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THE DIOCESAN FINANCE COUNCIL:
A HISTORICAL AND CANONICAL STUDY

by

Rev. Adrian G. Farrelly

A dissertation submitted to the
Faculty of Canon Law, Saint Paul
University, Ottawa, Canada, in
partial fulfillment of the
requirements for the Degree of
Doctor of Canon Law.

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BIOGRAPHICAL NOTE

Rev. Adrian Farrelly was born in Mackay, Queensland, Australia, on December 14, 1948. His primary and secondary education were completed mainly in Brisbane, Queensland, apart from eighteen months which he spent in Melbourne, Victoria. He returned to Brisbane to enter Pius XII Provincial Seminary, Banyo.

Ordained a priest for the archdiocese of Brisbane on August 8, 1973, he served three years in the parish of Ekibin, then seven years in Gayndah, almost five of which as parish priest. During that time, he received a Bachelor of Divinity degree from the University of Queensland.

He began his studies in canon law at Saint Paul University, Ottawa, in September, 1983, receiving his Licentiate in Canon Law in 1985.

ABBREVIATIONS

AA	Apostolicam Actuositatem
A.A.S.	Acta Apostolicae Sedis
CD	Christus Dominus
CLD	The Canon Law Digest
CLSA Proceedings	Canon Law Society of America Proceedings
Coll. Lac.	Acta et decreta sacrorum conciliorum recentiorum. Collectio lacensis. Auctoribus presbyteris S.J. e domo B.V.M. Sine Labe Conceptae ad lacum
Collectanea SCPF	Collectanea S. Congregationis de Propaganda Fidei; seu decreta, instructiones, rescripta pro apostolicis missionibus
Collectanea SS	Collectanea constitutionum, decretorum, indultorum, ac instructionum Sanctae Sedis
D.D.C.	Dictionnaire de droit canonique
DH	Dignitatis Humanae
Directory	Directory on the Pastoral Ministry of Bishops
DPME	Directorium de Pastoralis Ministerio Episcoporum
GE	Gravissimum Educationis
GS	Gaudium et Spes
HARDOUIN	Acta conciliorum et epistolae decretales, ac constitutiones Summorum Pontificum
IM	Inter Mirifica

ABBREVIATIONS

v

Justice in the World	The Synodal Document on Justice in the World (1971)
LG	Lumen Gentium
MANSI	Sacrorum Conciliorum nova et amplissima collectio
PC	Perfectae Caritatis
Periodica	Periodica de re canonica morali liturgica
PG	Patrologiae cursus completus (series graeca)
PL	Patrologiae cursus completus (series latina)
PO	Presbyterorum Ordinis
SC	Sacrosanctum Concilium
1977 Schema Book II	Schema canonum libri II de populo Dei
1980 Schema	Codex iuris canonici: schema patribus commissionis reservatum
Sixteen Documents	The Sixteen Documents of Vatican II and the Instruction on the Liturgy
US Commentary	The Code of Canon Law: A Text and Commentary commissioned by the Canon Law Society of America
X	Decretales Gregorii Papae IX

TABLE OF CONTENTS

	Page
ACKNOWLEDGEMENTS	ii
BIOGRAPHICAL NOTE	iii
ABBREVIATIONS	iv
INTRODUCTION	xiii
CHAPTER ONE	
DIOCESAN-LEVEL PARTICIPATION BEFORE THE COUNCIL OF TRENT	1
I. Care of Church Property and Finances in the Pre-Constantinian Church	2
a. The New Testament Church	2
(i) The Twelve and the Seven	2
(ii) Bishops and Presbyters	6
b. Second and Third Centuries	7
II. Participants in Episcopal Property Administration (IV to IX Century)	14
a. Role of Clergy	15
b. Oeconomus	21
c. Archpriest and Archdeacon	22
d. Imperial Regulations	24
III. Chapters of Canons (X to XVI Century)	27
Decretals	30

TABLE OF CONTENTS

vii

CHAPTER TWO	FROM THE COUNCIL OF TRENT TO THE SECOND VATICAN COUNCIL	38
I.	The Council of Trent and Particular Legislation	38
	a. Council of Trent	38
	b. Provincial European Councils	40
	c. Councils in the United States of America	49
	d. Particular Legislation for Mission Territories	58
II.	The 1917 Code of Canon Law	63
	a. Composition of the Council of Administration	66
	(i) Relationship with the Bishop	66
	(ii) Number of Members	68
	(iii) Qualifications of Members	69
	(a) Technical Expertise	69
	(b) Clergy or Laity	69
	(iv) Eligibility for Membership	74
	b. Functions of the Council	75
	(i) Consultation	75
	(ii) Ordinary and Extraordinary Administration	81
	(iii) Penalties	83
	(iv) Structures in Mission Countries	83

TABLE OF CONTENTS

viii

CHAPTER THREE. CONTEMPORARY LEGISLATION ON DIOCESAN-LEVEL PARTICIPATION	88
I. Vatican II and Post-conciliar Documents	88
a. Mission of the Diocesan Bishop	89
(i) The Function of Governing	90
(ii) The Functions of Teaching and Sanctifying	98
b. Principles and Practices Guiding Management and Use of Temporal Goods	100
(i) Principle of Subsidiarity	100
(ii) Principle of Justice	103
(iii) Practice of Sharing Goods	105
c. Temporal Goods in the Mission of the Church	107
(i) Purpose of Temporal Goods	107
(ii) Relationship with the State	112
(iii) Accountability	114
II. 1983 Code of Canon Law	116
a. Canons on Temporal Goods in the Code	117
b. Incorporation of Contemporary Teaching into the 1983 Code	118
(i) The Mission of the Diocesan Bishop	120
(a) Function of Governing	122
(1) Supervisory Authority	125
(2) Public Juridic Persons Subject to the Bishop	126

TABLE OF CONTENTS

ix

(3) Public Juridic Persons not Subject to the Jurisdiction of the Bishop	127
(4) Acts Requiring Permission	127
(5) Income	129
(b) Functions of Teaching and Sanctifying	133
(ii) Principles and Practices Guiding Management and Use of Temporal Goods	135
(a) Principle of Subsidiarity	135
(b) Principle of Justice	137
(c) Practice of Sharing Goods	139
(iii) Temporal Goods in the Mission of the Church	141
(a) Purpose of Temporal Goods	141
(b) Relations with the State	143
(c) Accountability	144

CHAPTER FOUR THE DIOCESAN FINANCE COUNCIL IN THE 1983 CODE OF CANON LAW	148
I. Evolution of Canons 492 and 493	148
a. Preliminary Working Paper	149
b. 1977 Schema Book V	153
c. 1977 Schema Book II	154
d. 1980 Schema	160
e. 1982 Schema	163

TABLE OF CONTENTS

x

II. Establishment and Duration of Finance Councils	164
a. The Diocesan Finance Councils	165
(i) The Nature of the Diocesan Finance Council	165
(ii) Term of Office	169
(iii) Modality of Appointment	170
b. The Finance Council of other Juridic Persons	171
III. Membership of the Finance Council	175
a. Number of Members	175
b. Qualifications for Membership	176
(i) Christian Faithful	176
(ii) Gender and Ecclesial Status	179
(iii) Technical Expertise	180
(iv) Personal Qualities	182
(a) Integrity	182
(b) Relationship to the Bishop	183
c. Mutually Exclusive Offices	183
(i) The Diocesan Bishop	184
(ii) The Finance Officer	185
(iii) The Vicar General and the Episcopal Vicars	186
(iv) The Diocesan Administrator	189

TABLE OF CONTENTS

xi

CHAPTER FIVE	FUNCTIONS AND DUTIES OF THE DIOCESAN FINANCE COUNCIL	191
I.	Preliminary Comments	192
a.	Scope of the Study	192
b.	Notion of Consultation and Consent	194
c.	The Meaning of the Term "Administration" with regard to Ecclesiastical Goods	200
II.	Specific Functions and Duties	202
a.	Regularly Recurring Items	202
(i)	The Diocesan Budget	202
(ii)	Taxation	203
(iii)	More Important Acts of Administration and Acts of Extraordinary Administration	206
(iv)	Reports	211
(v)	Investment of Endowment Capital	212
(vi)	Wills	213
b.	Particular Responsibilities Regarding Alienation and Acts Endangering the Patrimonial Condition of a Juridic Person	214
(i)	Acts Subject to the Canonical Regulations Regarding Alienation	218
(ii)	Acts Not Subject to the Canonical Regulations Regarding Alienation	220
c.	The Appointment and the Dismissal of the Finance Officer	224
d.	Particular Situation: Impeded or Vacant See	225

TABLE OF CONTENTS

xii

III.	Related Questions	228.
	a. Parish Finance Councils	228
	b. Public Associations of the Christian Faithful	232
	c. Institutes of Consecrated Life and Societies of Apostolic Life	233
	CONCLUSION	239
	BIBLIOGRAPHY	246
	APPENDIX Proposed Constitution of the Diocesan Finance Council	274

INTRODUCTION

Material as well as spiritual resources are needed if the Church is to carry out the salvific work Christ entrusted to it. The material demands of this mission are many and varied -- care for those in need because of poverty or sickness, evangelical outreach, and the maintenance of existing churches and apostolates, to name but a few.

Since the effectiveness and the progress of the Church's mission depends significantly on these material resources or temporal goods, their management or administration is a task to be performed well. Responsibility for this happening belongs primarily to those entrusted with leadership. However, the revised Code of Canon Law does not envisage such persons shouldering the burden of administration alone; it requires every administrator of an ecclesiastical juridic person to be assisted by a finance council, or at least by two advisors (cf. canon 1280).

This dissertation examines the diocesan finance council. The description given in the Code (canons 492 and 493) is the most detailed one of a finance council, and our hope is that a study of the laws regulating the establishment,

composition, functions and duties of this body will assist those involved in the diocesan administration of temporal goods, especially the members of such a council in carrying out their mission; it is also hoped that it will help those establishing or restructuring finance councils for other juridic persons, such as parishes, associations of the Christian faithful, or religious communities, by providing general guidelines that can be applied.

The laws in the 1983 Code of Canon Law regulating the diocesan finance council are a far cry from the decisions of the New Testament Jerusalem community with regard to the distribution of food among the widows, or whatever management was needed with regard to the money people like Paul collected for the poor. However, scant though the references are, they are evidence of the importance given to the care of these material resources. Beginning then with those early churches, we will examine the norms established up to the time of the Council of Trent to see who was enabled to participate in the episcopal administration of temporal goods at the diocesan level and in what manner.

In chapter two, we will examine decrees from various local councils and the Roman congregations issued over the

centuries from Trent to the promulgation of the Code to see what were the norms that had been established with regard to diocesan-level involvement in episcopal administration of church property and finances after Trent and prior to the promulgation of the 1917 Code of Canon Law; we will also examine their significance and the nature and duties of the council of administration as spelled out in the Code. This body was a direct forerunner of the present-day diocesan finance council.

We will then analyse the documents of the Second Vatican Council and other texts to see what was taught with regard to temporal goods and their use by the Church. We hope to see then how the principles and practices which were enunciated in that teaching were incorporated into the 1983 Code of Canon Law.

In chapter four, we will focus our study primarily on canon 492 of the revised Code: the nature, establishment, duration, and membership of the diocesan finance council. We will examine the evolution of the formulation of the canon through the various stages of the revision process and then see what the law, as promulgated, actually requires to be done.

Finally, we will examine the council's functions and duties as they are spelled out in the Code and also suggest other ways such a council may assist the diocesan bishop. In addition, attention will be given to the council's relationship with other diocesan bodies.

Even though a full draft of the revised Code of Canon Law for the Oriental Churches has now been completed, this study has restricted itself to what is required for the Latin rite. It aims at providing a reasonably full analysis of a mandatory element of diocesan structure. Earlier major studies in the field of church law on temporal goods dealt only indirectly with the finance council or its immediate predecessor, the council of administration. We hope that future studies in this area will be able to build upon what has been attempted in this present work.

CHAPTER ONE

DIOCESAN-LEVEL PARTICIPATION BEFORE THE COUNCIL OF TRENT

The norms in the 1983 Code of Canon Law regulating episcopal administration of temporal goods are the latest stage in a development that had its beginning in the New Testament Church. Modes of organization have changed, but the Church's care for property and finances, essential items for its life, has remained constant.

To begin our study of these basic norms, we shall conduct a survey of the development, from the times of the New Testament Church to the Council of Trent, of norms established to regulate the administration of temporal goods. Particular attention will be paid to the norms requiring diocesan bishops to consult other members of the diocese before acting in certain matters.

This examination will provide an understanding of the norms operative throughout this period and the reasons for their establishment. It will also provide a backdrop against which to examine and evaluate changes introduced in the legislation from the time of Trent to the 1917 Code of Canon Law.

I Care of Property and Finances in the Pre-Constantinian Church

a. The New Testament Church

(i) The Twelve and the Seven

When the Twelve with Peter as the head resolved the food distribution problem that was dividing the Jerusalem Church by calling on the community to choose seven other men for this task,¹ their decision could be seen to imply that care for the material needs of church members was an integral part of the life of the Church, and that some members should assume a particular responsibility for its exercise. Unfortunately, a detailed description of the service of the Seven and their relationship with the Twelve has not been preserved. However, the facts contained in the Acts of the Apostles about the Jerusalem Church provide sufficient evidence to enable us to conclude that the temporal administration of the community was considerably more involved than simply "waiting on tables". Even if the picture Luke painted of the Jerusalem community was somewhat idealized,² the communitarian life-style would have presented the lead-

1. Acts, 6,1-6. Translation used throughout is The New American Bible, New York, Thomas Nelson Publishers, 1971.

2. Acts, 4,34-37. If all the house-owners actually sold what they owned then there would have been no homes in which the community could gather as stated in Acts, 2,46. Also if the description is not an ideal, then why single out Barnabas as one who sold his farm if it were the common practice?

ers of the community, especially as it grew in numbers, with a reasonably heavy burden of ensuring that all were adequately cared for on the material as well as on the spiritual level.

Those in charge of the Jerusalem church and the other New Testament churches had only the free-will offerings of the members as a source to draw on to meet the daily demands.³ Careful management was required if all were to be treated justly. No one knows how much money or goods were handled by the New Testament churches, but it seems reasonable to suppose that those entrusted with the management of what was collected could, from time to time, have had sizeable amounts in their keeping if at least some, like the Levite convert Barnabas,⁴ sold all they owned and donated the proceeds.

How these goods were safeguarded until distributed is a question to which a variety of answers have been given. Some deny the question outright. Administration, in the early Church, they contend, did not mean hoarding and increasing,

3. P. FOURNERET, "Biens ecclésiastiques", in Dictionnaire de théologie catholique, Paris, Letouzey et Ané, 1903-1950. Vol. 2, col. 850; E. CORECCO, "La sortie de l'Église pour la raison fiscale", in Austritt aus der Kirche, L. CARLEN (ed.), Freiburg, Universitätsverlag, 1982, p. 31.

4. It is possible that the apostles did likewise: cf. Acts 3,6.

but prompt and impartial distribution to the various objects of the Church's charity.⁵ Others suggest a common fund that emptied and filled according to need. The Church maintained no reserves, nor drew up budgets.⁶

Such opinions seem unnecessarily negative as if administration of these matters was seen by the early Church, at best, as a necessary evil. From what has been said of the Seven who were chosen in Jerusalem specifically for this work, the amount of time and energy the apostle Paul invested in collecting money,⁷ and the people for whom the collected funds were used, it seems clear that the Church saw this side of its activity as something good. And seeing it thus would most likely ensure that the best known methods of safeguarding funds used by individuals with regard to their own property would be employed with what was given to them as members of the Church.

What was collected was definitely not intended for hoarding. Apart from what was needed for the celebration of

5. W. LOWRIE, The Church and its Organization in Primitive and Catholic Times: An Interpretation of Rudolph Sohm's Kirchenrecht. The Primitive Age, London, Longmans, Green, 1904, p. 315.

6. J. DAUVILLIER, Les temps apostoliques: 1er siècle, Paris, Sirey, 1970, p. 629.

7. Acts 24,17; Rom. 15,26ff; 1 Cor. 16,1; 2 Cor. 8,1 - 9,15.

worship by the Church, the goods were used to support both local and itinerant elders,⁸ widows and orphans without resources of their own⁹ or available from their families,¹⁰ and slaves.¹¹ Buying the freedom of slaves was an action the Church took only when the slave was at risk, e.g. separation from spouse or children, danger of being forced to renounce the faith or handed over to prostitution. There is no evidence that any church of the apostolic period owned a building reserved for worship.¹² The worship that was particular to the Christians was conducted in the homes of members.¹³

The allocation of funds to these ends involved many decisions. This required information about many things: who is in need, what resources are available, how will the resources best be used? Given the spirit of sharing that was acclaimed as characteristic of the early communities, it is difficult to imagine that those who were the community

8. 1 Tim. 5,17-18. Cf. J. DAUVILLIER, op. cit., p. 614.

9. James 1,27.

10. J. DAUVILLIER, op. cit., p. 618.

11. Ibid., p. 621.

12. Ibid., p. 629.

13. Acts 1,14 (Jerusalem); Acts 2,46; Acts 12,12 (Jerusalem - Mary, mother of John Mark); Acts 16,40 (Philippi - Lydia); Acts 20,7-12 (Troas); Rm. 16,5 (Ephesus - Aquila and Prisca); Col. 4,15 (Laodicea - Nymphas); Philemon 2 (Rome - Philemon). Cf. C. MUNIER, Eglise et cité, Paris, Editions Cujas, [1979], p. 264.

leaders took these decisions without sharing their concerns with others in order to seek their opinions on the matter.

(ii) Bishops and Presbyters

This would be especially true with the churches in the period immediately following the death of the apostles,¹⁴ but before the emergence of the structure of one bishop and many presbyters as the basic structure of leadership of the Christian churches. In this period, "bishop" and "presbyter" are sometimes interchangeable terms.¹⁵ The presbyter-bishop, as he appears in the pastoral letters of Timothy and Titus, is a man appointed to care for the local community. His authoritative guidance will preserve the local communities from disintegration. The presbyter-bishop is a man blessed with particular virtues. R. Brown states:

It is implied that he must be able to manage the budget of his own home; in particular he must not be a lover of money (1 Tim. 3,3,5) - character requirements all the more important if, as may well be suspected from Dead Sea Scroll parallels, the presbyter-bishop had to administer the common money of the Christian community.¹⁶

14. The insights in this section are drawn from R. BROWN; The Churches the Apostles Left Behind, New York, Paulist Press, 1984, 156p.

15. Tit. 1,6,7. The terms "presbyteros" and "episkopos" refer to the same person. See note to verse 6.

16. R. BROWN, op. cit., p. 34.

Brown thinks it plausible that Christians borrowed from the synagogue a pattern of groups of presbyters for each church, while the pastoral-supervisor (episkopos) role given to all or many of them came from the organizational model of close-knit Jewish groups such as the Dead Sea Essenes, rather than being borrowed from pagan secular and religious administration.¹⁷ In a very short time, however, the pastoral-supervisor role became the role of a single office-holder.

b. Second and Third Centuries

By the time of Ignatius of Antioch (35-107), the centrality and supremacy of a single bishop seems already well established. Writing early in the second century, Ignatius directs the Christians at Ephesus as follows:

Seek to do everything in a divine harmony, under the presidency of the bishop who takes the place of God, of the presbyters who take the place of the senate of the apostles and of the deacons who are dear to me, to whom the service of Jesus Christ has been entrusted.¹⁸

17. Ibid., p. 33.

18. IGNATIUS OF ANTIOCH, "Epistle to the Magnesians" 6,1 in Corpus Ignatianum: A Complete Collection of the Ignatian Epistles, genuine, interpolated, and spurious; together with numerous extracts taken from them, as quoted by ecclesiastical writers down to the tenth century; in Syriac, Greek and Latin: an English translation of the Syriac text, copious notes and introduction by William

The reference to the presbyters taking the place of the "senate of the apostles" mitigates, somewhat, the position attributed to the bishop.

The special position of the bishop is intimately linked with his role as president of the celebration of the eucharist. Already by the time of Ignatius, the eucharist was central to the life of the Church: church organization developed around this celebration.¹⁹ Indeed, at the time, the only eucharist considered lawful was the one which took place under the presidency of the bishop or of the person delegated by him.²⁰ For the early Church, the breaking of the bread, the term used for the eucharist, was the event for which the Christians gathered in each other's homes. This was their characteristically Christian celebration.

As the function of leadership centres on one man, the

Cureton. London, F. & J. Rivington, 1849, p. 66: "[...] moneo in concordia Dei studete omnia operari; praesidente Episcopo in loco Dei, et Presbyteris in loco consessionis Apostolorum, et Diaconis mihi dulcissimis habentibus creditam ministrationem Jesu Christi." English translation taken from J. DANIELOU, The First Six Hundred Years, London, Darton, Longman, and Todd, 1964, p. 117.

19. R. METZ, "Les responsables des biens des Églises dans la perspective de Vatican II comparée à celle du Code de 1917", in Prawo Kanoniczne, 20(1977), p. 61.

20. J. DANIELOU, op. cit., p. 117.

president par excellence of the eucharist, the one who takes the place of God, the understanding of who should care for the management of the goods offered by the members of the community develops in such a way that the administration of donated goods becomes a task reserved to the priests, in particular to the bishops. The faithful made their offerings, usually, at the celebration of the eucharist -- a fact R. Metz sees as having profound ramifications: "These goods, gifts and offerings from the faithful were offered to God; they were not then the community's goods, but the Lord's."²¹

Metz explains that if indeed the goods belong to God, then their administration can only rest in the hands of those who represent God within the community. At first this was the Apostles and the Seven but as these men died, those who replaced them as heads of the community fulfilled the function.²² W. Lowrie holds a similar opinion: the reception and the administration of church property is a priestly act which can only be performed by God's representative.²³ As the bishop emerges as the head of the Church, he is attributed the same character as God's representative and so naturally assumes the same functions with

21. R. METZ, loc. cit., p. 61.

22. Ibid.

23. W. LOWRIE, op. cit., p. 318.

regard to church property.²⁴

In the writings of the post-apostolic period, the bishop is shown as being deeply involved in the physical as well as the spiritual welfare of those entrusted to his care. Justin Martyr (around 150) speaks of the one who presides as having control of what is collected from the faithful:²⁵ he distributes this to the widows and orphans, to those who are needy because of sickness or for some other reason, to those in prison, and to guests. The Shepherd of Hermas (140-155) praises the bishop for hospitality and the care of the poor and widows.²⁶ He has the care of all ecclesiastical property, which he administers with God as his supervisor. The Didascalia (around 250), in a warning to bishops on their conduct, described them as stewards of God and gave them the following instructions:

[...] dispense well, according to the command, those things that are given and accrue to the Church, to orphans and widows and to those who are in distress and to strangers, as knowing that you have God who will require an account at your hands, who delivered this stewardship unto you.²⁷

24. Ibid., p. 320.

25. JUSTIN MARTYR, Apologia I, 67 in J.P. MIGNE, (ed.), Patrologiae cursus completus (series graeca), Parisiis, Vrayet, 1857, vol. 6, col. 430. (Hereafter cited as PG).

26. J. DANIELOU, op. cit., p. 117.

27. Didascalia Apostolorum, translated by R.H.

Although the same document described presbyters as "the counsellors of the bishop, and the crown of the Church", a description that seems to imply some sort of consultative role in the bishop's stewardship, no firm conclusions can be reached with regard to this matter.

The Apostolic Constitutions, a collection of ecclesiastical laws dating from the latter half of the fourth century,²⁸ forbade the bishop from selling the property or giving it to his relatives except if they were poor.²⁹

However, for the most part in the post-apostolic period the bishop stood supreme.

Thou shalt require no account of the bishop, nor observe him, how he dispenses or discharges his stewardship or when he gives, or to whom, or where, or whether well or ill, or whether he gives fairly.³⁰

Such an open approach would not last. Administrators of

CONNOLLY, Oxford, Clarendon Press, [1969], p. 78.

28. F.L. CROSS and E.A. LIVINGSTONE, (eds.), The Oxford Dictionary of the Christian Church, London, Oxford University Press, 1974, p. 75.

29. "Constitutiones Apostolorum" 8,38 in F.X. FUNK, (ed.), Didascalia et Constitutiones Apostolorum, Paderbornae, in libraria F. Schoeningh, 1905, Vol. 1, p. 5/5.

30. R.H. CONNOLLY, op. cit., pp. 99-100.

temporal goods can be imprudent, negligent, uninformed, and even corrupt in their work. Safeguards must be set in place to protect the Church's goods. The bishop's accountability for his stewardship will be prescribed in norms enacted by various councils, but indirectly so, through a limitation of his power to act: requirements to take the advice of the clergy or some section of it are gradually set in place.³¹

In the post-apostolic, pre-Constantinian period, a shift occurred. The Church was growing; it was no longer a home-church religion. Some scholars hold that the churches were landlords and in some cases owned their own place of worship, even before the conversion of Constantine.³² The

31. With the expansion of the Church, especially into rural areas, assemblies of all the clergy became increasingly more difficult to hold. The general assembly gave way to the clergy living in the episcopal city, and in time, as numbers within the city become unwieldy, bishops opt for consultation with yet smaller groups. The development of what will become chapters of canons, colleges of consultors, and presbyteral councils has started.

32. D. HERLIHY, "Church Property", in New Catholic Encyclopedia, New York, McGraw-Hill Book Co., 1967, vol. 3, p. 850. There is evidence which shows the churches in the third century were regarded as land-owners. In the Life (ch.49) of Alexander Severus (d.235), attributed to Lampridius and contained in the Augustan History, a christian community is mentioned as the collective owner of its place of worship. The edict of Emperor Gallienus in 257-258 (Eusebius, Hist. eccl., 7,13), ending a persecution of the christians, stipulated that their cemeteries should be restored to them. In a discussion of church property from the first half of the third century, Origen (PG 13,1696-1697) used technical terms - dispensator, or administrator of real properties, redditus

precise title by which the churches held their properties at a time when the Christian faith was not recognized as a lawful religion by the imperial authorities and was liable to persecution is a debated matter which is of little direct consequence to our study. What is important for us is that the Church as a body was recognized by the imperial authorities as the owner of the property. But the goods in question belonged not to God but to the Church. It is difficult to say how great a part the civil recognition of church ownership played in the development of the Church's own understanding of its right to ownership, but it is more difficult to see its having no effect at all. The recognition of church ownership of goods given to it did not affect the care with which those goods were administered, nor, more importantly, did it adversely affect the awareness that the gifts offered to the Church were in a real sense given to God. Gifts and donations constituted outright transfers of ownership. The Church was free to use those goods as it saw fit, provided the intentions of the donors were carried out.³³

Misuse was strongly condemned. Pope Lucius I (253-

or ground rents - that make it almost certain that churches by then possessed income-producing land.

