titular bishop from his episcopal dignity or from his membership in the college of bishops. Membership in the college

¹¹⁹ II Acta Poc. II, Pars III, pp. 65, 658 and 661. This debate was treated in chapter 2.

¹²⁰ Acta Syn. II, Pars II, pp. 368-369, arts. 8-9. This matter was treated in chapter 3.

¹²¹ AAS. 58:685: "Quod bonum ut debite procuretur, haud raro Episcopi Auxiliares constituendi sunt, eo quod Episcopus dioecesanus... nequit per semetipsum omnia episcopalia munia, sicut animarum exigit bonum, adimplere. Imo et aliquando peculiaris necessitas postulat ut in ipsius Episcopi dioecesani adiutorium constituatur Episcopus Coadiutor. Qui Episcopi Coadiutores et Auxiliares ita congruentibus facultatibus instruendi sunt, ut, salva semper unitate dioecesani regiminis necnon Episcopi dioecesani auctoritate, eorum actio efficacior reddatur et dignitas, Episcoporum propria, magis in tuto ponatur." Abbott-Gallagher, pp. 414-415.

provides no rights or powers apart from the college. A titular bishop as such has no office in the legal sense. He receives faculties by delegation or ordinary power by virtue of an appointment to the office of vicar general or episcopal vicar. The measure of a coadjutor or auxiliary bishop's power, therefore, is determined by the tasks given him.¹²²

Christus Pominus 25 calls upon auxiliary and coadjutor bishops to exercise their office in single-minded agreement with the diocesan bishop and to manifest obedience and reverence toward him. Though coadjutors and auxiliaries are bishops, incorporated into the episcopal college by sacramental ordination, their position is relative to the diocesan bishops whose coadjutors or auxiliaries they are. The diocese is governed solely by its residential bishop; other bishops are episcopal collaborators with him.¹²³

The *motu proprio Ecclesiae sanctae* I, 13, which implemented Christus Pominus 25, noted that the well-being of the Lord's flock, the unity of governance in the diocesan church, the episcopal dignity of the auxiliary bishop and his effective cooperation with the diocesan bishop were the chief principles to be kept in mind when dealing with the power to be granted to an auxiliary bishop. It prescribed that the diocesan bishop should appoint the auxiliary as

¹²² K. Morsdorf, "Pecree," in *Vorgrimler* 2:244-246. Also see Augustinus Vallini, "Pe figura episcopi coadjutoris et auxiliaris secundum doctrinam Concilii Oecumenici Vaticani II recognoscenda," *Apollinaris* 40 (1967):177-214, and the Pi rectory on Bishops, nn. 190 & 199.

¹²³ K. Morsdorf, "Pecree," in *Vorgrimler* 2:245.

either vicar general or episcopal vicar "with the understanding that he is solely under the authority of the bishop of the diocese."

In the preparation of the new code, the *coetus de sacra hierarchica* focused on two areas of concern in its discussion of assisting bishops. First, it was deeply concerned that the unity of diocesan government be carefully preserved.¹²⁴ Second, it questioned the wisdom of appointing coadjutor bishops with the right of succession, since the freedom of the Holy See was greatly restricted when experience showed that a coadjutor was not capable of presiding over a particular diocese.¹²⁵

The 1983 code affirms *Lumen gentium* 21: by virtue of episcopal consecration all bishops, diocesan and titular, are incorporated into the college of bishops and receive along with the function of sanctifying the functions of teaching and ruling.¹²⁶ Since titular bishops do not have an office as such, they receive no canonical mission and thus they possess no exercisable power outside the college of bishops. The appointment coadjutor and auxiliary bishops receive is granted in reference to a diocesan bishop who, by virtue of a canonical mission, presides over the church committed to his pastoral care.

Because they receive no canonical mission and therefore do not possess exercisable power within the diocesan church, canon 406.1 prescribes that

¹²⁴ *Communicationes* 7 (1975):170.

¹²⁵ *Ibid.*, p. 162.

¹²⁶ Cc. 375 & 376.

diocesan bishops appoint coadjutors to the office of vicar general and even commit to them those matters which by law require a special mandate before a vicar general is competent to act. 127 Canon 406.2 advises that auxiliary bishops should be appointed to the office of vicar general or, at least, episcopal vicar.¹²⁸ These prescriptions respond to the desire of the council fathers that auxiliaries and coadjutors be viewed as vital sharers in the threefold ministry of teaching, sanctifying and governing and not just as ministers of confirmation as was so often the case in the past.¹²⁹ According to canon 409.1, coadjutor bishops become diocesan bishops immediately after the see to which they are appointed becomes vacant. Auxiliary bishops, regardless of the terms of their appointment, normally retain all and only those powers and faculties which they possess as vicar generals or episcopal vicars. 130

To protect the unity of diocesan government canon 407.2 urges diocesan bishops to consult before others their auxiliaries and coadjutors. Canon 407.3 reminds coadjutor and auxiliary bishops that they share the concerns of the

127 See c. 479.1; J. Alesandro, "Internal Ordering," in Coriden, Commentary, pp. 389-391; Antonio Sousa Costa, "Caput III: Pe curia dioecesana," in Pinto, Commento. pp. 279-281; T. P. Pougherty, Vicar General. CU. 447.

128 See c. 479.2; J. Alesandro, "Internal Ordering," in Coriden, Commentary, pp. 390-391; A. Sousa Costa, in Pinto, Commento. pp. 280-281; J. Penna, Episcopal Vicar. CU. 475.

129 T. Green, "Particular Churches," in Coriden, Commentary, p. 338.

130 c. 409.2; K. Morsdorf, "Pecree," in Vorgrimler 2:245-247.

diocesan bishop and therefore are to fulfill their duties in such a way that they proceed in harmony with him.

Canon 403 of the 1983 code describes "a hierarchy of auxiliary bishops" in ascending order: auxiliary bishops (403.1), auxiliary bishops with special faculties (403.2) and coadjutor bishops with the right of succession who also can be given special faculties (403.3). Normally the initiative for the appointment of the simple auxiliary rests with the diocesan bishop; for the appointment of an auxiliary with special faculties it probably rests with the Holy See; and for the appointment of a coadjutor with the right of succession it certainly rests with the Holy See. Usually the appointment of an auxiliary is in view of diocesan considerations, such as the size of the diocese, the large number of its inhabitants, the presence of a significant number of the faithful of a different rite or language or the presence of a significant pastoral concern. A coadjutor and probably the auxiliary with special faculties are normally appointed in consideration of the person of the diocesan bishop, such as advanced age, illness or time-consuming extra-diocesan responsibilities. 131

Special attention needs to be given to canon 403.2, which provides that an auxiliary bishop with special faculties can be given to a diocesan bishop in more serious circumstances even of a personal nature. This canon has been invoked in two recent cases involving diocesan churches in the United States, Richmond and Seattle. The recent Vatican interpretation of canon 403.2 seemed to add a new dimension to the understanding of coadjutor or auxiliary

131 T. Green, "Particular Churches," in Coriden, *Commentary*, p. 337.

bishops, namely, to use the auxiliary bishop with special faculties as a corrective measure. This was evident in the case of the Archdiocese of Seattle. Several areas of concern regarding Archbishop Hunthausen's pastoral care were noted and special faculties were given to Auxiliary Bishop Donald Wuerl in these areas: (1) to present more clearly the Church's teaching on the permanence and indissolubility of marriage, contraceptive sterilization and homosexuality; (2) to ensure that the archdiocesan tribunal conform to the prescriptions of the revised code both in its constitution and its practice; (3) to insure that pastoral practice surrounding the celebration of the liturgy, especially the Eucharist and penance, be in accord with universal norms; (4) to review the ongoing education of priests and the formation of candidates for the priesthood; and (5) to assure that laicized priests are excluded from certain roles in accord with the rescripts of laicization. 132

Archbishop Hunthausen, not the Holy See, conferred the special faculties on Bishop Wuerl under the direction of the Holy See.¹³³ This action, however, was not voluntary. In his address to the National Conference of Catholic Bishops, the archbishop describes the actions taken by the Holy See as "punitive" and "disciplinary."¹⁴ The letter to the bishops of the United States

132 "Authority of Seattle's Auxiliary Bishop," *Origins* 16 (1986):251.

133 *Ibid.*, pp. 249 and 251.

134 "Archbishop Hunthausen to the U.S. Bishops," *Origins* 16 (1986):402. The archbishop also describes the secrecy which surrounded the visitation and the report of the visitation. The priests of the Archdiocese of Seattle express the

drafted by the commission appointed by the Holy See to assess the current situation¹³⁵ and its report to the Vatican¹³⁶ recommend that full faculties be restored to Archbishop Hunthausen because the concerns raised earlier were addressed. If the archbishop freely delegated faculties to Bishop Wuerl, it would be within his power to reclaim them without any action on the part of the Holy See.

The use of canon 403.2 as a corrective measure has serious implications with regard to the authority of the residential bishop. First, and most importantly, withdrawing certain areas of responsibility from the jurisdiction of the diocesan bishop and delegating them to the jurisdiction of the auxiliary treats the residential bishop's authority as if it were delegated authority. The terminology used in the Seattle case actually refers to the archbishop's power as faculties: "You will notice when you read the report that we have recommended the following points: 1) That full faculties be restored to Archbishop Hunthausen."¹³⁷ "Hence, the proposal of the commission contains these essential elements: 1. The auxiliary bishop should be transferred to another

opinion that their archbishop acted under coercion. "Priests in Seattle Issue Statement on Their Archbishop," *Origins* 16 (1986):807.

¹³⁵ "Commission's Letter to U.S. Bishops," *Origins* 17 (1987):37.

¹³⁶ "Commission's Report to the Vatican," *Origins* 17 (1987):40.

¹³⁷ "Letter to U.S. Bishops," p. 37.

see. 2. The archbishop should recover his faculties as diocesan bishop ... "138 This contradicts the teaching of *Christus Pominus* 8a and canon 381.1 that diocesan bishops enjoy in the dioceses committed to them all the ordinary, proper and immediate authority required for the exercise of their pastoral office.

Second, this interpretation of canon 403.2 places the auxiliary bishop in a role that can only be described as inappropriate in light of the tradition. The 1917 code, *Christus Pominus* and the motu proprio *Ecclesiae sanctae* represent the tradition of holding the auxiliary to be a coadjutor of the residential bishop, that is, an assistant bishop. It is the diocesan bishop who presides over the particular church committed to his care. Normally, the diocesan bishop freely confers faculties on his assisting bishops. Canon 406.1 states that a coadjutor bishop as well as an auxiliary equipped with special faculties is to be appointed a vicar general by the diocesan bishop. This prescription implies that the diocesan bishop's authority remains intact because it is ordinary and proper jurisdiction.

Third, the division of the residential bishop's power has a divisive effect both within and outside the diocesan church. Evidence of this is found in the Seattle case. The statement of the priests in Seattle calls attention to the effect of the "compromise" on the diocesan church.¹³⁹ Bishop James Malone, who

¹³⁸ "Report to the Vatican," p. 40.

¹³⁹ "Priests in Seattle," p. 807; Bishop James Malone, "The Situation in Seattle," *Origins* 16 (1986):400-401; R. Hunthausen, "Hunthausen to the U.S. Bishops," p. 405; "Minutes," *Proceedings of the Canon Law Society of America*

was President of the National Conference of Catholic Bishops at the time, speaks of division and estrangement between Catholics in America and the Holy See. He observes, "We all know that in recent weeks the situation in the Archdiocese of Seattle has exemplified these concerns."¹⁴⁰ This divisive effect follows from the break of unity of diocesan leadership. Creating a situation which generates division contradicts the unifying function of the primatial office of the pope which, according to canon 333.1, is to strengthen and safeguard the proper, ordinary and immediate power which bishops possess in the particular churches entrusted to their pastoral care.

Finally, bishops are members of the Christian Faithful, and thus share in the rights of the Christian Faithful listed in canons 208 to 223. Publicly placing limitations on the exercise of the pastoral office that is theirs without due process violates these rights.¹⁴¹

The goal of the revision of the code was to enhance the status of coadjutor and auxiliary bishops in light of the council's teaching on their membership in the episcopal college. This goal was achieved by the prescriptions that coadjutors be appointed to the office of vicar general and

48 (1986):325-326; Roberto Sura, "Vatican Aides Say Bishops' Talks in U.S. May Mark Turning Point." *The New York Times*. 13 November 1986, pp. 1 & 13; and Joseph Berger, "Vatican Envoy Defends His Handling of Case Against Archbishop of Seattle," *The New York Times*. 30 January 1987, p. 7.

140 "The Church: Its Strengths and Questions," *Origins* 16 (1986):396.

