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LA THÈSE A ÉTÉ
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THE COLLEGE OF CONSULTORS
AND
THE EXERCISE OF ECCLESIAL AUTHORITY

by

John B. Hannon

A dissertation submitted to the Faculty of Canon Law of
Saint Paul University, Ottawa, in partial fulfilment of the
requirements for the degree of Doctorate in Canon Law.

Ottawa, Canada

January, 1986



John B. Hannon, Ottawa, Canada, 1986.

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BIOGRAPHICAL NOTE

Rev. John Bernard Hannon was born on October 21, 1952, in Melbourne, Australia. After completing his Matriculation at Christian Brothers' College, East St. Kilda (1969), he studied at Melbourne University (1970), entered Corpus Christi College seminary in 1971, and then studied at Monash University (1974-1976), where he received a Bachelor of Science with Honours in 1977, and a Diploma of Education in 1981. He received a Bachelor of Theology from Catholic Theological College in 1978, and was ordained for the Archdiocese of Melbourne the same year.

After three and a half years as an assistant priest in the parish of Croydon - in Melbourne - he commenced studies in Canon Law at St. Paul University, Ottawa in September, 1982, receiving his Licentiate in Canon Law in 1984. Following this, he undertook doctoral studies in Canon Law at the same university.

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ABBREVIATIONS

<u>AAS</u>	Acta Apostolica Sedis
<u>ASS</u>	Acta Sanctas Sedis
<u>CCCB</u>	Canadian Conference of Catholic Bishops
<u>CIC</u>	Codex Iuris Canonici
<u>CLSA</u>	Canon Law Society of America
<u>CLSANZ</u>	Canon Law Society of Australia and New Zealand
<u>CLSGBI</u>	Canon Law Society of Great Britain and Ireland
<u>CUA</u>	Catholic University of America
<u>AA</u>	Apostolicam actuositatem
<u>CD</u>	Christus Dominus
<u>ES</u>	Ecclesiae sanctae
<u>GS</u>	Gaudium et spes
<u>LG</u>	Lumen gentium

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INTRODUCTION

Consultation is a notion which receives much recognition in the decision-making processes of the modern world. Movements as diverse as politics, business and church administration, even small group situations, attempt somehow to involve the many members in decision-making, but in varying times, however, such involvement is rather nominal; yet, in some instances, extensive efforts are made to seek the opinion of all concerned.

In a democratic society, the individual sees "having a vote" as a fundamental human right in the political process of government. Nevertheless, decisions have to be made once governments are elected, and not every situation can be judged in terms of a majority vote. Thus one often hears of the need for "consultation" of interested parties, and a balanced presentation of all the facts surrounding a case before any conclusions are reached or decisions made. The complexity and number of issues with which a government, for example, has to concern itself lead to great variations in the processes of decision-making, but ultimately it is the government which must take responsibility, and so be held accountable to the electorate for its decisions.

In contrast to governments or secular enterprises, the Church is a "society structured with hierarchical organs." At

the same time, it is "the mystical body of Christ, the visible society and the spiritual community, the earthly Church and the Church endowed with heavenly riches." These are "not to be thought of as two realities" but they "form one complex reality." [1] As the "hierarchical communion" described by Vatican II, the Church requires organization and administration in keeping with its purpose, "that the Kingdom of God may come and the salvation of the human race may be accomplished." [2]

Likewise, as a society, it requires organization and adaptation to different situations. For instance, Vatican II acknowledged the contribution which the modern world can make to ecclesial life:

The Church has a visible social structure, which is a sign of its unity in Christ: as such, it can be enriched, and it is being enriched, by the evolution of social life - not as if something were missing in the constitution which Christ gave the Church, but in order to understand this constitution more deeply, express it better and adapt it more successfully to our times. [3]

1. VATICAN COUNCIL II, Dogmatic Constitution on the Church, "Lumen gentium", November 21, 1964, in AAS, 57(1965), pp. 5-75. English translation in A. FLANNERY, ed., Vatican Council II: The Conciliar and Post-Conciliar Documents, New York, Costello, 1975, p. 357, no. 8.

2. ID., Pastoral Constitution on the Church in the Modern World, "Gaudium et spes", December 7, 1965, in AAS, 58(1966), pp. 1025-1115. English translation in A. FLANNERY, op. cit., p. 947, no. 45.

3. Ibid., p. 946, no. 44.

Hence, secular tools which can assist in achieving the Church's goals may be legitimately applied if appropriate. One such tool is the consultative process.

The question of consultation in the Church is to be studied here, primarily in reference to the group of priests once known as the "diocesan consultors" (the 1917 Code of Canon Law), and now as the "college of consultors" (the 1983 Code). On a broader scale, however, the exercise of authority in the Church and the means by which decisions are made and implemented cannot be ignored. The relationship of the particular Church to the entire Church and its degree of autonomy under its own bishop is also an area of relevance.

Firstly, then, we shall examine the circumstances which led in the 19th century to the initial legislation for the establishment of diocesan consultors for bishops in the dioceses of the United States of America. While cathedral chapters had been established centuries earlier in European countries, the particular situation in the "New World", will be reviewed. This involves the legislation proposed by the American bishops and later confirmed by the Apostolic See, after it was passed by the various provincial and plenary councils where the question of assistance to the bishop in his mission of governance was raised. The legislation of the 1917 Code on consultors will also be examined, as a means of

describing the intended functions of consultors throughout the Church.

Since canon law is inseparable from its theological and historical foundations, the second chapter will first seek preliminary bases for the exercise of consultation by bishops as leaders in the local Church, particularly with respect to the evolving role of the presbyterium in the early Church and its relationship to the bishop. It will then be concerned with the evolution of the exercise of ecclesial authority. In this light, some of the relevant canons of the 1917 Code, concerning questions of orders and jurisdiction, as well as papal and episcopal authority, will be studied. Indeed, these canons reflected the Church as a pyramidal "perfect society." This model predominated at the time, and affected the life of the particular Church. This will show the importance of the consultative process in any form of diocesan governance, something which will be of particular relevance to consultors as they fulfil their role.

The third chapter will focus primarily on the relationship between law and theology, examining the changing emphases in ecclesiology and in the exercise of authority in the Church. One element to be considered is the model of "hierarchical communion" as an expression of the life of the Church. The exercise of ecclesial authority in this context of communion will be considered and related to the

responsibilities of the diocesan bishop and his presbyterium.

In this regard, the background of the Vatican II documents on bishops and priests will be examined to determine which basis, if any, exists in the conciliar thinking to justify the newly introduced "consultative" organs of the presbyterium in the particular Church. This will be carried through to the proposed new legislation, by examining the various drafts and discussions of the Pontifical Commission for the Revision of the Code on the importance of this new body and its role in diocesan life.

With this background, the transformation of the optional diocesan consultors of the 1917 Code into the college of consultors, as emerging during the Code Commission's discussions, will be examined. This, of course, leads to reasons for its retention as an organ distinct from but related to the presbyteral council. The reasons for the transition from diocesan consultors to college of consultors are significant. But, more important, however, is the theological basis for the new body. This will be outlined, as will be the college's rights and obligations in various aspects of diocesan life. Its relationship with the presbyteral council is to be considered as one of primary importance; however, the need for coordination with all diocesan organisms necessitates some comparisons of their roles with those of the consultors. Some thoughts, then, for

the future of the college of consultors will conclude this work.

The consultative process is so important in the life of the particular Church that it qualifies any type of Church governance. A dissertation could have been prepared on any of the various organizations involved in the governance process. However, because of their particular relevance in the 1983 Code of Canon Law, the college of consultors has been selected as the specific focus of our study. Thus, the goal is to provide an integrated rationale, for the college's presence in the particular Church, as one vital body assisting the bishop in his task of governing, teaching and sanctifying that portion of the People of God entrusted to his pastoral care.

CHAPTER I

THE ORIGIN AND DEVELOPMENT OF DIOCESAN CONSULTORS

Before undertaking a comprehensive study of the "College of Consultors", as described in the 1983 Code of Canon Law, it would be important first to review the origins of the "Diocesan Consultors" in the North American Church during the nineteenth century, and their 'canonisation' in the 1917 Code of Canon Law. They were established for dioceses where no cathedral chapter existed to assist the diocesan bishop in the governance of the local church, and provided the basis for the diocesan consultors of the 1917 Code.

While cathedral chapters have a much longer history, traceable back to early times in different forms, their functions will be reviewed briefly, only in so far as their role relates to that of the consultors. As a general principle, it could be stated that the law of the Church has always provided some way of giving the diocesan bishop assistance in his function of governance, although the same means have not been used consistently.

It is significant that the 1983 Code assigns a far greater role to the college of consultors, than did the previous law, despite the post-Vatican II introduction of the senate of priests or presbyteral council to dioceses throughout the world. It would be a mistake, however, to

identify the new "College of Consultors" with the "Diocesan Consultors" who existed under the previous law. The titles are similar and it will be shown that the former's existence to some extent inspired the formation of the latter, but their roles and theological foundation are significantly different. In addition, the new law downplays somewhat the role of the cathedral chapter, while the formation of the college of consultors is encouraged in its place. The option remains to retain the chapter, but it is interesting to note the change in pre-eminence of these two well-established bodies in the Church today.

The theological developments before the promulgation of both the 1917 and the 1983 Codes followed the Vatican Councils of 1869-1870 and 1962-1965 respectively. Foundations for participation in the decision-making processes of the Church by priests and laity, and not the bishop alone, will be sought, in order to provide a coherent context for the evolution of the organs of participation and their rationale in the Church today.

A: Setting the scene in history

1. The origins of consultors

It is in the North American Church that diocesan consultors seem to have been first mooted. Following initial representations for the establishment of chapters, the

factors which led to consultors becoming the primary advisory body to the bishop will be considered. Unlike chapters, the diocesan consultors had no corporate existence independent of the bishop; after their appointment by him, they had limited tenure of office for three years, subject to renewal. In the long term, this situation suited diocesan bishops because it enabled them to control decisions and membership of this diocesan advisory body.

There are no indications that the idea of having diocesan consultors rather than cathedral chapters came from the Congregation de Propaganda Fide, the Roman dicastery in charge of the missionary churches throughout the world; rather, it seems that the idea evolved somehow from the bishops' awareness of the need for the assistance of their priests in governance. At the same time, however, existing conditions did not lend themselves to establishing chapters in their own right; later on, there even appeared a marked reluctance on the part of bishops to allow for the existence of a body to some extent independent of their jurisdiction.[1]

1. Several articles on the relationship between the American Church and the Congregation de Propaganda Fide reveal no mention of where the initial proposal for diocesan consultors came from. See C.E. O'NEILL, "The United States of America", in J. METZLER, ed., Sacrae Congregationis de Propaganda Fide Memoria Rerum, 1622-1972, Rome, Herder, 1971-1976, vol. 2, pp. 1162-1184. Also W. HENKEL, "The Final Stage of the USA Church's Development under Propaganda Fide", in ibid., vol. 3.1, pp. 705-727.

The development of the Catholic Church in North America seems to provide the best context for a study of diocesan consultors, since the history of consultors is well documented. As well, the first formal mention of consultors is found in the Diocesan Synod of Mobile in 1835 and their eventual establishment was prescribed by the Third Provincial Council of Baltimore in 1885.

a) Growth in the North American Church

A few statistics tell a story of growth and expansion in terms of the Catholic population in the United States. In 1829, there were about 500,000 Catholics out of a total population of 12 million; in 1850, there were over 1,500,000 Catholics with 3 archbishops, 24 bishops, 1081 priests; in 1876, there were 6 million Catholics with 11 archbishops, 56 bishops, over 5,000 priests; in 1884, at the convening of the Third Plenary Council, there were 8 million Catholics with one cardinal, 11 archbishops, 58 bishops and over 7,000 priests.[2] To quote one American Church historian:

If the progress from 1776 to 1829 had been remarkable, from a small and obscure body just released from the most oppressive penal laws, and barely known in two or three colonies, to a church existing in every state of the Republic, with its hierarchy established, and by its acts taking an honored place in the legislation of

2. Cf. J.G. SHEA, "The Progress of the Church in the United States: From the First Provincial Council to the Third Plenary Council of Baltimore", in American Catholic Quarterly Review, 9(1884), pp. 471-497.

that ecclesiastical body that had triumphed over the heathen emperors of Rome, the feudal tyrants of mediaeval times; the so-called Reformers, the Gallican and the modern infidel, its progress in the next half century under the Propaganda, guided by the Sovereign Pontiffs Gregory XVI, Pius IX and Leo XIII, was to present a still more remarkable spectacle. [3]

While these words exaggerate somewhat the reality of the situation, they reflect a certain awareness of the Church's vitality as it spread through the "New World".

It is obvious, then, that here was a scene vastly different to that in Europe at the time, with its long history of church involvement in so many aspects of life and society, despite the incidence of the Reformation in the sixteenth century and the French Revolution in the eighteenth century. The Church in the United States came into a largely Protestant, secular society, where it was not part of the institutional structure, and with the many migrants from different countries, cultures and religious backgrounds, life in general could be expected to be a situation of turmoil and ferment from many points of view. Considering only the religious dimension, it can be seen that the Catholic Church required competent leadership in administration and organization to cope with the rapid growth and diversity of its members. Needless to say, cooperation and harmony were not always its hallmarks. Some of the reasons for the

3. Ibid., p. 481.

eventual introduction of consultors rather than chapters will become clear as the American Church's development is studied.

To understand how diocesan consultors were introduced as cooperators with the bishop, some of the events concerning the relationships between bishops and priests in the United States during this period need to be considered. These relationships were often tenuous and even hostile, as revealed in R. Trisco's study of the issue.[4] At the same time, there occurred rapid expansion of membership and institutions within the Church.

b) Origins of ecclesiastical organization

Prior to the war of independence, separate regions of the country were under the jurisdiction of various Spanish and French bishops, depending on their settlement patterns and colonial history. The only evidence for a cathedral chapter ever existing in the United States comes from the diocese of New Orleans around 1793, but it seems to have faded into oblivion as disorganization and confusion followed

4. Cf. R. TRISCO, "Bishops and their Priests in the United States", in J.T. ELLIS, ed., The Catholic Priest in the United States: Historical Investigations, Collegeville Minn., St. John's University Press, 1971, pp. 111-192. Cf. also his shorter paper: "An American Anomaly: Bishops without Canons", in C. CURRAN and G. DYER, eds., Shared Responsibility in the Local Church, Chicago, NFPC, 1970, pp. 31-45.

upon the transfer of the first bishop, Luis Penalver, to Guatemala in 1801.[5]

Since the south and west of America were settled by the French and Spanish, and were thus under considerable Catholic influence, P. Klekotka's research indicates that initially there was some degree of adoption of the common law of the Church, with "benefices, rights of patronage, [...] and even chapters." [6] Still, it was the "victory of the Anglo-Saxon element over the French and the Spanish" which lessened Catholic influence and customs as these territories became annexed to the United States.[7]

According to Klekotka, the missions established by the French in Quebec, were highly organized. The territory under this mission's jurisdiction was huge,

[...] covering all the wide territory from Quebec, Canada and Newfoundland, embracing parts of [...] Maine and New York, down through [...] Wisconsin and Michigan, the valley of the Mississippi, Louisiana and even the plains of the Far West. [8]

Under Bishop François de Laval it was erected as a vicariate-apostolic in 1658; and the See of Quebec created a diocese in

5. Cf. P. KLEKOTKA, Diocesan Consultors, Washington, D.C., CUA Press, 1920, p. 16.

6. Ibid., p. 13..

7. Cf. ibid.

8. Ibid.

1674 - subject directly to Rome. While a chapter had been established from the mid-seventeenth century, it faded out after the cession of Canada to England in 1763, since a hostile English government prevented its vacancies being filled.[9] It was, however, re-established later on, and the practice extended to other French-speaking dioceses in Canada.

In America, the English missions appear to have had more continuity, even though growth was less pronounced. Until the end of the war, the 13 colonies were subject to the Vicar Apostolic of the London District in England, following which the Sacred Congregation of the Propaganda decreed the separate organization of the Church in the United States, with Reverend John Carroll as Prefect Apostolic. The development of ecclesiastical discipline from this time, then, was "not from the French and Spanish settlements, but from the small English-speaking Catholic settlements in Maryland." [10]

Some type of "General Chapter" governed the new republic of the United States from 1783 to 1789, when the diocese of Baltimore was erected, and John Carroll then elected its bishop, with Roman approval, by the priests of

9. Cf. ibid., p. 14.

10. Ibid., p. 17.

the American mission.[11] The election was considered a special favour from Rome for this one occasion.[12] In 1791, Carroll summoned the first diocesan synod in Baltimore, in order for 15 priests to elect a coadjutor. He sought to have this group as a permanent "senate", implying that he wished his priests to have some say in the governance of the diocese.[13]

It seems that approval had originally been granted to Carroll by Propaganda in 1793 to establish a "modified" cathedral chapter; this followed upon Carroll's own request, but he never subsequently followed it up.[14] This is particularly interesting, since Carroll's second successor, Ambrose Maréchal, was refused permission when he applied for a similar approval; this seems to reflect the changing nature of Rome's replies to a scene far removed in many ways. Yet, in 1807, in contrast to his earlier conciliar leanings, Carroll later proposed the names of four potential bishops to Rome for new dioceses, without prior consultation with the clergy. In the following year he was appointed archbishop; his intention to hold a subsequent diocesan synod was

11. Cf. G. FOGARTY, "American Conciliar Legislation, Hierarchical Structure and Bishop-Priest Tension", in The Jurist, 32(1972), p. 400.

12. Cf. R. TRISCO, "Bishops and their Priests ...", p. 113.

13. Cf. G. FOGARTY, loc. cit., p. 401.

14. Cf. ibid.

thwarted by ill-health until his death in 1815.[15]-

After Carroll's initial request in 1793 for approval of the formation of a cathedral chapter,[16] the third Archbishop of Baltimore, Ambrose Maréchal (1818-1829)

[...] envisioned this body of priests as having all the rights and privileges of cathedral canons but as not being obliged to recite the divine office in choir. It was his intention that they should guide him in the administration of the archdiocese and after his death should elect a vicar-capitular who could govern during the vacancy. [17]

The reply from Propaganda in 1821 was negative, on the grounds that canon law did not envision such a body under these terms.[18] The suggestion was made again that he should appoint "consultors", which did not eventuate. Nor did he convene the council earlier sought by Carroll.

It is worth noting that such chapters, as proposed by Maréchal were later established in England during the restoration of the Catholic hierarchy in the middle of the century, but the American bishops showed less interest as time went on, moving to a position of strong resistance to their introduction by the time of the Third Plenary Council

15. Cf. P. GUILDAY, A History of the Councils of Baltimore, New York, MacMillan, 1932, pp. 74-75.

16. Cf. R. TRISCO, "Bishops and their Priests ...", p. 115.

17. R. TRISCO, "An American Anomaly ...", p. 144.

18. Cf. ibid., p. 145.

of Baltimore in 1884. The proponents of these chapters argued for the added dignity thus given to the clergy and the support given to episcopal authority, as claimed by the English Bishop, William Poynter, in a letter to Maréchal.[19]

Friction was evident between the French and Irish nationalities during Maréchal's time as archbishop, particularly among the clergy, who had come from Europe; so he and a French suffragan bishop, James Flaget, were even described as representing a "French cabal that tyrannized the American church." [20] Maréchal praised the Irish clergy on one hand, but noted their proclivity for excessive drinking, in a report forwarded to Propaganda.[21] While one long-term solution was to promote locally born clergy, the persons interested in joining the priesthood were comparatively few in number; the ministry was difficult in a missionary situation and finance for seminary education was lacking. The possibility of appointing native American bishops was exacerbated by this dearth of candidates. Furthermore, it has been stated:

- Both the immigrant priests and the people were ignorant of proper Church discipline and canon law. This ignorance, combined with the desire of each national group for autonomy, the

19. Cf. ibid., p. 145.

20. G. FOGARTY, "Lay Trusteeism: Yesterday and Today", in America, 115(1968), p. 657.

21. Cf. ibid., p. 657.

Catholics' new-found freedom in republican America, the relatively small Catholic population in a pluralistic society and the immense difficulty of communication and transportation both within the United States and between this country and Rome emphasized the defects of lay trusteeism and obscured any advantages. [22]

Rome's apparent ignorance of the situation, in terms of geography, politics and ethnic groups, only increased the difficulties.

c) Relations between priests and bishops

Four main problem areas existed between priests and bishops as they tried to regulate their "reciprocal relations".[23] Firstly, it seems clear that the priests wished to have a say in the selection of their diocesan bishop; too often, appointments seem to have been made in terms of nationality or favoritism rather than suitability. In the second place, a chapter of canons or board of consultors would have been a means of encouraging cooperation rather than confrontation or hostility, by allowing priests some say in diocesan administration and a share in episcopal authority. The third area of friction existed from the beginnings of the American mission: that is, the question of irremovability for pastors, who often were apparently moved

22. Ibid., p. 658.

23. R. TRISCO, "Bishops and their Priests ...", p. 112.

at the whim of the bishop, without sufficient reason and appropriate consultation.

A further source of ongoing dissatisfaction and contention was the lack of any judicial process for dealing with clergy misdemeanours; rather, a summary process was invoked to punish a cleric by removal from his parish, or some other automatic penalty was decided by the bishop, whose judgment was final on the local level. As a result, numerous appeals against these arbitrary decisions were sent to Rome, with many priests becoming ultramontane, hoping for support and a greater degree of justice through their appeals to the higher authority.

These grounds provided, in part, a rationale for the holding of a series of councils throughout the nineteenth century, but, on the other hand, the bishops were also very conscious of their authority and autonomy from Rome in certain areas. From their point of view, then, the councils were a means of trying to enforce uniformity in their dioceses, even though they also provided support for each diocese. This leads to a point where it is necessary to examine the more significant of these councils - in relation to the origins of "diocesan consultors" and their ensuing involvement in the decision-making processes at the diocesan level.

2. The conciliar period of the nineteenth century American Church

a) 1829 - The First Provincial Council of Baltimore

The nomadic tendencies of some priests who were reluctant to remain in one appointment, or even the same diocese, for any length of time, provided the stimulus for Archbishop James Whitfield of Baltimore to convoke the First Provincial Council of Baltimore in 1829.[24] The attitudes of the suffragan bishops varied, with John Dubois, the French-born bishop of New York, and aggressively anti-Irish, describing his clergy as "ignorant" or of ruined or questionable reputation. He based his argument against the establishment of parishes on these factors, preferring to have mission churches set up.

At the same time, John England, bishop of Charleston, argued in favour of stability and thus for the establishment of parishes over missions, with priests having more definite tenure, being irremovable without a canonical process. This was obviously the minority view among the bishops, as the council did not mandate the establishment of parishes; indeed, these were not to be set up until many decades

24. Their mobility was understandable in some ways because of the wide areas of territory to which they could be assigned.

later.[25] The bishops seemed to prefer retention of their authority. This attitude even seems to have worried Roman observers because of the American bishops' gradual development of a sense of collegiality as councils continued.[26]

b) 1835 - The First Diocesan Synod of Mobile

While the First Provincial Council of Baltimore achieved little in the area of priests' rights and responsibilities, a most significant move forward in regard to their cooperating with the bishop on an official level was the first "episcopal council" or "board of consultors" formed at Bishop Michael Portier's diocesan synod in Mobile (1835), where

[...] it was decreed that two priests, appointed by the bishop, together with the vicar-general, should constitute the episcopal council, should meet on the second Thursday of every month, whether the bishop was present or not, to discuss affairs pertaining to the welfare of the diocese, and should be invested with the faculties granted by law in pari casu. [27]

P. Klekotka suggests that "in pari casu" implied that the consultors so appointed had some of the rights and duties of

25. Cf. R. TRISCO, "Bishops and their Priests ...," p. 120.

26. Cf. G. FOGARTY, "American Conciliar Legislation, ...", p. 401.

27. R. TRISCO, "An American Anomaly ...", p. 146. Cf. Synodus Mobiliensis prima, Notre Dame University Press, 2nd ed., 1890, no. XI.

canons of the cathedral chapter as outlined in the general law of the Church.[28]

While Bishop Portier's intention was apparently to implement at least a consultative process between his priests and himself, with some concept of sharing of authority, the "diocesan consultors" appear to have been the exception rather than the rule for the next few decades. Portier's background in the mission of New Orleans, where the sole American cathedral chapter was in existence, probably gave him the stimulus to provide some parallel body to suit the conditions of his own diocese, once formed. No official listings of "Bishop's Councils" were found in the Church directories before 1854 - two years after the First Plenary Council.

c) 1852 - The First Plenary Council of Baltimore

Seven Provincial Councils of Baltimore occurred prior to the First Plenary Council held there. They seem to have effectively furnished legislation for the whole American Church.[29] The restoration of the British hierarchy and the concurrent re-establishment of cathedral chapters - comprising 10 canons, a provost and a dean - occurred in 1850, by which time the American bishops were less interested

28. Cf. P. KLEKOTKA, op. cit., p. 18.

29. Cf. R. TRISCO, "Bishops and their Priests ...", p. 124.

than ever in losing their autonomy. It could be contended, though, that chapters probably could have been formed in the American milieu in the mid-nineteenth century, had the bishops been amenable to the idea.

Some uniformity seems to have been introduced into the life of the American Church, when the legislation of prior provincial councils was consolidated.[30] The need for a formal meeting of the bishops to promote effective organization of Church affairs is obvious from the statistics of rapid growth mentioned earlier.

Of the 25 decrees passed and promulgated by this Council, the sixth decree was in reference to consultors. It exhorted bishops to "choose a council of learned and prudent priests, who, as consultors, would assist them in the administration of the diocese"; the custom of a monthly meeting with these Consultors was also recommended.[31] No obligation was therefore implied; the bishop's choice determined just how his diocese would be administered. The

30. Cf. P. GUILDAY, History of the Councils of Baltimore, New York, MacMillan, 1932, p. 178.

31. Ibid., p. 178: "Mortandos Episcopos Patres censuerunt, ut ubi fieri poterit, in suis diocesibus aliquos sacerdotes aetate, scientia, vitae integritate, et rerum agendarum peritia conspicuos seligant, quos Consultores constituent, et quorum sententias in administratione dioeceseos, cum opus fuerit, exquirant. Laudandum etiam censuerunt consuetudinem alicubi vigentem Consultores singulis saltem mensibus, die determinato, convocandi, ut quae ad dioecesim pertinent discutiantur." In Collectio Lacensis, Vol. III, p. 146.

exhortation to implement consultors was qualified prior to promulgation, by the insertion into the decree, of the clause "where it is possible."

This provided little satisfaction to priests who were seeking more recognition of their rights and greater involvement in diocesan governance. Nevertheless, by 1866, when the Second Plenary Council was called, "most of the dioceses and almost all of the archdioceses" recorded the existence of Bishop's Councils, along the lines recommended by the decree referred to above.[32] Most bishops had diocesan councils by 1874.[33] Whatever the activity of these councils, however, it appears that they were formed more for the assistance of the bishops in the implementation of their wishes, than for shared responsibility with their priests.[34] Rome's interests were heightened by the investigation carried out by Archbishop Gaetano Bedini, who was commissioned by the Holy See to report on the American scene in 1853.[35] He provided an ambiguous account,

32. P. KLEKOTKA, op. cit., p. 19.

33. Cf. S.B. SMITH, Notes on the Second Plenary Council of Baltimore, New York, O'Shea, 1874, p. 66.

34. Cf. R. TRISCO, "Bishops and their Priests ...", p. 126.

35. This trip was a diversion on his way to Brazil as Apostolic Legate. Bedini's mission was compounded by the threats and actual attacks he faced from such diverse anti-Catholic groups as the "Know Nothings" and "European revolutionary exiles", apart from the internal conflicts

which, in retrospect, seems rather an understatement of the problems. Before concluding his report with a paradoxical statement about how priests "loved" their bishops, he described the underlying friction resulting from episcopal autocracy:

The lack of chapters puts all the administration of the diocese in the hands of the bishops. Their priests therefore have no knowledge of the progress nor even the resources of the diocese. They only know that the bishop controls what he is doing [...] and so it causes them to fear his arbitrary power; and in that country more than others, this is the most horrible supposition. To tell the truth, though, there was no reason to think that any bishop was guilty of this injurious supposition. They are all loved by their priests [...] [36]

Thus dialogue was lacking and antipathy was strong between priests and bishops despite progress on a formal level of legislation in regard to consultors. The insecurity of tenure of appointment to missions rather than to parishes seems to have encouraged a tendency for priests to accumulate money, on the one hand, or to be pastorally negligent, on the other, if not both.

The Eighth Provincial Council of Baltimore, held in 1855, was primarily concerned with the temporal goods of the Church; it was suggested that the consultors constitute a counselling board. This council also elaborated as follows,

within the Church. This is discussed by R. TRISCO, "Bishops and their Priests ...", p. 129.

36. Ibid., p. 129.

on their responsibilities when the see was vacant:

It will be the duty of all the consultors, however, after the death of the bishop, to make known in writing to the archbishop (or, if he has died, to the senior bishop) who each one thinks should be promoted to the vacant see. Let them also add the reasons for their opinion and any other information which may be useful to the bishops so that they may be able to recommend worthy priests to the Apostolic See. [37]

An understanding of the consultors' role, then, advanced only slowly, as no fixed laws about number or duties were defined at this stage; these remained subject "to the prudence and the conscience of each bishop." [38]

The First Provincial Council of St. Louis, held in the same year of 1855, assigned a different role to consultors, in relation to their intervention in clerical trials, a contentious issue referred to earlier. The bishop was to assign two consultors to assist in judging a priest defendant; Propaganda insisted, however, that different consultors be used in each case, in order to prevent preference or bias on the bishop's part in selecting the judges, who could be influenced in their decisions by their relationship with the bishop. [39] Still, the conditions were weighted heavily in favour of the bishop, since he "gave the

37. R. TRISCO, "Bishops and their Priests ...", p. 129. Cited from Collectio lacensis, III, pp. 161-162.

38. Ibid., p. 129.

39. Cf. R. TRISCO, "An American Anomaly ...", p. 147.

sentence and he appointed the consultors." [40]

d) 1866 - The Second Plenary Council of Baltimore

As problems continued to blight bishop-priest relations, the Second Plenary Council of Baltimore was convened in 1866, with Archbishop Martin Spalding of Baltimore presiding as Apostolic delegate. While one of its main aims was to produce a handbook of church law for priests and seminarians, some bishops wanted to take advantage of the occasion to extend and define the rights of consultors - even to the point of instituting modified chapters, as had occurred in England. Their goal was to obtain more support in the administration of the temporal affairs of the diocese, but the general reaction of the other bishops was negative to this proposition. [41] The First Plenary Council's decree on consultors, and the St. Louis Council's decree on clerical trials, were restated verbatim as the bishops strived to restore harmony between the two orders. The role of consultors was described thus:

As bishops, especially in these States, are so burdened with labors, that of themselves alone they can scarcely comply with all their duties, they should select priests [...] who will assist them by their wise counsels. In this manner the second sacerdotal order will give assistance to the first, and by the common consent and suffrage

40. G. FOGARTY, "American Conciliar Legislation ...", p. 404.

41. Cf. R. TRISCO, "Bishops and their Priests ...", p. 139ff.

of all, the unity of administration will be rendered firm, and everything will be done gently, yet not done without constancy, for the greater glory of God. [42]

It seems that this council was not really effective in changing the actual situation, despite the seriously expressed notions of improved good will and understanding. Considerable publicity was given to remaining contentious issues concerning priests and bishops through a number of Catholic publications sympathetic to the grievances of the priests.[43]

Although bishops were encouraged not to move priests arbitrarily, without giving good reasons and considering the incumbents' claims to remain in their parishes, there were still cases of aggrieved priests appealing to Rome or to the civil courts about their rights.[44] Furthermore, an anonymous priest, pen-named "Ius", conducted a polemic campaign for priests' rights, at one point claiming that the Second Plenary Council's decree number 25 really meant that "a priest has no right which a bishop is bound to respect."[45]

42. Cited in S. SMITH, Notes on the Second Plenary Council of Baltimore, p. 56.

43. Cf. R. TRISCO, "Bishops and their Priests ...", pp. 150-194.

44. Cf. J. SHEA, "The Coming Plenary Council of Baltimore", p. 352.

45. R. TRISCO, "Bishops and their Priests ...", p. 161.

On a more moderate note, it could be asked whether such episcopal councils existed "in reality or merely in name", or whether their members were formally consulted or called together regularly.[46] In the light of the Second Plenary Council's teachings, apart from the implementation of the statutes, it was advocated that priests be given some say in episcopal appointments, with bishops having the right of acceptance or rejection of the nominations,[47] and that priests be recognized as having some rights as far as clerical trials were concerned.[48]

Before the Third Plenary Council, some canonists seem to have expressed preference for the model of cathedral chapters as a better system for giving the clergy recognition of their rights and access to due process.[49]

3. General observations

a) Bishop Conroy's visit

A severe indictment was passed on the American bishops by another Roman visitor in 1878, Bishop George Conroy of

46. S. SMITH, op. cit., p. 66.

47. Cf. ibid., p. 101.

48. Cf. ibid., p. 110.

49. Cf. S. SMITH, "Cathedral Chapters as Adapted to the United States", in American Catholic Quarterly Review, 3(1878), pp. 709-721.

Armagh, and temporary Apostolic Delegate to Canada; he came in response to the interminable grievances of priests who were appealing to Rome over unfair treatment. His main criticism focussed on the random movement of clergy for questionable reasons - such as an aptitude for financial management rather than pastoral care. He also claimed that of sixty eight bishops, only ten appeared "distinguished in talent", while the others hardly approached "a decent mediocrity." [50]

No doubt, at the heart of Rome's concern was the independence of the American episcopacy and the fact that many of these bishops were reluctant to vote in favor of papal infallibility at Vatican I in 1870. Conroy's recommendations were that pastors be given a vote for the terna for appointments to the episcopacy, and that notice be taken of canon law, which was observed "as if it didn't exist!" [51] From the bishops' side came the comment from Bishop Michael Corrigan of Newark, writing to Archbishop James Gibbons of Baltimore in 1879, of the danger of priests knowing too much canon law, in reference to the frequent appeals and complaints to Rome. [52]

50. G. FOGARTY, "American Conciliar Legislation ...", pp. 403-404.

51. R. TRISCO, "Bishops and their Priests ...", p. 201.

52. Cf. G. FOGARTY, "American Conciliar Legislation ...", p. 405.

b) Propaganda's Instructio of 1878

In 1878, an Instructio on clerical trials ensued from Propaganda. Although probably not influenced by Conroy's report, since it was not yet received, its contents were most likely influenced in part, by the many priests' grievances submitted to Rome. Bishop Conroy's report arrived in Rome only after his untimely death during his return journey to Europe, following his American experience; his report confirmed what Rome apparently knew already of the situation.[53] The Instructio suggested a perception of some of the injustices occurring in various dioceses.[54] It was inadequate in dealing with individual cases, due to confusion about interpretation, and, given the background, the bishops were probably reluctant to set up tribunals to judge their own decisions.[55] Ironically, it was the bishops who were perceived as "taking little or no account of canon law when

53. Cf. R. TRISCO, "Bishops and their Priests ... ", pp. 198-203.

54. SACRA CONGREGATIONE DE PROPAGANDA FIDE, Instructio de modo servando ab episcopis Foederatorum Septentrionalis Americae Statuum in cognoscendis et definiendis causis criminalibus et disciplinaribus clericorum, June 20, 1878, in ASS, 12(1879), pp. 88-92.

55. Cf. J.G. SHEA, "The Coming Plenary Council of Baltimore", in American Catholic Quarterly Review, 9(1884), p. 353.

they exercised their authority," at least in the eyes of many priests.[56]

c) Local controversies publicised

A polemic contribution to the ongoing "debate" about priests' rights was the book The Rights of the Clergy Vindicated, subtitled A Plea for Canon Law in the United States, which anonymously reflected the dissatisfaction of many clergy. It called for observance of canon law as "the only sure and safe guide of action for all possessed of ecclesiastical authority." [57]

Another pamphlet on episcopal appointments appeared, in which it was argued from a historical perspective that priests should have some say in the process; in addition, it called for the establishment of a permanent Apostolic delegation to the United States, an issue which had become a popular cause among priests having difficulties with their bishops.[58] Thus the scene was set for the Third Plenary Council of Baltimore, convoked by Propaganda.

56. R. TRISCO, "Bishops and their Priests ...", p. 200.

57. W. MAHONEY, The Rights of the Clergy Vindicated, New York, J. Sheehy, 1883, p. 39. Trisco provides a detailed account of Mahoney's grievances in "Bishops and their Priests ...", pp. 206-213.

58. Cf. W. CORRIGAN, "What the Catholic Church Needs Most", New York, American News Co., 1884, 77p., referred to in W. MAHONEY, op. cit., pp. 214-225.

4. 1884 - The Third Plenary Council of Baltimore

At the time, it seems that the priests were more concerned with their rights in becoming irremovable pastors and in the appointment of bishops, rather than with gaining a greater share in diocesan governance.[59] Due to the continuing list of grievances of priests against their bishops, and presumably to exert some control over the arbitrary authority of many American bishops, Propaganda's intentions were threefold: firstly, to formalize the 1878 Instructio in order to give priests a more objective judgment; secondly, to establish mandatory cathedral chapters, or, at least diocesan consultors; thirdly, to establish ten missions or quasi-parishes, where the pastors were to be irremovable.[60]

a) Preliminary planning

A delegation of bishops went to Rome for the preliminary discussions on the council agenda, and fought strenuously to resist too many concessions against their autonomy or power. Nevertheless, they agreed to several changes in the status quo. Speaking for the bishops, Archbishop James Gibbons agreed

59. Cf. J.G. SHEA, "The Coming Plenary Council ...", p. 352.

60. Cf. G. FOGARTY, "American Conciliar Legislation ...", pp. 405-416.

[...] to the establishment of parishes of irremovable tenure, but under the following conditions: 1) that the decision regarding the fitness of appointees be left to the bishop; 2) that the appointees should submit to a concursus; 3) and that the appointees should not be eligible until they had labored successfully for ten years in the ministry in one of the churches of the diocese. [61]

Effectively, then, the bishops still had the upper hand in this situation.

Episcopal opposition to cathedral chapters was particularly strong, in the face of Propaganda's wish to implement them at this time. The reasons advanced by the bishops against the proposal, were:

- chapters are not in accord with the character of the American people;

- qualified priests are not readily available, because the priests, scattered in districts far removed [...], cannot be brought together without serious inconvenience and great expense;

- it is to be feared that once priests are raised to the rank of canons they will become insolent in their attitude toward the bishop and will seek to demand unwarranted privileges;

- there is the risk of controversies between the Bishops and the canons, as experience shows to be the case where chapters are in existence. [62]

This rationale seems a bit far-fetched, given the public dissension within the American Church, and Rome's involvement

61. "Decrees and Decisions: Preliminary Meetings for the Third Plenary Council of Baltimore: November 13, 1883," in The Jurist, 11(1951), p. 124.

62. Ibid., p. 129.

through the recourse of so many priests. The bishops obviously had a very strong grip on authority which they were reluctant to relinquish. Historically, it could be argued that they had as much power over their priests as bishops have had at any time in history, although much depended on the individual bishop and the way in which he exercised his authority.

While chapters were resisted to the point where the Propaganda Cardinals gave in to the American episcopal delegation, the rights of consultors were considered. It was agreed that every diocese by law should have consultors and that they be active; nevertheless, the bishops were once again forceful in asserting their rights.[63] Their preference for consultation or advice rather than for the consent of the consultors, resulted in another victory for them over the Cardinals. Propaganda had proposed that the consent of the consultors be required for calling a synod, for division of parishes or missions, and for entrusting a parish to a religious institute. At the third session of the preparatory meeting, the bishops proposed that such consent should only be required for the alienation or acquisition of church property, for the appointment of a new consultor or

63. Cf. R. TRISCO, "Bishops and their Priests ...", p. 221ff. Trisco clearly demonstrates this determination of the bishops, apart from the evidence of the "Minutes of the Roman Meeting" cited earlier.

extra-synodal examiner, and for imposition of a new episcopal tax.[64]

Finally, the right of suggesting names of episcopal candidates was proposed for irremovable pastors as well as for consultors.[65] Thus the representative bishops accomplished their mission successfully, in so far as they had wrested back a significant number of their prior prerogatives, before they could be challenged in the impending council at home. While they argued for separate laws because America was so different from Europe, the underlying intention was clearly to maintain the rights of bishops over priests. This paradoxical attitude of the American hierarchy has been described as follows:

The hierarchy exists in a democratic society and in its origin it was democratic in outlook; yet perhaps nowhere has it developed such a tradition of absolutism. [66]

Back in America, the pre-conciliar consultation which ensued resulted in several changes: it was proposed that all clergy submit a list of possible episcopal candidates, but with the bishop having the final choice. It was agreed that the "Instruction" on clerical trials be implemented, and the

64. Cf. "Decrees and Decisions: ... ", pp. 302-303.

65. Cf. ibid., p. 234.

66. G. FOGARTY, "American Conciliar Legislation ... ", p. 407.

move to replace the requirement for the "consent" of the consultors with "consultation" was confirmed.

b) 1886 - Ratified Decrees

The final decrees of the Council - presided over by Archbishop James Gibbons in 1884 - were ratified by the Holy See and published in 1886; as expected, they reflected the views and wishes of the hierarchy. Technically, in appeasement to Rome, it was legislated that there were to be cathedral chapters or colleges of canons in cathedral churches,

who might assist the bishops as helpers and advisors in their advice and work in the governance of the diocese, as if a senate of the church. [67]

Nevertheless, the intention of the bishops to avoid cathedral chapters was reflected in the clause which considered it inopportune at the time to erect such, "until otherwise provided" (donec aliter provideatur). "Diocesan Consultors" were to be a temporary improvisation, but were mandatory in all dioceses. It seems likely that the wording was so put as a concession to the Propaganda view of the need for chapters with their own independent rights, but there was never any sign of willingness on the part of most bishops to move

67. Acta et decreta concilii plenarii Baltimorensis tertii 1884, Baltimore, J. Murphy, 1886, n. 17, p. 14: "qui Episcopis in gubernandis suis dioecesisibus consilio et opera adsint, tanquam ecclesiae senatus, praecipuique Episcoporum coadjutores ac consilarii."

towards chapters. The "temporary" substitution of consultants had become an institution in itself, even though that was never the expressed intention.[68]

In small dioceses, there were to be at least two consultants, whereas, in general, six or at least four were recommended.[69] As for selecting consultants, the bishop was to select half himself, and the other half were to be suggested by the priests, with the bishop having the final choice from those proposed.[70] The term of office was to be three years, with removal before that period requiring a legitimate ground and the advice of the other consultants.[71]

Their advice (consilium) was to be sought by the bishop in those seven matters which had been agreed upon, prior to the Council at the preparatory sessions. They were to be consulted in:

- calling a diocesan synod and publishing its acts;
- division of a parish or mission;
- entrusting a parish or mission to a religious order;
- appointment of deputies to the diocesan seminary;

68. Cf. P. KLEKOTKA, op. cit., p. 22.

69. Cf. Acta et decreta concilii plenarii Baltimorensis tertii 1884, n. 18, p. 15.

70. Cf. ibid., n. 19, p. 15.

71. Cf. ibid., n. 21, p. 16.

- selection of a new consultor and of synodal examiners;
- alienation of church property or possessions valued at more than \$5,000;
- imposition of a new tax by the bishop for a particular cause and over a specified amount.[72]

It was further decreed that the consultation be conducted collegially and by secret ballot if necessary. It was likewise decreed that irremovable rectors were to be instituted by the bishop, after consultation with the consultors, in "certain missions which seem more suitable",[73] as was the case in England.

During the vacancy of a see, a major prerogative given to the consultors, also given to the irremovable pastors, was the right to propose three candidates for the episcopacy, so that these could be presented to the Holy See, which retained the right of appointment.[74]

In spite of these changes, the aftermath of the Council saw a continuation of the dissatisfaction among many of the clergy. There seems to have remained a general reluctance by the bishops to relieve themselves of any power previously exercised. One positive justification for this

72. Cf. ibid., n. 20, p. 15.

73. Ibid., n. 33, p. 21.

74. Cf. ibid., n. 15.I, pp. 12-13.

attitude has been suggested; because of a consciousness

[...] of their theological education and their observation of their predecessors in the episcopate they regarded their responsibility as such a sacred trust reposed in them personally that they had to bear the burden alone and could not let the priests carry any part of it for them. Hence, many of them tended to be jealous of their authority, unwilling to listen to advice, and secretive about the affairs of the diocese. [75]

The reactions of many priests to the council's decisions were negative, as they analyzed the minimal concessions they had been given. The correspondence and Catholic literature of the period again reflects the fact, as seen in calls for the defence of priests' rights, for fair trials and more irremovable pastors.[76]

While dissenting priests had called for the establishment of an Apostolic delegation to America, the bishops seemed more reluctant. The polemicists who campaigned against episcopal autocracy, spoke favorably of a Roman representative in flattering terms. It seems that their ultramontane sympathies were a little extreme, but useful in their arguments with the bishops. Finally, in 1893, Leo XIII appointed Archbishop Francesco Satolli as delegate.[77]

75. R. TRISCO, "An American Anomaly ...", p. 157.

76. Cf. R. BURTSELL, The Canonical Status of Priests in the United States, New York, J. Sheehy, 1887, pp. 42-58, cited in R. TRISCO, "Bishops and their Priests ...", p. 155.

77. Cf. R. TRISCO, "Bishops and their Priests ...", p. 261.

B: Consultors in other countries

The development of the Catholic Church in Australia has some parallels with its counterpart in the United States, in being a later part of the "New World" to be settled by Europeans. The Church in Australia, likewise, had missionary beginnings, with a vast expanse of territory and a thinly spread Catholic population, the earliest of whom were mainly Irish convicts under British control. On the Australian scene, no mention of consultors was made in the documents of the first two provincial councils in Sydney (1844) or Melbourne (1869).[78] The first formal mention of diocesan consultors in Australia is found in the decrees of the First Plenary Council of Sydney (1885).[79] This was one year after the Third Plenary Council of Baltimore. Although the printed Acts of Baltimore were published only in 1886, the Council Fathers had access to the drafts.

