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# A COMMENTARY ON THE NEW CODE OF CANON LAW

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*Professor of Canon Law*

VOLUME II

Clergy and Hierarchy



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TO

THE BELOVED HIERARCH OF OUR DIOCESE

THE RT. REV. MAURICE FRANCIS BURKE, D.D.

BISHOP OF ST. JOSEPH, MO.

THIS VOLUME IS RESPECTFULLY DEDICATED

1893-1918

# FOREWORD

This second volume is dedicated to the *Rt. Rev. Bishop M. F. Burke, D.D.* (By mistake the dedication appeared in Vol. I.) On June 24, 1918, Msgr. Burke celebrated, amidst a gathering of the clergy, the silver jubilee of his episcopal career in our diocese. During this time our monastery as well as the author himself have enjoyed the most cordial and unruffled relations with the noble-hearted prelate. Wherefore it seemed appropriate to offer this book as a token of gratitude and esteem to his Lordship.

A word may be added concerning the make-up of the Commentary. Semi-official notice received from Rome, in response to our inquiry, caused us to limit our work to a commentary proper, since translations into the vernacular are not only not desired by the authorities, but rather discouraged, nay, at least for the whole Code as such, forbidden. Therefore we had to embody the contents of the Code in the Commentary, and rendered the Latin text into English only when it seemed absolutely necessary, or where no commentary was needed. Some canons have been neither translated nor paraphrased because the person concerned might have been offended by a translation or paraphrase.

THE AUTHOR

*Conception Abbey, Mo.,*
*July, 1918.*

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# THE NEW CODE OF CANON LAW

## BOOK II

### ECCLESIASTICAL PERSONS

### INTRODUCTORY — PERSONS IN GENERAL

Person (*persona*) physically signifies a being endowed with life, intelligence, free will, and individual existence. The Roman law, however, restricted its meaning to one capable of right (*subjectum iuris capax*), and slaves were not considered to be persons.[1]

Roman[2] and civil, as well as canon law, also know artificial or *moral persons, i. e.,* such as are created by human law for the purposes of society and government (corporations or bodies politic).[3] Such a corporation may be called "*e pluribus unum,*" as our coins express it, or a subject consisting of several physical persons.

Three elements must combine to constitute a moral person or corporation: (a) a plurality of persons, according to the well known adage, "*Tres faciunt collegium;*"[4] (b) corporate rights embodied in the constitu-

1 Cf. § 4, *Inst.*, I, 16. The slaves were called ἀπρόσωποι or personless; cfr. Cassiodorius, *Variarum*, VI, 8 (Migne, 69, 689).

2 Dig., 1, 5; *Ins.*, I, 3; Vering, *Gesch. und Pandekten d. röm. und heutigen Rechts*, ed. 5, p. 104.

3 Blackstone-Cooley, *Commentary*, I, 122.

4 Fr. 85, *Dig.*, 50, 16; *New International Encyc.*, 1904, V, 438.

tion and pertaining to the members as such, *i. e.*, because they are members of the corporation; (c) legal acknowledgment or sanction. Only when these three conditions are verified, do we have a corporation in the proper sense. It is not amiss to add that the civil law does not create these corporations but finds and accepts them as products of the social life.[5]

English law distinguishes between *corporations aggregate* and corporations sole, the former being what we have defined above, whereas a *corporation sole* consists of one person only and his successors, incorporated by law in order to give them certain legal capacities and advantages, particularly that of perpetuity, which in their natural persons they could not enjoy. In this sense the King of England is a corporation sole; so is a bishop; so are some deans and prebendaries, distinct from their several chapters; and so is every parson and vicar of the established Church.[6] The U. S. acknowledge no ecclesiastical but various civil corporations.[6]

In order to construe a corporation, some authors resorted to a *fictio iuris,* which consists in the assumption or supposition of many physical persons as forming one body or person. There is no necessity whatever to maintain this theory. For the sum-total of corporate rights embodied in the community which is represented by its legal head or manager is a reality in the realm of law no less than the persons endowed with those rights. The legal fiction theory results from a too material conception of right or law.

But neither can the theory which takes the *end* or purpose of a moral person as the base and bearer of corporate rights, satisfy the inquirer after the constitu-

5 Blackstone-Cooley, *Commentary,* I, 472.

6 Zollmann, *Am. Civil Church Law,* 1917, pp. 38 ff.

ent element of a corporation. The end indeed specifies, and gives coloring to, a corporation, but it cannot create or produce rights. The creation or production of rights must in the last analysis be attributed to human reason and will, whence every law arises, subordinate, of course, to the eternal law.[7] Therefore a corporation or legal community is the bearer of corporate rights and if not fully autonomous, only requires the sanction of the competent authority to actuate itself.

CAN. 100

**§ 1. Catholica Ecclesia et Apostolica Sedes moralis personae rationem habent ex ipsa ordinatione divina; ceterae inferiores personae morales in Ecclesia eam sortiuntur sive ex ipso iuris praescripto sive ex speciali competentis Superioris ecclesiastici concessione data per formale decretum ad finem religiosum vel caritativum.**

**§ 2. Persona moralis collegialis constitui non potest, nisi ex tribus saltem personis physicis.**

**§ 3. Personae morales sive collegiales sive non collegiales minoribus aequiparantur.**

This first paragraph sketches the charter of the Church founded by Christ. The following two establish the relation of dependent corporations and societies to the Church.

Here we might enlarge upon the constitution of the Church. However a brief summary must suffice to explain the necessary elements of that society which derives its origin from God. For a more elaborate exposition we must refer the reader to fundamental theology and to that part of canon law which goes by the name of public ecclesiastical law.

7 Cfr. Bachofen, *Summa Iuris Eccl. Pub.*, 1910, p. 14 ff.

The *Catholic Church*[8] *claims a divine foundation,* because Christ, its Founder, came to establish the Kingdom of God, or the Kingdom of Heaven, which He embodied in the flock gathered by Him and placed upon the rock that was Peter, the prince of the Apostles. Here we find two essential elements of a corporation: a plurality of persons and corporate rights embodied in the visible head of the college or society.

The most important and essential element of the Church, as of every other corporation, is the *constitution,* which determines the nature and purpose of the corporation as well as the mode of organization and the rights of the members. That constitution, in its essential features, was mapped out by God and hence is of divine origin. The *nature and purpose* of the Church is the same as that for which Christ was sent into the world, *viz.:* the establishment of the Kingdom of God. This end and purpose is plainly *supernatural* or religious. This does not mean, however, that the Church does not need natural, even material, *means* to realize its end. A corporation consisting of men composed of body and soul, who can be led to spiritual apprehension only through the medium of the senses, cannot forego material, bodily means. This is very palpable in the support of ministers and external worship.

To direct a society to the end for which it is instituted an *authority is needed.* For uniform, constant, and unswerving direction of a multitude with many and different views and aspirations is impossible without some one having power to impose obligations and to distribute rewards. This authority Christ has built into the foundation of His Church, as it were, by conferring on *St. Peter a supreme and indivisible power* similar to that

8 See *ibid.,* p. 22 ff.

which He Himself enjoyed.[9] However, this power, indivisible and supreme, was not the only one which the Lord imparted to His Apostles. Besides St. Peter He appointed others who should be heard and should rule portions of the flock.[10] These are the *bishops* (or seniors) mentioned in the Acts of the Apostles.

If Christ wished His Kingdom to be stable and permanent, He must have provided means of perpetuation and continuity. This He did by providing successors to St. Peter and the other Apostles. The Fisherman's Throne was erected above Peter's tomb, and ever since the *Roman Pontiffs, viz.,* those who succeeded St. Peter in the see of Rome, were acknowledged as *Vicars of Christ.* To them, therefore, belongs in equal measure the supreme and indivisible power over the whole Church. Under them the *bishops* by divine institution rule their respective districts. This is the essential organization of the Church as far as its external constitution is concerned. *Priests* and *ministers* also share in the power of the hierarchy, but their jurisdiction, as such, does not comprise external acts of a public nature.

How is this power exercised? Through a *threefold function,* called legislative, judiciary, coercive. If we speak of a threefold power, we do not mean to distribute it among various functionaries and bodies, as Montesquieu has done, but we consider it merely under various aspects or effects, which differ in procedure and execution. Thus *legislation* means the power inherent in the Supreme Pontiff to make laws for the entire Church; *judiciary power* applies these laws by means of judgment and trials or simple decisions, whilst *coercive or executive power* renders the law and its application effective

9 Cfr. Matt. 16, 18; Luke 22, 31; John 21, 15.

10 Cfr. Matt. 18, 18; Acts 20, 28.

and respected, whilst at the same time it conserves the public welfare and provides satisfaction for violations of the public order.

A moral person endowed with such prerogatives is called a "*perfect society.*" This term necessarily involves: (a) an existence independent of every other society, in other words, autonomy or sovereignty; (b) independence of end or purpose; (c) independence in the attainment of end or pursuit of means proportionate to the end.

The question arises: Are these conditions verified in the Catholic Church? What about the third requisite of a moral person, *viz., legal sanction?* If legal would mean only what the State sanctions, then the Church would have had no legal existence for more than three hundred years. But legal here means the *natural right of existence.* If God is the author of nature, and as such also of the State, He certainly enjoys power sufficient to give legal existence to a society which He Himself wished to found. The God of nature can not contradict the God of grace; neither does legal sanction given by God to the State exclude legal sanction given by the same God to the Church. When Constantine issued his edict of toleration 312–313, he did not legalise the Church, but merely acknowledged publicly what was due to her.

Legal sanction accrues to the Church by virtue of her divine foundation. The Church is a moral person in the most perfect sense of that word. The plurality of members is shown in her *catholic* character, whilst *unity* is manifest from her constitution, which was set up expressly for the preservation of one faith and one rule or government. In that same constitution is also included diversity of members. Not all the members of the Church are endowed with governing powers. There-

fore the Church is called a *societas inaequalis,* which implies different rights and obligations on the part of its members,— a distinction *between the clergy* and *laymen* — between pastors and flock, between those who sanctify and those who are sanctified, between those who teach and those who are taught.[11]

*Hierarchy* in the strict sense means "a body of persons who enjoy ecclesiastical power in a different, gradually determined, degree."[12] Such is the case in the *Catholic Church,* of which can. 100 asserts that is a *moral person.* However, the Church forms a juridical person only in conjunction with the Roman Pontiff, because without him it would lack one of its essential constituents. The Supreme Pontiff (Apostolic See) would form a moral person even if the entire body of the faithful would cease to exist — an unlikely hypothesis, which is here stated merely to illustrate the necessity of a supreme head. Without exaggeration we may say that the Pope is a corporation sole by virtue of his sovereignty, like the King under English law. For this reason the Pope is said to have all laws *in ventre,*[13] *i. e.,* he combines the whole legislative as well as judiciary and coercive power in his own person.

Besides the Church universal, or rather within it, there are other, inferior or *minor juridical persons.* As their purpose is subordinate to that of the whole Church, and they are therefore dependent on her with regard to the attainment of their end and the pursuit of the means leading thereto, these minor juridical persons necessarily owe their very existence to her. This is to be particularly emphasized from the legal point of view.

11 Cfr. *Schema Conc. Vatic. de Ecclesia Christi,* c. 10.

12 Aichner, *Compendium Juris Eccl.,* § 26; Smith, *Elements,* I, p. 83.

13 Cfr. c. 1, 6°, I, 2 de Constitut.

For if such a subordinate corporation would renounce allegiance to the Apostolic See, *i. e.,* fall away from the Church, it would lose all its corporate rights, and consequently also its legal hold on church property, which would in that case belong to those members who remained faithful to their allegiance.[14]

Such inferior corporations, also called *imperfect societies,* may come into existence and obtain a legal standing in the Church either by law or by a formal decree of any competent superior. Legal consent is understood to be given for the formation of a diocese or cathedral chapter as soon as all the requisites are present. (On *religious corporations* see the next section.)

The Code expressly mentions moral persons whose end is charity. Such *charitable corporations* can be juridical persons only if the physical persons constituting them devote their time to charity, but do not themselves live on charity for the sake of charity. Some ancient confraternities, *e. g.,* the Brothers of Mercy and various guilds, were of such a character. An orphanage, a hospital, etc., is not a juridical person in the strict sense; it may be called a charitable institute, or *pia causa,* because those who partake of its benefits are not members with definite rights, but mere beneficiaries of charity. In these therefore the end or purpose may be said to be the subject of rights.[15] Paragraph 3 of our canon compares such inferior or subordinate corporations and fellowships or societies in a wider sense to physical persons who are not yet of age (minors). The

14 Cfr. Bachofen, *Summa,* p. 43 ff.

15 Meurer, *Die Juristischen Personen,* 1901, p. 21, contradicts our exposition and holds that the *destinatarii* (orphans, sick, etc.) are the subjects of quasi-corporate rights. Cfr. Bachofen, *Summa,* p. 16.

*tertium comparationis* is the dependence of both as to free and unhampered action (see can. 89).

After this necessary explanation of the Church as a perfect juridical person or corporation in the highest sense, we now proceed with our commentary *secundum ordinem.*

CAN. 87

**Baptismate homo constituitur in Ecclesia Christi persona cum omnibus christianorum iuribus et officiis, nisi, ad iura quod attinet, obstet obex, ecclesiasticae communionis vinculum impediens, vel lata ab Ecclesia censura.**

*Baptism* is the sacrament of initiation, "the sacrament of Christian grace," the "receiving of Christ's livery," [16] concerning which more is said in the third book of the Code.[17] The effect of baptism consists in obtaining certain rights and assuming certain obligations. These are partly general, partly particular. All Christians have the same general rights and obligations with regard to spiritual favors and aids to salvation.[18] But not every Christian is obliged to embrace the clerical or religious state, although all who are called to it have a right to enter that state. In this respect the Catholic Church is truly democratic.

It would be wrong to hold that children, when they attain the use of reason, have a right to decide whether or not they wish to keep their baptismal vows.[19] One who by formal heresy or schism or apostasy rends asunder the bond that unites him with the Church, is yet bound by

16 Cfr. Coustant, *Epistolae RR. Pont.*, 1721, pp. 875, 545, 550.
17 Cfr. Canon 737 ff.
18 Cfr. Canon 682.
19 Cfr. *Conc. Trid.*, Sess. 7, c. 8, 14 de bapt; Pohle-Preuss, *The Sacraments*, 1915, II, 273 ff.

the obligations resulting from his baptismal vow. Again, one who commits a crime upon which the penalty of excommunication (*censura*) has been laid by law or inflicted by legitimate authority, loses his rights until absolution is obtained, but his obligations remain.[20]

## Can. 88

**§ 1. Persona quae vicesimum primum aetatis annum explevit, maior est; infra hanc aetatem, minor.**

**§ 2. Minor, si masculus, censetur pubes a decimoquarto, si femina, a duodecimo anno completo.**

**§ 3. Impubes, ante plenum septennium, dicitur infans seu puer vel parvulus et censetur non sui compos; expleto autem septennio, usum rationis habere praesumitur. Infanti assimilantur quotquot usu rationis sint habitu destituti.**

English and American law agree in fixing the age of minors at from fourteen to twenty-one.[21] Between these two *termini* lie the years of discretion, wherefore minors are capable of some, but not of all, legal actions. A margin is left to premature malice (*"malitia supplet aetatem"*), so that the limit, like the one from the seventh to the fourteenth (or twelfth) year, is only proximate or presumptive.[22]

Concerning *infants*[23] the same term *"censetur"* is employed, which involves supposition and not absolute certainty; hence, even after the seventh year the use of

20 Cfr. Heiner, *Kirchenrecht*, 1897, I, 125 ff. The disjunction in the canon is only apparent, for by heresy, etc., one *eo ipso* incurs censure.

21 Blackstone-Cooley, *l. c.*, I, 463.

22 Cfr. Canon 1254, § 1.

23 *Infantes dicuntur qui fari nesciunt, i. e.*, who are speechless; cfr. Cicero, *De Divinatione*, I, 53; cfr. l. 18, *Cod. Just.*, VI, 30; 16, *ib.*, l. 3, V, 60. Cfr. Canon 1254, § 1; Ulpian, *Frag.*, tit. XI; Lachmann, *Gaii Institution.*, 1841, p. 138 ff.

reason is only "presumed." Presumption must, of course, always cede to proven facts. Hence, if a boy or girl of seven is by medical attestation proved to be destitute of reason, all acts performed by him or her are null and void before the canon law. On the other hand the age-limit of seven is not so strict that infants could not share in the benefits which the law grants to such as are *"compotes sui,"* even if they have not yet reached the seventh year, provided they actually enjoy the use of reason. But this is only to be understood with regard to favors. Thus, *e. g.*, infants, even though they enjoy the use of reason, are not obliged to fast if they have not yet attained the seventh year.[24]

## Can. 89

**Persona maior plenum habet suorum iurium exercitium; minor in exercitio suorum iurium potestati parentum vel tutorum obnoxia manet, iis exceptis in quibus ius minores a patria potestate exemptos habet.**

The Code makes no *distinction between the sexes*, hence males and females are considered equally capable of legal action after they have attained the age of twenty-one.[25] *Minors* enjoy habitually or radically the same rights as those of age, but are hampered in their enjoyment because they depend on parents or tutors. This disability, as Blackstone well observes, is in fact a privilege, because it prevents children from hurting themselves by their own acts.[26] The Code adopts this universal principle by placing minors under the tutelage of parents

24 Cfr. can. 1254.

25 The earlier Roman law considered a woman of age only when married. Cfr. Blackstone-Cooley, I, 463.

26 Cf. Reiffenstuel, III, 38, n. 38; Blackstone-Cooley, I, 464.

and guardians, at least in certain cases. Thus we shall see that minors, except in certain cases, are incapable of electing or of being witnesses. They may be presented for a benefice, but only through their tutors.[27] They are exempt from observing the law of tutelage in choosing their vocation (clerical or religious state) as also in marrying, provided, however, that they have reached the age of puberty.

The new Code does not distinguish between *tutor* and *curator,* although in Roman law this distinction was made; a *tutor* was given to infants or *impuberes,* whilst a *curator* was assigned to *puberes* until they were of age.[28] However, this distinction is juridically unimportant.

We may observe that, although the Code has ecclesiastical laws in view, the civil laws, too, in as far as they do not clash with those of the Church in the matter of tutelage or guardianship, must be observed and may be followed in conscience; for instance, in deeds and contracts and in the alienation of land.[29]

### DOMICILE

The term *domicilium* is derived from *domum colere,* to foster or inhabit the home. Hence it has reference primarily to the place where one is born. Place (*locus*) was taken by the Roman lawyers in a very narrow sense, *viz.,* as a place or parcel of a larger property, called *fundus,* upon which one's affection was supposed to be especially centered.[30] Analogously, *domicile,* too, was restricted to the birthplace or origin or legal status which the citizen was supposed to possess in virtue of his belong-

27 Blackstone-Cooley, I, 464.

28 Cf. *Dig.,* 26, 5; *Cod. Just.,* V, 42; V, 33.

29 Cf. l. 60, *Dig.* 50 de verborum significatione: "locus est non fundus, sed portio aliqua fundi."

30 Cfr. *Dig.,* l. c.; *Cath. Enc.,* V, 103.

ing to a determined municipality or city. This was, we say, supposed, because even if born elsewhere, a man was a citizen of the municipality in which in the natural course of events he would have been born. Hence, the son shared the domicile of his father. Now let us see what the Code establishes concerning domicile.

CAN. 90

**§ 1. Locus originis filii, etiam neophyti, est ille in quo, cum filius natus est, domicilium, aut, in defectu domicilii, quasi-domicilium habebat pater vel, si filius sit illegitimus aut postumus, mater.**

**§ 2. Si agatur de filio vagorum, locus originis est ipsemet nativitatis locus; si de exposito, est locus in quo inventus fuerit.**

The Roman Law is here again followed. The canon applies it not only to children but also to *neophytes, i. e.,* persons baptized as adults,[31] although such were supposed to have their legal domicile in the place of baptism. Concerning illegitimate children, the old law is followed entirely; but an innovation appears to be introduced concerning posthumous children, *i. e.,* such as are born after the father's death. These are put on a level with the illegitimate, which seems rather strange, because the civil law treats them as equals of legitimate children and entitled to share in all their rights. Perhaps this was assumed to make sure of the birthplace of the child.[32] Paragraph 2 restates the law as contained in the Constitution "*Cupientes*" of Paul III.

CAN. 91

**Persona dicitur: *incola,* in loco ubi domicilium,**

31 *Conc. Nic.*, c. 2 (c. 1, Dist. 48).
32 Paul III, "*Cupientes*," 21 March, 1542; cfr. Aichner, § 62.
32 Cfr. *Dig.*, 28, 2; *Cod. Just.*, VI, 29.

*advena,*[33] in loco ubi quasi-domicilium habet; *peregrinus,* si versetur extra domicilium et quasi-domicilium quod adhuc retinet; *vagus,* si nullibi domicilium habeat vel quasi-domicilium.

CAN. 92

§ 1. Domicilium acquiritur commoratione in aliqua paroecia aut quasi-paroecia, aut saltem in dioecesi, vicariatu apostolico, praefectura apostolica; quae commoratio vel coninuncta sit cum animo ibi perpetuo manendi, si nihil inde avocet, vel sit protracta ad decennium completum.

§ 2. Quasi-domicilium acquiritur commoratione uti supra, quae vel coniuncta sit cum animo ibi manendi saltem ad maiorem anni partem, si nihil inde avocet, vel sit reapse protracta ad maiorem partem anni.

§ 3. Domicilium vel quasi-domicilium in paroecia vel quasi-paroecia dicitur *paroeciale;* in dioecesi, vicariatu, praefectura, non autem in paroecia vel quasi-paroecia, *dioecesanum.*

The definition of domicile is partly taken from the Code of Justinian, where we read: "Doubtless every *incola* has his domicile where he has established his house-goods, the bulk of his chattels and property, and which he does not intend to abandon unless called elsewhere, which he leaves as traveller and to which he returns after ceasing to travel."[35] This is the famous definition which, at least tacitly, had always been admitted by canonists and was enlarged after the twelfth century by the notion of quasi-domicile.

33 "*Advena est quem graeci ἄποικον appellant,*" *i. e.,* one absent from home. (l. 239, *Dig.,* 50, 16).

34 L. 7, Cod. X, 40 de incolis. Cfr. Boudinhon in the *Cath. Encycl.,* V, 103. This is one of the best articles in matters of Canon Law contained in that valuable reference work.

35 Boudinhon, *l. c.*

The *difference between a domicile and a quasi-domicile* [36] consists first and above all in the *intention.* If one has the intention to reside, for instance, in a parish forever, he contracts a domicile from the very first day of his stay in the same. Of course, in the case of ordination, he would have to make oath to that effect. This intention is supplied by actual residence for ten full years.

Note that one and the same person may have two domiciles, for instance, a summer and a winter residence; for the intention in that case is equally directed to both, and perhaps the time almost equally divided between both.[37]

*Quasi-domicile* is determined by the intention of abiding in a place for the greater part of a year, which is generally taken to be at least six months,[38] although in common estimation seven months is properly speaking the greater part of a year. One's stay may be morally, but it must not necessarily be physically, continuous. In other words, a man may be absent from his domicile for a considerable time, say, two or three months each year, without losing his domicile, provided, of course, his intention to stay there forever is not changed. But one who has only a quasi-domicile may not be absent from it for more than five months, because quasi-domicile requires a stay of at least six months in a year in one and the same place. But an absence of a few days each month would not interrupt his quasi-domicile, as long as he has not given up the intention of remaining in the place at least six months.

What surprises us, to some extent at least, is the as-

[36] Cfr. l. 6, § 2, *Dig.* 50, 1, ad municipalem.

[37] Cfr. decree of the Holy Office, 9 Nov., 1898. Bened. XIV, "Paucis," March 19, 1758. Students and soldiers have such a quasi-domicile.

sumption of a *diocesan domicile.* This is a recent notion, and it is not true to say that "many canonists," [38] even after the "*Ne temere,*" adopted it. Cardinal Gennari promoted the theory which has now prevailed. "The canon law," says Boudinhon [39] truly, "has never recognized as domicile an unstable residence in different parts of a diocese, without intent to establish oneself in some particular parish." Now a Catholic of, *e. g.,* the diocese of Cheyenne, with its more than 100,000 square miles, has a pretty wide range for his domicile. Let it be confessed, however, that the "*Ne temere*" has turned the tide in favor of a diocesan domicile; for since the Ordinary is looked upon as equal to the *parochus proprius,* it is logical to regard the whole diocese as a domicile.

Paragraph 3 tells us that the *parochial* is not to be identified with the *diocesan domicile,* and consequently they may be two distinct juridical concepts. The question is therefore not quite useless: May one have a parochial and a diocesan domicile at one and the same time? The answer is rather difficult. One may move about the diocese from parish to parish for the time necessary to establish either a domicile or quasi-domicile, and, being tired of that nomadic life, settle permanently in one particular parish. As said above, from the first day of his intention to make his permanent abode in one parish a man acquires a domicile in that parish. But in that case it is clear that he intentionally gives up his domicile in another parish, because one intention excludes the other.[40] However, it is not impossible to contract two quasi-domiciles, one diocesan and the other parochial. For by staying a little over six months in one parish, a

38 *Cath. Ency., l. c.,* p. 105.
39 *Am. Eccl. Review, ibid.; Cath. Encyc., l. c.,* p. 105.
40 Cfr. l. 19, *Dig.,* 1, 5; l. 27, § 2, *Dig.,* 50, 1; c. 4, C., 34, q. 1, 2.

man contracts a quasi-domicile, and since the intention is supplied by this six months' stay, he is not compelled to change his intention.

## Can. 93

**§ 1. Uxor, a viro legitime non separata, necessario retinet domicilium viri sui; amens, domicilium curatoris; minor, domicilium illius cuius potestati subiicitur.**

**§ 2. Minor infantia egressus potest quasi-domicilium proprium obtinere; item uxor a viro legitime non separata, legitime autem separata etiam domicilium.**

The juridical status of wives and minors under the new Code is the same as under the Roman law.[41] But there is a difference concerning quasi-domicile, the Church law granting to wives, though not legally separated, the right to establish a quasi-domicile. This may be necessary in case of desertion, or of lawfully protracted absence from the husband; *e. g.*, if he be called to military service. Concerning minors, the Roman law too acknowledged the possibility of their acquiring a domicile.[42]

## Can. 94

**§ 1. Sive per domicilium sive per quasi-domicilium suum quisque parochum et Ordinarium sortitur.**

**§ 2. Proprius vagi parochus vel Ordinarius est parochus vel Ordinarius loci in quo vagus actu commoratur.**

**§ 3. Illorum quoque qui non habent nisi dioecesanum domicilium vel quasi-domicilium parochus proprius est parochus loci in quo actu commorantur.**

41 Cfr. l. 17, § 11, *Dig.*, 50, 1, ad municipalem; Engel, II, 2, n. 12.

42 Cfr. Can. 1097.

## Can. 95

**Domicilium et quasi-domicilium amittitur discessione a loco cum animo non revertendi, salvo praescripto can. 93.**

These two canons complete the subject of domicile or quasi-domicile, without mentioning the *commoratio mensilis* which the *"Ne temere"* decree had introduced, and which is adopted in the Code with regard to matrimony.[43] But this is the only case in which a monthly stay suffices for performing a legal act; in all other judiciary matters the domicile or quasi-domicile decides the *forum competens* with all its consequences, concerning which the fourth book is to be consulted. Here we will only mention the fact that the law makes no distinction between domicile and quasi-domicile so far as pastor and Ordinary are concerned. Hence the pastor of one's domicile has no preponderance over the pastor of one's quasi-domicile in the administration of the sacraments. In case, therefore, one has both a domicile and a quasi-domicile, it is he, not the pastor, who may decide from whom he wishes to receive the sacraments.

Concerning *vagi,* the new Code embodies the juridical norm of the Council of Trent,[44] which is practically followed also by our civil law. As if to prove that diocesan domicile is a vague notion, the Code compares those who have only a diocesan domicile to *vagi;* their pastor is the one in whose parish they happen to live at the moment. This is import in regard to marriages, but investigation must be made as to their free status.

Why can. 95 exempts wives, minors, and the insane

43 Cfr. Can. 1097.

44 Cfr. *Conc. Trid.,* Sess. 24, c. 7, de ref. mat.

from losing their domicile is evident from the juridical assumption that they have no domicile of their own choice.

It is not so easy to see why a wife lawfully separated from her husband (by ecclesiastical and civil court) and who can have a domicile of her own, can not lose it by departing from it with the intention not to return.

### BLOOD RELATIONSHIP AND AFFINITY

If a common dwelling place, *e. g.*, a municipality or city, is determined chiefly by origin and domicile, and hence may be called a civic or ecclesiastical relation, there is a still nearer connection possible, *viz.*, by blood and affection. Hence the Code now proceeds to the determination of those relationships,— consanguinity and affinity.

### CAN. 96

**§ 1. Consanguinitas computatur per lineas et gradus.**

**§ 2. In linea recta, tot sunt gradus quot generationes, seu quot personae, stipite dempto.**

**§ 3. In linea obliqua, si tractus uterque sit aequalis, tot sunt gradus quot generationes in uno tractu lineae: si duo tractus sint inaequales, tot gradus quot generationes in tractu longiore.**

### CAN. 97

**§ 1. Affinitas oritur ex matrimonio valido sive rato tantum sive rato et consummato.**

**§ 2. Viget inter virum dumtaxat et consanguineos mulieris, itemque mulierem inter et viri consanguineos.**

**§ 3. Ita computatur ut qui sunt consanguinei viri, iidem in eadem linea et gradu sint affines mulieris, et vice versa.**

Little practical value would ensue here from a further explanation, which must be deferred to the canons on marriage. Note that affinity has shared the fate of public honesty, in as far as also from a non-consummated marriage relationship results, which formerly was limited to *matrimonium consummatum,* or rather to carnal intercourse, licit or illicit.

### VARIOUS RITES

### Can. 98

**§ 1. Inter varios catholicos ritus ad illum quis pertinet, cuius caeremoniis baptizatus fuit, nisi forte baptismus a ritus alieni ministro vel fraude collatus fuit, vel ob gravem necessitatem, cum sacerdos proprii ritus praesto esse non potuit, vel ex dispensatione apostolica, cum facultas data fuit ut quis certo quodam ritu baptizaretur, quin tamen eidem adscriptus maneret.**

**§ 2. Clerici nullo modo inducere praesumant sive latinos ad orientalem, sive orientales ad latinum ritum assumendum.**

**§ 3. Nemini licet sine venia Apostolicae Sedis ad alium ritum transire, aut, post legitimum transitum, ad pristinum reverti.**

**§ 4. Integrum est mulieri diversi ritus ad ritum viri, in matrimonio ineundo vel eo durante, transire; matrimonio autem soluto, resumendi proprii ritus libera est potestas, nisi iure particulari aliud cautum sit.**

**§ 5. Mos, quamvis diuturnus, sacrae Synaxis ritu alieno suscipiendae non secumfert ritus mutationem.**

What this canon says concerning the different rites, of which mention was made in the first book (can. 1),

was determined in the Constitutions of Benedict XIV,[45] Pius IX,[46] and Leo XIII, especially in the latter's Apostolic Letter "*De disciplina Orientalium conservanda et tuenda.*" [47] The solicitude of the Apostolic See for the reunion of the Oriental dissidents and, at the same time, for the preservation of their peculiar rites, has been amply illustrated by Benedict XIV in his "*Allatae.*"

The reason why *baptism* is the characteristic mark of distinction between the different rites, must be sought in the ceremonies employed by the Orientals in conferring this sacrament,[48] which is the gate to the Church. The Oriental formula, though deprecatory rather than indicative, is equivalent to the Latin: "*Ego te baptizo.*" The attending ceremonies, however, especially the confirmation connected with baptism, differ greatly. Hence it is proper that the difference of ceremony in conferring the sacrament of initiation should mark the distinction between the rites at large.

If a Latin minister baptizes "by fraud," *e. g.,* pretending to be an Oriental minister, the child nevertheless belongs to his father's rite, for the rite of the father determines that of the child. A case of necessity, when by reason of not having an Oriental minister a Latin priest should have to baptize the child of an Oriental, is mentioned by Benedict XIV.[49] The last clause of paragraph 1 of our canon is an amplification of the case cited in Leo's "*Orientalium,*" where mention [50] is made of one

45 "*Etsi pastoralis,*" May 26, 1742; "*Demandatam,*" Dec. 24, 1743; "*Allatae,*" Feb. 20, 1755 (*Bull. Bened.*, ed. Prat., 1845, I, 197 ff; 328 ff; 249 ff.

46 "*In suprema,*" Jan. 6, 1848; "*Romani Pontifices,*" Jan. 6, 1862; "*Amantissimus,*" Apr. 8, 1862 (*Coll. Lac.*, II, 484 ff.).

47 "*Orientalium,*" Nov. 30, 1894 (*Leonis XIII Allocutiones, Epistolae, Constitutiones;* ed. Desclée, 1898, v, 303 ff.).

48 Cf. Benedict XIV, "*Etsi pastoralis,*" § II (*l. c.*, p. 199).

49 "*Demandatam,*" § 18 (*l. c.*, p. 322).

50 No. XI (*l. c.*, p. 308).

converted to the unity of faith under the condition of embracing the Latin rite. Such a one is not bound to remain a Latin forever, but may return to his native (of course Catholic) Oriental rite.[51]

Paragraph 2 prohibits proselytizing, without, however, mentioning the penalty of suspension inflicted in "*Orientalium*" [52] and "*Demandatam.*" Paragraph 3 is a modification of Leo's Constitution which permitted a return to the former rite if the Apostolic See had been asked — *Apostolica Sede exorata.*

Paragraph 4 is taken almost verbally from Leo's Constitution, with the exception of the clause, "unless otherwise provided by particular law." Under this clause a provincial council might issue regulations contrary to this canon.

As to the last paragraph, the respective passage in "*Orientalium*" is somewhat wider: "The faithful are at liberty to communicate in either rite, not only in places where there are no churches or priests of their own rite, but also where their places of worship are too distant to be conveniently frequented. But they must not on that account be supposed to have changed their rite, but remain in all other offices subject to their own pastor." [53]

Since this canon offers us an opportunity which, as far as we are aware, does not recur in the whole Code, it may not be amiss to complete the subject from the Constitution of Leo XIII. Religious who conduct schools frequented by members of the Oriental rite, should employ a priest of that rite for the respective functions. Every Oriental who lives outside the territory of his Patriarch is under the care of the Latin priest, but re-

51 *Ib.*, n. I (p. 306 ff.). Neither could we discover this penalty in the penal code.

52 *L. c.*, n. II (p. 307).

53 *Ib.*, n. III, IV, IX, XII, (*l. c.*, p. 307 ff.).

mains subject to his own rite, so that nothing is changed in his relation to the Oriental rite. Matrimonial and other ecclesiastical causes appealed to the Apostolic Delegate must be submitted to the *S. C. pro Ecclesia Orientali.* These general rules also hold good for the Orientals in this country.

MORAL OR JURIDICAL PERSONS

CAN. 99

In Ecclesia, praeter personas physicas, sunt etiam personae morales, publica auctoritate constitutae, quae distinguuntur in personas morales collegiales et non collegiales, ut ecclesiae, Seminaria, beneficia, etc.

(For can. 100, see p. 3, *supra.*)

CAN. 101

§ 1. Circa actus personarum moralium collegialium:

1.° Nisi aliud expresse iure communi aut particulari statutum fuerit, id vim iuris habet, quod, demptis suffragiis nullis, placuerit parti absolute maiori eorum qui suffragium ferunt, aut, post duo inefficacia scrutinia, parti relative maiori in tertio scrutinio; quod si suffragia aequalia fuerint, post tertium scrutinium praeses suo voto paritatem dirimat aut, si agatur de electionibus et praeses suo voto paritatem dirimere nolit, electus habeatur senior ordine vel prima professione vel aetate;

2.° Quod autem omnes, uti singulos, tangit, ab omnibus probari debet.

§ 2. Si de actibus personarum moralium non collegialium agatur, serventur particularia statuta ac normae iuris communis, quae easdem personas respiciunt.

## Can. 102

**§ 1. Persona moralis, natura sua, perpetua est; exstinguitur tamen si a legitima auctoritate supprimatur, vel si per centum annorum spatium esse desierit.**

**§ 2. Si vel unum ex personae moralis collegialis membris supersit, ius omnium in illud recidit.**

What has been said, *supra,* pp. 1 sqq., about moral persons may now be detailed. Canon 99 draws a distinction between corporate and non-corporate bodies. What is required for the former has been stated above. Properly speaking, *non-corporate* bodies cannot be called juridical persons at all. For such the term *"moral entities"* (the Italians style all corporations *"enti morali"*) would be more suitable. But it was precisely the Italian government, or rather some extremely radical jurists, who, in order more readily to suppress ecclesiastical corporations, denied the existence of such moral entities.[54] On the other hand, civil governments, especially in Europe, have acknowledged the legal title of corporations even to *parishes.*[55] Here a parish is not considered a corporation, because it lacks an end sufficiently distinct from others,— all parishes having one and the same end, the care of souls,— and because of the want of a subject proper as bearer of corporate rights. The parish as such is not the bearer of distinctly ecclesiastical rights, as it is composed of lay people who enjoy rights only as far as they are members of the Church. Hence the cor-

54 Thus Scaduto and Giorgi, *La Dottrina delle Persone Giuridiche,* Firenze 1897. But what about Italia Unita? Is it no *ente* or *corpo morale?*

55 Cf. Lampert, *Die rechte Stellung der Landeskirchen in den Schweizer. Kantonen,* 1908; Id., *Doc. Stifungen,* 1912; *Schul-System,* p. 252.

porate rights would be vested in the pastor, who, however, cannot form a corporation, since to constitute a corporation requires at least three physical members. English law perceived the difficulty and assumed, very logically, a corporation sole. Our States, after some changes and development, assume either a corporation aggregate, or the trustee corporation, or the modern form of the corporation sole.[56]

As stated under can. 100, § 3, such corporations have an end subordinate to that of the universal Church, and depend for their legal existence on the supreme authority, and hence share the lot of minors placed under guardians. It follows that their *corporate acts* are subject to common law and to those particular laws which conform to the former, or if they do not conform, are at least approved of by higher authority. For just as the State requires conformity to its own common laws when approving a corporation, so also the Church approves only such corporations as correspond with her general end and are conducive thereunto. Hence can. 101 establishes some general rules to be observed at *meetings* held to decide a matter proposed to the vote of the members of a corporate body. Under 1°, the law speaks only of such acts as are voted on by the members *present* (*"qui suffragium ferunt"*). Now it is generally presumed that two-thirds of the members present form a quorum capable of making a decision.[57] Therefore the general law considers the absent members as not claiming their right of voting, and as having no right to remonstrate against a resolution adopted by the majority. We say, the common law treats absent members thus. If the particular statutes of the corporation contain a contrary

56 Cfr. Zollmann, *l. c.*, p. 63. 57 Bouix, *De Capitulis*, p. 182.

clause, *viz.*, that the votes must be counted according to the total number of members, either present or absent, this statute must be followed. If no such statute exists, votes of the members present only are counted.

Number 6 provides that the invalid votes (*demptis suffragiis nullis*) must be subtracted from the sum-total of the voters present.

A suffrage is null and void, according to the Code,[58] if extorted, or not given secretly,— if secrecy be required by the particular statutes, in matters not touching election, — or if given conditionally. Such votes, therefore, must be thrown out.

An *absolute majority* is one vote more than half of those given; for instance, if there are thirteen who cast a vote for or against selling a certain property, and seven are for, while six are against selling, the resolution carries in favor of selling. A *relative majority* can take place only when more than two resolutions or more than two candidates are at issue. Thus, in the case just mentioned, there may be question not only of selling or not selling, but also of renting or borrowing money. If four of twelve members present would vote for selling, and three against, and five for taking up money, the last vote would carry, but only in the third scrutiny, not in the first and second, because for these two an absolute majority is required, and hence seven votes out of twelve would have to be cast for taking up money if it should carry in the first or second ballot.[59]

The last means of deciding an even vote is the *president* or presiding officer, who may give his vote in

58 Can. 169. These rules affect the moral and juridical liberty of the voters.

59 Cfr. Bouix, *De Capitulis*, p. 184. This rule was formerly rejected by weighty canonists; but it is very reasonable in that it prevents waste of time.

favor of either side. But there may be cases, especially in elections, when the president does not wish to cast the deciding vote. If two or three candidates come out with an even number of votes in three scrutinies, and the presiding officer refuses to decide in favor of any one, how is the election to be settled? First the rank and seniority of sacred orders must be considered, and therefore a priest must be preferred to a deacon, and a deacon to a subdeacon (minor orders are not taken into consideration). If in a religious community two priests are elected who were ordained on the same day, the date of their simple profession decides the preference, and if by a fanciful hypothesis both should have been ordained and made their profession on the same day,[60] the priority of age must decide who is elected; because then the rule would hold: *"Prior in tempore, potior in iure,"* as will be seen under the canon governing precedence.

No. 2 of § 1 (canon 101) apparently sets up a contradictory rule by ordaining that "what touches all, as individuals, must be approved by all," in accordance with the regula juris 29 in 6°: *"Quod omnes tangit, debet ab omnibus approbari."* [61] But our text by way of explanation adds: *"ut singulos."* These two words clear up the apparent contradiction. For in every corporation there are rights which touch the corporation as such (*e. g.*, corporation property) and rights which are intrinsically inherent in each member as such. Concerning the latter class the law requires that the approval of all must be given, if rights are to be given up, or changed, or retained. An example of the former would be, according to our

60 *Reg. S. Bened.*, c. 58; cfr. l. 5, *Cod. Just.*, v, 59 de auctoritate praestanda; l. 11 *Dig.* 8, 3, De servitut. praed. rust; Reiffenstuel, t. ult., Reg. 29.

61 Reiffenstuel, *Com. in Reg. Iuris*, 29, n. 7 ff.

opinion, a change of statutes, of the latter, a change of election and compromise.[62]

As to paragraph 2, nothing need be added except that the acts mentioned therein are not properly speaking corporative acts or enactments, but mere rules set forth by proper authority.

That a *moral person is perpetual,* as can. 102 states, follows from the nature of its organization and end, which is enduring. That the legitimate authority which has sanctioned its existence, can also dissolve a corporation, needs no proof.

§ 2 enacts that corporate rights devolve on the *surviving member.* This follows from the generally accepted rule: *"Collegium remanet in uno."* Although at least three persons are required for constituting a corporation, yet by way of devolution the corporate rights would, in case of death or defection of all but one member, devolve on that member, who would become the bearer of all those rights, though he could not exercise all of them, for instance, he could not elect himself.[63]

### ETHICAL QUALITIES OF LEGAL ACTS (VIS, METUS, ERROR)

If we speak here of moral qualities, we do not mean to deny the juridical character inherent in these qualities. It is evident that violence, fear, and error, of which the two following canons treat, affect chiefly the intrinsic or ethical side of corporate acts, and only indirectly their juridical nature. This is quite obvious, for it is impossible to sever morality from right or law.

62 Cfr. Bouix, *De Capitulis,* p. 184, p. 601; Aichner, *l. c.,* § 82, 1. Cfr. can. 162 (on election); can. 172 (on compromise).

63 Cfr. Bouix (as under note 62).

CAN. 103

§ 1. Actus, quos persona sive physica sive moralis ponit ex vi extrinseca, cui resisti non possit, pro infectis habentur.

§ 2. Actus positi ex metu gravi et iniuste incusso vel ex dolo, valent, nisi aliud iure caveatur; sed possunt ad normam can. 1684–1689 per iudicis sententiam rescindi, sive ad petitionem partis laesae sive ex officio.

CAN. 104

Error actum irritum reddit, si versetur circa id quod constituit substantiam actus vel recidat in conditionem *sine qua non;* secus actus valet, nisi aliud iure caveatur; sed in contractibus error locum dare potest actioni rescissoriae ad normam iuris.

These are general norms, universally accepted by canonists, except the second paragraph of Can. 103 in its broad sense. Civil law is more lenient with regard to accidental errors.

*Violence,* or physical force, whether justly or unjustly exercised, if irresistible, of necessity excludes free consent of the will. Wherefore an act posited — we cannot well say performed — under such influence, can neither be imputed nor does it entail a moral or juridical obligation. Note, however, the clause, "which cannot be resisted." For if the assailant *can* be resisted, at least by using equal violence, he should be resisted; violence must be warded off by violence, unless perhaps reverence or respect would dictate otherwise. Thus a child may not use violence against his parents, even though they should physically try to force him into a state of life distasteful to him. Violence is less practicable in case of a cor-

poration, because a crowd is less liable to be attacked. Yet even a body of men, for instance, electors, may be subjected to violence. The people of Viterbo gave actual proof of this.[64]

Physical violence, thus brought to bear on the mind in order to force a man to do something against his will creates no *voluntarium,* and therefore produces no human act.[65] Notice, however, that this violence must affect the person himself; violence done to parents, near relatives, or friends, is not the violence of which § 1 of our canon speaks, but is rather *fear* or alarm, which the Code considers next.

*Fear* is an emotion excited by threatening evil or impending pain, accompanied by a desire to escape or avoid it. All violence, as the Pandects say,[66] is fear or causes fear; but *metus* does not always include physical force. The law then goes on to determine the nature of fear. Fear, to render an act involuntary, must be grievous, vehement, and at the same time unjustly threatened. Concerning the first condition authors generally describe fear as grievous when it is such as may befall a man of robust body and mind, not a nervous or weak-minded person. Wherefore, they add, two things are required to constitute grievous or vehement fear, *viz.,* that the threatened evil exists objectively, not merely in the imagination, and that the evil threatened be important and weighty, *e. g.,* death, mutilation, imprisonment, loss or confiscation of property, defloration,[67] and, we might add, the loss of

64 The incident of Viterbo, 1270–71, was instrumental in framing the decretal of Gregory X on papal elections, c. 3, 6°, I, 6.

65 *S. Th.,* I-II, q. 6, a. 5; cfr. c. 4, X, I, 40 *de his quae vi metusve causa fiunt; Dig.* 4, 2; *Cod. Just.,* 2, 19.

66 L. 1, *Dig.* 4, 2: "*Metus instantis vel futuri periculi causa mentis tripidatio.*"

67 Reiffenstuel, I, 40, n. 28.

reputation for a person in good standing, or of social position and remunerative occupation.

The other condition is that fear be *unjustly threatened* or inflicted. Unjust would be a fear excited by private authority, or by one not entitled to threaten an evil in order to obtain consent. We should likewise consider a fear unjustly threatened if there were no proportion between the greatness of the evil threatened and the reason for which it is threatened. Thus a judge might unjustly threaten one to force him to marry a certain person for futile reasons, or threaten one so that he would give up a position because of political disagreement.

This remark leads to another observation made by canonists. The connection between the evil threatened and the special act which is to be extorted by the threat, is expressed by the disjunctive formula: either — or; either death or marriage; — in other words, the evil must be threatened *ad hoc,* for that very purpose, and no other.[68] Lastly, as the term "*incussus*" seems to imply, the fear must come from outside, *ab extrinseco,* or, as it is also termed, from a *causa libera, i. e.,* an agency existing outside the one who suffers fear, and not from a natural phenomenon such as lightning or shipwreck.

Now an act performed under the influence of fear, thus described, or inspired by fear, is not necessarily invalid, because it may still be truly voluntary, though, under a certain aspect (*secundum quid*), it is involuntary. For there is in the intellect the knowledge of an end, and that end is wished for, along with what is chosen as a necessary means to it. In this respect, such actions are, in themselves, truly and properly called voluntary. On the other hand, these same acts are performed against the in-

[68] Cf. *S. Th.,* I–II, q. 6, a. 6; Hill, *Ethics,* 8 ed., pp. 51 ff.

clination of the will and with reluctance; and although the person cannot say, "I will not," yet he could truly say, "I would I could not." Hence, actions performed under the influence of fear are in a certain respect involuntary [69] and, according to our Code, give the victim the right to have the act rescinded. However, on account of possible hallucinations, and for the sake of the public welfare, a legal procedure must be followed. The first step will be to gather proofs in the form of affidavits; the next, to secure a lawyer, unless the person is able to act as his own lawyer. Then the judge of the defendant, or in other words, the competent judge [70] — *actor sequitur forum rei* — must be sought.

A *judge* may of his own accord proceed against one who has threatened another unjustly, for such conduct is detrimental to the public welfare. As soon as the judge is morally convinced that evil has been unjustly threatened, he may cite the injured party, even though the latter would wish to escape a trial. It is left to the prudent and conscientious judgment of the judge to proceed further, unless the validity of a marriage is at stake.

The same legal benefit is granted to one who suffers from another's *deceit* (*dolus*), which is called a connivance to cheat or deceive another, who thereby suffers injury. This occurs especially in matters of contract, wherein the law takes it for granted that every transaction is fair and honest.[71] Whether deceit is committed by hiding the truth (*calliditas*) or telling a lie (*fallacia*), or by some machination employing both words and deeds, is immaterial. But it is important to ascertain whether

69 This will be further explained in Book IV; cfr. cc. 1684–1689.

70 Cfr. X, II, 14 *de dolo; Dig.* IV, 3 *de dolo malo.*

71 Blackstone-Cooley, *l. c.*, III, 164.

72 Reiffenstuel, II, 14, n.

the deceit practiced is the cause of one's acting in such a way; for if the *dolus* is only concomitant, and not the impulsive cause of the act, the benefit of law (writ of deceit) cannot be invoked.

Deceit generally causes error, and therefore the following canon speaks of *error.* Error is a state of mind in which one approves falsehood for truth. It differs from ignorance, which is a lack of due knowledge. The Code distinguishes between a mistake regarding the *substance of a thing,* and one which concerns a quality as a *condition sine qua non.* The former would be the case if one bought brass for gold, a pearl of glass for a jewel, or if he married Anna instead of Mary, whom he had intended to marry.[73] An essential or *sine qua non condition* (this clause evidently refers to matrimonial law), would be a quality inherent in a woman by which alone she is known to the wooer, and on account of which alone he wishes to marry her (for instance, she is the first-born daughter of his friend). Such an essential condition might also occur in buying a registered steer of a certain stock. Now if the would-be groom or the buyer is in error or deceived, no matter by whom, the marriage or purchase is void, because the essential consent is wanting by reason of a false object presented to which the intention was not directed.

The *circumstances* which render an object less desirable may, however, be purely accidental, as when the person married is not as peaceful or as rich as pretended and believed before marriage. Such accidental errors do not render the act null and void, because consent, at least in persons acting reasonably, is not directed exclusively to such accidents.

73 This may occur in the case of twins or other persons resembling each other very closely.

But marriage is a peculiar affair, which shall be treated more fully in its proper place. The Code says that in *matters* of *contract* room is left for *rescinding the act.* Here especially enters the writ of deceit, which is granted also by the civil law.

It is then in the power of the plaintiff to approach the judge either to obtain damages or to put in a claim for annullment of the act performed under deceit, and the judge will have to decide whether he is competent to give a verdict in the case.[74] That the procedure must be legal is required by the public welfare, which demands equity as well as order and justice.

### CONSENT OR ADVICE TO BE ASKED BY THE SUPERIOR

### CAN. 105

**Cum ius statuit Superiorem ad agendum indigere consensu vel consilio aliquarum personarum:**

**1.° Si consensus exigatur, Superior contra earundem votum invalide agit; si consilium tantum, per verba, ex. gr.: *de consilio consultorum,* vel *audito Capitulo, parocho,* etc., satis est ad valide agendum ut Superior illas personas audiat; quamvis autem nulla obligatione teneatur ad eorum votum, etsi concors, accedendi, multum tamen, si plures audiendae sint personae, concordibus earundem suffragiis deferat, nec ab eisdem, sine praevalenti ratione, suo iudicio aestimanda, discedat;**

**2.° Si requiratur consensus vel consilium non unius tantum vel alterius personae, sed plurium simul, eae personae legitime convocentur, salvo praescripto can. 162, § 4, et mentem suam manifestent; Superior autem pro sua prudentia ac negotiorum gravitate potest eas**

74 Cfr. cc. 1679–1683, which correspond to the *actio erroris.*

**adigere ad iusiurandum de secreto servando praestandum;**

**3.° Omnes de consensu vel consilio requisiti debent ea qua par est reverentia, fide ac sinceritate sententiam suam aperire.**

The general rule, says Engel,[75] is that every important matter should be treated by the superior (prelate) either with the consent or with the advice of his chapter.

Such advice, though it does not bind the superior, is not to be looked upon as superfluous. For by counsel, observes the same author, hasty and foolish acts are prevented, and several pairs of eyes see more than one. This rule, of course, applies especially to cathedral and religious chapters, where the *bonum privatum* must cede to the *bonum commune.* Which cases require consent or advice is stated in the law. We merely observe that, unless expressly provided in the Code, advice only, not consent must be asked.[76]

The next number treats of convocation required in case several persons must be asked at the same time. This is the case with our *diocesan consultors,* who, therefore, must be called together for a meeting whenever their consent or counsel is demanded by law. For though our consultors do not as yet, like the diocesan chapter, form an ecclesiastical corporation, they take the place of such in the government of the diocese, and, besides, constitute among themselves,[77] a *"coetus,"* which is the meaning of *"plures simul."*

Of course, if all the consultors should accidentally be present, for instance, at a diocesan meeting or clerical

75 Cfr. ad X, III, t, 10, n. 1, *de his quae fiunt a praelatis sine consensu capituli;* Engel, III, 10, n. 1. *Reg. S. Bened.,* which, however, speaks only of advice, not consent.

76 Cfr. Can. 427.

77 Cfr. Can. 162 § 4.

retreat or on some festive occasion,[78] the bishop may make use of that opportunity and consult them there and then, but not in the presence of others, *i. e.,* not in such a way that others may hear the counsel and the consultors thereby perhaps be compromised or hindered in their free speech.

Whether a matter is of sufficient importance to require secrecy, is left to the judgment of the superior.

### PRECEDENCE

Precedence, first and above all, means priority in rank or dignity, and this, in turn, is chiefly, though not exclusively, based upon the authority or power one enjoys over another. Hence the relation between superior and inferior, between *maioritas* and *obedientia,* as defined in the Decretals (I, 33). Similarly, our Code establishes jurisdiction as the primary rule of distinction.[79]

### Can. 106

**Circa praecedentiam inter varias personas seu physicas seu morales, serventur normae quae sequuntur, salvis normis specialibus quae suis in locis traduntur:**

**1.° Qui alius personam gerit, ex eadem obtinet praecedentiam; sed qui in Conciliis alliisque similibus conventibus procuratorio nomine intersunt, sedent post illos eiusdem gradus qui intersunt nomine proprio;**

**2.° Cui est auctoritas in personas sive physicas sive morales, eidem ius est praecedentiae supra illas;**

**3.° Inter diversas personas ecclesiasticas quarum nulla habeat in alias auctoritatem: qui ad gradum potiorem pertinent, praecedunt eis qui sunt inferioris**

78 Cfr. Can. 162 § 4. K.-R., I, 431 f.
79 Cfr. c. 15, X, I, 33; v. Scherer,

gradus; inter eiusdem gradus personas sed non eiusdem ordinis, qui altiorem ordinem tenet, praecedit iis qui in inferiore sunt positi; si denique ad eundem gradum pertineant eundemque ordinem habeant, praecedit qui prius est promotus ad gradum; si eodem tempore promoti sint, senior ordinatione, nisi iunior ordinatus fuerit a Romano Pontifice; et si eodem tempore ordinem receperint, senior aetate;

4.° In praecedentia diversitas ritus non attenditur;

5.° Inter varias personas morales eiusdem speciei et gradus, illa praecedit quae est in pacifica quasi-possessione praecedentiae et, si de hoc non constet, quae prius in loco, ubi quaestio oritur, instituta est; inter sodales vero alicuius collegii, ius praecedentiae determinetur ex propriis legitimis constitutionibus; secus ex legitima consuetudine; qua deficiente, ex praescripto iuris communis;

6. Loci Ordinarii est in sua dioecesi statuere praecedentias inter suos subditos, ratione habita principiorum iuris communis, legitimarum dioecesis consuetudinum et munerum ipsis commissorum; et omnes de praecedentia controversias, etiam inter exemptos, quatenus ii collegialiter cum aliis procedant, componere in casibus urgentioribus, remota omni appellatione in suspensivo, sed sine praeiudicio iuris uniuscuiusque;

7.° Circa personas quae ad Domum pontificalem pertinent, praecedentia moderanda est secundum peculiaria privilegia, regulas et traditiones eiusdem pontificiae Domus.

This question of precedence may come up at a future council just as it did at the Vatican Council,[80] where prece-

80 Cf. Granderath-Kirch, *Gesch. des Vatik. Konzils*, 1903, I, p. 391 ff.

dence was established as follows: (1) Cardinals according to their titles, episcopal, presbyterial, diaconal; (2) Patriarchs; (3) Primates, but only by a special grant of the Pope; (4) Archbishops according to the time of their promotion; (5) Bishops in the same way; (6) Superiors general of religious orders with solemn vows.[81] Procurators were excluded from both a consultative and a decisive vote, just as they are now under the new Code.[82] To plenary councils no procurators are admitted, except coadjutors or auxiliary bishops,[83] who, therefore, will have to take their seats after the ordinaries who are personally present. Since the general rule is that precedence must be determined according to the rank of the person represented, an apostolic legate precedes all others, provided he be a cardinal.

This is the principle of distinction regarding rank or precedence. However, it may happen that many are present of equal authority, wherefore, to avoid unpleasant contention, the following rules are to be enforced:

It may happen, not only in conciliar meetings, but also on any festal occasion, that this "*crux magistrorum ceremoniarum*" (the question of precedence) may arise. Our canon furnishes the solution. We will add only a few remarks. *Cardinals* always have precedence over all other dignitaries except an apostolic legate. They rank according as they are Cardinal bishops, priests, or deacons, and are followed by the Patriarchs, the residential archbishops and bishops,[84] titular archbishops and titular bishops, who have no "authority," properly speaking.

81 Concerning the Council of Trent, to which procurators of the German bishops were admitted, *ib.* p. 108 ff.; *Concilium Trid.*, 1901, I, 202, 349, 368 etc.; can. 224, § 2.

82 Cfr. can. 282.

83 But in his own territory the diocesan bishop precedes even archbishops — with the exception of his Metropolitan — and all other bishops. Can. 347.

84 This rule was observed at the Vatican Council; Granderath-Kirch, *l. c.*, I, p. 392.

Among those of equal rank, *e. g.,* bishops, the one who has been promoted earlier to the episcopal rank precedes the one whose promotion occurred later. Notice the term *promotion,* for it means the publication of the bishop's name in Consistory, not the date of his election or consecration.[85]

The next step in deciding the question of precedence between two prelates of equal rank, order, and promotion, is to ascertain the date of their *ordination.* Now ordination, according to our Code,[86] includes the conferring of the tonsure, wherefore the date of clerical initiation decides seniority. One case, however, is excepted, *viz.,* if one is ordained by the Roman Pontiff.[87] But the term "Roman Pontiff" is here to be interpreted strictly, wherefore ordination by the Cardinal Vicar of Rome or another Cardinal does not involve that privilege. A special delegation, however, given by the Pope to ordain a cleric in his name would have the same effect as ordination performed by the Pontiff himself.[88] Finally the last hypothesis is clear enough, *viz.,* if two were equal in rank, order, promotion, time of ordination, then the natural *age* would have to decide.

Hence Latin and Oriental bishops or priests are equal, *ceteris paribus.*

The rule of precedence among religious is settled in the section on religious, can. 491, but since this bone of contention has always troubled the house of God, as we know from innumerable decisions of the S. C. EE. et RR., several pontifical Constitutions[88] have been issued

85 Can. 350.

86 Can. 950; cfr. c. 12, X, I, 11 de temp. ord.; Bened. XIV, "In postremo," Oct. 20, 1756 (*Bull.,* Prati, t. III, 388 ff.).

87 "In postremo," § 19 (p. 398).

88 Pius V, "*Divina,*" Aug. 17, 1567; Greg. XIII, "*Exposcit,*" July 25, 1583. Cfr. the Gloss ad c. 1, 6°, III, 13; c. m. 6°, v, 6; Santi-Leitner, *l. c.,* I, 33, n. 2 (vol. I, p. 380).

on this matter, which we shall quote in their proper place.

The first clause of n. 5 is taken from "*Exposcit*" of Gregory XIII, July 25, 1583. There the question was settled concerning the Mendicant Orders in the way now prescribed for all. If a Mendicant Order could prove its quasi-possession,[89] that is, undisturbed and uncontested precedence for a time at least sufficient for prescription, it was supposed to have a just title thereto. If no such proof could be furnished, the historical fact of being founded in a place earlier than a competitor was to settle the question. This is still the rule concerning corporations of the same *kind*. It also applies to corporations of the same *rank*. A cathedral is of higher rank than a collegiate chapter, a distinguished chapter higher than a non-distinguished.[90] A clerical order enjoys precedence over a non-clerical one, etc.[91] Corporations which have their own constitutions must consult these, or else custom and the common law, especially the present paragraph, and others treating the question of precedence.

This latter ruling is very wise because apt to maintain order and decorum on solemn occasions, without prejudice to the rights of religious.

During procession, the decision of the Ordinary must be obeyed, and only after the function is over, have those who think they are wronged a right to defend their claim, first before the bishop, and then before the S. C. Relig.

The rules under § 7, concerning the *Papal Household*

89 It is called quasi-possession because of the nature of right, which is not corporeal; *vide* Reiffenstuel, II, 12, n. 143 ff.

90 Cfr. can. 391, § 2; can. 408; can. 491.

91 If men strike each other with the staffs of their banners and crosses — and we read of such instances in genuine records — the decorum is gone.

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or Famiglia Pontificia are contained in the Caeremoniale of the papal palace and do not enter into our present purpose. Precedence, like etiquette, belongs to every well regulated government, and not even a thorough-going democrat has a right to ridicule it, for it is based on human nature and the dictates of right reason.

## CAN. 107

**Ex divina institutione sunt in Ecclesia *clerici* a *laicis* distincti, licet non omnes clerici sint divinae institutionis; utrique autem possunt esse *religiosi*.**

After treating generally of the members of the Church who are such by baptism, and of the different physical and moral persons who may exist within the Church, the Code draws the line of demarcation between clergy and laity. This distinction, as pointed out above, is based upon the nature of the Church, which, because of its divine and therefore legal and necessary existence, has a constitution of its own, neither made nor to be changed by men, at least in its essential features. One essential feature of this constitution is the *hierarchy* in the broad sense, involving a distinction between clergy and laity.

The term *clergy* is derived from the Greek κλῆρος, (Latin *sors*), a lot.[92] According to St. Jerome, clerics are so called because they are called into the lot of the Lord, or because the Lord is their portion, or because they are chosen by lot. Therefore every clergyman may in a particular sense be called a servant of God. That the clergy, distinguished into its hierarchic orders, has gradually grown into a minutely arranged system, is owing to

92 Cfr. c. 5, C. 12, q. 1; c. 7, ib. (*incerti auctoris, saec. XI*).

circumstances of necessity and natural development, excepting, of course, the divinely ordained distinction between bishops, priests, and deacons.

The word *laity* is derived from λαός (*plebs*), people, in which sense it occurs in the epistle of St. Clement to the Corinthians.[93] Hence this organisation or distinction can claim divine institution.

[93] C. 40; cf. Bruders-Villa, *La Costituzione della Chiesa,* 1906; German: *Die Verfassung der Kirche* in Ehrhard's *Kirch. Forschungen,* 1904, IV.

# PART I

# THE CLERGY

## SECTION I

## THE CLERGY IN GENERAL [1]

### Can. 108

§ 1. Qui divinis ministeriis per primam saltem tonsuram mancipati sunt, clerici dicuntur.

§ 2. Non sunt omnes in eodem gradu, sed inter eos sacra hierarchia est in qua alii aliis subordinantur.

§ 3. 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.

In connection with the custom of cutting the hair of those who were to be servants (*mancipati,* serfs, slaves) of the Church, *tonsure* occurs as early as the fifth century.[1] It may be defined as a rite whereby a Christian (Catholic) is constituted in the clerical state and made fit to receive minor orders.[2] Hence tonsure [3] can be con-

1 Cf. Coustant, *l. c.,* p. 73; Martène, *De Antiquis Eccl. Ritibus,* l. i, c. 8, art. 7 (ed. Antwerp, 1736, t. II, 40 ff.); Conc. Agath., an. 506, c. 19. *Mancipia* were serfs or a higher grade of slaves; cfr. *Cod. Just.,* XI, 63.

2 Cfr. *Pont. Rom., De Clerico Faciendo;* Lämmer, *K.-R.,* p. 81.

3 Cfr. *Conc. Trid.,* Sess. 23, c. 4, *De Ref.*— The difference between the Scottish and Roman tonsure

ferred only on such as are validly baptized and confirmed and ask for it of their own free will and without deceit. Tonsure is not enumerated among the minor orders, nor is it considered an order at all.[4]

Those, then, who have received the tonsure are called clerics — *i. e.,* men bound to the sacred ministry. As that ministry has various functions, necessitating the exercise of various powers, which are distributed by degrees, it follows that there must be a sacred authority ruling over the whole ministry. This sacred authority is the *hierarchy,* an organization by virtue of which clerics are subordinate to one another and enjoy ecclesiastical power in various degrees.

Three orders are of *divine origin:* the episcopate, the priesthood, and the ministry [5] or diaconate, taking it in the sense of the Church. The words *episcopi, presbyteri,* and *diaconi* occur in the pastoral letters of St. Paul as well as in the Acts of the Apostles. But we do not meet with a fixed terminology until St. Ignatius of Antioch, and even after that there is a certain vagueness in the use of *sacerdotes* and *episcopi,* the terms being often employed synonymously.[6] This fact, however, does not prove that the functions or powers of the two orders were considered to be identical.

Besides these three, other minor ranks were introduced at an early date, owing to the manifold needs of the Church and the increased occupations of the clergy. From the beginning of the second to the middle of the third century there was an almost continual develop-

caused quite a controversy in France and England up to the beginning of the VIIIth century.

4 This is now *sententia communis,* although Fagnani held the opposite opinion; ad c. 11, X, I, 14, n. 43 ff.; cf. v. Scherer, I, 313.

5 *Conc. Trid.,* Sess. 2, 3, can. 6, *De sacr. ord.*

6 Cf. Bruders, *Die Verfassung der Kirche, passim* (we are using the Italian translation by Villa).

ment of lower functions, some of which disappeared later, but most of which have survived to our own day. While the *cantores, exceptores,* and *fossores* are no longer among the orders proper, the subdeacons *(hypodiaconoi)*, the acolytes, exorcists, lectors, and janitors *(ostiarii)* have retained their position as clerics. Since the eleventh century,[7] subdeaconship has even entered the ranks of the *ordines maiores,* while the four others are styled *ordines minores.*[8] These latter, though a complement of the diaconate, are of purely human origin.

The *supreme pontificate* and the *episcopate* are of divine origin, though they are distinct one from the other by reason of their jurisdictional institution. The supreme pontificate, which is an office not only of honor, but of jurisdiction in the proper sense,[9] comprises the legislative, judiciary, and coercive power in their full and unlimited extent, as far as required by the purpose of the Church. Therefore the jurisdiction of the Pope is coextensive with the Church itself, and comprises all members of the same, whatever their rank or condition, as well as all those objects which fall under ecclesiastical jurisdiction. Therefore the jurisdiction of the Sovereign Pontiff is called *plena et suprema.*

However, the *power* of the *bishops,* though subject to and dependent upon, this supreme jurisdiction of the Pope, is really *ordinary,*[10] *i. e.,* given by virtue of the episcopal office, radically or *aptitudinaliter* by consecration, fully and expeditely by confirmation or promotion.

7 Cfr. c. 11, Dist. 32 (Alex. II.); c. 9, X, I, 14.

8 Cf. Wieland, *Die Entwicklung der sog. Ordines Minores* (*Röm. Quartalschrift*) 1897. The theological question whether all the orders are distinct does not touch the canonist. Cfr. St. Thomas, Suppl., q. 36, art. 5; q. 37, art. 2; Bened. XIV, "*In postremo,*" Oct. 20, 1756, § 10 ff. (*Bull.*, t. III, p. 391 ff.); Pohle-Preuss, *The Sacraments,* IV, 1917, p. 93.

9 *Conc. Vatic., De Eccl.,* c. 1–3.

10 *Conc. Vatic., De Eccl.,* c. 3.

Whether this jurisdiction is given to the bishop immediately by the Pope or by God Himself through the medium of his Vicar on earth, is a question which may agitate a speculatively inclined theologian, but does not excite the canonist. The more common opinion is the one mentioned first, because it is certain that no bishop is constituted without the consent and confirmation of the Holy See; and hence we may say that all jurisdiction in the Church comes immediately from the Pope.[11] Since, however, the episcopal jurisdiction is an ordinary one, it cannot be set aside by the Supreme Pontiff, as if he could rule the Church by his vicars, or restrict the episcopal jurisdiction by undue reservations.[12] No such power is included in the papal sovereignty, for the simple reason that the episcopate is established by God, and forms part and parcel of the divine organism of the Church. On the other hand, subordination of the episcopal jurisdiction to that of the supreme head is a necessary requirement of unity of faith and government. An illustration is furnished by the Oriental Church.

Canon 108 says, lastly, that the other degrees existing among the clergy are of (purely) human institution. Concerning the *orders* and the *potestas ordinis* given by ordination, we have said enough. There are eight of them, now permanently fixed. As to the degrees of *jurisdiction,* introduced in course of time, they are especially the following: cardinals, patriarchs, primates, metropolitans, and other prelates endowed with jurisdiction *in foro externo.* All these will occur again.

11 Cfr. Mazzella, *De Rel. et Ecc.*, ed. 5, p. 786, whose historical arguments, however, are not cogent, as it is hardly possible to prove that, in the first ten centuries, all the bishops received their jurisdiction from the Pope. Wernz, *Jus. Dec.*, II, n. 737, calls the old opinion "antiquated."

12 Aichner, *l. c.*, § 99.

## CAN. 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.**

This canon, the first clause of which is taken from the dogmatic canons of the Council of Trent,[13] is directed against certain innovations which cropped out throughout the history of the Church, but were introduced especially by the so-called reformers of the sixteenth century. The "*consent of the people*" was the favorite cry of Arnold of Brescia and his followers, in the twelfth century. It was repeated by Wiclif and Huss, Calvin and Zwingli. Against these the Council of Trent declared it as an article of faith that the people have no voice in the choice of ministers. The *consent of the civil power* was favored by Luther, and partly also by Zwingli at the Council of Zurich. Both demands are excluded by the very organization of the Church and its nature as a *societas inaequalis*.

The next clause establishes the human agency by which the papal power is conferred, *i. e.*, legitimate election accepted by the person elected. On this subject more shall be said in its proper place. The reason for the law here laid down is that the papal power is supreme, and there is no superior who could either ratify election to it or accept the person elected.

13 *Conc. Trid.*, Sess. 23, can. 4, *De Eccl. Hierarchia et Ordinatione;* those chosen in the way here condemned, are called "robbers and thieves." (John 10, 1).

The "*missio canonica*" is necessary for all who are inferior to the Pope. For as the Lord sent his Apostles,[14] so in turn they sent others to exercise their spiritual power with authority, and without such credentials no one has authority in the Church. Formerly (up to the twelfth century) the *missio canonica* was believed to be included in ordination, but now that absolute ordination is possible, a distinct *missio canonica,* by which jurisdiction is conferred, is always required.[15]

### Can. 110

**Quamvis Praelati titulo, honoris causa, a Sede Apostolica etiam nonnulli clerici donentur sine ulla iurisdictione, proprio tamen nomine Praelati in iure dicuntur clerici sive religiosi qui iurisdictionem ordinariam in foro externo obtinent.**

The name *prelate* is derived from *praeferre,* to prefer [some one] to others. It is applied in the ninth century to abbots and abbesses,[16] and later occurs frequently in the Decretals.[17] At the Roman Curia, especially since the college of cardinals shared more largely in the government of the universal Church,— *i. e.,* since the twelfth century,— are mentioned *praelati de curia* and *praelati domus* (employed in the personal service of the pope). Both classes constitute the *Praelatura Romana,* now distributed among the various congregations, tribunals, and offices, and the *Famiglia Pontificia.*[18] A new organization of the Prothonotaries Apostolic has been created

14 Matt. 28, 18; Rom. 10, 15.

15 Cfr. Sägmüller, *K.-R.,* ed. I, p. 147.

16 Cfr. Du Cange. *Glossarium,* s. v. "*Praelatus*"; Tertullian, *De Corona,* III, 3.

17 Cfr. cc. 41, 44, X, I, 6; c. 2, X, II, 1; c. 3, X, I, 31 etc.

18 Cfr. Phillips, *Kirchenrecht,* Vol. VI, 297 ff; Hinschius, *K.-R.,* I, 375 ff.

by Pius X. The Bull *"Inter multiplices,"* of Feb. 21, 1905, determines the rights and privileges of the four classes of prothonotaries,[19] but does not touch the *domestic prelates,* nor the private *chamberlains* residing in or outside of Rome.[20] All these are honorary prelates.

The Code says that *prelates in the proper sense* are such only as enjoy jurisdiction *in foro externo. Forum* in the primitive sense meant a market-place, where wares were exposed for sale. There were many such *fora* in ancient Rome. The term was also used to designate a judgment place, or court, on account of the publicity given to trials, and in this sense was transferred to the power of the judge, or rather to his competency.[21] From these two significations it is easy to construe the meaning of *forum externum,* which is nothing else but the power of jurisdiction in matters concerning the public order of the Church. This power is manifested in the exercise of the legislative, judiciary, and coercive function, especially in the infliction of censures and vindictive penalties, as will be seen in the fifth book.[22]

19 Cfr. *Amer. Eccl. Rev.,* Vol. 32, p. 612 ff.

20 Cfr. *Cath. Encycl.,* Vol. X, 510, *s. v.* "Monsignore;" *Am. Eccl. Rev.,* Vol. 31, p. 605.

21 Cf. l. 5, *Cod. Just.,* III, 13: *"in criminali negotio rei forum accusator sequatur."*

22 Cfr. Putzer, *Comment.,* p. 24.

# TITLE I

## INCARDINATION IN A DIOCESE

After describing the constituted hierarchic order of clerics who enjoy ecclesiastical power in different degrees, it is natural that the code should treat of the local [1] hierarchy, or incardination in a diocese.

The Council of Chalcedon [2] forbade so-called *absolute ordinations,* and hence every cleric was assigned at ordination to a specified diocese, or city, or martyr's cell, or monastery, where he had to perform his functions. Hence clerics were called *incardinated* in a certain church as subdeacons, deacons, or priests. Incardination in another diocese was allowed only with the permission of both bishops concerned, unless the ordinary was in the hands of enemies or otherwise impeded.[3] *Litterae commendatitiae* were required for receiving strange clerics or monks into dioceses and monasteries not their own.[4] In course of time, especially since the twelfth century, the old discipline was relaxed and various titles of ordination were, at least practically, admitted. But the Council of Trent [5] returned to the old discipline, and the new Code upholds its decision.

1 See the historical note under canon 216.

2 Can. 6; cfr. c. 1, dist 70; c. 1, dist. 71; c. 17, 6°, III, 4, *De Praeb.*

3 Cfr. c. 5, dist 71; c. 6, dist. 74.

4 Cfr. *Reg. S. Bened.*, c. 61; c. 7, 8, dist. 71.

5 Sess. 23, c. 16, *De Ref.*

## CAN. III

**§ 1. Quemlibet clericum oportet esse vel alicui dioecesi vel alicui religioni adscriptum, ita ut clerici vagi nullatenus admittantur.**

**§ 2. Per receptionem primae tonsurae clericus adscribitur seu, ut aiunt, *incardinatur* dioecesi pro cuius servitio promotus fuit.**

After having stated, in can. 107, that there are two classes of persons, clerics and laymen, and that both may be religious, the Code decrees that every cleric must belong either to a diocese or to a religious order. Both dioceses and religious orders or congregations may be looked upon as corporations in the canonical sense. Every clergyman must therefore be a member of one or the other. This is necessary even from a juridical point of view. For a regulated administration requires that every subject should belong to some municipality or corporation, whose duties and obligations he shares.

A cleric becomes incardinated in a diocese or religious community at the moment when he receives the *first tonsure,*[6] because at that moment he enters the clerical state, which, though *in abstracto* it signifies the sacred ministry in general, yet *in concreto* means that part of the Church which is assigned for a cleric's activity. The phrase, *" to the diocese to which he is promoted,"* includes not only the *titulus servitii,* but any title on which one is ordained. For § 1 simply forbids vagrant clerics.

## CAN. 112

**Praeter casus de quibus in can. 114, 641, § 2, ut**

6 It is called first tonsure because it presupposes the renewal of the tonsure.

clericus alienae dioecesi valide incardinetur, a suo Ordinario obtinere debet litteras ab eodem subscriptas excardinationis perpetuae et absolutae; et ab Ordinario alienae dioecesis litteras ab eodem subscriptas incardinationis pariter perpetuae et absolutae.

CAN. 113

Excardinationem vel incardinationem concedere nequit Vicarius Generalis sine mandato speciali, nec Vicarius Capitularis, nisi post annum a vacatione sedis episcopalis et cum consensu Capituli.

CAN. 114

Habetur excardinatio et incardinatio, si ab Ordinario alienae dioecesis clericus beneficium residentiale obtinuerit cum consensu sui Ordinarii in scriptis dato, vel cum licentia ab eodem in scriptis concessa e dioecesi discedendi in perpetuum.

CAN. 115

Etiam per professionem religiosam quis a propria dioecesi excardinatur, ad normam can. 585.

CAN. 116

Excardinatio fieri nequit sine iustis causis, et effectum non sortitur, nisi incardinatione secuta in alia dioecesi, cuius Ordinarius de eadem priorem Ordinarium quantocius certiorem reddat.

CAN. 117

Ad incardinationem alieni clerici Ordinarius ne deveniat, nisi:

1.° Necessitas aut utilitas dioecesis id exigat, et salvis iuris praescriptis circa canonicum ordinationis titulum;

2.° Ex legitimo documento sibi constiterit de obtenta legitima excardinatione, et habuerit praeterea a Curia dimittente, sub secreto, si opus sit, de clerici natalibus, vita, moribus ac studiis opportuna testimonia, maxime si agatur de incardinandis clericis diversae linguae et nationis; Ordinarius autem dimittens, graviter onerata eius conscientia, advigilare debet ut testimonia sint veritati conformia;

3°. Clericus iureiurando coram eodem Ordinario eiusve delegato declaraverit se in perpetuum novae dioecesis servitio velle addici ad normam sacrorum canonum.

Many decrees[7] were issued in the course of about twenty years for the purpose of regulating the matter of excardination and incardination. They were all based on the Tridentine law and upon the Constitution "*Speculatores,*" of Innocent XII, Nov. 4, 1694. This pontiff, a canonist of renown, determined the question of the *episcopus proprius* and in connection therewith, also touched the subject of excardination. According to the Constitution mentioned every layman who left the diocese where he was born or where he had a legitimate domicile, had to be excardinated by his own bishop if he wished to receive tonsure from another.[8] Our Code does not mention excardination proper, but simply says that by the first tonsure one becomes attached to the diocese for which one is to be ordained or promoted. Hence the case of laymen now no longer enters the question of excardination or incardination.

7 Cfr. *A. Ap. S.*, II, 105; IV, 249; V, 34; VI, 182 ff.; *Am. Eccl. Rev.*, Vol. 30, 293 ff.

8 Cfr. Richter, *Trid.*, p. 536, § 3

The new legislation may be summarized as follows:

a) Letters of excardination and incardination are required;

b) Such letters cannot be given except for just reasons;

c) Both excardination and incardination must be absolute and perpetual;

d) Excardination does not take effect until incardination has been granted.

These are the four salient points. Hence everything must be done in *writing,* with signature and seal. In former decrees it was required that the cleric should be minutely described as in a passport. The vicar-general needs a special mandate to issue such letters, and the vicar-capitular is allowed to grant them only after a year's vacancy. The *reason for excardination* must be just, and considered carefully by the Ordinary. It may be based either on necessity or utility;[9] hence a reason of either kind suffices. Necessity could be urged if there were a *penuria sacerdotum,* either temporary or permanent; *utility,* if there were need of help in diocesan institutions,— schools, seminaries, parishes of diverse languages, etc. The bishop himself is the judge about the existence of such reasons.

Excardination or incardination is *absolute* and *perpetual* if no condition is added; such a condition would be, for instance, "if you do not stay in my province," or "if you do not apply to such and such a bishop." No conditions are admitted, and if they be added, must be looked upon as non-existent. What "perpetual" means is clear; it precludes incardinating a cleric for a time only, *e. g.,* as long as help is needed.

[9] *Conc. Trid.,* Sess. 23, c. 16, *De Ref.*

*Excardination does not take effect until incardination is consummated.* This is a noteworthy clause. It protects clerics against harsh measures unauthorized by law, and is simply a consequence of the law which ordains that every cleric should belong to some diocese. A bishop may dismiss a priest *usque in indefinitum,* but the priest continues to belong to his diocese as long as he has not been incardinated elsewhere, and, therefore, is entitled to decent support.

The bishop, however, has the right to give one written permission to *take leave of absence* from his diocese *in perpetuum* (can. 114). Permission (*licentia*), however, generally presupposes a demand, as the word "*concessa*" also implies. Wherefore, in that case, the cleric asking for such a permission has to take the consequences upon himself. As to a *residential* benefice, *i. e.,* one which requires lasting residence in a strange diocese, for instance, a parish or canonical office, excardination and incardination are implied in the very grant thereof. The same is to be said concerning *religious profession* which is made by perpetual (either solemn or simple) vows (can. 505). For by such a vow one becomes a member of a religious body.

The *oath* to be given at incardination is that which is taken by touching the Gospels as a witness of one's earnest intention. The S. C. Cons. has decided that, if this oath was perchance omitted at the time of incardination, the bishop cannot therefore declare the incardination invalid.[10] This decision, we believe, is not overthrown by the Code, because the wording of can. 107, though prohibitive, is not nullifying.

[10] Jan. 31, 1913 (*A. Ap. S.,* V, 34).

## TITLE II

## RIGHTS AND PRIVILEGES OF CLERICS

If the clerical state, on account of its hierarchic power, is superior to the lay state, it follows that this superiority must be manifested by outward signs or rights. This is a dictate of reason, as the history of all civilized nations attests. Wherever there was a legally acknowledged priesthood, it enjoyed marked distinctions, not only under the Jewish theocracy, but also in the Oriental empires as well as in the Greek and Roman States.[1] The Christian priesthood and ministry could not form an exception. But it would be shooting beyond the mark if we were to assert that each and every privilege or right vindicated to the clergy in the following canons is of natural or divine law. For not only is it contrary to logic to deduce a particular conclusion from a general and vague premise, on the ground of their being of the same nature, but even scriptural and historical indications would fail to bear out such conclusions regarding some of these privileges.

We premise this in order to caution the reader against certain unproved assumptions.

The caption of our Title reads: "Rights and Privileges of Clerics." No precise distinction is made between rights and priviliges, and hence a margin is left for controversial speculation. The whole class of these rights

1 Cfr. *Handbuch der Klass. Altertumswissenschaften,* O. Gruppe, *Griech. Mythologie,* 1906, II, 1020 and *passim;* Wissowa, *Religion und Kultus der Römer,* 1902, pp. 63 ff.; 339 f.; 410 ff. Ramsay-Lanciani, *Manual of Roman Antiquities,* 1901, pp. 374 ff.

is known by the general name of *immunities*.[2] Immunities comprise the *privilegia canonis et fori, beneficium competentiae,* and *immunity* in the strict sense. All these privileges belong to the clergy by virtue of their state, and remain as long as they are not forfeited by the loss of that state or by virtue of the penal law.

## CAN. 118

**Soli clerici possunt potestatem sive ordinis sive iurisdictionis ecclesiasticae et beneficia ac pensiones ecclesiasticas obtinere.**

This is a strict *right,* not a mere privilege; a right reserved to the clergy because the divine organization of the Church enjoys the peculiarity that ecclesiastical power is granted only to those chosen by Christ. Hence whatever pertains to the hierarchical power, order, and jurisdiction can be conveyed only to such as belong to the hierarchy. Besides, since the material emoluments are granted on account of the spiritual office, which can be exercised only by hierarchical persons, ecclesiastical benefices and pensions can be obtained only by clerics. Therefore *laymen,* as such, cannot be ordained, as long as they have not received the first tonsure.[3] If the examples of St. Nicholas and Ambrosius are urged against this principle, we need not resort to Gratian's expedient,[4] but simply answer that their calling was divinely sanctioned, and rather forms an "*exceptio quae firmat regulam,*" than a breach of principle. *Laymen,* as such, cannot obtain *jurisdictional* power in matters strictly spiritual or ec-

2 Cfr. X, III, 49, *De Imm. Eccl.,* and the commentators thereon.

3 Cfr. c. 8, Dist. 61, *e contra,* c. 7, X, II, 26, *De praescript.*

4 Cfr. c. 8, Dist. 61, where he speaks of insufficient education and spiritual inferiority.

clesiastical;[5] neither can they obtain any benefice which is of a purely ecclesiastical nature; though by special concession they may be *patrini* of benefices,[6] or have the advowson, as the English law puts it.

### THE PRIVILEGIUM CANONIS

### Can. 119

**Omnes fideles debent clericis, pro diversis eorum gradibus et muneribus, reverentiam, seque sacrilegii delicto commaculant, si quando clericis realem iniuriam intulerint.**

The relation existing between a superior and an inferior enjoins respect for authority and obedience on the part of the subordinate. Therefore the clergy always take precedence over the laity.

The second clause of our canon contains the so-called *privilegium canonis,* which dates back to the second Lateran Council, A. D. 1139. The violent acts perpetrated by Arnold of Brescia and his followers against priests and religious led the Council to repeat and summarize previous synodal acts of Rheims and Pisa in *one canon;* hence the name. This canon, the fifteenth of the Lateran Council,[7] decreed that "whoever maliciously lays hands on any cleric or monk, thereby incurs *ipso facto* excommunication, from which, except in danger of death, no bishop shall dare to absolve him, until he presents himself before the pope to await his sentence."

Our canon speaks of a *sacrilege,* but does not mention its penalty, which belongs to the penal Code.[8] Who are

5 C. 2, X, II, 1: "*Laici ecclesiastica negotia tractare non praesumant*"; c. 8, X, I, 43, *De arbitris;* concerning matrimonial causes cfr. *Trid.,* 24, can. 24, *De Matr.*

6 Cfr. Reiffenstuel, II, I, p. 75.

7 Cfr. c. 29, C. 17, q. 4.

8 Cfr. c. 2343, which mitigated

meant by *clerici* is evident from can. 108, § 1, *viz.:* all those who have received the first tonsure, but also all religious of both sexes, even novices, as well as tertiaries who live in common and wear the religious habit, and hermits who live in common and have received the habit from the competent authority.[9]

The *injury* which is declared to be a sacrilege, must be *real,* that is, done to the cleric himself by act or deed, not in words only; thus imprisoning[10] a cleric or throwing mud at him, would be a real injury.

The action must be *injurious,* which implies that the offended person is justly[11] indignant at the perpetrator and that the latter was aware of the sacred character of his victim. Self-defence against a cleric is no injurious action. Though there is, according to our view at least, no specific difference between a sacrilegious act committed against a higher and one committed against a lower cleric, yet on account of the public order the penalties imposed differ according to the rank of the injured party. This is clearly stated in the penal Code.

### THE PRIVILEGIUM FORI

### CAN. 120

**§ 1. Clerici in omnibus causis sive contentiosis sive criminalibus apud iudicem ecclesiasticum conveniri debent, nisi aliter pro locis particularibus legitime provisum fuerit.**

**§ 2. Patres Cardinales, Legati Sedis Apostolicae, Episcopi etiam titulares, Abbates vel Praelati *nullius,* supremi religionum iuris pontificii superiores, Officiales**

the penalty for injury done to the lower clergy (not prelates) by reserving it to the Ordinary.

9 Cfr. D'Annibale, *Comment. in Ap. Sedis,* 1894, p. 73.

10 Cfr. c. 1, 3, 4, 10, 24, 54, X, V, 39.

11 If a clergyman has provoked

maiores Romanae Curiae, ob negotia ad ipsorum munus pertinentia, apud iudicem laicum conveniri nequeunt sine venia Sedis Apostolicae; ceteri privilegio fori gaudentes, sine venia Ordinarii loci in quo causa peragitur; quam tamen licentiam Ordinarius, praesertim cum actor est laicus, ne deneget sine iusta et gravi causa, tum maxime cum controversiae inter partes componendae frustra operam dederit.

§ 3. Si nihilominus ab eo qui nullam praehabuerit veniam, conveniantur, possunt, ratione necessitatis, ad vitanda maiora mala comparere, certiore tamen facto Superiore a quo venia obtenta non fuit.

This canon contains, as it were, the ancient and modern history of the *privilegium fori* in a nutshell. The privilege, then, signifies that clerics in civil as well as criminal causes should be judged by an ecclesiastical, and not by a lay tribunal. It has been frequently asserted [12] that this privilege is of divine or natural law, and arguments from the Old Testament as well as from pagan customs have been brought forth in proof. However, a little historical reflection is sufficient to disprove these pretensions. For neither theory nor practice has always been uniform. Rather extensive prerogatives were granted to *bishops*. Constantine permitted them to have some influence in deciding between dissentient secular judges.[13] Valentinian III granted the right of deciding civil cases of the clergy who sought the episcopal tribunal; but criminal cases of clerics had to be brought before the lay judge.[14] Justinian excluded from the competency

such treatment by an insult offered to the perpetrator's wife, mother, daughter or sister, he cannot be said to be *justly* indignant.

12 Cfr. the Commentators on X, II, 1, and X, III, 49.

13 Cf. Euseb., *Vita Const.*, IV, 27; *Cod. Theod.*, VI, 281.

14 Nov. 34, Am. 452; Gothofred,

of lay judges all causes of monks and nuns; and concerning the civil causes of clerics he ordained that they might be brought before the bishops, and only in case these should fail to reach a sentence should the lay judges be called upon to decide. In criminal cases the accused cleric was first to be cited before the episcopal court and then punished by the civil court.[15] With little differences the same practice was followed in the West, though here the influence of Pseudo-Isidore cannot be denied, as a glance into Gratian's Decree shows.[16] Since the ninth century the prelates and inferior clerics claimed immunity from lay courts. After the Reformation, and even more so after the French Revolution, under the influence of Rationalism, the *privilegium fori* was curtailed, in some instances (Austria, Bavaria, Sicily) with the consent of the Holy See by way of concordats.[17]

The latest occasion where the *privilegium fori* was publicly and emphatically reasserted was in the Verdesi-Briccardelli case, in which certain Cardinals were cited to appear in court, and were excused only on the ground that exemption was attached to the royal order of the Annunziata, to which they happened to belong. This incident called forth the famous Motu proprio of Pius X, "*Quantavis diligentia*" of Oct. 9, 1911, which caused unnecessary disturbance in more than one parliament.[18]

After this historical preliminary let us see what the Code states. It first vindicates (§ 1) the *privileged court for the whole clergy* as far as the term clergy extends, *i. e.*, all those who enjoy the *privilegium canonis*. But it also

VI, 417; Baronius, *Annal. Eccl. ad Annum 452.*

15 *Nov.*, 83, § 1; 123, c. 27.

16 Cfr. cc. 1, 3, 9, 10, C, 11, q. 1 (all Pseudo-Isidorian sources); see Bachofen, *Summa Juris Eccl. Pub.*, p. 78 ff.

17 Austrian Concordat, art. 13; Aichner, Appendix, p. 6; Nussi, *Conventions*, 1809, p. 193.

18 Cfr. *A. Ap.*

makes an exemption, *viz.,* for those countries or places for which special provision has been made. Such provision is made by concordats and in other ways. § 2 distinguishes between the higher and the lower clergy. The higher clergy are the cardinals, legates of the Apostolic See, bishops, *praelati nullius,* the superiors general of papal orders, and the higher officials of the Roman Curia. Who these officials are is not apparent either from this canon or the organization of the Roman Court, but the Prefect, the Secretary and the Subsecretary are doubtless included. The term *legates* most probably includes Apostolic delegates.[19]

After the enumeration of the higher officials of the Roman Court follows a comma, and then, "on account of affairs pertaining to their office." The question may arise whether this addition refers to all the persons (cardinals, legates, bishops, prelates *nullius,* superiors general, higher officials of the Roman Court) or to the last-named only. In the latter case the higher officials of the Roman Curia might be cited before a civil court for matters not pertaining to their office, whilst the other persons named could not be summoned at all. Can. 2341 refers the clause, "on account of affairs, etc.," without a comma, only to the higher officials of the Roman Court, and we believe there was a special reason to mention these matters in connection with the Roman officials, on account not only of the importance of the matter, but also because they belong to the papal authority, and, we might say, household. On the other hand, the *privilegium fori* must be vindicated to these officials to the full extent, according to § 1.

19 Cfr. can. 267. § 2.— The *maiores religionum iuris pontificii superiores* are Abbot Primate, abbots president, abbots, generals, and provincials of communities or congregations approved by the Holy See. Cfr. c. 488.

The next clause of § 2 treats of clerics of inferior rank, such as vicars-general, honorary prelates, pastors and their assistants, and religious. All these must first obtain permission of the Ordinary before they may licitly appear before a civil court. Here no mention is made of matter pertaining to their office. Note that religious, though exempt, must have leave from the Ordinary of the diocese, not only the permission of their own superior, who cannot, however, withhold it if the Ordinary has given his. Ordinaries are in the last clause of the same § 2 exhorted to be liberal unless they have special and weighty reasons for refusing permission.

§ 3 of canon 120 provides for cases where clerics are summoned without the necessary permission, and establishes that only in cases of necessity and when greater evils might follow if the clergy would not appear, the higher as well as inferior clergy are allowed to obey the summons of a civil court. However, from can. 2341 it is evident that the penalty of excommunication reserved to the Holy See *modo speciali* would be incurred if a cardinal, an Apostolic legate, a higher official of the Roman Court, or the Ordinary of the diocese would be summoned by civil authorities without the necessary permission. The same penalty would be incurred if another than the diocesan bishop, though but titular, or a prelate *nullius,* or a religious superior general of a papal institute would be summoned. If any of the lower ranks of the clergy would be called to court, the penalty for a cleric would be suspension, and for a layman some penalty to be determined by the Ordinary.

Now two questions of importance must be answered:

(a) Do the *privilegium fori* and its concomitant penalty also apply in the case where one is called as a *witness* only? The text *ibique adesse* as well as the interpreta-

tion given by Cardinal Gennari answer affirmatively.[20] We also know that this was the stand taken by the Roman Curia in the Verdesi case.

(b) May a *custom be admitted against the privilegium fori?* This may also be affirmed, as appears from the answer of Cardinal Merry del Val to the ambassador of Prussia, Mühlberg, officially [21] printed in the *Osservatore Romano* of Dec. 16, 1911. Whether this custom may be upheld in the U. S. is difficult to say in view of the enactments of the Second Pl. Council of Baltimore, n. 156, and the Third, n. 84. The clause inserted by the latter: " as far as it may be defended among us," seems to admit the contrary custom. Besides, there is no doubt that English customs prevail in our country, and these would point to the existence of a contrary custom.[22] Lastly, our canon does not reprobate such a custom.

### PERSONAL IMMUNITY

### Can. 121

**Clerici omnes a servitio militari, a muneribus et publicis civilibus officiis a statu clericali alienis immunes sunt.**

This canon comprises the whole range of personal immunity which the clergy have *de iure et facto* enjoyed for centuries. On just what ground, or law, or custom this freedom is based, the Code does not decide. Neither has any dogmatical definition ever been given in this regard. For the text in the Decretals [23] that churches and

20 Cfr. *Monitore Eccles.*, 1912, p. 507.

21 The *Osservatore* is not the official organ of the Vatican, but in this case the latter employed it to give an official answer. Cfr. *Archiv f. K.-R.*, 1915, 297 f.; *Monitore Eccles.*, 1911, p. 507.

22 Cfr. *Am. Eccl. Rev.*, Vol. 47, 312 ff.

23 c. 4, 6°, III, 20, *De Immunitate.*

ecclesiastical persons and things enjoy immunity by divine right, is merely an assumption not contained in the dispositive part of the law. The Council of Trent [24] appeals to the rulers to respect the privilege, but advances no definition. The Syllabus condemns the propositions that clerical immunity originated in a grant of the civil government, and that it could and should be abolished.[25] Hence no authentic or *de fide* definition has been issued by the Apostolic See concerning the immunity of the clergy. What we said concerning divine law in reference to the *privilegium fori* applies here also.

The clergy are free from *military service.* That priests at least should be exempt from carrying and using arms seems very becoming and just. For their state demands charity, meekness, and forbearance, which shrink from bloodshed. Besides their high calling requires that they hold themselves aloof from the strife and turmoil of warfare. In times of war especially are they the messengers of spiritual and even corporal mercy. The sacerdotal character resembles that of the Prince of peace, whose hands were not stained with blood, whose lips spoke nought but love, even for His enemies, whose heart embraced all. We will not speak of the dangers accruing to the priestly life from the atmosphere of garrisons and trenches. If any one should trump up democracy — a term much abused but seldom rightly understood — as demanding equality of all citizens, we answer that the Athenians and the Romans were as good democrats as we moderns, and yet accorded a privileged place to their priests. True democracy does not exclude respect for the things that pertain to God, who, being the author of nature, is also the author of the *democratic*

24 Sess. 25, c. 20, *De Ref.*

25 Syllabus, n. 30, n. 32; Heiner, *Der Syllabus*, 1905, p. 167.

*form of government* as well as of the monarchical. We have dwelt upon this point because it seemed necessary in view of present tendencies. For the day will come — and we hail it — that *compulsory military service* will be introduced into our republic. Why not take our little sister republic of Switzerland for a model? There, no one physically fit is exempt from military service. After having passed the medical examination and being found capable, the young man, at the age of twenty, must serve for ten weeks as a recruit of infantry, or for twelve weeks in some of the other units. After that, two or three weeks every year, when the manœuvres take place, must be spent in the military service, only those of the clergy being exempt who have received at least *subdeaconship* or definitively entered the religious state. Those who are exempt from service must pay the military tax. Of course military chaplains with the rank of captain are also drafted. We cannot see any damage either to the clerical state or to the country in such conditions. The little Swiss Republic, surrounded as it is by four great powers, has proved itself a noble country, ready and able to fight for liberty and democracy without deeming it necessary to disturb the ministers of religion in the possession of their time-honored immunity.[26]

*Obligations* or *munera* (*sordida*) are such kinds of labor as are commonly called base because performed only by physical labor, and were always looked upon as unbecoming to cultured persons; or, as Blackstone says,[27] such as are fit only for peasants or persons of servile rank. These were called services of villein-socage. Hither belonged the *pedagium* (*angaria*), or

26 Concerning the custom of the Middle Ages in England, see *Translations and Reprints,* published by the University of Penn., Vol. IV, n. 3, p. 28 ff.

27 Commentary, II, 60 f.

road-repairing, the *podagium,* or upkeep of bridges, the *ius metatus,* or quartering of soldiers, etc. Such services were not demanded from the clergy.[28] But now that they are commuted into poll-taxes, it would be difficult to exempt the clergy from paying these taxes. Other taxes, on personal property especially, the clergy have to pay like the rest.

*Public offices* of a civil character are, *e. g.,* the postmastership, the mayoralty, the offices of bailiff, constable, alderman, trustee, guardian, etc. The last-named two offices a cleric may assume for relations, orphans, and the poor.[29]

### BENEFICIUM COMPETENTIAE

### CAN. 122

**Clericis qui creditoribus satisfacere coguntur, salva sint quae ad honestam sui sustentationem, prudenti ecclesiastici iudicis arbitrio, sunt necessaria, firma tamen eorundem obligatione creditoribus quamprimum satisfaciendi.**

This is what is known as the *privilege* or *benefit of the clergy* in case of insolvency. Its origin is not only obscure, but also mystic, on account of the popular comparison of the clerical state with the military profession (*militia coelestis — militia terrena*). With this comparison in mind the commentators on the famous chapter "Odoardus" (c. 3, X, III, 23) applied to the clergy the

28 Cfr. c. 4, X, III, 49, *De Imm.* It is to be noted, however, that c. 7 enjoins the clergy to assist the commonwealth if the layman's help alone does not suffice. The "Great Charter" of England (1215), n. 22, reads: "A clergyman shall be fined only in proportion to his lay holdings, and not according to the extent of his ecclesiastical benefice." *v. Translations and Reprints,* Vol. I, n. 6, p. 10.

29 Cfr. cc. 1, 3, X, I, 37; c. 2, X, III, 50; Aichner, *l. c.,* § 73, 1; for England see Blackstone-Cooley, I, 376.

privileges of the imperial soldiers whose salary could not be entirely garnisheed by creditors.[30] The chapter alleged really mentions only the dictum of Pope Gregory IX, that a clergyman declaring himself insolvent should not, on that account, be excommunicated, but should give security that in case of his obtaining a better income, he would pay his debts. This is the sole basis for the simile of the "spiritual warfare or *militia Christi*." Nevertheless the canonists [31] clung to the interpretation and now it has been perpetuated in the new Code. Now-a-days this matter is settled by civil laws, which are no longer as rigid as were those of the Middle Ages. The meaning of the canon therefore is that a sufficient support should be left to an indebted clergyman and, especially, that his freedom should not be curtailed. But the obligation of paying his debts — the *security* of the Decretals — certainly remains.

### LOSS OF THE CLERICAL PRIVILEGES

### Can. 123

**Memoratis privilegiis clericus renuntiare nequit; sed eadem amittit, si ad statum laicalem reducatur aut privatione perpetua iuris deferendi habitum ecclesiasticum plectatur, ad normam can. 213, § 1, 2304; recuperat vero, si haec poena remittatur aut ipse rursus inter clericos admittatur.**

The privileges enumerated, though cleaving to the

30 Cfr. l. 33, *Cod. Just.*, I, 3; *Nov.*, 123, c. 10; l. 173, *Dig.*, 50, 17; Zipperling, *Das Wesen des beneficium competentiae*, 1907, p. 94 ff.

31 Cfr. Engel, III, 23, n. 1; Fagnani, *ad c. cit.*, where he mentions the penalty imposed on a deeply indebted clergyman who was set upon a donkey and had to wear a green biretta.

clergyman, and in so far personal, belong to the clerical state, *i. e.,* to the clergy as a class, not to the individual in the first place, and therefore they cannot be waived by private agreement, even though this be confirmed by an oath.[32] They are lost, however, by *degradation,* whereby a cleric is reduced to the lay state.[33] The right of wearing the clerical garb is forfeited by *deposition,* followed by stubborn refusal to do penance,[34] and, furthermore, by reduction to the lay state (can. 211 ff.).

Clerics in minor orders lose their privileges *ipso iure* according to can. 132, § 2, can. 136, § 3, can. 141, § 2, because by acts done against these canons they *reduce themselves* to the lay state.

32 Cfr. c. 12, X, II, 2.
33 Can. 2305; cfr. c. 14, X, V, 39, *De sent. excom.*
34 Can. 2304.

## TITLE III

## OBLIGATIONS OF CLERICS

### RELIGIOUS DUTIES

### CAN. 124

Clerici debent sanctiorem prae laicis vitam interiorem et exteriorem ducere eisque virtute et recte factis in exemplum excellere.

### CAN. 125

Curent locorum Ordinarii:

1.° Ut clerici omnes poenitentiae sacramento frequenter conscientiae maculas eluant;

2.° Ut iidem quotidie orationi mentali per aliquod tempus incumbant, sanctissimum Sacramentum visitent, Deiparam Virginem mariano rosario colant, conscientiam suam discutiant.

### CAN. 126

Omnes sacerdotes saeculares debent tertio saltem quoque anno spiritualibus exercitiis, per tempus a proprio Ordinario determinandum, in pia aliqua religiosave domo ab eodem designata vacare; neque ab eis quisquam eximatur, nisi in casu particulari, iusta de causa ac de expressa eiusdem Ordinarii licentia.

These three canons refer to the religious life of the clergy, who in virtue of their divine calling and the sacred ministry which they exercise, are obliged to gov-

ern their conduct in accordance with these laws. The retreat master as well as the spiritual director will find ample material in the ancient sources of Canon Law [1] for fit subjects to speak on. This is not the place to enlarge upon that subject. We would merely draw attention to the fact that a retreat should not form the occasion for belittling the science and application of Canon Law or for concentrating the entire attention on the authority of the bishop. *Suum cuique!*

### CLERICAL OBEDIENCE

### CAN. 127

**Omnes clerici, praesertim vero presbyteri, speciali obligatione tenentur suo quisque Ordinario reverentiam et obedientiam exhibendi.**

### CAN. 128

**Quoties et quamdiu id, iudicio proprii Ordinarii, exigat Ecclesiae necessitas, ac nisi legitimum impedimentum excuset, suscipiendum est clericis ac fideliter implendum munus quod ipsis fuerit ab Episcopo commissum.**

The Code mentions first the special obligation of paying *reverence* as well as obedience to the Ordinary. Reverence is due to a superior from his inferiors,[2] and consists in external marks of respect, *e. g.*, rising in his

1 Cfr. *Dist.*, 23–50; c. 5, C. 6, q. 1; X, III, 1; 6°, III, 1; *Clem.*, III, 1; *Trid.*, Sess. 22, c. 1; Sess. 23, c. 11, 13; Sess. 25, c. 1, *De Ref.*; Gasparri, *Codex Juris Can.*, p. 29, enumerates 28 Apostolic Constitutions and Letters to that effect.

2 Cf. c. 3, 6, Dist. 23; c. 24, C. 7, q. 1; c. 18, C. 11, q. 11; c. 10, C. 18, q. 2; cc. 2, 7, 9, X, I, 33. See Bened. XIV, "*Etsi minime,*" Feb. 7, 1742, § 6 (*Bull.*, Prati, Vol. I, p. 137 f.), especially concerning the duty of priests to teach the catechism.

presence and giving him the first place.[3] Other signs, *e. g.,* kissing the Bishop's ring or hand, are more or less conventional, and depend upon local custom. Reverence, therefore, is outwardly manifested by giving precedence to the superior and showing him such signs of respect as are customary.

The *obedience* here inculcated is called *canonical,* because based upon the rules laid down by the Church. At his ordination a cleric simply promises to obey the Ordinary and his successors. The object and extent of this obedience is determined, on the one hand, by the clerical state and office, and, on the other, by the extent of the episcopal jurisdiction. The bishop is entitled to enjoin or enforce the common law which governs the clerical state and office in general. The obedience of the clergy, therefore, extends to whatever concerns their state as such, and in this matter no exemption can be claimed. The *office* of a cleric is partly general and partly particular. It is general in so far as it is given by virtue of the different orders — subdeaconship, deaconship, priesthood.[4] Therefore, whatever belongs to his respective office, a cleric is not at liberty to refuse to perform.