33. W.J. DOHENY, Church Property: Modes of Acquisition, Washington, Catholic University of America, 1927, pp. 7-8.

254), in a letter to the bishops of Spain and Gaul, stated that those who stole from or defrauded the Church were guilty of a very serious sin. Of interest for this present study is the fact that his condemnation included not only the actual perpetrators, but also those who gave their consent to the act.³⁴

II Participants in Episcopal Property Administration (IV to IX Century)

Recognition of the Church by the emperors fostered unprecedented growth in numbers and consequently in wealth. Confiscated properties were returned, various leasing arrangements of church properties were entered into, and grants were even received from the imperial funds (the bishop being the one responsible for their distribution).³⁵ Legacies also benefited the Church's material well-being,

34. POPE LUCIUS I, letter 1, chapter 6, in MANSI, vol. 1, col. 879: "Quorum nos frequentes exempla, omnes tales praesumptores, et ecclesiae raptores, atque suarum facultatum alienatores, una vobiscum a liminibus sanctae matris ecclesiae anathematizatos, apostolica auctoritate pellimus, et damnamus, atque sacrilegos esse judicamus. Et non solum eos, sed omnes consentientes eis: 'quia non solum faciunt, rei judicantur, sed etiam qui consentiunt facientibus.' Par enim poena et agentes et consentientes comprehendit."

35. J. SHARPE, "Church Property", in W. SMITH and S. CHEETHAM, (eds.), Dictionary of Christian Antiquities, Toronto, Willing and Williamson, 1880, p. 1731; EUSEBIUS CAESARIENSIS, The Ecclesiastical History and the Martyrs of Palestine, translated by H.J. LAWLOR and J.E.L. OULTON, London, Society Promoting Christian Knowledge, [1927-1928], 10,6, pp. 319-320.

thanks to Constantine's promulgation of a decree in 321 permitting bequests of property to the Church.³⁶ The increase of wealth meant an increase in the responsibilities assumed by administrators and a corresponding development of norms to help them in their tasks.

a. Role of Clergy

The bishop remained the central figure in the administration of church properties and in the collection and distribution of revenues. The Council of Ancyra (314), in present day Turkey, permitted him to revoke a sales contract entered into by a presbyter when church property was involved.³⁷ The second Council of Rome (324) decreed that the bishop's share of church revenue was one quarter, with the rest being used for the repair of churches, the support of local and travelling clergy, and the poor.³⁸ In the same year at Gangra,³⁹ in present day northern Turkey, the seventh canon made the bishop's permission crucial to giving

36. Codex Theodosianum, 16, 2,4.

37. Council of Ancyra, canon 14, in J.D. MANSI, Sacrorum Conciliorum nova et amplissima collectio, Parisiis, Welter, 1927, vol. 2, col. 525. (Hereafter cited as MANSI).

38. Second Council of Rome, canon 4, in MANSI, vol. 2, cols. 624-625.

39. The date of this council is disputed. For an excellent article see W.A. JURGENS, "Gangra", in The Jurist, 20(1960), pp. 1-12.

away offerings made to the Church.⁴⁰ The penalty for acting without this was anathematization.

Among the earliest norms requiring the bishop to work with diocesan personnel in the administration of church goods were the decrees of the Council of Antioch (341), in present day southern Turkey near the Syrian border. While acknowledging the authority of the bishop to administer church property, the council did not see this as being carried out alone. To prevent any loss of church property upon the bishop's death, through confusion of title, the council decreed that the priests and deacons were required to know what belonged to the Church.⁴¹ Nor was the bishop given a free hand to use church funds without reference to anyone else: as a safeguard against episcopal maladministration of any sort, the priests and deacons were to know for what ends the bishop was using the Church's goods.⁴² One

40. Council of Gangra, canon 7, in MANSI, vol. 2, col. 1107.

41. Council of Antioch, canon 24, in MANSI, vol. 2, col. 1327. "Manifesta vero sint quae pertinere videntur ad ecclesiam, cum notitia presbyterorum et diaconorum, qui circa ipsum sunt, ita ut agnoscant, nec ignorent, quae sunt ecclesiae propria, nec eos aliquid lateat."

42. Ibid., in MANSI, vol. 2, col. 1328. "Quod si contentus istis minime fuerit, convertat autem res ecclesiae in suos usus domesticos, et eius commoda vel agrorum fructus, non cum presbyterorum conscientia diaconorumque pertractet, sed horum potestatem domesticis suis, aut propinquis, aut fratribus, filiisque committat, ut per huiusmodi personas occulte ceterae laedantur ecclesiae, synodo provinciae

African council went so far as to legislate that the bishop was not allowed to sell church estates if the council and his priests were ignorant of the transaction.⁴³ Legislation of this sort left no doubt that the bishop was a steward of the Church's goods, not their owner.

A number of African councils towards the end of the fourth and in the first quarter of the fifth centuries established norms imposing restrictions on the bishop's administrative activity. For instance, the fourth Council of Carthage (398) declared invalid (*irrita*) a gift, sale, or transfer of ecclesiastical property by the bishop without the support and approval of the clergy (*absque conniventia et subscriptione clericorum*).⁴⁴ At the next Council of Carthage held in the same year, an almost total prohibition on

poenas iste persolvat."

⁴³. Codex of Canons of an African Church, canon 33, in J. HARDOUIN, Acta conciliorum et epistolae decretales, ac constitutiones Summorum Pontificum. Parisiis, Ex Typographia Regia, 1714-1715, vol. 1, col. 8/9, (hereafter cited as HARDOUIN): "Item placuit, ut presbyteri non vendant rem ecclesiae, ubi sunt constituti, nescentibus episcopis suis; quomodo et episcopis non licet vendere praedia ecclesiae, ignorante Concilio, vel presbyteris suis. Non habente ergo necessitatem, nec episcopo liceat matricis ecclesiae rem tituli sui usurpare." J.F. CLEARY, in his work Canonical Limitations on Alienation of Church Property, p. 100, refers to this canon as coming from the council of Hippo.

⁴⁴. Council of Carthage IV, canon 32, in MANSI, vol. 3, col. 954: "Irrita erit donatio episcoporum, vel venditio, vel commutatio rei ecclesiasticae, absque conniventia et subscriptione clericorum."

sales of church property was brought into play. If a sale was demanded by some necessity, the senior bishop of the province with a number of other bishops was to decide on the matter beforehand. If this prior consultation was impossible, then these same people were to be informed after the sale.⁴⁵ The Councils of Hippo-Regia (419)⁴⁶ and Carthage XVIII (421)⁴⁷ passed similar legislation.

The same concern for honest and creditable episcopal administration was held by Pope Leo the Great (440-461). With regards to the sale, donation or exchange of church property, a bishop was to act only with the approval and consent of the entire clergy. All were to be aware of the benefit this would bring to the Church.⁴⁸

However, where the proposed alienation⁴⁹ concerned

45. Council of Carthage V, canon 4, in MANSI, vol. 3, col. 969.

46. Council of Hippo-Regia, canon 9, in MANSI, vol. 4, col. 442.

47. Council of Carthage XVIII, canon 9, in MANSI, vol. 4, col. 450.

48. LEO I, letter 17, in J.P. MIGNE, (ed.), Patrologiae cursus completus (series latina), Parisiis, Migne, 1844, (hereafter cited as PL), vol. 54, col. 705: "Sine exceptione decernimus, ne quis episcopus de rebus ecclesiae suae quicquam donare, vel commutare, vel vendere audeat, nisi forte aliquid horum faciat, ut meliora prospiciat, et cum totius cleri tractatu atque consensu id eligat, quod non sit dubium profuturum ecclesiae."

49. The concept of alienation supposes primarily the

small properties or vineyards, less useful churches, or ones located some distance away, the council of Agde (506) in the south of France, allowed an exception to the general rule on the necessity of some consultation to perform acts of alienation.⁵⁰ In these instances where the condition of the Church would not be endangered by the transaction, the bishop was allowed to act without consulting his clergy. This seems to have been the first appearance of such an exception in church legislation. Even then, certain conditions had to be fulfilled before the bishop could act: there had to be a case of necessity, the church property was of little value, and was situated in a remote area.⁵¹

transfer of legal title. Canonically, it includes any act or contract whereby church property is exposed to danger or loss, or its legal possession is reduced to a worse condition. It includes that act by which property, real rights, or possessions of any ecclesiastical moral or public juridic person are gratuitously or onerously transferred, set aside, lessened or burdened. For more detailed treatments see J.F. CLEARY, Canonical Limitations on the Alienation of Church Property: an Historical Synopsis and Commentary, Washington, D.C., The Catholic University of America, 1936, 141 p.; F.G. MORRISEY, "The Conveyance of Ecclesiastical Goods", in CLSA Proceedings, 38(1976), Washington, D.C., Canon Law Society of America, 1977, pp. 123-137.

50. Council of Agde, canon 45, in MANSI, vol. 8, col. 332: "Terrulas aut vineolas exiguas, et ecclesiae minus utiles, aut longe positas parvas, episcopus sine consilio fratrum, si necessitas fuerit, distrahendi habeat potestatem."

51. J.F. CLEARY, op. cit., p. 31.

Overall though, the power of the bishop over the goods of the parochial churches was being reduced. Rapidly expanding dioceses made it impossible for the bishop to be the immediate administrator of all its goods.⁵² Increased conciliar recognition of the rights of parochial churches to retain and administer what was offered by the faithful further restricted episcopal power. The fifth Council of Paris (577) forbade bishops' transferring to the cathedral church the property of a deceased pastor. Such property was to remain with the parish church.⁵³ The XVI Council of Toledo (693) in Spain allowed the bishops to take their share of parochial revenue only if they were going to use it for repair work on the parish church whose members had donated the money.⁵⁴ The sixth canon of the Council of Trosley (909), in France, provided one of the clearest statements of the administrative rights of the parish clergy: the governance and distribution of the offerings of the faithful were to remain firmly in the hands of the priests, even though subject to the power and direction of

52. Some of the offerings of the faithful were allowed to remain in the local church for its upkeep and the support of the resident priest, but the disposal of the entire revenue of the diocese belonged to the bishop. Cf. J.J. COMYNS, Papal and Episcopal Administration of Church Property; an Historical Analysis and Commentary, Washington, D.C., Catholic University of America, 1942, p. 21.

53. Council of Paris V, canon 8, in HARDOUIN, vol. 3, col. 552; cf. J.J. COMYNS, op. cit., p. 28.

54. Council of Toledo XVI, chapter 5, in HARDOUIN, vol. 3, col. 1796; cf. J.J. COMYNS, op. cit., p. 29.

the bishops.⁵⁵

Lack of possession of the right of full dominion over these goods⁵⁶ did not mean lack of interest in them. Lawful, episcopal intervention in the immediate administration of parish property was justified in cases of proven negligence by the local administrator. The bishop could then intervene to rectify the trouble and punish those responsible, if such measures were called for. He could also proceed in the same way with those who performed unauthorized acts of donation or usurpation.⁵⁷

b. Oeconomus (Finance Officer)

The expansion of the Church's property holdings and overall wealth saw the emergence of a new administrative officer: the oconomus, or finance officer, who has remained part of ecclesiastical legislation on temporal administration ever since. Canon 48 of the Arabic version of the Council of Nicea (325) called for the appointment of an oconomus in each church.⁵⁸ Along with other procurators,

55. Council of Trosley, chapter 6, in HARDOUIN, vol. 6, cols. 519-520; cf. J.J. COMYNS, op. cit., p. 30.

56. J.J. COMYNS, op. cit., p. 28.

57. Ibid., p. 31.

58. Council of Nicea, canon 48, in MANSI, vol. 2, col.

the finance officer was in charge of produce and expenses. Everything entrusted to his care -- houses, farms, consumables, the storage boxes for gold and silver vases, vestments, church ornaments and the collection boxes -- was to be safeguarded. These church officials were mandated to protect and, where possible, increase what had been entrusted to them. The same council assigned to them the task of distributing to the priests in rural areas their share of the first fruits.⁵⁹

In the middle of the fifth century, the Council of Chalcedon (451), located in present day Turkey, decreed that no bishop was to manage the affairs of his diocese without an oeconomus⁶⁰ who was to be a member of the bishop's own clergy and who had to follow the bishop's decisions as to the way the affairs of the diocese were to be managed. This provision ensured an ordered and reputable management.

c. Archpriest and Archdeacon

As well as the oeconomus, the fourth century saw the appearance in conciliar statements of the titles "arch-

1003. The canon is not found in some versions.

59. Ibid., canon 6, in MANSI, vol. 2, col. 1021.

60. Council of Chalcedon, canon 26, in MANSI, vol. 7, col. 380.

priest" and "archdeacon". Both were mentioned in the fourth Council of Carthage (398).⁶¹ The bishop was not to care personally for widows, orphans, and travellers, but was to work through the archpriest or archdeacon. St. Leo (453) alluded to the archdeacon as having management of all ecclesiastical cares and concerns.⁶² Pope Gelasius (492-496) decided in a particular case that a bishop had acted wrongfully in dismissing his archdeacon so as to be freer in his use of ecclesiastical revenues and goods and thus escape the archdeacon's recriminations.⁶³

In the East, the office of archdeacon never attained the importance it did in the West where the deacons were handling the day to day management of the Church, and where the senior deacon or archdeacon was especially close to the bishop. The office of archdeacon at one period assumed an importance which was scarcely inferior to that of the episcopate itself.⁶⁴

61. Council of Carthage IV, canon 17, in MANSI, vol. 3, col. 952.

62. LEO THE GREAT, letter 111, chapter 2, in J.P. MIGNE, PL, vol. 54, col. 1021. Cf. A. AMANIEU, "Archidiaconus", in R. NAZ (ed.), Dictionnaire de droit canonique, vol. 1, col. 949. (Hereafter cited as D.D.C.)

63. GELASIUS I, letter Respecto et Leonino episcopis, in J. MIGNE, PL, vol. 59, col. 100. Cf. A. AMANIEU, loc. cit., vol. 1, cols. 950-951.

64. E. HATCH, "Archdeacon", in W. SMITH and S. CHEETHAM, (eds.), Dictionary of Christian Antiquities, Toronto,

The close working relationship envisaged by the legislation between the bishop and these various administrative officers would suggest some form of consultation on a regular basis. The bishop would not only want to communicate his directives to them, but would also want to be informed of developments in this section of his administration by those who were at the forefront. Apart from legislation similar to what has been examined already, there seems to have been little legislated that bound the bishop to seek the advice of these officials or to follow any advice they may have offered with regard to transactions involving ecclesiastical property.

d. Imperial Regulations

Imperial legislation, on the other hand, was at times more explicit. Emperor Leo, in 470, decreed that no property would be disposed of without the consent of all the clergy, including the bishop and the finance officer.⁶⁵ Justinian, at the beginning of the second quarter of the sixth century, set tight restrictions on emphyteusis, a form of long-term lease. His decree allowed such a lease only for a stated

Willing and Williamson, 1880, vol. 1, p. 136. /

65. Codex Justinianus, i,2,14.

time and only to the recipient and two heirs. To avoid fraud, he demanded the presence of a certain number of persons other than the bishop at the making of the transaction. Those stipulated were two leading architects, and if in Constantinople, the finance officers, five priests and two deacons, or in the provinces, two or even one worthy architect.⁶⁶ The extent of church holdings and the privileged position churches enjoyed as regards exemption from taxation made it imperative for the imperial government to ensure that such holdings were not placed at risk by negligent or unthinking administrators. The welfare of many citizens depended on properties owned by the Church. Indeed, as these properties became even more extensive, their impact on the financial stability of the empire became a more and more important factor in governmental considerations.

The imperial recognition of the Church as what could be called a corporate entity was an important event for the development of modes of administration of ecclesiastical temporal goods. This recognition acknowledged what the Church had always possessed -- an awareness of itself as an entity in its own right. As far as the Church was concerned, imperial recognition added nothing to its essence. That came from Christ and had endured in the face of hostility that

66. Novellae, vii,2. It is not clear if the finance officers are different from the priests and deacons, or included in their number.

denied its legitimacy and tried to exterminate it by persecution. The great benefit imperial acknowledgement brought to the Church was stability and security. No longer did it have to fear losing all its property with the outbreak of another persecution.

This security ushered in a new phenomenon in the life of the community. Through the careful management of its properties, it now had a guaranteed source of revenue and was no longer totally dependent on the free-will offerings of the faithful.⁶⁷ Such revenue producing property was not regarded universally as an unqualified blessing by the Church.⁶⁸ Indeed, greed and corruption amongst the clergy created problems that many councils since then have tried to address. Increased demands to administer these properties reduced the time that clergy could give to the spiritual side of their vocation -- prayer, preaching, and caring for the poor. Also, with a more or less assured revenue, individual members could find reasons for giving less generously. The Church had gained a degree of independence from its former total reliance on the generosity of the members, but the price was high. As D. Herlihy aptly observed:

67. E. CORECCO, loc. cit., p. 32.

68. J. GAUDEMET, L'Église dans l'Empire romain (I^{er}-V^e siècles), Paris, Sirey, [1958], p. 291.

The age of the Christian Roman Empire [...] bequeathed to the Middle Ages not only a large and well-administered ecclesiastical endowment, but also the tenacious, social and moral problems connected with it.⁶⁹

+ + +

Until the ninth century, legislation on the rôle of church members who were not bishops in the diocesan administration of temporal goods saw little by way of innovation. The pattern that had been set before this time, with the bishop having overall control of the temporal goods of the diocese and being required to consult his clergy before performing certain acts (in some places even needing their consent), was reaffirmed in successive councils. The acts upon which such limitations were placed were either those that entailed the possibility of danger for the Church through loss of funds needed for an approved purpose, or those which removed profitable land from being of benefit to the Church through leases.

III Chapters of Canons (X to XVI Century)

The clergy of the city where the bishop resided were the ones normally consulted when circumstances prompted his

69. D. HERLIHY, loc. cit., p. 851.

seeking advice or when legislation required him to consult with his clergy. At first, of course, they were the only clergy. However, as the numbers of rural clergy increased, the bishop continued to rely on those in the city because of their proximity. As this pattern became the generally accepted practice, the priests of the city were accorded greater respect. Jerome (342-420) spoke of them as a "senate". Pope Zachary (741-752) even referred to them as possessing authority over their rural counterparts.⁷⁰

In time, a further distinction appeared in which only the clergy of the cathedral enjoyed the privileged position which had been accorded earlier to all the clergy of the city. Augustine, the bishop of Hippo (396-430), had attempted to live some form of common life with his cathedral clergy -- an example that was followed in other dioceses. Those clerics who lived this common life were called canons.⁷¹ But their common life languished in the tenth century. Those who persevered with it in its fullness came to be known as "canons regular", while those who came together only at particular intervals for religious services were called "secular canons". Both cathedral and non-cathedral churches could have canons, depending on whether

70. P. TORQUEBIAU, "Chapitres de chanoines", in D.D.C., vol. 3, col. 534.

71. P.J. KLEKOTKA, Diocesan Consultors, Washington, D.C., Catholic University of America, 1920, p. 11.

these were adequately supported. However, it is the cathedral canons, the clergy close to the bishop, whose development is noteworthy with regard to participation on the diocesan level in matters of temporal administration.

The term "chapter" in the sense of a college of clerics appeared in official texts for the first time in the tenth century.⁷² The reference was to the canons of the cathedral, the clergy closest to the bishop. By the twelfth century, the Chapter was probably at the highest point of its power. The upward movement had taken place almost imperceptibly, but the rising prestige of the Chapters was due to their wealth, numbers, social standing of some of the members, and increased powers, amongst which the greatest probably was their monopoly on the election of the bishop.⁷³

The law's stipulation of consultation of the clergy by the bishop was a safeguard to ensure he had, at least, the benefit of an opinion other than his own, and the opinion of those to whom the temporal welfare of the diocese was important.⁷⁴

72. P. TORQUEBIAU, loc. cit., col. 531.

73. Ibid., col. 545

74. The opinion of the clergy of the diocese is what is important, not just any opinion. This is clear in the répliques Alexander III gave to the patriarch of Jerusalem who was making various appointments to ecclesiastical positions

Decretals

The importance of the cathedral Chapter in the administration of temporal goods is clearly seen in legislation promulgated by Gregory IX in the Decretals (1234), the first official collection of universal norms. Title X of Book III was devoted entirely to what a prelate could do without the consent of the Chapter. As these texts were the common law and influenced subsequent legislation on this matter, it is important to examine those canons of Title X which have some direct bearing on the administration of temporal goods.

The opening text stated what had become the basic or guiding principle as regards episcopal consultation of diocesan clerics since it had first been enunciated in the legislation of the fourth Council of Carthage in 398. A donation, sale, or exchange of ecclesiastical property by a

but acting on the advice of clerics and lay men who were not members of his church. This patriarch even went so far as to enter fraudulently the names of his clergy as approving although they had been absent. The first of these replies contains one of the most explicit papal statements on the unity of the bishop and his chapter - together they make one body: he is the head and they are the members. Cf. GREGORY IX, Decretalium D. Gregorii Papae IX compilatio in vol. 2 of the Corpus iuris canonici, edited by A. RICHTER and A. FRIEDBERG, 2nd ed., Lipsiae, Ex Officina B. Tauchnitz, 1928, book III, title 10, chapters 4 and 5. Hereafter quotes from the Decretals will appear in abbreviated form, e.g. c. 4, 5, X, de his quae fiunt a praelato sine consensu capituli, III, 10.

bishop was invalid without the support and the approval of the clerics.⁷⁵ Alexander III (1159-1181), in a reply to the bishop of Norwich, mitigated these requirements somewhat when he judged the bishop's act as valid because, although the Chapter had not been convened, it had known of the act and had voiced no objection.⁷⁶ The same Pope also allowed a form of retroactive validation: an act of alienation, performed by the bishop without the consent of the Chapter, but afterwards ratified by it retained its effect.⁷⁷

In July, 1198, Innocent III reaffirmed the necessity of the consent of the Chapter for episcopal acts of alienation, but upheld the proposition that episcopal consent alone was sufficient with regards to a lay person giving an ecclesiastical tithe to a community of monks.⁷⁸ The issue

75. c. 1, X, de his quae fiunt a praelato sine consensu capituli, III, 10: "Irrita erit episcoporum donatio, vel venditio vel commutatio rei ecclesiasticae absque collaudatione et subscriptione clericorum."

76. c. 2, X, de his quae fiunt a praelato sine consensu capituli, III, 10: "[...] si conventu sciente et non contradicente facta est, robur firmum debet habere."

77. c. 3, X, de his quae fiunt a praelato sine consensu capituli, III, 10: "Certum est, de rigore iuris concessionem illam non tenere, quam reclamante capitulo per eundem praedecessorem tuum constat factam fuisse, nisi idem capitulum concessionem eam ratam postmodum habuisset."

78. c. 7, X, de his quae fiunt a praelato sine consensu capituli, III, 10: "Qui si forte induci nequiverit, et eam cum dioecesani consensu alteri ecclesiae assignaverit, praesertim religioso conventui, constabit ipsa donatio perpetua firmitate subnixa."

centred on the fact that lay people did not have the faculty to dispense ecclesiastical goods: this belonged to the bishop.⁷⁹ The Pope's ruling had added significance in that the matter had been raised by two diocesan Chapters who saw in the bishop's action a challenge to their rights and to their power.

Rights enjoyed by the bishop under other titles were not to be used as excuses for circumventing the restriction imposed on him by the requirement to consult with his chapter. In a reply to the archdeacon of Metz (1201), Pope Innocent III decreed that the conferment in perpetuity of vacant baptismal churches was without doubt an act of alienation; and even when the bishop had the right of patronage, the act was still subject to all the formalities required by law, including obtaining the consent of the Chapter.⁸⁰ Nor could the bishop regard the consent of a patron as sufficient to validate acts which were regarded as acts of alienation. The conferment of the income of a parish church onto some religious order could not be done without either the permission of the Roman Pontiff or the consent of the Chapter, even if provision had been made for the vicar of the

79. Council of Lateran I, c. 4, in MANSI, vol. 21, col. 282.

80. c. 8, X, de his quae fiunt a praelato sine consensu capituli, III, 10.

church and the patron had also given his approval.⁸¹

Until the promulgation and publication of the Decretals, the common law mandating the bishop to consult with his diocesan clergy for their advice on some proposed act, or to obtain their consent to it had to be drawn from statements made on the matter at local and ecumenical councils, or from rulings by the Pope which bound the whole Church. With the Decretals came a clarity as to what was the law. In summary, the common law stated that the bishop was the central figure in the diocesan administration of temporal goods. His role was primarily a supervisory one where parochial property was concerned. He was not its immediate administrator.⁸² His immediate administration covered goods that were strictly diocesan, as well as the episcopal mensa, that part of the episcopal income which is legally destined for the bishop's support. Without the bishop's consent, administrators subject to his jurisdiction were not to perform acts of alienation. To be able to give that consent, the bishop had to have the prior consent of his cathedral Chapter. This applied even where the alienation was of less useful possessions so as to be able to acquire more useful

81. c. 9, X, de his quae fiunt a praelato sine consensu capituli, III, 10.

82. J.J. COMYNS, op. cit., p. 33.

ones.⁸³ Without this consent, the bishop's act was not lawful,⁸⁴ and indeed, any transaction entered into without this formality was held to have no binding force.⁸⁵ Pope Innocent III (1198-1216) even allowed bishops to revoke such alienations.⁸⁶ However, the actual exercise of such a permission may have, in fact, been very difficult.

Boniface VIII included in the Liber Sextus (1298) a decree of Gregory X from the second Council of Lyons (1274) determining that no prelate was to submit, subject or subordinate to lay people churches, immoveable goods or their rights which had been entrusted to him without the consent of his Chapter and the special permission of the Apostolic See. Contracts which did not observe this prescription were totally void.⁸⁷

Clement V included in the collection of decretals

83. c. 8, X, de rebus ecclesiae alienandis vel non, III, 13; J.F. CLEARY, op. cit., p. 42.

84. c. 7, X, de donationibus, III, 14.

85. c. 12, X, de rebus ecclesiae alienandis vel non, III, 13.

86. c. 10, X, de rebus ecclesiae alienandis vel non, III, 13.

87. BONIFACE VIII, Liber sextus decretalium in vol. 2 of the Corpus iuris canonici, edited by A. RICHTER and A. FRIEDBERG, 2nd. ed., Lipsiae, Ex Officina B. Tauchnitz, 1928, book III, title 9, de rebus ecclesiae non alienandis, chapter 2.

gathered under his name a decree from the Council of Vienne (1311-1312) that rendered invalid and void any act by the diocesan bishop to unite some church to his mensa or to the Chapter -- even if the Chapter agreed.⁸⁸ Collusion in a dishonest act or an abuse of power was not to be tolerated.