The Australian decrees of the 1886 Plenary Council on consultors paraphrased those of the American Council. The one additional qualification was that they were required to attend Mass at the cathedral at least twice a year at the

78. Cf. P. KLEKOTKA, op. cit., p. 23.

79. Cf. Acta et decreta concilii plenarii Australasiae, habiti apud Sydneyensem, 1885, a Sancta Sede recognita, Sydney, F. Cunningham and Co., 1887, nn. 29-34, pp. 16-17.

more solemn feasts.[80] Up to and including the Fourth Plenary Council of Australia and New Zealand, held in 1935, which merely summarized and restated the norms of the 1917 Code on consultors,[81] no significant changes occurred in the local legislation, which remained consistent with the general law of the Church.

Similarly, the Latin American Council of 1899, held in Rome, legislated for all the countries on the American continent south of the Rio Grande.[82] Many dioceses, however, had previously existing chapters from earlier centuries of church establishment. For new dioceses, where these did not exist, the institution of consultors or "assessors" was decreed.[83] Their function was outlined in essentially the same terms as at Baltimore (1884) and Sydney (1885).

The Canadian scene reflected the diversity of language and culture, as well as the effects of history, with the French-speaking Church generally having chapters established

80. Cf. ibid., n. 31.2, p. 16.

81. Cf. Concilium plenum IV Australiae et Novae Zelandiae, habitum apud Sydneyensem anno Domini 1937, Editio officialis, Manly, NSW, Manly Daily Pty., 1937, nn. 142-148.

82. Cf. P. KLEKOTKA, op. cit., p. 24.

83. Cf. Acta et decreta concilii plenarii Americanae Latinae, in Urbe celebrati anno Domini 1899, Romae, Typis Vaticanis, 1902, nn. 242-246.

along the lines of the Church in Europe, with English-speaking Canada in a situation similar to that in the United States. While there were fewer priests in Canada, the French Catholic influence seems to have prevailed in the long term. Despite the demise of the first chapter due to attrition, and the prevention of replacement appointments in the first chapter in Quebec, as dioceses were erected, cathedral chapters were established to aid the bishop in governance. The Plenary Council of Quebec, held in 1909, put the articles "Concerning Chapters and Canons" and "Concerning Consultors", into one section;[84] it prescribed that diocesan consultors or "assessors" were to be constituted in dioceses "where Cathedral Chapters cannot be erected." [85] Once again, their functions paralleled those already described.

C: Later twentieth century developments

1. Changes in Universal Law: Pre-1917

In 1909, the Constitution Sapienti consilio[86] removed the Church of the United States from the jurisdiction of Propaganda, as well as reorganizing the Roman Curia, but

84. Cf. Acta et decreta concilii plenarii Quebecensis primi, anno Domini 1909, Quebeci, Typis "L'Action Sociale", 1912, nn. 116-124.

85. Ibid., n. 117b.

86. PIUS X, Apostolic Constitution, "Sapienti consilio", June 29, 1908, in AAS, 1(1909), pp. 7-35.

introduced no change in the role of diocesan consultors. The particular law governing them remained in force, although universal law still prescribed cathedral chapters. In 1910, however, the responsibilities of consultors were increased somewhat, by the decree "Maxima cura"[87] which required that their consent be given for the selection of pro-synodal examiners or the newly-introduced "parish priest consultors", and for filling their vacancies. On the other hand, in 1916, their right to present three candidates for a vacant see was revoked by the Sacred Consistorial Congregation.[88] This decree left them with the right to recommend to the bishop every second year, the names of those they considered worthy.[89] The 1917 Code of Canon Law expressed in codified form the state of the law at the time and its prescriptions will be studied in more detail.

2. 1917 - The "New" Code of Canon Law and consultors

By 1917, the initially proposed temporary nature of the consultors had faded into the background, since there was no question of their suppression or obsolescence; indeed, the legislators of the Church had discussed their role when

87. S. C. CONSISTORIALIS, Decree, "Maxima cura", August 20, 1910, in AAS, 2(1910), pp. 636-648.

88. Cf. P. KLEKOTKA, op. cit., p. 25.

89. Cf. Acta et decreta concilii plenarii Baltimorensis tertii 1884, n. 15f. This right is not mentioned in the 1917 Code, but presumably remained according to this decree.

preparing the schema of the new law. By this time, the Holy See seems to have recognized their viability over cathedral chapters in countries where the Church was relatively young. The legislation was based on the decrees of the Third Plenary Council of Baltimore, which were described as "the most original piece of our local legislation and undoubtedly the foundation of the present common law on the subject." [90] At times, though, it was still argued strongly that cathedral chapters should be introduced into the United States, following the English example in 1850, when the Catholic Church was restored. [91]

The introduction of the new Code called for uniformity of practice and discipline throughout the Catholic Church. Chapters of canons were retained where they had existed previously, with much the same role as they had played before (canons 391-422). They were defined by canon 391 as "a college of clerics, instituted to celebrate more solemnly the Divine Office, to assist the bishop as his senate and

90. J.D. BARRETT, A Comparative Study of the Councils of Baltimore and the Code of Canon Law, Washington, D.C., CUA Press, 1932, p. 73. This study compared the relevant canons of the 1917 Code with those of the Third Council of Baltimore. Naturally, the universal law of the Church overruled previous legislation and practice in particular law, in the constitutive area.

91. Cf. S.B. SMITH, "Cathedral Chapters as Adapted to the United States", in American Catholic Quarterly Review, 3(1878), pp. 709-721. See also Smith's Notes on the Second Plenary Council of Baltimore, p. 57ff.

council."[92] If they acted as a cathedral chapter, according to the norms of the canons, when the see was vacant, the consultors governed the diocese.[93]

a) Definition of diocesan consultors

The diocesan consultors were not specifically defined as a body, in the Code, but were assigned responsibilities similar to those of the chapters of canons (canons 423-428).

According to canon 427:

The group (assembly) of diocesan consultors, in place of the cathedral chapter, supplies as the senate of the bishop; wherefore those canons concerning the governance of the diocese, which relate to the cathedral chapter - whether the see is impeded or vacant - are also understood to apply to the diocesan consultors. [94]

The duties of the canons were thus ascribed to the consultors, to the point where they exercised an independent governing role as a body when the see was impeded or vacant.

92. CIC, 1917, canon 391, §1: "Capitulum canonicorum sive cathedrale sive collegia seu collegiatum est clericorum collegium ideo institutum ut sollemniolem 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."

93. Cf. also J. GILCHRIST, "Cathedral Chapter", in W.J. McDONALD, ed., New Catholic Encyclopedia, New York, McGraw-Hill, 1967, vol. 2, p. 249.

94. CIC, 1917, canon 427: "Coetus consultorum diocesanorum 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 diocesanorum intelligenda sunt."

At the same time, the existence of the consultors was dependent on the bishop.

b) Nature of consultors

There was disagreement among the early commentators over the nature of the consultors; Smith and Augustine concurred in arguing against their being a moral person or an ecclesiastical corporation, in that the term coetus implied a broader definition than the more specific terms of collegium, societas or corpus, all used canonically in reference to juridical persons.[95]

On the other hand, A. Blat maintained that the consultors constituted a collegial moral person, based on canon 427, which assigned them the same rights and duties as the cathedral chapter.[96] His argument was also based on the three elements required; these are that there be:

- three or more persons to form a collegium, as specified in canon 100, §2;
- corporate rights for the group, which are not possessed individually;

95. Cf. S.B. SMITH, Elements of Ecclesiastical Law I, New York, Benziger, 1892, p. 496. Cf. also C. AUGUSTINE, A Commentary on the New Code of Canon Law, St. Louis, Herder, 1925, vol. II, p. 35.

96. Cf. A. BLAT, Commentarium textus codicis juris canonici, Romae, Ferrari, 2nd ed., 1921-1938, Liber 2, De personis, p. 395.

- some form of legal recognition.

Klekotka supported this view, since the canon law specified a minimum of four consultors, attributing to them the same rights and duties as chapters.[97]

The question of diocesan governance when the see was vacant provides a suitable illustration of this point. While consultors were not constituted as chapters were, but rather instituted,[98] it was consistent to see them as legally recognized "from the prescription of law" (ex iuris prescripto).[99] Hence there seems little argument against the diocesan consultors being a collegiate moral person. In the Schema preceding the 1917 Code, the term coetus was not even used,[100] so that it might be suspected that this term was introduced to give some legal standing to the body of consultors, leaving no room for misinterpreting their role, or for their acting as individual consultors. This last group of opinions seems to have had more favour and is the most logical.

97. Cf. ibid., p. 36.

98. "Instituantur", in CIC, 1917, canon 423.

99. This is Klekotka's position, op. cit., p. 33.

100. PONTIFICIA COMMISSIO IURIS CANONICI RECOGNOSCENTO, Schema codex iuris canonici; cum notis P. Card. Gasparri, (sub secreto pontificio), Romae, Typis Polyglottis Vaticanis, 1912, canons 302-308.

c) A Dubium iuris

While consultation was a high ideal in theory, in practice, the fact that its exercise rarely required the consent of those involved, meant that it was possible for the diocesan bishop to make his decisions in the above areas defined by the law, without paying too much notice to advice. Through the Third Council of Baltimore's decrees, the American bishops had succeeded in establishing a firm base for their exercise of authority, independent of their priests, in diocesan governance. The 1917 Code did not go much further in extending the rights of priests, but it reinforced the hierarchical model of authority which fitted the theology of the day - something to be discussed in the next chapter.

The question of validity of episcopal decisions taken without consultation, against the prescriptions of law as outlined above, was often raised after the 1917 Code was promulgated. In 1949, C. Bastagnel provided a comprehensive review of the array of canonical opinions in this matter.[101] Canon 105, §1 provided the basis for his study, since it contained the norms which determined the effects of a superior's failure to obtain consent before acting, in

101. Cf. C. BASTAGNEL, "The Requirement of Consultation for Valid Action", in The Jurist, 9(1949), pp. 365-395.

accord with the law.[102]

Bouscaren and Ellis have cited several principles for validity:[103]

- If consent was required, then consultation and a favourable vote had to be obtained for valid action.
- An element of doubt entered, however, when the situation of counsel or advice occurred, as the canon did not clearly state whether or not this was required for validity.
- There was no doubt that a superior did not have to follow the advice of those consulted if he decided otherwise. The legal requirement was fulfilled if they were asked, but he was exhorted to take this advice seriously.
- In the event of more than one person needing to be consulted, those involved in the process were to be summoned

102. CIC, 1917, canon 105, §1: "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, parrocho, etc., satis est, ad valide agendum ut Superior illas personas audiat; quamvis autem nulla obligatione teneatur ad eorum votum, etsi concors, accendendi, multum tamen, si plures audiendae sint personae, concordibus earundem suffragiis deferat, nec ab eisdem, sine praevalenti ratione, suo iudicio aestimanda, discedat."

103. Cf. T.L. BOUSCAREN and A.C. ELLIS, Canon Law - A Text and Commentary, Milwaukee, Bruce Publishing Co., 1957, 3rd. ed., pp. 90-91.

collegially, according to canon 162, §4; they could have been required to take an oath of secrecy.

- Advice or consent must be given with the attitude described in canon 105, §3.[104] While it might have seemed unnecessary to legislate for attitudes, it is interesting that advice and consent were to be sought in an atmosphere of "respect, faith and sincerity" were called for, as stated in this canon. Perhaps this suggests prior experience with problems in this area.

The variety of opinions on the matter vindicates those who held that there was a genuine dubium iuris, where it was difficult to decide where the line should be drawn. It did seem that this area of doubt called for application of canon 15, which provided for validity when there was some doubt in law. Hence the conclusion of the authors was that a superior's act would not be invalid, even if - contrary to law - he acted without consultation.[105]

d) The role of the diocesan consultors in the 1917 Code compared with the Third Plenary Council of Baltimore

While canon 423 implied a preference for cathedral chapters, if they were not constituted or restored, diocesan

104. CIC, 1917, canon 105, §3: "Omnes de consensu vel consilio requisiti debent ea qua par est reverentia, fide ac sinceritate sententiam suam aperire."

105. Cf. ibid., p. 91.

consultors were to be instituted by the bishop. The high virtues to be found in those chosen for these offices were similar to those of Baltimore's Decree 18,[106] except for the omission of the phrase "care for the salvation of souls",[107] probably because of the need for conciseness in the universal law, and the self-evident nature of the proposition. The requirement of an oath of office - before taking up duties - was added in the 1917 Code.[108]

The bishop's right to select his consultors was reaffirmed in canons 424 and 426, parallel to Baltimore's Decrees 19 and 21. However, a considerable change occurred in 1917, in that more control and freedom were given to the bishop in the Code, whereby he could appoint all of the consultors, in contrast to the previous legislation, which gave priests the right to nominate half of them.[109] The bishop could still apply the former method of selection, but

106. Acta et decreta concilii plenarii Baltimorensis tertii 1884, n. 18: "Quamdiu, in praesenti rerum statu, capitula cathedralia erigi nequeunt, instituantur consultores dioecesani, sacerdotes pietate morumque integritate, sollicitudine pro animarum salute, doctrina, prudentia, rerum hominumque experientia, necnon sacrorum canonum et dioecesanorum statutorum observantia insignes [...]"

107. Underlined in the Latin text of Decree 18 above.

108. CIC, 1917, canon 425, §2 prescribed the oath of office.

109. Cf. Acta et decreta concilii plenarii Baltimorensis tertii 1884, n. 19.

was not bound to do so.[110] There was no suggestion of extending the minimum mandatory term of three years for consultors, which confirms the fact that the Code was reinforcing episcopal authority, rather than extending the participation and representation of the presbyterium in diocesan governance.

i) Number and removal

The minimum number of consultors permissible was raised from two to four in small dioceses, although the recommended number remained at six or more, according to canon 425, §1. The fact that the consultors chosen were to live in the vicinity of the bishop's city suggests that meetings were to be held at regular intervals, and that consultation was to be exercised seriously, and not be merely nominal or a formality. In the balance, then, some attention was paid to broadening the level of episcopal consultation, limited though this was.

The removal of a consultor - discussed in canon 428 - was not effected easily, without good cause and the advice of the other consultors. Baltimore's legislation contained the same conditions of removal, in Decree 21.[111] Again, the

110. Cf. P. KLEKOTKA, op. cit., p. 52. Cf. also J.D. BARRETT, op. cit., p. 75.

111. Cf. Acta et decreta concilii plenarii Baltimorensis tertii 1884, n. 21.

1917 law provided some safeguard against absolute autocracy, although this could not be prevented if the consultors chosen in the first place were all compliant with the bishop's wishes.

Having established the nature of the board of consultors, the Code then defined its duties and functions.[112] Since canon 427 identified its role with that of the cathedral chapter, wherever feasible, references to it applied also to the consultors.

ii) Frequency of meetings

If the consultors were to be active as a body, the necessity of regular meetings was obvious. Canon 411 prescribed for the chapter to meet at a fixed time and place, with no mention of frequency. The Third Council of Baltimore had decreed that at least two, but preferably four, meetings between the bishop and consultors be held per year.[113]

iii) Consultation and consent

The question of consent and consultation needs to be given attention. The seven occasions when consultation was

112. CIC, 1917, Caput VII: De consultoribus dioecesan- is was only one specific area of reference to the consultors, but many other canons related to their functions - wherever chapters were mentioned.

113. Cf. Acta et decreta concilii plenarii Baltimorensis tertii 1884, n. 21.

required in the Baltimore legislation have already been outlined (Decree 20). Four of these were reconfirmed as such in the Code.[114] The relevant canons are detailed here.

- Canons 386, §2 and 426, §3 referred to the replacement of pro-synodal examiners and parish priest consultors outside a diocesan synod, and of diocesan consultors themselves, because of death or resignation of one of the incumbents.[115] Furthermore, the Code adds, in canon 388, that they may not be removed by the bishop, without a serious reason and after consultation with the consultors. This softened the regulation contained in Maxima cura (1910), which required the consultors' consent for selection of their own replacement members.[116]

- Canons 452, 1423, 1428 and 1442 concerned the situation of a parish or mission which is to be entrusted to a religious institute. The consultors were to be consulted by the bishop before the Holy See gave approval. Religious and secular benefices were not to be confused.[117]

114. Cf. J.D. BARRETT, op. cit., pp. 78-79.

115. Cf. Acta et decreta concilii plenarii Baltimorensis tertii 1884, n. 25.

116. SACRA CONGREGATIO CONSISTORIALIS, Decree, "Maxima cura", loc. cit., pp. 636-648.

117. Cf. Acta et decreta concilii plenarii Baltimorensis tertii 1884, n. 20.3.

- Canon 1359 required the bishop to seek the advice of the consultors in appointing the deputies in charge of the discipline and temporal affairs in the seminary.[118]
- Canon 1428 called for consultation of consultors and of irremovable pastors when there was a question of the division of a parish or mission.[119]

The differences in legislation between the 1884 Council and the 1917 Code were:[120]

- Canons 357, §1 and 362 stated that the bishop alone was responsible for calling and presiding at a diocesan synod, and was the sole legislator, whereas the Council of Baltimore required that he consult his consultors before convoking the synod or promulgating its decrees. [121]
- Canon 1234 concerned the determination of funeral offerings, and was the only financial item requiring consultation with the consultors, whereas the Baltimore decrees were more rigorous, in that they required consultation wherever any new tax was to be imposed by the

118. Cf. ibid., nn. 20 and 179.

119. Cf. ibid., n. 20.2.

120. Cf. J.D. BARRETT, op. cit., pp. 79-83.

121. Cf. Acta et decreta concilii plenarii Baltimorensis tertii 1884, n. 20.1.

bishop.[122] This was an addition by Rome to the original decrees; the commentators never considered its meaning to be clear anyway.[123] The various situations where a bishop could have imposed taxes or receive remuneration suggested that he was free - without consultation - to:

- expect "hospitality" on a visit (canon 346);
- call for a seminary collection (canon 1355);
- impose a cathedraticum (canon 1504); or
- decide on an "extraordinary" tax for special purposes, provided it was "moderate" and for an "urgent cause" (canon 1505).[124]

- Canon 1520, §1 required the bishop to consult the consultors before appointing the two or more men to form the diocesan council of administration with him.

- Canons 1532, §2 and 1532, §3 prescribed that for the alienation of church property, beyond certain limits, the bishop was not free to act independently, without consultation and consent. An inconsistency in the code appeared here, in that only the Holy See was to be asked for its consent, if the value exceeded 30,000 lire (approximately

122. Cf. ibid., n. 20.7.

123. Cf. S.B. SMITH, Elements of Ecclesiastical Law I, p. 490.

124. Cf. P. KLEKOTKA, op. cit., pp. 146-248.

\$US 6,000 then). The consultors only needed to be consulted for sums between 1,000 and 30,000 lire, and not for those in excess of this sum. Baltimore had decreed that the consultors and the Holy See give its consent for alienation of anything valued at over \$US 5,000.[125] Meanwhile, an indult had been granted to the American bishops, to the effect that only the consultors' consent was required for sums in excess of the \$5,000 limit, with the provision that a report of transactions and expenditures be sent every three years to Rome.[126] Non-observance of the law was punishable with penalties listed in canon 2347 - even to the point of automatic excommunication.

iv) Vacancy of the see

The period wherein the see was vacant or impeded was legislated for in canons 427 to 444. Canons 431 and 432, §1 elaborated: the power of governance devolved first to the cathedral chapter or diocesan consultors, who, within eight days of receiving notice of the vacancy, were to elect a diocesan administrator or vicar capitular, unless other provisions had been made by the previous bishop or the Holy See. If the see was impeded and the vicar general or person(s) delegated by the bishop was (were) unavailable, the

125. Cf. Acta et decreta concilii plenarii Baltimorensis tertii 1884, n. 20.6.

126. Cf. ibid., p. ciii.

consultors were to elect a "vicar" to govern the diocese with the power of a vicar capitular (canon 429, §3), with the person assuming charge to notify the Holy See of the situation (canon 429, §4).

The legislation of the Second Plenary Council of Baltimore, according to decrees 96-99,[127] provided that the senior suffragan bishop or metropolitan archbishop was to intervene in appointing an administrator to a vacant see, but this was no longer permitted by the Code, except where the consultors (or chapter) had failed to appoint one within the required eight days, according to canon 432. An exception was allowed where a diocese had less than five consultors, but only for three years, from 1919;[128] in this case, a bishop or archbishop was permitted to intervene. The consultors were to notify the Holy See of the bishop's death, and once they had appointed a diocesan administrator, canon 432, §4 required that he inform the Holy See of his election. There is "no doubt" that the consultors had the right to elect the administrator of a vacant see in the United States, according to the 1917 Code.[129] The rules for election are contained

127. Cf. S.B. SMITH, Notes on the Second Plenary Council of Baltimore, nn. 96-99.

128. S. C. CONSISTORIALIS, Decree, "Maxima cura", loc. cit., p. 75.

129. Cf. S. WOYWOOD, A Practical Commentary on the Code of Canon Law, rev. by C. Smith, New York, Wagner, 1948, vol. 1, p. 178.

in canons 160-178, and applied to the consultors electing the administrator.[130]

During this brief period of governance, the consultors or the chapter, and then the administrator, had all the ordinary power of the bishop in both spiritual and temporal affairs, according to canon 435, §1, but, before the administrator was elected, they had to act together collegially (collegialiter); their power resided in the whole body, not in the individuals.[131] While the Councils of Baltimore had never decreed that the consultors had this power, it had been customary for chapters to govern vacant sees;[132] the 1917 Code extended the role to the consultors, by granting them this ordinary power on a temporary basis, as mentioned in canon 427.

Some restrictions were placed on the administrator's power, although canon 437 provided that the consultors could not reserve any of his ordinary power to themselves, their status reverting to that of "advisors" - as soon as the administrator was elected, accepted the appointment, and made

130. Cf. ibid., p. 179; cf. also J. ABBO and J. HANNAN, The Sacred Canons, St. Louis, Herder, 1957, vol. 1, p. 433.

131. Cf. P. KLEKOTKA, op. cit., p. 165.

132. Cf. S.B. SMITH, Elements of Ecclesiastical Law I, pp. 494-495.

the profession of faith,[133] at which point ordinary power devolved upon him.

There was one further role assigned to the consultors in the event of a vacant or impeded see: canon 380, §1 refers to the two safes necessary for diocesan archives; the second was for secret documents, particularly those concerned with criminal trials. Two keys were prescribed for it - one for the bishop and one for the vicar general; in the event of a vacant see, the keys were to go to the administrator and to the senior consultor. The vault was not to be opened unless there was urgent cause, and the administrator was required to have two consultors present to do so. Such legislation ensured privacy and reduced the chances of private information being leaked. The penalties for non-observance of the law were severe, unlawful removal of any document leading to a latae sententiae excommunication - prescribed for in canon 2405.

The consultors had special functions to carry out even after the election of the administrator, despite his having the "ordinary" power of the bishop, since there were several limitations placed on the exercise of this power, as follows:

- Canon 113 provided that the administrator could not grant anyone excommunication or incardination until the see had been

133. Cf. ibid., p. 166.

vacant for a year, and then only with the consent of the consultors.

- Canon 373, §5 required the consent of the consultors for the removal of the diocesan chancellor and notaries.

- Canon 426, §5 concerned the situation where a consultor had resigned or died when the see was vacant, and had to be replaced; the administrator required the consent of the consultors to replace him.

- Canon 958, §1, #3 prescribed that after a year sede vacante, the administrator could grant dimissorial letters to a secular priest of the diocese, only with the consultors' consent. In an emergency situation, this could be done even if the see had been vacant for less than a year.

These canons were the only ones which required the consent of the consultors during the period of vacancy. It can be seen that the restrictions placed on a diocesan administrator, however, were not intended for the bishop, whose sole restriction as far as consent was concerned, was in the matter of alienation of Church property, as referred to in canon 1532, §3.

v) Rights of consultors

The rights of consultors were enumerated in several canons:

- Canon 286, §3 required that they be informed when provincial councils were to be held, and that they meet to select two representatives, who were to have a consultative vote.
- Canon 334, §3 provided for the consultors to receive the apostolic letters of appointment of the residential bishop; canon 313 demanded the same of an apostolic administrator, while canon 353, §2 required it of a coadjutor bishop.
- Canon 358, §1, #2 similarly required that they be called to a diocesan synod, among others.
- Canon 425, §2 required that consultors take an oath before assuming office, while there was the requirement of a profession of faith to be taken in the presence of the consultors and the local Ordinary or his delegate by an incoming consultor, according to canon 1406, §1, #6. The vicar capitular similarly was required to make such a profession in the presence of the cathedral chapter, and therefore the consultors in its place, where there was no chapter (canon 1406, §1, #4).

There are a few instances referred to by the Code, which used the term of "hearing" the consultors in reference to some episcopal decisions: This seems to imply a lesser obligation than those which mention the term "consult". To some commentators, the obligation to "hear" implied that it

was sufficient for the persons concerned to be consulted individually; the obligation to "consult" called for consultation of the whole group. Nevertheless, the fact that these situations are legislated for, means that they deserve attention in the overall scheme of diocesan governance:

- Canon 895 stated that the bishop may only reserve sins after "hearing" his consultors, if outside a diocesan synod.

- Canon 1292 called for him to "hear" them before organizing a special procession for a public purpose.

- Canon 1303 referred to poorer parishes and the bishop's right to levy a charge for the use of their churches by priests for their own convenience, the charge to be determined only after hearing the consultors outside a diocesan synod (canon 1303, §4).

- Canon 1520, §1 required the consultors to be heard before the council of diocesan administration was appointed.

Conclusion

Perhaps the most striking observation of this study is that the institution of "Diocesan Consultors" almost occurred by default, after they were introduced as a temporary measure, while conditions were not considered suitable for establishing cathedral chapters. The developing American Church, with its diversity of cultures and attitudes,

provides a fascinating study in itself - of growth in numbers and influence, but along with conflicts with the secular society and difficulties from within.

In the American Church, the increasing emphasis on local episcopal authority is seen in the virtual reversal of positions by Propaganda and the bishops from the time of Archbishop Maréchal's request to Propaganda for a "modified" cathedral chapter, suitable for the American "missionary" scene, in the early nineteenth century, to the episcopal pressure against such a move in the Roman consultations held prior to the Third Plenary Council.

The bishops' preference for retention of diocesan consultors, which were more or less totally under their control through personal selection, after the 1917 Code (even though election of half their number by the clergy was decreed by the Plenary Council of Baltimore in 1886), along with the limited number of areas where their consent was required, meant that their usefulness was limited. It would appear that many bishops saw them not so much as representatives of the local presbyterium, but as a means of support to their decisions and relief of some of their administrative responsibilities. The fact that the consultors' consent was not required for any issue according to the decrees of Baltimore, and only for a limited number of administrative matters in the 1917 Code, indicates that their

influence was dependent on the attitude of the diocesan bishop.

The priests, on the other hand, seem to have been primarily concerned with their security or tenure in a parish as pastors, and also with justice in clerical trials. From the evidence, it seems their interests were more in these areas than in the practical issues of diocesan administration. As for episcopal appointments, little progress was made in terms of consultation of priests in general. It was understandable that the priests wanted more security and protection of their rights, given the random way in which many were moved around, and in which summary judgments could be given in clerical trials by bishops.

According to the 1917 Code, the most significant role ascribed to the diocesan consultors in terms of the exercise of authority, was during the vacancy of a see, when, as a body, they exercised the ordinary power of governance until they appointed the Administrator. The institution of the diocesan consultors in the general law of the Church - from 1917 - has ensured their continued existence as a juridical person which has rights in the local Church and responsibilities to it.

CHAPTER II

THEOLOGICAL BACKGROUND TO THE EXERCISE OF ECCLESIAL AUTHORITY

Along with a historical account of the development and organization of presbyteral-episcopal relations within the North American Church in the nineteenth century, a review of the theology underlying the law is also a necessary part of this study, in order to have a balanced perspective of legislation and structures from the point of view of the whole Church. It is clear that political and personal considerations played a significant part in the formulation of the legislation on consultors in the United States. Nevertheless, the fact that they were introduced into the general law of the Church in the 1917 Code indicates that the Roman authorities acknowledged their role and applicability to local churches where cathedral chapters could not be established. The fact that the bishop required advisors chosen from the presbyterium was never in dispute on a theoretical basis. It was the practical situation which led to the thwarting of the intentions of the legislators, to the extent that consultors became more important in name than in function.

Hence, a study will be made first of the models of Church and authority. A brief historical survey of the development of the consultative process, and of the episcopate and its relationship to the presbyterium and laity - from Apostolic times until 1917 will be conducted with the aim of contextualizing changes in the expression of Church

structure from Vatican I (1869-1870) to Vatican II (1962-1965); these are the Councils which provided the theological thrust for the Codes of Canon Law of 1917 and 1983 respectively.

A: Preliminary bases for consultation in the Church

1. Some New Testament evidence

a) Consultation in general

A number of principles that are operative in any shared decision-making organizations of society can be found in the New Testament writings - at least in embryonic fashion. Among these, as characteristic of the apostolic communities, we could mention personal freedom, the equality of members, service, order and authority.[1] Freedom comes from faith in Jesus Christ, who frees from sin and death (Rom 8:2). The radical equality of members precludes judgments of others based on social class or on any other criterion (James 2.2-4); any divisions within the community are to be based on charisms and capacities, to be exercised in the building up of the community (1Cor. 12), and not on other elements.

Authority is to be exercised through service of the community, in the sense of Luke's description of Jesus as the

1. Cf. R. PESCH, "The New Testament Foundations of a Democratic Form of Life in the Church", in Concilium, 63(1971), pp. 48-59.

leader who "comes as one who serves" (Lk 22.24), and John's account of the washing of the feet at the Last Supper (Jn 13.15) as a model to follow. Thus the mission, life and service of Jesus set the pattern for life in the early Church; which operated in a manner quite different from that of the secular world surrounding it, but in which christians were actively involved. The understanding of "office" in this context was truly based on the nature of service, the duty of each member.

New Testament references to ministry and service (diakonia) indicate that the power of office in the Church is based on the ministry and power of Jesus Christ himself, thereby demanding the elements of service and self-effacement in the role of continuing the Church's mission. Any authority exercised derives from Christ, as is seen in the acknowledgment of offices as a gift of the glorified Lord to the community. The responsibility of office in the Church is two-fold, in that it is christological in origin and cannot be separated from the community. It remains the responsibility of the community to have some part in the exercise of authority. The antithesis of true ecclesiastical authority is the notion that acquisition of office entitles one to exercise power for its own sake. The community must always be considered in any decision if this decision is to be faithful to christian principles.

The early Church communities evolved through the active involvement of members in collaboration with their bishops and presbyters in a dynamic of reflection and consultation; a considerable degree of autonomy was in evidence in each early community, as evidenced by the following brief resume.

b) Presbyterium in the Early Church

The understanding of the presbyterium as a collegial entity of priests in the local Church was common in the early centuries of christianity, but this reality, and even the notion, faded as the Church spread geographically and grew numerically. Some background as to its origins will be considered.

It would seem that the terms episkopos and presbyteros were interchangeable in scripture and examination of relevant New Testament texts leaves us uncertain whether they indicated separate functions, although there are suggestions that the "elders" or "presbyters" in the Jerusalem church were administrators (Acts 11.30) and took part in decision-making at the Council of Jerusalem (Acts 15.16). The Apostolic communities seem to have used the term "presbyter" to embrace "all three subsequent distinctions of bishop, priest and layman." [2] Their role was described thus:

2. J. PURCELL, "The Institute of the Senate of Priests", in The Jurist, 38(1978), p. 134.

They appear always in the plural and act as a group; they do not travel from city to city like the Apostles, but fulfil their tasks within the framework of a particular congregation; they assist the Apostles in the administration of the community; and their office is a continuation of the apostolic office of preaching and teaching. [3]

The collegiality existing among bishops and presbyters could be seen as deriving from the collegiality of the pope and the bishops, which in turn can be seen as an analogy of the original college of apostles with Peter as head. From his letters, St. Paul's model of the Church was not primarily pyramidal, since his image of the Body of Christ emphasized the fact that members had different charisms to be used in building up the community (as in 1Cor. 12.1-29). However, some hierarchical structure is evident in his outline of the responsibilities of apostles, prophets and teachers (cf. 1Cor. 12.27-31). But individual leadership in many of the diverse communities soon developed as christianity spread.

Leadership of the local community by the bishop was common by the end of the apostolic age, but with evidence of the presbyterium's sharing in the authority of the leader through consultation and support. This authority

[...] which pertains to the presbyterium is a directive authority and a deliberative authority. The basis for this authority will be the

3. Ibid., p. 134, citing W.D. WALZ, The Juridical Status of the Senate of Priests, Washington, CUA, 1968, pp. 8-9.

sacramental ordination of the presbyterium, its inseparable connection with the office of bishop, the nature of ministry, and the charism of priesthood, which is, of course, a charism for leadership and governing. [4]

The authority of the priests, then, was to be exercised in harmony and collaboration with their bishop, whose role was to unify this authority.

Existing Jewish organizations and institutions certainly influenced the process of development of the early communities. The Pastoral Epistles fail to distinguish between the roles of bishops and presbyters, with community leadership and ministry realized in "elders" or "overseers"; Timothy has hands laid on him by the presbyterion (1Tim 4.14); elders govern, lead and teach (1Tim 5.17), while one of Titus' roles is to assign presbyters to every town (Tit 1.5). The basic pattern, then, is not entirely consistent, but could be described thus:

Jesus Christ founded the community and communities, aided by the activity of his Apostles and disciples during and after his lifetime; community and ecclesia naturally contain authority; this authority realizes itself in many ways stimulated by needs, cultures, by theological or liturgical emphases, by the different approaches of the Apostles. This plurality is part of an evolution of Church form, which evolution tends away from pluralism. [...] The number and form of these community leaders were realized in different concrete forms, and there were qualitatively different dimensions in

the leadership and polity of the community. [5]

In the apostolic period, when the apostles were absent, the role of bishops, elders and presbyters appears to have been to "celebrate the Eucharist, and govern the community collegially." [6]

2. Presbyterium in Patristic writings

a) Clement, Ignatius of Antioch, Polycarp and Hippolytus

Clement's letter to the Corinthians (ca. AD 96) from Rome was written from one church to another, without reference to a local bishop as head - at a time when there was dissent within the presbyterium in Corinth; it testified to the presence of colleges of presbyters both in Corinth and in Rome. The existence of a type of "collegiate presbyteral government" could explain the lack of reference to a bishop as head of the community. [7]

In the early second century, the letters of Ignatius of Antioch (ca. AD 110) to different churches emphasized the collegiality of the presbyterium, with priests forming a

5. T.F. O'MEARA, "Towards a Roman Catholic Theology of the Presbytery", in The Heythrop Journal, 10(1969), pp. 394-395.

6. T. GARCIA BARBERENA, "Collegiality at Diocesan Level: The Western Presbyterate", in Concilium, 8(1965), p. 11.

7. Cf. ibid.

college or "senate" (sunhedrion) around their bishop,[8] where a "strong and intimate bond with mystical overtones exists between the bishop and the presbyterium,"[9] but where the priests were seen as subject to the bishop, just as the apostles were to the Lord. Nevertheless, the authority of the bishop was shared, with the unity of the presbyterium dependent on the priests' common bond with their bishop. This model might not have been typical throughout the Church, but its theology was quite developed, with presbyters and deacons joining the bishop as leaders in their communities.

The Church at Philippi seems to have been governed under a "pure collegial regime" in Polycarp's time (ca. AD 107), since texts of the period contain elements of what is today understood as collegial government, these being "identity of authority, plurality of members and corporate action." [10].

The Apostolic Tradition of Hippolytus (ca. AD, 215) refers to "the grace and counsel" given to the newly-ordained

8. Cf. B. BOTTE, "Collegiate Character of the Presbyterate and Episcopate", in Etudes sur le sacrement de l'ordre, Paris, Cerf, 1957, pp. 97-124. Also referred to in: G. D'ERCOLE, "The Presbyteral Colleges of the Early Church", in Concilium 17(1966), p. 14.

9. F. HAARSMA, "The Presbyterium: Theory or Programme for Action?", in Concilium, 43(1969), p. 32.

10. T. GARCIA BARBERENA, loc. cit., p. 12. See also G. D'ERCOLE, loc. cit., passim.

priest, in order that he "help the priests and govern" the People of God. He was to participate in the "council of the clergy" and to receive the "common Spirit of the presbyterium", conferred by the bishop.[11] The presbyterium gathered for the election of a bishop, whose powers were conveyed by the laying on of hands by other bishops; the priests participated in the prior election with the people, and then, in a sacerdotal gesture, extended hands over the gifts at the altar. The ordination of priests involved the laying on of hands on those to be ordained, by the other priests present, as a clear sign of ministry together in the common spirit of the presbyterium, in the governance of the People of God, so that "they form a college sharing the bishop's burdens." [12] Echoes of this sense of common unity in the presbyterium were incorporated into the Apostolic Constitutions of the late fourth century.[13]

bP Cyprian

By the third century, the decline of the presbyterium in terms of influence in diocesan governance was evident in

11. Cited in J. LECUYER, "Le Presbyterium", in *Les Prêtres, formation, ministère et vie*, Paris, Cerf, 1968, Coll. *Unam Sanctam*, n. 68, p. 280. Cf. also J. LYNCH, "Co-Responsibility in the first Five Centuries: Presbyteral Colleges and the Election of Bishops", in J.A. CORIDEN, ed., *Who Decides for the Church? Studies in Co-Responsibility*, Hartford, CLSA, 1971, pp. 20-25.

12. B. BOTTE, *loc. cit.*, p. 77.

13. Cf. J. LECUYER, *loc. cit.*, p. 280.

Cyprian's writings (ca. AD 249-258), which reflected the movement towards centralization of the episcopal office. The bishop's ministry was as head of the presbyterate, "endowed with personal prerogatives of government independent of the presbyters." [14] While Cyprian formulated the famous expression that he made no decisions "without your advice and consent of the people," [15] his vision of the episcopal role was considerably more authoritarian, with "the people united to its bishop (sacerdos) and the flock adhering to its pastor." [16] In his words: "the bishop is in the Church, and the Church is in the bishop; and those who are not with the bishop are not in the Church." [17] The bishop's apostolic succession - symbolized by the cathedra - and his responsibility for the maintenance of unity in the community of faith were the foremost factors in Cyprian's mind; one problem faced in this period was the tendency towards schism and heresy in a number of communities, so that centralization of authority was seen as a necessary solution.

14. T. GARCIA BARBERENA, loc. cit., p. 12.

15. "Nihil sine consilio vestro et sine consensu plebis [...]." Cited by B. BOTTE, loc. cit., p. 78. Also by R.B. ENO, "Shared Responsibility in the Early Church", in Chicago Studies, 9(1970), p. 136.

16. B. BOTTE, loc. cit., p. 78.

17. Cited in ibid., from Epist. 66.9, in G. HARTEL, ed., Opera Omnia S. Thasci Caeceli Cypriani, Vindobonae, Geroldi, 1868-1871, vol. 3, p. 727.

The liturgy and discipline of this period also demonstrated this centralization: the bishop celebrated the eucharist when he was present, — while the priests concelebrated; he was to prepare the catechumens and preside at the rites of initiation, assisted by the priest; he was the teacher of the people in matters of doctrine and the one who reconciled and judged.[18] Hence the term presbyterium changed in meaning from the early writers such as Ignatius and Hippolytus, for whom there were connotations of equality with the bishop in Church leadership. The later sense used by Cyprian — which reflected a role for the presbyterium subordinate to that of the bishop, prevailed in the long term. At the same time, the "presbyterium" retained a sense of responsibility in acting as the bishop's advisors in governance, as well as having greater independent responsibility for Word and sacrament in ministry to local communities. The coetus presbyterorum was the senate of the local Church primarily in the second and third centuries.[19]

There remains the question of what is of divine and of ecclesiastical law in regard to the structures of administration and the exercise of authority in the Church. Cyprian's view was that episcopal powers in governance were

18. Cf. B. BOTTE, loc. cit., pp. 79-81.

19. Cf. J. LECUYER, loc. cit., p. 281.

preeminent by divine law. Some form of ministry was present from the beginning, passed on from the apostles, but the writings reveal that its practical expression was not uniform. It varied, depending on culture and other contemporary factors:

There is ministry and leadership in the Christian community but it can realize itself in different ways. Our collegial form with bishop and co-working priests is one of these realizations. Authority within community exists from Jesus and the twelve apostles, but particular realizations of this ministry stand between "divine" and "ecclesiastical" law. [20]

The centralization of authority at the local level occurred as the Church grew. An intermediate stage of development can be identified between "a pluralistic, diverse, somewhat creative and adaptable Church order"[21] and the later hierarchical structure which became the norm. The presbyteral role became more important in one particular aspect of ministry: this was in the celebration of the sacraments, since the bishop could not do everything sacramental in each community. But the counterbalancing factor was the loss of the collegial sense and activity among the priests. The ministry of the Word and sacraments became a presbyteral responsibility, but in the western Church, confirmation was reserved to the bishop as the completion of

20. T.F. O'MEARA, loc. cit., pp. 396-397.

21. Ibid., p. 395.

Christian initiation. The link with his eucharist was seen in the practice of sending consecrated bread from the bishop's Mass - the fermentum - out to the presbyters in charge of the smaller communities.[22]

3. Church and State involvement

The conversion of the Roman emperor Constantine (ca. AD 313) effected public acceptance of christianity, which in turn led to even greater dispersion of presbyters, sent by their bishops to carry out their mission to preach the Word, celebrate the Eucharist and the other sacraments in distant communities; the irreversible decline of the collegial presbyterium was inevitable. The relatively rapid change of circumstances and resulting practice has been summarized thus:

In the third and fourth centuries a decentralizing tendency entered. In the third century the Eucharist was generally celebrated by the bishop. But as Christianity expanded, when there had to be more than one liturgy for a church, when the small communities in the cities were organized, and especially with the evangelization of the countryside and small towns, presbyters became the pastors of these churches. [23]

From this experience arose the more highly structured monarchical model of the Church. Even so, the presbyterate

22. Cf. B. BOTTE, loc. cit., p. 81.

23. T.F. O'MEARA, loc. cit., p. 397. Cf. also Y.M. CONGAR, "Presbytérat et épiscopat", in Sainte Eglise, Paris, 1963, p. 292ff.

remained "a priestly body, assisting and supplying for the bishop in his charge of governing the people of God." [24] The lack of formal structuring was evident in these early centuries as liturgy and faith were developing in diverse atmospheres and cultures, but the focus on the bishop as leader was one of the earliest consistent features of ecclesiastical life :

There are no liturgical books and no codified law. The bishop is the sole legislator for his community. He lives very close to his people, consults his presbyters on important matters, and even seeks the consensus of the people. But he is dependent on no-one. He is the head of the community. [25]

4. Signs of declining collegiality

What could be termed as "diocesan collegiality" faded when bishoprics became larger and priests acted as "rather isolated vicars of the urban bishop." [26] In addition, the political situation of the Roman empire, along with the adoption of principles of Roman law, were predominant factors in the western Church's organization, whereby:

a whole system of decisions of ecumenical and local councils began to enclose the community in a network of directions and minutiae, until the interventions of the Roman See (which became more

24. B. BOTTE, loc. cit., p. 83.

25. Ibid.

26. T.F. O'MEARA, loc. cit., p. 397.

and more frequent) made the Church an absolute monarchy. [27]

In this way, the Church was transformed "by firmly securing the little primitive autonomous communities in the iron collar of a gigantic juridical machine." [28] Thus a political environment evolved, in which power was exercised independently according to law, "bound neither to senates nor to popular consent." [29] The evolution of centralized authority continued until the thirteenth century, when papal supremacy was at its medieval peak, with the presbyterium and synodal activity on the regional level being replaced by archdeacons and cathedral chapters at times acting as rivals for power, rather than as advisors to the local bishop.

The consciousness of the bishops seeing themselves as belonging to the "order of bishops" (ordo episcoporum) demonstrated a sense of collegiality among them. Historically, they were successors of the apostles, and hierarchically, they formed a separate "college". [30]

27. B. BOTTE, loc. cit., p. 84. Cf. also J.E. LYNCH, "The History of Centralization: Papal Reservations", in J. CORIDEN, ed., The Once and Future Church, Staten Island, Alba, 1971, pp. 57-109, which traces the course of increasing papal authority and control over the whole Church from Apostolic times to the twelfth century.

28. B. BOTTE, loc. cit., p. 84.

29. T.F. O'MEARA, loc. cit., p. 398.

30. Cf. B. BOTTE, loc. cit., p. 87.

Incorporation occurred through a collegial act, in that at least three other bishops were required for consecration, as decreed by the Council of Arles (AD 314). [31]. Perhaps the most important aspect of this sense of collegiality, though, was its contribution to the sense of unity through eucharistic communion and a common faith.

5. The emergence and decline of the cathedral chapter

In the fifth century, St. Augustine, as bishop of Hippo, first organized priests who were attached to the cathedral church on a formal basis with a rule and common residence with the bishop. The term "canon" derived from their observance of rules or "canones"; the term "chapter" designated a "college" of clerics "endowed with a juridic personality, whose principal function is to render solemn worship to God, in a cathedral or collegiate church", as well as having some rôle in administration. [32]

31. Canon 20, cited in P. GRANFIELD, "The Historical Development of Ecclesial Democracy", in Ecclesial Cybernetics: A Study of Democracy in the Church, New York, MacMillan, 1973; p. 152. In this chapter, Granfield gives an overview to community participation in the process of decision-making in the Church, pp. 140-210.