But there is another office attached to the clerical state (can. 145), which involves *the exercise of ecclesiastical power in a certain station or measure.* The latter is mentioned in can. 129. Canonical obedience obliges a cleric to take upon himself an office duly assigned by his Ordinary, and to discharge that office *faithfully,* be it that of parish priest, assistant, chaplain, teacher, etc. He is

3 Cfr. Smith, *Elements,* I, p. 217.

4 However, this binds only in general, not for a particular church. Thus, *e. g.,* a parish priest, who is not canon of a cathedral, cannot be compelled to act as deacon or subdeacon in the cathedral church. S. C. C. Nov. 26, 1701; Aug. 19, 1702, "*Auximana*" (Richter, *Trid.,* 208, n. 8). Lehmkuhl in the *Linzer Quartalschrift,* 1900 (Vol. 53), p. 86 f.

bound to do this by virtue of his ordination for and incardination in the diocese, and because the clerical state is one of labor, not leisure. Though the promise of obedience is not an oath which would constitute clerics vassals of the bishop, it partakes of the nature of religion, which links the clergyman to the legitimate power of the diocese.

From this obligation a cleric is free in two cases only: (1) if the Church does not need him, or (2) if he has a legitimate excuse.

(1) In our country, and after the great war in most other countries, there is not likely to be an oversupply of priests.

If the bishop insists upon a priest serving in his diocese, he must provide that priest with an adequate living.[5] A clergyman not provided with any ecclesiastical benefice or office in the diocese cannot be compelled to take part in processions, unless there is a legitimate custom to the contrary.[6]

(2) A *legitimate excuse* exempting a cleric from accepting an office would be a physical impediment, for instance, poor health; or a bodily defect which might prove a serious obstacle to his exercise of the office; or a moral obstacle, such as scrupulosity; or enmity on the part of the people; or lack of practical knowledge or prudence.[7] Where no such excuse exists, a cleric is bound to obey his bishop when the latter assigns him to a charge. He must also heed the bishop's *injunctions* and *precepts*, even in matters which are only indirectly connected with the clerical state and office. In the Constitution of Leo

5 S. C. C. Jan. 26, 1833, "*Reatina*" (Richter, *Trid.*, p. 208, n. 6).

6 Richter, *ib.*, n. 9; Bened. XIV, *Inst.*, 31, n. 1 f.

7 Cfr. S. C. Cons., "*Maxima cura*," Aug. 20, 1910.

XIII, "*Officiorum ac munerum,*" 1897, the clergy are admonished to submit to the Ordinary any books they may write, even on subjects of natural science and art, "in order to show an example of prompt obedience," and are forbidden to assume the editorship of newspapers and magazines without the Ordinary's permission.[8] The bishop, therefore, is entitled to demand from his clergy obedience in all licit things that pertain to his episcopal jurisdiction, in so far as required by the clerical state and office.

SCIENTIFIC EQUIPMENT OF THE CLERGY

CAN. 129

**Clerici studia, praesertim sacra, recepto sacerdotio, ne intermittant; et in sacris disciplinis solidam illam doctrinam a maioribus traditam et communiter ab Ecclesia receptam sectentur, devitantes profanas vocum novitates et falsi nominis scientiam.**

CAN. 130

**§ 1. Expleto studiorum curriculo, sacerdotes omnes, etsi beneficium paroeciale aut canonicale consecuti, nisi ab Ordinario loci ob iustam causam fuerint exempti, examen singulis annis saltem per integrum triennium in diversis sacrarum scientiarum disciplinis, antea opportune designatis, subeant secundum modum ab eodem Ordinario determinandum.**

**§ 2. In collatione officiorum et beneficiorum ecclesiasticorum ratio habeatur eorum qui, ceteris paribus, in memoratis periculis magis praestiterunt.**

CAN. 131

**§ 1. In civitate episcopali et in singulis vicariatibus**

[8] *Const. cit.*, n. 22.

foraneis saepius in anno, diebus arbitrio Ordinarii loci praestituendis, conventus habeantur, quos *collationes* seu *conferentias* vocant, de re morali et liturgica; quibus addi possunt aliae exercitationes, quas Ordinarius opportunas iudicaverit ad scientiam et pietatem clericorum promovendam.

§ 2. Si conventus haberi difficile sit, resolutae quaestiones scriptae mittantur, secundum normas ab Ordinario statuendas.

§ 3. Conventui interesse, aut, deficiente conventu, scriptam casuum solutionem mittere debent, nisi a loci Ordinario exemptionem antea expresse obtinuerint, tum omnes sacerdotes saeculares, tum religiosi licet exempti curam animarum habentes et etiam, si collatio in eorum domibus non habeatur, alii religiosi qui facultatem audiendi confessiones ab Ordinario obtinuerunt.

The Code, in insisting on knowledge or *science* in clerics, simply follows tradition and repeats old canons.[9] St. Paul's[10] warning to Timothy is as timely now as it was then, because faith is not *gnosis,* and the Church is the keeper of the *depositum fidei.* That stress is laid upon the *sacred* disciplines or studies, is as natural as to require of a physician that he study medicine and its allied sciences.

The *examination* prescribed in Can. 130 may be arranged in such a way that dogmatic and moral theology, canon law and Holy Scripture, liturgy and history may all be surveyed during the three years' course. That a thorough repetition of these sciences is difficult for many

9 Cfr. c. 1, Dist. 38; c. 2, Dist. 49; c. 2, Dist. 36; c. 15, X, III, 1; Pius II, Const. of April 4, 1460; Leo XIII, "*Plane quidem,*" May 20, 1885 (Desclée, 1887, II, 136 ff.).

10 I Tim. 6, 20.

priests employed in parish work or teaching is evident, and hence exemptions are provided for according to the prudent judgment of the bishop.

Clerical *conferences* are to be held (the *number* is stated only approximately) *saepius in anno, i. e.,* about two or three times a year.[11] The *matter* for these conferences is to be taken chiefly, though not exclusively, from moral theology and liturgy. These two branches are of special importance, in as far as uniformity in the confessional and in the administration of the sacraments fosters unity of morals and discipline and palpably demonstrates that unity to the people. If conferences cannot be held for any solid, not imaginary, reason, the Code assigns a substitute, namely, the *written solution of questions proposed.* The matter for these questions is to be taken from the same branches and they are to be answered as often as conferences would be held. The solutions are to be sent to the Ordinary or his chancellor, and to be examined by the bishop himself or a delegate, perhaps one of the usual examiners, or any competent judge. After the examination the correct answers should be sent to the priests, while the original copy of the answers submitted may be kept in the archives.

The last paragraph mentions *those who are obliged to attend the conferences* or to send in solutions. Leo XIII, in his Constitution *"Romanos Pontifices,"* May 8, 1881, had laid down the general law concerning regulars actually employed in the care of souls, whilst the S. C. EE. et RR. had repeatedly enjoined all regulars who had received the faculty of hearing confessions to hold theological conferences in their own houses.[12] Hence the Code establishes nothing new, except in prescribing writ-

11 Barbosa, *Tractatus Varii,* Dist. 362, *l. c.,* p. 786.

12 Cf. Bachofen, *Compendium Juris Regularium,* 1903, p. 262.

ten solutions. However, these must be sent in by regulars only in case no conferences are held in their monasteries. All religious, whether exempt or not, if they are actually in charge of souls, even though they be prelates, are obliged to attend these conferences, unless regular conferences are held in their convents. Hence religious who are pastors must attend in any case, other religious only in case no pastoral conferences are held in their respective communities. All this goes to show how important these conferences are considered by the legislator, and that they should not be set aside by bishops or religious.

Of course, in order to obtain the expected results, the conferences should be conducted on the basis of authority and in a manner which interests those who are bound to take part in them.

### CELIBACY OF THE CLERGY

#### CAN. 132

**§ 1. Clerici in maioribus ordinibus constituti a nuptiis arcentur et servandae castitatis obligatione ista tenentur, ut contra eandem peccantes sacrilegii quoque rei sint, salvo praescripto can. 214, § 1.**

**§ 2. Clerici minores possunt quidem nuptias inire, sed, nisi matrimonium fuerit nullum vi aut metu eisdem incusso, ipso iure e statu clericali decidunt.**

**§ 3. Coniugatus qui sine dispensatione apostolica ordines maiores, licet bona fide, suscepit, ab eorundem ordinum exercitio prohibetur.**

#### CAN. 133

**§ 1. Caveant clerici ne mulieres, de quibus suspicio**

esse possit, apud se retineant, aut quoquo modo frequentent.

§ 2. Eisdem licet cum illis tantum mulieribus cohabitare in quibus naturale foedus nihil mali permittit suspicari, quales sunt mater, soror, amita et huiusmodi, aut a quibus spectata morum honestas, cum provectiore aetate coniuncta, omnem suspicionem amoveat.

§ 3. Iudicium an retinere vel frequentare mulieres, etiam illas in quas communiter suspicio non cadit, in peculiari aliquo casu scandalo esse possit aut incontinentiae afferre periculum, ad Ordinarium loci pertinet, cuius est clericos ab hac retentione vel frequentatione prohibere.

§ 4. Contumaces praesumuntur concubinarii.

### Can. 134

Consuetudo vitae communis inter clericos laudanda et suadenda est, eaque, ubi viget, quantum fieri potest, servanda.

The last canon, though apparently but loosely connected with the subject of celibacy, has much to do with it, according to the saying of the Preacher: "Woe to him that is alone" (Ecc. 4, 10); and there is a reason why the Code has added it to the canons enforcing the law of celibacy. The Church certainly had strong reasons for establishing the law of continency for the clergy and of *celibacy* for those in major orders. The sublimity of the sacred ministry and its constant, almost unrelenting occupations, which admit of no family cares and troubles, originally inspired her to enact this law, which was, besides, a strong safeguard against the danger of hereditary succession to office and set up a splendid example for the laity.

The *Occidental Church* has set a more emphatic example in this matter than the Oriental Church. Already in the fourth century, Pope Siricius (384–398) obliged priests and levites to sobriety and chastity,[13] and Leo I (440–461) extended the prohibition of marriage to the subdeacons.[14] At the time of the struggle between Church and State celibacy was attacked, but successfully defended by the popes. The Second Lateran Council established the nullity of matrimony for the higher clergy, and the Council of Trent confirmed its canons.[15]

The *Oriental Church* was neither uniform nor consistent in the application of celibacy. Whilst its ancient custom tallied with that of the Western Church, the enactments of the Trullan Synod (692) admitted a laxer practice, which finally prevailed.[16] Even to-day the subdeacons of the Oriental rites are allowed to marry before they receive that order and to cohabit with their wives. However, if we may believe a modern exponent of the Oriental law, a marriage contracted by a cleric after receiving subdeaconship would be invalid,[17] though as far as we are aware, the Catholic Church has never pronounced a sentence on these marriages.[18] However, priests of the Oriental rites who wish to be employed as such in the U. S. must conform to the Latin custom.[19]

(1) In the Occidental Church, therefore, *every attempted marriage* by a cleric who has validly received subdeaconship or any higher order, unless he be constrained by violence or fear, is *null and void,* not by rea-

13 Cfr. *Ep. ad Himerium,* n. 10 (Coustant, *l.* c., p. 630).

14 Cfr. c. 1, Dist. 32.

15 Cfr. c. 40, C. 27, q. 1; c. 13, X, III, 1; c. 4, X, III, 3; c. 7, X, I, 21; c. un. 6°, III, 15; *Conc. Trid.,* Sess. 24, c. 9, *De Ref.*

16 Cfr. Milasch-Pessič. *Kirchenrecht der Abendländ. Kirche,* 1905, p. 267, p. 598.

17 Milasch-Pessič, *l. c.*

18 Cf. Bened. XIV, "*Etsi pastoralis,*" May 26, 1742; "*Eo quamvis,*" May 4, 1745 (*Bull.,* Mechl., t. I, 361 ff; III, 145 ff.).

19 *S. C. P. F.* May 10, 1892; May

son of a supposed vow, but in virtue of positive ecclesiastical law.[20] In virtue of the obligation of perfect *chastity,* every morally imputable act, whether internal or external, directed against that obligation, involves a profanation of a sacred person and is, therefore, sacrilegious.

(2) Every *valid marriage* contracted by one in *minor orders* reduces the latter *ipso iure* to the lay state, thereby depriving him of all clerical rights and privileges and absolving him from clerical duties.[21] The Code says, "unless the marriage is null and void by reason of violence or fear." This, however, must not be presumed, but proved. Hence, though one affected by that impediment may be thoroughly persuaded of the invalidity of a marriage thus contracted, he could not continue to conduct himself as a cleric, but would have to await the final sentence of the ecclesiastical court.

(3) A *married man,* in order to receive *higher orders* licitly, now needs an *Apostolic dispensation.* If no dispensation was obtained, such a one, if ordained, is *ipso iure* debarred from the exercise of the order received. Here the Code is somewhat stricter than the old law, which permitted a married man to receive higher orders if his wife consented and the bishop sanctioned the vow of chastity to be pronounced by the wife.[22] Although the married state is not, properly speaking, an irregularity, it is an impediment to holy orders,[23] dispensation from which is reserved to the Apostolic See, and therefore the

1, 1897 (*Am. Eccl. Rev.,* 7, 66; 18, 67).

20 *S. Th.,* II–II, q. 88, a. 11; Heiner, *K.-R.,* I, 233; cfr. can. 214, § 1.

21 Cc. 1–3, X, III, 3.

22 Cf. c. 5, X, III, 32; c. 6, h. t. III, 32 required profession in a religious order if the husband was made a bishop; this requisite was extended to all wives whose age might cause misgiving, and only after the age of fifty the suspicion seemed removed.

23 Can. 987, 2°.

married and ordained man remains suspended until the Holy See has provided; otherwise he would become irregular *ex capite delicti.*[24]

The next canon logically determines the *cohabitation* of *clergymen* with *women.* St. Paul mentions the fact that the Apostles kept a woman, a "sister," about them.[25] These women were probably virgins who led a life of celibacy and administered unto the temporal needs of the clergy. They were called "*virgines subintroductae*" and are mentioned in the epistle of the bishops against Paul of Samosata as women of suspicious character. Therefore it is not surprising that the Council of Nicaea (325) thought it necessary to regulate the relation of clerics to their female relatives. Besides those mentioned in § 2: mother, sister, aunt[26] (on either side), the Nicene canon also admits other women of good character. This was extended to the second degree of consanguinity and affinity, not by any written law, but by the canonists and doctors.[27] Our Code admits any woman whose moral character and age ward off suspicion. Concerning *age* the law does not determine a limit. For what is generally known as the "*canonical age,*" no canon can be quoted. However, since twenty-four is called *aetas superadulta,* this might be taken as indicating the canonical age. Concerning female relatives no age is stated.

The next paragraph reserves the judgment concerning permission to retain or visit women entirely to the bishop, who, although he cannot forbid clergymen to have women housekeepers,[28] has a right to know who these

24 Can. 985, 7°.

25 Cf. I Cor. 9, 5; X, III, 2, *De cohab. cleric. et mul.*

26 Euseb., *Hist. Eccl.,* VII, 30; c. 3, c. 16, Dist. 32.

27 Bened. XIV, *Inst.,* 83, n. 6 f.

28 Cf. v. Scherer I, 372; Wernz, II, p. 298 (1. ed.); the Code allows priests to have a female housekeeper, but does not determine the canonical age.

women are and what is their reputation. Clerics must obey the Ordinary if he should forbid them to keep or visit a certain person. One who stubbornly refuses to obey his bishop is *presumed* to be a concubinarian. Strictly speaking, one is *contumax* only if he refuses to appear before the judge who summons him. Therefore one must be properly summoned and have received the summons before he can be declared contumacious. And even if he should be declared *contumax*, the presumption is a simple one, not *iuris et de iure*.[29] But this belongs to legal procedure.

The last of the three canons recommends community life to priests, doubtless as a preservative of clerical continency. What has been said concerning the chapter on canons may suffice to prove the intention of the Church. Be it also mentioned that pastors and assistants should live in the same house.[30]

### DIVINE OFFICE (BREVIARY)

### CAN. 135

**Clerici, in maioribus ordinibus constituti, exceptis iis de quibus in can. 213, 214, tenentur obligatione quotidie horas canonicas integre recitandi secundum proprios et probatos liturgicos libros.**

The clergy are the mediators between God and men, and the office of mediator involves the duty of praying according to the example of the Apostles.[31] Prayers in common were cultivated especially by the monastic institutes, but also in churches by the clergy assigned to them. Justinian expressly inculcated that duty in his Code.[32]

29 Cf. cc. 1842 ff; 1825 ff; 2176 ff.
30 Cf. c. 476, § 5.
31 Cf. Acts 2, 15; 3, 1; 10, 9.
32 L. 42, § 10, Cod. I, 3.

The chapters of canons established in the eighth century practised public prayers, mostly according to the Rule of St. Benedict, in their churches. The Decretals urge the same duty upon the priests of cathedral, collegiate, and regular churches.[33] These texts prove the obligation of *choir service,* but are silent about the recital of prayers. The Council of Basle (1431–49) enacted that duty, but it did not establish a universal law.[34] Benedict XIV deduces the obligation of the *private recitation* of the divine office, incumbent upon all clergymen in higher orders, from "ancient tradition and immemorial custom," rather than from any written text, and adds that the Oriental Church has no law to that effect.[35]

The name *Breviary* occurs since the time of Gregory VII (1073–1085). The *Roman* Breviary contains the rules according to which it must be recited. It must be used by all clerics except those who have a special privilege for using a different book or a practice of at least 200 years previous to Pius V's Constitution "*Quod a nobis*" (July 9, 1568). Pius X by his Const. "*Divino afflatu*" (Nov. 1, 1911) rearranged the Psalter according to the early and traditional idea of its weekly recitation.

The obligation of reciting the Breviary privately has now become a universal written law, binding every cleric from subdeacons onward, except those who have been reduced to the lay state or are freed on account of having been ordained by force. A *dispensation* may be granted by the Holy See, and for a time and in particular cases also by the Ordinary.

33 Cf. cc. 1, 9, X, III, 41; c. 1, Clem. III, 14.

34 Sess. 21, c. 5; cfr. v. Scherer I, 386; Wernz, II, 273 (1. ed.); *Cath. Encycl.*, s. v. "Breviary"; Bäumer, *Geschichte des Breviers*, 1895.

35 "*Eo quamvis*," May 4, 1745, (*Bull.*, Mechl., 1826, III, 147, §43).

CLERICAL DRESS

CAN. 136

§ 1. Omnes clerici decentem habitum ecclesiasticum, secundum legitimas locorum consuetudines et Ordinarii loci praescripta, deferant, tonsuram seu coronam clericalem, nisi recepti populorum mores aliter ferant, gestent, et capillorum simplicem cultum adhibeant.

§ 2. Annulo ne utantur, nisi id ipsis a iure aut apostolico privilegio sit concessum.

§ 3. Clerici minores qui propria auctoritate sine legitima causa habitum ecclesiasticum et tonsuram dimiserint, nec, ab Ordinario moniti, sese intra mensem emendaverint, ipso iure e statu clericali decidunt.

A *distinct clerical garb,* used by the clergy outside of the sanctuary, was introduced about the sixth century. It originally consisted of the old Roman dress: a tunic and a long white undergarment with or without sleeves. In course of time many councils and synods passed enactments on the subject, the last being the Tridentine Council, which decreed that the clergy should wear a dress proper to their state, in order to show by the decency of their outward habit the probity of their interior conduct.[36] Sixtus V styled that dress *vestis talaris* or cassock.[37] The Third Plenary Council of Baltimore enacted into positive law what may be called the legitimate custom of this country, the wearing in public or on the street of a coat of black or sombre color, reaching to the knees, with a Roman collar. Religious, too, are expected to conform to this custom.[38] The *tonsure* is not prescribed

36 Cfr. c. 15, X, III, 1; c. 2, *Clem.* III, 1; *Conc. Trid.*, Sess. 14, c. 6, *De Ref.*

37 "*Cum sacrosanctam,*" Jan. 9, 1589, § 2; cfr. Bened. XIV, "*Ad militantis,*" March 30, 1742, § 26.

38 *Acta et Decreta,* n. 77.

in our country. Concerning the hair, the old canons, in warning against unbecoming vanity, used the phrase "*comam ne* [*clerici*] *nutriant.*" [39] The new Code is silent as to *beards* and *wigs,* and hence this matter is left to the prudent judgment of the Ordinary or to a council.[40]

*Rings,* either with or without gems, are permitted only to those whom the law or an Apostolic privilege has endowed with the right of wearing them. Hence only cardinals, bishops, and blessed abbots are allowed to wear them at Holy Mass,[41] while prothonotaries *non participantes,* doctors, and *abbates non benedicti* are not allowed to wear them at Mass.[42]

The last paragraph deals with those in *minor orders* who doff the clerical dress and tonsure and refuse to obey the injunction of the bishop to reassume them within a month. This is a modified repetition of the decretal of Pius IX, published A. D. 1860.

## OCCUPATIONS AND AMUSEMENTS FORBIDDEN TO THE CLERGY

### CAN. 137

**A fideiubendo, etiam de bonis propriis, clericus prohibetur, inconsulto loci Ordinario.**

The ancient civil law as well as the Decretals forbade the clergy to give bail,[43] but made some exceptions in favor of fellow-clerics and their own churches, as well as

39 Cfr. c. 22, Dist. 23; c. 7, X, III, 1.

40 Formerly the wearing of a wig required an Apostolic indult; cfr. Richter, *Trid.,* p. 184, n. 12; Bened. XIV, *De Syn. Dioec.,* XI, 9.

41 Cf. c. 811, §2.

42 S. R. C. Feb. 13, 1625 (Barbosa, *Apost. Dec.,* p. 26); Pius X, "*Inter multiplices,*" Feb. 27, 1905, n. 4, 27, 28, 31, 47–49.

43 Nov. 123, c. 6; c. 1, X, III, 22; Engel, III, 22, n. 4.

for their own property and person. The Code doubtless must be given a stricter interpretation because of the general terms in which it forbids the practice. Hence every kind of bail, "whereby a man obliges himself, his heirs, executors and administrators, to pay a certain sum of money to another on an appointed day," [44] is forbidden except with the permission of the bishop. This condition must also be observed if a clergyman would give bail on his personal, patrimonial or parsimonial property. This ruling may seem harsh, but cases brought before the Roman Curia prompted a severer course in order to protect the clerical state from slanders and insinuations which are never so rife as when a clergyman makes mistakes in money matters. This and the following canons are all inspired by the *twofold purpose* of safeguarding the decorum of the clerical state and preserving its members from troublesome distraction which might impede their fruitful activity in the sacred ministry. Hence:

CAN. 138

**Clerici ab iis omnibus quae statum suum dedecent, prorsus abstineant; indecoras artes ne exerceant; aleatoriis ludis, pecunia exposita, ne vacent; arma ne gestent, nisi quando iusta timendi causa subsit; venationi ne indulgeant, clamorosam autem nunquam exerceant; tabernas aliaque similia loca sine necessitate aut alia iusta causa ab Ordinario loci probata ne ingrediantur.**

The principle previously stated is here announced in set terms, whereupon five occupations are specified which are more or less unbecoming to the clerical state. These

44 Blackstone-Cooley, *l. c.*, II, 340.

occupations comprise all *professions* or *arts* which, in the common estimation of the people, are exercised only by a low class of men or involve a degradation of the clerical state. Such are especially the profession of actors and the trade of saloon or innkeepers, butchers and executioners.[45] *Games of hazard,* if connected with staking of money, are prohibited. But moderate card playing, chess, billiard or tenpins is not forbidden if no scandal — of course pharisaical scandal cannot always be avoided — is given and no excess in time or money involved.[46]

The *carrying of arms,* fire arms as well as others, is forbidden also in the Decretals.[47] But we remember that, about ten years ago, when there was a morbid agitation against the clergy in Italy, and especially in Rome, many priests received license from the Pretor to carry a revolver. This was purely a means of self-defence; hence the very reasonable clause in the new Code.

*Hunting* and the chase are distinguished; the former is not entirely forbidden, but should not be indulged in. *Indulgere* implies frequent repetition. Hence, occasional hunting without dogs, or only one dog, and without a great apparatus, may be permitted if no dangerous consequences are to be feared. But the *chase, i. e.,* clamorous hunting with dogs, hawks, and falcons for the pursuit of large game, bears, deer, foxes, etc., is forbidden.[48]

*Saloons* and similar places must be avoided by clerics.[49] On that point we believe that in our country the necessary precautions are not wanting. Neither are the saloons, at least many of them, in the U. S., places where

45 Cfr. cc. 1–3, Dist. 34; c. 1, Dist. 35; c. 1, X, III, 50; c. 1, Clem. III, 1.

46 C. 1, X, III, 50; *Conc. Balt. II,* n. 754.

47 C. 2, X, III, 1.

48 Cfr. X, V, 24, *De clerico venatore.*

49 Cfr. c. 2, Dist. 44; c. 15, X, III, 1; *Conc. Trid.,* Sess. 24, c. 12. *De Ref.*

clergymen should be found for purposes of amusement. The bishop might proceed against a clergyman who would not heed the prohibition of frequenting saloons after a paternal and peremptory admonition.[50] But on the other hand it is not commendable to decree *suspensio ipso facto incurrenda* for transgressors of this rule, because that penalty should be meted out only in grievous cases, lest it lose its effectiveness. A canon of the IVth Lateran Council forbids drinking bouts and drinking at command,[51] a practice which resembles our so-called "treating,"— a fertile source of drunkenness.

### Can. 139

§ 1. Ea etiam quae, licet non indecora, a clericali tamen statu aliena sunt, vitent.

§ 2. Sine apostolico indultu medicinam vel chirurgiam ne exerceant; tabelliones seu publicos notarios, nisi in Curia ecclesiastica, ne agant; officia publica, quae exercitium laicalis iurisdictionis vel administrationis secumferunt, ne assumant.

§ 3. Sine licentia sui Ordinarii ne ineant gestiones bonorum ad laicos pertinentium aut officia saecularia quae secumferunt onus reddendarum rationum; procuratoris aut advocati munus ne exerceant, nisi in tribunali ecclesiastico, aut in civili quando agitur de causa propria aut suae ecclesiae; in laicali iudicio criminali, gravem personalem poenam prosequente, nullam partem habeant, ne testimonium quidem sine necessitate ferentes.

§ 4. Senatorum aut oratorum legibus ferendis, quos

50 Aichner, *l. c.*, § 72, 2.

51 C. 14, X, III, 1 to which Vallensis (*Paratitla*, III, 1, n. 7) remarks that some *aequales haustus* might be permitted in honor of prince or country, if drunkenness is avoided.

*deputatos* vocant, munus ne sollicitent neve acceptent sine licentia Sanctae Sedis in locis ubi pontificia prohibitio intercesserit; idem ne attentent aliis in locis sine licentia tum sui Ordinarii, tum Ordinarii loci in quo electio facienda est.

The principle stated in the first paragraph is based on St. Paul's exhortation to Timothy: "No man, being a soldier to God, entangleth himself with secular business." [52] Secular business affairs are apt to distract a priest from the one necessary occupation, the sacred ministry. Hence the prohibition of offices which, in themselves, are not incompatible with the dignity of the clerical state — who would venture to say, *e. g.*, that a senatorship is degrading? — yet, because of their unwholesome effect upon the priestly office, should be accepted only in obedience to the Church.

The professions or occupations forbidden to clerics in can. 139 as "foreign to the clerical state" may be divided into two classes: such as require an Apostolic indult and such as merely demand the consent of the Ordinary.

An *Apostolic indult* is required for the practice of *medicine,* and the Code makes no distinction between medicine and surgery as to the strict necessity of obtaining the papal permission. Hence no matter whether a cleric wishes to practice simple medicine or surgery (formerly called medicine "*cum adustione et incisione*" [53]) he needs an Apostolic indult. There can be no doubt that the so-called Kneipp doctors and other "naturopaths" fall under this prohibition, [54] because the law is aimed at the exercise of the medical profession as such and intended to safeguard the honor of real physi-

52 II Tim. 2, 4.

53 Cfr. c. 19, X, V, 12, on account of the danger of irregularity.

54 Cfr. *Acta et Decreta Conc. Balt. III,* n. 82; Bened. XIV, *De Syn. Dioec.,* XIII, c. 10.

cians against usurpers and bunglers. At the same time it must be observed that *exercere* implies a habitual exercise; hence giving a dose of quinine or other drug occasionally would not be exercising the medical profession.

The question may arise, *Whom* does the law require to ask for an Apostolic indult? The answer is: all who partake of the clerical state; hence also lay brothers and sisters, unless they merely act as assistants to physicians in giving medicine or at an operation. If they practice medicine of their own accord and on their own responsibility, they need an Apostolic indult.[55]

What about *oblates* of religious communities? These, though partaking in spiritual favors, are not religious, and hence no clerics in the proper sense, supposing, of course, that they have not received either tonsure or orders. Therefore they may exercise medicine or surgery without an indult.

Another profession which clerics may not adopt without Apostolic permission is that of *notaries public.* It was forbidden [56] to the clergy in higher orders by Innocent III, and this prohibition is now extended to all clerics, and consequently also to religious. The Code does not except those who act as notaries in favor of their own churches or monasteries if cases are taken to the civil court.[57] Only in ecclesiastical courts are clerics allowed to act as notaries public.

A third prohibition refers to *public offices* which involve civil jurisdiction or administration, *e. g.,* those of judges and administrative functionaries, mayors, governors, etc.[58] This law includes *senators and deputies* in

55 Cfr. Bachofen, *Compendium Juris Reg.,* p. 150 f.

56 C. 8, X, III, 50.

57 Engel (III, 50, n. 5) and other canonists admit an exception.

58 Cfr. c. 4, X, III, 50: "*iustitiarius principis . . . iurisdictiones saeculares.*"

*Italy,* where Catholics are expressly forbidden by the Holy See to solicit or accept such offices.

All these occupations, then, in order to be licitly assumed by a cleric, require an Apostolic indult. The fact that the clause "*sine apostolico indultu*" is placed at the head of § 2 proves that the legislator wishes to include all the offices that follow.

§ 3 enumerates the offices for the exercise of which on the part of a cleric the *permission* of the *Ordinary* is required. Note that the text says "*sui,*" not "*loci Ordinarii.*" The Ordinary of exempt religious is their superior, not the bishop of the diocese.

(1) Clerics may not be *managers* of business affairs or of properties which belong to laymen or necessitate the rendering of an account to civil authorities. To this class of affairs belongs the guardianship of orphans and widows,[59] which a cleric cannot undertake without the permission of his bishop or superior. Forbidden to clerics on the same score are the offices of president, director, treasurer, secretary of banks, even though these be of a charitable or social type (rural or farmers' banks, etc.).[60]

(2) A cleric is not allowed, furthermore, to act as *procurator* or by proxy in another's name by special mandate, or as *attorney,* unless for himself or in defence of his church.[61] We may safely extend "*propria causa*" to his next relatives, who because of blood relationship may be considered as one person with him.[62]

(3) In *criminal cases* which imply either capital punishment or confinement in a penitentiary — which punishment generally entails infamy — a cleric is not allowed

59 Cfr. c. 2, X, III, 50.

60 S. C. Consist., Nov. 18, 1910 (*A. Ap. S.*, II, 910).

61 C. 2, X, III, 50; S. C. C., Aug. 4, 1883, *Nullius Cluniac.*

62 Aichner, § 73.

to act as a *witness,* unless called by legitimate authority (the prosecuting attorney or judge), which would be a case of necessity. But even in such cases it is commendable to ask the Ordinary's permission if time permits.

(4) The last case which requires the permission of the Ordinary is the solicitation and acceptance of the offices of *senators* and *deputies.* There is not much danger in our country that clergymen will be elected to Congress; but if one wished to become a candidate, he would need the permission of his own Ordinary as well as that of the Ordinary of the district — if this were located in a different diocese — for which he sought to be elected.

### AMUSEMENTS

### Can. 140

**Spectaculis, choreis et pompis quae eos dedecent, vel quibus clericos interesse scandalo sit, praesertim in publicis theatris, ne intersint.**

*Unbecoming* to the clergy are all shows which offend against the divine or the natural law, or detract from the honor and respect due to the Church and her ministers.[63]

The term *spectacula* comprises all kinds of mimic representations, either masked or not, by professional actors, likewise gladiatorial contests, bullfights and prize-fights. Concerning this last-named kind one might be tempted to condemn them as immoral, yet it would be impossible to prove their immorality from the viewpoint of natural law. Hence we are not ready to pronounce them simply unbecoming.[64] Of course a bishop might forbid his

63 Cfr. Bened. XIV, *De Syn. Dioec.,* XI, 10, 11 f.; *Inst.,* 37; 76.

64 The point of immorality would only arise from the danger to life, which no one is allowed to expose; however, properly conducted prize-fights does not necessarily involve risk of life, as statistics show.

clergy to attend prize-fights if he were persuaded that the majority of his flock strongly opposed them.

*Choreae* are balls and dances. The well-known decree of March 31, 1916, is pertinent to the subject; but the Code uses more general terms, although we would not assert that said decree is now ineffective.[65] That clergymen would take an active part in dances or arrange such, although it may have happened in bygone days,[66] is, we believe, no longer to be feared.

*Pompae* are festivities celebrated with much ado and display, with eating, drinking, and musical programmes; for instance, at weddings or other occasions of a purely worldly character.[67] If such affairs take place in *public* theatres,[68] the clergy have an added reason for keeping away. Theatres are now often turned into *moving-picture* shows, many of which are of a low type, injurious to eyes and nerves and destructive of moral and physical health. Of course theatrical representations by school-children, college students, or members of a parish are not affected by the Code. But the holy seasons of Advent and Lent and the ember days should be respected by the latter class.

## CAN. 141

### § 1. Saecularem militiam ne capessant voluntarii,

65 Cf. *A. Ap. S.*, VIII, 147 f. Card. Gasparri in his notes also refers to that decree (p. 35, n. 2). The dispositive part of said decree reads: "All clergymen, secular as well as regular, are strictly forbidden to promote or favor dances or balls, even if these should be held to help and support a good and pious cause or for any other purpose; besides all the clergy are prohibited to attend such dances if arranged by laymen." But dances in general, in which the clergy take neither the initiative nor a passive part, are not forbidden, even if given for a charitable or religious purpose by lay people. This is the tenor of the text, and nothing more.

66 Cfr. Bened. XIV, *De Syn. Dioec.*, XI, 10, 14.

67 Cfr. cc. 14, 15, X, III, 1; c. 3, Dist. 23.

68 Cfr. c. 12, X, III, 1 (theatres in churches); *Conc. Trid.*, Sess. 22, c. 1 *De Ref.*

**nisi cum sui Ordinarii licentia, ut citius liberi evadant, id fecerint; neve intestinis bellis et ordinis publici perturbationibus opem quoquo modo ferant.**

**§ 2. Clericus minor qui contra praescriptum § 1 sponte sua militiae nomen dederit, ipso iure e statu clericali decidit.**

The first clause of the first paragraph and the second paragraph treat the same subject, *viz.: volunteering for military service,* which now-a-days is mostly done by enlisting in the army or navy. Some countries permit clerical students to escape further service by volunteering for one year. If a cleric in minor or major orders should wish to choose this course, he must first obtain the permission of his Ordinary. A cleric in minor orders who voluntarily enlists against the prescription of § 1, forfeits the clerical state.[69]

To participate in *internal troubles* (revolutions, etc.) is strictly forbidden to the clergy. Leo XIII advised the Spanish clergy not to allow themselves to be wholly absorbed by party spirit lest they might seem to care more for human than for heavenly things.[70] As to *political* activity in the U. S., which a clergyman might be called upon to take up, a time may come when the freedom of our schools will require the clergy to exert political influence. The social question, too, is becoming a "burning" problem in public life. In any combat for principles the direction of political action will rest, first and above all, with the hierarchy. Uniform procedure, firm and un-

69 Can. 188, 6.— *Decidere a statu clericali,* it seems to us, involves a radical and absolute loss of that state, wherefore the reassuming of the clerical garb, which formerly (cfr. Bened. XIV, *De Syn. Dioesc.,* XII, 3, 1) could be performed privately, is no longer sufficient.

70 "*Cum multa,*" Dec. 8, 1882; "*Postquam catholici,*" Dec. 10, 1894; S. C. P. F., Instr. of Nov. 23, 1845, n. 7; S. C. C., Jul. 12, 1900.

flinching, will lend great strength to the cause of the Church. But moderation and loyalty must always be combined with firmness, and the clergy will usually be safe if they follow the guidance of the hierarchy.

In *purely political issues* arising between parties the clergy are free, and the bishop cannot compel them to follow his opinion, much less forbid them to vote. For the right of voting is, radically at least, an inborn right, inherent in a citizen by the fact of his belonging to the State. And the State we hold to be of natural or divine origin. Hence the clergy, remaining citizens though clerics, cannot be deprived of that natural right by any authority, except by way of penalty.

However, we would not deny ecclesiastical authorities the right to forbid the clergy to vote in some particular case which involves great disturbance to state or diocese.[71] But this only by way of exception. And what we have said concerning the clergy in general, must fully be applied to religious, for that mystic *mors civilis* has now ceased in most countries.

### NEGOTIATIO PROHIBITA

### CAN. 142

**Prohibentur clerici per se vel per alios negotiationem aut mercaturam exercere sive in propriam sive in aliorum utilitatem.**

This is the *negotiatio prohibita,* the forbidden commercial trading, which was proscribed by many synodal acts. That in the beginning of the Church the "Apostolic

71 Leo XIII, "*Cum multa*"; Heiner, *l. c.,* I, 229, justly remarks that the bishops are empowered to see to it that the clergy do not, on account of political activity, neglect their clerical duties or transgress the bounds of Christian charity and truthfulness.

laborers" were such not only in the spiritual but also in the material sense, like St. Paul the tentmaker, was but natural. Later on, some clerics supported themselves on their patrimony, whereas others had to work for a living either in the fields, or at a trade, or in some other way. In the third century some bishops devoted so much time to their worldly affairs that complaints were heard, and the Council of Elvira (ca. 300) issued a special decree (can. 19) on the subject.[72] The Christian emperors forbade the clergy to engage in trading throughout the Roman empire.[73] Diocesan synods and provincial councils prohibited clerical participation in agricultural trades and businesses of a purely commercial character.[74] Nevertheless, says Benedict XIV, some clergymen are moved by such insane avarice that, not in their own name, but under the cloak of an assumed name —"*sub alieni nominis velamine*"— setting aside all fear of God, they engage in forbidden occupations.[75] Hence the Church has never ceased to admonish clerics to hold aloof from business and trading.

What, precisely, is meant by *negotiatio* and *mercatura?* These terms are generally understood to mean habitual buying and selling for the sake of gain —"*turpis lucri gratia.*" Hence, according to the teaching of canonists, a cleric is not forbidden to sell stock or produce grown on his own farm. He may even buy cattle (feeders), fatten and sell them or their offspring in the market. But to purchase or rent land in order to raise wheat or corn for the sole purpose of selling it would be *negotiatio*

72 Funk, *Manual of Church History*, 1913, I, 51.

73 Cfr. Heiner, *l. c.*, I, 227.

74 Cfr. cc. 9 ff., Dist. 88; c. 16, X, III, 1; c. 6, X, III, 50; *Conc. Trid.*, Sess. 22, c. 1, *De Ref.*

75 "*Apostolicae Servitutis*," Feb. 25, 1741, §1 (*Bull.*, Prati, I, 38).

*illicita.*[76] Now-a-days it is not forbidden for a cleric to lend money at the usual rate of interest.

An important part of our commercial life is taken by *stock companies,* which offer shares, stocks and bonds in every shape and form, as the advertisements prove *ad nauseam.* Some of these companies are solidly established and in a flourishing condition. Is a clergyman allowed to buy their stocks? We see no wrong in this, if the shares are bought with the sole object of getting the dividends.[77] But to buy for the sake of speculation is forbidden. It is also forbidden for a cleric to be a director of such a company, because this would entail a worldly and perhaps distracting occupation, not to speak of the financial risk. Gambling is most detestable in a clergyman, and one who has grown rich by such illicit means should be avoided by his fellows.[78]

The Code appears very strict, to judge from the wording, "*sive in propriam sive in aliorum utilitatem.*" However, we believe our interpretation is borne out by the common teaching of canonists. For the words "*negotiatio and mercatura*" must be taken in their proper sense, and what the authors allow does not fall under *trading* or *business,* strictly interpreted. However, there can be no doubt that clerics are forbidden to trade or transact business in the proper sense by giving their money to others that these may traffic with it for the advantage of the real owner.

76 Barbosa, *Tractatus Varii,* Appell. 162 (p. 262). Of course a cleric is not allowed to sell wine, oil, or other products at retail. Heiner, *l. c.*

77 Sanguineti, *Juris Eccl. Institut.,* 1890, p. 148 f; Buvée, *Le Commerce, les Opérations de Bourse et le Clergé,* in the *Revue Canonique,* Feb., 1899.

78 Bened. XIV, "*Apost. Servitutis,*" *l. c.*

ABSENCE FROM THE DIOCESE

CAN. 143

**Clerici, licet beneficium aut officium residentiale non habeant, a sua tamen dioecesi per notabile tempus sine licentia saltem praesumpta Ordinarii proprii ne discedant.**

CAN. 144

**Qui cum licentia sui Ordinarii in aliam dioecesim transierit, suae dioecesi manens incardinatus, revocari potest, iusta de causa et naturali aequitate servata; et etiam Ordinarius alienae dioecesis potest ex iusta causa eidem denegare licentiam ulterioris commorationis in proprio territorio, nisi beneficium eidem contulerit.**

In point of *residence,* as we shall see further on, the law deals separately with different ranks of the clergy. Canon 143 merely states the fact that the duty of residence is connected with certain offices or benefices, and that every secular cleric belongs to a determined diocese by incardination. Being ordained for that diocese, he is supposed to have some kind of work assigned to him or at least to be at the disposition of the Ordinary under whose jurisdiction he lives. A protracted absence from the diocese would, as it were, withdraw him from that jurisdiction, and hence an Ordinary is entitled to know his clerics' whereabouts.

What "*notabile tempus*" means may be inferred from a comparison of clerical residence with quasi-domicile. A quasi-domicile, as we have seen, is constituted by a stay of about six or seven months in one place. A "considerable time" for the absence of a cleric from

his diocese would, therefore, be less than six months. On the whole, this term is very elastic according to the comparison implied therein. But we believe four or five months would be a "considerable time."

A *presumed* or probable permission is had when the Ordinary knows of a clergyman's absence and does not recall him, for then the latter may legitimately assume that the bishop is willing to prolong his furlough. As long as a cleric remains within the limits of his diocese, he needs no permission.

Canon 144, the last of Title III, deals with the *recall* of clerics to their own diocese. For such a recall there must be a just reason, and natural equity must be observed (*naturali aequitate servata*). Equity here can mean nothing else but justice or fairness in determining conflicting claims. The bishop of the diocese whence the clergyman is to be recalled, might wish to retain him because of his usefulness, and hence a conflict might arise between the two bishops, which must be settled by compensation or mutual agreement.

An Ordinary may, if there be a just reason, order an outside cleric to leave his diocese, unless, indeed, he has conferred an ecclesiastical benefice on him, which would be tantamount to incardination.[79]

79 Cfr. can. 114.

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## TITLE IV

## ECCLESIASTICAL OFFICES

After a cleric has been incardinated in a diocese and endowed with clerical rights and duties, he may and should be given an ecclesiastical office. For the clerical state is not merely a speculative state, as it were, of idle onlookers, but one with determined functions, which vary according to the various hierarchical degrees, but all tend to the realization of the end for which the Church was founded. The Church, therefore, is entitled to prescribe the manner in which clerics are to be appointed to the offices established, either divinely or humanly, within her pale.

Hence the first chapter of Title IV treats of the nature and provision of ecclesiastical offices.

### CAN. 145

**§ 1. Officium ecclesiasticum lato sensu est quodlibet munus quod in spiritualem finem legitime exercetur; stricto autem sensu est munus ordinatione sive divina sive ecclesiastica stabiliter constitutum, ad normam sacrorum canonum conferendum, aliquam saltem secumferens participationem ecclesiasticae potestatis sive ordinis sive iurisdictionis.**

**§ 2. In iure officium ecclesiasticum accipitur stricto sensu, nisi aliud ex contextu sermonis appareat.**

## CAN. 146

**De beneficialibus officiis in specie, praeter canones qui sequuntur, custodiantur insuper praescripta can. 1409 seqq.**

What canon 145 says of an ecclesiastical office in the wider sense, may be illustrated by a consideration of certain offices which are no longer exclusively clerical, *v. g.,* those of *fossores, hermeneutae, cantores,* and deaconesses. The latter, in the first two centuries, formed a distinct category or class of ecclesiastics, though without any hierarchical or liturgical distinction.[1] The offices of grave-digger, interpreter, and chanter were enumerated among the clerical orders, but gradually sank to lay rank.[2] Nevertheless, if singers perform their task with a spiritual intention, and not for gain or vanity, they may be said to exercise an ecclesiastical office. The same holds true of janitors and organists. Laymen, according to St. Peter, may be a "holy priesthood who offer up spiritual sacrifices"[3] in the Church, and thus act as functionaries of the Church at large.

However, the divine and human organization of the Church contains a special class of persons for the performance of strictly ecclesiastical offices. Three characteristics single out these *functions properly* called *ecclesiastical:* (1) They are established by divine or ecclesiastical law; (2) they must be conferred according to the rules laid down by the Church; (3) they must communicate some sort of ecclesiastical power.

(1) The *Divine Law,* as stated above,[4] singles out

1 Cfr. Wieland, *Die Genetische Entwicklung der sog. Ordines Minores,* 1897, p. 60 ff.

2 *Ib.,* p. 165 f.; p. 170 ff.

3 I Pet. 2, 5.

4 Can. 108, § 3.

bishops, priests, and ministers; *human law* (or rather ecclesiastical custom) has introduced other offices, partly of higher, partly of lower rank.

(2) The *rules* according to which one may hold an ecclesiastical office can only emanate from that power which confers the rights inherent in that office. And since these rights are of a spiritual nature, the power which confers them is the spiritual society established by Christ, or the Church. Hence to her must belong the right to establish the mode and means by which a man may obtain an ecclesiastical office.[5] But it must be remembered that the Church employs human factors and instruments in conveying ecclesiastical offices. Though, *e. g.,* the supreme pontificate and the episcopate are of divine origin, yet the manner in which these offices are conferred has been determined gradually by human agencies, and historical facts must not be set aside for the sake of a preconceived idea. All that is necessary is to hold fast to the principle involved.

(3) An ecclesiastical office must convey *ecclesiastical power.* This may be in the hierarchy of *order,* and thus we have the episcopate, the priesthood, and the ministry (*i. e.,* the higher orders of deaconship and subdeaconship as well as the four minor orders, with tonsure as a stepping stone); or it may be in the hierarchy of *jurisdiction,* which is supreme and ordinary in the Sovereign Pontiff, but dependent in the episcopate. Between these two there are different shades of jurisdiction, which the *lumen maius* has variously distributed. Every ecclesiastical office involves some jurisdiction, though its real and full nature appears only when exercised *in foro externo.* The term "ecclesiastical office" is generally to be taken

5 *Conc. Trid.,* Sess. 23, *De Eccl.Hierch. et Ord.,* cc. 4, 7.

in its proper sense as denoting ecclesiastical power.

The next canon (146) touches the *beneficiary* or material element of ecclesiastical offices. Those who serve the altar are entitled to partake of the oblations made for the benefit of the altar.[6] This fact led canonists to say that an ecclesiastical office entails "the right to receive a definite share of the ecclesiastical revenues."[7] The terms "office" and "benefice" were looked upon as correlative and therefore used promiscuously.[8] The Code, however, justly speaks of the office *in directo,* and of the benefice *in obliquo,* treating the latter as an ecclesiastical thing (*res*) in the third book. But it adds that ecclesiastical benefices fall under the rules governing ecclesiastical offices, the reason for which is evident from the mutual relation of the two.

6 I Cor. 9, 13.
7 Cf. Aichner, *l. c.,* §76, 1.
8 Cfr. c. 9, C. 1, q. 3; c. 1, X, V, 26; c. 15, 6°, I, 3.

## CHAPTER I

### APPOINTMENT TO ECCLESIASTICAL OFFICES

### Can. 147

§ 1. Officium ecclesiasticum nequit sine provisione canonica valide obtineri.

§ 2. Nomine *canonicae provisionis* venit concessio officii ecclesiastici a competente auctoritate ecclesiastica ad normam sacrorum canonum facta.

### Can. 148

§ 1. Provisio officii ecclesiastici fit per liberam collationem a legitimo superiore, vel per eius institutionem, si praecesserit praesentatio a patrono aut nominatio, vel per eius confirmationem aut admissionem, si praecesserit electio aut postulatio, vel tandem per simplicem electionem et electi acceptationem, si electio non egeat confirmatione.

§ 2. De officiorum provisione per institutionem serventur praescripta can. 1448–1471.

### Can. 149

Electi, postulati, praesentati vel nominati a quibusvis personis ad ecclesiastica officia ne confirmentur, admittantur, instituantur a Superiore infra Romanum Pontificem, nisi antea fuerint a proprio Ordinario idonei reperti, etiam per examen, si id ius vel officii ratio postulet aut Ordinarius opportunum iudicaverit.

CAN. 150

§ 1. Provisio officii de iure non vacantis ad normam can. 183, § 1, est ipso facto irrita, nec subsequente vacatione convalescit.

§ 2. Nec promissio eiusdem officii, quicunque id promiserit, ullum parit iuridicum effectum.

CAN. 151

Officium de iure vacans quod forte adhuc ab aliquo illegitime possidetur, conferri potest, dummodo rite secundum sacros canones declaratum fuerit eam possessionem non esse legitimam, et de hac declaratione mentio fiat in litteris collationis.

These five canons define in logical succession canonical appointment, its various modes, and some necessary requisites, and also touch upon vacancy. That no one can obtain an ecclesiastical office without canonical appointment follows from the necessity of the *missio canonica* and the fact that the Church is an organization.

(1) *Appointment* implies three elements: (a) the granting or conferring of an ecclesiastical office, (b) by competent authority, and (c) according to canon law.

The manner in which an ecclesiastical office may be conferred is: by free collation, investiture, confirmation or admission.

*Collatio libera, i. e.,* a free appointment is made when he who appoints has the right not only to appoint but also to designate the person of the appointee. Thus the bishops of the U. S. are empowered to designate pastors and confer parishes on them.

*Investiture* or *collatio necessaria* takes place when the clergyman to be appointed is designated by a third per-

son,— either presented by a patron (*jus patronatus*) or nominated by one who enjoys that privilege, as, for instance, the King of Spain or the Emperor of Austria.

*Confirmation* or ratification follows election, properly so-called, which takes place when a chapter enjoys the right of electing the prelate.

*Admission,* finally, is attached to postulation, which is a substitute for election when the person to be appointed suffers from a canonical impediment.[1]

The *collatio libera* confers full title to an office, or as the canonists say, *jus in re* — which means that the appointee holds a title to the office in question and may enter upon it at any time. In other words, he only needs to be installed (*introductio corporalis*). An equally valid title is conferred by investiture, confirmation, and admission; that is to say, one invested, confirmed, or admitted receives the *jus in re,* whilst before these three acts he had either a mere *jus ad rem,* as by presentation, nomination, or election, or no right at all, as in the case of postulation.

(2) The *competent authority* in conferring major ecclesiastical offices (*prelacies*) is the *Sovereign Pontiff;* lower offices may be bestowed by the *Ordinary.*[2] This is the general rule, which will be further explained when we come to treat of various offices.

(3) An ecclesiastical appointment must be made according to *canon law.* Now the law, as will be seen under the respective headings, has set up certain rules to be observed in making appointments. Of these some touch the office itself, others the act of conferring it, and again others the necessary requisites in the candidate. As to the latter, the Code lays them down under

1 Cf. c. 16, § 2, 6°, III, 4; cc. 11, 12, X, I, 6; c. 3, X, I, 5; X, III, 7.

2 Wernz, *Jus Decret.,* II, n. 291, p. 397, ed. 1.

each office, and hence we refer to the respective canons.

But the Code mentions expressly one condition of the office to be conferred, *viz.*, that it must be *vacant*. Vacancy may be caused by resignation, privation, removal, transfer and lapse of time (can. 183, § 1), and may be either *de facto*, or *de jure* only, or *de jure et facto*.[3] An office is vacant *de facto* when no one actually holds or fills it, although some one has a lawful claim to it, *e. g.*, a bishop exiled from his see. An office is vacant *de jure* if, as stated above, according to can. 183, § 1; an intruder is in actual, though illegal, possession thereof. An office is vacant both *de facto* and *de jure* if no one holds or claims it.

An office not vacant *de jure* cannot be conferred; and if it is conferred, the appointment is null and void because against the law. Even if the office becomes vacant before the illegal appointee has taken possession, the appointment is null because made at a date when there was no vacancy. In consequence all acts, examinations or concursus performed in the interval would have to be repeated.

An office vacant not *de facto* but *de jure* can be validly conferred after a declaratory sentence to the effect that there is a *de jure* vacancy, provided mention is made of that declaration in the letter of appointment.

A brief but important paragraph is § 2 of canon 150, which precludes the so-called *expectativae*. These were introduced towards the close of the Middle Ages, and were nothing else but a practical conclusion from the right of the Pope as supreme collator of all benefices.[4]

[3] Cf. Engel, III, 8, No. 2; Maschat-Giraldi, *Institutiones Canonicae*, III, 18, n. 1; cfr. cc. 1, 2, 6, X, III, 8; cc. 18, 28, 6°, III, 4.

[4] Cfr. c. 2, X, III, 8; c. 4, X, III, 24; Wernz, II, n. 315 (p. 420, ed. 1).

The popes sometimes granted letters or rescripts to clergymen declaring that the bearer was entitled to a benefice — for the *office* they usually cared but little — as soon as it would become vacant. The possessor of such a letter, given at first in the form of *preces,* then as mandates (*monitoriae* and even *praeceptoriae*), could lay claim to a benefice as soon as it became vacant, but had to wait (*expectare*) until it really was vacant.[5] Abuses arose in connection with these letters, and the rights of bishops and abbeys were much hampered, wherefore the Council of Trent set proper limits to these *expectativae,* admitting them only in case of coadjutors to bishops and abbots.[6] The new Code denies all juridical effect to any such promise, no matter by whom made, including, we suppose, the Pope himself, as far as he intends to bind himself by such laws.

Finally, certain conditions are attached to the *act of appointment,* but these are not here specified in general. Some are mentioned in connection with special modes of appointment. It may not be amiss to state the general conditions as described by canonists.[7]

(a) The appointment must be made *freely,* deliberately, and absolutely, *i. e.,* not extorted by fear or violence, or by attaching conditions to the office which its character does not imply and the appointer has no right to demand.

(b) An ecclesiastical office must be conferred *gratis,* otherwise it savors of simony, which would nullify the act. Chancellor's fees for expediting the document are, however, permitted.

(c) The appointment must be made *publicly.* The

5 Cfr. v. Scherer, I, 283; Sägmüller, p. 272.

6 *Trid.,* Sess. 24, c. 19; Sess. 25, c. 7, *De Ref.*

7 Cfr. Garzia, *De Re Beneficiaria,* P. VIII, c. I, n. 1; cc. 8, 9, 34; Wernz, II, n. 323 (p. 437, ed. 1).

new Code prescribes, in addition, that it must be made *in writing.*[8]

(d) It must be made within the *time* determined by the Code for the office in question.

## ART. I

### FREE APPOINTMENT (LIBERA COLLATIO)

What is meant by free appointment has been explained above, both as to the designation of the person and the conferring of the office (*collatio tituli*). The present article doubtless treats of minor offices, which have no jurisdiction *in foro externo,* unless we include the office of vicar-general in the number of offices *liberae collationis,* which is admissible.

### CAN. 152

**Loci Ordinarius ius habet providendi officiis ecclesiasticis in proprio territorio, nisi aliud probetur; hac tamen potestate caret Vicarius Generalis sine mandato speciali.**

The bishop or Ordinary of the diocese, according to the general rule, has the right to confer all the ecclesiastical offices in his diocese, except those which the law exempts from his power, or unless his right is contested and the claim proved.

(a) Exempt from this power by law are cathedral and collegiate chapters and the first dignitaries;[9] concerning canonicates the bishop must proceed in harmony with his chapter.

(b) The bishop's right may be limited by *incorporation*

8 Cfr. cc. 392, 394, § 2.

9 Cf. cc. 392, 394 § 2.

and *juspatronatus,* which however must be proved by those who claim that right, as shall be seen in its proper place. Incorporation for forty years would create a prescription in favor of the corporation.[10] As to the *juspatronatus,* what is necessary for our country to note on this subject will be said later.

The above-mentioned cases excepted, the Ordinary is free in choosing his vicar-general and other officials of the diocese,[11] appointing consultors, rural deans, pastors, assistants and rectors.[12]

The *vicar-general* needs a special mandate to fill offices which the Ordinary is entitled to fill. The mandate must be given *ad hoc, i. e.,* for the purpose of making the appointment. This means a special commission for each individual appointment, because each appointment is a separate juridical act which has no connection with any other. Therefore a general commission to appoint to ecclesiastical offices would not be valid. Besides the *mandatarius* must follow strictly the terms of the mandate, else he would act invalidly.[13]

### REQUISITES OF ECCLESIASTICAL OFFICE HOLDERS

### Can. 153

**§ 1. Ad vacans officium promovendus debet esse clericus, iis qualitatibus praeditus, quae a iure communi vel particulari aut a lege fundationis ad idem officium requiruntur.**

**§ 2. Assumatur, omnibus perpensis, magis idoneus sine ulla personarum acceptione.**

**§ 3. Cum provisus caret qualitatibus requisitis, pro-**

10 Cf. X, II, 26, and Engel h. t. n. 33.

11 Cf. can. 366, § 2; can. 373.

12 Cf. can. 424; can. 446, §2; can. 455, §1; can. 476, §3; can. 480, § 1.

13 Cfr. the commentators on X, I, 38, *De procuratoribus.*

**visio est nulla, si ita cautum sit iure communi vel particulari aut lege fundationis; secus est valida, sed per sententiam a legitimo Superiore irritari potest.**

## CAN. 154

**Officia quae curam animarum sive in foro externo sive in interno secumferunt, clericis nondum sacerdotio initiatis conferri valide nequeunt.**

Regarding the *common law,* our Code deals with the requisites for the single offices in connection with these. Note that no criminal, defamed, or censured ecclesiastic can be appointed to an office.[14] A *particular* law would be that the appointee must belong to a certain nation or family, or to the nobility, which played an important part in German cathedral chapters. The *law of foundation* is generally laid down in the founder's last will and testament, which the Church regards as sacred.

A brief remark on the "*magis idoneus.*" The Code almost studiously avoids the terms "*dignior*" and "*dignus,*" formerly used, and chooses the more flexible but also more juridical expression *idoneus,* which certainly is more in keeping with laws that deal with external qualities rather than internal. One is fit, just as one is worthy, if he lacks none of the qualifications prescribed by law. The fitter (*magis idoneus*) of two candidates is he who possesses these qualifications in a more conspicuous degree.[15] But the law inculcates the duty of appointing the fitter candidate only by way of admonition, not prohibition, and, moreover, adds: "*omnibus perpen-*

14 Cfr. c. 7, X, I, 6; c. 4, X, I, 14; c. 4, X, V, 1; cc. 7, 9, X, V, 27; Wernz, II, n. 298 (p. 404, ed. 1).

15 Cfr. Smith, *Elements,* I, n. 372, p. 169; Wernz, II, n. 309 (p. 414, ed. 1).

*sis."* Therefore the judgment rests with the Ordinary, who must consider the place, time, and circumstances of the office as well as the qualifications of the clergyman to be appointed. Sometimes a good business manager is needed, sometimes an orator, sometimes an ascetic. One parish needs a democratic leader, another a more aristocratic one. If the bishop looks at the appointment merely from the point of view of necessity and utility, without sentiment, he may make a mistake but certainly will not commit a sin or breach of the law.

### TIME OF APPOINTMENT

### Can. 155

**Officiorum provisio cui nullus terminus fuit speciali lege praescriptus, nunquam differatur ultra sex menses utiles ab habita notitia vacationis, firmo praescripto can. 458.**

The date is definitely fixed for higher offices as well as for offices *jurispatronatus;* but for minor offices of free appointment the time of six months was generally prescribed.[16] The Code employs the term *utiles,* which is analogous to *tempus utile,*[17] and implies that if the bishop should ignore the vacancy, or be prevented by a reasonable cause from making an appointment, the six months are to be counted from the time when he was free to act. In can. 458 the Ordinary is admonished to appoint permanent pastors, but allowed to put a vacant parish in charge of an administrator if this appears to him more prudent in consideration of the circumstances.

16 Cfr. cc. 2, 5 12, X, III, 8; c. un. Clem. I, 5.

17 Cfr. can. 35.

INCOMPATIBLE OFFICES

When the rule of the Council of Chalcedon that every cleric should be ordained and assigned to a definite church or service was abandoned, avarice and ambition and the evils attendant upon an incontinent clergy caused serious abuses in the shape of the holding of several ecclesiastical offices by the same person. The third and fourth Lateran Councils [18] sought to remedy this unlawful practice, but the *cumulatio beneficiorum* flourished again during and after the "Babylonian captivity," until the Council of Trent [19] enacted wholesome reform laws and subsequent pontiffs enforced them.[20] The purpose which inspired the prohibition of holding two or more offices was twofold: — to counteract avarice and ambition and to provide efficacious and worthy ministers. The Code considers this last mentioned reason, and for the rest merely reënforces the Tridentine law.

## Can. 156

**§ 1. Nemini conferantur duo officia incompatibilia.**

**§ 2. Sunt incompatibilia officia quae una simul ab eodem adimpleri nequeunt.**

**§ 3. Firmo praescripto can. 188, n. 3, concessio alterius officii a Sede Apostolica facta non valet, nisi in supplici libello mentio prioris incompatibilis habeatur, aut clausula derogatoria adiiciatur.**

The law exempts no one, not even learned and deserving ecclesiastics,[21] from the general prohibition. Besides

18 Cfr. c. 3, X, III, 4; cc. 5, 28, X, III, 5; but "*sublimes et litteratae personae*" were exempt from the enforcement of c. 28.

19 Sess. 7, c. 4; Sess. 24, c. 17 *De Ref.*

20 Bened. XIV, *De Syn. Dioec.*, XIII, 8 ff.; Wernz, II, n. 318 (p. 426 ed. 1).

21 Cfr. c. 28, X, III, 5. The Trid. Council, however, excepted no one, not even Cardinals. Sess. 24, c. 17.

the Code says, "*nemini . . . conferantur,*" which means that it is forbidden to confer, and not only to hold, incompatible offices.

*Incompatible* are such offices as exclude the possibility of doing justice to both. For instance, (a) offices which require *personal residence,* such as bishopries, canonries, parishes;[22] (b) offices which, though they do not require personal residence, are of the same nature and attached to the same church, chapel, or altar; for instance, chaplancies or simple canonries[23] (called *beneficia uniformia sub eodem tecto*);[24] (c) a religious cannot be prior of one monastery and abbot of another.[25]

Offices which require neither residence nor service in the same church are *compatible* if one is not sufficient for the decent support of a cleric.[26]

§ 3 adverts to a possible dispensation. This the Holy See alone can grant. However, if a petition were sent to Rome to obtain, for instance, two parishes, and it would not mention the fact of the petitioner already being in the possession of one parish, the rescript would be *ipso jure* invalid,[27] for the legislator is not supposed to act against his own law, unless he makes special mention of the exception, as by the clause, *ex certa scientia,* or *de plenitudine potestatis,* or *etiamsi de illis specialis, specifica, individualis mentio sit facienda,* or similar ones.[28] The mere clause *motu proprio*[29] would not have this effect.

Can. 188, n. 3, refers to tacit resignation implied in the

22 *Trid.,* Sess. 24, c. 17; cfr. Richter, p. 376 ff.

23 *Trid.,* Sess. 7, c. 4, *De Ref.;* Richter, p. 50 ff.; Engel, III, 5, n. 68.

24 Cfr. c. 28, X, III, 5; c. 9, X, III, 8.

25 S. C. C. 23 Febr., 1715 (Richter, *l. c.,* p. 50, n. 9).

26 Cfr. Richter, *l. c.,* p. 50 ff.

27 Cfr. c. 23, 6°, I, 4; c. 2, Clem. I, 9.

28 Barbosa, *Tract. Var.,* cl. 43; cl. 59.

29 Cfr. Can. 46.

acceptance and possession of an incompatible office. Therefore, even if a papal rescript provided with the necessary clause would have been granted to hold two offices, if these offices were incompatible, one would have to be resigned and vacated.

## CAN. 157

**Officium vacans per renuntiationem vel per sententiam privationis nequit ab Ordinario, qui renuntiationem acceptavit aut sententiam tulit, valide conferri suis aut resignantis familiaribus, consanguineis vel affinibus usque ad secundum gradum inclusive.**

This canon is a repetition of two Constitutions[30] of Pius IV and Pius V, and rests, though not verbatim, upon the prohibition of the Council of Trent,[31] which says that every shadow of hereditary succession in ecclesiastical offices is odious: — an effective blow against nepotism.

*Familiares* are such as serve one actually and dependently and belong to one's household and live at one's expense.[32] *Consanguinei* would be nephews and first cousins, while *affines* could only be spoken of in case of a once married clergyman. Upon none of these, either his own or those of the *resignatarius,* may the Ordinary confer an office made vacant by resignation or a sentence of privation. Neither may he admit any of the persons mentioned to a *concursus.*

The *juspatronatus* is not touched by this canon, nor are the familiars and relatives of the vicar-general debarred,[33] unless, of course, it was he who accepted the

30 Pius IV, *"Cupientes,"* Oct. 11, 1560, § 1; Pius V, *"Quanto Ecclesia,"* Apr. 1, 1568, § 5.

31 *Trid.,* Sess. 25, c. 7, *De Ref.;* cfr. cc. 7, 10, 11, X, I, 17, *De filiis presbyt.*

32 Reiffenstuel, II, 20, n. 122, well says: *"ut actu inserviat et ut veluti commensalis vivat expensis domini."*

33 Reiffenstuel, I, 9, n. 118 ff.

resignation or passed the sentence of privation, for the canon speaks of the Ordinary.

### Can. 158

**Qui, alius neglegentiam vel impotentiam supplens, officium confert, nullam inde potestatem acquirit in nominatum; sed huius iuridicus status perinde constituitur, ac si provisio ad ordinariam iuris normam peracta fuisset.**

This canon supposes the right of devolution brought into exercise either by negligence or inability of conferring the office at the time prescribed by law. In such cases the decretals [34] permitted the interference of the metropolitan if a suffragan bishop failed to make an appointment within six months. Our Code [35] admits the metropolitan's interposition only in the case of an office to which advowson is attached, or *juspatronatus*. Speaking, however, of inability the present canon seems to take a wider range which may extend to the case of a vicar-general conferring an office by special mandate. Yet even this must be excluded, for the juridical position would not be altered even if the vicar-general were allowed to interfere. The canon, therefore, must be limited to the right of devolution. This, says the law, does not create any juridical change in the status of the person who has received an office in this extraordinary way. The reason is that if a superior supplements the negligence or inability of the lawful appointer, his right cannot be stretched beyond what is expressly and explicitly permitted by law, which admits the appointment but gives no further jurisdiction.[36]

34 Cfr. X, III, 10, *De suppleṇda negligentia praelat.*

35 Cfr. Can. 274, 1°.

36 Reiffenstuel, 1, 10, n. 10.

CAN. 159

**Cuiuslibet officii provisio scripto consignetur.**

Every appointment must be delivered in writing either by the Ordinary or by his chancellor, and, of course, properly signed and sealed with the diocesan seal.

## ART. II

### ELECTION

CAN. 160

**Romani Pontificis electio unice regitur const. Pii X *Vacante Sede Apostolica,* 25 Dec. 1904; in aliis electionibus ecclesiasticis serventur praescripta canonum qui sequuntur, et peculiaria, si qua sint, pro singulis officiis legitime statuta.**

#### I. ELECTION OF A POPE

The historical evolution of the process of electing a Pope shows various phases.

(1) Up to the time of Nicholas I (1059–1061) not only the clergy but also the senate and people of Rome had a share in the election, whilst the emperor claimed the right of ratifying it.[37]

(2) Nicholas II endeavored to reduce the undue influence of senate and people. He reserved the right of electing the Pope chiefly to the clergy of the titular or cardinal churches of Rome, but did not entirely exclude the emperor. His decree[38] expressly emphasizes "the honor and reverence due to the King."

37 Cfr. Mansi, *Coll. Conc.*, XIV, 479; Bachofen, *Summa Juris Eccles. Publ.*, 1910, p. 82 f.

38 C. 1, Dist. 23.

(3) The decretals of Alexander III (1159–81) went further, and Gregory X (1271–76) finally reserved the right of electing the Pope to the Cardinals of the Roman Church. The so-called "Veto" or "*jus exclusivae,* which the monarchs of Austria, France, and Spain arrogated to themselves and by means of which they excluded candidates unacceptable to them through the agency of one of their cardinals, was definitively abrogated by Pius X.[39]

The question whether the Pope can legally *designate his own successor* is controverted. Technically, there is no doubt that the Pope has this right, because the mode of election now in vogue is merely a human (ecclesiastical) law, by which the supreme lawgiver is not bound. Practically and morally speaking, however, such a right is not to be vindicated except in a very extraordinary and urgent case. The Pope, being a human being, might be too strongly inclined towards his family, and through nepotism the papacy might be in danger of becoming hereditary. Besides, the Pope is morally bound to respect the *jus quæsitum* of the cardinals, which would be illusory if the Pope could set it aside at his pleasure. Felix III (526–30) nominated his successor, but this extraordinary act was prompted by peculiar circumstances.[40]

At present the law concerning the election of a Pope is as follows:

1. The only authorized *electors* are the *cardinals,* who must have received at least deaconship, unless permitted by a special Apostolic indult to remain in lower orders. Even censured cardinals enjoy a vote in the conclave, but not such as have been deposed or have resigned their

39 *A. Ap. S.,* t. v. p. 252; *Acta Pii X,* 1908, III, 289 ff.

40 *Tueb. Quartalschrift,* 1903, p. 91 ff., Wernz II, p. 651 (1 ed.).

dignity with the consent of the Pope. Absent cardinals must be invited by the Dean of the Sacred College or by another cardinal and admitted to the conclave as long as no election has taken place.

2. Concerning *eligibility,* the Constitution of Pius X merely admonishes the electors to choose one whom they deem fit. Since the end of the fourteenth century only cardinals, and since Hadrian VI (1523), only Italian cardinals have been elected.

3. The voting takes place by *scrutiny,* which may be performed *only* within the *conclave.* The latter point, however, no longer affects the validity of the election.

Quasi-inspiration, compromise, and *accessus* seem to be excluded, as the Constitution makes no mention of these. The election is completed only when two-thirds of the votes or suffrages, cast secretly and according to the scheduled forms, fall on the same person. The vote of the elected cardinal may not be counted. It is evident that generally more than one scrutiny is required. The ballots must be burned.

4. A purchased election would probably be valid, but those guilty of that crime (*simony*) incur excommunication *latae sententiae.* The same penalty falls upon those who in any way admit the abrogated "veto."

5. The cardinals may, during the vacancy of the Apostolic See, discuss probable candidates and their fitness for the office. This is called the *tractatus praevius.*

### 2. ELECTION OF BISHOPS

During the first ten centuries election in the proper sense was effected by the concurring suffrages and cooperation of the clergy and the people. Often sovereigns exercised an undue influence in the matter, espe-

cially after an exaggerated feudal system had created the so-called investiture with ring and crozier, which abuse was rectified by the Treaty of Worms (1122). Later on the corporate chapters of the cathedral churches legally exercised the right of electing the bishop.[41] The rule that all provisions belong to the Holy See (known as Regula II of the Apostolic Chancery) was never received outside of Italy, but remained a dead letter, like most of the other rules (with the exception of III) of the same chancery.

A modification had naturally to take place when Protestantism severed many rulers and countries from the Church. The *jus praesentandi* granted to some sovereigns naturally ceased after their defection, and though a certain interference was still exercised, *contra fas jusque,* the diocesan clergy and neighboring bishops, under the supervision of the Holy See, took an important part in episcopal appointments. This happened especially in Ireland,[42] where the *ius commendandi* in course of time almost became a *ius nominandi.* Rome was careful to keep the right of appointing bishops within its proper limits. Still the right of commending candidates was acknowledged in Great Britain and the United States, and the Third Plenary Council of Baltimore (tit. II, n. 15) sanctioned the mode of selecting three candidates as *dignissimus, dignior, dignus,* respectively, at a meeting of the consultors and irremovable rectors of the diocese. This terna was revised by the bishops of the respective province and the final decision given by the Propaganda and, of late, by the S. C. of the Consistory. A new method was ushered in — *ad experimenti instar* — by a decree of the S. C. Cons. of July 25, 1916. It is difficult

41 C. 35, Dist. 63 (Lat. II, c. 28); cc. 21, 36, 42, 51, 56, X, 1, 6; c. 3, X, II, 12.

42 *Eccles. Review,* 1917 (56), p. 227.

to describe this mode by a proper term, but we may call it a *proposal* for future appointments.

The decree may be summarized as follows:

1. The so-called *candidates,* whose names may be proposed, must enjoy certain *qualities.* They should be of mature age, but not too old, experienced in the practical administration of temporal and spiritual affairs, of sound Catholic doctrine,— which means that they must not be suspected of Modernism, especially,— of more than ordinary learning, faithfully devoted to the Holy See, of good conduct and piety, of sound manners and health. Their family affairs should also be examined (art. 2).

2. All *bishops* are called upon to send to their metropolitan the names of one or two priests, either of their own diocese or outside of it, whom they regard as possible candidates for a future choice. This should be done in Lent, every two years, beginning with 1917 (art. 1). In order that the bishops may be properly informed as to the character of the candidates, they should informally and secretly ask their consultors and irremovable rectors — a reminiscence of the old method. They are, however, in no wise bound to accept or follow the information thus obtained (art. 2 ff.). The metropolitan follows the same procedure in his archdiocese, and ultimately draws up an alphabetical list of the names received from all the bishops of the province (art. 5).

3. The bishops *meet with their metropolitan* after Easter, at a convenient place and time, without attracting the attention of outsiders. To their meeting no other ecclesiastic is admitted. One of the bishops (the youngest or the ablest) acts as secretary. After having taken the oath of secrecy, the bishops enter into a moderate (moderate, we suppose, as to time and spirit) discussion concerning the candidates proposed. Then they proceed to

balloting, in alphabetical order, the white ballot signifying "yes," and the black one "no," and a neutral color "I abstain" (art. 12). The metropolitan and the secretary act as tellers. More than one vote may be taken. After a result has been obtained, the minutes of the discussion and the result of the balloting are drawn up in form of a document by the secretary, who reads the same to his fellow prelates and has a copy made, which must be sent to the Apostolic Delegate, by whom it is forwarded to the Consistorial Congregation (art. 15 ff.).

This, in substance, is the decree regulating the "proposal" of names, which are to be kept on record in Rome as well as in the secret archives of the metropolitan, at least as long as there is no danger of divulgation. The decree says nothing of the right of bishops, nothing about *postulatio,* nothing as to when a meeting should be called in case the metropolitan see is vacant.

The juridical effect of the "*proposal*" or the *ius nominandi seu commendandi,* as once in vogue in the United States and still customary in Ireland, England, and Canada, is not to create a *ius ad rem,* but merely, as it were, a *processus informativus,* serving as a basis to the Holy See for the appointment of suitable candidates to vacant bishoprics.

Quite naturally the question arises: Does this decree still hold good after the Code has gone into force? We believe it does, since the Code alludes to "*peculiaria,*" where lawfully established. Besides, it is not probable that the framers of the decree of 1916 knew nothing of the present Code, which was then in its final shape, so far as the regulations concerning the election of bishops was concerned. But we may be allowed to express the hope that this decree will be changed or abolished if the experiment should prove unsatisfactory.

*Other ecclesiastical elections* which fall under the present article, are those held in religious communities, especially of exempt orders, who elect their prelates or superiors.

### TIME AND CONVOCATION

### Can. 161

Si cui collegio sit ius eligendi ad vacans officium, electio, nisi aliud iure cautum fuerit, nunquam differatur ultra trimestre utile computandum ab habita notitia vacationis officii; quo termino inutiliter elapso, Superior ecclesiasticus, cui ius confirmandae electionis vel ius providendi successive competit, officio vacanti libere provideat.

### Can. 162

§ 1. Salvis peculiaribus constitutionibus vel consuetudinibus, collegii praeses, statuto modo, loco ac tempore electoribus convenienti, convocet omnes de collegio; et convocatio, quando personalis esse debet, valet, si fiat vel in loco domicilii aut quasi-domicilii vel in loco commorationis.

§ 2. Si quis ex vocandis neglectus et ideo absens fuerit, electio valet, sed ad eius instantiam debet, probata praeteritione et absentia, a competente Superiore irritari, etiam secuta confirmatione, dummodo iuridice constet recursum saltem intra triduum ab habita notitia electionis fuisse transmissum.

§ 3. Quod si plures quam tertia pars electorum neglecti fuerint, electio est ipso iure nulla.

§ 4. Defectus convocationis non obstat, si praetermissi nihilominus interfuerint.

§ 5. Si agatur de electione ad officium quod electus

**ad vitam retinet, convocatio electorum ante officii vacationem nullum habet iuridicum effectum.**

Canon 161 establishes the *trimestre utile* within which the election must be held. What *utile* means has been explained.[43] The Code adds that the three months' period must be observed unless the law provides otherwise, and law here means the common law, not constitution or custom. Hence the general law requires that an election be held within three months, unless, of course, some unforeseen impediment should arise,[44] for which the *utile tempus* is granted. If the legitimate electors fail to meet within that time, or can not agree upon a candidate, — for *election* certainly involves a result, not mere fruitless scrutinies — then the one who is entitled to ratify the election, or to fill the vacant office by way of devolution, should make the appointment. This is the case, for instance, if a cathedral chapter allows the *tempus utile* to elapse.[45] But it also applies to religious communities, and the common law admits their constitutions only in so far as they do not conflict with the present canon. Hence privileges granting an extension of time must now be considered to be without effect.[46] Wherefore, for instance, in certain Benedictine Congregations which grant the right of ratification to the Abbot President, the latter would be entitled to appoint, *positis ponendis,* a candidate of his own.

Canon 162 treats:

(1) Of the *preliminary act of convocation,* which concerns the mode, place, and time of the election.

(a) The possible *mode,* in the juridical sense, would

43 Cf. can. 35; can. 155.
44 C. 41, X, I, 6.
45 Can. 432, § 2.
46 Can. 507. The Franciscans enjoy such a privilege; cfr. Piat. Mont, *Prael. Juris Reg.,* 2nd ed., I, 518; Bachofen, *Compendium Juris Reg.,* p. 190.

be twofold, *viz.,* scrutiny and compromise, quasi-*inspiratio* being excluded. *Scrutiny* is the usual way of electing by votes. *Compromise* is admitted by the Code and determined in c. 172 f. But the term "*modus*" may also be taken in a wider sense, as signifying the way in which to proceed in the election, as far as not determined by law; *v. g.,* mass and other solemnities, written or printed ballots, etc.

(b) The *place* for holding elections is not determined. According to the old law, episcopal elections should take place in the cathedral.[47] For religious the whole convent is reputed to be a proper place; not even an interdicted place is excluded.[48]

(c) The *time* is to be determined by the head of the collegiate body. Any time of the day may be chosen, and it is proper that the *Missa de Spiritu Sancto* precede the act.[49]

(2) *Convocation* or summons must be served to *all* who belong to the body which is to elect. Therefore

(a) All *absent members must* be summoned in such a way that, considering the ordinary means of communication, the summons is apt to reach them wherever they may be. Hence if the summons is directed to one's domicile or quasi-domicile, or actual stopping-place (*e. g.,* in vacation time), this is sufficient. If the letter is lost on the way, or miscarries, this accident has no juridical effect. But it is advisable to have the letters registered, for the receipt would serve as a proof that summons has been duly made. Distance is a very immaterial point now-a-days. Besides, the Constitutions may provide for different emergencies.

(b) Summons must be sent also to such as are under

47 C. 28, X, I, 6.
48 Cfr. Bachofen, *Compendium Juris Reg.,* p. 189.
49 *Ibid.,* p. 195.

*censure,* unless they are *excommunicati vitandi,*[50] or have been legally deprived of their vote before the summons was sent.

(c) The reason why all have a right to be summoned lies not only in the chapter-rights, of which that of having a voice in the election of superiors is the most prominent, but also in the danger of nullifying the election. For if only one member is absent by reason of not having been called, the election may be declared null and void. However, the one who feels himself slighted, in order to nullify the election, must furnish a *twofold proof:* first, that his absence was caused by not being summoned, and secondly, that he has put in his claim within three days from the date of the election. If the first proof cannot be furnished, the latter has no value. Hence the secretary of the chapter should keep a copy of the summons, with receipts for the registered letters sent out. The members should be called together *in capitulo,* and care be taken that all are present. If one is *absent* legitimately (*i. e.,* not through his own fault), he is entitled to a personal summons; but if he knows of the convocation from another source, and that source can be proved, he is not entitled to remonstrate. The proof that he appealed within three days can easily be upset if the president keeps the minutes and records.

(d) That more than *one-third of the electors* of any corporate body should be neglected in the case of an election is not probable, but should it happen, the election is null and void, and another must take place. To proceed to that, a comparison between the members entitled to the vote and the members neglected must be made, and if it is proved that the summons were not sent, the minority

[50] C. 23, X, II, 28.

has the right to ask for another election. However, if they were present at the election, even though they did not vote, the election is valid, for summoning is only a means of calling together, not the purpose of election.

(e) Paragraph 5 speaks of an *office for life,* and enacts that any meeting of the members entitled to take part in an election held before the vacancy of the incumbent produces no juridical effect. Such a preliminary meeting or consultation about possible candidates savors of disrespect for the present incumbent, opens the way to criticism and insubordination, and is forbidden to the cardinals under penalty of excommunication.[51] From such a meeting the so-called *tractatus praevius* differs *toto caelo.* This is a meeting held in certain congregations immediately before the election of a superior, in order to discuss the qualifications of probable candidates. Our Code is silent on this subject, and we believe that the advisability of holding such *tractatus praevii* depends much on circumstances. In a monastery with many *expositi* such a preliminary discernment may accelerate an election and remove misgivings. Besides, it may bring out faults and mistakes of the former government which ought to be corrected.[52]

### THE ELECTORS (VOX ACTIVA)

### CAN. 163

**Convocatione legitime secuta, ius eligendi pertinet ad eos qui praesentes sunt die in convocatione statuto, exclusa facultate ferendi suffragia non solum per epi-**

51 Cfr. *"Vacante Sede Apostolica,"* n. 80; c. 2, Dist. 79.

52 At Einsiedeln in Switzerland they hold a so-called *Murr-Kapitel,* in which everyone is allowed to criticize what displeased him under the preceding régime.

**stolam, sed etiam per procuratorem, nisi lege peculiari aliud caveatur.**

The Decretals as well as the Tridentine Council,[53] and several decisions of the Roman Curia, had forbidden voting by proxy, the common opinion of canonists also voting by letter.[54] Now the Code establishes the general law that only those actually present are allowed to vote, but voting by proxy or letter is permitted where a special law to that effect has been made by the collegiate body. Such a law may be contained in the Constitutions approved by the Holy See. Custom, however, is inadmissible in this matter because the Code speaks of laws enacted in a special manner. Where voting by proxy or letter is allowed, care must be taken that the secrecy of the vote be kept intact.

CAN. 164

**Etsi quis plures ob titulos ius habeat ferendi nomine proprio suffragii, non potest nisi unicum ferre.**

CAN. 165

**Nullus collegio extraneus admitti potest ad suffragium, salvis privilegiis legitime quaesitis; secus, electio est ipso facto nulla.**

CAN. 166

**Si laici contra canonicam libertatem electioni ecclesiasticae quoquo modo sese immiscuerint, electio ipso iure invalida est.**

If laymen interfere in any way with canonical liberty

53 Cfr. c. 42, X, I, 6; Sess. 25, c. 6, *De Reg.*

54 Benedict XV, "Dei providentis arcano," May 1, 1917; *Acta Ap. Sedis*, Vol. IX, pp. 529 ff.; cfr.

in an ecclesiastical election, the election is *ipso iure* null and void.

Canon 164 precludes the casting of several votes by the same person, though he may technically have the right to more than one vote, for instance, as canon and dignitary, consultor and irremovable rector.

Can. 165 says that one who *does not belong to the collegiate body,* or is not a member of the chapter which has the right of election, may by custom or privilege be permitted to cast a vote,[55] provided he is himself a cleric. Unless custom or privilege — and both must be proved — warrant such a participation, no one who does not belong to the body of electors has a right to interfere, and if the chapter should consent to such interference, the election would be null and void.

Much less, says Can. 166, may a *layman,* no matter under what pretext, even though he be the patron of the monastery[56] or church, be admitted to the election. And election here means not only the casting of the votes, but whatever belongs thereto. An exception, if such it be, may be made in favor of a layman's being present at the holy Mass, to pray for a good choice.

## Can. 167

**§ 1. Nequeunt suffragium ferre:**

**1.° Incapaces actus humani;**

**2.° Impuberes;**

**3.° Censura vel infamia iuris affecti, post sententiam tamen declaratoriam vel condemnatoriam;**

**4.° Qui sectae hereticae vel schismaticae nomen dederunt vel publice adhaeserunt;**

55 Cfr. c. 8, X, I, 4; c. 50, X, I, 6.

56 Cfr. c. 1, Dist. 63 (Had.); c. 51, X, I, 6. (Cluny had admitted a layman, but was reprimanded by Greg. IX: "*in dispendium ecclesiasticae libertatis*"), c. 56, X, I, 6.

**5.° Carentes voce activa sive ob legitimam iudicis sententiam sive ex iure communi aut particulari.**

**§ 2. Si quis ex praedictis admittatur, eius suffragium est nullum, sed electio valet, nisi constet, eo dempto, electum non retulisse requisitum suffragiorum numerum, aut nisi scienter admissus fuerit excommunicatus per sententiam declaratoriam vel condemnatoriam.**

*Impuberes* are all under the age of fourteen.[57] Those who are "incapable of [eliciting] a human act" are generally called insane, although the authors[58] exclude from voting only such as have no control over themselves at all habitually, not such as have a lucid moment (*lucidum intervallum*) at the time when they cast their vote.

By *censure* is understood any excommunication, suspension or personal interdict which has been inflicted either by the law itself for a grievous external fault and hence needs only to be *declared* to be incurred, or a penalty inflicted by legitimate ecclesiastical authority for a crime which, though not censurable in law, was imposed by the judge in the form of a *sententia condemnatoria.* Concerning the first kind, note that a declaratory sentence starts at the moment of the perpetration of the crime[59] for which it was inflicted, whilst a condemnatory sentence must be formally pronounced in order to take effect. Hence if one had committed a crime deserving of censure by a declaratory sentence, even though he would be declared guilty only at or after the election, his vote would be null and void. The same holds good concerning *infamia juris,* which is in law established for certain enormous crimes,[60] as well as with regard to *heretics* and

57 Cfr. can. 88, § 2; c. 32, X, I, 6.

58 Cfr. Reiffenstuel, I, 6, n. 166.

59 Cfr. can. 2232, § 2.

60 Such as heresy and apostasy, also crimes of a gross nature com-

*schismatics.* The term *nomen dare* means to enroll one's name on the official list of members of a non-Catholic sect, *e. g.,* by taking a pew in a sectarian church, but one could not be said to have "given his name" if he merely contributed to a collection.

Those who are *deprived* of an *active voice* in an election may be so deprived either by the sentence of an ecclesiastical judge (Ordinary, Pope, Abbot), or by reason of the law stating that penalty. Such are secularized and apostatized religious.[61] The particular law sometimes inflicts that penalty, *e. g.,* when the Constitutions of an order declare that religious who own property against the will of their superior,[62] or who reveal the secrets of the chapter, lose the right to vote. Here the Code does not require either a declaratory or a condemnatory sentence. Hence such religious are *ipso iure* deprived of the vote. However, since either the fact of the perpetrated crime, or the penalty, may not be known to the electors, the president should formally exclude such members, or formally pardon them for the purpose of casting their vote.

Here we may explain the meaning of the *absolutio* imparted at the beginning of an election. This is little more than a mere ceremony and does not render those excluded from the right of voting under our canon capable of voting, but is intended *ad cautelam,* as the canonists say, *i. e.,* in order that the election, if no essential feature is omitted, may take effect, and hence may not be frivolously attacked. For if it would take away the effects of penalties, these would be a mere mockery.[63]

The last paragraph (§ 2) says that the vote cast by

mitted by clergymen *in sacris,* such as sodomy, adultery, bestiality; cfr. can. 2314, § 1, n. 2; can. 2359, § 2.

61 Cfr. can. 639 f.; can. 2385; by a sentence of the judge cfr. cc. 2331, 2336, 2342, 2360, 2368, 2389.

62 *Trid.,* Sess. 25, c. 2, *De Regg.*

63 Ferraris, *Prompta Bibliotheca, s. v. "Praelatus Regularis,"* n. 73.

one incapable of voting does not render the election itself null and void, except in two cases: if the invalid vote were decisive, and if the electors would knowingly admit an excommunicated member. The first case is a rather difficult one. The secrecy of the ballot box, as now in use, seems to preclude an investigation. It is probably for this reason that the canon says, "*si constat*," *i. e.*, if it is evident. The fact might be evident to the tellers, whose statement in that case would be sufficient to nullify the election. The other case is more palpable, for the law requires a knowledge on the part of at least some of the electors of the fact of excommunication. If an excommunicated person were present in the room and could not be decently removed, the electors would have to protest against his presence and also state that his vote would not count.[64] The tellers could then simply throw him out.

CAN. 168

**Si quis ex electoribus praesens in domo sit in qua fit electio, sed electioni ob infirmam valetudinem interesse nequeat, suffragium eius scriptum a scrutatoribus exquiratur, nisi aliter particularibus legibus vel legitimis consuetudinibus fuerit constitutum.**

This rule, of course, applies only when the sick person is in a normal mental condition; otherwise there is not only no obligation to obtain his vote, but by reason of can. 167, § 1, n. 1, he is excluded from voting.

CAN. 169

**§ 1. Suffragium est nullum, nisi fuerit:**

**1.° Liberum; et ideo invalidum est suffragium, si**

64 Reiffenstuel, I, 6, n. 169.

elector metu gravi aut dolo, directe vel indirecte, adactus fuerit ad eligendam certam personam aut plures disiunctive;

2.° Secretum, certum, absolutum, determinatum.

§ 2. Conditiones ante electionem suffragio appositae tanquam non adiectae censentur.

## Can. 170

**Suffragium sibimetipso nemo valide dare potest.**

The first *essential requisite* of a vote is (a) that it be given *freely*. Hence if a voter is influenced, either *directly, i. e.,* at the election itself, or indirectly, *i. e.,* before the election but for the purpose of electing a certain person, no matter whether this influence was exercised by insiders or outsiders, through grievous fear[65] or deceit, *i. e.,* bribery, or false representations, his vote is *ipso iure null* and void.[66] Undue influence of senior upon junior members would not invalidate the vote, but might endanger its liberty, so that the tellers would be obliged to reject the ballots.

(b) A vote must furthermore be *secret,* because of the probable consequences of partisanship, enmity, preference, and other evils. Hence the Decretals as well as the Council of Trent insist upon secrecy,[67] and all precautions must be taken that no one's vote is ever revealed. For this reason the names of the candidates as well as those of the electors should be printed and distributed. No mark should be put on the ballots, and no showing them to others is permitted.

(c) A vote must, in the third place, be *certain, i. e.,* cast for a determined person. It would be uncertain if

65 Cfr. can. 2205, § 2.

66 Cfr. cc. 14, 43, X, I, 6.

67 Cfr. c. 42, X, I, 6; *Trid.,* Sess. 25, c. 6, *De Regg.*

written thus: "I elect the one who has the most votes." *Absolute* is the opposite of conditional. A conditional vote would be: "I elect N. if he accepts." A vote is *determined* if the candidate cannot be mistaken and it spells almost the same as certain.

Any stipulation made before the election is null and void; hence no "*capitulatio*," as was sometimes done before papal elections, and no promise may be made, or if made, it need and should not be kept after the election.

### BALLOTING

### Can. 171

§ 1. Ante electionem per secreta suffragia deputentur, nisi iam propriis statutis deputati sint, e gremio collegii duo saltem scrutatores, qui una cum praeside, si et ipse e gremio collegii sit, iusiurandum interponant de munere fideliter implendo ac de secreto servando circa acta in comitiis, etiam expleta electione.

§ 2. Scrutatores curent ut suffragia secreto, diligenter, singillatim et servato praecedentiae ordine ab unoquoque electore ferantur; collectisque ad ultimum suffragiis, coram praeside electionis, secundum formam propriis constitutionibus vel legitimis consuetudinibus statutam, inspiciant an suffragiorum numerus respondeat numero electorum, suffragia ipsa scrutentur palamque faciant quot quisque retulerit.

§ 3. Si numerus suffragiorum superet numerum eligentium, nihil est actum.

§ 4. Suffragia statim, peracto unoquoque scrutinio, vel post sessionem, si in eadem sessione habeantur plura scrutinia, comburantur.

§ 5. Omnia electionis acta ab eo, qui actuarii munere fungitur, accurate describantur, et saltem ab eo-

**dem actuario, praeside ac scrutatoribus subscripta, in collegii tabulario diligenter asserventur.**

Unless otherwise provided for in the statutes of the respective corporation, at least two tellers, who are members of the chapter, must be appointed by secret suffrage immediately before the election. These tellers, as well as the presiding officer (if he belongs to the chapter), must take an oath that they will faithfully fulfill their duty and keep the proceedings secret even after the election.

The tellers must see to it that each elector votes secretly, singly, and according to the order of precedence. After the votes have been collected the tellers shall, in the presence of the presiding officer, count them according to the constitutions and customs proper to the chapter, to see whether the number of the ballots corresponds with that of the electors; and then ascertain and announce the result.

If the number of votes cast exceeds that of the voters the election is void.

The ballots must be burnt after each scrutiny, or at least after each session, if several ballots were take in one one session.

The minutes of the election must be accurately taken down in writing by the secretary, who together with the presiding officer and the tellers must sign the record, which is to be carefully preserved in the archives of the chapter.

This important canon embodies the famous chapter 42 of the Decretals of Gregory IX (I, 6), which has been elaborately explained by the commentators. However, the new law modifies and simplifies the procedure. Thus, only *two tellers* are required, but these must be members of the chapter which elects a superior. They must be

chosen by secret ballot, unless the statutes determine who are to serve as tellers, for instance, the two seniors, or the two juniors, or the two oldest definitors. The tellers must be chosen immediately before the election. Their *function* consists in watching that the voting takes place according to law: *secreto, i. e.,* so that no one can perceive in any way, or by any sign, to whom another gives his vote. This can best be accomplished by using printed ballots and folding them in such a way that the name does not appear. The folded ballots are cast into a chalice or urn in presence of the tellers. *Diligenter* formerly meant that the tellers had to urge the electors to give their vote to a worthy candidate and with holy zeal. This was necessary when the electors had to inquire and put down the names of those for whom the vote was cast.[68] Now-a-days *diligenter* may be taken as an exhortation to the electors to vote conscientiously and so as not to delay the election. *Singillatim* means that the electors should vote one after another, not two or three at the same time, which might furnish an opportunity for fraud. Hence the *order of precedence* is prescribed, which says that the senior member of the community should vote first. Seniority is to be taken according to the date of profession in religious bodies, or the date of appointment or choice in chapters or boards of diocesan consultors. However, if the Constitution of an order or congregation prescribes that the junior members should cast their vote first, this rule must be observed.

After all have cast their vote, the tellers, in the presence of the presiding officer, should first *compare* the number of votes cast with the total number of those

68 Reiffenstuel, I, 6, n. 128.

who were entitled to vote. If there are fifty lawful electors present and fifty-one votes are cast, the election is null and void and another ballot must be taken. When the number of votes cast tallies with that of the voters present, the ballots must be opened (unfolded) and examined as to their validity, which may be affected by the vote itself, by the person who cast it, or the one for whom it is cast.

(a) Every ballot must be cast according to can. 169, and hence uncertain, conditional, and undetermined votes are not counted.

(b) The *person who has cast the vote* may be incapable of voting, which would make his vote null and void; but this defect should be decided before the balloting, although such an invalid vote may be rejected after the election if its invalidity was not discovered before.

(c) The *person for whom* the vote is cast may suffer from an impediment which renders him incapable of accepting the election, at least without a dispensation. If the impediment is such that a dispensation may be obtained, the person thus affected must be *postulated* (can. 180) and the phrase "I postulate" be used in the vote or ballot. Otherwise the vote is invalid. The impediments which may arise in the case of religious are stated in can. 504 of our Code, where the Constitutions of each religious congregation are enforced and, besides, the following conditions laid down: that no one is eligible who has not been in the order at least ten years from the date of simple profession and who is not of legitimate birth;[69] that, to be elected superior general or abbess, a candidate must be forty years of age, whilst to be elected provincial or abbot or guardian, etc., the age of thirty

69 *Regula juris* 87 in 6°: "*infamibus portae non pateant dignitatum.*"

suffices. The Constitutions of some orders lay down other and stricter conditions for the respective offices.

Under the old law heretics and apostates, forgers of apostolic documents,[70] persons guilty of sodomy,[71] those who from ambition consent to their election before the result is published,[72] and those who used simonical means were excluded.[73] The Code does not mention these disqualifications, but it would be neither against the law nor superfluous to insert them in the Constitutions.

The *result* of an election is to be made public by the tellers, together or singly announcing how many votes each candidate has received.

Summarizing the new law governing elections we may lay down the following as its essential points:

(1) Two tellers secretly elected from the members of the body;

(2) Oath taken by the tellers;

(3) Duty of tellers respecting the casting of the votes;

(4) Collecting of the votes;

(5) Examination as to the number of votes and voters;

(6) Inspection of the ballots;

(7) Publication of the result.

The rest of the text (§§ 4 & 5) is plain enough. It is not so evident, to us at least, why no oath is required from the presiding officer if he does not belong to the *gremium collegii*. Of course, we understand why he cannot strictly be obliged to take the oath, for he does not belong to the chapter and therefore the chapter has no authority to demand an oath of him. However, the supreme legislator could oblige such a one to take the oath of secrecy because the presiding officer at an ecclesiastical election acts in the

70 C. 7, X, V, 20.
71 Pius V, "*Horrendum*," Aug. 30, 1568.
72 C. 46, X, I, 6.
73 C. 27, X, V, 33.

name of the Church. And we believe it would be very opportune to put him under oath because strict secrecy is very important in an election, and although he is bound by the professional secret, yet the religious act of taking an oath would add weight to the natural obligation.

The oath itself may be taken upon the Holy Gospels, which is the usual form, or without the Gospel Book, by simply swearing in the name of God.

### COMPROMISE

### CAN. 172

§ 1. Electio, nisi aliud iure caveatur, fieri etiam potest per compromissum, si nempe electores, unanimi et scripto consensu, in unum vel plures idoneos sive de gremio sive extraneos ius eligendi pro ea vice transferant, qui nomine omnium ex recepta facultate eligant.

§ 2. Si agatur de clericali collegio, compromissarii debent esse sacerdotes, secus electio est invalida.

§ 3. Compromissarii debent pro validitate electionis conditiones compromisso appositas, quae non sint contra ius commune, observare; si nullae conditiones additae fuerint, servandum ipsis est ius commune circa electiones; conditiones autem contra ius pro non appositis habeantur.

§ 4. Si ab electoribus in unam tantum compromissum fuerit personam, haec nequit seipsam eligere; si plures designati fuerint compromissarii, nemo ex iis proprio consensu potest accedere reliquis ipsum eligentibus ut electionem sui compleat.

This canon provides that an election, unless otherwise

provided by law, may take place "by compromise, *i.e.*, the electors may, by unanimous written consent, bestow the right of electing upon one or several fit persons, who may be either members of the chapter or outsiders, and who, by virtue of the faculty received, perform the election in the name of all.

In clerical chapters the *compromissarii* must be priests, otherwise the election is invalid.

The *compromissarii,* in order to elect validly, must observe the conditions laid down in the compromise, as far as these do not contravene the common law; if no conditions are mentioned, the common law concerning elections must be followed.

If there is only one *compromissarius,* he may not elect himself; if there are several, none of them may add his vote to the votes cast for himself in order to be elected.

The Code, following the Decretals,[74] admits the form of compromise and sets up several rules for it.

*The first rule* is that the compromise must be made *by unanimous consent,* because an election touches all and must therefore be approved by all.[75] The consent must be given *in writing* (formerly this was not required), and therefore all the electors must sign their names to the compromise. The electors may choose either from their own (chapter) or outside, *i. e.,* such who would not have a right to vote, as in the example referred to in the previous note concerning nuns appointing the bishop as their *compromissarius.*

The *second rule,* although not especially stated, is that the *compromissarii* must be clergymen,[76] and if the electing body is of the clerical order, the Code says they must be priests. What is meant by *clerical order* or *community*

74 Cf. c. 42, X, I, 6; in c. 8 *ib.*
75 *Reg. juris* 29 in 6°.
76 Cf. c. 8, X, I, 41, *de arbitris,* c. 2, XII, 1 *de judic.;* can. 166.

is stated in can. 488, § 4, where a clerical order is defined as one, most of whose members are priests. A lay order, *e. g.*, is that of the Christian Brothers, who may choose brothers of another community, or even of a different order, as *compromissarii*.

The *third rule* touches a *conditional compromise,* which is sometimes called limited, or a compromise with restrictions, as, for instance, if the electors agree to elect one of the members of their own community,[77] or to employ the advice of certain persons,[78] to elect within a specified time. If the condition added militates against the common law which determines the fitness of persons or the mode of election, no attention must be paid to it. But the *compromissarii* must follow the common rules of election and, of course, observe the *trimestre*.

The *fourth rule* excludes *electing oneself*. If only one *compromissarius* is chosen he cannot elect himself. But there may be several *compromissarii,* an example of which is stated in the Decretals[79]: Seven were *compromissarii* to elect a dean of the chapter; three chose one of the seven and the other three chose another, who was not one of the seven. Pope Innocent decided that the former was elected if he consented to his election and there was no canonical impediment. Under the new Code this is impossible, because the candidate would not be allowed to *accede to* the votes given for him. But if four votes of the seven, not counting that of the elected candidate, would fall upon the same person, that person would be legitimately elected. Thus, also, in the case of three *compromissarii* casting two votes for the third *compromissarius,* the latter would be elected if there were no obstacle to invalidate his election.

77 Cf. cc. 32 f., X, I, 6.
78 Cf. c. 52, X, I, 6.
79 C. 33, X, I, 6.

## Can. 173

**Cessat compromissum et ius eligendi redit ad compromittentes:**

**1.° Revocatione a collegio facta, re integra;**

**2.° Non secuta aut non servata aliqua conditione compromisso apposita;**

**3.° Electione absoluta, si fuerit nulla.**

Canon 173 decides when the compromise may be repeated, and when it ceases. The lawful electors may *recall* the compromise as long as it has not taken a legal turn (*re integra*). The *legal turn* has commenced, according to the old law,[80] which is not changed in this regard, when the *compromissarii* have repaired to a separate place or room and begun to treat of the person to be elected.

The right of electing *returns* to the *original electors:*

a) If any condition is not fulfilled by the *compromissarii,* for instance, if the time set for the election elapses [81] or if an unfit (*indignus*) candidate is elected. The non-observance of any reasonable condition which is not against the common law, deprives the *compromissarii* of the right of election, which consequently returns to the legitimate electors, not to the superior, because the Code explicitly says: "*ius eligendi redit ad compromittentes.*"

b) If the *compromissarii* have made an election, but this is void for any reason, *e. g.,* the unfitness of the candidate elected, the right of electing returns to the original electors.

The question may arise whether religious communities

80 C. 30, X, I, 6.

81 C. 37, 6°, I, 6; but the canon states that the right of electing passes to the superior, as the canonists taught; cfr. Reiffenstuel, I, 6, n. 93, and others, but this is rejected by the new Code.

may employ the compromise. The answer is yes, because the Code admits it in general terms. Hence, if the Constitutions contain nothing to the contrary, a religious community may elect a superior by compromise.

### THE NUMBER OF VOTES REQUIRED

### CAN. 174

**Is electus habeatur et a collegii praeside proclametur, qui requisitum suffragiorum numerum retulerit, ad normam can. 101, § 1, n. 1.**

The one who has received the number of votes required under can. 101, § 1, n. 1, is elected and must be proclaimed by the presiding officer.

The canon referred to states that an *absolute majority* of votes is required to carry an election.

### EFFECT OF THE ELECTION

### CAN. 175

**Electio illico intimanda est electo, qui debet saltem intra octiduum utile a recepta intimatione manifestare utrum electioni consentiat, an eidem renuntiet; secus omne ius ex electione quaesitum amittit.**

The result of an election must be immediately made known to the one elected, who is obliged within eight days (*utiles* from the date of notice) to signify his intention of accepting or not accepting the election. If he fails to do this, he forfeits every right acquired by the election.

Now-a-days the means of communication are so swift and convenient that the result of an election may be made known to the one elected more rapidly than in former times, wherefore the Code uses the term *illico,* without,

however, determining its exact meaning. Formerly intimation was to be made *quam citius,*[82] which was interpreted as meaning eight days from the date of election.[83]

Of course, the notice of election should be sent immediately to the person elected, because *illico* means without delay, and from the spot or place where the election was held. Formerly the person elected was given one month for deliberation,[84] now he is given only eight days. Still the new law leaves some margin, in as far as the eight days are *utiles* or equitable. Therefore if an unforeseen impediment, over which a man has no control (*e. g.,* sickness or delay of trains) would arise, this delay would not affect the right acquired by election. But if malice or negligence caused a delay, the right accruing from election would be *ipso iure* forfeited.

## Can. 176

**§ 1. Si electus renuntiaverit, omne ius ex electione quaesitum amittit, etsi renuntiationis eum postea poeniteat; sed rursus eligi potest; collegium autem intra mensem a cognita renuntiatione ad novam electionem procedere debet.**

**§ 2. Acceptatione electionis electus, si confirmatione non egeat, plenum ius statim obtinet; secus, non acquirit nisi ius ad rem.**

**§ 3. Ante acceptatam confirmationem ipsi praetextu electionis non licet sese immiscere administrationi officii sive in spiritualibus sive in temporalibus, et actus ab eo forte positi nulli sunt.**

Every man is free to accept or refuse an election. Religious are no exception. Hence not even the superior

82 C. 6, 6°, I, 6.
83 C. 16, 6°, I, 6, § *Caeterum.*
84 *Ibid.*

can compel a religious to accept an election, because the freedom to refuse office has not been taken away by profession.[85] But once having refused, he has lost his rights, nor can they be regained by a change of mind. Therefore, when an elected person refuses to accept, the electors must proceed to another election. At this second election the one who was first elected, but refused, and subsequently changed his mind, may again be elected.