141 See the report on the 51st Annual Meeting of the Canon Law Society of America by Carol Ostrom, "Open Investigations Sought: Bishops' Rights Are Emphasized," *The Seattle Times*. October 14, 1989, p. A-10.

auxiliaries at least to the office of episcopal vicar. Their episcopal status is also protected by legislation that auxiliaries retain the power given them by law when the see is vacant. This goal, however, has to be balanced against another, namely, the careful protection of the unity of diocesan government and of the rights the diocesan bishop possessed by virtue of episcopal consecration and the conferral of a canonical mission to preside over a particular church. Achievement of this goal seems especially difficult in those cases where the Holy See provides as a corrective measure an auxiliary with special faculties.

CONCLUSIONS

The Synod of Bishops celebrated April 3-8, 1967 assisted in the formation of principles which would guide the work of the Pontifical Commission for the Revision of the Code of Canon Law in its work. With regard to the office of bishop, these principles looked for the new code to define the office of bishop in a positive manner, to provide diocesan ordinaries with the greatest freedom to exercise their ministry of care of souls, particularly with regard to their competence to dispense from the general law of the Church, and to manifest clearly the bishop's relationship to the Church as a whole. It can generally be said that the 1983 Code of Canon Law is faithful to the teaching of the Second Vatican Council on the role of bishops and to these guiding principles prepared by the synod.

Canon 375.1 witnesses to the truth the Holy Spirit constitutes the bishop as pastor of the church committed to his care. The Roman Pontiff, thus, is not

the sole agent or underlying principle of his pastoral ministry. Canon 377 affirms the right of the Roman Pontiff to appoint bishops or confirm their legitimate election. This right, however, provides him with only an indirect relationship to the formation of the episcopal college. He nominates members to it; episcopal consecration incorporates bishops into it. The college, therefore, is not a creation of the pope.

There is an inseparable relationship between episcopal consecration and fulfillment of the episcopal office. This is demonstrated by the canonical requirement that the pope be ordained a bishop immediately after his election, if he lacks the episcopal character (c. 332), and that a bishop be consecrated before taking canonical possession of his diocese (c. 379). These requirements represent a major shift from those of the 1917 code, where a bishop could take canonical possession of his office and exercise jurisdiction before ordination. The present requirements respect the teaching of the council on the unity of episcopal power and on its source.

In every case, human agency is involved in the designation of office. For the pope, the human agency is the election prescribed by law. Only after accepting legitimate election, provided he is already a bishop, does the pope succeed to the office of blessed Peter and to the power and function appropriate to that office. Canonical mission renders the episcopal power conferred on bishops by sacramental ordination exercisable power.

The fidelity of the code to the council is found in the manner in which it implements the principle of reservation of major causes to the Holy See. This

principle itself upholds the dignity of the episcopal office, for it means that bishops are empowered to act in all cases that are not reserved. The principle of reservation has been more appropriately applied to the bishop's dispensing power than to other acts of governance. With regard to the latter, for example, in the case of the erection, change or suppression of cathedral chapters (c. 504), merging, uniting or suppressing religious institutes of diocesan right and determining the distribution of their temporal goods (cc. 582 and 584) and the reduction of Mass obligations (c. 1308.1), the reasons for reserving the matter to the Holy See are not substantial. If these reservations were not imposed, the principle of subsidiarity would be better served and pastoral discernment safeguarded because of the bishop's closeness to the situation.

The *motu proprio* *Pe episcoporum muneribus*, which implemented *Christus Pominus* 8b, held that bishops were able to dispense from the general law of the Church except for the twenty cases reserved to the supreme authority. This was a major step forward in affirming the dispensing power of bishops by comparison to the 1917 Code of Canon Law where all dispensations from the general law were reserved, except in cases where the extraordinary circumstances set forth in canon 81 were fulfilled or the bishop was granted faculties by the law or by competent authority. The new code goes even further with its very limited number of reserved cases. While there may be historical and theological reasons for questioning the reservation of some dispensations to the Holy See, most, if not all, reserved cases are reserved for substantial reasons. The manner in which the principle of reservation of major causes is

implemented in the code frees bishops from the need to have recourse to the Holy See, except in matters of great importance.

The requirement of unity of diocesan government and of respect for the office of the diocesan bishop, clearly recognized as essential in *Christus Pominus*, and the focus on suitable care for the diocese is generally provided ample respect in the canons governing coadjutor and auxiliary bishops. Canon 403.2, however, which provides the Holy See with the right to appoint an auxiliary bishop with special faculties leaves the door open to potential violation of these essential values. Where certain areas are removed from the jurisdiction of the diocesan bishop by virtue of canon 403.2, the unity of diocesan government and the ordinary, proper and immediate nature of the diocesan bishop's jurisdiction becomes obscure.

CONCLUSIONS

The Catholic Church has consistently believed that the papacy and the episcopacy are of divine origin. The Roman Pontiff is the successor of blessed Peter; the body of bishops succeeds to the place of the apostolic college. Still, the scope of the residential bishops' power and the manner of its exercise in the churches committed to them has varied over the centuries. A comparison of two periods in the Church's history, namely, the era of the 1917 Code of Canon Law and the present era of the 1983 code, illustrates the truth of this observation.

It has often been suggested that, while the First Vatican Council was the council of the papacy, the Second Vatican Council was the council of the episcopate. The 1917 Code of Canon Law incorporated the theological understanding of the First Vatican Council which, due to historical circumstances, ended prematurely. This prevented it from thoroughly reflecting on the role of diocesan bishops. Despite its limitations, the 1917 code was up to the time of the Second Vatican Council the Church's most explicit attempt to give canonical expression to the position of the pope and of bishops in the Church.

The 1917 code held that bishops were successors of the apostles. It described residential bishops as possessing ordinary and immediate jurisdiction. It recognized them as sole diocesan legislators and primary judges. In their exercise of executive power, it perceived them as competent to govern their dioceses, to administer diocesan temporal goods, to oversee the administration of the temporal goods owned by individual juridical persons within the diocese and to possess the power to impose and remit penalties. In other words, the 1917 code did not see bishops as delegates of the Roman Pontiff.

In the practical order, however, a very different picture emerged. An extensive general law left little room for diocesan legislation. The diocesan bishop's power to dispense from the general law was greatly restricted. He could do so only if faculties were conceded to him by the law itself or by the Holy See, or if the emergency provisions found in canon 81 were simultaneously present. The reservation of ecclesiastical benefices interfered with his freedom to make appointments and the extensive number of reserved ecclesiastical penalties left little option for his exercise of coercive power. The discipline of the Church, in effect, obscured the position of the bishop as the ordinary governor in the diocese. The bishop, forced to turn so frequently to the Holy See for a grant of faculties, appeared as a delegate of the Roman Pontiff.

The Second Vatican Council manifested a renewed appreciation of the diocesan church and of its head, the residential bishop. The first chapter of the Dogmatic Constitution on the Church *Lumen gentium* describes the Church first

as mystery. Before all else the Church is formed by faith in Christ which leads to baptism through which individuals are incorporated into the Church. This view of the Church is consolidated in article 26 which teaches that Christ is present in any community gathered around an altar, under the sacred ministry of the bishop. Through his presence the one, holy, catholic and apostolic Church is constituted. The diocesan church, then, is not an administrative unit of the universal Church but a representation of it, for within the diocesan church are found all the elements of church: the abiding presence of God, Word, sacrament, ministries and charisms. It is in this light that *Christus Pominus* 11 defines a diocese as a portion of the people of God which is entrusted to the pastoral care of its bishop who shepherds it with the cooperation of his presbytery. This portion constitutes a particular church in which the one, holy, catholic and apostolic Church of Christ is present.

The council developed a rich theology of the office of bishop. *Lumen gentium* 21 describes the bishop as a sacrament of Christ to his Church. Through the bishop Christ himself is present as teacher, priest and head of the Church. The same article teaches that the ministry of bishops is conferred by the Holy Spirit. The imposition of hands and the words of consecration confer the grace of the Holy Spirit, impress a sacred character and incorporate the new bishop into the episcopal college so that bishops, in an eminent and visible way, undertake Christ's role as teacher, sanctifier and shepherd. Because of episcopal consecration, they act in his name. The bishop's ministries of providing authentic teaching and governing, like the ministry of sanctifying, are

rooted in the sacrament of holy orders. This teaching moves beyond the position of the 1917 code which perceived episcopal consecration to be the source of only the power of orders or the power to sanctify.

The implications of this teaching were spelled out in the council's description of the unique relationship between an individual bishop and his church. *Lumen gentium* 17 states that, just as the Roman Pontiff as the successor of blessed Peter is the perpetual and visible source and foundation of unity for the universal Church, so also is the diocesan bishop the visible principle and foundation of unity in his particular church. Article 21 teaches that bishops minister to their churches as vicars of Christ, not as vicars of the Roman Pontiff. This graphic description of the bishop's relation to his particular church highlights his headship of it. He is its pastor and fulfills on its behalf a teaching, sanctifying and governing function by virtue of an authority that is his own.

In light of the doctrine of *Lumen gentium* on bishops, the Decree on the bishops' pastoral office in the Church *Christus Dominus* 8a teaches that bishops as successors of the apostles enjoy in the dioceses entrusted to them all the ordinary, proper and immediate authority required for the exercise of their pastoral office. While this article clearly recognizes the pope's right, by virtue of papal primacy, to reserve to himself or to some other authority major causes affecting the universal Church, bishops are said to exercise their threefold function by virtue of an authority that is their own (proper), for it is derived from their incorporation into the episcopal college by sacramental ordination and by the conferral of the grace of the Holy Spirit to carry out the office of bishop.

Christus Pominus 8b applies article 8a to the bishop's dispensing power. It recognizes that bishops have dispensing power over the general law of the Church, except for those matters which the Apostolic See reserves to the supreme authority. The principle of reservation protects the prerogatives of the pope while upholding episcopal power, for its corollary is that bishops are empowered by virtue of their own ordinary power to act in all cases which are not reserved.

It can be concluded, therefore, that the episcopal office involves more than implementing policy formed on a higher level. As moderator of the Church's liturgy in the diocesan church, for example, the bishop not only oversees the observance of the general liturgical law, he also defines that law for the diocese. As *Lumen gentium* 26 states, he sanctifies the faithful and forms the community by his own celebration of the sacraments and by directing their celebration by others. Where juridical authority is needed to celebrate the sacraments, he has the competence to extend faculties to presbyters, deacons and even depute lay members of the Christian faithful. In union with the head and members of the episcopal college, the bishop is an authentic teacher of the faith and the faithful are called to adhere to his teaching with religious assent. He moderates the ministry of the Word in its many forms in his diocese. In governing, the bishop functions by virtue of episcopal, not papal, authority.

As the Vicar of Christ to the whole Church, the pope has a primacy of ordinary power over the Church and over all the churches, providing for their common good as well as for the good of the whole Church. This ordinary and

immediate jurisdiction, however, does not, because of its source, cancel out the ordinary and proper authority of residential bishops. Rather it must safeguard and build up episcopal power, for the catholic Church is found not just in the universal Church but also in the particular churches which form it.

The 1983 Code of Canon Law treats the episcopacy in a radically different way from the 1917 code, a consequence of the council's teaching on the collegial nature of the episcopate, on the source and extent of episcopal power and on the principle of reservation of major causes to the Holy See. Episcopal authority is greatly enhanced in comparison to its place in the 1917 Code of Canon Law. The new code is faithful to the council in its treatment of the episcopal office.

Canon 375 affirms that the Holy Spirit constitutes bishops as pastors of their churches, enabling them to carry out their teaching, sanctifying and governing function. The pope in assigning a canonical mission is not the sole agent or underlying principle of episcopal power. The essential role of the Holy Spirit is clearly expressed.

The code holds as inseparable the relationship between episcopal ordination and the fulfillment of the episcopal function. Canon 332 requires that the individual elected to the papal office be ordained immediately if he lacks the episcopal character. Canon 379 requires episcopal ordination before a bishop takes canonical possession of his office. Both cases represent major change in the law in comparison to the 1917 code, where acts of jurisdiction could be carried out regardless of episcopal consecration. Episcopal ordination and

incorporation into the college of bishops which is effected by it are the source of the power to fulfill episcopal ministry.

Human agency is always involved in rendering the power possessed through ordination exercisable power. For the pope, the human agency is legitimate election. His acceptance of legitimate election, when joined to episcopal consecration, provides him with the exercisable power needed to fulfill the primatial office. Canonical mission renders episcopal power conferred by consecration exercisable power in the case of bishops.

In canon 381.1 the 1983 code makes a significant addition to the legal description of the jurisdiction of the diocesan bishop by its inclusion of the word "proper." Canon 334.1 of the 1917 code described the bishop as the ordinary and immediate pastor of the diocese committed to his care. The insertion of the word "proper" signifies that the power the bishop exercises on behalf of his diocese is his own power, that is, not delegated. Underlying this concept is the conciliar reaffirmation of the traditional teaching that bishops are the vicars of Christ to their churches, not vicars of the Roman Pontiff. They are sacraments of Christ's headship of these churches which form the one, holy, catholic and apostolic Church.