32. While the term "chapter" or "capitulum" was not applied to such a body until the tenth century by Gaius, Archbishop of Sens, it could be applied retrospectively to Augustine's "canons". Cf. P. TORQUEBIAU, "Chapitres de chanoines", in R. NAZ, ed., Dictionnaire de droit canonique, Paris, Letouzey et Ané, 1935-1965, vol. 3, col. 530. For further discussion on the subject, see J. GILCHRIST, "Cathedral Chapter", in New Catholic Encyclopedia, New York, McGraw-Hill, 1967, pp. 249-250. The subject is discussed in more detail by P. TORQUEBIAU, "Chanoines", in Dictionnaire de

Some three centuries later, Chrodegang of Metz in the eighth century (ca. AD 755) drew up canonical rules of common life, which became the basis of later capitular rules. Common life, however, was not very popular with clerics who preferred to retain their personal possessions and prebends, even though they still played some role as advisors to the bishop.

The early cathedral chapters were only a remnant of what was once the focus of ministry - the presbyterium of the local church - with presbyters gathered around their bishop as a united force, guiding their people in faith; those who remained at the cathedral formed the bishop's council or senate. The common life of many canons had virtually disappeared by the eighth century, but the cathedral chapters continued to gain rights, power and influence in Church and civil affairs, reaching their peak between the eleventh and fourteenth centuries.[33]

The eleventh century Gregorian reform brought in stricter rules. Conflicts developed between chapter and bishop as the "cathedral chapter as a corporate body with

~~droit~~ canonique, vol. 3, cols. 472-488, and "Chapitres de chanoines", *ibid.*, cols. 530-595. The latter articles give a comprehensive account of the history of chapters and canons.

33. Cf. J. PERCELL, *loc. cit.*, p. 137. Cf. also P. TORQUEBIAU, *loc. cit.*, and J. GILCHRIST, *loc. cit.*

rights and status in the Church" developed and progressed.[34] By the twelfth century, it became customary for the chapter to elect the bishop; this practice was confirmed by the Fourth Lateran Council (AD 1215). When the see was occupied, the bishop was required to seek its counsel or consent in prescribed cases.[35]

From the thirteenth to the sixteenth centuries, the administration of a diocese during a vacant see was subject to the jurisdiction of the chapter, whose pastoral interests were somewhat complicated by the fact that the canons were involved with the wealth and corporate life of the city with business interests predominant; corruption and abuse of power seem to have been somewhat prevalent throughout this period.[36]

Three factors characterized the chapter: proximity to the episcopal church, praying divine office or having solemn worship in common, and playing a role in major matters of diocesan governance as adjutants to the bishop. P. Torquebiau contends that chapters - even though not designated as such by name in the early centuries - are virtually "as old as the

34. Cf. J. GILCHRIST, loc. cit., p. 249.

35. Cf. P. KLEKOTKA, Diocesan Consultors, Washington, DC, CUA Press, 1920, p. 9.

36. Cf. ibid.

Church" itself.[37] They also had the right to impose ecclesiastical sanctions, from the time of Ivo of Chartres (ca. AD 1127), and, through its role as the bishop's senate, the chapter "played a continuous part in the administration of a diocese." [38]

The Council of Trent - in its general legislation to correct abuses - enacted decrees of reform of the chapters, which nevertheless retained the right to carry out diocesan administration sede vacante and to elect the new bishop.[39] Their spiritual rôle of common worship in the cathedral also seems to have been at least defined even if not practised. The chapters had

[...] a twofold corporate existence: one as a senate of the bishop; the other as a corporate body of its own. [40]

Ironically, then, the chapter, initially established as a means of assisting the bishop in running a diocese, became a negative factor through its tendency to operate independently of the bishop, whom it had elected. Laws from Rome, subsequent to the thirteenth century, modified capitular

37. Cf. P. TORQUEBIAU, loc. cit., col. 532. Cf. also J. MANSI, Sacrorum Conciliorum Nova et Amplissima Collectio, Paris, Welter, 1901-1927, 53 vols., 23:1011.

38. J. PURCELL, loc. cit., p. 138.

39. Cf. P. KLEKOTKA, op. cit., p. 11.

40. S.B. SMITH, Elements of Ecclesiastical Law I, New York, Benziger, 1892-1893, 9th ed., p. 495.

power, generally by reducing its responsibilities. Appointment of bishops became a papal prerogative - though theoretically still a capitular right until the 1917 Code. The Council of Trent (AD 1545-1560) legislated for chapters to appoint an administrator within eight days of a See's becoming vacant, and subjected them to "episcopal visitation and correction." [41] The cathedral chapter, then, was a limited realization of the original intention to involve the whole presbyterium of a diocese in the decision-making process of the bishop by consultation, as a successor of the early presbyteral colleges; this is the conclusion reached after reviewing the development of diocesan organization from the early Church through the centuries. Centralization and concentration of authority were the hallmarks of the Church in the period up to and beyond the Council of Trent.

6. A historic principle of consultation

One historical principle concerning consultation was sometimes applied to ecclesial deliberations: this was stated as "what touches all, is to be approved by all" ("Quod omnes tangit, ab omnibus approbetur"). Y. Congar describes it thus:

[It] comes from Roman Law, where it was a simple law of procedure. Brought in by the communitarian current of the twelfth century, and even more deeply by means of the traditional

41. J. PURCELL, loc. cit., p. 139. The relevant Tridentine legislation is recorded in J. MANSI, op. cit., vol. 33, 165-166, canon 16, and ibid., vol. 33, 45, canon 4.

christian sense in matters of political life, ecclesial life and common religious life, the maxim quickly took on a broader meaning, in the sense of a system of advice and consent. [42]

By the thirteenth century, it became

[...] a pivotal constitutional principle in the Church and western polity generally. [...] in the ecclesiastical sphere [the maxim was used] [...] as a sort of general directive requiring the consultation of interested parties before certain actions were taken in a community. [43]

Its application marks the complementing of the church's hierarchical structure with a degree of consultation and consent in the community. So it was recognized during this period that the Church's structures should accomodate broader participation, not so much as a means of preventing bad decisions, but to reflect a turn to "consultative leadership", with broader involvement of the people who are affected with the issues at hand.[44] At the same time, the bishops still had the final power of decision and alone signed the conciliar documents of the Church.[45] By the end

42. Y.M. CONGAR, "Quod omnes tangit, ab omnibus tractari et approbari debet", in Revue historique de droit français et étranger, 30(1958), p. 258. Cyprian's famous statement on seeking the consent of his presbyterium and people implies use of the same notion. The subject is treated at length by Congar, in this article, pp. 210-259. Cf. also W.J. LA DUE, "The Right of the Church People to participate in Ecclesial Decision-Making", in Studia Canonica, 7(1973), p. 184.

43. W.J. LA DUE, loc. cit., p. 184.

44. J.A. CORIDEN, "Shared Authority: Rationale and Legal Foundation", in Chicago Studies, 9(1970), p. 182.

45. W.J. LA DUE, loc. cit., p. 184.

of the thirteenth century, however, the mood within the Church changed to a more authoritarian exercise of authority. The point is that consultation - even beyond the level of the clerical - was an operative principle at some stages in the Church's history.

The process of decision-making should include genuine consultation, and not merely result in acquiescence to a leader's decisions or proposals. Models of participatory decision-making from government, business and other organizations, demonstrate an effective means of creating a greater sense of involvement and responsibility among members of a group, so that this adage still holds true in the Church in the modern world.

B: The understanding of authority in the Church leading up to the 1917 Code

The movement of centralization of authority and administration, which had been given a strong momentum by the Council of Trent, was continued through to Vatican I, culminating in the promulgation of the definition of papal infallibility in 1870. This conciliar teaching underlies many of the canons of the 1917 Code; this is pointed out, for instance by M. Dortel-Claudot, in his study of the relationship between Rome and the Church universal.[46]

46. Cf. M. DORTEL-CLAUDOT, "Rome et l'Eglise universelle du XIIe au début du XXe siècle", in Eglises locales,

The goal of this section is to clarify developments in theology of the papacy, episcopacy and presbyterate, so that the relationships between them may be studied, giving some background to the relevant canons in Section II in Book II of the 1917 Code, in relation to the hierarchical structure of the Church.[47]

1. The Council of Trent and its aftermath

Perhaps the most consistent period in the Church's history, in terms of theological perspective, has been the period between the Council of Trent and Vatican I (AD 1545-1870), during which time the Catholic Church became increasingly embattled against societies which were rapidly changing, whether through revolution or less violent social change.

The Reformation eventually led to the Council of Trent, and the subsequent Counter-Reform within the Church, which emphasized continuity with tradition as well as uniformity in worship and doctrine, for the sake of preservation of the faith. This called for strong central government, with universal laws over Catholic practice, wherever the Church had survived the reformers' zeal.

Eglise universelle: comment se gouverne le peuple de Dieu,
Lyon, Chalet, 1973, pp. 47-59.

47. CIC, 1917, canons 215-486.

The somewhat centralized governance of the Church in this period led such theologians as Y. Congar to speak of the "mystique" of authority which permeated the Church after Trent - demonstrating a "complete identification of God's will with the institutional form of authority. In the latter it is God himself whose voice we hear and heed." [48] The exercise of authority in the Church was controlled by the Pope, the episcopus universus, under whose jurisdiction all church matters came.

The delegated papal power which the bishop exercised, gave him greater standing in the Church from the time of Trent, before which time much of the jurisdiction had been assumed by the archdeacons, whose power had increased over the centuries, and by the monasteries and cathedral chapters. Hence, although the understanding of papal authority was at its peak, in effect, the bishops had quite a degree of authority restored to them in their own dioceses. [49]

The Tridentine debate on the subject of episcopal jurisdiction was far from unanimous; the Spanish bishops apparently wished to see episcopal jurisdiction over a

48. Y. CONGAR, "The Historical Development of Authority in the Church: Points for Reflection," in J. TODD, ed., Problems of Authority, Baltimore, Helicon Press, 1962, p. 144.

49. Cf. J. LYNCH, "The Changing Role of the Bishop: A Historical Survey", in The Jurist, 39(1979), p. 309.

diocese explained as coming directly from God, rather than through the pope.[50] Their arguments were outweighed by those who supported the view that the power of orders was conferred by the sacrament and that of jurisdiction by papal concession. Objections remained, however, to the implication that the episcopate was denied any direct responsibility for the Church universal, "reducing the bishop to a mere functionary or vicar of the Pope within the limits of his diocese." [51] In practice, then, the bishop was given considerable power in his own diocese after Trent, although its exercise was limited in theory by papal authority.

Some time after Trent, in the 18th century, an author such as J. Bolgeni is found treating the question of episcopal authority and collegiality in a way which anticipated the teaching of Vatican II.[52] His theology focussed on the Church's indissoluble unity through the universal episcopate, whereby the bishops were in communion with one another and dependent on the Pope for their authority:

He (Bolgeni) sees in the hierarchical constitution of the Church a reflection of the

50. Cf. S. RYAN, "Episcopal Consecration: Trent to Vatican II", in Irish Theological Quarterly, 33(1966), p. 136.

51. Ibid., p. 137.

52. Cf. ibid., p. 140.

mystery of the inner Trinitarian life in that same fullness which is vested in the Pope, also found in the episcopal college as a whole. [53]

While his views might not have been typical of the general understanding of ecclesiastical authority - papal and episcopal - at the time, his writings were not anathematized. Bolgeni described the bishop as possessing powers of orders and jurisdiction in his own diocese, through his communion with the Pope and membership of the college of bishops; as a member of this body - the successors of the apostolic college, he shared in the universal jurisdiction of the Church. In addition, he described each diocesan bishop as having his own authority in the local church for which he was responsible.

2. Vatican I and its teachings

a) Papal infallibility

The acts of Vatican I revealed a consistent theological option for centralization of authority and the primacy of Rome in all decision making and policy formulation for the Church universal. The papacy was seen as the focal point for control, with the episcopacy dependent on it for jurisdiction; the presbyterate was recognized as having minimal power, dependent on the local bishop for its exercise. All jurisdiction came from the pope, and not even

the bishop could exercise his ministry without a canonical mission from the pope. In contrast to Bolgeni's position, the theology of Vatican I, as revealed in the section on the Roman Pontiff in the 1917 Code, attributed this jurisdiction directly to the supreme authority in the Church.[54]

The Vatican I definition of infallibility came as a logical development of the way in which papal authority was being exercised on the ecclesiastical plane. It stated that the definitions of the Roman pontiff in matters of faith and morals are irreformable of themselves, not even through the consent of the Church.[55] No mention was made of monarchy in the documents, but there is the clear implication of a monarchical mentality behind them.[56] There were certain limitations on the pope's power, in that he could not deny revelation or its definition in dogma; nor could he abolish basic structural elements of the church, such as the episcopate. Thus the model was more of a constitutional monarchical nature rather than that of an absolute monarchy, if all implications of the definition are considered.

54. CIC, 1917, canons 218-221.

55. Cf. Vatican I, "De Romani pontificis infallibili magisterio", in H. DENZINGER and A. SCHONMETZER, eds., Enchiridion symbolorum, definitionum et declarationum de rebus fidei et morum, Ed. 35 emendata, Friburg-Brisgoviae, Herder, 1973, p. 792.

56. Cf. P. GRANFIELD, "Ecclesial Cybernetics: Communication in the Church", in Theological Studies, 29(1968), p. 188.

b) Preliminary signs of episcopal collegiality

While Vatican I had concentrated on the role of the papacy and its authority in the Church, the fact remains that there was a schema prepared on the role of bishops - Constitutio secunda de ecclesia Christi, [57] but circumstances prevented its being treated at the Council, which was disrupted by the unstable political situation of the time. As a counter-balance to the definition of papal infallibility, this document would have acknowledged episcopal collegiality as a reality in the Church, [58] in much the same spirit as Bolgeni's earlier treatise. Nevertheless, this Council did state that the "power of the Supreme Pontiff is far from standing in the way of ordinary and immediate episcopal jurisdiction." [59]

In 1875, the German bishops issued a declaration on the relationship between the papacy and the episcopate; they declared the independence of each diocesan bishop in the exercise of jurisdiction in his own diocese, and stated that he was not simply a papal delegate, but had power in his own

57. This is discussed by P. GRANFIELD, in *ibid.*, in reference to G. DEJAIFVE, "Primauté et collégialité au premier concile du Vatican", in Y.M. CONGAR and B.D. DUPUY, eds., L'épiscopat et l'Eglise universelle, Paris, Cerf, 1962, pp. 639-660.

58. Cf. P. GRANFIELD, *loc. cit.*, p. 189.

59. H. DENZINGER and A. SCHONMETZER, *op. cit.*, p. 792.

right. Pius IX's response to it was favorable; he claimed it "presented the true meaning of the Vatican decrees" in a way which "leaves nothing to be desired." [60] Meanwhile, however, the "orthodox" theologians adhered to the notion of "papal infallibility, supremacy and jurisdiction." [61]

During the same period, Bolgeni's thesis was rejected by such proponents of papal absolutism as D. Palmieri, whose 1877 Treatise on the Roman Pontiff was rather lop-sided in its analysis of ecclesiastical power, concentrated totally in the hands of the Pope, as "the one supreme power in the Church, with the bishops receiving their power from him." [62] The bishops, then had been given some consideration as to their role in the area of authority, and their individual power as "successors to the apostles" was acknowledged in preliminary deliberations for the Council in 1870. But, in the ensuing period, the upper hand was held ultimately on the teaching level of the Church by the proponents of virtually absolute papal authority.

With the theology of the episcopacy moving into such an official vacuum, the power of orders was stressed as the distinguishing factor between bishops and priests. It was as

60. P. GRANFIELD, loc. cit., p. 190.

61. S. RYAN, loc. cit., p. 147.

62. D. PALMIERI, Tractatus de Romano Pontifice cum prologomeneo de Ecclesia, Romae, S.C. de Prop. Fidei, 1877, p. 492.

if a bishop's role was simply to provide more priests. The former could ordain and confirm, in addition to the normal priestly powers of consecration and absolution, but the jurisdictional power was left to the Pope. The isolation of power led to a "theology of the sacrament of Order which has lost its roots [...] in a splendid isolation", [63] and left it disconnected from a theology of the Church.

C: The 1917 Code and models of authority

1. The models

a) Perfect society

The 1917 Code legislated with Vatican I theology in mind, as can be seen from an analysis of the canons relating to power and authority. The changes in the role of the bishop and the effect of the theology of the episcopacy found in the documents of Vatican I incorporated into the Code, can be expressed under many headings. [64] The Church was seen as a pyramidal structure, with the pope at the head, the bishops on the next rung down, followed by clergy, and religious with laity at the bottom. The notion of the Church as a "perfect society", possessing within itself all of the power required

63. S. RYAN, loc. cit., p. 149.

64. Cf. V. WALSH, "The Theological and Juridical Role of the Bishop: Early 20th Century and Contemporary Views", in Apollinaris, 44(1971), pp. 39-92.

for its life and activity, perhaps best summarizes this model. This was expressed by D. Palmieri:

It is a perfect society, neither part of, nor subordinate to another society; for if it is of this kind, it possesses the capacity to achieve its ends, whereby it forms an integral and total society in itself, and thus is perfect. [65]

A dual purpose was expressed by this model: to preserve the Church's independence from the State, and to reinforce episcopal authority from within. The idea of the Church as a "society" arose from the idea that it was "a stable and moral union, made up of many members, to attain a common end, by common means." [66] Thus its definition was more political than theological, but this distortion was assumed by the theology manuals and continued to be the predominant "official" model influencing the formulation of the 1917 Code. Theoretically, the goal was to preserve "ecclesiastical independence" from secular society, rather than to emphasize "papal monarchy", [67] but the latter was very much the reality existing in the Church, particularly after the formal definition of papal infallibility.

65. "Ea est perfecta societas quae neque est pars alterius societatis, neque alteri societati subordinatur; si enim huiusmodi est, oportet ad consecutionem finis; quo fit ut societas integra sit et in se tota, hic est perfecta." D. PALMIERI, op. cit., p. 378.

66. V. WALSH, loc. cit., p. 42.

67. J. CUNEO, "The Power of Jurisdiction: Empowerment for Church Functioning and Mission Distinct from the Power of Orders", in The Jurist, 39(1979), p. 189.

b) Monarchy

Along with the "perfect society" model, the view of the Church as a monarchy also prevailed; the pope was seen as the absolute leader, with the bishops somehow sharing in this power in their own dioceses. This view has been described as of "divine law or right" - instituted by Christ himself.[68] One problem with this vision is that it was based on the view that the monarchy was the ideal form of government in a society - an idea which was fast fading in many secular societies at the time, particularly in the light of the revolutions of the 18th and 19th centuries. It is clear that this limited vision handicapped theological development, and expression of ecclesiology in broader categories.[69] This post-Reformation vision of the Church saw the pope as the princeps of the society, governing auctoritate propria, with the Church possessing the power of jurisdiction as a result of its being a societas perfecta. [70] Pius X's famous statement on the respective roles of clergy and laity in the Church epitomized the clericalism of the Church at the time, ascribing to the laity simply a passive role of obedience and

68. Cited by R. KRESS, "Membership and Leadership in the Church", in The Jurist, 42(1982), p. 34. Many other theologians similarly wrote of the Church in this style after Vatican I.

69. Cf. V. RYAN, loc. cit., p. 45.

70. Cf. J.M. HUELS, "Another Look at Lay Jurisdiction", in The Jurist, 41(1981), p. 60.

subservience to ecclesiastical authority:

The Church is by its very nature an unequal society. There are within it two different classes of persons: the members of the various orders of the hierarchy, and the multitude of believers. These two classes are so distinct that it can be said that with the hierarchy alone rests the right and the authority to move and direct members towards the goals of the society. The office of the multitude, on the other hand, is to permit themselves to be ruled and to follow obediently the directives of the office-holders. [71]

This move towards absolutism demonstrated the marked swing from the "constitutional spirit of the thirteenth century" to the "absolutist atmosphere which pervaded the 1917 Code." [72]

This mentality led to a somewhat distorted, dualistic conception of the Church as a perfect society on the secular level - having all the powers proper to it - and, on another, higher level, as a spiritual entity possessing vicarious power from Christ. [73] The dichotomy evident in these two concepts retarded progress towards a more unified and

71. P. GASPARRI, ed., *Codicis iuris canonici fontes*, Rome, Typis Polyglottis Vaticanis, 1925, Vol. III, p. 664. Translated from the Latin by W.J. LA DUE, *loc. cit.*, p. 185. The original statement was made by PIUS X, in his Encyclical Letter, "Vehementer nos", February 11, 1906, in *ASS*, 39(1906), pp. 3-16.

72. W.J. LA DUE, *loc. cit.*, p. 185.

73. The article by J.M. HUELS, "Another Look at Lay Jurisdiction", in *The Jurist*, 41(1981), p. 60, sees this as a necessary result of the "perfect society" model of the Church at the time, not unlike many secular societies, and aided by the fact of the existence of the Church as a temporal power, with the pope as ruler (princeps).

balanced vision of the Church, especially in regard to the position and role of the "lower levels" of clergy, religious and laity.

The next point to be examined is the mode of exercise of ecclesiastical jurisdiction. The monarchical model requires that all power of jurisdiction come from the top of the pyramid, which leads ecclesiology to be described as "hierarchology" - "the theology of those having the power of leadership." [74] The pope headed the structure, with the bishops in charge of the local churches under him, supported by clergy who were totally dependent on the bishop for their jurisdiction and the exercise of their orders. Laity only fitted into the picture on the bottom level as passive followers, with no possibility of exercising any ecclesiastical power. Extremes were reached in such expressions as: "The pope himself is the Church" ("papa ipse ecclesia"); and the rumored statement of Pius IX: "I am Tradition" ("La Tradizione - sono Io"). [75]

Historically, it can be argued that attacks on the hierarchy prompted such reaction and concentration of power, but to the detriment of the understanding of the Church as a "Mystery" - a concept so dear "to the Fathers of the ancient

74. R. KRESS, loc. cit., p. 34.

75. Referred to by Kress, ibid., p. 36.

Church and the Masters of Medieval Scholasticism." [76]

Following from Pius X's earlier declaration on the role of the laity in 1907, the view of one commentator on the 1917 Code was that:

The Catholic Church is the Church of the clergy. Pope; bishop and priest constitute the Church. According to its canon law, the clerics alone appear as full fledged members. The laity are but the people who are to be led and taught. [77]

A study of the 1917 Code supports this statement to some extent, in that laity are rarely mentioned and there, generally in reference to obedience to authority. [78]

2. Ecclesiastical jurisdiction

Jurisdiction is "a canonical vehicle of Church organization." [79] It will first be considered as "public power", or power of governance; canon 196 (of the 1917 Code) sees "the power of jurisdiction, that is, of ruling, which is

76. Ibid., p. 35.

77. U. STUTZ, Der Geist des Codex iuris canonici, Stuttgart, Enke, 1918. Translated from the Latin by R. Kress in ibid., p. 36.

78. The section de Laicis of the 1917 Code, contains 44 canons (682-725) - mainly concerning associations of the faithful, while the laity are only mentioned in 2 canons: Canon 682 gives them the "right" to receive ecclesiastical discipline, the spiritual goods and helps for salvation, while canon 683 forbids the wearing of clerical dress! This limited view is discussed by A. CARTER, in "Bishop-Priest-Laity Relationship in the Light of Vatican II", in Studia Canonica, 1(1967), p. 157.

79. J.J. CUNEO, loc. cit., p. 185.

of divine institution in the Church, as either of external forum or internal forum." [80] Analogous to the power of the state, jurisdiction is seen as a public power to be directed towards uniting a plurality of individuals, the "capacity to rule or direct members of the society with legislative, executive and judicial functions." Authority, then, is seen as "the right to oblige members to follow the end of the society." [81] Its purpose is to place a juridical bond between the means to be used and the ends to be achieved in a society; but primary questions concern how it is to be exercised and by whom.

All ecclesiastical authority has its source in Christ, so that:

[...] the apostles and their successors do not fill this power in their own name, but by reason of their institution in this function by Christ and for him. Through the jurisdictional power given to the bishops, Christ himself governs his Church, the same as, through the power of the sacrament of Orders, he constitutes his Church in each of his members. That is to say that the obedience vis-à-vis the holders of jurisdictional power in the Church, is equivalent to the obedience of Christ and that disobedience to them is equivalent to disobedience to Christ. But through that, the apostles and their successors do not take the place of Christ. They do not bind men to themselves, but to Him whose servants they are. [82]

80. CIC, 1917, canon 196.

81. J.J. CUNEO, loc. cit., p. 186.

82. G. SIEGWALT, "L'autorité dans l'Eglise: son institution et sa constitution", in Revue de droit canonique, 22(1972), p. 102: translated from the French.

G. Siegwalt, in his study on authority in the Church, identifies historically the confusion between the roles of secular and religious authority, when the Church was as much involved with the government of secular society as exercising its spiritual authority over its subjects - through its leaders. The Council of Trent bound the exercise of orders to the ministerial priesthood, as the "power of consecrating, offering and distributing the body and blood of Christ," as well as the "power of remitting and retaining sins", [83] not only in the sacrament of penance, but more generally in the mission of preaching the Word and administration of the sacraments.

The impact of temporal law on traditional Roman Catholic conceptions of ecclesiastical authority is seen in the relationship between the doctrinal and governmental aspects of Church ministry, with the 1917 Code seeming to place the former magisterial role under the heading of jurisdiction, so that the governmental disciplinary dimension included the doctrinal level of teaching and believing. [84] Hence the source of confusion is evident about who has the power of jurisdiction. The involvement of non-ordained members of the Church being anything but passive would have

83. H. DENZINGER and A. SCHONMETZER, op. cit., n. 1764, p. 412. Translated by G. SIEGWALT, loc. cit., p. 117.

84. Cf. ibid., p. 118.

been seen as a risk to the orthodoxy of doctrine, which had to be kept under the control of those ordained - more specifically, of the hierarchy.

The influence of social phenomena on the Church's exercise of power is also treated by F. Houtart, who sums up the problem of authority in the Church thus:

Moreover, the confusion between the supernatural and the profane has produced in many religious systems an identification between the religious hierarchy and the social stratification. This has happened to the extent that the holders of religious authority become partakers in the establishment. [85]

In addition, to highlight the legitimacy of authority, apart from this legal-societal obligation, he considers the categories of M. Weber. These are: tradition, affective attitudes and a rational belief in the value of authority, leading to the description of the three types of authority as "patriarchal", "rational-legal" (bureaucratic), and "charismatic". These categories of authority then shed some light on its exercise in different ways in the Church:

Firstly, authority is charismatic, because its origin is divine. Secondly, authority is of the rational-legal type, because in a modern society religious authority has adopted a certain number of means of communicating and acting from the rational universe in which it lives. Thirdly, in a number of domains and regions, authority is of the traditional type especially where a

85. F. HOUTART, "Conflicts of authority in the Roman Catholic Church", in Social Compass, 16(1969), p. 316.

sacralization of the social order still predominates. [86]

These categories of leadership help identify the Church's basis for many aspects of fulfilling its mission through the direction of its members. The contrast between the "vertical-hierarchical" model of the pre-Vatican II Church and the "horizontal-collegial" model of the post-Vatican II era is a key factor in analysing the changing attitude to its exercise on the part of Church members and of those in authority. Its organization is characterized by the functions of transmission of ultimate values, which enable socialization and continuity in diverse cultures. Flexible structures of organization are needed, as are the means of providing for the collective expression of the members. This is apart from the fact of the system of legitimation being based on divine revelation.[87]

J. Beyer's contribution to the discussion cannot be neglected either, as he speaks of the unity of ecclesial power, despite the clear categories of Orders and jurisdiction, defined in the 1917 Code and operative in Church life since the Council of Trent.[88] The question of

86. Ibid., p. 316.

87. Cf. ibid., p. 309.

88. Cf. J. BEYER, "La nouvelle définition de la 'Potestas Regiminis'", in L'Année canonique, 24(1980), pp. 55-67.

ordinary and delegated power is another area of interest, treated by A. Stickler, who asserts that:

[...] incontestably, in the Catholic Church the power of governance has always been considered inherent in the office and not in the person, and that the origin of the attribution of power is attributable to the office, independently [...] [89]

Ordinary power is conferred with a particular office, while delegated power is given specifically to the person. This dimension of sharing authority leads to further questions of who can participate in the power of governance and casts doubts on the necessity for the clericalization of many offices connected with the exercise of jurisdiction in the Church. These aspects of power will be considered in more detail, from both pre- and post-Vatican II viewpoints.

a) Orders and jurisdiction according to the 1917 Code

From traditional post-Tridentine canonical doctrine, ecclesiastical jurisdiction may be seen as relational - in that it is associated with the community, and is not just an individual possession:

The power of orders is received sacramentally in the rites of sacred ordination or consecration. The power of jurisdiction is received through concession of canonical mission (except in the case of the pope [...]). The power

89. A. STICKLER, "Le pouvoir de gouvernement: pouvoir ordinaire et pouvoir délégué", in L'Année canonique, 24(1980), p. 72. He considers the question of power at lower levels in the Church, through delegation to the individual person.

of orders is a power for sanctifying through the exercise of divine worship, especially the Eucharist, the administration of sacraments and sacramentals. The power of jurisdiction is for public rule. The power of orders is based on an indelible character received by the person in the sacrament. The power of jurisdiction is based upon a moral relationship established between the person ruling and the other members subject to the rule. [90]

Jurisdiction is seen as the uniting principle between the person exercising it, the community and the entire ecclesial communion. In this view, the two powers may be seen as separate and yet allied, with a "relational ontology of jurisdiction", rather than a "personal ontology dependent on clerical status." [91]

In other words, even in the context of the 1917 Code, an argument can be made for jurisdiction's not being necessarily dependent on the power of orders and for the laity to have the capacity, through baptism, to share in this power by delegation. Needless to say, this was not then the prevailing view, as has been described in the accounts on the role of the laity.

J. Beyer also speaks of the "ontological nature of ecclesial power", in his consideration of the distinction between orders and jurisdiction. With that of orders as sacramentally based and exercised ex opere operato, the non-

90. J.J. CUNEO, loc. cit., p. 189.

91. J.M. HUELS, loc. cit., p. 60.

sacramental exercise of jurisdiction provides for all other authority in the Church, the implication then being that it is delegatable power. This delegatable power is

[...] received by divine mission at the moment of his election by the sovereign Pontiff or by canonical mission given by force of office or through simple concession or delegation. [92]

He also points out, however, that historically, the two powers were often considered as united and indistinguishable. The confusion of the 1917 Code in this matter, in its distinction of the two and yet insistence on reception of orders for the exercise of jurisdiction, remains an area for debate. Suffice it to say that the unity of ecclesial power is founded on Christ as "supreme pastor of the Church." [93] Though defined as distinct, powers, orders and jurisdiction, "remain one in their source and divine origins, in the force of the Spirit, the soul of the Church." [94]

Orders were considered to sanctify individuals who received them, as well as enabling them to sanctify others, while jurisdiction was seen as a means of governing the organization or society. Such a dichotomy fits in with the preceding theory of the monarchical, perfect society, but the complete separation of these two powers was not conducive to

92. J. BEYER, loc. cit., p. 55.

93. Ibid., p. 55.

94. Ibid.

a balanced ecclesiology, since an "artificial duality" in the theology of the episcopacy logically resulted. The spiritual and temporal planes were delineated as separate, with no suggestion of any autonomy for the bishop in his governance of the local church - beyond that specifically designated by the Pope. Any dispensations to be granted or concessions given were subject to papal approval.

The teachings of Pius XII were consistent with this line of thought: in the encyclical Mystici corporis, it is asserted that bishops received their jurisdiction and mission from the Pope, immediately upon their acceptance of the appointment.[95] This power was seen as "truly episcopal" by Vatican I,[96] and was reiterated as such in the 1917 Code.[97] Yet the independence or autonomy of any diocesan bishop was severely restricted, subject to Rome's approval.

b) Papal and episcopal jurisdiction

On the hierarchical level, in reference to the pope and bishops exercising their authority in the Church, the exaggerated division between the powers of orders and jurisdiction added another facet - beyond the models of

95. Cf. PIUS XII, Encyclical Letter, Mystici corporis, June 29, 1943, in AAS, 35(1943), pp. 212, no. 5.

96. Cf. J. BEYER, loc. cit., p. 56.

97. Cf. CIC, 1917, canon 218, §2.

perfect society and monarchy - to the 1917 Code's understanding of authority. In prior canonical tradition, the power of orders was seen as received through ordination or consecration, and the power of jurisdiction through canonical mission, except for the pope, who received it by divine right, on acceptance of his election.[98] It was considered that the Holy Spirit conferred orders, while the Church provided jurisdiction. Yet, the jurisdiction was restricted to the clerical arena; while both concerned independent areas of ecclesiastical power, orders were a prerequisite to receiving canonical mission for the exercise of jurisdiction. The logic seems somewhat contorted, but reflects the contemporary understanding.

This division of jurisdiction on the hierarchical level into the two areas of papal and episcopal, the former being universal and the latter particular, was seen as of divine right. No link with orders was identified, and the pope remained the sole source of the subordinate episcopal jurisdiction. This explained how orders could be held as valid outside the Church, but without jurisdiction, and how a non-bishop, such as a vicar apostolic, could receive jurisdiction from the pope without consecration. Practically, the pope could appoint or remove bishops, and limit their

98. Cf. J. CUNEO, loc. cit., p. 189.

authority as he saw fit, so that all power was in his hands.[99] Canonical mission from the pope endowed the bishop with his power of jurisdiction in his own diocese, to which it was limited.

The limitation on episcopal jurisdiction, however, left the bishop's concern solely with his own diocese and failed to account for his responsibility to the entire Church. The model was distorted in terms of a historical understanding of the episcopacy, where collegiality had been an integral part of church governance. The jurisdiction received through appointment of individuals to ecclesiastical offices, as well as the authority of synods of the local Churches was interpreted as a participation in papal authority.

The bishops in an ecumenical council were considered to be exercising papal, rather than personal authority; thus their role fitted into this restrictive model of delegated papal authority. Perhaps this view could be interpreted as a remnant of the reaction against conciliarism and the emphasis placed on the primacy of the papacy at Trent and during the following centuries. The title for bishops, as "Successors of the Apostles", was more honorary than empowering, despite earlier practice to the contrary, when bishops had more

99. Cf. V. WALSH, loc. cit., p. 55.

authority in their own right.[100] The apostles were seen as having "extraordinary" powers, but succeeding bishops possessed only "ordinary" power. The extraordinary fact is the way in which this centralization of authority in the papacy had restricted the traditional authority of bishops in their own right, particularly in regard to collegiality. Such was the theological atmosphere after Vatican I guiding the formulation of the 1917 Code.

In reviewing the right to autonomy of the local Churches - particularly in the light of the "legitimate diversity" evidenced during the patristic period - and the central authority of the Roman Church, Y. Congar indicates that the narrow perception of the Catholic Church as one large diocese with the Pope as bishop was too limited and was in need of change.[101]

c) The divisions of ecclesiastical jurisdiction

The traditional division of ecclesiastical jurisdiction into legislative, executive and judicial components derives from a civil law theory proposed by John Locke and elaborated upon in relation to its application to

100. Cf. ibid., p. 67.

101. Cf. Y.M. CONGAR, "Autonomie et pouvoir central dans l'Eglise", in Irenikon, 53(1980), pp. 291-313.

the Church by Montesquieu.[102] The theory arose from the consideration that the various functions of government and competence for each area should be shared - as a means of minimising abuses and protecting individual freedom. The analogy falls short for the Church, where, traditionally, the powers have not been separated from those who exercise them. Nevertheless, the division does cover the "various activities required by the government of the Church." [103] The power of governance - potestas pascendi seu regendi - has as its end the "common religious good of the faithful who constitute the Church." [104] Functions and powers are seen as separate, with the former being the broader means by which the ends or common good of the society are met, while the latter are given to the persons or institutions formally involved in the fulfilment of these functions.

102. Referred to by C. LEFEBVRE, in "Pouvoirs de l'Eglise", in Dictionnaire de droit canonique, vol. 7, col. 76. Cf. also A. OTTAVIANI, Institutiones iuris publici Ecclesiastici, vol. 1, Ecclesiae constitutio socialis et potestas, editio quarta emendata et aucta adiuvante I. DAMIZIA, Pontificium Institutum Utriusque Iuris, Romae, Typis Polyglottis Vaticanis, 1958, pp. 735. Ottaviani treats these three divisions of the power of jurisdiction, according to his model of the Church as the "perfect society."

103. W. ONCLIN, "The Church Society and the Organization of its Powers", in The Jurist, 27(1967), p. 13. Cf. P.G. MARCUZZI'S article "Distinzione della 'Potestas Regiminis' in legislativa, esecutiva e giudiziaria", - in Salesianum, 43(1981), pp. 275-304, also provides a detailed account of the reasons for each of these powers being separate, and he outlines the significance of each in relation to Church governance.

104. W. ONCLIN, loc. cit., p. 8.

While the bishop, as the ordinary and immediate pastor of a diocese,[105] possesses all the power of governance necessary within his diocese, the tripartite division of powers in the Church enables him to delegate various duties of office to others. In distinguishing between the three areas, the legislative function embraces the general laws and prescriptions of the Church - be they "laws, common precepts, or approved canonical customs." [106] The bishop alone is the "local" legislator, and so is fully responsible for any diocesan legislation and its implementation.

The executive or administrative function includes issuing instructions for explanation of laws, and particular decrees for their implementation, apart from the broader purpose of taking "all individual measures and concrete acts useful to the end of a society." [107] In a diocese, the vicar general is often charged with responsibility for this area, which was the most likely to be affected by the active involvement of the various diocesan organisms of consultation - whether chapters of canons or consultors, as defined in the 1917 Code.

105. Cf. CIC, 1917, canon 334, §1.

106. W. ONCLIN, loc. cit., p. 13.

107. Ibid., p. 14.

Thirdly, the judicial function relates to judgments, penalties for offences, and consideration of rights of individuals and groups in the Church, so that there is a just means of "due process" where contentious issues arise or where the law is broken. The judicial vicar or officialis is usually the bishop's alter ego in this sector of diocesan administration, according to the 1917 Code.[108]

This division of powers in the Church was appropriate through the clarification of the various aspects of governance and its distinction from sacramental ministry, but there is no satisfactory resolution of the practical separation of orders from jurisdiction, despite the clear differences in functions. A. Stickler's historical analysis details the diverse and active roles of many laity in these processes through the centuries.[109] In the legislative area, laity appear to have had a say concerning matters of faith and discipline, through their presence at the councils. In matters requiring judgement, similar practices were observed, with jurisdiction being delegated to junior clerics - not only bishops - by the Pope himself. Then, in the exercise of executive power, whether papal or episcopal, priests or deacons were often delegated to assist. They worked in areas relating to "disciplinary, penal, patrimonial

108. Cf. CIC, 1917, canon 1573.

109. Cf. A.M. STICKLER, loc. cit., pp. 78-85.

questions et cetera, which concerned clerics as much as laity." [110]

In the 1917 model of authority, the power to be exercised on the diocesan level by clerics other than the bishop comes from the local bishop. In this scenario, distribution of the functions was not a means of changing the source of the power, which ultimately came from Christ, although channeled absolutely through the pope. The role of the diocesan consultors, then, as one group who was to assist the bishop in diocesan governance, was highly dependent on the bishop's choice of members and his directives.

d) The exercise of authority according to the 1917 Code

A brief examination of some of the relevant canons of the 1917 Code reveals the adoption of the preceding theology of the Church, of papacy and episcopacy in the "new" legislation. Canon 107 provides a statement of the distinction between clerics and laity:

By divine institution there are in the Church clerics, distinct from laity, although not all clerics are of divine institution; both clerics and laity may be religious. [111]

110. Ibid., p. 80. Stickler elaborates on the involvement of lower ranking clerics and laity in the exercise of jurisdiction with many examples.

111. CIC, 1917, canon. 107: "Ex divina institutione sunt in Ecclesia clerici a laicis distincti, licet non omnes clerici sint divinae institutionis; utrique autem possunt esse religiosi."

Then Canon 108 - introducing the section on clerics[112] - refers to the hierarchies of order, consisting of bishops, priests and ministers; instituted by divine right, and jurisdiction, constituted by the supreme pontificate and subordinate episcopate, reinforcing the hierarchical structure discussed previously. Canon 109 defines the division between the power of orders deriving from sacred ordination, and the power of jurisdiction arising from canonical appointment.[113] Canon 201, §1 states that jurisdiction can be exercised over subjects only, and was seen as existing independently of episcopal consecration.[114]

The section on the Roman Pontiff begins with canon 218: his power of jurisdiction is defined as "full and supreme" over the whole Church in matters of faith, morals and discipline.[115] Canon 219 then reasserts the pope's "full power of supreme jurisdiction", which comes immediately

112. Cf. CIC, 1917, canon 108, §1, which describes clerics as all who have received tonsure.

113. CIC, 1917, canon 109: "Qui in ecclesiam hierarchicam 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."

114. CIC, 1917, canon 201, §1: "Potestas iurisdictionis potest in solos subditos directe exerceri."

115. CIC, 1917, canon 218, §1: "Romanus Pontifex, Beati Petri in primatu Successor, habet non solum primatum honoris, sed supremam et plenam potestatem iurisdictionis in

on his acceptance of legitimate election.[116] Contingent on this papal authority, the power of an ecumenical council is defined in canon 228 as being "supreme", but, significantly, not as the "full and supreme" power attributed to the pope, to whose authority the council is subject.[117]

The section on bishops commences with canon 329; they rule their dioceses with "ordinary power", under the authority of the pope, who freely chooses and appoints them. While their apostolic succession is acknowledged, no special powers are given as a result.[118] The guarantee is that local churches will always have bishops to rule them. The ensuing canons in this section emphasise papal authority further: canons 329, §2 and 331, §3 give the pope alone the

universam Ecclesiam tum in rebus quae ad fidem et mores, tum in iis quae ad disciplinam et regimen Ecclesiae per totum orbem diffusae pertinent"; canon 218, §2: "Haec potestas est vere episcopalis, ordinaria et immediata tum in omnes et singulas ecclesias, tum in omnes et singulas ecclesias, tum in omnes et singulos pastores et fideles, a quavis humana auctoritate independens."

116. CIC, 1917, canon 219: "Romanus Pontifex, legitime electus, statim ab accepta electione, obtinet, iure divino, plenam supremam iurisdictionis potestatem." These two canons (218 and 219) are, in fact, based on earlier Church-State disputes, which accentuated the need for the Church's independence from secular control or undue influence, so that they emphasize the absolute authority accorded the Pope over the whole Church. Cf. V. WALSH, *loc. cit.*, p. 44.

117. CIC, 1917, canon 228, §1: "Concilium Oecumenicum suprema pollet in universam Ecclesiam potestate; canon 228, §2: A sententia Romani Pontificis non datur ad Concilium Oecumenicum appellatio."

118. CIC, 1917, canon 329, §1: "Episcopi sunt Aposto-

right to choose those suitable for episcopal office. Canon 1350, §1 concerns the bishop's responsibility towards non-catholics in his diocese, but canon 1350, §2 states that care of such individuals in mission territories remains directly under the Holy See's jurisdiction, a further reminder of the preoccupation with accentuating papal responsibility and control.

As for pastors of parishes, canon 451, §1 introduces their role thus:

A pastor is a priest or moral person upon whom a parish is conferred in his own right with the care of souls to be exercised under the authority of the Ordinary of the place. [119]

Following his reception of orders, the authority of a pastor is dependent on his appointment and direction by his Ordinary, in a manner consistent with the outlined vertical model of authority. An analogy between papal and episcopal authority on the one hand, and the diocesan bishop's and the pastor's authority on the other, is identifiable - in terms of jurisdiction. However, the jurisdiction of the pastor is limited, since "the care of souls is limited to the internal

lorum successores atque ex divina institutione peculiaribus ecclesiis praeficiuntur quas cum potestate ordinaria regunt sub auctoritate Romani Pontificis."

119. T. BOUSCAREN and A. ELLIS, Canon Law: A Text and Commentary, 3rd ed., Milwaukee, Bruce, p. 187. CIC, 1917, canon 451, §1: "Parochus est sacerdos vel persona moralis cui paroecia collata est in titulum cum cura animarum sub Ordinarii loci auctoritate exercenda."

forum only,"[120] and pastors have limited jurisdiction in the external forum, relating to emergency situations as defined in the Code. A "domestic" power has been referred to as "a certain disciplinary and administrative power by virtue of which the pastor, like a good father, watches over his subjects."[121]

Orders seems to have relatively low priority in this scheme of things, except, of course, for normal sacramental ministry, apart from being the prerequisite for the exercise of any jurisdictional power. The role of the assistant priest illustrates this fact, in that the commentators leaned against an affirmative answer to the question of whether he had any ordinary jurisdiction, it "being difficult to concede the probability of the affirmative opinion."[122]

The question of religious in relation to the exercise of jurisdiction is an area which goes beyond the realm of this study; suffice it to say that the "dominative power" over their subjects afforded religious superiors, is also subject to the Pope; clerical institutes alone were considered to be capable of participating in the exercise of ecclesiastical jurisdiction, as defined by canon 501, §1:

120. Ibid., p. 187.

121. Ibid.

122. T. BOUSCAREN and A. ELLIS, op. cit., p. 221.

All religious superiors have dominative power over their subjects. In a clerical exempt institute, superiors and chapters have ecclesiastical jurisdiction as well, both in the internal and external forum. [123]

Thus, a restrictive model of the Church can be seen to have underpinned the legislation of 1917, which reinforced the well-defined categories of ecclesiastical jurisdiction. In accordance with the thrust of Vatican I theology, papal authority was emphasised, with all other authority somehow delegated by him, as the universal pastor. Historically and theologically, the models of a perfect society, monarchy and vertical authority had severe limitations - later to be implicitly acknowledged by the teachings of Vatican II, as Y. Congar indicates in noting its move from seeing "the Universal Church as a huge diocese, the bishop of which was the Pope," to a rediscovery of the "true notion of local Churches." He uses the term "circumincersion", "whereby the local Churches and the Universal Church are one inside another, a relationship analogous to that of a local Church and its bishop." [124]

123. CIC, 1917, canon 501, §1: "Superiores et Capitula, ad normam constitutionum et iuris communis, potestatem habent dominativam in subditos; in religione autem clericali exempta, habent iurisdictionem ecclesiasticam tam pro foro interno, quam pro externo."