All legislation in some way aims at regulating the life of the community and in many cases new legislation is a response to some abuse or distortion of the existing laws. Pope Paul II's constitution Ambitiosae (1468) attempted to remedy previous disregard of the norms governing the alienation of church property.⁸⁹ Apart from those instances permitted in law where usefulness to the Church was evident, or in the case of fruits and goods which could not be retained for present or future needs,⁹⁰ all alienations in the broad sense of the term were forbidden, including not only those acts where actual ownership was transferred, but also those where the act could result in harm being suffered by the

88. CLEMENT V, Constitutiones in vol. 2 of the Corpus iuris canonici, edited by A. RICHTER and A. FRIEDBERG, 2nd. ed., Lipsiae, Ex Officina B. Tauchnitz, 1928, book III, title 4, de rebus ecclesiae non alienandis, chapter 2.

89. J.F. CLEARY, op. cit., p. 49.

90. JOHN XXII, Extravagantes decretales quae a diversis Romanis pontificibus post sextum emanaverunt, in vol. 2 of the Corpus iuris canonici, edited by A. RICHTER and A. FRIEDBERG, 2nd. ed., Lipsiae, Ex Officina B. Tauchnitz, 1928, book III, title 4, de rebus ecclesiae non alienandis, chapter 1.

Church. Any acts placed in disregard of the law lacked all force.

* The seriousness of the question can be seen from the severe penalties imposed by the Pope for violation of the norms of the constitution. For instance, those administrators who enjoyed episcopal or abbatial dignity were interdicted; and if within six months after incurring the interdiction they had not changed their minds, they were then automatically suspended from all spiritual and temporal administration. Lesser administrators suffered automatic deprivation of office. Any alienated goods reverted to the church, monastery, or pious place to which they rightfully belonged.

This constitution made no reference to the requirement that the diocesan bishop consult members of his own clergy in temporal administration. The only consultation prescribed was that addressed to the Holy See.

This omission did not constitute a break in the traditional legislation with regard to those acts where the bishop was required to consult with members of his clergy or obtain their consent. The legislation requiring consultation was in such strong possession that the Pope had no need to repeat it explicitly. Implicit affirmation could be found,

at any rate, in Paul II's renewal of the prohibitions of his predecessors which included the restriction on the bishop's freedom to act without consultation.

+ + +

As we come to the period of church history which is ushered in by the Council of Trent, the following points, taken from the preceding survey, can be emphasized. First, the Church has shown its consistent care for its material possessions by establishing norms to ensure their safety. Second, while the bishop is the head of the diocese, he remains an administrator or steward of the goods owned by it. Third, in a number of transactions, especially alienations, the bishop's freedom to act is qualified by the requirement of law that he consult some of his clergy or even gain their consent before acting. Fourth, while the requirement that the bishop not act alone in certain prescribed circumstances has remained constant, at least since the fourth century, there has been change in whom he is required to consult: all the clergy, the clergy of the city, or the cathedral Chapter of canons.

CHAPTER TWO

FROM THE COUNCIL OF TRENT TO THE SECOND VATICAN COUNCIL

The period from the Council of Trent to the eve of the Second Vatican Council saw certain developments in the forms of administration of temporal goods at the diocesan level. These were not related directly to the general principles underlying the norms already established, but referred rather to those bodies whose consent or advice the law required the diocesan bishop to seek before performing certain transactions.

I The Council of Trent and Particular Legislation

a. Council of Trent

The Council of Trent (1545-1563) reaffirmed the centrality of the bishop in the administration of diocesan property. He was the direct administrator of the cathedral and of common diocesan property, as well as being the promoter of proper administration by his subordinate administrators. His vigilance over their work was exercised primarily by way of the annual reports administrators were required to submit.¹

1. COUNCIL OF TRENT, session 22, chapter 9, De refor-

While the bishop was the key figure in the administration of the diocese, the decrees of Trent envisaged his working in close collaboration with the clergy of the diocese; his need to associate others with himself in his administrative tasks was affirmed most strongly. To raise the revenues needed to construct and maintain a seminary, the Council directed the bishops to work with two priests from the Chapter, one chosen by the bishop himself and the other by the Chapter, and with two others from the clergy of the city, one chosen by the bishop and the other by the clergy of the city themselves.² The inclusion of the priests from the city clergy is interesting as an indicator of the Council's desire to involve the wider presbyterium in the administration of the diocese and to avoid any return to the virtual monopoly on the governance of the diocese formerly enjoyed by the cathedral Chapters.

matione; in J.D. MANSI, Sacrorum conciliorum nova et amplissima collectio, Parisiis, H. Welter, 1901-1927, (hereafter cited as MANSI), vol. 33, col. 136.

2. ID., session 23, chapter 18, De reformatione, in MANSI, vol. 33, col. 147: "Idem episcopi cum consilio duorum de capitulo, quorum alter ab episcopo, alter ab ipso capitulo eligatur; itemque duorum de clero civitatis, quorum quidem alterius electio similiter ad episcopum, alterius vero ad clerum pertineat." English translation, in H.J. SCHROEDER, Canons and Decrees of the Council of Trent. Original text with English translation by H.J. Schroeder. St. Louis, Mo., Herder, 1941, p. 176.

Not that the Chapter members were undervalued. The Ordinary was to choose two of them, experienced in the administration of property, to assist him in the task of redirecting revenues of institutions which could no longer fulfill their original aim. Hospitals were the case in point. The Council decreed that the revenues be directed to some other pious purpose more closely related to their foundation and more useful in respect of time and place, as would appear most expedient to the Ordinary.³

b. Provincial European Councils

Similar legislation appeared in the decrees of later provincial councils as the reforming spirit of Trent was incarnated in the lives of diocesan churches. The first Council of Milan (1565) ordered a review of long term leases of ecclesiastical goods -- those of thirty years or more. To carry out this work, the bishop himself was to choose a member of the Chapter and another cleric from the clergy.⁴ A quarter of a century later, the Council of Toulouse (1590) issued a similar decree. Two able and proven men were to be

3. ID., session 25, chapter 18, De reformatione, in MANSI, vol. 33, col. 192.

4. COUNCIL OF MILAN I, canon 62, in MANSI, vol. 34a, col. 68: "Ex auctoritate sacri concilii Tridentini negotium damus episcopis provinciae nostrae, ut singuli una cum canonico a capitulo et altero de clero ab ipsis deligendo recognoscant."

chosen by the bishops or their vicars general to accomplish the work. One was to belong to the Chapter, the other to the clergy of the city. Whenever the revision was concerned with leases of property belonging to the bishop or his mensa, the review was to be conducted by a neighbouring bishop and those selected from the Chapter and the clergy.⁵

At times, the presence of associates who carried considerable responsibility for the episcopal administration of temporal goods was simply implied in legislation. For instance, the provincial synod of Naples in 1699 penalized clerics who assisted administrators of ecclesiastical goods in usurpation and alienations contrary to the decrees of the Council of Trent. In addition to the excommunication imposed by the Tridentine decree, the synod deprived of their benefices those found guilty of this offence, and declared them unsuitable for the attainment of other benefices.⁶ The same

5. COUNCIL OF TOULOUSE, chapter 3, in MANSI, vol. 34b, col. 1307: "Episcopi, aut generales eorum vicarii cum duobus aliis aptioribus, probatioribusque viris, altero quidem a capitulo, et clero civitatis, altero in dioecesana synodo huius auctoritate eligendis, deputandique [...], bona fide recognoscant."

6. SYNOD OF NAPLES, chapter 1, no.7, in Acta et decreta sacrorum conciliorum recentiorum. Collectio lacensis. Auctoribus presbyteris S.J. e domo B.V.M. Sine Labe Conceptae ad lacum, Friburgi Brisgoviae, Herder, 1870-1892, (hereafter cited as Coll. Lac.) vol. 1, col. 240: "Clerici ecclesiasticorum bonorum administratores assentientes alienationibus atque usurpationibus contra formam Decreti Tridentini praeter excommunicationis sententiam poenam privationis beneficiorum et inhabilitatis ad alia obtinenda incurrant."

synod issued a decree regulating the use of monies received, with the stipulation that they be carefully invested in the normal diocesan way. However, this was not to take place without prior consultation of the episcopal curia and with the necessary precautions.⁷ In such instances, the members of the bishop's curia replaced the non-curial clerics who up to that time had a role with the bishop in the administration of temporal goods.

These local councils, as Trent itself, seemed content to retain existing structures with regard to the administration of temporal goods at the level of the diocese. The reason for this can be found, in great part, in the position in which the Church found itself in post-Reformation Europe.

Indeed, at varying times and in varying degrees, the states in Germany, France, Austria, Spain and Italy confiscated church property, and interfered in the internal affairs of the Church. In some places, the Church was subjected to persecution; in others, almost total national control was imposed, but without bloody persecution.⁸ For

7. *Ibid.*, chapter 1, no. 10, in *Coll. Lac.*, vol. 1, col. 241: "quod non fiat, nisi consulta curia Episcopali et necessariis cautionibus adhibitis."

8. In Austria, Emperor Joseph II (1780-1790) established a system of absolute sovereignty over the churches to perform arbitrary reforms, to claim ecclesiastical juris-

these governments, the Church was an organization within society and was to be treated no differently than any other one. More than that, the organization existed only because the State, the supreme authority, allowed it to exist. According to them, the Church's right to exist was dependent on the will of the secular power.

In part, the strong centralist policies adopted by the papacy to effect the Tridentine reforms contributed somewhat to the loss of goodwill and power suffered by both the papacy and the Church during the seventeenth and eighteenth centuries. There was no room within absolutist states for the claims of a universal church to universal jurisdiction.⁹ Goodwill and power were not all that was lost. In those years, the Church also suffered extensive losses of its temporal goods.¹⁰

dictions and to suppress monasteries and church establishments to a large degree. Cf. A. FRANZEN, A Concise History of the Church, revised and edited by J.P. Dolan. Translated from the German by P. Becker. [London], Burns & Oates, [1969], p. 349.

9. Ibid.

10. During the French revolution, all church property was confiscated to pay public debts -- a law concerning the confiscation and secularization of all church property was passed on April 14, 1790. Similarly, Catholic Spain saw the property of the Church ruthlessly exploited by the monarchy in its own interests (Amortization laws of 1763 and 1798). For further detail see ibid., pp. 345-369.

A great part of the output of the local councils of Europe during the eighteenth and nineteenth centuries centred, understandably, on the Church's right to exist independently of any secular authority. This was the pressing issue. Accordingly, detailed legislation on the organization of temporal administration was given less attention.

Provincial councils in the second half of the nineteenth century promulgated legislation which restated the traditional position regarding advisors in episcopal administration. Although no organizational innovations were introduced, interest was shown in improved forms of administration of temporal goods.

Meeting at Westminster in 1852 in provincial council for the first time since the hierarchy was reestablished in England, the bishops formulated and promulgated a decree which made the diocesan bishop responsible for choosing prudent men from the Chapter or the clergy to assist in the temporal administration of the diocese. The bishop was to consult with them frequently to ensure that pious legacies received the best and safest care. Their advice would also help in the distribution and use of the monies collected from the faithful. The bishops hoped that, by taking these measures, favouritism would be avoided and a wise and advan-

tageous administration carried out.¹¹ The bishops deferred consideration of other matters relating to the administration of the Church's temporal goods to a later meeting so as to concentrate on issues which were regarded as more important for the newly-erected hierarchy.¹² This makes all the more significant the decision to associate priests in the work of administration as it stood as a guide for future development in this area.¹³

Three years later, gathered for the second provincial council of Westminster, the bishops addressed more fully the question of the administration of the Church's temporal goods. The eighth section of the acts of the Council contained twenty-one decrees on ecclesiastical goods.

Out of the legislation promulgated at the Council of 1855 regarding temporal goods, only one decree made reference to a consultation process of any kind at the diocesan

11. COUNCIL OF WESTMINSTER I, decree 14, no. 4, in Coll. Lac., vol. 3, col. 926: "Expedit praeterea, ut Episcopus viros prudentes, sive de gremio capituli, sive de clero, eligat, ut ipsum in administratione temporali dioeceseos adjuvent."

12. COUNCIL OF WESTMINSTER II, decree 8, no. 1, in Coll. Lac., vol. 3, col. 980: "[...] in hac Synodo plenius nobis agendum videtur, quia praesertim in primo provinciali Concilio, rebus maioribus occupati, hujusmodi materiam ad tempus remiserimus."

13. F. SCHMALZGRUBER, Ius ecclesiasticum, Romae, Ex typographia Rev. Cam. Apostolicae, 1843-1845, p. 384.

level: when alienation was necessary, a priest could act only with the permission of the bishop; and a bishop could act only after having taken the precautions required by canon law.¹⁴

Analysis of the canon law on alienation of ecclesiastical goods in force at the time reveals the following elements as the formalities to be observed: (1) the existence of a just cause (traditionally this was necessity, utility, piety, or serious inconvenience), (2) the deliberation, consent, and approval of the chapter, (3) the consent of the bishop, and (4) the authorization of the Holy See.¹⁵ If no Chapter existed in the diocese, and particular law had not authorized another body to act in its stead (as was the case in the United States with the creation of consultors),¹⁶ then a bishop could read such legislation as per-

14. COUNCIL OF WESTMINSTER II, decree 8, no. 8, in Coll. Lac, vol. 3, col. 981: "Quodsi propter causas ab ipso jure approbatas contigerit talem alienationem esse necessariam, sacerdos numquam sine Episcopi auctoritate, nec Episcopus absque iis cautionibus quae a lege canonica requiruntur illam efficere potest."

15. J.F. CLEARY, Canonical Limitations on the Alienation of Church Property; an Historical Synopsis and Commentary, Washington, D.C., Catholic University of America, 1936, p. 51.

16. P.J. KLEKOTKA, Diocesan Consultors, Washington, D.C., Catholic University of America, 1920, passim. For a similar treatment see W.D. MILLER, The Juridical Configuration of the Diocesan Consultors with Particular Reference to the Church of the United States of America, Roma, Pontificia Università Lateranense, 1975, 90p.

mitting him to act on his own. Prudence might strongly advise that a bishop discuss an intended alienation with some of his priests to be sure of doing what was in the best interest of the diocese, but failure to do so in these instances would not have affected the validity of the bishop's act, presuming a just cause existed and the Holy See had given its permission.

When other European councils issued decrees dealing with the administration of property and with acts which called for the bishop to seek the advice or consent of his clergy, they were mainly content to repeat the standard teaching of the Church. For instance, the provincial Council of Lyons (1850) stated that in certain cases prescribed by law, the bishop ought to seek the advice of the Chapter and in some cases obtain its consent.¹⁷ No detail was added. At the Council of Vienna (1858), the bishops recapped the existing norms of the Chapter, mentioning that they sought its advice in those matters which the law or particular custom dictated. Other matters, such as the concerns of the Chapter itself and the union of churches and benefices, required the consent of the Chapter. As the bishop's senate, the Chapter, through its advice, participated in the

17. COUNCIL OF LYONS I, decree 13, no. 2, in Coll. Lac., vol. 4, col. 471: "Tandem Episcopus, in quibusdam casibus a jure praescriptis, Capituli consilium expetere debet, et in nonnullis assensum obtinere."

governance of the diocese.¹⁸

But there was also thought given to new approaches in the administration of temporal goods. For instance, the provincial Council of Venice (1859) called for the bishops to erect in their dioceses a new office whose task would be to maintain vigilance over the administration of ecclesiastical property throughout the whole diocese and observe any norms promulgated on the matter by the Council.¹⁹ The bishops envisioned this work as being done by a number of people (personas eligant).

Providentially, the Church, at this time, was becoming more than a European phenomenon. Missionary activity along the new trade routes first opened up in the fifteenth and sixteenth centuries resulted in the Church's being

18. COUNCIL OF VIENNA, title 2, chapter 5, in Coll. Lac., vol. 5, col. 153: "Episcopi senatum constituunt, consilio et opera in dioecesi gubernanda adsunt. Nonnullis etiam in rebus, de quibus juris statuta et singularum ecclesiarum consuetudines consulantur oportet, Antistitis est, capituli aut quorundam ex capitulo consilia petere. In negotiis, quae ipsum capitulum attinent, nec non in ecclesiarum sive beneficiorum unione consensus capituli accedat necesse est."

19. COUNCIL OF VENICE, part 3, chapter 28, in Coll. Lac., vol. 6, col. 343: "Praecipit igitur haec Synodus, ut Episcopi, in sua quisque dioecesi, ad hunc finem novum officium quamprimum instituant et certum locum designent et personas eligant, quae vel immediate, vel per vicarios foraneos huic bonorum administrationi in tota dioecesi invigilent et communes normas diligenter servent, quae suo tempore promulgabuntur."

established in North, Central and South America, China, Japan, the Philippines and elsewhere. As with all mission churches, development was a gradual process, and until the Church reached maturity, certain adaptations and innovations were necessary to enable it to function. It was from the mission countries that new developments in diocesan structures of temporal administration emerged.

c. Councils in the United States of America

The country whose bishops were most creative as regards diocesan structures was the United States of America. They rejected the models of church organization observed in the neighbouring French and Spanish colonies as unsuitable to the young church.²⁰ In their diocesan synods, provincial and plenary councils, of which the councils of Baltimore were the most influential, the bishops looked afresh at ecclesiastical organization. P.J. Klekotka described the situation well when he said:

But the bishoprics represented at these Baltimore councils were not the developed and well-organized dioceses of today. All over the United States the Church was still in its infancy, the Catholics few and far between, missions, not organized parishes, were the rule. This missionary state of affairs precluded the early establishment of anything like the cathedral Chapters and out of these circumstances arose our

20. P.J. KLEKOTKA, op. cit., p. 17.

institution of diocesan consultors.²¹

The institution of the consultors was itself the product of experimentation by individual bishops. Klekotka found the first legislation mentioning a body like the consultors to be the eleventh decree of the first diocesan synod of Mobile, Alabama (1835) convoked by Bishop Michael Portier, the first bishop. The decree stated:

It is decreed that two priests designated by the bishop, together with the Vicar General form an episcopal council and meet on the second Thursday of each month, with the bishop present or absent, to discuss the matters which can affect the good of the diocese and to be invested with the faculties conceded by the law in similar cases.²²

What exactly Bishop Portier meant by the reference to "faculties conceded by the law in similar cases" is not known. Presumably he intended to give the council at least some of the rights and duties possessed by the cathedral Chapters. If this presumption proved true, then the "episcopal council" would share in the administration of diocesan

21. Ibid.

22. SYNOD OF MOBILE I, decree 11, in P.J. KLEKOTKA, op. cit., p. 18: "Statutum est duos sacerdotes ab Episcopo designatos una cum Vicario Generali constituere consilium episcopale et convenire qualibet secunda feria quinta cujuslibet mensis, praesente vel absente Episcopo ad discutiendas res quae ad bonum dioecesis contuere possunt et investiri facultatibus in pari casu a jure concessis." This text was not found elsewhere.

property and finances in those areas where the common law required the involvement of the Chapter.

The third and fourth provincial councils held in Baltimore in 1837 and 1840 issued decrees requiring the diocesan bishop to seek the advice of his priests before performing certain acts of temporal administration. The issue at point at the third Council was the establishment of a fund to support priests who were sick, aged, or otherwise incapacitated.²³ At the fourth Council the concern was the development of a just system for the distribution of the money given by the faithful on the occasion of weddings or baptisms.²⁴ The advice sought in both these decrees was for once-only decisions, not decisions which were part of the ongoing administration of the diocese. Advice of this kind was most probably obtained by the diocesan bishop from his priests gathered in a diocesan synod, as was stipulated by the first provincial Council of Cincinnati (1855), for the establishment of a fund for sick and incapacitated priests.²⁵ Admittedly these decrees concerned the establish-

23. COUNCIL OF BALTIMORE III, decree 2, in Coll. Lac., vol. 3, cols. 56-57: "Cupimus autem maxime ut in singulis dioecesis Episcopi, quamprimum commode potuerint, Sacerdotum ipsorum adhibito consilio et opera, certum quemdam modum et stabilem statuunt, quo infirmis, vel aetate provectoris, vel alias impeditis, provideatur."

24. COUNCIL OF BALIMORE IV, decree 3, in Coll. Lac., vol. 3, col. 70.

25. COUNCIL OF CINCINNATI I, decree 12, in Coll. Lac.,

ment of something that had not existed before; therefore, only the one decision was involved. The fund and the distribution system which were created would require ongoing administration -- an area where the priests could participate. However, this matter was not addressed in the decrees.

In 1852, the first plenary Council of the bishops of the United States of America was held in Baltimore. In its decree, Hortandos Episcopos,²⁶ the Council called for the appointment of priest-consultors in each diocese where such was possible. Those appointed were to be priests of maturity, learning, integrity and with expertise in business matters. When the need arose, the bishop was to gather their opinions. From the conclusion of the decree it was clear that certain bishops were already using some of their priests in this capacity. In these dioceses, the priests met with the bishop on a set day each month to discuss diocesan affairs. The similarities with the ideas expressed in the decree from Mobile, Alabama (1835) suggest that other dio-

vol. 3, col. 197.

26. PLENARY COUNCIL OF BALTIMORE I, decree 6, in Coll. Lac., vol. 3, col. 146: "Hortandos Episcopos Patres censurerunt, ut, ubi fieri poterit, in suis dioecesisibus 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. Laudandam etiam censurerunt consuetudinem alicubi vigentem Consultores singulis saltem mensibus, die determinato, convocandi, ut quae ad dioecesim pertinent discutiantur."

ceses had found the Alabama ones worthwhile and put them into practice at home.

The legislation of the first plenary Council which called for the appointment of consultors was adopted by the eighth provincial Council of Baltimore (1855). This Council increased the number of consultors to ten or twelve. What the number was before this was not stated, but with a group of ten or twelve the bishop could hear opinions that were supported by others. Pains were taken at the same time to ensure that the bishop was not obliged to seek the advice of the whole group even with regard to more important affairs. The opinions of three or four were thought to be sufficient.²⁷

Conciliar acts and decrees provide an insight into the issues facing the Church at a particular time. They also reveal some of the attitudes of the bishops of the day. As far as the involvement of diocesan clergy in the administration of church goods was concerned, the bishops at the second plenary Council of Baltimore supported their decrees

27. COUNCIL OF BALTIMORE VIII, decree 6, in Coll. Lac., vol. 3, col. 162: "[...] eos (episcopos) nunc praeterea hortamur, ut eorundem numerum ad decem vel duodecim extendant, quin tamen singulorum sententias circa omnia etiam graviora exquirere teneantur. Satius enim erit si tribus vel quattuor nominatim rem quamlibet commendent."

with a number of comments. The priests who helped the bishop in the exercise of his ministry were not underestimated; they brought their piety, zeal, prudence, learning, and wise advice. By their common consent and support, the unity of the administration was strengthened and everything accomplished more agreeably and effectively.²⁸ The decree was a mixture of theological and practical reasoning. The position of the bishop as pastor par excellence was reaffirmed, but the united effort of the bishop with the priests of the diocese was seen not only as an effective way of administering the diocese, but also as an expression of the fact that the episcopate and the presbyterate belonged together. The priesthood did not consist just of bishops, but of bishops and priests, the latter subordinate to the former, but both coming together to make the whole. The bishops; in quoting the great reforming bishop of Milan, St. Charles Borromeo, revealed, however, the weight which practicality had on their reflection and their decisions to associate others with themselves in the work of governance:

When more serious matters are being considered we are led by nature and by reason itself to seek the advice of others, either because the deliberative

28. PLENARY COUNCIL OF BALTIMORE II, title 2, chapter 5, no. 70, in Coll. Lac., vol. 3, col. 421: "Hujusmodi quippe agendi ratione, secundus ordo sacerdotalis ordini primo in succursum venit, commune omnium consensu ac suffragio et unitas administrationis firmatur, et omnia suavius fortiusque, ad majorem Dei gloriam animarumque salutem, peraguntur."

process is more cautious if the opinion of many people has entered into the decision, or because with those from whom we earnestly desire to take advice, consultation has greater authority and weight if more people have taken part.²⁹

The decree, Visum est,³⁰ of the first plenary Council of Baltimore was restated by the second plenary Council held in the same city. This decree made the chancellorship of a diocese in the United States an office with widened responsibilities.³¹ The chancellor was placed in charge of the administration of church property so that this aspect of the life of the Church would not suffer from neglect but would be handled easily and effectively. As the present study is concerned with the norms which directed the diocesan bishop to consult members of the diocese in the administration of temporal goods, further study of this American development is not warranted here. Undoubtedly, dialogue between the bishop and the chancellor took place, but the law did not

29. Ibid., title 2, chapter 3, no. 62, in Coll. Lac., vol. 3, col. 419: "Natura et ratione ipsa ducimur, ut in gravioribus rebus deliberandis, aliorum consilia exquiramus, vel quod cautior deliberatio est, si ad nostrum iudicium multorum sententia accesserit, vel quia apud illos, quibus consulere maxime cupimus, majorem auctoritatem et pondus habet consultatio, in quam plures consenserint."

30. PLENARY COUNCIL OF BALTIMORE I, decree 7, in Coll. Lac., in vol. 3, col. 146: "Visum est Patribus valde expedire ut in unaquaque dioecesi Cancellariam statuatur Ordinarius, pro faciliore rerum ecclesiasticarum administratione, et ad stabilem in iis negotiis agendi normam consequendam."

31. PLENARY COUNCIL OF BALTIMORE II, title 2, chapter 5, no. 71, in Coll. Lac., vol. 3, col. 421.

make such dialogue mandatory. Given the central role accorded to the chancellor in the administration of temporal goods,⁴ and the role the consultors played in the governance of the diocese, it would seem probable that most bishops would have appointed the chancellor as a consultor and provided themselves with a group whose advice would be most helpful and informed.

In 1858, at the second provincial Council of St. Louis, the bishops had made a number of proposals concerning the administration of church property.³² Their concern was with the protection of ecclesiastical goods. What was then in force seemed inadequate; consequently, there was the risk that the Church would suffer serious loss. In addition, the bishops seemed overburdened with temporal worries. The fourth decree of the Council recommended asking the Pope to call a national council to consider this problem and to

32. COUNCIL OF ST. LOUIS II, decree 4, in *Coll. Lac.*, vol. 3, cols. 317-318: "Cum modus hucusque adhibitus, et in praesenti vigens, servandi bona ecclesiastica his in regionibus plurimis incommodis et periculis gravissimis obnoxius sit, Ordinariosque dioecesium curis temporalibus plus nimio, necessitate cogente, addicat, censent Patres hujus Concilii Summo Pontifici supplicandum, ut Concilium nationale quam primum celebrari jubeat, cui difficillimam hanc quaestionem referat, ut, lege aliqua in omnibus dioecesibus Statuum Unitorum vim habitura, accedente approbatione Summi Pontificis, statuatur, quomodo securitati bonorum hujusmodi consuli possit, sive Capitulum Cathedralium erectione, sive coetu aliquo Ecclesiastico singulis dioecesibus constituendo, cui, una cum ordinario, rerum Ecclesiae temporalium administratio committatur, et penes quem jus de hujusmodi bonis disponendi, servatis sanctionibus canonicis de rerum Ecclesiae alienatione, maneat."

issue a law which would rectify it, eliminate the dangers, and be uniform across the country. To secure property, the bishops saw that they needed reliable advice and proposed two alternatives for accomplishing this. The first was to retain the ancient tradition and erect cathedral Chapters. The second was the establishment, in each diocese, of an ecclesiastical body (coetus ecclesiasticus) to whom, together with the Ordinary, the administration of the temporal affairs of the Church would be entrusted. Administrators at the parochial level were accustomed to legislation calling for the erection of councils, but this decree was probably the first in church law calling for the erection of a similar council at the diocesan level.