The code incorporates the principle of the reservation of major causes to the Apostolic See. This principle of exceptional cases upholds episcopal power for the obverse is that bishops, by virtue of their proper and ordinary power, may act in all other cases.

The principle of reservation is more appropriately applied in cases involving the bishop's dispensing power than in those involving other acts of governance. With regard to the latter the reasons for reserving the matter to the Holy See are not convincingly substantial and minimize the principle of subsidiarity. The dispensing power of the bishop, however, is greatly expanded even by comparison with the *motu proprio* *Pe episcoporum muneribus*, promulgated soon after the council. The number of reserved cases is greatly reduced from twenty-one to seven dispensations in the new code. The limited instances of reservations in the code frees bishops from the need to have recourse to the Holy See, except in matters of great importance, a great improvement over the 1917 code where special faculties were needed, for example, for a mixed marriage dispensation.

It is certainly arguable that a bishop's action contrary to the law in a reserved case would be valid, though illicit. Such an argument is based on the nature of episcopal power which is proper, ordinary and episcopal. Its source is episcopal consecration. The supreme power of the Church, therefore, cannot affect the exercise of episcopal power in such a way that its substance is destroyed as would be the case if some actions involving the exercise of episcopal jurisdiction were declared invalid. Invalidity means the act has no substance. A consistent pattern of illegal activity, however, would be harmful to communion and would call for appropriate action by the Holy See. The imposition of a sanction is quite different from declaring actions invalid.

It can generally be said that the code respects the office of the diocesan bishop and the requirement of unity of diocesan government, which are recognized as essential in *Christus Pominus*. Canon 403.2, however, which provides the Holy See with the right to appoint an auxiliary bishop with special faculties, has the potential for undermining these essential values. Where certain areas are removed from the diocesan bishop's jurisdiction and given over to an auxiliary the ordinary, proper and immediate nature of the diocesan bishop's jurisdiction is undermined.

It is obvious there are points of weakness in the 1983 code. They witness to its human quality. There is at times a divergence between theory and practice in the discipline of the Church. Overall, the code represents a serious attempt to bring into the legislative life of the Church the rich theology of the episcopate provided by the Second Vatican Council, a theology which sees bishops as successors of the apostles, vicars of Christ to their diocesan churches and true pastors of these churches exercising on their behalf ordinary, proper and immediate authority.

SELECTED BIBLIOGRAPHY

SOURCES

Abbott, Walter, gen. ed., and Joseph Gallagher, trans, ed. *The Documents of Vatican II*. Baltimore: America Press, 1966.

Acta Apostolicae Sedis. Roma: Typis Polyglottis, 1909 -.

Acta Commissionis. "Principia quae Codicis iuris canonici recognitionem dirigant." *Communicationes* 1 (1969):77-85; "Relatio circa Principia quae Codicis iuris canonici recognitionem dirigant." *Communicationes* 1 (1969):86-91.

. "Sectio II: De Ecclesiae Constitutione Hierarchica." *Communicationes* 14 (1982):89-91.

Acta et Decreta Sacrosancti Oecumenici Vaticani. Rome: Typographia Vaticana, 1872.

Acta et Documenta Concilio Oecumenico Vaticano II Apparando. Series I, *Antepreparatoria*. 4 Vols. Rome: Typis Polyglottis Vaticanis, 1960-1961; Series II, *Praepreparatoria*. 3 Vols. Rome: Typis Polyglottis Vaticanis, 1964-1969.

Acta Sanctae Sedis. 41 Vols. Rome: Typis Polyglottae, 1867-1909.

Acta Synodalia Sacrosancti Concilii Oecumenici Vaticani Secundi. 4 Vols. Rome: Typis Polyglottis Vaticanis, 1970-1978.

Alberigo, Giuseppe, and Magistretti, Franca, eds. *Conciliorum Oecumenicorum Decreta*. 3rd ed., Bologna: Centro di Documentazione, 1973.

Annuario Pontificio per L'Anno. Citta del Vaticano: Tipographia Poliglotta Vaticana, 1716-.

Barberi, Andreas, ed. Bullarii Romani Continuatio Summorum Pontificum. 19 Vols. Rome: Typographia Reverendae Camerae Apostolicae, 1835-1857.

Bouscaren, T. Lincoln, and O'Connor, James, eds. The Canon Law Pigest. 10 Vols. Milwaukee: Bruce Publishing Co., 1934-1986.

Code of Canon Law: Latin-English Edition. Washington: Canon Law Society of America, 1983.

Codex Iuris Canonici auctoritate Ioannis Pauli Pp. II promulgatus. Rome: Libreria Editrice Vaticana, 1983.

Codex Iuris Canonici Pii X Pontificis Maxime iussu digestus Benedicti Papae XV auctoritate promulgatus. Rome: Typis Polyglottis Vaticanis, 1917.

Coetus studiorum de clericis. Communicationes 17 (1985):74-89.

Coetus studiorum de iure poenali. Communicationes 2 (1970):99-107; 9 (1977):304-322.

Coetus studiorum de locis et de temporibus sacris deque culto divino. Communicationes 12 (1980):319-387.

Coetus studiorum de populi Pei. Communicationes 12 (1980):236-318; 13 (1981):111-150; 14 (1982):154-230.

Coetus studiorum de sacra hierarchica. Communicationes 7 (1975):161-172.

Coetus studiorum de sacramentis--Pe ordine. Communicationes 10 (1978):179-208.

Communicationes. Vatican City, 1969 -.

The Congregation for Bishops. Pirectorium de pastorale ministerio Episcoporum. Rome: Typis Polyglottis Vaticanis, 1973. Pirectorv on the Pastoral Ministry of Bishops. Translated by the Monks of the Seminary of Christ the King, Mission, B.C. Ottawa: Canadian Catholic Conference Publications, 1974.

The Congregation for Bishops. "Praefatio Statement on Episcopal Conferences." *Qiigjjs* 17 (1988):731-737.

The Congregation for the Doctrine of the Faith. "Post litteras apostolicas." *Acta Apostolicae Sedis* 58 (1966):445.

The Congregation for Religious and Secular Institutes. "Instructio de vita contemplativa et de monialium clausura." *Acta Apostolicae Sedis* 61 (1969):674-690.

. "Normae directivae pro mutuis relationibus inter Episcopos et Religiosos in Ecclesia." *Acta Apostolicae Sedis* 70 (1978):473-507.

Council for the Public Affairs of the Church, "Episcoporum delectum," *Acta Apostolicae Sedis* 64 (1972):386-391.

Penzinger, Henricus, and Schoenmetzer, Adolfus, eds. *Enchiridion Symbolorum definitionum et declarationem de rebus fidei et morum*. 35th rev. ed. Barcinone: Herder, 1963.

Flannery, Austin, gen. ed. *Vatican Council II: The Conciliar and Post-Conciliar Documents*. Northport: Costello Publishing Co., 1975.

Friedburg, Aemilius, ed. *Corpus Iuris Canonici editio Lipsiensis secunda post Aemilii Ludovici Richerti*. 2 Vols. Graz: Akademische Druck, 1959.

Gasparri, Pietro, ed. (Vols. 1-6) and Serendi, Justinian, ed. (Vols. 7-9). *Codicis iuris canonici fontes*. 9 Vols. Rome: Typis Polyglottis Vaticanis, 1923-1939.

John Paul II. "Constitutio Apostolicae Sacrae disciplinae leges." *Communicationes* 15 (1983):3-8.

Leo XIII. *Leo XIII Pontificis Maximi Acta*. 9 Vols. Rome: Typographia Vaticana, 1881-1903.

Magnum Bullarium Romanum. 18 Vols. Luxemburg: Chevalier, 1727-1754.

Mansi, John, ed. *Sacrorum Conciliorum nova et amplissima collectio*. Florence: 31 Vols. 1759-1798; 28 Vols. 1900-1927.

National Conference of Catholic Bishops. "Statutes and Bylaws." In Canon Law Pigest. Vol. 7. Pp. 293-303. Edited by T. Lincoln Bouscaren and James O'Connor. 10 Vols. Chicago: Chicago Province S.J., 1934-1986.

Opera Consultorum. "III: Pe recognoscendis normis generalis I.C" Communicationes 3 (1971):89-90.

Paul VI. "Apostolic Constitution Romano Pontifice eligendo." Acta Apostolicae Sedis, 67(1975):609-645.

. "Litterae Apostolicae datae motu proprio Ecclesiae sanctae," Acta Apostolicae Sedis 58 (1966):757-787.

. "Litterae Apostolicae datae motu proprio Pastorale Munus." Acta Apostolicae Sedis 56 (1964):5-12.

. "Motu proprio Apostolica sollicitudo." Acta Apostolicae Sedis 57(1965) :775-780.

. "Motu proprio Episcopalis potestatis." Acta Apostolicae Sedis 59 (1967):385-390.

. "Motu proprio Pe Episcoporum Muneribus." Acta Apostolicae Sedis 58 (1967):467-472.

. "Motu Proprio Pastorale Munus." Acta Apostolicae Sedis 56 (1964):5-12.

Pius IX. Pii IX Pontificis Maximis Acta. 9 Vols. Rome: Typographia bonarum artium, 1854-1878.

Pontificia Commissio Codici Iuris Canonici Recognoscendo. Codex Iuris Canonici schema novissimum iuxta placita Patrum Commissionis emendatum atque Summo Pontifici praesentatum. Rome: Typis Polyglottis Vaticanis, 1982.

. Congregatio Plenarium 20 October. 1981. Prat. Num. 4747/81. Vatican City: 1981.

. Relatio complectens synthesim animadversionum ab Em.mis atque Exc.mis Patribus Commissionis ad novissimum schema Codicis Iuris Canonici exhibitum. cum responsionibus a Secretaria et Consultoribus datis. Rome: Typis Polyglottis Vaticanis, 1981.

. Schema Codicis Iuris Canonici iuxta animadversiones S.R.E. Cardinalium. Episcoporum Conferentiarum. Picasteriorum Curiae Romanae. Universitatum Facultatumque ecclesiasticarum necnon Superiorum Institutorum vitae consecratae reoonitum. Rome: Libreria Editrice Vaticana, 1980.

. Schema Lex Ecclesiae Fundamental. Rome: Typis Polyglottis Vaticanis, 1971.

Potthast, Augustus, ed. Regesta Pontificum Romanorum inde ab anno post Christum natum mxcviii ad annum mccciv. 2 Vols. Graz: Akademische Pruck, 1957.

Sacrosanctum Oecumenicorum Concilium Vaticanum Secundum, Commissio de Episcopis et Pioecesium Regimine. Animadversiones A Concilii Patribus Scripto Exhibitae super Schema Pecreti Pe Cura Animarum. Appendix et Index Generalis. Rome: Typis Polyglottis Vaticanis, no date, unpublished (Archbishop Leo Binz Collection, Archives, Library of the Catholic University of America, Washington, P.C).

. Animadversiones a Concilii Patribus Scripto Exhibitae super Schema Pecreta Pe Cura Animarum. Series Prima. Rome: Typis Polyglottis Vaticanis, no date, unpublished (Archbishop Leo Binz Collection, Archives).

• Summarium Animadversionum et Emendationum quae a Concilii Patribus in Aula Conciliarum propositae sunt vel in scriptis exhibitae super Schema Pecreti de Pastoralis Episcoporum Munere in Ecclesia perdurante tertia sessione Concilii Oecumenici Vaticani II. Rome: Typis Polyglottis Vaticanis, no date, unpublished (Archbishop Leo Binz Collection, Archives).

Schroeder, Henry, ed. Canons and Peces of the Council of Trent. St. Louis: B. Herder, 1941.

Societas Goerresiana. Concilium Tridentinum. Piariorum. Actorum. Epistolarum. Tractatum. nova collectio. 13 Vols. Friburg: Herder, 1901.

AUTHORS

- Abate, Antonio, "Sectio I: Pe suprema Ecclesiae auctoritate." In *Commento al Codice di diritto canonico*. ed. Pio Vito Pinto. Pp. 193-219.
- Abbo, John, and Hannan, Jerome. *The Sacred Canons. A Concise Presentation of the Current Pisciiplinary Norms of the Church*. Rev. ed. 2 Vols. St. Louis: B. Herder Co., 1957.
- Alberigo, Giuseppe. *Lo Sviluppo della Pottrina sui poteri nella Chiesa universale: Momenti essenziali tra il XVI et il XIX secolo*. Rome: Herder, 1964.
- . "La juridiction." *Irenikon* 49 (1976):167-180.
- Alesandro, John. "Title III: The Internal Ordering of Particular Churches." In *The Code of Canon Law: A Text and Commentary*, ed. James Coriden et al. NewYork/Mahwah: Paulist Press, 1985. Pp. 378-414.
- Alfaro, Juan. "Cristo, Sacramento de Pios Padre: La Iglesia, sacramento de Cristo glorificando." *Gregorianum* 48 (1967):5-27.
- Anciaux, Paul. *The Episcopate in the Church*. Translated by Thomas Murray. Staten Island: Alba House, 1965.
- Anderson, Floyd, ed. *Council Pavbook: Vatican II*. 3 Vols. Washington: National Catholic Welfare Conference, 1965-1966.
- Anglican/Roman Catholic International Commission. *An Agreed Statement on Authority in the Church*. Venice 1976. Washington: United States Catholic Conference Publications, 1977.
- Anton, Angel. "Episcoporum Synodus: partes agens totius catholici episcopatus." *Periodica* 57 (1968):495-527.
- Aquilar, Fernando. "The Conference and the Piocese: An Evaluation from Experience." *The Jurist* 48 (1968):402-407.
- Aquinas, Thomas of. *Summa Theologica*. 4 Vols. Ottawa: Typis Catholicis Panamericanus, 1941.
- Arrieta, Juan. "The Active Subject of the Church's Teaching Office (Canons 747-748)." *Studia canonica* 23 (1989):243-256.