Paragraph 2 mentions the *right following acceptation.* This right is either *in re* or *ad rem.* A right *in re* creates the faculty and power to dispose of a thing as one's own; thus a proprietor may do with his property as he pleases, unless the law intervenes. A *ius ad rem* is a right which creates a claim to a thing, or causes it to become one's own (*ut res fiat sua*), though he does not yet have it in his hands nor can dispose of it freely. One elected to office obtains a *ius ad rem* if the election needs ratification by a superior. But if the very act of election and acceptation puts him in possession of the office or prelacy, he has a *ius in re,* or an unimpeached right to administer the office.

§ 3 explains what one who has been elected and accepted, cannot do if the election requires confirmation. Since he is not yet the proprietor or possessor of the office, he cannot interfere with its spiritual or temporal administration, and consequently, even if he has been administrator *ad tempus* or procurator, he has to abstain from acts of jurisdiction. However, we believe that common acts of buying and selling and administrative routine affairs, provided nothing is done detrimental to the church or community, may be performed by such administrators-elect.[86] But strictly legal acts, such as appointment to

85 Engel, I, 6, n, 46.

86 Cf. Reiffenstuel, I, 6, n. 47; Engel, I, 6, n. 51, who even makes some allowance for provinces remote from Rome.

offices or presentation to parishes, and acts of jurisdiction, such as giving faculties for hearing confessions, inflicting ecclesiastical censures, absolutions and dispensations, would be of no juridical effect (*actus ab eis forte positi nulli sunt*).

CAN. 177

§ 1. Electus, si electio confirmatione indigeat, saltem intra octiduum a die acceptatae electionis confirmationem a competente Superiore petere per se vel per alium debet; secus omni iure privatur, nisi probaverit se a petenda confirmatione iusto impedimento fuisse detentum.

§ 2. Superior, si electum repererit idoneum, et electio ad normam iuris fuerit peracta, nequit confirmationem denegare.

§ 3. Confirmatio in scriptis dari debet.

§ 4. Recepta confirmatione, electus obtinet plenum ius in officio, nisi aliud in iure caveatur.

This canon states the *necessity of ratification,* which is evident because the legitimate superior's power cannot be set aside. Ratification must be sought under penalty of forfeiting the rights accruing from election. Under the Decretals [87] this penalty was so severe that it rendered a person incapable of obtaining any office in future. This is abolished by the new Code. If the elect can prove, by at least one trustworthy eyewitness, or other lawful proof, *e. g.,* the testimony of a physician, that he was prevented from asking ratification, the rights acquired by the election remain intact.

The *competent* superior, from whom ratification must be demanded, is the one next in authority.[88] Thus a pro-

87 C. 17, X, I, 6; c. 5, 6°, I, 6; Engel, I, 6, n. 51.

88 Engel, I, 6, n. 50.

vincial would have to ask the general's confirmation; bishops are confirmed by the Holy See. Religious orders and congregations mostly state in their constitutions who has the right of confirming elections.[89] Superiors of diocesan institutions are ratified by the respective Ordinary.[90] The Code says (§ 2) that a superior is not at liberty to refuse ratification arbitrarily. This does not apply to the Supreme Pontiff, who, unless bound by a concordat, may, even without reason, refuse to confirm the elect.[91] Other superiors are obliged to ratify the election if the person elected is fit and the election was valid, because an election and its acceptance produce a right.[92]

Ratification, which must be given in writing (§ 3), creates a full right to the office, unless consecration or benediction is required to enable one to exercise pontifical functions. Abbots regular, in order to be allowed the exercise of pontifical functions, must be blessed by the diocesan bishop within three months from the date of their election.[93]

DEVOLUTION

## Can. 178

**Si electio intra praescriptum tempus peracta non fuerit, aut collegium iure eligendi privetur in poenam, libera officii provisio ad eum Superiorem devolvitur, a quo confirmanda esset electio vel cui ius providendi successive competit.**

If an election was not performed within the term prescribed, or if the electors were legitimately deprived of the right of election, the right to appoint one to the vacant office devolves on the superior who would otherwise ratify

89 These Constitutions are admitted by the Code, can. 507, §1.
90 Can. 506, § 4.
91 Reiffenstuel, I, 6, n. 28.
92 C. 3, X, I, 6.
93 Can. 625; cf. cc. 325, 964, n. 1.

the election, or on the one who is next as to the right of appointment.

The time prescribed in can. 161 is three months from the date when notice was given of the vacancy.[94] Therefore the electoral college loses the right of election after said term has expired. It may, moreover, forfeit the right by electing one unfit for the office, or by setting aside the substantial form required by law.[95] In such cases the right of election devolves either on the superior who has the right of ratifying the election, which is the case in religious communities, or on the superior who is called upon to supply the negligence of an inferior, as happens in cathedral chapters.[96] The case may arise that one who is elected suffers from a *hidden impediment,* for instance, illegitimacy unknown to the electors, or at least to the majority of them. Is such a one allowed to accept the election? If he can decline it without defamation or losing his reputation, he is bound to do so. But if he is reasonably afraid of losing his good name, or if the church or community would suffer by his refusal, he is allowed to accept, but should ask secretly for a dispensation.[97]

## ART III

### POSTULATION

### CAN. 179

**§ 1. Si electioni illius quem electores aptiorem putent ac praeferant, impedimentum obest, super quo dispensari possit ac soleat, suis ipsi suffragiis eum possunt, nisi aliud iure caveatur, a competente Superiore**

94 Cc. 7, 41, X, I, 6.
95 C. 18, 6°, I, 6.
96 Cf. cc. 315, X, I, 10; cc. 2, 12, X, III, 8; *Trid.,* Sess. 24, c. 16, *De Ref.;* c. 18, 6°, I, 6, reserves that right to the Roman Pontiff with regard to cathedral chapters.
97 Engel, I, 6, n. 45.

postulare, etsi agatur de officio, pro quo electus confirmatione non egeat.

§ 2. Compromissarii postulare nequeunt, nisi id in mandato aut compromisso fuerit expressum.

CAN. 180

§ 1. Ut postulatio vim habeat, pro ea stet oportet maior suffragiorum pars, imo, si cum electione concurrat, saltem duae tertiae partes requiruntur.

§ 2. Suffragium pro postulatione exprimi debet per verbum: *postulo,* aut aequivalens; formula: *eligo vel postulo,* aut aequipollens, valet pro electione, si impedimentum non exsistat, secus pro postulatione.

CAN. 181

§ 1. Postulatio saltem intra octiduum mitti debet ad Superiorem ad quem pertinet electionem confirmare, si facultatem habeat ab impedimento dispensandi; secus ad Romanum Pontificem aut ad alium habentem facultatem.

§ 2. Si intra praescriptum tempus postulatio missa non fuerit, ipso facto nulla evadit et electores pro ea vice privantur iure eligendi aut postulandi, nisi probent se a mittenda postulatione iusto detentos fuisse impedimento.

§ 3. Per postulationem nullum ius postulato acquiritur et Superiori licet eandem repellere.

§ 4. Praesentatam Superiori postulationem electores revocare non possunt, nisi Superiore consentiente.

CAN. 182

§ 1. Reiecta a Superiore postulatione, ius eligendi ad collegium redit, nisi electores scienter illum postula-

verint qui tali detinetur impedimento in quo nequeat aut non soleat dispensari; tunc enim provisio ad Superiorem pertinet.

§ 2. Quod si postulatio admissa fuerit, id significetur postulato, qui respondere debet ad normam can. 175.

§ 3. Si eam acceptet, plenum ius in officio eidem statim acquiritur.

These four canons treat of what is called postulation, *i. e.*, "a petition directed to the competent superior or dignitary."[98] This is styled *postulatio solemnis* or proper, to distinguish it from simple postulation, which, according to all authors, takes place when an inferior, say a religious or clergyman of another diocese, is to be elected to a higher office in a monastery or diocese not his own. We are not concerned so much about the bishops of our country, as about religious communities, although it is evident that a bishop of one diocese should be postulated, not elected, for another diocese, because, as the authors say, a spiritual tie between the bishop and his diocese induces a mystic marriage, which can be dissolved only by the Roman Pontiff.[99] But this is not the case with a religious, who is, for instance, elected abbot or superior of another monastery, or even bishop of a diocese. In the first case, *viz.*, if he is elected to another monastery than that of his profession, he needs only the permission of his immediate superior and must be of the same religious order. If he is elected bishop of a diocese, he needs no permission but that of his superior, because it is he who is entitled to give permission to leave the monastery.[100] Hence there

98 Engel, I, 5, n. 1.

99 C, 4, X, I, 7, *de translatione Episcopi.*

100 Cc. 27, 36, 6°, I, 6; c. 1, Clem. I, 3; a religious not abbot.

is not the faintest idea of postulation in the proper sense to be perceived in the Decretals. Such a religious, if he is endowed with the necessary permission either before (conditionally) or after election is simply elected, not postulated.

But what about an *abbas regiminis ac benedictus?* May he be elected or must he be postulated if called to govern another monastery? Some authors [101] insist vehemently upon the spiritual marriage between an abbot and his monastery and maintain that in such a case postulation is required. However, the text quoted in 6° does not favor that opinion, and the *sententia communis* is against it.[102] Neither can we see much difference between perpetual and temporary abbots as to the spiritual relation between superior and monastery or understand how the blessing contributes to the spiritual tie. Hence, as long as no better reasons are brought forward, we cling to the old law and to the *sententia communis* which tells us that abbots can be elected in the strict sense.

Postulation in the proper sense is required if the person elected suffers from an ecclesiastical impediment, for instance, of age or lack of the necessary number of years in the order,[103] or illegitimate birth. In such cases the competent superior to be asked for a dispensation is the Apostolic See, unless the necessary faculty has been imparted to the superior general of an order or to an Apostolic legate.[104]

The next canon (180) states the *requisites* of postulation. The first is that an absolute majority of the votes

101 Molitor, *Religiosi Juris Capita Selecta*, 1909, p. 450.

102 Thus Passerini, *De Electione*, c. 24, n. 38; Engel, I, 5, n. 9; Reiffenstuel, I, 5, n. 6; Wernz, *l. c.*, II, n. 394; Aichner, § 82, 2.

103 Cf. can. 504; can. 507, § 3, admits postulation only in extraordinary cases, but insinuates nothing as to the necessity of postulating abbots.

104 C. 36, X, 6°, I, 6.

cast is required for postulation in general. However, if a portion of the electors should wish to elect, *e. g.,* a person without an impediment, while another prefers a candidate with an impediment, the *postulantes* must form two-thirds of the electoral college,[105] and the formula used should simply be, *" ego postulo,"* not *" eligo et postulo,"* because such a formula is uncertain.[106] The Code, however, admits the term *" eligo vel postulo "* in case the candidate suffers from no canonical impediment.

Canon 181 mentions the *time* within which postulation must be presented to the superior and the *effects* which it produces. As to the former the Code is explicit. Concerning the latter, it must be remembered that the admission of postulation is a mere favor on the part of the superior, who, therefore, if he is supreme (*i. e.,* the Sovereign Pontiff) needs to give no reason for rejecting the postulation, whereas an inferior does. This is precisely what § 3 says. It follows that mere postulation, until fully admitted, creates no right whatever to the office, because, as stated, the admission of postulation is a favor.[107] Another consequence is that postulation depends upon the admission of the superior and creates no right for the *postulatus,* but consists in this that postulants may *change their mind* as long as postulation is not as yet in the hands of the superior.[108] But once it has reached the superior, postulation can no longer be changed, lest the superior would be derided. Of course, if the superior consents to a change, postulation may be changed or turned into election.

The last canon (182) speaks of *rejection* and *admission*

105 C. 40, X, I, 6.

106 C. un. 6°, I, 5.

107 Reiffenstuel (I, 5, n. 72) is inclined, but certainly not logically or canonically, to hold that there is an obligation of admitting postulation if the public welfare or utility are at stake.

108 C. 4, X, I, 5; Engel, *h. t.,* n. 4.

of postulation. If postulation is rejected, for whatever reason, the electors regain their right of again electing or postulating. However, if they have knowingly postulated one afflicted with a canonically indispensable impediment, the postulants have, for the time being (not for future elections) forfeited the right of election, and the superior to whom the postulation was directed is free to appoint a person of his own choice.[109] Admission of postulation creates the same right as election and confirmation together, *i. e.,* admission produces a *ius in re,* provided the *postulatus* gives his consent within eight days from the date of the notice received of the admitted postulation. The acceptance must be intimated to the postulants as well as to the superior who admitted the postulation, although the right to the office or prelacy takes full effect from the moment one accepts. Hence, whatever pertains to administration and jurisdiction he may now perform, but if consecration or benediction is needed, he cannot exercise pontifical rights.

A last question to be solved concerns *titular bishops.* Must they be postulated? The Decretals [110] seem to favor the assumption that, although they have no flock and no clergy, such bishops are bound to their titular church, and hence need a special dispensation to transfer them to a residential cathedral church. It follows that titular bishops cannot properly be elected, but must be postulated. This, however, must and cannot be applied to titular abbots, much less to such as enjoy only the privilege of pontificals.

109 Cc. 1–3, X, I, 5.

110 Cf. Reiffenstuel, I, 5, n. 40 ff.

## CHAPTER II

### LOSS OF ECCLESIASTICAL OFFICES

### CAN. 183

**§ 1. Amittitur officium ecclesiasticum renuntiatione, privatione, amotione, translatione, lapsu temporis praefiniti.**

**§ 2. Resoluto quovis modo iure Superioris a quo fuerat concessum, officium ecclesiasticum non amittitur, nisi lex aliud caveat aut nisi in concessione habeatur clausula: *ad beneplacitum nostrum,* vel alia aequipollens.**

An ecclesiastical office is lost by resignation, privation, removal, transfer and lapse of time.

Although the superior who has made the appointment goes out of office, the appointee does not lose his office, unless otherwise provided by law or unless the grant was made with the clause: "*ad beneplacitum nostrum*" or a similar one.

After the legislator has stated how an office is acquired, either by free appointment or election, he now proceeds to show how it may be lost. In § 1 he completely (*taxative*) enumerates the ways by which an office may be lost. In § 2 he removes, as it were, a doubt concerning the *tenure* of office, as if it ceased in consequence of the deposition or resignation of the grantor. This, the Code says, is the case only (a) if the office was granted under a clause signifying the will of the grantor

to confer it "*ad beneplacitum nostrum*," or "*durante nostro pontificatu*," or (b) if the law itself states that the office ceases with the superior's authority; thus, *e. g.*, the Roman Congregations and tribunals enjoy only a limited power during the vacancy of the Holy See,[1] the jurisdiction of the vicar-general ceases with the cessation of his Ordinary's office,[2] etc. Otherwise an office is supposed to be given permanently or not to be revoked by the cessation of the grantor's office, *e. g.*, that of legate.[3] After stating this general principle, the Code treats of the several ways in which an office may be lost.

RESIGNATION

CAN. 184

**Quisque sui compos potest officio ecclesiastico iusta de causa renuntiare, nisi speciali prohibitione renuntiatio sit ipsi interdicta.**

CAN. 185

**Renuntiatio ex metu gravi, iniuste incusso, dolo aut errore substantiali vel simoniace facta, irrita est ipso iure.**

CAN. 186

**Renuntiatio, ut valida sit, fieri debet a renuntiante aut scripto aut oretenus coram duobus testibus aut etiam per procuratorem speciali mandato munitum; et scriptum renuntiationis documentum in Curia deponatur.**

These three canons determine the objective requisites of resignation.

1 Can. 241; Pius X, "*Vacante Sede Apostolica.*"

2 Can. 371.

3 C. 2, 6°, I, 15.

The *person* who resigns must be in full possession of his mental faculties — *compos sui* — *i. e.*, he must be able to perform a human act. Besides there must be a reason for resigning, else many might leave their charges and disturbance ensue. The valid reasons for resigning an office are stated in the Decretals,[4] as well as in the Constitution of Pius V, "Quanta Ecclesia," April 1, 1568. They are as follows:[5]

*Advanced age,* which may vary and should be estimated according to prudent judgment.

*Sickness,* bodily disease and corporal deformity which prevent one from securely, decently, and satisfactorily performing the duties connected with the pastoral office, *e. g.*, paralysis, gout, epilepsy, etc.

*Consciousness of a crime* and censure with one's reputation at stake.

Deadly or lasting *enmities* between a pastor and a large part of his flock; to which category also scandal, even without fault, may be referred.

Receiving another *office incompatible* with the one already possessed.

Finally, entrance and profession in a *religious order.*[6]

These are the reasons admitted by law for resigning an office. Though some authors maintain that said Decretals applied only to bishops and that the Constitution of Pius V was not everywhere received,[7] the Code by requiring in general some just reason, certainly intends to apply that enactment to each and every office to be

4 C. 10, X, I, 9, of which the summary repeats them in the following verse:
*"Debilis, ignarus, male conscius, irregularis,*
*quem mala plebs adit, dans scandala cedere potest."*

5 Cf. Barbosa, *Ius Eccl. Univ.*, l. III, c. 15, nn. 99 ff (ed. Lugd., 1660, II, 279 f.).

6 Bened. XIV, "*Ex quo,*" Jan. 14, 1747 (*Bull.*, Prati, II, 156 ff.).

7 Engel, I, 9, n. 6.

resigned. But it must be added that one or the other of the reasons named would suffice.

A *novice* is prevented by law from resigning an office which he held before entering religion.[8]

The person who resigns must be *entirely free.* Hence any grievous fear inflicted by one who has no right to bring pressure upon an office-holder, would render the resignation void.[9] This does not, of course, apply to the fear threatened by the legitimate superior, *e. g.,* a bishop who has a reason for forcing a clergyman to resign.

Physical violence, especially if exercised by laymen, would invalidate a resignation.[10] The same holds good of *fraud* or *error, e. g.,* the promise of a pension or sum of money, or a fraudulent description of conditions which supposedly exist in a parish, as also any *simoniacal* pact, either real or verbal. All these would render a resignation invalid *ipso jure.*[11]

Can. 186 establishes the *form* in which resignation must be made; *viz.,* either in writing or verbally in the presence of two witnesses. This is a very reasonable rule, for it not only safeguards liberty but also prevents litigation.

If the resignation is handed in by a *procurator* furnished with a special mandate, he must observe all the conditions of the mandate, and besides, we believe, must obey the rules established in this canon, *viz.,* submit the resignation in writing or bring two witnesses. As long as the mandate is not expressly revoked and the repeal received by the procurator, he may proceed with the resignation.[12] The procurator may be a layman.[13]

8 Can. 568.
9 C. 5, X, I, 9; c. 4, X, I, 40.
10 C. 2, X, I, 40.
11 Bened. XIV, "*In sublimi,*" Aug. 29, 1741 (*Bull.,* Prati, I, 98 f.), c. 4, X, I, 35; c. 2, X, V, 3.
12 C. un. Clem. I, 4.
13 C. 1, 6°, I, 19, *de procurat;*

CAN. 187

**§ 1. Renuntiatio generatim, ut valeat, ei fieri debet a quo est acceptanda, vel, si acceptatione non egeat, a quo clericus officium accepit vel qui eiusdem locum tenet.**

**§ 2. Quare si officium per confirmationem, admissionem vel institutionem collatum fuerit, renuntiatio fieri debet Superiori ad quem de iure ordinario confirmatio, admissio vel institutio spectat.**

Resignation being a voluntary act, which must be accepted by a competent superior, requires that it be presented to that superior, who is the real grantor of the office. Note, however, that, although acceptance is said to be an essential part of resignation, there are cases in which it is not required. Thus the Roman Pontiff may abdicate without the consent of the College of Cardinals.[14] Besides any one may resign an office to which he has only the *ius ad rem, e. g.,* to which he has been elected but not yet ratified. Furthermore if two contend for an office, one may waive the claim; and, lastly, a clergyman who is not a bishop may resign in order to enter a religious order.[15]

In all those cases in which acceptance is required, the resignation must be presented to the one who has conferred the office or to his representative (successor). Hence bishops (and abbots) must present their resignation to the Pope.

Minor offices are resigned into the hands of the bishop or his coadjutor, if the latter has full power,[16] of the

Barbosa, *Jus Eccl. Univ.*, l. III, n. 121 f.

14 C. I, 6°, I, 7.

15 Barbosa, *l. c.*, III, n. 5 f.; Reiffenstuel, I, 9, n. 16 f.

16 Barbosa, *l. c.*, n. 11.

vicar-capitular,[17] but not of the vicar-general unless he has a special mandate.[18]

§ 2 follows out the principle laid down in the preceding paragraph; for the one who actually confers the benefice is the one who ratifies the election, who admits postulation, and who confers the office. Hence neither the electors nor the *postulantes,* nor the lay or ecclesiastical patron who presents a candidate for an office, have the power to accept his resignation.[19]

Besides express or explicit resignation, both the old and the new law admit also a

TACIT RESIGNATION,

which is brought about and signified by a fact, especially one upon which the law itself has decreed the loss of an ecclesiastical office.

CAN. 188

**Ob tacitam renuntiationem ab ipso iure admissam quaelibet officia vacant ipso facto et sine ulla declaratione, si clericus:**

**1.° Professionem religiosam emiserit, salvo, circa beneficia, praescripto can. 584;**

**2.° Intra tempus utile iure statutum vel, deficiente iure, ab Ordinario determinatum, de officio provisus illud adire neglexerit;**

**3.° Aliud officium ecclesiasticum cum priore incompatibile acceptaverit et eiusdem pacificam possessionem obtinuerit;**

**4.° A fide catholica publice defecerit;**

**5.° Matrimonium, etiam civile tantum, ut aiunt, contraxerit;**

17 Can. 455, § 2.
18 Cf. can. 455, § 3; Barbosa, *l. c.*
19 Barbosa, *l. c.*, n. 10.

6.° Contra praescriptum can. 141, § 1 militiae saeculari nomen sponte dederit;

7.° Habitum ecclesiasticum propria auctoritate sine iusta causa deposuerit, nec illum, ab Ordinario monitus, intra mensem a monitione recepta resumpserit;

8.° Residentiam, qua tenetur, illegitime deseruerit et receptae Ordinarii monitioni, legitimo impedimento non detentus, intra congruum tempus ab Ordinario praefinitum, nec paruerit nec responderit.

This canon presumes resignation, to which it applies the effect which *certain facts* are supposed to produce under the law. This effect is vacancy of the office held, whether adduced by privation, as punishment,[20] or simply due to the incompatibility of certain offices with the newly chosen state of life or other offices. Hence

(1) By *religious profession* (even *simple*) a man forfeits all parochial offices within one year from the date of said profession, and all other offices[21] within three years.

(2) The *tempus utile* within which the bishop must go to his diocese is four months from the date of confirmation;[22] the parish priest has to commence his administration within the time prescribed by the Ordinary. Note the phrase "*tempus utile*," which implies that a legitimate impediment or ignorance of the date fixed for taking hold of the office would excuse.

(3) What *incompatible offices* are was said above; by the very acceptance of one such office the others become vacant.[23]

20 Really, it would be privation, but the Code presumes resignation *ipso facto*.

21 Can. 584; c. 4, 6°, III, 14.

22 Can. 333; can. 238, § 2; c. 14, 6°, I, 6.

23 Can. 156; c. 54, X, I, 6; c. 3, 6°, I, 16; *Trid.*, Sess. 7, c. 4; Sess. 24, c. 17, *De Ref.*

(4) *Defection* from the Catholic faith, if public, deprives one of all ecclesiastical offices he may hold;[24] not, however, mere schism, if unconnected with heresy.

(5) *Marriage,* if contracted by a public act, either validly by such as are in minor orders only, or attempted by clerics constituted in higher orders, is tantamount to giving up office.[25] Hence from the very moment a marriage is either contracted or attempted, the offices held by a clergyman would be vacant, and restitution of the revenues derived therefrom would begin from the moment of the marriage.

(6) Enlisting in the *army* has been touched above.[26]

(7) Doffing the *ecclesiastical garb* is tantamount to resignation if ostentatious and scandalous and connected with contumacy towards the Ordinary.

(8) As to *residence,* the necessary explanations are given under the respective canons.[27] We only repeat that these cases, as set forth by our canon, do not really imply a resignation, but that the law supposes and presumes resignation, which therefore is an improper renunciation or legally presumed resignation.

## Can. 189

**§ 1. Superiores sine iusta et proportionata causa renuntiationes ne acceptent.**

**§ 2. Renuntiationem Ordinarius loci intra mensem vel admittat vel reiiciat.**

## Can. 190

**§ 1. Officium, renuntiatione legitime facta et acce-**

24 C. 9, X, V, 7.
25 C. 2, Dist. 28; cc. 10, 13, Dist. 32; cc. 1, 3, 5, X, III, 3.
26 Can. 141.
27 Can. 143 (in general); can. 338 (bishops); can. 465 (pastors).

**ptata, vacat postquam renuntianti significata est acceptatio.**

**§ 2. Renuntians in officio permaneat donec de Superioris acceptatione certum nuntium acceperit.**

CAN. 191

**§ 1. Semel legitime facta renuntiatione, non datur amplius poenitentiae locus, licet renuntians possit officium ex alio titulo consequi.**

**§ 2. Acceptata renuntiatio tempestive nota fiat iis qui aliquod ius in officii provisionem habent.**

The legislator admonishes (but under no invalidating clause) superiors not to accept a resignation without just and proportionate reason, as insisted upon by Pius V.[28] Besides, in order not to protract vacancies, acceptance must be notified within one month. With the same end in view Gregory XIII, by his Constitution "*Humano vix iudicio*" (Jan. 5, 1584), had prescribed that all resignations should be published within six or nine months. This Constitution is modified by the Code, which requires not publication, but notification, to be made within one month.

The effect of the notified acceptance of a resignation consists in the vacancy of the office resigned.[29] Therefore, as soon as the *resignans* has received official notice that his resignation is accepted, he is free from all obligations connected with the office, but also deprived of all rights, material and spiritual, pertaining thereto.[30]

The last canon on resignation states that if a resignation has once been accepted, it is not rendered invalid by

28 Cc. 1, 5, 9, 10, X, I, 9; "*Quanta Ecclesia*," 1568, § 3.

29 Cc. 3, 12, X, I, 9; c. 6, 6°, I, 3.

30 Barbosa, *Jus Eccl. Univ.*, III, c. 15, nn. 148 ff.

regret or a change of mind on the part of the *resignans,* since such a step is supposed to be taken with due deliberation and for adequate reasons.[31] However, if a man who has resigned an office is again presented or elected or appointed to the same, the presentation, election, appointment or investment would constitute a new title. In that case, however, precedence and other privileges would date only from the second appointment.[32] Thus, *e. g.,* a prelate who resigned his office and obtained it anew would hold rank of seniority only from the date of the second appointment, unless the mere order would be decisive.[33]

### DEPRIVATION OF OFFICE

### Can. 192

§ 1. Privatio officii incurritur sive ipso iure, sive ex facto legitimi Superioris.

§ 2. Si agatur de officio inamovibili, Ordinarius nequit clericum eodem privare, nisi mediante processu ad normam iuris.

§ 3. Si de amovibili, privatio decerni ab Ordinario potest ex qualibet iusta causa, prudenti eius arbitrio, etiam citra delictum, naturali aequitate servata, sed certum procedendi modum sequi minime tenetur, salvo canonum praescripto circa paroecias amovibiles; privatio tamen effectum non habet, nisi postquam fuerit a Superiore intimata; et ab Ordinarii decreto datur recursus ad Sedem Apostolicam, sed in devolutivo tantum.

Deprivation is incurred either by law or by the decision of a legitimate superior. A cleric who holds an irre-

31 Cc. 3, 6, 12, X, I, 9.
32 Reiffenstuel, I, 9, n. 42.
33 This agrees with St. Benedict's Rule, ch. 29.

movable office can be deprived of it only upon trial instituted according to law. One holding a removable office may be deprived of it by his Ordinary without having committed a crime, for any just reason. No special procedure is required in such cases unless the cleric is a removable pastor, when the Ordinary has to comply with the canonical norms. Deprivation takes effect only after the subject has been notified by his superior. From the Ordinary's decision recourse may be had to the Apostolic See, but *in devolutivo* only.

Deprivation is a penalty, and hence the present canon really belongs to the penal law. However, since the legislator enumerated deprivation among the modes of losing an office in can. 183, § 1, it was necessary to deal with the subject here.

§ 1 states how deprivation is brought about, *viz.*, by law or by a judicial sentence. The law states the reasons for deprivation partly under the heading of tacit resignation (can. 188), partly in the fifth book.[34] There, too, it is stated when the judge may decree privation, and that he may inflict this penalty (for it is a vindictive penalty), for weighty reasons if the law is silent.

§ 2 and § 3 distinguish between *irremovable* and *removable* officials, and say that the former may not be deposed without an ecclesiastical trial (as described in Book IV). One holding a *removable* office is more easily deprived, unless that office is a *pastorate,* in which case the regulations laid down in the Code must be strictly followed.[35]

Of other offices one may be deprived, (a) even though he has committed no crime, (b) for a just reason, according to the prudent judgment of the Ordinary, who,

34 Can. 2298 ff. 35 Cf. cc. 2157–2161.

however, (c) must follow the dictates of equity, although (d) he is not bound by any legal procedure.

As to (a), it was once generally held that only a crime (*delictum publicum*) could deprive a holder of his office; however, since the "welfare of the Church" came to be regarded as the "supreme law," [36] the ancient rigor was relaxed and (b) any *reason* that satisfied the Ordinary was deemed sufficient to justify removal.

Which would be a sufficient reason? Comparing our Code [37] with the well-known decree "Maxima cura" (1910), we find that some of the reasons stated in the latter have been omitted. They are: serious *neglect of pastoral duties,* after one or two admonitions and in matters of importance, such as sick-calls, catechism class and preaching, the law of residence; *disobedience to the injunctions* of the *Ordinary,* after several admonitions, and in important matters, such as excessive familiarity with a certain person or family, cleanliness of the house of God, moderation in the exaction of taxes, etc. (pew-rent, collection). These reasons cover a large field and may enter into the Ordinary's judgment. Of course, it is evident that the other reasons stated in can. 2147, § 2 are also sufficient to remove an office holder.

Having, then, one of these reasons, the bishop is bound only by the dictates of *natural equity,* which means that merit and previous services to the diocese should be taken into consideration and some other office is available; for as long as a priest does not make himself culpably unworthy, he remains incardinated. Lastly, (d) in order to proceed to the act of removal the Ordinary need *not* employ any *legal procedure* (*strepitus iudicii*). After he has duly intimated his decision to the clergyman whom

36 S. C. Consist., "*Maxima cura,*" Aug. 20, 1910. (*A. Ap. S.,* II, 636).

37 Can. 2147, § 2.

he wishes to remove, the latter may have recourse to the Holy See,— if we mistake not to the S. C. Concilii,— but the effect of an appeal will be *devolutive* only, that is to say, the decision of the Ordinary holds good and the one deprived of office is really deposed and must conduct himself accordingly, *i. e.,* neither take any part in the management of his former office nor cause trouble in the congregation or community, until a decision is given by the Roman Court.

Here the important question arises whether our so-called *removable rectors in the U. S.* fall under the category of those who must be removed according to cc. 2157–61, or whether they may be removed for the reasons described above and without trial. We premise that according to can. 454, § 3, all pastors ought to be irremovable, unless the bishop, compelled by special circumstances, deems it necessary to retain removable pastors. It is left to the prudent judgment of the Ordinary, after having heard his consultors, to determine the character of the pastorate in his diocese. This premised, the answer of the S. C. Consist. of June 28, 1915, to the bishops of the United States [38] must decide our case. This answer is that removable rectors in the U. S. may be removed according to the good pleasure of the bishop, but that the latter, under the decrees of the Second Plenary Council of Baltimore, should not make use of this right except for weighty reasons and with due regard to the merits of his priests. The reason given for this decision is that "*salus animarum suprema lex est,*" and that, according to the IInd and IIIrd Councils of Baltimore removable rectors are not equal to the *desservants* of France, but must be regarded as vicars of

38 Card. Gasparri alleges this decision, but the date needs correction.

their Ordinaries and hence are *amovibiles ad nutum.*[39]

TRANSFERS

CAN. 193

§ 1. Translatio ab uno ad aliud officium ecclesiasticum ab eo tantum perfici potest, qui ius habet tum acceptandi renuntiationem, tum removendi a primo officio et promovendi ad alterum.

§ 2. Ad translationem, si de consensu clerici fiat, quaelibet iusta causa sufficit; si invito clerico, eadem fere causa requiritur idemque procedendi modus ac pro privatione, firmo praescripto can. 2162–2167, quod ad translationem attinet parochorum.

CAN. 194

§ 1. In translatione prius officium vacat cum clericus alterius possessionem canonice capit, nisi aliud a iure cautum sit vel a legitimo Superiore praescriptum.

§ 2. Reditus prioris officii translatus percipit, donec aliud occupaverit.

CAN. 195

Qui clericum ad officium elegerunt vel postulaverunt aut praesentaverunt, nequeunt eundem officio privare aut ab eo revocare seu amovere aut ad aliud transferre.

By transfer is understood an exchange of offices made with the consent of the legitimate superior. The transfer of bishops is dealt with in can. 430. Canons 193 sqq. treat of transfers in general. First mention is made of

39 *A. Ap. S.*, 1915 (VII), p. 378ff.

the *legitimate superior,* who is entitled to transfer one from one office to another. In case of episcopal transfers the legitimate superior is the Holy See.[40] Formerly such transfers were made at synods.[41] The inferior clergy was transferred with the consent of the bishop.[42] The new Code requires that the superior who negotiates the transfer must enjoy the right of accepting resignations as well as the right of removal and promotion. Hence it is evident that, concerning minor offices, it is the bishop who is entitled to make transfers, not those who have the right of presentation (*patroni*) or election.

However, transfers, like resignations, should not be made without reason, because, unless there is a promotion to a better office, transfers are generally looked upon as odious and degrading. Hence § 2 justly requires a reason, but also distinguishes between *voluntary* and *involuntary* transfers. The former may be made at the express wish of the office-holder. For instance, a pastor advanced in years, or in poor health, or beset by serious troubles, may ask for a transfer to another parish, or even to the post of assistant.

Here the question arises whether parish priests may *exchange* places. The Code,[43] as far as we can see, touches that question only in connection with the exchange of benefices, but does not exclude an exchange of offices. Hence if made for reasons of utility or necessity, and with the consent of the Ordinary, such an exchange would be lawful.

An *involuntary* transfer, being odious and generally disgraceful,[44] not only requires reasons acknowledged by

40 C. 34, c. 7, q. 1 (Pseudo-Anterus); cc. 1–4, X, I, 7.

41 C. 37 (Carthag. IV), C. 27, q. 1.

42 *Ibid.*

43 Can. 1487 f.

44 Cf. Smith, *Elements* I, n. 394.

law, but also the legal procedure prescribed in the IVth Book.[45]

Canon 194 mentions the *date of vacancy,* which commences from the time the other office is canonically taken possession of. The reason is that from the moment a priest holds one office, he is not supposed to hold another.[46] Hence the possessor of the former office is entitled to the revenues of the latter, until he has been actually introduced into the new office (*corporalis immissio*).

What canon 195 states is evident not only from the fact that patrons and electors do not actually confer the office, but also from can. 193, which supplements the latter canon.[47] This canon doubtless strikes at a custom which is not in keeping with ecclesiastical law, and therefore not to be imitated elsewhere, though in vogue, as we know, in Switzerland, where parishes in certain cantons claim the right to reelect their pastors or vote them out of office. The canon, though admitting the right of election, because this is not tantamount to conferring the office, justly rejects any interference with the removal or transfer of ecclesiastical office-holders.

45 Can. *2162–2167*; cf. c. 5, X, II, 19.

46 C. 28, X, III, 5; c. 28, 6°, III, 4.

47 C. 4, X, III, 38.

# TITLE V

## ORDINARY AND DELEGATED POWER

### Can. 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.**

The legislator, after having stated the modes and means by which an office is acquired or lost, now turns to the natural foundation and end of every office: the power of jurisdiction. This, he says, is *by divine institution* twofold. For the Church, being a perfect society intended for the salvation of souls, must exercise (cfr. can. 100) a jurisdiction which chiefly looks to the welfare of society as such, and at the same time must wield a power which directly touches the realm of conscience. Thus the Apostles were endowed with spiritual power from above.[1] They as well as their successors were given the threefold power of making laws, deciding cases, and applying punishment. At the same time they also received the power of binding and loosing,[2] which is exercised in the Sacrament of Penance. Moreover, St. Paul solved cases outside a strictly speaking private or internal tribunal, yet touching the conscience of individuals, as in the case of the incestuous man of Corinth and

1 Matt. 28, 18; cf. Pohle-Preuss, *The Sacraments*, Vol. III, 1917, pp. 1 ff.

2 Matt. 16, 18; 18, 18; John 20, 21.

the two blasphemers.[3] In addition, cases not necessarily connected with sacramental absolution may occur and have always occurred, *e. g.,* the need of dispensing from vows, occult irregularities and impediments, absolving from occult censures, etc.[4] This, then, is the range of ecclesiastical jurisdiction *in foro externo* and *in foro interno,* which latter touches the conscience of individuals. The word *jurisdiction* is derived from *ius dicendi,* which means the right of taking cognizance of a case and deciding it according to law or equity.

In general, jurisdiction may be said to be "a public faculty to rule or govern others." [5] This definition covers both jurisdiction *in foro externo* and jurisdiction *in foro interno,* because, though the latter touches conscience, it is the public authority of the church which bestows that power over the consciences of the faithful.[6]

### ORDINARY JURISDICTION

### CAN. 197

**§ 1. Potestas iurisdictionis ordinaria ea est quae ipso iure adnexa est officio; delegata, quae commissa est personae.**

**§ 2. Potestas ordinaria potest esse sive propria sive vicaria.**

### CAN. 198

**§ 1. In iure nomine *Ordinarii* intelliguntur, nisi quis expresse excipiatur, praeter Romanum Pontifi-**

3 I Cor., 5, 5; I Tim. I, 20.

4 Bouix, *De Principiis Iuris Canonici,* 1852, p. 524.

5 Reiffenstuel, I, 29, n. 3 (according to Pirhing): "*Jurisdictio est potestas publica circa aliorum regimen seu gubernationem.*"

6 Berardi, *Comment. in Jus Can. Univ.,* 1746, I, p. 12, well says that the faculties of preaching and absolving belong to the court of conscience, but the power of granting them belongs to the *forum externum,* because given for the public welfare.

cem, pro suo quisque territorio Episcopus residentialis, Abbas vel Praelatus *nullius* eorumque Vicarius Generalis, Administrator, Vicarius et Praefectus Apostolicus, itemque ii qui praedictis deficientibus interim ex iuris praescripto aut ex probatis constitutionibus succedunt in regimine, pro suis vero subditis Superiores maiores in religionibus clericalibus exemptis.

§ 2. Nomine autem *Ordinarii loci* seu *locorum* veniunt omnes recensiti, exceptis Superioribus religiosis.

The term *ordinary* in the Decretals[7] is an attribute of judges and means as much as *official*. Even archdeacons were said to enjoy ordinary jurisdiction in their respective districts.[8] But it also meant[9] the free or unhampered power of the bishops in their dioceses. Hence the term signifies a certain autonomy, but not complete independence. The root of that autonomy is the nature of the office;[10] wherefore our canon says that ordinary jurisdiction is attached to the office, not to the person; it grows out of the office as the fruit grows on the tree. *By law* it is attached to the office, because either of divine or human law (to which latter also belong privileges and customs)[11] certain office-holders enjoy jurisdiction *in foro externo*. Therefore, as soon as one is in full possession of an office, he has the power to exercise the jurisdiction appertaining to that office.

However, there is a distinction made by the Code:— ordinary power may be either *proper* or *vicarious* (*propria vel vicaria*). This somewhat modern distinction is not easily explained. Wernz says that jurisdiction

7 Cf. Tit. 31, lib. I.

8 Thomassin, P. I, l. II, c. 20, n. 7.

9 C. 1, X, I, 31.

10 L. 5, Dig. 2, 1 defines ordinary jurisdiction as possessed "*ipso iure, non alieno beneficio.*"

11 Berardi, *l. c.*, p. 19; Bouix, *l. c.*, p. 529.

proper is that which naturally follows the existence of the Church as a perfect society and is exercised by the Church in her own name, as in her own forum (*ut in foro suo*), *e. g.,* excommunication and penalties, whereas vicarious jurisdiction is that exercised by the Church in virtue of a special divine commission and *in foro Dei, e. g.,* to declare the word of God infallibly, to remit sin, grant indulgences, solve vows, oaths, etc.[12] We must confess that we were always under the impression that the objects enumerated under vicarious power belonged to the Church as her proper domain. Where is the bishop's jurisdiction proper, and where does his vicarious power commence? If the latter signifies the so-called *iurisdictio mandata,* which is a delegated power for all cases (*ad universitatem causarum*),[13] we have delegation proper, as can. 199, § 3 plainly states. However, it may be that vicarious refers to *vicar.* A vicar differs from a delegate, inasfar as he takes the place of the ordinary (judge) and forms one tribunal with him, whereas a delegate is a distinct juridical person and has his own tribunal.[14] Here we have a more tangible distinction. If this is the meaning of the canon, the vicar-general would enjoy vicarious jurisdiction, whilst the bishop, within his sphere and territory, has jurisdiction proper. To assume that a bishop has but a vicarious power, derived from the pope, whose vicar he is, would offend against the divine institution of the Church.

The next canon (198) enumerates those who are comprised by the name of *Ordinaries.* They are: all who rule or govern a diocese or ecclesiastical district tantamount to a diocese: residential bishops, prelates *nullius*

12 *Ius Decretal.,* II, p. 7 (1 ed.); Laurentius, *Institut. Iuris Eccl.,* 1903, p. 36, n. 45, adopts the same explanation.

13 Reiffenstuel I, 29, n. 17.

14 Reiffenstuel, *l. c.,* n. 28.

(*sc. territorii*), as well as their vicars-general; also Apostolic administrators, Apostolic vicars and prefects; the vicars-capitular or administrators during the vacancy of a see, be these such under the common law or according to approved constitutions;[15] finally, the higher superiors of exempt clerical orders of religious, *i. e.,* the superior general, abbot primate, provincials and abbots, presidents as well as abbots of single exempt monasteries, and their legitimate *locum tenentes* or representatives.[16] These latter, however,— except in cases where they are at the same time *prælati nullius* — are not *ordinarii loci,* but simply Ordinaries. Hence, if a canon[17] says that a religious needs the permission of the *Ordinarius,* the superior of his community is understood; but if the *Ordinarius loci* is mentioned, the religious, though exempt, must obtain the permission from the diocesan bishop, *e. g.,* in case of absence from a parish for some length of time.[18]

### DELEGATED JURISDICTION

A delegated jurisdiction, according to can. 197, § 1, is one which has been commissioned to a person.[19] This is the cause or *raison d'être* of a juridiction which is not given by virtue of the office itself but accrues to a person by reason of a special commission which may be implied in the law or come directly from the competent authority (*delegatio a iure, delegatio ab homine*). Hence a delegated jurisdiction is not exercised in one's own name, but in the name and by commission of another.

### CAN. 199

**§ 1. Qui iurisdictionis potestatem habet ordina-**

15 Can. 432, § 3.
16 Can. 488, 8°.
17 Cfr. can. 139, § 3.
18 Can. 465.
19 Cf. S. C. P., Nov. 8, 1882; S. O., Feb. 20, 1888.

riam, potest eam alteri ex toto vel ex parte delegare, nisi aliud expresse iure caveatur.

§ 2. Etiam potestas iurisdictionis ab Apostolica Sede delegata subdelegari potest sive ad actum, sive etiam habitualiter, nisi electa fuerit industria personae aut subdelegatio prohibita.

§ 3. Potestas delegata ad universitatem negotiorum ab eo qui infra Romanum Pontificem habet ordinariam potestatem, potest in singulis casibus subdelegari.

§ 4. In aliis casibus potestas iurisdictionis delegata subdelegari potest tantummodo ex concessione expresse facta, sed articulum aliquem non iurisdictionalem etiam sine expressa commissione iudices delegati possunt subdelegare.

§ 5. Nulla subdelegata potestas potest iterum subdelegari, nisi id expresse concessum fuerit.

This canon treats of the relation of ordinary jurisdiction to delegation, and of the relation of the latter to subdelegation.

(1) The *Pope* may delegate his power of jurisdiction wholly or partially to another, except in certain matters. A bishop or *Ordinary* may also delegate his power to another, and our text is emphatic as to the extent of that delegation, stating that it may comprise the whole power (*ex toto*). Hence the former opinion of canonists,[20] that the whole jurisdiction of a bishop could not be delegated to another, because this would be tantamount to abdication, can no longer be held. Neither are any special qualifications laid down for a delegate. It used to be held that a *delegatus papae* had to be an ecclesiastical dignitary, *e. g.*, a canon of a cathedral chapter, a *prior*

20 Cf. Reiffenstuel I, 29, n. 56; Santi-Leitner, I, 29, n. 7.

*conventualis* (but not a *prior claustralis*).[21] Now, we believe, any Catholic priest in communion with the Holy See can be entrusted by the Pope with a delegation. The priestly character seems to be required, since the Code insists upon that in every instance, but we would not assert that the Sovereign Pontiff could not make an exception in favor of a cleric in minor orders, since it is acknowledged that he can delegate even laymen.[22]

(2) If the pope has chosen a delegate, either for a certain case or for all cases that may arise, this delegate may *subdelegate* another ecclesiastic,[23]— a layman could not be admitted in the case of subdelegation, this being the exclusive privilege of the Sovereign Pontiff,— and endow him with the delegated power, either habitually (*i. e.,* without limit as to time or person or matter) or for a certain case. However, if the person delegated by the pope was chosen on account of qualities peculiar to himself and found in no one else, subdelegation is excluded. Whether such a personal choice was intended, must be gathered from the text of the document. As a rule, if the name of the person is placed first, and followed by that of the office or dignity, what canonists call *industria personae* is intended. The same holds if the writ says that the delegate must himself (*ut ipse, per temetipsum*) take cognizance of, and decide the case or cases for which he is appointed, or if the nature and circumstances of a case are fully known only to him, or if the matter concerns persons in high position.[24] Sometimes a writ of delegation contains a clause expressly prohibiting subdelegation.

§ 3 and § 4 mention *delegates appointed by ecclesiastics*

21 C. 11, 6°, I, 3; c. 2, Clem. I, 2.
22 C. 23, Dist. 63; c. 4, X, III, 8.
23 C. 62, X, II, 28.
24 Cc. 3, 43, X, I, 29; Santi-Leitner, I, 29, n. 8.

*inferior to the pope.* Whoever is delegated for any purpose by a cardinal, or metropolitan, or bishop, or other Ordinary must first of all examine the document by which he is delegated, to ascertain whether he is to expedite affairs generally (*ad universitatem negotiorum*) or only a certain kind or number of cases. If he has what may be termed universal (delegated) jurisdiction (which may be the case, *e. g.,* with coadjutor bishops), he may in turn subdelegate in particular cases,[25] for instance, one special matrimonial case, or the criminal case of a clergyman. If, however, no universal (delegated) jurisdiction has been conferred on him, the delegate needs a special and an express commission to authorize him to subdelegate others. Only incidental but not juridical acts, properly so called, may be subdelegated; thus, for instance, a delegate may, even without a special commission, entrust another clergyman with the reading or translation of documents if he needs help in that direction. But the summoning and hearing of witnesses, receiving of exceptions, interlocutory sentence, etc., are juridical acts which the delegate may not subdelegate to another except with special permission.[26]

The last paragraph prohibits *subdelegation* by a subdelegate, *ne processus detur in infinitum.*[27] Even if the original *delegans* would expressly permit such a subdelegation, it would not hold good in law.

## INTERPRETATION OF JURISDICTION

### CAN. 200

**§ 1. Potestas iurisdictionis ordinaria et ad univer-**

25 There is no foundation for the distinction made by Putzer (*Com. in Fac. Ap.*, p. 38 f.) between *universalitas* and *generalitas causarum;* the Code excludes that.

26 C. 27, X, I, 29; Reiffenstuel, I, 29, n. 64 f.

27 C. 28, X, I, 29: *exonerare malitiose nequeat.*

**sitatem negotiorum delegata, late interpretanda est; alia quaelibet stricte; cui tamen delegata potestas est, ea quoque intelliguntur concessa, sine quibus eadem exerceri non posset.**

**§ 2. Ei, qui delegatum se asserit, incumbit onus probandae delegationis.**

Ordinary and universal (delegated) jurisdiction may be interpreted broadly; all others must be interpreted strictly; however, even in delegated jurisdiction all those faculties are included without which the exercise thereof would be impossible.

Whoever claims to be delegated is obliged to prove the fact.

The difference between the two interpretations mentioned in § 1 consists in this, that ordinary and universal jurisdiction is considered favorable, whereas the other is taken to be odious; in other words, the broad interpretation is based upon one's own power, whilst the strictly delegated power depends on the consent of another, which may not be presumed. Hence if an Ordinary has doubts concerning his own power, he may nevertheless use it. But strictly delegated power must be neither extended nor restricted as to persons, number, species, or norm of procedure.[28]

That one who *pretends* to be a delegate must show his credentials, follows from the fact that delegation is an accident, which may not be presumed, but must be proved.[29]

28 C. 31, X I, 29; c. 1, Extrav. Comm. I, 3.

29 Reiffenstuel, I, 29, n. 52 f.

EXTENT OF JURISDICTION

CAN. 201

§ 1. Potestas iurisdictionis potest in solos subditos directe exerceri.

§ 2. Iudicialis potestas tam ordinaria quam delegata exerceri nequit in proprium commodum aut extra territorium, salvis praescriptis can. 401, § 1, 881, § 2 et 1637.

§ 3. Nisi aliud ex rerum natura aut ex iure constet, potestatem iurisdictionis voluntariam seu non-iudicialem quis exercere potest etiam in proprium commodum, aut extra territorium exsistens, aut in subditum e territorio absentem.

The power of jurisdiction may be directly exercised only over subjects. Judicial power, ordinary as well as delegated, cannot as a rule be exercised for one's own benefit or outside of one's own territory.

It is otherwise with voluntary or non-judicial jurisdiction, which may be exercised in one's own favor outside one's territory, and on subjects absent from home.

As legislative power does not extend to such as are not subject to the community or society,[30] so judiciary power cannot be applied to those outside the jurisdiction of the judge. The limiting adverb "*directly*" in the text is important, especially for matrimonial cases. For although the Church does not judge those outside her own pale, she is entitled to make laws for, and judge, those who belong to her fold, and hence, while an impediment laid down by the Church may not directly bind an unbeliever or non-baptized person, yet the Catholic party is bound by the law and judgment of the Church, and conse-

30 Can. 12.

quently, marriage being a bilateral contract, it cannot take place until the obstacle is removed.

The next two paragraphs suppose the distinction between *contentious* and *voluntary jurisdiction.* The former is exercised in judicial form even over such as do not seek the aid of the court (*in nolentes, invitos*), whereas the latter may be exercised without judiciary formalities, but only over persons who seek the benefit of jurisdiction of their own accord, *e. g.,* absolution from censures, dispensation from irregularities and impediments, etc. Contentious or judicial jurisdiction (*e. g.,* litigation between two office-holders) cannot be exercised by a judge, ordinary or delegated, upon his own person, because no one can judge his own case.[31] This principle does not, however, apply to the Sovereign Pontiff, because "*prima sedes a nemine judicatur.*" [32]

Laws being territorial, and no judge having a right outside the territory allotted to him, none can exercise jurisdiction outside his district.[33] However, the Code makes two exceptions: in favor of absolution [34] and in favor of a judge who is expelled from his territory or forcibly prevented from exercising judiciary power.[35]

*Voluntary jurisdiction,* on the other hand, may be exercised (a) in one's own favor; thus, *e. g.,* one who has received delegated power to dispense from fasting or abstinence may apply it to himself. Absolution from censures, however, if sacramental confession is required, must be applied by another, although a priest who has the faculty by delegation may subdelegate it to the priest who hears his confession. (b) The bishop may exercise

31 L. un. Cod. Just., III, 5; c. 18, X, II, 1.

32 Cf. 13, C. 9, q. 3.

33 C. 2, 6°, I, 2: "*extra territorium ius dicenti non parebitur impune.*"

34 Can. 401, § 2; can. 881, § 2.

35 Can. 1637; — an example would be Clemens August of Cologne (1837).

his ordinary or delegated power over his own subjects, even if he is *hic et nunc* outside his diocese, for the law does not restrict his power in this respect.[36]

Clerics who study in a seminary or university situated outside of their home diocese must apply for any dispensation needed to their own *Ordinaries.*

CAN. 202

**§ 1. Actus potestatis iurisdictionis sive ordinariae sive delegatae collatae pro foro externo, valet quoque pro interno, non autem e converso.**

**§ 2. Potestas collata pro foro interno exerceri potest etiam in foro interno extra-sacramentali, nisi sacramentale exigatur.**

**§ 3. Si forum, pro quo potestas data est, expressum non fuerit, potestas intelligitur concessa pro utroque foro, nisi ex ipsa rei natura aliud constet.**

This canon establishes the *relation* between the *forum externum* and the *forum internum* and hardly needs an explanation. Of the two *fora* the more intensive and extensive is the *forum externum;* and hence, though one may be absolved from censure (*e. g.,* on account of a mixed marriage contracted against the law) in the court of conscience, he must nevertheless conduct himself like one under censure until relieved of the latter by public absolution. On the other hand, one who has received public absolution must be considered as restored to full communion. Thus, also, a marriage acknowledged to be null and void *in foro interno* cannot be so declared *in foro externo* unless external proofs are given.[37]

§ 2 states that power given for use in the court of

36 Otherwise Putzer, *l. c.,* p. 71 f. 37 Putzer, *l. c.,* p. 28 f.

conscience may be exercised *outside the sacrament of penance,* although this is not the usual and generally prescribed mode. Thus, *e. g.,* dispensation from secret impediments, vows, or irregularities may be applied outside the confessional if the party concerned shrinks from confession.[38] But in cases where a dispensation can be imparted by the confessor (regular) only, confession is required.

DUTIES OF DELEGATES

CAN. 203

**§ 1. Delegatus qui sive circa res sive circa personas mandati sui fines excedit, nihil agit.**

**§ 2. Hos tamen excessisse non intelligitur delegatus, qui alio modo ac deleganti placuerit, ea ad quae delegatus est, peragit, nisi modus ipse fuerit a delegante praescriptus tanquam conditio.**

A delegate who exceeds the limit of his mandate, either concerning objects or persons, acts invalidly. But a delegate does not transgress the limit if he exercises his power in a manner (*modus*) other than that which would please the *delegans,* unless the manner of exercising the faculties conferred has been prescribed by the *delegans* as a *condition* of validity.

CAN. 204

**§ 1. Quod quis Superiorem adit, inferiore praetermisso, non idcirco voluntaria suspenditur inferioris potestas, sive haec ordinaria fuerit sive delegata.**

**§ 2. Attamen rei ad Superiorem delatae ne se immisceat inferior, nisi ex gravi urgentique causa; et hoc in casu statim Superiorem de re moneat.**

38 *Ibid.,* p. 27 f.

The voluntary jurisdiction, ordinary or delegated, of an inferior authority is by no means suspended by direct recourse to a superior. But if a case has been brought before a superior, the inferior authority shall not interfere, unless for a weighty and urgent reason, of which the superior must be promptly informed.

Whoever acts as a delegate is supposed to have received a commission or *mandate,* which must be observed as to all its substantial injunctions. Our Code especially mentions two limits: objects and persons. When the object or matter is mentioned expressly, *e. g.,* a matrimonial case, the delegate has no power to decide other cases. In some countries there are special marriage courts, to whom no other cases are delegated. Again, when a certain *class of persons* (*e. g.,* clerics, sisterhoods) is mentioned in the mandate, the jurisdiction of the delegate cannot be extended to other classes. If exempt religious are expressly mentioned, the non-exempt are not included.

The next paragraph bears upon *procedure.* Of course, it takes for granted that the *essential form* prescribed by common law is observed, unless expressly provided otherwise in the mandate of delegation. But there is a margin for accidental formalities; these are left to the judgment of the delegate, which may differ from that of the *delegans.* As in the case of rescripts, so here the intention of the *delegans* must be ascertained from the text.[39] When a special mode of procedure, differing from that prescribed by common law, is enjoined, this must be followed. If the mode is merely insinuated, without the clause "*non aliter,*" or "*sic neque alio modo,*" or "*si secus fiat, irritum sit et inane,*" the *delegatus* may proceed

[39] Cfr. c. 22, X, I, 3, *de rescriptis.*

according to his good pleasure, observing, however, the essential solemnities of legal procedure, if this is prescribed, or the tenor of his faculties. If no place is stated by the *delegans,* the place of the parties must be chosen, if it is safe.[40] If *no time* is fixed, the business must be finished within the *tempus utile, i. e.,* a year from the date of delegation, with due regard, however, to the nature of the case as well as the distance of the parties.[41] The reason for keeping within the limits of the mandate is expressed in the Roman law, which states that he who does not observe them appears to do something unauthorized.[42] An analogue may be found in the case of diplomatic agents, who receive instructions of a twofold kind, some of which must be strictly followed, while others are left to their discretion.

Can. 204 speaks of *recourse* to a superior, *e. g.,* from a bishop to the Apostolic See. A recourse differs from an appeal. The latter always supposes a sentence, either interlocutory or final, whilst the former does not necessarily suppose a sentence. The way to a higher superior is open at any time. But the Code says that in case of a recourse, the *voluntary* or non-judicial jurisdiction of an Ordinary or a delegate is not suspended. Therefore, for instance, a bishop may proceed with the investigation of, say, a matrimonial case and even pronounce a non-judicial sentence. But as soon as he is notified that the parties are having recourse to the Apostolic Delegate, or to Rome, he should stop his own procedure and not vex the higher tribunals with importune insinuations, unless the case requires it, in which eventuality information shall be welcomed by the higher authorities.

40 C. 11, 6°, I, 3; c. 13, X, I, 29, I, 29, n. 21 f.
41 C. 26, X, I, 29; Santi-Leitner, 42 L. 5, dig. 17, 1.

SEVERAL DELEGATES

CAN. 205

§ 1. Si plures iurisdictionem delegatam obtinuerint pro eodem negotio, et dubitetur utrum delegatio facta fuerit in solidum an collegialiter, praesumitur facta in solidum in re voluntaria, collegialiter in re iudiciali.

§ 2. Pluribus in solidum delegatis, qui antea negotium occupavit, alios ab eodem excludit, nisi aut posthac impediatur aut nolit ulterius in negotio procedere.

§ 3 Pluribus collegialiter delegatis, omnes simul pro actorum validitate in negotio expediendo procedere debent, nisi in mandato aliud cautum sit.

CAN. 206

Pluribus successive delegatis, ille negotium expedire debet cuius mandatum anterius est nec posteriore rescripto expresse abrogatum fuit.

A decretal [43] of Celestine III (1191–1198) says that the Apostolic See rather appoints several delegates than one, in order that the judgment may be solid. This may be done in such a manner that the several persons delegated are responsible *in solidum, i. e.,* each one of them is responsible conjointly with the others for the whole thing, for instance, a payment, or a judgment, or bail,—or severally *pro rata, i. e.,* each for his proportionate share. If they have jurisdiction *in solidum,* the whole jurisdiction resides in each one, and each may therefore decide the case by himself without the coöperation of the others. Again, several may be delegated as *one body* or quasi-

[43] C. 21, X, I, 29.

corporation (*collegialiter*), and in that case all have to proceed conjointly in order to act validly.[44]

Concerning delegation *in solidum,* our Code says it must be presumed in voluntary or non-judicial jurisdiction, because voluntary jurisdiction does not essentially require the formalities of procedure, nor does it, generally, infringe upon the rights of others. But judiciary jurisdiction is supposed to be given to the body as such or *collegialiter.*[45] In the latter case, as § 3 states, all the judges have to proceed at the same time, like a jury, *i. e.,* they must commence the trial by a simultaneous summons,[46] which is the first judicial act. This formality is so important that the defendant may refuse to appear if not all the names of the corporate judges are named in the summons.

Then again all essential judicial acts, such as the hearing of witnesses, issuing interlocutory or final sentences, must be made by all the judges in unison.

It is otherwise with the *delegatio in solidum* (§ 2), because in that case the one who issues the summons first is entitled to proceed to the exclusion of the others. Only in case one is prevented by sickness or some other impediment, or does not proceed within the appointed time (one year) to finish the affair, another may take his place.

When several judges have been delegated, neither *in solidum* nor *collegialiter,* but merely *successive,* then it depends upon the *date of the rescript* issued by the *delegans.*

If the case is of voluntary jurisdiction the rescript is presumed to be one of favor; if the case is of contentious

44 Santi-Leitner, I, 29, n. 25.

45 Cfr. cc. 2, 16, 21, 22, 23, X, I, 29; tit. 14 in 6°.

46 C. 22, X, I, 29; — unless the rescript or mandate contains the clause that in case of a legitimate impediment two may proceed without the third one; *ibid.*

jurisdiction, the rescript is presumed to be one of justice. In the former instance, consequently, the date is a *dies datae,* or the day when issued by the *delegans;* in the latter, it is the *dies presentatae* or date when the letters are shown to the parties interested or the execution of the rescript takes place.[47] But it is safe to say that every rescript of delegation effectively is a rescript of justice or at least one which needs an executor, and hence only the date of presentation may here be considered;[48] for the parties have a right to have the rescript "shown" to them.

CESSATION OF DELEGATED AND ORDINARY JURISDICTION

CAN. 207

§ 1. Potestas delegata exstinguitur, expleto mandato; elapso tempore aut exhausto numero casuum pro quo concessa fuit; cessante causa finali delegationis; revocatione delegantis delegato directe intimata aut renuntiatione delegati deleganti directe intimata et ab eodem acceptata; non autem resoluto iure delegantis, nisi in duobus casibus de quibus in can. 61.

§ 2. Sed potestate pro foro interno concessa, actus per inadvertentiam positus, elapso tempore vel exhausto casuum numero, validus est.

§ 3. Pluribus collegialiter delegatis, si unus deficiat, aliorum quoque delegatio exspirat, nisi aliud ex tenore delegationis constet.

CAN. 208

Ad normam can. 183, § 2, potestas ordinaria non

47 Cf. c. 8, 6°, I, 14; can. 38; can. 48.

48 C. 12, X, II, 28; c. 1, Extrav. Comm. I, 3 de electione.

**exstinguitur resoluto iure concedentis officium cui adnexa est; sed cessat, amisso officio; silet, legitima appellatione interposita, nisi forte appellatio sit tantum in devolutivo, firmo praescripto can. 2264, 2284.**

CAN. 209

**In errore communi aut in dubio positivo et probabili sive iuris sive facti, iurisdictionem supplet Ecclesia pro foro tum externo tum interno.**

In can. 207, § 1, six modes are enumerated by which delegated power ceases. These apply indiscriminately only to jurisdiction in *foro externo,* because § 2 of the same canon modifies two of them in regard to the court of conscience by ordaining (1) that the *mandate is fulfilled* if the sentence has been pronounced or the rescript has been executed,[49] because after the sentence one ceases to be judge; (2) if the *time* has expired, if a certain time was fixed, which commences, as said above, from the date when the documenet of delegation was presented;[50] (3) if the *number* of cases (for instance, twenty) is exhausted. These two latter modes of expiration do not affect the *forum internum* if a confessor should, by oversight, absolve in one more case than allowed, or if he should absolve beyond the time granted by the indult.[51] But since the *forum internum* is generally mentioned, and this comprises the confessional as well as extra-confessional application,[52] we believe we are justified in saying that any act, either in the confessional or outside of that tribunal, performed by oversight with regard to the time or

49 C. 9, X, I, 29; l. 55, dig. 42, 1; l. 1, *Cod. Just.* VII, 52.

50 C. 4, X, I, 29; c. 12, X, II, 28.

51 Stricter Benedict XIV, "Apostolica indulta," Aug. 5, 1744, §§ 3, 6; "Apostolicum ministerium," May 30, 1753, § 3 (for England).

52 Can. 194.

number of cases, is valid. Thus a dispensation executed outside the confessional, but intended for the court of conscience, would be valid even if applied by mistake beyond the specified time and number. (4) If the *motive cause* of a delegation ceases (*e. g.,* an indult given for a solemn occasion, as a jubilee) the jurisdiction ceases; (5) if the *delegans* expressly (not only tacitly) *revokes* the delegation and the repeal is duly made known to the delegate. Note that the *delegans* may revoke a delegation at any time, even though the delegate has given the case a legal turn by summoning the parties. But the delegate who has subdelegated the whole jurisdiction to another is not entitled to revoke the subdelegation if the business had already taken a legal turn.[53] (6) If the delegate *resigns* (or refuses) the delegation and the resignation is accepted, the delegation ceases.

Generally speaking, no one can be compelled to be a delegate, unless the *delegans* has jurisdiction proper over him. Thus the Pope can compel any prelate or clergyman to accept a delegation, an Ordinary can compel any clergyman of his jurisdiction but not a clergyman of another diocese; a metropolitan cannot force one of his suffragans to accept a delegation.[54]

The first pragraph of our canon, modifying the old law,[55] says that only in *two cases* a delegation expires by one's going out of office. They are the cases mentioned in can. 61, *viz.,* if a *clausula* to that effect had been inserted in the mandate, or if power was given to grant a favor to particular persons mentioned in the rescript, as long as the matter has not taken a legal turn.

If *several delegates* had been appointed *collegialiter,* the power of all of them ceases when one fails either by

53 C. 6, 6°, I, 14; c. 37, X, I, 29; c. 7, 6°, I, 14.

54 C. 11, X, I, 31.

55 Cc. 14, 42, X, I, 29.

death, or accepted resignation, or by the infliction of a penalty implying the loss of ecclesiastical power.

Can. 208 speaks of the loss of *ordinary power.* It says (1) that even if the *superior* who has conferred the office to which that power is attached goes out of office by death, resignation, transfer, or privation, the power is not lost. Hence the bishops of the U. S., who are appointed by the Pope, do not lose their ordinary power by a vacancy in the Holy See. (2) The ordinary power is *lost* if the office itself is lost. Thus, if a bishop dies or resigns or is deprived of his office, his power ceases. (3) The power becomes quiescent or *silent* if an appeal is made to a higher authority or instance, provided, of course, the appeal is *in suspensivo,* not *in devolutivo,* for as the former term implies, by such an appeal the jurisdiction of the inferior is suspended.[56] If one who is excommunicated or suspended [57] has rendered a declaratory or condemnatory sentence, the sentence itself is null and void, and consequently the appeal will be of no consequence, *i. e.,* it does not suspend the ordinary power.

Can. 209 provides for the common good and public security as well as for the tranquillity of conscience by reaffirming the well-known principle that the *Church supplies the necessary jurisdiction when a common error or a positive doubt arises.* Of course, the *common error,* to have this effect, must be accompanied by a *titulus coloratus* or an apparent title to the office one exercises. An intruder has no such claim.[58] But if an Ordinary or confessor were commonly but erroneously supposed to have the necessary faculties, the Church would supply the defect of real jurisdiction. The same effect is produced by a positive and *probable doubt, i. e.,* one which

56 Concerning appeals see can. 1879 ff.

57 Can. 2264, 2284.

58 Reiffenstuel, II, 1, n. 200.

for certain reasons and circumstances inclines more to one side than to the other, in this case more to the side of the power being vested in the person whose court is sought. Whether this doubt regards the facts or the law is immaterial. A doubt regarding a fact would be whether a particular Ordinary or priest has a certain faculty; a doubt regarding the law (*ius*), whether the case falls under his jurisdiction. To quiet consciences the Church, out of the fulness of her power, supplies the defective jurisdiction and renders valid acts which would otherwise be invalid.

### POWER OF ORDER

### CAN. 210

**Potestas ordinis, a legitimo Superiore ecclesiastico sive adnexa officio sive commissa personae, nequit aliis demandari, nisi id expresse fuerit iure vel indulto concessum.**

This canon says that the power of order attached to an office or entrusted to a person by a legitimate superior, cannot be delegated to others, except by express permission either contained in the law or granted through an indult.

The power of order is the power imparted by ordination and is separable from that of jurisdiction. The term is here used of episcopal or pontifical power, as the priestly power and that attached to lower orders can hardly have entered the mind of the legislator.[59]

Pontifical power comprises that for which either the episcopal order is required or which can not be exercised

[59] This is clearly seen from the notes of Card. Gasparri to this canon.

without the use of holy oils.[60] To this category belong the conferring of orders, confirmation and the consecration of sacred edifices [61] and utensils with chrism. These faculties belong by right to consecrated bishops. However, the power of conferring minor orders may by a *special indult* of the Pope be delegated to a priest. The same is true of the power of confirmation and consecrating churches.[62] *By law,* abbots *nullius* and vicars Apostolic may confer confirmation, tonsure and minor orders and consecrate altars; abbots *regiminis,* if blessed, may confer minor order on their own subjects.[63] Whether the power of conferring subdeaconship and deaconship may be commissioned to a priest, is uncertain. Since the pontificate of Innocent VIII (1484–1492) we do not hear of any such privilege being granted to a priest or abbot. And even the bull ascribed to that pope has been strongly assailed as to its genuineness.[64] Some defend, others attack it, but the controversy has no *practical* value.

60 Benedict XIV, "Apostolicum ministerium," May 30, 1753, § 3.

61 *Id.,* Ep. ad Engelhardtum (*Bull.,* Prati, III, p. 445 ff.).

62 *Ibid.,* and "Apostolicum ministerium," §§ 4, 9; *De Syn. Dioec.,* VII, 2 f.

63 Can. 782, § 3; 957, § 2; 964.

64 Cfr. Bachofen, *Compendium Juris Reg.,* 1903, p. 256; Pohle-Preuss, *The Sacraments,* IV, 124; *Catholic Fortnightly Review,* 1917, St. Louis, pp. 67 ff.

## TITLE VI

### RETURN OF CLERGYMEN TO THE LAY STATE

### Can. 211

§ 1. Etsi sacra ordinatio, semel valide recepta, nunquam irrita fiat, clericus tamen maior ad statum laicalem redigitur rescripto Sanctae Sedis, decreto vel sententia ad normam can. 214, demum poena degradationis.

§ 2. Clericus minor ad statum laicalem regreditur, non solum ipso facto ob causas in iure descriptas, sed etiam sua ipsius voluntate, praemonito loci Ordinario, aut eiusdem Ordinarii decreto iusta de causa lato, si nempe Ordinarius, omnibus perpensis, prudenter iudicaverit clericum non posse cum decore status clericalis ad ordines sacros promoveri.

### Can. 212

§ 1. Qui in minoribus ordinibus constitutus ad statum laicalem quavis de causa regressus est, ut inter clericos denuo admittatur, requiritur licentia Ordinarii dioecesis cui incardinatus fuit per ordinationem, non concedenda, nisi post diligens examen super vita et moribus, et congruum, iudicio ipsius Ordinarii, experimentum.

§ 2. Clericus vero maior qui ad statum laicalem rediit, ut inter clericos denuo admittatur, indiget Sanctae Sedis licentia.

CAN. 213

§ 1. Omnes qui e clericali statu ad laicalem legitime redacti aut regressi sunt, eo ipso amittunt officia, beneficia, iura ac privilegia clericalia et vetantur in habitu ecclesiastico incedere ac tonsuram deferre.

§ 2. Clericus tamen maior obligatione coelibatus tenetur, salvo praescripto can. 214.

CAN. 214

§ 1. Clericus qui metu gravi coactus ordinem sacrum recepit nec postea, remoto metu, eandem ordinationem ratam habuit saltem tacite per ordinis exercitium, volens tamen per talem actum obligationibus clericalibus se subiicere, ad statum laicalem, legitime probata coactione et ratihabitionis defectu, sententia iudicis redigatur, sine ullis coelibatus ac horarum canonicarum obligationibus.

§ 2. Coactio autem et defectus ratihabitionis probari debent ad normam can. 1993–1998.

Although sacred ordination, once validly received, can never be annulled, a clergyman in higher orders may be reduced to the lay state by a rescript of the Holy See, by a decree or sentence issued in accordance with can. 214, or, finally, by degradation.

A cleric in minor orders is reduced to the lay state not only *ipso facto* for reasons stated in the law, but may also return thereto of his own accord, after having informed the Ordinary of the diocese, or by virtue of a decree issued by the same Ordinary for just reasons, if the latter upon due deliberation prudently judges that the cleric cannot be promoted to higher orders without disparagement to the clerical state.

Clerics in minor orders who have returned to the lay state, cannot be again admitted to the ranks of the clergy, unless the Ordinary of the diocese in which they were incardinated grants the necessary permission, which, however, should not be given except after a careful investigation of their life and conduct, and, if deemed opportune, upon suitable trial or test of character.

A cleric in higher orders who has returned to the lay state, may be readmitted to the ranks of the clergy only by leave of the Holy See. All those who are reduced from the clerical to the lay state thereby lose their clerical offices, benefices, rights, and privileges and are no longer allowed to wear the clerical garb and tonsure.

A cleric in higher orders remains bound by the law of celibacy, save in the case mentioned in can. 214.

A cleric who was compelled under grievous fear to receive a higher order, and has not ratified the ordination at least tacitly by the performance of an act proper to the order received, should be reduced to the lay state by a sentence of the ecclesiastical judge given after the coërcion and the defect of ratification have been duly proved; in which case he is bound neither by the obligation of celibacy nor by that of reciting the canonical hours.

The first three centuries were severe in meting out penalties to clerics. They were treated much like laymen.[1] In the fourth century a noticeable mitigation was introduced. Clerics who had committed a serious crime[2] were deposed but permitted to stay in the communion of laymen. *Communio laica* then meant that a cleric was reduced to the position of a layman and could

1 Funk, *Manual of Church History*, 1913, I, 197.

2 Capital crimes were: apostasy, homicide, adultery (*moechia*); serious crimes: fornication, perjury, theft, absence from the diocese; cfr. Apost. Canons, 25, 61; Smith-Cheetham, *Dictionary of Christian Antiquities*, 1880, II, 947.

receive holy communion, but outside the *bema* or railing which divided the nave from the presbytery. This mitigation, which certainly occurs in the fourth century, was introduced for the reason that, as St. Basil [3] as well as the Apostolic canons say, a cleric should not be punished twice. Later synods generally combine this penance with that of being confined in a monastery with the right of lay communion. As a penalty following degradation, the reduction of clerics to the lay state is amply testified to in the Decretals.[4] But examples of dispensation from higher orders, or, more correctly, from the obligations attaching thereto, are very rare in history, at least to our knowledge. Perhaps one of the best known examples is that of King Casimir of Poland in the eleventh century,[5] but not many more examples could be adduced, unless, of course, where a trial *ex metu* was instituted.

The above historical note has *touched upon the three reasons* which may bring about a reduction to the lay state, as outlined by can. 211, § 1. The first is a *rescript* of the Holy See to the effect that, notwithstanding a validly received *higher order* (which is indelible),[6] a cleric is free from the law of celibacy, the obligation of the Breviary, and other duties. It is evident that weightier reasons are required for a dispensation from the obligations attached to deaconship than from those attached to subdeaconship. The second reason is a *judicial sentence* concerning the reception of a higher order from fear or coërcion, as seen under can. 204. The third reason is *degradation,* which comprises deposition, privation of clerical prerogatives, and reduction to the lay

3 *Ad Amphiloch.*, c. 32.

4 C. 10, X, II, 1; c. 9, X, V, 7; c. 27, 4, V, 40.

5 Sczygielski, *Aquila Polono-Benedictina,* 1663, p. 94 f.

6 *Trid.*, sess. 23, can. 4, c. 4 de ordine.

state, and can be inflicted only for crimes stated in the law and after a duly conducted trial or confession.[7]

A cleric in minor orders may be reduced to the lay state if he does not wear the clerical dress, as stated above,[8] or if he spontaneously enlists in the army;[9] thus also a dismissed religious, especially if he has made profession by deceit.[10] But the Ordinary may pass judgment, if he finds reason for not admitting a cleric to higher orders, because minor orders were instituted precisely for the purpose of testing character, or as a kind of clerical novitiate.

Can. 212 establishes the conditions for *readmission* to the clerical state. Formerly a rather mild practice was defended,[11] but to-day, in order to guard against fraud and rashness, readmission is only allowed with the direct permission of the Ordinary, if the clergyman is in minor orders; if he is in higher orders, a rescript of the Holy See is necessary.[12]

Canon 213 treats of the *effects* of the reduction of a cleric to the lay state. They are, first and above all, the *loss* of all the *ecclesiastical offices and benefices* held by the delinquent, which therefore become vacant from the moment the rescript is received, or the sentence is uttered according to can. 1993 f., or the sentence of degradation is issued. A second effect is the *loss of clerical prerogatives* and the prohibition of wearing clerical distinctions, hence the *privilegium fori, canonis,* and *immunitatis,* which the so-called *diaconi selvaggi* (roaming deacons) in the former Neapolitan Kingdom used to claim, are lost.[13]

7 Can. 2305, 2314, 2343, 2354, 2368, 2388.
8 Can. 136, § 3.
9 Can. 141 § 2.
10 Can. 648; can. 2387.
11 Benedict XIV, *De Syn. Dioec.* XII, 3, 1 ff.
12 *Pontificale Rom.,* tit. degradatonis forma.
13 Cfr. cc. 1, 3, 7, 9, X, III, 3; c. un. 6°, I, 12.

§ 2 of can. 213 appears to us incomplete. We understand, indeed, that the law of celibacy remains after the sentence of degradation, but ceases after the sentence *ex metu*. But what if a rescript of the Holy See is obtained for a subdeacon? Is he bound to observe celibacy? If so, in most cases the object will not be achieved. From the recital of canonical hours all are freed, for the Code makes no distinction.

Can. 214 alludes to a case that may happen and has happened in the Greek (Coptic) Church, which permitted the ordination of infants, which, as Benedict XIV says,[14] was valid though illicit. Such ordinations are not likely to happen now-a-days. But moral coërcion — physical coërcion would exclude validity for lack of consent — may still be brought to bear, especially on devoted and timorous children, by importune entreaties, inducements or threats of ill will, displeasure and disinheritance.[15] When one submits to ordination under such influences,[16] the ceremony is valid, because the voluntariness of the consent is not simply excluded. The fear may be removed after ordination and the ordained person find himself between two horns of a dilemma: Should I exercise sacred functions or not? And if I do, do I thereby ratify my ordination? The answer lies in that apposition "*volens tamen*," somewhat clumsily inserted. If such a one, in exercising a sacred function, has the strict intention of complying with obligations attaching to the clerical state, he is supposed to ratify the ordination received under the pressure of fear. But if he has no such intention and performs the sacred function materially or mechanically, because he was told to do so, or for

14 "Eo quamvis tempore," May 4, 1745, § 17; "Probe te," Dec. 15, 1751, § 3; *De Syn. Dioec.*, XII, 4, 2 f.

15 Richter, *Trid.*, 175, n. 6; physical coaction, *ibid.*, n. 4.

16 Can. 103, § 2.

fear of causing a disturbance, the intention of ratifying is absent and hence the function cannot be regarded as a sign of consent or ratification. However, in case such a one performs a sacred function, the presumption is always that he means to ratify his ordination, unless he protests to some trustworthy witness. All such cases must be referred to the S. C. Sacr. If the one thus ordained wishes to be freed from the obligations attendant upon sacred orders, the S. Congregation shall refer the case to the court of the diocese to which the plaintiff belongs. In order to be free from these obligations two uniform sentences are required.[17]

17 Cfr. can. 1993–1998.

## SECTION II

## THE HIERARCHY

After having explained the difference between clergy and laity and described the clerical state with its rights and duties, as well as ecclesiastical offices in general, the Code proceeds to treat of the ecclesiastical hierarchy, beginning with the Supreme Pontiff. The term hierarchy is here chiefly, though not exclusively, taken in the jurisdictional sense. However, although the Catholic Church, in its universal aspect, forms a compact and perfect society, embracing all baptized Christians, yet *de facto* there is also a local organization, which parcels out the Catholic world into various districts with minor divisions. Hence the Code first mentions

### THE LOCAL ORGANIZATIONS

### CAN. 215

**§ 1. Unius supremae ecclesiasticae potestatis est provincias ecclesiasticas, dioeceses, abbatias vel praelaturas *nullius,* vicariatus apostolicos, praefecturas apostolicas erigere, aliter circumscribere, dividere, unire, supprimere.**

**§ 2. In iure nomine dioecesis venit quoque abbatia vel praelatura *nullius;* et nomine Episcopi, Abbas vel Praelatus *nullius,* nisi ex natura rei vel sermonis contextu aliud constet.**

CAN. 216

§ 1. Territorium cuiuslibet dioecesis dividatur in distinctas partes territoriales; unicuique autem parti sua peculiaris ecclesia cum populo determinato est assignanda, suusque peculiaris rector, tanquam proprius eiusdem pastor, est praeficiendus pro necessaria animarum cura.

§ 2. Pari modo vicariatus apostolicus et praefectura apostolica, ubi commode fieri possit, dividantur.

§ 3. Partes dioecesis de quibus in § 1, sunt *paroeciae;* partes vicariatus apostolici ac praefecturae apostolicae, si peculiaris rector eisdem fuerit assignatus, appellantur *quasi-paroeciae.*

§ 4. Non possunt sine speciali apostolico indulto constitui paroeciae pro diversitate sermonis seu nationis fidelium in eadem civitate vel territorio degentium, nec paroeciae mere familiares aut personales; ad constitutas autem quod attinet, nihil innovandum, inconsulta Apostolica Sede.

CAN. 217

§ 1. Episcopus territorium suum in regiones seu districtus, pluribus paroeciis constantes, distribuat, qui veniunt nomine *vicariatus foranei, decanatus, archipresbyteratus,* etc.

§ 2. Si haec distributio, ratione circumstantiarum, videatur impossibilis aut inopportuna, Episcopus consulat Sanctam Sedem, nisi ab eadem iam fuerit provisum.

The supreme ecclesiastical power alone is competent to erect, circumscribe, divide, unite or suppress ecclesiastical provinces, dioceses, abbies or prelatures *nullius,* Apostolic vicariates and prefectures.

Under the name of *diocese* the law comprises also an abbey or prelature *nullius;* and by the name of *bishop* it understands also an abbot or prelate *nullius,* unless the nature of the matter or the context require a different interpretation. The territory of each diocese should be distributed into districts, and to each of these assigned a special church with a determined part of the flock, over which is to be placed a local pastor, who shall take the necessary care of souls.

Similarly should be divided, wherever possible, vicariates and prefectures Apostolic.

The minor divisions of a diocese mentioned in § 1 are called *parishes;* the minor divisions of a vicariate or prefecture, if they have their own rectors, are called *quasi-parishes.*

Henceforward no parishes are to be established for faithful of diverse language or nation in the same city or territory without a special Apostolic indult. In regard to such parishes already existing, nothing is to be changed without the advice of the Holy See.

Every bishop is to divide his territory into districts, each comprising several parishes, to go by the name of foraneous vicariates, deaneries, archpresbyteries, etc. Where by reason of special circumstances such a division is impossible or infeasible, the bishop should consult the Holy See, unless the latter has already made provision.

The meaning of these canons is evident and only requires a few historical remarks.[1] When the first epoch, marked by itinerant preachers and ministers, had passed, the local organization alone remained. This extended from cities to suburbs, with areas [2] of widely dif-

1 Duchesne (tr. by McClure), *Christian Worship,* 1903, p. 14 ff.

2 A diocese, before Constantine, was a minor portion of a province,

ferent proportions, but the center of gravitation was the city where the bishop dwelt. It was generally held that each city should have its bishop with its own clergy. That these several bishoprics or churches formed an ecclesiastical province similar to the political provinces, cannot be proved for the first three centuries. Neither did the existing prominent churches imitate the civil divisions except in so far as there was a geographical connection. It was natural that *Rome* should be looked upon as the center of Christendom, as it was not only the capital of the *Orbis Romanus,* but also the place hallowed by the two chief Apostles and consecrated by their martyrdom. Thus the successors of St. Peter were already in the first three centuries the acknowledged metropolitans of the West, which comprised the Italian peninsula, and later Western Illyricum with Gaul, and still later the Spanish provinces. The Council of Nicæa (325), comparing Rome with the sees of Alexandria and Antioch, referred to the metropolitan organization of the former as an established fact.[3] Alexandria and Antioch in the East retained for centuries their influence over the districts which had been allotted to them. In the reign of Theodosius I (379–395), the five civil provinces of the Orient (Pontus, Asia, Thrace, and Egypt) had their ecclesiastical heads, who were later (fifth century) called patriarchs: the Orient with Antioch, Alexandria with Egypt, and Pontus, Asia, and Thrace under the newly established metropolitan of Constantinople, who, as occupant of the see of New Rome,[4] claimed the right of consecrating the bishops of these three provinces — *i. e.,*

called παροικία, parish; but after Const. a diocese signified a district or area comprising several provinces.

3 Council of Nicaea (325), c. 6 has various readings; cfr. Maassen, *Gesch. d. Quellen,* I, 19; c. 6, Dist. 65.

4 C. 3 Constant. I; c. 28 Chalced.

jurisdictional, hierarchic power over them. Thus the exarchs or metropolitans of Heraclea in Thrace, of Ephesus in Asia, and Caesarea of Pontus dwindled to lower rank, whilst Jerusalem, under the intriguing Juvenal, arose after the council of Chalcedon to the rank of a patriarchate, until Islam invaded the East. In the *West* we hear but little of metropolitans, if we except Milan, Aquileja, and Ravenna. Spain and Gaul show few traces of true organization with the sole exception of the *Vicariate of Arles,* founded by Pope Zosimus (417–418), which, however, proved a failure.[5]

More effective was the organization introduced by St. Boniface, the "Apostle of Germany," who acted strictly according to regulations received from Rome. A favorite theme of Pseudo-Isidore was the introduction of *Primates,*[6] of whom we hear as early as the fifth century, assuming that they are identical with the vicars of the Apostolic See. Thus, besides Arles, a vicar was created at Thessalonica,[7] and St. Boniface, as metropolitan of Mayence, was Primate of Germany. Later on the Primate of Hungary succeeded in upholding that title. In England, as we know from the history of the conversion of that country, St. Gregory had intended to erect two provinces.[8] Pope Nicholas I amalgamated the see of Bremen with the archbishopric of Hamburg. From the eleventh century onward the erection of bishoprics was reserved to the Holy See,[9] so that not even the papal legates were allowed to make a change in the territorial condition of dioceses.[10]

5 Duchesne, *l. c.,* p. 39.

6 Cfr. cc. 1, 2, Dist. 80; c. 1 f. Dist. 99.

7 Duchesne, *l. c.,* p. 42.

8 Lingard, *Anglo-Saxon Church* (*s. a.*), I, 107.

9 C. 1, Dist. 22; Dictatus Greg. VII, n. 7 (Migne 148, 407); c. 1, X, I, 7.

10 C. 2, X, I, 7; c. 4, X, I, 30; c. 4, 6°, I, 15.

The erection and delimitation of new dioceses was generally effected *in forma bullae* or by a document called "bull of circumscription."

In countries which maintained diplomatic relations with the Holy See, the civil government coöperated with the former in the act of circumscription as well as in the carrying these documents into effect. Where, however, there was complete separation between Church and State, the Holy See established or reëstablished dioceses by papal bull. Thus Gregory XVI, by his Constitution "*Benedictus Deus,*" of July 17, 1834, laid down the boundaries of several dioceses and Pius IX, Jan. 24, 1868, increased the number of dioceses in the U. S. By the bull "*Universalis Ecclesiae,*" of Oct. 1, 1850, Pius IX reestablished the hierarchy in England.[11] The whole business of erecting and changing the boundaries of dioceses now lies with the S. C. Consistorialis.[12]

The new Code insists upon strict organization of dioceses proper and parishes with due regard to the distinction between dioceses and vicariates. For the latter § 2 makes allowance, "*ubi commode fieri potest.*" But the distribution of dioceses into parishes must be enforced. For our country the passage referring to parishes of *different languages* is important, because in future none but English-speaking parishes can be erected without a special Apostolic indult. This law we consider very opportune because it does away with inconveniences arising from uncertain boundaries and puts the division on the basis of territory, which alone should be considered for administrative purposes. But as to carry the law into effect at once would cause difficulties, the legislator moderates the law as to the existing parishes. Par-

11 *Kirchenlexikon,* 2nd ed., *s. v.* "Circumscriptionsbullen."

12 Can. 248, § 2.

ishes for a certain number or class of *families,* especially of the nobility, such as exist in Spain, are unknown in America.

The Code, with some restrictions, also insists upon the erection of rural *deaneries.* The scope of this provision is apparent from can. 131, which urges conferences of the clergy for each rural district, as also from cc. 445 ff., which define the duty of deans to watch over the clergy of their districts.

# TITLE VII

## THE SUPREME POWER AND THOSE WHO PARTAKE THEREOF BY ECCLESIASTICAL LAW

## CHAPTER I

### THE ROMAN PONTIFF

#### CAN. 218

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

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

#### CAN. 219

Romanus Pontifex, legitime electus, statim ab acceptata electione, obtinet, iure divino, plenam supremae iurisdictionis potestatem.

#### CAN. 220

Gravioris momenti negotia quae uni Romano Pon-

**tifici reservantur sive natura sua, sive positiva lege, *causae maiores* appellantur.**

CAN. 221

**Si contingat ut Romanus Pontifex renuntiet, ad eiusdem renuntiationis validitatem non est necessaria Cardinalium aliorumve acceptatio.**

The Roman Pontiff, being the successor of St. Peter, possesses not only an honorary primacy, but supreme and full power of jurisdiction in the whole Church concerning matters of faith and morals as well as of discipline and government.

This power is truly episcopal, ordinary, and immediate, extending to each and every church no less than to each and every pastor, and to all the faithful, and is independent of every human authority.

The Roman Pontiff, lawfully elected, obtains by divine right full power of supreme jurisdiction at the moment when he accepts office. All affairs of major import (*causae maiores*), by their nature or by positive law, are reserved to the Roman Pontiff.

If the Roman Pontiff resigns his office, the resignation is valid without its acceptance by the cardinals or any one else.

These four brief canons embody the Catholic doctrine of the Roman Pontiff, on which many volumes have been written and which is fully treated in every manual of fundamental theology. We will limit our comments to a few canonical observations.

All those who pervert the essential divine organization of the Church as a perfect society of the monarchical type, necessarily deny the power of the Roman Pontiff.

The so-called democrats of the later middle ages (Marsilius, Jandunus, Wiclif, and Hus) were deliberately bent on destroying the pure notion of papal power.[1] But the Jansenists, Gallicans, and Josephinists were also far from the true idea of papal power. They gave the Supreme Pontiff the title "*caput ministeriale,*" somewhat like a premier, or first among equals[2] (*primus inter pares*), but denied to him jurisdictional primacy over bishops and priests.[3] Pius VI, by the "*Auctorem fidei,*" Aug. 28, 1794, condemned the doctrine of the "*caput ministeriale,*" which meant that the supreme power was given to the Church as such, and only by and through the deference and connivance of the Church at large to the Pope. Finally the Vatican Council, summing up the traditional belief and many conciliary decisions, expressed the Catholic belief in its fourth and last session, held on July 18, 1870, which is embodied in our canon.[4]

Hence, (1) the power of the sovereign pontiff is truly a *primacy* of *jurisdiction,* which means not only inspection or direction, but legislative, judiciary, and executive power.[5]

(2) This power is *supreme* by reason of its dignity, because it is not derived from human authority, but is of divine origin, independent of any one in the same category.

(3) It is the *plentitude of power,* because it comprises all and every power needed for the attainment of the end for which the Church was founded. Therefore (a) all matters of faith and morals are subject to this power by reason of the infallible *magisterium;* (b)

1 Cf. Denzinger, *Enchiridion,* ed. 9, 1900, nn. 513, 528, 534, 589.

2 Ed. Richer, *De Ecclesiastica et Politica Potestate,* 1611.

3 Denzinger, *l. c.,* nn. 1366, 1369.

4 *Ibid.,* nn. 1667–1677 (Sess. IV, c. 3, de const. Eccl.).

5 Pius V, "Auctorem fidei," n. 5 (Denzinger, *l. c.,* n. 1368).

the whole ecclesiastical administration belongs to it in virtue of the sacred *ministerium;* (c) the whole government of the Church may be claimed by the Pope by reason of the full and undivided *imperium.*

(4) The power of the Pope is *episcopal,* inasmuch as he is the supreme pastor whom the whole flock, of whatever rite or dignity, by reason of hierarchic subordination must follow and obey, and with whom all must be united.[6]

(5) The power of the Pope is *immediate* — a quality which naturally flows from spiritual sovereignty, but had to be specified against the Febronians,[7] who, as stated above, made the Pope the mere representative or diplomatic agent of the bishops. The supreme power accrues to the Pope not by any concession from or deference on the part of the bishops, but from Christ's promise and actual bestowal.

(6) This power, lastly, is *ordinary,* because supreme, full, and immediate jurisdiction is imparted through and with the office of the successor of St. Peter and rests with him as long as he holds that office, from the moment he accepts the lawfully performed election until his death or resignation. Neither for the validity of the election nor for a resignation is acceptance, confirmation, or anything else required. The reason is not far to seek. The pontificate, being supreme and immediate, requires merely an appropriate human factor or instrument in order to exist. (Election is, we might say, the remote material element, whilst the consent of the elect is *materia proxima,* to which is added the divine form of the primacy embodied in the Roman bishop.)

6 Vat. Conc. sess. IV, c. 3 (Denzinger, n. 1673).

7 Eybel had published a pamphlet: "What is the Pope?" against which Pius VI promulgated the Const. "Super soliditate," Nov. 28, 1786 (Denzinger, n. 1363).

The question may be asked how the phrase "*iure divino*" in can. 219 is to be understood. No Catholic will doubt that the primacy is of divine sanction. But why is it held by the bishop of the Roman See, and not by the bishop of Antioch or the bishop of Alexandria (founded, it is said, by St. Mark, the "spiritual son" of St. Peter)? The majority of authors, theological [8] as well as canonical, maintain that it was by "divine ordinance," by the "providence of God," by a "supernal interposition" that the Roman See was chosen to be the instrument of Peter's Primacy. The proof from tradition and common conviction, therefore, is in favor of the *iure-divino* connection of the Primacy with the Roman See. Yet it must be said, with an author who has written a monograph on the subject and acted as member of the Codification Commission, that no *de fide* definition has been issued on the subject.[9] A purely academical question [10] is, whether a Pope could be deposed if he became a heretic or schismatic. *Nego suppositum.*

Canon 220 mentions the *causae maiores* which are reserved to the Roman Pontiff. Gratian's Decree and the Decretals contain several texts which refer to the so-called *causae maiores.* The text of Gratian, however, is taken largely from apocryphal sources. In one place, for instance, he says, that "all greater affairs must be referred to the Holy See, divine grace thus commanding," and vindicates to the Apostolic See "*ecclesiasticarum summas querelas causarum*" and the condemnation of bishops.[11] Besides, *appeals* to the Holy See are more than once refered to. It is safe to say that, since the synod of Sardica (343), appeals to the Apostolic

8 Cf. Mazzella, *De Religione et Ecclesia,* 1892, p. 731 ff.

9 Msgr. Hollweck, *Der Apost. Stuhl und Rom,* 1895.

10 Aichner, *l. c.,* § 25, 2.

11 C. 15, c. 24, q. 1; c. 6, 3. 3, q.

See[12] were frequent. The canons of this synod had a peculiar fate, for in some versions they were simply attached to the canons of Nicæa, and having no special inscription or enumeration, were accepted as Nicene canons. A Latin translation containing them was circulated in Rome and Gaul, as the Codex Theatinus and others prove, whilst the African Church used copies of the Nicene Council without the canons of Sardica. When Apiarius, a priest of Sicca in Africa, appealed to Pope Zosimus, and the latter accepted the appeal by pointing to the canons of the Nicene Council, the African bishops remonstrated and denied that there were any such "Nicene canons." Both the Pope and the African bishops spoke the truth considering the state of their respective versions. But the African bishops were wrong in denying that appeals to the Holy See are permissible. For Julius I (337–352) had accepted the appeal of St. Athanasius, and the Africans themselves had sent the decrees of two of their councils to the Apostolic See.[13] Besides, it is a historical fact that questions continued to be submitted to Rome, instances of appeals being those of Himerius, Bishop of Tarragona, in 384, of Victricus, Bishop of Rouen, in 403, and of Exuperius, Bishop of Toulouse, in 404. The replies are embodied in the noble epistle of Siricius and Innocent on ecclesiastical discipline.[14] Besides appeals there were other causes brought before the Pope. Thus the restitution of deposed or sentenced bishops, doubtful or contested episcopal elec-

12 Cc. 10, 12, C. 2, q. 2; c. 9, C. 3, q. 6; c. 59, X, II, 28; as to the Sardican canons see Hefele, *Conciliengeschichte*, I, 341 f.; 539 ff.; Maassen, *l. c.*, p. 9 f.; p. 56 ff.

13 Cf. S. Aug., *Serm.* 132, n. 10: "*Jam enim de causa duo concilia missa sunt ad sedem apostolicam. Inde etiam rescripta venerunt; causa finita est, utinam aliquando error finiatur.*"

14 Coustant, *Epp. RR. Pontiff.*, 1721; Duchesne, *l. c.*, p. 37.

tions, the concession of coadjutors, etc. Add to this the convocation of general councils and the solution of doubts concerning articles of faith or ritual questions,[15] and especially, later, the beatification and canonization of saints, the grant of exemptions, the erection of religious orders and congregations, dispensation from and commutation of certain vows, the erection and change of higher ecclesiastical benefices, etc.

An expression in the Gloss (ad. c. x, § I, 7) deserves some attention.[16] "No one," it says, "may appeal from the decision of the Holy See to another authority." The Gallicans had invented a formula, a certain panacea, as they said, for protecting the clergy and bishops from unjust sentences pronounced by Rome. This is the famous *appellatio ab abusu,* an appeal from the spiritual authority to the civil government. But that formula was a mere political measure, devised to hinder the free exercise of the spiritual power in matters proper to it. It was properly dealt with by the condemnation of the so-called Gallican Articles.[17] But there were other errors contained in the Gallican tendencies, which were transplanted to Germany and Austria and other countries, even to the Republic of Switzerland. These are known as the *"placetum regium"* and other outcroppings of a truly autocratic system, which would submit to civil power every official communication of the Supreme Pontiff and of pastors with their flocks.[18] Therefore, quite

15 Cfr. cc. 10, 12, C. 2, q. 6; c. 10, 6°, I, 6; c. un. 6°, III, 5; c. 1, X, II, 7; c. 5, Dist. 17; c. 3, X, III, 42.

16 The verse reads: "Restituit Papa solus, deponit et ipse — Articulos solvit; synodumque facit generalem — Transfert et mutat, *appellat nullus ab ipso* — Dividit ac unit, eximit atque probat."

17 Innocent XI, April 11, 1682; Alexander VIII, "Inter multiplices," Aug. 4, 1690; "Auctorem fidei," Aug. 28, 1794; "Apostolicae Sedis," 1869, n. 6–8; cfr. Charlas, *Tractatus de Libertatibus Eccl. Gallicanae,* 1725, III, 1, 166 ff.

18 Syllabus n. 28; Heiner, *Der*

naturally, our Code insists on the supreme spiritual power being *independent* in its sphere of any human authority. And, truly, if the divinely established government were subject to temporal rulers, the mission of the Church would be jeopardized and often foiled.

In order to complete the observations made thus far, we will add some remarks on

### THE PAPAL TITLES AND INSIGNIA

By the term "title" we understand not only the various nomenclatures which distinguish the Pope, but also the diverse dignities inherent in the papal office. To commence with the latter, three of which have now become merely honorary, there are

1. TITLES CONNOTING PREËMINENCE: (a) *Bishop of Rome, i. e.,* of the diocese within a circumferenece of 40 miles of the City (with the exception of six suburbicarian bishoprics), called in Italian "comarca di Roma," over which the Cardinal Vicar presides with ordinary jurisdiction.[19]

(b) *Metropolitan of the Roman Province,* which at the time of Innocent III comprised the region between the two provinces of Capua and Pisa,[20] and had some significance as long as provincial councils were held in Rome.

(c) *Primate of Italy* and the adjoining islands, Corsica, Sardinia, and Sicily (including Malta).[21]

(d) *Patriarch of the Occident,* in imitation of the Oriental patriarchates.[22]

Of these four titles only the first has a juridical value.

*Syllabus,* 1894, p. 151; Bachofen, *Summa Iuris Ecc. Pub.,* 1910, p. 56 f.; p. 68.

19 Benedict XIV, *De Syn. Dioec.,* II, 3, 2.

20 C. 5, X, I, 23; v. Scherer, *l. c.,* I, 463.

21 C. 11, Dist. 11.

22 C. 23, X, V, 33.

2. HONORARY TITLES expressive of the office and dignity of the Sovereign Pontiff are the following:

*Papa* from the Greek πάππας, *i. e.,* father, which since the fifth century is exclusively used for the pope in the West;[23]

*Apostolicus, viz. Dominus,* in use since the fifth century, taken from the see, called Apostolic; *Pontifex Maximus, Summus.*[24]

*Vicarius Dei* or *Vicarius Christi,* also *Vicarius Petri,* to signify the primacy and source of power, in use since the thirteenth century.[25]

*Servus Servorum Dei,* which dates to the time of Gregory the Great (590–604). Because the monks were called "servants of God," Gregory, a former monk, called himself "*Servus Servorum Dei,*" against the "Universal Patriarch" of Constantinople.[26]

With these titles are in keeping the *cermonies* of the papal court. There is, first, the *adoratio* or reverence given to the Pope. At public cermonies the cardinals are supposed to kiss his foot and hand, the bishops his foot and knee, diplomatic representatives his hand.[27] Formerly the emperors used to hold the *strepa* of the Pope's horse. Now-a-days the Pope is considered the first of sovereigns and in Catholic countries his envoys take precedence over all other diplomatic agents.

The Pope is addressed as "Holy Father," in Latin, *Beatissime Pater, e.g.,* in petitions; *Sanctitas Vestra, Beatitudo Vestra,* although *beatitudo* is also the address of Oriental patriarchs.

23 Coustant, *l. c.,* p. 765.

24 V. Scherer, I, 468. Pontifex Maximus alludes to the pagan Summus Pontifex and to the Jewish Pontiff or Highpriest.

25 Cc. 2, 4, X, I, 7; c. 17, 6°, I, 6.

26 Io. Diac. Vita Greg. (Migne 75, 87).

27 The etiquette is the so-called Spanish; but it is useless to assert that this *adoratio* or worship is intended for the relics sewed in the tip of the slippers.

3. The most remarkable INSIGNIA of the Sovereign Pontiff are these:

At certain solemnities the Pope wears the *tiara* or *triregnum,* a crown about 1½ ft. high with three bands or small diadems, set with precious stones, and with two lappets hanging from the rear. In its present form it dates back to the first half of the fourteenth century (Benedict XII, d. 1342). No juridical significance can be attached to the tiara.[28] It is used at the coronation of the Pope and high solemnities; at liturgical functions the Pope wears the episcopal mitre.

Instead of the crooked pastoral staff of the bishops the Pope uses the *pedum rectum,* a straight cross or staff, at the point of which is a cross, to signify the plenitude of power which the holder exercises in the name of Christ crucified.[29]

Besides, to indicate the fulness of his power, the Pope wears the *pallium* at all functions and without any restrictions as to place. The usual or daily dress of the Pope consists of a cassock of white silk, a white silken skullcap, a pectoral cross, and slippers of red silk.[30]

28 *Cath. Encycl.,* XIV, 717 f. (Braun); Wuescher-Becchi, *Ursprung d. päpstl. Tiara u. d. bischöfl. Mitra,* 1899, shows that the tiara was modelled on the Phrygian cap or *pileus,* and the mitre on a band or scarf (*taenia*) used by priests.

29 C. un. X, I, 15 § 9; v. Scherer, I, 468 f.; Wernz, *l. c.,* II, p. 684.

30 C. 4, X, I, 8; v. Scherer, *l. c.*

## CHAPTER II

### GENERAL (ECUMENICAL) COUNCILS

#### CAN. 222

**§ 1. Dari nequit Oecumenicum Concilium quod a Romano Pontifice non fuerit convocatum.**

**§ 2. Eiusdem Romani Pontificis est Oecumenico Concilio per se vel per alios praeesse, res in eo tractandas ordinemque servandum constituere ac designare, Concilium ipsum transferre, suspendere, dissolvere, eiusque decreta confirmare.**

No general council can be held except by convocation of the Roman Pontiff, who presides over it either himself or by legates, prescribes and assigns the matters to be treated, as well as the order to be followed, transfers, suspends, and adjourns the council and ratifies its decrees.

Among the *causae maiores* reserved to the Roman Pontiff was enumerated the convocation of general councils, and hence this chapter is logically connected with the preceding. But there is also another reason why the Code treats of general councils here. The Pope being the supreme head of the universal Church, and a general council being a lawful gathering of prelates representing the whole body with the consent of the supreme head, it is evident that such an assembly must be the foremost object of the sovereign power. Besides, the bishops being the successors of the Apostles, endowed with power to rule the Church of God, can be called together author-

itatively only by one who enjoys immediate jurisdiction over them.

History testifies that the first four general councils were convoked by civil rulers; but even at these, as the respective *acta* prove, the Popes were legitimately represented by legates.

As to the *necessity* of general councils, it is not absolute, but only *relative*.[1] For the power of the Pope is intrinsically neither enhanced by a general council nor diminished by the absence thereof. But in order to discuss matters thoroughly, and to impress the faithful as well as dissenters more effectively, to give a more widespread influence and application to universal decrees, a general council proves an effective means, especially in times of distress and spiritual calamities.

## Can. 223

**§ 1. Vocantur ad Concilium in eoque ius habent suffragii deliberativi:**

**1.° S. R. E. Cardinales, etsi non Episcopi;**

**2.° Patriarchae, Primates, Archiepiscopi, Episcopi residentiales, etiam nondum consecrati;**

**3.° Abbates vel Praelati *nullius;***

**4.° Abbas Primas, Abbates Superiores Congregationum monasticarum, ac supremi Moderatores religionum clericalium exemptarum, non autem aliarum religionum, nisi aliud convocationis decretum ferat.**

**§ 2. Etiam Episcopi titulares, vocati ad Concilium, suffragium obtinent deliberativum, nisi aliud in convocatione expresse caveatur.**

**§ 3. Theologi ac sacrorum canonum periti, ad Con-**

1 Bellarmine, *De Conciliis*, I, 10; 1892, p. 809 ff. Mazzella, *De Religione et Ecclesia*,

**cilium forte invitati, suffragium non habent, nisi consultivum.**

CAN. 224

**§ 1. Si quis ex vocatis ad Concilium ad normam can. 223, § 1, eidem, iusto impedimento detentus, interesse non possit, mittat procuratorem et impedimentum probet.**

**§ 2. Procurator, si fuerit unus e Concilii Patribus, duplici suffragio non gaudet; si non fuerit, publicis tantum sessionibus interesse potest, sed sine suffragio; expleto autem Concilio, huius acta subscribendi ius habet.**

If one of those called to the council is lawfully prevented from attending, let him send a procurator and prove the obstacle.