124. Y.M. CONGAR, "Autonomie et pouvoir central dans l'Eglise vu's par la théologie catholique", in Irénikon, 53(1980), p. 313.

While no definitions of the Church, jurisdiction or hierarchy are found in the 1917 Code, some idea of their meaning may be ascertained from the legislation involving their application. The Church was the "perfect society", possessing all the power it required to function, mediated through its "monarch" - the Pope - who, through canonical mission, transmitted some of this power to the bishops as his delegates. Through the jurisdiction given to them by the diocesan bishop, priests then provided for the care of souls on an individual and parish basis, having received the power of orders through ordination. The hierarchical structure of ecclesial life was continued in this way.

The term "hierarchy" may be used in a subjective or an objective sense: subjectively, it denotes those in orders who share in the power; objectively, it refers to the

[...] totality of sacred power given by Christ, which is shared in various grades to rule the Church and to celebrate and distribute the mysteries of Christian religion. [125]

This is where the problem arises with lay ministry, since many commentators on the 1917 Code attributed all sacred power to clerics - the tonsured ministers of the Church, who were presumed to have the monopoly on the Church's power of jurisdiction - a highly controlled power through its ultimate exercise and delegation by the Pope, and only as a result of

125. J.J. CUNEO, loc. cit., p. 189.

reception of orders. The 1917 Code's approach to official ministry limited jurisdiction to ecclesiastical office, with "clerics as the sole possessors of ecclesiastical power and the requirement of a title to become an official minister." [126] In defining "office" in the Church, canon 145, §1 applied it to any function - munus - carried out legitimately for a spiritual purpose, [127] while "title" referred to the assurance of a permanent and stable source of income for a cleric; in many places, this was seen as "service of the diocese" for diocesan priests. [128] The function followed from the bestowal of office, according to the law.

Having outlined the basis for the understanding of authority in the 1917 Code, it is now opportune to examine the basis for the Vatican II formulations in relation to the subjects of authority and jurisdiction, in order to provide a background for the study of the norms contained in the 1983 Code.

126. J.H. PROVOST, "Toward a Renewed Canonical Understanding of Official Ministry", in The Jurist, 41(1981), p. 451.

127. Cf. CIC, 1917, canon 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."

128. J.H. PROVOST, "Towards a Renewed Canonical Understanding....", p. 452.

CHAPTER III

VATICAN II AND ECCLESIAL AUTHORITY

A: Towards a new understanding of authority

The renewed understanding of authority in the Church in the post-Vatican II era was not a spontaneous generation. It had its roots in the events of preceding centuries, and could be interpreted as a consequent development to broader events occurring in different societies. Thus it has been said of the twentieth century that:

[...] (it) has experienced a continual rebellion against established authority. Behind it stand events crucial to the development of modernity, the English regicide of the 1640's, the French regicide of the 1790's, the liberal and revolutionary movements of the 19th century, and the increasingly critical insistence of modern thought. [...] Faith that the powers that be are ordained of God, however formulated in the various cultural idioms of the world, has become largely eroded. [...] That authority crisis has now become a fact within the last bastion of Western religious authority - within the Roman Catholic Church. [1]

While the Church presented what could be considered by some to be a somewhat defensive posture in protecting its followers from the impact and perceived threat of changing conditions on faith, as seen most clearly in the post-Tridentine era, many of those who embraced the "new ideas" of the day left the Church to adhere to some alternative philosophy or creed. This meant that a degree of influence or

1. T.F. O'DEA, The Catholic Crisis, Boston, Beacon Press, 1969, p. ix.

challenge to the internal structure of the Church was absent. There does seem, then, to be some "dysfunction" in the Church's former approach to institutionalized authority, influenced both by the challenge to secular authority and the intricate question of the crisis of faith in the modern world.

Inevitable tensions arise between the three realms of "charisma", "tradition" and "rationality", which are suggested by T. O'Dea as necessary elements in a balanced, contemporary approach to the establishment of a stable relationship between authority, community and tradition in the Church.[2] Universally enforced authority, which allows change only when imposed from above, tends to contain a structural rigidity that may be inhibiting to the creativity and initiative of individuals and communities, since conformity and assent to authority are not the sole virtues necessary for survival, continuity and growth.[3]

The elements of Greek rationality, Roman authority and Jewish charisma all contributed to the life of the early

2. The modernist crisis at the beginning of this century provides an example within the Church of the problems engendered in such a vertical approach: critics of the Church, or questioners within it, were told to acquiesce to the higher authority, or were officially considered anathema, sometimes with little discussion or explanation of their positions.

3. Cf. T.F. O'DEA, "Authority and Freedom in the Church: Tension, Balance and Contradictions. An Historico-sociological View", in The Jurist, 31(1971), p. 249.

Church, but institutionalization became the overriding factor as the Church became identified with society. It is reasonable to seek a greater balance between the three in the Church today, which should "evolve a sacral but flexible authority leaving a certain freedom for charisma and recognizing the inviolability of reason." [4]



The post-Vatican II Church has broadened the perspective of the Church's role in the modern world, and the means of communicating with it. A variety of models of the Church as the People of God has been proposed, highlighting different aspects of its role and mission. While the hierarchical structure of the Church is fundamental to its existence, this does not exclude the legitimacy of seeking a deeper understanding through examining some of these different emphases which offer a measure of flexibility to the expression of faith and life of its members. It is within this context that we will be able to examine the new canon law and its application to diocesan governance.

1. The Church as People of God

a) Yves Congar

In studying the transition from a monarchical, vertically structured "perfect society" model of the Church,

4. Ibid., p. 249.

to that of a more horizontally organized "hierarchical communion"[5] of believers, it could be expected that a corresponding change in the theology of the Church would be at the base of such a move. In reaction to a vision of Church identified with the clergy, Vatican II opened the way for a broader understanding of the Church and the role of its individual members. Pius XII's encyclical, Mystici corporis[6] of 1943 might be seen as a move in this direction, whereby the Church was described as the "Mystical Body of Christ" - a reaffirmation of the Pauline model and doctrine of the apostolic Church - underlining "the Church's intimate connection with Jesus Christ and with God's call to a communal relationship, one with another in Christ." [7]

The implications of such a title were obvious in that the role of each member of the community was accentuated, and the Church was not defined simply in terms of Pope and bishops. The image of the Church as the People of God

5. A comprehensive description of this understanding of the Church as revealed in Vatican II is contained in G. GHIRLANDA, "De Notione communionis hierarchicae iuxta Vaticanum Secundum", in Periodica, 70(1981), pp. 41-68; a French translation is "La notion de communion hiérarchique dans le concile Vatican II", in L'Année canonique, 25(1981), pp. 232-254.

6. PIUS XII, Encyclical Letter, Mystici corporis, June 29, 1943, pp. 208 and 225-228, nos. 5 and 8.

7. R.P. McBRIEN, Catholicism: Study Edition, Minneapolis, Mn., Winston Press, 1981, p. 595. Scriptural references abound in the Pauline epistles: Eph 4.1-4, Col 3.12-15, among others.

provides another important dimension in an understanding of the Church as a community of believers in a covenant relationship with God. These two models of "Mystical Body" and "People of God" incorporate the Old Testament idea of "corporate personality", [8] which leads to a more balanced model of the Church.

The research of Yves Congar in the 1950's set the stage for Vatican II ecclesiology, based on the Church as the People of God; he studied the rights of the laity in the Church extensively, in the light of scripture and the early Church. In concluding that the laity should have a more active role to play in the Church than had officially been recognized in the post-Tridentine period, he used the model of the Christian as priest, prophet and king in describing the functions of the laity, who were to be more than passive receptors of sanctification and guidance from those in the officially ordained ministry of the Church. He accounts for the neglect of the laity in Church teaching in that theological treatises were often written to combat error and were concerned with structure more than with the "operations of life", thereby failing to show that life has to be integrated into the structure. Congar states:

Our theology, which is insufficiently inductive and too often ignores what can be learned from facts, has almost completely failed

8. Cf. ibid., p. 596.

to see how the actual Church, whose structure is life-bearing, follows a law of existence that can be formulated thus: the meeting and harmonizing between an hierarchical communication from above and a community's consent. The Church is actualized in a living relationship between two poles, which can be called the 'hierarchical' and the 'communitarian' poles. [9]

. Thus it is essential to retain a balanced ecclesiology, which acknowledges both the hierarchical structure and the community dimensions of the Church. In advance, then, Congar advocated the hierarchical communion model of the Church, which has been adopted by Vatican II.

b) Hans Kung

The clericalization of the Church was evident in Vatican I and the 1917 Code's ecclesiology, which tended to ignore the role of the laity. To quote Hans Kung:

The Church is always and in all cases the whole people of God, the whole ecclesia, the whole fellowship of the faithful. Everyone belongs to the chosen race, the royal priesthood, the holy nation [...] This fundamental parity is much more important than the distinctions which exist [...] [10]

Through God's call, all belong to this people, which cannot be an exclusive group, since His will is for the salvation of all. Membership is by free and human choice; Kung argues

9. Y.M. CONGAR, Lay People in the Church, trans. G.D. Attwater, 2nd ed. revised, Westminster, Md., Newman Press, 1967, p. 263.

10. H. KUNG, The Church, New York, Image, 1976, p. 169.

against "hypostatizing" the Church to a "supra-personal institution mediating between God and man", [11] since the believers - as a community - are the Church; this is its basic structure. It should not be idealized as beyond reality, since it is a pilgrim church, journeying towards fulfilment, but never quite at its destination; its mission is to look forward in hope, and not to languish in complacency or remain static in outlook or practice. The ecclesia semper reformanda must be a fundamental aspect of ecclesiology. This outline of the People of God presents the Church as in a dynamic tension - between past, present and future, but never as something static. The foundations for the People of God image are well-secured, and must have considerable impact on the evolution of ecclesiology and law in the Church, wherein the interpersonal dimensions of the Church as a community of believers are accented. [12] The Vatican II Constitution on the Church (Lumen gentium) used this as its dominant model, but acknowledged others as well, in speaking - at different points - of the Church as mystery, sacrament and Body of Christ.

2. Other models of the Church

It is certain that no one title or description can do

11. Ibid., p. 175.

12. Cf. A. DULLES, Models of the Church, New York, Image, 1978, p. 34.

full justice to the mystery which is the Church. Avery Dulles proposes a number of different models, each of which provides an insight into a different dimension of the Church.[13] As a basis for the understanding of post-Vatican II legislation in the Church, a brief synopsis of these models will be made, given that canon law must be based on doctrine.

a) Institution

Firstly, the perspective of the Church as institution cannot be ignored or eliminated, since as a vast organization with its members having a common goal, structures and rules are necessary. Nevertheless, the limitations on this model are that it lowers the church to a level of ordinary society, with the emphasis on external structure and visible elements, as Robert Bellarmine's 1601 definition of the Church stated:

The one and true Church is the community of men brought together by the profession of the same christian faith and conjoined in the communion of the same sacraments, under the government of legitimate pastors and especially the one vicar of Christ on earth, the Roman pontiff. [14]

The clericalism, juridicism and triumphalism - which tend to be accentuated in this model - are negative factors if taken alone. Its scriptural basis is tenuous, the

13. Cf. ibid.

14. Cited in A. DULLES, op. cit., p. 20. Cf. also J. HAMER in The Church is a Communion, trans. R. Matthews, London, Chapman, 1964, p. 84.

obligations placed on a passive laity, and its obstruction of creative theology, lead to questions about its validity. Alone, it does not adequately describe the reality of the Church. On the positive side, however, Dulles points out the value of the "strong sense of corporate identity" among Catholics in the past, the fact that Church teaching has emphasised it over the last few centuries, and that it provides a sense of continuity and certainty, often lacking in today's world.[15] This model, then, has some relevance, but is radically incomplete.

b) Mystical communion

The Church as a "Mystical communion" embodies the notions of "People of God" and "Body of Christ." [16] These two aspects complement each other in describing the Church as a communion or communio of believers, united in "creed, worship and ecclesiastical fellowship." [17] The aspect of People of God allows for the idea of a Church of sinners, yet acknowledges a relationship with God whose covenant is always there, while the aspect of Body of Christ attests to the bonds of grace through the Spirit's indwelling presence and

15. Ibid., pp. 39-50.

16. Cf. Y.M. CONGAR, in op. cit., p. 263ff., passim, and J. HAMER, op. cit., passim, 240p. Both works pursue the dimensions of communio in the Church.

17. A. DULLES, op. cit., p. 59.

life as the source of unity. Personal human freedom and responsibility are still present, so that sin is explicable in this context. Again, neither "metaphor" - taken in isolation - gives a totally satisfactory image. The notion of communio encompasses both images.

c) Sacrament

The Church as sacrament is an aspect developed by Henri de Lubac[18] and Karl Rahner,[19] and later by E. Schillebeeckx,[20] among other theologians; it was taken up again by Vatican II; this model leads to an understanding of the link between the divine and human elements of the Church:

If Christ is the sacrament of God, the Church for us is the sacrament of Christ; she represents him in the full and ancient meaning of the term, she really makes him present. She not only carries on his work, but she is his very continuation [...]. [21]

The Church then reflects the reality of the presence and life

18. Cf. H. de LUBAC, Catholicism; A Study of Dogma in Relation to the Corporate Destiny of Mankind, trans. L. Sheperd, London, Burns, Oates and Washbourne, 1950, xiv-283p.

19. Cf. K. RAHNER, "Membership of the Church", in Theological Investigations, Vol. 2, Baltimore, Helicon, 1963, pp. 1-88. Also "The Church and the Sacraments", in Inquiries, New York, Herder and Herder, 1964, pp. 191-257.

20. Cf. E. SCHILLEBEECKX, Christ, the Sacrament of Encounter with God, New York, Sheed and Ward, 1963, in particular the chapter discussing "The Church as Sacrament of the Risen Christ", pp. 47-89.

21. H. de LUBAC, op. cit., p. 35.

of Christ in it. Another positive aspect of this model is its ability to link the relevant elements of the institution and mystical communion models through its emphasis on the all-encompassing presence of grace as the life principle enlivening the Church.

d) Word

The tendency in Protestant ecclesiology has been to concentrate on the proclamation of the Word, rather than on the sacramental aspect; the notion of "Word" "emphasises faith and proclamation over interpersonal relations and mystical communion." [22] The Protestant focus on scripture over tradition accounts for this emphasis - a continuing consequence of Reformation teaching - as compared with the Catholic stress on continuity of structure and order over scriptural applications. Once again, if taken in balance, this model adds to the vision of Church as universal, with the Word interpretable and applicable to christian life in the contemporary world. As R. McBrien puts it:

The mission of the Church is one of proclamation of the Word of God to the whole world. [...] The Church is essentially a kerygmatic community, which holds aloft, through the preached Word, the wonderful deeds of God in past history, particularly his mighty act in Jesus Christ. The community itself happens wherever the Spirit breathes, wherever the Word is proclaimed and accepted in faith. The Church

is event, a point of encounter with God. [23]

Undoubtedly, this model has validity in perspective; the Word must be proclaimed, but within the context of a Church which has a teaching office and structure. Kung sees the Church as fully present in each local community or ekklesia gathered to hear and proclaim the Word.[24] The Church here and now, however, is seen as somewhat detached from the eschatological Kingdom, the coming of which is absolutely dependent on God; the assembled christian community is the herald of the Reign of God, but not its realization. The more traditional Catholic emphasis on structure, teaching authority and sacramentality cannot be ignored; again, this model provides useful but incomplete insights into the nature of the Church.

e) Servant

The final model focusses on the Church's relationship to the world - the Church as servant. It also provides a means of renewing the link between the Church and the secular world, which had grown apart through recent history as science and technology tended to advance while faith tended to remain resistant to the challenge of modern thought.

23. R. McBRIEN, Church: The Continuing Quest, New York, Newman, 1970, p. 11.

24. Cf. H. KUNG, op. cit., p. 120ff.

- at least on the official level. This was reflected in many of the papal documents from the time of Pius IX's "Syllabus of Errors" in 1864,[25] through the definition of papal infallibility and the anti-modernist period of Pius X. Despite this, the gospel was seen by many Christians as a call to action in the world, rather than detachment from it. The dichotomous view which separated the Church from the world was largely overcome by Vatican II in the Catholic Church, but earlier developments are seen in writings such as Dietrich Bonhoeffer's; his call for a servant Church came from his Letters and Papers from Prison:

The Church is only the Church when it exists for others. To make a start, it should give away all its property to those in need. The clergy must live solely on the free-will offerings of their congregations, or possibly engage in some secular calling. The Church must share in the secular problems of ordinary human life, not dominating, but helping and serving. [26]

This radical call came from an awareness that the official churches were being ignored by the world in general, and that the mission of Christians was to be active in the world, not merely passive worshippers. With Jesus as the "man

25. PIUS IX, "Syllabus complectens praecipuos nostrae aetatis errores qui notantur in Encyclicis aliisque Apostolicae Litteris Sanctissimi Domini nostri Pii Papae IX", December 8, 1864, in AAS, 3(1895), pp. 168-176.

26. D. BONHOEFFER, Letters and Papers from Prison, rev. ed., New York, MacMillan, 1967, pp. 203-204.

for others", credible witnesses to him must follow his example of service.

Teilhard de Chardin's awareness was similar; in arguing for a synthesis between faith and scientific knowledge, which was being ignored by many Christians, he attempted to overcome the lack of perceived harmony between the two, which had often led to the misconception that the two disciplines were opposed. His synthesis was based on the ultimate unity of all in Christ, the "Omega Point", and in the Church, whose responsibility it was to be "open to everything good that emerges from the dynamism of the human spirit as found in science and technology." [27] While this synthesis was rooted in the Church, he also described evidence of this thrust in the secular world on its own - as the whole of creation moves towards its fulfilment.

The danger in this model is that the active side of service could be emphasised at the expense of the kerygmatic proclamation of the Gospel message. As a model, it conveys the necessity for continuity between faith and life, Church and world, along with a sense of social responsibility on the part of each individual. The world is to be transformed into the Kingdom of God in an evolutionary process, through those who serve. The New Testament term reflecting the notion of

27. A. DULLES, op. cit., p. 101.

christian service best is diakonia, which is all-embracing, including ministry to Word, sacraments and ordinary human situations. With this in mind, the notion of service does not merely refer to a secular humanistic concern for one's neighbour without faith in the gospel message.

In essence, then, these models - each with its own positive contribution to ecclesiological understanding of the Church - provide a sound basis for a consideration of the teaching of Vatican II and the ensuing ecclesiastical legislation, culminating in the new Code of Canon Law in 1983. There has been much written on the subjects of communio and missio in relation to the more recent emphases on the responsibilities of all who constitute the Church, so these concepts will be considered in further detail, with concentration on the Vatican II vision of the episcopate and the presbyterium and its realization in the local Church.

B: Vatican II and its notion of authority

History shows that forms of leadership, structures and the exercise of authority in the Church have changed according to factors of time, place and culture. Coresponsibility is allied with belonging to the christian assembly, which should reflect a "fundamental equality within the People of God", [28] who have a common dignity and

28. J.A. CORIDEN, "Shared Authority: Rationale and Legal Foundation", in Chicago Studies, 9(1970), p. 174.

destiny, and whose mission - through baptism - is to continue Christ's ministry as "priest, prophet and king" in the service of all. The eucharistic community should demonstrate its communio as a reality through its sharing in the social and disciplinary life of the Church. The People of God have the right and responsibility to be involved in the whole life of the Church they constitute.

There is a need for shared decision-making, with the opportunity for local diversity, dependent on time, situation and culture, and with what might be described as allowing for the "creative response to the needs of the local Church", [29] which is essential to the growth in faith and identity of the local community. True authority is "that quality which exists in virtue of a fully thought out assent to an offering of guidance or a claim upon the individual's active collaboration." [30] This definition could be applied to situations in ecclesial decision-making, even though the official authority of the Church is not based on democratic ideals so much as on the Gospel, which does call for leadership in service and humility.

The reality of christian freedom should be realized in the life of the community, where the conflicts of "freedom

29. Ibid., p. 179.

30. K. LEHMANN, "On the Dogmatic Justification for a Process of Democratization in the Church", in Concilium, 63(1971), p. 80.

against authority, the official ministry against the charismatic elements, official direction against 'democratization', 'authority' against 'guidance by the Spirit', should be avoided."^[31] Yet the Gospel must always be an active force for correction in the community. Where official ministry in a community prevails, it should be exercised in a positive way, encouraging understanding and respect for all. The Church must live in fidelity to the Gospel, whereby inequalities are removed and problems resolved by dialogue rather than by confrontation or absolute judgment. Where dialogue and mutual understanding are lacking, the need for change is greatest - towards "democratization", in the sense that all are involved in the process. No secular model of democracy is really suitable for direct application to ecclesial structures and consultation; the recognition of some form of democracy in the Church suggests the need for constant review of the means of participation of its members, who have the right to be involved and consulted.

In reference to having a say in legislative activity, R. Philippot argues for the right of initiative of Church members:

Consultation is incontestably a valuable and fortuitous form of participation. Thanks to it,

³¹. Ibid., p. 82.

the legislator gains information, studies and elucidations which permit him to put the maximum of rationality and of adaptation of order which he is ready to introduce, at the same time as it prepares the consensus for execution of a law, without which the law risks being a dead letter. [32]

The point emphasized here is the need for input from all levels of the organization, so that a sense of participation is engendered, given that its theological base has been demonstrated through the "People of God" model of the Church. The process of consultation lends to expressions of coresponsibility among Church members, leading to a

[...] dynamism of the moving forward of the community of which the legislative expression is one of the most expressive forms, but not always the most profound. [33]

With the common good of the community in mind, it could be hoped that individualism and abusive contestation would be minimised through the exercise of this process.

32. R. PHILIPPOT, "Le droit d'initiative dans l'Eglise", in L'Année canonique, 17(1973), p. 748: "La consultation est incontestablement une forme valable et heureuse de participation. Grâce à elle, le législateur dispose d'informations, d'études et d'élucidations qui lui permettent de mettre le maximum de rationalité et d'adaptation à l'ordre qu'il s'apprête à introduire, en même temps qu'elle prépare le consensus à l'exécution sans lequel la loi risque de rester lettre morte."

33. Ibid., p. 754: "Il y a donc déjà une coresponsabilité véritable dans cette participation au dynamisme d'entraînement de la communauté dont l'expression législative est une des formes les plus expressives, mais pas toujours la plus profonde."

1. The bishop and the diocesan Church

From the thirteenth century, the term "diocese" was used exclusively in reference to the community over which a bishop ruled,[34] although his right to visit, supervise, legislate and dispense in certain conditions was only restored by the Council of Trent in reaction to the abuses from the numerous exemptions granted earlier. The power attributed to bishops, though, was described as "delegated by law" and not a power exercised by them in their own right.[35].

The diocese was understood in the 1917 Code in simple physical terms, as "a territory over which a bishop rules as its proper and ordinary pastor." [36] Although the collegiality of the episcopate was not treated by Vatican I, it was commonly held that through his papally delegated power, the diocesan bishop had a wide range of powers within his own diocese, acknowledged by many of the laws of the 1917 Code.

34. Cf. K. MORS DORF, "Diocese", in K. RAHNER et al., eds., Sacramentum Mundi: An Encyclopedia of Theology, London, Burns and Oates, 1968, vol. 2, p. 81.

35. E. CORECCO, "The Bishop, Head of the Local Church and Discipline", in Concilium, 38(1968), p. 50.

36. T. BOUSCAREN and A. ELLIS, Canon Law: A Text and Commentary, 3rd. ed.; Milwaukee, Bruce, 1957, p. 148, in reference to CIC, 1917, canon 215, §§1 and 2.

The Vatican II understanding of local Church is more comprehensive; in the Decree on the Pastoral Ministry of Bishops, it introduced the discussion on the Diocesan Bishop with this description:

A diocese is a portion of the People of God entrusted to a bishop to be guided by him with the assistance of his clergy so that, loyal to its pastor and formed by him into one community in the Holy Spirit through the Gospel and the Eucharist, it constitutes one particular church in which the one, holy, catholic and apostolic Church of Christ is truly present and active.[37]

This definition sets the scene for a more decentralized and autonomous exercise of authority in the local Church on the part of the bishop in collaboration with the priests and laity who constitute the People of God at this level. What is more, the repetition of this definition verbatim in the 1983 Code is indicative that here is a key element for the theological and juridical basis of shared authority at the local level.[38] In particular, the mention of the "cooperation of the presbyterium" in both English translations of the 1983 Code points to the necessity for the clergy to work with the bishop on more than a subservient or solely on a parochial level. Here is the foundation for the new diocesan councils instituted by Vatican II.

Whereas the pre-Vatican II understanding of a diocese was expressed in administrative terms as a canonical

37. CD, 11.

38. Cf. CIC, 1983, canon 369.

institution and the territorial object of a bishop's jurisdiction, the communio dimension is the key element in this more recent approach, where unity with the bishop and his presbyterium as an integral portion of the people of God is foremost - a people "gathered into one Holy Spirit through Gospel and Eucharist." [39]

Some criticism could be made here of the dangers of redefining in theory without changing practice, since the bishop still could be seen as providing the "vertical, paternal type of control" in opposition to the "horizontal, fraternal principle", which should be in effect in the community. A balance between the two is required, with the bishop as the focus of unity, rather than merely the imposer of external authority.

Two Italian canonists - A. Sorrentino and E. Colagiovanni - provide detailed reflections on these two-dimensional structures in the local Church: the former discusses the necessity for organizational structures on the vertical level, while the latter focuses on functioning of the more flexible and varied local communities at the parish, inter-parish and diocesan levels on the horizontal plane - in the context of local needs and circumstances. [40] Naturally,

39. R. HUYSMANS, "The Diocese as an Administrative Unit", in Concilium, 77(1972), p. 91.

40. Cf. A. SORRENTINO, "Le strutture verticali della

harmony and coordination between both models of diocesan life must exist.

K. Morsdorf treats the subject of the autonomy of the local Church in a way that emphasises the bishop's pastoral and spiritual responsibilities and consequent necessary power to fulfil his mission, given by Christ first and foremost, following episcopal consecration and the granting of the canonical mission.[41] In a careful analysis of Vatican II teaching on the subject of the local Church and episcopal authority, Morsdorf sees the roots of juridic authority in aggregates of local churches in different countries or regions as lying in the same source as that of the diocesan bishop - "in a power given by God." [42] Hence, the local Church is fully the Church of Christ, and collegiality goes beyond the bishops to the local Churches under their leadership, so that the "collegiality of bishops" is placed "firmly in the context of the collegiality of churches." [43] The bishops are the bond of unity within and beyond the local Church.

Chiesa locale dopo il Vaticano II", in Monitor Ecclesiasticus, 94(1969), pp. 216-232, and E. COLAGIOVANNI, "Le strutture orizzontali della Chiesa locale dopo il Vaticano II", in ibid., pp. 233-278.

41. Cf. K. MORSDORF, "L'autonomia della Chiesa locale", in Il Diritto Ecclesiastico, 83(1972), pp. 325-345.

42. Ibid., p. 345.

43. H.M. LEGRAND, "Revaluation of Local Churches", Concilium, 77(1972), p. 64.

2.. The authority of the diocesan bishop

a) Episcopal autonomy and power of jurisdiction

The diocesan bishop is the "proper, ordinary and immediate" pastor, with all the power required for the exercise of his pastoral office.[44] The Constitution on the Church previously outlined the authority of the bishop based on episcopal consecration, which confers:

[...] the fullness of the sacrament of Orders [...] (and) together with the office of sanctifying, the duty also of teaching and ruling, which, however, of their very nature can be exercised only in hierarchical communion with the head and members of the college. [45]

Moreover, this authority is to be exercised by bishops as vicars of Christ, not of the pope: "Lumen gentium" stated that the bishops' pastoral charge

[...] is entrusted to them fully; nor are they to be regarded as vicars of the Roman Pontiff; for they exercise the power which they possess in their own right, and are called in the truest sense prelates of the people whom they govern. [46]

This transition in theological understanding created problems for canonists, because

[...] it is not easily reconcilable with the old traditional teaching that there are two powers of which the power of jurisdiction is not

44. CD, 11 and LG, 27.

45. LG, 21.

46. LG, 27.

transferred through ordination but through canonical mission. [47]

In the 1917 Code, canon 329, §1 described bishops as "successors of the apostles", which is a title not even mentioned in the preliminary schema for that Code.[48] This acknowledged their role as heads of particular Churches under the pope's jurisdiction, but the interpretation of the time stopped at that point. Following the Vatican I bias towards papal absolutism, the bishops tended to be seen only as "administrative assistants" of the Pope in "a single enormous diocese." [49] It is evident that a collegial element must be expressed in the episcopal role in more than a notional way, yet the 1917 Code made no mention of episcopal collegiality.

By contrast, Vatican II stresses the dual role of leadership in a diocese and in membership of the college, the latter being independent of canonical mission:

Hence, one is constituted a member of the episcopal college by virtue of sacramental consecration and by hierarchical communion with the head and members of the body. [50]

47. K. RAHNER, "Observations on the Episcopacy in the Light of Vatican II", in Concilium, 3(1965), p. 11.

48. V. WALSH points this fact out in his analysis of the change in description of the episcopal role: V. WALSH, "The Theological and Juridical Role of the Bishop: Early 20th Century and Contemporary Views", in Apollinaris, 44(1971), p. 83.

49. H.M. LEGRAND, loc. cit., p. 53.

50. LG, 22.

The authority of bishops is seen as being "of divine right" by virtue of their office:

As lawful successors of the apostles and as members of the episcopal college, bishops should always realize that they are linked one to the other, and should show concern for all the churches. For by divine institution and the requirement of their apostolic office, each one in concert with his fellow bishops is responsible for the Church. [51]

In fact, some authors stress episcopal responsibility to the entire Church more than the responsibility for the local Church,[52] but a balance is required in discussing the ecclesiological foundation of the Church, and the resulting pluralism within Church order. The local Church is integral to the making present of the universal Church, in communion with other local churches. It is fully the Church of God, since "where the Spirit is, where the Gospel is, where the Eucharist is, where the apostolic tradition is, there is the Church." [53]

H. Legrand discusses the essential relationship between the local church and the universal Church, with the need for a balance between the horizontal communion between churches and the vertical relationship with the hierarchical

51. CD, 6.

52. Cf. J.J. O'ROURKE, "The Office of Bishop and its Relationship to the Particular Churches and the Universal Church", in Studia Canonica, 5(1971); p. 243.

53. H.M. LEGRAND, "The Revaluation of Local Churches", loc. cit., p. 57.

structure. The local church, then, is more than a merely administrative, numerical or legal subdivision within the whole Church, but is an integrated unity of members, with the bishop as head and focus of that unity - primarily responsible for the celebration of Word and sacrament - in the eucharistic community.[54] His priorities are to serve that portion of the People of God assigned to his pastoral care, and secondarily to fulfil his other obligations to temporal matters influencing the good of the Church.[55]

The first sign of change in the juridical powers of the diocesan bishops had come with Paul VI's motu proprio, Pastorale munus, which granted a number of additional faculties to bishops.[56] This could be attributed to episcopal pressure - early during Vatican II - to reduce the number of cases where recourse to the Roman curia was sought.[57] Controversy arose among canonists as to whether the new powers granted were ordinary or vicarious. Since ordinary jurisdiction comes from "an office in the strict

54. Cf. E. CORECCO, loc. cit., p. 50.

55. Cf. J. DENIS, "Les incidences du décret conciliaire 'De pastoralis episcoporum munere' sur la législation canonique latine, spécialement en ce qui concerne le gouvernement des diocèses", in L'Année canonique, 11(1967), p. 28.

56. Cf. PAUL VI, Motu proprio, "Pastorale munus", November 30, 1963, in AAS, 56(1964), pp. 5-12.

57. Cf. G.P. GRAHAM, "The Powers of Bishops in Recent Documents", in The Jurist, 28(1968), pp. 425-445.

sense, with powers attached to it by law, and when the attachment of powers is stable and continuing,"[58] it seems indisputable that the new faculties were a result of the recognition of the nature of office of the bishop, even before consecration, as pointed out by the document itself,[59] while the privileges granted to the bishops were delegated, since they were given to the person rather than being allocated to the office. The somewhat ambiguous structure of this document - based largely on the juridical context of the 1917 Code - left it to Vatican II to develop the broader perspective of episcopal power.[60] Nevertheless, it reflected the thinking of the first two sessions of the Council, when the expression of episcopal collegiality was being developed.

Thus, the conciliar elaboration of the episcopal ministry developed through the documents on the Church (Lumen gentium), and on bishops (Christus Dominus). It was complemented by the motu proprio, De episcoporum muneribus, which outlined the means of implementation of the norms of Christus Dominus, no. 8, concerning the power of diocesan bishops:

58. Ibid., p. 428.

59. Cf. PAUL VI, "Pastorale munus", p. 11.

60. Cf. W.J. La DUE, "De Episcoporum Muneribus", in The Jurist, 27(1967), pp. 416-417.

a) Bishops, as the successors of the apostles, enjoy as of right in the dioceses assigned to them, all ordinary, special and immediate power which is necessary for their pastoral office, but always without prejudice to the power which the Roman Pontiff possesses, by virtue of his office, of reserving certain matters to himself or to some other authority.

b) Individual diocesan bishops have the power to dispense from the general law of the Church in particular cases those faithful over whom they normally exercise authority. It must be to their spiritual benefit and may not cover a matter which has been specially reserved by the supreme authority of the Church. [61]

As a corollary, this last document is clear in its declaration that the bishop's ordinary power in giving dispensations derives from the office and is not delegated. Moreover, this ordinary power is attributable to those equivalent in law to the diocesan bishop.[62] A considerable change in outlook is noted between the two motu proprios, with the latter incorporating the deliberations of the Council Fathers and applying them to the general law of the Church; it "allows greater flexibility in the use of power granted." [63] Generally speaking, the bishop cannot dispense from constitutive laws, but from certain disciplinary laws - in special cases and for the spiritual benefit of the

61. CD, 8.

62. This meant that Vicars and Prefects Apostolic, Apostolic Administrators permanently constituted and Prelates and Abbots nullius could enjoy the same faculties. Cf. G. GRAHAM, loc. cit., p. 437.

63. Ibid., p. 438.

faithful, as specified in Christus Dominus. [64] The mode of operation of the dispensations is simple, in that the bishop may grant them of his own authority with no recourse to higher authority for ratification; this was a considerable move away from the former Roman centralization of dispensing power, in recognition of the autonomous authority of the local bishop.

A synthesis of these documents and their teaching was produced for practical use by bishops under the title of Directory on the Pastoral Ministry of Bishops in 1973. [65] Its primary emphasis is pastoral; it moves from outlining the principles of episcopal ministry and life to the practical exercise of the episcopal office in the entire and the local Church, as well as in the episcopal conference. The previous lacuna in the legislation concerning the juridical relationship between pope and bishops on a collegial level has been filled - by counterbalancing papal authority with that of the bishops beyond their local dioceses, apart from the recognition of their increased autonomy within their own dioceses.

64. Cf. CD, 8b.

65. SACRED CONGREGATION FOR BISHOPS, Directory on the Pastoral Ministry of Bishops, Ottawa, CCCB, 1974, vii-116p.

The restrictions of canon 81,[66] which provided that the bishop was to seek the permission of the Holy See in many situations, were considerably relieved by the new norms. Canon 109, however, was the key limiting factor in the old Code, since it ascribed all power of jurisdiction to the pope, who alone received his authority without canonical mission. Those subject to him in the Church were seen to receive jurisdiction in various grades by canonical mission.[67] Hence the definition of a new juridical relationship between the pope and bishops was necessary, in the light of Vatican II theology.[68]

Apart from the right of bishops to participate in ecumenical councils, the dimension of episcopal conferences, plenary and provincial councils is now seen in a new light, with the authority to be exercised being truly episcopal authority, and not merely that delegated by the pope, as was the case in the old Code, expressed in canon 281. The fact that no plenary council had been held in the United States since 1884, in Canada since 1909, and in Australia and New

66. Cf. CIC, 1917, canon 81.

67. Cf. CIC, 1917, canon 109: the operative phrase is: "in reliquis gradibus iurisdictionis, canonica missione", in reference to ecclesiastical jurisdiction below that of the pope.

68. Cf. V. WALSH, loc. cit., p. 76.

Zealand since 1937,[69] - could perhaps be attributed to the "inhibiting factor" of the requirements for direct papal involvement in the convocation, celebration and promulgation of the acts.[70]

The first schema on the role of bishops in preparation for Vatican II - De Ecclesia[71] - was unfavourably received by the bishops because of its preoccupation with the rights of the Curia in matters concerning bishops and their dioceses. This could be taken as the turning point in the formal recognition of episcopal authority in its own right, as the schema was returned for revision, with instructions to write on the subject of relations between the pope and the bishops, rather than the curial congregations.[72] The areas suggested as ones where independent juridical authority could be exercised by episcopal conferences - "a form of assembly in which the bishops of a certain country or region exercise their pastoral office jointly"[73] - were:

69. These merely provide some examples of reasons why bishops failed to continue holding such councils.

70. J.W. BAKER, "Implications of Collegiality", in The Jurist, 24(1964), p. 255.

71. SACROSANCTUM OECUMENICUM CONCILIUM VATICANUM SECUNDUM, Schema Constitutionis Dogmaticae de Ecclesia, Romae, Typis Polyglottis Vaticanis, 1962, 80p.

72. J.W. BAKER; loc. cit., pp. 254-255.

73. CD, 37.

a) questions placed in their competence by the Holy See or by the common law; b) major matters of public concern; c) agreements with the civil government; d) cases in which common action of the bishops is necessary in some serious matter to such a degree that at least two-thirds of the member bishops consider that the decision made should be binding on all. [74]

In the subsequent decree, the pre-eminence of the pope was reiterated - in accordance with Vatican I teaching - with no juridical limitation placed on his powers, but such conferences were encouraged; their decisions obtained the force of law subject to support by two-thirds of those holding a deliberative vote, and to confirmation by the Holy See.[75]

i b) Ministry of Word and sacrament

The bishop's ministry of Word and sacrament, through his role as the leading sanctifier and teacher in the local Church, is given emphasis in Lumen gentium:

In the person of the bishops, then, - to whom the priests render assistance, the Lord Jesus Christ, supreme high priest, is present in the midst of his faithful. [...] it is above all through their signal service that he preaches the Word of God to all peoples and administers without cease to the faithful the sacraments of faith; that through their paternal care, he incorporates, by a supernatural rebirth, new members into his body [...] he directs and guides the people of the New Testament [...] Chosen to shepherd the Lord's flock, these pastors are

74. J.W. BAKER, loc. cit., p. 256.

75. Cf. CD, 38.4.

servants of Christ and stewards of the mysteries of God, to whom is entrusted the duty of affirming the Gospel of the grace of God and of gloriously promulgating the Spirit and proclaiming justification.. [76]

Hence the episcopal powers of jurisdiction and orders are now not so clearly distinguished. It seems that Vatican II's aim was to link episcopal office and power primarily to the sacramental order.[77] Bishops then are to function as "a central and sacramental witness to their, collegially shared faith which in turn reflects the faith shared by christians throughout space and time." [78] This does not necessarily imply a monopoly on the jurisdictional power of the Church, but does suggest a broader understanding of the mission of the Church to be exercised by the whole of the People of God.

The emphasis on the episcopal role to preach the Gospel in many diverse ways [79] and to celebrate the sacraments [80] implies the necessity for broader distribution of juridical responsibilities which do not depend so

76. LG, 21.

77. Cf. B. COOKE, "'Fullness of Orders': Theological Reflections", in The Jurist, 41(1981), p. 417.

78. Ibid., p. 417.

79. Cf. LG, 25.

80. Cf. LG, 26.

explicitly on reception of orders.^[81] Since the primary focus in this study is the relationship between the bishop and priests, and their collaboration within the local Church, these other ministries - while just as important - will not be considered in detail here. Needless to say, the sacrament of orders empowers and commissions the priest for this ministry also, but under the jurisdiction of the local bishop or his religious superior, as described in Christus Dominus:

In exercising their mission of sanctification bishops [...] who enjoy the fullness of the sacrament of orders, and both priests and deacons are dependent on them in the exercise of their power. [...] It is therefore bishops who are the principal dispensers of the mysteries of God, and it is their function to control, promote and protect the entire liturgical life of the Church entrusted to them. [82]

c) Potestas and munus

The distinction introduced in Lumen gentium in the terms referring to episcopal office illustrates the change in theological understanding, since there was a move from the use of potestas (power) in reference to the power of orders to the term munus (responsibility or function). In relation to the bishop's "power" conferred by consecration, he is

81. Cf. J.J. CUNEO, "The Power of Jurisdiction: Empowerment for Church Functioning and Mission Distinct from the Power of Orders", in The Jurist, 39(1979), pp. 186-190.

82. CD, 15.

given the munera of sanctifying, teaching and governing, as an "ontological participation through the conferral of consecration." [83] The use of potestas as power, remains in reference to the power to act with a canonical mission, but the distinction is not altogether clear. It seems to be a term now used more in reference to the power deriving from a particular assigned office (officium), which returns to the question of whether orders are necessary for all ecclesiastical jurisdiction. The connotation of the word munus, rather than potestas, implies also an emphasis on the responsibility to service, rather than the mere exercise of power, by one holding a particular office in the Church.

There is also an implication that the munera of teaching, sanctifying and governing conferred by episcopal ordination, are not the only means whereby ecclesiastical power may be exercised. The conferring of the "priesthood of the faithful" by baptism on each individual member of the People of God as "priest, prophet and king" suggests the possibility of the non-ordained sharing in this jurisdictional power. This priesthood of the faithful is recognized as differing "essentially and not only in degree"

83. "Tamquam ontologicam participationem consecrationem collatam", in LG, 21b, "Nota explicativa praevia", 2. The use of munus had replaced potestas, which was used in the earlier texts of "De Ecclesia". Cf. G. GHIRLANDA, in loc. cit., p. 51.

from the ministerial priesthood, but "each in its proper way shares in the one priesthood of Christ." [84]

d) Further questions of orders and jurisdiction

Controversy still clouds the question of ecclesial power and its sources in orders and jurisdiction: the two positions being described as the "Roman" and the "German" by J. Provost, whose study on the matter provides much evidence in the balance in favour of laity taking part in the exercise of jurisdiction in the Church; the same views are held by J. Huels and J. Cuneo, in their reviews. [85]

The "German" position asserts the unity of sacred power, "the power of Christ present in the Church through the sacrament of Orders," [86] a power for teaching, sanctifying and governing the People of God. On the other hand, the "Roman" school sees a division of the powers of orders and

84. LG, 10.

85. Cf. J. PROVOST, "The Participation of the Laity in the Governance of the Church", in CLSGBI, Newsletter, 60(March, 1984), pp. 12-67; also in Studia Canonica, 17(1983), pp. 417-448. J. HUELS, "Another Look at Lay Jurisdiction", in The Jurist, 41(1981), pp. 59-80, and J. CUNEO, loc. cit., pp. 183-219. The opposing view, primarily in response to Provost's article, is argued for by D.M. JAEGER, "The Relationship of Holy Orders and the Power of Governance according to the Revised Code of Canon Law, CLSGBI, Newsletter, 62(September, 1984), pp. 20-38. Jaeger denies the possibility of the laity's participation in Church governance, as a result of his examination of the evidence.

86. J. PROVOST, "The Participation of the Laity in the Governance of the Church", p. 19.

jurisdiction, with the former coming from Christ and the latter deriving from the divine natural law; both are "distinct in origin, purpose and characteristics.[87]

A. Stickler and J. Beyer are proponents of this view.[88] A historical perspective demonstrates that laity have shared in jurisdiction in the Church in the past, as evidenced particularly in non-clerical religious communities, and according to the new law, where it is stated that laity may "cooperate in the exercise of the power of governance,"[89] with specific examples studied by J. Provost.[90] The arguments are numerous and complex, but Provost's conclusion seems the most logical: all power to be exercised in the Church is not restricted to those with Orders, since:

Fundamentally, all power in the Church is pastoral, for it is Christ who pastors the Church through the three munera of teaching, sanctifying and governing. Lay persons who take on these pastoral roles may be considered to be cooperating in the power of governance in a broad

87. Cf. ibid., p. 23.

88. Cf. A. STICKLER, "De potestatis sacrae natura et origine", in Periodica, 71(1982), pp. 65-91, and J. BEYER, "De natura potestatis regiminis seu iurisdictionis recte in Codice renovato enuntianda", in Periodica, 71(1982), pp. 93-145.

89. CIC, 1983, canon 129, §1.

90. Cf. J. PROVOST, "The Participation of the Laity ...", pp. 47-49.

sense, and strictly to the extent they are given faculties or delegation. [91]

The rigid approach of the two schools he refers to is too resistant to allow for an interpretation of power which goes beyond the institutional level, on the one hand, or the sacramental on the other, so that there is no room for the "action of the Spirit through charisms and grace." [92]

J. Huels elaborates on J. Cuneo's logically argued contention that the concept of Church jurisdiction contains the basis for the extension of the role of the laity in this level of the Church's mission. Cuneo considers it "a type of empowerment by which a person can share in the Church's mission," [93] taking the meaning of "mission" in its more general sense - to include the juridical, charismatic and sacramental dynamic - not merely limiting it to "canonical mission". In asserting that "any participation in the Church is sacramental," [94] and therefore so is all power, he concurs with Schillebeeckx in seeing the unity of powers deriving from Christ and mediated to individuals through baptism, the primary sacrament of initiation. [95] Huels

91. Ibid., p. 53.

92. Ibid., p. 52.

93. J.J. CUNEO, loc. cit., p. 185.

94. J.M. HUELS, loc. cit., p. 68.

95. Cf. E. SCHILLEBEECKX, op. cit., passim.

refers to this notion in his argument on broadening the concept of jurisdiction.