Subsequent provincial and plenary councils in the United States did not act on the St. Louis proposal. Perhaps the vigilance of the chancellor and the role the law gave the consultors in the episcopal administration of ecclesiastical goods made the erection of a separate, specialized body unnecessary, or perhaps the other bishops did not want it. What is of interest is that the idea was being considered.

d. Particular Legislation for Mission Territories

The Apostolic See encouraged in mission territories the development of new ecclesiastical structures in the area of administration of temporal goods. In a reply (August 20, 1778) to a letter from the Vicar Apostolic of Sichuan, China³³ the Holy Office gave the Vicar the faculty of alienating goods, but stipulated a number of formalities to be observed. First among these was consultation by the Vicar with the missionaries who could be consulted without great difficulty. The second was the existence of a just cause; for instance, the sale would be useful to the Church either by enabling something else to be bought or by paying debts, as the Vicar decided was most expedient. The final formality was that notification of the alienation be forwarded to the Holy See.

33. SACRED CONGREGATION OF THE HOLY OFFICE, reply, August 20, 1778, in Collectanea S. Congregationis de Propaganda Fidei; seu, decreta, instructiones, rescripta pro apostolicis missionibus. [2a ed.], Romae, Ex Typographia Polyglotta, 1907, (hereafter cited as Collectanea SCPF), vol. 1, no. 529, p. 326: "SSmus concedit ad decennium Vicario Apost. Sutchuensi facultatem [...] cum consilio tamen missionariorum, eorum videlicet qui commode in consilium adhiberi possint, et cum onere adiuncto pretium ex huiusmodi venditionibus retractum in Ecclesiae utilitatem impendendi, vel emendo alia bona, vel aliter erogando, prout magis expedire visum fuerit onerata super his Vicarii Ap. conscientia, additaque praeterea obligatione certiore faciendi Sacram Congreg. de Prop. Fide de omni quacumque peracta alienatione."

The same insistence on the Vicar's not working alone with matters that could endanger the temporal welfare of the mission was clear in the instruction the Congregation for the Propagation of the Faith sent to the Vicars Apostolic of Cochin and the Procurator of the Missions in India in 1807. These had requested the faculty to change to more useful purposes offerings and pious legacies that had been given for a certain task. The faculty was granted and could be used if necessity urged, the execution of the donor's desired task was impossible, and the missionaries had given their consent. In this case, as with the requirement in the 1778 reply, the Holy See had to be notified after the fact; no prior consent was demanded.³⁴

An indult granted by Pius VII on January 30, 1803 to the Vicar Apostolic in Western Tonkin, bestowing on him the faculty to sell properties with pious legacies attached to them, stipulated that the faculty could be used only if the European missionaries of the Vicariate, or at least a majority of them, agreed on the sale, and if the proceeds were deposited in a stable fund or in annuities.³⁵

34. SACRED CONGREGATION FOR THE PROPAGATION OF THE FAITH, instruction, January 25, 1807, in Collectanea SCPF, vol. 1, no. 689, p. 410: "[...] ita tamen ut in his casibus commutationem faciat in opera meliora, de consensu missionariorum; eaque demum peracta certiozem reddat Sacram hanc Congregationem pro obtinenda Apostolica approbatione."

35. PIUS VII, indult, January 30, 1803, in Collectanea

On September 8; 1869, the Congregation sent a letter to the Vicars Apostolic of India who were asked to establish councils to handle the temporal administration of the vicariates. The relevant paragraph reads:

So that the administration of all ecclesiastical revenue may proceed in an orderly fashion, a council to manage that administration is to be established in each vicariate; where it has already been established, it is to be reformed properly. The council should consist of several of the more prudent missionaries designated by the Vicar Apostolic. The Vicar acts with them in more serious matters, listening to their advice; and when it is a matter of building new churches, houses, schools or colleges, he never acts against the greater and wiser segment of the missionaries.³⁶

constitutionum, decretorum, indultorum, ac instructionum Sanctae Sedis, Hongkong, Typis Societatis Missionum ad Exteros, 1905, (hereafter cited as Collectanea SS), no. 163, p. 72: "Vicar. Apost. Tonkino Occidentali, facultatem benigne concessit vendendi nonnulla praedia piis quibusdam legatis addicta, dummodo in venditionem ipsam consentiant Missionarii Europaei ejusdem Vicariatus, vel major ipsorum numerus."

36. SACRED CONGREGATION FOR THE PROPAGATION OF THE FAITH, instruction, September 8, 1869; in Collectanea SCPF, vol. 2, no. 1346, section 27, p. 24: "Ut omnium ecclesiasticorum reddituum administratio ordinate procedat in unoquoque Vicariatu Consilium eidem administrationi gerendae constituendum est; ubi vero iam constitutum reperitur accurate reformandum. Quod quidem Consilium ex nonnullis prudentioribus missionariis a Vic. Ap. designandis constare debet, cum quibus ipse Vic. in negotiis gravioris momenti aget, eorumque audiet consilia; et cum sermo sit de novis ecclesiis aut domibus, collegiis, scholis fundandis nunquam aget contra maioris saniorisque missionariorum partis consilium."

This appears to be the first time the Apostolic See had called for the establishment, at a level comparable to that of a diocese, of a council whose sole purpose was to assist the bishop in managing the Church's temporal goods.

What was found in the 1869 letter to the Vicars Apostolic of India, but was missing in the previous statements of the Congregation for the Propagation of the Faith, was the establishment of a council, a body endowed with some permanence to give it the stability its role required. The letter did not require a determined number of members, but stipulated that they be prudent. The council was to enjoy a consultative role, but in some circumstances spelled out in the law, its opinion would be deliberative. Even so, the Vicar retained control of the Vicariate. He alone could initiate an action. The council's power was a restrictive one: it could stop the Vicar from acting, but it could not force him to act if he did not wish to do so.

Another instruction of the Congregation for the Propagation of the Faith, October 18, 1883, sent to the Vicars Apostolic of China,³⁷ reaffirmed the substance of the 1869

37. ID., instruction, October 18, 1883, in Collectanea SCPE, vol. 2, no. 1606, section 14, p. 195: "[...] Iamvero huiusmodi Consilium ex nonnullis prudentioribus missionariis a Vic. Ap. designandis, qui illi ipsi esse possunt qui adsistere debent Vicario Ap. in aliis gravioribus Missionis negotiis expediendis, constare debet, cum quibus ipse Vic. in rebus temporalibus quoque agat, eorumque audiat consilia.

letter but added some precisions. It recognized the possibility of the Vicar's choosing as members of the council for administration those whose advice he already sought in handling the more important matters which arose in the Vicariate. It also dealt with the significance of the council's deliberations. He needed the approval of the other missionaries for an act of alienation before writing to the Congregation for permission. These priests were seen as cooperating in the vicar's vigilant care in the administration of all church goods, offerings and collections -- even in the examination of the reports missionaries were bound to submit each year to the Vicar Apostolic, according to the constitution Romanos Pontifices.

In Japan and Korea in 1890, the churches adopted the idea of a council and made it part of their law.³⁸ In 1893, the Congregation for the Propagation of the Faith sent an

Hoc consensu uti debet Vic. Ap. sive ad tractationem rerum ipsarum temporalium gerendam, sive antequam ad alienationes efficiendas rem Ap. Sedi proponat, sive ad exercendam vigilantiam circa administrationes speciales bonorum uniuscuiusque christianitatis, oblationum et collectarum, sive ad revisionem redditionis rationum, quam singulis annis missionarii, servata quoad Regulares Constitutione Romanos Pontifices (Leonis XIII 8 Maii 1881), Vicariis App. exhibere tenentur. Hac ratione profecto fiet ut ecclesiasticum patrimonium conservetur, benefactorum voluntas sarta tectaque sit, litibus et abusibus et corruptelis via praecludatur."

38. REGIONAL SYNOD OF JAPAN AND KOREA I, title 9, no. 2, in Acta et decreta Primae Synodi Regionalis Japoniae et Coreae, Hongkong, Typis Societatis Missionum ad Exteros, 1923. p. 109.

instruction to the bishops of the East Indies reminding them of the importance of temporal administration in the overall ministry of the Church.³⁹ In this context, the role to be played by the council was reaffirmed.

II The 1917 Code of Canon Law

On March 19, 1904 Pope Pius X issued the encyclical, Arduum sane munus. Thus began a labour to achieve what he desired -- a gathering of the laws of the universal Church, and their arrangement in a lucid manner.⁴⁰ The task was completed with the production of the first codification of the laws of the Church.

With the promulgation of the Code on May 27, 1917 and its coming into force on May 19, 1918, the norms regulating the administration of ecclesiastical goods at the diocesan level were clearly stated. They singled out a number of bodies which were to participate in the episcopal administration of diocesan ecclesiastical goods. Such bodies were these: the Chapter, the consultors, the diocesan council of

39. SACRED CONGREGATION FOR THE PROPAGATION OF THE FAITH, instruction, March 19, 1893, in Collectanea SCPF, vol. 2, no. 1828, section 2, pp. 287-288.

40. T.L. BOUSCAREN, (ed.), The Canon Law Digest, Milwaukee, The Bruce Publishing Company, 1934, (hereafter cited as CLD), vol. 1, p. 3.

administration, and the missionary council. Of these, the council of administration was the only one whose sole reason for existing was the provision of assistance to the Ordinary in his administration of temporal goods.

This council was not something that simply appeared without warning from the pen of the legislator. It had been taking shape, generally speaking, since the earliest norms calling for a bishop to act only after consulting his clergy or receiving their consent. Its immediate roots lie with the norms promulgated by the Apostolic See to regulate the administration of temporal goods in mission countries, and with the legislation of the councils of the nineteenth century, particularly those in the United States.

Canon 1520 of the 1917 Code of Canon Law was the first⁴¹ in universal church law to prescribe that a council, designed specifically to assist the bishop in his administration of the church's temporal goods, be a mandatory part⁴² of the structure of each diocesan church.

41. M. CONTE A CORONATA, Institutiones iuris canonici, 4a ed., Romae, Marietti, 1951, vol. 2, p. 473.

42. Cf. F.M. CAPPELLO; Summa iuris canonici, ed. 4a, Romae, Apud Aedes Universitatis Gregoriana, 1945, vol. 2, p. 571; A. COULY, "Les biens temporels de l'Église," in Le canoniste contemporain, 45(1922), p. 137.

Canon 1520

1. For the proper discharge of this responsibility, every Ordinary shall establish in his episcopal city a council which shall consist of a president, who shall be the Ordinary himself, and of two or more qualified men who are, if possible, experts also in secular law, selected by the Ordinary after hearing the Chapter, unless an equivalent provision has been lawfully made by law or particular custom.

2. In the absence of an Apostolic indult they are not to be appointed to the post of administrator who are related to the local Ordinary in the first or second degree of consanguinity or affinity.

3. When important administrative acts are to be performed the local Ordinary shall not fail to consult the council of administration; the members of it have, however, only an advisory capacity unless their consent is required in cases specially enumerated in the general law or in virtue of the articles of foundation.

4. The members of this council shall, in the presence of the Ordinary, take an oath they will efficiently and faithfully fulfill their office.⁴³

43. Canon 1520,

"1. Ad hoc munus rite obeundem quilibet Ordinarius in sua civitate episcopali Consilium instituat, quod constet praeside, qui est ipsemet Ordinarius, et duobus vel pluribus viris idoneis, iuris etiam civilis, quantum fieri potest, peritis, ab ipso Ordinario, audito Capitulo, eligendis, nisi iure vel consuetudine peculiari iam alio aequivalenti modo legitime fuerit provisum.

"2. Citra apostolicum indultum, ii a munere administratoris excluduntur, qui cum Ordinario loci primo vel secundo consanguinitatis vel affinitatis gradu coniuncti sint.

"3. Loci Ordinarius in administrativis actibus maioris momenti Consilium administrationis audire ne praetermittat; huius tamen sodales votum habent tantum consultivum, nisi iure communi in casibus specialiter expressis vel ex tabulis foundationis eorum consensus exigatur.

"4. Sodales huius Consilii iusiurandum de munere bene ac fideliter adimplendo coram Ordinario emittant."

The law embraced not only dioceses, but also those other ecclesiastical territories governed by local Ordinaries,⁴⁴ that is, Abbacies and Prelatures nullius, Apostolic administrations, Apostolic Vicariates and Prelatures. The inclusion of the council in the common law can be seen as an indication of the benefit that its forerunners had brought to the churches in which they had operated. •

a. Composition of the Council of Administration:

(i) Relationship with the Bishop

The council of administration was to be composed of at least three persons; the Ordinary who was the ex officio president, and two others whom he chose after consulting the Chapter or the consultors. He was not bound to follow the advice given to him by the Chapter or consultors, but he had to consult them. As the welfare and the effective pastoral care of the diocese depended on sound administration, with regard to temporal and spiritual matters, those chosen to be episcopal advisors on the council of administration needed to be of the highest calibre possible. Hence, the legislator's concern that the Ordinary not make this selection

44. Canon 198,2 (1917).

without the benefit of the advice of those who, by law, assisted him in the governance of the diocese. The Chapter or the consultors could ensure that the bishop was adequately informed about the candidates being proposed. In addition, the inclusion of the Chapter or the consultors in the process of selection could, it was hoped, contribute to a future, fruitful working relationship between these bodies and the council of administration.

Some commentators did not see the law as demanding the establishment of a new body if one already existed which fulfilled the functions the Code ascribed to the council.⁴⁵ What the legislation did seem to specify, however, was a body separate from the Chapter or consultors -- the very body which would have been supplying the bishop with the assistance of its opinion on temporal matters as well as on a variety of other concerns.⁴⁶ The law did not forbid a bishop from naming his Chapter or consultors as his council of administration; such a decision would presumably fulfill the letter of the law, if not reflect its spirit.

45. Cf. H.A. AYRINHAC, Administrative Legislation in the New Code of Canon Law, New York, Longmans, Green, 1930, p. 426; M. CONTE A CORONATA, op. cit., pp. 473-474.

46. The 1917 Code required the bishop to consult both the Chapter of Canons (consultors) and the council of administration only when the alienation of an object with a value between 1,000 lire and 30,000 lire was being considered

In establishing the council of administration, the legislator called for a permanent body which was to become part of the diocesan structure and recognized as such by all. By its permanence, all would see that this group shared the bishop's responsibility for temporal administration. The law did not state that one reason for having the council was to free the bishop for other duties, especially those connected with teaching, preaching and presiding at worship -- a view expressed, however, by commentators.⁴⁷ The council was to help the bishop fulfill properly the function of vigilant supervision that was one of his principal duties.

(ii) Number of Members

The law required the council to consist of two or more suitable men (not women), expert even in civil law. It established a minimum number to ensure the bishop was assisted by a council, a safeguard against an individual's becoming the sole episcopal adviser in financial affairs. No upper limit was set to allow the bishop the freedom to structure this body in the way which best suited the diocese.

(canon 1532,3), or when the kind of contract considered endangered the condition of the Church as specified in canon 1533.

47. A. COULY, loc. cit., pp. 318-319.

(iii) Qualifications of Members

(a) Technical Expertise

Those chosen by the Ordinary as members of the council of administration were to be skilled, as far as possible, in civil law. The complexity of modern civil legislation in regard to property demanded the advice of experts who could help the local Ordinary handle these oftentimes difficult matters and avoid mistakes which had been made occasionally in the past.

While the canon specified expertise only in civil law, a knowledge of and expertise in canon law by at least some of the members would also be needed for the council to be the competent advisory body envisaged in the law.

(b) Clergy or Laity

The members could be clerics or lay men; women were excluded. As the survey of earlier conciliar legislation has shown that the role of episcopal consultant, either for giving advice or consent, was considered as the preserve of the clergy, the expansion therefore of the criteria for eligibility to include lay men was an interesting development.

Lay men had participated in the administration of ecclesiastical temporal goods prior to this, but never in this official advisory capacity at the diocesan level. At the parish level, there was a lengthy history of the local administrator's being assisted by the lay people who sat on the fabric council. At the diocesan level, however, legislation was consistent in its exclusion of lay people from assisting the diocesan bishop in a similar manner. There were, nevertheless, some interesting precedents.

The most significant one was with regard to the oeconomus or finance officer, the official who managed the Church's estates and the day to day running of the diocese. The general rule for most of the Church's history was that lay people were not considered suitable for the office. There were exceptions, among the more significant of which was St. John Chrysostom (347-407) who seemed to have had a lay man as finance officer when he was bishop of Antioch. This, however, was regarded as an isolated instance.⁴⁸ The Council of Chalcedon (451) decreed that the bishop should appoint the finance officer from among his own clergy. St. Gregory the Great (540-604) was insistent that the bishop choose only clerics for the post,⁴⁹ hoping to

48. Y. CONGAR, "Les biens temporels de l'Église," in G. COTTIER, (éd.), Église et pauvreté, Paris, Editions du Cerf, 1965, p. 244.

49. GREGORY I, epistola ad Ianuariam, in J.P. MIGNE, Patrologiae cursus completus, [series latina], Parisiis,

ensure by this that only worthy men were chosen for this important task.⁵⁰ The Council of Seville (619) in Spain reaffirmed the Chalcedonian decree,⁵¹ and, in addition, declared that a lay man was unfit to be the vicar of the bishop, or to be in a position of judging the clergy; Scripture was quoted to prove the inappropriateness of such a choice: lay man and cleric are as different as ox and ass, and they shall not be yoked together (Deut.22). Any bishop who disregarded this decree and appointed a lay man as finance officer was criticized harshly. He was seen as being contemptuous of the canons, a swindler of ecclesiastical property, liable to judgement by Christ over the property of the poor, and also liable to judgement by the Council who passed the decree.

Equally insistent on the separation of the ecclesiastical and secular spheres was the Council of Constance (1415). Only priests have the right to possess and adminis-

Migne, 1844, vol. 77, col. 1002.

50. J.J. COMYNS, Papal and Episcopal Administration of Church Property; an Historical Synopsis and Commentary, Washington, D.C., Catholic University of America, 1942, p. 35.

51. COUNCIL OF SEVILLE II, decree 9, in MANSI, vol. 10, col. 560: "Nona actione didicimus, quosdam ex nostro collegio, contra mores ecclesiasticos, laicos habere in rebus divinis constitutos oeconomos. Proinde pariter tractantes eligimus, ut unusquisque nostrum secundum Chalcedonensium patrum decreta, ex proprio clero oeconomus sibi constituat."

ter the goods of the Church. These goods belong to God and only the priest can rightly take up this task. Even if the cleric were delinquent in his duty, the lay man had no more right to interfere than a peasant would have had with royal property were the king delinquent in his responsibilities.⁵²

The Council of Trent was content to remain with the status quo with regard to the question of oeconomi or finance officers.⁵³ Evidence of relaxations of this requirement of exclusivity appeared in the decrees of a few subsequent local councils, notably the second plenary Council of Baltimore (1866). This Council called for the appointment of finance officers and decreed that lay men could be chosen for the office. They were to submit annual reports of their administration to the bishop.⁵⁴

While the legislation on finance officers saw them as being actively involved in the administration of the goods

52. COUNCIL OF CONSTANCE, article 16, in MANSI, vol. 28, cols. 105-106: "Quia igitur bona temporalia Ecclesiae sunt sanctificata Domino, minus possunt temporales Domini talia ad arbitrium suum auferre ab Ecclesia, clero delinquente, quam rustici possent ad arbitrium suum auferre bona regalia a corona terreni regni, ministris ipsius Regis delinquentibus."

53. J.J. COMYNS, op. cit., p. 55.

54. PLENARY COUNCIL OF BALTIMORE II, title 2, chapter 5, no. 75, in Coll. Lac., vol. 3, col. 422: "[...] si etiam Oeconomum, seu in temporalibus rebus gerendis Procuratorem, laicum sive clericum nominaret [...]."

of the diocese, and although numerous calls were made for their appointment, the office never became widespread in the Western Church.⁵⁵ The diocesan bishops appeared to prefer other means of handling the temporal administration of the territories entrusted to their care. Perhaps this preference was born of hard experience. The history of the diocesan bishop, in large part, is the history of his struggles with those, clerics and laity, who would usurp or limit his power. Diocesan bishops, gathered in council, would not be expected to issue decrees that might allow their authority to be undermined. Even with an office that possibly featured more on paper than in reality, the bishops were careful not to bestow on it any power other than a dependent one. The legislation on the finance officer, for instance, never made it obligatory for the bishop to consult him in the way he was obliged to consult the diocesan clergy or some portion of it before placing certain acts of temporal administration.

The promulgation of universally binding laws in which the action of a bishop could be stopped by a council composed entirely of lay men was something remarkable. A bishop might never choose to compose the council in such a manner, but even to admit the possibility of its happening

54. L.A. VOEGTLE, "Econome (canon law)," in New Catholic Encyclopedia, New York, McGraw-Hill Book Co., [1967], vol. 5, p. 43.

reflected a major shift in thinking on the part of the legislator who recognized the growing complexity of the business and legal worlds, worlds where the laity were the most skilled. He acknowledged, no doubt as well, that many bishops had already greatly benefited by the help of lay men in the temporal administration of their dioceses. The law was drafted in a way that enabled the diocesan bishop to maintain his authority, yet at the same time allowed him to choose the most suitable and skilled advisors.

The acceptance of lay men into the realm of diocesan administration seems to have been prompted more by pragmatism than by any theological awakening to the baptismal dignity of the laity which made them suitable to administer the goods of the Church. This awakening would come with the Second Vatican council.

— (iv) Eligibility for Membership

To avoid accusations of conflict of interest or of favouritism, the bishop was not to choose anyone related to him in the first or second degree of consanguinity or affinity, unless the Holy See permitted an exception to the law.⁵⁶ H. Ayrinhac held the opinion that the Vicar General

56. M. PISTOCCHI, De bonis Ecclesiae temporalibus, Taurini, Marietti, 1932, p. 322.

was also ineligible.⁵⁷ He did not give a reason for this opinion, but possibly his reasoning was that the Vicar General is the one who, by virtue of his office, possesses Ordinary power for the whole territory of the diocese,⁵⁸ and who, thereby, is the alter ego of the bishop. He is the person in the diocese whom the bishop should most likely delegate to preside at council meetings when he himself could not be present. The council is composed of the Ordinary and at least two others -- when the bishop is present, there is no need for the alter-ego. To preserve that particular relationship which must exist between the bishop and the Vicar General, he was not to be a member of a council that advised the bishop.

b. Functions of the Council

(i) Consultation

The council of administration was erected in the diocese to help the Ordinary fulfill his function of vigilant supervision over the administration of all the ecclesiastical goods which had not been withdrawn from his jurisdic-

⁵⁷. H.A. AYRINHAC, op. cit., p. 427.

⁵⁸. Canon 198,1 (1917), canon 366,1 (1917).

tion.⁵⁹ The help was given by means of a process which the law required the local Ordinary to initiate before he performed certain administrative acts.⁶⁰ At times, consultation alone fulfilled the requirement. He was left free to accept or reject the advice which was offered. At other times, the requirement was to obtain the consent of the council. In these cases, he would place an invalid act if he acted without the council's approval. Its power, though, remained a restraining one. The council could not force him to initiate an action.

The Code described the acts which required the involvement of the council of administration as "acts of greater importance." While a certain number were listed, the local Ordinary remained free to seek the advice of the council with regard to other matters which were not specified in the Code as requiring the observance of this formality.