The procurator, although being perhaps a father of the council, enjoys but one vote; if he is not a father of the council he has no deliberative vote, but may be present at the public sessions and sign the acts after the council is finished.

CAN. 225

**Nemini eorum qui Concilio interesse debent, licet ante discedere, quam Concilium sit rite absolutum, nisi a Concilii praeside cognita ac probata discessionis causa et impetrata abeundi licentia.**

The fathers of a council are not allowed to leave until it is duly concluded, unless the president of the council grants leave after having duly considered and approved the reasons for departure.

The first of these three canons speaks of those who are called (*vocantur*) to attend a council. The term *vocantur* is to be taken as indicating a matter of fact, not a law or

rule. This is plain from the persons enumerated. For *cardinals,* if not bishops, are called in virtue of their privileged office, which the Vatican Council silently admitted,[2] as does also our Code.

Those who *must* be called are the *bishops,* be they patriarchs, primates, archbishops, or simple bishops, provided they are residential, and not merely titular. The reason why the residential bishops must be called lies in their twofold character of pastors and teachers. This double office they exercise in a twofold way: (1) As successors of the Apostles they share in the government of the universal Church and form a body analogous to the college of the Apostles, with whom Christ remains until the end of time. (2) As residential bishops they exercise their office in a determined district or diocese, which, however, is part and parcel of the universal Church.[3] This power is jurisdictional in a particular sense, while the power they exercise over the whole Church is jurisdictional in a general sense, so far, namely, as they convene in council under their legitimate superior.

The next question would be, whether the right of a bishop to be called to a general council depends on episcopal consecration or jurisdiction. The Vatican Council doubtless took the view that it is a right emanating directly from jurisdiction. This is implicitly also the standpoint of our Code, otherwise a bishop confirmed by Rome but not yet consecrated, could not be called. The point is palpably illustrated by the debate concerning the admission of *titular bishops.* After long deliberation the commission of cardinals entrusted with the investigation of the matter decided that such bishops are to be called, as they are bound by the oath "*vocatus ad synodum*

2 Cfr. Granderath-Kirch, *Geschichte des Vatik. Konzils,* 1903, I, 83, 440.

3 *Ib.,* p. 84 ff.

*veniam.*" The *quaestio iuris* the commission would not touch.[4] Our Code says, § 2, "*etiam episcopi titulares, vocati ad concilium.*" The delicate question could, of course, be solved only by answering two others: (1) Is the *magisterium* an act of jurisdiction or of spiritual power based on the power of orders? and (2) Is episcopal jurisdiction derived directly from God by virtue of consecration, or from the Pope? The commission would not solve the problem, as the time was too short. It only took the historical point of view, by which it was safely guided, thus making the council what it ought to be; "*concilium episcoporum est,*" as the Council of Chalcedon says.[5]

But there is an unmistakable hint as to the viewpoint which the Vatican Council as well as our Code take with regard to the twofold question proposed above: the office of teacher and pastor follows jurisdiction, not consecration, and this jurisdiction is supposed to be given by the Supreme Pontiff. Hence abbots *nullius* are called to the council, although many of them are not consecrated; — in the Cassinese Congregation they are not even blessed, though some are real *abbates nullius.*[6] For these abbots *nullius* as well for other abbots mentioned S. Sanguineti, S. J., gave his votum.[7] He proved that since the second Nicene Council (787) the monastic bodies and their superiors took a conspicuous part in the affairs of the Church, but their participation in councils was a privilege, not a strict right, though abbots possess a quasi-episcopal jurisdiction, which is the reason of their being admitted to councils. But when he comes

4 *L. c.*, p. 93.
5 Sess. IV.
6 Those of Monte Cassino, S. Paolo fuori le mura, Cava de' Tirreni.
7 Granderath-Kirch, *l. c.*, p. 99.

to the point — *punctum saliens* — whether all abbots, or only some of them, should be admitted, Fr. Sanguineti's conclusions seem not to tally with his premises. For in the Benedictine Order all abbots *regiminis* are endowed with quasi-episcopal jurisdiction, and neither the Abbot Primate nor the Abbot President possesses real jurisdiction over the individual abbots. Hence the distinction between heads of monastic congregations and superiors of single autonomous monasteries is merely extrinsic. We fail to perceive the intrinsic reason of the distinction made, upon the opinion of Sanguineti, by the commission of cardinals in 1868 and now adopted by the Code. One reason advanced at the meeting, why not all abbots should be admitted, we understand, namely, that their number would be so great as to displease the bishops.[8] *Transeat!* The superiors of non-exempt congregations[9] were not entitled to be present at general councils, which exclusion was logically based upon the theory of quasi-episcopal jurisdiction.

Concerning *proxies,* our Code embodies the practice of the Vatican Council.[10] If a procurator is at the same time a "father" of the council, *i. e.,* entitled by law to a deliberative vote, he enjoys only one vote, for the reason that a bishop or pastor, being judge and counsellor at the assembly, cannot impart his judgment or counsel to another. Concerning bishops, the matter is still more palpable, for, being chosen by the Holy Ghost, they cannot communicate that personal gift to another.[11] A procurator who does not belong to the "fathers" of the council enjoys no deliberative vote, unless, of course,

8 *Ib.,* p. 104.

9 Exempt congregations are the Redemptorists and the Passionists.

10 Granderath-Kirch, *l. c.,* I, 108 ff.

11 *Ib.,* p. 115; Benedict XIV, *De Syn. Dioec.,* III, 12, 4.

the Pope expressly grants him one, as Paul III allowed [12] the procurators of some German bishops a decisive vote, which privilege, however, was repealed by Pius IV.[13] Besides, the office of a procurator is to explain and prove the reasons why his *mandans* has not personally appeared, although he was under obligation to attend.[14] The investigation of such cases must be laid either before a commission specially assigned by the council, or before the presiding officer. The latter must also take cognizance of and approve the reasons for a departure before the close of the council.

A last question may perhaps be of some juridical interest, *viz., how many fathers* must be present in order to call a council ecumenical? This question Bellarmine [15] has answered by saying that the number cannot be defined but should be such as to constitute a moral representation of the whole Church. He adds that at least some bishops should be present from the majority of provinces. The councils of the East had but few representatives from the Occident, whose small number was supplied by the papal representatives.

ORDER AND AUTHORITY OF A GENERAL COUNCIL

CAN. 226

**Propositis a Romano Pontifice quaestionibus Patres possunt alias addere, a Concilii tamen praeside antea probatas.**

CAN. 227

**Concilii decreta vim definitivam obligandi non ha-**

12 "Dudum cum fide," Dec. 5, 1545.
13 Aug. 26, 1562.
14 C. 4, X, II, 24; Benedict XIV, *De Syn. Dioec.*, III, 12, 5.
15 *De Concil.*, I, c. 17; Mazzella, *l. c.*, p. 801.

**bent, nisi a Romano Pontifice fuerint confirmata et eius iussu promulgata.**

CAN. 228

**§ 1. Concilium Oecumenicum suprema pollet in universam Ecclesiam potestate.**

**§ 2. A sententia Romani Pontificis non datur ad Concilium Oecumenicum appellatio.**

To the questions proposed by the Roman Pontiff others may be added by the Fathers, provided they are approved by the presiding officer.

Conciliary decrees have no obligatory force unless they are ratified by the Roman Pontiff and promulgated by his command.

An ecumenical council possesses supreme power over the whole Church.

From the judgment of the Roman Pontiff no appeal is admissible to a general council.

CAN. 229

**Si contingat Romanum Pontificem, durante Concilii celebratione, e vita decedere, ipso iure hoc intermittitur, donec novus Pontifex illud resumi et continuari iusserit.**

Should the Roman Pontiff die during the council, the latter is suspended until the new Pontiff gives orders to resume and continue it.

As to the matter and the order of proposals, it is well known that preparatory sessions are held and various committees chosen. No general rule is laid down, and prelates who wish to make new proposals must submit them to the President of the council, in order that they may be sifted and discussed.

Concerning the *vis definitiva,* it should be remembered that the fathers of the council are judges concerning all matters proposed to their acceptance or rejection. Wherefore those who are mentioned in can. 233, § 1 and § 2 subscribe the acts with the phrase *definiens subscripsi.* However, although these are regular judges, the final sentence remains with the Pope. He it is that *ratifies* the decrees either at the council itself, if he is personally present, or when they are submitted to him, generally by the secretary of the council. It may happen that some decrees are ratified, while others are rejected, as, for instance, the third cannon of the I Council of Constantinople and the twenty-eighth of Chalcedon were rejected by the Popes.[16]

As to the *authority* of a general council, it is evident that, if it deserves the name, its dogmatic decrees bind the whole Church, Oriental as well as Occidental. But the disciplinary decrees of Occidental councils, unless directly applied to the Oriental Church, are not intended for the latter.[17] But there is also another intent in can. 228, § 1, that is to reject the pretention of Hus,[18] that every council called general obliges the whole Church, and especially to condemn the 29th thesis of Luther,[19] that it is allowed to reject or even rebel against the decrees of an ecumenical council. The same canon rejects the famous "*conciliar theory,*" which, approved by Gerson, was a leading topic of discussion at the end of the fourteenth and the beginning of the fifteenth centuries, and culminated in the assertion of the superiority of a general council over the Pope, thus destroying the true idea of

16 Also the conciliar decrees of the council of Basle (1431) were not all ratified by the pope.

17 Can. 1 of our Code.

18 Art. 5 (Denzinger, *Enchiridion,* n. 551).

19 Denzinger, *l. c.,* n. 653.

the papacy.[20] Hence no appeal is possible from the Pope to an ecumenical council. To admit such an appeal would, moreover, be tantamount to maintaining that a council can appeal to itself, since a general council is unthinkable without the supreme head. Wherefore Pope Zosimus (418) justly wrote to Aurelius, bishop of Carthage, that the authority of the Apostolic See is so great that no one can revise its sentences.[21]

Regarding the *death of the Roman Pontiff* during a council, Pius X established that as soon as the notice thereof should reach the council, wherever it be held, all sessions and meetings and enactments of decrees or canons should be immediately stopped, and nothing further done until the new Pontiff ordered its resumption and continuance. A council has no share in the election of the Pontiff, this prerogative being reserved to the Cardinals.[22]

20 Pius II (who as Aeneas Silvius inclined to the same theory) "Execrabilis," Jan. 18, 1459; Conc. Vatic., Sess. IV, c. 3.

21 Ep. 12 (Migne, 20, 676).

22 "Vacante Sede Apostolica," n. 28.

# CHAPTER III

## THE CARDINALS OF THE HOLY ROMAN CHURCH

Pope Fabian (236–251) divided the (14) regions of Augustus into seven ecclesiastical districts, over which seven *deacons* should preside, who took care of the temporal affairs of the Church. With the growth of the number of the faithful the number of these *diaconiae* also increased. In the seventh century we read of *diaconiae monasterii,* entrusted to monks, from among whom the superior of each *diaconia* or charitable institute was taken. Henceforth an indefinite number of regionary deacons appear, and their office or charge is designated according to the name of the church attached to each *diaconia.* Thus in the pontificate of Hadrian I (772–775) 18 such deacons are mentioned. In the eleventh century the deacons presiding over these institutes were called *cardinales diaconi.*[1] These formed a conspicuous part of the Roman clergy and were often employed for papal legacies and other important affairs.

At the time of the same Pope, Fabian, and most probably even earlier, there were in the city of Rome a number (at first 28, later 48 or 49) churches (more particularly those built above the sepulchres of martyrs) which were called *tituli,* after the saint whose relics were there preserved, or for some other special reason (*e. g., titulus pastoris,* St. Pudenziana). Furthermore there were four

1 *Liber Pontificalis,* ed. Duchesne, 1880, I, 148, 519, 522, 364; Kehr, *Regesta Pontif. Rom.,* 1906, I, 3 ff.

*principal churches,*[2] which were considered baptismal churches and penitential churches, and around which the other churches or *tituli* with their clergy were grouped. For as each church had its clergyman, especially assigned to or incardinated into it, so the principal churches had their special or incardinated clergy, who had to serve there and nowhere else. Here we have the origin of the name "cardinal"; it means a clergyman incardinated in a special church which enjoys a certain preëminence, and since the Church of Rome was considered *the* principal church among all the churches of the world, its clergy, especially those incardinated in one of the ancient *tituli,* took precedence over the rest in rank and dignity. To the Roman clergy employed in these titular churches, after the 16th century,[3] were reserved the title and rank of *cardinals.*

Add to these cardinal deacons and cardinal priests the *seven suburbicarian bishops,* who since the time of Stephen III (768–772) were summoned to perform the liturgical functions each week at the Lateran Basilica,[4] and you have the College of Cardinals.

The energetic John VIII (872–882) employed the cardinal clergy as counsellors, who had to meet at one or the other *diaconia* or church at least once a month, and twice a week at the papal palace in the Lateran.[5] Still more conspicuous and important grew the cardinal's office after Nicolaus II (1059) and Alexander III (1179) placed the papal election entirely into the hands of the

2 Pope Simplicius (468–483) "constituit ad S. Petrum apostolum et ad S. Paulum apostolum et ad S. Laurentium martyrem ebdomadas ut presbyteri manerent propter penitentes et baptismum." *Lib. Pont.,* I, 249; later on S. Maria ad praesepe was added to the three.

3 There were "cardinals" also at Cologne. Hinschius, *K.-R.,* I, 321 f.

4 Mabillon, *Museum Italicum,* 1724, II, 574.

5 Kehr, *l. c.,* I, 6, n. 8.

cardinals of the Roman Church.[6] Under Innocent III (1196–1229), after synods had come into disuse, the Cardinals formed a permanent *consistory* of the Pope, and were convoked two or three times a week, or as often as affairs were urgent.

It was but natural that the *precedence* of Cardinals over other prelates should gradually manifest itself. At the IInd Council of Lyons (1174) they rank higher than archbishops and bishops; in the 14th century they precede even the patriarchs. Two centuries later no prelate outside the college of Roman Cardinals was allowed to call himself cardinal. Finally, the *Ceremoniale Cardinalium* (May 4, 1706) vindicated to the cardinals the title of *Princes of the Holy Roman Church.*[7]

The *number of Cardinals* differed at various times, according to the number of titular churches. The Council of Constance and Bâsle allowed only 24, but Sixtus V established 70, in imitation of the 70 seniors of the old Law, 14 deacons, 50 priests and six bishops.[8]

### OFFICE AND RANK OF CARDINALS

### CAN. 230

**S. R. E. Cardinales Senatum Romani Pontificis constituunt eidemque in regenda Ecclesia praecipui consiliarii et adiutores assistunt.**

The Cardinals form the senate of the Roman Pontiff and are his main counsellors and helpers in the government of the Church.

6 C. 1, Dist. 23; c. 6, X, I, 6; Galante, *Fontes Iuris Canonici*, 1906, p. 414 f.

7 Bangen, *Die Röm. Curie*, 1864, p. 462; Hinschius, *l. c., I*, 319.

8 "Postquam," Dec. 3, 1586; "Religiosa," April 13, 1587; Galante, *l. c.*, 467 ff.

CAN. 231

**§ 1. Sacrum Collegium in tres ordines distribuitur: episcopalem, ad quem soli pertinent sex Cardinales dioecesibus suburbicariis praepositi; presbyteralem, qui constat Cardinalibus quinquaginta; diaconalem, qui quatuordecim.**

**§ 2. Cardinalibus ordinis presbyteralis ac diaconalis suus cuique titulus aut diaconia in Urbe assignatur a Romano Pontifice.**

The Sacred College is divided into three orders: that of bishops, to which class the six suburbicarian prelates belong; that of priests, fifty in number; that of deacons, fourteen in number.

Each of the cardinal priests and deacons has his own title or *diaconia* assigned to him by the Roman Pontiff.

It is not necessary to enlarge upon the exalted office of cardinals. They are, as Eugene IV said, "the hinges upon which the government of the whole Church turns," [9] or, as Sixtus V called them, the "two eyes of the Pontiff." [10]

The six *suburbicarian bishoprics* are: Porto S. Rufina, Albano, Palestrina, Sabina, Frascati, and Velletri.[11] The cardinal priests' titles are fifty different churches, to which, as said above, a certain number of clerics, among them a presbyter, were assigned. The deacons' churches were originally charitable institutions with oratories attached to them.

The cardinals take solemn *possession* of their titles after they have been announced in the public consistory. They are, or were in former times, supposed to take ma-

9 "Non mediocri," 1439, § 4.
10 "Postquam," Dec. 3, 1586.
11 Pius X, "Edita a Nobis," May 5, 1914 (*A. Ap. S.*, VI, 219 f.).

terial care of their churches, *juxta posse*,[12] and enjoy a certain jurisdiction over the titular clergy.[13]

### CREATION AND QUALIFICATIONS OF CARDINALS

#### CAN. 232

§ 1. Cardinales libere a Romano Pontifice ex toto terrarum orbe eliguntur, viri, saltem in ordine presbyteratus constituti, doctrina, pietate ac rerum agendarum prudentia egregie praestantes.

§ 2. A cardinalatus dignitate arcentur:

1.° Illegitimi, etiamsi per subsequens matrimonium fuerint legitimati; itemque alii irregulares vel a sacris ordinibus impediti secundum canonicas sanctiones, etsi cum ipsis auctoritate apostolica fuerit ad ordines et dignitates etiam episcopalem dispensatum;

2.° Qui prolem etiam ex legitimo matrimonio susceptam, vel nepotem ex ea habent;

3.° Qui primo aut secundo gradu consanguinitatis alicui Cardinali viventi coniuncti sunt.

#### CAN. 233

§ 1. Cardinales creantur et publicantur a Romano Pontifice in Consistorio sicque creati et publicati obtinent ius ad electionem Romani Pontificis et privilegia de quibus in can. 239.

§ 2. Si tamen Romanus Pontifex creationem alicuius in Consistorio annuntiaverit, eius nomine sibi in pectore reservato, sic promotus nullis interim gaudet

12 The *Liber Pontificalis* records many donations made by popes to their former titular churches, and well known is the generosity of the late Cardinal Rampolla to S. Cecilia.

13 Cf. can. 240, § 2.

Cardinalium iuribus aut privilegiis, sed, postquam a Romano Pontifice eius nomen publicatum fuerit, iisdem fruitur a publicatione, iure vero praecedentiae a reservatione in pectore.

CAN. 234

Promotus absens a Curia debet in recipiendo bireto rubro iurare se intra annum, nisi legitimo detineatur impedimento, Summum Pontificem aditurum.

CAN. 235

Nisi aliter in casibus particularibus fuerit a Sancta Sede provisum, per promotionem ad sacram purpuram non solum ipso facto vacant dignitates omnes, ecclesiae, beneficia quae promotus possideat, sed etiam pensiones ecclesiasticae amittuntur.

The dignity or office of a cardinal is of merely human or rather ecclesiastical institution,[14] but from time immemorial was reserved exclusively to the Pope, although, as said above, a cardinal clergy existed also elsewhere.[15] Hence the admission of so-called "*crown cardinals,*" whom certain monarchs recommended to the Pope, was really nothing else but connivance on the part of the Holy See, and constituted no right in the strict sense of the word. The question put to the Cardinals in the secret consistory: "*Placetne vobis,*" by which the Pope seems to ask the consent of the *patres purpurati* already created, is a mere ceremony.[16]

14 A solid doubt or controversy as to the ecclesiastical institution of the cardinalate, as Smith, *Elements,* I, n. 488 insinuates, cannot be maintained; cfr. Wernz, *l. c.,* II, n. 624 (p. 706, ed. 1.).

15 C. 17, 6°, I, 6.

16 Wernz, *l. c.,* n. 625.

The *qualifications* required for the cardinalate are partly stated by the Council of Trent,[17] and partly in the Constitution *"Postquam"* of Sixtus V, Dec. 3, 1585. At present, in addition, the priesthood is absolutely required.

Excluded by law (from which, however, the Pope may grant a dispensation) are the following:

(a) Persons born of *illegitimate* wedlock, even though they be legitimated by the subsequent marriage of their parents, or rendered capable of holding ecclesiastical dignities by Apostolic dispensation; hence the parents must have lived in lawful wedlock at the birth of the candidate.

(b) Those who are *irregular,* either *defectu* or *delicto,* for the reception of sacred orders or for the exercise thereof, although made capable by Apostolic dispensation.

(c) All persons who have legitimate or illegitimate offspring, male or female, or grandsons or granddaughters;

(d) *Brothers* who are either of the same parents or of one parent only: father's or mother's, brother's or sister's sons (cousins-german), paternal or maternal uncles, and grandsons of either father's or mother's side cannot be cardinals at the same time.[18]

The *mode of creating Cardinals* is left to the Roman Pontiff. However, as a rule, the Pope creates them and publishes their names in a secret consistory,[19] at which only the Cardinals already created are *de iure* present, and from this moment the new cardinals begin to enjoy cardinalitial rights and privileges. In a sub-

17 Sess. 24, c. 1 de ref.

18 "Postquam," § 17 f.

19 Pius V, Jan. 26, 1571; Gregory XV, "Decet," March 12, 1622, modified the Constitution of Eugene IV, "In eminenti," Oct. 26, 1431.

sequent *public consistory,* to which, among others, the diplomatic corps, dignitaries, clergy and laity are admitted, they receive the red hat and take the oath of fidelity to the Pope.

A special mode, which was first made use of by Martin V (1417–1431), is that of reserving a cardinal's name *in petto; i. e.,* the Pope, by an act of his will, creates a cardinal, but for special reasons does not immediately publish his name. The one thus made a cardinal "*in petto*" must await publication before he can exercise the rights and prerogatives of a cardinal; but his precedence dates from the time of the secret consistory when the Pope announced the reservation. Thus Pius IX, on March 18, 1875, created five cardinals "*in petto.*" Had he died before making their names known, the five *purpurae* would have died with him, had he not provided a means of carrying out his will by testament. However, this is an unsafe way, liable to cause dispute and confusion, and it is better that the names of such *reservati* be published before the Pope's demise.[20]

Persons promoted to the cardinalate while absent from Rome, generally receive the red *biretta* by a special envoy, and upon receiving it must promise under oath to visit Rome within a year.[21]

What canon 235 states is nothing else but the general prohibition of a *plurality of offices.* However, concerning the loss of *dignities,* it is evident that the episcopal dignity is not forfeited, but rather exalted by the cardinalate, though as to *churches* it must be noticed that a bishop promoted to the cardinalate only virtually, not actually, loses his bishopric, insofar namely, as the pope is entitled to keep him at his court if he deems fit. As

20 Cfr. Santi-Leitner, *l. c.,* I, 31, n. 23 f.

21 "Postquam," § 19.

to benefices other than episcopal, they are lost; hence also *commendae* seem, at least *de iure,* now lost as well as pensions.[22]

OPTION

CAN. 236

§ 1. Per optionem in Consistorio factam et a Summo Pontifice approbatam, possunt, servata prioritate ordinis et promotionis, Cardinales ex ordine presbyterali transire ad alium titulum et Cardinales ex ordine diaconali ad aliam diaconiam et, si per integrum decennium in ordine diaconali permanserint, etiam ad ordinem presbyteralem.

§ 2. Cardinalis ex ordine diaconali, transiens per optionem ad ordinem presbyteralem, locum obtinet ante omnes illos Cardinales presbyteros, qui post ipsum ad sacrae purpurae honorem assumpti sunt.

§ 3. Suburbicaria si vacet sedes, Cardinales ex ordine presbyterali, qui momento vacationis praesentes fuerint in Curia vel ab ea absentes ad tempus ob sibi commissum negotium aliquod a Romano Pontifice, optare eam possunt in Consistorio, servata prioritate promotionis.

§ 4. Cardinales quibus una ex ecclesiis suburbicariis est assignata, aliam optare nequeunt; cum vero Cardinalis gradum Decani attigerit, dioecesim suam Ostiensi cumulat, quae proinde cum alia atque alia dioecesi suburbicaria in persona Cardinalis Decani semper coniungitur.

22 It is a fact, as Wernz (*l. c.*, II, n. 632) justly observes, that *commandae* were so far retained, and can. 1298 seems to confirm that view; but our canon is absolute, wherefore to combine both, we must say that *commendae* possessed before promotion are lost, but may be re-obtained with the permission of the Pope after promotion.

This canon deals with the *right of option, i. e.,* the right of a Cardinal to choose a higher rank, or another church within the same rank of a better class or greater renown by reason of antiquity or distinction and income. This is especially the case in the suburbicarian bishoprics. Velletri has for centuries been united with Ostia, whose cardinal bishop always was and still is dean of the Sacred College. Pope Pius X, the solicitous pastor, rearranged the suburbicarian sees. He assigned suffragans to all of them (Velletri and Sabina had suffragans before) [23] with a salary of six thousand Lire ($1150), besides other rights and prerogatives. Four years later he separated Velletri from Ostia, which latter is no longer a suburbicarian see, but always in the hands of the Cardinal Dean. There being only six suburbicarian sees and six cardinal bishops, it happens that the Cardinal Dean is bishop of a real suburbicarian bishopric and at the same time bishop of Ostia.[24] The reason for this change is obvious. The Pope wished to remedy the frequent changes of the holders of these sees, which could only be achieved by uniting Ostia [25] with one of the six other sees and denying the right to all of the incumbents. Ostia having always been the privileged see to which the rank of dean was attached, it was natural that this see should not be suppressed, but made an additional title to one of the other suburbicarian sees: Porto S. Rufina, Albano, Palestrina, Sabina, Frascati, Velletri. Thus now the rank of dean does not depend on the see of Ostia, but solely on the time of promotion to a suburbicarian bishopric. We may add that the suf-

23 "Apostolicae Romanorum," April 15, 1910 (*A. Ap. S.*, II, 277 ff.).

24 "Edita a Nobis," May 5, 1914 (*A. Ap. S.*, VI, 219 ff.).

25 The diocese of Ostia is insignificant as to population.

fragans of these six sees have again been abolished and the *status quo* restored.[26]

THE SACRED COLLEGE AS A CORPORATION

CAN. 237

**§ 1. Sacro Cardinalium Collegio praeest Decanus, idest antiquior promotione ad aliquam sedem suburbicariam, cui tamen nulla est in ceteros Cardinales iurisdictio, sed ipse primus habetur inter aequales.**

**§ 2. Vacante decanatu, ipso iure succedit Subdecanus, sive is tempore vacationis sit praesens in Curia, sive in sua suburbicaria dioecesi commoretur, sive absit ad tempus ob sibi commissum munus a Romano Pontifice.**

Since the time of Alexander III (1159–1181), when the cardinal clergy of Rome obtained the exclusive power of electing the Pope,[27] the tendency to corporative union among them asserted itself more and more. In course of time they also increased their independence and improved their material condition,[28] so that their revenues became far from insignificant. The temporal administration was in the hands of a chamberlain (*camerlengo*) elected by the body of cardinals, who, however, must not be confounded with the *camerlengo* of the Holy Roman Church. Their income was distributed twice a year among the cardinals *de curia,* including the papal legates. This distribution was called *rotulus cardinalitius.*[29] Our

26 Benedict XV, "Exactis," Feb. 1, 1915 (*A. Ap. S.,* VII, 229 ff.); the other enactments are left untouched in the Code.

27 C. 6, X, I, 6 de electione.

28 Cf. Sägmüller, *Tätigkeit u. Stellung der Kardinäle,* 1896, p. 170 ff.

29 Benedict XIV, "*In regimine,*" Feb. 3, 1745, complains of cardinals, who are not *de curia,* coming to Rome twice a year simply to receive the rotulus; cfr. Bened. XIII, "*Romani Pontificis,*" Sept. 7, 1724; Clement XII, "*Pastorale officium,*" Jan. 10, 1731.

Code is silent about the *camerarius,* whilst the dean and subdean are mentioned. It is a fact that the significance of the College as such, as well as the *rotulus,* have lost much of their former importance.

### DUTIES AND PRIVILEGES OF CARDINALS

### Can. 238

**§ 1. Cardinales tenentur obligatione residendi in Curia, nec fas est ipsis ab eadem discedere sine licentia Romani Pontificis, salvo praescripto §§ 2, 3 huius canonis.**

**§ 2. Haec obligatio urget quoque Cardinales Episcopos suburbicarios; sed ipsi non indigent licentia ut sese conferant ad dioeceses sibi commissas, quoties opportunum iudicaverint.**

**§ 3. Cardinales qui sunt Episcopi alicuius dioecesis non suburbicariae, lege residendi in Curia eximuntur; sed cum ad Urbem venerint, Summum Pontificem adeant, nec ab Urbe discedant antequam ab eodem abeundi licentiam impetraverint.**

The duty of residence follows from the nature of the cardinalitial office, the Cardinals being counsellors and assistants to the Sovereign Pontiff.[30] Although the suburbicarian cardinal bishops are bound by the law of residing in Rome, yet the Pope always grants them tacit, and now through the Code express permission to visit their dioceses, thus interpreting, not abolishing, the divine law of residence.[31]

What we said above concerning the loss of a bishopric, which naturally follows one's elevation to the cardinalate, is here corroborated. It is an implied dispensation from

30 C. 17, 6°, I, 6.

31 Benedict XIV, "Ad universae," Sept. 3, 1746; *De Syn. Dioec.,* VII, 1, 7.

the law prohibiting a plurality of offices. Diocesan residence is here preferred to residence *in curia.*

## CAN. 239

1. Praeter alia privilegia quae in hoc Codice suis in titulis enumerantur, Cardinales omnes a sua promotione in Consistorio facultate gaudent:

1.° Audiendi ubique terrarum confessiones etiam religiosorum utriusque sexus et absolvendi ab omnibus peccatis et censuris etiam reservatis, exceptis tantum censuris Sedi Apostolicae specialissimo modo reservatis et illis quae adnexae sunt revelationi secreti S. Officii;[32]

2.° Sibi suisque familiaribus[33] eligendi sacerdotem confessionibus excipiendis, qui, si iurisdictione careat, eam ipso iure obtinet, etiam quod spectat ad peccata et censuras, reservatas quoque, illis tantum censuris exceptis, de quibus in n. 1;

3.° Verbum Dei ubique praedicandi;

4.° Celebrandi vel alii permittendi ut coram se celebret unam Missam in feria V maioris hebdomadae ac tres Missas in nocte Nativitatis Domini;

5.° Benedicendi ubique, solo crucis signo, cum omnibus indulgentiis a Sancta Sede concedi solitis, rosaria, aliasque coronas[34] precatorias, cruces, numismata, statuas, scapularia a Sede Apostolica probata eaque imponendi sine onere inscriptionis;

32 This oath is imposed on the employees of the Holy Office and the S. C. Consistorialis; cfr. *A. Ap. S.*, I, 82.

33 *Familiares* are those who habitually serve cardinals or bishops as domestics and depend on them for their livelihood; cfr. Reiffenstuel, II, 20, n. 122.

34 Other *coronae* or rosaries are those of St. Brigid, of the Seven Sorrows of the B. V. Mary, and of the Immaculate Conception, the *corona Domini;* cfr. Putzer, *Comment. in Facult. Apost.*, 1897, p. 355.

6.° Sub unica benedictione erigendi, in ecclesiis et oratoriis etiam privatis aliisque piis locis, stationes *Viae Crucis* cum omnibus indulgentiis, quae huiusmodi pium exercitium peragentibus impertitae sunt; nec non benedicendi pro fidelibus, qui causa infirmitatis vel alius legitimi impedimenti sacras stationes *Viae Crucis* visitare nequeant, Crucifixi icones [35] cum applicatione omnium indulgentiarum devoto exercitio eiusdem *Viae Crucis* a Romanis Pontificibus adnexarum;

7.° Celebrandi super aram portatilem non solum in domo propriae habitationis, sed ubicunque degunt; et permittendi ut alia Missa, ipsis adstantibus, celebretur;

8.° Celebrandi in mari, debitis cautelis adhibitis; [36]

9.° In omnibus ecclesiis et oratoriis Missam celebrandi proprio calendario conformem;

10.° Fruendi altari privilegiato personali quotidiano;

11.° Lucrandi in propriis sacellis indulgentias, ad quas acquirendas praescripta sit visitatio templi alicuius vel publicae aediculae civitatis seu loci, in quo Cardinales actu commorentur, quo privilegio etiam eorum familiares frui possunt;

12.° Benedicendi ubique populo more Episcoporum; sed in Urbe in ecclesiis tantum, piis locis et fidelium consessibus;

13.° More Episcoporum gestandi crucem ante pectus etiam supra mozetam atque utendi mitra et baculo pastorali;

14.° Sacrum celebrandi in quolibet privato sacello

35 Cf. Putzer, *l. c.*, p. 366 f.

36 Cfr. can. 349, where the conditions are mentioned in the commentary.

sine praeiudicio illius qui indulto gaudet;[37]

15.° Pontificalia cum throno et baldachino peragendi in omnibus ecclesiis extra Urbem, Ordinario praemonito, si ecclesia sit cathedralis;

16.° Honoribus locorum Ordinariis tribui solitis fruendi quocunque se conferant;

17.° Fidem faciendi in foro externo, de oraculo pontificio testantes;[38]

18.° Fruendi sacello ab Ordinarii visitatione exempto;

19.° De reditibus beneficiariis libere disponendi etiam per testamentum, salvo praescripto can. 1298;

20.° Consecrationes et benedictiones ecclesiarum, altarium, sacrae suppellectilis, Abbatum aliasve similes, excepta oleorum sacrorum consecratione, si Cardinalis charactere episcopali careat, ubique locorum, servatis servandis, peragendi, firmo praescripto can. 1157;

21.° Praecedendi omnibus Praelatis etiam Patriarchis, immo ipsis Legatis Pontificiis, nisi Legatus sit Cardinalis in proprio territorio residens; Cardinalis autem Legatus a latere praecedit extra Urbem omnibus aliis;

22.° Conferendi primam tonsuram et ordines minores, dummodo promovendus habeat dimissorias proprii Ordinarii litteras;

23.° Ministrandi sacramentum confirmationis, firmo onere inscriptionis nominis confirmati ad normam iuris;[39]

24.° Concedendi indulgentias ducentorum dierum,

37 Hence the chaplain may say another Mass, at which those endowed with the indult may assist, as well as at that of the Cardinal.

38 Cfr. can. 79; a privilege given orally by the pope, but testified to by a cardinal, may be vindicated also in *foro externo*.

39 Cfr. can. 798 f.

etiam toties quoties lucrandas, in locis vel institutis ac pro personis suae iurisdictionis vel protectionis; item in aliis locis, sed a praesentibus solummodo, singulis vicibus, lucrandas.[40]

§ 2. Cardinalis Decanus gaudet privilegio ordinandi et consecrandi electum Pontificem, si hic ordinatione vel episcopali consecratione indigeat, et tunc pallio utitur; quod privilegium, absente Cardinali Decano, competit Subdecano, eoque etiam absente, antiquiori Cardinali Episcopo suburbicario.

§ 3. Demum Cardinalis Proto-diaconus pallia Archiepiscopis et Episcopis privilegio fruentibus eorumve procuratoribus, vice Romani Pontificis, imponit; et nomen novi electi Pontificis populo annuntiat.[41]

To this specific, though not quite exhaustive,[42] enumeration of privileges we add the *insignia* of cardinals:

(1) The red hat granted by Innocent IV (1245) to cardinals of the secular and by Gregory XIV (1591) also to those of the regular clergy;

(2) The red biretta, in use probably since Paul II (1464);

(3) The red mantle or sacred purple, in use since Boniface VIII. The Cardinals of the regular (exempt) clergy, with the exception of the Society of Jesus,[43] retain in their dress the color of their order.

40 This would mean that those present in the places subject to the jurisdiction of the Cardinal could gain the indulgence as often as the Cardinal would grant it, even several times in one day, nay that the indulgence would, as it were, be attached to the place itself; whilst outside the institutes of their protection or jurisdiction, this indulgence could be gained only once a day by those personally present.

41 The announcement is made by the cardinal deacon from the balcony of St. Peter's, which is directed towards the piazza.

42 Other privileges are mentioned in can. 2227, 2241–44.

43 The former cardinal Vaszary of Hungary, O.S.B., had the privilege of wearing the purple dress.

In the seasons of Advent and Lent the crimson gives way to violet.

(4) The title "Eminence," or *eminentissime princeps,* was so strongly insisted on by Urban VII, that a refusal to acknowledge it was held sufficient to cause a break of diplomatic relations.[44]

### RIGHTS OF CARDINALS IN THEIR TITLES AND SEDE VACANTE

### CAN. 240

§ 1. Cardinalis ad sedem suburbicariam promotus et in eiusdem possessionem canonice immissus est verus Episcopus suae dioecesis, eaque potestate in eam pollet, quam Episcopi residentiales in propria dioecesi obtinent.

§ 2. Ceteri Cardinales in suis titulis vel diaconiis, postquam eorundem canonicam possessionem ceperint, omnia possunt quae locorum Ordinarii in suis ecclesiis, exceptis ordine iudiciorum et qualibet iurisdictione in fideles, sed salva potestate in iis quae ad disciplinam, morum correctionem, servitium ecclesiae pertinent.

§ 3. Cum throno et baldachino Cardinalis ordinis presbyteralis potest in suo titulo pontificalia peragere et Cardinalis ordinis diaconalis in sua diaconia pontificaliter assistere, et nemo alius ibidem id potest sine Cardinalis assensu; in aliis vero Urbis ecclesiis Cardinales throno et baldachino uti nequeunt sine licentia Romani Pontificis.

The obligations and privileges attached to the suburbicarian sees, whose incumbents are bishops or ordinaries

44 Decree of June 10, 1630.

in the true sense of the word, have been defined by Paul IV and lately by Pius X.[45]

As to § 2 it should be remembered that Cardinals formerly[46] enjoyed a quasi-episcopal jurisdiction in their respective titles. This, however, was limited by Innocent XII in his Constitution "*Romanus Pontifex,*" of Sept. 17, 1692, to what now remains: a domestic or paternal power, which consists in admonition and the infliction of penalties that require no trial, and in the proper maintenance of the divine service.

Regarding the *right of pontificals* note that even the Cardinal Vicar of Rome, if he wishes to pontificate in one of the titular churches, needs the consent of the Cardinal to whom the title belongs, as was solemnly decided by Leo XIII in the case of the Basilica Eudoxiana (S. Pietro in Vincoli).[47]

## Can. 241

**Sede Apostolica vacante, Sacrum Cardinalium Collegium et Romana Curia non aliam habent potestatem, quam quae definitur in const. Pii X *Vacante Sede Apostolica,* 25 Dec. 1904.**

The powers which the Sacred College of Cardinals and the Roman tribunals enjoy during the vacancy of the Apostolic See are defined by Pius X in the Constitution "*Vacante Sede Apostolica,*" Dec. 25, 1904, which determines that

(1) All the powers which require the express approval

45 "Cum venerabilis," Aug. 22, 1555; Pius X, "Apostolicae Romanorum," April 15, 1909 (*A. Ap. S.*, II, 277 ff.

46 C. 11, X, I, 33; Sixtus V, "Religiosa," April 13, 1589; Fagnani, in c. cit. 11, n. 19 ff.

47 Jan. 30, 1879; S. Rit. C., Sept. 15, 1668; Dec. 1903; Santi-Leitner, *l. c.*, I, 31, n. 34 ff.

of the Pope, *i. e.,* such as cannot be exercised except "*verbo facto cum Sño,*" or "*Ex audientia SSñi.,*" or "*vigore specialium et extraordinariarum facultatum,*" are suspended;

(2) That the ordinary faculties remain, but should not be made use of except in cases of minor importance, or in more important cases which suffer no delay; and in the latter the matter should be entrusted to the Cardinal Prefect and some Cardinals of that Congregation which would probably decide, but their decision should be only provisional, until a new Pontiff is elected.[48]

48 Const. cit., nn. 22–25.

## CHAPTER IV

### THE ROMAN COURT

It is evident that the Sovereign Pontiff is unable to provide personally for all the needs of the universal Church. His coadjutors are the bishops and members of what is known as the Papal Court,— *Curia Romana,* from the habitual residence of the Pope.

The name *curia* is derived either from the Latin *cura* (care) or *quiris* (Roman citizen), and signifies either the temple around which the *curiae romanae* gathered, or the place where the senate assembled to look after the public welfare, as Varro insinuates.[1]

The term *Curia Romana* has a threefold meaning: (a) in the *strict sense* it comprises the Sacred Congregations, tribunals, and offices to which the business of the whole Church is entrusted; (b) in a *wider sense* it embraces not only the three above-mentioned *dicasteria* but also the so-called *familia pontificia,* which consists of the servants and coadjutors of the Papal Court as well as honorary prelates and knights. (c) In the *strictest sense* it comprises only the so-called *curiales* or minor officials — lawyers, notaries, procurators, *speditori,* agents,[2] etc. In what sense the term is used, must be determined in each instance from the context.

1 Cfr. Forcellini, *Lexicon, s. v.* "Curia."

2 Bangen, *Die Römische Curie,* 1854, p. 7; Hilling, *Die Röm. Kurie,* 1896, p. 4 (English, New York 1907). Lega, in *Annal. Eccl.,* 1896, t. 4, p. 46; *A. Ap. S.,* I, 8.

Historically the *Curia Romana* developed *pari passu* with the Papal State and power. The term "curia" was almost unknown up to the 12th century,[3] when it occurs in the so-called *Ordo Romanus X*. But the rapid growth of the papacy during the three subsequent centuries created tribunals of far-reaching influence, especially the Chancery, the Dataria, and the Rota Romana, the Secretary Nepos who was later merged with the Secretary of State, and a host of minor offices (*officia vacabilia*). Still it was only after the Council of Trent (1545–1563) that the *Curia Romana* in its present-day sense was completed. Pius IV and his successors, especially Sixtus V (1585–1590), created the Roman Congregations, upon which devolved the burden of supervising the ordinary affairs of the universal Church. The policy established under Julius II (1503–1513) drew the various civil governments, now awakening to national consciousness, into diplomatic relations with the Papal Court.[4] All this enhanced the splendor of the papacy, and at the same time increased the legislative and administrative activities of the Curia. Hence it is not surprising that the Cardinals began to assert their importance at the court and in the special congregations and tribunals.

Of these we shall now treat, as reorganized by Pope Pius X.[5]

### CAN. 242

**Curia Romana constat Sacris Congregationibus, Tribunalibus et Officiis, prout inferius enumerantur et describuntur.**

3 "Exit domnus papa de palatio cum episcopis et cardinalibus, et cum toto apparatu curiae." Mabillon, *Museum Italicum*, 1724, II, p. 97; Migne, *P. L.*, 78, 1009.

4 Sixtus V, "Immensa," Jan. 22, 1587.

5 "Sapienti consilio," June 29, 1908.

CAN. 243

§ 1. In singulis Congregationibus, Tribunalibus, Officiis servanda est disciplina et tractanda sunt negotia secundum normas tum generales tum particulares, quas ipsis Romanus Pontifex praestituerit.

§ 2. Omnes qui ad Congregationes, Tribunalia, Officia Romanae Curiae pertinent, ad secretum servandum tenentur intra fines et secundum modum ex disciplina unicuique propria determinatum.

CAN. 244

§ 1. Nihil grave aut extraordinarium in iisdem Congregationibus, Tribunalibus, Officiis agatur, nisi a Moderatoribus eorundem Romano Pontifici fuerit ante significatum.

§ 2. Gratiae quaevis ac resolutiones indigent pontificia approbatione, exceptis iis pro quibus eorundem Officiorum, Tribunalium, Congregationum Moderatoribus speciales facultates tributae sint, exceptisque sententiis Tribunalis Sacrae Romanae Rotae et Signaturae Apostolicae.

CAN. 245

Controversiam, si qua exoriatur, de competentia inter Sacras Congregationes, Tribunalia vel Officia Romanae Curiae, dirimit coetus S. R. E. Cardinalium, quos Romanus Pontifex singulis vicibus designaverit.

The Code adopts the general arrangement made by Pius X in his Constitution "*Sapienti consilio*," June 29, 1908, which was followed by the "*Ordo Servandus in Romana Curia*."[6] The duty of *secrecy* is severest for the

[6] *A. Ap. S.*, I, 36 ff.

members of the "Holy Office," who are bound to it under penalty of excommunication most especially reserved to the Holy See.[7]

The so-called routine or system observed at the Curia we need not set forth here. But it may not be amiss to cite chapter X of the "Ordo," [8] which ordains that any Catholic may have recourse to the offices of the *Curia,* either personally or by means of an agent chosen from among those approved by the *Curia.*

Ordinaries may treat with the *Curia* either personally or by mail. If an Ordinary wishes to negotiate without a lawyer, he must direct his petition to the respective Congregation, Tribunal or Office, where note is taken thereof with the accompanying words: *personalis pro ordinario.* But if he wishes to employ the services of an agent or lawyer, he is obliged to take one of those approved by the *Curia.*

As to the agents of the bishops, the same "Ordo" prescribes that they must be Catholics of good reputation and know Latin and Canon Law. If the agent is a priest, or at least in sacred orders, he must have permission from the Cardinal Vicar to reside in Rome. One who wishes to be approved as an agent must submit a petition to the assessor of the S. C. Consistorialis. If admitted, his name is placed upon the list of official agents.[9] There are many experienced agents in Rome from among whom the Ordinaries may choose.

Can. 245 is an entirely new enactment. Formerly the Signatura Apostolica had power to settle all controversies about competency, which were quite frequent when the "*Sapienti consilio*" first went into effect.

7 *A. Ap. S.,* I, p. 82 f.
8 *Ib.,* p. 53 f.
9 *Ib.,* p. 49 f.

## ART. I

### THE SACRED CONGREGATIONS

Sixtus V instituted fifteen congregations;[10] but in course of time some were overburdened, while others lost their importance. This led Pius X to issue a Constitution which treats minutely of the reorganization of the Roman Court[11] (*Curia* in the strict sense). This order was to remain in force, and, despite the difficulties arising from the competency of various Congregations, has remained in force with only one exception, made by the present pontiff, Benedict XV, in his allocution of March 22nd, 1917, when the Congr. of the Index was suppressed, or rather combined with the Holy Office, whilst the department of Indulgences, formerly attached to the Holy Office, was joined to the S. Poenitentiaria.[12] Besides this, Benedict XV has given a fuller title to the S. C. of Studies.

### CAN. 246

**Singulis Congregationibus praeest Cardinalis Praefectus vel, si eisdem praesit ipsemet Romanus Pontifex, eas dirigit Cardinalis Secretarius; quibus adiunguntur Cardinales quos Pontifex eis adscribendos censuerit, cum aliis necessariis administris.**

### THE HOLY OFFICE

This Congregation developed from the Inquisition. Its first traces are discernible in the canons issued by Lucius III, A. D. 1184, against the Waldenses and Albigenses. The civil authority (Frederick II and Louis IX)

10 "Immensa," Jan. *22*, 1587.
11 "Sapienti consilio," June *29*, 1908 (*A. Ap. S.*, I, 7 ff.)
12 "Amplissimum collegium" (*A. Ap. S.*, IX, 161 ff.).

lent their assistance to the Church in combatting these heretics, and the Dominicans were chiefly entrusted with the unpleasant task of prosecution and procedure. Pope Paul III established the " Supreme Universal Inquisition " (1542) and Sixtus V added it to the Roman Congregations. Paul IV (1559) and Pius IV (1564) added the Index Commission to the Holy Office.[13]

## CAN. 247

§ 1. Congregatio S. Officii, cui ipse Summus Pontifex praeest, tutatur doctrinam fidei et morum.

§ 2. Iudicat de iis delictis quae sibimet secundum propriam eiusdem legem reservantur, cum potestate has criminales causas videndi non solum in gradu appellationis a tribunali Ordinarii loci, sed etiam in prima instantia, si directe ad ipsam delatae fuerint.

§ 3. Ipsa sola cognoscit ea quae, sive directe sive indirecte, in iure aut in facto, circa privilegium, uti aiunt, Paulinum et matrimonii impedimenta disparitatis cultus et mixtae religionis versantur; itemque ad eam spectat facultas dispensandi in hisce impedimentis. Quare quaelibet huiusmodi quaestio ad hanc Congregationem est deferenda, quae tamen potest, si ita censeat et casus ferat, quaestionem remittere ad aliam Congregationem vel ad Tribunal Sacrae Romanae Rotae.

§ 4. Ad eandem pertinet non solum delatos sibi libros diligenter excutere, eos, si oportuerit, prohibere, et dispensationes concedere; sed etiam ex officio inquirere, qua opportuniore licebit via, quae in vulgus edantur scripta cuiuslibet generis damnanda, et in memo-

13 Cf. Hilling, *Procedure of the Roman Court*, 1907, p. 54 ff. Pius V and Sixtus V had established the Index as a special congregation; now it is again attached to the Holy Office.

**riam Ordinariorum reducere, quam religiose teneantur in perniciosa scripta animadvertere eaque Sanctae Sedi denuntiare, ad normam can. 1397.**

**§ 5. Ipsa una competens est circa ea omnia quae ieiunium eucharisticum pro sacerdotibus Missam celebrantibus respiciunt.**

The Holy Office, therefore, is competent in matters of faith and morals, and whatever touches the so-called *privilegium Paulinum* and the impediments of *disparitas cultus* and *mixtae religionis;* from which impediments it has the power to dispense. All such matters must be referred to that Congregation, which, however, may, if it thinks it opportune and the case permits, refer the question to another Congregation or to the tribunal of the S. R. Rota.

The Holy Office also acts as judge or censor of books, either allowing them to be published or condemning them, and this Congregation alone is competent to decide questions regarding the Eucharistic fast of priests celebrating Mass.

THE CONSISTORIAL CONGREGATION

As its name implies, this Congregation was instituted for the purpose of preparing the matter to be discussed and decided in consistory or meeting of the Cardinals with the Sovereign Pontiff. The subjects chiefly treated in these meetings were the erection of higher benefices and the provision of consistorial benefices. The present importance of this Congregation is due to the reorganization of the Curia by Pius X.

CAN. 248

**§ 1. Congregationis Consistorialis Praefectus est**

ipse Romanus Pontifex. Praeter alios ad eandem pertinent ex officio Cardinales Secretarius S. Officii, Praefectus Congregationis de Seminariis et Universitatibus studiorum et Secretarius Status. Inter Consultores eiusdem semper sunt Assessor S. Officii, Secretarius Congregationis pro negotiis ecclesiasticis extraordinariis et Secretarius Congregationis de Seminariis et Universitatibus studiorum.

§ 2. Ad hanc Congregationem spectat non modo parare agenda in Consistoriis, sed praeterea, in locis Congregationi de Prop. Fide non obnoxiis, novas dioeceses ac provincias et capitula tum cathedralia tum collegialia constituere; dioeceses iam constitutas dividere; Episcopos, Administratores Apostolicos, Coadiutores et Auxiliares Episcoporum constituendos proponere, canonicas inquisitiones seu processus super promovendis indicere actosque diligenter expendere, ipsorum periclitari doctrinam, salvo praescripto can. 255.

§ 3. Ab hac Congregatione dependent ea omnia quae pertinent ad constitutionem, conservationem et statum dioecesium. Quare ipsa vigilat super impletis vel minus obligationibus, quibus Ordinarii tenentur; cognoscit ea quae ab Episcopis scripto relata sint de statu suarum dioecesium; indicit visitationes apostolicas examinatque eas quae fuerint absolutae, transmissis in utroque casu ad singulas Congregationes iis ad deliberandum negotiis quae ad eas peculiariter pertinent.

On the Consistorial Congregation at present devolves not only the preparation of matter for the consistories, but also, in places not subject to the S. C. Prop. Fide, the erection of new dioceses, provinces, cathedral and collegiate chapters; the division of dioceses; the proposal of

bishops, Apostolic administrators, episcopal coadjutors and auxiliaries, and the so-called *processus informativus.*

To this congregation also belongs whatever pertains to the constitution, preservation, and state of the various dioceses. It sees to it that the obligations of the Ordinaries are complied with; takes cognizance of the written report of the dioceses by the bishops, etc.

### THE CONGREGATION OF THE SACRAMENTS

### Can. 249

§ 1. Congregationi de disciplina Sacramentorum proposita est universa legislatio circa disciplinam septem Sacramentorum, incolumi iure Congregationis S. Officii circa ea quae in can. 247 statuta sunt, et Sacrorum Rituum Congregationis circa ritus et caeremonias quae in Sacramentis conficiendis, ministrandis et recipiendis servari debent.

§ 2. Ad illam itaque spectant ea omnia, quae decerni concedique solent tum in disciplina matrimonii, tum in disciplina aliorum Sacramentorum nec non in celebratione Sacrificii Eucharistici, iis tantum exceptis quae aliis Congregationibus reservata sunt.

§ 3. Ipsa cognoscit quoque et exclusive de facto inconsummationis matrimonii et de exsistentia causarum ad dispensationem concedendam, nec non de iis omnibus, quae cum his sunt connexa. Potest tamen cognitionem horum omnium, si id expedire iudicaverit, ad Sacram Romanam Rotam remittere. Pariter ad eam deferri possunt quaestiones de validitate matrimonii, quas tamen, si accuratiorem disquisitionem aut investigationem exigant, ad tribunal competens remittat. Eodem modo ad ipsam pertinet videre de obligationibus ordinibus maioribus adnexis, atque examinare

**quaestiones de ipsa validitate sacrae ordinationis, aut eas ad tribunal competens remittere. Et ita porro de aliis Sacramentis.**

The S. Congregation of the Sacraments is entirely new. This Congregation is occupied with whatever concerns the *seven Sacraments,* with the exception of what belongs to the jurisdiction of the Holy Office and the Congregation of Rites.

To it also is referred whatever pertains to the decision and granting of dispensations in matters of marriage and other Sacraments. This Congregation is alone competent to decide whether a marriage is consummated, whether the reasons for granting a dispensation truly exist, and all matters connected therewith. However, if it deems it expedient, it may refer any matter to the S. R. Romana. To the Congregation of the Sacraments may be reported questions concerning the validity of matrimony, but it will refer these to the competent tribunal if a more accurate examination or investigation is required. This Congregation is also competent to investigate the obligations arising from higher orders and to examine the validity of ordination or remit such cases to the competent tribunal. According to the *"Sapienti Consilio,"* to the S. Congregation of the Sacraments must be addressed the following petitions:

(1) Concerning the preservation of the Blessed Sacrament in oratories which otherwise would not enjoy that privilege;

(2) Concerning the celebration of Mass in the open air, or on board a vessel, before dawn or after noon, or on Holy Thursday;

(3) Concerning the privilege of saying Mass *de Beata* or requiem on acccount of eye trouble;

(4) Concerning the privilege of private oratories with the right of having Mass said there.

Besides, as is plain from the text, this S. Congregation, perhaps the most occupied of all, is competent to grant dispensations from impediments of a public character, to rich and poor, so that "*in forma pauperum*" no longer pertains to the S. Poenitentiaria.

THE S. CONGREGATION OF THE COUNCIL

This Congregation was originally known as "*S. Congregatio Cardinalium Concilii Tridentini Interpretum.*" It was instituted by Pius IV, Aug., 1564, and was charged with the execution of the reform decrees of the Council of Trent, to which Pius V added that of interpreting authentically the Tridentine decrees and settling controversies arising in connection therewith. The importance of this Congregation has diminished considerably since the S. C. of the Sacraments was established.

CAN. 250

**§ 1. Congregationi Concilii ea pars negotiorum est commissa, quae ad universam disciplinam cleri saecularis populique christiani refertur.**

**§ 2. Quamobrem ipsius est curare ut christianae vitae praecepta serventur, cum facultate opportune ab eisdem fideles dispensandi; moderari quae parochos et canonicos spectant; aut quae pias sodalitates, pias uniones (etiamsi dependeant a religiosis vel erectae sint in eorum ecclesiis seu domibus), pia legata, pia opera, Missarum stipes, beneficia aut officia, bona ecclesiastica, mobilia et immobilia, tributa dioecesana, taxas curiarum episcopalium aliaquae huiusmodi attingunt. Eidem reservata est facultas eximendi a conditionibus**

requisitis ad assecutionem beneficiorum, quoties ad Ordinarios eorum collatio spectat; admittendi ad compositionem eos qui occuparunt bona ecclesiastica, etiam pertinentia ad religiosos; permittendi ut fideles acquirant bona ecclesiastica, a potestate civili usurpata.

§ 3. Videt quoque de iis omnibus, quae ad immunitatem ecclesiasticam pertinent, itemque de controversiis circa praecedentiam, salvo iure Congregationis de sodalibus religiosis et Congregationis Caeremonialis.

§ 4. Ad eandem pertinent ea omnia quae ad Conciliorum celebrationem et recognitionem atque ad Episcoporum coetus seu conferentias referuntur, extra loca quae subsunt Congregationi de Prop. Fide.

§ 5. Est autem haec Congregatio competens in omnibus controversiis negotia eidem commissa spectantibus, quas in linea disciplinari pertractandas censuerit; cetera ad tribunal competens sunt deferenda.

This Congregation, therefore, is competent in administrative matters pertaining to the secular clergy and to confraternities, beneficiary provisions, immunities, precedence. Besides it grants permission to hold councils, the documents and decrees of which must be submitted to it for approbation.

### THE S. CONGREGATION OF RELIGIOUS

### Can. 251

§ 1. Congregatio negotiis religiosorum sodalium praeposita ea sibi exclusive vindicat quae respiciunt regimen, disciplinam, studia, bona et privilegia religiosorum sodalium utriusque sexus tum sollemnibus tum simplicibus votis adstrictorum, eorumque qui, quamvis sine votis, in communi tamen vitam agunt more

religiosorum, itemque tertiorum Ordinum saecularium, incolumi iure Congregationis de Prop. Fide.

§ 2. Quapropter, quaestionibus ordine iudiciario tractandis ad tribunal competens remissis et incolumi semper iure Congregationis S. Officii et Congregationis Concilii circa negotia ad ipsas spectantia, haec Congregatio quaestiones omnes suae competentiae in linea disciplinari dirimit; sed si quaestio vertatur inter religiosum sodalem et personam non religiosam, ipsa, praesertim ad instantiam partis, potest quoque, si aequum iudicaverit, eandem quaestionem ad aliam Congregationem aut tribunal remittere.

§ 3. Huic denique Congregationi reservatur concessio dispensationum a iure communi pro sodalibus religiosis, firmo praescripto can. 247, § 5.

The S. Congregation of Religious is exclusively competent in whatever concerns the government, discipline, studies, property and privileges of religious of both sexes, either with solemn or simple vows, as also of such as have no vows but live a common life like religious, and of secular tertiaries.

Wherefore, with the exception of judiciary matters to be referred to the competent tribunals and of whatever pertains to the Holy Office and the S. C. of the Council, this Congregation settles all disciplinary questions belonging to its competency. To this Congregation is also reserved the granting of all dispensations to religious.

Formerly there existed a *S. C. Episcoporum et Regularium,* which had great authority and was probably instituted by Pius V; at least its regesta run from the end of the year 1572 and embrace a threefold division of cases: *Episcoporum, Regularium, Monialium.* The ma-

terial was almost entirely collected by the Benedictines of St. Anselm's College when the reorganisation was effected but for some reason or another the *Collectanea* were never published.

THE S. CONGREGATION OF THE PROPAGANDA

Since the Catholic Church began to spread across the seas, to the East and West Indies, and established missions in the countries newly added to its jurisdiction, she has taken particular care of these. Peculiar conditions called for special legislation, which was adapted to the "*terrae missionum*" as distinguished from the provinces of the regular hierarchy. In order to insure an orderly and stable procedure in the transaction of missionary matters Gregory XV, in 1622, founded this Congregation.[14] By Clement IX (1720) the same was entrusted with the revision of the books of Orientals. Pius IX reformed the Propaganda and created a new section "*pro negotiis ritus orientalis*" (1862), now detached.

The *competency* of the Propaganda is *locally* circumscribed by the so-called "mission territories." Several countries which formerly were subject to its jurisdiction (the U. S., England, Ireland, Scotland, Holland, Luxemberg, Canada) are now withdrawn from it and placed either under the regular hierarchy or among the "provinces of the Apostolic See."

## CAN. 252

**§ 1. Congregatio de Propaganda Fide missionibus ad praedicandum Evangelium et catholicam doctrinam**

14 "Inscrutabili divinae," June 22, 1622. Urban VIII erected the *Collegium Urbanum* for the training of missionaries; it is entirely under the S. C. Prop. Fide.

praeest, ministros necessarios constituit et mutat, facultatemque habet tractandi, agendi et exsequendi omnia hac in re necessaria et opportuna.

§ 2. Curat ea omnia quae ad Conciliorum celebrationem in locis sibi subiectis pertinent.

§ 3. Eius iurisdictio iis est circumscripta regionibus, ubi, sacra hierarchia nondum constituta, status missionis perseverat. Huic Congregationi sunt etiam subiectae regiones, quae, etsi hierarchia inibi constituta sit, adhuc inchoatum aliquid praeseferunt. Eidem pariter subsunt societates ecclesiasticorum ac Seminaria quae exclusive fundata sunt eo fine, ut in eis instituantur missionarii pro exteris missionibus, praesertim quod attinet ad eorum regulas, administrationem atque opportunas concessiones ad sacram ordinationem alumnorum requisitas.

§ 4. Haec autem Congregatio tenetur ad competentes Congregationes deferre negotia quae aut fidem attingunt, aut causas matrimoniales, aut generales normas circa sacrorum rituum disciplinam tradendas vel interpretandas.

§ 5. Quod vero spectat ad sodales religiosos, eadem Congregatio sibi vindicat quidquid religiosos qua missionarios, sive uti singulos sive simul sumptos, tangit. Quidquid vero religiosos qua tales, sive uti singulos sive simul sumptos attingit, ad Congregationem religiosorum negotiis praepositam remittat aut relinquat.

This Congregation presides over the missions, provides them with ministers, and has power to do whatever it deems necessary for their benefit.

Its jurisdiction is restricted to provinces which as yet have no hierarchic constitution, but are still in the missionary state. To it are subject also those regions in

which the hierarchy is in an incipient state and all societies of ecclesiastics and seminaries founded exclusively for the foreign missions.

As to *religious,* this Congregation is competent in whatever touches them as missionaries, either individually or as a body. But whatever concerns religious as such must be referred to the Congregation of Religious.

THE S. CONGREGATION OF RITES

CAN. 253

**§ 1. Congregatio Sacrorum Rituum ius habet videndi et statuendi ea omnia quae sacros ritus et caeremonias Ecclesiae Latinae proxime spectant, non autem quae latius ad sacros ritus referuntur, cuiusmodi sunt praecedentiae iura aliaque id genus, de quibus sive servato ordine iudiciario sive in linea disciplinari disceptetur.**

**§ 2. Eius proinde est praesertim advigilare, ut sacri ritus ac caeremoniae diligenter serventur in Sacro celebrando, in Sacramentis administrandis, in divinis officiis persolvendis, in iis denique omnibus quae Ecclesiae Latinae cultum respiciunt; dispensationes concedere opportunas; insignia et honoris privilegia tam personalia et ad tempus, quam localia et perpetua, quae ad sacros ritus vel caeremonias pertineant, elargiri, et cavere ne in haec abusus irrepant.**

**§ 3. Denique ea omnia agit quae ad beatificationem et canonizationem Servorum Dei vel ad sacras reliquias quoquo modo referuntur.**

The business of this important Congregation is, therefore, to watch over the proper observance of the sacred rites and ceremonies in the celebration of the Mass, the

administration of the Sacraments, the Divine Office, and everything pertaining to the worship of the Latin Church. It grants dispensations, distributes insignia and honorary privileges, either personal and temporary, or local and perpetual, which are connected with rites and ceremonies, and safeguards against abuses.

This Congregation has the right to decide what belongs to the rites and ceremonies of the Latin Church, especially to approve the official liturgical books, such as the Ritual and the Pontificale Romanum, the Missal, the approbation of feasts, etc.

It also supervises the beatification and canonization of the Servants of God and the cult of sacred relics.

### THE S. CONGREGATIO CAEREMONIALIS

### CAN. 254

**Ad Congregationem Caeremonialem pertinet moderatio caeremoniarum in Sacello Aulaque Pontificali servandarum et sacrarum functionum quas Patres Cardinales extra pontificale sacellum peragunt; itemque eadem Congregatio cognoscit quaestiones de praecedentia tum Patrum Cardinalium tum Legatorum quos variae Nationes ad Sanctam Sedem mittunt.**

This Congregation is entrusted with the direction of the ceremonies to be observed in the papal chapel and court, of the sacred functions which the Cardinals perform outside the papal chapel, and the decision of questions concerning the precedence of Cardinals and ambassadors accredited to the Holy See.

THE S. C. FOR EXTRAORDINARY ECCLESIASTICAL AFFAIRS

## CAN. 255

**Ad Congregationem pro negotiis ecclesiasticis extraordinariis spectat dioeceses constituere vel dividere et ad vacantes dioeceses idoneos viros promovere, quoties hisce de rebus cum civilibus Guberniis agendum est; insuper Congregatio in ea negotia incumbit, quae eius examini subiiciuntur a Summo Pontifice per Cardinalem Secretarium Status, praesertim ex illis quae cum legibus civilibus coniunctum aliquid habent et ad pacta conventa cum variis Nationibus referuntur.**

This Congregation is entrusted with the erection and division of dioceses and the promotion of ecclesiastics to vacant dioceses, whenever these matters must be settled in accord with civil governments; besides, it has charge of affairs submitted to it for examination by the Supreme Pontiff through the Cardinal Secretary, especially where civil governments or concordats are concerned.

THE S. CONGREGATION OF STUDIES

## CAN. 256

**§ 1. Congregatio de Seminariis et Universitatibus studiorum vigilat super omnibus quae ad regimen, disciplinam, temporalem administrationem et studia Seminariorum pertinent, incolumi iure Congregationis de Prop. Fide. Eidem pariter commissa est moderatio regiminis ac studiorum, in quibus versari debent athenaea seu quas vocant Universitates vel Facultates quae ab Ecclesiae auctoritate dependent, comprehensis iis quae a religiosae alicuius familiae sodalibus diriguntur. Novas institutiones perpendit approbatque;**

facultatem concedit academicos gradus conferendi normasque tradit quibus ii conferri debeant, et, ubi agitur de viro singulari doctrina commendato, potest eos ipsa conferre.

§ 2. In hac Sacra Congregatione connumerantur inter alios Cardinales Secretarius Congregationis Consistorialis et inter Consultores Assessor eiusdem Congregationis.

This Congregation watches over the government, discipline, and temporal administration of seminaries, except those under the Propaganda. It supervises the order and courses of studies at Catholic universities dependent on the authority of the Holy See, even those entrusted to religious communities, examines and approves new institutions, grants the faculty of and determines the rules for conferring academic degrees in the name of the Holy See, and may itself grant such degrees to men distinguished for their learning and devotion to the Church.

THE S. CONGREGATION FOR THE ORIENTAL CHURCH

CAN. 257

§ 1. Congregationi pro Ecclesia Orientali praeest ipse Romanus Pontifex. Huic Congregationi reservantur omnia cuiusque generis negotia quae sive ad personas, sive ad disciplinam, sive ad ritus Ecclesiarum orientalium referuntur, etiamsi sint mixta, quae scilicet sive rei sive personarum ratione latinos quoque attingant.

§ 2. Quare pro Ecclesiis ritus orientalis haec Congregatio omnibus facultatibus potitur, quas aliae Congregationes pro Ecclesiis ritus latini obtinent, incolumi

**tamen iure Congregationis S. Officii ad normam can. 247.**

**§ 3. Haec Congregatio controversias dirimit via disciplinari; quas vero ordine iudiciario dirimendas iudicaverit, ad tribunal remittet quod ipsa Congregatio designaverit.**

To this Congregation appertain all affairs which touch either persons or the discipline and rites of the Oriental Churches, even such as are of a "mixed" nature, *viz.* in part concern Latins. However it can settle matters administratively only; all judiciary questions must be referred to tribunals designated by the same Congregation.

The Congregation for the Oriental Church appears to be a new creation, for it formerly formed part of the S. C. of the Propaganda, to which latter was also attached, as a special department since the time of Pius VII, the so-called *Reverenda Camera Spoliorum.* Pius VII had made a large loan of the Propaganda and, in partial payment thereof, assigned to that Congregation the revenues from vacant benefices which would otherwise be claimed by the Apostolic Exchequer.[15] The Code makes no mention of this, probably because it is of a private nature.

## ART. II

### TRIBUNALS OF THE ROMAN COURT

*The Sacra Poenitentiaria*

### CAN. 258

**§ 1. Sacrae Poenitentiariae praeficitur Cardinalis Poenitentiarius Maior. Huius tribunalis iurisdictio**

15 "Spolii jura," June 19, 1817; Hilling, *l. c.*, p. 81.

coarctatur ad ea quae forum internum, etiam non sacramentale, respiciunt; quare hoc tribunal pro solo foro interno gratias largitur, absolutiones, dispensationes, commutationes, sanationes, condonationes; excutit praeterea quaestiones conscientiae easque dirimit.

§ 2. Eiusdem insuper est de iis omnibus iudicare quae spectant ad usum et concessionem indulgentiarum, salvo iure S. Officii videndi ea quae doctrinam dogmaticam circa easdem indulgentias vel circa novas orationes et devotiones respiciunt.

In the eleventh and twelfth centuries so-called Apostolic confessors were chosen from the papal court, and in the thirteenth century a Cardinal held a prominent place among these *poenitentiarii,* who had the power to absolve from papal censures and to impart certain dispensations. As a corporation or college, or as a regular tribunal, these *poenitentiarii* were established by Benedict XII, in 1338.[16] After repeated reorganizations, Benedict XIV gave to this body the form which it has substantially retained to the present time.[17] It is now *composed* of the Cardinal Penitentiary, the Regens, a theologian, five prelates of the Signatura, a secretary and several minor officials.

Its jurisdiction is limited to the court of conscience, confessional and extra-confessional, and hence this tribunal grants absolutions, dispensations, commutations, sanations, condonations, and solves cases of conscience. It is also empowered to judge concerning the use of indulgences, with the exception of dogmatic questions regarding the same and of new prayers and devotions, which departments belong to the domain of the Holy Office.

16 "In agro Dominico," April 8, 1338; cf. the classical treatise of Goeller, *Die Päpstliche Pönitentiarie,* 1907, Vol. I.

17 Benedict IV, "Pastor bonus" and "In apostolica," Ap. 13, 1744; Hilling, *l. c.,* p. 127 f.; *Annuario Pontificio,* 1917, p. 369.

*The Rota and the Signatura*

The assessors of the Rota are called *auditores*. The term occurs in the Decretals as well as "*Auditorium*."[18] The auditors constituted a college in the first decades of the 14th century, for the constitution "*Ratio iuris*," of John XXII (1326) supposes a corporate body of the "*sacri palatii causarum generales auditores*."[19] Perhaps this was at first a worldly tribunal for the papal dominions, but in course of time it was transformed into an ecclesiastical corporation. As "*Rota*" it is mentioned in a constitution of Martin V.[20] The name has found various explanations. Some hold that it arose from the custom of the auditors of holding their meetings at a round table or, at Avignon, in a room with a fretted ceiling ("rota porphyretica lacunar"); but it seems more probable that the name owes its origin to the custom of filing the official records in the form of rolls in a barrel-shaped bookshelf (*in pluteo* or *rotulo*).[21] However this may be, the Rota since the 14th century has been often reformed as to the number of auditors and mode of procedure. It maintained its reputation, although somewhat diminished after the institution of the congregations, up to the year 1870, when it seemed that the "charioteer and master of all tribunals" was doomed to a slow death. But Pius X revived and restored the Rota.

Its *constitution* is officially established in the "*Sapienti consilio*" and the "*lex propria*." The Rota consists of ten prelates appointed by the Roman Pontiff. The *primus*

18 Philipps, K.-R., VII, 307 f.
19 *Bull. Taurin.*, It. IV, 317 ff.
20 *Ib.*, p. 708 f. § 27.
21 Ehrle, *Historia Bibliothecae Rom. Pont.*, I, P. II, p. 696; Goeller, in *Archiv. für Kath. K.-R.*, 1911.

*inter pares* is called dean. The auditors are allowed to choose an assistant (*coadjutor*), to be approved by the pope, who appoints a *promotor justitiae* and a *defensor vinculi*. Besides these there are a number of approved lawyers, from whom the litigants must choose one, and minor officials. The Rota is *competent* to try all cases which are not *causae maiores,* including criminal cases committed to it by the Pope, either *motu proprio* or at the request of the parties concerned. The Rota may also decide in the second and third instance, and in the last instance in cases tried by an inferior tribunal. The auditors give their decisions in turns of three, or in more important cases or last instances, *in pleno*. Their sentences may be overthrown for formal reasons, otherwise they are final.

Formerly there were two *segnature,* one called *gratiae,* the other *iustitiae*. In the course of time one was deemed sufficient, and hence it was but natural that at the reorganization of 1908 the two were welded into one. Benedict XV has further determined the authority of this tribunal,[22] which has entered the new Code in a modified form.

### Can. 259

**Causae ordinem iudiciarium requirentes aguntur apud Sacram Romanam Rotam et apud Supremum Tribunal Signaturae Apostolicae intra fines et secundum normas traditas in can. 1598–1605, salvo iure Congregationis S. Officii et Congregationis Sacrorum Rituum in causas sibi proprias.**

Causes requiring judiciary procedure are to be treated

22 *A. Ap. S.,* 1915, p. 320 ff; *Annuario Pontificio,* 1917, p. 370 f.

by the S. Roman Rota and the Supreme tribunal of the Apostolic Signatura, according to the norms laid down in can. 1598–1605, except matters pertaining to the Holy Office and the S. Congr. of Rites.

## ART. III

### THE OFFICES OF THE ROMAN COURT

#### *The Apostolic Chancery*

The Apostolic Chancery grew out of the *scrinium* mentioned under Damasus I (366–384). In the eleventh century the Librarian of the Holy Roman Church appears also as Chancellor of the same, but was called vice-chancellor, because it seemed unfit that a cardinal should hold that office.[23] Now the cardinal presiding over the chancery is styled Cardinal-Chancellor, and is assisted by a regens, his substitute, and several prothonotaries Apostolic and minor officials (mostly laymen).[24]

### CAN. 260

**§ 1. Cancellariae Apostolicae, cui praeest Cardinalis Cancellarius Sanctae Romanae Ecclesiae, hoc est proprium munus, apostolicas expedire litteras seu bullas pro beneficiorum et officiorum consistorialium provisione, novarum provinciarum et dioecesium ac capitulorum institutione et pro aliis maioribus Ecclesiae negotiis conficiendis.**

**§ 2. Quae litterae seu bullae ne expediantur nisi de mandato Congregationis Consistorialis circa negotia ad eius competentiam spectantia, aut de mandato**

23 Bresslau, *Urkundenlehre,* 1889, I, 173 ff.

24 Formerly lay brothers of the Cistercian Order were the *plumbatores* at the Apostolic Chancery.

**Summi Pontificis circa alia negotia, servatis in singulis casibus ipsius mandati terminis.**

The Apostolic Chancery expedites pontifical documents or bulls for the provision of consistorial benefices and offices, for the erection of new provinces, dioceses, and chapters, and for other ecclesiastical affairs of importance.

These documents or bulls cannot be dispatched without the command of the S. C. Consistorialis in matters pertaining to the latter's competency, or without a mandate of the Supreme Pontiff concerning other matters; in any case the limits of the mandate must be strictly observed.

*The Apostolic Datary*

No later than the 13th century there was attached to the Apostolic Chancery a place or locality where petitions to the Pope were received. This was called *"communis data,"* and later on, *" tribunal gratiae concessae."* [25] It developed in course of time into a regular tribunal of dispensations, especially for matrimonial cases, and since Innocent X (1644–1655) was presided over by a cardinal pro-datary. At present it has lost much of its significance. The personnel consists of the cardinal datary, a subdatary, and a prefect.

CAN. 261

**Datariae Apostolicae, quam moderatur Cardinalis Datarius Sanctae Romanae Ecclesiae, commissum est cognoscere de idoneitate promovendorum ad beneficia non consistorialia Apostolicae Sedi reservata; conficere et expedire apostolicas litteras pro eorum collatione; eximere in conferendo beneficio a conditionibus requi-**

25 Bresslau, *l. c.*, p. 231.

**sitis, quoties eius collatio ad Ordinarium non pertinet; curare pensiones et onera quae Summus Pontifex in memoratis conferendis beneficiis imposuerit.**

The Apostolic Datary, at the head of which is a Cardinal of the Holy Roman Church, investigates the fitness of candidates proposed for benefices that are reserved to the Apostolic See but not conferred in consistory. It also composes and dispatches the Apostolic letters for their appointment, grants exemption from qualities required in the appointees to benefices which do not belong to the Ordinary, and takes care of the pensions and taxes imposed by the Supreme Pontiff in conferring such benefices.

*The Reverenda Camera Apostolica*

After the office of Archdeacon of the Holy Roman Church had, especially through the efforts of Gregory VII (1073–1085), lost much of its former exorbitant power, the Camerlengo took his place and soon acquired the rank of a cardinal. The *Camera* was a place in the papal palace where the treasury and the sacred vessels and vestments (*il tesoro*) were kept.[26] Under Leo X the Camerlengo became the exchequer of the Papal State as well as of the Church, whilst the vice-camerlengo was governor and the auditor judge-in-ordinary of the City.[27]

Now the R. C. A. has a Cardinal Camerlengo (not the same as the Camerlengo del Sacro Collegio), a Vice-Camerlengo, an auditor general, and a treasurer.

CAN. 262

**Camerae Apostolicae, cui praesidet Sanctae Roma-**

26 Mabillon, *Iter Italicum*, 1724, II, 362, 450, 488.

27 Leo X, "Etsi pro," June 28, 1514.

**nae Ecclesiae Cardinalis Camerarius, cura est atque administratio bonorum ac iurium temporalium Sanctae Sedis, quo tempore praesertim haec vacua habeatur; et tunc adamussim serventur normae statutae in const. Pii X *Vacante Sede Apostolica,* 25 Dec. 1904.**

The Camera Apostolica administers the temporal property and rights of the Holy See, especially during a vacancy, when the rules laid down by Pius X in the "*Vacante Sede Apostolica*" (Dec. 25, 1904) must be strictly observed.

*The Secretariate of State*

It is evident that the office of Secretary of State is one of "confidence and authority, of great prominence in the Curia."[28] Apostolic secretaries or confidential chaplains were known as early as the 14th century. Of a "College of Apostolic secretaries" we hear in the constitution of Innocent VIII, who reformed it.[29] The same Pontiff also created the office of a "domestic or intimate secretary," who often was a near relative of the Pope (*nepos*). After Julius II (1503–1513) had established permanent nuncios, the authority of the *nepos,* who received the cardinal's title and was therefore called *Cardinal Nepos,* increased so that he managed all the diplomatic affairs of the Papal Court. Many incumbents of this office also held the title of Vice-Chancellor of the H. R. Church. However after the golden age of nepotism had passed, especially through the efforts of Innocent XI (1676–1689), the Cardinal Nepos disappeared before the Cardi-

28 *Annuario Pontificio,* 1917, p. 573.

29 "Non debet reprehensible," Dec. 31, 1487 (*Bull.,* Taur., V, 330 ff).

nal Secretary, who thus became what he now is: Secretary of State or Prime Minister of the Pope.

CAN. 263

**Officium Secretariae Status, cuius moderator est Cardinalis Secretarius Status, constat triplici parte hoc ordine:**

**1.° Prima pars, cui praesidet Secretarius Congregationis pro negotiis ecclesiasticis extraordinariis, versatur in negotiis quae eidem Congregationi examinanda subiici debent ad normam can. 255, ceteris pro diversa eorum natura ad peculiares Congregationes remissis;**

**2.° Altera pars, cui praeest Substitutus, incumbit in ordinaria negotia;**

**3.° Tertiam partem dirigit Cancellarius Brevium Apostolicorum, qui vacat expeditioni Brevium.**

The office of Secretary of State consists of three departments. (1) The first, presided over by the Secretary of the Congregation for Extraordinary Ecclesiastical Affairs, deals with matters which (can. 255) are submitted to the authority of that congregation. (2) The second, headed by the Substitute, deals with matters of ordinary occurrence. (3) The third department, under the Chancellor of Apostolic Briefs, attends to the expedition of papal Briefs.

CAN. 264

**Ad Secretarias Brevium ad Principes et Epistolarum latinarum spectat munus latine scribendi acta Summi Pontificis, ab eodem illis commissa.**

The Secretariate of Briefs directed to Princes and of

Latin Letters is charged with writing in Latin the documents with which the Sovereign Pontiff entrusts it.

*Authority of the Roman Court and Its Decisions*

The *Sacred Congregations* are the first and most conspicuous bodies that share in the labors of the Supreme pontificate,[30] wherefore Pius X calls these, together with the Tribunals and Offices, the Roman Court, which has "to deal with the affairs of the universal church."[31] From this it is apparent that the congregations act as true judges in their own domain, in the name and with the authority of the Pope. And although it may be truly said that their jurisdiction is ordinary, yet it is entirely dependent on the Supreme Pontiff. Hence this Court *de facto* enjoys the same authority as the Pope himself, and its decisions demand obedience and assent from the bishops as well as from the faithful and the clergy.[32]

This is evident also from the fact that all decisions of more than ordinary importance or of extraordinary character must be *reported* to the Pope.[33]

We now aproach the question of the *juridical value* of the decisions of the various Congregations and Tribunals.

(1) Concerning *favors,* there is little difficulty, for they touch only persons directly concerned, and therefore are of a private nature. However, if a favor curtails the right of a third person, the latter must first be asked, either directly or through the Ordinary.[34]

(2) As to *questions* that may be settled by way of

30 Sixtus V, "Immensa," June 22, 1587.

31 "Sapienti consilio" (*A. Ap. S.*, I, 8).

32 Santi-Leitner, *l. c.*, I, 31, n. 41 ff.

33 Cfr. can. 244, § 1.

34 "Sapienti consilio," Ordo servandus, III, 1 (*A. Ap. S.*, I, 62).

*discipline* or *administration, i. e.,* without a judicial trial (*absque strepitu iudicii*), as, for instance, many liturgical questions or questions concerning parish priests and chaplains of institutions or confraternities,— if this mode of settlement is accepted by the parties, then these parties have to abide by the decision of the respective Congregation and are not allowed to pursue their rights by judicial action, unless the S. Congregation itself refers the case to a competent tribunal.[35] From this it is evident that particular decisions touching single cases and persons bind those for whom they are issued, but not outsiders, and hence we sometimes find the clause "*et non amplius*" added, which means: "*et amplius non proponatur,*"[36] *i. e.,* the case is definitively settled. But even this clause does not make it impossible to have the case again proposed to the Roman Court if new reasons are found. In this case the remedy, which is not unlike the "*restitutio in integrum,*" must be resorted to. This is granted by the Pontiff.

Concerning the sentences of the Rota, the benefit of restitution to the former judicial status is granted by the Signatura Apostolica.[37]

(3) The judicial sentences of the Roman tribunals, though not *irretrievable,* must be obeyed by the parties concerned, as long as no "*restitutio in integrum*" is granted. The latter suspends the effect of the sentence if its execution has not yet begun.[38]

Besides *particular decisions* and sentences there may be

35 *Ib.*, p. 65.

36 Santi-Leitner, *l. c.*, I, 31, n. 44.

37 "Sapienti consilio" (*A. Ap. S.*, I, 18); can. 1603.

38 Can. 1905–1907. That the sentences of the S. R. Rota are final, the Boni Castellaine-Gould case proves.

*general decisions,* which as a rule emanate from the Congregations, because the Tribunals are more or less occupied with particular sentences. When issued as "*Decreta Urbis et Orbis*" these general decrees bind the universal Church, provided no particular custom stands in the way. But, though they must be received with due respect, they are not irretrievable, much less infallible, unless the Roman Pontiff should publish such a decree by means of a solemn Constitution.[39] Instances to prove that even the decrees of the Holy Office are not irreformable or infallible, may be found in the Gallilei case (Feb. 15, 1616), and the decision of 1897 concerning the Comma Ioanneum.[40]

As to future *general decisions* of the Roman Congregations note that any one which is not based on a strictly comprehensive interpretation of the New Code, but is either extensive or restrictive, is tantamount to a new law and lacks retroactive force.[41] Benedict XV has ordered that the Roman Congregations should for the present abstain from issuing "new general decrees," but limit their decisions to instructions and strictly declaratory explanations.[42]

There are *collections* of Roman decrees called authentic, for instance, of the S. C. of Rites and the Propaganda (1907), which contain many decisions of a strictly particular nature, whilst others bear the title "*decretum Urbis et Orbis.*" Do the particular decisions lose their nature by being inserted in such a collection? By no

39 Santi-Leitner, I, 29, n. 70 f.

40 "Utrum tuto negari aut saltem in dubium revocari possit, esse authenticum textum S. Ioannis in Ep. I, 5, 7? Negative."— Pope Leo XIII was approached on the subject, and in his Encyclical on the Holy Ghost omitted to quote that text, although occasions were not wanting. Cfr. Pohle-Preuss, *The Divine Trinity,* pp. 30 sqq.

41 Can. 17, § 2.

42 "Cum iuris canonici," Sept. 15, 1917 (*A. Ap. S.,* IX, 530).

means. For "authenticity" in that case is entirely different from that of the three authentic collections of the Decretals, and means neither more nor less than that the decisions contained in those collections are genuine, *i. e.*, were really given by the Congregations to whom they are ascribed. An illustration of the truth of our contention is the fact that Cardinal Gasparri never refers to the "Decreta Authentica" of the S. R. Congr., but merely quotes the date of the decisions.

# CHAPTER V

## LEGATES OF THE ROMAN PONTIFF

Dependent on the Curia, and on the Secretary of State in particular, are those representatives of the Sovereign Pontiff who go by the name of *legates.* The right of sending and receiving legates (*ius legationis activum et passivum*) is inherent in the spiritual sovereignty of the Pope.[1] It is evident, however, that the actual relations between the Pope and secular governments will differ according to the connection existing in each case between Church and State (*sacerdotium et imperium*). In other words, where there is a complete separation between the spiritual and temporal power, papal legates will not exercise diplomatic functions in the proper sense, nor be acknowledged by the public authorities as representatives of the Sovereign Pontiff. Their mission in such countries is limited to merely ecclesiastical matters and their position or rank is strictly ecclesiastical.

After this preliminary observation a few remarks on the *historical* development of the institution of papal legates may not be out of place. We hear of a Vicar Apostolic of Illyricum in the fourth century, whose office was entrusted to the Archbishop of Thessalonica (Saloniki). Similar rights and attributes were later be-

1 Pius VI, Responsio ad Metropolitanos Mag., Trev., Col., Salisburg., super Nuntiaturis Apostolicis, Romae 1789. The so-called "Punctuatio of Ems," 1786, denied the right of the Pope to send nuncios and to grant dispensations, in an endeavor to impose Febronian principles upon the Church.

stowed on certain prominent sees in Gaul (Arles, 545), Spain (Seville, 520), and Germany (Treves, 909, Salzburg, 973). The incumbents of these sees were considered to be *ipso facto* papal legates, or *legati nati.* Out of these in the eleventh century grew the so-called primates, who have now dwindled into insignificance.[2]

Another species of legates, of greater and more lasting importance, are the *legati missi.* Leo I (440–461) sent Julian of Cos to the Emperor Marcian to look after ecclesiastical discipline and watch over the purity of faith, as well as to observe the proceedings at the imperial court. If anything should be doubtful, he (Leo) would be ready to issue further instructions.[3] This is presumably the office of those who were called papal *responsales* or *apocrisiarii.* In the Orient their activity lasted until Cæsaropapism brought forth the unhappy schism of the ninth century.

*Legati missi* were employed also in the West, not indeed permanently, but for temporary or transient missions, especially in the tenth and eleventh centuries, when the investiture fight was raging, and in the twelfth and thirteenth centuries in connection with the crusades. That the royal courts of England and France were not in favor of these papal legates is well known.[4] But Rome insisted upon its right, and when permanent nunciatures had been established upon the model of the Florentine court (Medici) by Julius II, the papal legates became regular diplomatic agents of the Pope, who in turn received the envoys of civil governments.

2 That of Hungary (Strigonensis or Gran) has preserved a few of the ancient prerogatives, but the Code does not favor any exception, can. 271, unless it can be especially proved by particular law.

3 Ep. 113: "Consulenti . . . non deerit relationibus tuis meae responsionis instructio" (Migne, *P. L.*, 54, 1025).

4 Cfr. the following note.

A third kind of legates are the *legati a latere, viz.,* (sent) from the side of the pontiff. They are of rather recent date, used merely for transient purposes, and generally chosen from among the Cardinals. Thus Pius VII sent Cardinal Caprara to put into effect the Napoleonic concordat; thus *legati a latere* have appeared in recent years at the international Eucharistic Congresses.

### Can. 265

**Romano Pontifici ius est, a civili potestate independens, in quamlibet mundi partem Legatos cum vel sine ecclesiastica iurisdictione mittendi.**

Two centuries before John XXII complained of his rights being curtailed by Christian princes[5] Pascal II uttered the same complaint against the King of England, who refused to receive papal legates.[6] In the new Code the Pope claims the right to send legates anywhere he pleases. This right can indeed be denied only on the pretext that the Church is no legal, necessary society founded by God, that the Sovereign Pontiff is not the spiritual ruler of that society, and that his power is not supreme, immediate, and independent within its own sphere. But these claims, as has been set forth, cannot be sustained, and the right asserted in Can. 265 is essential to any sovereign.

5 C. un. Extrav. Comm., I, 1: "Super gentes et regna Romanus Pontifex a Domino constitutus, cum personaliter singulas regiones circuire non possit, nec circa gregem sibi creditum curam pastoralis solicitudinis exercere, necesse habet interdum ex debito impositae servitutis, suos ad diversas mundi partes destinare legatos." Cfr. Leo XIII, "*Longinqua oceani*," Jan. 6, 1895.

6 Friedberg, *Grenzen zwischen Staat und Kirche*, 1872, p. 729; 477, 542.

The legislator is careful to specify that it is a strictly *spiritual jurisdiction* that is exercised by his legates, *viz.*, such as in no way exceeds the limits of the power exercised by the Pope himself.

It follows that if papal legates would deal with political questions, or such of a mixed nature which concern both Church and State, the "independent right" would become dependent on the State, which in its sphere is also sovereign. This latter supposition is not verified, *e. g.*, in the case of the Apostolic Delegate at Washington, whose mission is confined to purely spiritual matters.

It is evident that the Pope will not send legates to entirely pagan countries, where no Catholic subjects live, although he can and often does send missionaries for the purpose of conversion. But no government under whose régime a goodly number of Catholics live, has the right to exclude papal legates who come on a purely ecclesiastical mission.

## CAN. 266

**Dicitur *Legatus a latere* Cardinalis qui a Summo Pontifice tanquam *alter ego* cum hoc titulo mittitur, et tantum potest, quantum ei a Summo Pontifice demandatum est.**

A *legatus a latere,* then, is a Cardinal sent by the Sovereign Pontiff, and he has precisely as much power as the Pontiff bestows on him, and no more.

As we have said before, legates were not always welcome in the countries to which they were sent. One reason for this was that they committed grievous mistakes and often exceeded their faculties.[7] In the light of history Canon 266 almost sounds like a warning.

[7] Cc. 3, 4, X, I, 30.

The following canons remove some misgivings which may arise in the Ordinaries of dioceses.

### Can. 267

§ 1. Legati qui mittuntur cum titulo Nuntii *aut Internuntii:*

1.° Fovent, secundum normas a Sancta Sede receptas, relationes inter Sedem Apostolicam et civilia Gubernia apud quae legatione stabili funguntur;

2.° In territorio sibi assignato advigilare debent in Ecclesiarum statum et Romanum Pontificem de eodem certiorem reddere;

3.° Praeter has duas ordinarias potestates, alias plerumque facultates obtinent quae tamen sunt omnes delegatae.

§ 2. Qui vero mittuntur cum titulo *Delegati Apostolici* unam habent ordinariam potestatem de qua in § 1, n. 2, praeter alias facultates delegatas ipsis a Sancta Sede commissas.

The office of the legates sent as *Nuncios* or *Internuncios,* therefore, is to foster friendly relations between the Apostolic See and the civil governments to which they are accredited; to observe the conditions of the churches of the territory assigned to them and inform the Roman Pontiff thereof. Besides these ordinary functions, they often receive other faculties, which, however, are all delegated.

Those legates who are sent out as *Apostolic Delegates* enjoy the ordinary power mentioned under § 1, n. 2, besides other delegated faculties entrusted to them by the Holy See.

CAN. 268

**§ 1. Legatorum munus cum omnibus facultatibus eisdem commissis non exspirat vacante Sede Apostolica, nisi aliud in litteris pontificiis fuerit statutum.**

**§ 2. Cessat autem, expleto mandato, revocatione eisdem intimata, renuntiatione a Romano Pontifice acceptata.**

This canon repeals the enactment, elsewhere made,[8] that the office of Legates with all the faculties granted them does not expire by the vacancy of the Apostolic See, unless otherwise provided in the Apostolic letters; but, that, on the other hand, it ceases if the mandate or mission is fulfilled, or by repeal duly intimated, or by resignation accepted by the Roman Pontiff. A due intimation means an official or authentic document.

CAN. 269

**§ 1. Legati Ordinariis locorum liberum suae iurisdictionis exercitium relinquant.**

**§ 2. Licet forte charactere episcopali careant, praecedunt tamen omnibus Ordinariis qui non sint cardinalitia dignitate insigniti.**

**§ 3. Si charactere episcopali sint aucti, possunt sine Ordinariorum licentia in omnibus eorum ecclesiis, excepta cathedrali, populo benedicere et officia divina etiam in pontificalibus, adhibito quoque throno et baculo, peragere.**

Since legates must respect the jurisdiction of the Ordinaries, any suspicion on the part of the latter would be unfounded. Leo XIII justly observed, following St.

8 Cfr. cc. 2 f., 6°, I, 15; can. 207; can. 181.

Gregory: "Their rights are sacred to us, their honor is that of the whole Church, and the pastor's glory is the solid strength and vigor of his brethren." [9]

The rules for *precedence* are laid down in can. 106, 1°, and can. 239, § 1, n. 21, concerning cardinals. The term "all the churches" includes the churches of exempt religious.

CAN. 270

**Episcopis qui, ratione sedis, titulo Legati Apostolici decorantur, nullum exinde competit speciale ius.**

Bishops who are Apostolic legates by reason of their see, enjoy no special rights on that account.[10]

* * *

To complete this more or less diplomatic tract we will add a list of papal nuncios and internuncios and Apostolic delegates. For the present Pope has divided the whole ecclesiastical corps into these three classes.[11]

1. *Apostolic Nuncios* are at Vienna and Madrid.

2. *Apostolic Internuncios* in Argentina, Bavaria, Belgium, Brazil, Chile, Colombia, Holland, Peru, Venezuela.

3. *Delegates Apostolic,* under the *S. C. Consistorialis,* are in Canada and Newfoundland, Cuba, the Philippine Islands, and the United States of America (Mexico also should have one). Delegates subject to the *S. C. Prop. Fide:* Australia, Constantinople, East Indies, Egypt and Arabia, Greece, Kurdistan and Armenia Minor, Mesopotamia, Persia, Syria.

9 "*Longinqua oceani,*" Jan. 6, 1895.

10 A certain right, or at least honorary prerogative, of an Apostolic legate is still claimed by the King of Hungary (cf. Potthast, *Regesta,* n. 10,637), and was vindicated by the King of Sicily, (*Monarchia Sicula*), but entirely suppressed by Pius IX ("Suprema," Jan. 28, 1864; cfr. Giannone, *Il tribunale della Monarchia di Sicilia,* 1892).

11 *A. Ap. S.,* 1916, p. 213 (Decree of May 8, 1916).

The *countries* now represented at the Papal Court are:

1. By *ambassadors:* Austria-Hungary and Spain.

2. By *envoys extraordinary:* Argentina, Bavaria, Belgium, Bolivia, Brazil, Chile, Colombia, Costa Rica, England (on special mission), Holland, Monaco, Peru, Prussia, Russia.[12]

The Congress of Vienna, 1814, fixed the precedence of nuncios which they still retain. They rank in the first class, even after the loss of the temporal power of the Pope.[13]

It is noteworthy that the U. S. maintained, at least for some years, diplomatic relations with Pius IX (1848 to 1868).[14]

12 *Annuario Pontificio,* 1917, p. 579, 292, 582 ff.

13 Westlake, *International Law,* 1910, I. p. 286 f.

14 Cfr. Catholic *Fortnightly Review,* (St. Louis), Vol. XXV, No. 12; *Historical Records and Studies* of the U. S. Catholic Hist. Soc., New York, Vol. XI (1918).

## CHAPTER VI

### PATRIARCHS, PRIMATES, METROPOLITANS

After what has been said about organization and papal legates, it is superfluous to add anything concerning patriarchs. As to the metropolitans, a few notes will suffice.

Metropolitans are bishops who rule over a province composed of several bishoprics. However, under the present legislation, the term "rule" must be taken in a very restricted sense. In ancient times the power of metropolitans was more extensive, especially in regard to the election and ordination of the provincial bishops, the convocation of synods, and trials of the higher and lower clergy.[1] This was but natural since the metropolis was considered the mother see and center of the whole ecclesiastical organism. However, in course of time the authority of the metropolitans was diminished and went to the general centre, Rome. Metropolitans are also called archbishops, though these terms are not fully synonymous; for every metropolitan is an archbishop, but not every archbishop is a metropolitan (*e. g.*, the Archbishop of Ferrara). The title may be merely an honorary distinction.[2] Every metropolitan has one or more suffragans, thus called since the eighth century.[3] In the Frankish

1 Cfr. Nic., cc. 4 ff.; c. 1, Dist. 64; c. 3, Dist. 12; dictum Gratiani ad c. 1, C. 9, q. 3.

2 The title archbishop for metropolitan occurs since the VIII century, cf. Benedict XIV, *De Syn. Dioec.*, II, 4, 3 ff.

3 V. Scherer, *l. c.*, I, 532. In

Kingdom, and in Italy, especially at Ravenna, the tendency early manifested itself to diminish the number of metropolitan sees and augment the prerogatives of the remaining archbishops, in order that they might appear as primates. These primates were mostly the nominees of temporal rulers. The abuses of this system were so grievous that the papacy set to work to arrest the extension of metropolitan powers, prevent the creation of primatial sees, and generally opposed the growth of tendencies which threatened to lead to the establishment of national churches.[4]

## Can. 271

**Patriarchae aut Primatis titulus, praeter praerogativam honoris et ius praecedentiae ad normam can. 280, nullam secumfert specialem iurisdictionem, nisi iure particulari de aliquibus aliud constet.**

The title Patriarch or Primate is purely a title of honor and aside from the right of precedence (can. 280) carries with it no special jurisdiction, except where particular laws exist to the contrary.

Our historical remark concerning the tendencies of certain bishops of France is corroborated by the canon quoted by Cardinal Gasparri in his edition. Rudolf, Archbishop of Bourges, claimed patriarchal rights; but Pope Nicholas I told him that, except where the canons and legitimate custom permit, patriarchs and primates have no power over other bishops, unless the Apostolic See has honored a church by special privileges.[5] The

case of the transfer of an archbishop to a bishop's, see, he retains his title and hence is addressed as Archbishop-Bishop (*e. g.*, Msgr. Harty of Omaha).

4 Cfr. Joy-Maitland, *St. Nicholas*, I, 1901, p. 33 f.

5 C. 8, C. 9, q. 3.

same answer Innocent III made to an archbishop of Tours.[6] To-day, if we mistake not, only the archbishop of Gran (Esztergom) in Hungary enjoys any noteworthy prerogatives.

CAN. 272

**Provinciae ecclesiasticae praeest Metropolita seu Archiepiscopus; quae dignitas coniuncta est cum sede episcopali a Romano Pontifice determinata vel probata.**

Over an ecclesiastical province presides a Metropolitan or Archbishop, and the connection of that dignity with an episcopal see must be determined or approved by the Roman Pontiff.

As the erection of dioceses, so that of provinces, is a *causa maior* reserved to the Holy See (S. C. Consist.).[7]

CAN. 273

**Salvo praescripto can. 275–280, Metropolita in propria dioecesi easdem obligationes eademque iura habet quae Episcopus in sua.**

Besides the obligations and rights mentioned in can. 275–280, a Metropolitan is bound in his own diocese by the same duties as a bishop in his, and enjoys the same rights.

CAN. 274

**In dioecesibus vero suffraganeis Metropolita potest tantum:**

**1.° A patronis ad beneficia praesentatos instituere,**

6 C. 9, X, I, 31.

7 Cf. c. 2, C. 9, q. 3; can. 215; can. 248, § 2.

si Suffraganeus intra tempus iure statutum, iusto impedimento non detentus, id facere omiserit;

2.° Indulgentias centum dierum, sicuti in propria dioecesi, concedere;

3.° Deputare Vicarium Capitularem ad normam can. 432, § 2;

4.° Vigilare ut fides ac disciplina ecclesiastica accurate serventur, ac de abusibus Romanum Pontificem certiorem facere;

5.° Canonicam visitationem peragere, causa prius ab Apostolica Sede probata, si eam Suffraganeus neglexerit; tempore autem visitationis, potest praedicare, confessiones audire etiam absolvendo a casibus Episcopo reservatis, de vita et honestate clericorum inquirere, clericos infamia notatos Ordinariis ipsorum, ut eos puniant, denuntiare, notoria crimina, manifestas et notorias offensas tum sibi tum suis forte illatas, iustis poenis, censuris non exclusis, punire;

6.° In omnibus ecclesiis, etiam exemptis, Ordinario loci praemonito, si ecclesia sit cathedralis, peragere pontificalia, uti Episcopus in proprio territorio, populo benedicere, cruce ante se delata incedere, non autem alia exercere quae iurisdictionem importent;

7.° Appellationem recipere a sententiis definitivis aut interlocutoriis definitivarum vim habentibus, prolatis in Curiis suffraganeis, ad normam can. 1594, § 1;

8.° Controversias de quibus in can. 1572, § 2, in prima instantia dirimere.

As to No. 1: The right of *investing* is granted to the metropolitan if the suffragan delays investiture beyond two months, for in that case the law [8] permits the patron

[8] Pius V, "In conferendis," § 4; Richter, *Trid.*, p. 576; Barbosa, *De Officio et Potestate Episcopi*, P. I, tit. 4, n. 20; cfr. can. 455, 458.

to ask the metropolitan for investiture, supposing, of course, that the candidate is fit. It may be observed that the Code mentions only benefices of the *iuspatronatus,* which is of no importance for the metropolitans of our country.

No. 3 will be explained in its proper place, under can. 432.

No. 5. As to the *canonical visitation,* the Council of Trent [9] ordained that a metropolitan could perform it in a diocese of any of his suffragans only after he had visited his own diocese and with the approval of the provincial council. The new law modifies the old in two ways: first, in that the visitation of his own diocese is not required previously to visiting a suffragan's diocese; secondly, the reason for visiting the suffragan's diocese must now be reported to, and ratified by, the Holy See. This latter enactment is the logical consequence of the provincial councils being approved by the Holy See. As soon as the visit is ratified by competent authority, and the metropolitan enters the diocese of his suffragan, his jurisdiction becomes as it were ordinary over the subjects of his suffragan, but not over the suffragan himself. Hence, (a) he may preach the word of God even without asking the suffragan; (b) exercise acts of jurisdiction in the confessional as well as outside. To this latter faculty must be referred the investigation of the life and conduct of the clergy, and the exercise of contentious jurisdiction. Coercive power may be exercised by the metropolitan against infamous clergymen [10] for notorious crimes [11] which cannot be concealed, especially if the culprit has been tried by a civil or ecclesiastical

9 Sess. 24, c. 3 de ref., cc. 1, 5, 6°, III, 20.

10 Cf. can. 2320, 2328, 2343, 2314, 2359, § 2.

11 Cf. can. 2197. Barbosa, *Tractatus Varii,* Appellativa, n. 166.

court. Finally, the metropolitan may proceed against such as offer affronts or insults to his person or suite, or prevent the exercise of his jurisdiction during the time of canonical visitation.[12]

Nos. 7 and 8 mention appeals, which may, but need not always, be made from the sentence of the episcopal court,[13] and settlements of such controversies as regard the personal property and rights of the bishop or his episcopal revenues, or diocesan property.[14]

From this enumeration of the rights of a metropolitan with regard to his suffragans we may conclude, first, that only in case of negligence directly stated in the law has the metropolitan a right to interfere in the diocese of a suffragan. Here the old [15] and the new law agree. Secondly, a metropolitan enjoys no jurisdiction *over his suffragans* as such, for in all the cases alleged in the present canon the person of the suffragan is nowhere mentioned, but there is question merely of administrative measures or appeals, or the extraordinary case (n. 5) of canonical visitation, and in this the metropolitan really acts in the name of the Pope.

Except in the case of a canonical visit, every jurisdictional act is forbidden to the metropolitan in the dioceses of his suffragans.[16] Wherefore the statement of some older canonists [17] that the metropolitan may exercise jurisdiction over his suffragans, must now be modified, as the present law warrants no such privilege, unless when the Holy See permits a metropolitan to exercise it in connection with a canonical visitation.

12 Cc. 1, 5, 6°, III, 20; c. 1, 6°, V, 9.

13 Can. 1594, § 1; c. 11, X, I, 31; c. 1, 6°, I, 16; c. 7, 6°, V, 11.

14 Can. 1592, § 2.

15 C. 1, 6°, I, 8; c. 1, 6°, I, 6.

16 Cc. 7 f., C. 9, q. 3.

17 Reiffenstuel, I, 10, n. 11; Barbosa, *De Officio et Potestate Episcopi*, P. I, tit. 4, who enumerates 38 prerogatives of the archbishops; cfr. his *Summa Decis. Apost.*, s. v. "Archiepiscopus."

### THE PALLIUM

The origin of the pallium is involved in obscurity. It seems to be an imitation of the *ὠμοφόριον*, a band of wool worn at Mass by Oriental bishops. This ornament was in vogue also in Gaul and Africa. As a special sign of distinction the *pallium* came into general use after the sixth century. In its modern form it is a circular band, about two inches wide, worn about the neck, breast and shoulders, and having two pendants, one hanging down in front, the other behind. It is set with six black crosses of silk, one each on the breast and back, one on each shoulder, and one on each pendant. It is worn over the chasuble and signifies the plenitude of the pastoral and episcopal power which an archbishop has received from the Pope.[18] The pallia are kept in a *capula* over the tomb of St. Peter, and hence are said to be "taken from the body of St. Peter," after being blessed by the Pontiff on the eve of the feast of SS. Peter and Paul.[19]

### Can. 275

**Metropolita obligatione tenetur, intra tres menses a consecratione vel, si iam consecratus fuerit, a provisione canonica in Consistorio, per se vel per procuratorem a Romano Pontifice pallium petendi, quod significat potestatem archiepiscopalem.**

The metropolitan is obliged, either himself or by proxy, to ask the Pope for the pallium within three months from the date of his consecration, or, if he is already consecrated, from the time of his canonical promotion in the consistory.