The conclusion then is that clergy and laity should be able to participate in the exercise of jurisdiction in the Church through baptism, since its source of power is "Christ's action through sacrament." [96]

Huels makes the point that to "overjurisdictionalize all ministries in the Church is unnecessary, given this theology of membership." [97] His criticism of Cuneo's position in this area seems justified, in that the latter emphasises "the legal principle of jurisdiction" over the sacramental basis for its exercise. Support for the more fluid approach comes from Y. Congar, who returns to Scripture to justify authentic ministry going beyond "official presbyteral ministry" to the "multitude of diverse modes of service" in the Church. [98] The conclusion to Huels' argument is that four types of ministries may be identified in the Church as "common, public, jurisdictional and ordained," [99] thereby allowing for a more flexible approach to ministry and service. Reception of orders or canonical

96. J.M. HUELS, loc. cit., p. 70.

97. Ibid., p. 70.

98. Y.M. CONGAR, "My Path-Findings in the Theology of Laity and Ministries", in The Jurist, 32(1972), p. 176.

99. J.M. HUELS, loc. cit., p. 74.

mission are not the sole means of active participation in the ministry of the Church. The point to note is that both Huels and Cuneo argue from the initial perspective of the 1917 Code on orders and jurisdiction, particularly in extending the understanding and exercise of that jurisdiction beyond the standpoint of its limitation to clerical exercise.

The arguments lead to a negative conclusion, whereby it seems right to state that laity may share in this aspect of power when delegated. It is preferable to speak of the "unicity of the active subject of sacred power than of the unicity of sacred power itself,"[100] since the individual given power to exercise must be in communion with the head and members of the Church. It could be recalled, too, that christian baptism initiates one into the Church and ultimately into playing an active part in its mission - beyond the specific ministry of orders itself.[101]

A synthesis between the two elements of grace and the juridico-hierarchical dimension of power is difficult to achieve, given the different aspects and nature of ecclesial and episcopal theology which have been considered here. The

100. "Melius esset ergo, ad vitandam confusionem, loqui potius de unicitate subiecti activi potestatis quam de unicitate potestatis sacrae ipsius." Quoted from: A.M. STICKLER, "De potestatis sacrae natura et origine", in Periodica, 71(1982), p. 85.

101. Cf. J. BEYER, "La nouvelle définition de la 'Potestas Regiminis'", in L'Année canonique, 24(1980), p. 64.

Church has the properties of both an invisible, spiritual community as well as a visible institution, but is a unity in reality. The episcopate also has a unity of diverse elements, with the functions (munera) or sacramental power of orders and the hierarchical power of jurisdiction resulting from the office (officium).[102] The model of "hierarchical communion" for the Church expresses the reality of the unity of these diverse elements in the life of the Church.

This is seen in the concept of "power of communion" (potestas communionis), which provides an explanation for the means by which the Pope concedes his non-sacramental jurisdictional power to others; it is the power to act - the potestas expedita ad agendum - by canonical mission.[103] In this sense, Beyer argues that it is a means of the non-ordained participating in jurisdiction, as history has shown in past practice. In this view, the "power of communion" is not restricted to those who have received orders.[104]

Beyond the philosophical and academic arguments is the fact that the primary goal of the exercise of power in the Church is the welfare of the People of God. In this less juridical perspective, the elements to emphasize are unity

102. Cf. ibid., p. 56.

103. Cf. ibid., p. 66.

104. Cf. ibid., p. 67.

and communion, in promoting the presence and vitality of the Church in the world. Participation in the power of communion is participation in the power of Christ, the source of all ecclesial power, but the delineation of the subdivisions and responsibilities is often not so clear.

C: Communio and mission.

The image of the Trinity could be adopted to describe the fundamental structure of the local church, since within it is a communion of christians with diverse charisms, but one mission given by Christ, held in unity by the one Spirit. Unity in charity must be demonstrated in the exterior life of the Church, which should combine the components of law and charity in harmony.[105]

The dual structure of communion and mission is the basis of a Church which is integrated according to "divine law" (ius divinum), and in which power is exercised through the pope and bishops - as successors of Peter and the other apostles, who received their commission from Jesus Christ. In the same way, priests are united with their bishop in the one priesthood, but act in diverse expressions of the particular mission to which they are assigned in the local church.

105. Cf. G. GHIRLANDA, loc. cit., p. 67. Cf. also R. KRESS, "The Church as Communio: Trinity and Incarnation as the Foundation of Ecclesiology", in The Jurist, 36(1976), pp. 127-158, provides a theological and historical justification for this Trinitarian model of the Church as communio.

Theology is influenced by the philosophy of the time in its expression, and by history, since it derives from a living community reflecting on its faith and on itself in a particular time and place; it cannot be divorced from human experience. With this in mind, the change in emphasis in ecclesiology before and after Vatican II, from the Church seen as a "perfect society" to the Church described as a communio, can be better understood.

The communio model of the Church provides a more theologically sound basis for leadership and consultation. It is vital to an understanding of the Church as a united community of believers, who share values which are lived out individually and communally in following the Gospel. J. Provost proposes an alternative approach to developing community from outside official direction, through a closer examination of the Church at the "grass roots" level of the parish, where most members have their immediate contact with the christian community.[106] In this context, the individual might be made more aware of his responsibility to participate in the Church's mission, through belonging to a community which reflects enthusiasm and life.

106. J. PROVOST, "Structuring the Church as a Communio", in The Jurist, 36(1976), p. 259.

1. Principles of shared responsibility

The principles of legitimate diversity, coresponsibility and subsidiarity are fundamental to this approach, since each aspect acknowledges the potential of individuals and groups in the Church to contribute to the growth and life of the community to which they belong, entry being effected through baptism. For the "priesthood of the faithful" to be exercised by all, a focus on participation at the local level is necessary. The exercise of authority in the community should "discern the Spirit evident in the signs of the times,"[107] so that situations are responded to in the light of the Gospel. In a practical way, the involvement of the faithful in the liturgy, in assisting in the administration of Church affairs, and in the mission of service to others, are areas which reflect the communio dimension through working together. L. Suenens speaks of the primacy of baptism leading to the "primacy of community", where each member is to be coresponsible, in a "cooperation which is the corollary and manifestation of the Church's deepest nature." [108] Needless to say, the communio model is not the ultimate description of the Church, but a means of clarifying its role in service of the community.

107. Ibid., p. 195.

108. L.J. SUENENS, Coresponsibility in the Church, New York, Herder and Herder, 1968, p.32.

In regard to diocesan organization, the bishop should provide the leadership and stimulus to the people entrusted to his pastoral care, so that effective dialogue and consultation may occur, both through the formally instituted bodies such as the diocesan pastoral council, the senate of priests and the diocesan synod, and through less formal contact of the people with their leaders. While he remains the sole legislator in his diocese, the diocesan bishop's authority is primarily one of service to the community; communio on a diocesan level is developed by engendering a real sense of responsibility among those who are involved in areas of consultation, and by a mutual willingness to discuss issues in a spirit of good will and openness.

Three aspects have been identified as the basis for the emphasis on consultation in the post-Vatican II Church: these are the "equality of all believers, the charismatic dimension of the Church, and the model of the Church as a 'communion' and a 'mission'." [109]

It is misleading to speak of the Church as a democracy, since this would imply a system of decision-making by the majority. While the Church is not a democracy in the generally accepted sense of the term; nevertheless, certain

109. Cf. J. PROVOST, "The Working Together of Consultative Bodies - Great Expectations?", in The Jurist, 40(1980), pp. 258-259.

principles which apply to democratic institutions will be assumed by the Church, a hierarchically structured institution, with the Pope at the head and the bishops as its leaders in sacramental, administrative and juridical life, assisted by the priests as ordained ministers. Vatican II, however, emphasises the universal "priesthood of the faithful", received through baptism, and the fundamental equality of all believers, who share in the threefold priestly, prophetic and royal offices of Christ, described in Lumen gentium. [110]

The charismatic dimension of the Church as the People of God, called to share its talents in contributing to the life of the Church, [111] is also given considerable importance, in contrast to the conformity evidenced in the post-Tridentine Church up to Vatican II. The model of the Church as the pyramidal "perfect society" was superseded by the more egalitarian model of a communion, [112] in which is expressed the reality of a people being in communion with God and each other. The People of God are "hierarchically held together and on mission continuing the mystery revealed in

110. Cf. LG, 30.

111. Cf. LG, 12.

112. Communio from the Latin, and koinonia from the Greek.

Christ."[113] All have the responsibility to share in this communio in a variety of ways, depending on each individual's gifts and function in the community. Consultative bodies provide one means in which the dimension of communio is reflected on a practical level.

a) Ecclesial subsidiarity

The principle of subsidiarity was first applied to life in society by Pius XI: in relation to human freedom and responsibility, decisions in individual or group situations should be taken at the lowest possible level, rather than at a higher level of authority, which is removed from the situation. The principle was used as an argument against excessive centralization of authority, and referred primarily to the area of social justice.[114] It requires that decisions be taken at the most appropriate level, and it calls for decentralization of authority where feasible. Vatican II cited it rarely, but it is mentioned in several documents, in relation to the role of the State and culture,[115] and it was advocated as a norm to be applied

113. J. PROVOST, "The Working Together of Consultative Bodies ...", p. 259.

114. Cf. PIUS XI, Encyclical Letter, "Quadragesimo anno", May 15, 1931, AAS, 23(1931), p. 203.

115. Cf. GE, 3 and 6.

in international cooperation.[116] John XXIII referred to it in the social encyclical "Mater et magistra", [117] but only in the context of State control of smaller bodies, which were encouraged to be given more autonomy.

In the light of the increased power of the bishop recognized by Vatican II,[118] the principles for the revision of the Code of Canon Law included subsidiarity as a means of

[...] defending the reasonableness or need, especially of individual institutions, to provide for their own advantage by particular laws enacted by themselves as well as by a reasonable amount of autonomous executive power and authority. [119]

Basic principles of fundamental institutions and the description of means for attaining the supernatural ends of the Church were to be preserved, but the general principle of

116. Cf. GS, 86c.

117. Cf. JOHN XXIII, Encyclical Letter, "Mater et magistra", in AAS, 53(1961), p. 406.

118. Cf. CD, 8.

119. P.J. CONNORS, "The Principle of Subsidiarity", in An Introduction to the New Code of Canon Law, G. Robinson, ed., CLSANZ, Prior, 1983, pp. 153-169. Cf. also, G. LESAGE, "Le principe de subsidiarité et l'état religieux", in Studia Canonica, 2(1968), pp. 99-124, which outlines the historical basis for subsidiarity and then applies it to religious communities. Also R. METZ, "La subsidiarité, principe régulateur des tensions dans l'Eglise", in Revue de droit canonique, 22(1972), pp. 155-176, which summarises the applications of subsidiarity to the Church in papal teachings and in preparation for the new Code.

allowing variations in individual Churches and decision-making processes at the most appropriate levels was recognized. The "Directory on the Pastoral Ministry of Bishops" declares that the bishop must "respect the legitimate competencies of others" and should not "ordinarily take upon himself what can well be done by others." [120] The freedom of ecclesial communities and individuals is thus expanded, with the function of authority being a source of unity rather than uniformity. Subsidiarity reflects the New Testament spirit of "authority as a service of love and guidance." [121]

Further applications of the principle should occur in time, since it is primarily applied to the diocesan bishop's role in the new Code. He has the proper, ordinary, and immediate power as "Vicar of Christ", with broad dispensing powers, as designated in the 1983 Code. Subsidiarity extends to particular law, where local legislation is decided upon at episcopal conferences, where decisions taken are not totally binding, since each bishop may dissent from the general policy decisions in regard to his own diocese. The further extension of subsidiarity to clergy and laity has not yet been in evidence; instead, the process of consultation has

120. SACRED CONGREGATION FOR BISHOPS, Directory on the Pastoral Ministry of Bishops, CCCB, Ottawa, 1974, 96.

121. B. PENA, "Decentralization of Church Authority", in Philippiniana Sacra, 8(1973), p. 281.

been encouraged, as mentioned earlier. The final decisions are left to the bishop where this occurs, but if subsidiarity is not extended to involve the clergy and laity in decision-making processes, it is in danger of becoming a "fossilized" concept.[122] It is inevitable, or at least necessary, that the process of consultation with his priests and laity be taken seriously by the bishop, in order that the cooperation and collegiality of all of the People of God be a reality; subsidiarity is a means of achieving this end.

b) Some "democratic" principles applicable to the Church

The preceding considerations make it clear that the Church has moved towards a less autocratic form of government and decision-making, without changing its hierarchical structure. The Pope retains "supreme, full, immediate and universal ordinary power." [123] The college of bishops shares this power as "the subject of supreme and full power over the universal Church", in communion with him. [124] On a diocesan level, the bishop has ultimate authority, with "all the ordinary, proper and immediate power which is required for the exercise of his pastoral office", [125] apart from

122. Cf. P.J. CONNORS, loc. cit., p. 159.

123. CIC, 1983, canon 331.

124. CIC, 1983, canon 336.

125. CIC, 1983, canon 381.

cases reserved to the Holy See or to some other authority.

If the increase in shared responsibility, as expressed in the new legislation, is seen in terms of a more "democratic" form of life, some consideration needs to be given to the meaning of the term "democracy". The Church certainly cannot be described as democratic in government in terms of majority vote decisions or regular elections with possible changes in government. One danger of seeking specific democratic ecclesial structures is to revert to viewing the Church as a "society", and losing sight of the dimension of "mystery". Nevertheless, there are elements of democratic life which can be identified in the Vatican II theology and subsequent legislation..

The facts of "democratic freedom and political equality" are seen as essential to a democratic way of life.[126] Their presence was notable in the early Church. A certain tension between freedom and equality is involved in any community, but democratic forms of life should reflect interaction between the "communication of the optimal amount of freedom and the highest possible degree of equality" among members.[127] Human experience has led to a recognition of the need for social organization, incorporation of a respect

126. K. LEHMANN, "On the Dogmatic Justification for a Process of Democratization in the Church", in Concilium, 73(1971), pp. 60-86.

127. Ibid., p. 65.

for the individual, and for an awareness of responsibilities for the maintenance of order and growth of the community. Rational bases for mutual understanding and resolution of conflicts or difficulties are required. These elements can be identified in the life of the early Church, and are also aspects of the reemphasis on the Church today as a communio, which incorporates such realities as: "the freedom of the children of God, the universal priesthood, the imparting of the Spirit to all, the conscious holding of faith in common on the part of believers, the basic equality of christians, the equality and dignity attached to the name of christian and other elements." [128] Such an experience of communio realizes the christian role of living in Christ in freedom and service, given that each member is personally committed to contributing to the life of the community. Structures are necessary for order, but should not stifle individual spontaneity and creativity.

Since the Church has one head in Jesus Christ, whereas a democracy connotes some notion of sovereignty of the people in a civil society, a further distinction is evident between the two. The Church has no absolute right to self-determination, since faith, dogma and law derive from salvation of all in Christ. Self-determination implies some degree of control over the basic constitutions of a society,

128. Ibid., p. 68.

but the Church again is different, in that the basic elements of revelation are separate from area subject to negotiation and change by its members. Effective application of the Gospel is fundamental, which means that interpretation is a part of the christian responsibility. At times, especially during the more authoritarian periods of the Church's history, dogmatic and constitutional elements of its life have been labelled as non-negotiable by authorities, without enough consideration being given to discerning between the essentials and the peripheral aspects of faith, particularly in regard to structures and authority.

Recent Church teaching insists that there be consultative bodies, and that they be implemented at a diocesan level by the competent authority - usually the diocesan bishop. Presbyterorum ordinis, the decree on the life and ministry of priests, calls for the formation of "a group or senate of priests [...] to represent the body of priests", and "help the bishop in the management of the diocese." [129] Christus Dominus, urges that a diocesan pastoral council be set up in each diocese, "presided over by the bishop himself, in which clergy, religious and laity [...] will participate." Its function is "to investigate and consider matters relating to pastoral activity and to

formulate conclusions concerning them." [130] This is reiterated in Ad gentes and Apostolicam actuositatem, the decrees on missionary activity and on the apostolate of the laity, respectively. [131] Practical details for the establishment of these two consultative bodies were given in the motu proprio, Ecclesiae sanctae, [132] in 1966, and their presence in the life of the Church is canonised in the 1983 Code of Canon Law. [133]

Having established a basis for the expression of communio in the Church at this level, the Council encouraged an active role in consultation at all levels of the Church's communion, as in the following: the Synod of Bishops at the universal level, [134] episcopal conferences at the national level, provincial councils at the regional level, [135] diocesan presbyteral and pastoral councils, [136] as well as parish and other councils for apostolic works. [137] As R. Kress puts it:

130. CD, 27.

131. Cf. AG, 30 and AA, 26.

132. Cf. ES I, 15.

133. Cf. CIC, 1983, canons 495-501 and canons 511-514.

134. Cf. CD, 5.

135. Cf. CD, 37 and 38.

136. Cf. CD, 27 and AG, 30.

137. Cf. AA, 26.

Thus unity and diversity, the one and the many, are not as such hostile, antagonistic, mutually exclusive. Rather they are to be thought of as dancing together in joyful harmony, indeed, in communion. There is a threefold perichoresis: Trinity (Deus in se); Incarnation (Deus in alio); Church (Deus in aliis). Thus the Church is most properly thought of as the divine will of God the Father to save humanity through His incarnate Son Jesus, who is in hypostatic union with humanity, and through the Holy Spirit, who is the bond of union within God as well as between God and Christ-ed humankind. The Church is the special event and sign of the new creation which God has more wonderfully reformed and restored. [138]

This is the communio to which the People of God are called to constitute.

2. The mission of the communio

The call of the People of God to mission is a necessary corollary to the communion of the Church; the Vatican II Decree on "The Church in the Modern World" - Gaudium et spes - speaks of the Church's mission in these terms:

Christ did not bequeath to the Church a mission in the political, economic or social order: the purpose he assigned to it was, a religious one. But this religious mission can be the source of commitment, direction and vigor to establish and consolidate the community of men according to the law of God. [...] The encouragement of unity is in harmony with the deepest nature of the Church's mission, for it is in the nature of a sacrament - a sign and instrument - that is of communion with God and of unity among all men. It shows to the world that social and exterior union comes from a union of hearts and minds, from the faith and love by

which its own indissoluble unity has been founded in the Holy Spirit. The impact which the Church can have on modern society amounts to an effective living of faith and love, not to any external power exercised by purely human means. [...] it can form a very close and unifying effect on the various communities of men and nations, provided they have trust in the Church and guarantee it true freedom to carry out its mission. [139]

This mission is inseparable from the communio of the Church, since "mission is the religious and historical purpose of the existence of the community called Church." [140] The thrust of mission is into the world, so that the communio is not an isolated group of believers in an alien world, but an empowered community of individuals who have a sense of awareness of their call to be missionary as christians in that world.

Gaudium et spes reflects a determination to reduce the dichotomous view of the world as separated between "sacred" and "profane", so that missio has a positive interpretation as a call to involvement in that world, rather than, to provide an escape from it into the communio. The church as a corporate body or community, as a whole, is sent outward to the world. The Gospels provide the basis for this notion of

139. GS, 42.

140. R.D. HAIGHT, "The 'Established' Church as Mission: The Relation of the Church to the Modern World", in The Jurist, 39(1979), p. 10. Cf. also J.A. KOMONCHAK, "Clergy, Laity and the Church's Mission in the World", in The Jurist, 39(1979), pp. 422-447; he argues for the recognition of the mission of the People of God in the world.

mission, with the constant theme of being sent out: "As the Father has sent me, so I send you" (Jn 20.21), and "Go therefore and make disciples of all nations" (Mt 28.19). Mission is at the core of the Church's very being, and is a motivating factor for members to profess an active and dynamic ~~with~~, so that their way of living is consistent with the Gospel.[141]

The involvement of both clergy and laity in the Church's mission is made clear in the Vatican II Decree on the Apostolate of the Laity, Apostolicam actuositatem, which speaks in these terms:

In the Church, there is a diversity of ministry but unity of mission. To the apostles and their successors, Christ has entrusted the office of teaching, sanctifying and governing in his name and power. But the laity are made to share in the priestly, prophetic and kingly office of Christ; they have therefore, in the Church and in the world, their own assignment in the mission of the whole People of God; it is exercised too when they endeavour to have the Gospel spirit permeate and improve the temporal order, going about it in a way that bears clear witness to Christ and helps forward the salvation of men. [142]

The concepts of coresponsibility, subsidiarity and diversity may be applied to the mission of the Church; this

141. Cf. J. COMBLIN, The Meaning of Mission, Maryknoll, New York, Orbis Press, 1977, pp. 1-27, focusses on this dynamic of faith and action as a consequence of participation in mission, and the call to transform society.

142. AA, 2.

perspective of mission begins with baptism as giving an individual the munus for missio, but with implementation of the munus dependent on further development in faith and on ongoing and active membership of the communio. [143] This juridical foundation for missio must be

[...] completed by personal commitment and a greater insertion into the life of the Church before the person is sufficiently empowered to carry out the Christian's rights in this regard. [144]

The mission of the Church is broadly based, and never confined merely to those in orders, which is primarily a sacramental ministry of service to the community. The mission of christian family life, for example, is given greater emphasis as the formative area for individuals growing up in the community with a sense of christian mission.

The Vatican II perception of ministry and service, is one which leads to the realization of the necessity of applying the theological principles outlined to the organization of the local and entire Church. The relationship between priests and their bishop at the local level should reflect these images of unity and cooperation, in a sense of common mission. This provides a raison d'être for such

143. Cf. J.H. PROVOST, "Structuring the Church as 'Missio'", in The Jurist, 39(1979), pp. 220-288.

144. Ibid., p. 244.

diocesan organs as the college of consultors and the presbyteral council.

Conclusion

The experience of the two Vatican Councils has had direct repercussions on the way in which the Church understands its authority and subsequently formulates its law. It has been necessary to study the theological background in order to explain the way in which ecclesiastical structures have been established, and authority has been understood..

While the presbyterium in the early Church appears to have been an active entity in pastoral care, working in close relationship to the local bishop, the institutionalization of Church structures inevitably occurred through its growth and recognition by the civil state. Generally speaking, a more authoritarian form of leadership and control of members under the diocesan bishop's jurisdiction was the norm. The bishop himself was directly subject to the pope, whose spiritual authority in particular increased through the centuries, reaching its peak in the 1870 definition of papal infallibility. Circumstances at this Council prevented consideration of episcopal authority in its own right; the bishop was considered to be directly subject to the pope, through whom the power of jurisdiction was channeled. The

power of orders was seen as quite separate, but prerequisite to the exercise of jurisdiction, and the model of the Church as the "perfect society" reinforced the perception of the pyramidal, vertical structure.

In contrast, the theology of Vatican II has presented a variety of models of the Church - each with its own merit, with particular emphasis on the reality of its existing as a "hierarchical communion", to which all members of the People of God belong by virtue of their baptism. In this communio, they have the common mission to participate in the life and activities of the Church, in contributing to the realization of the Kingdom of God here and now.

The lines of distinction between orders and jurisdiction are less clearly defined, although orders is not generally considered an absolute prerequisite for the exercise of jurisdiction. The use of such terms as "collaboration" and "cooperation" in regard to laity and presbyterium in the Code, as well as in the Vatican II documents themselves, leaves the question somewhat open to further development and interpretation.

The collegiality of bishops was affirmed, with the implication that this concept of co-responsibility should be exercised at the level of the local Church as well, with the participation of presbyterium and people at different levels

of decision-making and activity, so that the principle of subsidiarity is to be effectively applied to organization within the Church at the local level.

CHAPTER IV

CONCILIAR TEACHING ON THE PRESBYTERIUM

The 1917 Code was limited in its presentation on the role of priests in governance, just as the theology of priesthood at the time, was somewhat limited in its expression to the sacramental dimension of church life. The cathedral chapter and diocesan consultors were given little deliberative power over the bishop's decisions. As a result, the notion of presbyterium, as it was understood and experienced collegially in the early church, was largely forgotten. The presbyterium, as an active entity per se in the local church, had suffered from neglect for numerous centuries. Many have pointed out the impossibility of extending its role in the local church without "theological and existential" renewal, expressed in canon law.[1]

In many respects, the long term effects of the application of Roman Law to ecclesiastical law can be

1. Cf. T.F. O'MEARA, "Towards a Roman Catholic Theology of the Presbytery", in The Heythrop Journal, 10(1969), p. 399. Other contemporary authors have written similarly in calling for deeper theological reflection on the nature of the presbyterium: F. HAARSMA, "The Presbyterium: Theory or Programme for Action", in Concilium, 43(1969), pp. 32-37; T. GARCIA BARBERENA, "Collegiality at Diocesan Level: The Western Presbyterate", in Concilium, 8(1965), pp. 11-18; B. BOTTE, "Caractère collégial du presbytérat et de l'épiscopat", in Etudes sur le sacrement de l'ordre, Centre de Pastorale Liturgique, Paris, Cerf, 1957, pp. 97-124. English translation: "The Collegiate Nature of the Presbyterate and Episcopate", in The Sacrament of Holy Orders: some papers and discussions concerning Holy Orders at a session of the Centre de Pastorale Liturgique in 1955, London, Aquin Press, 1962, pp. 75-97; J. LECUYER, "Le presbyterium", in Les Prêtres, formation, ministère et vie, Paris, Cerf, 1968, Coll. Unam Sanctam, n. 68, pp. 275-288.

identified in the use of principles and terminology of canon law, as expressed in the 1917 Code.[2] The resulting limitations were evident through the ascendancy of the juridical and hierarchical emphasis on the relations between bishops and their priests, and there is perhaps a parallel in the more recent experience of a similar imbalance in the relationship between parish priests and their assistants, who had few rights according to law, and remained in a subordinate position to the parish priest, moreso in practice than to the diocesan bishop.

The reformers of the sixteenth century tended towards "presbyteralism" away from centralized authority, in reaction to centralization of authority by Rome. Thus it might be expected that Trent's emphasis would be on centralized authority and uniform organization of ecclesiastical structures, with a polemic tone against the radically different ideas of the reformers. The elaboration of principles regarding the involvement of priests in diocesan governance is something which was largely ignored during the Councils of Trent and Vatican I, although the former treated of the role of priests in several aspects, mainly with a view

2. A study of Roman Law and commentaries leads to this conclusion; one series of studies of the 1917 Code's use of Roman Law is by B.F. DEUTSCH, "Ancient Roman Law and Modern Canon Law", in *The Jurist*, 27(1957), pp. 297-309; 28(1968), pp. 23-37, 149-162, 449-469; 29(1969), pp. 10-25, 265-278; 30(1970), pp. 182-192; 31(1971), pp. 478-488.

to reforming priestly life and ministry. Vatican II, on the other hand, produced the document on the life and ministry of priests - Presbyterorum ordinis - as its last decree; this provided a major contribution to the understanding of priesthood in the modern world in a theological and practical context.

A: The presbyterium according to Vatican II

It is not satisfactory merely to speak of the "dual" power of Orders, in reference to the sacerdotal power over the "eucharistic body of Christ", and to the "mystical body of Christ", in relation to pastoral ministry. Rather, there is need for a broader expression of what constitutes priestly ministry, which has been described as "the principle of the growth, organization and unity of the body of Christ." [3] Episcopal and presbyteral roles are closely linked:

The presbyterate, then, is not an autonomous organism placed side by side with the bishop. It has no special domain assigned to it outside the bishop's sphere. It is there to advise and assist him and to deputise for him in his absence. But it is the bishop who is the pastor of his people par excellence. In the first centuries he did indeed live very close to them and he knew them, and was known by them. It is the bishop who is the principle of unity in his church not only in disciplinary but in sacramental and doctrinal matters. Although he is assisted by a presbyterate he is fully cognisant of being the head and of representing the apostolic power in

3. B. BOTTE, "The Collegiate Nature of the Presbyterate and Episcopate", p. 94.

himself alone. The presbyterate shares his power, but in unity and submission. [4]

Thus, priests have a mission to collaborate with the bishop in a sense of unity, for the development of a living church. The presbytery is the extension of the bishop in the local church, on the spiritual and pastoral levels of ministry.

Implementation of expressions of collegiality between a bishop and his priests on a diocesan level, required both legislative and attitudinal adjustments to the structure decreed by Vatican I and the 1917 Code. Reformulation was reflected in Vatican II and then the 1983 Code of Canon Law was revised in that light. Hence, the development of the role of the presbyterium in the documents of Vatican II will be reviewed, along with the ensuing application of the teaching in the new Code, which was to incorporate the conciliar principles into law. A change of attitude among clergy and bishops is also required, as law simply attempts to formulate basic principles or norms to be followed. The goal should be to achieve more than legal changes, but also "an expression of what is original and unchanging in the Church operating in the world in ever new ways." [5]

The major documents of Vatican II in regard to the promotion of what has been called "diocesan collegiality",

4. Ibid., pp. 95-96.

5. T. GARCIA BARBERENA, loc. cit., p. 16.

are the texts on "The Church", "The Pastoral Ministry of Bishops" and "The Life and Ministry of Priests." [6] The conciliar discussions preceding the promulgation of these documents reveal quite significant changes in direction from the initial schemata, as the influence of such concepts as "People of God" and "shared responsibility" in the Church, with movement beyond pope, curial congregations and bishops, were elaborated. The specific area to be explored here is the progress of discussions concerning the introduction of priests' senates, the changing role of cathedral chapters and the situation of the diocesan consultors.

1. Preliminary insights into presbyterium during Vatican II

The earliest document to emphasize the presbyterium as having a key role in the ministry of the local church was Lumen gentium, which described priests as

[...] prudent cooperators of the episcopal college and its support and mouthpiece, called to the service of the People of God, [who] constitute together with their bishop, a truly sacerdotal college (presbyterium) dedicated it is true to a variety of distinct duties. In each local assembly of the faithful they represent in a certain sense the bishop, with whom they share all trust and generosity; in part, they take upon

6. These have been referred to in the preceding chapter's theological analysis. The Latin titles are Lumen gentium, Christus Dominus and Presbyterorum ordinis, all translated into English in A. FLANNERY, Vatican Council II: The Conciliar and Post-Conciliar Documents, New York, Costello, 1975, pp. 350-426, 564-610, 863-902.

themselves his duties and solicitude. [...] Those who, under the authority of the bishop, sanctify and govern that portion of the Lord's flock assigned to them render the universal Church visible in their locality and contribute efficaciously towards building up the whole body of Christ. [...] In virtue of their sacred ordination and their common mission all priests are united together by bonds of intimate brotherhood, which manifests itself in a spontaneously and gladly given mutual help, whether spiritual or temporal, whether pastoral or personal, through the medium of reunions and community life, work and fraternal charity. As to the faithful, they should bestow their paternal attention and solicitude on them. [...] They should preside over and serve their local community in such a way that it may deserve to be called by the name which is given to the unique People of God in its entirety [...]. [7]

This first reference to the general responsibilities of presbyteral ministry reflects the change in emphasis from the rather exclusive sanctifying role of the priest to one that is collegial. The mention of cooperation with other priests in unity with the bishops gives recognition to elements of the presbyteral role which had been characteristic of the early Church, but which had been lost or submerged in the process of centralization and concentration of power. The concepts of service and leadership of the People of God were focal points of the discussions.

2. The evolution of Christus Dominus

The decree on bishops was promulgated on October 28, 1965.[8] It encourages bishops to be concerned about their priests as their "prudent cooperators." [9] Protracted conciliar discussions led to the realization that a revision of existing organs of diocesan governance was required for the effective exercise of collegiality and fraternal cooperation between bishops and priests on the diocesan level. The first mention of this revision appeared in the sixtieth general congregation (November 5, 1963), when it was stated - in Cardinal P. Marella's review of the schema De episcopis ac de dioecesium regimine, into which the schema De cura animarum was to be integrated - that the bishop should have "suitable and effective collaborators, who are one in heart and soul with him in pastoral care." The statement referred to priests, and in particular, parish priests, who "live most closely with the people of God." [10] Later, during the same session, another council father called for something specific in order to define the organs of

8. The evolution of this decree (Christus Dominus) is discussed by K. MORSDORF, "Decree on the Bishops' Pastoral Office in the Church", trans. H. Graef, in H. VORGRIMLER, ed., Commentary on the Documents of Vatican II, Freiburg, Herder and Herder, 1969, vol. 2, pp. 165-300.

9. CD, 15.

10. Acta Synodalia, 2-2-4, p. 437. Quoted from Cardinal P. Marella's review of the schema De episcopis ac de dioecesium regimine.

diocesan governance, citing Pius XII's description of priests as "companions and advisors" to the bishop. His two points were:

(a) given the fact that presbyters, according to the words of Pius XII [...] are 'companions and advisors' of the bishop, the law therefore wished that the governance of the diocese be enhanced with the chapters of canons, in fulfilling their duty as 'a senate or council of the bishop' [...]. There are many bishops, however, who look forward to a more effective senate. b) As well as the administrative, judicial or executive duties to be exercised, the bishops are responsible, in particular, for pastoral ministry, properly speaking. As for the Curia's pastoral role, however, there is absolutely nothing in law. And yet how very greatly it is desired. [11]

The new outline for the schema then incorporated a section entitled "On the Organs of Diocesan Governance." [12]

The revised schema was discussed during the 83rd General Congregation (September 18, 1964), which, when speaking of the Curia and diocesan councils, referred to advisory councils:

11. "Duo notanda: (a) eo quod presbyteri, iuxta verba Pii XII [...], sunt episcopi 'socii vel consiliarii', ideo lex voluit ut in regimine dioecesis episcopi ditarentur Capitulis canonicorum in munere fungendo 'senatus vel consilii episcopalis' [...] Multi autem sunt episcopi qui efficaciorum senatum exspectant.

(b) Praeter munus administrativum, iudiciale vel executivum episcopi ministerium exercendum habent praesertim pastorale proprie dictum. De Curia autem pastoralis in dioecesi nihil absolute in iure habetur. Et tamen quam maxime desideratur!", in Acta Synodalia, 2-2-4, p. 458.

12. Cf. ibid., p. 459.

Among the foremost cooperators of the bishop in the governance of the diocese, are numbered those presbyters who constitute his senate or council; as the cathedral chapter, the coetus of consultors or other councils, according to the diverse circumstances and nature of different places. [13]

Significantly, this schema also made the first mention of the involvement of laity in the formation of proposed diocesan pastoral councils, immediately following mention of the consultors. The next article was entitled "The Diocesan Cleric"; it emphasized the common concern for the "care of souls" of priests as cooperators with their bishop, constituting "one presbyterium and one family, whose father is the bishop." [14] The diocesan curia's role was not elaborated on further, so that its role at this point remained primarily administrative, according to the bishop's direction.

The vicar general, as the diocesan bishop's alter ego, could exercise the ordinary power of the latter; his role was given preeminence in the revision of this schema, as presented at the 113th General Congregation (October 20, 1964), but the text on the councils remained unchanged. [15]

13. "Inter praecipuos Episcopi cooperatores in regimine dioecesis, illi presbyteri enumerantur qui eius senatum consiliumve constituunt, ut sunt capitulum cathedrale, consultorum coetus vel alia consilia, secundum diversorum locorum circumstantias vel indolem." In ibid., 3-3-2, n. 25, p. 32.

14. Ibid., n. 26, p. 33.

15. Cf. ibid., 3-3-6, no. 27, p. 146.

At this session, a slight, but significant, modification was introduced into the ensuing article - on the diocesan clergy (clerus dioecesanus) - to stress their participation in the "one priesthood of Christ with the bishop", to further highlight that special unity shared by all diocesan priests in constituting that "one presbyterium and one family", which was already contained in this text,[16] as mentioned above.

In response to one intervention during the 137th General Congregation (September 28, 1965), it was admitted that these councils, the cathedral chapter in particular, should be subject to revision and a reordering of their structure and purpose.[17]

The resulting decree was promulgated as Christus Dominus on October 28, 1965. The section which resulted from the preceding discussions is entitled: "Those Who Cooperate with the Diocesan Bishop in his Pastoral Task." It demonstrates concern that the relations which should exist between the two orders

16. Ibid., n. 28, p. 147: "sacerdotes dioecesani, qui providi cooperatores Ordinis episcopalis effecti, unum sacerdotium Christi cum Episcopo participant et exercent atque Ecclesiae particulari [...], eiusdem servitio plene sese devotent ad unam dominici gregis portionis pascendam; quare unum constituunt presbyterium atque unam familiam, cuius pater est Episcopus."

17. Cf. ibid., 4-4-2, p. 577.

[...] be based before all else on supernatural charity, so that their unity of purpose will make their pastoral activity more effective. Therefore, to ensure an increasingly effective apostolate, the bishop should be prepared to engage in dialogue with his priests [...] regularly. Furthermore, the diocesan priests should be united among themselves and should be genuinely zealous for the spiritual welfare of the whole diocese. [18]

Immediately preceding this paragraph was the practical recommendation that those formal bodies which cooperate with the bishop in diocesan governance, as "his senate or council, such as the cathedral chapter, the council of consultors, or other committees" be "reorganized to suit contemporary needs." The cathedral chapter in particular is singled out for reform. The diocesan curia is to be organized as "a useful medium for the bishop, not only for diocesan administration, but also for pastoral activity." The same paragraph calls for the introduction of a diocesan pastoral council in which clergy, religious and laity are to participate.[19] Herein lies the foundation for the ensuing reform and development of administrative structures in the post-Vatican II Church.

3. The evolution of Presbyterorum ordinis

A study of the original schemata and commentaries on the Vatican II documents leads to the conclusion that there

18. CD, 28.

19. CD, 27.

was much debate, reformulation and revision before the promulgation of the final texts of the decrees.[20] While much has been written on all of these documents, the primary objective here is to find a useful purpose for the college of consultors and to define its relationship to the presbyteral council.

It was proposed and subsequently approved that the initial schema - De sacerdotibus (submitted for review in December, 1963) - be reduced to ten guiding principles concerning priestly ministry.[21] The title was changed to De vita et ministerio sacerdotali, in October, 1964, because the former title was too general and implied that it treated more areas of priestly ministry than it did in fact. The resulting schema was heavily criticized for its limitations. The ten principles were primarily directive and theologically bereft, as was pointed out by a considerable number of the fathers who submitted critical comments.[22] The document,

20. Most importantly, the volumes of Acta Synodalia Sacrosancti Concilii Oecumenici Vaticani II, Romae, Typis Polyglottis Vaticanis, 1970-1978, 25 vols. 1-1-1 - 4-4-7, contain the preliminary and revised drafts of the decrees, along with the accompanying discussions and interventions of the council fathers. More specifically, see J. LECUYER, "Decree on the Ministry and Life of Priests", trans. R. Walls, in H. VORGRIMLER, ed., Commentary on the Documents of Vatican II, vol. 4, pp. 183-297.

21. Cf. J. LECUYER, "Decree on the Ministry and Life of Priests", p. 189.

22. These were referred to as animadversiones.

as it stood, was considered derogatory to priests, given the attention afforded bishops and the laity in other decrees. There was said to be little positive emphasis on the priesthood as a lifestyle of commitment and mission; the absence of a missionary spirit or awareness of the reality of problems in the world, and the paternalistic tone of the text were also problematic.[23] Predictably, a broader and more comprehensive schema was commissioned. This marked a critical turning point in the consideration of the role of the priest and the presbyterium in the Church. Given the nature of the documents on the Church and on bishops, it was clear that priests should be given more consideration than merely to be referred to casually, in a limited number of exhortations.

The revised version was entitled De ministerio et vita presbyterorum, [24] and was presented for consideration in November, 1964. The implications of the name change were that the document was to concern the "second order of priests", rather than the bishops as well, and the mention of ministry, rather than life alone, implied that the priest's life should be governed primarily by his ministry. The outline formed the basis for the final decree. It began with a consideration of

23. Ibid., p. 193. The Relator was Archbishop F. Marty, whose Relationes are in the introduction to the appendix to De vita et ministerio sacerdotali, in Acta Synodalia, 4-4-4, pp. 830-832.

24. Acta Synodalia, 4-4-4, Schema Decreti De ministerio et vita presbyterorum, Textus emendatus et Relationes, pp. 336-375.

the priest's sharing in the office of Christ as teacher, priest and king. The presbyterate was situated in the context of the mission of the whole Church, and its relationship to the general priesthood of the faithful and the episcopal priesthood was detailed. The task of preaching the Word was considered, as was its link with sacramental ministry, centred on the Eucharist. In the area of leadership of the community, the priest was seen as having the task of building up the celebrating community, as well as having a call to mission beyond the local community.[25] The scene was set, then, for a detailed review of a text which had been radically modified from the draft containing the ten principles presented in February, 1964.

In moving from the original schema, the first draft text on the ministry and life of priests expanded greatly on the role of priests in relation to bishops; for the first time the requirement was mentioned for a new advisory body for the bishop - "as a council and curia or senate of the Church," (veluti consilium et curia seu senatus Ecclesiae), comprising representatives chosen from among the priests. They were to be heard by the bishop "in matters of greater importance in the government of the diocese." [26] The

25. Cf. J. LECUYER, "Decree on the Ministry and Life of Priests", pp. 235-236.

26. Acta Synodalia, 4-4-4, Appendix - De ministerio et vita presbyterorum, no. 7, p. 841.

background discussions recorded indicate that there was a desire for greater cooperation and fraternity among priests and bishops through "a spirit of filial liberty and common responsibility." [27] One possible means of achieving this was the formation of an organism representative of the presbyterium, extending its competence beyond that of the chapters and consultors already in existence.

At the 148th General Congregation of the Council (October 13, 1965), Archbishop F. Marty, the official relator of the Commission, after emphasising the three "functions" (munera), spoke of the

[...] relations and the necessary unity which exist between bishops and presbyterium, as well as the confraternity by which presbyters are joined among themselves; and likewise, of the cooperation which, in all things, but especially in pastoral action, on account of common participation in the priesthood of Christ as well as in the community of mission and responsibility, must flourish among all priests, and especially among those who, under one bishop in the same diocese, constitute one presbyterium. [28]

This was expressed in the revised text, where the

27. Ibid., 4-4-4, De numero 7, p. 866.

28. Ibid., 4-4-4, p. 333: "Hoc fundamento doctrinali innixi, describimus arctas relationes ac necessarium unitatem quae Episcopos inter et Presbyterium intercedunt, necnon confraternitatem qua Presbyteri invicem devinciuntur; itemque exponitur cooperatio quae, in omnibus quidem, sed praesertim in actione pastoralis, propter communem participationem in sacerdotio Christi et in communitate missionis ac responsibilitatis, inter omnes Presbyteros vigere debet, ac specialiter inter eos qui in eadem dioecesi sub uno Episcopo unum Presbyterium constituunt."

"relationship between Bishops and Priests" was elaborated to the point of defining a new "assembly" (coetus) of priests, who were to represent the presbyterium in assisting the bishop in the governance of the diocese. This was the first recorded mention of the introduction of a representative group of priests into diocesan structures.[29]

In the revision of the 159th General Congregation (November 12, 1965), the role was defined a little more specifically in that the bishops were "to freely listen, indeed, consult about, and discuss with them, those things which concern the necessities of pastoral work and which are concerned with the good of the diocese." [30] Two Fathers wished to define the end and function of this new body more clearly, but it was pointed out that the Code Commission would undertake this task.[31] In reference to bodies already in-existence in this area of competence, that is, the cathedral chapter[32] and the diocesan consultors,[33] it

29. Ibid., 4-4-4, n. 7, amended to n. 6, p. 347.

30. Ibid., 4-4-6, n. 7 in Textus emendatus, p. 357: "Eos libenter audiant, immo consultant at cum eis colloquantur de iis quae ad necessitates operis pastoralis et ad bonum dioeceseos, efficaciter adiuuare possit."

31. Cf. ibid., Note G: De numero 7, p. 394.

32. The "senate and council", or senatus et consilium of canon 391 of CIC, 1917.

33. Coetus consultorum dioecesanorum of canons 423-428 of CIC, 1917.

was reiterated that this new body was a necessary adjunct to them, but not to be seen as their replacement. Its role was not to be confused with that of the pastoral council which had been advocated earlier in conciliar discussions.[34]

The addition of the word "senate" (senatus), could well have been a means of identifying some parallels with the function of representative bodies of the presbyterium in the early Church, as were referred to by early christian authors such as those mentioned in chapter II. The word was also used in the 1917 Code.[35]

The 166th General Congregation (November 12-13, 1965) effected further revisions of this text, whereby the words "by their advice" (suis consiliis), were added in reference to the bishop's need for extra counsel from such a body, "in a manner suited to present day needs." [36] From the animadversions voiced at this session, there was a fear of leaning towards local Church government as an analogue of the democratic model of many civil societies. The mention of the members of the senate as "advisors" was apparently inserted

34. Cf. CD, 27.

35. Cf. CIC, 1917, canon 391, §1. This point is discussed in the footnotes to the revision of the text during this 159th session, in ibid., notes 26 and 27, p. 368; also in the notes of the discussions De numero 7, no. F, p. 394.

36. "Ad modo hodiernis adiunctis ac necessitatibus accomodato", in ibid., 4-4-7, n. 7, p. 132.

to placate those expressing this concern-[37]

Throughout the period of development of this decree, the notion of communio remained at the fore, since it reflected the bond existing between the bishops and their priests, as well as expressing concern with the relationship of unity which is to exist among bishops, as referred to in Lumen gentium. [38] A subtle change is identifiable in changing the reference to priests as "sons and friends" in the documents on the Church [39] and on bishops, [40] to "brothers and friends" in the decree on priests. [41] This close link necessitates the bishop's taking responsibility for the well-being of his priests, as their leader. The concerns of those calling for closer ties among priests and bishops are found in the discussions on the schema, with such statements as:

Priests must be real co-workers with the bishops and not just executors. On important issues the bishop ought to be obliged to consult his presbyters and come to a decision either after this consultation or after voting. [42]

37. Cf. ibid., no. 84, p. 158.

38. Cf. LG, 22.

39. LG, 27.

40. CD, 16.

41. PO, 7.

42. J. LECUYER, "The Decree on the Ministry and Life of Priests", cites Archbishop V. Garaygordobil-Berrizbeitia of Ecuador, p. 241.