Aubert, Robert. Vatican I. Paris: Editions de l'Oriente, 1964.

Auer, Alfons; Biemer, G.; Fink, K.A.; Haag, H.; Kiing, H.; Moller, J.; Neumann, J.; Ratzinger, J.; Rief, J.; Shelke, K.H.; Seckler, M.; and Stockmeier, P. "Limited Term of Office for Bishops?" In *Bishops and People*, ed. Leonard Swidler and Arlene Swidler. pp. 22-38.

Austin, Rodger. "The Particular Church and the Universal Church in the 1983 Code of Canon Law." *Studia canonica* 22 (1988):339-358.

Aymans, Winfried. *Kollegium und Kollegiden Akt im kanonischen Recht*. Munich: Max Hueber Verlag, 1969.

• Pas synodale Element in der Kirchenverfassung. Munich: M. Hueber, 1970.

. "Wesensverständnis und Zuständigkeiten der Bischofskonferenz in CIC von 1983." *Archiv für katholisches Kirchenrecht* 152 (1983):46-75.

Bachofen, Charles Augustine. *A Commentary on the New Code of Canon Law*. 8 Vols. St. Louis: B. Herder Co., 1918.

Badii, Cesare. *Institutiones Iuris Canonici*. 3rd rev. ed. Florence: Libreria Editrice Fiorentina, 1921.

Barauna, Guilherme, ed. Yves Congar, Pirector of the French edition. *L'Eglise de Vatican II. Unam Sanctam* nn. 51 ac. 3 Vols. Paris: Les Editions du Cerf, 1966.

Bassett, William, ed. *The Choosing of Bishops*. Hartford: Canon Law Society of America, 1971.

. "The Office of Episcopal Vicar." *The Jurist* 30 (1970):285-313.

Bauer, Johannes, ed. *Bibeltheologisches Wörterbuch*. 2 Vols. Graz: Verlag Styria, 1967.

Bauer, Norman. "People of God Schema: Clerics-Function versus Call." *Proceedings of the Canon Law Society of America* 42 (1980) :115-123.

Baum, Gregory. "Primacy and Episcopacy: A Theological Reflection." In *Vatican II: The Theological Dimension*. ed. Anthony Lee. Pp. 211 -221.

. "Theological Authority of Vatican II." *The Ecumenist* 3 (1965):89-93.

Baum, Gregory, and Greeley, Andrew, eds. *The Church as Institution*. New Concilium, Vol. 91. New York: Herder and Herder, 1974.

Bellarmino, Roberto. *Opera omnia*. Xisto Sforza, ed. 8 Vols. Naples: C Pedrone Lauriel, 1872.

Belluco, Bartolomeus. *Novissimae ordinariorum locorum facultates: Commentarium in motu-proprio 'Pastorale munus'*. Rome: Pontificum Aethnæum Antonianum, 1964.

Benson, Robert. *The Bishop-Elect. A Study in Medieval Ecclesiastical Office*. Princeton: University Press, 1968.

Berger, Peter. *The Sacred Canopy. Elements of a Sociological Theory of Religion*. Garden City: Doubleday and Co., 1967; Anchor Books, 1969.

Bernhard, Jean. "Commentaire (le motu proprio 'Pastorale munus')". *Revue du droit canonique* 14 (1964):206-216 and 15 (1965):59-72.

. "Les premières normes d'application de quatre décrets du concile: Les motu proprio 'Ecclesiae sanctae' et 'De episcoporum muneribus'." In *Vatican II: La Charge pastorale des évêques*. texte. traduction et commentaires. *Unam Sanctam*. 74. Pp. 359-410. Paris: Les Editions de Cerf, 1969.

Bertrams, Wilhelm. "De analogia quoad structuram hierarchicam inter Ecclesiam universalem et ecclesiam particularem." *Periodica* 56 (1967):267-308.

. "De differentia inter sacerdotium episcoporum et presbyterorum." *Periodica* 59 (1970):185-213.

. "De Episcopo quoad universam Ecclesiam." *Periodica* 55 (1966):153-169.

. "De missione divina et de consecratione episcopali tamquam constitutive officii supremi Ecclesiae pastoris." *Periodica* 65 (1976):187-242.

. "Pe potestate episcopali exercitio personali et collegiali." *Periodica* 53 (1964):455-481.

. "Pe principio subsidiaritatis in iure canonico." *Periodica* 46 (1957):3-65.

. "Pe quaestione circa originem potestatis jurisdictionis episcoporum in concilio Tridentino non resoluta." *Periodica* 52 (1963):458-476.

. *Pe Relatione inter Episcopatum et Primatum: Principia philosophica et theologica quibus relatio iuridica fundatur inter officium episcopale et primatiale*. Rome: Libreria Editrice dell'Universita Gregoriana, 1963.

. "Pe subiecto supremae potestatis Ecclesiae." *Periodica* 54 (1965):490-499.

. "Pe Synodi Episcoporum potestate cooperandi in exercitio potestatis primatialis." *Periodica* 57 (1968):528-549.

. "Pie Einheit von Papst und Bischofkollegium in der Ausübung der Hirtengewalt durch den Trager des Petrusamtes." *Gregorianum* 48 (1967):28-48.

. "Notae aliquae quoad opus recenter editum de potestate Episcoporum in Ecclesiam universalem." *Gregorianum* 46 (1965):343-354.

. *Vicarius Christi-Vicarii Christi: Pe significatione potestatis episcopalis*. Rome: 1964.

Berutti, Christopher. "Litterae apostolicae motu proprio Pauli PP VI datae 'Pe episcoporum muneribus': normae episcopis impertiuntur ad facultatem dispensandi spectantes." *Monitor Ecclesiasticus* 92 (1967):543-580.

Beste, Ulric. *Introductio in Codicem*. 4th ed. Naples: P'Auria Pontificius Editor, 1956.

Betti, Umberto. *La Costituzione dommatica "pastor aeternus" del Concilio Vaticano I*. Rome: Antonianum, 1961.

. La dottrina sull' Episcopato nel Capitolo III della Costituzione dommatica *Lumen gentium*. Rome: Citta Nuova Editrice, no date.

. "Relations entre le pape et les autres membres du college episcopal." In *L'Eglise du Vatican II*. ed. Guilherme Barauna. 3:791-803.

Bevilacqua, Americo. *Pe Episcopi seu Ordinarii: Iuribus ac Obligationibus*. Rome: Pustet, 1921.

Bevilacqua, Anthony. "Some Problems Regarding Episcopal Faculties." *The Jurist* 31 (1971):647-666.

Beyer, Jean. "'Pemandatio' potestatis ordinis: Conamen interpretationis canonis 210." *Periodica* 48 (1959):229-266.

. "Iudex laicus vir vel mulier." *Periodica* 75 (1986):29-60.

. "Pe Legis Ecclesiae Fundamentalibus redactione, natura et crisi." *Periodica* 61 (1972):525-552.

. "Pe natura potestatis regiminis seu iurisdictionis recte in Codice renovata enuntianda." *Periodica* 71 (1982):93-145.

. "Pe potestate ordinaria et delegata animadversiones." *Periodica* 53 (1964):482-502.

. "Pe natura potestatis regiminis seu iurisdictionis recte in Codice renovatione enuntiandi." Prot. Norn. 72/81 in Pontificio Commissio Codicis iuris canonici Recognoscendo. Congregatio Plenaria August 21, 1981. Prot. Num. 4747/81.

Billot, Louis. *Pe Ecclesia Christi*. 3rd ed. Prato: Libreria Giachetti, 1909.

Black, Henry. *Black's Law Dictionary*. 4th rev. ed. St. Paul: West Publishing Co., 1968.

Bodensieck, Julius, ed. *The Encyclopedia of the Lutheran Church*. 3 Vols. Minneapolis: Augsburg Publishing House, 1965.

Bonnet, Piero. "Pirito e potere nel momento originario della 'potestas hierarchia' nella Chiesa: stato della dottrina in una questione canonicamente disputata." *Ius canonicum* 15 (1975):77-158.

Borders, William. "Collegiality in the Local Church." *Origins* 9 (1980):509-513.

Bottoms, A. M. "A Commentary on the Forty Faculties of Pastoral Munus." *The Jurist* 24 (1964):423-440.

Bouesse, Humbert, et al., eds. *L'Eveque dans l'Eglise du Christ*. Lyon: Pesclee de Brouwer, 1963.

Bouix, Pominique. *Tractatus de Episcopo*. 2nd ed. 2 Vols. Paris: Regis Ruffet and Co., 1873.

Bouscaren, T. Lincoln, and Ellis, Adam. *Canon Law. A Text and Commentary*. 3rd rev. ed. Milwaukee: Bruce, 1957.

Brecht, Suso. "Pecree on the Church's Missionary Activity." In *Commentary on the Documents of Vatican II*. ed. Herbert Vorgrimler. 4:87-182.

Brown, Raymond, Ponfried, Karl, and Reumann, John, eds. *Peter in the New Testament*. Minneapolis: Augsburg Publishing House, 1973.

Brown, Raymond. *Priest and Bishop. Biblical Reflections*. Paramus: Paulist Press, 1970.

Buijs, Louis. "Pe potestate episcoporum dispensandi." *Periodica* 56 (1967):88-115, 456-484, 597-639.

. "Litterae apostolicae motu proprio datae quibus facultates et privilegia quaedam episcoporum conceduntur, adnotationes." *Periodica* 53 (1965):285-322.

Burghardt, Walter. "Church Structure: A Theologian Reflects on History." *Proceedings of the Canon Law Society* 33 (1971):11-22.

Cabreras de Anta, Marcelino, et al. *Commentarios alCodigo de Derecho Canonico*. 4 Vols. Madrid: Biblioteca de Autores Cristianos, 1963.

Cance, Adrien. *Le Code de droit canonique*. 8th rev. ed. 4 Vols. Paris: J. Gabalda et Cie., 1950.

Cann, Hilarion. "Changing Emphasis in the Concept of Authority in the Church." *The Jurist* 23 (1963):377-393.

Canon Law Society of America. "Priestly Ministry and Celibacy in the United States: Report of the Symposium on 'The Future Discipline of Priestly Celibacy', Poughlaston, New York, August 19-22, 1971." *The Jurist* 32 (1972):273-289.

- Procedure for the Selection of Bishops in the United States. Hartford: Canon Law Society, 1973.

Cappello, Felix. *Summa iuris canonici*. 4th ed. 3 Vols. Rome: Gregorian University, 1945.

- *Summa iuris publici ecclesiastici*. 6th ed. Rome: Gregorian University, 1954.

Carrier, Herve, and Pin, Emile, eds. *Essais de Sociologie religieuse*. Paris: Spes, 1967.

Castelli, Enrico, ed. *L'Infaillibilite*. Paris: Auber, 1970.

Castello Lara, Rosalio. "La communion ecclesiale dans le nouveau Code de Droit Canonique." *Communicationes* 16 (1984):242-266.

Cavagnis, Felix. *Institutiones iuris publici ecclesiastici*. 3rd rev. ed. 2 Vols. Rome: Pesclee, Lefebvre et Cie,, no date.

Cecconi, Eugene. *Histoire de Concile du Vatican*. 4 Vols. Paris: Libraire Victor Lecoffre, 1887.

Celeghin, Adriano. "Sacra potestas: quaestio post conciliaris." *Periodica* 74 (1985):165-225.

Celvo-Alvarez, Joaquin, ed. *Manuel de derecho canonico*. Pamplona: University of Navarra, 1988.

Cicognani, Amieto. *Canon Law*, authorized English version by Joseph O'Hara and Francis Brennan. 2nd rev. ed. Westminster: Newman Bookshop, 1934.

Claes-Bouaert, Ferdinand, s.v. "Eveque." *Pictionnaire de droit canonique*. Vol. 7, pp. 569-589. Edited by Raoul Naz. 7 Vols. Paris: Letouzey et Ane, 1935-1965.

Cleary, Joseph. Canonical Limitations on the Alienation of Church Property. A Historical Synopsis and Commentary. Canon Law Studies, 100. Washington: Catholic University Press, 1936.