18 Cfr. Duchesne, *Christian Worship*, p. 380 ff; Braun in the Cath. Encycl., Vol. XI, 427.

19 Benedict XIV, "*Rerum ecclesiasticarum*," Aug. 12, 1748.

CAN. 276

**Quare ante pallii impositionem, excluso speciali indulto apostolico, ipse illicite poneret actus sive iurisdictionis metropolitanae, sive ordinis episcopalis in quibus, ad normam legum liturgicarum, usus pallii requiritur.**

Acts of metropolitan jurisdiction or of the episcopal order which require the use of the pallium according to liturgical norms, are illicit if performed before the imposition of the pallium.

CAN. 277

**Metropolia uti potest pallio intra quamlibet ecclesiam etiam exemptam suae provinciae in Missarum sollemnibus, diebus in Pontificali Romano designatis aliisque forte sibi concessis; nullatenus vero extra provinciam, etsi Ordinarii loci consensus accedat.**

The Metropolitan may use the pallium in every church of his province on the days determined in the *Pontificale Romanum* or on others specially granted to him; but he may not use it outside his province, even though the local Ordinary consent.

CAN. 278

**Si Metropolita pallium amittat vel ad aliam sedem archiepiscopalem transferatur, novo indiget pallio.**

If a Metropolitan loses his pallium, or is transferred to a different archiepiscopal see, he must obtain another pallium.

## Can. 279

**Pallium neque commodari potest neque donari nec in morte alicui relinqui, sed omnia pallia quae Metropolita obtinuit, cum eodem sunt sepelienda.**

The pallium can neither be lent, nor given away, nor left to anyone after death, but all pallia received by a Metropolitan must be buried with him. Archbishops who are metropolitans, or who hold that title, must demand the pallium *instanter, instantius, instantissime.* The reason for this urgent postulation lies in the significance of the pallium as indicative of the plenitude of the archiepiscopal jurisdiction.[20]

If an archbishop is personally present in Curia, he must present himself to the senior Cardinal Deacon, who imposes the pallium in the name of the Pontiff. The same applies to the procurator who requests the pallium for an archbishop, and who is, moreover, obliged to take an oath before the same Cardinal Deacon that he will conscientiously transmit the sacred ornament to the metropolitan.[21]

Since the pallium signifies the plenitude of the pastoral office, it must be obtained before the metropolitan can exercise his archiepiscopal functions. Hence he cannot licitly invest clergymen presented by patrons, but he may licitly and validly make appointments in his own archdiocese; he cannot convoke a provincial council (can. 284), nor licitly perform any act of jurisdiction mentioned in can. 274. Besides, before the reception of the pallium, a metropolitan cannot consecrate altars, or churches, or bishops, or chrism, or ordain clergymen,

20 C. 1, Dist. 100; c. 3, X, I, 8.

21 Benedict XIV, "Inter conspicuos," Aug. 29, 1744. The formula of the oath is given in "*Rerum ecclesiasticarum,*" Aug. 12, 1748; cfr. can. 239, §3.

even though he may have been archbishop of another diocese.[22]

The pallaium may be worn by an archbishop in all the *churches* located *within the limits of his province.* Strictly speaking, its use is restricted to the celebration of the Mass, except *de requiem.*[23] The festival occasions on which the use of the pallium is permitted are indicated in the *Caeremoniale Episcoporum.*[24] Since the pallium is something attached to the person, but with definite relation to a church designated by the Roman Pontiff, it cannot be loaned to another, or taken to another see, but all the pallia of an archbishop, if he has obtained several, are to be buried with him.[25]

### PRECEDENCE

### Can. 280

**Patriarcha praecedit Primati, Primas Archiepiscopo, hic Episcopis, salvo praescripto can. 347.**

Patriarchs enjoy precedence over primates, primates over archbishops, and archbishops over bishops, except in the cases mentioned in can. 347.

The *Annuario Pontificio* for 1917 enumerates the following *Patriarchs,* called *maiores:*

*Constantinople:* (Latin) residing in Rome;

*Alexandria:* The Latin residing in Rome; the Coptic at Hermopolis;

*Antioch:* The Latin in Rome; the Syrian at Beirut; the Maronite at Bikorchi on Mount Lebanon; the Greek Melchite (Arabic) at Damascus;

22 *Pontificale Rom., De Pallio; Caeremoniale Episcop.,* I, c. 16, n. 6.

23 *Caerem. Ep., ib.*

24 L. I, c. 16, n. 4.

25 C. 2, X, I, 8; c. 4, X, I, 5; *Pont. Rom., De Pallio; Caeremoniale Episcop.,* I, 16, n. 6 f.

*Jerusalem,* the Latin, with residence there.

*Minor Patriarchs* are those of:

*Babylon* of the Chaldees, at Mossul, who is at the same time Administrator Apostolic of Acre;

*Armenian Cilicia,* at Constantinople, Administrator Apostolic of Ispaham in Armenia;

*West Indies,* Archbishop of Toledo in Spain (since 1540);

*East Indies,* at Goa, since 1886;

*Lisbon,* since 1716, residence there (under normal circumstances).

*Venice,* transferred from Aquileja-Grado since 1541.[26]

[26] Cfr. *Am. Eccl. Rev.,* 1918 (Vol. 58), p. 113 ff.

# CHAPTER VII

## PLENARY AND PROVINCIAL COUNCILS

When Christianity had spread and diocesan centres were erected, the bishops assembled for deliberation and especially for the uprooting of heresies. This custom soon became an important factor in the life of the Church. Synods or councils, as they were called already in Tertullian's [1] time, were quite frequent in the third and even more so in the fourth century, and were generally held in times of a crisis, but also for disciplinary purposes. Since the middle of the third century they were known by the name of provincial (exarchal) councils. In Africa, however, plenary or universal councils, presided over by the primate of Carthage, were celebrated in the fourth and fifth centuries. Roman or Papal synods went by the same name almost to the close of the Middle Ages.[2] The Council of Trent [3] ordered provincial councils to be held every three years for the regulation of morals, the correction of excesses, and the settling of controversies. Notwithstanding this enactment, times were so unfavorable that more than a century elapsed without a provincial council being held, with the exception of one at Tarragona in Spain, until Benedict XIII held one at Benevento in 1693. Since then they became more frequent.[4]

1 *De ieiunio*, c. 13.

2 Cfr. *Kirchenlexikon*, 2 ed., s. v. "Concil."

3 Sess. 24, c. 2 de ref.

4 *Collectio Lacencis, Acta et Decreta SS. Concil. Recentiorum*, 1870, Vol. I, Prolegomena, p. 2.

In this country the first provincial council was held at Baltimore in 1829 and followed by others in 1833, 1837, 1846, 1849. In 1852 the first National or Plenary Council was convoked by the Archbishop of Baltimore, Mt. Rev. F. P. Kendrick, in the capacity of Apostolic Delegate of Pius IX. The second followed fourteen years later, and the last one was held in 1884, under the presidency of Archbishop, now Cardinal, Gibbons of Baltimore as Apostolic Delegate.[5]

PLENARY COUNCILS

CAN. 281

**Ordinarii plurium provinciarum ecclesiasticarum in Concilium plenarium convenire possunt, petita tamen venia a Romano Pontifice, qui suum Legatum designat ad Concilium convocandum eique praesidendum.**

The Ordinaries of several ecclesiastical provinces may meet in a plenary council after having obtained permission from the Roman Pontiff, who will designate a Legate to convoke and preside over the council.

Leo XIII, after having received the petition of South American bishops, left it to them to choose the place of meeting, but was highly pleased with their choice of Rome, where the illustrious prelates met in 1899 and enacted a number of decrees which received the specific approval of the Holy See.[6]

CAN. 282

**§ 1. Concilio plenario assistere debent cum suffragio**

5 The *acta* were published in the *Coll. Lacencis*, t. III, and separately at Baltimore in 1853, 1868, 1886.

6 "Quum diuturnum," Dec. 25, 1898 (*Am. Eccl. Rev.*, Vol. 20, 409 f.).

deliberativo, praeter Legatum Apostolicum, Metropolitae, Episcopi residentiales, qui, sui loco, mittere possunt Coadiutorem vel Auxiliarem, Apostolici dioecesium Administratores, Abbates vel Praelati *nullius*, Vicarii Apostolici, Praefecti Apostolici, Vicarii Capitulares.

§ 2. Etiam Episcopi titulares, in territorio degentes, si a Legato Pontificio, secundum receptas instructiones, ad Concilium vocentur, adesse debent habentque suffragium deliberativum, nisi in convocatione aliud expresse caveatur.

§ 3. Alii ex utroque clero viri, forte ad Concilium invitati, suffragio non gaudent nisi consultivo.

This canon, especially by § 3, excludes the superiors of religious orders or congregations from a deliberative or decisive vote; they need not even be invited if the preliminary meeting thinks it unnecessary to call them. This enactment is surprising if compared with can. 223, § 1, n. 4, which admits the superiors general of exempt religious and abbots presidents of monastic congregations to deliberative participation at a general council. The Third Plenary Council of Baltimore had accorded that same right to the abbots presidents Wimmer of St. Vincent and Mundwiler of St. Meinrad, and to the superior general of Holy Cross, Father Sorin.[7] We are at a loss to find a solid reason for the exclusion of the aforesaid superiors from the right of assisting at a plenary council, the more so since Cardinal Gasparri gives no text for this enactment. But where there is no right, there is no obligation, although an invitation might be tendered.

7 *Acta et Decreta Conc. Balt.* III., 1886, p. LXIII.

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PROVINCIAL COUNCILS

CAN. 283

**In singulis provinciis ecclesiasticis celebretur provinciale Concilium vicesimo saltem quoque anno.**

In each province a provincial council should be held at least once every twenty years.

CAN. 284

**Metropolita, eoque legitime impedito vel sede archiepiscopali vacante, Suffraganeus antiquior promotione ad ecclesiam suffraganeam:**

**1.° Locum ad celebrandum Concilium intra provinciae territorium, auditis omnibus qui assistere debent cum suffragio deliberativo, eligit; cessantibus tamen iustis impedimentis, metropolitana ecclesia ne negligatur;**

**2.° Concilium convocat eique praeest.**

The metropolitan, or in case he is lawfully prevented or the archiepiscopal see is vacant, the suffragan who by reason of promotion to the suffragan see is the senior, shall select the place for holding the council, after having received the opinion of all those who are obliged to assist thereat with a decisive vote. If there is no serious obstacle, the metropolitan church should be chosen. The metropolitan shall convoke the council and preside over it.

The term "*auditis*" signifies that the metropolitan is not bound by the opinion or quasi-vote given, but may choose a place according to his own good pleasure.[8]

CAN. 285

**Episcopi qui nulli Metropolitae subiiciuntur, Ab-**

8 Cf. can. 105.

**bates vel Praelati *nullius,* et Archiepiscopi Suffraganeis carentes, aliquem viciniorem Metropolitam, nisi forte iem elegerint, semel pro semper, praevia Sedis Apostolicae approbatione, eligant, cūius Concilio provinciali cum aliis intersint, et quae ibi ordinata fuerint, observent et observanda curent.**

Bishops who are not subject to a metropolitan, abbots or prelates *nullius,* and archbishops without suffragans, if they have not done so already, should once for all and with the approbation of the Holy See choose the nearest metropolitan, at whose provincial council they must assist, and the enactments of which they must observe and enforce.

As to the *vicinior,* or nearest metropolitan, several decisions [9] of the Roman Court have defined that the distance is to be measured from the cathedral or abbey church to the cathedral of the metropolitan. However, these decisions are rather old, and perhaps antiquated, because there were no railroad facilities in those days, and hence it will be advisable to submit the choice to the Holy See. After the choice has been approved, no change is permitted and the obligation of assisting at the provincial councils is strict if no legitimate impediment occurs.

## Can. 286

**§ 1. Praeter Episcopos, Abbates vel Praelatos *nullius* et Archiepiscopos de quibus in can. 285, ad Concilium provinciale vocandi sunt et convenire debent cum voto deliberativo Suffraganei omnes aliique de quibus in can. 282, § 1.**

9 S. C. EE. et RR., Jan. 20, 1579; 1 C. C. Aug. 2, 1596; cf. Barbosa, *Summa Decis. Apost., s. v.* "Episcopus vicinior;" Santi-Leitner, I, 11, n. 36; *Trid.,* Sess. 24, c. 2 de ref.

§ 2. Episcopi titulares qui in provincia degunt, possunt a praeside, cum consensu maioris partis illorum qui cum voto deliberativo intersunt, convocari, et si convocentur, votum habent deliberativum, nisi aliud in convocatione caveatur.

§ 3. Capitula cathedralia aut Consultores dioecesani cuiusvis dioecesis cuius Ordinarius ad normam § 1 vocari debet, invitentur ad Concilium et invitati mittant duos ex capitularibus aut Consultoribus collegialiter designatos, qui tamen obtinent votum tantum consultivum.

§ 4. Maiores quoque religionum clericalium exemptarum ac Congregationum monasticarum Superiores, qui in provincia resideant, invitandi sunt, debentque invitati adesse aut impedimentum, quo detinentur, Concilio notum facere; sed his, quemadmodum aliis ex utroque clero viris ad Concilium forte vocatis, votum fuerit, habet votum dumtaxat consultivum.

Two diocesan consultors, therefore, must attend the provincial council and the *superiores maiores* of exempt clerical orders and monastic congregations who reside in the province must also be invited, and upon being invited, must attend or give notice of the reason for their absence; but all these and other ecclesiastics, secular and regular, if invited, have only an advisory vote.

Innocent III told the archbishop of Sens, who wished to exclude the cathedral chapters from the provincial council, that their deputies were to be admitted to the conciliar discussions (*ad tractatum*), especially with regard to matters touching upon the chapters.[10] This text would seem to indicate that these delegates ought to have a deliberative vote. But the new Code grants only a

10 C. 10, X, III, 10.

consultive vote, apparently for the reason that only the bishops are judges and legislators in the true sense,—which reason is perfectly correct, inasfar as even these judges cannot go against the general law.

The deputies of the chapters and diocesan consultors must be appointed *collegialiter,* either by secret ballot or open vote by a legitimate *quorum* present in one place at the same time.

At provincial councils the superiors of religious orders are allowed to be present, nay, they must be invited, and this invitation, of course, creates the obligation of attending.

### CONCILIARY PROCEEDINGS

### CAN. 287

**§ 1. Qui Concilio plenario aut provinciali interesse debent cum voto deliberativo, si iusto impedimento detineantur, mittant procuratorem et impedimentum probent.**

**§ 2. Procurator, si fuerit unus ex Patribus quibus est votum deliberativum, duplici voto non gaudet; si non fuerit, habet votum dumtaxat consultivum.**

Those obliged to attend either a plenary or provincial council and who have a deliberative vote, shall, if detained, send a procurator and prove that they are legitimately absent. If the procurator is one of the "Fathers" of the Council, he enjoys but one vote; if he is not a "Father," he has a consultive vote only.

### CAN. 288

**In Concilio sive plenario sive provinciali praeses,**

**habito, si de provinciali agatur, Patrum consensu, determinat ordinem servandum in quaestionibus examinandis et ipsum Concilium aperit, transfert, prorogat, absolvit.**

The president of either a plenary or provincial council (if the latter, with the consent of the Fathers) shall establish the order in which questions are to be examined, shall open, transfer, prorogue, and close the meetings.

CAN. 289

**Concilio plenario vel provinciali inchoato, nemini eorum qui interesse debent, licet discedere, nisi iustam ob causam a Legato Pontificio vel a Concilii provincialis Patribus probatam.**

Those who are obliged to attend a plenary or provincial council are not allowed to depart, once the council has been opened, unless they have a reason approved by the Apostolic Legate or the Fathers of the Council.

Notice the difference between those who are obliged to attend, because these may enjoy only an advisory vote, and the Fathers of the council, who are entitled to a deliberative or decisive vote.

CAN. 290

**Patres in Concilio plenario vel provinciali congregati studiose inquirant ac decernant quae ad fidei incrementum, ad moderandos mores, ad corrigendos abusus, ad controversias componendas, ad unam eandemque disciplinam servandam vel inducendam, opportuna fore pro suo cuiusque territorio videantur.**

The Fathers of a plenary or provincial council shall

earnestly examine and decree upon all matters touching the increase of faith, the control of morals, the correction of abuses, the settling of controversies, the preservation and introduction of uniform discipline, and whatever may be opportune for their own territory. This canon states, in rough outline, what is to be submitted to the deliberation and consultation of the Fathers, and is chiefly taken from the IVth Lateran Council and that of Trent.[11] Note that only "*increase of faith*" is mentioned, not a definition of faith, because infallibility is not the attribute of a plenary or provincial council, which may, however, denounce heresies, draw attention to wrong tendencies, and warn the faithful against them. But the final definition or qualification must be left to the supreme tribunal. By the phrase "settling controversies" is not meant a dogmatic or theological settlement, as long as Rome has not spoken, but questions of discipline, education of clergy and faithful in seminaries and schools, the administration of the Sacraments, parish boundaries, etc. The matter is made much easier by the new Code, which states the universal law, modifications of which, either restrictive or extensive, are reserved to the Holy See. Where the Code is not explicit enough, a council must apply to Rome (*S. C. Concilii*).

Finally, though the canon says nothing about it, the *mode of proceeding* at a council is by vote. The vote may be secret or open. This point is to be settled in a preliminary session. The presiding officer has no preponderating voice, even where there is a tie,[12] unless the papal legate to a plenary council has received special instructions from the Holy See.

11 C. 25, X, V, 1; Sess. 24, c. 2 de ref.

12 Smith, *Elements*, I, n. 71.

pretation to the legislators. However, the case here is a peculiar one, since the decrees have no obligatory force unless approved by the Roman Congregation. We think it will be safe to adopt the rule laid down by the Fathers of the Latin-American Plenary Council, *viz.:* that the bishops have power to settle doubts arising from the wording of the text, as long as their interpretation does not affect the substance and juridical value of the same. In the latter case, the doubts should be submitted to the Congregation of Extraordinary Affairs.[18] For our country the authentic interpretation of the decrees of plenary and provincial councils belongs to the S. Congregation of the Council.

With regard to *dispensations,* the Code is more explicit, permitting the Ordinaries to dispense from or relax the decrees in individual cases for a just reason. The reason why this power of dispensation is limited and why the limitation affects the metropolitans as well as their suffragans — though they are themselves the legislators — lies in the fact that their decrees have been elevated into a higher sphere by a superior, not only through papal interposition, but also by a collective act of the legislators.[19] Particular cases means not such as happen daily and ordinarily (*communiter contingentes*), but exceptions, to single persons and parishes.

### Can. 292

**§ 1. Nisi aliter pro peculiaribus locis a Sede Apostolica provisum fuerit, Metropolita, eoque deficiente, antiquior e Suffraganeis ad normam can. 284, curet ut**

18 *Archiv für K.-R.*, 1901 (Vol. 81), p. 54 f.

19 Suarez, *De Legibus*, l. VI, c. 15, nn. 4 ff.; Kenrick, *Theologia Moralis*, 1860, I, 118 (tract. IV, c. 6, n. 49).

**Ordinarii locorum, saltem quinto quoque anno, stato tempore apud Metropolitam aliumve Episcopum comprovincialem conveniant, ut, collatis consiliis, videant quaenam in dioecesibus agenda sint ut bonum religionis promoveatur, eaque praeparent de quibus in futuro Concilio provinciali erit agendum.**

**§ 2. Etiam Episcopi aliique de quibus in can. 285, una cum aliis Ordinariis convocari et convenire debent.**

**§ 3. Iidem Ordinarii congregati sedem proximi conventus designent.**

Unless otherwise provided for by the Apostolic See, the metropolitan, or if he fails to act, the senior suffragan bishop (according to can. 284) should see to it that the Ordinaries of the dioceses meet every five years at a stated time, at the metropolitan's or a fellow-bishop's residence, in order to deliberate about the affairs of their dioceses and thus foster the good of religion, as well as to prepare the questions to be treated in a future provincial council.

The bishops and others mentioned in can. 285, together with other Ordinaries, should be called and must attend a meeting to appoint the place for the next meeting.

All these regulations are intended to secure a united and uniform proceeding as well as to foster charity.

## CHAPTER VIII

### VICARS AND PREFECTS APOSTOLIC

There is a material difference between the vicars Apostolic formerly appointed for, *e. g.*, Thessalonica or Arles, and the vicars Apostolic now appointed for missionary countries. The former were quasi *legati nati*,[1] whereas the vicars of whom the present canon treats are really vicars of the Apostolic See with episcopal jurisdiction, appointed for regions where a full diocesan organization cannot as yet be established or restored. Thus a vicar Apostolic was appointed for Brunswick and Lüneburg, in 1607, under the pontificate of Alexander VII (1655–67), and one for Malabar, where Nestorian disturbances made such a measure imperative. To-day there are vicars or prefects Apostolic in all the territories subject to the Propaganda.[2] In England a vicar Apostolic (Blackwell) was appointed in 1598, and vicars Apostolic continued to govern the English Church until 1850, when the hierarchy was reëstablished. Alaska is now the sole vicariate in our country.

### Can. 293

**§ 1. Territoria quae erecta non sunt in dioeceses reguntur per Vicarios aut Praefectos Apostolicos; qui omnes ab una Apostolica Sede nominantur.**

**§ 2. Vicarius et Praefectus Apostolicus possessionem**

1 Smith, *l. c.*, I, n. 524.

2 Benedict XIV, *De Syn. Dioec.*, II, 10, 3 ff.

sui territorii capiunt, ille litteras apostolicas, hic decretum seu patentes litteras Sacrae Congregationis de Prop. Fide per se vel per procuratorem ostendentes ei qui territorium regit ad normam can. 309.

## Can. 294

§ 1. Vicarii et Praefecti Apostolici iisdem iuribus et facultatibus in suo territorio gaudent, quae in propriis dioecesibus competunt Episcopis residentialibus, nisi quid Apostolica Sedes reservaverit.

§ 2. Etiam ii qui charactere episcopali carent, possunt, intra sui territorii fines ac perdurante munere, omnes benedictiones Episcopis reservatas, una pontificali excepta, impertiri, calices, patenas et altaria portatilia cum sacris oleis ab Episcopo benedictis consecrare, indulgentias quinquaginta dierum concedere, confirmationem, primam tonsuram et ordines minores conferre ad normam can. 782, § 3, 957, § 2.

Apostolic vicars and prefects enjoy the same rights and faculties in their respective territories as residential bishops in their dioceses, unless the Apostolic See makes reserves. Even though destitute of the episcopal character they may, within the limits of their own territory, and during the time of their office, impart the blessings reserved to bishops, except the pontifical blessing proper, may consecrate chalices, patens, and portable altars with oil blessed by a bishop, grant indulgences of fifty days, and confer the tonsure and minor orders according to can. 782, § 3, 957, § 2.

Blessings reserved to bishops are: the blessing of abbots, the dedication and consecration of churches, the blessing and laying of corner-stones, the blessing and

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Blessings reserved to bishops are: the blessing of abbots, the dedication and consecration of churches, the blessing and laying of corner-stones, the blessing and

reconciliation of cemeteries.[3] The consecration of fixed altars is not expressly mentioned, and therefore probably not included in these faculties.

All these faculties, with the exception of such as require the episcopal character or cannot be exercised without the use of holy oils, can be communicated to simple priests.[4]

## Can. 295

**§ 1. Vicarii et Praefecti Apostolici ab omnibus missionariis, etiam religiosis, possunt ac debent exigere ut suas patentes seu alias quasvis eorum missionis, destinationis, constitutionis ac deputationis litteras exhibeant, easque exhibere recusantibus exercitium cuiusvis ministerii ecclesiastici prohibere.**

**§ 2. Omnes missionarii, etiam regulares, licentiam sacri ministerii exercendi petant a Vicariis et Praefectis Apostolicis, qui tamen eam ne denegent, nisi singulis et gravem ob causam.**

Apostolic vicars and prefects may and must demand of all missionaries, even religious, that they show their credentials or other letters explaining their mission, destiny, appointment, and deputation, and in case of refusal must forbid them the exercise of any ministerial functions.

All missionaries, including (exempt) regulars, must ask permission of the vicars or prefects Apostolic to exercise the sacred ministry. This permission should not be denied except in single cases and for weighty reasons.

This is but a repetition of former injunctions.[5]

3 Van der Stappen, *Sacra Liturgia*, IV, p. 347.

4 Benedict XIV, "Apostolicum ministerium," May 30, 1753, § 4.

5 Clement IX, "Speculatores," Sept. 13, 1669; Benedict XIV, Const. cit.

CAN. 296

§ 1. Etiam missionarii regulares subiiciuntur Vicarii et Praefecti Apostolici iurisdictioni, visitationi et correctioni in iis quae pertinent ad missionum regimen, curam animarum, Sacramentorum administrationem, scholarum directionem, oblationes intuitu missionis factas, implementum piarum voluntatum in favorem eiusdem missionis.

§ 2. Quamvis Vicariis et Praefectis Apostolicis nullo modo liceat, praeter casus in iure praevisos, se in disciplinam religiosam ingerere quae a Superiore religioso dependet, si tamen circa ea, de quibus in superiore paragrapho, conflictus oriatur inter mandatum Vicarii aut Praefecti Apostolici et mandatum Superioris, prius praevalere debet, salvo iure recursus in devolutivo ad Sanctam Sedem et salvis peculiaribus statutis a Sede Apostolica probatis.

All missionaries belonging to (exempt) regular orders are subject to the jurisdiction, visitation, and correction of the vicar or prefect Apostolic in matters pertaining to the government of the mission, the care of souls, the administration of the Sacraments, the direction of schools, the gifts of the faithful made for the mission, and the execution of pious legacies made in behalf of the same.

Although the vicar or prefect Apostolic has no right, except in cases provided by law, to interfere with the religious discipline, which depends on the religious superior, yet in the matters mentioned in § 1 of this canon, should a controversy arise between a command of the vicar or prefect and of the superior, the former must prevail, without prejudice to the right of recourse *in devolutivo* to the Holy See and to special statutes approved by the latter.

That regulars in charge of souls should be subject to the jurisdiction of the Ordinary in all matters pertaining to the exercise of this office, was established by the Council of Trent.[6] Benedict XIV ordained furthermore that no appeal or injunction should delay or invalidate the execution of these decrees and their consequences as applied by the Ordinaries,[7] and logically extended the law to the regular missionaries.[8] New experiences and questions elicted the remarkable constitution of Leo XIII, "*Romanos Pontifices,*" of May 8, 1881, which endeavored to settle some disputes between Ordinaries and regulars employed in parish or mission work. The rules laid down in that Constitution have entered almost entirely into the new Code, as may be seen in the section on religious. Here we will only add a note on *schools*. Leo XIII has subjected all elementary (parish) schools conducted by religious, exempt as well as non-exempt, to the direction and visitation of the bishops, but in the same Constitution states that other schools, colleges, etc., are not subject to the Ordinary, though they require his permission for their erection.[9]

As to gifts made for the missions, the same Constitution ordains that all donations made for missionary purposes must be used for that purpose. Broadly speaking, Sunday and house collections, pew rent and stole fees are mission donations and must be employed as such and accounted for to the vicar or prefect Apostolic.

What *in devolutivo* means has already been explained. Religious orders (the Society of Jesus, for instance)

6 Sess. 25, c. 11 de regg.

7 "Ad militantis," March 30, 1742, § 8.

8 "Apostolicum ministerium," May 30, 1753, § 12.

9 Can. 1382, however, gives the Ordinary the right to inspect the schools — except house schools — of regulars as to their religious and moral training.

which have statutes concerning their missionaries approved by the Holy See, are entitled to have these statutes respected by vicars or prefects Apostolic.

### Can. 297

**Deficientibus e clero saeculari sacerdotibus, Vicarii et Praefecti Apostolici possunt, audito eorum Superiore, cogere religiosos, etiam exemptos, vicariatui vel praefecturae addictos, ad animarum curam exercendam, salvis pariter peculiaribus statutis a Sede Apostolica probatis.**

Where there is an insufficient number of secular priests, the vicar or prefect may, upon having heard their superior, compel religious, even those belonging to exempt orders, who are attached to the vicariate or prefecture, to perform pastoral work, with due regard, however, to their peculiar statutes approved by the Apostolic See, as stated in "*Speculatores*" of Clement IX, Sept. 13, 1669.

### Can. 298

**Si qua dissidia in iis quae ad curam animarum pertinent, sive inter singulos missionarios, sive inter diversas religiones, sive inter missionarios et alios quoslibet oriri contigerit, ea quamprimum componere curent Vicarii ac Praefecti Apostolici, qui huiusmodi quaestiones, ubi opus fuerit, dirimant, integro tamen iure recursus ad Apostolicam Sedem, qui decreti effectum non suspendit.**

If any controversy should arise about matters pertaining to the care of souls between individual missionaries, or different religious orders, or between missionaries and

others, let the vicars or prefects settle them as quickly as possible. The right of recourse *in devolutivo* to the Apostolic See, however, remains untouched.

That such controversies may arise, the incidents recorded in several constitutions of Benedict XIV amply prove. This Pontiff had to settle the somewhat heated dissensions between the Dominicans and the Jesuits about Chinese rites, and solve doubts about various customs regarding the administration of baptism and nuptial ceremonies.[10]

### Can. 299

**Vicarii Apostolici obligatione tenentur Sacra Limina Beatorum Apostolorum Petri et Pauli visitandi eadem prorsus lege, qua Episcopi residentiales ad normam can. 341; cui tamen muneri, si quid graviter obstet ne per se ipsi illud expleant, satisfacere possunt per procuratorem etiam in Urbe degentem.**

Vicars Apostolic are, like residential bishops, bound to make the *visitatio ad limina* (or tombs) of SS. Peter and Paul. If a serious obstacle prevents them from performing this duty, they may send a procurator, or commission some one living in the Eternal City. An explanation of this follows under can. 341.

### Can. 300

**§ 1. Ad normam can. 340, Vicarii ac Praefecti Apostolici tenentur obligatione Sedi Apostolicae exhibendi plenam accuratamque relationem de suo quisque pastorali officio, deque omnibus quaecunque ad**

10 "Ex quo singulari," July 11, 1744; "Omnium solicitudinum," 1742; "Redditae nobis," Dec. 19, Sept. 12, 1744.

**statum vicariatus vel praefecturae, ad missionarios, ad religiosos, ad populi disciplinam, ad scholarum frequentiam, ad fidelium denique ipsorum curae commissorum salutem quavis ratione pertineant; quae relatio scripta esse debet et subscripta tum ab ipso Vicario aut Praefecto tum ab uno saltem ex consiliariis de quibus in can. 302.**

**§ 2. Imo etiam sub cuiusque anni exitum ad Sanctam Sedem mittant elenchum seu numerum conversorum, baptizatorum annuaeque Sacramentorum administrationis una cum aliis notatu dignioribus.**

As prescribed in can. 340, Apostolic vicars and prefects are obliged to send each year a full and accurate report of their pastoral office and everything that touches the state of their vicariate or prefecture, or the missionaries, the religious, the discipline of the people, the frequenting of schools, the welfare of the faithful committed to their care. This report must be made in writing, signed by the vicar or prefect and by at least one of his consultors (see can. 302). Each vicar and prefect shall, moreover, at the end of each year, send to the Holy See a report on the number of converts, baptisms, and the annual administration of the Sacraments, together with other noteworthy items.

## Can. 301

**§ 1. In regione sibi commissa commorentur, a qua sine gravi et urgenti causa per notabile tempus iis abesse ne liceat, inconsulta Sede Apostolica.**

**§ 2. Regionem sibi concreditam, quandocumque sit opus, debent ipsi per se vel, si legitime impediti fuerint, per alium visitare eaque omnia in visitatione expendere,**

**quae ad fidem, bonos mores, Sacramentorum administrationem, praedicationem verbi Dei, festorum observantiam, cultum divinum, iuventutis institutionem, disciplinam ecclesiasticam referuntur.**

Apostolic vicars and prefects must reside in the territory assigned to them and are not allowed to be absent therefrom for any considerable length of time without a weighty and urgent reason and without having consulted the Apostolic See.

Whenever necessary, they must visit their district either themselves or, if impeded, send another, and at this visitation take due measures respecting the faith, good morals, the administration of the Sacraments, preaching, the observance of feasts, divine worship, the education of youth, and ecclesiastical discipline.

These two paragraphs enjoin *residence* and *diocesan visitation;* that a wide margin is left as to place and time is but natural in missionary countries. Due regard must necessarily be taken of distance and transportation facilities. Weighty and urgent reasons may arise at any moment and cannot always be foreseen.

### Can. 302

**Constituant Consilium ex tribus saltem antiquioribus et prudentioribus missionariis, quorum sententiam, saltem per epistolam, audiant in gravioribus et difficilioribus negotiis.**

They shall appoint a council consisting of at least three of their older and more experienced missionaries, whose opinion they shall hear, at least by letter, in more important and difficult matters.

CAN. 303

Prout siverit opportunitas, missionarios saltem praecipuos tum religiosos tum saeculares proprii territorii congregent semel saltem in anno, ut possint ex singulorum experientia et consilio deducere quae sint ordinanda perfectius.

As far as circumstances permit, they shall also convoke the principal missionaries, religious as well as secular, once a year, in order to learn from their experience and advice what may be more perfectly arranged.

CAN. 304

§ 1. Legibus quae de archivo constituendo Episcopis praescribuntur, etiam Vicarii ac Praefecti Apostolici, habita locorum personarumque ratione, aeque tenentur.

§ 2. Pariter quae de Conciliis plenariis et provincialibus can. 281–291 praescribuntur, applicari debent, congrua congruis referendo, Conciliis plenariis vel regionalibus et provincialibus in regionibus Sacrae Congregationi de Prop. Fide subiectis; quae de Synodo dioecesana can. 356–362, Synodo vicariatus apostolici; sed nullum est praefinitum tempus pro Concilii provincialis et Synodi celebratione, et canones Conciliorum, antequam promulgentur, recognosci debent a Sacra Congregatione de Prop. Fide.

Vicars and prefects, like bishops, but with due consideration of persons and places, are obliged to keep archives for the documents pertaining to their districts. Similarly, but also in a manner proportionate to circumstances, the prescriptions concerning plenary and provincial councils (can. 281–291) must be applied to the provinces sub-

ject to the Propaganda; also enactments regarding diocesan synods (can. 356–362). However, no definite time is fixed for the celebration of either provincial councils or diocesan synods, and the canons of both must, before promulgation, be recognized by the Propaganda. Here it is permissible to doubt whether the religious superiors are to be excluded from participation in a plenary council.

### Can. 305

**Studiosissime curent, onerata graviter eorum conscientia, ut ex christianis indigenis seu incolis suae regionis probati clerici rite instituantur ac sacerdotio initientur.**

They are under strict obligation to see to it that worthy Christian natives or inhabitants of their province are properly trained and raised to the priesthood. This most Apostolic injunction has been insisted upon in various Apostolic constitutions and inculcated again and again by the S. C. Prop. Fide. Thus, on Nov. 23, 1845, the latter enjoined that natives should be trained and employed, not only in inferior mission work, such as catechizing, but also as missionaries, who in course of time might become pastors of souls and even vicars or prefects Apostolic. The contrary practice was condemned as opposed to the intentions of the Holy See and out of keeping with the spirit of the sacred ministry.

### Can. 306

**Missae sacrificium pro populis sibi commissis applicare debent, saltem in sollemnitatibus Nativitatis Domini, Epiphaniae, Paschatis, Ascensionis, Pentecostes, sanctissimi Corporis Christi, Immaculatae Con-**

**ceptionis et Assumptionis Beatae Mariae Virginis, Sancti Ioseph eius sponsi, Sanctorum Apostolorum Petri et Pauli, Omnium Sanctorum, servato praescripto can. 339, §§ 2 seqq.**

They must apply the holy sacrifice of the Mass for the people entrusted to them at least on the feasts of Christmas, Epiphany, Easter, Ascension, Pentecost, Corpus Christi, the Immaculate Conception, the Assumption of the B. V. Mary, St. Joseph, SS. Peter and Paul, and All Saints, with due regard to the rules laid down in can. 339, § 2 ff.

CAN. 307

**§ 1. Ipsis non licet, inconsulta Sede Apostolica, concedere missionariis ab ea missis veniam in perpetuum deserendi vicariatum aut praefecturam, vel alio transeundi, nec eos quoquo modo expellere.**

**§ 2. In casu autem publici scandali possunt ipsi, audito suo Consilio, et si agatur de religiosis, praemonito, quantum fieri potest, Superiore, missionarium statim removere, facta tamen illico certiore Apostolica Sede.**

They are not allowed, without consulting the Apostolic See, to grant to the missionaries sent out by the same (Apostolic See) perpetual leave of absence from their vicariate or prefecture, or permission to go elsewhere, or to expel them in any way.

In case a missionary has given public scandal, however, they may, after having heard their counsellors, and, if the culprit is a religious, after serving notice, when possible, upon his superior, remove him at once and then notify the Apostolic See as soon as possible.[11]

11 Clement IX, "Speculatores," Sept. 13, 1669; Leo XIII, "Ad

## Can. 308

**Vicariis et Praefectis, charactere episcopali auctis, privilegia honorifica competunt, quae ius concedit Episcopis titularibus; si autem charactere episcopali careant, habent tantum, durante munere et in proprio territorio, insignia et privilegia Protonotariorum apostolicorum de numero participantium.**

Vicars and prefects, if they have the episcopal character, enjoy the same prerogatives of honor which the law grants to titular bishops; if they are not consecrated bishops, they are entitled, during their tenure of office and in their own territory only, to the insignia and privileges of prothonotaries Apostolic *de numero participantium.*

As titular bishops, vicars and prefects rank after residential bishops. Their place at councils is expressly defined in the Code.[12]

As to the *protonotarii apostolici de numero participantium,* Pius X (*"Inter multiplices,"* Feb. 25, 1905) regulated their dress, which is that of regular prelates, with the right of wearing a ring and the faculty of pontificating outside of the Eternal City, but only with the *faldistorium* (faldstool) and without the seventh candle. Nor are they allowed to bless the people when entering the church. They say not "Pax vobis," but "Dominus vobiscum." They wear the pectoral cross only when they pontificate. Their mitre is not the *pretiosa* (studded with gems), but of gold cloth or silk, and their skull-cap of black silk. They always need the consent of the Ordinary if they wish to celebrate pontifical High Mass.[13]

extremas Orientis," June 24, 1893; Instructio S. C. Prop. Fide in *Collectio Lacensis,* VI, 663 ff.

12 Can. 348 f.

13 Cf. *Am. Eccl. Rev.,* 1905 (Vol. 33), p. 612 ff; Vol. 34, p. 74 f.

CAN. 309

§ 1. Vicarii et Praefecti, ubi primum in territorium suum advenerint, deputent ex uno vel altero clero Provicarium vel Pro-praefectum idoneum, nisi Coadiutor cum futura successione a Sancta Sede datus fuerit.

§ 2. Pro-vicarius aut Pro-praefectus nullam habet, vivente Vicario aut Praefecto, potestatem, nisi quae fuerit ab eodem sibi commissa; sed deficiente Vicario aut Praefecto, vel eorum iurisdictione impedita ad normam can. 429, § 1, totum debet regimen assumere et in hoc munere permanere, donec a Sancta Sede aliter fuerit provisum.

§ 3. Pari modo Pro-vicarius aut Pro-praefectus, qui titulari successerit, statim deputet ecclesiasticum virum, qui sibi, ut supra, in munere succedat.

§ 4. Si forte contingat ut nemo sive a titulari sive a pro-titulari uti administrator fuerit designatus, tunc senior in vicariatu vel praefectura, is, nempe, qui sit praesens in territorio et suas destinationis litteras in eodem prius exhibuerit, censetur delegatus a Sancta Sede ut regimen assumat, et inter plures aeque seniores antiquior sacerdotio.

Vicars and prefects shall, immediately upon entering their territory, appoint a fit clergyman as pro-vicar or pro-prefect, unless the Holy See has already assigned a co-adjutor with the right of succession.

The pro-vicar or pro-prefect has no power during the lifetime of the vicar or prefect, except in so far as the latter has committed it to him; but in case the vicar or prefect ceases to officiate, or if his jurisdiction is impeded, according to can. 429, § 1, the pro-vicar or pro-prefect assumes the whole government and administers it until the Holy See shall provide otherwise.

A pro-vicar or pro-prefect who has succeeded the vicar or prefect proper, shall immediately appoint an ecclesiastic to succeed him.

Should the appointment of an administrator have been omitted either by the vicar or the pro-vicar, the prefect or the pro-prefect, then the senior of the vicariate or prefecture, *i. e.*, the priest who is present in the territory and has first shown the papers of his missionary appointment, must be looked upon as delegated by the Holy See to assume the reins, or if there are several of equal seniority, the one who has been longest in the priesthood.

Benedict XIV provided that where no coadjutor with the right to succession had been appointed, the vicar Apostolic should name a pro-vicar or quasi vicar-general, who in case of the demise of the vicar should immediately succeed him.[14] In another Constitution [15] he limited the appointment of a vicar-general to territories in which there were no chapters or consultors who would be entitled to choose a vicar-capitular. But he also modified the requisites (doctor title) for the office of vicar, demanding only that he be "*habilis et idoneus.*" Our canon modifies this law in so far as not only the vicars Apostolic but also the prefects Apostolic are instructed to appoint pro-prefects, in order to obviate any uncertainty or confusion regarding the government of the territory. The canon makes no distinction between territories with chapters or concultors and such as have none of these, but merely enjoins that a pro-vicar or pro-prefect be appointed immediately upon entering his office, or rather his district. The power of these pro-vicars and pro-prefects is suspended until the vicars and prefects go out of office, just as Benedict XIV had ordered.

14 "Ex sublimi," Jan. 26, 1753. 15 "Quam ex sublimi," Aug. 8, 1755.

CAN. 310

**§ 1. Ad quos vicariatus aut praefecturae cura devenerit ad normam can. 309, ii debent quamprimum certiorem facere Apostolicam Sedem.**

**§ 2. Interim uti possunt omnibus facultatibus sive ordinariis ad normam can. 294, sive delegatis, quibus Vicarius vel Praefectus pollebat, nisi commissae fuerint ob industriam personae.**

Those who rule a vicariate or prefecture (*ad interim*) according to can. 309, must inform the Apostolic See as soon as possible. In the meanwhile they enjoy the faculties, both ordinary (can. 294) and delegated, which were enjoyed by the vicar or prefect himself, with the exception of such as were granted with sole respect to person.

These faculties in certain formularies — the personal faculties are not contained in these formularies — are given by the S. C. of the Propaganda.

CAN. 311

**Qui vacariatui vel praefecturae apostolicae ad certum tempus praepositus est, debet in regimine cum omnibus facultatibus sibi concessis permanere, licet definitum tempus fuerit praeterlapsum, donec successor canonicam sui muneris possessionem ceperit.**

One who is appointed to a vicariate or prefecture for a certain time only, must continue to administer the government with all the faculties granted to him, until his successor has taken canonical possession of the office, even though this should happen after his own term has expired.

## CHAPTER IX

### APOSTOLIC ADMINISTRATORS

### Can. 312

**Dioecesis canonice erectae regimen, sive plena, sive vacante sede, aliquando Summus Pontifex ob graves et speciales causas Administratori Apostolico vel in perpetuum vel ad tempus committit.**

The Sovereign Pontiff, for weighty and special reasons, sometimes entrusts a canonically established diocese, either during the occupancy of the Ordinary or during a vacancy, to an Apostolic administrator, either permanently or for a limited period.

Administrators, sometimes styled *visitatores,* occur in the Decretals of Boniface VIII. They were appointed either by the Roman Pontiff or by the chapter, the synod or the metropolitan, but only those appointed by the Pope had full power.[1] Besides it was customary to allow young nobles to assume the government of a diocese as administrators in temporal, especially princely, affairs.[2] Later it became the exclusive right of the Pope to assign an administrator to a diocese. This right he often exercised in times of politico-ecclesiastical troubles, such as happened, *e. g.,* at Cologne, and lately at Genoa. The expedient of appointing an Apostolic administrator is occasionally resorted to when the financial or religious con-

1 C. 42, 6°, I, 6; c. 4, 6°, I, 8. 2 Sägmüller, *K.-R.,* 1 ed., p. 363.

ditions of a diocese are in a precarious state. The administrator is named *in pleno congressu* by the S. C. Consistorialis, and the letters of appointment are dispatched in the form of a Bull.[3]

## CAN. 313

**§ 1. Quilibet Administrator Apostolicus, si datus fuerit dioecesi, sede plena, canonicam administrationis possessionem init, ostendens litteras suae nominationis tum Episcopo, si sit mentis consiliique compos et in dioecesi versetur, tum etiam Capitulo, ad normam can. 334, § 3.**

**§ 2. Si sedes fuerit vacans, vel si Episcopus non sit mentis consiliique compos, aut in dioecesi non moretur, Administrator Apostolicus possessionem sumit ad instar Episcopi secundum cit. can. 334, § 3.**

Every Apostolic administrator given to a see whilst still occupied by a bishop (*sede plena*) enters upon the canonical possession of his administration by presenting the letters of his appointment to the bishop, if the latter is in full possession of his mental faculties and dwells in the diocese, as well as to the chapter, according to can. 334, § 3.

If the see is vacant, or the bishop is not in full possession of his mental faculties, or if he does not dwell in the diocese, the administrator takes possession like a new bishop, according to can. 334, § 3.

We believe "*mentis consiliique compos*" here means the full possession of one's mental faculties, for it may be that one can think rationally, but lacks the faculty of memory, or by reason of softening of the brain has no

3 "Sapienti consilio," June 29, 1908, P. II, c. VII, art. 2, n. 7 (*A. Ap. S.*, I, 83 f.)

will power. The so-called *lucida intervalla* must not be taken into account here.

A bishop may dwell outside of his diocese either casually or fortuitously, or culpably, or as an exile, by deportation. Again, he may be in the diocese, but held a quasi-prisoner. In the latter case, too, it may be said that he has no power of his own (*impos consilii*).

### Can. 314

**Iura, officia ac privilegia Administratoris Apostolici desumantur ex litteris suae deputationis, vel, nisi in eisdem aliud caveatur expresse, ex praescripto canonum qui sequuntur.**

The rights, duties, and privileges of an Apostolic administrator must be gathered from the letter of appointment, or if no special provision is therein made, from the rules laid down in the following canons.

### Can. 315

**§ 1. Administrator Apostolicus permanenter constitutus iisdem iuribus et honoribus fruitur, iisdemque obligationibus tenetur, ac Episcopus residentialis.**

**§ 2. Si ad tempus datus sit:**

**1.° Eadem iura ac officia habet, ac Vicarius Capitularis; sed, sede plena, potest dioecesim visitare ad tramitem iuris; nec tenetur obligatione applicandae Missae pro populo, quae Episcopum gravat;**

**2.° Ad honorifica privilegia quod attinet, valeat praescriptum can. 308; sed Episcopo qui, ad aliam sedem translatus, prioris retinet administrationem, in hac quoque omnia Episcoporum residentialium honorifica privilegia competunt.**

An Apostolic administrator, if appointed permanently, enjoys the same rights and honors and is bound by the same obligations as a residential bishop.

If he is appointed only for a limited time, he has the same rights and duties as a vicar-capitular, but may visit the diocese according to law; but he is not obliged to apply the Mass for the people, as a bishop is.

As to honorary prerogatives, an Apostolic administrator enjoys those of a titular bishop (see can. 308), or, if he is not a bishop, those of Apostolic prothonotaries *de numero participantium.*

A bishop transferred to another see, who retains the administration of his former diocese, enjoys also in the latter all the honorary privileges of a residential bishop.

## Can. 316

**§ 1. Si Administrator Apostolicus dioecesi, sede plena, praeficiatur, iurisdictio Episcopi eiusque Vicarii Generalis suspenditur.**

**§ 2. Quanquam autem Administrator Apostolicus Episcopi auctoritati non subest, non debet tamen se immiscere causis Episcopum ipsum spectantibus, neque in Vicarium eius Generalem iudicium seu processum instruere aut animadvertere ob acta praeteritae administrationis.**

If an administrator is appointed for a diocese while its bishop is still alive, the jurisdiction of the bishop and of his vicar-general is suspended.

Although the administrator is not subject to the authority of the bishop, yet he must not meddle in affairs which concern the bishop personally, nor try judicially or punish the vicar-general for acts of the former administration.

## Can. 317

**Si impedita fuerit iurisdictio Administratoris Apostolici aut si idem Administrator defecerit, Sedes Apostolica statim moneatur; et interim, si dioecesis vacet aut Episcopus non sit sui compos, valent praescripta can. 429 seqq.; secus Episcopus dioecesim regit, nisi Sedes Apostolica aliud praestituerit.**

If the jurisdiction of an Apostolic administrator is impeded, or if he goes out of office, the Holy See must be immediately informed; meanwhile, if the see is vacant or the bishop is not in full command of his faculties, the prescription of can. 429 ff. must be followed; in all other cases the bishop rules the diocese, unless the Apostolic See has decided otherwise.[4]

## Can. 318

**§ 1. Administratoris Apostolici iurisdictio Romani Pontificis aut Episcopi obitu non cessat.**

**§ 2. Cessat vero cum Episcopus dioecesis vacantis possessionem legitime ceperit ad normam can. 334, § 3.**

The jurisdiction of an Apostolic administrator does not expire with the death of the Roman Pontiff or the bishop. But it ceases as soon as the bishop of a vacant see has taken legal possession thereof, according to can. 334, § 3.

Under § 1 of this canon the canons or consultors of a diocese cannot proceed to the election of a vicar-capitular or administrator while the bishop whose diocese is ruled by an Apostolic administrator, is alive.[4]

4 S. C. EE. et RR., Aug. 4, 1578; Jan. 24, 1749 (Bizzarri, *l. c.* p. 31, 214, 276).

# CHAPTER X

## INFERIOR PRELATES

### CAN. 319

**§ 1. Praelati qui praesunt territorio proprio, separato ab omni dioecesi, cum clero et populo, dicuntur Abbates vel Praelati *nullius*, nempe dioecesis, prout eorum ecclesia dignitate abbatiali vel simpliciter praelatitia gaudet.**

**§ 2. Abbatia vel praelatura *nullius*, tribus saltem paroeciis non constans, singulari iure regitur, nec eidem applicantur quae canones statuunt de abbatiis vel praelaturis *nullius*.**

Prelates who preside over a territory of their own, belonging to no diocese, inhabited by clergy and people, are called abbots or prelates *nullius, viz.,* of no diocese, according as their church is abbatial or simply prelatial.

An abbey or prelature *nullius,* which does not consist of at least three parishes, is ruled by special law, and the following canons do not apply to it.

It is evident that here the question of exemption would, at least partly, enter canonical discussion. However, this topic belongs formally to the tract on religious, to which we must therefore refer the reader for a fuller exposition. Here we will only state, with Benedict XIV, that there are three kinds of inferior prelates:

(1) such as are superiors of religious living within a monastery or convent with passive exemption from the jurisdiction of the Ordinary;

(2) such as enjoy active jurisdiction over the clergy and people of a certain district within the limits of a diocese; and

(3) prelates with active jurisdiction over clergy and people living in a territory which is separated and distinguished by proper boundaries from the surrounding dioceses. The last-named class of prelates are abbots or prelates *nullius* (*dioeceseos*), and their right or title is acquired by Apostolic privilege or immemorial custom which bears all the marks of a juridical proof.[1] The *Annuario Pontificio* for 1917 enumerates four prelatures, eighteen abbeys, and one priory *nullius*.[2] One of the eighteen abbeys is St. Mary's, at Belmont, North Carolina. The Abbey of Einsiedeln, Switzerland, belongs to the class defined in § 2 of our canon, for its active exemption and jurisdiction extends only over the territory circumscribed by the walls of the monastery and over the clergy and people living within that precinct; therefore this latter abbey is ruled by special laws.

## Can. 320

**§ 1. Abbates vel Praelati *nullius* nominantur et instituuntur a Romano Pontifice, salvo iure electionis aut praesentationis, si cui legitime competat; quo in casu ab eodem Romano Pontifice confirmari aut institui debent.**

**§ 2. Assumendi ad abbatiam vel praelaturam *nullius* iisdem qualitatibus ornati esse debent, quas ius in Episcopis requirit.**

Abbots and prelates *nullius* are nominated and invested

1 *De Syn. Dioec.*, II, 11, 2 ff.

2 Page 283 ff., the priory being that of Ciudad Real in Spain belonging to the United Military Orders.

by the Roman Pontiff, with due regard to the right of election or presentation lawfully belonging to another person; in which latter case they are confirmed or invested by the Roman Pontiff.

Those chosen to govern an abbey or prelature *nullius* must have the same qualifications which the law requires for bishops.

CAN. 321

**Si cui collegio est ius eligendi Abbatem vel Praelatum *nullius* ad validam electionem requiritur numerus suffragiorum absolute maior, demptis suffragiis nullis, firmo peculiari iure quod maiorem suffragiorum numerum exigat.**

As abbots or prelates *nullius* are classed with bishops, it is evident that the Pope is entitled to nominate them. However, the Code does not wish to curtail the acquired rights of others, be they physical or moral persons. The physical person generally is the patron, *e. g.*, the King of Spain concerning Ciudad Real, who *presents* a fit person for the vacant office. The right of *election* belongs to an electoral college, which must proceed according to the rules laid down in can. 160–178. However, if the constitutions or statutes of a college or chapter require it, the candidate must have two-thirds of the entire number of votes. On the other hand, any statute or constitution which admits only a relative majority, would now have to be discarded. If, for instance, there are forty electors and three candidates, one of whom receives twenty, the second eleven, the third nine votes, the election is null and void. As to the qualifications of candidates, can. 331 must be observed.[3]

3 Gregory XIV, "Onus apostolicae," May 15, 1591, § 2.

CAN. 322

**§ 1. Abbas vel Praelatus *nullius* nequit quovis titulo sive per se sive per alios in regimen abbatiae vel praelaturae se ingerere, antequam eiusdem possessionem ceperit, ad normam can. 334, § 3.**

**§ 2. Abbates vel Praelati *nullius* qui ex praescripto apostolico vel ex propriae religionis constitutionibus benedici debent, intra tres menses a receptis litteris apostolicis, cessante legitimo impedimento, benedictionem ab Episcopo, quem maluerint, accipiant.**

§ 1 strictly prohibits any interference in the spiritual or temporal government of an abbey or prelature *nullius* by the candidate-elect before he has received the Apostolic letters confirming his election. But suppose the election fell upon the administrator or vicar-capitular, what then? In that case, as Pius IX has decided,[4] a new administrator should be chosen by the electoral college. Our Code, mitigating the Constitution of Pius IX just quoted,[5] inflicts the penalty of suspension of the right of election *ad beneplacitum,* if the electors allow the candidate elected or presented to interfere before he has received the Apostolic letters notifying him of his appointment. One who acts against this law is declared unable to obtain the prelacy.[6] But can. 334, § 3 permits an administrator who is elected bishop, to continue in the office of administrator.

As to the blessing of abbots or prelates *nullius,* the Code speaks conditionally, *viz.,* if an Apostolic mandate or statute requires the same. Up to a few years ago the Cassinese abbots, three[7] of whom are abbots *nullius,*

4 "Romanus Pontifex," Aug. 28, 1873.

5 According to the Const. just quoted, excommunication *speciali modo* reserved was inflicted.

6 Can. 2394.

7 Those of Monte Cassino, S. Paolo Roma, SS. Trinità della Cava de' Tirreni.

were never blessed, because being chosen *ad tempus,* for special reasons, they simply took possession of their abbeys after being confirmed. An abbot must be blessed by a bishop, not by an abbot.[8]

## CAN. 323

**§ 1. Abbas vel Praelatus *nullius* easdem potestates ordinarias easdemque obligationes cum iisdem sanctionibus habet, quae competunt Episcopis residentialibus in propria dioecesi.**

**§ 2. Si charactere episcopali non sit ornatus et benedictionem, si eam recipere debet, receperit, praeter alia munera quae in can. 294, § 2 describuntur, potest quoque ecclesias et altaria immobilia consecrare.**

**§ 3. Quod attinet ad Vicarii Generalis constitutionem, serventur praescripta can. 366–371.**

As to § 1 we may mention[9] that some abbots seem to have exempted themselves from the duty of visiting the tombs of SS. Peter and Paul at stated times. The Code, following the law laid down by Benedict XIV, enjoins on abbots and prelates *nullius* the same obligations which are incumbent on residential bishops, including the *visitatio ad limina.*

§ 2 appears somewhat misleading, because there are two conditions in one sentence: if not endowed, and if obliged to receive the blessing, as if the blessing were a necessary qualification for obtaining the rights mentioned. We believe the meaning to be that abbots who are not bishops may perform the functions allowed to vicars and prefects Apostolic — for these are mentioned in can. 294, § 2 —

8 S. Rit. C., March 8, 1617; Barbosa, *Summa Apost. Decis., s. v.* "Abbas," n. 8.

9 Cfr. Benedict XIV, "Quod sancta," Nov. 23, 1740, §§ 3, 5, 6; "Firmandis," Nov. 6, 1744, § 12.

but that this does not apply to those abbots who are under obligation to receive the blessing and, against the Apostolic injunction or proper statutes, fail to receive it. As a penalty for their disobedience they are deprived of prerogatives which they would otherwise enjoy, and which such abbots as are not bound to receive the blessing enjoy unconditionally.

We may here draw attention to our explanation of can. 294, § 2, where we said that Apostolic vicars and prefects are not entitled to consecrate churches and immovable altars. Can. 323, § 2 adds to the privileges enjoyed by vicars that of consecrating churches and altars as granted to the abbots or prelates *nullius,* who therefore are more privileged than vicars and prefects.

### Can. 324

**Capitulum religiosum abbatiae vel praelaturae *nullius* regitur propriis legibus ac constitutionibus; Capitulum saeculare, iure communi.**

Concerning religious chapters and their constitutions, note must be taken of can. 489, which ordains that particular constitutions conflicting with the present Code are to be looked upon as abrogated.

### Can. 325

**Abbas vel Praelatus *nullius,* licet charactere episcopali careat, utitur tamen in proprio territorio insignibus pontificalibus cum throno ac baldachino et iure ibidem officia divina pontificali ritu celebrandi; crucem autem pectoralem, annulum cum gemma, ac pileolum violaceum potest etiam extra territorium deferre.**

Abbots and prelates *nullius,* though not consecrated bishops, enjoy within their own territory the right of wearing the pontifical insignia with throne and canopy, and of celebrating pontifical functions; outside their territory, they may wear the pectoral cross, a ring set with a precious stone, and a violet skull-cap.

The canon limits the pontifical functions of these prelates to their own territory, outside of which they are not allowed to pontificate, unless the Ordinary of the diocese grants permission.[10]

### Can. 326

**Si praelatura saecularis Capitulo careat, eligantur consultores ad normam can. 423–428.**

### Can. 327

**§ 1. Abbatia vel praelatura *nullius* vacante, si agatur de abbatia vel praelatura religiosa, succedit Capitulum religiosorum, nisi constitutiones aliud ferant; si de saeculari, Capitulum canonicorum; utrumque autem Capitulum intra octiduum debet Vicarium Capitularem deputare ad normam can. 432 seqq., qui abbatiam vel praelaturam regat usque ad novi Abbatis vel Praelati electionem.**

**§ 2. Abbatia vel praelatura impedita, servetur praescriptum can. 429.**

During the vacancy of an abbey or a prelature belonging to religious, the chapter of religious succeeds in the government, unless the Constitutions provide otherwise; to a vacant secular abbey or prelature, the chapter of

10 S. Rit. C., Dec. 6, 1631; Barbosa, *Summa, Dec. Ap., s. v.* "Abbas," n. 28; cfr. can. 337.

canons succeeds; however, both chapters are obliged within eight days from date of notice of the vacancy, according to can. 432 ff., to elect a vicar-capitular, who shall rule the abbey or prelacy until a new abbot or prelate is elected.

If an abbey or prelature is *impedita,* let canon 429 be observed.

These canons will be treated in their proper places further down.

### Can. 328

**Circa Romani Pontificis Familiares, sive praelati titulo gaudeant, sive non, standum privilegiis, regulis et traditionibus pontificiae Domus.**

The term *familiares* (dependants) of the Roman Pontiff excludes the so-called palatinate Cardinals, who would otherwise belong to the *familia pontificia.* The latter term first included all persons belonging to the Papal Court, but towards the end of the fifteenth century it came to be a special distinction or honor granted to certain persons who stood in a special relation to the palatinate clergy.[11] Now the *palatinate* clergy really meant those clerics who served the *palatium Lateranense,* or Lateran palace. But in course of times various papal officials and tribunals (*Rota* and *Signatura*) were detached from the palatinate clergy and attached to the Papal Court.[12] According to the *Annuario Pontificio* for 1917 the following belong to the *Familia Pontificia:* two Cardinals palatinate, the Maggiordomo, the Maestro di Camera, the Vicar-Prefect of the Sacred Apostolic Palaces, the Auditor of the Pope, the Master of the Sacred

11 *Annuario Pontificio,* 1917, p. 559.

12 Phillips, *K.-R.,* 1864, Vol. VI, 333 ff.

Palace, the secret Chamberlains *participantes,*[13] the Domestic Prelates in great number, the secret Chamberlains supernumerary, also in great number, the Chamberlains with the purple dress (*pavonazzo*) in and outside of Rome, and finally the secret chaplains in and outside the City.[14]

13 After that would follow the *camerieri di spada e cappa,* who, however, are all secular persons.

14 *Annuario Pontificio,* 1917, p. 455 ff.; Pius X, "Inter multiplices," Feb. 21, 1905.

# TITLE VIII

## THE EPISCOPAL POWER AND THOSE WHO PARTAKE THEREOF

After treating of the supreme power in the Church and those who stand either in a proximate or a remote relation to the Sovereign Pontiff, the Code proceeds to deal with the episcopal power and those who partake thereof. The whole preceding title considered only prelates immediately connected with the Papal Court. This is intelligible, because all the ranks of the hierarchic order so far enumerated, with the exception of the Primacy itself, are of ecclesiastical institution, and, so to speak, ramifications of the central power.

Now a new title starts, treating of an institution which, though dependent on the supreme power, exists not by mere permission or authority of the Roman Pontiff, but by divine right and ordination.

# CHAPTER I

## THE BISHOPS

### CAN. 329

**§ 1. Episcopi sunt Apostolorum successores atque ex divina institutione peculiaribus ecclesiis praeficiuntur quas cum potestate ordinaria regunt sub auctoritate Romani Pontificis.**

**§ 2. Eos libere nominat Romanus Pontifex.**

**§ 3. Si cui collegio concessum sit ius eligendi Episcopum, servetur praescriptum can. 321.**

After what has been said under cc. 100 and 216, only a few remarks remain to be added.

The names *episcopus* and *sacerdos* occur promiscuously up to the third century, and even at the time of St. Gregory the Great, bishops were called *consacerdotes,* which is not surprising, since the bishops are priests in the fullness of the word, who have received the plenitude of the priesthood and jurisdiction over a determined territory, generally called diocese. Hence bishops were also styled *dioecesani.*

Two characteristics distinguish the bishop from the simple priest: the fullness of the priesthood and the power of jurisdiction *in foro externo.* The former, *potestas ordinis,* consists chiefly in the right of administering the Sacraments of Confirmation and Holy Orders and performing pontifical consecrations and blessings. The

*potestas iurisdictionis* is *ordinary,* because *ipso facto* attached to the episcopal office, wherefore the bishop is also called *Ordinarius* (*i. e., iudex*) of his diocese. However, the episcopal jurisdiction is subject to the power of the Sovereign Pontiff, and hence is neither *plena* nor *independens,* but limited, first to the diocese (locally) and, secondly, in regard to subject-matter (materially), especially by reserved cases and limited dispensations, as also by co-called *causae maiores.*

From this we must conclude: (1) that whereas the *potestas ordinis* is equal in the bishops and the Pope, the latter is superior to the bishops as to the *potestas iurisdictionis;* (2) that bishops are superior to ordinary priests both in power, order, and jurisdiction. These conclusions are *de fide.*[1] The opinion of St. Jerome [2] concerning the equality of bishops and priests, and the false views of William a Sancto Amore are of purely historical interest.[3] The Code merely says that the bishops are by divine right placed over single dioceses. This expression appears to us not well chosen. For local organizations are not of divine institution, and therefore single dioceses cannot correctly be said to be ruled by the bishops in virtue of a divine ordinance. The truth is that, by virtue of their episcopal consecration, bishops are radically (*aptitudinaliter*) qualified to rule a diocese assigned to them by the Pope. Jurisdiction, of course, no matter how we conceive it to be conferred, whether immediately by God through consecration, or mediately through the Pope, can neither validly nor licitly be exercised without a canonical mission, which, on account of the monarchical principle of the Church,

1 *Vatic.,* Sess. IV, c. 3; *Trid.,* Sess. 23, cap. 4; can. 7 f. (Denzinger, *l. c.,* nn. 1672 ff. nn. 837, 844 f.).

2 *Comm. in Titum,* I; *Ep. ad Ocean.* 69, 1; ed. 146 *ad. Evang.* 1.

3 Bouix, *De Parocho,* 1855, p. 65 f.

must be imparted by the supreme head. Therefore, also, episcopal consecration is, according to modern law,[4] reserved to the Pope, who has moreover the exclusive right of confirming bishops.[5]

§ 3 of our canon mentions the election of bishops, which followed, as we shall see under chapter V (Diocesan Chapters), the investiture, which the diocesan chapters, with the approval of the Holy See, vindicated to themselves. The Decretals mention this mode of providing for a vacant diocese, not as a particular concession of the Holy See, but rather as a matter-of-fact and the usual thing.

### QUALITIES REQUIRED IN A BISHOP

### Can. 330

**Antequam quis in Episcopum assumatur, constare debet, secundum modum a Sede Apostolica determinatum, eum esse idoneum.**

### Can. 331

**§ 1. Ut quis idoneus habeatur, debet esse:**

**1.° Natus ex legitimo matrimonio, non autem legitimatus etiam per subsequens matrimonium;**

**2.° Annos natus saltem triginta;**

**3.° A quinquennio saltem in sacro presbyteratus ordine constitutus;**

**4.° Bonis moribus, pietate, animarum zelo, prudentia, ceterisque dotibus praeditus, quae ipsum aptum**

4 Schemier, *Jurisprud. Eccl. Civilis,* l. I, tr. 3, c. 1, n. 569; *Pontificale Rom.,* tit. de consec. electi.

5 Benedict XIV, "*In postremo,*" Oct. 20, 1756, § 15; but historians would put at least a sign of interrogation after the word "restituta," used in the paragraph quoted; even the Decretals speak of election as something usual and legal; cc. 46, 48, 50, 57, X, I, 6 de electione.

efficiant ad gubernandam dioecesim de qua agitur;

5.° Laurea doctoris vel saltem licentia in sacra theologia aut iure canonico potitus in athenaeo aliquo vel in Instituto studiorum a Sancta Sede probatis, vel saltem earundem disciplinarum vere peritus; quod si ad religionem aliquam pertineat, a suis Superioribus maioribus vel similem titulum vel saltem verae peritiae testimonium habeat.

§ 2. Etiam electus, praesentatus vel quoquo modo ab illis designatus, qui privilegio a Sancta Sede concesso eligendi, praesentandi seu designandi gaudent, debet memoratis qualitatibus pollere.

§ 3. Iudicare num quis idoneus sit, ad Apostolicam Sedem unice pertinet.

CAN. 332

§ 1. Cuilibet ad episcopatum promovendo, etiam electo, praesentato vel designato a civili quoquo Gubernio, necessaria est canonica provisio seu institutio, qua Episcopus vacantis dioecesis constituitur, quaeque ab uno Romano Pontifice datur.

§ 2. Ante canonicam institutionem seu provisionem candidatus, praeter fidei professionem de qua in can. 1406–1408, iusiurandum fidelitatis erga Sanctam Sedem edat secundum formulam ab Apostolica Sede probatam.

No one, says can. 330, shall be appointed a bishop, unless his fitness is proved according to the rules prescribed by the Apostolic See. It also mentions the *processus informativus* [6] or investigation into the qualifications of candidates for the episcopal office. This is now conducted by the S. C. Consistorialis. For appointments to bishop-

6 *Trid.*, Sess. 24, c. 1 de ref.

rics outside of Italy, the Secretary of State gathers the necessary documents, makes up what is called the "position" of the case, and then proposes it to the full Congregation. According to a decree of July 25, 1916, of the same Congregation [7] the names and qualifications of candidates for American sees, after being passed upon by the bishops and the metropolitan of the province, must be forwarded to the Secretary of State.

Canon 331 states some of the *qualities* which are required in episcopal candidates over and above those demanded for the priesthood.

(1) The candidate must be of *legitimate birth.* Legitimation by a subsequent marriage is not sufficient. This is a stricter regulation than was usually admitted by authors.[8] It means that at the time the candidate was born, his parents must have lived in lawful wedlock.

(2) The candidate must be thirty years of age and in *sacred orders* or the priesthood. As to age, the old law [9] was not quite determined up to the Decretals,[10] and the Tridentine Council did not fix the precise age, but simply referred to the canons.[11] And as to the time during which one had to be in sacred orders, the Council required only six months. The new Code requires five years.

(3) The *moral qualifications* are more detailed in our canon than in the Tridentine decrees.[12]

(4) As to *scientific equipment,* the Code closely follows the enactments of Trent, but inserts "*vere peritus*" to determine more definitely the Tridentine decree which says that if an academic degree is wanting, "at least the

7 *A. Ap. S.*, 1916 (VIII), p. 400 ff.

8 Cfr. Barbosa, *De Officio et Potestate Ep.*, P. II, alleg. 1, nn. 33 ff.

9 C. 3, dist. 77 required 45 years; c. Dist. 51 only 30 years.

10 Cc. 7, 19, X, I, 6 de electione.

11 Sess. 22, c. 2 de ref.

12 *Ib.* and Sess. 24, c. 1 de ref.

public testimony of an academy should declare the candidate fit to teach others." It is not probable now-a-days that, as in the time of Honorius III (1216–1227), a bishop should be unable to read the grammar or "Donatus," [13] but the standard of scholarship laid down by the Code must be insisted upon. For, as Barbosa says, a bishop without learning is like a ship without a rudder, a clock without weights, a hen without wings.[14] A bishop should be particularly "well versed" in theology and canon law because the former governs the court of conscience, while the latter is required for the *forum externum.*

The *superiores maiores* of a candidate who belongs to a religious order or congregation are the Abbot Primate, the Abbot President, the Abbot, the Superior General, or the Provincial.[15]

The same qualities are required for all candidates for episcopal sees, no matter whether they are elected, presented, or designated, for the law [16] makes no distinction. Nor is there any reason for granting an exemption when the public welfare is concerned, since these qualities are prescribed not merely for the persons, but for the office, which is one of great dignity and importance. Nothing, says Innocent III, is more offensive to the Church of God, than unworthy prelates ruling souls.[17] The Roman Pontiff alone is competent to judge whether or not the qualities described in the papers relating to the *processus informativus* are sufficient. Of course, in case of necessity or utility the Pontiff may dispense with some of the required qualifications.[18]

13 C. 15, X, I, 14.

14 *De Officio et Pot. Ep.*, P. II, alleg. 1, n. 25.

15 Can. 488, 8°; cfr. *Trid.*, Sess. 22, c. 2 de ref.

16 Cfr. cc. 1, 3, X, I, 5; cc. 7, 18, 44, 53, X, I, 6; *Trid.*, Sess. 24, c. 1 de ref.

17 C. 44, X, I, 6.

18 *Ib.* and c. 19, X, I, 6; Pius X, Allocutio "Duplicem," Nov. 14, 1904.

Can. 332 rejects the claim of the so-called regalists that the right of presentation includes investiture, and that consequently a bishop can enter upon the government of his diocese without papal investiture and documents.[19] The contrary is true. Only by ratification on the part of the Apostolic See can one become a bishop or Ordinary of a diocese. This confirmation is preceded by two acts: the *profession* of faith and the *oath* of allegiance to the Church. The oath must be taken before an Apostolic Delegate, personally and not by proxy.[20] If the consecration is performed in virtue of Apostolic letters, the *oath of fidelity or loyalty* is taken into the hands of the consecrator.[21] This is that "fearful" (!) oath which most probably Pope Gelasius I (492–496) prescribed for the suburbicarian bishops, and which St. Boniface, the Apostle of Germany, made into the hands of Gregory II, which did not, however, prevent him from making remonstrances to Pope Zachary.[22]

## Can. 333

**Nisi legitimo impedimento prohibeatur, promotus ad episcopatum, etiamsi S. R. E. sit Cardinalis, debet, intra tres menses a receptis apostolicis litteris, consecrationem suscipere, et intra quatuor ad suam dioecesim pergere, salvo praescripto can. 238, § 2.**

Unless prevented by a lawful obstacle, one promoted to a bishopric, even though he be a cardinal of the Holy Roman Church, must within three months after receiving the Apostolic letters receive consecration, and within

19 Pius IX, Allocutio, "Nunquam fore," Dec. 15, 1856; Syllabus, n. 50 (Denzinger, n. 1598); "Romanus Pontifex," Aug. 28, 1873; cfr. c. 18, X, I, 6; Reg. Iuris I in 6°; c. 5, Clem. I, 3.

20 Can. 1406 f.

21 *Pontificale Rom.*, De Consecr. Electi in Episcopum: Forma juramenti.

22 Cf. Alzog, *Manual of Church History*, 1876, II, p. 114.

four months take up residence in his diocese. The cardinal-bishops of the suburbicarian sees are the only ones exempted from this rule. The text is based upon an old law,[23] and its meaning is evident, with the possible exception of the time within which a newly consecrated bishop must go to his diocese. For it might be construed either that the four months run from the date of consecration, or that they must be counted from the date of having received the Apostolic letters of confirmation. In the first case seven months would be granted, in the latter only four. We believe that the latter interpretation is the correct one, because otherwise the clause would have no proper starting point; and hence the omission of the *terminus a quo* in the last clause must be supplied from that of the first or, "*a receptis litteris.*" This seems still more probable if we consider the omission of the word "months" in the last clause.

### DUTIES AND RIGHTS OF BISHOPS

### CAN. 334

**§ 1. Episcopi residentiales sunt ordinarii et immediati pastores in dioecesibus sibi commissis.**

**§ 2. In regimen dioecesis neque per se neque per alios, nec ullo sub titulo sese ingerere possunt, nisi prius eiusdem dioecesis possessionem canonice ceperint; sed si ante suam ad episcopatum designationem vicarii capitulares, officiales, oeconomi fuerint renuntiati, haec officia etiam post designationem retinere et exercere possunt.**

**§ 3. Canonicam dioecesis possessionem capiunt Episcopi residentiales simul ac in ipsa dioecesi vel per se**

23 Cc. 7, 44, X, I, 6; *Trid.*, Sess. 7, c. 9, de ref; Sess. 23, c. 2 de ref.

**vel per procuratorem apostolicas litteras Capitulo ecclesiae cathedralis ostenderint, praesente secretario Capituli vel cancellario Curiae, qui rem in acta referat.**

Bishops are the judges-in-ordinary of their respective districts, because their power accrues to them in virtue of the episcopal office, not by mere delegation. What the term *immediate,* taken from the decrees of the Vatican Council,[24] means is to be determined by the bishop's dependence upon the supreme authority of the Church on the one hand, and by his independence of any secular or clerical power on the other. Pius X complained against the illegal procedure of the government of Portugal, which tried to separate clergy and people from the centre and subject them to its own power.[25] The episcopal power, though it may be offered by electors or patrons, is not conferred by them, but by the Sovereign Pontiff, and is attached to the office. *Immediate* in the truest sense would mean that the episcopal power is the result of consecration. But it is hardly probable that the Code intends to settle a controversy which has been debated for a long time and with an excess of zeal by canonists.[26] Probably the term here only means that, aside from papal interposition, no other power on earth shares in the bestowal of episcopal jurisdiction.

With regard to his inferiors, the bishop of a diocese is their free and independent judge, and not responsible to them, but subject only to the supreme lawgiver and the common law of the Church.[27]

The next paragraph emphasizes that a bishop elect, even after he is confirmed, should not interfere in dio-

24 Sess. IV, c. 3 (Denzinger, *l. c.* n. 1674).

25 "Iamdudum," May 24, 1911 (*A. Ap. S.*, III, 217 ff).

26 Cf. Benedict XIV, *De Syn. Dioec.*, I, 4, 2.

27 Aichner, *l. c.*, § 115, 3, c.

cesan matters before he has taken canonical possession of his see.[28] Stress is here laid, as the quotations of Card. Gasparri show, on the Apostolic letters of Pius IX against the regalistic tendencies which tried to subvert the organization of the Church in favor of civil governments.[29] But the old law already opposed such encroachment.[30]

Our canon permits a candidate elected and confirmed to a bishopric to continue in the office of administrator or official (can. 1573), if he held these offices before his appointment to the episcopate. As bishop elect, however, he cannot accept any such office.

The act of taking juridical (not liturgical) possession of a see is performed in the chapter (*in capitulo*). In our country this means that the consultors, who take the place of the chapter as far as this forms the senate of the bishop,[31] must meet to hear or inspect the papal document. The chancellor of the diocese, who acted as such under the preceding bishop, must be present, in order to make a record of the proceeding.

## Can. 335

**§ 1. Ius ipsis et officium est gubernandi dioecesim tum in spiritualibus tum in temporalibus cum potestate legislativa, iudiciaria, coactiva ad normam sacrorum canonum exercenda.**

**§ 2. Leges episcopales statim a promulgatione obligare incipiunt, nisi aliud in ipsis caveatur; modus autem promulgationis ab ipsomet Episcopo determinatur.**

28 See can. 322.

29 "Nunquam fore," Dec. 15, 1856; Syllabus, n. 50; "Romanus Pontifex," Aug. 28, 1873.

30 Cc. 9, 17, 23, X, I, 6; c. 5, 6°, I, 6; c. 1, Extrav. Comm. I, 3.

31 Can. 427.

CAN. 336

§ 1. Observantiam legum ecclesiasticarum Episcopi urgeant; nec in iure communi dispensare possunt, nisi ad normam can. 81.

§ 2. Advigilent ne abusus in ecclesiasticam disciplinam irrepant, praesertim cira administrationem Sacramentorum et Sacramentalium, cultum Dei et Sanctorum, praedicationem verbi Dei, sacras indulgentias implementum piarum voluntatum; curentque ut puritas fidei ac morum in clero et populo conservetur, ut fidelibus, praecipue pueris ac rudibus, pabulum doctrinae christianae praebeatur, ut in scholis puerorum ac iuvenum institutio secundum catholicae religionis principia tradatur.

§ 3. Circa praedicationis munus, servetur praescriptum can. 1327.

About these two canons many pages might be written. The new Code has rendered a great service to the bishops as well as to canonists, as the former have in it a guidebook through the labyrinth of canon law, while the latter are allowed to refer to the respective canons. Yet some observations will not be superfluous.

(1) The bishops, in virtue of their office, enjoy *legislative power* within the limits of the common law, from which, however, they may dispense under certain conditions. These conditions are laid down in canon 81, which says that a bishop cannot dispense even in individual cases unless this power has been given to him either explicitly (by a faculty), or implicitly in virtue of a special office connected with that of Ordinary. Implicitly may also mean that the law itself grants the power of dispensation in certain cases. And, indeed, our Code

mentions several instances in which Ordinaries may grant dispensations which would otherwise be beyond their power. Thus they may dispense from examinations those who are distinguished in theological science [32]; they may dispense from occult irregularities,[33] from the banns of marriage,[34] from impediments of ecclesiastical law in certain cases,[35] and from fasting and the observation of feasts in peculiar circumstances.[36]

But, as noticed under can. 81, there is another category of cases in which bishops may dispense, *viz.*: if the three conditions mentioned there occur. Hence if the law, on the one hand, is sufficiently explicit as to the power of dispensation, it is also strict in limiting the use of that power.[37]

Here let us state that, without solid reasons, Ordinaries cannot validly dispense in common law. Laxity in that regard would subvert ecclesiastical discipline, endanger the hierarchy, and invite schism, such as the pseudo-council of Pistoja tried to bring about.[38]

In what, then, does the legislative power of the bishops consist? Being the guardians, not the authors, of the common law of the Church, they have to watch over its enforcement.[39] They may furthermore make new decrees in matters which the common law has overlooked or left undetermined, for in that case an episcopal decree is not against, but beyond the law. Thus, for instance, the common law [40] ordains in a general way that children

32 Can. 459, § 3.
33 Can. 990.
34 Can. 1028.
35 Can. 1043, 1045.
36 Can. 1245.
37 Can. 85. The S. C. Cons. (Apr. 25, 1918) has abolished certain faculties (*Acta Ap. Sedis*, X, 190 ff.), of which we shall treat in an appendix.
38 Pius VI, "Auctorem fidei," nn. 7, 74 (Denzinger, *l. c.*, nn. 1370, 1437).
39 Benedict XIV, *De Syn. Dioec.*, XII, *passim*.
40 *Rituale Rom.*, tit. 9.

should be brought to church for baptism as soon as possible. Here the bishop may determine the precise time. He may also determine more accurately the common law rules concerning clerical dress and conduct. He may abolish customs contrary to the common law and proper to his diocese only; although, as Benedict XIV says, he should be cautious in abrogating long standing traditions tolerated by the Church.[41] However, a bishop would exceed his power were he to demand of *ordinandi* the so-called five-year pledge under threat of refusing them Holy Orders. For such an ordinance would be tantamount to establishing an irregularity, which bishops cannot do.[42]

(2) The *judiciary power* of the Ordinary extends to all ecclesiastical matters brought before his court, which are not specially reserved to the Holy See. Reserved are all *causae maiores,* as noted above,[43] as well as the foundation of religious communities and the approbation of their constitutions.[44] Otherwise bishops are judges-in-ordinary of the first instance, and therefore every bishop must establish a diocesan court and finish cases brought before him within the time prescribed by law.[45] Besides, at canonical visitations he may issue enactments and rules for correction, from which appeal can be made only *in devolutivo.*[46] Lastly, they may reserve cases to themselves, but only a few, at most four.[47]

The *place* where a bishop can exercise his judiciary power, in cases of contentious jurisdiction, is his whole

41 Bened. XIV, *l. c.,* XII, 7, 4; XI, cc. 10 ff.; XI, cc. 1–3.

42 This is the opinion of a Roman canonist whom we consulted about the matter.

43 Can. 220.

44 Can. 492.

45 Can. 363 f.; can. 1709.

46 Benedict XIV, "Ad militantis," March 30, 1742; can. 345.

47 Can. 897.

diocese (barring places exempted); whilst extra-judicial or voluntary jurisdiction may be exercised even outside the diocese.[48]

(3) The *coercive power* of a bishop consists in inflicting ecclesiastical penalties on such as are contumaciously delinquent and recalcitrant. Here especially the censures are to be noted. They are either established by law or directly inflicted by the Ordinary. The Code admonishes bishops to be moderate and very circumspect in wielding this power.[49] To inflict canonical penalties without weighty reasons would diminish episcopal authority and provoke contempt of the bishop.[50] Temporal punishments, especially fines, forfeiture of revenues, etc., unless permitted by law, should be sparingly used.

(4) Regarding the *administrative power* of a bishop, he is the dispenser and steward of all the church property within his jurisdiction, *i. e.*, so far as not exempt by law, and as such must watch over the diocese.[51] Here we deem it well to call attention to the late decree of the S. C. Council, which says that bishops should not hold church property in fee simple, but have it acknowledged by the State as vested in parish corporations or a corporation sole, to be administered by the bishop with the coöperation of trustees and the diocesan consultors.[52] The bishop is furthermore entitled and obliged to demand an account of priests or administrators, and to see to it that testaments are properly executed.[53]

As to *civil laws,* note that some States of our Union restrict the amount of property that a church or religious society may hold, and the use to which it is put, whereas

48 Cfr. c. 7, 6°, I, 16; can. 201.

49 Can. 2241.

50 *Trid.*, Sess. 25, c. 3 de ref.; Benedict XIV, *De Syn. Dioec.*, v, 5, 5.

51 Can. 1519.

52 July 29, 1911 (*Am. Eccl. Rev.*, Vol. 45, 586).

53 Can. 1520 ff; *Trid.*, Sess. 22, cc. 9, 11 de ref.; can. 1515.

other States have no restrictions. Nearly all States, however, have some statutory laws, which must be observed as far as they do not conflict with ecclesiastical laws.[54] A deed of land to the bishop for a church in fee simple creates a trust, and on the death of the bishop, the title passes to his successor.[55] As to cemeteries, the civil laws generally acknowledge ecclesiastical jurisdiction.[56]

As regards the *exactions* the bishop is entitled to make, see can. 1504–1507.

(5) The bishop's *ius vigilantiae,* according to canon 336, is exercised by watching that no *abuses* creep into:

(a) The *administration of the Sacraments and Sacramentals,* which should take place according to the *Rituale Romanum.* No diocesan ritual should be used, unless it has the special approbation of the Holy See (S. Rit. C.). Bishops may approve editions of Roman liturgical books, if they are in strict concordance with the original text. Their approval is simply testifying to the correctness of the reprint. Bishops may also approve and publish a diocesan calendar with feasts prescribed for the universal church or for their diocese especially. Besides, they may set the hour of divine service more precisely. For the rest the third book contains explicit instructions.

(b) The *divine worship* and the *veneration of saints* might be endangered by tolerating devotions not approved by the Church, or by the exhibition of strange images and unusual representations, drawing an aureole around the head of one not yet beatified or canonized, etc.[57] The bishops might, at times, profitably say a word about pictures, sculptures, and architectural designs.

54 Scanlan, *The Law of Church and Grave,* 1909, n. 304; C. Zollmann, *American Civil Church Law,* 1917.

55 Scanlan, n. 287.

56 *Ibid.,* n. 454.

57 *Trid.,* Sess. 25, de invoc., venerat., etc.

(c) As to *indulgences,* see the rules laid down in can. 911 ff.

(d) Concerning the *purity of faith and morals,* the rules on the censorship of books are of special importance.[58] Of course, bishops are not infallible judges in matters of faith and morals and cannot singly define articles of faith, and therefore they should abstain from endeavoring to settle dogmatical controversies which the Church has not yet decided.[59]

(e) About *schools,* the Code gives some important rules in can. 1375 ff., and it is not necessary to repeat the injunctions of popes and councils touching that matter. Leo XIII in the beginning of his pontificate,[60] addressed all the bishops of the Church, saying: "Your duty, Venerable Brethren, is to take every care that the seed of celestial doctrine be sown throughout the field of the Lord, in order that the minds of the faithful may be deeply imbued with the Catholic truths and firmly rooted and preserved from error." He went on to urge upon the bishops the necessity of giving a solid Catholic training to the young.

(f) As to *preaching,* the new Code merely reiterates the old precept that bishops must preach the word of God and also see to it that the pastors do their duty in this important matter.[61]

### PONTIFICAL FUNCTIONS

### CAN. 337

**§ 1. Episcopus in tota dioecesi, ne exceptis quidem**

58 Can. 1384 ff.

59 Benedict XIV, *De Syn. Dioec.,* VII, 11, 2.

60 "Inscrutabili," April 21, 1878.

61 II Tim. 4, 2; Acts 6, 2; Benedict XV, "Humani generis," June 15, 1917; cfr. can. 1327.

**locis exemptis, potest pontificalia exercere; non vero extra dioecesim sine expresso vel saltem rationabiliter praesumpto consensu Ordinarii loci, et, si agatur de ecclesia exempta, de consensu Superioris religiosi.**

**§ 2. Exercere pontificalia in iure est sacras functiones peragere quae ex legibus liturgicis requirunt insignia pontificalia, idest baculum et mitram.**

**§ 3. Episcopus, licentiam concedens pontificalia exercendi in suo territorio, potest quoque permittere usum throni cum baldachino.**

That a bishop may perform pontifical functions which require the use of the pastoral staff and mitre, even in the exempt churches of his diocese, has been decided by several congregations. Thus the S. C. EE. et RR. answered on July 10, 1603, that a bishop may employ censures if regulars refuse him that right.[62] Outside his diocese, however, a bishop needs the consent of the respective Ordinary. This consent may reasonably be presumed if the Ordinary is absent and has never objected to outside bishops pontificating in his diocese. However, if the church belongs to exempt religious outside his own diocese the consent must be expressed, because in that case the Ordinary[63] has no power to give his consent, and the religious superior is not supposed to permit a stranger to exercise pontifical functions, in order not to establish a precedent.

Pontifical functions, says the Code, are such as require the use of the *pastoral staff and mitre,* hence, the conferring of Holy Orders (even minor), Confirmation,

62 Barbosa, *Summa Decis. Apost., s. v.* "Baldachinum."

63 We scarcely believe that the Code intends to enjoin two consents: that of the Ordinary and that of the religious superior, although "et" (and) would not exclude that interpretation; but the consent of the religious superior too may reasonably be presumed.

blessing abbots, consecrating virgins,[64] consecrating chrism, sacred vessels, blessing sacred vestments, etc. Mitre and staff always go together and are things related to one another in the bishop's use, except, of course, in Masses *de requiem*.[65]

### RESIDENCE

### Can. 338

§ 1. Etiamsi Episcopi Coadiutorem habeant, tenentur lege personalis in dioecesi residentiae.

§ 2. Praeterquam causa visitationis Sacrorum Liminum, Conciliorum, quibus interesse debent, vel civilis officii suis ecclesiis legitime adiuncti, abesse possunt aequa de causa non ultra duos vel ad summum tres menses intra annum, sive continuos sive intermissos, dummodo cautum sit ne ex ipsorum absentia dioecesis quidquam detrimenti capiat: quod tamen tempus coniungi nequit sive cum tempore sibi concesso occasione suae promotionis, vel visitationis Sacrorum Liminum, vel assistentiae Concilio, sive cum tempore vacationum anni subsequentis.

§ 3. Ab ecclesia cathedrali ne absint tempore Adventus et Quadragesimae, diebus Nativitatis, Resurrectionis Domini, Pentecostes et Corporis Christi, nisi ex gravi et urgenti causa.

§ 4. Si ultra sex menses e dioecesi illegitime abfuerint, Episcopum Metropolita, ad normam can. 274, n. 4, Metropolitam antiquior Suffraganeus residens Sedi Apostolicae denuntiet.

64 The phrase "*La consacra*," which frequently occurs in the regesta S. C. EE. et RR. means the solemn blessing of nuns (moniales) with solemn vows.

65 Cf. Benedict XIV, "*Ad audientiam*," Feb. 15, 1753, § 8; *Caeremoniale Episcoporum*, I, c. 17, nn. 4, 8.

This canon deals with the important duty of *residence,* by which is understood not only material presence in the place of office, but also personal discharge of the duties involved. For offices are indeed attached to places, as the Council of Chalcedon (c. 6) enacted, but they are also generally conferred with regard to personal qualities (*de industria personae*). Hence this obligation may truly be said to have its foundation in divine law, although it is modified and further determined by ecclesiastical law.

The *place* where the bishop must reside is his diocese, but not necessarily the cathedral church. His presence in the latter is required only at certain times mentioned in § 3. In this point the old law [66] agrees with the new Code.

The law of residence obliges all residential bishops, as well as Cardinals who govern a diocese, with the exception of the six cardinal bishops of the suburbicarian sees.[67]

We may add that, according to canonists, residence in the diocese means attending to business, not merely looking on.

§ 2 allows a *three months' vacation,* as granted by the Tridentine Council.[68] This period does not include the canonical visit to the tombs of SS. Peter and Paul (a mere pleasure trip, even a pilgrimage, cannot be called *a visitatio ad limina*) nor the time spent at a council at which attendance is of obligation. (A friendly visit to a provincial or plenary council at which a bishop is not obliged to be present, because not belonging to that prov-

66 C. 19 ff, c. 25 f., C. 7, q. 1; c. 9, X, III, 4; *Trid.,* Sess. 6, c. 1; Sess. 23, c. 1 de ref.; Richter, *Trid.,* pp. 33 ff.; p. 178 ff.; Benedict XIV, "*Ad universae,*" Sept. 3, 1746.

67 Can. 238.

68 *L. c.*

ince or country, could not be reckoned off). Lastly,—and this is intended mainly for countries (*e. g.,* Austria) in which the bishops are *ex officio* deputies to parliamentary assemblies — bishops are allowed to deduct from the three months allowed them for vacation the time they are in duty bound to spend outside their dioceses to attend parliamentary sessions. Foreseeing, however, human frailty and astuteness, or perhaps also good faith wrongly applied, the Code forbids any arbitrary interpretation as to the three months' period by stating that no combination or putting together is allowed, because that would protract a bishop's absence from his diocese.

No mention is made of lawful absence because of a civil office, for in that case circumstances are not at the command of the bishop.

Note that a vacation may not be prolonged by taking the last three months (Oct.-Dec.) of one year and the first three months (Jan.-March) of the following year and staying away six months in succession. All these questions were proposed to the S. Congregation under Urban VIII and solved as stated in the Code.[69]

§ 3 describes the *feasts* on which bishops must be at their *cathedral,* for they are pastors whose voice the faithful hear more willingly. From this duty they are excused only by an urgent and solid reason, such a one, says Benedict XIV, as will stand the test before the tribunal of the great Judge.[70]

§ 4 ordains that, if a bishop is unlawfully absent from his diocese for more than six months, the metropolitan must report him to the Holy See, and if he is himself a metropolitan, this duty devolves on the senior suffragan.

69 Benedict XIV, "*Ad universae,*" § Cum vero.

70 "*Ubi primum,*" Dec. 3, 1740, § 4.

*Reasons* which would excuse such absence are, according to the Council of Trent:[71]

(a) *Christian charity,* for instance, preaching to infidels and heretics, or a lecture which cannot well be postponed; spiritual or bodily help to confrères and people in time of distress or calamity, such as war, earthquakes, etc.

(b) *Urgent necessity,* relating to his own person, for instance, persecution, ill-will of the people, or personal infirmity requiring a change of climate; however, the danger of contracting disease in times of epidemics and perils common to pastors and flock does not excuse the bishop from keeping residence;[72]

(c) *Obedience* to superiors, for instance, a call to Rome or to the Metropolitan, perhaps for a special meeting, trial, canonization, etc. To this class belong the *visitatio ad limina* and assistance at councils, as expressly stated in the Code;

(d) *Evident utility* of Church or State, for instance, as peacemakers, as extraordinary envoys or counsellors, as strike settlers, etc. However, if time permits, it is advisable to inform the metropolitan or the Apostolic See.[73]

Reports concerning the non-observance of the law of residence are to be made to S. C. Consistorialis.[74]

## MISSA PRO POPULO

### CAN. 339

**§ 1. Debent quoque, post captam sedis possessionem, omni exiguitatis redituum excusatione aut alia quavis**

71 *Trid.*, Sess. 23, c. 3; Sess. 24, c. 12; Benedict XIV, "*Ad universae.*"

72 Benedict XIV, "*Ad universae.*"

73 Wernz, *l. c.*, II, p. 557; p. 564 ed. 1; cfr. can. 465; 2168, 2175.

74 Can. 248, § 3.

exceptione remota, omnibus dominicis aliisque festis diebus de praecepto, etiam suppressis, Missam populo sibi commisso applicare.

§ 2. In festo Nativitatis Domini, et si quod festum de praecepto in diem dominicam incidat, satis est ut Missam unam pro populo applicent.

§ 3. Si festum ita transferatur ut in die *ad quem* non solum fiat officium cum Missa festi translati, sed serventur quoque obligationes audiendi Missam et abstinendi a servilibus, Missa pro populo applicanda est in die *ad quem;* secus in die *a quo.*

§ 4. Episcopus Missam pro populo diebus supra indicatis per se ipse applicare debet; si ab eius celebratione legitime impediatur, statis diebus applicet per alium; si neque id praestare possit, quamprimum vel per se ipse vel per alium applicet alia die.

§ 5. Licet Episcopus duas vel plures dioeceses aeque principaliter unitas regat aut, praeter propriam dioecesim, aliam vel alias in administrationem habeat, obligationi tamen satisfacit per celebrationem et applicationem unius Missae pro universo populo sibi commisso.

§ 6. Episcopus, qui obligationi de qua in superioribus paragraphis, non satisfecerit, quam citius pro populo tot applicet Missas, quot omisit.

The first of these paragraphs is taken almost verbally from the Apostolic letter of Leo XIII, "*In suprema,*" June 10, 1882, where the Pontiff says that one of the duties of a pastor is to pray and offer sacrifice for his flock, and that this obligation, considered in general and not as to fixed days, is based on the divine law. The Code with the S. C. Concilii, insisting upon the Tridentine

decrees,[75] authentically explains and extends this rule to all bishops and cardinals who govern a diocese, and to abbots and prelates *nullius.*

The *days* on which a bishop has to say Mass *pro populo* are Sundays, holydays of obligation celebrated *in foro et choro,* and such suppressed feastdays as are now celebrated only *in choro.* The feastdays *in foro et choro,* or holydays of obligation, are: New Year's Day, Ascension, Assumption of the Blessed Virgin, All Saints, Immaculate Conception, and Christmas (First Mass).[76] The suppressed feasts are: Epiphany, Purification,[77] St. Matthias, St. Joseph (March 19), Annunciation B. M. V., Monday and Tuesday after Easter, Monday and Tuesday after Pentecost, SS. Philip and James, Finding of the Holy Cross, Corpus Christi, St. John Baptist, SS. Peter and Paul, St. James, Nativity of the Blessed Virgin, St. Matthew, St. Michael (Sept. 29), SS. Simon and Jude, St. Andrew, St. Thomas, St. Stephen Protomartyr, St. John Evangelist, Holy Innocents, Pope St. Sylvester (Dec. 31).[78]

The rest of the canon needs no explanation, with the exception perhaps of two phrases. "*Si ab eius celebratione legitime impediatur*" (§ 4) does not mean that a bishop is unable to say Mass at all, but that he is not able to *apply* his Mass; for instance, he may have to say a Mass for a special intention, a funeral Mass, or a *missa pro sponso et sponsa,* or perhaps he has a *pingue stipendium* for that day and no other. All these and similar reasons are considered lawful, provided a bishop complies with the rest of the canon.—"*Aeque principaliter*

75 Sess. 23, cc. 1, 4 de ref.

76 Cfr. can. 1247, § 3.

77 Not Candlemass day, because the blessing of candles always takes place on Feb. 2, whereas the feast of the Purification may be transferred.

78 The compiler of the St. Louis Ordo, 1918, has wisely inserted this list (p. 22).

*unitae"* are two dioceses which have been combined, but so that both remain intact and none is subject to the other.[79]

REPORTS TO THE HOLY SEE

CAN. 340

§ 1. Omnes Episcopi tenentur singulis quinquenniis relationem Summo Pontifici facere super statu dioecesis sibi commissae secundum formulam ab Apostolica Sede datam.

§ 2. Quinquennia sunt fixa et communia, atque computantur a die Ianuarii 1911; in primo quinquennii anno relationem exhibere debent Episcopi Italiae, insularum Corsicae, Sardiniae, Siciliae, Melitae, et aliarum minorum adiacentium; in altero, Episcopi Hispaniae, Portugalliae, Galliae, Belgii, Hollandiae, Angliae, Scotiae et Hiberniae, cum insulis adiacentibus; in tertio, ceteri Europae Episcopi, cum insulis adiacentibus; in quarto, Episcopi totius Americae et insularum adiacentium; in quinto, Episcopi Africae, Asiae, Australiae et insularum his orbis partibus adiacentium.

§ 3. Si annus pro exhibenda relatione assignatus inciderit ex toto vel ex parte in primum biennium ab inito dioecesis regimine, Episcopus pro ea vice a conficienda et exhibenda relatione abstinere potest.

On the last day of December, 1909, the S. C. Consistorialis issued a decree (*"A remotissima"*) regulating the *visitatio ad limina* and the reports to be made in connection therewith. Canon 340 relates only to the latter.[80] It is a new law, in so far as the report is to some extent detached from the *visitatio,* and in regard to details.

79 Can. 1419, 30.

80 *A. Ap. S.,* II, p. 13 ff.

What the canon means by "*communia*" (general) appears from the contrary; *i. e.*, the dates fixed oblige all the bishops comprised under a certain year, so that no exception or further specification is required. The year for our American bishops commenced on the first of January, 1914, and ended the last day of December, 1914, so that the next year in which they will have to make a report is 1919; then 1924, etc.

§ 3 says if a bishop has been governing his diocese only for two years when his turn comes for making his report to the Holy See, he may omit it. The reason is evident. A new bishop is hardly able to know the state of his diocese, especially if he has not yet visited all portions of it.

The decree of S. C. Consist. prescribes that the quinquennial report be made in *Latin.* The "*Ordo servandus in Relatione de Statu Ecclesiarum*" (fifteen chapters with 150 points) specifies what the report must contain, *viz.:* a survey of the material and spiritual state of the diocese, comprising the clergy, religious and pious institutes, and the faithful at large.[81]

### VISITATIO AD LIMINA

### CAN. 341

**§ 1. Omnes et singuli Episcopi eo anno quo relationem exhibere tenentur, ad Urbem, Beatorum Apostolorum Petri et Pauli sepulcra veneraturi, accedant et Romano Pontifici se sistant.**

**§ 2. Sed Episcopis qui extra Europam sunt, permittitur ut alternis quinquenniis, idest singulis decenniis, Urbem petant.**

81 *A. Ap. S.*, II, 17 ff.

CAN. 342

**Episcopus debet praedictae obligationi satisfacere per se vel per Coadiutorem, si quem habeat, aut, ex iustis causis a Sancta Sede probandis, per idoneum sacerdotem qui in eiusdem Episcopi dioecesi resideat.**

The tombs of the princes of the Apostles were from the earliest times visited by the faithful and their pastors as a sign of veneration for the two founders of the Roman Church. Cajus, a presbyter of Rome, told the heretic Proculus: "I can show you the trophies of the Apostles." Two epitaphs testify to the custom of sacred visitation, notably that of Abercius, bishop of Hieropolis in Phrygia, who came to Rome to venerate the tombs of the Apostles towards the end of the second century.[82] Of course, the Italian bishops, who were immediately subject to the Bishop of Rome as their metropolitan, were more numerous and regular in making these visits. But it is also true that missionary bishops were sometimes summoned to Rome, whence they had received their mission. Since Paschal II (1099–1118) the metropolitans had to promise at the reception of the pallium to visit the *sacra limina* at stated intervals.[83] Later on all the bishops who were either directly or indirectly consecrated by the Pope had to comply with this obligation.[84] A more uniform discipline was ushered in when Sixtus V, in his Constitution "*Romanus Pontifex*," Dec. 20, 1585, ruled that all patriarchs, primates, metropolitans, and bishops should present themselves at regular intervals before the Roman Pontiff, to give counsel and make suggestions conducive to the betterment of ecclesiastical

82 Armellini, *Lezioni di Archeologia Cristiana*, 1898, p. 90 f; p. 225.

83 C. 4, X, I, 6.

84 C. 13, X, I, 33; C. 4, X, II, 24.

conditions. Benedict XIV directed also the prelates and abbots *nullius* to make the *ad limina* visit.[85] He permitted bishops who were lawfully prevented from making the visit personally, to send a representative,— either a secular or regular dignitary, or a priest in good standing. This representative must report the reason why the bishop cannot come. Titular bishops are not obliged to make the visit, because the text binds only those who have to make a report.

In Rome, the bishops, after visiting the two churches of St. Peter (Vatican) and St. Paul (Via Ostiense), must present themselves in the sacristies of the two basilicas and inscribe their names in a book kept for that purpose.

The *relatio status* must be handed in at the Apostolic Chancery (Via Vittore Emmanuele) to the S. C. Congregatio Consistoralis.

During their visit,[86] the bishops must also present themselves to the Sovereign Pontiff, in order to pay their respects to the Vicar of Christ and, as stated above, to offer their counsels if asked for.

### DIOCESAN VISITATIONS

### CAN. 343

**§ 1. Ad sanam et orthodoxam doctrinam conservandam, bonos mores tuendos, pravos corrigendos, pacem, innocentiam, pietatem et disciplinam in populo et clero promovendam ceteraque pro ratione adiunctorum ad bonum religionis constituenda, tenentur Episcopi obligatione visitandae quotannis dioecesis vel ex toto vel**

85 "*Quod sancta*," Nov. 23, 1744.

86 The Irish bishops, by indult of the S. C. Conc., May 20, 1631, have to make the visit only every ten years; but we scarcely believe that the S. C. Consist. would now admit that privilege, although can. 60 does not declare it null and void.

ex parte, ita ut saltem singulis quinquenniis universam vel ipsi per se vel, si fuerint legitime impediti, per Vicarium Generalem aliumve lustrent.

§ 2. Fas est Episcopo clericos duos etiam a Capitulo sive cathedrali sive collegiali sibi adsciscere visitationis comites atque adiutores; eosque, quos maluerit, eligere, reprobato quocunque contrario privilegio vel consuetudine.

§ 3. Si obligationi de qua in § 1, Episcopus graviter defuerit, servetur praescriptum can. 274, nn. 4, 5.

### Can. 344

§ 1. Ordinariae episcopali visitationi obnoxiae sunt personae, res ac loca pia, quamvis exempta, quae intra dioecesis ambitum continentur, nisi probari possit specialem a visitatione exemptionem fuisse ipsis ab Apostolica Sede concessam.

§ 2. Religiosos autem exemptos Episcopus visitare potest in casibus tantum in iure expressis.

### Can. 345

Visitator, in iis quae obiectum et finem visitationis respiciunt, debet paterna forma procedere, et ab eius praeceptis ac decretis datur recursus in devolutivo tantum; in aliis vero causis, etiam tempore visitationis, Episcopus ad normam iuris procedat necesse est.

### Can. 346

Studeant Episcopi debita cum diligentia, sine inutilibus tamen moris, pastoralem visitationem absolvere: caveant, ne superfluis sumptibus cuiquam graves onerosive sint, neve ratione visitationis ipsi aut quisquam suorum pro se suisve dona quodvis genus petant aut

**accipiant, reprobata quavis contraria consuetudine; circa vero victualia sibi suisque ministranda vel procurationes et expensas itineris, servetur legitima locorum consuetudo.**

From the *Codex Canonum Ecclesiae Africanae* we learn that at the beginning of the fifth century synods ruled that prelates should visit their privinces annually.[87] A council of Tarragona, 516, commanded the bishops on the occasion of this visit to see especially to the repairs of the churches.[88] In the Frankish Kingdom, especially under Charles the Great, the bishops were accompanied by a count (*comes*) as protector and aid, who took cognizance of and decided cases of a more or less civil nature.[89] A decretal of Innocent IV (1252) forbids avaricious exactions, allowing the necessary victuals but no gifts or donations of any kind.[90] These rules were renewed by the Council of Trent, from which our text is almost verbally taken.[91]

(1) The episcopal visitation must be made by the bishop *personally,* unless he is prevented by a legitimate obstacle, *e. g.,* sickness, or duties of an urgent nature, in which latter case the visit may be entrusted to the vicar-general or some other trustworthy priest.

(2) The *whole diocese* must be visited within the space of *five years,* which is a modification of the Tridentine law.