As J. Lecuyer put it:

It says much for the realism of the fathers that they demanded the erection of a solid diocesan institution for the carrying out of these suggestions. The commission maintained these proposals in face of objections which reflected a fear of democratizing tendencies. Some bishops rejected the phrase presbyterium repraesentium and objected to the idea of a senatus, for such formulations could imply the notion of a type of parliamentary government for the Church. [43]

The Commission added a cautious statement on the form of the consultation, with the words suis consiliis added to the phrase where this council was to "support the bishop in his decisions." [44] The ninth public session (December 7, 1965) then published this revised text, [45] which was finally promulgated without further modification, as the "Decree on the Life and Ministry of Priests", Presbyterorum ordinis. This decree called for the establishment of the presbyteral council:

Bishops, therefore, because of the gift of the Holy Spirit that has been given to [...priests] at their ordination, will regard them as their indispensable helpers and advisers on the ministry and in the task of teaching, sanctifying and shepherding the People of God. [...] [Bishops] should be glad to listen to their priests' views and even consult them and hold conferences with them about matters that concern the needs of pastoral work and the good of the diocese. But for this to be reduced to

43. Ibid., pp. 241-242.

44. Ibid..

45. Cf. ibid., 4-4-7, pp. 131-132.

practice a group or senate of priests should be set up in a way suited to present-day needs, and in a form and with rules to be determined by law. This group would represent the body of priests and by their advice could effectively help the bishop in the management of the diocese. [46]

Yet here is the foundation for what has now become an established body in the general law of the Church. Whatever the controversies, the evolutionary process of this decree was remarkable in its transformation from an originally rigid perspective to a pastorally sensitive, encouraging and optimistic document.

4. Implementation of Christus Dominus and Presbyterorum ordinis

Implementation of some of these conciliar norms was effected by means of the motu proprio, Ecclesiae sanctae, (August 6, 1966).[47] The council of priests was introduced thus:

There is to be in each diocese a council of priests, a group or senate of priests, representing the presbyterium, which by its advice will give effective assistance to the bishop in ruling the diocese. The manner and forms of its working are to be determined by the bishop. In this council the bishop shall hear the views of his priests and discuss with them the pastoral needs and the good of the diocese. [48]

46. PO, 7.

47. Cf. PAUL VI, Motu proprio, Ecclesiae sanctae I, in AAS, 57(1966), pp. 757-775; English translation in A. FLANNERY, ed., Vatican Council II: The Conciliar and Post-Conciliar Documents, pp. 591-610.

48. ES I, 15.1.

[...] In the meantime those councils of the bishop established by virtue of existing law, that is, the chapter of the cathedral, consultors and other existing bodies of this nature, shall preserve their proper function and competence until they are revised. [49]

The establishment of the presbyteral council (consilium presbyterale)[50] was thus assured. That its institution was recommended by two separate decrees suggests that there should have been more coordination between conciliar commissions; on the other hand, the point was being emphasized that a more representative body was required to reassert the vital role of the presbyterium as a body in the diocese, and so the repetition could have been intended.

Also required is some definition of the distinct roles of the pastoral and presbyteral councils, as in the initial stages of their development there were questions about the priorities of each body. The role of the diocesan pastoral council was described in Christus Dominus: "to investigate and consider matters relating to pastoral activity and to formulate practical conclusions concerning them." [51]

49. ES I, 17.2.

50. It has been suggested that consilium presbyterii, which designates the council as representative of the presbytery, would be a more appropriate title, in order to emphasize the importance of the presbyterium as an essential entity in itself. The difference seems more semantic than real, so the question is immaterial. This is discussed by K. MORSDORF, "Decree on the Bishops' Pastoral Office", p. 252.

51. CD, 27.

Despite the thrust towards practical implementation of theological developments of Vatican II - towards involving the whole People of God in the active mission of the Church, including its decision-making processes, it is said to be only "highly desirable" that it be established. Thus, the diocesan pastoral council is given a subsidiary role to the presbyteral council.[52] Though optional, the role of this body should be of great importance in a diocese, through its representative character of the local Church, with lay, religious and clerical membership.[53] The coordination of roles and responsibilities is the duty of the diocesan bishop, who is called to work in cooperation with other bishops by means of the bishops' conferences:

It is desirable that in questions which concern either the council of priests, the pastoral council, or their relation to each other or to episcopal councils already in existence in virtue of the present law, the bishops, especially when gathered together in conferences, take common counsel, and issue similar regulations in all the dioceses of the territory. The bishops should also see to it that all the diocesan councils be most aptly coordinated, by precisely defining their competencies, their mutual sharing of members and of joint or continuous sessions, and in other ways. [54]

52. Cf. ibid. This is repeated in Ecclesiae sanctae also, where its role is defined a little more specifically, in ES I, 16.

53. Cf. ES I, 16.

54. ES I, 17:1.

This proposed integration of pastoral activities on a diocesan level had as its purpose to promote greater cohesiveness and accountability among bishops, priests, religious and laity. Nevertheless, many practical problems lay ahead in the reorganization and reassignment of responsibilities, especially with the older, well-established bodies, even if they were ineffective in practice. Tensions would obviously arise over many questions, but such were seen as preferable to "episcopal autocracy"; the stress on collegiality and shared responsibility found throughout the Vatican documents, and the theological thought leading up to their ratification and promulgation, justified these tensions. These new bodies have been described in this way:

The council of priests and the pastoral council constitute the collegial element at the diocesan level; the bishop represents the personal element in the guidance of the diocesan Church. [55]

The recurrent themes of communication and collaboration come to the fore in practice for such bodies to be effective.

The involvement of laity and non-clerical religious in diocesan governance is not to be denied; the activities of the presbyterium are but one aspect of the pastoral work in a diocese. Ecclesial office extends considerably beyond the ordained ministries of bishop, priest and deacon, and it can

be argued that "the free charism"[56] of individual members requires expression, as noted in Vatican II's "Decree on the Church in the Modern World" (Gaudium et spes), which states:

As the firstborn of many brethren, and by the gift of his Spirit, he established, after his death and resurrection, a new brotherly communion among all who received him in faith and love; this is the communion of his own body, the Church, in which everyone as members one of the other would render mutual service in the measure of the different gifts bestowed on each. [57]

The presbyterium cannot be treated as the sole source of pastoral activity, but the concentration of this study is on its newly defined role in the broader perspective of the local Church. In terms of precedence, the presbyteral council is seen as the primary advisory body to the bishop over the pastoral council, but both are advisory and consultative.[58]

Some link, however tenuous, must have been implicit between the new presbyteral council and the older bodies, since:

As an organ of the presbytery, the priests' council is closely related to the cathedral chapter which originated from the presbytery, as well as to the council of diocesan consultors. [59]

In contrast to the diocesan consultors of the 1917 code, who

56. Ibid., p. 35.

57. GS 32.

58. Cf. ES I, 15.3 and 16.2.

59. K. MORSDORF, "Decree on the Bishops' Pastoral Office", p. 252.

were not to be religious, even if they worked in a parish,[60] religious clergy were permitted to belong to the council of priests, by virtue of their range of pastoral work in the diocese, "insofar as they share in the care of souls and the works of the apostolate." [61] Much scope is left to the local Churches in detailing the competence and relationships between all of these bodies, since Ecclesiae sanctae dealt primarily with questions of diocesan organization, but in a spirit of subsidiarity and recognition of the autonomy of the local Church.

While this council is to advise the bishop in certain matters, there is no suggestion of its having any more than a consultative voice at any time. The only situation mentioned there where consultation must occur, is before parishes are erected, suppressed or changed.[62] Another contrast with the competency of the cathedral chapter or the diocesan consultors occurs when the see is vacant, as the presbyteral council ceases to exist,[63] while the governance devolves upon the former bodies - according to the norms of law - until an administrator has been selected. This demonstrates the theological significance of the presbyteral council in

60. Cf. PONTIFICIA COMMISSIO AD CODICIS CANONES AUTHENTICE INTERPRETANDOS, AAS, 23(1931), p. 110.

61. ES I, 15.2.

62. Cf. ES I, 21.2.

63. Cf. ES I, 15.4.

relation to the bishop and his responsibility to fulfilling the munera of governing, leading and teaching the People of God, with the cooperation of his presbyterium,[64] in a firm bond of unity and sense of common mission.

The practical demands for continuity of diocesan governance during a vacant see raise questions of the possibility for continuity of the presbyteral council. Nevertheless, this was never admitted officially. Herein lies a pragmatic purpose for the continued presence and involvement of the college of consultors, as an indirect extension of the presbyterium - relative to the presbyteral council - and yet because of its capacity to operate without the bishop, it can provide interim governance. Perhaps this could be expressed as a demonstration of the necessity for continuity in the mission of the local Church, while the closer dependence of the presbyteral council illustrates the bond of communio which should be realized at all levels of the local Church, and which is limited during a vacant or impeded see.

5. The Circular Letter of 1970

An attempt to clarify the situation resulting from the confusion about the uncertain role of the presbyteral council was made in a "Circular Letter" issued by the Sacred

64. Cf. CD, 11.

Congregation for Clergy in 1970.[65] The obligation to establish a council in every diocese was reiterated, since it was seen as being

[...] in harmony with the times because it is most appropriate and useful today that between bishops and priests there should be established an instrument of consultation and dialogue. Its usefulness is already apparent [...]: contact with the priests is made easier; their views and desires are better known; again, more accurate information on the state of affairs in the diocese can be derived; mutual experiences can be more fittingly communicated; the needs of pastors and of God's flock are more clearly apparent; apostolic enterprises accommodated to today's circumstances are harmoniously undertaken; finally, through shared labor difficulties are adequately resolved or, at least, explained. [66]

We have here a succinct summary of the goals of implementation. The activities and interrelationships of these organisms of the local Church, and of their association with the diocesan bishop, have taken time to evolve, and will continue to do so, as circumstances and situations of the local Churches vary.

In regard to membership of the presbyteral council, while the bishop's prerogative to appoint members was acknowledged, representation from different age groups, pastoral ministries and regions, and religious, was

65. Cf. Sacred Congregation for the Clergy, Circular Letter on the Priests' Council, April 11, 1970, in Canon Law Digest, Vol. 7, pp. 383-390. Translated from AAS, 62(1970), pp. 459-465.

66. Ibid. 5.

recommended.[67] A majority were to be elected by a free vote of the priests, and some members were to be defined as being ex officio, because of their role in the diocese.[68]

The competence of the presbyteral council concerned anything "of major moment" in the diocese in spiritual, doctrinal, pastoral or administrative matters, but not in matters requiring "a discreet manner of procedure", as in conferral of office.[69] The possibility of the council's having a deliberative vote in order to bind the bishop to a certain decision was raised as a secondary right, only if the bishop had deemed such to be appropriate in a particular instance. The allowance was also made for the universal law of the Church to provide for such a case, although no such instance was specified in this document.[70]

In retaining their "proper functions and competency" as they had been previously, even though the presbyteral council was to have "the title and function of the bishop's senate in the government of the diocese." Individual episcopal conferences were called upon to submit proposals for "revision of the cathedral chapter and reformation or

67. Cf. ibid., 6.

68. Cf. ibid., 7.

69. Ibid., 8.

70. Ibid., 9.

confirmation of the board of consultors."[71]

B: The formation and role of the presbyteral council as an expression of the presbyterium

There have been several major studies on the implementation and effectiveness of presbyteral councils.[72] Their conclusion has been that these councils have a future in the Church, from a theological, juridical and practical

71. Ibid., 10.

72. Doctoral theses have been written in recent years based on research into presbyteral councils in French Canadian Quebec, and in the Anglophone Church in Canada, as well as several other general theses on the subject of priests' senates. The major ones considered are: M. PAQUETTE, Les conseils presbytéraux au Québec: coresponsabilité des prêtres et de l'évêque dans le gouvernement pastoral de l'Eglise particulière, Montréal, Fides, 1973, 319p., and B.A. ROSSI, Priests' Senates: Canadian Experiences: A study of the constitution and developments of Presbyteral Councils in the Anglophone Provinces and Territories of Canada in the 10 years following "Ecclesiae sanctae", Rome, Edizioni dell'Urbe, 1979, 397p. G. CARRETTO, "Il consiglio presbiterale: espressione giuridica e realizzazione postconciliare del Presbiterio diocesano", in Apollinaris, 44(1971), pp. 220-269 and 423-455; M. MARCHESI, Consiglio Presbiterale diocesano, Rome, Brescia, Morcelliana, 1972, xx-412p. One study considered the relationship between the presbyteral council and consultors, as found in two Vietnamese dioceses: M. NGUYEN-VAN-HIEN, Collège des consultants diocésains et conseil presbytéral: dispositions générales appliquées à deux diocèses Sud-Vietnamiens - Saigon et Xuan-Loc, Louvain, Université Catholique de Louvain, 1975, 440p. The development of these councils in dioceses of France was reviewed in a symposium held in Toulouse during 1969. This event provided an overview of "Le conseil presbytéral"; the papers were published in Revue de droit canonique, 17(1970). Another study in the French Church is: J. PASSICOS, La mise en place du conseil presbytéral dans les diocèses de France (1966-1970), Toulouse, Institut catholique de Toulouse, 1970, 316p. Cf. also J. BEYER, "De consilio presbyterii adnotationes", in Periodica, 60(1971), pp. 29-103.

perspective. The conflicting interests and the competence of other consultative bodies have complicated innovation to some extent; furthermore, a distinction had to be made between the competence of the pastoral and presbyteral councils.[73] Naturally, some variations in approach would be expected, due to the general nature of the norms outlined in Ecclesiae sanctae; these allowed for adaptation to local circumstances and conditions.

The volume of material produced on presbyteral councils indicates that they have been implemented as a significant means of assisting the bishop in diocesan governance and pastoral care. Some coverage of the role of the presbyteral council in the overall scheme of diocesan governance should first be given; then, an analysis of the role of the consultors in this light.

1. The Name of the Council

The question of title has been raised because of the doubts engendered by the use of the words consilium presbyterii in Ecclesiae sanctae. Preference for the terms consilium presbyterale and concilium presbyteriale

73. One comprehensive study of the diocesan pastoral council's unique role is: R. PAGE, Le conseil diocésain de pastorale, Montréal, Fides, 1969, 187p.; in English translation: The Diocesan Pastoral Council, translated by B. PRINCE, New Jersey, Newman Press, 1970, vi-170p. A later study on the same subject is by S.J. MARCEAUX, The Pastoral Council, Roma, Universitas S. Thomae de Urbe, 1980.

had been recorded in different cases; the term presbyteriale was said to imply better the representative nature of the council.[74] In one way, the distinction seems to be trivial, and in French, the most common title seems to be conseil presbyteral. [75] The fact of its replacing the cathedral chapter as the "senate" of the bishop in diocesan governance, has also led to the presbyteral council's being called the "senate of the bishop", particularly in the English-speaking world.[76] Surveys showed that "senate of priests" was commonly used, but the expression is not entirely satisfactory since reference is not made to the bishop. The obvious point is that the council represents the presbyterium and is in union with the bishop as the ultimate diocesan legislator and senior pastor. The term "presbyteral council" will continue to be used here, as it is most in harmony with the terminology of the official documents promulgated in its regard.[77]

74. Cf. G. CARRETTO, "Consiglio 'Presbyteriale' o 'Presbyterale'?", in Palestra del Clero, 96(1970), pp. 1096-1102.

75. Cf. J. BEYER, "De consilio presbyterii adnotationes", p. 71.

76. Cf. B. ROSSI; op. cit., pp. 224-226.

77. The English translations of the 1983 Code vary: the "council of priests" is used in The Code of Canon Law, in English translation, Prepared by The Canon Law Society of Great Britain and Ireland in association with The Canon Law Society of Australia and New Zealand and the Canadian Canon Law Society, Ottawa, CCCB, 1983, while "presbyteral council" is the preferred American expression, in Code of Canon Law - Latin-English Edition, Washington, CLSA, 1983.

2. Definition of its mission in theory and practice

In moving from the presbyterium to its expression in the presbyteral council, the discussion and preparation of documents during Vatican II demonstrate the logical transition to the council as a means of expressing the mission of the presbyterium in its mission to assist the diocesan bishop in governance - in a way which effectively represents the presbyterium in its diversity of individuals and their activities as priests. The presbyteral council appeared as a result of the Fathers of Vatican II reviewing current diocesan structures and forms of governance and seeking for more effective means of involving the whole presbyterium in the process. The theological understanding of presbyterium in the local Church, with its own degree of autonomy - subject to the bishop - also forced this resolution.

As an example of the way presbyteral councils were called to function, we could examine documentation produced after an analysis of these councils in the Longobard region of Italy. The regional council's deliberations were stated in summary:

So that the presbyteral council represents the whole presbyterium, it is to be composed of priests of the diocesan and religious clergy who have the responsibility of the care of souls or an apostolate, and who, with their advice, efficaciously help the bishop in the pastoral government of the diocese [...]. The presbyteral

council is a college, over which the bishop presides. [78]

On the other hand, a more abstract definition was also considered:

The presbyteral council must be the instrument of sacerdotal communion between the bishop and the diocesan presbyterium, [... and] the manifestation of communion among priests. [79]

These two views bring out the aspects of communion and cooperation between priests and bishop in a diocese; the dimensions of collegiality and coresponsibility stand to the fore as the features of this body.

In a study of presbyteral councils in the Church of Quebec, the situation was viewed similarly by M. Paquette: the bishop is the "head of the local Church and his authority is received from Christ." [80] The bishop is united with diocesan and religious priests in one presbyterium, rather than in two distinct and separate ones, thus providing a

78. "Consilium Presbiterale, ut totum presbyterium repraesentans, componi ex sacerdotibus cleri dioecesanique religiosi qui curam animarum vel apostolatus operam habent, quod suis consiliis Episcopum in dioeceseos regimine pastoralis efficaciter adiuvet. [...] Consilium Presbyterale esse collegium, cui Episcopus praesidet." M. MARCHESI, "Consilium Presbyterale: Quomodo definitur?", in *Periodica*, 61(1972), p. 424. Cited from *Deliberazioni dell'Episcopato Lombardo*, "Il Consiglio Presbiterale", in *Bollettino Ufficiale della diocesi di Cremona*, 60(1967), pp. 93-95.

79. "Consilium Presbiterale esse debet communionis sacerdotalis instrumentum Episcopum inter et Presbyterium dioecesanum [...] et] communionis inter sacerdotes manifestationem." Cited by M. MARCHESI, *loc. cit.*, p. 427.

80. M. PAQUETTE, "De duplici consilii presbyterii conceptu", in *Periodica*, 61(1972), p. 435.

[...] faithful image of the whole local presbyterium [...] (which) cannot exist without the bishop; the reality of the presbyterium connotes the reality of that without which there is not communion with the college of bishops, which derives its mission from the Lord. [81]

Paquette's conclusion produced the following definition:

The presbyteral council is an organ of collegial government in the diocese, in which the bishop exists as the true head of his Church but where the unity of the priesthood and the ministry of Christ is manifested, both for bishop and priests. [82]

The council is intended to be a more effective agent of cooperation between a bishop and his priests. The notion of governing "pastorally" is a new way of expressing the presbyteral responsibility of leadership and mission in teaching, sanctifying and serving the People of God. More than just a substitute for the cathedral chapter, it could be said to be a type of "permanent diocesan synod."

If this expression of collegiality and cooperation is to be effective, a transfer has to be made from the doctrinal to the practical level, such that deliberations are not just reduced to votes or juridic statements; the attitudes of

81. Ibid., pp. 435-436: [Consilium presbyterii] "[...] ut fidelis imago totius Presbyterii localis, [...] sine Episcopo non existit; realitas Presbyterii connotat realitatem illius sine quo non esset communio cum Collegio Episcoporum quod missionem a Domino retinet."

82. Ibid., pp. 436-437: "Consilium presbyterii esse organum regiminis 'collegialis' dioecesis in quo episcopus ut verum caput suae Ecclesiae existit, sed ubi unitas eiusdem sacerdotii et ministerii Christi tam episcopi quam presbyterorum manifestetur."

those involved are important. Genuine openness to discussion of issues in a spirit of dialogue, and provision of full information on the subjects being raised are necessary for effective operation of this council. Without this, unless there is a spirit of fraternity and cooperation, its deliberations would be counter-productive to its very raison d'être.

Few, if any, commentators have registered negative reactions to the new council; the main problem is to have it functioning in a way that the goals enunciated may be achieved. The general sense seemed to be one of enthusiasm in the early days of implementation: to have presbyteral councils working in the spirit of the ancient synods, in collaboration, at frequent meetings. This leads to a pastorale d'ensemble, which may be defined as:

[...] the realization of the proper conditions for the diffusion of charisms which the Spirit distributes to those under his guidance for the accomplishment of the Church's mission. In other words, whatever concerns the mission of the bishop and the People of God is included in the expression pastorale d'ensemble, which consists in fulfilling the mission of the Church in the greatest effective unity possible.[83]

The need for priests to play a greater part in diocesan

83. "La pastorale d'ensemble peut encore être conçue comme la réalisation des conditions propres à l'épanouissement des charismes que l'Esprit ne manque pas de distribuer à ceux qui sont sous sa mouvance en vue de l'accomplissement de la mission de l'Eglise. En un mot, tout ce qui relève de la mission de l'évêque et de celle du peuple de Dieu est englobé

governance should be realized through this "innovation" in, or rather "renovation" of, the presbyterium as an active body in the broader local Church, in the light of the early Church's experience in this regard.[84]

One other specific purpose of the presbyteral council concerns the general welfare of all members of the presbyterium; problems related to the clergy require attention, and prior to Vatican II, no formal body was available to deal with this area of ministerial life, except on the level of appointment to, or removal from, parishes or other diocesan offices. The well-being of priests is surely of prime importance in a body established to represent their concerns, as well as to advise the bishop on a more general level in pastoral matters. This dual role has been described thus:

The presbyterium, certainly, is ordered towards the service of the whole community, but for that, priests must have at their disposal what is required for good balance in their own lives - as much on the spiritual as on the material level. The presbyteral council, therefore, rightly concerns itself with the well-being of priests, especially those who have more

dans la pastorale d'ensemble, qui est la mise en oeuvre de la mission de l'Eglise dans la plus grande unité effective possible." So the phrase refers to the variety of diocesan organisms involved in the integrated pastoral care of a diocese. Quoted from R. PAGE, Le Conseil diocésain de pastorale, p. 127.

84. Cf. P.A. BOCQUET, "Du presbyterium au conseil presbytéral", in Revue de droit canonique, 20(1970), pp. 107-108.

need of this care, such as the more aged or sick. [85]

While the priestly mission is one of service to the People of God in proclaiming the Gospel, the ideal can become obscured by mundane, practical concerns with administrative matters. A balance in outlook and activity of the presbyteral council is something to be aimed for, in fulfilment of its mission to priests and to the whole People of God in the local Church.

3. Examples of implementation

A review of the presbyteral council in all of the dioceses of Quebec, and in those of Ottawa and Edmundston, in Canada was made ten years after the promulgation of Presbyterorum ordinis, to provide some reflections on the results of their activities.[86] The scene was not altogether promising, as it seemed that many councils were floundering in what was described as a "crisis of

85. "Le presbyterium, certes, s'ordonne au service de toute la communauté, mais pour cela les prêtres doivent avoir à leur disposition ce qui est nécessaire à l'équilibre de leur vie tant sur le plan matériel que spirituel. Il est donc louable que le conseil presbytéral se préoccupe du bien-être des prêtres, surtout de ceux qui ont davantage besoin de cette sollicitude, comme les plus âgés et les malades." Quoted from A. VILELA, "Réflexion théologique sur les conseils presbytéraux", in Revue de droit canonique, 20(1970), p. 599.

86. Cf. R. PAGE, "Le Conseil presbytéral, dix ans après le Décret 'Presbyterorum ordinis'", in Studia Canonica, 8(1974), pp. 237-254.

confidence"; this was attributed to a series of problems, some depending on the nature of the diocese and others on the attitudes of bishops and priests. The survey noted "a noticeable diminution of interest towards the presbyteral council and a lack of communication between it and the presbyterium." [87]

The disinterest or "malaise" noted seems to have come from a negative attitude to the way in which the councils were operating. There was said to be uncertainty about their role, with some dioceses reporting that the council had made no impact on diocesan life at all. The problems of disinterest were attributed more to the priests than to the bishops. A lack of communication between elected members and those whom they represented in the presbyterium was noted; superficial consultation and the passing on of only simple factual information was criticized, since this meant that serious consultation and participation of the presbyterium was not possible. [88] It could be said, then, that the original goals of the council were not even close to being achieved; these are described as follows:

For the presbyterium to act as his (the bishop's) council and fulfil its duty as a council itself for the good of the whole diocese, besides having the nature of a college which it has, it requires the unity of the members in

87. Ibid., p. 238.

88. Cf. ibid., pp. 241-242.

carrying out its own duties so that the deliberation itself does not remain limited to judgment of opinions and computation of votes. For true dialogue to exist, there must be full and open information and sincere and profound discussion of matters. [89]

Goals, then, are more easily defined than is their realization achieved. The presbyteral council was to be the

[...] means and the privileged link of meeting between the bishop and his presbyterium. The unity of the ministry is expressed in the exchange concerning all which touches on the government of the diocese, either closely or remotely. 'Listening, consultation, conversation' express the type of communication which is established between the presbyteral council and the bishop. [90]

Previous practices of decision-making in a somewhat autocratic way, with only an inside group of advisors being

89. "Ut autem presbyterium Consilio suo agere possit et ipsum Consilium ad bonum totius dioeceseos munere suo fungatur, praeter naturam collegialem quam habet, necessario tali indiget membrorum unitate in participanda sua responsabilitate ut ipsa deliberatio non remaneat iuridica sententiarum et suffragiorum computatio. Ut verum habeatur colloquium, rerum plena et aperta informatio et sincera et profunda discussio requiruntur. Quae non habentur, nisi fraternitas, quae remote sacramentalis est, humano commercio in caritate non ficta sese exprimat. Ex ipsa natura presbyterii et eius Consilii plura videntur exigere dona spiritualia et humana sine quibus Consilium non nisi formale remaneat institutum." Quoted from J. BEYER, "De Consilio presbyterii adnotationes", p. 73.

90. "Le conseil de presbyterium sera le moyen et le lien privilégié de cette confluence entre l'évêque et son presbyterium. L'unité du ministère s'exprime dans l'échange concernant tout ce qui touche de près ou de loin au gouvernement du diocèse: 'Ecoute, consultation, entretien' [...] exprime le type de communication qui s'établit entre le conseil du presbyterium et l'évêque." Quoted from P. EY, "Le conseil presbytéral", in Revue de droit canonique, 20(1970), p. 143.

involved, seems to have made some priests cynical about this new idea of serious dialogue, and conversely, threatened some bishops, conscious of their authority and concerned about a democratic mentality among the priests, even though this was clearly precluded by the fact that the council was to be consultative except where the bishop might decide otherwise in certain instances.

Another concern was that of representation; the three methods proposed were election, ex officio membership and appointment by the bishop. While the legislation of Ecclesiae sanctae did not specify the method of selection, its requirement that members be representative of the presbyterium, including religious clergy active in diocesan pastoral work,[91] led to most councils having a majority of members elected. The problem remained, however, of the bishops tending still to retain their personally selected counsellors, apart from the confusion of competence with the previously existing councils and advisory bodies.

The second question in relation to representation concerned the diverse categories of the presbyterium; whether priests should be represented according to age groups, regions of a diocese, type of ministry if specialized, and a balance between parish priests and associates.[92] The

91. Cf. ES I, 15.1 and 15.2.

92. J. PASSICOS, "Réflexions sur le Conseil du Pres-

balance depended on the statutes of each diocesan presbyteral council.

A French Canadian survey - conducted by R. Pagé - suggests also that there was little preparation for the establishment of presbyteral councils, so that they were implemented without enough thought. There should be the obvious prerequisite of "going deeply into the rôle of a structure which is an expression of the rôle of coresponsibility of the presbyterium with the bishop in the exercise of his pastoral duty." [93] Many members of presbyteral councils were unsure about their rôles, and this uncertainty led to disinterest and lack of effectiveness. As an immediate reaction to a directive in Church law, many dioceses introduced presbyteral councils with little consideration of the finer points of their exact rôle.

4. Presbyteral council and cathedral chapter

The multiplicity of diocesan structures probably provided the greatest hurdle to effective implementation, [94]

byterium", in *Revue de droit canonique*, 17(1970), pp. 167-168. Cf. also M. PAQUETTE, Les conseils presbytéraux au Québec, pp. 93-102.

93. "[...] approfondissement du rôle d'une structure qui est l'expression de la coresponsabilité du presbyterium avec l'évêque dans l'exercice de sa charge pastorale." Cited from R. PAGE, "Le conseil presbytéral, dix ans après le décret ...", p. 245.

94. Cf. ibid., p. 247.

and the satisfactory integration of new diocesan organisms was a complex process. It has been pointed out that some members of the presbyteral council spent their mandates trying to work out what the different organisms were meant to do.[95] That the cathedral chapter was defined as the senate and council of the bishop in the 1917 Code,[96] could imply that, following the institution of the presbyteral council, two senates existed side by side, which might be taken to mean that the bishop still had to seek the advice of the chapter or the consultors according to the law. The definition of the presbyteral council implies that it should also be consulted for advice on the same subject.[97]

Some thought that the cathedral chapter was now superfluous, given that the presbyteral council was to be the primary advisory body to the bishop, representing the presbyterium.[98] Nevertheless, in many countries the chapter also has a significant role to play regarding property, finances and similar undertakings, as well as the right to elect a new bishop in some instances, so that it cannot simply be discounted as a spent or unnecessary force.

95. Cf. ibid., p. 249.

96. Cf. CIC, 1917, canon 391, §1.

97. Cf. J. PASSICOS, "Réflexions sur le Conseil du presbyterium", p. 157.

98. Cf. M. PAQUETTE, Les Conseils presbytéraux au Québec, p. 192.

Some canonists have argued for its renewal as a "counterbalance" in front of the bishop, claiming it should be entitled to contest his decisions.[99] The presbyteral council represents the presbyterium, whereas the chapter does not, being established at times by reason of benefice.[100] Despite its liturgical role, based on the cathedral choral office, the chapter does not seem to have kept its theological roots as firmly as its administrative responsibilities, whereas the presbyteral council is firmly based on the theological basis of presbyterium and common mission of the ordained priesthood. Furthermore, the bishop is not a member of the chapter, whereas the general consensus is that he has a key role to play with the presbyteral council - even though not a member himself - through his position as head of the local presbyterium and Church.

Another report, issued by the Episcopal Commission of Clergy of the Canadian Conference of Catholic Bishops in 1971, investigated the relationship between the new and the old bodies of diocesan governance.[101] Therein was a list

99. L. de NAUROIS, "La participation dans les institutions temporelles et dans l'Eglise", in Revue de droit canonique, 20(1970), p. 125. Also, A. BOCQUET, "Du presbyterium au Conseil presbyteral", p. 103.

100. J. BEYER, "De consilio presbyterii adnotationes", p. 89.

101. Rapport de la consultation sur les Chapitres et les Conseils diocésains, Office national du clergé, avril, 1971. Cited in M. PAQUETTE, Les conseils presbytéraux au Québec, p. 194.

of the chapter's and the consultors' duties, in regard to government of the diocese, finances, juridical affairs, liturgy and the vacancy of the see. In addition, their responsibilities according to civil law were enumerated. It was reported that of 57 dioceses responding to the survey, 44 (6 with reservations) recommended "the suppression of the Chapter in its present form", in view of the presbyteral council's role. The suggestion was that the presbyteral council take on all of the chapter's (consultors') responsibilities, apart from financial matters, which were to be taken on by a new council of administration, replacing the chapter in civil law matters.[102]

Nevertheless, four major reservations about abolition of the chapter were raised:

- When the bishop needs advice, it could take too long to assemble the whole presbyteral council;
- the capacity of a largely elected council to tackle complex problems of diocesan administration was questioned;
- the deprivation of the dioceses of an organism which could provide some stability, while the newer ones had yet to acquire experience, was seen as a handicap;
- the exigencies of civil law could give rise to legal problems.[103]

102. Cf. ibid., p. 3.

103. Cf. ibid., p. 17.

A council of administration for each diocese was recommended, so that continuity could be assured and competent members appointed; this recognized the benefit of the separation of pastoral concerns from specifically administrative financial matters. Mention is made of another survey of francophone dioceses, where the predictable problem of uncertain and overlapping competence led to the two diocesan organisms sometimes working in parallel, doubling the workload or perhaps ignoring each other.[104]

These arguments and proposals provide background to the ensuing evolution of the new Code of Canon Law, the preparation of which took into consideration the questions faced by introduction of the new diocesan structures. It has been stated that as long as the chapter was represented on the presbyteral council, all would be well, but the problem of delineating responsibilities and competence remained.[105]

5. The presbyteral council and the diocesan pastoral council

Another relationship of the presbyteral council to be considered is the presence of the diocesan pastoral council

104. Cited in M. PAQUETTE, Les Conseils presbytéraux au Québec, p. 195. From Rapport d'un sondage auprès des Conseils presbytéraux des diocèses de langue française, Office national du clergé, 31 août, 1971, p. 6.

105. Cf. J. PASSICOS, "Réflexions sur le Conseil du presbyterium", p. 160. While he is referring to the situation in France, his analysis seems rather cursory in discounting conflicts of competence between the two organisms.

as a consultative body to the diocesan bishop. Even though its institution was only strongly recommended,[106] the theological and practical reasons for its presence as representative of the People of God at the local level could be seen as making it essential in any diocese. Its coordination with other diocesan bodies is seen as the bishop's responsibility.[107] The relationship between the two requires clarification on a theological and a practical level.

The theological bases have been described thus:

The presbyteral council is founded on the unity of ordination and mission, which binds priests in virtue of the sacrament of orders. The pastoral council, on the contrary, bases itself on the unity of the People of God, which baptism establishes between those who belong to the Church. [...] The presbyteral council has for its end to help the bishop effectively, through its advice, in the government of the diocese. The pastoral council [...] to the exclusion of all participation in the government of the particular Church [...], has for its mission to assist the bishop, through its investigations, studies and proposals, to promote conformity with the Gospel, the life and the action of the People of God. [108]

106. Cf. ES I, 16.

107. Cf. R. PAGE, Le Conseil diocésain de pastorale, which is probably the most extensive study of the role of the diocesan pastoral council available. Page argues convincingly for its necessary presence in the scheme of local Church structures.

108. Translated from the French: H. BOULARD, "Le conseil pastoral", in Les structures diocésaines post-conciliaires, Premier Symposium des Evêques d'Europe, juillet, 1967, p. 57.

This is not to deny the reality of problems arising between the two bodies:

Despite the theoretical distinctions, on a practical level, it is still difficult to have both bodies operating harmoniously with defined areas of competence, under the bishop's leadership. Psychological distances have to be overcome and communication facilitated. [109]

The pastoral council should reflect the needs of the People of God in its deliberations, as its work is to

[...] examine and consider all that relates to pastoral work and to offer practical conclusions on these matters, so that the life and activity of the People of God may be brought into greater conformity with the Gospel. [110]

As an organ of government in the Church, representative of the priests, the presbyteral council should seek to have translated into action matters which are treated by the pastoral council, but which require further deliberation prior to implementation or decisions being taken by the bishop in their regard. Thus the pastoral council may be used as a primary (but not sole) source of matters to be treated by the presbyteral council, which could thereby avoid a "neo-clericalism" which is always a danger if a clerical group operates in a vacuum with no direct point of reference to the People of God or their concerns. [111]

109. Translated from the French: P. EYT, "Le fondement doctrinal du presbyterium", in Revue de droit canonique, 20(1970), p. 145.

110. ES I, 16.2.

111. This is the view taken by J. PASSICOS, "Réflexions sur le Conseil du presbyterium", p. 160. Cf. also A. VILELA, loc. cit., p. 600.

Links between the councils thus established suggest that liaison would be best served by having at least a representative of the presbyteral council on the pastoral council as well. On the other hand, there seems no objection to having a lay representative from the pastoral council present as an observer at the presbyteral council's deliberations, despite its different nature. The role of priests in each council differs in that they are on equal footing with other members of the People of God on the pastoral council, but are counsellors of the bishop as representative members of the presbyterium on the presbyteral council. Nevertheless, for purposes of communication and coordination of activities, some priests could be active members of both councils; even so, this is opposed by some canonists because of the distinctive roles of each body.[112]

Membership of both presbyteral and pastoral councils by the same priests seems a reasonable means of allying the concerns of each so that a concerted effort may be made in tackling problems on the diocesan level, given that priest members are conscious of the risk of transposition of competencies and deviation from their proper

112. Cf. A. VILELA, *loc. cit.*, p. 600. He cites H. BOULARD, "Le conseil pastoral", in support of his argument, but there is no need to insist on such an exclusion; it seems pedantic to do so.

ends.[113] Goals need to be defined and adhered to. To have the bishop alone as the common link is neither sufficient nor satisfactory, since the purpose of these councils is to assist him, not just to provide him with added burdens of coordination and transfer of information.

That the pastoral council should not come under the concern of the diocesan pastorale d'ensemble is claimed on the grounds that it should be a flexible body, which

[...] represents the diverse conditions of life of the members of the People of God, and not the institutions, organisms, apostolic movements or others, overseen by the 'pastorale d'ensemble'. [114]

While this council represents the People of God in a pastoral sense, matters concerning diocesan governance per se do not come under its mandate. Its competence is broad, but non-specific, as a consultative body concerned with pastoral needs. The presbyteral council, in representing the presbyterium, does have a share in diocesan governance.[115]

113. Cf. R. PAGE, Le Conseil diocésain de pastorale, p. 148.

114. Translated from the French: ibid., p. 128.

115. This is reiterated in the Circular Letter on Presbyteral Councils, April 15, 1970, n. 9. Cf. also S.J. MARCEAUX, Presbyteral Councils, in Proceedings of the 44th Convention, October, 1982, Hartford, CLSA, 1983, p. 205.

C: Consultation and decision-making

It might be asked, then, if consultation is a worthwhile exercise. This is beyond doubt, given that there is a willingness on the part of both bishop and presbyteral council to discuss, compromise and decide on issues affecting the local Church, even though the final decision rests in the hands of the bishop. The question is not one of democracy, but of mutual dialogue and cooperation, with the pastoral care of the People of God as the focus of concern. Other methods of participation in decision-making are perhaps more direct, but less productive, since organization of diocesan life and activities requires an overall perspective of the needs of the local Church, which is unlikely to be held by any one particular group.

Where decisions are taken in a democratic sense by particular bodies, with majority vote ruling, and the bishop being tied to the result, good government is not necessarily the result, due to the loss of flexibility and general perspective. If the preservation of communio is an essential element of decision-making, then democratic voting is probably not the ideal formula for the process. On the other hand, participation by contestation has been raised as a means of ultimately changing prior decisions - whether juridic or administrative - which have been challenged.

The consultative process, if exercised in the most effective way, with all parties willing to cooperate and compromise, seems to be a viable means of encouraging a greater sense of participation in the life of the Church on all levels of its existence. The organ of consultation should be representative and the members are to have some expertise in the areas to be treated. At the end of the process, the bishop is the one to take the decision and assume responsibility for it.[116]

D: The presbyteral council and the preparation for the New Code of Canon Law

It could be presumed that the new Code of Canon Law would define the responsibilities of the various diocesan organisms which evolved through the lengthy discussions and reviews of their post-Vatican II implementation. At the same time, though, the discussions reveal a determination to allow flexibility in their operation in the local Church. If the texts relevant to the presbyteral council are studied in the successive schemata for the new Code, it is seen that the proposed canons are closely based on the general requirements of Ecclesiae sanctae. The preparatory schema of 1977 contains

116. A concise treatment of the question of consultation and decision-making in the Church as compared with the French and American models of government is provided by L. de NAUROIS, "La participation dans les institutions temporelles et dans l'Eglise", in Revue de droit canonique, 20(1970), pp. 109-127.

eight canons on the presbyteral council, with one of these directly concerning the college of consultors.[117] The intention here was to express "in juridic terms the three principal conciliar and post-conciliar texts, which had already dealt with them." [118]

This first schema of 1977 outlines the field of competence of the presbyteral council (canon 309), its requirement of statutes approved by the bishop (canon 310), the criteria for designating members (canon 311), the question of active and passive voting in elections to the council (canon 312) and the necessity for representation of all areas of the ministries and regions of the diocese (canon 313). The question of consultative and deliberative power is then treated (canon 314). While the Circular Letter of 1970 gave the council deliberative power solely through the bishop in determined cases, and the universal law gave only consultative voice, the schema's relevant canon puts the conditions thus:

Canon 314, §1: The presbyteral council has only a consultative vote: but it must be consulted in matters which are expressly determined in the universal law, or which, in the

117. PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECOGNOSCENDO, Schema canonum novi Codicis Iuris Canonici, Romae, 1978, Liber II, canons 309-316.

118. As described by R. PAGE, "Le conseil presbytéral et la révision du code", in Studia Canonica, 15(1980), p. 370, in reference to PO, 7, Ecclesiae sanctae I, 15 and the Circular Letter on Presbyteral Councils, April 11, 1970.

judgment of the diocesan bishop, concern the general administration of the diocese; but it is up to the diocesan bishop alone to pass judgment and to make decisions.

§2: However, in cases determined in the general law or in those exceptional cases determined by the Episcopal Conference, or when the diocesan bishop himself has given a deliberative vote to the presbyteral council, he must have the consent of the council in order to make decisions.

§3: The presbyteral council can never act without the diocesan bishop, and it is the bishop alone who can promulgate whatever was decided according to the norms of §§1 and 2 above. [119]

In other words, a bishop could not give deliberative power to this council in a matter not previously foreseen; needless to say, nothing was to stop him following the advice of the council, but the law was to provide a safeguard against his being tied to a deliberative decision which he did not wish to follow. When the see becomes vacant, the council ceases to exist (canon 315), but its functions are taken over by the college of consultors (canon 316). This is one of the major innovations in this section of the schema.[120] It is a position consistent with the theological premise that the bishop is a member of the presbyterium at its head, and that therefore its

119. Schema, 1978, canon 314. Translated in B. ROSSI, op. cit., p. 82.

120. Cf. R. PAGE, "Le conseil presbytéral et la révision du Code", p. 371.

representative council should not be constituted in his absence.[121]

This preliminary schema was revised and the rationale behind the changes is found in the discussions of the Code Commission.[122] Some proposals were that the presbyteral council continue to function when the see was vacant, and that the bishop be required to convene the council at least twice a year with at least a third of the members present.[123] It was also recommended to the Commission that the college of consultors be a means of treating "more urgent cases", when it was difficult to convene the senators (presbyteral councillors) at short notice; the bond between the two bodies was emphasized, however, by the suggestion that all of the consultors - up to seven in number - be drawn from among the members of the presbyteral council.[124] Even though the bishop was to select the consultors himself, the law was moving towards encouragement of mutual harmony between these two presbyteral bodies through common concern for the People of God in their diocese.

121. Cf. S.J. MARCEAUX, loc. cit., p. 204.

122. PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECOGNOSCENDO, Communicationes, 5(1973), pp. 229-230; 9(1977), p. 255; 12(1980), pp. 128-135.

123. Communicationes, 5(1973), p. 230.

124. Ibid., and reiterated in Communicationes, 9(1977), p. 255.

Several detailed amendments were sought in later meetings of 1980; the possibility of a democratic mentality in the Church was still being raised as a "danger" to be avoided, so that the suggestion was made that the words "like a senate of the bishop"[125] be dropped from the text. This was not accepted. The expression was also criticised as a term because it had referred to the cathedral chapter in the 1917 Code.[126] Minor alterations in style were made to the texts of the next four canons of the schema (canons 310-313), but these implied no significant change in the legislation itself.

A further meeting of the Commission on April 17, 1980, enabled it to coordinate a more substantial review of the canons; the clause which allowed the bishop to decide when the council must be heard was removed, as it seemed opportune to have the universal law itself determine when this should occur, and to minimise the opportunities for the nullity of episcopal acts.[127] The secretary's reaction was to retain

125. "Tamquam senatus sit episcopi", in Communicationes, 13(1981), p. 128.

126. Cf. ibid.

127. Ibid., p. 131. Discussion was in reference to canon 314, §1: "Consilium presbyterale gaudet voto consultivo tantum: audiendum vero est in causis quae iure universali expresse determinantur aut quae iudicio ipsius Episcopi dioecesei, regimen generale dioecesis respiciunt; unius autem Episcopi dioecesei est causas dirimere et decisiones ferre."

the emphasis on the bishop's hearing the council in regard to "matters of greater importance", and to drop the final clause because of its redundancy; it went without saying that the bishop could pass judgment and make decisions if the advice was merely consultative. The revisions were accepted by all present.

A more controversial issue was raised in regard to the mention of the deliberative power of the presbyteral council in certain circumstances, where the universal law or the diocesan bishop in exceptional cases, defined by the Episcopal Conference, required the council's consent,[128] was indicated that the relevant section of Ecclesiae sanctae referred only to a consultative vote, and others suggested that the authority of the bishop should not be limited in such a way. The Relator suggested the analogy with the pope giving the Synod of Bishops a deliberative vote in certain matters, although its vote was normally consultative. A deliberative vote was only mentioned in the Circular Letter of 1970, which had less force than the other two major documents, so that the arguments moved away from even mentioning deliberative power, as it was "not foreseen by the

128. Cf. *Ibid.*, p. 132. Discussion was in reference to canon 314, §2: "In causis tamen, in quibus Consilio presbyterali votum deliberativum concesserit sive ius universale sive, in casibus exceptionalibus ab Episcoporum Conferentia definitis, ipse Episcopus ut decisiones ferat consensu eget eiusdem Consilii."