Cocchi, Guido. Commentarium in Codicem iuris canonici. 5th rev. ed. 8 vols. Rome: Marietti, 1938.

Colombo, Carlo. "The Hierarchical Structure of the Church." In Vatican II: An Interfaith Appraisal. International Theological Conference University of Notre Dame: March 20-26, 1966. Edited by John Miller. South Bend: Notre Dame Press, 1966. Pp. 208-218.

Colson, Jean. L'Episcopat catholique. Collegialite et Primauté dans les trois premiers siècles de l'Eglise. Unam Sanctam, n. 43. Paris: Les Editions du Cerf, 1963.

—j. L'Eveque dans les communautés primitives. Unam Sanctam, n. 21. Paris: Les Editions du Cerf, 1951.

. "Le rôle du presbyterium et de l'évêque dans le contrôle de la liturgie chez saint Ignace d'Antioche et le rôle de Rome au second siècle." Paroisse et Liturgie 47 (1965):15-24.

Commission Report to the Vatican. "A Resolution of the Situation in Seattle." Qjjgjs. 17 (1987):37-41.

Composta, Pario. "Teologia del diritto divino positive la 'Potestas Iurisdictionis'." Apollinaris 45 (1972) :210-260.

. "Titulus III: De ministris sacris seu de clericis." In Commento al codice di diritto canonico. ed. Pio Vito Pinto. Pp. 138-172.

Comyns, Joseph. Papal and Episcopal Administration of Church Property. Canon Law Studies, 147. Washington: Catholic University Press, 1942.

Congar, Yves, and Pupuy, Bernard. L'Episcopat et L'Eglise universelle. Unam Sanctam, n. 39. Paris: Les Editions du Cerf, 1962.

Congar, Yves. "Bulletin d'Ecclesiologie (1939-1946): la théologie et l'histoire des pouvoirs hiérarchiques." Revue des Sciences Philosophiques et Théologiques 31 (1947):272-296.

. La Collegialité épiscopale. histoire et théologie. Paris: Les Editions du Cerf, 1965.

. *Le Concile de Vatican II: Son Eglise Peuple de Dieu et Corps du Christ. Theologie Historique*, n. 71. Paris: Beauchesne, 1984.

. "Pe la communion des eglises a une ecclesiology de l'Eglise universelle." In *L'Episcopat et L'Eglise universelle, Unam Sanctam*, 39, pp. 227-260. Edited by Yves Congar and Bernard Poupuy. Paris: Les Editions du Cerf, 1962.

. *Jalons pour une Theologie du lai'cat. Unam Sanctam*, n. 23. Paris: Les Editions du Cerf, 1953.

. "My Pathfindings in the Theology of the Laity and Ministries." *The Jurist* 32 (1972):169-188.

. "Renewal of the Spirit and Reform of the Institution." In *Ongoing Reform of the Church. The New Concilium*, 73, pp. 39-49. Edited by Alois Muller and Norbert Greinacher. New York: Herder and Herder, 1972.

. *The Mystery of the Church*. Translated by Geoffrey Chapman. 2nd rev. ed. Baltimore: Helicon Press, 1965.

. *Vatican II. Le Concile au jour le jour*. 4 vols. Paris: Les Editions du Cerf, 1963-1966.

Coriden, James. "Book III, The Teaching Office of the Church [cc. 747-833]." In *The Code of Canon Law: A Text and Commentary*, ed. James Coriden et al. Pp. 545-589.

, ed. *The Case for Freedom: Human Rights in the Church*. Washington: Corpus Books, 1969.

. "Shared Authority: Rationale and Legal Foundation." In *Shared Responsibility in the Local Church*, ed. Charles Curran and George Pyer. Pp. 59-70.

, ed. *We. the People of God. A Study of the Constitutional Government of the Church*. Huntington: Sunday Visitor Press, 1967.

Coriden, James, Green, Thomas, and Heintschel, Donald, eds. *The Code of Canon Law: A Text and Commentary*. New York/Mahwah: Paulist Press, 1985.

Coronata, Matthaeus Conte a. *Compendium iuris canonici*. 3rd ed. 2 Vols. Rome: Marietti, 1944.

. *Institutiones iuris canonici*. 4th rev. ed. 3 Vols. Rome: Marietti, 1949.

. *Ius publicum ecclesiasticum*. Rome: Marietti, 1924.

Crowley, Leonard. "Reflections of a Bishop on Religious Communities." *Review for Religious* 38 (1979):21-27.

Cuneo, J. James. "The Power of Jurisdiction: Empowerment for Church Functioning and Mission Pistinct from the Power of Orders." *The Jurist* 39 (1979):183-219.

Cuneo, Joseph. *Concepts of Ecclesiastical Power in Recent Studies Edited by the Canon law Society of America; Reflections Toward Understanding Jurisdiction for Functioning in the Church*. Rome: Pontificia Universitas Gregoriana, 1975.

Curran, Charles and Pyer, George, eds. *Shared Responsibility in the Local Church*. A project of the Catholic Theological Society of America, sponsored by the National Federation of Priests' Councils in conjunction with Chicago Studies. 1970.

Cuschieri, Andrew. "The Conept of Public Authority." In *Introductory Readings in Canon Law*. Roman Catholic Studies, vol. 3. Lewiston: Edwin Mullen Press, 1988. Pp. 183-224.

P'Annibale, Joseph. In *Constitutionem Apostolicae Sedis qua Censurae latae sententiae Limitantur Commentarii*. Prato: Libreria Giachetti, 1894.

Pejaifve, Georges. "La collegialite episcopale dans la tradition latine." In *L'Eglise de Vatican II*. ed. Guilherme Barauna. 3:871-890.

PeLetter, Prudentius. "Primacy and Episcopacy: Poctrinal and Practical Implications." In *Vatican II: The Theological Pimension*. ed. Anthony Lee. Pp. 222-235.

de Lubac, Henri. *Catholicisme. Les Aspects sociaux du doome*. Unam Sanctam, n. 3. 5th rev. ed. Paris: Les Editions du Cerf, 1952.

- . Paradox et Mystere de l'Eglise. Paris: Montaigne, 1967.
- . The Splendor of the Church. Translated by Michael Mason. New York: Sheed and Ward, 1956.
- Penis, Jacques. "L'Exercice du pouvoir de dispense des Pioresains depuis Vatican II." *L'Annee canonique* 13 (1969):65-78.
- PePaolis, Velasio. "Natura e funzione del foro interno." In *Investigationes Theologico-Canonicae*. Pp. 115-142. Rome: Gregorian University, 1978.
- Peutsch, Bernard. *Jurisdiction of Pastors in the External Forum*. Canon Law Studies, 378. Washington: Catholic University Press, 1957.
- de Vries, Wilhelm. "The Origin of the Eastern Patriarchates and Their Relationship to the Power of the Pope." *One in Christ* 2 (1966):50-69.
- Pougherty, T. Pavid. *The Vicar General of the Episcopal Ordinary*. Canon Law Studies, 447. Washington: Catholic University Press, 1966.
- Poyle, Thomas. "Title VII: Marriage [cc. 1055-1165]." In *The Code of Canon Law: A Text and Commentary*, ed. James Coriden et al. Pp. 737-833.
- Pulles, Avery. *Models of the Church*. Garden City: Poubleday and Co., 1974.
- "The Theologian and the Magisterium." *Proceedings of the Catholic Theological Society of America* 31 (1976):235-246.
- . "What is the Role of a Bishops' Conference?" *Origins* 17 (1988):789-796.
- Puval, Leon-Etienne, et al. *L'Eglise: Constitution "Lumen gentium"*. Mame: Vivre le Concile, 1965.
- Elsesser, Suzanne. "Full-Time Lay Ministers in the Church." *Origins* 10 (1980):145-151.
- Empie, Paul, Murphy, T. Austin, and Burgess, Joseph, eds. *Teaching Authority and Infallibility in the Church. Lutherans and Catholics in Pialogue*, n. VI. Minneapolis: Augsburg Publishing House, 1978.

Eno, Robert. "Shared Responsibility in the Early Church." In *Shared Responsibility in the Local Church*, ed. Charles Curran and George Pyer. Pp. 3-16.

Ercole, Giuseppe. *Communio-Collegialita-Primato e sollicitudo omnium Ecclesiarum dai vangeli a Costantino*. Rome: Herder, 1964.

Estevez, Jorge. "The Constitution on the Church: *Lumen Gentium*." In *Vatican II: An Interfaith Appraisal*. International Theological Conference University of Notre Dame: March 20-26, 1966. Edited by John Miller. South Bend: Notre Dame Press, 1966. Pp. 101-122.

Facultate Historiae Ecclesiasticae, ed. *Archivum historiae pontificiae*. Rome: Universitate Gregoriana, 1963 -.

Falco, Mario. *La Codificazione del diritto canonico*. Milan: Fratelli Treves, 1921.

Feiner, Johannes. "The Decree on Ecumenism: Commentary on the Decree." In *Commentary on the Documents of Vatican II*. ed. by Herbert Vorgrimler. 2:57-164.

Ferrante, Joseph. *Summa iuris constitutionalis ecclesiae*. Rome: Officium Libri Catholici, 1964.

Ferrara, Vincenzo. "Il Sinodo dei Vescovi: Ipotesi e realtà. Natura teologico-giuridica del Sinodo." *Apollinaris* 42 (1969):491-556.

Flors, Juan, ed. *La Potestad de la Iglesia*. *Trabajos de la VII Semana de Derecho canonico*. Barcelona: 1960.

Fogliasso, Emilio. s.v. "Exemption canonique." In *Dictionnaire de droit canonique*. Vol. 5:646-665. Edited by Raoul Naz. 7 Vols. Paris: Letouzey et Ane, 1935-1965.

Foley, Daniel. *The Synod of Bishops: Its Canonical Structure and Procedures*. *Canon Law Studies*, 481. Washington: Catholic University Press, 1973.

Franzelin, John. *De ecclesia Christi*. Rome: Typographia Polyglotta, 1887.

Gagnebat, Rosarius. "De duplici subiecto unice potestatis supremae." *Acta Congressus Internationalis de theologia Concilii Vaticani II Romae diebus 26 septembris-1 octobris 1966 celebrati*. Rome: Typis Polyglottis Vaticanis, 1968. Pp. 118-128.

Gallen, Joseph. "Canon Law for Religious after Vatican II." Review for Religious 36 (1977) :133-146.

Garcia Guerrero, Francisco. El decreto sobre residencia de los Obispos en la tercera asamblea del concilio Tridentino. Cadiz: Imprenta Sucesor de M.Alvarez, 1943.

Gasparri, Pietro. Tractatus canonicus de sacra ordinatione. 2 vols. Paris: Pelhomme and Briquet, 1893.

George, Joseph. The Principle of Subsidiarity-With Special Reference to Its Role in Papal and Episcopal Relations in the Light of Lumen Gentium. Canon Law Studies, 463. Washington: Catholic University Press, 1968.

Ghirlanda, Gianfranco. Hierarchica communio. Analecta Gregoriana, 216. Rome: Gregorian University, 1980.

. "Pe natura, origine et exercitio potestatis regiminis iuxta novum codicem." Periodica 74 (1985):109-164.

Gilbert, Edward. "Title VI: Orders [cc. 1008-1054]." In The Code of Canon Law: A Text and Commentary, ed. James Coriden et al. Pp. 713-736.

Gilbert, Jean. "Les pretres." In L'Eglise de Vatican II. ed. Guilhrme Barauna. 3:915-941.

Gill, Joseph. The Definition of the Primacy of the Pope in the Council of Florence." Hevthrop Journal 2 (1961):14-29.

Gomes Marques, Antonio. Obispo Piocesano na Genese do "Christus Pominus". Pamplona: University of Navarre, 1976.

Gonzalez, Casimiro, ed. Commentarios a la constitucion sobre la Iglesia. Madrid: Biblioteca de Autores Cristianos, 1966.

Gordon, Ignatius. "Constitutio de S. Liturgia et canones 1256-1257." Periodica 54 (1965):89-140.

Graham, George. "The Powers of Bishops in Recent Pocuments." The Jurist 28 (1968):425-445.

Granfield, Patrick. The Limits of the Papacy: Authority and Autonomy in the Church. New York: The Crossroads, 1987.

Gregory, Donald. *The Pauline Privilege: An Historical Synopsis and Commentary*. Canon Law Studies, 68. Washington: Catholic University, 1931.

Green, Thomas. "Book VI: Sanctions in the Church [cc. 1311-1399]." In *The Code of Canon Law: A Text and Commentary*, ed. James Coriden et al. Pp. 891-942.

. "Critical Reflections on the Schema of the People of God." *Studia canonica* 14 (1980):235-322.

. "The Diocesan Bishop in the Revised Code: Some Introductory Reflections." *The Jurist* 42 (1982):320-349.

. "Persons and Structures in the Church: Reflections on Selected Issues in Book II." *The Jurist* 45 (1985):24-94.