(3) Not more than two companions are allowed, who may be taken from the number of canons, although these might remonstrate against the exercise of this right of

87 Nn. 53, 73, 94, Mansi, *Coll.,* III, 742, 775, 799.

88 Cfr. c. 10 f., C. 10, q. 1; (Toledo synod, 633, cc. 35 f.).

89 Regino of Prüm, *De Synodalibus Causis,* l. II., c. 2 ff.

90 C. 1, § 5, 6°, III, 20.

91 Sess. 24, c. 3 de ref.

the bishop;[92] and the Code reprobates any contrary privilege or custom.

(4) The *persons, things, and places* subject to the diocesan visitation are:

(a) The whole *secular clergy* of the diocese, also cathedral and collegiate chapters, in all matters spiritual and temporal.[93] The *laity,* too, may, if the Ordinary judges it expedient, be examined about things pertaining to faith and morals, the administration of the Sacraments and the care of the church property. The church trustees in particular are liable to be questioned.

All *religious, not exempt,* of both sexes, are amenable to the canonical visit; and also *exempt religious* who are *pastors* of souls, in all matters concerning their pastoral conduct.[94]

(b) The *places* which should and may be visited are the cathedral church, the parish churches, and public and semi-public oratories not in possession of or administered by exempt religious. Oratories which, though incorporated into an exempt religious body, are served by a secular priest, are subject to visitation.[95]

The Bishop may also visit any *parish church* held and administered by exempt religious, and inspect the baptismal font, the confessionals of the pastor and his assistants and the altar of the Blessed Sacrament.[96] He may visit the meeting places or chapels or *confraternities* or *sodalities* of lay persons, even though they are erected in churches belonging to exempt religious;[97] also hos-

92 Richter, *Trid.*, p. 155, nn. 34, 35, 37, 38.

93 *Trid.*, Sess. 6, c. 4 de ref. (Richter, *l. c.*, p. 39).

94 Can. 631, § 1.

95 *Trid.*, Sess. 7, c. 8 de ref. (Richter, *l. c.*, p. 52, n. 3).

96 S. C. Conc., April 5, 1631, Curiensi; June 23, 1725 (Richter, *l. c.*, n. 6).

97 *Trid.*, Sess. 7, c. 7 de ref.; S. C. Conc., Sept. 30, 1730 (Richter, *l. c.*, p. 53, n. 10).

pitals and orphanages and *schools* which are maintained, even by exempt religious, as *parish* or *elementary schools.*

High schools and colleges conducted by exempt religious are liable to canonical visitation by the Ordinary only concerning their religious and moral training.[98]

*Cemeteries* common to the faithful and exempt religious are subject to episcopal visitation, whilst cemeteries exclusively reserved to exempt religious are not.[99]

(c) The *things* which the bishop should examine and inspect must be determined by the purpose of the canonical visit, as outlined in the first clause of canon 343, § 1, and mentioned in the *Pontificale Romanum.*[1] The second point: "That he may know how the church is administered spiritually and temporally," offers an opportunity to investigate:

(α) Whether the *Blessed Sacrament* is properly kept and in the right place; whether there is a sanctuary lamp; whether pyxis, monstrance, lunula, etc., are of the prescribed material, kept clean and free from verdigris, whether the sacred species are changed with sufficient frequency, etc.

(β) Whether the *altars* are made according to rubrics, and if images or statues are erected upon them, whether these are in conformity with the mind of the Church and in good taste, and especially whether any extraordinary images or representations disapproved by the Church are exposed for veneration.

(γ) Whether the *baptismal font* is properly and conveniently kept and the holy oils can be easily found and are preserved in a decent place.

(δ) In the *sacristy* he should observe the neatness and

98 Leo XIII, "*Romanos Pontifices,*" May 8, 1881; can. 1382.

99 Leo XIII, *ibid.*

1 Pars III: *Ordo ad Visitandas Parochias.*

color of the sacred vestments, the chalices and other sacred vessels.

(ϵ) The *confessionals* should be examined as to their grates, and also with regard to veils, stole and surplice, where these are prescribed, etc.[2]

We come now to what the Code says about *exempt religious*.[3]

(1) Note that exemption from canonical, or rather episcopal, visitation is now comprised under the general concession of exemption, as has been more than once decided by the S. R. Rota,[4] but is valid only if granted by a special concession of the Apostolic See, as canon 344, § 1 clearly emphasizes. Wherefore no *communicatio privilegiorum* may be invoked by exempt religious as to the canonical visitation.

(2) However, as far as the exempt religious themselves are concerned, the bishop is entitled to visit them only in *cases expressly stated in the law*. These cases, as far as the diocesan visitation is concerned, were partly mentioned above. They are:

(a) The *parish churches* administered by exempt religious, including the Blessed Sacrament, the altar, the tabernacle, the baptismal font and holy oils, the confessionals, the pulpit, the sacristy, the belfry with the bells belonging to the parish, the cemetery, etc.[5]

(b) The *oratories or chapels* of confraternities whose members are lay or secular persons, even though administered by exempt religious;[6]

2 Cf. Barbosa, *De Officio et Potestate Episcopi*, P. III, alleg. 73, nn. 63 ff.

3 Cfr. can. 615 f.

4 Barbosa, *l. c.*, n. 6; Benedict XIV, "*Ad militantis*," March 30, 1772; "*Firmandis*," Nov. 6, 1744; Gregory XV, "*Inscrutabili;*" Leo XIII, "*Romanos Pontifices*," May 8, 1881.

5 "*Firmandis*," § 7.

6 "*Inscrutabili;*" Richter, *l. c.*, p. 53, n. 10.

(c) The *schools* conducted by exempt religious, except the secondary schools, which are subject to visitation only as far as religious and moral education is concerned;[7]

(d) *Divine worship,* that it be carried out according to the sacred canons, and no superstitious practices tolerated, even in the churches and oratories of exempt religious.[8]

Canon 345 lays down the *modes of procedure* when correction of abuses becomes necessary. There are two such modes, the paternal and the judiciary. The former consists in secretly admonishing the delinquent. This may be employed towards the clergy as well as the faithful. But it would not be paternal to threaten penalties in order to compel one to reveal crimes or transgressions,[9] or to make a public admonition serve as a preliminary to criminal procedure.[10]

Much less in keeping with the bishop's office as a father would be the infliction of ecclesiastical censures. Penances which have no judiciary character, *e. g.,* a retreat, would not exceed paternal correction. If the bishop proceeds paternally, no appeal is allowed, because no sentence has been given; but recourse is permitted *in devolutivo;* that is to say, the correction must be accepted and the injunctions carried out, until the superior judge reverses the sentence.

Metropolitans should not accept any recourse against a bishop's paternal procedure as long as the latter has remained within the limits prescribed by law.[11]

What are the *aliae causae* mentioned in canon 345? We presume them to be such as do not fall directly under

7 Can. 1382.

8 Can. 1261.

9 Barbosa, *l. c.,* P. III, alleg. 73, n. 29.

10 Can. 2309.

11 *Trid.,* Sess. 13, c. 1 de ref.; Richter, *l. c.,* p. 71, n. 1 f.; Benedict XIV, "*Ad militantis,*" March 30, 1742, §§ 6, 10, 19, 21.

the objects of an episcopal visitation, especially those which require a *formal trial, e. g.,* the removal of a parish priest, the procedure against pastors refusing to comply with the law of residence, although a mere precept concerning that point would not exceed the paternal method;[12] lastly, all criminal cases requiring trials.

Can. 346 repeats the old and oft inculcated duty not to make the episcopal visitation disagreeable for those concerned, and more especially establishes the *remuneration* allowed by law.[13] The Code permits the *procurationes* and expenses of the journey. By *procurationes* are understood food and lodging. No prescription is admissible against this lawful claim of the visiting bishop.[14] However, those who would have to furnish the *procurationes* may pay their equivalent in money.[15] With the exception of this support, and the expenses of the journey, neither the bishop nor his companions are allowed to demand or accept any gifts or donations.

It has been decided by the S. C. Concilii that nuns (*moniales*), who have no regular ecclesiastical benefice, are not obliged to offer the *procurationes* to the visiting bishop.[16] However, as the Code says, custom may in that case admit the acceptance of a decent support. But on the other hand the canons as well as legal decisions[17] admonish the bishop not to be too exacting. Now-a-days there is not so much danger of excesses in this as there used to be.

12 Barbosa, *l. c.*, n. 37.

13 C. 16, X, I, 31; c. 23, X, III, 39; cc. 1 f, 6°, III, 20; *Trid.*, Sess. 24, c. de ref.

14 C. 16, X, II, 26 de praescript.

15 *Barbosa*, l. c., n. 56.

16 S. C. Conc. Nov. 13, 1638 (Richter, *Trid.*, p. 333, n. 9).

17 Richter, *l. c.*, p. 335, n. 17; this decision obliges the bishop to restitution.

PRECEDENCE

## Can. 347

In suo territorio Episcopus praecedit omnibus Archiepiscopis et Episcopis, exceptis Cardinalibus, Legatis Pontificiis et proprio Metropolita; extra territorium serventur normae traditae in can. 106.

TITULAR BISHOPS

## Can. 348

§ 1. Episcopi titulares nullam possunt exercere potestatem in sua dioecesi, cuius nec possessionem capiunt.

§ 2. Decet ex caritate, citra tamen obligationem, ut aliquando Missae sacrificium pro sua dioecesi applicent.

EPISCOPAL PRIVILEGES

## Can. 349

§ 1. Ab accepta authentica notitia peractae canonicae provisionis, Episcopi sive residentiales sive titulares:

1.° Praeter alia privilegia quae suis in titulis recensentur, fruuntur privilegiis de quibus in can. 239, § 1, nn. 7–12; nec non n. 2, etiam quod spectat ad casus Ordinario loci reservatos; n. 3, cum consensu saltem praesumpto Ordinarii loci; n. 4, dummodo non teneantur celebrare in cathedrali; nn. 5, 6, ritibus tamen ab Ecclesia praescriptis;

2.° Ius habent deferendi insignia episcopalia ad normam legum liturgicarum.

§ 2. A capta vero possessione Episcopi residentiales habent praeterea ius:

**1.° Percipiendi reditus mensae episcopalis;**

**2.° Concedendi indulgentias quinquaginta dierum in suae iurisdictionis locis;**

**3.° Elevandi in omnibus ecclesiis suae dioecesis thronum cum baldachino.**

Can. 349 enumerates some of the *privileges and rights* of bishops. The following they hold in common with cardinals: the right of a portable altar,[18] the right to celebrate Mass on board of vessels, the right of applying the indulgences of a personally privileged altar, the right to gain indulgences in their private chapels, and the right to bless the people everywhere. As to the celebration of Mass on board a vessel the conditions are: that the sea be calm and the ship not rolling, that it be far from the coast and another priest or deacon be present to hold the chalice in case of great agitation of the ship.[19]

As to the privileges mentioned under n. 2, canon 239, § 1, the confessor chosen by the Ordinary for himself and his dependents may also absolve from cases which the same Ordinary has reserved to himself; and with regard to n. 3, concerning preaching in a strange diocese, the consent of the Ordinary must at least be presumed, *i. e.*, it must be probable from common indications that he is not unwilling to grant it, or known that he never refused his consent before when asked for it. As to n. 4, Christmas would be concerned and also Holy Thursday; but on the latter day the bishops generally bless the holy oils. On Christmas day, according to can. 338, § 3, they should not be absent from their cathedrals, but this does not exclude the use of the privilege about the masses; at least a bishop may celebrate two masses or have them

18 S. R. C., June 8, 1896.

19 Cfr. Göpfert, *Moral-Theologie*, 1898, III, 138.

celebrated in his private chapel. About nn. 5 and 6, the bishops must follow the ritual in blessing devotional articles and erecting stations of the cross.

The *episcopal insignia* are: the mitre, the crosier or pastoral staff, the pectoral cross, the pontifical ring, dalmatics and tunicella, gloves and sandals.[20] Leo XIII added the skullcap of violet color for all.[21] The crosier is certainly the oldest and most significant episcopal ornament, in use since the fifth century, whilst the mitre (*taenia* = a priestly band) only dates to the tenth century, but is mentioned in several papal letters and in the decretals.[22] Besides, the residential bishop's name must be mentioned in the canon.

A *residential bishop,* from the day that he takes possession of his diocese, enjoys the *reditus mensae episcopalis,*[23] which means the income of the bishopric of which he is the sole administrator. This income comprises the salary proper, the cathedraticum, the *procurationes,* the *synodicum,* etc., or whatever belongs to him as chief pastor of the diocese, of whose table he is to live.[24] The bishop has the right of erecting a throne with a baldachino or canopy over it in every church of the diocese,[25] even those of exempt religious.

20 Cf. c. 15, X, III, 1; c. 7, X, 1, 8; cf. Jaffé, *Reg Pontf.*, ed. 2, 1882, where since the 10th century many privileges occur to that effect.

21 "*Praeclaro,*" Feb., 1888.

22 Cf. *Cath. Encycl.*, under the various catchwords; Smith-Cheltham, *Dictionary of Christian Antiquities, s. v.* "Mitre," "Staff."

23 *Mensa episcopalis* occurs since the 12th century; and in the sense of property or support, since the 9th century; see Du Cange, *Glossarium, s. v.* "Mensa."

24 I Cor. 10, 21; cfr. Barbosa, *l. c.*, P. III, alleg. 95, n. 67; Martin V, "Inter cunctas" (Denzinger, *Enchiridion,* n. 504).

25 Barbosa, *Summa Decis. Apost., s. v.* "Baldachinum."

## CHAPTER II

### COADJUTORS AND AUXILIARY BISHOPS

1. Bishops had helpers in the discharge of their pastoral duties as early as the third and fourth centuries. Thus St. Augustine is said to have been the coadjutor of Valerius. This custom, humane as it is,[1] had consequences against which the law had to guard, especially that two bishops should rule one and the same diocese. Therefore resort was had to the expedient of constituting a *visitator* or *quasi administrator*. For various reasons, especially to prevent a troubled election and to preserve episcopal sees against the invasion of territorial usurpers, it was often found necessary to appoint a coadjutor for a bishop yet living and active, whose see the coadjutor should occupy after the death of the incumbent. This practice was acknowledged by the Popes, who reserved the right of granting such coadjutors.[2]

2. In the Orient as well as in the Occident there was a species of bishops called *chorepiscopi* (country bishops), who were consecrated and exercised episcopal functions often to the detriment of the diocese.[3] At the end of the fourth century the *chorepiscopi* were supplanted by visitators. In the Occident, especially in France, "country bishops," whose jurisdiction often appears doubtful,

1 According to the saying: "afflicto affiictio non est addenda," c. 3, c. 7, q. 1; c. 5, X, III, 6.

2 C. un. 6°, III, 5; *Trid.*, Sess. 35, c, 7 de ref.; Benedict XIV, *De Synod. Dioec.*, 13, 10, 22 ff.

3 Cf. *Conc. Encyc.*, c. 13; *Sardic.*, c. 6; *Laodic.*, c. 57.

became more generally known in the eighth century, and in the following century incurred the censure of Pseudo-Isidor, whose influence dealt a deadly blow to the institution.

3. A last kind of quasi-bishops were those who owed their canonical position to the invasion of the Saracens, especially in Spain and the Orient, where many episcopal sees and cities were seized by the Islamic hordes and the bishops driven away. These exiled bishops sought refuge with other bishops, who often employed them in the discharge of diocesan functions. In Germany such refugees were commonly known as *episcopi titulares, annulares, nullatenses, auxiliares, suffraganei, vicarii in pontificalibus.* Their appointment was reserved[4] to the Holy See by Clement V. Furthermore it must be remembered that after the later crusades many bishops, though not resident at their sees, were ordained to bishoprics retained by schismatics or infidels; such bishops were called *"episcopi in partibus infidelium."*[5]

The Code distinguishes two kinds of coadjutors, *viz.:* coadjutors proper and auxiliaries. A coadjutor proper may be given to the see or to the bishop personally. However, we must confess that we have not so far read in any author of a coadjutor given to a see, unless he be identified with the coadjutor *cum iure successionis.*

## CAN. 350

**§ 1. Unius Romani Pontificis est Episcopo Coadiutorem constituere.**

**§ 2. Coadiutor dari solet personae Episcopi cum iure successionis; sed nonnunquam datur quoque sedi.**

4 C. 5, Clem. I, 3.

5 Since 1882 called simply *"in partibus"*; Aichner, *l. c.*, § 124; v. Scherer, *K.-R.*, I, p. 597.

**§ 3. Coadiutor, datus personae Episcopi sine iure successionis, speciali nomine dicitur *Auxiliaris.***

The principle laid down in § 1 was formulated by Boniface VIII and adopted by the Tridentine Council,[6] which also allowed coadjutors to abbots. Benedict XIV granted the bishops of Ireland the right to ask for a coadjutor if by reason of advanced age or infirmity they were unable to comply with the law of residence.[7] However, circumstances like those arising at Cologne[8] and elsewhere in the thirties of the last century might prompt the idea of giving a coadjutor to the see, not to the person of the bishop, especially if he is in the hands of the enemies of the Church. A coadjutor is supposed to be given to a see only in case it becomes vacant; because the contrary assumption that two bishops can hold one and the same see at the same time, would be uncanonical; one must be titular of another see, otherwise the *connubium spirituale* would be jeopardized.

### RIGHTS OF COADJUTORS

### Can. 351

**§ 1. Iura Coadiutoris dati personae Episcopi desumantur ex litteris apostolicis, quibus constituitur.**

**§ 2. Nisi aliud in his litteris caveatur, Coadiutor qui datur Episcopo prorsus inhabili, habet omnia iura ac officia episcopalia; ceteri tantum possunt quantum Episcopus eisdem commiserit.**

**§ 3. Quae Coadiutor potest et vult exercere, Episcopus habitualiter alii ne deleget.**

6 C. un. 6°, III, 5; *Trid.*, Sess. 25, c. 7 de ref.

7 "*Grave*," Aug. 15, 1741, § 8.

8 Brück, *Gesch. d. kath. Kirche in Deutschland im XIX. Jahrh.*, 1889, II, 371.

**§ 4. Coadiutor, iusto impedimento non detentus, debet, quoties fuerit a Coadiuto requisitus, pontificalia et alias functiones obire, ad quas Episcopus ipse teneretur.**

CAN. 352

**Coadiutor sedi datus potest in territorio ea quae sunt ordinis episcopalis exercere, excepta sacra ordinatione; aliis in rebus tantum potest, quantum eidem a Sancta Sede vel ab Episcopo fuerit commissum.**

These two canons state the powers of coadjutors. These powers depend first on the Apostolic letters of appointment, and secondly on the condition of the bishop in need of assistance. If the latter is able to perform his episcopal duties, his will must be respected. On the other hand, it would be unnatural and, as it were, offensive to the Holy See, if a bishop having a coadjutor would call in another bishop to perform pontifical functions which his coadjutor is able and willing to perform.

A bishop cannot punish or repeal acts which his coadjutor has lawfully performed.[9]

A coadjutor, unless permitted to do so by virtue of the Apostolic letters or the consent of his bishop, should not use the pastoral staff, because this is the special sign of jurisdiction; but he may bless the people, like the bishop.[10]

CAN. 353

**§ 1. Quilibet Coadiutor, ut canonicam sui officii possessionem capiat, necesse est litteras apostolicas ostendat Episcopo.**

**§ 2. Coadiutor cum futura successione et Coadiutor**

9 S. C. Conc., Feb. 18, 1623; Wernz, *l. c.*, II, p. 1009 (ed. 1.).

10 Barbosa, *Summa Decis. Apost.*, *s. v.* "Coadjutor," nn. 3, 10.

**sedi datus debent praeterea easdem ostendere Capitulo ad normam can. 334, § 3.**

**§ 3. Si Episcopus eum in statum inciderit ut eliciendi actus humani sit impos, praetermisso praescripto § 1, solum praescriptum § 2 ab omnibus Coadiutoribus servetur.**

This canon appears to confirm the general teaching of canonists [11] that a coadjutor with the right of succession, who is ordinarily elected by a chapter, is given by the Roman Pontiff only upon the previous consent of that chapter. But the Code in canon 350, § 1, is silent about that consent, and in the U. S. it is of little practical value. However, in our country, too, a bishop coadjutor with the right of succession must present his papers of appointment to the assembled consultors, who take the place of the chapter.[12] To the bishop the coadjutor must show the Apostolic letters only if the former is mentally and physically able to perform human acts,— in other words, as long as he realizes the meaning of the ceremony.

RESIDENCE

CAN. 354

**Coadiutor quilibet obligatione tenetur, sicut Episcopus, residendi in dioecesi, e qua, extra tempus vacationum, ad normam can. 338, ipsi non licet, nisi ad breve tempus, Coadiuto permittente, discedere.**

What is meant by "a short time" may be deduced from can. 405, § 5 f., where mention is made of a shorter

11 Benedict XIV, *De Syn. Dioec.*, XIII, c. 10, n. 24.

12 Can. 427.

time than a week in connection with residence. Hence, in round terms, we may say, about six days.

## CAN. 355

**§ 1. Coadiutor cum iure successionis, vacante sede episcopali, statim evadit Ordinarius dioecesis, pro qua fuerat constitutus, dummodo possessionem legitime ceperit, ad normam can. 353, §§ 2, 3.**

**§ 2. Cum Episcopi munere exspirat Auxiliaris officium, nisi aliud in litteris apostolicis caveatur.**

**§ 3. Si Coadiutor datus fuerit sedi, eius officium etiam sede vacante perdurat.**

This canon states how a *coadjutorship is ended; viz.:* (1) If the episcopal see becomes vacant the coadjutor appointed for that diocese becomes Ordinary of the same immediately after taking canonical possession thereof; (2) With the office of the bishop that of the auxiliary also expires, unless provided otherwise in the Apostolic letters; (3) If the coadjutor was given to the *see,* his office continues during the vacancy of the diocese.

## CHAPTER III

### DIOCESAN SYNODS

The first diocesan synod, or gathering of the clergy of a diocese of which we have knowledge, was held by Pope Siricius about 387 in Rome.[1] The holding of synods became customary in the Eternal City, and Innocent III was wont to convoke a synod twice or three times a week. These synods were, however, rather forerunners of the consistory, to which foreign bishops were admitted. In the Frankish kingdom diocesan synods were not infrequent in the sixth century, to judge from the seventh canon of the synod of Auxerre, A. D. 578, which set up the rule that in the middle of May all the priests, and on the first of November all the abbots should meet annually in the episcopal city.[2] These synods turned out to be mixed meetings in which both ecclesiastical and civil matters were debated. The fourth Lateran Council (1215) ordered synods to be held annually to promulgate the decrees of provincial councils to the clergy.[3] The same decree, with the addition of disciplinary injunctions concerning profession of faith and the appointment of synodal judges and examiners, was adopted by the Council of Trent.[4] The pseudo-council of Pistoja, 1786,

1 Benedict XIV, *De Syn. Dioec.*, I, 1, 6. The Council of Alexandria, 320/321, mentioned by Wernz (II, 1096) was attended by nearly 100 bishops (Hefele, *Conc.-Gesch.*, I, 325), which sounds more like a provincial council than a diocesan synod.

2 Hefele, *l. c.*, III, 38 f.

3 C. 25, X, V, 1.

4 Sess. 24, c. 2; 25, c. 2; 24, c. 18 de ref.

adopted certain false propositions concerning the importance and authority of synods and the power of parish priests, which were condemned by the Church.[5]

CAN. 356

§ 1. In singulis dioecesibus celebranda est decimo saltem quoque anno dioecesana Synodus, in qua de iis tantum agendum quae ad particulares cleri populique dioecesis necessitates vel utilitates referuntur.

§ 2. Si Episcopus plures dioeceses aeque principaliter unitas regat, aut unam habeat in titulum, alteram aliasve in perpetuam administrationem, potest unam tantum dioecesanam Synodum ex omnibus dioecesibus convocare.

CAN. 357

§ 1. Synodum dioecesanam convocat eique praeest Episcopus, non autem Vicarius Generalis sine mandato speciali nec Vicarius Capitularis.

§ 2. Celebranda est in ecclesia cathedrali, nisi aliud rationabilis causa suadeat.

The *date from which* the ten years are to be reckoned is not explicitly stated. However, since the Code went into effect in 1918, it appears reasonable to take this year as the starting-point. As it is very probable that a plenary council will be held in this country in the near future, if conditions permit, diocesan synods could be conveniently held soon thereafter and repeated every ten years. Most probably further instructions will be issued by the Holy See on this point.

The *matter or subjects* to be treated at the diocesan

5 Pius VI, "*Auctorem fidei*," Aug. 28, 1794, nn. 9–11.

synod are the needs and welfare of clergy and people. They are outlined in the classic work of Benedict XIV on the diocesan synod. He mentions:

(1) Public prayers, allocutions, and sermons;

(2) The decrees to be read and the profession of faith to be pronounced (according to the formula given in the Code);

(3) The election of synodal judges and examiners and the appointment of diocesan officials;

(4) The cases to be reserved (now no more than three or four) for atrocious crimes;

(5) The cathedraticum, taxes, stole fees, etc., to be determined;

(6) The alms for mass-stipends and abuses concerning them;

(7) Rendering of an account for the diocesan seminary.[6]

We might add pastoral conferences, the administration of church property, and, above all, the inculcation of the new Code.

As to § 2 of canon 356, observe that the S. C. Conc. formerly allowed two synods to be held for each of several dioceses *aeque principaliter* united (*e. g.,* Viterbo-Toscanella).[7] Benedict XIV, however, wished that only one synod be held for such dioceses (*e. g.,* Giovinozzo-Terlizzi, now Molfetta in Apulia), but alternately in the one and the other;[8] which is not excluded by the Code.

Can. 357 states the *authority* that convokes a synod is the bishop who has been confirmed by Rome and taken possession of the diocese, even though he be not yet consecrated. If he be a metropolitan he may convoke a

6 L. V, *De Syn. Dioec.*

7 Jan. 11, 1789 (Richter, *Trid.*, p. 35, n. 6).

8 "*Unigenitus,*" Nov. 26, 1749, § 9; *De Syn. Dioec.* I, 5, 3 f.

synod before the reception of the pallium.[9] We say that he must have taken possession of the diocese, on account of can. 334, § 2, which rules that before that act he is not allowed to take a hand in the government of the diocese. The name of Ordinary in this case includes Apostolic administrators, Apostolic vicars, abbots and prelates *nullius,*[10] but not vicars-general without a special commission, nor vicars-capitular, who are entirely excluded because they can have no mandate.[11]

As to the *place,* it is becoming that the cathedral church, as "the mother and head of the other churches," [12] be chosen for the synod, although any good reason may suffice for choosing another. Such reasons would be repairs in the cathedral church or the holding of a retreat for the clergy.

## CAN. 358

**§ 1. Ad Synodum vocandi sunt ad eamque venire debent:**

**1.° Vicarius Generalis;**

**2.° Canonici ecclesiae cathedralis aut consultores dioecesani;**

**3.° Rector Seminarii dioecesani saltem maioris;**

**4.° Vicarii foranei;**

**5.° Deputatus uniuscuiusque collegialis ecclesiae a Capitulo eiusdem ecclesiae e gremio eligendus;**

**6.° Parochi civitatis in qua Synodus celebratur;**

**7.° Unus saltem parochus ex unoquoque vicariatu foraneo eligendus ab omnibus qui curam animarum**

9 Benedict XIV, *De Syn. Dioec.,* II, 5; Wernz, *l. c.,* II, p. 1099, who remarks that the metropolitan is not allowed to wear the pallium at his archdiocesan synod.

10 Benedict XIV, *De Syn. Dioec.* II, cc. 10 f.

11 Benedict XIV, *l. c.,* c. 8.

12 *Ibid.,* I, 5, 6.

actu inibi habeant; parochus autem electus debet pro tempore absentiae vicarium substitutum sibi sufficere ad normam can. 465, § 4;

8.° Abbates de regimine et unus e Superioribus cuiusque religionis clericalis qui in dioecesi commorentur, designatus a Superiore provinciali, nisi domus provincialis sit in dioecesi et Superior provincialis interesse ipse maluerit.

§ 2. Episcopus, si opportunum iudicaverit, potest ad Synodum vocare alios quoque et etiam omnes canonicos, parochos, Superiores religiosos, imo et singulos suae dioecesis saeculares sacerdotes, iis tamen exceptis qui necessarii sunt ne in paroeciis animarum cura desit; invitati autem ius suffragii in omnibus habent, perinde ac ceteri, nisi Episcopus in invitatione aliud expresse caverit.

### Can. 359

§ 1. Iis qui ad Synodum venire debent, si legitimo impedimento detineantur, non licet mittere procuratorem qui eorum nomine Synodo intersit; sed Episcopum de impedimento certiorem faciant.

§ 2. Negligentes Episcopus potest iustis poenis compellere et punire, nisi de religiosis exemptis agatur qui parochi non sunt.

The text of the two canons is explicit enough, but one point has surprised us somewhat. It is n. 8 about the *abbates regiminis.* For the Council of Trent,[13] strongly defended by Benedict XIV in his work *De Synodo Dioecesana,*[14] and again upheld by Leo XIII, "*Romanos Pontifices,*" had established that only those abbots have

13 Sess. 24, c. 2 de ref.

14 Lib. III, c. 1.

to attend the synod who either exercise the care of souls as pastors of a parish, or whose monasteries are not united with a congregation and subject to a general chapter. Hence, since the Benedictines form congregations and celebrate general chapters, it would follow that the bishop had no right to call their abbots to the diocesan synod. But the Code subjects all governing abbots to the episcopal call. On the other hand the new law does insist less vigorously on the attendance of exempt religious exercising the care of souls, whom the old law strictly obliged to attend. Perhaps the Code wants the abbots to take the place of their subjects.

In order to make the invitation and will of the bishop more efficacious, canon 359, § 2, gives the Ordinary the right to proceed against recalcitrants with ecclesiastical penalties. These comprise, besides the privation of active and passive suffrage, excommunication and other punishments to be inflicted at the good pleasure of the bishop.[15] This procedure affects governing abbots and exempt religious only if they are actual pastors of parishes.

CAN. 360

**§ 1. Episcopus, si id ipsi expedire videatur, opportuno ante Synodum tempore, unam vel plures e clero civitatis et dioecesis *commissiones* nominet, seu coetus virorum qui res in Synodo tractandas parent.**

**§ 2. Ante Synodi sessiones Episcopus omnibus qui convocati sunt et convenerunt, decretorum schema tradendum curet.**

CAN. 361

**Propositae quaestiones omnes, praesidente vel per**

15 S. C. Conc., Nov. 19, 1604; Benedict XIV, *l. c.*, III, 1, 10.

**se vel per alium Episcopo, liberae adstantium disceptationi in sessionibus praeparatoriis subiiciantur.**

CAN. 362

**Unicus est in Synodo legislator Episcopus, ceteris votum tantum consultivum habentibus; unus ipse subscribit synodalibus constitutionibus; quae, si in Synodo promulgentur, eo ipso obligare incipiunt, nisi aliud expresse caveatur.**

Since the bishop is the sole ruler of the diocese, and alone endowed with legislative power *in foro externo,* it is evident that all synodal decrees made in conformity with the common law of the Church need no approbation or signature on the part of the diocesan consultors, or the synodal judges, or the rest of the clergy. The clergy, both secular and regular, must, however, carry out the decrees made at a synod. Any other theory would pervert the true idea of hierarchic jurisdiction.[16] At the same time it may be well to call attention to Benedict XIV's rule that nothing should be enacted in a synod which would be detrimental to the privileges of exempt religious, because these are granted by the Supreme Pontiff.[17]

16 Benedict XIV, *De Syn. Dioec.,* XIII, cc. 1 ff.

17 *Ibid.,.* IX, c. 15; Pius VI, "*Auctorem fidei,*" Aug. 28, 1794, nn. 9 ff.

## CHAPTER IV

### THE DIOCESAN COURT

A reproduction, on a smaller scale, of the Roman Curia is the diocesan court, whose importance grows in proportion to the extent of the territory and the number of the faithful in the diocese.

### Can. 363

**§ 1. Curia dioecesana constat illis personis quae Episcopo aliive qui, loco Episcopi, dioecesim regit, opem praestant in regimine totius dioecesis.**

**§ 2. Quare ad eam pertinent Vicarius Generalis, officialis, cancellarius, promotor iustitiae, defensor vinculi, synodales iudices et examinatores, parochi consultores, auditores, notarii, cursores et apparitores.**

The diocesan court, then, consists of those persons who assist the bishop or his representative in the government of the whole diocese. It is made up of the vicar-general, the official chancellor, the *promotor justitiae* or diocesan attorney, the defender of the marriage bond, synodal judges and examiners, parish consultors, auditors, notaries, couriers and beadles.

The *official,* who holds the first place after the vicar-general and must be chosen by the bishop (can. 1573, § 1), is a functionary distinct from the vicar-general. His importance will become manifest later. The *promotor iustitiae,* the couriers and beadles will also be

dealt with *infra*. The latter two offices, being similar to that of ushers (cf. can. 159[1]), may be committed to laymen and one man may hold both.

### Can. 364

**§ 1. Nominatio eorum qui praedicta officia vel munera exercent, scripto consignetur, ad normam can. 159.**

**§ 2. Nominati vero debent:**

**1.° In manibus Episcopi iusiurandum praestare de munere fideliter exercendo, quavis personarum acceptione posthabita;**

**2.° Negotia ad se spectantia sub auctoritate Episcopi tractare ad normam iuris;**

**3.° Secretum servare intra fines et secundum modum a iure vel ab Episcopo determinatum.**

The appointment of all these officials must be made in writing, but before entering upon their respective offices they (1) are bound to swear in the hands of the bishop that they will discharge their duties faithfully and without human respect; (2) and when performing their duties, they must do so under the supervision of the bishop, according to the norms laid down in the following canons. Besides they are strictly bound to secrecy within the limits and to the extent set by law or by the bishop.

The secret they are obliged to keep is called official; it attaches to their office and hence might also be styled with a legal term, "privileged knowledge," *i. e.*, knowledge the manifestation of which cannot be legally exacted. The obligation arising from this secret is based upon the natural law, but its measure and extent may be determined by positive norms, which are as broad as the mat-

ter involved and as wide as the necessity of the office, which is subject to the law and the will of the superior. Therefore, if a higher or more stringent reason, *e. g.*, the public welfare or a superior command, should demand of these officials the revealing of a secret, they would have to obey. On the other hand, they are never allowed to reveal anything to persons not legally, or not at all, involved or interested, and even to parties interested they cannot communicate anything which would be detrimental to another, unless they are legally called upon to do so by reason of their office.

## Can. 365

**De officiali, promotore iustitiae, defensore vinculi, iudicibus synodalibus, auditoribus, cursoribus et apparitoribus, serventur praescripta can. 1573–1593; de Vicario Generali, cancellario aliisque notariis, examinatoribus synodalibus et parochis consultoribus, praescripta canonum qui sequuntur.**

The special duties of these several officers are pointed out partly in the immediately following canons, partly in the fourth book on legal procedure (cc. 1573–1593). Here more particular attention is given to the important office of the vicar-general.

### ARTICLE I

#### THE VICAR-GENERAL

The historical development of this office proceeded by slow degrees, until it assumed its present status. Not all countries show the same process of evolution, and hence it is dangerous to generalize. The former office of

*archdeacon,* to some extent, resembles that of the vicar-general. In Rome as well as in other large cities, one of the deacons was called archdeacon, a title which is already given to St. Lawrence.[1] The office was closely connected with temporal affairs. The archdeacon grew in importance as the *chorepiscopus* decreased in power. Since the IXth century there was more than one archdeacon, especially in larger dioceses, and they gradually seem to have absorbed the powers of the archpriest, whose functions concentrated upon baptismal and other spiritual powers. The archdeacons often acted against the bishop's wishes, and consequently the bishops endeavored to restrict the archdeacons' aggrandizement of power. That their power was ordinary, without a mandate or delegation from the bishop, is nowhere stated in the Decretals of Gregory IX, although this has been asserted.[2] The decretals[3] call him vicar of the bishop, attribute to him the supervision and correction of the clergy, care of the sacred vestments, the office of master of ceremonies, and the visitation of the diocese. But without a special mandate of the bishop archdeacons cannot appoint parish priests or pronounce excommunication, although they may hear the quarrels of single individuals. This is sufficient concerning the power given by the Gregorian Decretals to the archdeacon. Soon afterwards appears an *officialis,* who may be identified with the present vicar-general. In the *Liber Sextus* Innocent IV (A. D. 1250) laid down rules for this official.[4] His power is not, at least in its full extent, ordinary, otherwise procedure and appointment to benefices would not be ex-

1 *Liber Pontificalis,* ed. Duchesne, 1886, I, 155.

2 Thus Sägmüller, *K.-R.,* 1900, p. 368.

3 Cf. tit. *23.*— A Vicar is mentioned in c. 14, X, I, 31 as constituted for different rites and languages, but subject to the bishop.

4 Tit. 13 in 6° de officio vicarii.

cepted therefrom. The bishops meanwhile continued their opposition to the archdeacons by appointing *officiales foranei,* or rural deans, who with the permission of the bishop exercised a certain jurisdiction in their districts, but were removable *ad nutum.* In England there arose a distinction between the vicar-general, to whom the administration or voluntary jurisdiction was entrusted, and the official, who had contentious or criminal jurisdiction. The Council of Trent[5] paid no attention to this distinction, but curtailed the power of the archdeacons, who became an appendage of the cathedral chapters with merely honorary rights, whilst the vicar-general became more important. Under the new Code the *officialis* of former times reappears, as will be seen in Book IV.

## Can. 366

**§ 1. Quoties rectum dioecesis regimen id exigat, constituendus est ab Episcopo Vicarius Generalis, qui ipsum potestate ordinaria in toto territorio adiuvet.**

**§ 2. Vicarius Generalis libere ab Episcopo designatur, qui eum potest ad nutum removere.**

**§ 3. Unus tantum constituatur, nisi vel rituum diversitas vel amplitudo dioecesis aliud exigat; sed, Vicario Generali absente vel impedito, Episcopus alium constituere potest qui eius vices suppleat.**

Whenever the right government of a diocese requires, the bishop shall appoint a vicar-general to aid him, with ordinary power, in the whole diocese.

5 *Trid.,* Sess. 24, cc. 3, 20; Sess. 25, c. 14 de ref.; concerning the history cfr. Thomassinus, *Vetus et Nova Disciplina circa Beneficia et Beneficiarios,* Magontiaci, 1787, P. I, lib. II, cc. 7 ff.; Hinschius, *System des Kath. Kirchenrechts,* II, 183.

The vicar-general is freely designated by the bishop and may be removed by him at pleasure.

Only one vicar-general may be appointed, unless a diversity of rites, or the size of the diocese, should require more. If the vicar-general is absent or prevented, the bishop may temporarily appoint another priest in his place.

This canon enjoins the bishop to choose a vicar-general under certain circumstances, namely, when this is necessary for the right government of the diocese. Hence the bishop is not absolutely, but only relatively obliged to appoint a vicar-general. The judgment of the necessity lies with the bishop himself. If gross neglect of episcopal duties or protracted absence should cause considerable damage to a diocese, the Holy See might force the bishop to accept either a vicar-general or apostolic administrator.[6]

The *appointment* of a vicar-general is one of the free and uncontested rights of the bishop, and in exercising it he is not bound by the consent or advice of his chapter or consultors, much less by insinuations or pressure on the part of the civil government, unless the latter is accorded definite privileges by a concordat.

The bishop can exercise the right of appointing a vicar only after the papal nomination or provision has been received.[7]

The removal of a vicar-general depends entirely on the good pleasure of the bishop, who may take the office away, with or without reason, and without any formality, summary or solemn procedure.

The *number* of vicars-general is limited to *one,* except in dioceses where diversity of rites or territorial extent

6 Cf. Wernz, *Jus Decret.,* II. p. 982.

7 Cf. can. 334, § 3.

make it advisable to have several. Innocent III decreed that a bishop should select several vicars for diverse rites and language.[8] Such vicars resemble auxiliary bishops, who would be able to celebrate the sacred mysteries in the respective rite, whilst our Code speaks of vicars-general only and does not mention diversity of language. The second reason for having several vicars-general is "*amplitudo dioeceseos.*" *Amplitudo* has the meaning of extension as well as greatness or number of parishes and souls. On that score the metropolitans of most of our American archdioceses may safely appoint several vicars-general, who *per concomitantiam* may divide their labors according to linguistic denominations. If a bishop has two dioceses to govern, either as two sees with equal rights (*aeque principaliter unitae*), or one as his proper see and the other as administrator, he may appoint two vicars-general, *i. e.*, one for each diocese, if this latter measure should be found more expedient or perhaps necessary for "right administration."[9]

## CAN. 367

**§ 1. Vicarius Generalis sit sacerdos e clero saeculari, annos natus non minus triginta, in theologia et iure canonico doctor aut licentiatus vel saltem earum disciplinarum vere peritus, sana doctrina, probitate, prudentia ac rerum gerendarum experientia commendatus.**

**§ 2. Si dioecesis alicui religioni commissa fuerit, Vicarius Generalis potest esse eiusdem religionis alumnus.**

8 Cf. c. 14, X, I, 31, de officio judicis ord.

9 Bouix, *Tractatus de Judiciis Eccl.*, 1855, t. I, p. 411 f., says that if the other diocese would be very distant, the bishop would be obliged to appoint a vicar-general.

**§ 3. Vicarii Generalis munus ne committatur canonico poenitentiario, aut Episcopi consanguineis praesertim in primo gradu vel in secundo mixto cum primo, aut, exclusa necessitate, parocho ceterisque curam animarum habentibus; sed non prohibetur Episcopus Vicarium ex ipsa dioecesi assumere.**

The Code next proceeds to determine the *qualities* of the vicar-general, which are modified somewhat in comparison with the old law:

The vicar-general must be a member of the secular clergy, at least thirty years of age, a doctor or licentiate of sacred theology and canon law, or at least well versed in said branches, of sound doctrine, righteousness, prudence, and experienced in administrative matters.

If the diocese has been entrusted to a religious order, the vicar-general may be a member of that order.

The office of vicar-general cannot be committed to the canon penitentiary, nor to one related to the bishop by blood in the first, or second touching the first, degree, nor, except in case of necessity, to a parish priest or any one occupied in the care of souls.

The first paragraph of Can. 367 appears to be taken almost verbally from the schema of the Vatican Council,[10] which, however, required the academic degree only in either theology or canon law. Our Code dispenses with the degrees, if a candidate is otherwise fit and has the required age, which is raised to thirty years.[11]

The second paragraph regards dioceses entrusted to religious orders. This may be done in such a way that the diocese becomes an *abbatia nullius,* which is possible only if the community itself is an abbey; or that religious

10 Cfr. Granderath-Kirch, *Geschichte des Vatik. Konzils,* 1903, II, 162.

11 Cfr. Bouix, *l. c.,* p. 388 ff.

have entire charge of the diocese, whose head is a religious, though not necessarily the superior of the community. Attention must be paid to the text, which says: "if the *diocese* is entrusted." Hence, if a religious is elected bishop of a diocese, this does not mean that the diocese is committed to the care of religious or that the vicar-general should be a religious; for the first paragraph requires the vicar-general to be a member of the secular clergy.

The question whether a *regular with solemn vows* may be appointed vicar-general seems, according to our view, to be settled in the negative by the first paragraph of our canon, which demands a secular priest. The reason for this law doubtless lies in the fact that religious should reside in their convents, at least habitually, unless they are compelled for good reasons to dwell outside, *e. g.*, as pastors. Hence a bishop who would wish to have a regular for his vicar-general, would have to apply to the Holy See. But a religious with simple vows, whose institute permits its members to dwell outside the convent, especially if they have given only the promise of obedience, provided he has the permission of his superior, needs no papal indult to accept the office of vicar-general.[12]

The last paragraph excludes three kinds of otherwise qualified priests from the vicar-generalship,— the *poenitentarius canonicus* of a cathedral, the next relations of the bishop, and pastors. As to the first-named, he must reside at the cathedral and hence, since he was formerly to be taken from a strange diocese, he could hold the office of vicar-general; but the office of cathedral confessor, and the delicacy of confessional trust, require full

12 Cf. can. 606, § 2. Cf. Bouix, *l. c.*, p. 392 ff. It is true, as we read in many responses to questions given by the S. C. EE. et RR., that the Roman practice never favored appointing religious as vicars-general.

attention. The same holds good concerning parish priests and others, chaplains or assistants, occupied with the care of souls. However, in case of necessity, *e. g.*, where there is a lack of fit persons, or *penuria sacerdotum,* even a parish priest, provided he is not *canonicus poenitentarius,* may be appointed. In no case, however, can a brother or nephew of the bishop be chosen vicar-general.[13] The old doctrine [14] that no one who was born in, or was a citizen or an inhabitant of, the diocese for which he was to be appointed, could be vicar-general thereof, is now discarded. The last clause of the last paragraph simply states that the bishop may choose a priest of the diocese, and consequently also of the episcopal city.

The *powers* of the vicar-general are described, or rather outlined, in the following canon.

CAN. 368

**§ 1. Vicario Generali, vi officii, ea competit in universa dioecesi iurisdictio in spiritualibus ac temporalibus, quae ad Episcopum iure ordinario pertinet, exceptis iis quae Episcopus sibi reservaverit, vel quae ex iure requirant speciale Episcopi mandatum.**

**§ 2. Nisi aliud expresse cautum fuerit, Vicarius Generalis exsequi potest rescripta apostolica quae Episcopo vel praecedenti rectori dioecesis remissa sint, ac generatim ad ipsum quoque pertinent facultates habituales Ordinario loci a Sancta Sede concessae, ad normam can. 66.**

The vicar-general, by virtue of his office, enjoys that

13 The first degree would also include the bishop's son and father, which cases, however, are rare.

14 Cf. Bouix, *l. c.*, p. 396 ff.

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temporal and spiritual jurisdiction in the whole diocese which the bishop as Ordinary possesses *iure ordinario,* except that which the bishop reserves to himself, or which by law requires a special mandate from him.

Unless expressly provided to the contrary, the vicar-general can be executor of Apostolic rescripts sent to the bishop or his predecessor in the administration of the diocese. He also enjoys the *habitual faculties* granted by the Holy See to the *ordinarius loci.*

Hence there is now [15] no longer any doubt as to the character of the vicar-general's power. It is an ordinary power, conferred by the very act of appointment, and, therefore, coextensive with the ordinary power of the bishop himself in matters spiritual and temporal. Wherefore, let it be said by the way, the custom of appointing two vicars-general, one *in temporalibus* and one *in spiritualibus,* is not to be admitted, although, as stated above, two vicars-general *in solidum* may be appointed.

From the ordinary powers of the vicar-general the Code exempts that which the bishop has reserved, and that for which the law requires a special mandate. As to the first clause, it should be remembered that *Regula iuris* 81, in 6°, states: "In generali concessione nequaquam illa veniunt, quae non esset quis verisimiliter in specie concessurus." Some authors give a list of such cases,[16] which, however, is of little value, since the bishop must state the reservations he wishes to make to the vicar-general, otherwise the latter acts validly and licitly if he proceeds in such cases. Of greater importance is the second clause. A special mandate is required under the

15 We say *now,* for doubts were previously entertained as to the nature of that power. Cfr. Wernz, *l. c.,* II, p. 987 f. (1 ed.).

16 Cf. Benedict XIV, *De Synod. Dioec.,* l. II, c. 8; Barbosa, *De Officio et Potestate Episcopi,* P. III, allegatio 54, nn. 83 ff. (ed. Lugd. 1665, t. II, p. 123 ff.)

new Code for the appointment to offices (can. 152), the conferring of benefices (can. 1432, § 2), the granting of *litterae dimissoriales* (can. 950, § 2), and the convoking of a synod (can. 357, § 1). Certain other cases that formerly required a special mandate are not mentioned in our Code.[17]

Concerning rescripts and faculties enough has been said in Bk. I. We merely note here that habitual, *i. e.*, triennial or quinquennial faculties, if such are issued again after the decree of the S. C. Consist. of April 25, 1918, are understood, but not such as are granted for a special case or for extraordinary occasions.

### Can. 369

**§ 1. Vicarius Generalis praecipua acta Curiae ad Episcopum referat, ipsumque certiorem faciat de iis quae gesta aut gerenda sint ad tuendam in clero et populo disciplinam.**

**§ 2. Caveat ne suis potestatibus utatur contra mentem et voluntatem sui Episcopi, firmo praescripto can. 44, § 2.**

In order that the old principle may be maintained, that the bishop and his vicar-general form one and the same person and tribunal, the Code demands that the vicar-general report the chief affairs (*acta*) of the Curia to the bishop and inform him of what was done or is to be done to safeguard the discipline of the clergy and the people, and that he should not use his powers against the intention and will of his bishop.

This canon was evidently added to obtain uniformity

17 For instance, to dispense from irregularities arising from an occult delict, (cfr. can. 998), to visit the diocese (can. 343), etc. Of course, this latter only in case the bishop is impeded.

and unity of government. It forbids the vicar-general, under pain of nullity, to grant a favor denied by the bishop. How far prudence and charity are to be guides, must be left to personal judgment. We only add that the canon does not mean to make the vicar-general the policeman (in an odious sense) of the diocese.

## CAN. 370

**§ 1. Praesente etiam Episcopo, Vicarius Generalis publice privatimque praecedentiae ius habet super omnibus dioecesis clericis, non exclusis dignitatibus et canonicis ecclesiae cathedralis, etiam in choro et actibus capitularibus nisi clericus charactere episcopali praefulgeat, et Vicarius Generalis eodem careat.**

**§ 2. Si Vicarius Generalis sit Episcopus, omnia honorifica privilegia Episcoporum titularium obtinet; secus durante munere habet tantum privilegia et insignia Protonotarii apostolici titularis.**

The *honorary rights* of the vicar-general are the following: He takes *precedence* over the whole clergy of the diocese at public and private occasions, even if the bishop is present, and over all dignitaries and cathedral canons in choir as well as in chapter meetings, unless there is a clergyman endowed with episcopal character and the vicar-general lacks that character. If the vicar-general is a bishop he enjoys all the honorary privileges of titular bishops. If he is not a bishop, he is entitled, during the time he serves as vicar-general, to all the privileges and insignia of a titular protonotary apostolic.

The first paragraph of can. 370[18] regulates the prece-

18 Formerly a distinction was made as to whether the vicar-general was a canon or not, whether he assisted in his insignia or not, etc. Cfr. Bouix, *De Capitulis*, 1852, p. 524 ff.

dence of the vicar-general on all ecclesiastical occasions. As he takes precedence over all prelates not endowed with the episcopal character, he ranks above protonotaries and abbots, actual and titular. Of the honorary privileges of a vicar-general who has received episcopal consecration, and hence ranks as a titular bishop, enough has been said. If the vicar-general is not a bishop, he is entitled to the privileges and insignia of a titular protonotary apostolic, the lowest class of the protonotaries' college, as remodeled by Pius X in his Motu proprio, "Inter multiplices," Feb. 21, 1905. Vicars-general enjoy the title and privileges of this class of prelates by right during the whole tenure of their office as vicars, and are, therefore, called monsignori. Their dress is a black cassock which may have a trail (but not unfolded) with a silk belt and two pendants (*flocculi*) on the left, a rochet, mantelet, and biretta, all black. They do not genuflect but only bow to the bishop or the cross; and are incensed *duplici ductu;* they say Mass as ordinary priests, but have the right to use the *bugia* or hand-light. Over their daily dress, on solemn occasions, including audiences with the Pope, they may wear a silken belt with a black fringe, a hat with a band and tassels of black color. On their coat-of-arms they may place a hat of black color with ribbons or strings and six tassels on each side, all black (not purple or red).[19]

## Can. 371

**Exspirat Vicarii Generalis iurisdictio per ipsius renuntiationem ad normam can. 183–191, aut revocationem ei ab Episcopo intimatam, aut sedis episcopalis**

19 Cfr. *Amer. Eccl. Review,* 1905, Vol. XXXII, p. 625 ff.

**vacationem; suspenditur vero suspensa episcopali iurisdictione.**

The jurisdiction of the vicar-general *expires* by resignation, by revocation on the part of the bishop, or by vacancy of the episcopal see. When the bishop's jurisdiction is suspended, that of the vicar-general also ceases.

As to *resignation* enough has been said above. If the bishop wishes to *remove* his vicar-general, he has to make the fact formally known to him, for a tacit recall is not valid nor does it affect the validity of the acts of the vicar-general. The best way is in writing, although this mode of recall is not strictly involved in the term "intimata," which signifies to make something known to someone in a legal way. Hence the notification may be made orally by courier or any other official, but the bishop must assure himself that the notice was received by the vicar-general. No reason [20] need be given for the removal, for the vicar-general is removable "*ad nutum episcopi.*"

If the episcopal see becomes vacant the jurisdiction of the vicar-general ceases, because bishop and vicar-general are considered one tribunal. However, if a common error concerning the death of the bishop should occur, the official acts performed by the vicar-general during the supposed vacancy would be valid.[21]

The jurisdiction of the vicar-general is suspended if the bishop is suspended from jurisdiction, or excommunicated, or smitten with the personal interdict. But a mere *suspensio a divinis* of the bishop would not suspend the jurisdiction of his vicar-general.

20 Bouix, *De Judiciis*, I, p. 443, and others hold that recourse may be had to the Holy See; but now this seems out of place, as stated in the text.

21 Cf. Wernz, *Jus Decret.*, II, p. 994.

## ARTICLE II

### THE CHANCELLOR AND OTHER NOTARIES — THE EPISCOPAL ARCHIVES

The following canons attest the great care which the Church wishes to be taken of all the more important documents pertaining to diocesan government. She herself has set a shining example. From the earliest time of her existence, Rome had its regional notaries, who were employed partly in collecting the acts of the martyrs, and partly in writing and preserving documents for the papal archives. The latter existed as early as the fourth century,[22] as we learn from the *Liber Pontificalis* that the popes preserved their official, legislative, and disciplinary documents *in archivio ecclesiae*.[23] The care of these archives required persons of trust and ability, who would scrupulously record the documents and watch over them. For this purpose a host of scribes (called *notarii, scriniarii, chartularii*) were employed at the papal court, who not seldom rose to dignities and held high rank in the pontifical family, to which in later centuries especially belonged the protonotaries.

All this goes to prove the importance of ecclesiastical archives and makes the following enactments more intelligible. As the episcopal court forms part of the universal machinery of the Church, those who are entrusted with the diocesan archives should bestow upon them minute and loving care.

### CAN. 372

**§ 1. In qualibet Curia constituatur ab Episcopo cancellarius qui sit sacerdos, cuius praecipuum munus**

22 Cf. Hieronymi Opp., Migne, *P. L.*, 23, 549; Phillips, *Kirchenrecht*, 1864, t. VI, p. 362 ff.

23 *Liber Pontificalis*, ed. Duchesne, I, CXXX, CLII, 230, 238

**sit acta Curiae in archivo custodire, ordine chronologico disponere et de eisdem indicis tabulam conficere.**

**§ 2. Poscente necessitate, adiutor ei dari potest, cui nomen sit vice-cancellarii seu vice-tabularii.**

**§ 3. Cancellarius est eo ipso notarius.**

Every episcopal Curia should have a chancellor, a priest appointed by the bishop, whose chief business it is to file official documents in the archives, keep them in chronological order and properly indexed. If necessary, the chancellor should be given an assistant, with the name of vice-chancellor or vice-recorder. The chancellor, by reason of his office, is also a notary.

The documents may be indexed according to the names of parishes, or topically, according to the subject-matter; for instance, appointments, assistants, charitable institutions, marriages, ordinations, parish priests, religious, sisterhoods, etc. The chronological order had best be kept according to the calendar year.

## CAN. 373

**§ 1. Episcopus praeter cancellarium potest alios quoque notarios constituere, quorum scriptura aut subscriptio publicam fidem facit.**

**§ 2. Iidem constitui possunt aut ad quaelibet acta, aut ad acta iudicialia dumtaxat, aut ad acta tantummodo certae causae vel negotii conficienda.**

**§ 3. Si clerici desint, possunt e laicis assumi; sed notarius in criminalibus clericorum causis debet esse sacerdos.**

**§ 4. Cancellarius aliique notarii debent esse integrae famae et omni suspicione maiores.**

**§ 5. Omnes possunt removeri aut suspendi ab eo**

**qui illos constituit aut ab eius successore aut Superiore, non autem a Vicario Capitulari, nisi de consensu Capituli.**

Besides the chancellor, the bishop may appoint other ecclesiastical notaries, who may act in all ecclesiastical matters without discrimination, or only in judicial affairs, or in certain cases, or for a certain kind of cases, as the bishop deems proper. Where there is a lack of clerics, laymen may be chosen for this office; but the notary in all criminal cases of the clergy must be a priest.

The chancellor and the other notaries must be men of good reputation and beyond suspicion concerning their character and trustworthiness.

All of them may be removed or suspended by the one who appointed them, or by his successor or superior, but not by the vicar-capitular, except with the consent of the chapter.

These officials may be removed by the bishop for any or no reason and without appeal to a higher authority. They may also be suspended [24] for a time, according to the good pleasure of the bishop. The right of removing and suspending the chancellor and other ecclesiastical notaries belongs to the bishop, to his successor, and to his *superior*. The superior of the bishop, in the canonical sense, is the Pope, not the metropolitan, who cannot therefore remove the aforesaid officials. Neither should the vicar-capitular or administrator remove or suspend them, for the old title in the Decretals (III, 9) that nothing should be changed during a vacancy, still holds good (can. 436). Therefore our canon demands, not only the advice, but the consent of the chapter or diocesan consultors.

24 Suspension is here to be taken as temporary cessation, not as ecclesiastical censure, because it may be inflicted on lay notaries.

## Can. 374

§ 1. Officium notariorum est:

1.° Conscribere acta seu instrumenta circa dispositiones, obligationes, citationes et intimationes iudiciales, decreta, sententias aliave circa quae eorum opera requiritur;

2.° In scriptis fideliter redigere quae geruntur eaque cum significatione loci, diei, mensis et anni subsignare;

3.° Acta vel instrumenta legitime petenti ex regesto, servatis servandis, exhibere et eorum exemplaria cum autographo conformia declarare.

§ 2. Conscribere acta nequit notarius nisi in territorio illius Episcopi a quo est electus aut pro negotio ad quod est legitime constitutus.

This canon defines the functions of ecclesiastical notaries. They are:

(1) To put in writing all episcopal acts or documents concerning enactments (*dispositiones*), orders, and engagements (*obligationes*), all judicial summons and intimations, all decrees and sentences, and whatever else requires their cooperation;

(2) To record all important events with name of place and date,— day, month and year;

(3) To show the acts or documents contained in the diocesan archives to those who rightfully ask to see them, and to furnish authenticated copies of the originals.

A notary can make official records only in the territory of the bishop by whom he is appointed, and in matters with which he is lawfully entrusted. The office of notary is thus not only legal, but partly that of a historiographer. *Legal acts* are the orders issued by the bishop (*dispositiones*), *e. g.,* concerning appointments to offices,

conferences and arrangements for confirmation. Likewise the *obligationes,* which imply all kinds of material and spiritual engagements, for instance, (1) title deeds, mortgages on church property, etc., (2) foundations for masses, legacies or bequests, especially last wills. Legal in the strictest sense are those acts which belong to judiciary procedure, summons, intimations, sentences, etc., all of which must be composed and recorded very carefully because their validity might otherwise be jeopardized.

As the *historiographer* of the diocese the chancellor or notary should record the erection of parishes, the labors of priests, the work done by institutions of charity and religion, etc. Historical records are very important, *inter alia,* for ascertaining prescription and custom. Wherefore the chancellor, in doing his duty conscientiously, serves History, which "teaches by example."

Here we would draw attention to the necessity of using durable and specially prepared ink. It is an unfortunate fact that many, especially typewritten papers, in course of time become almost illegible, whereas manuscripts of the ninth and tenth century can still be read with little difficulty.

The last paragraph of our canon *limits the activity* of notaries to the territory of the bishop to whom they owe their appointment. This rule is based on the nature of espiscopal jurisdiction, which is strictly limited in regard to territory, according to the principle: "Extra territorium ius dicenti impune non paretur." [25] A notary who would attempt to perform judicial functions in a strange territory would lack authority and therefore act invalidly.[26] Besides, a notary can write or compose only such documents for which he has been authorized; whence

25 Cfr. c. 2, 6°, I, 2, de const.

26 Cfr. Reiffenstuel, II, 22, n. 262, *de fide instrum.*

a judicial act or document composed by a notary who was assigned to administrative affairs only, would be invalid.

CUSTODY OF ARCHIVES

CAN. 375

§ 1. Episcopi in loco tuto ac commodo archivum seu tabularium dioecesanum erigant, in quo instrumenta et scripturae, quae negotia dioecesana tum spiritualia tum temporalia spectant, apte dispositae et diligenter clausae custodiantur.

§ 2. Omni diligentia ac sollicitudine conficiatur inventarium seu catalogus documentorum quae in archivo continentur cum brevi singularum scripturarum synopsi.

CAN. 376

§ 1. Quotannis, primo bimestri, inventario seu catalogo illae scripturae adiungantur, quae anno praecedenti confectae vel alias neglectae fuerunt.

§ 2. Ordinarii sedulo inquirant chartas et scripturas forte alio distractas atque dispersas; et quaelibet necessaria remedia adhibeant ut eaedem scripturae archivo restituantur.

CAN. 377

§ 1. Archivum clausum sit oportet et nemini illud ingredi liceat sine Episcopi aut Vicarii Generalis et cancellarii licentia.

§ 2. Unus cancellarius illius clavem habeat.

CAN. 378

§ 1. Ex archivo non licet efferre scripturas sine Episcopi vel Vicarii Generalis consensu eaedemque post

**triduum in suum locum referantur. Ordinario autem reservatur facultas prorogandi hoc tempus, quae tamen prorogatio nonnisi moderate concedatur.**

**§ 2. Qui aliquam scripturam ex archivo effert, syngraphum sua manu signatam, hoc ipsum significantem, cancellario relinquat.**

The bishop must provide a safe and convenient place for the diocesan archives, where all documents pertaining to the spiritual and temporal affairs of his diocese may be properly arranged and safely kept under lock and key. A careful inventory or list of documents kept in the archives should be made, as well as a brief summary of each. Within the first two months of every year should be added to the catalogue such new papers as have accumulated in the course of the preceding year or been found neglected elsewhere.

The Ordinaries are instructed to make a careful search for documents and papers which may have gone astray or been scattered, and to employ every feasible means to have them restored to the diocesan archives.

The archives are to be locked, and no one is allowed to enter the place where they are kept without the permission of the bishop or of both the vicar-general and the chancellor. The chancellor shall keep the key.

No one is allowed to take papers out of the archives without the consent of either the bishop or the vicar-general; and if any papers are taken out, they must be returned after three days, unless the Ordinary permits them to be kept out for a longer time. Such permission, however, should be granted but rarely. Whoever takes out a paper from the archives must leave a signed receipt in his own handwriting with the chancellor.

This canon is intended as a safeguard to prevent docu-

ments from being scattered, and at the same time offers to students of history, or others who may be interested in episcopal records, an opportunity to use them. Of course, bishops will see to it that the documents are not put to wrong uses.

SECRET ARCHIVES

CAN. 379

§ 1. Habeant praeterea Episcopi aliud archivum secretum vel saltem in communi archivo armarium seu scrinium omnino clausum et obseratum, quod de loco amoveri nequeat. In eo scripturae secreto servandae cautissime custodiantur; sed singulis annis quamprimum comburantur documenta causarum criminalium in materia morum, quarum rei vita cesserint vel quae a decennio sententia condemnatoria absolutae sunt, retento facti brevi summario cum textu sententiae definitivae.

§ 2. Etiam huius secreti archivi vel armarii inventarium seu catalogus conficiatur ad normam can. 375, § 2.

§ 3. Hoc archivum vel armarium duabus clavibus inter se diversis aperiatur, quarum altera apud Episcopum vel Administratorem Apostolicum, altera apud Vicarium Generalem vel, eo deficiente, Curiae cancellarium asservetur.

§ 4. Episcopus vel Administrator Apostolicus, repetita altera clave, ipse solus, nemine adstante, archivum vel armarium secretum, ubi opus fuerit, aperire et inspicere potest, quod deinde utraque clavi iterum claudatur.

CAN. 380

Statim a capta possessione, Episcopus sacerdotem

designet, qui, sede vacante aut impedita, clavem secreti tabularii seu armarii quae apud Episcopum erat, assumat.

CAN. 381

§ 1. Nisi Administrator Apostolicus dioecesi datus fuerit:

1.° Sede impedita ad normam can. 429, § 1, sacerdos ab Episcopo designatus, si quidem regimen dioecesis sit penes virum ecclesiasticum ab Episcopo delegatum, clavem eidem remittat; si penes Vicarium Generalem, eam ipse retineat;

2.° Sede vero vacante aut impedita ad normam cit. can. 429, § 3, idem sacerdos clavem remittat Vicario Capitulari statim post eius designationem; Vicarius vero Generalis vel cancellarius aliam clavem a se retentam remittere eodem tempore debet primae Capituli dignitati vel consultori dioecesano munere antiquiori.

§ 2. Antequam claves iis, quibus tradi debent ad normam § 1, remissae fuerint, Vicarius Generalis vel cancellarius et sacerdos, ut supra, ab Episcopo designatus, tabularium vel armarium sigillis Curiae obsignent.

CAN. 382

§ 1. Tabularium vel armarium nunquam aperiatur nec sigilla ab eo removeantur, nisi urgente necessitate et ab ipso Vicario Capitulari coram duobus canonicis vel dioecesanis consultoribus, qui evigilent ne qua scriptura e tabulario auferatur; solus autem Vicarius Capitularis documenta in tabulario asservata potest, iisdem canonicis vel consultoribus adstantibus, inspicere, nunquam tamen auferre. Archivum autem, post inspectionem, iterum sigillis obsignetur.

**§ 2. Advenienti novo Episcopo, si sigilla remota fuerint et tabularium aut armarium apertum, Vicarius Capitularis rationem reddat urgentis necessitatis, qua ad hoc motus fuerit.**

What was said in the preceding canons concerns the common archives of the diocese. Besides this there should be a strictly secret one. At least the bishop must provide for a special safe or chest, capable of being locked and immovable (safe or safety vault), wherein all secret papers should be carefully preserved. Documents pertaining to criminal cases and moral matters which have reference to deceased defendants or to cases settled by condemnatory sentence over ten years ago, should be burnt every year, only a brief summary of each case with the text of the final sentence being retained.

Of the contents of these secret archives or chests an inventory or catalogue must be made according to can. 375, § 2.

These archives (or safe) must be locked with two different keys, one of which is kept by the bishop or Apostolic administrator, the other by the vicar-general, or, if there is no vicar-general, by the chancellor.

The bishop or Apostolic administrator, after having procured the other key from the vicar-general or chancellor, may, if necessary, open and inspect the secret archives alone and without witnesses, and should again lock it with both keys.

§ 1 of canon 379 safeguards the reputation of the dead and prevents the accumulation of useless papers.

The reason why the Apostolic administrator is specially mentioned in § 3 and § 4 is because these officials have sometimes been excluded not only from episcopal palaces, but also from the diocesan archives.

Canon 380 provides that the bishop, immediately after taking possession of his diocese, shall appoint a priest who, during a possible vacancy of the see or enforced absence of the bishop (*sede impedita*), shall take possession of the key. How careful the Church wishes the bishop to be with these archives is apparent from this canon. The secret archives of a bishop resemble diplomatic archives, and the last nuncio of Paris, if he were still alive, might tell a strange tale. Hence the law provides that a special custodian is appointed for the secret archives,— the chapter, which is otherwise competent in such matters, being discarded for good reasons.

Canon 381 says that, when a diocese has no Apostolic administrator during the vacancy of the see or enforced absence of the bishop, the custodian of the secret archives shall hand over the key to the temporary ruler of the diocese, if he be an ecclesiastic designated by the bishop; but if the government is in the hands of the vicar-general, he shall retain the key. The key shall be handed over to the vicar-capitular as soon as one is appointed, and at the same time the vicar-general or chancellor shall give up the other key to the first dignitary of the diocesan chapter or the oldest in rank among the diocesan consultors.

Before the keys are handed over to the persons designated in § 1, the vicar-general (or chancellor) and the custodian appointed by the bishop shall seal the archives, including the secret chests, with the seal of the episcopal Curia.

Canon 382 rules that the secret archives (*tabularium, armarium*) shall never be opened or unsealed except in urgent cases, by the vicar-capitular in the presence of two canons or diocesan consultors, who shall watch that no papers are carried off. The vicar-capitular may examine the papers alone in the presence of said canons or con-

sultors, but he is not allowed to take any of them away, and the archives must again be sealed after inspection. If the seals were removed and the archives opened, the vicar-capitular must report to the new bishop the reason which urged him to open the archives.

OTHER ARCHIVES OF THE DIOCESE

CAN. 383

§ 1. Curent Episcopi ut archivorum quoque ecclesiarum cathedralium, collegiatarum, paroecialium, necnon confraternitatum et piorum locorum inventaria seu catalogi conficiantur duobus exemplaribus, quorum alterum in proprio archivo, alterum in archivo episcopali servetur, firmo praescripto can. 470, § 3, 1522, nn. 2, 3, 1523, n. 6.

§ 2. Documenta originalia ex praedictis archivis ne efferantur, nisi ad normam can. 378.

CAN. 384

§ 1. Documenta quae in paroeciarum et Curiarum archivis sub secreto servanda non sunt, fit cuilibet cuius intersit inspiciendi potestas; itemque postulandi ut sua impensa sibi legitimum eorum exemplar exscribatur et tradatur.

§ 2. Cancellarii autem Curiarum, parochi, aliique archivorum custodes in communicandis documentis et eorum exemplaribus describendis tradendisque regulas servent a legitima auctoritate ecclesiastica datas, et in casibus dubiis loci Ordinarium consulant.

Canon 383 urges the bishop to take care that all documents concerning the cathedral, collegiate and parish churches, as well as confraternities and pious institutions,

be made out in duplicate and that one copy be kept in the archives of the respective church or institution, whilst the other is preserved in the episcopal archives. No papers are to be taken from these archives except under the conditions stated in can. 378.

Canon 383 refers to three other canons, *viz.*, 470, 1522, and 1523, which pertain to the parish books and inventories procured by the diocesan trustees. Of these a copy must be sent to, and kept in, the episcopal archives. It is evident that parishes in charge of exempt religious must comply with this law only in so far as parish affairs are concerned.

According to canon 384, the papers which need not be kept secret in parochial and episcopal archives may be inspected by any one who is interested in them, and authentic copies may be made by any one at his own expense. The chancellors of the various Curiae, parish priests and other custodians, in communicating documents or copies from the archives entrusted to their care, shall follow the rules laid down by legitimate ecclesiastical authority, and in doubtful cases consult their ordinaries.

The laws embodied in this part of the Code may serve as a pattern for more elaborate rules, which, if properly observed, will prevent abuses and unpleasantness.

## ARTICLE III

### SYNODAL EXAMINERS AND CONSULTORS

### CAN. 385

**§ 1. In quavis dioecesi habeantur examinatores synodales et parochi consultores qui omnes in Synodo constituantur, propositi ab Episcopo, a Synodo approbati.**

**§ 2. Tot eligantur quot Episcopus prudenti suo iudicio necessarios iudicaverit, non tamen infra quatuor, nec ultra duodecim.**

## Can. 386

**§ 1. Examinatoribus et parochis consultoribus medio tempore inter unam et aliam Synodum demortuis vel alia ratione a munere cessantibus, alios pro-synodales Episcopus substituat de consilio Capituli cathedralis.**

**§ 2. Quae regula servetur quoque in examinatoribus et parochis consultoribus constituendis quoties Synodus non habeatur.**

The Council of Trent[27] decreed that at each diocesan synod *examiners* should be chosen for the concursus of parish priests. The same council[28] advised bishops to have regular examiners for examining candidates for the priesthood and priests asking for the faculty to hear confessions. Diocesan synods having gone into desuetude, and for other reasons, examiners are now also selected outside the synod. Hence two kinds of examiners *synodales, i. e.,* those chosen at a diocesan synod, and *prosynodales, i. e.,* those chosen outside.

The *parochi consultores,*[29] have but a short history; for, if we mistake not, they were "canonized" by the Motu proprio of Pius X, "Maxima cura," Aug. 20, 1910,

27 Cf. *Trid.*, Sess. 24 c. 18, de ref. and Bened. XIV, *De Synod. Dioec.*, l. IV, c. 7; decisions cfr. Richter, *Trid.*, p. 378 ff.

28 *Trid.*, Sess. 23, cc. 7, 15 de ref.

29 In the Catholic Directory the term "parochi consultores" is sometimes translated by "parish-consultors," which may be accepted for brevity's sake, but is not entirely correct, for these consultors are quasi assessors of the parish priests, not of the parishes, which, of course, are concerned indirectly.

and now figure in the procedure of administrative removal of parish priests.

The Code ordains that there should be in every diocese synodal examiners and parish priest consultors, all to be appointed at and approved by a synod but proposed by the bishop; that the number of examiners and consultors is left to the prudent judgment of the bishop, but should not be less than four nor more than twelve.

These officials should be elected by those attending the synod after the bishop has proposed several names. The balloting may be secret or open; but a majority of votes is required for election. Hence, if one or the other, or even all proposed by the bishop do not receive the necessary majority, the bishop must propose other names for those rejected, until the number of appointees has been reached.[30] This number is determined by the bishop, preferably at the synod. The maximum and minimum are settled by law.

Canon 386 provides that, if any examiner or parish priest consultor should die or go out of office during the time intervening between synods, the bishop, with the advice of the cathedral chapter [or the diocesan consultors] shall appoint another in his stead and that the same rule shall be observed in the appointment of examiners and consultors, if no synod is held.

This enactment precludes the idea that the office of consultor or examiner may be attached to a parish, dignity, or office in such a way that the successor in that parish, etc., would *eo ipso* be examiner or consultor because his predecessor held that office.[31]

The second paragraph provides for extraordinary

30 Benedict XIV, *De Synod. Dioec.*, l. IV, c. 7, n. 3.

31 *Ibid.*, n. 5, where an example from the diocese of Toledo in Spain is stated covering the text.

cases, which may arise where synods are not held at all or at irregular intervals.

CAN. 387

§ 1. Examinatores et parochi consultores, sive in Synodo sive extra Synodum constituti, post decennium ab incepto munere vel etiam prius, adveniente nova Synodo, officio cadunt; possunt tamen negotium iam coeptum ad exitum perducere et, servatis de iure servandis, denuo constitui.

§ 2. Qui loco examinatorum ac parochorum consultorum deficientium constituantur, in officio persistunt dumtaxat quousque perstitissent ii quibus substituti fuerunt.

CAN. 388

Removeri ab Episcopo nequeunt, nisi ex gravi causa et de consilio Capituli cathedralis.

CAN. 389

§ 1. Examinatores synodales operam suam diligenter navent praesertim experimentis habendis ad provisionem paroeciarum nec non processibus de quibus in can. 2147 seqq.

§ 2. Pro experimentis vero habendis ad clericorum ordinationem et approbationem sacerdotum qui petunt facultatem excipiendi sacramentales confessiones aut sacras conciones habendi, et pro examinibus de quibus in can. 130, integrum est Episcopo vel examinatorum synodalium vel aliorum opera uti.

CAN. 390

Idem potest esse examinator et parochus consultor, non autem in eadem causa.

Under can. 387 examiners and consultors, whether synodal or prosynodal, go out of office ten years from the date of their appointment, or, if a synod is held, even sooner. However, they may finish cases already begun, and, with due observance of the prescribed regulations, may be re-elected.

Those who are appointed in the place of deceased or retiring examiners and consultors shall merely fill the unexpired terms of those whose place they take.

A synod, according to can. 356, should be held every ten years, and this period is the normal term of office for the officials in question. Hence, if a consultor or examiner is appointed extrasynodically, say five years after the last synod, he can remain in office five years only, *i. e.,* up to the time of the next synod. However, he as well as those who have served a full ten years' term, may be re-elected at the synod according to the rules established in can. 385.

If they have *commenced* to treat an ecclesiastical matter, say the removal of a parish priest, they may finish the case, even if they are not re-elected. In the example stated, the cause would have "commenced," so far as the examiner is concerned, as soon as the invitation to resign has been issued (can. 2148). For a consultor a "business" (*negotium*) has "commenced" when the parish priest thus asked to resign has taken recourse to the Ordinary (can. 2153). In other affairs, such as examinations, a sudden interruption is not likely to occur; but if an examiner has commenced to examine, he must finish the job.

Canon 388 provides that examiners and consultors *cannot be removed from office* by the bishop except for weighty reasons and with the *advice* of the cathedral

chapter (or diocesan consultors). This canon is but a consequence of the mode of their appointment, as the express wish of the synod would be slighted if the bishop were to remove these officials arbitrarily. Hence a weighty reason is required. Such a reason would be, *e. g.,* fraud committed at an examination, or a bribe accepted. Besides, the reasons that justify the removal of a parish priest would also justify the removal of an examiner or consultor. Note that the *advice,* not the consent of the chapter or consultors is required. Hence a removal without solid reason, or without the advice of the chapter or board of consultors, would be valid, and the person removed could have recourse, but could not appeal to a higher authority.

Canon 389 makes it obligatory for the synodal (or prosynodal) examiners *to perform their task* diligently, especially at the examinations which are held for the provision of parishes and in the course of procedures aiming at the removal of pastors. For the examination of candidates for Holy Orders and of such priests as desire the faculty of hearing confessions and preaching, and also of newly ordained priests for three years after ordination, the bishop is at liberty to employ the synodal examiners or others. These points shall be explained in connection with can. 459, where definite rules are laid down.

Can. 390 permits the same person to be examiner and consultor, but not in the same cause. Hence in the canonical process for the removal of parish priests, one who holds both offices can act in only one capacity, either as examiner or as consultor.

# CHAPTER V

## CHAPTERS OF CANONS

Ancient documents testify to the fact that the bishops at an early date in the Church's history made use of their clergy in the government of the diocese, as helpers and counselors, so that the body of the clergy formed, as it were, a senate about their chief pastor. St. Jerome could say: "We, too, in the Church possess our own senate, the assembly of the clergy." [1] However, this coöperation did not imply a life in common (*vita communis*), as led by the monks. St. Augustine, indeed, endeavored to gather his priests under one roof and have them lead a community life; [2] and his example found followers, not only in Africa, but beyond the shores of the Mediterranean, at Tours (567) and Toledo (633).[3] A fresh impetus to community life was given by Chrodegang of Metz, who composed a special rule for his *canons,* as he called them.[4] This name had a double signification. Originally it meant one immatriculated or inscribed in the canon or list of names which was preserved in the churches either for liturgical or administrative purposes. In the eighth and ninth centuries, the term signified a person who lived according to a canonical rule, *i. e.,* one

1 Cf. Benedict XIV, *De Synod. Dioec.,* XIII, 1, 4.

2 *Vita S. Aug.,* by Possidius, in Migne, *P. L.,* 32, col. 37 ff.

3 Hefele, *Conciliengeschichte,* 1855, III, 75 and 21.

4 The rule of Chrodegang is published in Mansi, *Coll. Conc.,* t. XIV, 313 ff.; it is in part taken verbally from the rule of St. Benedict. Amalarius of Metz published an enlarged edition of the rule of Chrodegang.

supposed to be taken from the canons of church councils; hence, *vita canonica* or canonical life. Various synods, as well as Charlemagne, had decreed that all clergymen should be canons [5] and live within the *claustrum* of the bishop, to which no women were admitted.[6] The superior *par excellence* was the bishop himself, his chief assistants the arch-deacon, the precentor,[7] and prelates, who went by various names, the first in rank being sometimes called provost (*praepositus*), and the second, dean or arch-priest. The younger clerics, called *domicellares,* were trained by a *scholasticus* and employed as singers. This was the institute of canons, which Louis the Pious wished to introduce into his empire. But in course of time some of the clergy grew tired of the life in common, especially since their private property remained to them, and their prebends or benefices permitted, nay often compelled them to remain outside the community house. Yet, though they lived in private houses, they long retained the rule of Chrodegang [8] that they should attend the *chapter* or capitulum, in order to hear a chapter from the rule or a homily, and to receive orders and corrections. This praiseworthy custom was about all that was left of the ancient canonical life, and despite the efforts of saintly men [9] to restore it, the chapters of canons remained independent, nay obtained many additional prerogatives in the eleventh and twelfth centuries. It certainly was more than a mere accident that the popes wished to favor the chapters in that

5 Cf. Hefele, *Conciliensgeschichte,* III, pp. 551, 561, 585, 627, 683, 693.

6 *Regula Canonica,* cc. 117, 144; Hefele, *l. c.,* IV, pp. 10, 13.

7 *Regula Chrodeg.,* cc. 9, 24; Mansi, *l. c.,* XIV, 317, 325.

8 *Regula Chrodeg.,* c. 8; Mansi, *l. c.,* XIV, 318.

9 Yvo of Chartres, and especially S. Norbert, succeeded in establishing the order of canons regular, so-called, to distinguish them from the canons secular.

memorable struggle concerning investitures. Hence it need not surprise us that, under Alexander III (1159–81), the canons controlled the episcopal elections,[10] and that the Decretals accept this as a matter of fact.[11] Besides electing the bishop, the chapter, through its vicar-capitular, governed the diocese during the vacancy of the episcopal see.

Thus, the cathedral chapter in course of time became a powerful *corporation,* which asserted its influence throughout the diocese no less than within its bosom (*gremium*). To it belonged the right to receive new members and to determine their number, to create new prebends, etc. Thus, the *canonicus theologus* and the *canonicus poenitentiarius,* in existence since the thirteenth century, obtained a legal status at the Council of Trent[12] and were looked upon as important officials. Some canons were supranumerary or honorary, whilst others were full-fledged (*in fructibus et floribus*). Besides a distinction was sometimes made between *dignities* in the proper sense, including precedence and jurisdiction, *personatus,* which gave only precedence, and *officia,* which had neither precedence nor jurisdiction. But unfortunately these terms are often used promiscuously.[13] If *dignitas* is taken in the strict sense, to wit, as including precedence and jurisdiction *in foro externo,* it would include the bishop and the vicar-general, and perhaps other officials. However, the bishop and the vicar-general are not considered canons under the law. The new Code admits a twofold gradation: *dignitates* and *canonicatus,* the former being nothing else than the an-

10 Can. 35, Dist. 63.

11 Cf. tit. 6, *de electione,* passim.

12 Sess. 5, c. 1, de ref.; sess. 24, c. 8 de ref.; Bouix, *De Capitulis,* 1852; Aichner, *Compendium Juris. Eccl.,* § 121; Wernz, *Jus Dec.,* II, 921 ff. v. Scherer, *Kirchenrecht,* I, 565 ff.; Sägmüller, *K.-R.,* § 95.

13 Cf. Benedict XIV, *De Syn.,* III, 3. 1.

cient *personatus,* involving mere precedence or honorary rights, while the latter connotes administration or office, with, of course, some honorary prerogatives to distinguish the holder from the rest of the clergy.[14]

Mention must finally be made of the fact that after the canonical life had completely vanished, the chapters fixed a *certain number* of canons to be admitted, and a chapter, if filled, was called "closed" (*capitulum clausum*).

In order to make their burden more bearable, the canons admitted, not indeed into the chapter or to participation in its honorary rights, other clerics, who went by various names: *beneficiarii, capellani, portionarii, mansionarii.* These received a certain portion of the revenues and were actual coadjutors of the canons,[15] though without the latters' prerogatives.

After these explanations, which were necessary to enable the reader to understand the following canons, we now proceed.

## Can. 391

**§ 1. Capitulum canonicorum sive cathedrale sive collegiale seu collegiatum est clericorum collegium ideo institutum ut sollemniorem cultum Deo in ecclesia exhibeat et, si agatur de Capitulo cathedrali, ut Episcopum, ad normam sacrorum canonum, tanquam eiusdem senatus et consilium, adiuvet, ac, sede vacante, eius vices suppleat in dioecesis regimine.**

**§ 2. Capitulum collegiale appellatur insigne aut**

14 Cf. Bouix, *De Capitulis,* p. 79 ff.; Wernz, *Jus. Decret.,* III, 934 f., who appropriately remarks that, in order to get at the true distinction of these various offices, one would have to study the several chapters. This occupation we leave to others.

15 Cf. Bouix, *l. c.,* p. 68, p. 139 ff.; *mansionarii,* they were called because of their permanent service; *portionarii,* because they received a portion of the revenues.

**perinsigne, si hoc titulo ex apostolico privilegio vel ab immemorabili gaudeat.**

A chapter of canons, either cathedral or collegiate, is a corporation of clerics, instituted for the purpose of more solemnly celebrating the divine service. A cathedral chapter has the additional function of assisting the bishop as his senate and council and governing the diocese during a vacancy of the episcopal see.

A collegiate chapter is called distinguished or very distinguished (*insigne aut perinsigne*), if it has received that title from the Apostolic See or enjoys it by immemorial custom.

A *collegiate* chapter is a corporation of canons, which is established, not at the cathedral, or, as the ancient term has it, *in domo episcopi,* but in some other conspicuous place or church. Such chapters are often found in episcopal cities. In Rome, for instance, there are several of them, *e. g.,* S. Maria in Cosmedin, S. Lorenzo in Lucina, etc.

The character *insignis* (distinguished) is derived either from the will of the Supreme Pontiff or from immemorial custom. The former needs no reason, but generally follows the rule either of antiquity or excellence attached to the place or church. Custom, therefore, has distinguished certain chapters either by the significance of the place or importance of the church (sanctuary) or the fame of the canons.[16]

CAN. 392

**Capitulorum tum cathedralium tum collegialium institutio seu erectio, innovatio ac suppressio Sedi Apostolicae reservatur.**

16 Bouix, *l. c.,* p. 55 f.

Cathedral as well as collegiate chapters may be erected, changed, or suppressed only by the Apostolic See. This has been the practice of the popes since the eighteenth century; indeed, we might say, to some extent, since the Tridentine Council.[17]

## Can. 393

**§ 1. In qualibet ecclesia capitulari sint dignitates et canonici inter quos varia officia distribuantur; possunt esse etiam alia minora beneficia in uno vel pluribus gradibus.**

**§ 2. Capitulum constat dignitatibus et canonicis, nisi, ad dignitates quod attinet, aliud ex capitularibus constitutionibus eruatur; non autem inferioribus beneficiariis seu mansionariis, qui canonicis auxilium praestant.**

**§ 3. Canonicatus sine adnexis emolumentis ne instituantur sine speciali Apostolicae Sedis concessione.**

In every chapter church there should be dignitaries and canons to discharge the various offices. There may also be minor benefices of the same or several kinds (*gradibus*).

A chapter consists of dignitaries and canons, unless the constitution of the chapter provides otherwise concerning the dignities; but not of beneficiaries or *mansionarii* who are assistants to the canons.

No canonicate lacking the necessary revenues can be established without the special permission of the Apostolic See.

§ 1 declares the intention of the legislator that there should be two kinds of canons in every chapter: digni-

17 Cf. Bouix, *De Capitulis*, p. 81 ff.

taries and simple canons; but § 2 admits the old custom that dignitaries proper are not *de capitulo*.[17] A plurality of minor benefices either in the dignitaries or canons is admitted, whereas beneficiaries or vicars of canons are excluded from the chapter.

CAN. 394

§ 1. In Capitulis numeratis tot sint praebendati, quot praebendae; in non numeratis, quot ex proventibus decenter sustentari posse, Episcopus, audito Capitulo, iudicaverit.

§ 2. Erectio dignitatum Sedi Apostolicae reservatur; sed est in Episcopi potestate, consentiente Capitulo, exstinctas forte dignitates restituere et praebendis in Capitulo iam exstantibus alias sive canonicales sive beneficiales addere.

§ 3. In ecclesiis cathedralibus et collegialibus insignibus ubi adeo tenues praebendae sunt una cum distributionibus quotidianis, ut sustinendo canonicorum decori plane sint impares, Episcopi, audito Capitulo et impetrata Sanctae Sedis licentia, vel beneficia aliquot simplicia praebendis uniant, vel, si hac ratione provideri non possit, aliquibus praebendis suppressis, cum patronorum consensu, si de iure patronatus laicorum sint, quarum fructus et proventus reliquarum praebendarum distributionibus quotidianis applicentur, eas ad minorem numerum reducant, ita tamen ut tot supersint, quot divino cultui celebrando ac dignitati ecclesiae commode respondeant.

In closed chapters there should be as many prebendaries as there are prebends;[18] in chapters which have no

17 Cf. Bouix, *De Capitulis*, p. 81 ff.

18 In the established church of England, the chapter was said to consist of canons or prebendaries. Blackstone-Cooley, *Commentary*, I, p. 381.

fixed number of members, there may be as many as in the bishop's judgment (to be formed after hearing the chapter) can be decently supported from the revenues.

The establishing of dignities is reserved to the Holy See; but the bishop, with the consent of the chapter, may restore extinct dignities and add to the prebends already existing in the chapter others, either of canons or beneficiaries.

Should the prebends, even with the daily distributions added, become so meagre in any cathedral or distinguished collegiate church, that they prove entirely inadequate for maintaining the decorum of the canons, then the bishop may, after having heard the chapter (advice) and obtained the permission of the Holy See, add some simple benefices to the prebends, or, should this prove impracticable, suppress some of the prebends — (if these belong to a lay patron, their suppression requires the consent of the patron) — and apply the income thus saved to the daily distributions among the remaining prebendaries; provided, however, that enough prebends are left to ensure the worthy celebration of the divine service and the maintenance of the dignity of the church.

Note the difference between the first and second clause. To unite benefices requires the *beneplacitum apostolicum;* whereas to suppress insufficient prebends does not.

Since the *daily distributions* play a conspicuous part in chapters, a few words of explanation regarding them may not be amiss. Ivo of Chartres was probably not the first bishop who had trouble in making the canons live up to their duty of personally assisting at the choir service. To make the negligent more diligent and the slothful more assiduous in the performance of their canonical duties, he says, I have decided to give them half of the income of a provostry, in order to make thereof a daily

pittance, that those whom the sweetness of the spiritual food does not move, may be stimulated by the temporal bread.[19] This custom was accepted and entered the Decretals as a law.[20] The Council of Trent[21] ordered bishops to set aside the third part of all the fruits, revenues, and income from all the prebends for daily distribution among those who personally and actively assist at the divine service. Of these we shall hear more in the following canons.

## Can. 395

§ 1. In ecclesiis tam cathedralibus quam collegialibus in quibus nullae sunt quotidianae distributiones vel ita tenues ut verisimiliter negligantur, Episcopi tertiam partem separent fructuum, proventuum, obventionum quae ex dignitatibus, canonicatibus, officiis aliisque illius ecclesiae beneficiis percipiuntur et in distributiones quotidianas convertant.

§ 2. Si distributiones quavis de causa introduci nequeant, Episcopus in dignitates, canonicos ac beneficiarios negligentes pecuniarias constituat mulctas, quae distributionibus respondeant earumque locum teneant.

§ 3. Distributiones cedunt diligentibus, quavis collusione aut remissione exclusa; si vero dignitates habeant proventus a massa seu bonis canonicorum diversos et separatos, distributiones ab eis amissae cedunt aliis dignitatibus praesentibus, si adsint, secus fabricae ecclesiae, quatenus indigeat, aut alii pio loco, Episcopi arbitrio.

19 Cf. Benedict XIV, *Institutiones Iuris Eccl.*, 207, § 7; Bouix, *De Capitulis*, p. 170 f.

20 Cf. c. 32, X, III, 5 de praeb.; c. un. 6° III, 3 de clericis non resid.

21 *Trid.*, Sess. 21, c. 3; Sess. 22, c. 3 de ref.

**§ 4. Ab unoquoque Capitulo, secundum sua cuiusque statuta, unus vel plures censores, seu *punctatores* nominentur, qui absentes a divinis officiis quotidie notent, praestito prius coram Capitulo vel eius praeside iureiurando de suo munere fideliter obeundo; quibus Episcopus alium addere potest punctatorem; quod si abfuerint punctatores, senior e canonicis qui adsunt, illorum vices suppleat.**

In those cathedral as well as collegiate churches in which no daily distributions take place or where they are so meagre as to count for nothing, the bishop shall set apart the third part of all the profits, incomes, and revenues [22] received from the dignities, canonships, offices and other church benefices, and turn them into daily distributions.

If, for any reason, such distributions cannot be arranged, the bishop shall impose upon the negligent dignitaries, canons and beneficiaries, pecuniary fines in proportion to the distributions of which they shall take the place.

These distributions are for the benefit of the diligent and there must be no secret agreements or abatement of fines. If any dignitaries have an income separate from the common possession of the canons, the distributions forfeited by them must be given to the dignitaries present, or if none are present, they should be applied, according to the pleasure of the bishop, to the church building, if in need, or to any other pious institution.

22 These three terms, which often recur, signify respectively, *fructus*, the produce of the cultivated soil, thence victuals, *proventus*, income, revenue, also salary (in classical language also crop); *obventiones*, that income which is beyond expectation, what the Italians call *incerti* (*Sporteln*, fees), or, in the language of the Pandects, the revenues not including the fruits of the field. However, the three terms are often used promiscuously.

Every chapter shall, according to its own statutes, appoint censors or *punctatores*, whose duty it is daily to make note of those absent from the divine offices. Before entering upon their office these *punctatores* must promise under oath before the chapter or its presiding officer to perform their duty faithfully. The bishop may add another *punctator* to those set up by the chapter. If the *punctatores* are absent, the senior of the canons present shall take their place.

The *punctatores* (or *obedientiales*, as they were formerly called) must write down the names of the absentees, also note those who come late (if they arrive after the Kyrie, they are taken for absentees), and who talk or do not chant, or leave the choir too often.[23] That this office is not very agreeable goes without saying. Hence the right of the bishop to appoint a censor of his own, in order to prevent secret agreements.

## Can. 396

**§ 1. Collatio dignitatum tum in Capitulis cathedralibus tum in collegialibus Sedi Apostolicae reservatur.**

**§ 2. Prohibetur optio, reprobata contraria consuetudine, sed salva fundationis lege.**

**§ 3. Prima saltem dignitas in Capitulo cathedrali, quantum fieri potest et ceteris paribus, laurea doctorali in sacra theologia vel iure canonico polleat.**

The conferring of dignities in cathedral as well as collegiate chapters is reserved to the Apostolic See.

Optioning is prohibited, notwithstanding any contrary custom, but with due regard to the law of foundation.

23 Cf. Benedict XIV, *De Syn.*, IV, 4, where the oath to be taken is reproduced (n. 3, according to St. Charles Borrom.) Boux, *l. c.*, pp. 135–139.

The first dignitary of the cathedral chapter should, if possible and other things being equal, be a doctor of divinity or canon law.

*Optioning* means the right of choosing a vacant canonicate, whether a dignity or simple canonship, belonging to the senior canon.[24] It does not differ from the *ius optandi* of the cardinals. But canons no longer enjoy this right, unless it was expressly stipulated at the foundation of the chapter. The requisites (§ 3) for the first *dignitas,* whatever it be, according to the statutes of the respective chapter, are taken from the Council of Trent.[25] What "*ceteris paribus*" means, must be deduced, like the other qualities required, either from common law, or from particular statutes.

## Can. 397

**Nisi aliud in statutis capitularibus caveatur, dignitatibus et canonicis secundum ordinem praecedentiae ius et officium est:**

**1.° Episcopi vicem supplere in peragendis functionibus sacris in sollemnioribus anni festivitatibus;**

**2.° Episcopo celebranti in pontificalibus, aspersorium in ingressu ecclesiae porrigere et presbyteri assistentis fungi officio;**

**3.° Eidem decumbenti ministrare Sacramenta; defuncto iusta funebria persolvere;**

**4.° Convocare Capitulum eique praeesse ac praescribere et ordinare quae ad chori directionem referantur, dummodo dignitas sit de gremio Capituli.**

After the constitutive elements have been laid down, the *duties of canons* are now defined.

24 Cf. Bouix, *l. c.*, p. 169 f.

25 Sess. 24, c. 12 de ref., Richter, *Trid.*, p. 348 ff., where various decisions are inserted.

Unless otherwise provided in the chapter statutes, the dignitaries and canons, according to their respective rank and order of precedence, have the following rights and duties:

(1) They take the bishop's place in the celebration of the sacred functions on the more solemn feasts of the year;

(2) When the bishop celebrates pontifically, they must offer him the sprinkler at the entrance of the church, and one of them act as assistant priest;

(3) When the bishop is ill, they must administer to him the sacraments, and after his death, hold the funeral services;

(4) They shall convoke the chapter and preside over it, they shall prescribe and regulate whatever pertains to the direction of the choir service, provided the dignity belongs to the chapter. This conditional clause supposes that dignitaries may not belong to the chapter. Hence the meaning is that a dignitary who does not belong to the chapter has no right to convoke it; and if there should be no dignitary at all in the whole chapter, a canon, who acts as *praeses capituli,* may call the meeting. Generally, however, the chapter is called by the provost or dean.[26]

### THE CANONICUS THEOLOGUS AND THE POENITENTIARIUS

### Can. 398

**§ 1. In nulla ecclesia cathedrali desit officium canonici theologi et, ubi id fieri poterit, canonici poenitentiarii.**

**§ 2. Etiam in collegialibus, praesertim insignibus,**

26 Cf. Bouix, *l. c.,* p. 192 f.

officium canonici theologi et poenitentiarii constitui potest.

CAN. 399

§ 1. Canonicus theologus et poenitentiarius eligantur qui aptiores pro loci qualitate ad propria munera adimplenda reperiantur; sed, ceteris paribus, praeferantur doctores in sacra theologia, si agatur de canonico theologo, in sacra theologia vel iure canonico, si de poenitentiario; expedit praeterea ut canonicus poenitentiarius aetatis annum tricesimum expleverit.

§ 2. Praebenda theologalis et poenitentiaria ne conferantur, nisi prius de vita, moribus, doctrina candidatorum plane constiterit, salva lege concursus, ubi sit constituta.

§ 3. Canonicus poenitentiarius prohibetur aliud simul officium in dioecesi suscipere aut exercere, cui adnexa sit iurisdictio in foro externo.

CAN. 400

§ 1. Canonici theologi est, diebus et horis ab Episcopo cum Capituli consilio designatis, publice in ecclesia explanare sacram Scripturam; sed Episcopus, si id utilius iudicet, potest eidem alia doctrinae catholicae argumenta in ecclesia explicanda committere.

§ 2. Canonicus theologus munus expleat suum ipse per se, vel, si ultra sex menses fuerit impeditus, propriis expensis per alium sacerdotem ab Episcopo deputandum.

§ 3. Episcopus gravi de causa potest canonico theologo committere ut, loco lectionum in ecclesia, sacras disciplinas in Seminario doceat.

CAN. 401

§ 1. Poenitentiarius canonicus tum ecclesiae cathe-

dralis tum ecclesiae collegialis obtinet a iure potestatem ordinariam, quam tamen aliis delegare non potest, absolvendi etiam a peccatis et a censuris Episcopo reservatis, in dioecesi extraneos quoque, et dioecesanos extra territorium quoque dioecesis.

§ 2. Debet in sede excipiendis confessionibus sibi in capitulari ecclesia destinata residere tempore ad fidelium commoditatem, iudicio Episcopi, opportuniore et praesto esse iis qui ad confitenda sua peccata accedunt ipso quoque divinorum officiorum tempore.

CAN. 402

Si Capitulo adnexa sit cura animarum, haec exerceatur a vicario paroeciali ad normam can. 471.

In every cathedral church there should be a canon theologian, and, wherever possible, also a canon penitentiary (confessor).

Also in the collegiate churches, especially the distinguished ones, there may be both a canon theologian and a canon penitentiary.

The canon theologian and the penitentiary should be chosen from among those who are best fitted for their respective tasks; but, other things being equal, a doctor of divinity is to be preferred for canon theologian, and a doctor of divinity or canon law for penitentiary. It is also becoming that the penitentiary shall have completed the thirtieth year of age.

The prebends of a theologian and *poenitentiarius* shall never be conferred on any candidate until an investigation has been made as to his life, moral conduct and knowledge, and by observing the concursus, if this be the law.

The canon penitentiary is not allowed to hold or exercise any office in the diocese which has attached to it jurisdiction *in foro externo*.

The office of the *canon theologian* is to expound Holy Scripture publicly in church, on days and at hours designated by the bishop with the advice of the chapter. The bishop may also entrust him with the exposition of other doctrinal matter.

The canon theologian must fulfill his office personally, and in case he is prevented for more than six months, he must employ at his own expense another priest, to be designated by the bishop.

For urgent reasons, the bishop may employ the canon theologian as professor in the theological seminary, instead of lecturer in the church.

If a comparison be allowed between the old and the new law,[27] a certain mitigation is here noticeable, whether for better or for worse is not our business to determine. The old law excluded all other employment, even in the seminary, while the new permits the theologian to be professor of a theological — not petit — seminary. Probably new conditions, especially the lack of fit men and scarcity of priests, required the mitigation.

The *canon poenitentiarius* of a cathedral or collegiate church enjoys the ordinary power (which, however, he cannot delegate to others) of absolving all, even strangers in the diocese, from sins and censures reserved to the bishop. Outside his own territory he may absolve the subjects of his diocese.

He must sit in the confessional assigned to him in the capitular church at the time which, according to the judgment of the bishop, is most convenient for the faithful, and must be ready to hear confessions even during divine service.

27 Cf. *Trid.*, Sess. 5, c. 1, de ref. and the decisions of the S.C.C. in Richter, *Trid.*, p. 16 ff.; Benedict XIV, *De Synod. Dioec.*, XIII, 9, 17.

The faculties of this official are enlarged under the Code, especially concerning strangers and strange territory and as to cases reserved to the bishop.[28] Reserved to the bishop are those cases prescribed by law and designated as such by the bishop himself (cfr. Title IV, Book III).

If the chapter has charge of souls (*cura*) this must be entrusted to a vicar, according to canon 471.

### THE APPOINTMENT TO CANONICATES

#### CAN. 403

**Exceptis dignitatibus, ad Episcopum pertinet, audito Capitulo, conferre omnia et singula beneficia ac canonicatus in ecclesiis tum cathedralibus tum collegialibus, reprobata quavis contraria consuetudine et revocato quolibet contrario privilegio, sed firma contraria fundationis lege et praescripto can. 1435.**

#### CAN. 404

**§ 1. Canonicatus Episcopus conferat sacerdotibus doctrina vitaeque integritate praestantibus.**

**§ 2. In canonicatuum collatione, ceteris paribus, ratio habeatur illorum qui doctores in sacra theologia vel iure canonico renuntiati fuerint in aliquo athenaeo, vel laudabiliter ministerium ecclesiasticum aut magisterium exercuerint, firmo praescripto can. 130, § 2.**

#### CAN. 405

**§ 1. Dignitates, canonici et beneficiarii, capta legitime beneficii sui possessione ad normam can. 1443–**

28 Cfr. *Trid.*, Sess. 24, c. 8, de ref. Richter, *Trid.*, p. 344 f.; Bouix, *l. c.*, p. 125 f.

**1445, statim pro gradu suo acquirunt, praeter insignia ac privilegia propria, scamnum in choro, ius percipiendi fructus ac distributiones, ac vocem in capitulo ad normam can. 411, § 3.**

**§ 2. De fidei professione ab ipsis ante captam possessionem emittenda servetur praescriptum can. 1406–1408.**

The dignities excepted, all benefices and canonicates in cathedral and collegiate chapters are conferred by the bishop after hearing the chapter. All customs to the contrary are rejected and all privileges revoked, but the law of foundation as well as foundations made in Rome (can. 1435, § 3) remain in force.

The bishop should confer canonries on priests who are distinguished for learning and virtuous life. Other things being equal, those candidates should be preferred who are doctors of divinity or of canon law, or have distinguished themselves in the sacred ministry or as professors.

Dignitaries, canons and beneficiaries, after having duly taken possession of their office (can. 1443–1445), besides their insignia and privileges, immediately obtain a seat in the choir (stall), the right of receiving their income and sharing in the daily distributions, and a voice in the chapter, according to can. 411, § 3

As to the profession of faith to be pronounced before their taking possession, see can. 1406–1408.

### HONORARY CANONS

### Can. 406

**§ 1. Episcopo, non autem Vicario Generali, nec Vicario Capitulari, ius est canonicos ad honorem nomi-**

nandi sive dioecesanos sive extra-dioecesanos cum consilio Capituli cui canonicus est adscribendus, sed Episcopus raro et caute hoc iure utatur.

§ 2. Sacerdotem alienae dioecesis canonicum ad honorem nominaturus, Episcopus, praeter Capituli sui consilium, Ordinarii, cui subiectus est nominandus, assensum impetret, sub poena nominationis irritae, eundemque Ordinarium insignia edoceat ac privilegia quorum usum nominandus exinde habiturus sit.

§ 3. Canonici ad honorem extra dioecesim in qua nominati sunt degentes, numero sint tertia parte minores canonicis titularibus.

CAN. 407

§ 1. Canonici ad honorem alicuius basilicae vel ecclesiae collegialis almae Urbis, privilegiis et insignibus uti possunt tantum intra eiusdem basilicae vel collegiatae ecclesiae eiusque filialium ambitum; canonici vero ad honorem aliarum ecclesiarum extra Urbem, privilegiis et insignibus utantur in dioecesi tantum ubi nominati sunt, non autem extra dioecesim, nisi ad normam can. 409, § 2.

§ 2. Canonici ad honorem, praeter insignia et privilegia seu iura honorifica, obtinent etiam scamnum in choro.

The bishop (not the vicar-general or the vicar-capitular) has the right of nominating, with the advice of the chapter, honorary canons, either from his own or a strange diocese; but this right should be used rarely and with caution. In appointing a priest of a strange diocese honorary canon, the bishop must, besides the advice of his chapter, have the consent of the Ordinary to whom

the priest is subject, under penalty of the nomination being null and void; besides, the bishop must inform the strange ordinary as to the insignia and privileges which the honorary canon shall enjoy.

The number of honorary canons living outside the diocese for which they are named must be one-third less than of the titular canons (such as hold a canonship *in titulum;* cfr. can. 1439).

The honorary canons of basilicas and collegiate churches of the city of Rome enjoy their privileges and insignia only within the precincts of the respective basilica or collegiate church and their dependencies. Honorary canons of churches outside of Rome may use their privileges and insignia only in the diocese for which they are named, but not in another, except when they accompany the bishop or represent the bishop at occasions mentioned in can. 409, § 2.

Honorary canons, besides their insignia and privileges (honorary rights) are also entitled to a seat (stall) in the choir.