The acts stipulated in the Code as requiring the Ordinary to **consult** the council of administration were these:

1) investment of the endowment of a benefice in safe and fruitful real estate or bonds when such consists of a

59. Canon 1519,1 (1917).

60. Canon 1520,3 (1917).

set sum of money. This investment was to be made as soon as possible;⁶¹

2) alienation when the value of the property did not exceed one thousand lire or francs (unless the matter was of very little importance) and the interested parties had consented;⁶²

3) entering a contract through which the condition of the Church could be worsened. To know whether consent of the council was required as well, the guideline to follow was the value of the contract;⁶³

4) pledging the goods of the Church, mortgaging them, or contracting debts. Each of these acts constituted a risk to the well-being of the Church. The factors which would determine whether the Ordinary would merely seek the advice of the council or would be obliged to have its consent were the amount of money involved and the length of the time the contracted obligation would remain in force;⁶⁴

5) leases of ecclesiastical property if the value of the lease was between one thousand and thirty thousand lire or francs, and the lease was for less than nine years; or, if it was for more than nine years but the value was less

61. Canon 1415,2 (1917).

62. Canon 1532,2 (1917).

63. Canon 1533 (1917).

64. Canon 1538,1 (1917).

than one thousand lire or francs;⁶⁵

6) emphyteusis. This was a form of contract by which real estate was leased to a third party (called the emphyteuta) so that he enjoyed the right to use it and became the owner of its produce, either for all time or for a definite period, not less than ten years, under condition that annually he pay a certain consideration.⁶⁶ The canon stated that the lessee could not be relieved from the obligation of paying the consideration without the permission of the legitimate ecclesiastical superior mentioned in canon 1532;⁶⁷

7) investment of money or moveable goods given for the endowment of a foundation. The money or goods were to be kept in a safe place designated by the Ordinary until they could be safely and profitably invested;⁶⁸

8) litigation in which the local Ordinary represents the cathedral church or the episcopal mensa. To act licitly, the Ordinary was required to consult the cathedral Chapter (or diocesan consultors) or the council of administration, securing their advice or consent according to the amount of money involved in the case, as prescribed by canon 1532,2

65. Canon 1541,2, 2 and 3 (1917).

66. S. WOYWOD and C. SMITH, A Practical Commentary on the Code of Canon Law, New York, J.F. Wagner, 1948, p. 217.

67. Canon ~~1542~~ (1917).

68. Canon 1547 (1917).

and 3.⁶⁹ ---

The acts for which the Code required the Ordinary to obtain the **consent** of the council of administration were as follows:

1) exchange of notes payable to the bearer for other valuable papers which were at least equally safe and profitable. Any kind of barter or trading had to be avoided. The consent of other interested parties was also required;⁷⁰

2) alienation when the value of the property was between one thousand and thirty thousand lire or francs. The consent of the cathedral Chapter (or consultors) and other interested parties was also required;⁷¹

3) leases when the value of the lease exceeded thirty thousand lire or francs but the lease was for less than nine years;⁷²

4) leases when the value of the lease was between one thousand and thirty thousand lire or francs but the lease was for more than nine years;⁷³

5) emphyteusis when the value of the lease fell within the range for which canon 1532 stipulated that the council's

69. Canon 1653,1 (1917).

70. Canon 1539,2 (1917).

71. Canon 1532,3 (1917).

72. Canon 1541,2,1 (1917).

73. Canon 1541,2,2 (1917).

consent be sought;⁷⁴

6) litigation in the circumstances described in number 8 in the preceding section, but when the sum of money involved fell within the range for which canon 1532 stipulated the consent of the council;⁷⁵

7) contracts which risked worsening the condition of the Church, and whose value was such that, according to canon 1532, the consent of the council was required;⁷⁶

8) pledging securities, mortgages, and contracting debts when the value of the transaction fell within the range for which canon 1532 stipulated the consent of the council.⁷⁷

Broadly speaking, the acts for which the Code specified that the Ordinary was to seek the advice or the consent of the council of administration were those acts for which earlier norms had required that the bishop consult or obtain the consent of his clergy. Not that the clergy were overlooked in the norms of the 1917 Code. The cathedral Chapter or consultors played the same role in all those acts which required the advice or the consent of the council of

74. Canon 1542 (1917).

75. Canon 1653 (1917).

76. Canon 1533 (1917).

77. Canon 1538,1 (1917).

administration, with the exception of the investment of the money given for the endowment of a benefice,⁷⁸ and the exchange of notes payable.⁷⁹

(ii) Ordinary and Extraordinary Administration

As the validity of acts depended on the fulfillment of the required formalities, it was important to know to which acts these formalities applied. Canon 1527,1 spoke of acts which exceeded the ends and the mode of ordinary administration, which were invalid if the administrator posited them without seeking and obtaining the faculty to do so from the local Ordinary. This was one of the ways by which he exercised his control over the immediate administrators of the churches and other juridic persons of the diocese. These lesser administrators, clerical and lay, had also to submit annual reports of their administration and seek the Ordinary's authorization before beginning litigation or defending the Church in a court of law.⁸⁰ The Ordinary did not have the right of supreme and direct administration of the churches of the diocese, but the control he did have was considerable. He was to issue instructions as to which acts

78. Canon 1415,2 (1917).

79. Canon 1539,2 (1917).

80. R. NAZ, Traité de droit canonique, 2e éd. rév., Paris, Letouzey et Ané, [1947-1949], vol. 3, p. 245.

exceeded the limits of ordinary administration. One commentator distinguished between acts of ordinary and extraordinary administration in the following way:

Ordinary administration includes whatever is necessary for the preservation of church property and whatever actions are required to collect the income from such property; also the payment of current bills and taxes, the making of ordinary repairs, and keeping an ordinary bank account. Ordinary acts of administration also include such acts as are to be done at fixed intervals (monthly, quarterly, annually) as well as those which are necessary for the customary transaction of business.

Extraordinary administration includes such acts as do not occur periodically and are of their nature of greater importance; for example, the various actions listed until the title of contracts [...] and all acts for which the law requires for validity the permission of the Ordinary.⁸¹

An Ordinary could permit only those extraordinary acts of administration which lay within his competence. In giving that permission, the formalities stipulated regarding the council of administration had to be followed.⁸² The decision as to whether simple consultation or consent was required depended on the value of the transaction.

81. T.L. BOUSCAREN, A.C. ELLIS and F.N. KORTH, Canon Law: a Text and Commentary, fourth revised edition, Milwaukee, The Bruce Publishing Company, 1966, p. 835.

82. Ibid., p. 836.

(iii) Penalties

The seriousness with which the law considered the administration of the Church's goods was emphasized by the existence of a number of penal laws. Canon 2347 applied to ecclesiastical administrators, to those who dealt with them, and to those whose authorization or consent was necessary to render an alienation legitimate.⁸³ The penalty of ipso facto excommunication was incurred by those who consented to the alienation of an object that could be legitimately alienated only with the permission of the Holy See, if seeking that permission was knowingly neglected.⁸⁴ Complicity in illegal alienations which did not require the permission of the Holy See by those whose consent was an essential element for the validity of the act of alienation was punishable by deprivation from office, suspension, or ineligibility for future offices, depending on the person's office and dignity. Laymen were not mentioned specifically but could be punished with appropriate penalties.⁸⁵

(iv) Structures in Mission Countries

The Code made special provision for the churches in

83. J.F. CLEARY, op. cit., p. 111.

84. M. PISTOCCHI, op. cit., p. 322.

85. T.L. BOUSCAREN, A.C. ELLIS and F.N. KORTH, op. cit., p. 544.

mission countries so that those entrusted with governance of the Church were not left without assistance in their work. Canon 302 required Vicars and Prefects Apostolic to establish councils composed of at least three of the more senior and proven missionaries whose opinion they were to hear in the more serious and difficult affairs. This opinion could be given by letter, a provision needed to free the council from the requirement of the law which demanded convocation of the members so that they might act as a body.⁸⁶

Following the promulgation of the 1917 Code of Canon Law, some controversy arose as to the need for both a mission council and a council of administration. Some canonists thought one was sufficient, while others saw the law requiring two separate councils. An answer came in the form of a private reply from the President of the Commission for the Interpretation of the Code, January 26, 1919, in which he stated that the council of missionaries mentioned in canon 302 could take the place of the council of administration and of the Chapter as regards the alienation or leasing of ecclesiastical property, according to canons 1532 and 1521.⁸⁷ This opinion was reaffirmed by the Prefect of the

86. Canon 302. "Constituant Consilium ex tribus saltem antiquioribus et prudentioribus missionariis, quorum sententiam, saltem per epistolam, audiant in gravioribus et difficilioribus negotiis."

87. CLD, vol. 2, p. 121.

Congregation for the Propagation of the Faith in approving the decrees of the First Council of China. With reference to the members of the council of administration, he stated that in the missions these consultants or councillors may be the same as those chosen for the mission council.⁸⁸

Prior to the Second Vatican Council, the requirements of the Code on the formation of councils of administration remained unchanged. While the law governing the formation and the function of the advisory body became more detailed, the basic principle of the Ordinary's acting with the cooperation of others, who at times could even prevent his acting, remained intact. The major differences between the council of administration and those bodies which functioned in the council's capacity in former times were that, firstly, it was formed with the specific purpose of assisting the bishop in the administration of the temporal goods of the diocese, and secondly, lay men were eligible for selection as members.

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With regard to the administration of temporal goods, the Council of Trent was content to support the traditional

88. Ibid., vol. 3, p. 580.

practices and structures of diocesan organization. The diocesan bishop was entrusted with the care of the diocese; yet, while he was the central figure, he did not operate alone, either with regard to spiritual or to temporal matters.

The cathedral Chapter of Canons was the body of priests which canon law required the bishop to involve in his administration of the temporal goods of the diocese. It exercised its role primarily in two ways: advising the bishop, or giving consent to transactions proposed by him -- the law determined the formalities to be observed in each case.

In mission countries, the United States of America in particular, the chapter structure was not adopted by the developing churches. Councils composed of reliable, prudent missionaries were established in a number of countries at the instigation of the Congregation for the Propagation of the Faith. In the United States, the development of the diocesan consultors, a group of priests chosen by the bishop to assist him in the governance of the diocese, was a noteworthy innovation in diocesan structure.

With their inclusion in the 1917 Code of Canon Law, the consultors became part of the universal law of the

Church, and were accorded a place, where they existed, in the legislation governing the bishop's administration of temporal goods identical to that of the chapter. However, with the 1917 Code, another innovation in church structure emerged: the diocesan council of administration. This was the first time in universal church law that legislation called for the establishment of a body whose sole purpose was to assist the bishop in the administration of the temporal goods of the diocese.

The legislation accorded the council a central position in episcopal administration of temporal goods. In the cases determined in law, the bishop was either to seek the advice of the council or to obtain its consent before making certain transactions. In that sense, the council could be said to have a limiting power on the actions of the bishop. He remained free, however, to accept or disregard the advice of the council, but he was not to proceed without consultation, nor act without the consent of the council where the law required it.

Another important development in the laws governing episcopal administration was the eligibility of lay men for selection as members of the council of administration. This was the first time in universal, church law that lay men were formally authorized to be appointed as episcopal advisers.

CHAPTER THREE

CONTEMPORARY LEGISLATION ON DIOCESAN-LEVEL PARTICIPATION

Contemporary Legislation regarding the episcopal administration of temporal goods, especially that contained in the Church's principal legislative document, the 1983 Code of Canon Law, looks to the legislation of earlier times as a foundation on which to build. However, it turns to the teaching of the Second Vatican Council as the authoritative guide for what that legislation should express in the light of current conditions. The purpose of this chapter is to attempt to answer three questions. First, what did the Second Vatican Council teach as regards temporal goods and their management at the diocesan level? To answer this, we will make references to the documents of the council, but also to those later texts which clarify or develop the conciliar teaching. Second, how was this teaching incorporated into the revised Code of Canon Law? Third, by way of conclusion, is the new legislation governing the management of temporal goods at the diocesan level substantially different from the previous norms?

I Vatican II and Post-conciliar Documents

The contemporary teaching on temporal goods and their

management at diocesan level is not found in one specific statement. Rather, pertinent references are found in a number of the conciliar and post-conciliar documents. These references, direct and indirect, will be presented under three headings: the mission of the diocesan bishop; principles and practices guiding the management and the use of temporal goods; temporal goods at the service of the mission of the Church.

a. Mission of the Diocesan Bishop

A broad description of the mission of the diocesan bishop can be taken from the notion of a diocese found in the Decree on the Pastoral Ministry of Bishops:

A diocese is that portion of God's people which is entrusted to a bishop to be shepherded by him with the cooperation of the presbytery. Adhering thus to its pastor and gathered together by him in the Holy Spirit through the Gospel and the Eucharist, this portion constitutes a particular church in which the one, holy, catholic and apostolic Church of Christ is truly present and active.¹

1. VATICAN COUNCIL II, Decree on the Pastoral Office of Bishops in the Church, Christus Dominus, October 28, 1965, (hereafter cited as CD), in Acta Apostolicae Sedis, (hereafter cited as A.A.S.), 58(1966), n. 11, p. 677: "Diocesis est Populi Dei portio, quae Episcopo cum cooperatione presbyterii pascenda conceditur, ita ut, pastori suo adhaerens ab eoque per Evangelium et Eucharistiam in Spiritu Sancto congregata, Ecclesiam particularem constituat, in qua vere inest et operatur Una Sancta Catholica et Apostolica Christi Ecclesia." English translation in W.M. ABBOTT, (ed.), The Documents of Vatican II, New York, Guild Press, 1966, p. 403.

The bishop is thus the guide and pastor who moulds this group of the baptized, the people of God, into one community. These people are entrusted to him, a fact which acknowledges the existence of a hierarchic relationship between him and the authority that has care of the whole people of God. The Holy Spirit is the foundation of the community, but the community gathers in gospel faith and eucharistic oneness. The bishop stands in the midst of the community as a shepherding ruler who teaches and sanctifies. His office in the diocese has two focuses: first, the function of governing; second, those of teaching and sanctifying.

(i) The Function of Governing

A key text on the bishop's function of governing is found in the Dogmatic Constitution of the Church:

The bishops, as vicars and legates of Christ, govern the particular churches assigned to them by their counsels, exhortations and example, but over and above that also by the authority and sacred power which indeed they exercise exclusively for the spiritual development of their flock in truth and holiness, keeping in mind that he who is greater should become as the lesser, and he who is the leader as the servant. (cf. Lk.22,26-27) This power, which they exercise personally in the name of Christ, is proper, ordinary, and immediate, although its exercise is ultimately controlled by the supreme authority of the Church and can be confined within certain limits should the usefulness of the Church and the faithful require that. In virtue of this power bishops have a

sacred right and a duty before the Lord of legislating for and of passing judgement on their subjects, as well as of regulating everything that concerns the good order of divine worship and of the apostolate.²

The council restored authority that rightfully belonged to the bishop but which had been somewhat eroded over the years by moves that centred power more and more on the papacy. The bishops exist by divine institution, "having taken the place of the apostles as pastors of the Church."³ They are vicars of Christ, not vicars of the Roman Pontiff. They are the heads of particular churches in which the Church of Christ is present and active, not regional supervisors of administrative sub-divisions of a global church. "They exercise the power they possess in their own right and are called in the truest sense of the term prelates of the

2. VATICAN COUNCIL II, Dogmatic Constitution on the Church, Lumen Gentium, November 21, 1964, (hereafter cited as LG), in A.A.S., 57(1965), n. 27, pp. 32-33: "Episcopi Ecclesias particulares sibi commissas ut vicarii et legati Christi regunt, consiliis, suasionibus, exemplis, verum etiam auctoritate et sacra potestate, qua quidem nonnisi ad gregem suum in veritate et sanctitate aedificandum utuntur, memores quod qui maior est fiat sicut minor et qui praecessor est sicut ministrator (cfr. Luc. 22, 26-27). Haec potestas qua, nomine Christi personaliter funguntur, est propria, ordinaria et immediata, licet a suprema Ecclesiae auctoritate exercitium eiusdem ultimatum regatur et certis limitibus, intuitu utilitatis Ecclesiae vel fidelium, circumscribi possit. Vi huius potestatis Episcopi sacrum ius et coram Domino officium habent in suos subditos leges ferendi, iudicium faciendi, atque omnia, quae ad cultus apostolatusque ordinem pertinent, moderandi." English translation in A. FLANNERY, (ed.), Documents of Vatican II, Grand Rapids, Michigan, William B. Eerdmans Publishing Co., 1975, pp. 382-384.

3. LG, n. 20, in A. FLANNERY, (ed.), op. cit., p. 372.

people they govern."⁴ "As the successors of the apostles, (they) enjoy as of right in the dioceses assigned to them all ordinary, special and immediate power which is necessary for the exercise of their pastoral office."⁵ They do not operate with powers only granted to them by the supreme authority.⁶ Although the Roman Pontiff has the authority to reserve certain powers to himself, he is not the source of the bishops' power.

The source of this power is episcopal consecration. It "confers, together with the function of sanctifying, the duty also of teaching and ruling."⁷ Before the council, it was generally taught that the power of sanctifying came from episcopal consecration (power of orders), but the roles of teaching and ruling were commonly held to be conferred on the bishop by the Pope (power of jurisdiction).⁸

4. Ibid., n. 27, in A. FLANNERY, (ed.), op. cit., p. 383.

5. CD, n. 8, in A. FLANNERY, (ed.), op. cit., p. 567.

6. K. RAHNER, "Art. 18-27 Constitution on the Church", in H. VORGRIMMER, (ed.), Commentary on the Documents of Vatican II, Montreal, Palm Publishers, 1967, vol. 1, p. 205.

7. LG, n. 21, in A. FLANNERY, (ed.), op. cit., p. 373.

8. B. KLOPPENBURG, Ecclesiology of Vatican II, translated by M.J. O'Connell, Chicago, Franciscan Herald Press, [1974], p. 222. For fuller treatments of the questions arising from the conciliar teaching see 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. 183-219; G. GHIRLANDA, "De natura,

By virtue of the power of governing received at consecration, bishops in the dioceses assigned to them have the right and duty to legislate for and pass judgements on their subjects as well as regulating what concerns the good order of divine worship and of the apostolate. In the management of the temporal goods of the diocese, the bishop's use of his power would achieve good order by passing laws appropriate to the particular circumstances of the diocese, by issuing instructions on how the requirements of universal law are to be fulfilled, and by imposing appropriate penalties on negligent administrators, if such were to occur.⁹

Good government of the diocese depends primarily on the bishop, but the task of building the community and guiding it is a shared one.

For they (the pastors) know that they themselves were not established by Christ to undertake alone the whole salvific mission of the Church to the world, but that it is their exalted office so to be shepherds of the faithful and also recognize the latter's contributions and charisms that everyone in his own way will,

origine et exercitio potestatis regiminis iuxta novum codicem", in Periodica, 74(1985), pp. 109-164; J.M. HUELS, "Another Look at Lay Jurisdiction", in The Jurist, 41(1981), pp. 59-80.

9. Cf. LG, n. 23, in A. FLANNERY, (ed.), op. cit., p. 377.

with one mind, cooperate in the common task.¹⁰

Bishops are reminded by the council to regard priests as their indispensable helpers and advisers,¹¹ and deacons as fellow-workers, particularly in the fields of charity and administration.¹² Likewise, the laity, as participators in the function of Christ, priest, prophet, and king, have an active part of their own in the life and action of the Church.¹³ The desire of the council was for an active laity. For this reason, the bishops should "willingly use their prudent advice and confidently assign duties to them in the service of the Church leaving them freedom and scope for acting."¹⁴

10. Ibid., n. 30, in A.A.S., 57(1965), p. 37: "Sciunt enim Pastores se a Christo non esse institutos, ut totam missionem salvificam Ecclesiae versus mundum in se solos suscipiant, sed praeclarum munus suum esse ita pascere fideles eorumque ministraciones et charismata ita recognoscere, ut cuncti suo modo ad commune opus unanimiter cooperentur." English translation in A. FLANNERY, (ed.), op. cit., p. 388.

11. Cf. VATICAN COUNCIL II, Decree on the Ministry and Life of Priests, Presbyterorum Ordinis, December 7, 1965, (hereafter cited as PO), in A.A.S., 58(1966), n. 7, pp. 1001-1002. English translation in A. FLANNERY, (ed.), op. cit., pp. 875-876.

12. Cf. LG, n. 29, in A. FLANNERY, (ed.), op. cit., p. 387.

13. Cf. VATICAN COUNCIL II, Decree on the Apostolate of the Laity, Apostolicam Actuositatem, November 18, 1965, (hereafter cited as AA), in A.A.S., 58(1966), n. 10, p. 846. English translation in A. FLANNERY, (ed.), op. cit., p. 777.

14. Cf. LG, n. 37, in A. FLANNERY, (ed.), op. cit., p. 395.

Shared responsibility was recognized by Popes John XXIII and Paul VI as a legitimate aspiration of men and women in economic, social, and political life.¹⁵ Likewise, in ecclesial life, it also finds expression. The Directory on the Pastoral Ministry of Bishops, published in 1973 to assist bishops implement the teaching of the council, emphasized the fact.

Every member with differing roles and in differing ways takes his own part along with others in the work of the Church, especially with those who have been appointed by the Holy Spirit to rule the Church of God.¹⁶

For the renewal of the Church envisaged by the council to become a reality, those who exercise roles of leadership in it must sometimes change their way of thinking as well as change structures. Episcopal authority is best exercised

15. Cf. JOHN XXIII, encyclical letter, Mater et Magistra, May 15, 1961, in A.A.S., 53(1961), pp. 401-464.- PAUL VI, apostolic letter to Cardinal Maurice Roy, Octogesima Adveniens, 14 May, 1971, in A.A.S., 63(1971), pp. 401-441.

16. SACRA CONGREGATIO PRO EPISCOPIS, Directorium de Pastoralis Ministerio Episcoporum, (hereafter cited as DPME), [In civitate Vaticana], Typis Polyglottis Vaticanis, 1973, n. 4, p. 19: "Hinc omnia membra, diverso quidem titulo et modo, officium suum in labore Ecclesiae harmonice sociant cum onere aliorum, praesertim eorum qui a Spiritu Sancto positi sunt regere Ecclesiam Dei." English translation prepared by the Benedictine monks of the Seminary of Christ the King, Mission, B.C., in Directory on the Pastoral Ministry of Bishops, Ottawa, Publications Service of the Canadian Catholic Conference, 1974, (hereafter cited as Directory), p. 12.

when it stimulates a corporate sharing of the burdens of the diocese among the priests, religious and laity.¹⁷

In the earlier drafts of the schema De clericis, the emphasis on the laity's involvement in the administration of ecclesiastical goods was quite marked.¹⁸ Mention was also made in these texts of a council of administrators. The primary task of this body was to administer the common fund which each diocese was to establish to ensure adequate remuneration, health care and retirement benefits for clerics, the erection and ongoing care of ecclesiastical buildings, and other diocesan needs.¹⁹ In addition, the council was seen as the body to manage the administration of all the temporal functions of the diocese if the local Ordinary decided the situation warranted it and the good of the Church demanded it.²⁰ A later report of the Preparatory Commission introduced more specific details: the local Ordinary was to preside over this council, and in matters of great importance with regard to the administration of eccle-

17. Cf. Directory, n. 37, p. 23.

18. Cf. VATICAN COUNCIL II, Acta Synodalia Sacrosancti Concilii Oecumenici Vaticani II. Cura et studio Archivi Concilii Oecumenici Vaticani II. [In Civitate Vaticana], Typis Polyglottis Vaticanis, 1974, vol. 3, period 3, part 4, n. 38, p. 842.

19. Cf. Ibid., n. 34, p. 841.

20. Cf. Ibid., n. 35, p. 841.

siastical goods, he was to consult the council.²¹

However, it was decided not to incorporate such specific details in the conciliar decree. In April, 1964, the Preparatory Commission produced a schema in which no explicit reference was made to the administration of ecclesiastical goods.²² In a report issued at the end of the year, it was stated that the detailed regulations governing the involvement of the laity in the administration of ecclesiastical goods (and presumably other regulations for this area as well) would be better left to a post-conciliar directory.²³

The Congregation for Bishops, in its subsequent Directory on the pastoral ministry of bishops, called for the erection of councils for administering temporalities in the diocese, parishes, and other ecclesiastical organizations. It called specifically for the inclusion of lay men with administrative ability as members of the councils²⁴ (this

21. Cf. Ibid., p. 876.

22. Cf. Ibid., pp. 846-849.

23. Cf. Ibid., p. 240.

24. DPME, n. 135, p. 132: "Episcopus Consilia bonis administrandis in dioecesi, in unaquaque paroecia aliisque dioecesanis Institutis et Operibus constituenda curat, iisdemque etiam laicos, quatenus fieri possit, cum clericis adnumerat, selectos inter viros rei administrandae peritos atque probitate et Ecclesiae apostolatusque studio praeditos."

was changed in subsequent texts to refer to lay "persons").

(ii) The Functions of Teaching and Sanctifying

While the functions of teaching and sanctifying are distinct aspects of the mission of the Church in general and of the diocesan bishop in particular, they are closely united. This was recognized and given prominence in the Constitution on the Liturgy:

The two parts which in a sense go to make up the mass, viz. the liturgy of the word and the eucharistic liturgy, are so closely connected with each other that they form but one single act of worship.²⁵

In the Dogmatic Constitution on the Church, the word of God and the sacraments are presented as the spiritual

"Una cum Consilio dioecesano Episcopus perpendit proposita opera et expensarum ordines et pecuniarias rationes et cetera huiusmodi, atque consilia capit ad normam iuris.

"Quoque exeunte anno, vel opere completo, rationum summas, a Consilio recognitas, publicas faciendas curat, nisi aliud prudentia suadeat.

"Iisdem autem modis Consilia paroecialia aliorumque Institutorum, Episcopo invigilante, se gerunt."

25. VATICAN COUNCIL II, The Constitution on the Sacred Liturgy, Sacrosanctum Concilium, December 4, 1963, (hereafter cited as SC), in A.A.S., 56(1964), n. 56, p. 115: "Duae partes e quibus Missa quodammodo constat, liturgia nempe verbi et eucharistica, tam arcte inter se coniunguntur, ut unum actum cultus efficiant." English translation in A. FLANNERY, (ed.), op. cit., p. 19.

goods to which the faithful have a special right; the pastors, first and foremost the bishops, are the ones responsible for seeing that the right is respected.²⁶ From the passage already cited, it is seen that the bishop forms the diocesan community through the gospel and the Eucharist.²⁷ What is being said in these references is that the heart of the Church resides in the proclamation of the Good News and the celebration of that gospel-born faith in the sacraments, especially the Eucharist. If this is so, then at the heart of the ministry of the diocesan bishop is not the function of governing, important though it be, but the functions of teaching and sanctifying. Indeed, without these, there would be simply be no community, no Church to guide and direct.

Various texts from the conciliar documents appear to support the priority of these functions in the work of the bishop. The apostolic teaching authority was bestowed on the bishops.²⁸ Preaching, one aspect of it, is accorded pride of place among the bishop's more important duties.²⁹

26. Cf. LG, n. 37, in A. FLANNERY, (ed.), op. cit., p. 394.

27. Cf. CD, n. 11, in A. FLANNERY, (ed.), op. cit., p. 569.

28. Cf. SC, nn. 7-8, pp. 753-755.

29. LG, n. 25, in A.A.S., 57(1965), p. 29: "Inter praecipua Episcoporum munera eminent praedicatio Evangelii." English translation in A. FLANNERY, (ed.), op. cit., p. 379. Cf. also CD, n. 12, in A. FLANNERY, (ed.), op. cit., p. 569.

The importance of the bishop's role as sanctifier is emphasized in numerous texts.³⁰ The obvious corollary of this emphasis for the bishop is to give the role a preeminent position in his total ministry.

This summary presentation of the teaching and sanctifying function of the diocesan bishop shows that these functions are given a higher priority within the more important duties of the bishop than the function of governing. With regard to the bishop's administration of the temporal goods of the diocese, it would be expected that he would so organize himself and diocesan personnel that the administration would be carefully handled, but that his commitment to the functions of teaching and sanctifying would not suffer.

b. Principles and Practices Guiding Management and Use of Temporal Goods

(i) Principle of Subsidiarity

The principle of subsidiarity is broadly concerned with the limits of the right and duty of the public authori-

30. Cf. LG, n. 21, in A. FLANNERY, (ed.), op. cit., p. 373; SC, n. 41, in A. FLANNERY, (ed.), op. cit., p. 14; LG, n. 26, in A. FLANNERY, (ed.), op. cit., p. 381; CD, n. 15, in A. FLANNERY, (ed.), op. cit., p. 571; CD, n. 16, in A. FLANNERY, (ed.), op. cit., p. 572.

ty to intervene in social and economic affairs.³¹ Pius XI was the first to apply the term in church circles and defined it in his encyclical letter, Quadragesimo Anno:

It is a fundamental principle of social philosophy, fixed and unchangeable, that one should not withdraw from individuals and commit to the community what they can accomplish by their own enterprise and industry. So, too, it is an injustice and at the same time a grave evil and a disturbance of right order to transfer to the larger and higher collectivity, functions which can be performed and provided for by lesser and subordinate bodies.³²

While the principle has its roots in the social teaching of the Church, the bishops, in the council debates that would result in the Decree on the Pastoral Ministry of Bishops, also saw in the recognition of the principle within the Church a way to restore some of their original rights.³³ The aim was the establishment of a new relation-

31. R.E. MULCAHY, "Subsidiarity", in New Catholic Encyclopedia, New York, McGraw-Hill Book Co., vol. 13, p. 762.

32. PIUS XI, encyclical letter, Quadragesimo anno, May 15, 1931, in A.A.S., 23(1931), p. 203: "[...] fixum tamen immotumque manet in philosophia sociali gravissimum illud principium quod neque moveri neque mutari potest: sicut quae a singularibus hominibus proprio Marte et propria industria possunt perfici, nefas est eisdem eripere et communitati demandare, itaque a minoribus et inferioribus communitatibus effici praestarique possunt, ea ad maiorem et altiorem societatem avocare iniuria est simulque grave damnum ac recti ordinis perturbatio." English translation in R.E. MULCAHY, loc. cit., p. 762.