. "Section II: Particular Churches and Their Groupings [Canons 368-572]." In *The Code of Canon Law: A Text and Commentary*, ed. James Coriden et al. Pp. 311-349.

. "Rights and Duties of Diocesan Bishops." *Proceedings of the Canon Law Society of America* 45 (1983):18-36.

Griffin, Bertram. "National Church Structures." In *Code. Community. Ministry: Selected Studies for the Parish Minister Introducing the Revised Code of Canon Law*. Edited by James Provost. Washington: Canon Law Society of America, 1983. Pp. 48-52.

Groot, Joannes. "Aspects Horizontaux de la collegialite." In *L'Eglise de Vatican II*, ed. by Guilherme Barauna. 3:805-828.

Grootaers, Jan, ed. *Primaute et collegialite. Le dossier de Gerard Philips sur la Nota explicativa praevia*. Leuven: University Press, 1980.

Hajjar, Joseph. "La collegialite episcopale dans la tradition orientale." In *L'Eglise de Vatican II*. ed. Guilherme Barauna. 3:847-870.

Hamel, Jean-Robert. "Une chancellerie apres Vatican II." *Studia canonica* 12 (1978):81-91.

Hamer, Jerome. *The Church Is a Communion*. Translated by Ronald Matthews. New York: Sheed and Ward, 1964.

. *To Preach the Gospel: The First Duty of the Bishops. Reflections on the Episcopal Magisterium.* Washington: USCC Publications, 1979.

Harris, Peter. "Episcopate and Primacy." *Clergy Review* 49 (1964):489-514.

Haydt, John. *Reserved Benefices.* Canon Law Studies. 161. Washington: Catholic University Press, 1942.

Heintschel, Donald. *The Medieval Concept of an Ecclesiastical Office.* Canon Law Studies, 363. Washington: Catholic University Press, 1956.

Hemrick, Eugene. "Church Ministries: The Need to Refine Roles." *Origins* 10 (1980):151-154.

Herranz, Julian. "The Juridical Status of the Laity: The Contribution of the Conciliar Documents and the 1983 Code of Canon Law." *Communicationes* 17 (1985):287-315.

. "The Personal Power of Governance of the Diocesan Bishop." *Proceedings of the Canon Law Society of America* 49 (1987) :16-34.

. "Le statut juridique des laïcs: Rapport des documents conciliaires et du Code de droit canonique." *Studia canonica* 19 (1985):229-257.

Heston, Edward. "Present Organizational Design and Structure of the Roman Catholic Church." In *We, the People of God. A Study of Constitutional Government for the Church.* Edited by James Coriden. Huntington: Our Sunday Visitor Press, 1968. Pp. 29-47.

Hickey, James. "The Bishop as Teacher." In *The Ministry of Bishops: Papers from the Collegeville Assembly.* Washington: USCC Publications, 1982. Pp. 15-20.

Hickey, John. *Irregularities and Simple Impediments in the New Code of Canon Law.* Canon Law Studies, 7. Washington: Catholic University, 1920.

- Hill, Richard. "An Overview of Mutuae Relationes." In *Code. Community. Ministry: Selected Studies for Parish Ministers Introducing the Revised Code of Canon Law*. Edited by James Provost. Washington: Canon Law Society, 1983. Pp. 81-85.
- Hill, Richard. "Title VIII: The Power of Governance [cc. 129-144]." In *The Code of Canon Law: A Text and Commentary*, ed. James Coriden et al. Pp. 92-97.
- Hoeck, James. "The Decree on the Eastern Catholic Churches." In *Commentary on the Documents of Vatican II*. ed. Herbert Vorgrimler. 1:307-332.
- Holstein, Henri. *Hierarchy and People of Pious Obedience*. Paris: Beauchesne, 1970.
- Huels, John. "Another Look at Lay Jurisdiction." *The Jurist* 41 (1981):59-80.
- Huerga, Alvaro. "The Bishop in His Diocese." In *Vatican II: The Theological Dimensions*. ed. Anthony Lee. Pp. 236-261.
- Huizing, Peter. "The Sacramental Structure of Church Order and Its Implications." *The Jurist* 32 (1972):479-493.
- Hunthausen, Raymond. "Archbishop Hunthausen to the U.S. Bishops." *Origins* 16 (1988):401-405.
- _____. "Authority of Seattle's Auxiliary Bishop." *Origins* 16 (1988):249-252.
- International Theological Commission. *Theses on the Relationship between the Ecclesiastical Magisterium and Theology* (June 6, 1976). Commentary by Otto Semmelroth and Karl Lehmann. Washington: USCC Publications Office, 1976.
- Jedin, Hubert. *A History of the Council of Trent*. Translated by Ernest Graf. 2 Vols. St. Louis: Herder, 1957.
- John Paul II. "Code and Council." *The Jurist* 43 (1983):267-272.
- _____. *Letter of the Supreme Pontiff John Paul II to All the Priests of the Church on the Occasion of Holy Thursday 1979*. Washington: USCC Publications Office, 1979.

- Jone, Herbert. *Commentarium in codicem iuris canonici*. 3 Vols. Paderborn: Schoningh, 1950.
- Jubany, Narcisso. "Les religieux, collaborateurs du ministere pastoral des eveques." in *Vatican II; La Charge Pastorale des eveques*. texte, traduction et commentaires. *UnamSanctam* 74. Pp. 297-327. Paris: Les Editions du Cerf, 1969.
- Jukes, John. "A Commentary on the 'Notae Pirectivae' for the mutual relations between Bishops and Religious in the Church." *Clergy Review* 63 (1978):472-477 and 64 (1979):21-31.
- Jungmann, Josef. "Constitution on the Liturgy." In *Commentary on the Documents Of Vatican II*, ed. Herbert Vorgrimler. 1:1-87.
- Kelly, Walter. "The Authority of Liturgical Laws." *The Jurist* 28 (1968):397-424.
- Kennedy, Robert T. "Canonical Tradition and Christian Rights." In *The Case for Freedom: Human Rights in the Church*. Edited by James Coriden. Washington: Corpus Books, 1969. Pp. 91-106.
- . "The Early Republic's Challenge to Catholic Church Governance: Bicentennial Reflections of an American Canonist." *Proceedings of the Canon Law Society of America* 38 (1976):1-18.
- . "Shared Responsibility in Ecclesial Decision Making." *Studia canonica* 14 (1980):5-24.
- Kenyon, Roger. "A Compendium of Episcopal and Presbyteral Powers of Dispensation." *The Jurist* 38 (1978):190-202.
- Kinast, Robert. "The Laity, A Theological Perspective." In *To Build and Be Church*. Lay Ministry Resource Packet. Part I. The Vision. Edited by the NCCB Committee on the Laity. Washington: USCC Publications. Pp. 5-8.
- Klostermann, Ferdinand. "The Decree on the Apostolate of the Laity." In *Commentary on the Documents of Vatican II*. ed. Herbert Vorgrimler. 3:273-344.
- Komanchak, Joseph. "A New Law for the People of God: A Theological Evaluation." *Proceedings of the Canon Law Society of America* 42 (1980) :14-43.

Kramer, Peter. Pienst Vollmacht in der Kirche. Eine rechtstheologische **Untersuchung zur Sacra Potestas-Lehre des 11. Vatikanischen, Trier** Theologische Studien, 28. Trier: Paulinus Verlag, 1973.

Kress, Robert. "The Church as Communio: Trinity and Incarnation as the Foundations of Ecclesiology." *The Jurist* 36 (1976):127-158.

Kung, Hans. *The Church*. Translated by Ray and Rosaleen Ockenden. New York: Sheed and Ward, 1967.

Kutner, Raymond. *The Development. Structure and Competence of the Episcopal Conference*. Canon Law Studies, 480. Washington: Catholic University Press, 1972.

LaPue, William. "Pe episcoporum munribus." *The Jurist* 27 (1967):413-425.

Lambruschini, Ferdinando. "Disputatio de potestate vicaria Romani pontificis in matrimonium infidelium." *Apollinaris* 26 (1935):175-197.

Laurentin, Rene. L'enjeu du Concile. Bilan de la premiere session- Paris: Editions du Seuil, 1963. **Bilan de la deuxieme session.** Paris: Editions du Seuil, 1964. **Bilan de la troisieme session.** Editions du Seuil, 1965.

Lecuyer, Joseph. "Pecree on the Ministry and Life of Priests: History of the Pecree." In *Commentary on the Documents of Vatican II*. ed. Herbert Vorgrimler. 4:183-209.

. "L'Episcopat comme sacrement." In *L'Eglise de Vatican II*. ed. by Guilherme Barauna. 3:741-762.

. "La triple charge de l'evêque." In *L'Eglise de Vatican II*. ed. by Guilherme Barauna. 3:891-913.

Lee, Anthony, ed. *Vatican II. The Theological Dimension*. Province of St. Joseph: Thomist Press, 1963.

Lefebvre, Charles. "Pe episcoporum muneribus." *L'Annee canonique* 11 (1967):111-121.

Lega, Michael. *Commentarius in iudicia ecclesiastica iuxta Codicem iuris canonici*. Ed. Victorio Bartocetti. 3 Vols. Rome: Anonima Libreria Cattolica Italiana, 1950.

Legrand, Hervé-Marie. "The Revaluation of Local Churches: Some Theological Implications." *Concilium* 71 (1972):53-64.

. "Nature de l'église particulière et rôle de l'évêque dans l'église." In *Vatican II: La Charge pastorale des évêques*. Texte. traduction et commentaires. *Unam Sanctam* 74. Pp. 103-146. Paris: Les Editions du Cerf, 1969.

Linnan, John. "Dogmatic Constitution on the Church *Lumen Gentium*. 21 November 1964, and the Decree on the Pastoral Office of Bishops in the Church *Christus Dominus*. 28 October 1965." In *Vatican II and Its Documents: An American Reappraisal*. Theology and Life Series, 15. Edited by Timothy O'Connell. Wilmington: Michael Glazier, 1986. Pp. 39-61.

Löhrer, Magnus. "La Hierarchie au Service du Peuple Chrétien." In *L'Eglise de Vatican II*. ed. by Guilherme Barraza. 3:723-740.

Lynch, John. "The Changing Role of the Bishop: A Historical Survey." *The JJJJM* 39(1979):289-312.

. "Co-Responsibility in the First Five Centuries: Presbyteral Councils and the Election of Bishops." *The Jurist* 31 (1971):14-53.

. "Chapter IV: The Loss of the Clerical State [cc. 290-293]." In *The Code of Canon Law: A Text and Commentary*, ed. James Coriden et al. Pp. 229-239.

. "Some Landmarks in the Development of Papal Reservations up to 1400 A.D." *The Jurist* 30 (1970):145-181.

Lyonnet, Stanislas. "La Collegialité épiscopale et ses fondements scripturaux." In *L'Eglise de Vatican II*. ed. Guilherme Barraza. 3:829-846.

MacRae, George. "Shared Responsibility-Some New Testament Perspectives." In *Shared Responsibility in the Local Church*, ed. Charles Curran and George Pyer. Pp. 3-16.

Maida, Adam and Cafardi, Nicholas. *Church Property. Church Finances, and Church-Related Corporations. A Canon Law Handbook*. St. Louis: Catholic Health Association, 1984.

Mallet, Joseph. "Piocesan Structure and Governance." *Proceedings of the Canon Law Society of America* 42 (1980):151-160.

Malone, James. "The Church: Its Strengths and Questions." *Origins* 16 (1986):393-398.

Manzanares, Julio. "Pe schemate legis Ecclesiae Fundamentalism in Colloquio Hispano-Germanico adnotationes." *Periodica* 61 (1972):647-662.

Maritain, Jacques. *Pe l'Eglise du Christ, la personne de l'Eglise et son personnel*. Paris: Pescleede Brouwer, 1970.

Martin, Luciano. "Potestad parroquial." In *La potestad de la iglesia (Análisis de su aspecto jurídico)*. Trabajos de la VII Semana de derecho canónico. Barcelona: Juan Flores, 1960. Pp. 99-147.

May, John. "Archbishop May on Episcopal Conference's Status." *Origins* 18 (1988):113-117.

McPonough, Elizabeth. "Laity and the Inner Workings of the Church." *The JjilM* 47 (1987):228-245.

. "Relationships between Bishops and Religious: Mutual Rights and Puties." *Bulletin on Issues of Religious Law* 5 (October, 1989):1-8.

. "Separation of Members from the Institute: Canons 684-709." In *Religious Institutes. Secular Institutes. Societies of the Apostolic Life. A Handbook on Canons 573-746*. Edited by Jordan Hite et al. Collegeville: Liturgical Press, 1985. Pp. 221-274.

McManus, Frederick. "Introduction to Book IV: The Office of Sanctifying in the Church [cc. 834-1253]." In *The Code of Canon Law: A Text and Commentary*, ed. James Coriden. Pp. 591-604.

. "The Juridical Power of the Bishop in the Constitution on the Sacred Liturgy." *Concilium* 2 (1965):33-49.