Council" (i.e. Vatican II).[129]

It was argued that a consultative vote could be distinguished by the term "having heard the council", while "with the council consenting", implied deliberative power for those consulted - audito consilio and consentiente consilio - all for the purposes of avoiding the use of the word "deliberative" in the text of the canon. The revised text reflected this concern, with all references being to consultative voice only.[130]

Meanwhile, the third paragraph of the draft was left substantially intact with only a minor alteration: the council can only act with the bishop, who alone has the authority to divulge what is discussed.[131] The only major change suggested in the next canon was for the bishop to be allowed twelve months rather than six to establish the council, so that he might have more time to acquaint himself with the diocese (canon 315).

129. Ibid., p. 133.

130. The text for canon 314 now reads: "§1. Episcopi dioecesani est consilium presbyterale convocare, eidem praesidere atque quaestiones in eodem tractandus determinare aut a membris propositas recipere. §2. Consilium presbyterale gaudet voto tantum consultivo; Episcopus dioecesanus illud audire debet vel etiam eius consensu eget solummodo in casibus iure expresse definitis."

131. Cf. Communicationes, 13(1981), p. 131: "Consilium presbyterale nusquam agere valet sine Episcopo dioecesano, cuius etiam solius cura divulgari possunt quae ad normam §§ 1 aut 2 statuta sunt."

E: The presbyteral council in the 1980 Schema and the 1983 Code

The ensuing 1980 revised Schema[132] incorporated the approved modifications as well as including sections from the Lex Fundamentalis. Further animadversions of the Fathers were noted and modifications made. It was generally considered that these canons were in accord with the spirit of Vatican II's recommendations, although Cardinal G. Siri did not approve because of the democratic implications in diocesan government, which he feared as a result.[133] The Relator's response was firm in denying any form of democracy entering into the process, since the clause "enjoys only a consultative vote"[134] indicates the bishop's power in the final step of the decision-making process. It was seen as a positive thing that the bishop be given the right to approve the local presbyteral council's norms in accordance with the

132. Cf. PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECOGNOSCENDO, Schema Codicis Iuris Canonici, (Patribus Commissionis reservata), Rome, Libreria Editrice Vaticana, 1980, canons 415-422. The discussions of the fathers are recorded in PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECOGNOSCENDO, Relatio complectens synthesim animadversionum ab Em. mis atque Exc. mis Patribus Commissionis ad novissimum schema codicis iuris canonici exhibitarum, cum responsibus a secretaria et consultoribus datis, Città del Vaticano, Typis Polyglottis Vaticanis, 1981, p. 114-119. The Relatio is also found in Communicationes, 14(1982), pp. 215-218, but without identification of the intervening patres.

133. Cf. ibid., p. 115.

134. Ibid. The Latin used is: "Gaudet voto tantum consultivo", in canon 420, §2.

principles laid down by the bishops' conference (canon 416), as were the norms about union with the bishop and the consultative vote (canon 420), and those concerning the college of consultors (canon 422).

Cardinal S. Wyszynski again objected to the term "as if a senate of the bishop", [135] in reference to the presbyteral council, in that it replaced the cathedral chapter's primary role, and also to the term "representing the presbyterium", [136] which he thought to be suggestive of a "class struggle" between bishops and priests. The obvious was pointed out in that these terms were merely taken from Presbyterorum ordinis and Ecclesiae sanctae, [137] and therefore were to be understood in that context. [138] A clarification was sought in the canon referring to the role of "at least three" members to be chosen for the council by the vicar or prefect apostolic in vicariates and prefectures; it was proposed and accepted that they be specified as priests. [139]

135. Canon 415: "tamquam senatus episcopi."

136. Canon 415, §1: presbyterium repraesentans.

137. Cf. PO, 7 and ES I, 15.1.

138. Cf. Relatio, 1981, op. cit., p. 115?

139. Cf. ibid.; canon 415, §2: presbyteri rather than sacerdotes, as the latter includes the bishop.

The indefinite nature of the term, "a suitable number of them", was replaced by "about half"[140] in reference to the election of members by the priests, in order that the body be representative and not solely subject to choice by the bishop.

It was suggested that a distinction be made between those who had active and passive voice in elections and in voting at meetings, with the vicar general, episcopal vicars and priests habitually living outside the diocese being excluded; but the Relator pointed out that although these were not necessarily part of the presbyteral council, they should not be deprived of such a vote by law, if they happened to be members, as they are all part of the presbyterium.[141]

It was also clarified that any priest belonging to an Institute of Consecrated Life or a Society of Apostolic Life, and who was involved in some pastoral work for the good of the diocese, should be given active and passive voice for the council.[142] The subject of "delinquent" priests was raised in this regard, in that their unapproved absence from the diocese, or from their appointed ministry, be considered a

140. Canon 417: congrua eorum changed to dimidia circiter.

141. Cf. ibid., p. 116.

142. Cf. ibid., Ad canon 418, p. 116.

cause of deprivation of voting rights. The response was that the local bishop could enact legislation in this regard, allowing for the circumstances of each case.[143]

The question of the council's having a deliberative vote under certain conditions was again raised.[144] The decision was that the circumstances could be determined by the diocesan bishop, so that a change in the canon was "neither necessary nor opportune." [145] A fear of the bishop's losing any of his power was implicit, and the mind of the Relator seems to have been to preserve episcopal autonomy in decision-making situations with his priests. The episcopal conference was said to be the only place where this could be altered.[146]

An addition was made to canon 421 in the schema, where conditions for abolition of the presbyteral council were outlined; it was suggested that the bishop should be obliged to go beyond "hearing" those he had chosen as consultants, and

143. Cf. ibid., p. 117.

144. Cf. ibid., ad canon 420, p. 117. Cardinal T. Jubany cited the provision of the same schema's canon 279 - on the Synod of Bishops - and the intimation of the earlier Circular Letter, while Archbishop J. Bernadin suggested that the Episcopal Conference define circumstances for a deliberative vote entitlement to the council.

145. Ibid.

146. Cf. ibid. The Relator cited PO, 7 and ES I, 15.3 to support his stand on keeping the presbyteral council's consultative role alone defined in the universal law.

thus that he should consult the Metropolitan as well, before dissolving his presbyteral council. This principle was accepted and added to the text.[147]

Conclusion

This exploration of the practical implications of the notion of presbyterium and its understanding through the preparation of the documents of Vatican II and subsequent legislative implementation, has revealed the gradual expression of a renewed theology of ordained ministry in the light of bishops and priests in the local Church having a more cooperative attitude towards working together on a common mission with the People of God. The emphasis on the local Church as a more autonomous unit than had been the case prior to the Council brought about the realization that the local presbyterium did not merely consist of individual priests working independently under the direction of a bishop as the Pope's representative at that level. The increased autonomy of the local bishop was to carry through to the levels of presbyterium and people as demonstrated by the call for the new councils for priests and people, and then by the legislation to implement them.

In some ways, these can be identified as analogous with some of the practices in the early Church, briefly

147. Cf. ibid., Ad canon 421, p. 118.

treated in Chapter II, where the presbyterium gathered around a bishop, sharing in a rather close relationship of pastoral and sacramental activity. A renewed understanding of subsidiarity and co-responsibility in the local Church were driving forces in the formation of these new councils.

The presbyterium has the responsibility of reflecting the views and experiences of the members of the communio, with a view to promoting their mission as christians in the world. The documents studied here demonstrated the intention for increased consultation and representation of the People of God on the clerical, religious and lay levels of the local Church.

Certainly, there are problems in defining and developing mutually responsible and harmonious roles for the presbyteral councils and diocesan pastoral councils, particularly in the light of bodies such as the diocesan consultors and the chapters of canons, whose roles have been seen to depend on the particular situation of the local Church. The difficulty of establishing universal law for an extreme diversity of situations will always be a problem for implementation and enforcement at the local level. The primary concern is the need for application of the theological principles expounded in Chapters II and III; the presbyteral and diocesan pastoral councils, and at the parish

level, the parish pastoral council, are bodies established to renew and enliven the local church.

Now the point has been reached for a specific review of the consultors in this post-Vatican II environment, since their role in law has been restated in quite different terms in the 1983 Code to that of 1917, especially given the emphasis placed on the presbyteral council. What is the relationship meant to be, and can it be realized? How is it to be a part of the consultative process?

CHAPTER V

THE COLLEGE OF CONSULTORS IN THE 1983 CODE

Having examined the questions of authority and autonomy in the local church, together with the role of the diocesan bishop and his relationship with the presbyterium, it is now time to focus specifically on the organism known as the "college" of consultors, and to discern its place in diocesan affairs. The study thus far has indicated a radical change in emphasis since Vatican II, in the theology of Church and the exercise of authority within it by various individuals and organisms. In this context, then, the corresponding change between the former "Diocesan Consultors" and the 1983 "College of Consultors" will be considered, since the "college" is indeed not simply the same organism with a new name. The change is far deeper in theological and canonical significance.[1]

It will be demonstrated that this new "college of consultors" has a role different in many aspects from that of its predecessor, the "diocesan consultors; it is also

1. Cf. M. NGUYEN-VAN-HIEN, Collège des consultants et conseil presbytéral: dispositions générales appliquées à deux diocèses Sud-Vietnamiens - Saigon et Xuan-Loc, Louvain, Université de Louvain, 1975, 440p. A short summary is in his article: "Collège des consultants et conseil presbytéral: Points de dissemblance", in L'Année canonique, 20(1976), pp. 111-123. The documents have been listed earlier: PO, 7; ES I, 15; the Circular Letter of 1970 on Presbyteral Councils. His use of the word "college" is dubious, since the "college" of consultors is referred to, in reference to the 1917 Code. No conciliar or post-conciliar statement on consultors had been issued in the interim period.

unrelated to the former "parish priest consultors", who were primarily involved with the transfer and removal of pastors in the 1917 Code.[2]

Neither the preliminary schemata nor the new code itself used the terms "parish priest consultors" or "diocesan consultors", so that the distinction in names may be interpreted as implying a difference in the functions and structure of the new body. Similarly, the presbyteral council could only be loosely described as the "successor" of the cathedral chapter and of the diocesan consultors, which had originally been commissioned to fulfil the role of the chapter where it had not been established.[3]

A: Preparation of Canon 502: the background

While the cathedral chapter lost much of its former power through the promulgation of the 1983 Code, the college of consultors on the other hand, moved in the opposite direction - acquiring a new recognition and role throughout the Church, according to universal law. The rationale for the change to the college of consultors requires investigation.

2. Cf. CIC, 1917, canons 385-390." This is discussed by R. PAGE, "Le conseil presbytéral et la révision du code", in Studia Canonica, 15(1980), pp. 371-372. Cf. also his recently published book: R. PAGE, Les Eglises particulières, Tome I, p. 154.

3. Cf. ibid., p. 372.

Various situations are defined in the law where the consent or at least the advice of the consultors is mandatory for the bishop, but the implication of the law is that their role goes further. Apart from having the responsibility for diocesan governance and election of an administrator during the vacancy or when the see is impeded, perhaps the college's role could be described in terms of constituting an "inner cabinet" of the bishop, unless the episcopal council of canon 473, §4 fulfils this role.

The understanding of the consultors' role deepened and evolved through the meetings of the Commission for the Revision of the Code. The documents of Vatican II, which had much to say about the introduction of the two major new diocesan organisms - the presbyteral council and the diocesan pastoral council - merely recommended the retention of previously existing bodies until the promulgation of the new law. The presumption was that the diocesan consultors - where instituted already - continued to function, according to the 1917 Code. General opinion seems to be that the consultors were often not given the opportunity by the local bishop to fulfil their originally defined role as his advisors.[4] Rather, many had become personnel or clergy appointment boards, giving advice on other matters only when

4. The documentation on the activity of diocesan consultors is so sparse that the main source for gauging an idea of their activity is hearsay.

requested to do so by the bishop.[5]

One of the goals of the revised Code was to embody the theological and resulting juridical concepts which derived from the shifts in emphasis and renewed theological expression of subsidiarity, collegiality, presbyterium, ministry and Church in general.

1. The 1973 Meeting of the Code Commission

In comparison with the 1917 Code, it could be noted that proposals leading up to the 1983 Code contained a reversal in the position of cathedral chapters, which - at the 1973 meeting of the Code Commission - were considered after the presbyteral council, the consultors and the diocesan pastoral council.[6] The first mention of consultors was in reference to their forming a college to deal with matters either too urgent or inappropriate to be considered by the entire presbyteral council:

A college of consultors is to be constituted. When it seems neither opportune nor possible, as in dealing with certain cases, especially more urgent ones, for the presbyteral council to be convoked, it is proposed that some priests, be selected by the diocesan bishop from among the members of the presbyteral council, to constitute

5. This was certainly the case in many dioceses in Australia, where consultors were mandatory. Very little can be found apart from the statutes of the plenary councils of Sydney, which repeat the canons with virtually no variation or expansion.

6. Cf. Communicationes, 5(1973), pp. 229-233.

a college of consultors with duties prescribed in the law. However, if in certain dioceses, especially smaller ones, the presbyteral council does not consist of more than seven members, it will be the competence of this council itself, to fulfil the functions which belong by law to the college of consultors. [7]

2. The 1977 Schema

These prescriptions were repeated at the following meeting,[8] and reflected the presumed obsolescence of many chapters of canons, who some wished to see minimised in deference to the presbyteral council and college of consultors.

At the 1977 meeting of the Code Commission, the role of the chapter of canons was reviewed and the results of the discussion presented as follows:

According to the prescriptions proposed by the group of consultors [of the Code Commission], the primary duty of the chapter of canons will be to perform the more solemn liturgical functions in the cathedral or collegiate church. However, it is also its responsibility to fulfil other duties, either those committed to it by the law

7. Communicationes, 5(1973), p. 230: "Collegium consultorum constituendum. Cum videatur nec opportunum nec possibile esse ut pro certis causis, urgentioribus praesertim, tractandis totum Consilium presbyterale convocetur, proponitur ut inter membra Consilii presbyteralis ab Episcopo dioecetano eligantur aliqui sacerdotes, qui Collegium consultorum constituent, cui competunt munera iure determinata. Attamen, si in certis, praesertim parvis, dioecesibus, Consilium presbyterale non constet plus quam septem membris, ipsius huius Consilii erit munera adimplere quae iure Collegio consultorum competunt."

8. Communicationes, 9(1977), p. 255.

itself or by the diocesan bishop. Nevertheless, it is proposed that a considerable number of duties, proper to the chapter of canons in the Code of Canon Law [1917], be handed over to the presbyteral council itself or to the college of consultors, constituted by the bishop and consisting of members of the presbyteral council. [9]

Canon 316 of the 1977 schema for the new code outlined the means whereby consultors were to be appointed:

§1. From among the members of the presbyteral council several priests are to be freely appointed by the diocesan bishop, no less than six nor more than twelve in number, who are to constitute the college of consultors for a five year term, to whom duties determined by law belong.

§2. The diocesan bishop presides over the college of consultors; when the see is vacant or impeded, the one who takes the place of the bishop in the interim presides. If such a person has not yet been constituted, the priest who is senior by ordination in the college of consultors presides. [10]

9. Ibid., p. 232: "Secundum praescripta a coetu consultorum proposita, praecipuum Capituli canonicorum munus erit functiones liturgicas sollemniores in ecclesia cathedrali aut collegiali persolvere. Ipsius tamen etiam est alia quaedam munera adimplere, ea scilicet quae ipsi ipso iure aut ab Episcopo dioecesano committuntur. Attamen, non pauca munera quae in iure Codicis I.C. Capitulo canonicorum sunt propria, in iure recognito quod proponitur tribuuntur sive ipso Consilio presbyterali sive Collegio consultorum, quod ex membris Consilii presbyteralis ab Episcopo dioecesano constituitur."

10. Ibid., 12(1980), p. 134: Canon 316, §1. "Inter membra Consilii presbyteralis ab Episcopo dioecesano libere nominantur aliqui sacerdotes, numero non minori quam sex nec maiori quam duodecim, qui Collegium consultorum ad quinquennium constituent, cui competunt munera iure determinata."

§2. "Collegio consultorum praeest Episcopus dioecesanus; sede autem impedita aut vacante, is qui ad interim Episcopi locum tenet aut, si constitutus nondum fuerit, in Collegio

3. The cathedral chapter's role

(a) Viability and responsibilities

It was noted, however, that some cathedral chapters were considered to be operating in a viable way, and that because of their importance, they should be left with major responsibilities, so that between the 1977 and 1980 schemas, the option of having chapters fulfilling the functions of consultors was proposed and approved.[11] Therefore, with the consent of those present, a third section was added to the canon, allowing episcopal conferences to commit the college's responsibilities to the cathedral chapters where this was preferred at the local level.[12] The subsequent canon of this schema provided a definition for the chapter of canons, ascribing to it primarily a liturgical role.[13]

consultorum sacerdos ordinatione antiquior."

11.- The situations in Germany and Austria were referred to specifically in ibid., 12(1981), p. 135. In some Canadian dioceses, the Chapter holds the titles to certain properties rather than the local bishop, and it is not always opportune to return to the legislature for a revision of charters. What is more, the question of rights and privileges previously accorded chapters is not easily dismissed. Cf. J.A. ALESANDRO, "The Internal Ordering of Particular Churches", in J.A. CORIDEN et al., eds., Canon Law: A Text and Commentary, commissioned by the CLSA, New York, Paulist Press, p. 406.

12. Cf. Communicationes, canon 316, p. 135. Canon 316, §3. "Episcoporum Conferentia, decreto ad normam can. 205, §1 lato, statuere potest ut munera Collegii Consultorum Capitulo Cathedrali commitantur."

13. Cf. ibid., canon 317, p. 135.

One intention on the part of those drawing up the new legislation was to acknowledge the relative obsolescence of the cathedral chapter in some areas. This body had never gained the hoped-for recognition in countries where the consultors had originally been instituted as a temporary substitute. Perhaps this was partly due to the elimination of the need for benefices in supporting diocesan clergy. At any rate, the impracticality of the requirements that the cathedral canons pray the choral office, when their duties as parish priests did not make them readily available for this activity, could have been another reason for the change in emphasis.

(b) The 1974 European Symposium

In 1974, about mid-way between Vatican II and the promulgation of the new Code, a symposium was held on the role of chapters in several European countries, and arguments for their retention were presented quite specifically.[14]

14. Cf. The following articles related to the role of chapters in Europe at the time: P. BRANCHEREAU, "De Capitulo Cathedrali eiusque relatione cum consiliis presbyterali et pastoralis in Gallia", in *Periodica*, 65(1976), pp. 701-703; J.L. GONZALEZ NOVALIN, "De Capitulo cathedrali aliisque dioecesanis consiliis in Hispania", in *Periodica*, 63(1974), pp. 671-685; I. FURER, "Capitulum Cathedrale aliaque dioecesana consilia in Helvetia", in *Periodica*, 60(1971), pp. 687-696; P. WESEMANN, "De Capitulo Cathedrali in iure particulari Germaniae", in *Periodica*, 65(1976), p. 713; J. BEYER, "De capitulis cathedralibus servandis vel supprimendis", in *Periodica*, 63(1974), pp. 477-487.

The future of the chapter of canons in many circumstances was later assured, since the 1983 Code allows for the canons to take over the consultors' role if the bishop so sees fit.[15] In addition, the more specific liturgical role of the chapters is detailed, although, significantly, chapters themselves are discussed after the presbyteral council and the consultors. In contrast to the 1917 Code, where 32 canons defined their role,[16] the 1983 Code contains only 8 canons.[17] The placing of the canon concerning the college of consultors in the 1983 Code prior to those on chapters, demonstrates the general intention of the legislators to remove governmental concerns from them.

(c) Chapter and presbyteral council

A "serious problem" was identified as existing between the presbyteral council and the chapter due to their working

15. Cf. CIC, 1983, canon 502, §3. The Canadian decree on implementation of the 1983 Code allows for this, owing to the presence of chapters in many dioceses, particularly in Quebec: "In accordance with the prescription of canon 502, the Canadian Conference of Catholic Bishops hereby decrees that where Chapters of Canons have been legitimately established in Canada, they may be given the role assigned to the College of Consultors if the diocesan bishop so desires." CANADIAN CONFERENCE OF CATHOLIC BISHOPS, "Decree No. 4, College of Consultors", in Official Documents, No. 531, Ottawa, CCCB, May 14, 1985. Hence, the decision is left to the diocesan bishop, and all the functions of the consultors must be assumed by the chapter, and not shared between the two organisms.

16. Cf. CIC, 1917, canons 391-422.

17. Cf. CIC, 1983, canons 503-510.

in parallel, doubling the workload, or mutually ignoring each other.[18]

"Pastoral equity" was the term used by J. Beyer to justify the simplification of diocesan structures and therefore the reduced involvement of the chapters in diocesan governance. He argued for their liturgical involvement as important for the "edification of the people", and their reduced governmental role as a reduction of the "oppression" resulting from too many councils and commissions.[19] The setting up of an episcopal council is seen as closely related to the role previously played by of many of the active European chapters. Beyer argued, then, for such a body to be consultative and supportive of the bishop in his decision-making. But the danger of creating an elite group, personally selected by the bishop, which could tend to ignore the broader views of the presbyterium as expressed through the presbyteral council, is evident. Thus he wrote:

If the presbyterium is to stand out as the crown of the bishop and as the college of copresbyters and it is to take its proper place in the life of the particular church, it seems necessary that:

1. the presbyteral council - or if there are few priests, the presbyterium itself - be the senate of the bishop;

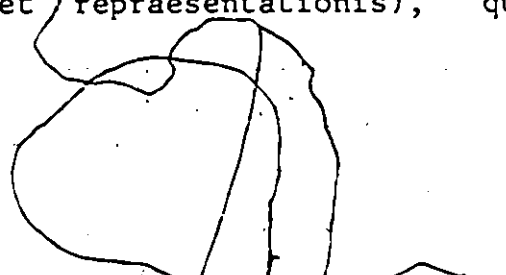
18. Cited by M. PAQUETTE, op. cit., p. 195, from: Rapport d'un sondage auprès des Conseils presbytéraux des diocèses de langue française, Office national du clergé, 31 août, 1971, p. 6.

19. Cf. J. BEYER, loc. cit., pp. 483-487.

2. the greater part obtain stability and experience in acting on matters;
3. it act with greater freedom of mind and in greater union with the bishop;
4. there does not seem to be any impediment against having the "episcopal council" or the "renewed chapter" absorbed into the presbyteral council itself, which is above them, especially in the germanic-speaking countries;
5. however, to avoid problems, many things should be clearly laid down: for in today's presbyteral councils, a high number of the members - if not all! - are elected and put forward its representative role, not rarely are they set up and act as a "pressure group", and often even oppose the diocesan bishop.

Whence it should be clearly defined in what way part of the presbyteral council is involved in diocesan governance and in what way its real union with the presbyterium is expressed (this union is better expressed as a sacramental union than as a democratic and representative delegation), and how better to promote this union. [20]

20. Ibid., p. 486: "Si presbyterium ut corona Episcopi et collegium compresbyterorum reipristinatur atque partes suas in vita Ecclesiae particularis obtineat oportet, videtur necessarium ut: 1. Consilium presbyterii - vel si pauci sint sacerdotes - ipsum presbyterium sit senatus Episcopi. 2. Ipsum maiorem obtineat stabilitatem et rerum agendarum experientiam. 3. Maiore cum mentis libertate et maiore cum Episcopo coniunctione agat. 4. Nullum videtur impedimentum ut 'Consilium episcopale' vel 'Capitulum renovatum', uti supra innuitur, praesertim in nationibus germanicae linguae, in ipso Consilio presbyterii assumatur. Ad mala autem vitanda plura clare statuuntur: nam consilia presbyterii hodierna quorum maior sodalium numerus - si non omnes! - eligitur atque missionem extollit repraesentationis, non raro 'coetu pressionis' moventur et ducuntur atque non raro Episcopo dioecesano sese opponunt. Unde clare definiatur oportet quaenam sit pars Consilii presbyterii in regime dioeceseos, quaenam vera eius coniunctio cum presbyterio (coniunctio potius est sacramentalis unionis quam democraticae delegationis et repraesentationis), quomodo melius componatur."



This demonstrates a consciousness of the necessity for involvement of the presbyteral council in all aspects of governance. Increasing multiplication of councils is not the objective of the new law in regard to diocesan management and pastoral care of the People of God. The presence of an episcopal council, a college of consultors, a presbyteral council (or senate), a chapter of canons, and then a diocesan pastoral council, seems unnecessarily complicated. One possible danger is that a number of consultative bodies could encourage more autocratic decision-making. There still remained some degree of lack of definition of the respective roles of each organism, and former bodies either kept their status or the bishop tended to continue governing without a genuine consultative attitude. Again, J. Beyer has summarised this attitude:

In Vatican II, there was a certain evolution of things, which is easily recognized by all, but it was not a unique and total revision. Many conciliar commissions treated the same matter and proposed various means of solution. Today it is of great importance that a simpler diocesan structure be set up, that there be greater cohesion of offices, and that it may be more clearly stated which is the most important collegial presence: the cathedral chapter or the presbyteral council, the episcopal council or the presbyteral council. The duties and responsibilities of the diocesan bishop himself are to be better defined in these bodies. [21]

21. Ibid., p. 487: "In Concilio Vaticano II certa fuit rerum evolutio, quae omnibus facile agnoscitur, at non fuit unica et totalis revisio. Plures commissiones Concilii de eadem materia egerunt atque varias inierunt solutionis vias. Magni momenti est hodie, ut simplicior evadat dioeceseos structura, maior sit officiorum coadunatio, clarius dicatur

4. The 1980 Schema and 1981 Meeting of the Code Commission

The 1981 meeting of the Code Commission saw more questions asked about the role of the college of consultors. It was suggested that the membership of this college not be restricted to priests on the presbyteral council, because "[...] the functions of the two colleges are of a diverse nature just as are the manner and time for which members are appointed to them." [22] This did not prevent another objection's being raised against the existence of both the consultors and the chapter, with the suggestion again that the consultors were redundant, but the discussion was not pursued. [23] In smaller dioceses, however, it might be possible, even though not specifically prescribed for in the law, to have the functions of the college assumed by the entire presbyteral council.

quaenam sit instantia collegialis maior: Capitulum cathedrale vel Consilium presbyterii, Consilium episcopale vel Consilium presbyterii. Melius ipsius Episcopi dioecesani definiantur in his Coetibus munus et responsibilitas."

22. "[...] functiones duorum collegiorum sunt diversae naturae sicut etiam modus et tempus ad quod ipsorum membra nominantur." The idea was rejected by the Relator because it seemed that the restriction should apply for cohesion in diocesan administration; in large dioceses, the difficulty of convening the presbyteral council at short notice and of dealing with sensitive questions "with prudent discretion" gave further cause for the limitation. Discussion is in Relatio, ad canon 422, §1, p. 118.

23. Cf. ibid., no. 4, p. 118.

Another question raised on the same occasion concerned what should be done in the case of a vacant see where the five year term of the consultors had expired, without a new college having been constituted. The simple response was that the college continued its duties until a new one could be constituted.[24]

Once again, concern was evident in the matter of reducing the power and the role of the cathedral chapter, since the question was then raised as to whether the college of consultors and the cathedral chapter could be united in one college for some considerations, as when a new bishop takes canonical possession of his diocese in the presence of the consultors[25] or when a coadjutor or auxiliary bishop presents the letter of appointment.[26] The college of consultors is to be present in such circumstances. Merely to combine the two bodies in such situations would appear to be counter-productive to the activities of both, as is indicated by the Relator's response. He pointed out, however, the provision for episcopal conferences to confer the duties of the college of consultors on the cathedral chapter, if such seemed opportune.

24. Cf. ibid., no. 2, p. 118.

25. Cf. ibid., ad canon 349, §3.

26. Cf. ibid., ad canon 371, §§1 and 3.

The independence of the presbyteral council and the college of consultors was firmly asserted in response to a request that the size of the college and its duration in office be regulated locally by the presbyteral council's statutes, as a sign of unity and collaboration between them. The Relator insisted on retention of the general law concerning the matter.[27] This is one of the primary questions to be investigated in providing a purpose for the college as separate from the presbyteral council in competence and in assessing the relative degrees of interdependence and independence of the two.

The final issue raised in the Commission is probably still the most difficult one to answer, since it concerns the functions proper to each body. The Relator denied the possibility of confusion, arguing that the college of consultors was more limited, in that its functions were determined solely and strictly by law, and that it had no further responsibilities than those outlined in the canons.[28] The promulgation of these norms in the new Code reflected the outcome of these discussions, as can now be seen in an examination of the text of canon 502 of the 1983 Code.

27. Cf. ibid., no. 5, p. 119.

28. Ibid., no. 6, p. 119.

B: The college of consultors; canon 502

The single canon concerning the establishment of the college of consultors is canon 502:

§1. Some priests are to be freely selected by the diocesan bishop from among the members of the presbyteral council to constitute a college of consultors; their number is to be not less than six nor more than twelve; the college is established for a five year term, and is responsible for the functions determined in the law; when the five year term is over, the college continues to exercise its proper functions until a new college is established.

§2. The diocesan bishop presides over the college of consultors; if the see is impeded or vacant, the one who takes the place of the bishop in the interim presides, or, if such a person has not yet been established, the priest who is oldest in ordination in the college of consultors.

§3. The conference of bishops can determine that the functions of the college of consultors be committed to the cathedral chapter.

§4. In apostolic vicariates and prefectures the functions of the college of consultors belong to the mission council mentioned in canon 495, §2, unless the law determines otherwise. [29]

29. Canon 502. §1. "Inter membra consilii presbyteralis ab Episcopo dioecesano libere nominantur aliqui sacerdotes, numero non minore quam sex nec maiore quam duodecim, qui collegium consultorum ad quinquennium constituent, cui competunt munera iure determinata; expleto tamen quinquennio munera sua propria exercere pergit usquedum novum collegium constituatur."

§2. "Collegio consultorum praeest Episcopus dioecesanus; sede autem impedita aut vacante, is qui ad interim Episcopi locum tenet aut, si constitutus nondum fuerit, sacerdos ordinatione antiquior in collegio consultorum."

§3. "Episcoporum conferentia statuere potest ut munera collegii consultorum capitulo cathedrali committantur."

A comparison with the six canons directly bearing on the diocesan consultors of the 1917 Code, reveals the fundamental change in the consultors' role in the 1983 Code. The advent of the presbyteral council has resulted in an overall reduction of the previous situations where the consultors' advice was required. The changes in the role of consultors are shown in the Appendix in tabular form, providing a comparison between the old and new Codes' requirements. The main common factor between the old and new consultors is the responsibility for diocesan governance in a vacant or impeded see, along with the right to elect a diocesan administrator, where necessary.

The relationship between the cathedral chapter and consultors is reversed, with the role of the chapter in diocesan governance now officially removed: "[...] it would seem that the cathedral chapter, without disappearing, had lost all ties with the exercise of governance." [30] The

§4. "In vicariatu et praefectura apostolica munera collegii consultorum competunt consilio missionis, de quo in can. 495, §2, nisi aliud iure statuatur."

In Codex Iuris Canonici, auctoritate Ioannis Pauli P.P. II promulgatus, Romae, Libreria Editrice Vaticanis, 1983. Trans. under the auspices of the CLSA, Washington, D.C., CLSA, 1983.

30. "[...] il aurait bien semble que le chapitre cathédral, sans disparaître, avait perdu tout lien avec l'exercice du gouvernement." R. PAGE, Les Eglises particulières, Tome 1, Montréal, Editions Paulines, 1985, p. 156.

chapter has only a subsidiary and liturgical role.

It is a "canonically separate entity"[31] from the presbyteral council; by contrast, no members of the college are ex officio, since the bishop is free to choose whomsoever he wishes from the presbyteral council. Appointment must be received formally in writing from the bishop (in accordance with canons 156 and 474). There is no obligation for him to appoint auxiliary bishops or the vicar general to the college; although this would seem advisable for cooperative leadership.

1. Nature: a college

As a "college", the consultors must meet in a group and not merely be consulted individually. This is a crucial change in terminology from the 1917 Code, where the term "coetus" referred to the group of diocesan consultors. As a "college", rather than a "council" or "group", consultation must be conducted with the whole group together. A principle of collegial existence is that the college functions as one and all members are bound by its decisions.[32]

31. J.A. ALESSANDRO, op. cit., p. 407.

32. These principles are set out in canon 119:

With regard to collegial acts, unless provision is made otherwise by law or statutes: ~

#1. If it is a question of elections, that action has the force of law which, when a majority of those convoked must be present, receives the approval of an absolute majority of

Even though it would seem preferable, and indeed, the intention of the law, that the presbyteral council meet regularly as a group, technically, the bishop could "hear" members on an individual basis, where he was required to consult. No such possibility is envisaged for the consultors, who must meet together on the issues defined by law, and also on any other matters prescribed by the bishop, because of the nature of a college. Perhaps particular law, under extenuating circumstances, such as long distances in a large diocese, could allow for members of the college to be

those who are present; after two indecisive ballots, the choice is between the two candidates who have obtained the greater number of votes, or, if there are several (with the same numbers), upon the two who are senior in age; after a third ballot, if the tie remains, the one who is senior in age is considered elected.

#2. if it is a question of other matters, that action will have the force of law, which, when a majority of those who must be convoked are present, receives the approval of an absolute majority of those who are present; if after two ballots it is a tied vote, the presiding officer can break the tie by his or her vote;

#3. what touches all as individuals must be approved by all.

Canon 119, #3 is reminiscent of Cyprian's dictum, cited in Chapter II, pp. 80-82, in relation to consultation, and reflecting the origins of the notion of collegial decision-making. That this canon uses the word approbari rather than probari points to a subtle difference in meaning. E. Kneal suggests the latter word - from traditional usage - tended to imply the need for unanimity and acceptance by all, rather than the intention of seeking evaluation. Unanimity is by far the most difficult and unlikely scenario in issues of governance or other matters to be considered. Cf. E. KNEAL, "Physical and Juridic Persons", in J.A. CORIDEN et al., eds., op. cit., p. 84.

convened by other means, such as telephone conference calls, when a matter requires urgent treatment.

Canon 127 is of key importance on this point, since it details the means by which collegial advice is to be given:

§1. When the law requires that, in order to perform a juridical act, a Superior requires the consent or the advice of of some college or group of persons, the college or group must be convened in accordance with canon 166, unless where there is a question of seeking advice only, particular or proper law provides otherwise. For the validity of the act, it is required that the consent be obtained of an absolute majority of those present, or that the advice of all be sought. [33]

An interesting and important fact to note is that the diocesan bishop is neither a voting member of the presbyteral council nor of the college of consultors, just as he was never a member of the cathedral chapter; he is therefore ineligible to vote on the matters on which these bodies are to advise him. It can be deduced from the law that when a person is to be advised by a group, he cannot be a member of that group. Thus, the Commission for Interpretation recently confirmed this interpretation and issued a negative response to the question of whether or not a Superior seeking the consent of a college or council could cast a vote, in reference to canon 127, §1. In particular, he may not cast a deciding vote; rather a majority of the group being

consulted must give its consent to a decision for the validity of a Superior's ensuing action.[34]

This response came in the wake of a suggestion of doubt as to the necessity for strict interpretation of canon 127, §1, in relation to the vote of a Superior in his council.[35] Nowhere in the Code is such a vote of a superior explicitly ~~excluded~~, but since the intention of councils and colleges is to provide counsel or consent, their vote may be seen as a form of counterbalance and control over a superior's proposals. It is therefore understandable that the Commission for Interpretation provides a strict interpretation of the canon.

In addition, while convocation of a college in canon law does not necessarily imply the physical presence of members, this is a requirement for elections, so that the election of a diocesan administrator would require that all the members of the college to be informed and summoned.[36]

34. Cf. PONTIFICAL COMMISSION FOR THE AUTHENTIC INTERPRETATION OF THE CODE OF CANON LAW, "De Superiore eiusque Consilio", in AAS, 78 (1985), p. 771.

35. Cf. R. SOULLARD, "Vote du supérieur dans son conseil", in Vie consacrée, 3(1985), pp. 188-189.

36. Canon 166 requires the one who presides over a college or group to summon all members. R. Hill provides the example of the invalidity of election of a diocesan administrator when the presiding officer according to canon 502, §2 fails to notify one or more of the consultors of the date and place of the election. The election must be rescinded and a new administrator appointed by the

On the question of juridic personality, the law does not specifically provide for this, as it does in other instances; it would therefore seem appropriate for the bishop to draw up a decree granting juridic personality, so that the rights and obligations of the members of the college are reinforced.[37]

2. Members

(a) Number

Numerically, the college's membership is to be between six and twelve priests inclusively, while the 1917 Code permitted a lower limit of four consultors in smaller dioceses. This would have seemed to have been a reasonable limit to continue, given that dioceses may vary so much in population and geographical size. But, it could be argued that the law is constitutive on this point, so that the 1983 upper and lower limits are strict and unvariable. Nevertheless, the fact that in vicariates and prefectures apostolic "at least three missionary priests" must be appointed by the Vicar or Prefect to constitute a "council" in place of the normal diocesan presbyteral council (canon 495, §2) suggests the possibility that smaller dioceses

metropolitan or senior suffragan bishop by promotion, according to canon 421, §2. Cf. R. HILL, "Canons and Commentary - Canons 124-203", in J.A. CORIDEN et al., eds., op. cit., p. 103.

37. CIC, 1983, canon 116.

might legitimately have a minimum of three consultors,[38] with the bishop dispensing from the requirement of minimum number.

Further support for this claim can be adduced from the identification of the functions of the college with those of the "council of the mission" (canon 502, §4), so that the mission council really doubles for which both organisms do in a diocese, even though the college and council normally have quite separate functions, as defined by the law. It has been argued that the change, from four members in the 1917 Code to a minimum of six members in the 1983 Code, suggests that the number is not of the "essence" of the college, but is such as to ensure its purpose, "which is to furnish consent or counsel to the bishop before he can place certain acts determined by law." [39] While the praxis of the Church has been to allow a minimum of four consultors, the possibility of a minimum of three has not been absolutely excluded. Mindful of the fact that the mission council is a different "college", the analogy here does not seem unreasonable to

38. Canonical opinion varies on this point. See J.K. PARAMPATH, "Dispensation from Number of Consultors and from Length of Term of Office in a Small Diocese Formerly an Apostolic Vicariate", in W. SCHUMACHER, ed., Roman Replies and CLSA Advisory Opinions, Washington, CLSA, 1985, pp. 30-34, argues for this interpretation, whereas R. Page opts for the minimum of six as constitutive and therefore not dispensable by the bishop, in R. PAGE, op. cit., pp. 157-159.

39. J.K. PARAMPATH, loc. cit., p. 32.

make in extenuating circumstances, given the similar functions it has to the college of consultors, as well as to the presbyteral council.

On the other hand, justification for exceeding the maximum of twelve members could be seen as more likely to be constitutive, because of the obvious intention of the legislator that the college be a relatively small inner circle.

(b) Term of Office

A problem arises when members initially chosen as consultors from the presbyteral council lose their positions on the latter through expiry of term or, if they are members ex officio, through loss of office. While the term of office for consultors is explicitly stated to be five years, members of the presbyteral council may have short terms, depending on the statutes.

With this possibility, there is the risk of the two bodies becoming polarized in time, through increasingly separate membership. For, while the college of consultors might maintain continuity in administration for the good of the diocese, the council could become detached from the more important aspects of decision making. Resentment and conflict could be envisaged as possible outcomes of such a scenario, were there not to be some defined means of ensuring ongoing

continuity in common membership of both groups. In addition, it seems that the provision of law that consultors initially come from the presbyteral council was a means of reducing tensions and promoting cohesion between these organisms of the presbyterium.

The change from three to five year terms for members of the college as found in the 1917 Code has been taken by some to suggest that this term is not an "essential constituent" of the college, and is therefore subject to dispensation in extraordinary circumstances (as allowed by canon 90, §§1 and 2).[40]

The turnover of members of the presbyteral council could be staggered, so that, apart from any ex officio changes on it, periodic changes in elected and appointed membership would provide for minimal disruption of operation. Some formula could be devised to ensure that at least half of the consultors be current members of the council. Just as the council is representative of the presbyterium, so the college should be - to some extent - representative of the council. Representativity is not an absolutely quantifiable measure, but the implication of the law is that the council should reflect the spectrum of thought and experiences within the presbyterium. The law, if applied literally, could allow too much leeway on the bishop's part to choose his own

40. Cf. ibid., pp. 32-34.

supporters. The discussions of the Code Commission indicate a fear of democratic tendencies at times, but representation is more than a feature of a democratic organization; it is a means of achieving effective consultation, resulting in greater opportunity for harmony within the presbyterium and in the diocese as a whole.

The Pontifical Commission for the Authentic Interpretation of the Code of Canon Law issued a response on the status of priests whose term of office on the presbyteral council had expired. It confirmed that a consultor does not lose his position in the college when he ceases to be a member of the presbyteral council. The response also stated that a consultor did not have to be replaced in the college if, for some reason, he ceased to be a member. The exception to this was if the number of consultors fell to less than the legal minimum.[41] At the same time, in the light of the harmony and coordination to be sought among councillors (senators) and consultors, replacement could take place. The response merely states that it is not obligatory for the bishop to do so.

The fact that the college of consultors has its roots in the presbyteral council should overcome the difficulty in

41. Cf. PONTIFICAL COMMISSION FOR THE AUTHENTIC INTERPRETATION OF THE CODE OF CANON LAW, in L'Osservatore Romano, October 15, 1984, p. 12. Also in AAS, 76(1984), pp. 746-747, in relation to canon 502, §1.

determining competence, if the bishop makes his selection of consultors in a spirit of cooperation, with a view to the smaller body's still being representative, as well as au fait with the activities of the larger group. At the same time, representation of the presbyterium in the college is not so much the purpose of the law, as is direct assistance to the bishop in specific matters of governance. That he may select his own consultors, even though from the presbyteral council, confirms the freedom or "latitude" the bishop has in appointing his closest advisors from the presbyterium.[42] All the same, it is a contentious issue, and preference could still be given to attaining a cross-section of members for optimal input.

The duration of a consultor's term of office provides a certain degree of stability to diocesan governance and a means of continuity and consistency in following through on policy, programs and decisions, particularly in the financial area, where programs often need to be initiated on a long-term basis. Expiration of membership of the presbyteral council is not linked with that of the college, as

[...] the idea was to provide for a special group the bishop could consult about delicate matters of finance, and which would carry the

42. Cf. L. MARTINEZ-SISTACH, "El colegio de consultores en el nuevo código", in Revista española de derecho canónico, 39(1983), p. 295.

responsibility for the diocese when the see was vacant. [43]

A consultor, then, remains in office as a member of the college for his full five year term; it is not necessary that he remain a member of the presbyteral council. As J. Provost indicates: "The intent of the law is that they be named as a body for five years." [44]

Of Provost's three proposed solutions to the problem of coordinating terms of office in a "normal" diocese, the best could well be to make consultors ex officio members of the presbyteral council when their term on it has expired, as long as there are checks to ensure that the presbyteral council does not become "top heavy" with ex officio members over time. The law guards against this occurring, in that it requires that "about half" of the members of the presbyteral council be "freely elected" (canon. 497, §1). Local legislation must be drawn up to account for such contingencies, however.

Another possible arrangement suggested was that the presbyteral council and the college have co-terminous "lives", but this is not implicit in the law, and five years would appear to be too long a period to have exactly the same

43. J.H. PROVOST, "Canon 502", in W. SCHUMACHER, op. cit., p. 28.

44. Ibid.

members on a presbyteral council, which needs the dynamism and input of new members on a more regular basis, particularly in a diocese with a relatively large number of priests in different situations and forms of ministry. The desire and necessity for representativity implies more frequent change in membership.

At the other end of the spectrum is the third suggestion that ultimately it does not matter whether or not there are any consultors on the presbyteral council, as the two are autonomous bodies with separately defined functions. While this may be true in theory, the demands of coordination and collaboration, as well as the intention of the law, point to a desire for some degree of common membership. That vacancies in the college need not be filled if the current number is still six or more, allows for more balancing in replacement, renewal and coordination of membership.

The proposal of having a college of consultors constituted with seven or eight members could well be the preferred option, since a vacancy would not require immediate replacement. A new college could then be constituted at a later date. It is not stated in the canon that the consultors are to be appointed as a college at the one time, or whether terms may be staggered for rotation of members. Either interpretation seems possible.

The canon wishes to provide for continuity, with no break in the existence of the college, so that notice of termination of office after the five years must still be given in writing by the bishop to the individuals concerned.[45]

It would also be possible for a religious member of the presbyteral council to be chosen as a member of the college of consultors, although perhaps some assurance of stability of such an appointment by his Institute would be advisable.

3. Role of the diocesan bishop

The bishop presides over the college of consultors, just as he presides over the presbyteral council (as in canon 500, §1), and the diocesan pastoral council (canon 514, §1), but without being a direct member of either. This does not mean he must chair the meetings personally; he may delegate this responsibility. While there are strong arguments against the bishop's chairing the presbyteral council's meetings because of its role in advising him in all manner of diocesan affairs, the matter is different with the consultors: in view of the more specific, limited and sometimes confidential

45. This derives from the stipulation of canon 186, which states that any office conferred for a given term is retained until written notification to the contrary is received from the competent authority.

nature of the subjects to be treated by the college for the advice and consent of the consultors, it might be opportune, but certainly not necessary for the bishop to chair meetings. It seems somewhat paradoxical that the bishop not be a member and yet have so much control over the matters to be treated, but the system does provide valuable checks and balances in the exercise of authority.