The order of *precedence* in chapters and for single canons is established as follows:

CAN. 408

**§ 1. Capitulum cathedrale praecedit collegiali, etiam insigni, in ipsa quoque collegiali ecclesia; Capitulum insigne praecedit non insigni; in eodem Capitulo, salvis peculiaribus statutis, vel legitimis consuetudinibus, dignitates, servato inter se praecedentiae ordine, praecedunt canonicis; canonici antiquiores, qui nempe prius possessionem ceperunt, posterioribus; canonici titulares, honorariis; honorarii, beneficiariis; dignitates vero aut capitulares charactere episcopali ornati omni-**

**bus dignitatibus ac canonicis in presbyterali tantum ordine constitutis praecedunt.**

**§ 2. In Capitulis in quibus habentur distinctae praebendae presbyterales, diaconales, subdiaconales, servetur praecedentia ordinis; et in eodem ordine praecedentia receptionis in ordinem, non autem in Capitulum.**

The cathedral chapter takes precedence over the collegiate chapter, even though this be a distinguished one and in its own church; a distinguished chapter over the one which does not enjoy that prerogative. In the same chapter, unless particular statutes and customs rule otherwise, the dignitaries have precedence over the canons; the senior canons over the junior, according to the time of possession; the titular canons over the honorary; the honorary canons over the beneficiaries. Dignitaries or capitularies endowed with the episcopal character take precedence over all other dignitaries and canons who are only priests.

In chapters which have distinct classes of priests, deacons, and subdeacons, precedence is regulated according to these orders, and, in the same order, according to the time of ordination, not the date of reception into the chapter.

### INSIGNIA

### Can. 409

**§ 1. In unaquaque ecclesia tum cathedrali tum collegiali, qui in dignitate episcopali sunt constituti, deferant in choro vestem episcopalem; ceteri omnes, dignitates, canonici et beneficiarii, vestem sibi in bulla erectionis assignatam vel apostolico indulto concessam; secus censeantur tanquam absentes.**

**§ 2. Vestem choralem aut specialia insignia capitularia adhibere possunt in tota dioecesi in qua est Capitulum, sed, reprobata contraria consuetudine, non extra dioecesim, nisi vel Episcopum comitentur vel Episcopum aut Capitulum repraesentent in Conciliis aliisve sollemnitatibus.**

Bishops wear the episcopal dress in choir; all others, dignitaries, canons, and beneficiaries, the dress assigned to them in the document of erection or granted by Apostolic indult. If they appear in any other garb, they are to be considered as absent.

Members of the chapter may wear their choir dress or special insignia throughout the diocese, but not outside of it, except when they accompany their bishop or represent him at a council or other solemnities. All contrary customs are abolished.

The dress of canons generally — for the Code admits prerogatives established by written law — consists of the rochet, mozzetta, cappa, and almutium.[29] The latter two appear united in the manteletta with a small hood. The new Code allows the canons to wear this choir dress in all the churches of the diocese, which is an extension of their former rights. For formerly,[30] unless they appeared in a body, the canons could wear this dress only in their own churches. Now they are entitled to wear it in the whole diocese, including the churches of exempt religious; for the text makes no distinction.

29 The word *rochet* is said to be derived from the Greek *ron chiton*, *i. e.*, soft tunic; *mozzetta* from the Italian *moza*, *i.e.*, cap, whilst *almutium* is said to be derived from *almuz* (Mütze), a late medieval German word; Bouix, *De Capitulis*, p. 504 ff.

30 Bouix, *l. c.*, p. 512 f. There are many decisions concerning our subject to be found in the *Decreta Auth. S. R. I. C.*

STATUTES AND MEETINGS

CAN. 410

§ 1. Sua cuique Capitulo statuta ne desint, ab omnibus dignitatibus, canonicis, beneficiariis religiose servanda.

§ 2. Statuta capitularia, per legitimum actum capitularem condita, approbanda subiiciantur Episcopo, sine cuius auctoritate postea nec abrogari possunt nec mutari.

§ 3. Si, Episcopo edicente ut statuta conficiantur, Capitulum id praestare neglexerit, exacto sexto ab intimatione mense, Episcopus eadem conficiat imponatque Capitulo.

CAN. 411

§ 1. Stato tempore ac loco conveniat canonicorum coetus de suae ecclesiae et Capituli negotiis acturus; alii praeterea conventus haberi poterunt, quoties id aut Episcopo aut Capituli praesidi aut maiori canonicorum parti expedire videatur.

§ 2. Ad habendum coetum ordinarium non est necessaria specialis convocatio; quae tamen ad extraordinarium requiritur, et facienda est secundum statuta capitularia.

§ 3. In capitulis vocem habent canonici, exclusis honorariis, et dignitates, si una cum canonicis Capitulum constituant ad normam can. 393, § 2.

Every chapter must have its statutes, which are to be observed conscientiously by all, dignitaries, canons, and beneficiaries.

The statutes, after having been established by a legiti-

mate capitular act, must be submitted for approval to the bishop, without whose authority no change can afterwards be made.

If the chapter, though admonished thereto by an episcopal edict, neglects to adopt statutes, the bishop, after six months from the date of the edict being intimated, should himself compose statutes and impose them on the chapter.

Formerly a chapter could make statutes either in writing or by way of custom, and they needed no appproval by the bishop as long as they touched the canons' own affairs.[31] But now no statutes can be enacted without episcopal approval. Besides, the chapters are obliged to write down their statutes, and may be compelled thereto by an episcopal edict, *i. e.*, a peremptory admonition issued in writing and brought to the notice of the canons in a canonical way. No abrogation or change is allowed without the knowledge and approval of the bishop.

A capitular act is one concluded and agreed upon by the majority of canons assembled in chapter.

The chapter should meet at stated times and places in order to deliberate on the affairs of the church and chapter.

Besides these regular meetings, others may be held as often as the bishop, or the president of the chapter, or the majority of the canons, deem it opportune.

For a regular meeting no special summons is necessary, but for an extraordinary assembly summons must be issued according to the statutes of the chapter.

In the chapter all canons, except the honorary, as well as the dignitaries, if the latter belong to the body of

31 Cfr. Bouix, *De Capitulis*, p. 408 ff.

canons, enjoy the right to vote. (Cfr. can. 393, § 2.)

As the matter is of importance for our diocesan consultors, a few notes may further illustrate the text.

The *regular meetings* should be established by statutory agreement, in order that the canons do not incur the danger of being condemned *in contumaciam* if they fail to appear.

*Extraordinary meetings* may be called as often as important affairs require it, by the bishop, by the president of the chapter (provost, dean), or by the majority of the members.

The *majority* is taken relatively to those who do not desire a chapter meeting; for instance, if the chapter consists of eight canons, five are a majority.

For the ordinary or regular meetings, no special summons is required. Hence the absentees lose their vote and cannot demand a rehearsal of the proceedings.

Two-thirds always form a quorum, but at regular meetings two-thirds are not required if only three members are present, according to the saying, "*tres faciunt collegium.*" We presuppose, of course, that the statutes contain nothing to the contrary. To *extraordinary meetings,* all the capitulars must be called. The summons must mention the time and place of the meeting, and if necessary, also the subject-matter to be considered. Should any member be unlawfully neglected by the one who calls the meeting, he may remonstrate against any decision made at that meeting and have it nullified.[32] Hence, whenever the bishop is ordered to ask the chapter to meet for affairs designated as requiring the chapter's cooperation, he must call a meeting,— not simply ask the advice or consent of the members in writing,— because

32 This is the doctrine commonly held by canonists. Cfr. Bouix, *l. c.,* p. 182 ff.

*the chapter* signifies the meeting of the whole body, not the vote of single canons or consultors.

Whether the vote is to be taken secretly or *viva voce,* is not determined, except for elections, and therefore balloting may take place either way, unless the statutes prescribe or the consultors by previous vote have adopted a specified mode.

The *majority* of votes is calculated in proportion to those present and relative to the number of yeas and nays; for instance, if thirteen are present, seven affirmative votes carry the resolution against the six contradictory votes.

What the Code says concerning dignitaries is to be understood of such as do not by right belong to the chapter according to its constitution; for instance, the vicar-general as such is not counted to be of the chapter in many cathedral chapters. But this depends upon the statutes.

### DUTIES OF CANONS

### CAN. 412

**§ 1. Canonici sive ecclesiae cathedralis sive collegialis Episcopo solemniter Missam celebranti aut alia pontificalia exercenti, etiam in aliis ecclesiis civitatis aut suburbii, ab eodem invitati, assistere et inservire debent, dummodo iudicio Episcopi sufficiens canonicorum et ministrorum in ecclesia numerus maneat: et eundem accedentem ad ecclesiam cathedralem et redeuntem comitari ad normam Caeremonialis Episcoporum.**

**§ 2. Epicopus potest duos e Capitulo sive cathedrali sive collegiali assumere ac retinere ut sibi in ecclesiastico ministerio ac dioecesis servitio assistant.**

CAN. 413

§ 1. Quodlibet Capitulum obligatione tenetur quotidie divina officia in choro rite persolvendi, salvis fundationis legibus.

§ 2. Divinum officium comprehendit psalmodiam horarum canonicarum et celebrationem cum cantu Missae conventualis, praeter alias Missas vel secundum rubricas Missalis vel ex piis fundationibus celebrandas.

§ 3. Missam conventualem sine cantu celebrare licet hebdomadario, cum in ecclesia, pontificali ritu, Episcopus vel alius loco Episcopi celebrat.

CAN. 414

Omnes et singuli qui chorale beneficium obtinent, tenentur in ipso choro divina officia persolvere singulis diebus, nisi servitium per *turnum* a Sede Apostolica aut fundationis legibus fuerit indultum.

CAN. 415

§ 1. Si ecclesia cathedralis aut collegialis simul sit paroecialis, relationes iuridicae inter Capitulum et parochum reguntur normis quae sequuntur, nisi aliud ferat aut Sedis Apostolicae indultum aut particularis conventio in erectione paroeciae inita et a loci Ordinario legitime probata.

§ 2. Ad parochum spectat:

1.° Applicare Missam pro populo et, debito tempore, praedicare ac christianam doctrinam fideles edocere;

2.° Custodire libros paroeciales et ex iis attestationes extrahere;

3.° Functiones paroeciales peragere de quibus in can.

462. Iusta funebria, in ecclesia ad normam iuris peragenda, non exclusa Missa exsequiali, persolvere ad Capitulum pertinet tantum in casu quo de funere agatur alicuius dignitatis, vel canonici, etiam honorarii tantum, vel beneficiarii;

4.° Alias functiones non stricte paroeciales peragere quae in paroeciis fieri solent, modo non impediatur chorale servitium, nec Capitulum easdem functiones peragat;

5.° Eleemosynas in bonum paroecianorum colligere, easdem directe vel indirecte oblatas recipere, administrare et secundum offerentium voluntatem distribuere.

§ 3. Ad Capitulum spectat:

1.° Custodire sanctissimum Eucharistiae Sacramentum; sed altera sacri ciborii clavis apud parochum servari debet;

2.° Invigilare ut in functionibus a parocho in capitulari ecclesia peragendis leges liturgicae observentur;

3.° Ecclesiae curam habere eiusque bona administrare cum piis legatis.

§ 4. Nec parochus capitulares nec Capitulum paroeciales functiones et munera impediat; exorto autem conflictu, quaestionem dirimat loci Ordinarius, qui in primis curare debet ut catechetica instructio et Evangelii explicatio hora fidelibus commodiore semper habeatur.

§ 5. Non solum Capitulum impedire nequit parochum in exercenda paroeciali cura, sed insuper sciant capitulares se ex caritate teneri, maxime si designati coadiutores desint, eidem adiutricem operam navare, secundum modum ab Ordinario loci determinandum.

## Can. 416

**In statutis capitularibus iusta designetur norma, ad quam canonici et beneficiarii in servitio altaris fungantur per turnum tum officio celebrantis tum etiam ministerio diaconi ac subdiaconi, exclusis tamen ab hoc ministerio dignitatibus, canonico theologo, poenitentiario et, si praebendae distinctae habeantur, canonicis ordinis presbyteralis.**

The canons of a cathedral or collegiate chapter, if invited, are obliged to assist and serve the bishop at the celebration of pontifical High Mass or other pontifical functions in other churches of the city or its suburbs, provided that a sufficient number of canons and ministers, according to the bishop's judgment, is left at the cathedral or collegiate church. Besides, they must accompany the bishop on his way to and from the cathedral according to the *Caeremoniale Episcoporum*.[33]

The bishop is entitled to assume and retain two members of either the cathedral or collegiate chapter to assist him in the ecclesiastical ministry and diocesan service.

Every chapter is bound to recite the divine office daily and properly in the choir, with due regard to the laws of foundation.

The divine service comprises the singing of the canonical hours and the celebration of a conventual high mass, besides other masses to be celebrated according to the rubrics of the Missal or the laws of foundation.

A low Mass may be celebrated as conventual mass by the hebdomadarian, if the bishop, or another bishop in his place, sings a pontifical Mass in the church.

33 Cfr. the decisions of the S. C. Conc., in Richter, *Trid.*, p. 354 f. Bouix, *De Capitulis*, p. 266 ff.

All who hold a choir benefice are bound to perform the divine service in the choir every day, unless the Apostolic See or the law of foundation allows the service to be performed *per turnum* (by turns).

Choir service means, of course, not only personal presence, but active coöperation in the recitation and singing. This has been expressly decided by the S. C. Concilii on various occasions.[34] Hither also belongs some knowledge of the Gregorian Chant.[35]

If the cathedral or collegiate church serves as parish church, the following rules must be observed. (Exceptions are admitted only if an Apostolic indult has been obtained to that effect, or an agreement lawfully approved by the Ordinary entered upon at the time the parish was erected). The rules are:

The *parish priest* has the following obligations:

(1) To apply the Mass for the people and to preach and teach catechism at the times prescribed;

(2) To keep the parochial books and take from them the attestations required;

(3) To perform the funeral services (cfr. can. 462); the chapter may hold funeral services, Mass not excluded, only for a dignitary, a canon, an honorary canon, or a beneficiary;

(4) To perform such other functions as are usually held in parish churches, provided, however, that the choir services do not interfere, or that the chapter perform the same;

(5) To collect alms for the good of the parishioners and accept such as are either directly or indirectly of-

34 Cf. Benedict XIV, *De Syn. Dioec.*, XI, 3, 8; XIII, 9, 11; *Instit. Eccl.*, 107, § 3.

35 "*Ipsi tenentur ex vi sui muneris addiscere cantum quem vocamus Gregorianum.*" (Thus Garzia et Pignatelli) Bouix, *l. c.*, p. 323.

fered, to administer and distribute them according to the donor's intention.

The *chapter* on its part is bound:

(1) To take care of the Blessed Sacrament, but leave one key with the parish priest;

(2) To see to it that the liturgical rules are observed by the parish priest in the performance of all functions in the chapter church;

(3) To take care of the church and administer its possessions and legacies.

The parish priest shall not interfere with the functions of the chapter, nor the chapter with the parochial functions. Should a conflict arise, the Ordinary should settle the question. He shall also take special care that catechetical instructions and gospel explanations be given at an hour most convenient for the faithful.

Not only should the chapter not interfere with the parish priest in the exercise of his parochial duties, but the capitulars should also remember that charity obliges them to lend a helping hand to the parish priest, according to the ways and means established by the Ordinary, especially if no sufficient number of assistants is available.

The chapter statutes should prescribe a just rule, according to which the canons and beneficiaries shall take turns in serving at the altar, either as celebrants, or as deacons and subdeacons; but the dignitaries, the canon theologian and the canon penitentiary, as also the canon priest, if there are distinct prebends, should not act as deacons and subdeacons.

CAN. 417

**§ 1. Missa conventualis applicanda est pro benefactoribus in genere.**

§ 2. Capitularis infirmitate detentus non tenetur eleemosynam praebere sacerdoti capitulari, qui ipsius vicem supplet in Missae conventualis celebratione et applicatione, nisi statuta capitularia vel particularis consuetudo aliud ferant.

§ 3. Servari potest consuetudo praebendi stipem celebranti vel ex cumulo distributionum vel ex reditibus omnium praebendarum per contributum.

The *conventual Mass* must be applied for the benefactors in general.

A capitular prevented by illness is not obliged to offer a stipend for the Mass celebrated and applied by another capitular in his stead, unless the statutes of the chapter or a particular custom so prescribe.

The custom of offering a stipend to the celebrant either from the distributions or from the contributions accruing out of all the prebends, may be retained.

RIGHTS AND PRIVILEGES OF CANONS

CAN. 418

§ 1. Reprobata contraria consuetudine, canonici ac beneficiarii quotidiano choro adstricti, possunt singuli abesse tres tantum menses in anno, sive continuos sive intermissos, dummodo propriae ecclesiae statuta aut legitima consuetudo servitium diuturnius non requirant.

§ 2. Sine causa legitima et speciali Episcopi licentia nec feriari licet Quadragesimae et Adventus tempore, aut in praecipuis anni sollemnitatibus de quibus in can. 338, § 3; nec permittitur uno eodemque tempore capitulares ultra tertiam partem abesse.

§ 3. Tempore vacationum omne genus distributio-

nes amittuntur, non obstante remissione ab aliis capitularibus facta; sed percipiuntur praebendae proventus aut duae tertiae distributionum partes, si omnes praebendae proventus in distributionibus consistant.

CAN. 419

§ 1. In ecclesiis in quibus non omnes simul choro intersunt, qui ad eum adstringuntur nequeunt per alium huic obligationi satisfacere, nisi in casibus particularibus, iusta ac rationabili de causa, et modo substitutus eodem tempore servitio chori non sit adstrictus, et sit in eadem ecclesia canonicus, si agatur de supplenda vice canonici, beneficiarius, si de beneficiarii; qui vero ad chorum non adstringuntur, obligatione residendi in loco beneficii non tenentur per dies quibus a choro absunt.

§ 2. Si quis eodem die urgeatur onere utriusque Missae et pro populo et conventuali, hanc ipse celebret applicetque per se, illam per alium vel per se die sequenti.

CAN. 420

§ 1. Ita excusantur a choro ut percipiant fructus praebendae ac distributiones quotidianas:

1.° Capitulares *iubilati* ad normam can. 422, § 2;

2.° Canonicus theologus singulis diebus quibus suo munere fungitur;

3.° Canonicus poenitentiarius dum tempore chori vacat confessionibus audiendis;

4.° Vicarius paroecialis aliusve e Capitulo sive parochus sive coadiutor ab Episcopo deputatus, dum paroecialibus vacat officiis;

5.° Qui infirmitate aliove physico impedimento choro prohibentur assistere;

6.° Qui pontificia legatione alibi funguntur aut personae Romani Pontificis actu inserviunt;

7.° Qui piis exercitiis vacant ad normam can. 126; quo tamen indulto semel tantum in anno chori servitio liberantur;

8.° Accedentes una cum Episcopo aut eiusdem vice ad visitanda Limina Apostolorum;

9.° Qui ab Episcopo vel Capitulo mittuntur ad Concilium Oecumenicum, plenarium, provinciale aut ad Synodum dioecesanam;

10.° Qui de Capituli consensu, non contradicente Episcopo, absunt a choro ob Capituli seu propriae ecclesiae utilitatem;

11.° Qui Episcopo sacra peragenti assistunt ad normam can. 412, § 1;

12.° Qui Episcopum comitantur in visitatione dioecesis vel visitationem ipsam eius nomine et mandato peragunt;

13.° Qui operam navant conficiendis processibus in causis de quibus in can. 1999 seqq., vel uti testes in his causis vocati sunt, pro diebus et horis quibus hoc officium praestant;

14.° Parochi consultores, examinatores et iudices synodales, dum proprio munere funguntur.

§ 2. Distributiones vero quae *inter praesentes* dicuntur, ii tantum percipiunt, qui in § 1, nn. 7, 11, 13, enumerantur, nisi obstet fundatorum expressa voluntas.

### Can. 421

§ 1. Excusantur a choro, sed percipiunt praebendae fructus dumtaxat, non autem distributiones:

1.° Qui de licentia Ordinarii loci publice docent in scholis ab Ecclesia recognitis sacram theologiam aut

ius canonicum;

2.° Dantes operam studio sacrae theologiae aut iuris canonici in publicis scholis ab Ecclesia probatis, de Ordinarii licentia;

3.° Vicarius Capitularis, Vicarius Generalis, officialis ac cancellarius, si de gremio sint, dum suis muneribus vacant;

4.° Canonici qui Episcopo inserviunt ad normam can. 412, § 2.

§ 2. Quod si omnes praebendae fructus consistant in distributionibus, vel adeo sint tenues ut tertiam distributionum partem non attingant, tunc memorati omnes duas tantum tertias partes distributionum lucrantur, cumulatas ex fructibus praebendae ac distributionibus.

CAN. 422

§ 1. Praebenda fruentes ab Apostolica tantum Sede impetrare possunt indultum emeriti seu, ut aiunt, *iubilationis* post continuum et laudabile quadraginta annorum in eadem vel distinctis ecclesiis eiusdem civitatis vel saltem dioecesis chori servitium.

§ 2. Iubilatus, etiamsi in loco beneficii non resideat, percipit tum fructus praebendae tum distributiones etiam inter praesentes, nisi obstent expressa fundatorum vel oblatorum voluntas, ecclesiae statuta aut consuetudo.

§ 3. Ius optandi, si ex lege fundationis competat, non est capitulari iubilato.

Canons and beneficiaries who are obliged to choir service may take a *three months' vacation* every year, either at once, or with interruptions, unless the statutes of their church or legitimate custom require a more protracted

service, every other custom to the contrary notwithstanding.

Without a lawful reason and the special permission of the bishop, no holidays are allowed during Lent and Advent and on the principal feastdays of the year (can. 338, § 3); neither are more than one-third of the chapter members permitted to be absent at one time.

During vacation all distributions are lost, notwithstanding any remittance (condonation) made by the other capitulars; but the income from the prebends or two-thirds of the distributions, if the whole salary consists in such, is to be granted.

In churches which do not require the attendance of all the capitulars at the same time, those who would be obliged to assist are not allowed to send a substitute, except in particular cases and for a legitimate and reasonable cause. The substitute must not be one who is himself at the same time obliged to choir service; he must not be a canon of the same church if he takes the place of a canon, or a beneficiary of the same church if he supplies a beneficiary.[36]

If one is under obligation of saying two Masses on the same day, one for the people and the other as conventual Mass, he shall himself celebrate and apply the conventual Mass, and say the Mass for the people on the following day, or he may engage a substitute to apply it for him (of course, we suppose, by giving him a stipend).

Although receiving the income from their prebend and the daily distributions, the following are *excused from choir service:*

(1) The capitulars who are jubilarians (cf. can. 422, § 2);

[36] Cf. *Trid.*, Sess. 24, c. 12, de ref. and the decisions in Richter, *Trid.*, p. 359; Bouix, *l. c.*, p. 326 ff.

(2) The canon theologian on the days when he performs his special office;

(3) The canon penitentiary if he hears confessions during choir service;

(4) The parish priest, or any member of the chapter appointed by the bishop as parish priest or assistant, while occupied in parochial duties;

(5) Those who are prevented from attending choir by sickness or any other physical obstacle;

(6) Those who act as papal legates or are in the personal service of the Roman Pontiff;

(7) Those who are in retreat (can. 126), for which reason, however, they are excused only once a year;

(8) Those who visit with the bishop, or in his place, the *sacra limina* (Rome);

(9) Those who are sent by the bishop or chapter to a general, plenary, or provincial council, or to a diocesan synod;

(10) Those who are absent from choir with the consent of the chapter, without the bishop objecting to it, for the utility of their chapter or church;

(11) Those who assist the bishop when pontificating (can. 412);

(12) Those who accompany the bishop on a diocesan visitation or make such visitation in his name and by his mandate;

(13) Those who are employed in the lawsuits mentioned in can. 1999 ff., or on the witness-stand, but only while actually so employed;

(14) The parish priests who are consultors, as well as examiners and synodal judges, whilst occupied in their office.

However, the distributions, which are strictly reserved

to *those present,* can be gained only by those mentioned under nn. 1, 7, 11, 13, unless the will of the founders contains a contrary clause.

The following are *excused from choir service,* and receive only the salary of the prebend, but no share in the distributions:

(1) Those who, with the permission of the Ordinary, teach dogmatic or moral theology (scripture, church history) or canon law in a Catholic school;

(2) Those who study any of these sciences in a school recognized by the Church, with the permission of the Ordinary;

(3) The vicar-capitular, the vicar-general, the *officialis,* and the chancellor, if they belong to the chapter, whilst occupied in their office;

(4) The canons serving the bishop.

If the whole income of a prebend consists of the distributions, or if it is so small that it would not amount to the third part of the distributions, then the aforesaid (§ I, 1–4) clergymen receive two-thirds of the distributions which are accumulated from the revenues of prebends and distributions.

Prebendaries can obtain the indult of *iubilatio* from the Apostolic See after a continuous and praiseworthy choir service of forty years either in the same church, or in different churches of the same city, or, at least, of the same diocese.

A jubilarian, although not residing at the place where his benefice requires him to reside, receives the whole income as well as the daily distributions, even those otherwise given only to attendants in choir, unless the express law of foundation, or the will of the founder, or the statutes, or a custom of the chapter, prohibit this.

The right of *optioning,* although permissible by the law of foundation, cannot be claimed by a jubilarian.[87]

87 Cf. Richter, *Trid.,* p. 360 ff. Benedict XIV, *De Synod. Dioec.,* XIII, 9, 15. Formerly *iubilatio* was merely a custom, for no law existed about it.

## CHAPTER VI

### DIOCESAN CONSULTORS

It must be gratifying to the church in the U. S. to see embodied in the new Code an institution which the Plenary Councils of Baltimore introduced. The Fathers of these councils realized, on the one hand, that — not to speak of the *penuria sacerdotum* — the ecclesiastical funds were not in a condition to permit the establishment of regular chapters, and, on the other hand, many of the bishops were overburdened with work. Hence the appeal of the II Plenary Council for helpers and counsellors on whom the bishops might unload a part of their burden.[1] In establishing diocesan boards of consultors, they followed the custom of other dioceses in similar condition, and, not improbably, the acts of the Council of Lebanon[2] offered an example. The new Code in a special chapter treats of these diocesan consultors, whose existence, of course, is the result of peculiar conditions.

### Can. 423

**In quibus dioecesibus nondum constitui potuit restituive cathedrale canonicorum Capitulum, instituantur ab Episcopo, salvis peculiaribus Apostolicae Sedis praescriptis, consultores dioecesani, hoc est sacerdotes pietate, moribus, doctrina ac prudentia commendati.**

1 Cfr. *Concilii Plenarii Baltimorensis II. Acta et Decreta,* Baltimore 1868, p. 53 f.

2 Printed in Rome, 1820.

CAN. 424

Consultores nominat Episcopus, firmo praescripto can. 426.

CAN. 425

§ 1. Consultores dioecesani numero sint saltem sex; in dioecesibus ubi pauci sint sacerdotes, saltem quatuor; iidemque omnes in civitate episcopali vel in locis vicinioribus commorentur.

§ 2. Antequam munus huiusmodi suscipiant, iusiurandum interponant de officio fideliter exsequendo sine ulla acceptione personarum.

CAN. 426

§ 1. Officium consultorum est ad triennium.

§ 2. Exacto triennio, Episcopus vel alios in eorum locum substituat, vel eosdem ad aliud triennium confirmet, quod idem servetur singulis trienniis.

§ 3. Deficiente, quavis de causa, aliquo consultore intra triennium, Episcopus alium de consilio ceterorum consultorum substituat, isque in officio maneat usque ad expletum idem triennium.

§ 4. Cum vero triennium excidisse contigerit vacante sede episcopali, consultores in officio maneant usque ad accessum novi Episcopi, qui intra sex menses ab inita possessione providere debet ad normam huius canonis.

§ 5. Si, sede vacante, aliquis consultor moriatur vel renuntiet, Vicarius Capitularis, de consensu aliorum consultorum, alium nominet, qui tamen, ut munere, sede plena, fungatur, indiget novi Episcopi confirmatione.

CAN. 427

Coetus consultorum dioecesanorum vices Capituli

**cathedralis, qua Episcopi senatus, supplet; quare quae canones ad gubernationem dioecesis, sive sede plena sive ea impedita aut vacante, Capitulo cathedrali tribuunt, ea de coetu quoque consultorum dioecesanorum intelligenda sunt.**

CAN. 428

**Durante munere, consultores ne removeantur, nisi ob iustam causam ac de consilio ceterorum consultorum.**

APPOINTMENT OF CONSULTORS

Where a cathedral chapter cannot as yet be either established or restored, the bishop shall appoint diocesan consultors. These consultors shall be priests distinguished by piety, exemplary life, learning, and prudence.

The appointment of consultors belongs to the *bishop,* who, however, must observe the special regulations of the Apostolic See (*salvis peculiaribus Apostolicae Sedis praescriptis*) and the rules laid down in can. 426.

As we said above, the institution of diocesan consultors, though now formally approved by the Holy See, is the result of peculiar circumstances. The rule was and is that a regular cathedral chapter should surround the episcopal office and dignity. In the U. S. this cannot as yet be achieved, and in Great Britain, where chapters once flourished, they have not yet, so far as we are aware, been restored to their former condition, although the hierarchy was reëstablished Sept. 29, 1850, and canons are constituted as corporated bodies.

What the "*peculiar regulations of the Apostolic See*" are, is not expressly stated. Perhaps the reference is to a conference held in Rome in 1883, for the introduction of cathedral chapters according to the English fashion. The Cardinals of the Propaganda, however, recognized

the present system of consultors.[3] But the Holy See reserves the right of changing the present boards of consultors into, say, a corporation or quasi-chapter with corporate rights. In that case, however, it will be natural to expect also a change of episcopal election or nomination, from which the consultors are now practically excluded.

### QUALITIES AND OBLIGATIONS

The *qualities* required in the consultors are almost verbally restated from the enactments of the second and third Plenary Councils of Baltimore.[4] These presupposed, the *bishop,* as long as Rome does not change the present laws, may freely *name* his consultors, and in doing so is not bound by the advice or consent of the counsellors, but need observe only what the Code demands in Can. 426.

There shall be at least six diocesan consultors, but four will suffice if the number of priests in the diocese is small. They should all live in the episcopal city, or near by.

Before they enter upon their office they must take an *oath* to discharge their duties faithfully without fear or favor. In large and populous dioceses the *number of consultors* may be more than six, for the canon says, "at least" six. But it can never be less than four, no matter how small the diocese may be. Therefore the rule of the III Council of Baltimore that there should be at least two,[5] must be corrected.

A leaning towards cathedral chapters is perceptible in

3 Cfr. Smith, *Elements,* I, p. 466.

4 *Acta et Decreta Conc. Balt. II.,* p. 53; *Conc. Balti. III.,* tit. II, c. 2, n. 18, p. 14 f.

5 *Balt. III., l. c.* Besides, this council (n. 19) ruled that one-half of the number should be chosen upon the nomination of the clergy, but this clause is now void.

the injunction that the consultors should live in or near the *episcopal city*. The reason is not far to seek. Forming as they do the senate of the bishop, who has to call them to meetings, they must be near at hand. Living at a distance would interfere with a prompt answer to his call.

*Before whom* the consultors appointed have to take oath is not explicitly stated in this canon. However, taking into consideration the obligation of making the profession of faith before the ordinary or his delegate, and at the same time before the other consultors,[6] it seems proper that the oath of office should be taken into the hands of the bishop or his substitute *ad hoc;* and if the profession of faith is made at the same time, the other consultors must also be present. To take the oath by proxy is neither permitted nor valid.[7]

The office of consultor lasts three years. After the expiration of that term, the bishop may replace a consultor, or leave him in office, according to his good pleasure.

If a consultor, for any reason, goes out of office during his term, the bishop, with the *advice* of the other consultors, shall appoint in his place another priest, who will remain in office until the three years have expired.

If the three years expire when the episcopal see is vacant, the consultors of the last term remain in office until the arrival of the new bishop, who must make provision for a new board of consultors within six months from the date of taking possession of his see.

Should a consultor die or resign during a vacancy in the episcopal see, the vicar-capitular or administrator, with the *consent* of the other consultors, shall name an-

6 Cfr. can. 1406, § 1, 6°. 7 Cfr. can. 1316, § 2.

other, who must, however, have the approval of the new bishop (after being installed) in order to act as consultor.

The text is so plain as not to require any comment. Attention may be drawn to the difference between the bishop and the vicar-capitular. The latter needs the *consent* of the consultors, while the former need only ask their *advice*. Consultors are free to resign, though they should not do so without a solid reason.

Can. 427 defines, in a general way, the *functions* of the diocesan consultors, for the body (*coetus*) of the diocesan consultors, as the bishop's senate, takes the place of the cathedral chapter, and hence whatever the canons attribute to the cathedral chapter in relation to the government of the diocese, either with the bishop or during a vacancy of the see, also applies to the diocesan consultors as a body.

Note the term "*coetus consultorum,*" which we rendered by "the consultors as a body." *Coetus* is a wider term than *societas, collegium,* or *corpus.* These mean a juridical person, or at least a compact society, while *coetus* means any assembly or gathering.[8] Hence, though the consultors form a body or unit, they are not a chapter in the canonical sense. Still, since *coetus* also signifies united work and a gathering of persons into a body, it follows that the consultors must be called together whenever their advice or consent is required.[9] This conclusion is confirmed by the fact that the consultors take the place of the cathedral chapter, not of the single canons. For this reason, too, be it said in passing, consultors do not enjoy the privileges and insignia of canons. But their *functions* are not therefore unimportant. They form the senate of the bishop, who must in

8 Cfr. l. 2, *Dig.*, 47, 11: "*Coetus sub praetextu religionis*"; l. 5, *Dig.*, 48, 6.
9 Cfr. can. 105.

certain instances ask their advice, and in other, more important affairs,[10] is bound by their consent, given in a body, as shall appear later.

Their functions during a vacancy or quasi-vacancy of the episcopal see are dealt with in the next chapter.

The consultors in the U. S. are not yet entitled to elect the administrator.[11]

Canon 428 rules that no consultor should be removed during his term of office without just reason and without the advice of the other consultors.

This law is taken almost verbally from the Third Council of Baltimore,[12] which enumerates some legitimate causes of removal, *viz.:* if a consultor, by reason of age or sickness, is unable to fulfill his duty, or if he has committed a crime that renders him unworthy of his office, or if his reputation has suffered considerably through his own fault. In such cases, therefore, the bishop may remove a consultor after having asked the advice of the other consultors. This means that no trial, not even a summary one in the strict sense of the term, is required; but the bishop is not on that account excused from the moral duty of at least making an investigation into the charges brought against a consultor.

10 Cfr., for instance, can. 1532, § 3 (alienation).

11 Cfr. can. 431, § 2; hence we cannot agree with the *Eccles. Rev.*, Vol. 57, p. 367 (Oct. 1917).

12 *Acta et Decreta*, 1886, n. 21, p. 16.

## CHAPTER VII

### QUASI-VACANCY AND VACANCY OF THE EPISCOPAL SEE — THE VICAR-CAPITULAR

We use the term "*quasi-vacancy*" for "*sedes impedita.*" The Decretals provide for the case of an episcopal see becoming vacant by the captivity of its occupant by "pagans or schismatics." Boniface VIII decreed that under such circumstances not the archbishop or metropolitan but the chapter should govern the diocese in spiritual and temporal affairs, "as if the see were vacant," and as soon as possible refer the matter to the Holy See.[1] This decretal was cited by the chapter of Cologne, in 1837, to justify their somewhat irregular election of a vicar-capitular against the will of the imprisoned Archbishop Clement August and the Holy See. The Cologne affair had no analogy with the captivity of a medieval bishop by pagans or schismatics, but was an act of sheer violence, perpetrated by the Prussian government without law or legal procedure, and it was branded as it deserved by Pope Gregory XVI.[2] Twenty-four years later Pius IX protested against the unlawful elections of vicars-capitular in the Kingdom of Naples and declared them null and void. The electors were declared to have incurred ecclesiastical censure and the elected vicar-capitulars were suspended and deprived of their benefices (May 3rd, 1862). The respective decree of S. C. EE. et RR. was extended to all dioceses where

1 Can. 3, 6°, I, 8 de supplenda negligentia.

2 *Brevia Greg. XVI*, Dec. 26, 1837; May 9, 1838; *Allocutio*, Sept. 13, 1838. Cfr. Brück, *Gesch. d. Kath. Kirche in Deutschland im XIX. Jahrh.*, 1889, Vol. II, p. 329 ff.

such disorderly elections would take place.[3] This action by the Holy See was simply a defence of the freedom of the Church and of the rights of an unlawfully imprisoned prelate, who was still able to communicate with his diocese, although with great difficulty.

For the Vatican Council[4] a sketch had been prepared to throw light on the terms "*sede vacante*" and "*sede impedita,*" which had up to that time been variously interpreted by canonists. The schema maintained that the see is vacant only if the bishop is really in captivity, but merely *impedita* in case of deportation or exile, and that in the latter case the vicar-general or any one assigned by the bishop should govern the diocese. This meant that the decretal of Boniface VIII cannot be applied to a *sedes impedita.*[5] We shall now see that the Code does not entirely reject either of the two opinions which were discussed at the Council, but tries to reconcile both.[6]

3 Bizzarri, *Coll. S. C. EE. et RR.*, 1885, p. 153 f.

4 Cfr. Granderath-Kirch, *Geschichte des Vatik. Konzils,* 1903, II, 162.

5 Cfr. the schema as to the point at issue, *ib.* p. 163, which reads: "Ab hypothesi Sedis vacantis longe differre visa est hypothesis Sedis per Episcopi captivitatem vel relegationem aut exilium impeditae. Prae oculis habita fuit celeberrima Bonifacii VIII. Decretalis 'Si Episcopus a paganis' (cap. 3, De suppl. neglig. in VI°), qua decernitur in casu Episcopi capti ab infidelibus vel schismaticis Capitulum administrare ac si Sedes per mortem vacaret. Prae oculis habitae fuerunt discrepantes DD. opiniones, aliis illud idem applicantibus cuicunque casui Sedis simili modo impeditae, aliis illud ad solum praedictum casum restringentibus; quorum praeterea non pauci sentiunt, ipsi etiam Decretali Bonifacii VIII. locum non esse, ubi existit Generalis Episcopi Vicarius. Prae oculis demum habitae fuerunt ingentes difficultates et maxima pericula, quae hac in re contigerunt recentioribus temporibus praesertim in Germania, Hispania et Regno utriusque Siciliae. Quidquid autem de iure constituto sit existimandum, de iure saltem constituendo id visum est omnino decernendum, quod in proposito Decreto continetur. Capitulorum ausibus obstaculum ita ponitur; et praxi Ecclesiae conformis ea solutio est, ut liquet ex gestis anno 1838 occasione captivitatis Archiepiscopi Coloniensis et ex Decreto S. Congr. Ep. et Reg., 3 Maii, 1862, ad nonnulla Capitula Siciliae a SS. D. N. Pio IX. approbato." C. V. 654 b.

6 Cfr. can. 285.

CAN. 429

§ 1. Sede per Episcopi captivitatem, relegationem, exsilium, aut inhabilitatem ita impedita, ut ne per litteras quidem cum dioecesanis communicare ipse possit, dioecesis regimen, nisi Sancta Sedes aliter providerit, penes Episcopi Vicarium Generalem vel alium virum ecclesiasticum ab Episcopo delegatum esto.

§ 2. Potest in casu Epsicopus, gravi de causa, plures delegare, qui sibi invicem in munere succedant.

§ 3. His deficientibus, vel, uti supra dictum est, impeditis, Capitulum ecclesiae cathedralis suum Vicarium constituat, qui regimen assumat cum potestate Vicarii Capitularis.

§ 4. Qui dioecesim regendam, ut supra, suscepit, quamprimum Sanctam Sedem moneat de sede impedita ac de assumpto munere.

§ 5. Si Episcopus in excommunicationem, interdictum vel suspensionem inciderit, Metropolita, eoque deficiente, vel, si de eodem agatur, antiquior inter Suffraganeos ad Sedem Apostolicam illico recurrat, ut ipsa provideat; quod si de dioecesi agatur vel praelatura de quibus in can. 285, Metropolita qui fuit legitime electus, obligatione recurrendi tenetur.

This is the canon treating of the *sedes impedita* or quasi-vacancy, and it affords a splendid example of how the old has been combined with the new law. The ancient law[7] spoke only of captivity brought about by pagans and schismatics, but the new law uses four terms to comprise the state of "*sedes impedita.*" They are: captivity, relegation, exile, incapacity or inability. The first three words signify substantially the same,[8] to wit: prac-

[7] Cfr. c. 3, 6°, I, 8, and above. [8] In Webster's Dictionary we

tical absence from the episcopal see, brought about either by force or by an act of the civil power, be it in war or peace. *Inhabilitas* is the physical or mental inability of the bishop, without any one's fault or coöperation. Such cases are mentioned in the Decree of Gratian; in one case the bishop suffered from severe headaches, in another, he was afflicted with an ailment not further specified. In both cases the popes, Gregory I and Nicholas I, decided that no successor should be elected but the priests and neighboring bishops should assist the infirm bishop.[9] That mental infirmity falls in the same category goes without saying.[10] Under such circumstances, therefore, the government of the diocese is put into the hands of the vicar-general, as the *Schema Concilii Vaticani* postulated, or the bishop, passing over the vicar-general, may appoint another ecclesiastic, or several to whom the government is entrusted.

This provision bridges the difference of opinion raised at the Vatican Council. For the new law, differing from the *Schema,* permits the election of a vicar-capitular, if the vicar-general and the appointment of episcopal legates is impracticable. In such a case the chapter, as will be seen, shall elect a vicar-capitular.[11] But whoever holds the government ad interim must report to Rome (to the S. C. Consist., or the Secretary of State, or the S. C. of Extraordinary Affairs).

The last paragraph treats of another case which may cause a see to be *impedita,* viz., the *censure* of the bishop (treated *infra,* Book IV). If a bishop is placed under censure, the Metropolitan is not allowed to interfere

could not perceive an adequate distinction between relegation and exile.

9 Cfr. cc. 1, 4, C. 7, q. 1.

10 Reiffenstuel I, 10, n. 35 ff.

11 The S. C. C., Aug. 7, 1683 (Richter, *Trid.,* p. 370) decided that if communication with the captured bishop was possible, his jurisdiction did not devolve on the chapter.

either with him or his vicar-general, nor is he called upon to appoint a vicar-capitular, because the old law [12] forbade such interference, and the new law does not abolish the old. But the Metropolitan is obliged in virtue of his office to inform the Holy See. If the Metropolitan is censured, the senior suffragan must make the report. If the prelate who is censured is immediately subject to the Holy See, the Metropolitan who has been chosen by the respective Prelate "*semel pro semper*," is obliged to have immediate recourse to Rome. In the meantime the vicar-general cannot continue to exercise his jurisdiction, because his power is suspended during the suspension of the bishop (can. 371). Hence, in such a case, the regular business of the episcopal curia will cease until Rome makes provision, which now-a-days, by reason of swift communication, can, as a rule, be done promptly. If any jurisdictional act should meanwhile be performed, which would give rise to a general error, the validity of such an act could not be doubted.

### VACANCY PROPER

### Can. 430

**§ 1. Sedes episcopalis vacat Episcopi morte, renuntiatione a Romano Pontifice acceptata, translatione ac privatione Episcopo intimata.**

**§ 2. Nihilominus, excepta collatione beneficiorum aut officiorum ecclesiasticorum, omnia vim habent quae gesta sunt a Vicario Generali, usque dum hic certam de obitu Episcopi notitiam acceperit, vel ab Episcopo**

12 Cfr. c. 1, 6° I, 8, de negligentia supplenda. The reason why the Metropolitan is not allowed to draw the jurisdiction to himself lies in the danger of detriment accruing to the bishop and his subjects. Reiffenstuel, I, 10, 36 also mentions the expedient of recourse.

aut Vicario Generali, usque dum certa de memoratis actibus pontificiis notitia ad eosdem pervenerit.

§ 3. A certa translationis notitia Episcopus intra quatuor menses debet dioecesim *ad quam* petere eiusdemque canonicam possessionem assumere ad normam can. 333, 334 et a die captae possessionis dioecesis *a qua* plene vacat; interim vero in eadem Episcopus:

1.° Vicarii Capitularis potestatem obtinet eisdemque obligationibus tenetur, cessante qualibet Vicarii Generalis potestate;

2.° Honorifica Episcoporum residentialium privilegia conservat;

3.° Integros percipit fructus mensae episcopalis ad normam can. 194, § 2.

The episcopal see becomes vacant by the death of the bishop, by his resignation as soon as accepted by the Roman Pontiff, or by his transfer and privation.

Nevertheless, with the exception of conferring ecclesiastical benefices or offices, all the official acts of the vicar-general are valid until he has received sure notice of the death of his bishop. Valid are also the acts of the bishop himself or of his vicar-general so long as they have not been duly notified of the vacancy.

Four months from the date of the notice of his transfer, the bishop must repair to the diocese to which he is transferred and take possession of it. From the date of his taking possession of the new diocese, his former see is fully vacant. Meanwhile, from the date of notice to that of his taking possession, the bishop

(1) enjoys the whole power of a vicar-capitular in the old diocese, while the power of the vicar-general ceases;

(2) retains all the honorary privileges of resident bishops, and

(3) is entitled to all the episcopal revenues.

The four modes by which an episcopal see may become vacant are evidently taken *taxative,* as none other is imaginable.

In order to safeguard the validity of official acts, the second paragraph provides that the *notice* must be *certa.* First as to the case of *death.* If the bishop dies within the diocese, there will hardly be any difficulty. The vicar-general may receive the death notice a day or two after the bishop has expired.[13] But this matters little. More important is the manner in which the notice is given. This must be certain or sure. Certainty, we know, may be either physical or moral, according as it is derived from the bodily senses or based on reasons which leave no room for reasonable doubt. Besides, there is juridical certainty, obtained by means prescribed in law; for instance, peremptory admonition, official summons, or a document. The last-named kind of certainty is not required for the death notice of a bishop, because the text demands only certain notice, and "one who is already certain need not be further informed."[14] Moreover, the case does not fall under any heading of law requiring juridical certainty. Hence if the vicar-general receives notice through trustworthy witnesses, or by letter from one who is in a position to know and willing to tell the truth, he may be said to have certainty. But he is not obliged to believe the newspapers, as they sometimes report people dead when they are still among the living. Of course, the surest way of notifying the vicar-general is through the episcopal chancery (with the diocesan, not episcopal, seal).

13 *Mors* (the physical separation of soul and body) *omnia solvit,* but there is also a civil death and canonical death (excommunication).

14 Regular juris 31 in 6°: "*Eum qui certus est, certiorari ulterius non debet.*" Cfr. Reiffenstuel, Cap. II in reg. cit.

After he has received certain notice of the death of the bishop the vicar-general's office ceases; in fact, it has ceased *de facto* and *de iure* from the moment of the bishop's death with regard to the conferring of ecclesiastical benefices and offices. What is the reason for this difference between the conferring of benefices and other official acts? For the former, the vicar-general needs a special mandate, which the bishop cannot impart after death. It may be asked whether a vicar-general can put into effect after the bishop's death a mandate received before that event. The answer is no, because a "*mandatum ab homine*" expires with the death of the *mandans,* even if the latter should have commenced the settlement of the affair in question (*re non amplius integrâ*).[15]

The terms *transfer* and *privation* have been explained above (can. 183). *Transfers*[16] of bishops were not unusual in the Middle Ages, even against the will of the prelates. The pope clearly has the right to transfer bishops from one see to another. As the appointment is adduced by human factors which depend finally on the Supreme Pastor, so a change must be considered possible and dependent on the same cause. The spiritual marriage (*connubium spirituale*) which is supposedly contracted between the bishop and his diocese, cannot be urged against this right. Mysticism in the law is dangerous and to stretch that mystic symbol would lead to absurdities. Moreover, the assumption that there is only a *matrimonium ratum* would suffice to vindicate the right of the Pope to solve it. Now-a-days, however, transfers, properly so-called, are generally made only with the consent of the one transferred and for reasons

15 Cfr. Reiffenstuel, I, 2, n, 46.

16 Cfr. title 7 in Decretals: de translatione episcopi.

of evident utility or necessity affecting either the person of the bishop or the diocese.[17]

The bishop who *resigns* must be duly informed of the acceptance of his resignation by the S. Cong. Consistorialis. The bishop who is *transferred* must be certain that the translation was made in public consistory, and the bishop *deprived* of his bishopric must be certain that that penalty was inflicted. Here again, therefore, the question of certainty arises. But here the certainty required must be limited to *juridical knowledge;* for the resignation must be accepted by the Pope, on whose will the acceptance depends. Transfer, too, depends on the same factor; and privation is a judiciary act which must be ascertained judicially. Hence in all these cases an official document, or at least official notice, is required. If the notice of acceptance, resignation or transfer is transmitted by telegraph or telephone, it must be done by persons acting in an official capacity, in other words, by the Secretariate of State.[18] Hence we believe our term (§ 3) "authentic notice" is a correct translation. The rest of the canon will be explained in connection with the office of vicar-general.

## Can. 431

**§ 1. Sede vacante, nisi adfuerit Administrator Apostolicus vel aliter a Sancta Sede provisum fuerit, ad Capitulum ecclesiae cathedralis regimen dioecesis devolvitur.**

**§ 2. Sicubi ex speciali Sanctae Sedis dispositione Archiepiscopus aliusve Episcopus Administratorem dioecesis vacantis designet, hic omnes et solas facul-**

17 Cfr. Aichner, § 96, 2; Smith, *Elements,* I, nn. 391 ff.

18 The Secretariate of State, in virtue of its diplomatic character, is guaranteed free communication.

**tates habet quae Vicario Capitulari competunt, eisdem obligationibus ac poenis obnoxius.**

The first paragraph of this canon, with the exception of the clause concerning the administrator Apostolic,[19] is a repetition of the old law,[20] which entrusted the chapter with the diocesan government.

The second paragraph applies to the U. S. Our second Plenary Council[21] provided "that if a vacancy occurs by the death of the bishop, an administrator appointed by the bishop before his death shall govern the diocese." Nothing to this effect is found in the Code, and hence it would not be safe to follow this conciliar enactment in future. But another regulation still holds good, namely, that the archbishop (metropolitan) or another, generally the senior suffragan, should designate an administrator for the vacant see. Our contention that bishops are no longer entitled to appoint their own administrators is based on the laws of interpretation. The legislator knew of the existence of a special provision for our country — otherwise mention thereof would not be made — and as he omits a part of the former disposition, he plainly wishes to see the same corrected. The term *"aliusve episcopus"* cannot be advanced against this interpretation, for the very position of the phrase clearly shows that this "other bishop" is no one else but the "senior suffragan" mentioned in n. 97 of the Second Baltimore Council. But even aside from this interpretation, which is merely declaratory, not extensive nor corrective, the right of the bishop to appoint

19 Cfr. cc. 312 ff.

20 Cfr. c. 3, 6°, I, 8, de supplenda neglig.; *Trid.*, Sess. 24, c. 16 de ref.

21 Cfr. *Acta et Decreta II. Conc. Plen. Balt.*, n. 96 f.; p. 67 f. Smith, *Elements* I, n. 638, Brief of Pius IX, Jan. 13, 1854.

an administrator was prejudicial to the clergy in general and the diocesan consultors in particular, a setting aside of the common law of the Church in an important disciplinary matter. Hence the Fathers of the Second Baltimore Council were naturally more anxious about the faculties than about the administrator, who enters upon the scene, as it were, only after the "*vir ecclesiasticus*" has been endowed with the faculties. Now these *faculties* [22] are granted in our Code to the administrator only in so far as the vicar-capitular possesses them, and no farther; and the administrator, like the vicar-capitular, is bound by the same obligations and subject to the same penalties.

### THE VICAR-CAPITULAR

### Can. 432

§ 1. Capitulum ecclesiae cathedralis, sede vacante, intra octo dies ab accepta notitia vacationis, debet Vicarium Capitularem qui loco sui dioecesim regat et, si fructuum percipiendorum ei munus incumbat, oeconomum unum vel plures fideles ac diligentes constituere.

§ 2. Si Capitulum intra praescriptum tempus Vicarium aut oeconomum, quavis de causa, nullum deputaverit, deputatio ad Metropolitam devolvitur; si autem ecclesia ipsa metropolitana fuerit vacans vel metropolitana simul et suffraganea, ad antiquiorem ex Episcopis suffraganeis.

§ 3. Etiam vacante dioecesi aut abbatia vel praelatura de quibus in can. 285, si Capitulum intra octiduum Vicarium vel oeconomum non nominaverit, hunc Metropolita qui fuit legitime electus ad normam citati canonis, constituat, nisi in abbatia vel praelatura *nullius* religiosa aliter ad normam constitutionum provideatur.

22 Cfr. can. 60 and Vol. I, p. 1111.

**§ 4. Capitulum quantocius de morte Episcopi et deinde electus in Vicarium Capitularem de sua electione Sedem Apostolicam certiorem faciant.**

In case of a vacancy in the episcopal see, the cathedral chapter, within eight days from the date of notice received, must appoint a vicar-capitular, who shall govern the diocese in the place of said chapter. If the chapter also administers the revenues, it must appoint one or more trustworthy and industrious persons as administrators thereof (*oeconomi*).

Should the chapter, for any reason, neglect to designate a vicar-capitular or *oeconomus* within the prescribed time, the right of making this appointment devolves on the metropolitan; and if the vacant see is a metropolitan see, or if the metropolitan see is vacant simultaneously with a suffragan see, the right of appointment passes to the senior suffragan.

If a diocese immediately subject to the Roman Pontiff, or an *abbatia* or *praelatura nullius* (can. 285) becomes vacant, and the chapter fails to appoint a vicar-capitular or *oeconomus* within the stated time, the metropolitan "*semel pro semper*" chosen designates the said officials, unless (in the case of an abbacy or prelature of religious) the respective constitutions provide otherwise.

The chapter should as soon as possible inform the Apostolic See of the death of the bishop, and the vicar-capitular should notify the same Apostolic See of a new election as soon as made.

The first paragraph of this canon is taken from the Council of Trent, which commands that a vicar-capitular and *oeconomi*[23] ("*qui rerum ecclesiasticarum et proventuum curam gerant*") be chosen, "*ubi fructuum per-*

[23] *Trid.*, Sess. 24, c. 16 de ref.

*cipiendorum ei munus incumbit.*" This latter clause is verbally inserted in our Code, while the former is omitted, but is connected with the office of administrator.

"In the United States," says Smith,[24] "no such procurators or administrators of the temporalities of vacant dioceses are appointed. Vacant sees are usually governed, both in *temporalibus* and *spiritualibus,* by one and the same administrator." This opinion may even now be held and followed, but only conditionally, *viz.,* as long as the diocesan consultors are not concerned with the "*munus percipiendorum fructuum*"; because the Tridentine as well as the new law speak conditionally ("*si*" or "*ubi*"). Hence as long as the bishop with the administrators who must henceforth be chosen,[25] takes care of the temporalities, and not the diocesan consultors as such, the election of a procurator is not required in the U. S.

"*Intra octo dies ab accepta notitia vacationis*" implies any sufficiently trustworthy notice of the vacancy (either by death or transfer),[26] because the notice is not further described. For eight days, therefore, the cathedral chapter, or the diocesan consultors, as a body, are entrusted with the government of the diocese, as it was before the Council of Trent.[27]

The second paragraph treats of the *devolution* of the right of appointment to the metropolitan or the senior suffragan. Hence, if the cathedral chapter, for any reason (*e. g.,* negligence or disagreement), fails to comply with the law laid down in our canon, the metropolitan may designate a vicar-capitular, and he is not bound to

24 *Elements,* I, n. 635, p. 393.

25 Cfr. cc. 1520 ff.

26 Barbosa, *De Canonicis et Dignitatibus,* c. ult., nn. 29 ff., ed. Lugd., 1668, p. 246.

27 Cfr. c. 14, X, I, 33; c. 2, X, III, 9; c. 3, 6°, I, 8; Benedict XIV, *De Syn. Dioec.,* II, 9, 2; Bouix, *De Capitulis,* p. 539 f.

notify the chapter of his intention, but merely of the person elected. The new law deviates from the old practice with regard to the *senior suffragan*. Formerly, if a suffragan see became vacant whilst the metropolitan see was also vacant, the metropolitan chapter was entitled to name a vicar-capitular for the vacant suffragan see.[28] Now the senior bishop designates the vicar-capitular in the cases mentioned.

But who is the *senior suffragan?* The text says "*antiquior,*" which implies that this attribute has reference to the see rather than to the person of its incumbent, and therefore the senior bishop is the one whose diocese was erected before the others: "*prior in tempore, potior in iure.*" [29]

The right of the metropolitan extends also to such vacant sees as are immediately subject to the Roman Pontiff and to *abbatiae nullius*. Exception, however, is made concerning the latter in case the Constitutions of the religious should provide otherwise. These generally determine that an administrator be chosen and admit no interference from outside. The clause safeguards the exemption as well as the authority of the Holy See to which such Constitutions must be submitted for approval.

## CAN. 433

**§ 1. Unus deputetur Vicarius Capitularis, reprobata contraria consuetudine; secus electio irrita est.**

**§ 2. Vicarii Capitularis et oeconomi constitutio fieri debet per actum capitularem ad normam can. 160–182, salvis peculiaribus huius Capitis normis, et ad eius**

28 Cf. Richter, *Trid.*, Sess. 24, c. 16, n. 24, p. 375; Benedict XIV, *De Syn.*, II, 9, 2; Bouix, *De Capitulis*, p. 583.

29 Cfr. tit. 33, Decret. de maioritate et obedientia; regula 54 iuris in 6°; Santi-Leitner, *Praelectiones Juris Canonici*, Vol. I, p. 379.

**validitatem requiritur numerus suffragiorum absolute maior demptis suffragiis nullis.**

**§ 3. Idem potest in Vicarium Capitularem et oeconomum deputari.**

§ 1 of this canon deals a decisive blow against the opinion of those canonists [30] who (based on some decisions of S. C. C.) held that more than one vicar-capitular could be elected in dioceses where an immemorial custom existed to that effect. The Code reprobates all such customs and declares all elections performed contrary to the new law to be null and void.

§ 2 treats of the *manner* of *voting,* which must be the same as that prescribed for elections proper. An absolute majority is required for election. Hence, if the number of electors is six, four votes must be cast for the same person. Any vote which is extorted, or which is not secret, certain, absolute, and determined [31] is invalid, and must be subtracted from the total. Thus, if one vote out of six were null and void, there would remain five valid votes, and therefore the candidate would have to obtain three, in order to be elected.

### QUALITIES OF THE VICAR-CAPITULAR

### CAN. 434

**§ 1. Ad Vicarii Capitularis munus deputari valide nequit clericus qui ad sacrum presbyteratus ordinem nondum fuerit promotus, aut tricesimum aetatis annum non expleverit, aut ad eandem vacantem sedem fuerit electus, nominatus vel praesentatus.**

**§ 2. Vicarius Capitularis sit praeterea in theologia**

30 Cf. Bouix, *De Capitulis,* p. 545; Wernz, *Jus Decret.,* II, 1, p. 960.

31 Cfr. Can. 169; Bouix, *De Capitulis,* p. 207.

**aut iure canonico doctor vel licentiatus aut saltem earundem disciplinarum vere peritus, in eoque morum integritas, pietas, sana doctrina cum prudentiae laude conspirent.**

**§ 3. Si praescriptae § 1 conditiones posthabitae fuerint, Metropolita, aut si ecclesia metropolitana vacans fuerit, vel de ipso Capitulo metropolitano agatur, antiquior provinciae Episcopus, agnita rei veritate, Vicarium pro ea vice deputet; actus autem illius qui a Capitulo electus fuerat, ipso iure sunt nulli.**

No cleric can be validly elected vicar-capitular unless he be a priest, thirty years of age; no one who has been elected, nominated or presented to the vacant see may be chosen for the office of vicar-capitular.

Furthermore, the vicar-capitular must be a doctor of divinity or of canon law, or a licentiate thereof, or at least well versed in these sciences; besides, he must be distinguished by probity of life, piety, sound doctrine, and prudence.

If in any case the conditions prescribed in § 1 have been set aside, the metropolitan, or if the metropolitan see be vacant or it be question of electing a vicar-capitular for the metropolitan see, the senior bishop of the diocese shall designate the vicar-capitular, after having been duly informed of the election; all the official acts of the so-called chosen vicar are *ipso iure* null and void.

The Code here corrects the Tridentine law in more than one point. The Council [32] was satisfied with the clerical state in general and with the age of twenty-five; now the priesthood and the age of thirty years (completed) are required. Besides, the canon adds that no one can be elected vicar-capitular who is elected, nom-

32 Cfr. *Trid.*, Sess. *22*, c. 4; Sess. *23*, c. *23*, c. *12*; Sess. *24*, c. *12*, de ref.

inated, or presented to the same vacant see, as decided by Pius IX, "*Romanus Pontifex,*" Aug. 28, 1873.

These three conditions affect the validity of the election and, if neglected, according to § 3, give the right of appointing a vicar-capitular to the metropolitan or senior suffragan. These latter cannot, however, proceed to the appointment unless they have been informed that the election was illegal; in other words, they must have verified the fact that the chosen candidate suffers from one of the three impediments stated in § 1 of this canon.

As in the case of the eight days having elapsed, the devolution takes place only for this one time (*pro ea vice*), and the metropolitan or senior suffragan cannot claim the right of interfering with the next election of a vicar-capitular to the same see. Hence, if those who are authorized to supply the illegal election should themselves choose an unfit candidate, the right of election would revert to the chapter. For the metropolitan and senior suffragan, too, are bound by the law. The reason for this assertion is that the law which urges all is nullifying and the law depriving the chapter of the right of election is penal.[33]

Concerning the other qualities required, the Code is not as strict as the former practice. The academic degrees are no longer strictly demanded for a valid election,[34] nor is that other requisite which the canonists set forth in agreement with the practice of the Roman Curia, to wit, that, *ceteris paribus,* a member of the chapter should be preferred to an outsider.[35] Therefore, should

33 Barbosa, *De Officio et Potestate Episcopi,* P. III, Alleg. 54, n. 164, ed. Lugd., 1665, t. II, p. 132.

34 Cfr. Richter, *Trid.,* p. 373, n. 4 f.; Bouix, *De Capitulis,* p. 546 ff., where the academic doctorate is described as one conferred in a public university (of course, Catholic), and the *laurea iuris* is said to be preferred to that in theology. But this must now be corrected.

35 Richter, *l. c.;* Bouix, *l. c.,* p. 572 f.; Santi-Leitner, I, p. 248 (tit. 28, n. 51).

the chapter (or the consultors) disregard these requisites, the metropolitan or senior suffragan could not claim the right of devolution.

RIGHTS OF THE VICAR-CAPITULAR

CAN. 435

§ 1. Sicut ad Capitulum ante deputationem Vicarii Capitularis, ita deinde ad Vicarium Capitularem transit ordinaria Episcopi iurisdictio in spiritualibus et temporalibus, exceptis iis quae in iure expresse sunt eidem prohibita.

§ 2. Quare Capitulum et postea Vicarius Capitularis omnia possunt quae enumerata sunt can. 368, § 2; item facultate pollent exercitium pontificalium in dioecesi cuilibet Episcopo permittendi, imo, si Vicarius Capitularis sit Episcopus, potest ipse eadem exercere, excluso tamen usu throni cum baldachino.

§ 3. Vicario Capitulari et Capitulo non licet agere quidpiam quod vel dioecesi vel episcopalibus iuribus praeiudicium aliquod afferre possit; nominatim vero Vicarius Capitularis aliique sive de Capitulo sive extranei, clerici aut laici, per se vel per alium prohibentur Curiae episcopalis documenta quaelibet subtrahere vel destruere vel celare vel immutare.

CAN. 436

Sede vacante nihil innovetur.

CAN. 437

In Vicario constituendo nullam sibi iurisdictionis partem Capitulum retinere potest, nec gerendo muneri tempus praefinire aliasve restrictiones praestituere.

The ordinary jurisdiction of the bishop, in spiritual as well as temporal affairs, passes first to the chapter and then to the vicar-capitular, except in regard to matters which the law has expressly excepted.

Therefore, first the chapter, and then the vicar-capitular, enjoy all the powers enumerated in can. 368, § 2, and besides, have the faculties to grant the exercise of pontificals to any bishop; nay, if the vicar-capitular is endowed with the episcopal character himself, he may perform pontifical ceremonies, though without using the throne and canopy.

The vicar-capitular and the chapter are not allowed to do anything that might prove prejudicial to the diocese or to episcopal rights; especially are the vicar-capitular and others, either capitulars or outsiders, clergymen or laymen, forbidden, either themselves or through others, to withdraw or destroy or hide or change documents of the episcopal Curia.

Nothing is to be changed during the vacancy of a see.

The chapter, in appointing a vicar, cannot reserve to itself any part of the jurisdiction, or limit the term of his office, or make any other restrictions.

These three canons belong together and supplement one another. Benedict XIV said that the powers of the chapter and the vicar-capitular about equal those of the vicar-general;[36] and therefore, whatever the bishop can do as Ordinary of the diocese (unless he has expressly reserved some matters) can also be done by the vicar-capitular. § 2, therefore, refers to can. 368, where the powers of the vicar-general are described.

Ordinary jurisdiction is vested in the chapter from the moment when notice of the vacancy is received, and in

[36] Cfr. *De Syn. Dioec.*, II, 9, 3.

the vicar-capitular as soon as he is lawfully appointed and has made his profession of faith.[37]

However, whilst the full ordinary power passes first to the chapter, and then to the vicar-capitular, our Code, following the old law, forbids both to enact or do anything which might be detrimental to the episcopal rights. Can. 436: "*sede vacante nihil innovetur,*" is a repetition of the Decretals (III, § 9). Under this heading various acts enumerated by canonists, who gathered them from scattered sources, are prohibited, though there are some modifications under the Code. Thus the vicar-capitular (a) *cannot convoke a diocesan synod.*[38] This is now absolutely forbidden, because the Code makes no exception. This measure seems quite reasonable, as synods must be held every ten years only.[39] (b) He *cannot confer benefices* promiscuously or appoint to office, except in so far as the law permits him to exercise that right, which is determined in can. 455, § 2. (c) He *cannot grant indulgences,* and must abstain from using the faculty of granting such, should he possess it.[40] (d) He *cannot alienate* anything of value, as this would be detrimental to the *mensa episcopalis* or the diocese.[41] With regard to this point we cannot discover any change in the new Code. Hence the old prescriptions remain in full force. No doubt, however, the vicar-capitular may conclude a favorable financial deal, for instance, getting money at a lower rate of interest or converting bonds into more profitable ones. For this is not prejudicial to the diocese, and opportunities, especially on the money mar-

37 *Ib.*, n. 4; cf. can. 438.

38 Cfr. can. 357, § 1.

39 Benedict XIV, *l. c.*, n. 5 f., says that the vicar-capitular can convoke a synod if a year has elapsed since the last one.

40 Cfr. *Trid.*, Sess. 7, c. 10 de ref.; Benedict XIV, *l. c.*, II, 9, 7; Wernz, *Jus Decret.*, II, 2, p. 969.

41 Cfr. c. 62, C. 12, q. 2; c. 1, X, III, 9; Bizzarri, *Coll.*, p. 40 f.

ket, easily slip away. Of course, if required, formalities prescribed by Canon Law must be observed. (e) The vicar-capitular *cannot grant litterae dimissoriales indiscriminately,* but only in the cases established by can. 958, § 1, 3°. In cases which permit him to issue such documents he may also ordain those provided with *litterae,* if he himself is endowed with the episcopal character (can. 959). This is a logical consequence of can. 435, § 2, which grants the vicar-capitular, if he is a bishop, the right of exercising pontifical functions. Only the use of the throne with the baldachin is forbidden; wherefore a temporary throne, or rather faldstool (*faldistorium*), must be prepared. We conclude that the vicar-capitular, if a bishop, may also administer the sacrament of confirmation.[42]

As to letters of incardination and excardination see can. 113.

The following canon (437) rejects the opinion prevailing among some canonists,[43] and in the S. C. C., but never in S. C. EE. et RR., that the chapter can reserve to itself part of the episcopal jurisdiction. Neither is the chapter entitled to limit the term of office of the vicar-capitular, or to restrict his power, for instance, to certain acts. If the vicar-capitular should submit to such restrictions at his election, the election would be valid, but the vicar-capitular would be obliged neither *in foro externo* nor *in foro interno* to abide by these restrictions.[44]

42 Cfr. Santi-Leitner, *l. c.,* I, 28, n. 62 (Vol. I, p. 255).

43 Cfr. Benedict XIV, *De Syn.,* IV, 8, 10; Bouix, *De Capitulis,* p. 556 ff.

44 Pius IX, "*Romanus Pontifex,*" Aug. 28, 1873: "Totam ordinariam episcopi jurisdictionem, quae vacua sede episcopali in capitulum venerat, ad Vicarium ab eo rite constitutum transire, nec aliam huius jurisdictionis partem posse capitulum reservare, neque posse ad certum et definitum tempus vicarios constituere."

The time when the ordinary jurisdiction passes to the vicar-capitular is stated in the next canon.

## Can. 438

**Vicarius Capitularis, edita fidei professione de qua in can. 1406–1408, statim iurisdictionem obtinet, quin necessaria sit ullius confirmatio.**

The vicar-capitular, after having pronounced the profession of faith (can. 1406 ff.), immediately obtains jurisdiction and needs no confirmation from any one. This settles a point long in dispute among canonists.[45] The profession of faith is to be made before the chapter. Whether its omission by mere accident would invalidate the jurisdiction and thus render the official acts of the vicar-capitular null and void, is not stated in our canon or in the one treating of the *professio fidei,* or in the penal Code. Hence, *salvo meliori iudicio,* we should say that the clause "*edita fidei professione*" (ablative absolute) here stands for the perfect tense, meaning "after having made the profession," but not conditionally, *if.* It follows that the mere wording of the text permits us to assume that the *professio fidei* does not affect the jurisdiction itself, but only the point of time in a non-conditional sense. However, in view of the importance attached to the profession and its being placed before "*iurisdictionem obtinet,*" we may conclude that the *ratio legis* lays stress on the profession, and this would seem to imply that it is a *conditio sine qua non.*

## Can. 439

**Quae in can. 370 de Vicario Generali praescripta**

[45] See Benedict XIV, *De Syn.,* II, 9, 4; Barbosa thought otherwise.

**sunt, eadem de Vicario quoque Capitulari dicta intelligantur.**

Concerning *precedence and honorary rights*, whatever has been enacted about the vicar-general must be applied to the vicar-capitular.

CAN. 440

**Vicarius Capitularis obligatione tenetur residendi in dioecesi et applicandae Missae pro populo ad normam can. 338, 339.**

CAN. 441

**Nisi aliter fuerit legitime provisum:**

**1.° Vicarius Capitularis et oeconomus ius habent ad congruam retributionem, in Concilio provinciali designatam vel recepta consuetudine concedi solitam, desumendam ex reditibus mensae episcopalis aut ex aliis emolumentis;**

**2.° Cetera emolumenta, quo tempore sedes episcopalis vacaverit, futuro Episcopo pro dioecesi necessitatibus reserventur, si ad Episcopum, ecclesia non vacante, pertinuissent.**

The vicar-capitular is obliged to residence and to the application of the Mass according to can. 338 f.

Unless otherwise provided:

(1) the vicar-capitular and the procurator are entitled to a decent support, determined by the provincial council or by legitimate custom, and taken from the episcopal revenues or other sources.

(2) All other revenues accruing during the vacancy of the see, if they are of a kind that would belong to the bishop in case the see were not vacant, must be reserved for the future bishop.

In the U. S. the bishops receive their salary chiefly by means of the cathedraticum,[46] and hence the solution of the pecuniary question here is simple. In the old countries this matter is more intricate. It is to be settled, from time to time, in provincial councils. The vicar-capitular or administrator, therefore, is entitled to the *cathedraticum pro rata temporis* as well as to the income received from dispensations. For the rest, a plenary or provincial council shall further determine the ways and means for the support of the vicar-capitular.

CAN. 442

**Oeconomus rerum ecclesiasticarum et proventuum curam et administrationem gerat, sub auctoritate tamen Vicarii Capitularis.**

The *procurator* shall administer the temporal affairs and revenues of the diocese under the supervision of the vicar-capitular.

CAN. 443

**§ 1. Vicarii Capitularis et oeconomi remotio Sanctae Sedi reservatur; renuntiatio authentica forma est exhibenda Capitulo, a quo tamen eam acceptari necesse non est, ut valeat; novi autem Vicarii vel oeconomi constitutio post prioris renuntiationem, obitum vel remotionem ad ipsum Capitulum pertinet, facienda ad normam can. 432.**

**§ 2. Cessat praeterea eorum munus per initam a novo Episcopo possessionem ad normam can. 334, § 3.**

The *removal of the vicar-capitular* and the procurator is reserved to the Holy See, the *resignation* of either must

46 Cf. *Conc. Balt. II*, n. 100 (*Actaet Decreta*, p. 68 f.).

be made in authentic form and presented to the chapter, whose acceptance, however, is not required for the validity of the act. After the resignation, death or removal of the vicar-capitular or procurator, a new one may be appointed by the same chapter, according to the rules laid down in can. 432.

The office of vicar-capitular or procurator ceases immediately after the new bishop has taken possession of his diocese, according to can. 334, § 3.

The removal of a vicar-capitular is logically reserved to the Holy See,[47] since the chapter has no jurisdiction over the vicar-capitular, and the whole ordinary power of the bishop passes to him at election. Neither is the metropolitan, if he has appointed a vicar-capitular, entitled to remove him, for that right is only an extraordinary means of appointment, nor does the appointment cause or create the jurisdiction, but only occasions it. Therefore the *regula juris* in the Decretals of Gregory, "*Omnis res, per quascunque causas nascitur, per easdem dissolvitur,*" cannot be applied here. From the same principle, *viz.:* that the whole ordinary jurisdiction is transferred to the vicar-capitular, and nothing remains with the chapter, it follows that the chapter has no right to indict the vicar, or to judge him, or to demand an account from him.[48]

The *resignation,* says the canon, must be drawn up in authentic form, as described in can. 186. But the acceptance of the chapter is not required for its validity, which is again quite logical, because the chapter has no jurisdiction to accept the resignation of the vicar. But it has the power, as a means to an end, to appoint a new vicar-capitular, if the first appointee resigns, dies, or is

47 Cf. Pius IX, "Romanus Pontifex," Aug. 28, 1873.

48 Cf. Bouix, *De Capitulis,* p. 609.

removed. The election must again proceed canonically, according to time and mode, and if the chapter fails to perform its duty within eight days from the date of notice of the resignation, death or removal of the former vicar-capitular, the metropolitan or senior suffragan can again claim the right of appointment.

CAN. 444

**§ 1. Novus Episcopus a Capitulo, a Vicario Capitulari, ab oeconomo et ab aliis officialibus, qui, sede vacante, fuerunt constituti, rationem exigere debet officiorum, iurisdictionis, administrationis munerisve ipsorum cuiuslibet, et in eos animadvertere, qui in suo officio seu administratione deliquerint, etiamsi, redditis rationibus, a Capitulo vel a Capituli deputatis absolutionem aut liberationem impetraverint.**

**§ 2. Iidem rationem reddant novo Episcopo scripturarum ad Ecclesiam pertinentium, si quae ad ipsos pervenerint.**

The office of vicar-capitular having ceased *ipso iure* upon the new bishop's taking canonical possession of the diocese, the latter must demand an account of the chapter, the vicar-capitular, the procurator, and other officials appointed during the vacancy, concerning their office, jurisdiction, administration, and charges; and he must proceed against such as have been delinquent in the discharge of their duties and offices, even though they had given an account to the chapter and been absolved or acquitted by the same.

Besides, the aforesaid officials shall also render account to the new bishop of whatever church documents may have come into their hands.

This canon is almost verbally reproduced from the decrees of Trent (Sess. 24, c. 16, de ref.). But instead of the term "*punire*," found there, the canon uses the milder expression, "*animadvertere*," which means to heed or take notice, although in law it also signifies to proceed, to punish. The punishment to be meted out is left to the prudent judgment of the bishop. Attention must be paid to the word "*debet*," which implies that the bishop is not at liberty to forego asking an account.[49] He is not, however, obliged to employ assessors or witnesses to testify to the fact that he has demanded an account.[50]

§ 2 again proves the solicitude which the Church wishes to have bestowed on official and other (for instance, historical), documents pertaining to the diocese.

49 Cfr. Bouix, *De Capitulis*, p. 656 f., who quotes Monacelli and Fagnani as saying that it would be a grievous sin to omit that account.

50 S. C. C., April 14, 1725; Richter, *Trid.*, p. 376, n. 25.

## CHAPTER VIII

### RURAL DEANS

The term "rural deans" is here employed for the Latin expression "*vicarii foranei,*" because the English render it thus and the practical significance of both terms is the same. Formerly their power was more extensive, and therefore the name "*vicarius,*" approaching that of vicar-general, was quite suitable. Their origin was due partly to the arrogance of the *chorepiscopi* and partly to the extension of the parish system. The country bishops became fully extinct towards the tenth century and their place was taken by archpriests, who were assigned to the civilly or ecclesiastically more important churches of the diocese, and exercised a certain amount of jurisdiction, but only in minor cases of frequent occurrence. They also convoked the clergy of their district on the first day of each month to instruct the priests how to conduct themselves in the administration of the Sacraments, as we read in the acts of a provincial council of London, of 1237. Besides, they watched over the conduct of the clergy and the faithful and the administration of temporalities.[1] It was but natural, considering the tendency of that time towards association (guilds), that the clergy of the various districts of a diocese should form, as it were, a chapter *en miniature* and elect a set of officials, the head of whom was called *dean.* The deans had to render an

1 Cfr. Thomassin, *Vetus et Nova Disciplina,* P. I, lib. II, c. 3. (ed. Mogunt., 1787, II, p. 13 ff.); Benedict XIV, *De Syn.,* III, 3, 5 ff.)

account each year to the bishop.[2] The Tridentine Council [3] enacted nothing special about them.

### Can. 445

**Vicarius foraneus est sacerdos qui vicariatui foraneo, de quo in can. 217, ab Episcopo praeficitur.**

The rural dean is a priest appointed by the bishop over a limited part of the diocese (c. 217).

### Can. 446

**§ 1. Ad munus vicarii foranei Episcopus eligat sacerdotem quem dignum iudicaverit, praesertim inter rectores ecclesiarum paroecialium.**

**§ 2. Vicarius foraneus ad nutum Episcopi amoveri potest.**

He should be a priest chosen from among the parish priests, and may be removed by the bishop at will.

Formerly the priestly character was not absolutely required, but now it is strictly insisted on. No special qualifications are laid down, but the choice as well as the removal is left entirely to the bishop, who is bound neither by the consent nor by the advice of his chapter or consultors.

### Can. 447

**§ 1. Vicario foraneo, praeter facultates quas ei tribuit Synodus provincialis vel dioecesana et secundum normas in eadem Synodo legitime statutas vel ab Episcopo statuendas, ius et officium est invigilandi potissimum:**

2 v. Scherer, I, 618 f.; Sägmüller, *l. c.*, § 100. The name dean is probably taken from the Rule of St. Benedict, c. 21.

3 Sess. 24, c. 20, de ref., exempts all matrimonial and criminal causes from the power of the deans.

1.° Num ecclesiastici viri sui ambitus seu districtus vitam ducant ad normam sacrorum canonum suisque officiis diligenter satisfaciant, praesertim circa residentiae legem, divini verbi praedicationem, impertiendam pueris atque adultis catechesim et obligationem infirmis assistendi;

2.° Num decreta lata ab Episcopo in sacra visitatione exsecutioni mandentur;

3.° Num debitae cautelae circa materiam Sacrificii Eucharistici adhibeantur;

4.° Num decor et nitor ecclesiarum et sacrae supellectilis, maxime in custodia sanctissimi Sacramenti et in Missae celebratione, accurate servetur; an sacrae functiones secundum sacrae liturgiae praescripta celebrentur; bona ecclesiastica diligenter administrentur, adnexaque illis onera, in primis Missarum, rite impleantur; rectene conscribantur et asserventur libri paroeciales.

§ 2. De iis omnibus ut reddatur certior, vicarius foraneus debet, statutis ab Episcopo temporibus, sui districtus paroecias visitare.

§ 3. Pertinet etiam ad vicarium foraneum, statim atque audierit aliquem sui districtus parochum graviter aegrotare, operam dare ne spiritualibus ac materialibus auxiliis honestoque funere, cum decesserit, careat; et curare ne, eo aegrotante vel decedente, libri, documenta, sacra supellex aliaque quae ad ecclesiam pertinent, depereant aut asportentur.

This canon describes the office or *functions* of the rural dean as follows:

Besides the faculties granted him by the provincial or diocesan synod, to be used according to the norms laid down by the same or determined by the bishop, the rural

dean enjoys the *right and office of watching,* especially:

(1) as to whether the clergy of his district live up to the requirements of the sacred canons and diligently perform their duties, particularly concerning residence, preaching the word of God, giving catechetical instruction to children and adults, and attending to sick calls;

(2) whether the clergy execute the decrees of the bishop given at the visitation;

(3) whether they take the necessary precautions concerning the matter of the Eucharistic sacrifice;

(4) whether the rules concerning the adornment and neatness of churches and sacred furniture, especially the custody of the Blessed Sacrament and the celebration of Mass, are accurately observed; whether the sacred functions are performed according to the rubrics; whether the church property is carefully administered, and the obligations, especially those accruing from Masses, are properly discharged, and, finally, whether the parochial books are correctly written and kept.

In order to inform himself of all this the rural dean shall, at stated times established by the bishop, visit the parishes of his district. As soon as he hears of the serious sickness of a parish priest of his district, he shall take care that the patient is properly provided for, materially as well as spiritually, and see to it that, in case of death, a decent funeral service be held. Furthermore, the dean shall watch that no parish books, papers, sacred furniture, or other things belonging to the church are lost or carried away during the sickness or at the death of a priest.

The beginning of the canon mentions *faculties* which may be granted to the rural dean either by the provincial or the diocesan synod. The Third Plenary Council of

Baltimore advised the Ordinaries to give their rural deans "more or less extensive faculties," in order that they might administer their office more efficaciously.[4] But as far as we are aware, deans receive the same faculties as other priests employed in parish work,— that is, if the term *faculties* is taken in its usual sense. But "faculties" may also mean powers in general, in which sense it would involve a kind of *participated jurisdiction.* This seems to us to have been the intention of the Third Baltimore Council. If this surmise is correct, the enlarged powers of deans would naturally have reference to the correction of abuses existing in their districts, exclusive, however, of legal procedure. In some countries it was customary for the deans to dispense from the prohibition of servile work on forbidden days. The new Code grants this power to the parish priests in certain cases.[5]

Concerning the matters to which the *vigilance* of the deans should be directed, not much need be said. Several of them, *e. g.,* residence, preaching, catechetical instruction, are explained under their respective headings. All these matters require a *knowledge of Canon Law,* which deans should possess. The III Plenary Council of Baltimore says they should be endowed, not only with piety and prudence, but also with learning.[6]

As to the "*materia sacrificii Eucharistici,*" this seems an almost superfluous admonition, yet actual occurrences prove its necessity. Altar bread must be of wheat, and for licit celebration in the Latin Rite it must be unleavened. The wine must be pressed from grapes (*vinum de vite*), and, outside of cases of necessity, it should be fermented.[7] At the present time it is necessary to

4 *Acta et Decreta,* n. 29, p. 19.
5 Cfr. can. 1245, § 1.
6 *Acta et Decreta,* n. 30.
7 Cf. Sabetti-Barrett, *Theol. Moralis,* 1917, p. 563 ff.; p. 1095.

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combat an exaggerated prohibition movement, which, as the cases of Oklahoma and Arizona show, aims not only at curtailing personal liberty but at subverting the positive divine law.

With regard to n. 4°, concerning the adornment of churches and their neatness, and the proper observance of the rubrics, we must refer to Titles XV and XVIII of Book III. Accurate book-keeping is again insisted on.

In order to assure the execution of this canon, the bishop should assign certain days, on which the rural deans *must visit the parishes* of their respective districts. The day appointed need not be made public; in fact, a surprise-visit is sometimes more effective in manifesting real conditions.

## Can. 448

**§ 1. Vicarius foraneus debet, diebus ab Episcopo designatis, convocare presbyteros proprii districtus ad conventus seu collationes de quibus in can. 131 eisdemque praeesse; ubi vero plures habeantur huiusmodi coetus in variis districtus locis, invigilare ut rite celebrentur.**

**§ 2. Si non sit parochus, debet residere in territorio vicariatus vel alio in loco non valde distanti secundum normas ab Episcopo definiendas.**

On the days assigned by the bishop each rural dean must call the priests of his district to a meeting or conference (see can. 131), at which he is to preside; if several meetings are held in different places of his district, the dean must see to it that they be properly conducted.

If the rural dean is not a parish priest, he must reside

in his district, or at least near it, as determined by the bishop.

The clerical conferences here mentioned were dealt with above (can. 131); where several conferences are held in various places of the same district, as may be necessary in large or numerous dioceses, the dean is dispensed from personally attending all of them, even though they may be held on different days, in order not to overburden him, especially if he is engaged in parish work. He may appoint a substitute, or entrust any priest with the presidency; but he must see to it that these meetings are held in an orderly way and accomplish the purpose for which they are instituted.

CAN. 449

**Saltem semel in anno vicarius foraneus proprii vicariatus rationem reddere debet Ordinario loci, exponens non solum quae intra annum bene gesta sint, sed etiam quae mala obrepserint, quae scandala exorta sint, quae remedia ad ea reparanda adhibita et quidquid agendum existimet ad ea radicitus exstirpanda.**

At least once a year the rural dean must submit to the Ordinary an account of the condition of his district. In this report he shall freely point out the good that was done as well as the evils that have crept in, scandals and the means employed to uproot them, and make suggestions as to what had best be done to eradicate abuses.

This canon sanctions an old custom. The report of a rural dean is not limited to any one subject. He may freely descant on the frequentation of the sacraments and their administration (not only as far as the four points of can. 447 are concerned), on the condition of sodalities and schools, on the spread of sound literature,

and if he is a temperance apostle, he may also touch on that subject. But he should also note that the III Plenary Council of Baltimore [8] says that deans should watch discreetly, admonish paternally, report truthfully. They should not be overzealous tyrants, backbiters, or flatterers.

CAN. 450

**§ 1. Vicarius foraneus sigillum habeat vicariatus proprium.**

**§ 2. Praecedit omnibus parochis aliisque sacerdotibus sui districtus.**

The rural dean shall have a *deanery seal,* which should differ from that of other deaneries.

He enjoys *precedence* over all the priests of his district.

His precedence is limited, first to the district and then to the diocesan synod or provincial council; and finally to the diocese. Outside these cases the general rules of precedence obtain. What has been said of the deans with regard to the clergy, applies also to religious employed in parish work (not to other religious).

8 *Acta et Decreta,* n. 30.

# CHAPTER IX

## PARISH PRIESTS

As said above (can. 215 f.), the whole diocese formerly went by the name of parish (*παροικία*), a term originally employed by the civil authority, and during the early centuries there was but one church in each district, which served as diocesan or parish church. The Council of Sardica (c. 6) forbade the stationing of bishops in villages and small towns, lest the episcopal dignity and authority should suffer.[1] But the *chorepiscopi* were wont to succour the faithful in places far removed from the episcopal city, where alone the Eucharistic Sacrifice was offered by the bishop.[2] Even in Rome, although we read of several titular churches, it was at the Lateran that the suburbicarian bishops, surrounded by their clergy, celebrated the sacred mysteries.

In the fifth century (Chalcedon) we hear of ministers dwelling in the country and appointed with a fixed tenure. They attended to the needs of the faithful after the pagans[3] had receded. This state of things caused the authorities and landed proprietors to erect appropriate edifices for divine worship and dwellings for the clergy, who soon gained more extensive powers in the administration of the Sacraments. One privilege especially now became

1 Cf. Funk, *Manual of Church History*, 1913, I, p. 180.

2 Thomassin, *Vetus et Nova Disciplina*, P. I, l. II, c. 21, n. 7 (II, 153).

3 Paganism (from *pagus*, i. e., a country district) lasted longest in the country.

attached to these rural churches, *viz.:* the right of possessing a baptismal font, which gradually came to be regarded as the mark of a full-fledged parish church. The landed proprietors, or landlords, either out of devotion, or for the sake of their subjects (slaves, serfs, vassals), erected churches on their estates, where priests could perform sacred functions. These churches, or rather oratories, were not endowed with the same privileges as the rural parish churches, but for the administration of baptism as well as for the celebration of Mass on feast-days depended on the parish church, to which they also had to pay tithes or make certain gifts. In the eighth century the entire rural clergy, like the clergy of the city, formed a sort of college or *corporation* and met at stated times.

In the *cities* progress was somewhat slower. For with the exception of Alexandria [4] and Rome,[5] where there were several baptismal and penitential churches, it was not until the eleventh century that the parish system was introduced in the larger cities. The reason for this tardiness must be sought in the fact that the bishop was considered the sole hierarch of the diocese, and especially of the episcopal city. The development proceeded gradually, until it assumed the present shape. But one feature must be added, *viz.,* that of the *beneficiary title* attached to parishes. This means that the parish church, by reason of its foundation and dotation, was a moral entity, though not a corporation in the sense of Canon Law, and a stable (*perpetua*) portion of a larger organization, *i. e.,* the diocese. The civil law endowed single parishes with a corporative character. The Latin names by which such parish churches went in former times, were *ecclesia ru-*

4 Thomassin, *l. c.,* c. 22, n. 1.

5 For Rome we have the testimony of the *Liber Pontificalis.*

*sticana, parochitana, dioecesana,* and a head-priest or arch-priest presided over each.

The oratories on private estates in course of time were turned into parish churches and attended by a *plebanus,* — a name sometimes also given to the *parochus.*[6]

*Parishes* were not seldom *united with monasteries, universities,* and *confraternities,* which were all more or less corporations or juridical persons. That monks were not considered incapable of ruling a parish is evident, not only from the fact that many settlements sprang up around their monasteries, but also from conciliary decrees. Thus we read in can. 14 of a synod held at Mayence in 847, under Rhabanus Maurus, that "no monk should presume to accept a parish without the consent of the bishop."[7] As long, however, as the monks, or at least the majority of them, were not endowed with the priestly character it was necessary for monasteries to designate and support a *vicar* who, in the name of the monastery and with the approval of the bishop, would govern the parish incorporated with the monastery. The same practice was followed by the universities, which also had incorporated parishes and appointed their vicars. Abuses, however, were not infrequent. Thus a synod of London complained that the regulars paid their vicars a miserly stipend.[8] The consequence was a frequent change of vicars to the detriment of orderly and effective government. Hence the Council of Trent wished to see permanent vicars placed over such parochial benefices as were united to corporations.[9]

6 Cfr. Nilles, *Commentaria in Conc. Plen. Balt. III.,* 1890, p. II, p. 797.

7 Thomassin, *l. c.,* P. I, l. II, c. 25, n. 8 (Vol. II, p. 182).

8 The IVth Lateran Council re-echoes this complaint, c. 30, X, III, 5, de praeb.

9 Sess. 7, c. 7; Sess. 21, c. 6; Sess. 24, c. 13, de ref.

Finally, mention must be made of a certain kind of parish priest introduced in *France* and *Belgium*. The concordat of 1801 required a reëstablishment of parishes in each diocese. Besides the regular parish priests, the bishops were allowed, if need be, to appoint *succursalistes*, — their number to be regulated conjointly by the bishop and the civil prefect. These succursalists (*desservants*) were appointed by the bishops and could be removed at their good pleasure. Thus it seemed that one essential element of the parish priest, *viz.*, irremovability, was lacking in this kind of "*vicaires et desservants*," as the thirty-first of the organic articles called them. Yet Bouix maintains that they were true parish priests in the canonical sense of the word.[10] According to the Council of Trent,[11] not only the perpetuity of the parish title (*perpetuitas obiectiva*), but also the perpetuity of the parish priest's tenure (*perpetuitas subiectiva*) is a requisite of the canonically established *parochus*. That the term later on became broader must be looked upon as an innovation or a gradual development.

Now let us hear what the Code establishes concerning parish priests. There is first the *definition:*

### Can. 451

**§ 1. Parochus est sacerdos vel persona moralis cui paroecia collata est in titulum cum cura animarum sub Ordinarii loci auctoritate exercenda.**

**§ 2. Parochis aequiparantur cum omnibus iuribus et obligationibus paroecialibus et parochorum nomine in iure veniunt:**

10 Bouix, *De Parocho*, 1855, p. 234 ff.

11 Cfr. Sess. 24, c. 13; Santi-Leitner, l. III, tit. 29, n. 6 (Vol. III, p. 269).

**1.° Quasi-parochi, qui quasi-paroecias regunt, de quibus in can. 216, § 3;**

**2.° Vicarii paroeciales, si plena potestate paroeciali sint praediti.**

**§ 3. Circa militum cappellanos sive maiores sive minores, standum peculiaribus Sanctae Sedis praescriptis.**

A parish priest is a priest or moral person to whom a parish is entrusted with the care of souls, to be exercised under the authority of the Ordinary of the diocese.

The following are equal to parish priests as to parochial rights and obligations and in law are known by the name of parish priests:

(1) Priests who govern quasi-parishes, *i. e.,* congregations of the faithful existing in vicariates and prefectures Apostolic (can. 216, § 3);

(2) Vicars of parishes who are endowed with full parochial powers.

Military chaplains, major and minor, are subject to special regulations by the Holy See.

There are four points in this canon which call for an explanation.

(a) A *parochus* may be "a priest or a moral person." In the first case, of course, he is a physical person, endowed with the sacerdotal character, which is now an essential requisite for a parish priest (can. 453). *A moral person* is a community consisting originally of at least three members, such as universities (in the ancient sense), monasteries, chapters, in a word, all corporations. But the term moral person may here also be taken in the sense of an institute, whose juridical nature is determined by, and which becomes the bearer of, rights bestowed for the end or purpose for which it is instituted, *e. g.,* a hosptial,

an orphanage. In this latter case the exercise of rights lies with the *oeconomus* or procurator, or, as he was formerly called, syndic. Both corporations and institutes, the latter, of course, represented by their procurators, may be what are called habitual parish priests (*parochi habituales*), in order to distinguish them from those (*parochi actuales*) who actually and *de iure* exercise the care of souls.

(b) Every *parish* must be entrusted to such a parish priest, as explained above (can. 216).

(c) A parish must be committed *in titulum.* A title may be defined as "the legitimate cause of possessing what otherwise does not belong to one."[12] It plays a conspicuous part in prescription and possession. To hold a parish in title, or the title to a parish, therefore, means to be the owner or possessor thereof. However, no *parochus* can be styled the owner or proprietor of a parish. We might say that the bishop is the proprietor of all the parishes in his diocese, especially if he holds them in fee simple. But here "title" must be restricted to possession by a legitimate cause. By holding a parish, then, "*animi et corporis detentione et iuris adminiculo,*" a priest comes into the possession of a parish; and this suffices to say that the parish was given him "in title." For as long as the title holds good, the actual possessor cannot be deprived of it. However, it may happen that the title is not real, but only presumptive (*titulus putativus* or *coloratus*), *i. e.,* it is believed to have been conferred, but was in fact never granted. For instance, a monastery may have held possession of a parish for a number of years sufficient to claim prescription, yet cannot show any document which proves that the parish

12 Cfr. Reiffenstuel, II, 26, 127: "Titulus est iusta causa possidendi quod nostrum non est."

was duly united with the monastery. Does such a title hold good? Yes, because if the monastic chapter was *bona fide* convinced that the title was granted, there was a legitimate cause for believing that the parish belonged to it, and therefore the monastery has the right of prescription.[13]

Neither does our Code determine anything to the contrary, for it only states "*in titulum,*" without describing the nature of the title. The only authority who can grant a title to secular, minor or parish benefices in any diocese is the bishop, and concerning the union of parishes with moral persons can. 452 must be consulted.

(d) The last but most important element of a parish priest is the *care of souls* (*cura animarum*), which comprises the whole range of the *forum internum,* apart from reserved cases. Consequently parish priests may be called *pastors,* although it is true what Bouix [14] says, that, in the strict sense, comprising the offices of teacher, sanctifier, and judge or ruler, the title of *pastor* belongs to the successors of the Apostles. But this does not detract from the honor and office of the parish priests. Their power is an *ordinary* power, given by virtue of their office, which the bishop cannot arbitrarily diminish, or take away, or limit to such an extent that it would be an empty title.[15] But it is also true, as the Code says, that their power is *dependent* upon, and subject to, that of the bishop and that therefore they must exercise the care of souls under the authority of the *Ordinarius loci* or bishop.[16] It follows that the institution of parish priests

13 Cfr. c. 6, X, II, 26; Engel, II, 26, n. 25.

14 Bouix, *De Parocho,* p. 149 ff. is somewhat extreme, but can be easily understood from his standpoint; he wrote against the Jansenists.

15 Benedict XIV, *De Syn.,* V, 4, 3.

16 *Ibid.*

or pastors of souls, in this limited sense, is not of divine law or origin, and that it is circumscribed by, and dependent upon, the authority of the bishop.[17]

§ 2 speaks of those who are equal to parish priests in regard to rights and obligations, and mentions two classes, *viz:* the *quasi-parochi* of Apostolic vicariates and prefectures, and the vicars of parishes. About the former nothing need be added. The *vicarii paroeciales* are further determined as such who are endowed with full parochial power. Of these the Code speaks in the next chapter (cc. 471 sqq.).

§ 3 adverts to *military chaplains,* of higher as well as lower rank. In Austria, for instance, there are a military vicar Apostolic with episcopal (titular) character, military parish priests and chaplains. The vicar receives ordinary and extraordinary faculties from the Apostolic See,[18] which are more freely communicated during the time of war. Similar conditions obtain in Germany and elsewhere. But all regulations concerning military chaplains must emanate directly from the Holy See, the bishop not being competent in this matter.

Does canon 451 apply to the *parish priests of the U. S.?* In order to decide this question[19] we must recur to the factors which, taken collectively, constitute a parish priest. They are: a *priest* holding a *parish in titulum* with the *care of souls.* That our pastors have the priestly character and exercise the care of souls no one will deny. But are our congregations *parishes* in the canonical sense? Returning to the definition of a parish as given in canon 216, we see that a territorially defined precinct, with a

17 Nilles, *Comment. in Conc. Balt. III,* P. II, p. 88.

18 Cfr. Aichner, *l. c.,* § 112. There is now in the U. S. an *Ordinarius Castrensis.*

19 Putzer, *Comment. in Facultates Apost.,* 4th ed., p. 172 f., emphatically denies the existence of canonical parishes in the U. S.

church and people, over whom presides a priest as their proper pastor, constitutes a parish. In this definition a twofold element may be distinguished, the one material, the other formal. The *material* element consists of a distinct territory and people with a church of their own. The *formal* element is the pastor proper in the person of a special rector. The material element is doubtless present in the parishes of the U. S., with the exception, perhaps, of the so-called "national" churches. But a difficulty arises when we come to the formal element, which is strictly connected with the condition of a parish priest, *viz.:* that he should hold the parish *in titulum,*— in his own name. Upon this point the whole controversy turns. The Second Plenary Council of Baltimore decreed that in all the provinces of the U. S., and especially in the larger cities, where there are several churches, certain districts with clearly defined limits should be assigned to each church, and that parochial or quasi-parochial rights should be given to the rectors.[20] The Third Plenary Council contented itself with repeating this enactment and complained that existing conditions did not yet permit the bishops to carry out the canonical laws concerning parish priests proper.[21] It also declared that canonically erected parishes do not as yet exist in this country.[22] Now, then, what is lacking to make our parish priests canonical *parochi?* The parish must be given *in titulum,* that is, the parish priest must govern and hold the parish in his own name. This was practically done in many cases,[23] especially those of churches

20 *Acta et Decreta,* n. 123 f.

21 *Acta et Decreta,* n. 32 f.

22 *Ibid.,* n. 24. These decrees are no longer to be followed blindly.

23 The bishops are no longer permitted to have church property incorporated, by an act of the State legislature in fee simple, but either as a corporation aggregate or a corporation sole. (S. C. C., July 29, 1911; cfr. *Am. Eccl. Rev.,* Vol. 45, p. 586).

which were incorporated, not in the name of the bishop, but in the name of either the priest as corporation sole, or in the name of the parish as corporation aggregate. Besides, the bishop must give the parish priest the full parochial rights which the care of souls demands, namely, ordinary power, which, as Benedict XIV says, cannot be taken away at random or arbitrarily limited. Are our bishops required to do this by the Code? We answer yes, unless the bishops request the Holy See to modify the Code. Our hierarchy is now fully and unreservedly embodied with the general hierarchy of the Church, and therefore the canonical rules must be observed also in the U. S. These rules require the appointment of *parochi proprii.* Why should our parish priests be only vicars of the bishops? No other species of public functionaries of the inferior clergy is to be discovered in the Code. Furthermore it is a natural dictate that, where duties are equal, rights should be equal also. And lastly, to speak plainly, what hinders the bishops from declaring in written terms what has *de facto* existed for a long time?

INCORPORATION

CAN. 452

**§ 1. Sine Apostolicae Sedis indulto paroecia nequit personae morali pleno iure uniri, ita nempe ut ipsamet persona moralis sit parochus, ad normam can. 1423, § 2.**

**§ 2. Persona moralis, cui paroecia sit pleno iure unita, habitualem tantum curam animarum retinere potest, servato, quod ad actualem spectat, praescripto can. 471.**

Without an Apostolic indult no parish can *pleno iure*

be united to a moral (juridical) person in such a way that this person would be a parish priest.

Canonists distinguish a *threefold union: plenissimo iure,* which is nothing else but an *abbatia nullius* or a territory juridically separated from the rest of the diocese; *pleno iure,* by which a corporaton (*e. g.,* a university or monastery) obtains the possession and administration of a parish in matters spiritual and temporal; *semipleno iure,* by which a corporation or community becomes the temporary administrator of a parish, either in matters temporal or in matters spiritual, but not in both at the same time, or at least not forever.

Of the first species enough has been said (cc. 319 ff.). The last kind of union (*semipleno iure*) does not apply here. The second touches chiefly parishes incorporated with monasteries or religious communities. Here some practical hints may not be amiss.

First and above all, the exact boundaries of the parish must be settled between the bishop and the religious community. Then the conditions binding both contracting parties must be laid down clearly and distinctly. Besides, the reasons for the alienation must be stated. The documents of transfer must be signed and sealed by both parties. The bishop may send his to the S. Cong. Concilii, while the religious dispatch theirs to the S. C. Relig. The bishop may include his document in the envelope in which the religious send theirs to the S. C. Rel., and both (having the same address on the inside, "Beatissime Pater") go to the latter Congregation, which forwards the papers of the Ordinary to the proper Congregation. The bishop should mention the fact that he proceeded "*auditis consultoribus et iis, quorum interest*" (can. 1428). Both parties, of course, are supposed to

keep the documents received from Rome in their respective archives.

If the document of the Apostolic See contains an affirmative answer, then, says § 2, the moral person to whom the parish is *pleno iure* united, obtains only the habitual care of souls, whilst the actual care is exercised by a vicar.

Hence the distinction between habitual and actual pastor. The former is the chapter or prelate, if the constitutions confer that right upon him, whilst the actual care with its obligations and rights are entrusted to the vicar.

### Can. 453

**§ 1. Ut quis in parochum valide assumatur, debet esse in sacro presbyteratus ordine constitutus.**

**§ 2. Sit insuper bonis moribus, doctrina, animarum zelo, prudentia, ceterisque virtutibus ac qualitatibus praeditus, quae ad vacantem paroeciam cum laude gubernandam iure tum communi tum particulari requiruntur.**

The *qualities* of a parish priest are as follows: He must be a priest of good morals, endowed with knowledge, zeal for souls, prudence and all other virtues and qualities required by either common or particular law for the praiseworthy government of a vacant parish.

That the priestly character is required for a *parochus* is evident from the fact that he must administer the Sacrament of Penance.[24] Formerly it was not necessary that the appointee should be a priest at the time of his appointment, provided only he received the priesthood

24 Cfr. c. 12, X, III, 38, de poenit. et rem., on annual confession and communion (Lat. Counc., 1215).

within a year from the date of his appointment.[25] Under the Code, however, the priesthood is required at the moment the appointment is made, and hence the appointment, for instance, of a deacon would be *ipso iure* invalid.

The other qualities [26] prescribed in § 2 are not required *ad validitatem,* but merely *ad liceitatem.* What the Code says *ad vacantem ecclesiam* must be understood in the light of can. 150, § 1, and therefore in the sense of a true vacancy, as explained above. In the U. S. there are no special laws concerning the qualifications of parish priests, but the general law is assumed. However, if a provincial council or diocesan synod should, *e. g.,* enact that certain conditions are necessarily required by particular circumstances, such an enactment would not be against the common law.[27] Neither would we call a *civil law* requiring citizenship for a parish priest unjust. For the law recognizing the pastor as a public functionary, for instance, at marriage, is entitled to set up conditions which do not clash with his spiritual character or with the nature of the Sacraments. Of course, such laws would not be ecclesiastical until formally "canonized," or at least approved of, by the Church.

### IRREMOVABLE AND MOVABLE PASTORS

### CAN. 454

**§ 1. Qui paroeciae administrandae praeficiuntur qua proprii eiusdem rectores, stabiles in ea esse debent; quod tamen non impedit quominus omnes ab ea removeri queant ad normam iuris.**

25 Cfr. c. 14, 6°, I, 6; *Trid.,* Sess. 7, c. 3.

26 *Trid., l. c.*

27 Thus, for instance, in a linguistically mixed diocese, a law to the effect that all parish priests should have some knowledge of the prevalent languages would certainly be reasonable.

§ 2. At non omnes parochi eandem obtinent stabilitatem; qui maiore gaudent, inamovibiles; qui minore, amovibiles appellari solent.

§ 3. Paroeciae inamovibiles nequeunt amovibiles reddi sine beneplacito apostolico, amovibiles possunt ab Episcopo, non autem a Vicario Capitulari, de Capituli cathedralis consilio, inamovibiles declarari; novae quae erigantur, sint inamovibiles, nisi Episcopus, prudenti suo arbitrio, attentis peculiaribus locorum ac personarum adiunctis, audito Capitulo, amovibilitatem magis expedire decreverit.

§ 4. Quasi-paroeciae sunt omnes amovibiles.

§ 5. Parochi autem, ad religiosam familiam pertinentes, sunt semper, ratione personae, amovibiles ad nutum tam loci Ordinarii, monito Superiore, quam Superioris, monito Ordinario, aequo iure, non requisito alterius consensu: nec alter alteri causam iudicii sui aperire multoque minus probare tenetur, salvo recursu in devolutivo ad Apostolicam Sedem.

A priest who is set over a parish as rector should be permanent. This permanency does not, however, imply that he cannot be removed according to the law.

All parish priests are not permanent in the same degree, but the irremovable rectors in a higher, and the removable rectors in a lesser degree.

Irremovable cannot be converted into removable parishes without an Apostolic indult, whereas removable parishes may, with the advice of the cathedral chapter, be declared irremovable by the bishop, but not by the vicar-capitular. Newly erected parishes are irremovable, unless the bishop is compelled by special circumstances of place or persons to declare them movable, which he is

empowered to do if he prudently deems it expedient, after hearing his chapter.

Quasi-parish priests are all removable.