33. K. MÖRSDORF, "Decree on the Bishops' Pastoral Office in the Church", in H. VORGRIMLER, (ed.), loc. cit.,

ship between the Pope, the Roman Curia and themselves. It was recognized that the Pope had the right to reserve certain matters to himself or to some other authority, but it was requested that this right be exercised only when the unity of the Church demanded it. The same principle was to apply to the diocesan bishop and the authorities subject to him. The principle harmonized well with the fact that all members of the people of God are called to participate in the work of the Church. Authority should not do what individual members could do themselves. It should do what they cannot do, support them, and ensure that their activities were well-ordered and directed toward the common good.³⁴

The principle was adopted by the council as a guiding norm in much of the reform of structures and is mentioned explicitly in the Directory on the Pastoral Ministry of Bishops as a general principle of pastoral rule. It reads:

The bishop takes care that he does not ordinarily take upon himself what can well be done by others; rather, he carefully respects the legitimate competencies of others and also gives his co-workers the powers they need and favours the just initiatives of individual believers and of groups.³⁵

vol. 2, p. 171.

34. Ibid.

35. DPME, n. 96: "Episcopus curat, ne quod ab aliis bene peragi potest, ordinarie sibi faciendum assumat, sed e contrario legitimas aliorum competencias diligenter obser-

The principle of subsidiarity was also one of the ten guiding principles drawn up by the commission for the revision of the Code of Canon Law and approved by the bishops who met in Synod in Rome in 1967.³⁶ These principles drew on the insights and teaching of the Second Vatican Council. Although subsidiarity was recognized as a principle to be applied in many areas of the Church's life, in the area of administration of temporal goods, it had a particular application since the differing laws of many countries had to be taken into account by Church leaders and administrators.³⁷

(ii) Principle of Justice

The final document of the Synod of Bishops which considered the topic "Justice in the World", left no doubt as to the importance of justice for the Church.

Action on behalf of justice and participation in the transformation of the world fully appear to us as a constitutive dimension of the preaching of the Gospel, or, in other words, of the Church's mission for

vat, facultates quoque, quibus opus sit, cooperatoribus tribuit et iustis fidelium, sive singulorum sive consociatorum, inceptis favet." English translation in Directory, p. 51.

36. Cf. PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECOGNOSCENDO, Communicationes, (hereafter cited as Communicationes), 1(1969), pp. 80-82.

37. Cf. Ibid, p. 81.

the redemption of the human race and its liberation from every oppressive situation.³⁸

The Directory on the Pastoral Ministry of Bishops emphasized the bishop's role as a teacher of the doctrinal principles concerning social affairs, and as a leader who applies them to the circumstances in his diocese.³⁹ Among the concerns he is called to address are very grave questions concerning ownership, increase, and just distribution of material goods.⁴⁰ These are particularly important with regard to the credibility of the Church's evangelical witness.⁴¹

While the Church is bound to give witness to justice, it recognizes that anyone who ventures to speak about it must first be just in the eyes of the listeners.⁴² Hence it becomes vital that rights within the Church be preserved.

38. SYNODUS EPISCOPORUM, IIIa, Roma, 1971, synodal document, De iustitia in mundo, November, 1971, in A.A.S., 63(1971), p. 924: "Actio pro iustitia et participatio transformationis mundi plene nobis apparent tamquam ratio constitutiva praedicationis Evangelii, missionis nempe Ecclesiae circa generis humani redemptionem et liberationem ab omni statu oppressionis." English translation in The Synodal Document on the Justice in the World, (hereafter cited as Justice in the World), [Boston], St. Paul Editions, [1971], p. 4.

39. Cf. Directory, n. 56, p. 33.

40. Cf. Ibid.

41. Cf. Justice in the World, p. 15.

42. Cf. Ibid., p. 14.

For instance, priests and religious who serve the Church by their labour have a right to receive a sufficient livelihood and enjoy that social security which is customary in their region. Lay people should be given fair wages and a suitable system for promotion. When working for the Church, they should also exercise more important functions with regard to Church property and should share in its administration.

(iii) Practice of Sharing Goods

The practice of sharing goods has been a central element of Christian living since the earliest times: "those who believed shared all things in common; they would sell their property and goods, dividing everything on the basis of each one's need."⁴³ The Second Vatican Council applied the practice for today in an explicit statement in the Dogmatic Constitution on the Church:

Finally, between all the various parts of the Church there is a bond of close communion whereby spiritual riches, apostolic workers and temporal resources are shared. For the members of the people of God are called to share their goods.⁴⁴

43. Acts of the Apostles 2,44-45. All quotations are taken from the New American Bible, New York, Thomas Nelson Publishers, 1971.

44. LG, n. 13, in A.A.S., 57(1965), p. 18: "Inde denique inter diversas Ecclesiae partes vincula intimae communionis quoad divitias spirituales, operarios apostolicos et temporalia subsidia. Ad communicandum enim bona

Bishops are reminded to have a concern for the needs of the entire Church. They "should bear it in mind that in the expenditure of ecclesiastical resources they must take into account the needs not only of their own dioceses but of other individual churches, since they form part of the one Church of Christ."⁴⁵ Specific mention was made of aid to the missions in the form of volunteers, and also spiritual and material assistance.⁴⁶

The Council message was addressed to all in the Church. Diocesan priests were reminded of their obligation to share.⁴⁷ The various institutes of consecrated life were called to bear a "quasi-collective" witness to poverty. "They should willingly contribute part of what they possess for the other needs of the Church and for the support of the poor."⁴⁸ This sharing by the institutes should also be an

vocantur membra Populi Dei." English translation in A. FLANNERY, (ed.), op. cit., p. 365.

45. CD, n. 6, in A. FLANNERY, (ed.), op. cit., p. 567.

46. Cf. LG, n. 23, in A. FLANNERY, (ed.), op. cit., p. 377.

47. Cf. CD, n. 28, in A. FLANNERY, (ed.), op. cit., p. 580.

48. VATICAN COUNCIL II, Decree on the Renewal and Adaptation to Modern Times of religious Life, Perfectae caritatis, (hereafter cited as PC), in A.A.S., 58(1966), n. 13, p. 708. English translation in A. FLANNERY, (ed.), op. cit., p. 618.

activity within the institute itself, between provinces and between houses.⁴⁹ The laity, whose distinctive task in the mission of the Church is the renewal of the temporal order,⁵⁰ were called to "establish the proper scale of values on the temporal order and direct it towards God through Christ."⁵¹

c. Temporal Goods in the Mission of the Church

(i) Purpose of Temporal Goods⁵²

49. Cf. Ibid., in The Sixteen Documents of Vatican II and the Instruction on the Liturgy, [Boston], St. Paul Editions, [1966], (hereafter cited as Sixteen Documents), p. 308.

50. Cf. AA, n. 7, in A. FLANNERY, (ed.), op. cit., p. 774.

51. Ibid.

52. Among the more useful articles on the subject of the purpose of temporal goods are the following: F. COCCO-PALMERIO, "Considerazioni sui beni della Chiesa", in La scuola cattolica, 107(1979), pp. 299-317; V. DE PAOLIS, "De bonis ecclesiae temporalibus in novo codice iuris canonici", in Periodica, 73(1984), pp. 113-151; ID., "Temporal Goods of the Church in the New Code with Particular Reference to Institutes of Consecrated Life", in The Jurist, 43(1983), pp. 343-360; D. FALTIN, "De recto usu bonorum ecclesiasticorum ad mentem concilii Vaticani II", in Apollinaris, 40(1967), pp. 409-441; C. GALLAGHER, "Temporal Administration in the New Code", in The Way Supplement, 50(1984), pp. 71-79; J.K. MALLETT, "Book V: Temporalities under the Revised Code of Canon Law", in The Catholic Lawyer, 29(1984), pp. 187-194; R. METZ, "Les responsables des biens des églises dans la perspective de Vatican II comparée à celle du code de 1917", in Prawo Kanoniczne, 22(1977), pp. 53-65; F.G. MORRISSEY, "New Canon Law on Temporal Goods Reflects Vatican II's Influence", in The New Canon Law: Perspectives on the Law, Religious Life and the Laity, St. Louis, Catholic Health

Any consideration of the modes of management and the use of temporal goods in the diocese presupposes an understanding and acceptance of the Church's attitude towards such goods. The central concept, as enunciated in the Council texts, is that the earth and all it contains was created by God and destined for all. Given this finality, it follows that created things should be shared fairly by everyone under the guidance of justice tempered by charity. Indeed, all have a right to possess a sufficient amount of the earth's goods for themselves and their families,⁵³ a right that is even more fundamental than the right to private property.⁵⁴ Private property is not contrary to the gospel,

Association, 1983, pp. 49-61; J.J. MYERS, "The Temporal Goods of the Church (cc. 1254-1310), in J.A. CORIDEN, T.J. GREEN, and D.E. HEINTSCHEL, (eds.), The Code of Canon Law: A Text and Commentary, (hereafter cited as US Commentary), New York, Paulist Press, 1985; F.X. OCHOA, "Ratio bonorum temporalium in Ecclesia et institutis perfectionis post Concilium Vaticanum II", in Commentarium pro religiosis et missionariis, 48(1969), pp. 339-348; also "Acquisitio, distributio ac destinatio bonorum temporalium Ecclesiae institutorumque perfectionis ad mentem Concilii Vaticani II", in Commentarium pro religiosis et missionariis, 51(1970), pp. 20-33; V. ROVERA, "De structuris oeconomicis in Ecclesia renovandis", in Periodica, 60(1971), pp. 197-250.

53. VATICAN COUNCIL II, Pastoral Constitution on the Church in the Modern World, Gaudium et Spes, December 7, 1965, (hereafter cited as GS), in A.A.S., 58(1966), n. 69, p. 1090. English translation in A. FLANNERY, (ed.), op. cit., p. 975.

54. B. DAVID, "Biens de l'Église", in Les cahiers du droit ecclésiast., 3(1985), p. 87.

or incompatible with it; it assures a person a highly necessary sphere for the exercise of personal and familial autonomy, and ought to be considered as an extension of human freedom.⁵⁵ Nevertheless, the exercise of this right must always take the basic, universal destination of all created things into account and ensure that it does not become the "source of greed and serious disorder."⁵⁶

With the use of goods by the Church, attention is paid not only to the universal destination of all goods, but also to the mission of the Church. In fact, temporal goods are used only as "often as the mission requires it."⁵⁷ Pope Paul VI also quite explicitly subjected the existence and the administration of ecclesiastical goods to the fundamental criterion of mission: -

Spiritual goods take precedence over economic goods, and [...] we should limit and subordinate the possession and use of the latter insofar as they are useful for the right exercise of our apostolic mission.⁵⁸

55. GS, n. 71, in A. FLANNERY, (ed.), op. cit., p. 977.

56. Ibid., p. 978.

57. Ibid., n. 76, in A. FLANNERY, (ed.), op. cit., p. 985.

58. PAUL VI, encyclical letter, Ecclesiam Suam, August 6, 1964, in A.A.S., 56(1964), p. 634: "illa animi bona rebus oeconomicis longe praestare, harumque possessioni et usui eum modum et ordinem esse statuendum, qui muneri apostolico, quo fungimur, conducatur atque conveniat." English translation in Encyclical Letter of His Holiness Pope Paul VI, His

The council provides an example of this in the need the Church has for property to preach the gospel and to form consciences. To achieve this end, among other means, the promotion of Catholic schools at every level and grade and the use of instruments of social communication are necessary.⁵⁹ The council affirmed the Church's right to found schools,⁶⁰ and to own and use any of the forms of media necessary and useful for the formation of Christians and for pastoral activity.⁶¹ Funds are required for such enterprises.

The purposes for which ecclesiastical property⁶² may

Church, Ecclesiam Suam, [Vatican translation, Boston], St. Paul Editions, [1964], p. 28.

59. F. COCCOPALMERIO, loc. cit., p. 300.

60. Cf. VATICAN COUNCIL II, Declaration on Christian Education, Gravissimum Educationis, October 28, 1965, in A.A.S., 58(1966), n. 8, p. 735. English translation in A. FLANNERY, (ed.), op. cit., p. 733.

61. Cf. VATICAN COUNCIL II, Decree on the Means of Social Communication, Inter Mirifica, December 4, 1963, in A.A.S., 56(1964), n. 3, p. 146. English translation in A. FLANNERY, (ed.), op. cit., p. 285.

62. In the 1983 Code of Canon Law ecclesiastical goods are all the temporal goods which belong to the entire Church, the Apostolic See, or other public juridic persons within the Church. Canon 1257,1: "Bona temporalia omnia quae ad Ecclesiam universam, Apostolicam Sedem aliasve in Ecclesia personas iuridicas publicas pertinent." This changes the definition which was in the 1917 Code. In it ecclesiastical goods were those which belonged to the universal Church, the Apostolic See, or other moral persons in the Church. (Empha-

be used are even more circumscribed. These are as follows: the organization of divine worship, the provision of decent support for the clergy and other ministers of the Church, and the exercise of works of the apostolate and of charity, especially for the benefit of those in need.⁶³ In fact, the achievement of these purposes is the basis of the Church's right to own temporal goods.⁶⁴

With regard to the provision of decent support for clergy, the council recommended that in those places where their support depended completely or to a great extent on the offerings of the faithful, the money offered should be collected by some kind of diocesan agency. This fund would be administered by the bishop with the help of priests and lay experts in financial matters appointed for this task, where such appointments were advisable.⁶⁵

Over and above this fund, the bishops also called for the establishment of another fund to satisfy the Church's

sis added). Cf. canon 1497,1 (1917): "Bona temporalia, sive corporalia, tum immobilia tum mobilia, sive incorporalia, quae vel ad Ecclesiam universam et ad Apostolicam Sedem vel ad aliam in Ecclesia personam moralem pertineant."

63. Cf. PO, n. 17, in A. FLANNERY, (ed.), op. cit., p. 895.

64. Cf. Ibid.

65. Cf. Ibid., n. 21, in A. FLANNERY, (ed.), op. cit., p. 900.

obligations to people employed in its service and to meet the various needs of the diocese.⁶⁶ In countries where there was inadequate or no social security organized for the benefit of the clergy, the episcopal conferences were to make provision, in harmony with ecclesiastical and civil law, for setting up diocesan funds (even federated with one another), or one fund for different dioceses grouped together, or even one catering for the whole territory. The purpose of these funds was to provide for suitable insurance and health assistance, and proper support for priests who suffered from sickness, ill health, or old age.⁶⁷

On the matter of support of priests, it was clearly stated that priests are entitled to receive equitable remuneration,⁶⁸ basically the same for all living in the same circumstances.⁶⁹

(ii) Relationship with the State

The Church's management of its property and finances

66. Cf. Ibid.

67. Cf. Ibid.

68. Cf. Ibid., n. 20, in Sixteen Documents, p. 446.

69. Cf. Ibid., in A. FLANNERY, (ed.), op. cit., p. 899.

is an activity in which the civil authorities as well as the ecclesiastical ones claim a legitimate interest. The conciliar documents acknowledged this interest and in so doing revealed something of the Church's perception of its relationship with the State.

While acknowledging the autonomy of the State in its own field, the Church claims freedom for itself in human society and before every public authority,⁷⁰ on the basis that religious bodies are a requirement of the nature of the human person and religion itself. This claim can be denied by the State, but if respected, a reasonable degree of cooperation can be attained as both Church and State share a devotion to the personal vocation of the individual.⁷¹

One area where such cooperation is seen is health and welfare for which the bishops, along with many others in the Church, are to have a special regard.⁷² However, the growing complexity and cost of these systems has seen a corresponding growth in State involvement. Such a development is not

70. Cf. VATICAN COUNCIL II, Declaration on Religious Liberty, *Dignitatis Humanae*, December 7, 1965, in *A.A.S.*, 58(1966), n. 13, p. 939. English translation in A. FLANNERY, (ed.), *op. cit.*, p. 810.

71. Cf. *GS*, n. 76, in A. FLANNERY, (ed.), *op. cit.*, p. 984.

72. Cf. *Directory*, n. 128, p. 66.

to be interpreted as permission for the Church to lose interest in the needy. "Recognizing the State's duty and good services as regards health and other social needs, the bishop [...] will remember the poor are always with us."⁷³

The Directory on the Pastoral Ministry of Bishops specifically addresses the question of attitude to be adopted by bishops in dealings with the State or even other non-Church institutions working in this field.

While avoiding every appearance of rivalry with these public and private institutions, the bishop, nevertheless, will vindicate the Church's unimpaired duty and right to give assistance to the poor.⁷⁴

(iii) Accountability

Even when a diocesan bishop applies the principle of subsidiarity in a particular situation, his duty of vigilant supervision of the administration of ecclesiastical goods does not thereby cease. This duty will normally be fulfilled

73. DPME, n. 127, p. 125: "Rei publicae allaborandi officium et meritum agnoscens in variis assistentiae campis, qui ad valetudinem et alias sociales necessitates [...] meminit Episcopus pauperes semper esse nobiscum." English translation in Directory, p. 66.

74. Ibid: "Quamlibet speciem aemulationis eorundem publicorum ac privatorum institutorum a se dioecesanisque operibus Episcopus arctet; Ecclesiae tamen integrum officium et ius vindicat sese pauperum assistentiae applicandi." English translation in Directory, p. 66.

by requiring the submission of a report on the completion of a task or at the end of a year. The Directory specifically mentions such matters:

At the end of each year, or on the completion of a project, he [diocesan bishop] is to see to it that a financial account, checked by the council, is made public, unless prudence dictates otherwise.

These same procedures are carried out, under the watchful care of the bishop, by parish councils and councils of other organizations.⁷⁵

Such accountability, both to legitimate superiors and to the faithful, is yet another example of the renewal which takes seriously the basic concept of the people of God. Those who contribute to the upkeep of the Church have a right to some form of accounting, indicating the uses to which their contributions were put.

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The council and post-conciliar documents present a vision of the Church in which involvement by other members of the diocese in the bishop's administration of its temporal goods is an important element. The reason why it is important seems to lie not only with the well-established canonical tradition that the teaching continues and builds

75. Directory, n. 135, p. 69.

on -- and which it had no cause to change -- but also with the awareness of the fact that all members are in fact responsible for the Church. To exclude some from assuming any real responsibility in this area of the Church's mission would be to distort the Council's teaching about the Church. The way and the degree to which each member shares in extending the mission will differ, but all do share.

The implementation of shared responsibility appears even more important for the administration of temporal goods than for some other areas, since without it the bishop would be in danger of neglecting what the documents proclaim as his principal duties, his care for the word of God and the sacraments.

We shall now see how these emphases of the Council's teaching on temporal goods have been taken by the legislator and incorporated into the revised Code of Canon Law.

II 1983 Code of Canon Law

This part aims at answering the question: how was the teaching of the conciliar and post-conciliar documents on temporal goods and their management at the diocesan level incorporated into the revised Code of Canon Law? The method of answering will be as follows: first, indicating the

canons in the Code to be examined; second, using the three headings under which the contemporary teaching was presented in Part I, examine how the teaching was incorporated.

a. Canons on Temporal Goods in the 1983 Code

Book V of the 1983 Code of Canon Law is titled Temporal Goods of the Church. Made up of 57 canons, the book begins with five introductory canons (canons 1254-1258) and then arranges the remainder under four titles: the acquisition of goods (canons 1259-1272), the administration of goods (canons 1273-1289), contracts and alienation in particular (canons 1290-1298), and pious wills in general and pious foundations (canons 1299-1310). All ecclesiastical goods, that is goods owned by public juridic persons in the Church,⁷⁶ are regulated by the prescriptions in these canons. They form the primary source for any examination of the approach towards temporal goods that the legislator wants adopted by those who administer such goods within the Church or who assist administrators in some way.

A secondary source of material for the same examination is found in the canons scattered throughout the Code that, explicitly or implicitly, touch on the subject of

76. Canon 1257,1 (1983).

temporal goods.⁷⁷

b. Incorporation of Contemporary Teaching into the
1983 Code

On the day of the official presentation of the revised Code of Canon Law, Archbishop R. Castillo Lara spoke of two

77. Canons 121-123 (the union, division, and extinction of public juridic persons and the destination of their temporal goods), canon 222 (obligation to assist with the needs of the Church), canon 231 (remuneration of lay people), canon 264 (seminary tax), canons 281-282 (remuneration of clerics), canon 319 (goods of a public association), canons 325-326 (goods of a private association), canon 392 (diocesan bishop's supervisory office), canon 402,2 (support of a resigned bishop), canons 492-494 (diocesan finance council), canon 510,4 (presumption in the matter of offerings), canon 531 (offerings to parishes), canon 532 (responsibility of the parish priest in the administration of the goods of the parish), canon 537 (parish finance council), canon 540 (parish administrator), canon 551 (offerings on the occasion of ministry), canon 584 (suppression of an institute), canon 616,1 (the goods of a suppressed religious house), canon 616,4 (the goods of a suppressed autonomous monastery of nuns), canons 634-640 (temporal goods and their administration in religious institutes), canon 668 (wills of religious, disposition of goods, pensions, insurance, acquisition of goods), canon 702 (compensation for one who leaves a religious institute), canon 706 (religious bishop), canon 707,2 (diocesan support for a retired religious bishop), canon 718 (temporal goods and their administration in secular institutes), canon 741 (temporal goods and their administration in societies of apostolic life), canon 848 (offerings on the occasion of administering the sacraments), canons 945-958 (legislation on mass offerings), canon 1181 (offerings for funerals), canon 1464 (question of a deposit for judicial expenses), canon 1580 (expenses of experts in trials), canon 1649 (court costs and gratuitous legal assistance). For further comment see V. DE PAOLIS, "De bonis temporalibus in novo codice iuris canonici", in Periodica, 73(1984), pp. 115-116; ID., "Temporal Goods of the Church in the New Code, with Particular Reference to Institutes of Consecrated Life", in The Jurist, 43(1983), p. 345.

fundamental criteria that guided and inspired the reform.

The first criterion is fidelity to the Council. The aim was to translate it as faithfully as possible into juridical norms [...]. The other criterion, no less important, is fidelity to the legislative-juridical tradition of the Church.⁷⁸

In formulating the law on temporal goods, the commission for the revision of the Code used the prescriptions on temporal goods in the Vatican II documents and their logical conclusions.⁷⁹ To understand and interpret the new Code correctly, we must make recourse to the Second Vatican Council, to the 1917 Code, and to the whole canonical tradition of the Church.

Part I of this chapter presented the references in the documents of Vatican II and other sources that provide the basis of the teaching of the Council on temporal goods, their management and use, especially within the diocese. The divisions employed in that presentation will be used here to see how the insights and directives of the Council have been incorporated into the canons of the Code of Canon Law.

⁷⁸ R. CASTILLO LARA, address given February 3, 1983, in Promulgation and Official Presentation of the Code of Canon Law, [Vatican City], Vatican Polyglot Press, 1983, p. 19.

⁷⁹ Cf. V. DE PAOLIS, op. cit., p. 118.

(i) The Mission of the 'Diocesan Bishop

Canon 369 defines what a diocese is and in so doing provides an outline of the ministry of the diocesan bishop.

A diocese is a portion of the people of God which is entrusted for pastoral care to a bishop with the cooperation of the presbyterate so that, adhering to its pastor and gathered by him in the Holy Spirit through the gospel and the Eucharist, it constitutes a particular church in which the one, holy, catholic and apostolic Church of Christ is truly present and operative.⁸⁰

The influence of the Council is apparent. Using the very words of the Decree on the Pastoral Ministry of Bishops, the diocese is described in terms of relationship, a relationship between the bishop and a portion of the people of God. That portion may be selected according to territoriality (canon 372,1 -- the general criterion), rite (canon 372,2), or other criteria, among which could be occupation, or nationality, but the heart of the identity of the diocese is the bond between the designated faithful and the bishop. He gathers them through the gospel and the

80. Canon 369: "Dioecesis est populi Dei portio, quae Episcopo cum cooperatione presbyterii pascenda concreditur, ita ut, pastori suo adhaerens ab eoque per Evangelium et Eucharistiam in Spiritu Sancto congregata, Ecclesiam particularem constituat, in qua vere inest et operatur una sancta catholica et apostolica Christi Ecclesia." Unless otherwise stated, all English translations are taken from Code of Canon Law, Latin-English edition, Washington, D.C., Canon Law Society of America, 1983.

Eucharist. The bishop is not the diocese, but without him an essential element is missing, one that makes this group of people into a particular church in which the one, holy, catholic and apostolic Church of Christ is present and operative.

To exercise the office entrusted to him as pastor of these people, the bishop possesses all the ordinary, proper, and immediate power required (canon 381,1). The conciliar teaching that the bishop governs his diocese as a vicar of Christ, not a vicar of the Pope here finds expression in universal church law. While certain matters may be reserved to the supreme church authority or some other supra-episcopal authority, it is now recognized that the bishop has all the power necessary to exercise his pastoral office by divine right.⁸¹

While the power of the bishop is not confined to the sphere of government, but operative in all areas of the Church's work, the management of temporal goods is one area where the bishop indeed exercises his power of governance. The canons, directly and indirectly relevant to temporal goods will be reviewed to see how the Code envisions the bishop fulfilling his function of governing in these matters

⁸¹. T.J. GREEN, "Particular Churches and their Groupings (cc. 368-572)", in US Commentary, p. 325.

and to note which bodies or persons the Code requires to participate in this work.