4. The situation in apostolic vicariates and prefectures

The last paragraph of the canon makes provision for those Churches which are not dioceses, but which are their equivalent, namely apostolic vicariates and prefectures. The mission council of canon 495, §2, is also to fulfil the duties of the college of consultors, a condition which raises questions about the possibility of the identification of the presbyteral council and college of consultors in certain circumstances in some dioceses.

C: The role and duties of the college of consultors

While canon 502 describes the college of consultors, following the more detailed treatment given the presbyteral council, many other canons throughout the Code refer to situations where the college must intervene.

1. The vacant or impeded see

The presbyteral council ceases to exist when the see

is vacant; the college of consultors comes to the fore at that moment, albeit briefly. The reasons for the demise of the presbyteral council are theological and canonical: the bishop is an integral part of this organism representative of the presbyterium, but without his presence, the college provides continuity of governance in the interim, assuming the duties of the presbyteral council (canon 501, §2). The principle "when the see is vacant, nothing is to be innovated" (sede vacante, nihil innovetur)[46] reflects the limitations on jurisdictional power of the individual or body governing temporarily in this eventuality.

During the vacancy of the see, the college of consultors automatically assumes governance in the absence of any auxiliary bishops, unless the Holy See has decreed otherwise. If someone, in accordance with the law, has assumed interim responsibility, then he must convoke the college, which is to elect the diocesan administrator (canon 419).[47] The election must occur within eight days of

46. CIC, 1983, canon 428, §1; CIC, 1917, canon 436.

47. Cf. CIC, 1983, canon 419: "When the see is vacant; until the establishment of a diocesan administrator, the governance of the diocese devolves upon the auxiliary bishop, or if there are several, upon the senior auxiliary bishop in terms of promotion, or if there is no auxiliary bishop, upon the college of consultors, unless the Holy See has provided otherwise; whoever assumes the governance of the diocese in this fashion is to convoke without delay the college which is competent to designate the diocesan administrator."

notice being received of the vacancy of the see (canons 421, §1 and 502, §3). [48]

If the see is impeded and there is no coadjutor, the consultors have the responsibility of selecting a priest to govern the diocese, if no list has been left by the bishop as to who should govern in such circumstances (canon 413, §2). [49]

However, when the see is vacant, diocesan governance is to be assumed by the senior auxiliary bishop, the sole auxiliary bishop, or the college of consultors, in that order, depending on local circumstances (canon 419). This is the case until the diocesan administrator is elected by the consultors, or, appointed - if he was not elected within the prescribed canonical time, appointed. Any issues to be treated by the consultors in the interim period - prior to appointment of the administrator - require the normal application of law to the role of the consultors. When the college assumes governance for any time, its senior member by ordination is to preside, but presumably does not lose his

48. CIC, 1983, canon 421, §1: "Within eight days of receiving the notice of the vacancy of the episcopal see, the diocesan administrator, that is, he who governs the diocese in the interim, must be elected by the college of consultors, with due regard to the prescription of canon 502, §3."

49. CIC, 1983, canon 413, §2. "If there is no coadjutor bishop or he is impeded, and the list mentioned in §1 is also lacking, the college of consultors is to select a priest who is to govern the diocese."

voting rights, as the college is to govern as a unit; a member of the college thus retains voting rights.[50]

2. Situations requiring consent

Since the requirements for obtaining the consent of the college of consultors is more serious than for simple consultation, particularly when the validity of episcopal acts is at stake, five separate situations where consent is required will first be considered. Three concern the diocesan administrator's power: he requires the college's consent 1) to excommunicate or incardinate a cleric (canon 272) after a year's vacancy of the see; 2) to remove the diocesan chancellor or other notaries (canon 485); 3) to grant dimissorial letters for the ordination of the secular clergy (canon 1018, §1, #2). These could be seen as rare and isolated cases, and not really a major part of the responsibilities of the college.

In addition, the diocesan bishop is obliged to have the college's consent, as well as that of the finance council, before he performs certain acts of extraordinary administration, which are to be defined by each bishops' conference (canon 1277).[51] This is a means of protecting the bishop, who might not have the expertise or experience in

50. Cf. canon 119.

51. The Australian Episcopal Conference has defined the following as examples of acts of extraordinary

financial matters to make such decisions without prior consultation. In certain cases of alienation of Church property, three consents are required: not only that of the college of consultors, but also of the finance council and of the parties concerned in the transaction (canon 1292, §1). The limits within which this requirement of the law is to apply are to be defined by the episcopal conference, with the Holy See's permission necessary as well, if the transaction is above the maximum amount authorized (canon 1292, §2).[52]

administration: "(a) An act of administration by which a diocese would be committed to an annual repayment, principal and interest, in excess of 50 cents per capita of Catholic population or \$100,000, whichever being the greater; (b) An act of administration by which a diocese would forgo an annual sum equal to 20 cents per capita of Catholic population or \$40,000 whichever being the greater. (Both figures to be indexed to inflation rate: the base rate being 1984)." From AUSTRALIAN EPISCOPAL CONFERENCE, "Decree 10: Acts of Extraordinary Administration (Canon 1277)", in CLSANZ Newsletter, Melbourne, Spring, 1985, p. 97.

52. The Australian norms set the following limits for alienation: "The maximum sum for alienation as mentioned in canon 1292, §1 is \$2,000,000 Australian, such sum being indexed in accordance with the annual rate of inflation as determined by civil courts which govern industrial awards.

The minimum sum for alienation as mentioned in canon 1292, §1 is \$10,000 Australian, also indexed in the same manner." From AUSTRALIAN EPISCOPAL CONFERENCE, "Decree 11: Alienation (Canon 1292)", in op. cit., pp. 97-98. It is also specified that the leasing of goods for periods in excess of 9 years require the consent of those mentioned in canon 1292, §1.

The Canadian norms in this regard are thus: "In accordance with the prescriptions of canon 1292, the CCCB hereby decrees that the minimum amount applicable in cases to which the canon applies will be 10% of the maximum amount approved by the Conference." From CANADIAN CONFERENCE OF

3. Situations requiring consultation

The occasions calling for consultation of the college of consultors are few. The two occasions where consultation is specified deal with financial administration. Firstly, the finance officer may be appointed or, within his five year term of office, removed by the bishop, only after "listening to the college of consultors and also the finance council" (canon 494, §§1 and 2).[53]

The other case requires consultation of the same two bodies: "to perform the more important acts in the light of the economic situation of the diocese" (canon 1277).[54] The presbyteral council is only mentioned once in the 1983 Code

CATHOLIC BISHOPS, "Decree No. 10: Alienation of Church Property", in Official Documents, No. 537. On the other hand, the minimum for alienation is set at \$50,000 Canadian, below which the bishop may act alone; between values of \$50,000 and \$100,000, the bishop "needs to consult" the finance council and the college of consultors; between \$100,000 and \$1,000,000, the consent of these bodies and the interested parties is required; over \$1,000,000, in addition to the obtaining of these consents, the Apostolic See must consent for the validity of the transaction.

In comparison, it could be said that the Australian norms are more flexible in that they allow for inflation and thus periodic adjustment of the figures.

53. CIC, 1983, canon 494, §§1 and 2. The Latin auditis implies consultation before the decision is taken.

54. CIC, 1983, canon 1277: "The diocesan bishop must hear the finance council and the college of consultors, to perform the more important acts of administration in light of the economic situation of the diocese; he needs the consent of this council and that of the college of consultors in order to perform acts of extraordinary administration besides cases specifically mentioned in universal law or in the

in regard to financial matters: it is to be consulted, as well as the finance council, before the bishop applies a tax to public juridic persons (canon 1263). Earlier drafts had also provided that it was to be concerned with clergy "salary and benefits", [55] but this was dropped during the review process.

The college's role is to be more closely associated with diocesan financial transactions, such as alienation of church property within defined limits of value, and those other matters where its consent is required. Nevertheless, beyond the stipulations of the law, the presbyteral council could at least be informed, but preferably be consulted specifically beforehand, on matters of major financial impact on the diocese. Alienations and acquisitions are issues which may affect the whole diocese, and incur heavy responsibility on those involved in the process of decision-making.

4. Other duties

A number of other canons refer to the activity of the consultors. A bishop takes canonical possession of a diocese

charter of a foundation. It is for the conference of bishops to define what is meant by acts of extraordinary administration." Examples given in the Canadian decree are: the sale of church land and buildings, entering into long-term loans or mortgages, entering into long-term leases, issuing bonds and debentures, and transfer of corporate ownership to lay boards. Ibid., Decree No. 10, Official Documents, No. 537, p. 2.

55. ES I, 8. Cited in Relatio, p. 272.

when the Apostolic letter of appointment is presented by him or a proxy to the college of consultors (canon 382, §3).[56] Similarly, a coadjutor bishop takes office immediately, on following this procedure (canon 404, §1). The college witnesses the profession of faith, to be made by the diocesan administrator before he assumes his duties (canon 833, §4).[57] This prescription carries with it a broader inference of the college's responsibility towards protecting the faith of the local Church and ensuring the continuity of its communio and mission through leadership.

In regard to the selection of bishops, there is one mention of the consultors having a role, but as individuals rather than as a college. In compiling the ternum, the papal Legate is to "hear the views" of "some members of the college of consultors and of the cathedral chapter", among others (canon 377, §3).

This outline delineates the general areas of responsibility of the college of consultors as defined by the 1983 Code.

56. Canon 382, §3. "A bishop takes canonical possession of a diocese as soon as he personally or through a proxy has presented the apostolic letter to the college of consultors, in the presence of the chancellor of the curia who officially records the event [...]."

57. Canon 833: "The following persons are obliged to make a profession of faith personally in accord with a formula approved by the Holy See: [...] #4. in the presence of the college of consultors, a diocesan administrator."

5. The possibility of identity of college and council

There does not appear to be any absolute reason as to why the presbyteral council and the college of consultors could not be identical in smaller dioceses. While the prescriptions of law are for two separate bodies, linked through a degree of common membership, no prohibition or intrinsically negative reasons against this possibility are identifiable. As has been discussed, simplification of the number and processes of consultative bodies could well lead to their more effective operation and better perception among those they represent. As B. Rossi has put it:

It was not the intent of the Second Vatican Council to further complicate Church government by adding new structures. Then, by retaining two separate bodies, a bishop will necessarily give more importance to one than to the other. Almost invariably, it will be the consultors, because of their longer tenure in office, and the fact that they are personally selected by the bishop, who will be the most important, and then the members of the presbyteral council will feel secondary, that their advice is not taken seriously, and so will give advice with less evaluation. [58]

Were the two bodies to be the same, the presbyteral council would cease in name during the vacant see, but continue solely as the college of consultors. Perhaps R. Page's description of the relationship between the two bodies

58. B.A. ROSSI, Priests' Senates: Canadian Experiences: A Study of the Constitution and Development of Presbyteral Councils in the Anglophone Provinces and Territories of Canada in the 10 Years Following "Ecclesiae sanctae", Rome, Edizioni dell'Urbe, 1979, -pp. 276-277.

best expresses the situation: while the two are not "essentially" different, "existentially" they seem to be.[59] In other words, a similar theological foundation for the existence of presbyteral representation and consultation on the presbyteral council can also be applied to the college of consultors. The primary existential differences are defined by the law.

While the differences between these organs may be viewed as more pragmatic in terms of functions, the Commission preparing the new Code was insistent on the fact that, in normal circumstances, "the college of consultors is an independent organ from the presbyteral council." [60] This implied that the nature of the college was somehow different, but without this being specified, apart from the lack of a requirement for statutes outside the universal law. Certainly, during the vacancy of the see, the college comes into its own with the demise of the presbyteral council, but its ongoing functions are significant, and it would not be inconceivable to find separate statutes drawn up for the college in some dioceses.

One serious problem arises with this variation of role, even though there is no explicit exclusion by law.

59. R. PAGE, Les Eglises particulières, p. 160.

60. Communicationes, 14(1982), p. 218.

Identification of the two bodies does not seem to be contrary to the "spirit" of the law, which is exhortatory in terms of consultation and cooperation, but a new bishop is free to reconstitute the presbyteral council, while the consultors remain in office. It would therefore be necessary to devise some means of smooth transition in membership, a procedure which is not addressed in the law.

Private matters could be entrusted to either body with the understanding that discretion was required. Terms of office would have to be revised by local law in such a case, as the law also suggests some regularity in elections and replacement of members; this would be done best periodically and in rotation, so that continuity in approach and planning is assured - mindful of the bishop's right to disband the council, but not the college, once constituted.[61]

Speaking of the relationship between the new college and the council, the former's subordinate role has been described in these terms:

The senate, however, is more deeply rooted in the ongoing reality of the diocese. Not only is it preeminent in advising the bishop. It also serves to express the fraternity and mutual concerns of the presbyterium. Unlike consultors who by definition are the bishop's men, the senate relates to all the presbyterium, bishops and priests together. Pastorally, the senate is where he should listen to his priests, consult them and have dialogue with them on those matters

61. Cf. CIC, 1983, canon 501, §3.

which pertain to the needs of pastoral work and the good of the diocese. [62]

Any extra duties given the consultors by the bishop would not be due to their role in the college as such. Nevertheless, while their formal role is strictly limited by the law, it is open to expansion beyond the letter, in matters and circumstances where requested by the bishop.[63] For a diocesan bishop to restrict their role simply to that foreseen by universal law seems somewhat limiting. A theological basis for the consultors - in regard to collegiality and communion - as for the presbyteral council, implies a broader definition of their role as a college, beyond the literal prescriptions of law, to include any extra requests made of them by the bishop. There is nothing to prevent the bishop's giving added duties to the college, or consulting the members on matters of importance outside those specified by the law, but such would be in an advisory capacity.

62. J.H. PROVOST, "The Working Together of Consultative Bodies - Great Expectations", in The Jurist, 40(1980), p. 272. As for terminology, the usual term given to the presbyteral council in Australia, America and English-speaking Canada is "senate", whether "priests' or bishop's senate." The direct latin translation is used in this study, however, as there is so much variety in different dioceses.

63. Cf. R. PAGE, "Le Conseil presbytéral et la révision du code", p. 373; also ID., "Les Eglises particulières", p. 156.

D: The college of consultors and other diocesan organisms

1. The college of consultors and the diocesan synod

With the post-Vatican II enthusiasm for broader involvement of the People of God in Church governance, the diocesan synod has been seen as one means whereby this goal might be realized, in addition to the contribution of the other post- and pre- conciliar structures. As was declared at Vatican II:

This sacred Ecumenical Synod expresses its earnest hope that these admirable institutions - synods and councils - may flourish with renewed vigor so that the growth of religion and the maintenance of discipline in the various churches may increasingly be more effectively provided for in accordance with the needs of the times. [64]

Similarly, the "Directory on the Pastoral Ministry of Bishops" emphasised the place that a periodic synod should hold in the life of the local church:

The diocesan synod, which is convoked and moderated by the bishop and to which the clergy, religious and laity are summoned according to the norms of law, is the assembly in which the bishop - using the help of experts in theology, pastoral and law, and drawing upon the advice of the community's various associations - officially fulfils his function and ministry of feeding the flock entrusted to him, by adapting the laws and norms of the universal Church to local conditions, by pointing out the policy and program of apostolic work in the diocese, by resolving problems encountered in the apostolate and administration, by giving impetus to projects

and undertakings, and by correcting errors in doctrine and morals if any have crept in. [65]

The 1917 Code legislated for diocesan synods to be held every ten years, and was weighted heavily towards the sole authority of the bishop; [66] the laity did not have any active role. Tradition had prevented lay involvement as a means of limiting political interference in ecclesiastical affairs. [67]

The legislation was not observed in many dioceses, and diocesan synods were generally more perfunctory occasions than effective legislative means. The models of the Church, in the light of Vatican II, are now more diverse, and the source of unity of the People of God is seen to reside more in the emphasis placed on the community or communio dimension, a community in need of organization and structures. This notion of communio is favored by many theologians as expressing most comprehensively the "essence and unity" of the Church:

65. Directory on the Pastoral Ministry of Bishops, n. 163. On diocesan synods, cf. also: I. FURER, "De Synodo Dioecesana", in Periodica, 62(1973), pp. 117-131; P.W. COLLINS, "The Diocesan Synod - An Assembly of the People of God", in The Jurist, 33(1973), pp. 399-411; J.A. CORIDEN, "The Diocesan Synod - An Instrument of Renewal for the Local Church", in The Jurist, 34(1974), pp. 68-93; also R. NAZ, "Synode", in Dictionnaire de droit canonique, t.7, Letouzey et Ané, Paris, 1965, cols. 1134-1140.

66. Cf. CIC, 1917, canons 356-362.

67. Cf. P.W. COLLINS, loc. cit., p. 403.

It implies a sharing and contributing, a fellowship and solidarity among all the members of the local Christian community which is properly expressed in a periodic assembly wherein the members have voice and vote, at least representatively. [68]

These elements, then, should be reflected, it seems, in an institute such as a diocesan synod, and some form of lay representation is essential.

The 1983 Code's renewed call for regular diocesan synods, without specification of frequency, is a recognition of their significance, but the onus is on the bishop to ensure they are held in his diocese. To reflect the necessity for episcopal leadership of the synod, the law states that the synod cannot be continued during a period of vacancy of the see. The canons broaden the consultative role and call for involvement of a wide range of members of the local Church, the specifications for which are protracted and detailed. [69]

(The college of consultors is not referred to explicitly in the canons on the diocesan synod, but their implicit responsibility in helping prepare the agenda and participating in their role as members of the presbyteral council, goes without saying. The types of issues which can

68. J.A. CORIDEN, loc. cit., p. 84.

69. CIC, 1983, canons 460-468 deal with the diocesan synod.

be considered are unlimited.[70]

The question of the relationship of the synod with other diocesan councils has to be considered. The synod should be a relatively infrequent event, perhaps occurring every ten years or so - as prescribed in the 1917 Code - since the different diocesan councils are able to provide for the ongoing direction of policy and the running of the diocese, through their assistance to the bishop. The synod could be seen as a body of review and vision for the future, in setting long term goals and directions. The occasion of a synod has been attributed even more importance than the activities of other diocesan bodies by some canonists,[71] even though it is only periodic, and by its very nature, limited in effecting ongoing change unless the permanent bodies apply its conclusions according to the bishop's direction. A newly instituted body such as the presbyteral council, has been described as "some type of permanently

70. Cf. J. A. CORIDEN, loc. cit., p. 87; he provides a typical range of possibilities such as promoting communication, advancing religious education and formation in faith, heightening consciousness of the local church, stimulating research and planning, studying real needs, setting goals, reaching consensus on policies, coordinating diocesan structures and agencies, correcting abuses with the ultimate goal of "manifesting more vividly the love which is to characterize the followers of Christ." This might seem an idealistic view of what could be achieved, but it provides a theoretical basis for goal-setting in a diocese.

71. Cf. A. BOCQUET, "Du presbyterium au conseil presbytéral", in Revue de droit canonique, 20(1970), p. 105.

established synod",[72] but the synod itself is distinctive in its broad representation of members and views.

2. The college of consultors and the diocesan curia

A further diocesan entity to be considered in its relationship to the college of consultors is the curia, which, in the 1917 Code, was defined as consisting of those who help the bishop in the governance of the diocese, including the vicars general, officialis, chancellor, promoter of justice, the defender of the bond, the synodal judges and examiners, the parish priest consultors, auditors, notaries, couriers and "constables",[73] all appointed by the bishop. This disparate group did not form a body as such, each person having specific functions prescribed by law. However, the 1983 Code broadens the definition thus:

Canon 469: The diocesan curia consists of those institutions and persons which furnish assistance to the bishop in the governance of the entire diocese, especially in directing pastoral activity, in providing for the administration of the diocese and in exercising judicial power. [74]

This definition elaborates upon the functions of governance in more specific terms, so that it "includes especially the direction of pastoral activity, the

72. M. PAQUETTE, Les conseils presbytéraux au Québec, p. 196.

73. Cf. CIC, 1917, canon 363.

74. CIC, 1983, canon 469.

administration of the diocese as a juridic person, and the exercise of judicial power." [75] In accordance with Vatican II teaching, the role of governance was expanded juridically beyond diocesan administration to include broader aspects of pastoral activity. [76] The exact composition of the curia is now left to the diocesan bishop to determine, with most diocesan councils as separate, but closely associated with the curia, which "[...] ought to be the means for studying, planning and carrying through the pastoral program which the bishop weighs and ponders together with his councils. [77]

In its encompassing of the individual offices and organs of diocesan governance, then, the curia's concerns are not merely bureaucratic, but also pastoral - in that the policy and decision-making processes are a complex of many deliberations under the bishop's final direction. The curia is to implement these decisions through its various members and organisms. In itself, it still has no autonomous being as a "college" or entity which meets in its own right.

a) The episcopal council

One part of the curia is the episcopal council,

75. J. ALESANDRO, op. cit., pp. 382-383.

76. Cf. CD, 27; cf. also Directory on the Pastoral Ministry of Bishops, n. 200.

77. Directory on the Pastoral Ministry of Bishops, n. 200.

consisting of the vicars general and episcopal vicars; it is a creation of the 1983 Code, with its primary concern being to coordinate "more suitable pastoral activity",[78] so that its purpose is not so much to reflect collegial activity, as the practical coordinating of the work of the local ordinaries, which is directly the responsibility of the bishop. This council is optional, but in a large diocese, a need for greater coordination would necessitate its existence, at least on an informal basis.

It could be envisaged that the college of consultors would have some common membership with this council, although this is not prescribed. There would be certain advantages in having the vicars general and episcopal vicars as members of the presbyteral council, and then some as consultors as well, depending of course on the size of a diocese. If coordination is desired, this could be a means of achieving it. The recommendations of the Commission for the Revision of the Code eliminated the possibility of having other clerics on the episcopal council and moved away from any suggestion of this council's having a governmental role, with the deletion of the phrases "and certain other clerics chosen by him (the bishop)", and "the orderly governance of the diocese", from the relevant canon of the 1977 Schema.[79] Hence, an

78. CIC, 1983, canon 473, §4.

79. Cf. Communicationes, 5(1973), p. 225, and dis-

underlying concern against duplicating structures and confusing competence is evident.

b) The diocesan finance council

The finance council is given particular emphasis in the 1983 Code. While it is set up as an independent body in the curia, it has restrictions placed on it. The 1917 Code prescribed that a "council of administration"[80] be set up by the diocesan bishop, who is to be president, along with two advisors, who are capable and knowledgeable of civil law; they were to be appointed by the bishop after consultation with the chapter or consultors. Often the consultors themselves actually constituted this body in many dioceses "to facilitate consultation on temporal matters." [81]

In not requiring consultation prior to appointment of members, the 1983 Code allows for more independence in this matter on the bishop's part:

Canon 492, §1: In each diocese a finance council is to be established by the bishop, over which he himself or his delegate presides, and which is to be composed of at least three members of the Christian faithful truly skilled in financial affairs as well as in civil law, of

cussed in ibid., 13(1981), pp. 116-117, concerning canon 285, §3. This is treated by J. ALESANDRO, op. cit., p. 385.

80. Concilium administrationis, referred to in CIC, 1917, canon 1520.

81. Cf. J.A. ALESANDRO, op. cit., p. 398.

outstanding integrity, and appointed by the bishop. [82]

Those appointed have a term of office of five years, which is then renewable,[83] thus ensuring stability and continuity in diocesan management of financial affairs. Even in the situation where a new bishop is appointed to the see during the five year period, the finance council members are to serve their full terms, unless the bishop, "for a grave cause", sees fit to terminate their office; however, he is to consult the college of consultors and the finance council before removing members within their set term of office.[84] The renewed emphasis on this council and its relative stability of membership, have been attributed to the fact that:

Given the communal nature of both the diocese and the parish, these are not duties that the canonical administrator is to exercise in abstraction, devoid of participation by other members of the pertinent community. This communal nature would seem to require in and of itself a consultation by the canonical administrator, within the membership of the public juridic person, concerning matters of financial administration. In addition to this implied duty of consultation, the law itself imposes certain obligations. For example, every diocese and parish must have its own financial council. [85]

82. From CIC, 1983, canon 492, §1.

83. CIC, 1983, canon 492, §2.

84. Cf. CIC, 1983, canon 494, §1.

85. A. MAIDA, and N. CAFARDI, Church Finances, and Church Related Corporations: A Canon Law Handbook, St. Louis, (Mo.), The Catholic Health Association of the United States, 1984, p. 32.

Earlier drafts of the canon defining the finance council emphasised the connection between it and the presbyteral council and the conference of bishops, but in the promulgated canon, the autonomy was referred to the local bishop primarily, given the restraints imposed on him regarding matters for consultation within the diocesan organization. Without the legislation specifying it, it would seem preferable that some representation from the college of consultors and perhaps also, the presbyteral council, be part of the finance council, to provide for what could be described as an "interdisciplinary" approach to involving pastoral and technical advisors in such areas,[86] as well as increasing cohesion between the separate groups.

The significance of this council is demonstrated by the fact that its consent is required along with that of the consultors in certain alienations - in fact, in all situations of alienation which require the bishop to seek approval before acting in this area. While the point has been made by some that the proliferation of consultative bodies has complicated matters unnecessarily,[87] it is desirable that a council for economic and financial matters be separate from the presbyteral council and the consultors, due to the

86. Cf. J.A. ALESANDRO, op. cit., p. 398.

87. Cf. B.A. ROSSI, op. cit., p. 284. Rossi's argument that economic advisors be brought in to be consulted by the presbyteral council on specific matters, rather than

specific expertise required by those giving counsel in the area. Cases of mismanagement or ill-advised financial decisions made through lack of expertise or ignorance could be documented in dioceses everywhere. As two canonists have put it:

The whole area of investment has been fraught with peril for the Church, either through reliance on well-meaning but incompetent counsel or through unilateral decision making without the proper information or training on the part of canonical administrators. The new code clearly implies an end to amateurism in the whole area of property management and investment [...]. On matters such as diocesan insurance policies, personnel policies, and property management matters as well, the diocesan bishop's need for expert advice of the diocesan financial council is apparent [...]. Given the communal view of the Church in our developing theology, as exemplified by the new code, this sharing of the administrative responsibilities of a diocese with qualified laypersons makes its own ecclesiological sense. [88]

With the consultors providing a safeguard and check against total autonomy of the finance council, the latter's functions should relieve those bodies concerned from the more pastoral aspects of governance and enable them to fulfil their purpose effectively. While some degree of common membership would be a contributing factor for cohesion and communication, there are limits to the number of

having a separate finance council, tends to deny the need for continuity and consistency in management, especially given the nature and variety of financial decisions to be made in a diocese.

responsibilities which individual members of the various councils can assume. With this problem in mind, some means of interaction between these councils is to be recommended.

Naturally, when the finance council is called upon to draw up an annual budget,[89] consultation with the different councils is essential, under the direction of the bishop, since he is ultimately responsible for policy and economic management. The direction for the appointment of a "finance officer" is a further indication of the professional way in which financial affairs are to be handled; like the finance council, this appointment is to be for a five-year term, unless there is good reason for curtailment of this period, and the consultors are "heard" before removal of the finance officer by the bishop.[90]

The 1917 Code's requirements for consultation prior to a bishop's making financial decisions were not as forceful in that the council of administration was only to be heard "in matters of greater moment." [91] The contracting of mortgages or debts,[92] the sale and exchange of sacred objects,[93]

89. Cf. CIC, 1983, cañon 493.

90. Cf. CIC, 1983, canon 494, §§ 1 and 2.

91. Cf. CIC, 1917, canon 1520, §3.

92. Cf. CIC, 1917, canon 1538, §1.

93. Cf. CIC, 1917, canon 1539, §2.

leasings of church property,[94] and release from paying annual rental on church property,[95] all had to be approved by the proper authority, which was usually the council of administration.

The 1983 Code's requirements concerning the finance council are more exacting, since, along with the college of consultors and the parties concerned, it must consent to alienation of goods or property, of a value above the minimum amount set by the bishops' conference, when the juridic person in question is subject to the diocesan bishop.[96] Consultation alone is required when a bishop wishes to impose a tax on juridic persons under his authority; in this case, the presbyteral council must also be consulted.[97] Nevertheless, where "more important acts of administration in the light of the economic situation of the diocese", are involved, the law calls for the consultors and the finance council to be "heard." [98] The finance council is to be consulted, along with the interested parties before the investment of endowments,[99] and also for the diminution of

94. Cf. CIC, 1917, canon 1541, §2.

95. Cf. CIC, 1917, canon 1542, §1.

96. Cf. CIC, 1983, canon 1292, §1.

97. Cf. CIC, 1983, canon 1263.

98. Cf. CIC, 1983, canon 1277.

99. Cf. CIC, 1983, canon 1305.

obligations, where it seems necessary.[100]

The financial independence of the diocesan bishop, then, is quite restricted by law, and diocesan financial management is best subjected to the judgement of experts. The bishop is thus freer to concentrate on his primary pastoral ministry of Word and sacrament. The critical requirement seems to be one of obtaining professional and competent personnel, who are accountable to the bishop and to the other bodies which are to have some say in the different aspects of management and administration of a diocese.

3..The college of consultors and the diocesan pastoral council

Despite its obvious importance in emphasizing the role of the laity in the Church, the diocesan pastoral council is optional; in representing the People of God, it should reflect their needs and concerns primarily in the pastoral arena. No specific relationship with the college of consultors has been defined in law, but the distinction between the presbyteral and pastoral councils has been described thus:

Just as the presbyteral council and pastoral council are different in nature, so the criteria for their choice of members are different, since these criteria flow from the nature of these organisms, and basically from their doctrinal foundation. The diocesan pastoral council groups

100. Cf. CIC, 1983, canon 1310, §1.

representatives of the whole People of God within a diocese because of the unity of its mission in the diversity of the conditions and states of life of its members. The presbyteral council represents the diocesan presbyterium in its organic unity with the bishop; this unity being exercised in a variety of pastoral undertakings and complementary apostolic situations. [101]

Communication between the pastoral council and the presbyteral council is vital for achievement of pastoral objectives. It would make sense to have at least one consultor as a member of these bodies, to avoid misunderstanding and misinterpretation of matters discussed, and more positively to promote cohesion of diocesan management, governance and pastoral care.

One difficulty in organizing a diocesan pastoral council is in deciding criteria for membership and representation of the People of God in the local church; R. Page points out the difficulties and proposes some methods for a broad spectrum of representation.[102] The diocesan pastoral council's role remains flexible, although its emphasis is in the area of pastoral concern, as prescribed in the same documents as those which first ordered that presbyteral councils be constituted. Its role was described in the following terms:

101. R. PAGE, The Diocesan Pastoral Council, trans. B. Prince, p. 138.

102. Cf. ibid., pp. 148-150.

It is highly desirable that in every diocese a special pastoral council be established, presided over by the diocesan bishop himself, in which clergy, religious and laity specially chosen for the purpose will participate. It will be the function of this council to investigate and consider matters relating to pastoral activity and to formulate practical conclusions concerning them. [103]

The need for coordination of the different groups was emphasized:

In matters affecting the council of priests and the pastoral council and the relations of these councils with each other and with the councils of the bishops established in virtue of the existing law, bishops, especially when they come together in conferences, should take counsel together and issue common regulations for the dioceses of the territory. The bishops shall also see that all the councils of the diocese are coordinated as well as possible, through precise definition of their competence, mutual participation of their members, through common or continuing sessions or by other means. [104]

There will be matters of common interest to both presbyteral and pastoral councils, but the role of consultors seems more restricted to administrative rather than pastoral matters. Even so, a survey of diocesan pastoral councils in America in the late 1970's, discovered a number of them involved in diocesan financial affairs, as, for example, in preparing the annual budget. [105]

103. CD, 27; cf. also ES I, 16.

104. ES I, 17.1.

105. S. MARCEAUX, The Pastoral Council, Rome, Pontificia Universitas S. Thomae de Urbe, 1980, pp. 153-172. The results of this survey are contained in S. Marceaux's study of diocesan pastoral councils in America.

Conclusion

The bishop's role is defined to some degree by his attitude towards leadership and his own authority, along with his personality, in regard to his capacity to consult effectively, particularly on matters beyond those requiring consultation by law. Here the value of managerial and administrative skills is evident, as applied in secular administration of organizations and business. On a practical level, applications can, and should, be made from these aspects of management and decision-making outside the Church, where efficiency, competence and stability of organization are necessary factors in government.

Management theory and organizational psychology should not be ignored in seeking effective coordination and consultation at all levels of decision-making. In particular, where there is the potential for confusion, which can readily lead to conflict between two groups with uncertain boundaries of competence and with common interests, means should be applied to reduce this likelihood. The suggestion has been made that four principles of reducing "intergroup conflict" should be applied to the structures involved in diocesan administration:

- The first involves ensuring that group members be introduced with a wholistic perspective of the diocese, so

that division is minimised and specific issues do not block the overall goal of working for the good of the local church.

- Communication between groups and individual members should be encouraged, so that decisions are not made in ignorance. Furthermore, serious deliberations should not be treated lightly, and implementation of suggestions or recommendations of these groups by the bishop when he has decided on a particular course of action is surely a means of reinforcement of their purpose.

- The staggered rotation of members is also recommended, as atrophy of ideas and a narrowness of interests can set in, as well as alienation from the mainstream of those supposedly represented, if there is no provision made for change or limits to individuals' periods of membership.

- Finally, the "win-lose" situation is considered counter-productive, when an official decision is announced even before consultation on a subject has been completed. Tokenism on the consultative level demoralises and discourages members, who take their role seriously.[106]

106. J.H. PROVOST, "The Working Together of Consultative Bodies - Great Expectations", loc. cit., p. 280. Provost uses the organizational psychology of Schein to the consultative process in the Church, applying concepts from: E.H. SCHEIN, Organizational Psychology, Englewood Cliffs, N.Y., Prentice Hall, 2nd ed., 1970, xix-138p.

The application of these four general principles would be a move in the direction of promoting consensus and a sense of unity in the diocese, even when some decisions might have to be made counter to the proposals of the consultative groups..

This examination of the role of the college of consultors demonstrates the advisability of having such a body as an independent entity, particularly in large dioceses. Its deliberations are to be conducted on those matters defined by law, with the bishop presiding and taking serious note of the advice given. Where consultation and consent are prescribed, the bishop cannot act validly on a matter without following the procedural norms.

As with the presbyteral council, consultation is to be conducted in an open spirit within the group, with comprehensive information provided on the subjects to be considered. Consultation of those ignorant of the facts of a given situation is an unacceptable approach.

Unquestionably, the college of consultors has an important role to play in diocesan life in assisting the bishop, providing continuity in the transitional period of the vacant see, where opportune, and being present as a stable collegial unit in the background of diocesan management and structures.

The definition of canon 502 is deceptively brief, but its prescriptions relate to many different parts of the Code.

Other set-ups could have been envisaged in the Code, but the one we have here seems to be appropriate and provides for efficient and confidential involvement in decision-making processes. Time alone will tell whether the organization envisaged in the new Code is indeed appropriate. In the meantime, it will be important to give the college of consultors the opportunity to show its usefulness and sense of responsibility in the governance of the diocese.

CONCLUSION

In the business world, much has been written about the search for effective management in terms of firm leadership, productivity, profitability and ensuring employee satisfaction and well-being. In recent decades, the tendency has been to move towards a more integrated approach to company management and employer-employee relations. In moving from a strictly hierarchical point of view, the newer style of governance could be described as more "democratic", in that the rank and file members of an organization, including those at the lower levels, are given consideration in their personal needs and interests. The realization that the well-being of an organization and a sense of belonging to it increase productivity and lessen tensions, has resulted in radical changes in management practices in many large corporations.

In the modern world, theories of management reflect what might be called the cooperative and consultative approach: they give some insight into the general principles which could be applied in this study of consultation in the Church. The three elements of strategy, structure and systems - known as the "hard 'S'" variables - required to maintain an organization are, of course, basic to its survival. There must be planning and effective use of resources, defined organizational patterns and an efficient means of communication among the various levels and departments. Yet, concern with these three aspects alone would not be conducive

to smooth running, unless several other variables were also acknowledged as significant; indeed, these are claimed by management theorists to be critical in determining its success and are known as the "soft 'S'" variables of staff, style, skills and superordinate goals.[1] "Staff" concerns the types of people in the organization, while "skills" refers both to the capabilities of individuals and groups within the organization, and to the overall capacity of the firm. "Style" concerns the behaviour patterns of senior managers and executives in achieving the defined company goals. The most interesting factor, for the purpose of this research project, however, is that of "superordinate goals", since they

([...]) include the spiritual or significant meanings and shared values of the people within an organization) [and] refer to the overarching purposes to which an organization and its members dedicate themselves. [...] this factor refers to values or goals that 'move men's hearts' and that genuinely knit together individual and organizational purposes. [2]

This last factor was seen as a vital ingredient in the success of many Japanese companies, in comparison with their American counterparts in private enterprise. The latter were

1. R.T. PASCALE and A.G. ATHOS, The Art of Japanese Management: Applications for American Executives, New York, Simon and Schuster, 1981, pp. 79-84. Cf. also, W.G. OUCHI, Theory Z: How American Business Can Meet the Japanese Challenge, New York, Avon Books, 1981, x-244p. Ouchi coins the term "Theory Z" to describe a form of management and organization, where these principles have been implemented.

2. R.T. PASCALE and A.G. ATHOS, op. cit., pp. 81-82.

found to have been traditionally more "hard-nosed" and economically oriented than concerned for the people involved in the enterprise. Recognition of this factor provokes some reflection on the applicability of secular management principles to the Church today, given the particular highlighting of this last factor of "spiritual" good of the people involved.

In coming to grips with the task of coordination of diocesan organisms and their effective operation, the factor of consultation is critical. As a management principle, it has been found to be an effective tool in improving relationships between the various members and levels of operation. In the Church, it is a time-honored principle, but one which has not always been applied. Yet the law focusses constantly on consultation as an instrument to be used readily, and therefore recognizes it as a process which is far more than a token means of hearing other opinions on the fringe of the decision-making process. As L. Orsy describes it:

The legal models the drafters had in mind are clearly the ones that we know from civic and political life. The members of an assembly, small or large, have either deliberative or consultative vote. If it is deliberative it is binding on all; if it is consultative it binds no-one. But such a simplistic approach cannot do justice to the internal riches of a christian community. The aim should be to put to good use in the Church all the gifts and talents of the faithful, which clearly cannot be done if the voice of the majority only carries weight, or if the result of the consultation can be

disregarded by a person in authority without some compelling duty for some explanation. [3]

Orsy sees consultation as the expression of the reality of the Church as communio, which has been a basic premise in this presentation. The exercise of communio requires that the People of God be listened to and encouraged to play their part in this whole process of development and growth of the local Church.

The college of consultors is one primary means envisaged in the law to promote this communio mentality. The 1917 Code used the term "consultor" and legislated for consultation by the bishop in many circumstances. The theological developments of Vatican II and the ensuing implementation of its decrees make the situations requiring consultation in the 1983 Code weightier than those the 1917 Code outlined. The validity of action without mandatory consultation would appear to be less doubtful now, so that invalidity could be assumed if the required consultation were not carried out as required by the law.

The college of consultors, of course, could have many more duties than merely being consulted in certain prescribed areas of diocesan governance. The many situations where its

3. L. ORSY, "Consultation in the Diocese, or The Practice of Communio", in 18th Conference: CLSANZ, Perth, CLSANZ, 1984, pp. 107-108.

intervention is required demonstrate its versatility as well as its position as an essential organ of support for the bishop and the whole diocese.

The presbyteral council is the body fundamentally expressing the presbyterium's role in diocesan governance and pastoral leadership. The college of consultors has its roots in this council and so this link should not be lost through eventual separation of membership of the two bodies. Particular law should be formulated to overcome this risk.

As for the future of the college, its assured place in diocesan life guarantees that it will be an ongoing source of advice to the bishop beyond the areas prescribed in the law. In confidential matters concerning individuals or sensitive issues, which cannot be aired publicly - at least initially - it seems that the college could be given a special advisory role. However, it is the prerogative of the bishop to do so.

In the final analysis, it should be remembered that the presbyteral council is the primary consultative body of the bishop, and the college of consultors is not a means of reducing the involvement of the presbyteral council in areas beyond the specific prescriptions of the law. Its role is more general, but there are sure to be matters which the consultors could consider first. Much depends on the attitude of the diocesan bishop and the statutes of particular law

outlining in detail the responsibilities of these and other bodies.

The college of consultors, then, is an organ designed to facilitate the governance of a diocese, whether the see is occupied, impeded or vacant. It guarantees continuity between bishops, but its normal role for the most part is defined by the law, with many situations requiring its involvement. At a high level of Church governance, it reflects the exercise of communio, with a view to stimulating the mission of the local Church.

Canon 502, then, in reinforcing the position of the college of consultors in the universal law of the Church, affirms that it is a body of significant force in the diocese. It has been found that:

- 1) The college of consultors is a specialized section of the presbyterium, rooted in the presbyteral council.
- 2) The presbyteral council remains the primary consultative body to the bishop, representing the presbyterium of the local Church, and expressing the presbyteral responsibility to assist the bishop in governance, sanctification and teaching of the People of God.
- 3) While the college of consultors is seen in the law as primarily concerned with administrative matters, its role could go much further in diocesan governance, depending on

the bishop's directives and the prescriptions of particular law.

4) The integration of diocesan organisms remains a challenge. Consideration must be given to the specific duties of each, the application of effective management principles within them, and coordination of their activities and concerns by the Moderator of the curia or another delegate of the diocesan bishop. Thus, a more cohesive exercise of diocesan governance and awareness of pastoral concerns should be achieved.

5) The situation of the vacant or impeded see allows the college to reach its highest point in governance, but it acts only in an interim role until the diocesan administrator is elected.

6) In larger dioceses, its presence is clearly required, as a separate entity. Whilst there seems no absolute barrier to combining the presbyteral council and the college of consultors, this can only occur as long as the roles of each body are maintained and exercised separately.

7) Consultation is a worthwhile process if exercised with mutual respect and the understanding that advice is not a token gesture, but a recognition of the responsibility of those required to consult, doing so in a responsible and informed manner. Thus, decisions affecting the Church may be

facilitated and directed towards the enlivening of the community of the faithful.

8) The bishop has the ultimate power and responsibility in a diocese, but the theology behind Vatican II, concerning the common priesthood of all the faithful and the ministerial priesthood of the ordained, has demonstrated the necessity for the sharing of tasks in the areas of governance and pastoral care. Questions of power deriving from orders and jurisdiction remain, but the principles of subsidiarity, shared responsibility and freedom in the Church require the involvement of the People of God at many different levels.

As the new law is implemented and different situations arise, the college of consultors will perhaps take on a form which will reflect a positive contribution to the goals of the local Church in its growth and autonomy, while still remaining mindful of its place in the entire Church. The application of the management principles mentioned, with attention to the "soft 'S'" variables should contribute to effective leadership and governance, and encourage the involvement of all where their skills may be used, with a style of leadership which encourages the experience of communio and enables both tangible and spiritual goals to be achieved: Cohesion and good will on the part of all are to be the ultimate goals as the Church moves closer towards becoming more fully the Kingdom of God.

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APPENDIX

CANONS CONCERNING CONSULTORS IN THE 1917 AND 1983 CODES

I The college of consultors

	1917 Code Canon	1983 Code Canon
Selection	424	502, §1
Number	425, §1	502, §1
Length of office	426, §§1 & 2	502, §1
Presidence	391, §1 *	502, §2
Chapter and consultors	423, 427	502, §3
Mission council	-----	502, §4
Number	Between 6 and 12, but minimum of 4 (canon 425, §1)	Between 6 and 12, (canon 502, §1)
Term of office	3 years (canon 426, §1)	5 years (canon 502, §1)
Title	<u>collegium</u> (canon 427)	<u>coetus</u> (canon 502, §1)

II Regular duties

a) Cases where consent is required

(i) Diocesan administrator and consultors

Excardination and incardination	113 *	272
Removal of chancellor and other notaries	373, §5	485

Area of responsibility	1917 Code Canon	1983 Code Canon
Dimissorial letters for secular clergy	958, §1, #3	1018, §1, #2
Replacement of consultors through death/resignation	426, §5	-----

(ii) Diocesan bishop and consultors

Acts of extraordinary administration	-----	1277
Limits on value of alienation	1532, §3	1292, §§1 & 2

b) Cases where consultation is required

Replacement of consultor within 3 years	426, §3	-----
Appointment of finan- cial administrator	-----	494, §1, #2
Appointments to council of administration	1520, §1	-----
Imposition of tax	-----	1263
Determination of funeral offerings	1234, §1	-----

Area of responsibility	1917 Code Canon	1983 Code Canon
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c) Other areas of responsibility

Profession of faith:		
By diocesan administrator	1406, §1, #4 *	833, §4
By newly appointed consultor(s)	1406, §1, #6	-----
Preparation of ternus by papal Legate	-----	377, §3
Bishop's taking canonical possession	334, §3	382, §3
Coadjutor or auxiliary bishop's taking office	-----	404, §§1 & 3
Presence at diocesan synod	358, §1, #2	463, §1, #4 **

III While the See is impeded or vacant

a) The Impeded See

Appointment for interim governance	429, §3 *	413, §2
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b) The Vacant See

Interim governance	431, §1 *	419 501, §2
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Area of responsibility	1917 Code Canon	1983 Code Canon
Election of diocesan administrator	432, §1 *	421, §1
Notification of Holy See of election	432, §4 *	422
Retention of office	426, §4	502, §1 +
Extension of duties	-----	501, §2

IV Duties specific to the 1917 Code

Presence at provincial councils	286, §3
Replacement of pro-synodal examiners and parish priest consultors	386, §1
Requirement of oath to assume office	425, §2
Normal replacement of consultors	426, §3
Removal of consultors	428
Reservation of sins	895
Approval of extraordinary processions	1292
Appointment of seminary deputies	1359
Entrusting a parish to a religious institute	1428, §1

* By analogy, where consultors existed instead of the cathedral chapter.

** By default, as members of the presbyteral council.

+ By inference, the vacant see makes no difference to the 5 year term of office of consultors.