. "The Scope of Authority of Episcopal Conferences." In *The Once and Future Church: A Communion of Freedom*. Edited by James Coriden. New York: Alba House, 1971. Pp. 129-178.

McNamara, Kevin. "The First Vatican Council." In *Vatican II: The Constitution on the Church*, ed. Kevin McNamara. Pp. 36-50.

. "From Mbhlerto Vatican II: The Modern Movement in Ecclesiology." In *Vatican II: The Constitution on the Church*, ed. Kevin McNamara. Pp. 9-35.

. "The Prefatory Note of Explanation." In *Vatican II: The Constitution on the Church*, ed. Kevin McNamara. Pp. 357-361.

Metz, Rene. "Le statut des laTcs, et celui des femmes en particulier, dans l'Eglise aujourd'hui." *Studia canonica* 12 (1978):125-144.

Meyendorff, Jean, ed. *La Primaute de Pierre dans l'Eglise Orthodoxe*. Neuchatel: Editions Pelachaux et Niestle, 1960.

Michiels, Gommar. *Pe potestate ordinaria et deleoata*. Paris: Pesclee, 1950.

Migne, Jacques, ed. *Patrologiae cursus completus [Series latina]*. Paris: 1844-1882.

Moeller, Charies. "History of Lumen Gentium's Structure and Ideas." In *Vatican II: An Interfaith Appraisal*. International Theological Conference, University of Notre Pame: March 20-26, 1966. Notre Pame: Notre Pame Press, 1966. Pp. 123-152.

Moncion, Jean. "L'Eglise, Society hierarchique selon le Me concile du Vatican." *Studia canonica* 8 (1974):133-161.

Montero y Gutierrez, Eloy. *Perecho publico ecclesiastico y normas generales*. 2nded. 2 Vols. Madrid: Imprenta Saez, 1948.

Morgante, Marcello. *La Chiesa particolare nel Codice di diritto canonico*. Comento oiuridico-pastorale. Turin: Edizioni Paoline, 1987.

Morrissey, Francis. *The Canonical Significance of Papal and Curial Pronouncements*. Washington: Canon Law Society of America, undated.

. "New Canon Law on Temporal Goods Reflects Vatican M's Influence." In *The New Canon Law: Perspectives on the Law*. Religious Life, and the Laitv. St. Louis: Catholic Health Association, 1983. Pp. 49-61.

. "The Significance of Particular Law in the Proposed New Code of Canon Law." Proceedings of the Canon Law Society of America 43 (1981):1-17.

Morsdorf, Klaus. "Pe conceptu officii ecclesiastici." Apollinaris 23 (1960):75-87.

. "The Pecree on the Bishops' Pastoral Office in the Church." In Commentary on the Documents of Vatican II. ed. Herbert Vorgrimler. 2:165-271.

. "The Piosesan Bishop's Power of Dispensation according to the Pecree 'Christus Pominus'. Article 8b." In Commentary on the Documents of Vatican II. ed. Herbert Vorgrimler. 2:220-229.

. "Einheit in der Zweiheit, Per hierarchische Aufbau der Kirche." Archiv fur Katholisches Kirchenrecht 134 (1965):80-88.

. "Pie Entwicklung der Zweigliedrigkeit der kirchlichen Hierarchie." Muenchener Theoloische Zeitschrift 3 (1952):1-16.

. "Pie hierarchische Struktur der Kirchenverfassung." Seminarium 6 (1966):403-416.

. Lehrbuch des Kirchenrechts auf Grund des Codex iuris canonici. Paderborn: Schoeningh, 1964-1967.

. "Munus regendi et potestas iurisdictionis." Acta Conventus Internationalis Canonistarum. Pontificia Commissio codici iuris canonici recognoscendo. Rome: Typis Polyglottis Vaticanis, 1970. Pp. 199-211.

. "Neue Vollmachten und Privilegien der Bischbfe." Archiv fur katholische Kirchenrecht 133 (1964):82-101.

. "Per Rechtscharakter der iurisdictio fori interni." Muenchener Theoloische Zeitschrift 8 (1957):161-173.

. "Pe sacra potestate." Apollinaris 40 (1967):41-57.

. "Pie Unmittelbarkeit der papstlichen Primatialgewalt in Licht© des kanonischen Rechtes." In Einsicht und Glaube. Festschrift fur Gottlieb Soenhagen. Freiburg-Basel-Wien: 1962. Pp. 464-478.

. "Weihgewalt und Hirtengewalt in Abgrenzung und Bezug." Miscellanea Comillas 16 (1951):95-110.

Morturi, Luciana. *Consacrazione episcopale e collegialita*. Florence: Vallecchi Editore, 1969.

Mostaza Rodriguez, Antonio. "Forum intemum-Forum externum." *Revista Espanola de derecho canonico* 23 (1967):253-331; 24 (1968):339-364.

Muhlen, Herbert. *Una mvstica persona: die Kirche als das Mvsterium der Identitat des heilioen Geistes in Christus und den Christen: Eine Person in vielen Personen*. 2 Vols. Schoening. 1964: *L'Esprit dans l'Eglise*. Translated by A. Liefoghe, M. Massart and R. Virion. 2 vols. Paris: Les Editions du Cerf, 1969.

Murphy, Francis. *Legislative Powers of the Provincial Council: A Historical Synopsis and a Commentary*. Canon Law Studies, 257. Washington: Catholic University, 1947.

Murray, John Courtney. "Freedom, Authority, Community." In *We. the People of God. A Study of the Constitutional Government of the Church*. Edited by James Coriden. Huntington: Sunday Visitor Press, 1967. Pp. 145-157.

Myers, John. "BookV: The Temporal Goods of the Church [cc. 1254-1310]." In *The Code of Canon Law: A Text and Commentary*, ed. James Coriden et al. Pp. 859-890.

National Conference of Catholic Bishops. *On Pue Process*. Rev. ed. Washington: USCC Publications Office, 1972.

- *Procedural Norms for the Processing of Formal Marriage Cases*. Washington: USCC Publications Office, 1970.

- . "Response to Vatican Working Paper on Bishops' Conferences." *Origins* 18 (1988):397-402.

Navarrete, Urbano. "Potestas vicaria ecclesiae evolutio historica conceptus atque observationes attenta doctrina Concilii Vaticani II." *Periodica* 60 (1971):415-486.

Naz, Raoul, ed. *Traite de droit canonique*. 5 Vols. Paris: Letouzey et Ane, 1946.

Neumann, Johannes. "Election and Limitation of Terms of Office in Canon Law." In *Bishops and People*, ed. Leonard Swidler and Arlene Swidler. Pp. 54-70.

. Synodales Prinzip: Per oressere Spielraum im
Kirchenrecht. Freiburg: Herder, 1973.

Neuner, Josef. "Pecree on Priestly Formation." In Commentary on the
Pocuments of Vatican II. ed. by Herbert Vorgrimler. 2:371-404.

Niedergeses, James. "Nashville: Rights, Structures-Governing a Local
Church." OigJns9(1980):637-641.

O'Brien, Joseph. The Exemption of Religious in Church Law. Milwaukee:
Bruce, 1943.

O'Connor, James. "Trends in Canon Law: The Question of Penalties." *Studia
canonica* 3 (1969):209-237.

O'Connor, John. "The Bishop as Teacher of Faith." In *Evangelization in the
Culture and Society of the United States and the Bishop as Teacher of
the Faith*. Washington: USCC Publications, 1989. Pp. 18-31.

O'Hara, Ellen. "Norms Common to All Institutes of Consecrated Life: Canons
573-606." In *Religious Institutes. Secular Institutes. Societies of the
Apostolic Life. A Handbook on Canons 573-746*. Edited by Jordan Hite
etal. Collegeville: Liturgical Press, 1985. Pp. 31-58.

Onclin, William. "The Church Society and the Organzation of Its Powers." *The
J_uuisi*27(1967):1-17.

. "Collegiality and the Individual Bishop." Translated by
Theodore Weston. *Concilium* 8 (1965):81-91.

. "Les Eveques et l'Eglise universelle." In *Vatican II: La
Charge pastorale des Sveques. Texte. traduction et commentaires*. Unam
Sanctam 74. Pp. 87-101. Paris: Les Editions du Cerf, 1969.

. "La genese du decret, le titre et la structure du decret." In
*Vatican II: La Charge pastorale des 6veques. Texte. traduction et
commentaires. Unam Sanctam* 74. Pp. 73-83. Paris: Les Editions du
Cerf, 1969.

. "The Power of Pecision in the Church at the Supra-
Piocesan Level." *Studia canonica* 4 (1970):279-296.

- Orsy, Ladislav. "Collegiality: Its Meaning." *America* 112 (1965):705-709.
- . "A Theology of the Local Church and Religious Life." *Review for Religious* 36 (1977):665-682
- Ottaviani, Alfredo. *Compendium iuris publici ecclesiastici*. 4th rev. ed. Rome: Typis Polyglottis Vaticanis, 1954.
- . *Institutiones iuris publici ecclesiastici*. 3rd rev. ed. 2 Vols. Rome: Typis Polyglottis Vaticanis, 1947.
- Padovano, Anthony. "Ecclesiastical Authority and the Priests' Senate." In *Shared Responsibility in the Local Church*, ed. Charles Curran and George Pyer. Pp. 91-110.
- . "A Theology of Church Government." *Proceedings of the Canon Law Society of America* 33 (1971):23-27.
- Page, Roch. *The Píocesán Pastoral Council*. Translated by Bernard Prince. Paramus: Newman Press, 1970.
- . *Les Eglises particulieres*. Tome I. Montreal/Paris: Editions Paulines and Mediaspaul, 1985.
- Parento, Pietro. *Saggio di una ecclesiologia alla luce del Vaticano secondo*. Rome: Città Nuova Editrice, 1968.
- Pazhayampallil, Thomas. *An Outline of Public Ecclesiastical Law*. Madras: Siga, 1971.
- Penna, Joseph. *The Episcopal Vicar*. *Canon Law Studies*, 475. Washington: Catholic University of America, 1971.
- Pennacchi, Joseph. *Commentaria in constitutionem Apostolicae Sedis qua censurae latae sententiae limitantur*. 2 Vols. Rome: Typographia Polyglotta, 1883.
- Pesendorfer, Marianne. *Particuláres Gesetz und particularer Gesetzgeber in System des geltenden lateinischen Kirchenrechts*. Wien: Verlag Herder, 1975.
- Philips, Gerard. "Dogmatic Constitution on the Church, History of the Constitution." In *Commentary on the Documents of Vatican II*. ed. Herbert Vorgrimler. 1:105-137.

- L'Eglise et son mystere au deuxieme Concile du Vatican.
2 vols. Paris: Casterman, 1967.
- . Pe Heilige Kerk. Antwerp: Pantheon, 1945.
- . Le role du laicat dans l'Eglise. Paris: Casterman, 1954.
- Phillips, George. Pu droit ecclesiastique. Translated by J. P. Crouzet. 2nd rev. ed. 3 Vols. Paris: Lecoffre et Cie., 1855.
- Pinto, Pio Vito, ed. Commento al Codice di diritto canonico. Rome: Urbaniana University Press, 1985.
- . "Pe Normis generalibus." In Commento al Codice di diritto canonica. ed. Pio Vito Pinto. Pp. 1-108.
- Popek, Alphonse. The Rights and Obligations of Metropolitans. Canon Law Studies, 260. Washington: Catholic University, 1947.
- Potvin, Thomas. "Guidelines for a Working Relationship between the Pastoral Magisterium and the Theologians in the Church." Studia canonica 15 (1981):10-43.
- Prat, Ferdinand, s.v. "Eveques, Origine de l'episcopat." In Pictionnaire de **theoiggie QathQlique 5:1656-1701.**
- Provost, James. "Chapter I: The Roman Pontiff and the College of Bishops [cc. 330-341]." In The Code of Canon Law: A Text and Commentary, ed. James Coriden et al. Pp. 265-281.
- , ed. Code. Community. Ministry. Selected Studies for the Parish Minister Introducing the Revised Code of Canon Law. Washington: Canon Law Society, 1983.
- . "The Pispensing Power of Bishops and Holy Pays of Obligation." The Jurist 42 (1982):533-535.
- . "Groupings of Particular Churches [cc. 431-459]." In The Code of Canon Law: A Text and Commentary. Edited by James Coriden et al. Pp. 350-377.
- . "Introduction to Canons 204-329." In The Code of Canon Law: A Text and Commentary, ed. James Coriden et al. Pp. 117-119.

. "Part I: The Christian Faithful [cc. 204-329]." In *The Code of Canon Law: A Text and Commentary*, ed. by James Coriden et al. Pp. 119-173.

. "The Participation of the Laity in the Governance of the Church." *Studia canonica* 17 (1983):417-448.

. "Preparing for Particular Legislation to Implement the Revised Code." *The Jurist* 42 (1982):348-382.