Parish priests who belong to a religious community may, as far as their person is concerned, be removed at will and with equal right either by the *Ordinarius loci,* after having notified the religious superior, or by the religious superior, after having notified the *Ordinarius loci.* Neither is bound to state and much less to prove the reason for his proceeding to the other. Recourse *in devolutivo* to the Holy See is open to both.

This canon was doubtless dictated by regard for the circumstances prevailing in several countries. It cannot be denied that the notion of a parish priest, in the canonical sense, includes his permanency or subjective perpetuity in the parish.[28] Our canon distinguishes, as the Second and Third Plenary Councils of Baltimore [29] did, between irremovable and removable rectors. *Irremovable* and permanent are synonymous terms, and the *juridical quality* attached to both is subjective perpetuity, which involves that the priest in permanent possession of a parish cannot be removed save upon trial, which supposes a crime (*delictum*). Such a trial had to be instituted according to the instructions of the S. C. P. F., 1884, "*Magnopere.*" [30] Our canon acknowledges a certain kind of irremovability, but not an absolute one. How to proceed in removing irremovable rectors is stated in cc. 2147–2156, which are modelled upon the Motu proprio "*Maxima cura,*" of Aug. 20, 1910.

Of a lower degree is the perpetuity of *removable* rectors, to which class in this country most rectors belong,

28 Cfr. c. 30, X, III, 5; c. un. 6°, III, 18.

29 *Acta et Decreta Conc. Balt. II.,* n. 125; *Balt. III.,* n. 32.

30 Cfr. *Acta et Decreta Conc. Balt. III.,* p. 287 ff.

because only every tenth parish priest was declared irremovable.[31] Removableness, however, being different only as to the degree of perpetuity, does not imply that such a rector can be removed without reason or formality, as shall be seen in cc. 2157 ff.

Note that irremovableness or removableness do not intrinsically follow the character of a *parochus proprie dictus;* otherwise the Code could not state that all parish priests do not enjoy the same degree of irremovableness. As already remarked, the new law is at variance in this regard with the old. What § 3 of the present canon says had already been enacted by the Third Plenary Council of Baltimore (n. 34). The bishops, therefore, cannot change parishes with irremovable rectors into such with removable rectors, because such a change would mean a deterioration of the condition of the churches, which is not permitted by law, unless there are sound reasons for it, which must, furthermore, be submitted to the Holy See for the necessary indult. On the other hand, the same principle gives the bishop the right of converting removable rectorships into irremovable, for this change signifies an amelioration of the status of the diocese.[32]

We said above that all parishes should receive *parochi* properly so-called. This statement receives an additional proof from the declared intention of the Holy See to introduce the parochial system everywhere.

The last paragraph of our canon determines the relation between the Ordinary and the religious superior concerning the vicar or temporary rector of a parish in charge of religious. Benedict XIV (*"Firmandis,"* Nov. 6, 1744) settled that question, and our text is but a verbal restatement of §11 of the aforesaid Constitution.[33]

31 *Conc. Balt. III.*, n. 35.
32 Cf. Smith, *Elements,* I, p. 133 f.
33 Cf. Richter, *Trid.,* p. 590.

Hence, if the bishop wishes to remove a religious from the post of rector, he may do so at will, and is not bound to give his reasons to the religious superior or to prove his right to make the change. The same applies to the religious superior. Should a clash ensue, the last and only remedy is an appeal to Rome (the bishop to the S. C. Conc. and the religious superior to the S. C. Rel.). Such an appeal leaves the removal in force until the Holy See has decided. For this is the meaning of an appeal "*in devolutivo*" as opposed to an appeal "*in suspensivo*," that it does not suspend or nullify an act or sentence until the higher instance has decided the case.

### APPOINTMENT OF PASTORS

### CAN. 455

§ 1. Ius nominandi et instituendi parochos competit Ordinario loci, exceptis paroeciis Sanctae Sedi reservatis, reprobata contraria consuetudine, sed salvo privilegio electionis aut praesentationis, si cui legitime competat.

§ 2. Sede vacante aut impedita ad normam can. 429, ad Vicarium Capitularem aliumve qui dioecesim regat, pertinet:

1.° Vicarios paroeciales constituere ad normam can. 472–476;

2.° Confirmare electionem aut acceptare praesentationem ad paroeciam vacantem, et institutionem electo aut praesentato concedere;

3.° Paroecias liberae collationis conferre, si sedes ab anno saltem vacaverit.

§ 3. Horum nihil Vicario Generali competit sine mandato speciali, salvo praescripto cit. can. 429, § 1.

CAN. 456

**Ad paroecias religiosis concreditas Superior, cui ex constitutionibus id competit, sacerdotem suae religionis praesentat Ordinario loci; qui eidem, servato praescripto can. 459, § 2, institutionem concedit.**

CAN. 457

**Quasi-parochos e clero saeculari proprius loci Ordinarius nominat, audito Consilio de quo in can. 302.**

CAN. 458

**Vacanti paroeciae curet loci Ordinarius providere ad normam can. 155, nisi peculiaria locorum ac personarum adiuncta, prudenti Ordinarii iudicio, collationem tituli paroecialis differendam suadeant.**

With the exception of parishes reserved to the Holy See, the right of appointing and investing parish priests belongs to the Ordinary of the diocese. All contrary customs are hereby rejected, with due regard, however, to the privilege of election or nomination.

If the episcopal see is vacant or *impedita* (can. 429), the vicar-capitular or administrator of the diocese is entitled:

(1) to appoint a parochial vicar according to cc. 472–476;

(2) to ratify the election and accept the presentation of a vacant parish and invest the one elected or presented;

(3) to appoint pastors to parishes whose appointment belongs to the bishop if the see has been vacant at least one year.

The vicar-general is not allowed to perform any of

these acts without a special mandate, save in the case mentioned in can. 429, § 1.

This canon provides that, as a rule, the appointment to parishes belongs to the *Ordinary of the diocese,* because he is the pastor of his district by virtue of his office. However, the Pope, being the pastor of pastors, and having plenary jurisdiction over the whole Church, also has a right to make appointments to parishes. This right was claimed and exercised by the Roman Pontiffs very extensively during the Avignon period (1304–1378). The principle of *reservation* had been emphatically asserted already in a Decretal[34] of Clement IV. This decretal mentions as reserved to the Roman Pontiff all benefices which became "vacant at the Apostolic See." This term is explained by canonists as meaning that every benefice becoming vacant where the Pope resided, or within a radius of 40 miles (40,000 paces), was subject to papal reservation. Therefore any benefice whose holder died within that territory could not be conferred by the local Ordinary, but only by the Pope. This law was adopted as a rule (*prima*) of the Apostolic Chancery. But, we may be permitted to add, neither the law laid down in the Decretals, nor the first rule of the Apostolic Chancery was ever applied to this country. Nor could it in justice be applied, for with the exception of a few parishes in the province of San Francisco and one in New Orleans, there are no benefices, strictly so-called, in the U. S.[35] Hence we are inclined to hold that papal reservations do not interfere with the bishop's free right of appointing parish priests.

34 Cf. c. 2, 6°, III, 4; concerning the historical part see v. Scherer, I, 283; Wernz, *Jus Decret.* 1 ed. II, p. 448 ff.; Sägmüller, p. 272; Bouix, *De Parocho,* p. 310 f.

35 Cfr. *Cath. Encyc.,* II, 474. Other rules, like the ninth of the Conc. Apost., concerning papal months, refer to higher benefices only.

Two other obstacles to the free granting of parochial offices are mentioned: the *privilege of election* and the *privilege of presentation.* What election means has been explained above. But the question arises what is meant here: — whether an election in the canonical sense, as that performed by a chapter, or an election by the congregation. Thus, for instance, in Switzerland parish priests are chosen by the congregation by a majority of votes. The Code seems to regard this as a privilege. It is a privilege with regard to common law, but based upon an ancient custom.[36]

The other mode of conferring a parish is by *presentation,* which means that the pastor is designated by a patron (*patronus*), who for some reason is entitled to exercise this right, as is the case, *e. g.,* in Spain and other countries in which concordats are still in force. In the U. S. there is neither election nor presentation to hamper the free choice of the bishop. But even where these privileges are enforced, the priest elected or presented needs *episcopal institution* or investiture, *i. e.,* the expressed judgment of the Ordinary that the candidate is fit, and the formal bestowal of parochial rights.

The Code next proceeds to determine the power of the *vicar-capitular* or administrator. He is entitled to appoint temporary vicars or assistants to vacant parishes (of whom more shall be said in the following chapter) and to grant investment to such as are elected or presented, for in this case the right of *libera collatio,* belonging exclusively to the bishop, is not interfered with, but only an act of jurisdiction is performed of which the administrator is capable. Lastly, the vicar-capitular is now entitled to confer all those parochial offices, the op-

36 Cf. Wernz, II, n. 287 (p. 393, ed. 1.)

pointment of which would otherwise belong to the bishop. Here a departure from the old law is noticeable.[37] However, this power can be used only after a full year's vacancy of the episcopal see; but the vicar need not apply for the exercise of that power to the Holy See,[38] because the law itself confers it.

§ 3 of canon 455 defines that the *vicar-general* does not enjoy the powers ascribed to the vicar-capitular in § 2. This is no superfluous addition, for in many respects both are considered equal, and a comparison between them has been drawn by prominent canonists.[39] The vicar-general can make no appointments to parishes without a *special mandate,* which had best be given in writing. (For instance: "I hereby authorize you to appoint to the vacant parish of N. whom you think worthy," etc.) This does not mean that the bishop designates the priest, on whom the parish is to be conferred, for then the vicar-general would not be *mandatarius,* but merely *executor.* In one case only does the vicar-general not need such a special mandate, *viz.,* when the episcopal see is *impedita,* as explained above under can. 429, § 1.

Canon 456 ordains that for parishes entrusted to a religious order, the respective superior who exercises that right under the constitution shall present a priest of his community to the Ordinary of the diocese, who shall invest him in conformity with can. 459, § 2.

This canon does not distinguish between a parish incorporated with a religious community *pleno iure* or only *semipleno,* but employs the general term *"ad parochias religiosis concreditas";* and hence both kinds are understood. Presentation by the *superior* is mentioned as a

37 Cfr. c. 2, X, I, 9; c. un. § 1, 6°, I, 8.

38 Cfr. Wernz, *Jus Decret.,* II, p. 969, nota 243.

39 Benedict XIV, *De Syn. Dioec.,* II, 9, 4.

*conditio sine qua non.* The competent superior is he whom the constitutions of the respective order clothe with the right of presentation. We believe that, generally speaking, only the *"superiores maiores"* mentioned in can. 488, 8.° are intended. In the case of the Benedictines, the Abbot of the monastery, not the Abbot Primate or the Abbot President; in other orders and congregations with provincial organization, the provincials, their substitutes or representatives. If the respective constitutions provide otherwise (either extending or restricting the power of the superiors), they must be followed. The candidate presented must be a *priest* endowed with all the qualities required for a *parochus.* Therefore our canon refers to can. 459, § 2, where the bishop is called upon to judge the ability of candidates presented by religious superiors — not their learning only, but also other necessary qualifications. Hence the bishop would be justified in requiring an examination as to the fitness of the candidate presented, but he is not obliged to subject him to an examination if he is morally certain as to his qualifications. If the candidate is found fit, the bishop is bound to give him the investiture.[40] The bishop is not entitled to subject a religious thus presented to a *concursus,* for this is neither prescribed by the Code nor favored by the old law.[41]

We may add that the Decretals demand that the superior (prelate, abbot) ask the consent of his chapter, unless ancient custom and prescription has derogated

40 Cfr. *Trid.,* Sess. 25, c. 11 de regg.; Pius V, "Ad exequendum," § 4 f. (*Bull. Rom.,* IV, II, 402); Piatus Mont, *Praelectiones Juris Reg.,* ed. 2, II, p. 20. Even a religious superior, though a prelate, may be subjected to an examination. (S. C. C., Jan. 7, 1755; Piatus Mont, *l. c.*)

41 Cfr. Engel., *De Privilegiis et Juribus Monasteriorum,* privil. 46, de unione pleno jure, n. 2, according to Pius V, "Ad exequendum" (*l. c.*), which is not revoked by Benedict XIV, "Cum illud."

from, or abrogated, the right of the chapter. The Code does not abrogate that right, and hence, if the constitutions do not give the unqualified right of presentation to the superior, and no custom has abrogated the right of the chapter, the superior is obliged to ask the chapter.[42]

Under canon 457 *quasi-parish priests* of the secular clergy are appointed by the Ordinary of the diocese, vicariate, or prefecture Apostolic, after hearing his chapter, according to can. 302.

Canon 458 ordains that the Ordinary of the diocese shall provide for a vacant parish according to can. 155, unless peculiar circumstances make a *delay* advisable.

The canon referred to (155) demands that a new pastor be named within six months from the date when the vacancy becomes known to the bishop. Circumstances making a delay advisable may have reference to place or person. *Circumstances of place* may be material or moral, *e. g.*, unpaid debts, unsafe conditions by reason of a fluctuating population, the erection of a parish school, the advisability of punishing the people for their treatment of their former pastor, etc. *Circumstances of person* have reference to the person to be appointed, for instance, if there be a lack of priests qualified for the place.

### EXAMINATION — CONCURSUS

### CAN. 459

**§ 1. Loci Ordinarius, graviter onerata eius conscientia, obligatione tenetur vacantem paroeciam illi conferendi, quem magis idoneum ad eam regendam habuerit, sine ulla personarum acceptione.**

**§ 2. In hoc iudicio ratio haberi debet non solum**

42 Engel, *l. c.*, in parochiis, etc., 46, 2.

doctrinae, sed etiam earum omnium qualitatum, quae ad paroeciam vacantem rite regendam requiruntur.

§ 3. Quare loci Ordinarius:

1.° Ne omittat documenta, si qua sint, ex Curiae tabulario desumere quae clericum nominandum respiciunt et notitias, secretas quoque, si opportunum iudicaverit, prudenter exquirere etiam ex locis extra dioecesim;

2.° Prae oculis habeat praescriptum can. 130, § 2;

3.° Clericum examini super doctrina coram se et examinatoribus synodalibus subiiciat; a quo, de consensu eorundem examinatorum, potest dispensare, si agatur de sacerdote doctrinae theologicae laude commendato.

§ 4. In regionibus in quibus paroeciarum provisio fit per concursum sive specialem ad normam const. Benedicti XIV *Cum illud,* 14 Dec. 1742, sive generalem, haec forma retineatur, donec Sedes Apostolica aliud decreverit.

The Ordinary of the diocese is seriously admonished of his obligation to confer a vacant parish only on the one whom he deems fittest for its government, without personal favoritism.

In forming his judgment as to fitness of a candidate, he should consider not only learning but also the other qualities that are required for successfully governing a parish.

Hence the Ordinary:

(1) shall not neglect to inspect the documents in the diocesan archives, if there are any that have reference to the clergyman to be appointed, and, if he deems it expedient, shall prudently seek to obtain secret information, even from outside the diocese;

(2) he shall faithfully comply with can. 130, § 2 (concerning examinations);

(3) he shall subject the candidate to an examination in the presence of the synodal examiners; however, he may, with the consent of the examiners, dispense from this examination if the priest concerned has distinguished himself in theology.

Where appointments to parishes are made by means of the *concursus*,— either the special concursus described in the Constitution of Benedict XIV, "*Cum illud*," Dec. 14, 1742, or a general concursus,— this method should be followed until the Apostolic See decrees otherwise.

The Council of Trent issued various decrees concerning the examination of candidates for vacant parishes, laying special stress on the necessity of such examination and permitting no appeal. A solitary exception was made in favor of those presented by universities.[43] Pius V and Clement XI issued constitutions to the same effect, and Innocent XI condemned the opinion of those who asserted that the Tridentine decrees were intended only to exclude unworthy candidates, not to give preference to the more worthy.[44] From this we may understand why § 1 of our canon appeals most earnestly to the Ordinary ("*graviter onerata eius conscientia*"), exhorting him to appoint the fittest candidate (*magis idoneum*).

The Code insists upon fitness rather than worthiness. The term *fitness* refers to the juridical qualities mentioned in § 2.

That he may form an objective and a safe judgment of a candidate's fitness, the law enjoins the Ordinary to

43 Cfr. Sess. 7, c. 13; Sess. 24, c. 18; Sess. 25, c. 9, de ref.; Pius V, "In conferendis," April 15, 1567 (Richter, *Trid.*, p. 575; p. 55, pp. 378 ff.).

44 Benedict XIV, "Cum illud"; cfr. Bouix, *De Parocho*, p. 339.

gather information about him, to study the records of previous examinations, especially those which the candidate had to undergo during the three years immediately following his ordination, and, finally, to subject him to another test, in the presence of the board of examiners. The matter of this final examination and its method depend on the examiners. It must be passed by every secular priest who is to be appointed to a parish, whether irremovable or movable, unless the applicant has *distinguished* himself in theology. Wherein this distinction consists is not precisely stated and hence room is left for discussion. A doctor of divinity, who has received his title from a Catholic university, no doubt enjoys that distinction. But as no academic degree is mentioned, it would not be against the spirit of the law if a professor of sacred theology in the episcopal seminary were accorded the privilege of exemption. The term "theology" is generally taken to comprise dogmatic, moral, and pastoral theology, and Holy Scripture. Concerning *canon law* a doubt might arise from the fact that it seems not to suffice for a canon theologian.[45] But as in our case the question does not turn about that office, since, moreover, canon law now forms part and parcel of theological training, and a degree in canon law can be obtained only after a postgraduate course, and it would be difficult to imagine a solid canonist without a thorough knowledge of theology proper and church history, we may safely include licentiates, doctors, and professors of that noble science in the category of the "*doctrinae theologicae laude commendati.*"

However, the bishop cannot decide this point by himself, but needs the *consent of the examiners.* This con-

45 Benedict XIV, *De Syn.*, XIII, 9, 17.

sent may be given by each one individually, or by vote, for no chapter-act is intended.

§ 4 treats of the *concursus,* which is twofold, either special, as described by Benedict XIV, or general, which does not accurately follow the rules laid down in the aforesaid Constitution. The Third Plenary Council of Baltimore adopted the Constitution *"Cum illud"* for all irremovable rectors;[46] and therefore for such the enactment of our Code holds good and must be followed as a universal law. The substance of that Constitution is as follows:

(1) When a parish becomes vacant, the bishop shall, by a public edict, fix a suitable day for the holding of the competitive examination, notifying at the same time all who wish to make the concursus that they must, within this time and before the day set apart for the concursus, file with the diocesan chancellor testimonials, judicial or extra-judicial, of their fitness, merits, qualifications, etc. After the expiration of this time, no testimonial or document of any kind can be received.

(2) The chancellor must make out a written summary or synopsis of all the documents or testimonials presented by the various candidates and give a copy of this synopsis to the bishop, and to each of the examiners, who in approving candidates after the examination, must take into account, not merely their learning, but also their other merits and qualifications.

(3) In case a rejected competitor appeals either *a mala relatione examinatorum* or *ab irrationabili iudicio episcopi,* he must produce before the judge of appeal all the acts or records of the examination held in the first instance, which must be given him for that purpose by the

[46] *Acta et Decreta,* n. 36, nn. 40 ff. (*l. c.,* p. 25 ff.); Smith, *Elements,* I, p. 416 ff.

chancellor. The judge *ad quem* must pronounce his decision solely and exclusively on the strength of the records or acts of the first concursus. Hence he cannot order any new concursus, nor receive any documents or testimonials other than those contained in the acts of the first instance.

(4) Finally, when the judge *ad quem* pronounces sentence in entire conformity with the appointment of the Ordinary, that is, in every respect against the appellant and in favor of the competitor appointed by the bishop, no further appeal is allowed, and the controversy becomes *res iudicata*. But if he reverses the action or appointment of the Ordinary, the competitor appointed by the bishop can appeal to the higher judge, whose sentence shall be final and unappealable.

(5) The concursus itself must be held in the following manner:

(a) The *same questions* must be proposed to all competitors, as also the same case (moral, liturgical, canonical, pastoral) and the same gospel-text upon which they must compose a short sermon; all these must be dictated at one and the same time, and the same length of time allowed for the answer.

(b) All must sit in the *same room,* and are not allowed to leave before they have completed the composition.

(c) They must *write the answers* in Latin, except the sermon, in their own hand and sign them.

(d) All answers, as well as the sermon, as soon as offered, must be *signed* by the presiding chancellor, the examiners and the bishop or his vicar, if the latter was present at the examination.

(e) The *judgment* upon the sufficiency of the answers must be passed by the examiners *at the place of exam-*

*ination,* and must include a verdict on each candidate's conduct, virtues, and prudence. But the examiners must give only an objective statement as to the ability of the candidate, and leave the judgment as to the greater or lesser degree of fitness to the bishop.[47]

A *general concursus* was proposed at the Vatican Council by the German bishops, especially for larger dioceses.[48] This examination, it was suggested, should be held once a year and turn chiefly upon the learning of the candidates. The other qualities were to be considered at the time a parish became vacant. Those who had passed the examination once, were considered fit for any charge, so far as doctrine was concerned. In the *U. S.,* according to the Third Baltimore Council (n. 36, n. 43), only those priests can be admitted to the concursus who have been laudably engaged in the sacred ministry for at least ten years in the diocese, and have within that time given proof of their ability to govern a parish spiritually and temporally, either in the capacity of simple rectors, or in some other way. After the lapse of six years they must undergo another examination if they wish to be appointed to an irremovable rectorship. This general concursus was embodied by the Council in its decrees,[49] and since the Code mentions it also, it is not to be looked upon as abolished. But it is intended only for dioceses whose size does not permit calling a special concursus. Also other "peculiar circumstances" are mentioned which render a general concursus advisable.

47 Cfr. *Conc. Balt. III,* nn. 36, 52 (*l. c.,* p. 23, p. 28).

48 At the Vatican Council, cfr. Smith, *Elements,* I, 421; Granderath-Kirch, *Gesch. d. Vatik. Konzils,* 1903, III, 439 ff.

49 *Acta et Decreta,* n. 59 (*l. c.,* p. 30).

UNITY AND POSSESSION

CAN. 460

**§ 1. Parochus ad normam can. 156 unam tantum titulo paroeciam habeat, nisi de paroeciis agatur aeque principaliter unitis.**

**§ 2. In eadem paroecia unus tantum debet esse parochus qui actualem animarum curam gerat, reprobata contraria consuetudine et revocato quolibet contrario privilegio.**

CAN. 461

**Curam animarum parochus obtinet a momento captae possessionis ad normam can. 1443–1445; et ante possessionem aut in ipso possessionis capiendae actu fidei professionem edere debet, de qua in can. 1406, § 1, n. 7.**

A parish priest, according to can. 156, can hold only one parish *in titulum,* unless two parishes are united *aeque principaliter.*

In each parish only one is the parish priest, who has the actual care of souls; all contrary customs are reprobated and contrary privileges repealed.

Canon 460 first speaks of the *incompatibility of two parochial charges* in one and the same person, and refers to can. 156, which forbids the holding of two offices that cannot be discharged at the same time by the same person. This law is taken over from the Decretals [50] and the Tridentine Council [51] and is based partly upon the requirement of personal residence, and partly upon the prohibition of avarice. Hence no one is allowed to possess two parishes *in titulum* as quasi-proprietor or rather pos-

50 Cc. 15, 28, X, III, 5 de praeb.; Engel, III, 5, n. 68.

51 Sess. 7, c. 4; Sess. 24, c. 17.

sessor. An exception, however, is made in favor of two parishes united in such a way that both retain their own titles and rights and neither is subject to the other.[52] Note, however, that such a union must be objective, not subjective, that is to say, the two parishes are not allowed to be united in favor of the pastor or holder, but purely with regard to themselves. For a subjective union would be nothing but a veiled plurality of benefices, forbidden in the case of two curacies or rather parishes (*cura aminarum*).

§ 2 safeguards unity of government.[53] It is directed against interference on the part of any juridical person (chapter, monastery) with the rights of the pastor in the care of souls and against encroachments on the part of assistant priests. Needless to say, under the new law, as under the old, several priests may be employed in a parish.[54]

Canon 461 says that the pastor has the care of souls from the moment of his taking possession of the parish (can. 1443–1445). Either before or in the act of taking possession he must pronounce the profession of faith (can. 1406, § 1, n. 7). Pastors should be installed either by the bishop himself or by his delegate. If a pastor does not wish to be present himself at this function he may be represented by a procurator endowed with a special mandate. But he cannot pronounce the profession of faith by proxy.

52 Cfr. can. 1419.

53 Cfr. c. 41, C. 7, q. 1; c. 4, C. 21, q. 2, where the allegory of husband and wife (parish) is alleged; c. 15, X, III, 4. Barbosa, *De Parocho*, I, 1, n. 43, Engel, III, 29, n. 12, and others won the case against Bouix, (*De Parocho*, p. 190 ff.), who maintained that the law does not strictly forbid several pastors; our text is from c. 15, X, III, 5.

54 Cfr. c. 3, X, I, 3; and the chapter of our Code on Vicars.

RIGHTS OF PARISH PRIESTS

CAN. 462

Functiones parocho reservatae sunt, nisi aliud iure caveatur:

1.° Baptismum conferre sollemniter;

2.° Sanctissimam Eucharistiam publice ad infirmos in propria paroecia deferre;

3.° Sanctissimam Eucharistiam publice aut privatim tanquam Viaticum ad infirmos deferre atque in periculo mortis constitutos extrema unctione roborare, salvo praescripto can. 397, n. 3, 514, 848, § 2, 938, § 2;

4.° Sacras ordinationes et ineundas nuptias denuntiare; matrimoniis assistere; nuptialem benedictionem impertiri;

5.° Iusta funebria persolvere ad normam can. 1216;

6.° Domibus ad normam librorum liturgicorum benedicere Sabbato Sancto vel alia die pro locorum consuetudine;

7.° Fontem baptismalem in Sabbato Sancto benedicere, publicam processionem extra ecclesiam ducere, benedictiones extra ecclesiam cum pompa ac sollemnitate impertiri, nisi agatur de ecclesia capitulari et Capitulum has functiones peragat.

CAN. 463

§ 1. Ius est parocho ad praestationes quas ei tribuit vel probata consuetudo vel legitima taxatio ad normam can. 1507, § 1.

§ 2. Potiores exigens, ad restitutionem tenetur.

§ 3. Licet paroeciale aliquod officium ab alio fuerit expletum, praestationes tamen parocho cedunt, nisi de contraria offerentium voluntate certo constet circa summam quae taxam excedit.

**§ 4. Gratuitum ministerium ne deneget parochus iis qui solvendo pares non sunt.**

Unless otherwise provided by law, the following functions are reserved to the pastor:

(1) To administer solemn Baptism;

(2) To carry the Holy Eucharist publicly to the sick in his own parish;

(3) To bring the Holy Eucharist as viaticum either publicly or privately to the sick, and to anoint them when in danger of death (with due regard to can. 397, n. 3; 514, 848, § 2; 938, § 2);

(4) To announce sacred ordinations and the banns of matrimony; to assist at marriages and impart the nuptial blessing;

(5) To hold funeral services according to can. 1216;

(6) To bless the houses on holy Saturday or other customary days, according to the liturgical books;

(7) To bless the baptismal font on Holy Saturday, to hold processions outside the church, to give the solemn blessing outside the church, unless, in a capitular church, the chapter performs these functions.

Most appropriately the administration of Baptism holds first place among parochial rights, it being not only the initiation into the fold of Christ, but also a sign of a true parish, according to the ancient view. *Solemn Baptism* includes all the ceremonies contained in the *Rituale Romanum,* whilst *private Baptism,* when administered by a priest, comprises only the pouring of water accompanied by the formula, the anointing with chrism, the handing over of the white cloth and candle.[55]

Concerning the public or private administration of

55 Cfr. *Conc. Balt. II,* n. 238 (*l. c.,* p. 731); Wapelhorst, *Compendium S. Liturgiae,* 1915, p. 431.

Holy Communion to the sick, the rules of the second Council of Baltimore [56] may safely be followed, for the custom of publicly bringing them the Holy Eucharist does not generally prevail in our country. The pastor's right concerning the Holy Eucharist and Extreme Unction does not extend to the bishop (can. 397, n. 3), nor to religious clerics and nuns, if the latter have a confessor or chaplain (can. 514), and ceases in cases of urgent necessity (can. 848, § 2; 938, § 2). What is understood by the funeral service is further determined in can. 1216. The custom of blessing houses on Holy Saturday is, as far as we are aware, not widespread in our country, except perhaps in Italian congregations. In Rome, as I know from experience, it is greatly favored and sometimes accompanied by much ceremony.

§ 7 mentions the right of blessing the *baptismal font* on Holy Saturday. No mention is made of the blessing on Pentecost Saturday; wherefore the latter is not to be reckoned among the reserved rights of the pastor. Besides *processions* [57] the Code also enumerates *blessings* [58] imparted "with pomp and solemnity outside the church." Blessings by which the Divine Name is invoked upon persons and things are various. The rights of the pastor do not include papal blessings,[59] nor such as are reserved to the bishop, notably the blessing of abbots and abbesses, the consecration of virgins, the blessing of the holy oils and chrism, of sacred vessels and furniture (unless, of course, a special privilege or faculty is obtained), the blessing of churches, public oratories, and cemeteries. Some authors [60] reserve to the bishop also the solemn

56 *Acta et Decreta*, n. 264 (*l. c.*, p. 142 f.).

57 Cfr. cc. 1290–1295.

58 Cf. Wapelhorst, *l. c.*, p. 516 ff.

59 The blessings proper to the Pope are: that of the pallium, Agnus Dei, Golden Rose, and Princes' Sword; Van der Stappen, *Sacra Liturgia*. 1900, IV, p. 342 f.

60 Van der Stappen, *l. c.*, p. 347.

blessing of images of our Lord, the B. V. Mary, and the Saints. However, our canon seems rather to favor the assumption that the parish-priest can now perform such solemn blessings, else why should it have added, "with pomp and solemnity"? Besides these, the solemn blessing of edifices, bridges, ships, railroads, banners or flags can also be performed by parish priests,— unless, the Code adds, these last named blessings (n. 7) are given by the *chapter*. Hence cathedral, collegiate or religious chapters — the Code uses the general terms *chapter* and *chapter church* — are allowed to bless the baptismal font on Holy Saturday, lead processions, and give the blessings mentioned. We know that the venerable chapter of St. Peter's in Rome has repeatedly crowned images of the Blessed Virgin. The underlying idea no doubt is that if a ceremony is performed by a whole chapter, it is more impressive and imposing than when performed by an individual pastor.

Under can. 463 every parish priest is entitled to the *income* established by approved custom and legitimate taxation (can. 1507). If he takes more, he is obliged to restitution. When parochial functions are performed by another than the parish priest, the latter is entitled to the fees, unless there is a surplus and it is evident that the donor intended that surplus for the priest who performed the function.

Parish priests should never refuse to serve the poor who cannot pay, free of charge.

This canon regulates the *material rights* of the parish priest. According to Holy Writ[61] the ministers of the altar have the right to live by the altar. The early Christians fulfilled this duty to their pastors by presenting offerings (*oblationes*) at the services. The *Didache*

61 Matt. 10, 10; I Cor. 9, 13.

(c. 13) directs the faithful to offer to God their first fruits, while the *Didascalia,*[62] by applying to the Christians the injunction of the Book of Numbers (c. 18) seems to enjoin the paying of tithes.[63] Lest the clergy should lean towards commercialism[64] and thus be distracted from their more important occupation, the Church, especially after the establishment of benefices so-called, demanded that the clergy should receive decent support from the faithful at large and from the flock entrusted to them in particular.[65] Whether the pastor is entitled to this support by divine or ecclesiastical right or law, is controverted. However, even those[66] who deny that divine or natural law dictates the support of pastors, must accept the view of St. Thomas,[67] who says: If a stipulation is made between the parish and its pastor to pay him a pension or interests, this agreement obliges the faithful in conscience; besides, if the minister has no other sources of income and stands in need of decent support, the parishioners, unless they themselves be destitute of means, are bound in conscience, by natural and divine law, to assist him. This was the view taken by the Third Plenary Council of Baltimore,[68] which says that justice and the sacerdotal dignity demand that the ministers of the Church should receive a decent support and decreed that the bishops should determine the salary of priests at the synods and that pastors should be content with a less sum if their people are unable to pay the stipulated salary. It is evident that the salary of a parish priest is not intended

62 *Const. Apost.* (ed. Funk, 1906), II, 25.

63 Funk, *Manual of Church History,* 1913, I, p. 56 f.

64 *Ibid.,* p. 175.

65 Cfr. c. 27, C. 12, q. 2; tit. 5, X, de praeb.; tit. 25, X, de peculio cleric. *Trid.,* Sess. 22, c. 1 de ref.

66 Barbosa, *De Parocho,* c. 24, n. 9 f. (ed. Lugd., 1665, p. 208); Bouix, *De Parocho,* p. 480.

67 *Summa Theol.,* II, II, q. 86, a. 1.

68 *Acta et Decreta,* n. 273 (*l. c.,* p. 156.)

to enable him to live in luxury.[69] The present salaries of most of our priests, we need hardly add, preclude "high living." Here it may not be amiss to call attention to the "burning question," recently discussed even in lay magazines,[70] of a living wage for the parochial clergy. The high cost of living alone is reason enough for increasing the salaries of our parish priests, let alone their exalted position in society. Most professional men receive at least double the amount of a priest's salary, although the latter has to study and prepare himself for a much longer time than, *e. g.,* the lawyer or the physician. To increase the priests' salaries would incidentally heighten popular esteem for classical studies. *Intelligenti pauca.*

What the canon means by "*praestationes*" is palpable, though not precisely stated. According to the Digest *praestatio* signifies a payment of what is due.[71] In ecclesiastical language it is often employed synonymously with *precaria,* a kind of prebend or benefice; sometimes with pension and interest;[72] sometimes with contributions, *e. g.,* cathedraticum. Our Code mentions *praestationes* in connection with *benefices,* which, it says, may consist of contributions to be paid by families or moral persons.[73] Hence we believe that by the term "*praestationes*" the law intends to comprise the whole range of income, salary and stole-fees, with the sole exception of manual mass stipends.[74] All these sources of income should be determined by a provincial council or meeting of the bishops of the province (can. 1507).[75] Hence a

69 *Trid.,* Sess. 24, c. 1, de ref.

70 Cfr. the Catholic *Fortnightly Review,* (by Arthur Preuss), St. Louis, Mo., Vol. XXIV, No. 18, pp. 274 f.; No. 21, p. 321.

71 Cfr. Dig. 43, 26.

72 Cfr. Du Cange, *Glossarium, s. v.* "Praestatio."

73 Cfr. can. 1410.

74 Cfr. the *Catholic Register,* Kansas City, Mo., n. 27, 1918, where a judge's decision is quoted which favors our point.

75 Manual mass stipends are such as are received irregularly and uncertainly, as it were, *de manu ad*

tax fixed by diocesan synod can no longer be looked upon as the juridical norm, either of law or conscience, unless a legitimate custom prevails in the diocese, either for better or worse.

The above considerations are of importance for understanding the next paragraph (§ 2), which mentions the *obligation of restitution* if a parish priest has obtained more than custom and fixed rates permit him to charge. Whatever he has acquired by overcharging, must be distributed for the benefit of pious causes. These, however, must not be understood to be the pastors themselves, but other persons or things, *e. g.*, the poor of the parish, the parish church, if it is needy, or other poor churches, hospitals, and all kinds of charitable institutions approved by the Church, poor students aspiring to the priesthood or the religious state, etc.[76]

§ 3 governs the disposal of the *stole fees* received by a priest who has performed a function reserved to the pastor, either with or without the latter's permission. Such a one is not allowed to retain the sum which is fixed either by taxation or custom; but he may keep any surplus if it is evident that the donor intended it for the one who performed the ceremony. The Third Plenary Council [77] merely decreed that the bishops should determine the stole fees, hence it is a diocesan matter, often regulated by custom. It must always be understood that the tax holds good which is in vogue in the diocese of the parish priest whose rights the other has assumed. Sometimes the fees for marriage and funeral services, which appear more stable than the fees for baptism, differ in different

*manum;* to base a salary or income upon such an uncertain source is contrary to common sense and common parlance, which styles them *alms*. The statement in *Eccl. Rev.*, Vol. 58, p. 74, is unacceptable.

[76] Cfr. Engel, III, 25, n. 11; cfr. can. 1473.

[77] *Acta et Decreta*, n. 296 (*l. c.*, p. 168).

dioceses. It is ordinarily understood that a "*stipendium pingue,*" given to one who is not the pastor, was intended for personal service and may, therefore, be kept after the customary fee has been handed over to the parish priest. Contrary diocesan statutes may now be disregarded, since the Code is the general law.

Concerning § 4 the Third Council of Baltimore established that priests should remember that ecclesiastical services should be given gratis to the poor and that this law should be re-inforced at diocesan synods.[78]

### DUTIES OF PASTORS

### CAN. 464

**§ 1. Parochus ex officio tenetur curam animarum exercere in omnes suos paroecianos, qui non sint legitime exempti.**

**§ 2. Potest Episcopus iusta et gravi de causa religiosas familias et pias domos, quae in paroeciae territorio sint et a iure non exemptae, a parochi cura subducere.**

The pastor is, by virtue of his office, obliged to exercise the care of souls towards all his parishioners who are not legitimately exempt. The bishop may, for just and weighty reasons, withdraw from the care of the pastor religious communities and pious houses located within the territory of the parish, even though they are not "exempt."

The "care of souls" comprises the spiritual direction of the faithful to the end for which the Church is established, *i. e.,* the salvation of souls. The particular duties

78 *Acta et Decreta,* n. 296 (*l. c.*). Incidentally we may mention that the fee or donation for churching women or for sick calls, which are no parochial rights, does not belong to the pastor exclusively.

of pastors are pointed out in the following canons. From this care some are exempt *ipso iure,* others may be withdrawn by the positive will of the bishop. The former are the so-called *exempt religious,* of whom more will be said later. The bishop may grant quasi-exemption from parochial rights and care to religious families and pious houses, if there are just and weighty reasons for so doing. This power is a reminder of past times, when the bishop was considered the parish priest of the whole diocese. The ruling of the Code is not entirely new, for the semi-public oratories of brotherhoods and sisterhoods have long enjoyed certain privileges which curtailed the pastor's rights. However, in these general terms the principle laid down in § 2 of our canon is of rather recent date. After the division of dioceses into parishes, the bishop was no longer considered the *parochus* of the whole diocese, but only of the cathedral.[79] Hence the Code binds the bishop to *"just and weighty reasons"* for withdrawing anyone from the care of the pastor. Such a reason would be the merits of a religious community and their distinguished work for the common welfare, peace and tranquillity from vexations coming from the parish priest, suspicion or undue interference by the pastor with the internal and domestic affairs of the community, etc. The parish priest may appeal to the Holy See, but he has no right to demand reasons from the bishop, who is not responsible to the pastor. Finally, we may add that the fact that the canon names the *bishop,* not the *Ordinary,* appears to exclude vicars-general or vicars-capitular from granting this exemption.

[79] Barbosa, *De Parocho,* c. 1, n. 21 f. (p. 5).

OBLIGATION OF RESIDENCE

## Can. 465

§ 1. Parochus obligatione tenetur residendi in domo paroeciali prope suam ecclesiam; loci tamen Ordinarius potest iusta de causa permittere ut alibi commoretur, dummodo domus ab ecclesia paroeciali non ita distet ut paroecialium perfunctio munerum aliquid inde detrimenti capiat.

§ 2. Eidem abesse permittitur per duos ad summum intra annum menses sive continuos sive intermissos, nisi gravis causa, iudicio ipsius Ordinarii, vel diuturniorem absentiam requirat vel breviorem tantum permittat.

§ 3. Dies quibus parochus piis exercitiis vacat ad normam can. 126, non computantur, semel in anno, in duobus vacationum mensibus, de quibus in § 2.

§ 4. Sive continuum sive intermissum sit vacationum tempus, cum absentia ultra hebdomadam est duratura, parochus, praeter legitimam causam, habere debet Ordinarii scriptam licentiam et vicarium substitutum sui loco relinquere ab eodem Ordinario probandum; quod si parochus sit religiosus, indiget praeterea consensu Superioris et substitutus tum ab Ordinario tum a Superiore probari debet.

§ 5. Si parochus repentina et gravi de causa discedere atque ultra hebdomadam cogatur abesse, quamprimum per litteras Ordinarium commonefaciat, ei indicans causam discessus et sacerdotem supplentem, eiusque stet mandatis.

§ 6. Etiam pro tempore brevioris absentiae parochus debet fidelium necessitatibus providere, maxime si id peculiaria rerum adiuncta postulent.

The pastor is obliged to reside in a parish house near his church. However, the Ordinary of the diocese may, for a just reason, allow him to live elsewhere, provided only his home is not so far away from the parish church that the performance of his parochial obligations would suffer thereby.

The pastor may take a two months' vacation, either continuous or interrupted, every year, provided there be no grave cause which, in the judgment of the Ordinary would require either a prolongation or shortening of this term.

The days of the yearly retreat (can. 126) are not included in the two months' vacation.

A pastor on vacation or absent from home for more than one full week, must have a legitimate excuse and the Ordinary's permission in writing, and, besides, provide a substitute to be approved by the Ordinary; if the parish priest is a religious, he needs also the permission of his superior, and his substitute must be accepted by both the Ordinary and the superior.

Should a parish priest, for a grave reason, be suddenly called away and compelled to be absent from home for more than a week, he must inform his Ordinary as soon as possible in writing, stating the reason for his leave and the name of his substitute, and abide by the Ordinary's commands.

Even during a shorter absence the pastor must provide for the wants of the faithful, especially if peculiar circumstances require it.

Little need be added to what has been said above concerning the residence of bishops. The present canon is nothing else but the embodiment of the Tridentine decrees [80] and of current practice, with some mitigation.

80 Sess. 6, c. 2, de ref.; cfr. Sess. 23, c. 1 de ref.; cfr. tit. 4, X de clericis non resid.

The personal character of a pastor's duties requires his *personal presence* in his parish. Hence the presbytery should be near the parish church, and the pastor should reside therein during the day as well as by night. If a priest has a parish, say, two, three or four miles from the town where his parents live, he would, *e. g.*, not be allowed to stay in the city, either at night or during the day, much less all the time, although he might have an assistant or substitute.[81] One who has a parish situated in a swampy place, where he is exposed to gout and rheumatism, is nevertheless bound to reside there, but he may ask the bishop for a longer vacation.[82] Smallpox, or the yellow fever, or any other epidemic may be raging in his parish, yet the parish priest must remain at his post, although he may employ another priest to administer the Sacraments to the stricken.[83] Neither age, nor ill health, nor the small number of families excuses the pastor from residence.[84] The decisions of the S. Congregation are firm and uniform in this regard. A pastor (shepherd) should prove himself worthy of his name, and not be a mercenary.[85]

§ 4 provides that a pastor needs the *permission* of his Ordinary (to be given in *writing and gratis*)[86] if he absents himself from his parish for over a week, even for the time of the vacation granted by law. In this there is a difference between bishops (or canons) and parish priests. Besides, pastors must have a *"legitimate reason"* for being away from their parish on Sundays or holydays of obligation. A legitimate reason would certainly be attending the sickbed or funeral of a relative,

81 S. C.C., May 10th, 1687 (Richter, *Trid.*, p. 38, n. 11).
82 Richter, *l. c.*, n. 12; n. 14.
83 *Ibid.*, n. 13.
84 *Ibid.*, n. 15, n. 17.
85 *Trid.*, Sess. 23, c. 1 de ref.
86 *Trid.*, Sess. 23, c. 1 de ref.

friend, or colleague, some installation or festivity, Forty Hours' devotion, or a call from the superior or the civil authorities, and any act of charity. As the bishop is to judge of the legitimacy of the reason,[87] it must be revealed to him.[88] Concerning the substitute, note that it is not sufficient simply to state that a substitute has been provided, but information must be furnished regarding his identity. It is evident that the parish priest must choose a substitute who has the necessary " faculties," or else obtain them for him from the bishop. As a rule it is safest to engage a priest or religious of the same diocese as a substitute. Should the bishop for some reason *withhold the faculties* from the substitute, the pastor must provide another, because the bishop is not obliged to grant faculties to a stranger. But neither is the substitute, especially if he be an exempt religious, obliged to undergo an examination before receiving temporary faculties. Hence prudence would dictate that the bishop should not demand too much in this regard.

The Code, as we said, mitigates the law of residence to some extent, especially concerning absence for less than a week, for which it requires neither a formal permission nor excuse. Formerly, according to some authors and a Roman synod held in 1725, an absence lasting more than two days required the Ordinary's permission.[89] The Code is silent concerning such a brief absence, and hence we may infer that it is not the lawgiver's intention to permit Ordinaries to set up a stricter rule, unless, of course, in particular cases, where grievous neglect of

87 Engel, III, 4, n. 14, de clericis non residentibus.

88 Therefore an oath of the pastor that the reason is sufficient would not have to be accepted by the bishop. Cfr. Bouix, *De Parocho*, p. 534 f.

89 Cfr. Bouix, *l. c.*, p. 553.

pastoral duties might result.[90] Therefore § 5 obliges the pastor to provide for the spiritual needs of his flock during his absence. By the way, and in order to complete the matter, it may be added that under the Council of Trent and our Code the bishop may not give leave of absence lasting longer than the time allowed for vacation to a parish priest except for the sake of study.[91]

The residence of a pastor is sometimes styled "*laboriosa,*" which means that it is no *dolce far niente,* but a life of constant labor, which demands that the pastor perform the parochial functions and duties himself and not by means of assistants. Of course what he is not able, physically or morally, to do himself, he may commit to his assistants, unless the law expressly forbids such commission or delegation.[92]

### APPLICATION OF THE MASS PRO POPULO

### CAN. 466

**§ 1. Applicandae Missae pro populo obligatione tenetur parochus ad normam can. 339, quasi-parochus ad normam can. 306.**

**§ 2. Parochus qui plures forte paroecias aeque principaliter unitas regat aut, praeter propriam paroeciam, aliam vel alias in administrationem habeat, unam tantum debet Missam pro populis sibi commissis diebus praescriptis applicare.**

**§ 3. Ordinarius loci iusta de causa permittere potest ut parochus Missam pro populo alia die applicet ab ea qua iure adstringitur.**

**§ 4. Parochus Missam pro populo applicandam ce-**

90 Concerning the penalties against non-resident clergymen, cfr. cc. 2168–2175, 2381.

91 Engel, III, 4, n. 11.

92 S. C. C., Oct. 7, 1604 (Richter, *Trid.,* p. 39, n. 19 f. Bouix, *l. c.,* p. 558 f.).

**lebret in ecclesia paroeciali, nisi rerum adiuncta Missam alibi celebrandam exigant aut suadeant.**

**§ 5. Legitime absens parochus potest Missam pro populo applicare vel ipse per se in loco in quo degit, vel per sacerdotem qui eius vices gerat in paroecia.**

A parish priest is obliged to apply the Holy Mass for his people, the same as a bishop (can. 339); a quasi-pastor, according to the rules laid down in can. 306.

A pastor who governs two parishes united *aeque principaliter,* or one as his own and the other as administrator, is obliged to apply but one Mass for the people.

The Ordinary of the diocese may for a just reason grant permission to a parish priest to apply the Mass for the people on another than the prescribed day.

A pastor should say the Mass for the people in the parish church, unless circumstances require him to say it elsewhere.

A pastor who is legitimately absent from home may either himself apply the Mass for the people at his actual abode, or have it said by his substitute.

The obligation of offering the Holy Sacrifice of the Mass for the people is based upon a divine law,[93] but the number of Masses to be applied has been established by ecclesiastical regulation. This obligation is incumbent on the pastor himself, if no legitimate reason excuses him, or, in other words, it is a personal obligation.[94] Of course, any legitimate cause (*e. g.,* sickness, some other personal duty, application of the Mass for his parents *in die depositionis* or *anniversarii,* or for a public cause)

93 *Trid.,* Sess. 22, de obser. etc.; S. C. C., Aug. 30, 1698. (Richter, *Trid.,* p. 134, n. 32.); cf. what was said under can. 339.

94 Cfr. the decisions of the S. C. C. in Richter, *l. c.,* n. 36; Bouix, *l. c.,* p. 588 f.; but the S. C. admitted a legitimate *in una,* Ruremond, Feb. 27, 1848, Bouix, *l. c.* The mass may be either low or *cantata;* Bouix, *l. c.,* p. 590.

would justify him in having the Mass for the people said by another.

§ 2 of this enactment is based on the practice followed by the S. C. Concilii.[95]

As to § 4 and § 5 it may be said that canonists were somewhat more rigorous because of some decisions[96] which seemed to demand the celebration of the Mass for the people in the *parish church.* However, our Code does not insist upon this but leaves a wider margin. By employing the general term *adiuncta,* the lawgiver leaves it to the prudent judgment of the pastor whether these circumstances are or are not verified. Such circumstances would be the use of a winter chapel or school house, the repairing of a parish church, personal infirmity of the pastor, the convenience of the people, etc.

Note must be taken of the decree of the *S. C. Consistorialis* April 25, 1918, that the *faculties granted to bishops are abrogated with regard to the present canon.* Hence Ordinaries are not allowed to make any change as to this enactment. But we submit our humble judgment with regard to parish priests on account of what has been said under canon 451. If our parish priests are not pastors (*parochi*) in the strict sense, who is obliged to offer Mass for the people? The bishops themselves would have to apply for as many parishes as there are in each diocese.[96a]

Attention must also be drawn to decisions of the *S. Rit. C.,* July 8, 1910, and May 27, 1911. The *Missa pro populo,* also on the feasts suppressed, must be that of the current day, and no *missa de requie pro die obitus* may be said nor that of a feast transferred on a

95 Cfr. Richter, *l. c.,* p. 135, nn. 37–39.

96 Bouix, *De Parocho,* p. 591.

96a Untenable, because unjuridical, are the views proposed in the *Record,* of Louisville, Ky., June 20 and July 25, 1918.

Sunday, if there is but one mass said in the parochial church.

Finally, can. 824, § 2 defines that a priest binating is not allowed to accept a stipend for either mass if he is obliged *ex iustitia* to apply one mass *pro populo* (except Christmas); but for the second mass he may accept some compensation *ex titulo extrinseco.* Thus we believe that a priest may say, *e. g.,* a mass for the purgatorial society of the diocesan clergy (if the statutes do not bind him *ex iustitia*), or for the Holy Name Society, or the Holy Rosary Confraternity, if he does not receive a stipend properly so called for such a mass. A donation for the trouble would be a compensation *ex titulo extrinseco, i. e.,* not intrinsically connected with the mass or the obligation arising *ex iustitia.*

### PARTICULAR DUTIES

### Can. 467

**§ 1. Debet parochus officia divina celebrare, administrare Sacramenta fidelibus, quoties legitime petant, suas oves cognoscere et errantes prudenter corrigere, pauperes ac miseros paterna caritate complecti, maximam curam adhibere in catholica puerorum institutione.**

**§ 2. Monendi sunt fideles ut frequenter, ubi commode id fieri possit, ad suas paroeciales ecclesias accedant ibique divinis officiis intersint et verbum Dei audiant.**

The pastor is obliged to celebrate the divine services, to administer the Sacraments to the faithful as often as they legitimately demand them, to know his sheep and prudently to correct the erring, to bestow his paternal

care upon the poor and wretched, and to employ the greatest diligence in instructing the children in the Catholic religion.

The faithful should be admonished that, whenever convenient, they should attend divine worship and hear the word of God in their parish church.

By "*divina officia*" the Code no doubt means primarily the celebration of Holy Mass, and secondarily those other devotions which are, as it were, ramifications of the central act of worship. *How often* the pastor is obliged *to say Mass on week-days* is not stated in the Code. Unless there is a law of foundation, a custom, a diocesan rule, legacy or stipend, no juridical obligation of saying Mass daily can be imposed.[97] However, on account of frequent communion, it will be difficult now-a-days for a pastor who has no assistant to limit the celebration of the Mass to certain days.

Of the obligation of *administering the Sacraments* and the rules to be observed in this connection more will be said in the Third Book.[98]

That the pastor should know his sheep is Gospel teaching re-echoed by the Council of Trent.[99]

§ 2 of our canon imposes on the *faithful* the moral obligation of attending their *parish churches.* It cannot be denied that the parish organism has been somewhat weakened in the last century. Thus among the parochial functions we do not even read of the paschal communion, although the people are admonished to receive it in their own church.[1] This is certainly a change from ancient views if we remember that the proposition "that the

97 Cfr. Benedict XIV, *Inst. Eccl. Just.*, 56, n. 6 (ed. Prati, 1844, p. 249).

98 Cfr. cc. 853 ff.; 901 ff.; 940 ff.

99 Cfr. John, 10, 14; 21, 15 ff.; 10, 12 f.; *Trid.*, Sess. 23, c. 1, de ref.; on preaching and catechism, see cc. 1327 ff.

1 Can. 859, § 3: *Suadendum*, etc.

faithful were not bound to receive Holy Communion on Easter in their proper churches" was at one time branded as "*falsa, scandalosa et temeraria.*" [2]

### CARE OF THE SICK AND CHARITABLE WORKS

### Can. 468

**§ 1. Sedula cura et effusa caritate debet parochus aegrotos in sua paroecia, maxime vero morti proximos, adiuvare, eos sollicite Sacramentis reficiendo eorumque animas Deo commendando.**

**§ 2. Parocho aliive sacerdoti qui infirmis assistat, facultas est eis concedendi benedictionem apostolicam cum indulgentia plenaria in articulo mortis, secundum formam a probatis liturgicis libris traditam, quam benedictionem impertiri ne omittat.**

### Can. 469

**Parochus diligenter advigilet ne quid contra fidem ac mores in sua paroecia, praesertim in scholis publicis et privatis, tradatur, et opera caritatis, fidei ac pietatis foveat aut instituat.**

The parish priest should assist the sick of his parish, especially the dying, with diligent care and great charity, by administering the Sacraments and commending them to God.

The pastor or any other priest assisting the sick has the faculty to grant, and should not omit to impart, the

2 Benedict XIV, *De Syn.*, IX, 16, 5. On account of can. 464, § 2, there is danger that exempt communities at times draw lay people to their chapels; but these communities as well as the bishop should see to it that no abuses are tolerated; can. 467, § 2, is evidence enough that the lawgiver wishes to see all the faithful in the parish churches.

Apostolic blessing with the plenary indulgence in *articulo mortis,* according to the formula contained in the approved liturgical books.

The current manuals of pastoral theology may be consulted concerning this point. We merely note that the faculty mentioned is given by the very fact that the patient is in a dangerous state which will probably result in death; hence no special communication of this faculty is needed.

Can. 469 directs the pastor to watch that nothing against faith or morals is taught in his parish, especially in the schools, and admonishes him to foster or establish works of charity, faith, and piety.

Note that when the pastor is called upon to watch, it is as watchman, *not as iudex in causis fidei,* which office is reserved to the bishops wherever the Holy Office cannot immediately exercise supervision.[3] Hence the pastors must report to the bishop. Concerning our so-called *public schools,* no direct interference by the pastor is possible or intended. Yet he may draw the attention of the school board to facts which he has learned from pupils or their parents. In America pastors are entitled to act as free citizens, and no doubt in many localities uniformity of action on the part of the clergy would result in the prevention of much harm on the part of biassed public-school teachers.

As to *works of charity, faith,* and *piety* the pastor shall use prudence and energy in fostering the same. What is suitable in one parish is not always suitable in another. Charity would dictate the fostering of St. Vincent de Paul conferences or similar institutions, and aid to hospitals and orphanages. The faith is promoted

[3] H. Office, May 15, 1901 (*Annal. Eccl.,* 1902, p. 9).

by apologetic lectures and a staunch and wholesome Catholic press. Piety is aided by devotions approved by the Church. *Sed ne quid nimis,* not too many new-fangled practices!

### PARISH BOOKS AND ARCHIVES

### Can. 470

§ 1. Habeat parochus libros paroeciales, idest librum baptizatorum, confirmatorum, matrimoniorum, defunctorum; etiam librum de statu animarum accurate conficere pro viribus curet; et omnes hos libros, secundum usum ab Ecclesia probatum vel a proprio Ordinario praescriptum, conscribat ac diligenter asservet.

§ 2. In libro baptizatorum adnotetur quoque si baptizatus confirmationem receperit, matrimonium contraxerit, salvo praescripto can. 1107, aut sacrum subdiaconatus ordinem susceperit, vel professionem sollemnem emiserit, eaeque adnotationes in documenta accepti baptismatis semper referantur.

§ 3. In fine cuiuslibet anni parochus authenticum exemplar librorum paroecialium ad Curiam episcopalem transmittat, excepto libro de statu animarum.

§ 4. Paroeciali utatur sigillo habeatque tabularium, seu archivum, in quo memorati libri custodiantur una cum Episcoporum epistolis, aliisque documentis, necessitatis vel utilitatis causa servandis; quae omnia, ab Ordinario vel eius delegato visitationis vel alio opportuno tempore inspicienda, religiose caveat ne ad extraneorum manus perveniant.

Every pastor shall keep parish books, especially a record of baptisms, confirmations, marriages, and deaths,

and take an accurate census of his parishioners. All these records must be kept according to the customary ecclesiastical rules, or as prescribed by the Ordinary, and carefully preserved.

The baptismal book should also contain notice as to whether and when the person baptized has received confirmation, was married, received subdeaconship, or made solemn vows. All these details should be embodied in the baptismal certificate, if asked for.

At the end of each year the pastor shall send a copy of all the parish books, except the *status animarum,* to the episcopal court.

The pastor should have a parish seal and archives in which said books, together with episcopal letters and other necessary or useful documents may be safely kept. Seal and archives are to be inspected by the Ordinary or his delegate at the diocesan visitation or at some other convenient time. The pastor shall take conscientious care that these documents do not get into strange hands.

The new law is certainly careful that the official documents be properly written and kept, and any one who has had to deal with documents in an official capacity (for instance, as *defensor vinculi*), will hail the solicitude of the lawgiver in this matter. It may perhaps be tedious, until good habits are contracted, but the fruits will prove priceless.

The most complicated parochial book is the *baptismal record,* which should contain four extra rubrics or separate columns,— one for confirmation, one for matrimony, one for subdeaconship, and one for solemn profession. Why the latter two are mentioned is evident from the fact that they are *impedimenta dirimentia* and have other juridical consequences. That these documents should, as

§ 4 prescribes, be conscientiously kept from profane eyes is very necessary. For official documents of a private character are not intended for those not entitled to know their contents. This secrecy should also be observed towards domestics and other persons wont to frequent the parish house.

# CHAPTER X

## ASSISTANT PRIESTS (VICARS)

The English term "assistant priests" for the Latin *vicarii paroeciales* is perhaps too narrow, inasmuch it includes only one species, *viz.*, those who help disabled or occupied pastors; whilst one whole class of vicars would be excluded, namely, those who are actual parish priests in time of vacancy or who take the place of a habitual pastor. In some countries, *e. g.*, Bavaria and Austria, pastors have *cooperatores* and *coadiutores,* or chaplains, as they are sometimes called. We may retain the term assistant priests because of its common use. The different classes may easily be distinguished by circumlocution.

### VICARS PROPER

### CAN. 471

**§ 1. Si paroecia pleno iure fuerit unita domui religiosae, ecclesiae capitulari vel alii personae morali, debet constitui vicarius, qui actualem curam gerat animarum, assignata eidem congrua fructuum portione, arbitrio Episcopi.**

**§ 2. Excepto casu tum legitimi privilegii aut consuetudinis, tum dotationis vicariae ab Episcopo factae, reservata sibi libera nominatione, vicarium praesentat Superior religiosus, Capitulum aliave persona moralis; loci autem Ordinarius eundem, si idoneum, servato praescripto can. 459, repererit, instituat.**

**§ 3. Vicarius si sit religiosus, est amovibilis sicut parochus religiosus de quo in can. 454, § 5; ceteri omnes vicarii ex parte praesentantis sunt perpetui, sed ab Ordinario possunt, ad instar parochorum, removeri, monito eo qui praesentavit.**

**§ 4. Ad vicarium exclusive pertinet tota animarum cura cum omnibus parochorum iuribus et obligationibus ad normam iuris communis et secundum probata statuta dioecesana vel laudabiles consuetudines.**

A parish which is *pleno iure* united to a religious community, a chapter church, or another moral person, must have a vicar, who has the actual care of souls, and a decent support should be assigned to him according to the judgment of the bishop.

Save in the case of a legitimate privilege or custom, or an endowment made by the bishop, who may have reserved the designation of a vicar, the right of designating the vicar belongs to the religious superior or chapter or moral person; but if found fit according to Can. 457, the Ordinary of the diocese shall grant him the investiture.

The assistant, if he be a religious, is removable like the pastor (can. 454, § 5); while all other vicars are perpetual as far as the presenting party is concerned, but may be removed like parish priests by the bishop, after having informed the one who presented the vicar.

To the vicar exclusively belongs the care of souls with all the parochial rights and obligations according to the common law of the Church and approved diocesan statutes or praiseworthy custom.

This whole canon treats of vicars in the proper sense, *viz.*, such who enjoy the full rights of pastors. They are *actual parish priests*, whilst the habitual pastorship resides with a juridical person, whose rights consist chiefly

in presenting a vicar and receiving the revenues which remain after subtracting the expenses necessary for the decent support of the vicar.

§ 1 speaks of parishes *incorporated* in a juridic person *pleno iure, i. e.,* as to temporal and spiritual matters, which union, as stated above, can be enacted only by the Apostolic See. If a monastery has a parish not fully united, it cannot appoint a vicar from among its own members, if the nature of the order or religious institute does not permit that its members be vicars *in perpetuum.*[1] A chapter *can* appoint one of its own members (canons) as pastor, but he needs the approval of the bishop, or his investiture. After his investiture the vicar has the full care of souls, and, as § 4 states, all the rights and duties of a pastor. Besides, he is entitled to *decent support.* The salary must be determined by the bishop. It is useless to say that the Constitution of Pius V, "*Ad exequendam*" (May 1, 1567) cannot be followed verbally. (This Constitution demanded at least 50 scudi, and not more than 100 scudi, or $100.) The underlying principle still holds good, *viz.,* that those who bear the burden should enjoy the benefits, and that the support of a pastor should be certain, not an uncertain amount from stole fees or similar sources, but a determined sum.[2] Benedict XIV by his Constitution "*Cum semper oblatas,*" Aug. 19, 1744, which was immediately intended for Italy but contains guiding principles for the whole world, gave the bishops full power to determine the "*congrua.*"[3] This is followed by the new Code. Hence the bishop shall establish what we call the *salary* of vicars, or assistant priests, not including in it uncertain revenues

1 Cf. *Trid.,* Sess. 7, c. 7 de ref. Richter, *Trid.,* p. 53, n. 12.

2 Cf. Richter, *Trid.,* p. 54; Santi-Leitner, I, 28 n. 14 (Vol. 1, 228).

3 *Bull. Bened. XIV,* ed. Prati, 1845, t. I, p. 595.

(stole fees, collections, etc.). It is, of course, immaterial whence the salary is taken, whether from pew rent, collections, or other resources, provided only it is stable and sufficient for decent support.

§ 2 establishes the right of *presentation* and investiture or *institutio*. The former is inherent in the juridical person to whom the parish is *pleno iure* united. However, there may be other persons competent to present the vicar; thus by reason of a legitimate privilege, or custom, or donation made by the bishop, the latter may reserve to himself the right of presentation. For endowment, properly made, creates the *iuspatronatus,* of which the Code treats in the Third Book. With these exceptions the right of presentation remains in the moral person.

Presentation does not confer the *titulus* or actual right of administering the parish. This is given by *investiture,* and must be done upon examination or concursus, if the latter is customary in the province, according to canon 459. Should the examination prove the candidate presented to be unfit, those who have the right of presentation must offer another. But if the one presented is found fit, the bishop is obliged to invest him, otherwise he would infringe upon the rights of a third person. This investiture is no mere installation, but confers the *ius in re,* or actual possession, in our language, the conferring of faculties. As soon as the vicar is invested, the whole care of souls (§ 4) devolves upon him; neither have the members of the chapter or monastery the right of meddling with his administration.[4]

§ 3 describes the *manner of removing a vicar.* If the vicar is a religious, he may be removed as stated in can. 454, § 5, *i. e.,* by the bishop or his superior. Religious, as

[4] S. C. C. June 2, 1731, "Nullius Montis Cassini" (Richter, *Trid.,* p. 53, n. 14).

we shall see in the treatise on religious, are capable of administering parishes, but only as temporary, not as perpetual vicars.[5] If the vicar is taken from the secular clergy, he is *perpetual, i. e.,* neither the chapter or moral person nor the bishop can remove him at will; but the bishop must proceed in the manner required for the removal of parish priests. The bishop is also obliged to inform the juridical person of the removal. Wherefore the trial prescribed in the Fourth Book must be instituted in cases of removal.[6]

### VICARS AD INTERIM

### CAN. 472.

**Vacante paroecia:**

**1.° Ordinarius loci in ea quamprimum constituat idoneum vicarium oeconomum, de consensu Superioris, si de religioso agatur, qui eam tempore vacationis regat, assignata eidem parte fructuum pro congrua sustentatione;**

**2.° Ante oeconomi constitutionem, paroeciae regimen, nisi aliter provisum fuerit, assumat interim vicarius cooperator; si plures vicarii sint, primus; si omnes aequales, munere antiquior; si vicarii desint, parochus vicinior; si tandem agatur de paroecia religiosis concredita, domus Superior; loci autem Ordinarius in Synodo vel extra Synodum tempestive determinet quaenam paroecia cuique paroeciae vicinior habenda sit;**

**3.° Qui paroeciae regimen ad normam n. 2 assumpsit, debet loci Ordinarium de paroeciae vacatione statim certiorem facere.**

5 Cfr. Richter, *Trid.*, n. 15, p. 53. Wernz, *Jus. Dec.*, II, p. 1058 (ed. 1); cf. cc. 2147 ff.

6 Cfr. c. 3, X, I, 28; c. un. 6°, III, 18; *Acta S. S.*, XII, 284 f.;

If a parish becomes vacant, (1) the Ordinary of the diocese shall, as soon as possible, appoint a fit *oeconomus* or *administrator,* (with the consent of the religious superior if the administrator is to be a religious), who shall govern the parish during the vacancy and receive part of the income for his support. (2) Before the administrator is appointed, unless otherwise provided, the assistant shall rule the parish, and if there are several assistant priests, the first in rank, or if all are equal in rank, the senior assistant shall assume the office of pastor *ad interim.* If there are no assistant priests, the nearest parish priest shall assume the same office; in parishes entrusted to religious the superior of the house shall act in the same capacity. The Ordinary of the diocese shall in due time, either at or outside the synod, determine which is to be considered the nearest parish. (3) Whoever has assumed the *ad interim* administration of a parish, must inform the Ordinary of the diocese of the vacancy.

The Council of Trent ordained that a *vicarius* be appointed by the bishop as soon as the latter receives notice of the vacancy of a parish.[7] The term *oeconomus* also[8] occurs in connection with the vacancy of episcopal sees. *Oeconomus* here means a vicar or administrator, who shall take charge of the parish until a new pastor is legitimately appointed and has taken possession. Until this *oeconomus* is appointed, the assistant priest shall "run" the parish. Then the Code sets forth various eventualities which may occur in larger parishes. Where there is no assistant, the neighboring priest should take care of the widowed parish *ad interim.* The text speaks of the *parochus vicinior* and says he should be determined by the bishop. The *parochus vicinior* is the one

7 Sess. 24, c. 18, de ref.

8 Sess. 24, c. 16, de ref.

whose parish church is in a direct line the next from the vacant parish church.[9] However, although the direct line may be shorter between parish church A (vacant) and parish church B, yet it may be that the pastor of parish C has better communications with A, on account of superior railroad or automobile or road facilities. Therefore it is left to the judgment of the bishop to decide who is the *nearer* pastor.

The *time* during which the *ad interim* assistant or neighboring priest shall have charge of the vacant parish is not stated. The Council of Trent urged speedy provision (*statim*) by means of a vicar and then, after ten days, public announcement[10] of the examination. But since the Code does not determine the time, the Ordinary should proceed at once to the appointment of a temporary vicar, and hold the examination (or, if prescribed, the concursus), so that the vacancy may not last too long, to the detriment of the vacant church.

## CAN. 473

**§ 1. Vicarius oeconomus iisdem iuribus gaudet iisdemque officiis adstringitur, ac parochus, in iis quae animarum curam spectant; nihil tamen ipsi agere in paroecia licet, quod praeiudicium afferre possit iuribus parochi aut beneficii paroecialis.**

**§ 2. Oeconomus novo parocho vel oeconomo successori coram vicario foraneo vel alio sacerdote ab Ordinario designato tradat clavem archivi et inventarium librorum ac documentorum aliarumque rerum quae ad paroeciam pertinent, et rationem reddat accepti et expensi tempore administrationis.**

9 Cf. Benedict XIV, *De Syn. Dioec.*, II, 12, 16; Santi-Leitner, I, n. 1, 11, n. 36 (Vol. I, p. 135.)

10 Sess. 24, c. 18 de ref.

The temporary administrator enjoys the same rights and is subject to the same obligations as the parish priest in whatever pertains to the care of souls; but he is not allowed to do anything that might prove prejudicial to the rights of the pastor or parish.

The administrator shall hand over the key of the archives to the new pastor, or a new administrator, in presence of the rural dean or a priest appointed by the Ordinary, as also the inventory of the books and documents and other things pertaining to the parish, and render an account of the receipts and expenses during his administration.

The *juridical position* of the administrator is here defined in general: He is pastor with all the rights and obligations [11] attendant upon the care of souls, but he does not hold the parish in his own name (*in titulum*), and must therefore abstain from asserting rights proper to the parish priest. For instance, if a religious institute or a charitable institution or school is under the care of the pastor, the administrator should not surrender any right to the chaplain of that institute, unless otherwise stipulated. Neither should he assume obligations which may prove burdensome to the new parish priest, for instance in hearing confessions or preaching beyond what the law and previous observance require. *Prejudicial to the parish* would be contracting debts or alienating property or changing boundary lines. The administrator may improve the material condition of the parish, *e. g.*, by getting a cheaper rate of interest on money borrowed, by repairing the buildings if it should prove necessary or an unforeseen accident calls for repairs, etc.

11 Hence he is bound to the application of the *missa pro populo*, to residence, etc.

TEMPORARY SUBSTITUTES

## CAN. 474

**Vicarius substitutus qui constituitur ad normam can. 465, §§ 4, 5 et can. 1923, § 2, locum parochi tenet in omnibus quae ad curam animarum spectant, nisi Ordinarius loci vel parochus aliquid exceperint.**

The substitute who takes the place of an absent pastor or of one who has been deprived of his parish and appealed to Rome (can. 1923, § 2) has charge of whatever pertains to the care of souls, unless the Ordinary of the diocese or the parish priest have made exceptions.

Absence has been considered *supra,* can. 465. The substitute who is assigned for the spiritual welfare of the flock, should not interfere with the material administration unless absolute necessity requires. Besides, he must follow the *reasonable instructions* of the absent pastor. We emphasize *reasonable,* because it sometimes happens that an absent priest lays down regulations (for instance, with regard to visiting families or institutes, services, etc.) which can hardly be styled reasonable. The parish priest may except assistance at marriages, unless his absence should last too long, in which case the substitute would have to apply to the Ordinary. The latter, too, may make exceptions when approving the substitute. But unless formally stated and clearly set forth in writing, the Ordinary is not supposed to have made exceptions. If these touch the hearing of confessions, assistance at marriages, etc., they must be strictly complied with by the substitute. Preaching, too, might be excepted, for reasons which the bishop is not bound to prove or state.[12]

12 The "*Congrua*" or decent support of the substitute may be settled between the absent pastor and the substitute. C. C., March 15, 1738, (Richter, *Trid.*, p. 38, n. 18).

Canons 475 sq. treat of what are properly called assistant priests. The first mentions such as are given to priests who for some reason are unable to perform their duties and are styled *coadiutores;* the other speaks of *cooperatores, i. e.,* helpers given to overburdened pastors.

ASSISTANTS PROPER

CAN. 475

§ 1. Si parochus ob senectutem, mentis vitium, imperitiam, caecitatem aliamve permanentem causam suis muniis rite obeundis impar evaserit, Ordinarius loci det vicarium adiutorem, praesentatum a Superiore, si de paroecia agatur religiosis concredita, qui suppleat eius vicem, assignata eidem congrua fructuum portione, nisi aliter provisum sit.

§ 2. Adiutori, si in omnibus suppleat parochi vicem, iura omnia et officia competunt parochorum propria, excepta Missae applicatione pro populo quae parochum gravat; si vero suppleat ex parte dumtaxat, eius iura et obligationes desumantur ex litteris deputationis.

§ 3. Si parochus sit sui compos, adiutor operam suam praestare debet sub eiusdem auctoritate secundum Ordinarii litteras.

§ 4. Quod si per vicarium adiutorem bono animarum provideri nequeat, locus est parochi amotioni ad normam can. 2147–2161.

If a pastor, by reason of age, mental debility, inexperience, blindness, or any other permanent cause, becomes incapable of discharging his duties properly, the Ordinary of the diocese should give him a coadjutor (presented by the religious superior if the parish belongs to religious) to take his place and to receive the necessary

support from the revenues, unless provided otherwise.

To this coadjutor, if he takes the pastor's place to the full extent, belong all the rights and obligations incumbent on parish priests, with the exception of the application of the Mass *pro populo;* but if he takes the pastor's place only in part, his rights and obligations must be determined by his letter of appointment.

If the pastor is of sound mind, the coadjutor must discharge his office under authority of the pastor, according to the faculties given by the Ordinary.

If the welfare of souls cannot be properly taken care of by a coadjutor, the pastor may be removed, according to cc. 2147–2161.

According to the very humane adage, several times repeated in the old law,[13] *"Afflicto afflictio non est addenda,"* the Code provides a coadjutor for a priest who is in any way incapable of properly performing his pastoral duties.

The first reason is *old age,* which with some comes sooner, with others later, but nearly always entails unpleasant consequences, weakened eyesight, hard hearing, etc. A definite age-limit is difficult to draw. The Decretals, when speaking of old age as a reason for resignation, define it as debility proceeding from age and entailing some weakness which renders a priest incapable of discharging the pastoral office.[14] Seventy is considered in law as the age of *senes* or old men.[15] Practically, age must be measured by physical frailty rather than by a certain number of years.

The *mental debility* next mentioned in our canon is a

13 Cfr. c. 2, C. 7, q. 21 (Greg. M.); c. 5, X, III, 6, de clerico aegrotante.

14 c. 10, X, I, 9.

15 Reiffenstuel, II, 6, n. 8 ff.

habitual *vitium mentis*. Insanity, therefore, even in its milder forms, certainly falls under this category.

*Imperitia* is inexperience. The Latin word refers to practical rather than speculative science; wherefore it does not, primarily, imply ignorance, such as was mentioned side by side with inexperience in the decree "*Maxima cura,*" Aug. 20, 1910, from which our text is apparently taken. Inexperience here means rudeness, imprudence, etc., in the confessional, or on the pulpit, or in dealing with the people[16]

*Blindness* (*caecitas*) differs from weak eyesight or half blindness (*caecutiens*), which do not entirely destroy the faculty of sight. All these bodily ailments are supposed to be incurable or permanent.

These four and similar reasons (*e. g.,* deafness or some other permanent disability, especially when of an incurable nature) justify the bishop in giving an assistant to the afflicted pastor. In case the parish is in charge of religious, the assistant must be *presented* by the religious superior. Here we draw attention to the fact that even a religious is entitled to the benefits of the law, though not, of course, to the detriment of the parish.

The powers or *faculties* of the assistant are described in §§ 2 and 3. Their extent must be gauged partly by the condition of the pastor, partly by the letters of appointment or credentials. No general rule can be established. The assistant is entitled to the *congrua,* as per § 1. This may, especially in poor parishes, cause some trouble. The assistant would have to be paid from the salary of the pastor; this would perhaps mean privation for the sufferer, who, in case of sickness, would need more than his salary. On the other hand, a poor parish

16 *Trid.,* Sess. 21, c. 6, speaks of "*illiterati et imperiti,*" but illiterate priests are no longer found.

can ill afford to pay two priests. Hence an *infirm priests' fund* should be established in every diocese. Some kind of an insurance or pension fund would also help in this direction. If money can be raised by non-Catholic sects for pensioning their ministers, we do not see why this should be impossible among Catholics.

The last paragraph mentions *removal.* If the welfare of souls cannot be procured by an assistant, the bishop must proceed to remove the pastor, according to cc. 2147 ff. For the welfare of souls is the supreme law.

### COADJUTORS

### Can. 476

§ 1. Si parochus propter populi multitudinem aliasve causas nequeat, iudicio Ordinarii, solus convenientem curam gerere paroeciae, eidem detur unus vel plures vicarii cooperatores, quibus congrua remuneratio assignetur.

§ 2. Vicarii cooperatores constitui possunt sive pro universa paroecia, sive pro determinata paroeciae parte.

§ 3. Non ad parochum, sed ad loci Ordinarium, audito parocho, competit ius nominandi vicarios cooperatores e clero saeculari.

§ 4. Vicarios cooperatores religiosos Superior cui id ex constitutionibus competit, audito parocho, praesentat Ordinario, cuius est eosdem approbare.

§ 5. Vicarius cooperator obligatione tenetur in paroecia residendi secundum statuta dioecesana vel laudabiles consuetudines aut Episcopi praescriptum; imo prudenter curet Ordinarius, ad normam can. 134, ut in eadem paroeciali domo commoretur.

§ 6. Eius iura et obligationes ex statutis dioecesanis, ex litteris Ordinarii et ex ipsius parochi commis-

**sione desumantur; sed, nisi aliud expresse caveatur, ipse debet ratione officii parochi vicem supplere eumque adiuvare in universo paroeciali ministerio, excepta applicatione Missae pro populo.**

**§ 7. Subest parocho, qui eum paterne instruat ac dirigat in cura animarum, ei invigilet et saltem quotannis ad Ordinarium de eodem referat.**

**§ 8. Si nec per vicarios cooperatores spirituali fidelium bono consuli rite queat, Episcopus provideat ad normam can. 1427.**

If, on account of the large number of people in a parish, or for other reasons, the pastor, in the judgment of the Ordinary, is unable to take proper care of the parish, he should be given one or more *cooperatores* or assistants, to whom a sufficient salary should be assigned.

Such assistants may be appointed either for the whole parish at large or for a particular part thereof.

Not to the pastor, but to the Ordinary of the diocese, upon having heard the pastor, belongs the right to nominate assistants from among the secular clergy.

Assistants belonging to a religious order must be presented by the competent superior, upon having heard the pastor, to the Ordinary for his approval.

The assistant is obliged to reside in the parish, according to the diocesan statutes, or praiseworthy custom, or the episcopal injunction. The Ordinary should see to it, according to can. 130, that the assistants dwell in the parish house.

Their rights and obligations must be determined from the diocesan statutes, the letters of the Ordinary, and the instructions of the pastor; however, unless the contrary is expressly stated, they take the place of the pastor in virtue of their office and must assist him in the entire

ministry of the parish, except only in the application of the Mass for the people.

The assistant is subject to the pastor, who should paternally instruct and advise him in the care of souls, watch over him, and at least once a year report to the Ordinary about him.

If the spiritual welfare of the faithful cannot be procured by means of assistants, the Ordinary should proceed according to can. 1427.

The Council of Trent enjoined the bishops to compel pastors whose parishes were so large that one priest alone could not administer the Sacraments or perform the divine service, to take unto themselves co-laborers.[17] Our canon mentions the same reason, but adds, "*aliasve causas.*" Some "other reasons" might be distance or increased pastoral work, for instance, in the parish schools or hospitals, increased frequentation of the Sacraments, such as is very perceptible now-a-days in many parishes of this country. The assistant may then be appointed either for the parish at large, or for some portion thereof, which latter would be the case if there were a chapel or oratory for the convenience of the more distant parishioners. Even where there is no chapel or oratory, it might be that the assistant would have to attend a group of parishioners speaking a different language (German, Italian, Polish, etc.).

§ 3 and § 4 speak of the *appointment.* According to the Council of Trent[18] the designation of an assistant was left in the hands of the pastor, who, however, could be compelled to take an assistant. Various provincial councils gave to the bishops the power to appoint assistants.[19] Therefore it may be said that our canon em-

17 Sess. 21, c. 4 de ref.
18 *Ib.*
19 Conc. Quebec., de vicariis; Conc. Hib. Thurl. de coadjutoribus; cf. *Coll. Lac.,* III, 657, 790.

bodies the common law arising from a practice otherwise established. Something of the old rights of parish priests remains, for the bishop is obliged to ask the opinion of the pastor concerning the necessity of appointing an assistant. But if the Ordinary is convinced of the necessity, he may appoint an assistant even against the will of the pastor.[20]

If the parish belongs to a religious community, the assistant to be appointed must be presented by the competent superior. This competency, as said above, is determined by the constitutions of the respective community. But in the case of religious, too, the pastor should be heard as to the necessity, not the person, of the assistant. The bishop in giving his approval also imparts the necessary powers.

These powers are determined (§ 6) by the diocesan statutes, the credentials of the Ordinary, and the commission of the pastor. Note the descending scale. First and above all the *diocesan statutes*[21] should regulate the juridical position of the assistants. After that the *letters of deputation* sent by the bishop must be inspected, because it may be that these either extend or restrict the rights given by the diocesan statutes, which the bishop can do at random, he being the sole legislator of the diocesan laws. Besides, it may be that the bishop has in the meantime received more ample faculties, which he is willing to communicate. As to the *commission of the pastor,* it must be noticed that he is not allowed to limit or curtail the rights of his assistants, as granted by the diocesan statutes or the letters of the bishop, unless these letters contain a restriction in favor of the pastor. The

20 Cf. can. 105.

21 It would not be out of place if, in order to give authority and produce uniformity, a plenary council would establish some rules to that effect.

parish priest is allowed to set up his own regulations, but they must not clash with the common law, the episcopal credentials, or the diocesan statutes.

§ 5 enjoins residence and dwelling in the same parish house, which is generally observed in the U. S. Some holidays are to be granted to assistants.

A very remarkable passage is that which says that the assistant, *by virtue of his office,* takes the place of the pastor. This means that no subdelegation in the proper sense is needed, for "by virtue of his office" signifies that by his very appointment the assistant can do what the pastor is empowered to do, unless the latter excepts something especially.

§ 7 speaks of the *relation between pastor and assistant.* It may not be amiss here to add what the Second Provincial Council of Quebec (A. D. 1854) enacted concerning this point: "The assistants shall diligently endeavor to act in uniformity with the pastor, for too great discrepancy in the practice of the sacred ministry might turn to destruction rather than edification. Besides, they shall most carefully avoid whatever in words or deeds might belittle the pastor, but in all things conduct themselves modestly, and diligently further the welfare of the people." [22]

We may sum up the relation between pastor and assistant as follows:

(a) Appointment is made by the Ordinary upon having heard the pastor;

(b) The assistant is bound to residence, because he must aid the pastor;

(c) According to can. 460, the pastor is the one admin-

22 *Coll. Lac.,* III, 657.

istrator of the parish, because of the unity desired by the Church in the government of the parish;

(d) If the pastor, or the letters of appointment, or the diocesan statutes except nothing, the assistant is *ratione officii* supposed to possess all the powers of the pastor, assistance at marriages not excluded (can. 1096, § 1), especially during the absence of the pastor;

(e) The application of the *missa pro populo* is incumbent on the pastor only.

The last paragraph provides for the division or dismemberment of a parish, if effective parish work cannot be secured even by means of assistants (can. 1427).

### REMOVAL

### Can. 477

**§ 1. Vicarii paroeciales de quibus in can. 472–476, si religiosi sint, amoveri possunt ad normam can. 454, § 5; secus ad nutum Episcopi vel Vicarii Capitularis, non autem Vicarii Generalis sine mandato speciali.**

**§ 2. Quod si vicaria sit beneficialis, vicarius cooperator removeri potest processu ad normam iuris, non solum ob causas propter quas alii parochi removeri possunt, sed etiam si graviter subiectioni defecerit parocho debitae in exercitio suarum functionum.**

The vicars spoken of in can. 472–476, if they are religious, may be removed according to can. 454, § 5; if secular priests, they may be removed by the bishop or the vicar-capitular, but not by the vicar-general, unless he has a special mandate.

If a benefice is attached to the vicar's office, the cooperator may be removed, upon trial conducted according to law, for reasons which admit the removal of a

parish priest, but also for any grievous insubordination shown to the parish priest in the exercise of the ministry.

Removal was spoken of in can. 454, concerning religious. A secular assistant may be removed at the good pleasure of the bishop or the vicar-capitular (administrator) during a vacancy. But the vicar-general needs a special mandate for that purpose. Of course, by removal is not meant dismissal from the diocese; for such a penalty cannot be inflicted without due process, as will be seen in the penal Code. Even assistants must be treated according to the law.

§ 2 considers the case of an ecclesiastical *benefice* being attached to the office of an assistant. This is the case in many dioceses of Europe, especially in countries where Church and State are closely connected. To such benefices is often attached the *iuspatronatus,* either *laicalis* or *ecclesiasticus,* and a removal is not so easily carried out. Besides, the objective perpetuity of the benefice seems to constitute a title to permanency. Note, however, that the term *cooperator* is here expressly used, not *coadiutor;* wherefore a cooperator is of a more stable character. To remove a cooperator, then, requires a trial, but the reasons need be less weighty than those for the removal of a pastor.

### PRECEDENCE OF ASSISTANTS

### CAN. 478

**§ 1. Sicut parochus ecclesiae cathedralis, ita vicarius paroecialis Capituli cathedralis praecedit omnibus aliis dioecesis parochis aut vicariis; oeconomi vero ius praecedentiae regitur normis in can. 106 statutis.**

**§ 2. Vicarii substituti et adiutores praecedunt, dum**

**in munere manent, vicariis cooperatoribus; hi aliis sacerdotibus ecclesiae paroeciali addictis.**

As the cathedral pastor, so the assistant of the cathedral parish enjoys *precedence* over all other pastors and assistants of the diocese; the precedence of the *oeconomus* is governed by the general rules laid down in can. 106.

Substitutes and assistants (*adiutores*) take precedence over *cooperatores,* and these in turn over all other priests attached to the parish church.

The first paragraph may surprise the one or other master of ceremonies in the U. S. For, if we mistake not, the assistants of cathedral churches had to give way to pastors. The Code seems to reverse the order. Yet we believe that the reversal is only apparent. For it must be remembered that the Code speaks of *cathedral* chapters made up of canons, one of whom is parish priest, and another, perhaps, assistant, if the assistant is not taken from the beneficiaries belonging to the chapter. This state of affairs is quite different from that obtaining in our country, and hence we believe, until a final decision is made by the Apostolic See or a Plenary Council, the old practice must be followed; *i. e.,* the parish priests take precedence over all assistants, even those of the cathedral.

The *oeconomus* mentioned in § 1 is the one spoken of in can. 432, who has temporal care of the diocese during its vacancy. However, we would not exclude the *oeconomus* of a vacant parish. To this class must be applied the general rules of precedence (can. 106).

That the substitutes and coadjutors of pastors should take precedence over the assistants proper may be deduced from the law of representation; they represent pastors,

who are in possession of precedence, whilst the assistants, as such, do not represent pastors. This law of representation must also be applied to religious who are substitutes of pastors, because the canon makes no distinction. But the general rules laid down in can. 106 must be followed here.

## CHAPTER XI

### RECTORS OF CHURCHES

We said above that, besides the baptismal churches, other oratories were sometimes erected, especially by landlords for their families and dependents, which, however, were not distinguished by a baptismal font. Chapter XI treats of a class of churches which seem to be a relic of such public oratories without parochial rights.

### CAN. 479

§ 1. Nomine rectorum ecclesiarum hic veniunt sacerdotes, quibus cura demandatur alicuius ecclesiae, quae nec paroecialis sit nec capitularis, nec adnexa domui communitatis religiosae, quae in eadem officia celebret.

§ 2. De cappellano religiosarum, sodalium virorum religionis laicalis, confraternitatis vel alius legitimae associationis, serventur particularium canonum praescripta.

### CAN. 480

§ 1. Ecclesiarum rectores libere nominantur ab Ordinario loci, salvo iure eligendi aut praesentandi, si cui legitime competat; quo in casu Ordinarii est rectorem approbare.

§ 2. Licet ecclesia pertineat ad aliquam religionem exemptam, rector tamen a Superiore nominatus debet ab Ordinario loci approbari.

**§ 3. Si ecclesia coniuncta sit cum Seminario aliove collegio quod a clericis regitur, Superior Seminarii vel collegii est simul ecclesiae rector, nisi aliter loci Ordinarius constituerit.**

*Rectors* of churches are priests who take care of a church which is neither a parish nor a capitular church, nor entrusted to a religious community.

As to chaplains of nuns and lay religious, confraternities or sodalities, the special rules concerning them must be observed.

To our knowledge there are not many such *chapels of ease,* as they might be styled, in our country. For the church whose holder is here called *rector,* is not one of the usual parochial places of worship and sacred ministry (see can. 481), but usually a beneficiary church, such as there are in the old country, with the character of public oratories.

The rectors of such churches, according to can. 480, are freely named by the Ordinary of the diocese or approved by him, if the right of election or presentation can be lawfully claimed by some one else.

If such churches belong to an exempt order, the rector named by the religious superior must be approved by the Ordinary of the diocese.

If such a church is united with a seminary, or college ruled by the clergy, the superior of this seminary or college is at the same time rector of the church, unless the Ordinary of the diocese has determined otherwise.

*Approbation* here means nothing else than the ratification of the rectors presented. The bishop is not entitled to subject them to an examination, because the care of souls, properly so-called, is not attached to such churches. However, if faculties for hearing confession are de-

manded or granted, the bishop may have the rector examined. That the hearing of confessions is not forbidden in such churches appears, at least negatively, from the following canons.

CAN. 481

**In ecclesia sibi commissa rector functiones paroeciales peragere nequit.**

CAN. 482

**Ecclesiae rector potest divina officia etiam sollemnia ibidem celebrare, salvis legitimis fundationis legibus et dummodo non noceant ministerio paroeciali; in dubio autem utrum huiusmodi detrimentum contingat, necne, Ordinarii loci est rem dirimere et opportunas normas praescribere ad illud evitandum.**

In such churches the rector is not allowed to exercise parochial functions; but he may hold solemn divine services, unless the laws of foundation, or detriment to the parochial ministry, should prevent; however, where there is doubt of such a damage befalling a parish, the Ordinary of the diocese should settle the question and make provisions to avoid it.

CAN. 483

**Si ecclesia, Ordinarii loci iudicio, ita a paroeciali distet ut paroeciani non sine gravi incommodo possint paroecialem ecclesiam adire ibique divinis officiis interesse:**

**1.° Loci Ordinarius, gravibus quoque statutis poenis, potest rectori praecipere ut horis populo commodioribus officia celebret, fidelibus dies festos ac ieiunia**

**denuntiet et catecheticam instructionem et Evangelii explicationem tradat;**

**2.° Parochus potest ex eadem sanctissimum Sacramentum, inibi ad normam can. 1265 forte asservatum, pro infirmis desumere.**

If, in the Ordinary's judgment, the church is so far distant from the parish church that the parishioners can frequent the parish church only with great inconvenience, then (1) the Ordinary can, under threat of heavy penalties, command the rector to hold services at hours more convenient for the people, to announce holydays and fast days, give catechetical instructions and explain the gospel; (2) the pastor can take the Blessed Sacrament, if preserved there according to can. 1265, and administer it to the sick.

§ 1 gives the bishop a power which was formerly looked upon as exclusively reserved to the Apostolic See.[1] Of course we suppose that the rector's church is held as a benefice. The bishop is now entitled to compel such rectors to assume *nova onera spiritualia,* which by virtue of their office they are not obliged to perform. However, this is for the benefit of the faithful. But a material reward would not be out of place and ought to be mentioned in the text. We repeat what we stated above, that if he has the necessary faculties, a rector is allowed to hear confessions in his church. For, on the one hand, hearing confessions is not a strictly parochial right or rather duty, and, on the other, a rector is entitled to distribute holy, even paschal, communion.

## Can. 484

**§ 1. Sine rectoris vel alius legitimi Superioris li-**

1 Cfr. t. 1, 12, lib. III Decret.; *Trid.,* Sess. 25, c. 5, de ref., III, 12, n. 6; Aichner, § 79, 4, c.

**centia saltem praesumpta, nemini licet in ecclesia Missam celebrare, Sacramenta ministrare aliasve functiones sacras peragere; haec vero licentia dari vel negari debet ad normam iuris.**

**§ 2. Quod attinet ad conciones in ecclesia habendas, serventur praescripta can. 1337–1342.**

Without the at least presumptive permission of the rector or other legitimate superior, no one is allowed to say Mass in such a church, or administer the Sacraments, or perform other sacred functions. The permission must be granted or denied according to the law.

Concerning the preaching in such churches, the rules laid down in cc. 1337–1342 are to be observed.

As presumption is a reasonable conjecture from facts likely to happen, a presumed license is based upon a natural conjecture that it would not be withheld if asked for. For saying Mass, a "celebret" should always be demanded, unless the priest is known; concerning other functions, the laws laid down for the administration of the Sacraments must be followed.

## Can. 485

**Rector ecclesiae, sub auctoritate Ordinarii loci servatisque legitimis statutis ac quaesitis iuribus, debet curare seu advigilare ut divina officia ad sacrorum canonum praescripta ordinate in ecclesia celebrentur, onera fideliter adimpleantur, bona rite administrentur, sacrae supellectilis atque aedium sacrarum conservationi et decori prospiciatur, et ne quidpiam fiat quod sanctitati loci ac reverentiae domo Dei debitae quoquo modo repugnet.**

The rector of the church must, under the authority of

the Ordinary of the diocese, and with due regard to the lawful statutes and the acquired rights of others, see to it that the divine services are properly carried out, according to the prescriptions of the sacred canons, that all obligations are faithfully complied with, that the property is duly administered, that the sacred furniture and the buildings are properly and neatly kept, and that nothing is done which might be repugnant to the sanctity of the place or to the reverence due to the house of God.

The *statutes* here mentioned are such rules as the founder of the church may have laid down. Now-a-days all such rules need the approval of the Ordinary. The *iura quaesita* are rights acquired by the family of the founder or other persons benefitted by the church. These must always be respected and are to be considered first if a conflict (see can. 482) should arise.

### Can. 486

**Rectorem ecclesiae, etsi ab aliis electum aut praesentatum, Ordinarius loci removere ad nutum potest ex qualibet iusta causa; quod si rector fuerit religiosus, servetur, circa eius remotionem, praescriptum can. 454, § 5.**

The Ordinary of the diocese may, at will and for any just cause, remove a rector, although elected or presented by others; if he is a religious, can. 454, § 5 must be observed in his removal.

After reading this last chapter of the first part of the Code, our so-called rectors will want to change their title into that of *pastors*. That they are pastors in the canonical sense of the word can no longer be doubted. How else should we classify them? They are neither "vi-

cars" of the bishop nor "rectors," but *pastores animarum,* pastors of souls, who hold their parishes in their own name.

# APPENDIX

## EPISCOPAL FACULTIES

This volume was already in type when the *S. C. Consistorialis* issued an important decree, which we reprint here *in extenso,* adding a few observations.

"Proxima sacra Pentecostes die, novo ecclesiasticarum legum Codice vim obtinente, omnes locorum Ordinarii facultatibus quam pluribus ipso iure instruentur, quas antea ab Apostolica Sede postulare solebant et communibus indultis assequebantur. Sufficit enim consulere canonem 349 collatum cum 239 circa plura privilegia personalia, quibus Episcopi augentur, canonem 386 circa electionem examinatorum et iudicum synodalium, 468 et 914 circa benedictionem papalem *in articulo mortis* et in maioribus anni solemnitatibus, 534 et 1532 circa alienationes, 806 circa sacri iterationem, 822 circa Missae celebrationem extra ecclesiam et oratorium, 1006 circa ordinationes extra tempora, 1043 et 1045 circa dispensationes ab impedimentis matrimonialibus, 1245 circa dispensationes ab abstinentia et ieiunio, 1304 circa benedictionem sacrorum utensilium, quin de multis aliis hic mentio fiat, ut illico appareat Episcopos, vi Codicis, tanta munitos esse potestate ut, quoties Ecclesiae utilitas et animarum salus id requirat, communis legis rigorem temperare et iustas dispensationes largiri aeque opportuneque valeant.

Quapropter indulta quae hucusque, postulantibus Ordinariis, ad hunc finem concedebantur, quaeque vel in Brevi dicto 25 annorum, vel in formulis typis impressis ad decennium, ad quinquennium aut etiam ad triennium valituris continentur, supervacanea evadere videntur; quin imo confusionem haud levem ingerere, eo quod a novis Canonici Iuris ordinationibus in pluribus discrepant.

Hisce itaque de causis, necnon ad discrimina in canonica disciplina tollenda maioremque unitatem in Ecclesia inducendam, Ssmus D. N. Benedictus Pp. XV, de consulto peculiaris coetus Emorum Patrum Cardinalium, hoc S. C. Consistorialis decreto ea quae sequuntur statuit et sanxit:

1) exceptis locis S. Congregationi de Propaganda Fide subiec-

tis, pro quibus suo tempore quae opportuna erunt decernentur, alibi, in universis scilicet dioecesibus iuri communi obnoxiis, facultates omnes pro foro externo Ordinariis concessae, quaeque in Formulis et Brevi superius recensitis continentur, a die 18 maii huius anni cessabunt, neque amplius in usu esse poterunt;

2) in locis tamen remotioribus aliisque ad quae, sive praesentis belli causa, sive alia qualibet ratione, praesentis decreti notitia utili tempore non pervenerit, dispensationes et ordinationes vi veterum facultatum ab Ordinariis forte concessas Ssmus Dominus ratas habet, firmo tamen ut ipsi ab acceptae notitiae die, si res adhuc sit integra, huic decreto se conformet;

3) facultates pro foro interno a S. Poenitentiaria datae, aliaeque ratione praesentis belli concessae, aut peculiaribus de causis ab Ordinariis obtentae, sub huius decreti dispositione non comprehenduntur, et ideo abolitae non sunt;

4) circa dispensationes matrimoniales, quamvis vi canonum 1043-1045 Ordinarii opportunas dispensationes largiri queant *"urgente mortis periculo"* et *"quoties impedimentum detegatur cum iam omnia sint parata ad nuptias, nec matrimonium sine probabili gravis mali periculo differri possit,"* nihilominus Ssmus Dominus, attentis temporum et locorum adiunctis, haec ulterius indulgenda decrevit:

*a*) ut locorum Ordinarii in America, in Insulis Philippinis, in Indiis Orientalibus, in Africa extra Mediterranei maris oras, et in Russia, per quinquennium a die 18 maii huius anni, dispensare valeant ab impedimentis minoris gradus quae recensentur in can. 1042, servatis regulis in eo Codicis capite statutis: itemque ut matrimonia nulliter contracta, ob aliquod eiusdem minoris gradus impedimentum, in radice sanare queant, iuxta regulas in capite XI, tit. VII, lib. III Codicis *de convalidatione matrimonii* positas, monita parte impedimenti conscia de sanationis effectu;

*b*) ut iidem locorum Ordinarii dispensare pariter per quinquennium valeant ab impedimentis maioris gradus, sive publicis sive occultis, etiam multiplicibus, iuris tamen ecclesiastici (exceptis impedimentis provenientibus ex sacro presbyteratus ordine et ex affinitate in linea recta consummato matrimonio), nec non ab impedimento impediente mixtae religionis, si petitio dispensationis ad S. Sedem missa sit et urgens necessitas dispensandi supervenerit, pendente recursu. Concedendo tamen hisce in casibus dispensationes, Ordinarius prae oculis semper habeat regulas statutas in Codice, lib. III, tit. VII, cap. 2, 3 et 4, circa

impedimenta in genere et in specie, itemque clausulas apponi solitas in matrimoniis cum hebraeis et mahumetanis; nec dispensationem concedat nisi caverit de plena earum omnium observantia iuxta sacrorum canonum praescriptiones, et iuribus S. Congregationis de disciplina Sacramentorum circa taxarum solutionem consulat;

*c*) ut Ordinarii Galliae, trium regnorum Magnae Britanniae, Germaniae, Austriae et Poloniae, durante bello, quoties aditus ad S. Sedem difficilis aut impossibilis saltem per mensem praevideatur, iisdem facultatibus uti possint, quae supra sub litteris *a* et *b* recensentur.

Praesentibus valituris de mandato Ssmi contrariis quibuslibet minime obstantibus.

Datum Romae, ex Secretaria S. C. Consistorialis, die 25 aprilis 1918.

✠ C. Cardinalis De Lai, Ep. Sabinen., *Secretarius.*

L. ✠ S.

† V. Sardi, Archiep. Caesarien., *Adsessor.*

This decree establishes that

(1) *All the faculties pro foro externo* granted to the Ordinaries of all dioceses subject to the general hierarchy of the Church shall *cease* May 18, 1918, whereas the faculties granted to the Ordinaries of the territories subject to the S. C. Prop. Fide shall remain in force;

(2) In those countries which, by reason of the war or for another cause, do not receive timely notice of this decree, all the dispensations and ordinances issued in virtue of former faculties shall be valid and licit until notice is duly received;

(3) The special faculties granted by the S. Penitentiary are not touched by the present decree;

(4) Concerning *matrimonial dispensations,* some of which have reference to can. 1043–1045, the following rules are to be observed:

(a) The Ordinaries of America, of the Philippine Islands, of the East Indies, of Africa, with the exception of the Mediterranean coast, and of Russia, from May 18, 1918, enjoy the faculty of dispensing from *all minor impediments,* as enumerated in can. 1042: consanguinity in the third degree of the collateral line, affinity in the second degree of the collateral line, public honesty in the second degree, spiritual relationship, crime arising from adultery with a promise of marriage or an attempt at

marriage before a civil magistrate. The Ordinaries may also heal (*sanatio in radice*) marriages contracted invalidly on account of the said five minor impediments. This faculty lasts for five years from May 19, 1918.

(b) The Ordinaries of the countries mentioned, for five years, from May 18, 1918, enjoy the faculty of dispensing from *all impediments,* either public or secret, also multiplied, provided they are *iuris ecclesiastici* and do not concern the priesthood or affinity in the direct line, *consummato matrimonio,* of dispensing from the impediment of mixed religion, provided a petition has been sent to Rome and an urgent necessity of dispensing exists. But the provisions of the new Code in Book III, tit. VII, chapt. 2, 3 and 4 must be strictly complied with. For further explanation we must refer to the Code and our comments on Book III, which, *Deo volente,* we shall soon have ready.

A rapid glance at the faculties [1] thus granted to the Ordinaries of our country results in the following comparison.

Form I

1. *Extra tempora* et *interstitia* is useless because granted by Can. 1006 and Can. 978, § 2.

2. Concerning irregularities the Ordinaries may no longer dispense, except in such as are secret and not brought before the episcopal court at least by summons, can. 990.

3. From the age required for ordination no dispensation is allowed, according to can. 975.

4. The only reserved vows are those of perfect and perpetual chastity and that of entering religion (can. 1309), from which the Ordinary may not dispense; all others are not reserved (can. 1313).

5. Simony in ecclesiastical offices, benefices, and dignities (can. 2392) is *simpliciter reservata* to the Holy See, and the Ordinary can no longer absolve therefrom, unless he has received a general faculty (can. 2253, § 3); but the faculties *pro foro interno* given by the S. Penitentiary remain.

6–10. About matrimonial dispensations see the decrees above, 3, a and b.

11. Touches the *Privilegium Paulinum* (can. 1120–1127), concerning which, for reasons that may prompt another answer

[1] We follow the text as printed in Sabetti's *Theol. Moral.,* 1917, p. 1082 ff.

from the Apostolic See, we do not wish to prejudice opinions, though we think the faculties have ceased.

12. Holy oils are to be blessed only on Holy Thursday (can. 734, § 1), but the first part of the faculty, concerning the number of priests, probably remains.

13. Concerning the blessing of sacred vestments and the reconciliation of churches, see can. 1304, 1177, and 1207.

14–15. See can. 2253 concerning the power of absolution.

17–19. Concerning indulgences see can. 912; as to cardinals, can. 239; § 1, n. 24; metropolitans, 274, 2; bishops, can. 349, § 2, n. 2. Can. 468, 914, 20, we believe, still hold good, because not given to the Ordinaries as such, but to dioceses.

21. Forbidden books, see can. 1401–1403.

22. Concerning regulars receiving the government of parishes no faculty is required; cfr. can. 454 and 630; but an incorporation may be made only with papal permission; can. 452.

23. No faculty needed by reason of can. 806.

24. Can. 847 allows our custom concerning Holy Communion brought to the sick.

25. About the wearing of clerical dress no faculty is needed; cfr. can. 136.

26. In regard to the recitation of the Breviary (can. 135) no faculty (properly so called) is needed, and only the general rules of morality need be observed; but can. 135 does not oblige one to substitute three rosaries for the Breviary.

27. No faculty now needed; cfr. can. 1245.

28 and 29. Must be regulated according to what has been said above, can. 196–210.

*Facultates Extraordinariae T.*

1. Cannot be applied (cfr. above, n. 3).

2. The *titulus servitii ecclesiae* is now common law (see can. 981), and therefore no faculty is needed.

3–6. Dispensations from these impediments may be granted in virtue of the decree of April 25, 1918, with the exception of affinity *in linea recta* (cfr. can. 97).

7. Remains, because the faculties of the S. Poenit. remain in force in virtue of the decree quoted.

8–12. Remain in virtue of the same decree and as far as this decree permits. But perhaps the reader will find a difficulty in said decree concerning *mixed religion: "nec non ab*

*impedimentio impediente mixtae religionis, si petitio dispensationis ad S. Sedem missa sit et urgens necessitas dispensandi supervenerit, pendente recursu.*" This seems to mean that for each case a petition has to be sent to Rome (Holy Office), and the case would be urgent pending recourse. We confess that this seems a very rigid application of the law and might cause great trouble, not only now, in time of war, but even in normal times. Probably a mitigation can be obtained.

13. See above, Form I, 11.

14. Is superfluous, according to can. 47.

15. Must be judged according to can. 1056.

16. Must be brought in accordance with can. 1429.

17–20. See above, Form I, n. 17–20.

21–22. These, we believe, remain, because the department of indulgences is attached to the S. Penitentiary, whose faculties are not revoked. Besides the Cardinals enjoy them (can. 239, n. 5 f.), as well as the bishops (can. 349, § 1, 10). It would be about time to stop the privileged state of certain orders and congregations, if these things are meant for the faithful at large, and we really expected a canon to that effect.

23–26. Are strictly missionary faculties, not applicable to our country, for instance, blessing of bells (can. 1169, 1155).

27. Concerning privileged altars, can. 916 f. must be observed.

28. The recitation of the Breviary must be performed according to rubrics and sound moral principles.

29. As to forbidden books, see can. 1401–1403.

30. The serving of flesh-meat on forbidden days to non-Catholics is to be judged according to moral principles.

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