(a) Function of Governing⁸²

The bishop's power of pastoral government is divided into three elements: legislative, executive and judicial (canon 391,2). Unlike many present day governments, the Church does not recognize any separation of these functions. There is one sacred power and one source, episcopal consecration, through which the bishop receives the threefold function to teach, sanctify and govern. In the person of the bishop, Christ is present in the midst of the faithful.⁸³

One major concern for the diocesan bishop is unity: both of the entire Church and of the diocese. Part of his protection of the former is his promotion of the common discipline of the whole Church (canon 392,1). For the latter's protection, the Code urges him to be watchful lest ecclesiastical discipline is undermined by abuses, especially with regards the ministry of the word, the celebration of the sacraments, worship of God and devotion to the saints, and the administration of property (canon

82. Communicationes, 5(1973), pp. 221-223.

83. Cf. LG., n. 21, in A. FLANNERY, op. cit., pp. 371-372.

392,2). The list is not exhaustive, but the inclusion of administration of property along with other areas that appear more overtly religious in nature is of particular interest for this dissertation.

The bishop possesses the power needed to fulfill the responsibilities entrusted to him, but the law does not ignore the fact that his power is not exercised by himself alone. Canon 391,2 indicates the persons through whom he normally exercises his power, but in actual practice even more people will be involved. His power is ordered to service of a community of men and women who share a baptismal equality in dignity and action (canon 208) in building up the Church and exercising the mission in the world which God has entrusted to the Church (canon 204). Their participation in the tasks for which the bishop has ultimate diocesan responsibility is an actualization of this truth.

From the canons which regulate the internal ordering of particular churches (canons 460-572), it is obvious that the bishop neither works alone nor assumes sole responsibility for the Church's mission. The various organisms and offices do not exist simply because the bishop cannot do everything alone. In particular, the presbyteral council and the college of consultors, the pastoral council, the finance council and the finance officer render actual the vision of

the council in which priests and laity, with their gifts of the Holy Spirit and in keeping with their own vocation, in union with the bishop and obedient to him constitute a particular church in which the Church of Christ is truly present and active (canon, 369).

In this context, particular attention must be given to the proposal in the law of a new concept of administration.⁸⁴ The law requires the bishop to appoint a diocesan finance officer to administer the goods of the diocese, that is, those which belong to the diocese as a juridic person (canon 494,3). Operating within the guidelines of the budget drawn up by the diocesan finance council, to which body he or she renders each year an account of receipts and expenditures, and always under the authority and following the directives of the bishop, the finance officer meets expenses from diocesan income (canon 494,3). The bishop can also assign this person the duties of supervising the administration of all the goods of the public juridic persons subject to him, and of appointing administrators for those public juridic persons which do not have administrators (canon 1278).

Church law is not unfamiliar with the figure of the finance officer or econome in the administration of temporal

84. Cf. F.G. MORRISEY, loc. cit., p. 52.

goods,⁸⁵ but while acknowledging similarities, the 1983 Code allows the bishop to give the finance officer new duties, such as the appointment of administrators, and the officer's functions are described more fully. This seems to imply that the bishop should make full use of what is permitted by the law so as to take advantage of the expert skills that are needed in modern financial management, and thereby free himself to be more devoted to the ministry of the word of God and the sacraments.

(1) Supervisory Authority

The law details the bishop's power over the public juridic persons subject to his governance as regards the administration of the temporal goods owned by them. He has a supervisory responsibility (canon 1276,1) which he can assign to the finance officer to fulfill (canon 1278). He alone issues the instructions that organize the entire administration of the ecclesiastical goods concerned (canon 1276,2). The bishop is not the administrator of the goods of those persons subject to his authority. That task belongs to the person who immediately governs the person to whom they belong (canon 1279,1). So the bishop supervises the adminis-

85. Cf. R. NAZ, "Économe", in Dictionnaire de droit canonique, Paris, Letouzey et Ané, 1935-1965, vol. 5, cols. 148-150.

tration of the parishes (canon 515,3), and diocesan seminary (canon 238,1) -- public juridic persons by the law itself. Public associations of the Christian faithful (canon 313) seem to belong to this category, but the wording of the canons is not as precise as it might have been, and some doubt exists. Whether other institutions in the diocese such as hospitals, schools, universities, or autonomous pious foundations (canon 1303,1,1) enjoy public juridic personality can only be determined by examining the decrees which established them.

(2) Public Juridic Persons Subject to the Bishop

Any substantial alteration to a public juridic person subject to the bishop, such as a division or merger with another public juridic person, or the complete suppression of the person, requires the bishop to act in the manner dictated by the law (canons 121-123). With parishes, their erection depends on the bishop as well (canon 515,2). The law also requires that he consult the presbyteral council before acting. No other body is stipulated as having to be consulted in these matters, but given what the law requires as regards the apportioning of goods, patrimonial rights, debts and other obligations, in an equitable and just way (canon 122), the bishop may be well-advised to consult the diocesan finance council to profit from the expertise of its members.

(3) Public Juridic Persons not Subject to the
Jurisdiction of the Bishop

Except in a few instances, the law gives the diocesan bishop no role in the direct administration of the goods of a religious institute, secular institute or society of apostolic life. The exceptions are the annual report of administration an autonomous monastery is to send to the local Ordinary (canon 637) and local Ordinary's written consent such monasteries and institutes of diocesan right must have for the validity of certain acts of alienation and other business transaction which could adversely affect the patrimonial condition of the juridic person (canon 638, 3 and 4).

(4) Acts Requiring Permission

Apart from anything the diocesan bishop may stipulate as an element of administration particular to the diocese he governs, the general law uses a system of permissions as part of its regulation of certain activities. For instance, fund-raising for church institutions or purposes by private physical or juridic persons is only allowed with the written permission of the person's own Ordinary and the local Ordinary (canon 1265,1); administrators only validly posit acts which exceed the limits and procedures of ordinary administration by first obtaining the Ordinary's written permission

(canon 1281,1); investment of surplus funds by administrators requires the Ordinary's consent (canon 1284,2,6^o); administrators initiating or contesting civil lawsuits on behalf of the public juridic persons whose goods they administer require the Ordinary's written permission* (canon 1288); alienation of certain prescribed categories of goods and also transactions capable of worsening the patrimonial condition of the public juridic persons subject to the diocesan bishop require his permission (along with other formalities) for validity (canons 1291-1292, 1295); the valid acceptance of a foundation by a juridic person requires the Ordinary's written permission (canon 1304,1); the investment of money or moveable goods designated for an endowment requires the approval of the Ordinary (canon 1305). Leasing of church goods is another activity where permission of the competent authority is required. In this case, however, it is up to the conference of bishops to determine precisely the form of the permission (canon 1297).

The effect of such a system within a diocese is that all of the more significant acts of temporal administration are known by the diocesan bishop or by the one whom the bishop has mandated as responsible for these permissions.

Mostly, however, the overall, economic well-being of the diocese rests with the administrators of the public

juridic persons subject to the authority of the diocesan bishop. They are to exercise their responsibilities according to the prescriptions of the Code and the particular instructions issued by the bishop. By means of such instructions, the bishop organizes the entire diocesan administration of ecclesiastical goods (canon 1276,2).

The degree to which these directives were implemented could be deduced from the annual reports administrators of ecclesiastical goods are bound to submit to the bishop (canon 1287,1). The examination of these reports constitutes one of the principal ways in which the bishop fulfills his function of vigilance over ecclesiastical discipline concerning administration of property (canon 392,2). In addition, his diocesan visitation could be an occasion personally to check these matters, or he could delegate someone travelling with him to attend to the task (canon 396).

(5) Income

To maintain diocesan property (e.g. cathedral, bishop's residence), to support the staff of the curia, to provide for the works of charity and the apostolate that are the responsibility of the diocese as a whole, the bishop has to have a concern for the production of income. The Code lists a number of the more traditional sources in the regu-

lation of which the bishop plays a part.

Free-will offerings at the time of administering the sacraments or sacramentals (canons 848 and 1264,2), at funerals (canon 1181), and for the celebration of mass (canons 945-958) form a part of the income. The amount of these offerings are determined by the bishops of the province with implementation of the regulations left to the diocesan bishop.

To raise money for some specific parochial, diocesan, national or universal project, the bishop can prescribe a special collection (canon 1266). This would be over and above the ordinary collections taken up on Sundays.

The bishop can also raise income by the imposition of taxes. These are always to be moderate, relatively speaking, whether they be imposed on public juridic persons subject to him, or, as is allowed in case of grave necessity, on other physical and juridic persons (canon 1263).⁸⁶ He can also impose a seminary tax (canon 264).

The expanded taxation power the Code gives the bishop

86. For a detailed examination of canon 1263, see R.L. KEALY, Diocesan Financial Support: its History and Canonical Status, Roma, Tipografia di Patrizio Graziani, 1986, pp. 312-340.

seems to be a departure from the canonical tradition.⁸⁷ Traditional sources of income have been free-will offerings, bequests, gifts, investments and the like. Taxation is seen by many as the way a secular state raises income, not the Church. Yet the revised Code seems to propose a moderate tax as an ordinary means of diocesan income, alongside the traditional collections and offerings. This greater taxing authority is possibly a consequence of a number of factors such as the enhanced role of the diocesan bishop, the increased demands placed on diocesan resources,⁸⁸ the loss of traditional sources of income in many places, and the common practice of many dioceses.

Bequests are another common source of income. Often, their acceptance entails the acceptance also of the obligation of fulfilling certain conditions of the testator, such as the regular celebration of Mass for the intention of the donor, or some other pious cause. At times, reduced income makes fulfillment of a bequest impossible. To meet this situation, the Code, in a change that supports the conciliar view that a diocesan bishop have all the power necessary to fulfill his office, extends to him faculty of reducing Mass obligations to the level of the offering legitimately established in the diocese (canon 1308,3).

87. D.J. FRUGE, "Taxes in the Proposed Law", in CLSA Proceedings, 44(1982), p. 287.

88. Ibid.

The diocesan bishop can also reduce the obligations of Masses in those situations where decreased income makes it impossible to achieve the proper purpose of the institute, such as fund the office of a chaplain, as well as provide for Masses (canon 1308,4).

The Code also enables the the bishop to supervise the proper fulfillment of wills when it acknowledges the Ordinary to be the executor of all pious wills (canon 1301). This role is not dependent on the wishes of the testator and, in fact, according to church law, any condition written into a will in an attempt to deprive the Ordinary of this right is considered non-existent (canon 1301,3). The Code allows the Ordinary even more extensive power over wills. In certain circumstances, if the testator has expressly given him such power, he can reduce, moderate, or commute wills for pious causes (canon 1310). If, through no fault of the administrator, the fulfillment of the obligation becomes impossible because of reduced income, he can, after consultation with the interested parties and the finance council, diminish equitably the obligations.

The bishop's responsibility to prevent abuses of the discipline that governs the administration of ecclesiastical property is recognized, for instance, in the Code's norm that prohibits a person from accepting the role of trustee

for goods bequeathed for pious causes if there is a stipulation that the Ordinary is not to be informed (canon 1302). Where abuses have occurred, the bishop, or the one to whom he has committed this responsibility, would have to decide what course of action would be most appropriate by way of response. Considerable discretion is provided in the law, even where an alienation has taken place without the required ecclesiastical formalities (cf. canon 1296).

Administrators of public juridic persons subject to the diocesan bishop, within the limitations established by law or approved statutes, enjoy complete autonomy apart from those instances where the common good is affected; in such cases reference is made to the higher authority. To ensure compliance with the instructions of the bishop, all administrators are required to take an oath before the Ordinary or his delegate prior to assuming office (canon 1283,1). The oath also brings home directly to those who administer ecclesiastical goods what is to be understood by all, whether they are administrators by title or not: ecclesiastical goods are entrusted into the hands of those who care for them. The trust is not to be mistreated.

(b) The Functions of Teaching and Sanctifying⁸⁹

In the Code, Book III is entitled De Ecclesiae munere

89. Communicationes, 5(1973), pp. 220-221.

docendi and Book IV is entitled De Ecclesiae munere sanctificandi. These functions of teaching and sanctifying, here as in the documents of Vatican II, lie at the heart of the Church's mission and the ministry of the diocesan bishop.

The bishop, as moderator of the entire diocesan ministry of the word of God, has a special duty to preach the gospel (canon 756,2). In addition, through personal contact, published directives and programs aimed at specific areas of the ministry, he encourages and directs others.

The bishop also pays particular attention to the sacred liturgy in which, in a special way, the Church's sanctifying function is fulfilled. Using many conciliar expressions, he is described as the priest of sacred worship, the high priest, principal dispenser of the mysteries of God, moderator, promoter and custodian of the entire liturgical life of the diocese (canon 835,1). Liturgical actions, as celebrations of the Church itself (canon 837,1), are his principal concern, but he is not to be unconcerned about peoples' dedication to prayer, works of penance and charity which are also ways the Church carries out its function of sanctifying (canon 839,1).

As was seen above, the Code provides the diocesan bishop with a number of avenues for so organizing the

diocesan administration of temporal goods that he can devote himself more to these central functions.

(ii) Principles and Practices Guiding Management and Use of Temporal Goods

(a) Principle of Subsidiarity

The principle of subsidiarity finds expression in a number of canons in the Code with regard to temporal goods. Important among these are those where the law of different nations has been adopted by the Code as the norm to be followed. The principle "serves and strengthens legislative unity by providing for the needs of an individual institution and by providing for healthy, autonomous, executive, legislative power recognized by law."⁹⁰ The canons which "canonize" the laws of various nations will be outlined in detail in a later section.⁹¹

Subsidiarity operates within the Church itself as well; it is the principle underlying the formulation of those canons where competency in different financial and

90. Cf. R.G. CUNNINGHAM, "The Principles Guiding the Revision of the Code of Canon Law", in The Jurist, 30(1970), p. 450.

91. See pp. 143-144.

property matters is given to the episcopal conference, or, in certain instances, the provincial assembly.⁹²

At the diocesan level, subsidiarity has played a part in the competence given to the diocesan bishop for regulating the administration of temporal goods belonging to the public juridic persons subject to him. Examples of this are as follows: the necessity of annual budgets and determining their form of presentation (canon 1284,3); the presentation of reports to the faithful for goods offered (canon 1287,2); the requirement to observe other formalities in the alienation of goods whose value exceeds the determined minimum amount (canon 1293,2).

The bishop could also authorize guidelines which require the administrators of public juridic persons subject to him to consult their own finance councils in ways similar to those where he himself is required to consult the

92. Some of these matters are: establishing norms for contributing to the support of the Church (canon 1262); determining the amount of taxes to be imposed for certain acts (canon 1264); preparing norms for the collection of funds (canon 1265); overseeing benefices where such still exist (canon 1272); providing some form of social security funds for clergy support (canon 1274); administering goods belonging to many dioceses (canon 1275), although this is more optional; determining acts of extraordinary administration (canon 1277); determining the sums of money to be used as a basis for alienation of church property (canon 1292); preparing norms for renting goods and property (canon 1297).

diocesan finance council.

(b) Principle of Justice

Social security, pensions, health benefits, and just wages for clerics and others who serve the Church were some of the justice issues raised at the Second Vatican Council. Pope Paul VI addressed the same issues and called for the establishment of a common fund to meet these obligations.⁹³ In addition, the 1971 Synod of Bishops on justice in the world drew attention to the need for administrators to examine their modes of operation to ensure they are just.⁹⁴

The Commission for the revision of the Code acted on these concerns.⁹⁵ Lay persons who devote themselves permanently or temporarily to some special service of the Church have a right to a decent remuneration, sufficient for them to be able to provide for their own needs and their families. Their right to pension, social security and health benefits is also recognized (canon 231,2). Clerics too deserve similar care (canon 281,1), and the law stipulates

93. Cf. PAUL VI, apostolic letter given motu proprio, Ecclesiae Sanctae, 6 August, 1966, in A.A.S., 58(1966), n. 8, p. 762. English translation in A. FLANNERY, op. cit., pp. 596-597. Cf. also G. GALLAGHER, loc. cit., p. 77.

94. Cf. F.G. MORRISEY, loc. cit., p. 52.

95. Cf. Ibid.

the funds to be set up, if nothing exists already, to provide for their needs, the needs of others who serve the Church, and further diocesan ones (canon 1274). Included among these would be support for a former bishop (canon 402,2), although if he is a religious, his own institute may wish to provide for his sustenance (canon 707,2).

Administrators must observe meticulously civil laws on labour and social policy, according to church principles, in employment of workers, especially by paying a just and decent wage, sufficient for themselves and their families (canon 1286). As these canons apply to religious institutes as well, their administrators are also bound by these prescriptions.⁹⁶

Other indications of the concern for justice in the Code are that taxes that a diocesan bishop can impose, whether they be ordinary or extraordinary (canon 1263), must be moderate, proportionate to the income of the persons taxed, and for a diocesan need. The "good householder" duties imposed on administrators manifest a concern for justice in the care to be given the goods of a juridic

96. Cf. Ibid., p. 51.

person (canon 1284).⁹⁷

The Church must invest wisely and soundly. Indeed, its credibility is at stake in such matters; therefore, these sources of income should be free of injustice and not opposed to the mission of the Church, e.g. investment in arms manufacture and the like. Legacies constitute another sensitive area. The Church has the right to accept these, but not at the risk of impoverishing the heirs⁹⁸ or limiting itself to impossible conditions.

(c) Practice of Sharing Goods

The bishops at Vatican II saw the bond of close communion that exists between all the various parts of the Church actualized in the sharing not only of spiritual resources, but also of apostolic workers and temporal resources.⁹⁹ The Code recalls this duty of sharing in those canons that legislate for the establishment of funds for the support of church workers, to meet other diocesan needs, and also to enable richer dioceses to aid poorer ones (canon 1274,3). A new canon on sharing likewise calls for bishops to procure means to assist the Apostolic See in its provi-

97. Cf. C. GALLAGHER, loc. cit., p. 78.

98. Cf. Ibid., p. 79.

99. Cf. LG, n. 13, in A. FLANNERY, op. cit., p. 365.

sion of service for the entire Church (canon 1271).

All the Christian faithful, in fact, are obliged to share what they have so that the Church has what is necessary for divine worship, apostolic and charitable works, and the decent sustenance of the ministers (canon 222,1). As well as assuming this general obligation, some members of the people of God also assume additional ones. For instance, lay people have a right to a decent remuneration that allows them to care for their families as well as themselves (canon 231,2). Clerics are encouraged to use any superfluous goods for the good of the Church and for works of charity (canon 282,2). Religious institutes are to strive to give collective witness of charity and poverty and are to contribute what they can of their own goods for the needs of the Church and the sustenance of the poor (canon 640). Lay members of secular institutes evangelize through their efforts to order temporal things according to God (canon 713,2) which means in part that all created things are meant to be shared fairly.¹⁰⁰ Clerical members of secular institutes help their brothers by their special apostolic charity (canon 713,3). The notion of sharing is encouraged among administrators of juridic persons. Within the limits of ordinary administration, they are permitted to make donations for purposes of

100. Cf. GS, n. 69, in A. FLANNERY, op. cit., p. 975.

piety or Christian charity from moveable goods which do not pertain to the stable patrimony (canon 1285). Administrators in alienating goods whose value exceeds the determined minimum need a just cause such as urgent necessity, evident usefulness, piety, charity or some other serious pastoral reason (canon 1293). A call to share could underlie all of the reasons.

(iii) Temporal Goods in the Mission of the Church

(a) Purpose of Temporal Goods

Canon 1254,2 substantially repeats what was said in Presbyterorum Ordinis that the ends of temporal goods proper to the Church are these: to order divine worship, to provide decent support for the clergy and other ministers, to perform the works of the sacred apostolate and of charity, especially towards the needy. These ends are the basis of the Church's innate right to acquire, retain, administer and alienate temporal goods (canon 1254,1). This statement of ends has remained substantially the same from the earliest formulations of the church law regarding temporal goods. However, with the inclusion of the word "especially" (praecipue), the legislator indicates that the list is not intended as exhaustive.

The persons within the Church who have these rights

and exercise them are moral and juridic persons, namely the Catholic or entire Church and the Apostolic See as moral persons (canon 113,1 states that both the Catholic Church and the Apostolic See are moral persons by divine law), and the particular churches and other bodies as juridic persons. Whether the juridic persons are public or private, they have the right to ownership and other rights as well.

The right to temporal goods flows from the juridic person's participation in fulfilling the mission of the Church.¹⁰¹ The very essence of a juridic person lies in its being ordered to a purpose congruent with the mission of the Church (canon 114,1).¹⁰² Service of the gospel, not accumulation of goods, vindicates the Church's right of requiring what is necessary from the faithful (canon 1260).

The call in Presbyterorum Ordinis¹⁰³ to establish funds to support the clergy, take care of other ministers and diocesan needs, and provide adequate social assistance

101. Cf. V. DE PAOLIS, loc. cit., p. 126.

102. Cf. Ibid. The author seems to overlook the difference between public and private persons when he states that juridic persons possess this right because they pursue ecclesial purposes in the name of the Church and in a public way. If all juridic persons do this then there is no need of the distinction.

103. Cf. PO, nn. 20-21, in A. FLANNERY, op. cit., pp. 898-900.

so that they are cared for if they suffer from illness, incapacity, or old age (canon 281,2), was answered in the provisions laid out in canon 1274.

On the question of remuneration for clerics, the Code states that it must be consistent with their condition in accord with the nature of their responsibilities and with the conditions of time and place, and sufficient to enable them to meet their own needs and pay for services they require (canon 281,1). No mention is made of the council's call that this remuneration be fundamentally the same for all living in the same circumstances. This right of priests to remuneration presupposes the priest's incardination or acceptance in some diocese¹⁰⁴ and that he can and should accept the office the bishop entrusts to him (canons 127-128).

(b) Relations with the State

The adoption of the property and finance laws proper to each country avoids the necessity of conforming to two sets of norms in specified areas:¹⁰⁵ one for civil law and

104. Cf. V. ROVERA, loc. cit., p. 230.

105. Among the canons dealing with temporal goods that refer to the civil law are the following: canon 668,1,3 and 4 (cession of administration by religious, and renunciation of goods); canon 681,2 (agreements between diocesan bishops and institutes working for him); canon 1259 (acquisition of

another for church law. It is also indicative of the Church's desire to work in harmony, where possible, with the State.

Social security for clerics and those who work for the diocese is also an area of State participation in those countries where there is a system of pensions tied to age and sickness, and other incapacities. The conciliar insight of Church and State sharing a common concern for the development of each individual would be realized.

(c) Accountability

Closely connected with an appearance of justice in the modes of administration is the notion of accountability, one that still meets resistance in some circles in the Church especially, if, in the opinion of one commentator, the reports of the administration are to be made public.¹⁰⁶

property); canon 1268 (the adoption of the civil requirements with regard to prescription as a means of acquiring or losing property or property rights); canon 1274,5 (civilly valid protection, where possible, for special reserve and retirement funds); canon 1281,3 (possible civil action against negligent administrators); canon 1284,2,2^o (civilly valid safeguards for the ownership of church property); canon 1284,2,3^o (observance of the requirements of civil law for gifts); canon 1286,1 (employment contracts (wages, benefits etc.)); canon 1288 (participation in court proceedings); canon 1290 (contracts); canon 1296 (civilly valid, but canonically invalid alienations); canon 1299,2 (wills). For further comment see also J.K. MALLETT, loc. cit., p. 193-194; J. HITE, "Church Law on Property and Contracts", in The Jurist, 44(1984), p. 132.

106. Cf. F.G MORRISEY, loc. cit., p. 52.

Canon 1287 now prescribes that each public juridic person subject to the bishop is to submit an annual report to be examined by the diocesan finance council.¹⁰⁷ Independent monasteries are under a similar obligation (canon 637). The diocesan finance officer likewise is required to give to the finance council a report of receipts and expenditures at the end of each year (canon 494,3).

As well as reports on the year's administration; the Code contains a strong recommendation for administrators to prepare annual budgets of receipts and expenditures (canon 1284,3).

In the diocese the bishop himself cannot act without thought for the good of the diocese. In acts of alienation or conveyancing, the law requires a number of formalities to be observed. These call for the consent of various designated persons or bodies (canons 1291-1294).¹⁰⁸ The formalities do not apply only to alienation; they also apply to the contracting of debts (canon 639, 1295).

Accountability in the Code is more than an accounting

107. Finance officers and other administrators in religious institutes are to submit a similar account to their respective authorities (canon 636,2).

108. Superiors in religious institutes are bound in the same way (canon 638).

to a competent authority. Canon 1287,2 calls for rendering an account to the faithful for the goods offered by them to the Church. Precise details of this would have to be spelled out in particular law, e.g. whether to include income that comes from sources other than offerings, such as investments, and if so in what detail. This requirement of accountability to the faithful who have contributed is intended to encourage understanding and trust between the Church and the faithful.¹⁰⁹

While these matters of accountability do not relate directly to conciliar documents (they are mentioned in the Directory), indirect allusions to them appear in Gaudium et Spes, no. 74, and Dignitatis Humanae, no. 8.¹¹⁰

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In the introduction to the chapter three questions were asked: what did the council teach as regards temporal goods and their management at the diocesan level? Second, how was the teaching incorporated into the revised Code of Canon Law? Third, is the new legislation governing the management of temporal goods, at the diocesan level substantially different from what went before it?

109. Cf. J. HITE, loc. cit., p. 124.

110. Cf. F.G. MORRISEY, loc. cit., p. 52.

The first two questions have been answered. From what has been said there, an answer can be given to the third question. Substantially the new law is in continuity with the preceding legislation, although there are interesting developments.

The bishop is still the person at the heart of the diocese; he gathers his people in the Holy Spirit through the proclamation of the Good News and the celebration of the liturgy especially the Eucharist, and governs them as their chief pastor -- his traditional role. Equally traditional is his centrality in the financial administration of the diocese, both as the immediate administrator of diocesan ecclesiastical goods, properly so called, and as the supervisor of the administration of the public juridic persons subject to him.

In these roles, as has been the case for the greater part of the Church's history, he does not act alone. However, depending on the matter in hand, the law now requires the involvement of the college of consultors, the diocesan finance council, the presbyteral council, and those with legitimate interests in the matter. The principal body assigned to assist in this administration is the finance council. The development of the laws regulating this new institute, and the content of the laws now affecting it will be the subject of the next chapter.

CHAPTER FOUR

THE DIOCESAN FINANCE COUNCIL IN THE 1983 CODE OF CANON LAW

The finance council is the only conciliar body directly identified in the 1983 Code of Canon Law as an obligatory part of the diocesan curia; that is, the institutions and persons that 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 (canon 469). Although other diocesan councils are mandatory, they are not described as being part of the curia. The finance council assists the bishop in his administration of the temporal goods of the diocese. This chapter will examine the evolution of the formulation of the canons in the present Code which describe the council and will then comment on the norms which regulate its establishment and membership.