. "Structuring the Church as Missio." *The Jurist* 39 (1979):220-288.

. "The Working Together of Consultative Bodies-Great Expectations." *The Jurist* 40 (1980):257-281.

Prummer, Pominic, ed. *Manuale iuris canonici*. 5th ed. Freiburg: Herder and Co., 1927.

Purcell, Joseph. "The Institute of the Senate of Priests." *The Jurist* 38 (1978):132-152.

Queenan, Austin. "The Pentarchy: Its Origins and Initial Pevelopment." *Piakonia* 2 (1967):338-351.

Rahner, Karl. "Observations on the Episcopacy in the Light of Vatican II." Translated by Theodore Weston. *Concilium* 3 (1965):15-23.

Rahner, Karl and Ratzinger, Joseph, ed. *The Episcopate and the Primacy*. Translated by Kenneth Barker, Patrick Kerans, Robert Ochs and Richard Strachan. New York: Herder and Herder, 1962.

Ratzinger, Joseph. "Announcements and Prefatory Notes of Explanation." In *Commentary on the Pocuments of Vatican II*. ed. Herbert Vorgrimler. 1:297-305.

. "The Bishop as Teacher of the Faith." In *Evangelization in the Culture and Society of the United States and the Bishop as Teacher of the Faith*. Washington: USCC Publications, 1989. Pp. 13-17.

. "La Collegialite episcopale: developpement theologique." In *L'Eglise du Vatican II*. ed. Guilherme Barauna. 3:763-790.

. "Pie 'potestas sacra' im Schema CIC: zu den canones 126, 244, 1373 n. 2." In Pontificio Commissio Codicis iuris canonici Recognoscendo. Congregatio Plenaria August 22, 1981. Prot. Num. 4747/81.

Reese, Thomas, ed. Episcopal Conferences. Washington: Georgetown University Press, 1989.

Regatillo, Eduardus. "Facultad de los Obispos para dispensar de las leyes generales de la Iglesia." *Sal Terrae* 55 (1967):754-778.

. *Institutiones iuris canonici*. 2nd rev. ed. 2 Vols. *Sal Terrae*: Santander, 1946.

. "Normas para la reduccion de Sacerdotes al estado laical, con dispensa del celibate" *Sal Terrae* 59 (1971):783-800.

Reitmeijer, Jan. "The Competence of Bishops in Matters of Dispensation." *Concilium* 48 (1969):101-114.

Rezac, Ioannes. "De potestate dispensandi Episcoporum Orientalium." *Periodica* 57 (1968):3-79.

Risk, James. "Title IV: Individual Administrative Acts [cc. 35-93]." In *The Code of Canon Law: A Text and Commentary*, ed. by James Coriden et al. Pp. 46-67.

Roach, John. "The Bishops and the Vatican: New, Positive Chapter." *Origins* 13 (1983):401-405.

Robleda, Olysius. "Pelegationes a iure in Tridentino synodo." *Periodica* 52 (1963):477-499.

. "Innovationes Concilii Vaticani II in theoria de officiis et beneficiis ecclesiasticis." *Periodica* 59 (1970):277-314.

. "Iurisdictio-Officium Ecclesiasticum." *Periodica* 59 (1970):661-689.

Romita, Florentius. "Adnotationes Acta S. Sedis." *Monitor Ecclesiasticus* 88 (1963):543-614.

Roquet, Robert. "La vie de l'eglise, Bilan du concile." *Etudes* 316 (1963):94-111.

Rousseau, Olivier. "La vraie valeur de l'episcopat dans l'eglise d'apres d'importants documents de 1875." *Irenikon* 29 (1956):121-150.

Ryan, Richard. *The Authority of the Residential Bishop in the Latin Rite to Pispense from the General Laws of the Church.* Canon Law Studies, 482. Washington: Catholic University, 1973.

. "The Authority of the Residential Bishop to Pispense: The Pecretals and the Pecretalists." *The Jurist* 39 (1979):313-324.

. "The Pispensing Authority of the Residential Bishop." *Proceedings of the Canon Law Society of America* 39 (1977):53-62.

. "The Pispensing Authority of the Residential Bishop of the Latin Rite regarding the General Laws of the Church." *The Jurist* 35 (1975):175-211.

Ryan, Seamus. "Episcopal Consecration: Trent to Vatican II." *Irish Theological Quarterly* 33 (1966):133-150.

. "The Hierarchical Structure of the Church." In *Vatican II: The Constitution on the Church*, ed. Kevin McNamara. Pp. 161-254.

. "Vatican II: The Re-Piscovery of the Episcopate." *Irish Theological Quarterly* 33 (1966):208-241.

Saier, Oskar. *Communio in der Lehre des zweiten Vatikanischen Konzils.* Munich: Max Hueber Verlag, 1973.

Salaverri, Joaquin. "Indoles singularis Collegii Puodecim determinat sensum quo ei succedunt Episcopi." *Acta Conoressus Internationalis de theolooia Concilii Vaticani II Romae diebus 26 septembris-1 octobris 1966 celebrati.* Rome: Typis Polyglottis Vaticanis, 1968. Pp. 173-181.

Scheeben, Matthias. *The Mysteries of Christianity.* Translated by Joseph Hofer. St. Louis: B. Herder, 1947.

Schillebeeckx, Edward. *Christ, the Sacrament of the Encounter with God.* Translated by A. Kerkevoorde. New York: Sheed and Ward, 1963.

. *L'Eglise du Christ et l'homme d'aujourd'hui selon Vatican II*. Translated by Theodore Bouman. LePuy: Mappus, 1965.

Schnackenberg, Rudolph. *Apostolicity: The Present Position of Studies*. *One in Christ* 6 (1970):243-273.

Schulz, Fritz. *Classical Roman Law*. Oxford: Clarendon Press, 1951.

Schwarz, Reinhold. *Pie eigenberechtioe Gewalt der Kirche*. *Analecta Gregoriana*, 196. Rome: Gregorian University, 1974.

. "Pe potestate propria Ecclesiae." *Periodica* 63 (1974):429-445.

Schwendenwein, Hugo. *Pas neue Kirchenrecht: Gesamtdarstellung*. Graz: Verlag Styria, 1983.

Sebastionelli, Gulielmus. *Praelectiones iuris canonici*. 3 Vols. 2nd rev. ed. Rome: Pustet, 1905.

Serrano, Jose Maria. "Caput IX: Pe separatione coniugum." In *Commento al Codice di diritto canonico*. ed. Pio Vito Pinto. Pp. 666-675.

Sipos, Stephanus. *Enchiridion iuris canonici*. 7th rev. ed. Rome: Herder, 1960.

Snijders, Jan. "Bishops and Religious: The Document on the Mutual Relations between Bishops and Religious." *Review for Religious* 39 (1980):115-126.

Sousa Costa, Antonio. "Caput I: Pe Ecclesiis particularibus." In *Commento al Codice di diritto canonico*. ed. Pio Vito Pinto. Pp. 220-225.

Stetson, William and Hervada, Javier. "Personal Prelatures From Vatican II to the New Code: An Hermeneutical Study of Canons 294-297." *The Jurist* 45 (1985):379-418.

Stickler, Alfonso. "La biparticion de la potestad ecclesiastica en su perspectiva historica." *Ius canonicum* 15 (1975):46-75.

. "Pe potestatis sacrae natura et origine." *Periodica* 71 (1982):65-91.

. "Pe potestate sacrae natura et origine in cann. 126, 244, 1373 n. 2, schematis novi Codicis, Considerationes circa 'animadversiones' sub nominibus Em.orum RP. Cardd. Freeman, Hume, O'Faich, Ratzinger propositus." In Pontificia Commissio Codicis iuris canonici recognoscendo, Conoregatio Plenaria August 22, 1981. Prot. Num. 4747/81.

Stockmeier, Peter. "Congregation and Episcopal Office in the Ancient Church." In *Bishops and People*, ed. Leonard Swidler and Arlene Swidler. Pp. 71 - 86.

Sweeney, Francis. *The Reduction of Clerics to the Lay State*. Canon Law Studies, 223. Washington: Catholic University, 1945.

Swidler, Leonard and Swidler, Arlene, eds. *Bishops and People*. Translated by Leonard Swidler and Arlene Swidler. Philadelphia: Westminster Press, 1970.

Swift, Thomas. "The Pastoral Office of Episcopal Vicar: Changing Role and Powers." *The Jurist* 40 (1980):225-256.

Tavard, George. "A Theological Approach to Ministerial Authority." *The Jurist* 32 (1972):311-329.

Thils, Gustave. *La primauté pontificale. la doctrine de Vatican I les voies d'une revision*. Cembloux: Editions J. Puculot, 1972.

Thomas, Francis. "The Bishop in His Teaching Office and Those Who Assist Him." *Studia canonica* 21 (1987):229-238.

Tillard, Jean Marie. "The Jurisdiction of the Bishop of Rome." *Theological Studies* 40 (1979):3-22.

. "The Theological Significance of Local Church for Episcopal Conferences." *The Jurist* 48 (1968):220-226.

Ting Pong Lee, Ignatius. "In litteris apostolicis Pauli VI, 'Pastorale munus,' motu proprio datas excursus doctrinalis." *Commentarium pro religiosis* 43 (1964):49-66.

Tirado, Victor. *Pe iurisdictionis acceptatione in iure ecclesiastico*. Rome: Collegium Internationale, 1940.

Torrell, Jean. *La Theologie de l'Episcopat au premier concile du Vatican. Unam Sanctam*, 37. Paris: Les Editions du Cerf, 1961.

Trisco, Robert. "The Debate on the Election of Bishops in the Council of Trent." *The Jurist* 34 (1974):257-291.

United States Catholic Conference. *The Kiino Pialooue. A Pocumentation on the Efforts of the Congregation for the Poctrine of the Faith and of the Conference of German Bishops to Achieve an Appropriate Clarification of the Controversial Views of Pr. Hans Kung (Tubingen)*. Washington: USCC Publications, 1980.

Urrutia, Francis. "Pelegation of the Executive Power of Governance." *Studia canonica* 19 (1985):339-356.

. *Pe Ecclesiae munere docendi*. Rome: Gregorian University, 1983.

Van Hove, Alphonse. *Pe legibus ecclesiasticis*. Mechlenae: H. Pessain, 1930.

Vela Sanchez, Luis. "Christifidelium officia et iura fundamentalia descripta in Legis Fundamentalis schematis textu emendato." *Periodica* 61 (1972):605-623.

Vermeersch, Arthur and Creusen, Joseph. *Epitome iuris canonici*. 3 Vols. 7th ed. Rome: H. Pessain, 1949.

Vorgrimler, Herbert, ed. *Commentary on the Pocuments of Vatican II*. 5 Vols. New York: Herder and Herder, 1966-1968.

Walkowiak, Pavid. *The Piocesan Bishop and the Munus Sanctificandi: A Study of Its Legal Pevelopment*. Canon Law Studies, 520. Washington: Catholic University, 1986.

Walsh, Vincent. "The Theological and Juridical Role of the Bishop: Early Twentieth Century and Contemporary Views." *Apollinaris* 44 (1971):39-82.

Weakland, Rembert. "Reflections on Ministry: Sharing Gifts and Responsibilities." *Origins* 10 (1980):177-182.

Weber, Paulus. "Pe Legis Ecclesiae Fundamentalis studio a coetu peritorum Heidelbergensi Iohanne Pombois duce institute" *Periodica* 62 (1973):423-466.

- Wernz, Francis and Vidal, Peter, *Ius canonicum*. 7 Vols. 2nd ed. Rome: Gregorian University, 1928.
- Wernz, Francis, *Ius decretalium*. 4 Vols. 2nd rev. ed. Rome: Typographia Polyglottis, 1905.
- Wojnar, Meletius. "The Code of Oriental Canon Law Pe Ritibus Orientalibus and Pe personis." *Ihe_Juiisl* 19 (1959):212-245.
- . "Pecree on the Oriental Catholic Churches." *The Jurist* 25 (1965):173-255.
- Woywod, Stanislaus and Smith, Callistus. *A Practical Commentary on the Code of Canon Law*. 2 Vols. Rev. ed. New York: Wagner Inc., 1948.
- Wrenn, Lawrence. "Book VII: Processes [cc. 1400-1752]." In *The Code of Canon Law: A Text and Commentary*, ed. James Coriden et al. Pp. 945-1022.
- Wulf, Friedrich. "Pecree on the Appropriate Renewal of Religious Life." In *Commentary on the Pocuments of Vatican II*. ed. by Herbert Vorgrimler. 2:301-370.
- . "Pecree on the Ministry and Life of Priests: Commentary on the Pecree, arts. 1-6." In *Commentary on the Pocuments of Vatican II*. ed. Herbert Vorgrimler. 4:210-236.
- Zirkel, Adam. "Executio potestatis": Zur Lehre Gratians von der geistlichen Gewalt. *Munchener Theologische Studien*, III, Kanonistische Abteilung, 33. St. Ottilien: Eos, 1975.