I Evolution of Canons 492 and 493

The coetus or study group entrusted with the revision of the canon law on the Church's temporal goods, or, as it was sometimes called, "the patrimonial law of the Church", began its work with a study of canons 1495-1551 of the 1917 Code of Canon Law. The first draft of the new norms was com-

pleted in nine sessions held between January 1967 and April 1970, each canon being studied to see what should be changed or added, or whether it should be suppressed. The order of presentation of the material and the headings of the various sections were also examined.

a. Preliminary Working Paper¹

The first text prepared as a working paper for the Commission divided the material into five sections under the following titles: I. Preliminary canons (1-9); II. Subject of ownership (10-14); III. Administration of goods (15-31); IV. Acquisition, alienation, and especially contracts (32-42); V. Pious wills in general and pious foundations (43-54).² Unfortunately this working paper as a whole has not been made public. However, some of the comments made by the members of the group who studied the draft have become available. These reveal the direction their reflections were taking as far as the finance council was concerned.

1. PONTIFICIA COMMISSIO CODICIS IURIS CANONICI RECOGNOSCENDO, Communicationes, (hereafter cited as Communicationes) 5(1973), pp. 94-103.

2. Divisions of the 1917 Code on temporal goods were: Pars Sexta: De bonis Ecclesiae temporalibus (cann. 1495-1551). Tit. XXVII: De bonis ecclesiasticis acquirendis (cann. 1499-1517); Tit. XXVIII: De bonis ecclesiasticis administrandis (cann. 1518-1528); Tit. XXIX: De contractibus (cann. 1529-1543); Tit. XXX: De piis foundationibus (cann. 1544-1551).

The foundational canon for examination and subsequent revision was canon 1520 of the 1917 Code:

1. For the proper discharge of this responsibility, every Ordinary shall establish in his episcopal city a council which shall consist of a president, who shall be the Ordinary himself, and of two or more qualified men who are, if possible, experts also in civil law, selected by the Ordinary after hearing the chapter, unless an equivalent provision has been lawfully made by law or particular custom.

2. In the absence of an apostolic indult they are not to be appointed to the post of administrator who are related to the local Ordinary in the first or second degree of consanguinity or affinity.

3. When more important administrative acts are to be performed the local Ordinary shall not fail to consult the council of administration; the members of it have, however, only an advisory capacity unless their consent is required in cases especially enumerated in the general law or in virtue of the articles of foundation.

4. The members of this council shall, in the presence of the Ordinary, take an oath that they will perform their duty well and faithfully.³

3. Canon 1520, "1. Ad hoc munus rite obeundum quilibet Ordinarius in sua civitate episcopali Consilium instituat, quod constet praeside, qui est ipsemet Ordinarius, et duobus vel pluribus viris idoneis, iuris etiam civilis, quantum fieri potest, peritis, ab ipso Ordinario, audito capitulo, eligendis, nisi iure vel consuetudine peculiari iam alio aequivalenti modo legitime fuerit provisum.

"2. Citra apostolicum indultum, ii a munere administratoris excluduntur, qui cum Ordinario primo vel secundo consanguinitatis vel affinitatis gradu coniuncti sint.

"3. Loci ordinarius in administrativis actibus maioris momenti Consilium administrationis audire ne praetermittat; huius tamen sodales votum habent tantum consultivum, nisi iure communi in casibus specialiter expressis vel ex tabulis foundationis eorum consensus exigatur.

"4. Sodales huius Consilii iusiurandum de munere bene

The study group considering the working paper proposed a number of changes. First, before choosing members for the council of administration, the Ordinary should consult the presbyteral council and at least one of its members should be appointed to the council.⁴

The role ascribed to the presbyteral council was an attempt to implement the conciliar desire that bishops "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."⁵ The presby-

ac fideliter adimplendo coram Ordinario emittant." Translation is based on J.A. ABBO and J.D. HANNAN, The Sacred Canons: A Concise Presentation of the Current Disciplinary Norms of the Church, St. Louis, Herder, 1952, pp. 725-726.

4. Communicationes, 5(1973), p. 97.

5. VATICAN COUNCIL II, Decree on the Ministry and Life of Priests, Presbyterorum Ordinis, December 7, 1965, (hereafter cited as PO), in A.A.S., 58(1966), no. 7, p. 1002. English translation in A. FLANNERY, (ed.), Documents of the Second Vatican Council, Grand Rapids, Michigan, William B. Eerdmans Publishing Co., 1975, p. 876. The document called specifically for a "group or senate of priests [...] set up in a way suited to present day needs [...] This group would represent the body of priests and by their advice could effectively help the bishop in the management of the diocese." The Motu proprio Ecclesiae Sanctae, I, August 6, 1966, no. 15 [A.A.S., 58(1966), no. 15, p. 766] was the first juridic text to lay the foundations for the presbyteral council and a letter of the S.C. for Clergy to the presidents of the conferences of bishops, April 11, 1970 (La documentation catholique, 1970, pp. 527-530; A.A.S. 62(1970), pp. 459-465) made the modalities precise. Cf. also R. PARALIEU, Guide pratique du droit canonique, Bourges, Editions Tardy, 1985, p. 171).

teral council is the practical application of this desire -- "a body of priests who are to be like a senate of the bishop, representing the presbyterate; [...] to aid the bishop in the governance of the diocese" (canon 495,1).

Requiring the bishop to consult the presbyteral council and to choose at least one member for the council of administration aimed at ensuring a relationship of confidence and harmony between the two bodies. It would indeed be mainly those transactions parish priests wished to perform that would be the "matters of greater importance" for which the bishop would consult his council of administration.

Second, the group saw the Ordinary as responsible for establishing the regulations governing the functioning of the council of administration.⁶ Universal law could not legislate adequately for the diversity of conditions of dioceses world-wide; so, apart from a number of transactions in which the council would be called upon to exercise a role, the bishop was left free to draw up a task description for the council suited to the needs of the diocese.

Third, the group agreed on the suppression of paragraph four of canon 1520: the requirement that members of

6. Communicationes, 5(1973), p. 97.

the council of administration swear an oath before taking office.⁷

These proposed changes did not affect the placement of the canon in the Code. It remained, for the time being, in the section on administration of goods.

b. 1977 Schema Book V⁸

In the 1977 schema of Book V, entitled "Patrimonial Law of the Church", the divisions remained practically the same as in the working paper. The changes that were introduced were minor: the heading of the first division -- "General canons" replaced the words "Preliminary canons"; this first section was also expanded by the addition of three canons. The systematic order of the book was now as follows: I. General canons (canons 1-12); II. The subject of ownership (canons 13-17); III. The administration of goods (canons 18-34); IV. Acquisition, alienation and especially contracts (canons 35-44); V. Pious wills in general and pious foundations (canons 45-57).

Interestingly, the canon regulating the erection,

7. Ibid.

8. PONTIFICIA COMMISSIO CODICIS IURIS CANONICI RECOGNOSCENDO, Schema canonum libri V de iure patrimoniale ecclesiae, [Civitate Vaticana], Typis Polyglottis Vaticanis, 1977, 23p.

composition and functions of the council of administration had been removed from the section on the administration of goods. The praenotanda to the schema provided the reason.

Regulations about the constitution and competence of the diocesan finance council and the diocesan finance officer are found in another part of the new Code (Book II: People of God) because they belong more to the structure of the diocesan curia. However as regards the finance officer, it is stated here that other duties can be entrusted to him by the bishop.⁹

c. 1977 Schema Book II¹⁰

In the 1977 schema of Book II, the People of God, Title IV in the section treating of the diocesan curia was "The finance council and the finance officer." Two canons (canons 306-307) were then devoted to the finance council and one to the finance officer (canon 308). The texts describing the finance council read:

Canon 306:

1. In each diocese a finance council is to be

9. Canon 22: "Normae de constitutione ac de competentia Consilii dioecesei a rebus oeconomicis necnon Oeconomis dioecesei habentur in alia parte novi Codicis (Lib. II, De Populo Dei) quia potius ad structuram Curiae dioecesei pertinent, attamen, ad Oeconomum quod attinet, alia munera committi posse ab Episcopo hic asseritur."

10. PONTIFICIA COMMISSIO CODICIS IURIS CANONICI RECOGNOSCENDO, Schema canonum libri II de populo Dei, [Civitate Vaticana], Typis Polyglottis Vaticanis, 1977, 155p. Hereafter cited as 1977 Schema Book II.

established, presided over by the diocesan bishop or his delegate, and is to be composed of at least three persons, truly expert in financial matters and civil law, of outstanding integrity, either lay persons or clerics, of whom at least one is to be a member of the presbyteral council, and appointed by the bishop having taken notice of the regulations established by the conference of bishops.

2. Unless the conference of bishops has established otherwise, members of the finance council are to be appointed for a five year term, but when this period has expired they may be reappointed for another five year period.

3. Those persons are excluded from the council of administration who are related to the bishop in the first or second degree of consanguinity or affinity.¹¹

Canon 307:

In addition to the duties committed to it in Titles III and IV of the "Patrimonial Law", the finance council is to prepare each year a budget of the income and expenditures foreseen for the governance of the entire diocese in the coming year, and at the close of each year examine a report of receipts and expenditures.¹²

11. Canon 306, "1. In singulis dioecesibus constituitur Consilium a rebus oeconomicis, cui praesidet ipse Episcopus diocesanus eiusve delegatus, et quod constat tribus saltem personis, in re oeconomica necnon iure civili vere peritis et integritate praestantibus, sive laicis sive clericis, quorum unus saltem membrum sit Consilii presbyteralis, ab Episcopo, attentis quidem normis ab Episcoporum Conferentia statutis, nominatis.

"2. Nisi Episcoporum Conferentia aliter statuerit, membra Consilii a rebus oeconomicis ad quinquennium nominentur, sed expleto hoc tempore ad alia quinquennia assumi possunt.

"3. A Consilio administrationis excluduntur personae quae cum Episcopo primo vel secundo gradu consanguinitatis vel affinitatis coniunctae sunt."

12. Canon 307: "Praeter munera ipsi commissa in Titulis III et IV de iure patrimoniali Consilii a rebus oecono-

The study group entrusted with this part of the revision of the law met on April 16, 1980. They examined the observations made by the various bodies which had been consulted and came to the following conclusions:

1. Canon 306,1 was approved with the following amendments:

- a) Replace "persons" with "Christian faithful";
- b) suppress "either laity or clerics, of whom at least one is to be a member of the presbyteral council";
- c) suppress "having taken notice of the regulations established by the conference of bishops."¹³

The reasons for the changes were not given, but some possibilities can be proposed. The replacement of the neutral "persons" with "Christian faithful" introduces the important requirement of membership in the Church and belief in Christ. Those who share in the episcopal administration of the temporal goods of the diocese need to have an understanding of the Church and its mission from their experience of lived commitment to that mission, as well as

micis est quotannis rationem apparare quaestuum et erogationum quae pro universo dioecesis regimine anno venturo praevidentur, necnon, anno exeunte, rationem accepti et expensi probare."

13. Communicationes, 13(1981), p. 127.

being skilled in financial affairs and civil law. The amended text expresses concern for the attitudes of those who will compose the council.

The suppression of the laity/clergy specification was necessary once the concept of the Christian faithful had been introduced, since this includes all who are members of the church. The suppression of the requirement that one member of the finance council be a member of the presbyteral council¹⁴ could be another example of the attempt made in the Code to avoid placing limitations on the diocesan bishop's power of governance in his own diocese. The bishop is left free to select those persons he prefers.

One of the reasons behind the suppression of the regulatory role by the conference of bishops¹⁵ might also be found in the desire not to restrict unduly the autonomy of the diocesan bishop. Indeed, the eventual interventions of the conference were severely curtailed in the final stages of the revision process.¹⁶ Also, there might have been a

14. Ibid.

15. Ibid.

16. Cf. J.H. PROVOST, "Title II: Groupings of Particular Churches", in J.A. CORIDEN, T.J. GREEN, and D.E. HEINTSCHEL, (eds.), The Code of Canon Law: a Text and Commentary, New York, Paulist Press, [1985], (hereafter cited as US Commentary), p. 364.

preference for guidelines set by the universal law in this matter with a view to obtaining as uniform an approach as possible in all countries.

In the second paragraph, the reference to the conference of bishops was also suppressed.¹⁷ Possibly the reasons proposed above could apply here.

Canon 306,3 was changed in two ways. First, the reversion in terminology to "council of administration", the language of the 1917 Code, was rectified with the words "finance council" being inserted. The greater precision of the latter description was preferred to that used in the former text. "Administration" is a broad term that is capable of a wider application than simply financial matters.

Second, the prohibited degree of relationship between members and the bishop was modified from the 1917 requirement of first or second degree of consanguinity or affinity, to "up to the fourth degree of consanguinity and affinity." This was based on a new system of computing degrees of relationship.¹⁸

17. Ibid.

18. Ibid. See canons 108 and 109 for the method of computing degrees of relationship. An explanation of the method used in the 1917 Code can be found in T.L. BOU-CAREN,

One closing comment can be made on canon 306. In the schema distributed for examination and comment, the canon was marked as a new canon regardless of its great similarity with canon 1520 (1917) because it was new to this section of the Code. The stipulation of a definite term of office for council members (canon 306,2) admittedly was a new element, but the other paragraphs were obviously developments of the earlier Code. Its new placement in the Code means that by its very position in the arrangement of the canons, it is identified as part of the diocesan curia: "those institutes and persons who assist the bishop in the governance of the entire diocese" (canon 469).

2. Canon 307 has no direct precedent in the 1917 Code. The text was approved by the study group with two amendments.

The first replaced the words "in Titles III and IV of Patrimonial Law" with "in the book on Temporal Goods of the Church."¹⁹ The consultors in the study group on temporal goods, during their meetings of June 17-23, 1979, had aban-

A.C. ELLIS, and F.N. KORTH, Canon Law: A Text and Commentary, fourth revised edition, Milwaukee, The Bruce Publishing Co., [1966], pp. 85-86.

19. Ibid.

andoned the proposed new title for this section "Patrimonial Law of the Church", for the more traditional one, "Temporal Goods of the Church."²⁰

The second amendment was to add the words "according to the directions of the diocesan bishop."²¹ This addition would allow the bishops to decide on the manner of preparation and presentation best suited to their dioceses. The entrusting to the council of budget preparation and examination of annual reports on receipts and expenditure was the result of a proposal made some years earlier. When texts dealing with clerics and the hierarchy were being prepared, it was suggested that the direction of financial affairs be entrusted to the council and their execution to the finance officer.²²

d. 1980 Schema²³

The 1980 Schema was the result of a lengthy process in

20. Communicationes, 12(1980), p. 394.

21. Communicationes, 13(1981), p. 127.

22. Communicationes, 5(1973); p. 228: "Consilio committenda est directio rei oeconomica, oeconomus vero executio."

23. PONTIFICIA COMMISSIO CODICIS IURIS CANONICI RECOGNOSCENDO, Codex iuris canonici: schema patribus commissionis reservatum, Civitate Vaticana, Libreria Editrice Vaticana, 1980, xxiii-382 p. Hereafter cited as 1980 Schema.

which the observations of those bodies to whom the draft texts had been sent were examined and, where appropriate, incorporated into the revised text. The end product was then presented to the members of the commission.²⁴

In the schema, the text containing the description of the finance council was found in canons 412 and 413, two of the three canons that composed article 3 of the section of the Code on the diocesan curia. The canons read:

Canon 412:

1. In each diocese a finance council is to be established over which the diocesan bishop himself or his delegate presides, and which is composed of at least three Christian faithful, truly expert in financial affairs and civil law, of outstanding integrity and appointed by the bishop.

2. The members of the finance council are to be appointed for a five year term, but when this period has expired, they may be reappointed for other five year terms.

3. Those persons are excluded from the finance council who are related to the bishop up to the fourth degree of consanguinity or affinity.²⁵

24. 1980 Schema, p. x.

25. Canon 412, "1. In singulis dioecesis constituitur consilium a rebus oeconomicis, cui praesidet ipse Episcopus dioecesanus eiusve delegatus, et quod constat tribus saltem christifidelibus, in re oeconomica necnon in iure civili vere peritis et integritate praestantibus, ab Episcopo nominatis.

"2. Membra consilii a rebus oeconomicis ad quinquennium nominantur, sed expleto hoc tempore ad alia quinquennia assumi possunt.

Canon 413:

In addition to the duties committed to it in Book V, The Temporal Goods of the Church, the finance council is to prepare each year, according to the directions of the diocesan bishop, a budget of the income and expenditures foreseen for the governance of the entire diocese in the coming year, and at the close of the year, examine a report of receipts and expenditures.²⁶

The changes and additions recommended by the consultants in the course of their deliberations on the 1977 schema had been incorporated into this draft. No further comment needs to be made.

The 1980 schema was given to the full commission on June 29, 1980. This document, plus the subsequent written report containing the comments made on it by the commission members, would be the basis for the final plenary session of the commission held in Rome, October 20-28, 1981, which resulted in an amended version of the canons being presented

"3. A consilio a rebus oeconomicis excluduntur personae quae cum Episcopo usque ad quartum gradum consanguinitatis vel affinitatis coniunctae sunt."

26. Canon 413: "Praeter munera ipsi commissa in libro V De Bonis Ecclesiae Temporalibus, Consilii a rebus oeconomicis est quotannis, iuxta Episcopi dioecesanii indicationes, rationem apparare quaestuum et erogationum quae pro universo dioecesis regimine anno venturo praevidentur, necnon, anno exeunte, rationem accepti et expensi probare."

on April 21, 1982,²⁷ to the Pontiff for promulgation.²⁸

e. 1982 Schema²⁹

Not only did the Pope study the text of the latest schema personally, he also enlisted the help of a small group of specialists in canon law to review the text. In the course of meetings held in July and September, 1982, these canonists resolved one hundred and nineteen questions, which had been raised and left thirty-nine others for the Pope's personal decision.³⁰ The Pope considered these with the assistance of special advisers³¹ and at Christmas 1982 announced that the new law would be promulgated on January 25, 1983 -- twenty-four years to the day since John XXIII inaugurated the work of revision.

None of the canons regulating the diocesan finance

27. R. PARALIEU, op. cit., p. 22.

28. J.A. ALESANDRO, "General Introduction", in US Commentary, pp. 7-8.

29. PONTIFICIA COMMISSIO CODICIS IURIS CANONICI RECOGNOSCENDO, Codex Iuris Canonici schema novissimum post consultationem S.R.E. Cardinalium, Episcoporum Conferentiarum, Dicasteriorum Curiae Romanae, Universitatum Facultatumque ecclesiasticorum necnon Superiorum Institutorum vitae consecratae recognitum, iuxta placita Patrum Commissionis deinde emendatum atque Summo Pontifici praesentatum. [Civitate Vaticana], Typis Polyglottis Vaticanis, 1982, 308p.

30. R. PARALIEU, op. cit., p. 22.

31. Ibid.

council was affected by this final revision and so they appeared unchanged in the 1983 Code of Canon Law.

+ + +

The rather peaceful evolution of the canons regulating the diocesan finance council reveals certain changes in the law governing episcopal administration of temporal goods at the diocesan level. The degree of involvement by other members of the diocese in this administration has been deepened, the finance council has been recognized definitively as part of the diocesan curia, and membership requirements which were discriminatory on grounds of gender have been modified.

II. Establishment and Duration of Finance Councils

The central canons with regard to the diocesan finance council are canons 492 and 493 in Book II of the Code. We shall now examine canon 492 as it contains the description of the composition of a finance council, paying particular attention to its establishment and duration. In the light of this, comment will then be made on what the Code prescribes for other juridic persons.

a. The Diocesan Finance Council

Canon 492 reads:

1. In each diocese a finance council is to be established by the diocesan 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 outstanding integrity and appointed by the bishop.

2. Members of the finance council are to be named for a five year term; but having completed this term they may be named to other five year terms:

3. Those persons are excluded from the finance council who are related to the bishop up to the fourth degree of consanguinity or affinity.³²

(i) The Nature of the Diocesan Finance Council

As part of the diocesan curia, the finance council is a body whose primary task is to assist the bishop in the administration of the diocese in financial and property matters. The specific ways in which the law envisages this assistance being given are dealt with in the next chapter.

32. Canon 492, "1. In singulis dioecesis constituitur consilium a rebus oeconomicis, cui praesidet ipse Episcopus dioecesanus eiusve delegatus, et quod constat tribus saltem christifidelibus, in re oeconomica necnon in iure civili vere peritis et integritate praestantibus, ab Episcopo nominatis."

"2. Membra consilii a rebus oeconomicis ad quinquennium nominentur, sed expleto hoc tempore ad alia quinquennia assumi possunt.

"3. A consilio a rebus oeconomicis excluduntur personae quae cum Episcopo usque ad quartum gradum consanguinitatis vel affinitatis coniunctae sunt."

The council is established by the diocesan bishop, who freely appoints those who exercise offices in the curia (canon 470). Since the diocesan bishop is the competent authority, those whom the law regards as equivalent to him (canon 381,2) must also establish this council and have the responsibility of doing so in those communities which have been entrusted to their leadership. The communities recognized in this way are these: territorial prelatures, territorial abbasies, apostolic vicariates, apostolic prefectures, apostolic administrations erected on a stable basis (canon 368) and military ordinariates.³³ The requirement of the 1917 Code that the council of administration, the forerunner of the present finance council, be established in the episcopal city³⁴ was not retained, although convenience would most probably see it based there.

The establishment of the council is obligatory.³⁵ Canon 492,1 makes no provision for the duties of the council being carried out by any equivalent body, as was the case in

33. Cf. JOHN PAUL II, apostolic constitution, Spiritali militum curae, April 21, 1986, in A.A.S., 78(1986), pp. 481-486.

34. Canon 1520,1 (1917).

35. This is especially important in light of the requirements of other canons which make the bishop's consultation of the council or his gaining its consent a condition for the validity of the actions he performs.

the 1917 Code with the council of administration.³⁶

In the promulgated canon, the bishop is free to select the members he wishes. The former Code required him to consult the cathedral chapter before making his selection,³⁷ while the 1977 draft had stipulated that at least one of the members of the council should also be a member of the presbyteral council.³⁸

No mention is made of the nature of the vote possessed by the members of the council, as was the case in canon 1520,3 of the 1917 Code where it was stated that their vote was only consultative, unless the common law in specially determined cases or the articles of establishment called for their consent.³⁹ It is clear, however, from those instances where the Code calls for the intervention of the finance council that the nature of the vote of the members has not changed. The council does not possess the power to force the bishop to act. Nor is the bishop answerable to it. Nevertheless, it has the power, in the situations indicated in the

36. Canon 1520,1 (1917).

37. Canon 1520,1 (1917). In the absence of the cathedral chapter the diocesan consultors should be heard. Cf. G. VROMANT, De bonis Ecclesiae temporalibus, Louvain, Museum Lessianum, 1927, p. 197.

38. Communicationes, 5(1973), p. 97.

39. Canon 1520,3 (1917).

Code, to prevent the bishop from acting by refusing to consent, but it cannot dictate what he must do.

Although the council is established by the bishop, it does not depend on him for its continued existence. When the see falls vacant, a number of bodies such as the presbyteral council, the episcopal council, and the diocesan pastoral council (if these latter two exist) cease to exist. The college of consultors and the finance council, however, remain functioning parts of the diocese attending to those tasks which the law defines (cf. canon 421,1 and canon 423,2).

The continued existence and effectiveness of these bodies helps ensure that no harm befalls the diocese in the interim. The college of consultors exercises the important function of electing a diocesan administrator (canon 421,1) and then continues to assist the priest so elected by assuming the additional task of fulfilling the functions of the presbyteral council (canon 501,2). On the other hand, the finance council assists the diocesan administrator in those areas foreseen by law, and if need be, elects a temporary finance officer (cf. canon 423,2). In exercising these roles, the council members are to recall the principle of canon 428,1: no innovations are to be made when the see is vacant.

(ii) Term of Office

The 1917 Code determined no time limit for those appointed to the diocesan council of administration.⁴⁰ The first reference to a definite term of appointment was found in canon 306,2 of the 1977 schema of Book II.

The term is five years with those appointed being eligible for reappointment for additional terms. These seem well-suited to enabling the members of the council to attain a solid understanding of the administration of the temporal goods of the diocese and provide the bishop with sound, reliable advice. The bishop would do well to ensure the periodic replacement of some of the councillors so as to provide for fresh ideas and view-points. A set term could also be an encouragement for some to accept membership as they would know that at the end of the period they would be free to leave.

No mention is made of the dismissal of members, but as the bishop is the competent authority to appoint members to the council, he would also have the power to remove them. The reasons for such action would need to be just, and could be spelled out in the statutes of the council or elsewhere.

40. Cf. L. MATHIAS, The Diocesan Curia; Its Organization According to History and Canon Law, Madras, The Good Pastor, 1947, p. 1/4.

Also included in that document could be a statement with regard to reimbursement for expenses and the like. The workload for members would vary considerably from diocese to diocese, and due consideration would need to be taken of this fact in deciding whether some form of honorarium may be in order.

(iii) Modality of Appointment

The modality of appointment is left to the bishop. The Code does not forbid nominations being presented by other diocesan bodies, such as the presbyteral council or the diocesan pastoral council.⁴¹ Once the selection has been made and those approached have accepted, the new members of the finance council should receive a signed and notarized letter of appointment as they have been appointed to an ecclesiastical office,⁴² and make the promise to fulfill their function faithfully and observe secrecy within the limits and according to the manner determined by the bishop.⁴³ The requirement of the former Code to swear an oath⁴⁴ has been mitigated.

41. Cf. J.J. MYERS, loc. cit., p. 183.

42. Cf. canons 156, 474.

43. Cf. J.A. ALESANDRO, US Commentary, p. 398.

44. Cf. canon 1520,4 (1917).

b. The Finance Council of other Juridic Persons⁴⁵

The description of the diocesan finance council is the most detailed example in the Code of a requirement which is binding on all juridic persons:

Each juridic person is to have its own finance council or at least two advisers, who according to the norm of its statutes assist the administrator in carrying out his or her function.⁴⁶

This canon appeared for the first time in the 1980 schema. Its requirements are binding on all juridic persons, public and private. For the most part, ~~the canons of~~ Book V are only binding on public juridic persons as it is their goods alone which are considered ecclesiastical goods (cf. canon 1257,1). The temporal goods of private juridic persons are regulated by their own statutes unless express provision is made to the contrary (cf. canon 1257,2). Canon 1280 makes this express provision and so the administrators

45. Cf. Extensive treatments of the question of juridic persons can be found in B.F. BROWN, The Canonical Juridic Personality with Special Reference to its Status in the United States of America, Washington, D.C., The Catholic University of America, 1927, v-212p.; F. COCCOPALMERIO, "De persona juridica iuxta schema codicis novi", in Periodica de re morali canonica liturgica, 70(1981), pp. 369-400; S.B. SALINAS, La noción de persona jurídica en el derecho canónico, Barcelona, Herder, 1985, 261p.

46. Canon 1280: "Quaevis persona iuridica suum habeat consilium a rebus oeconomicis vel saltem duos consiliarios, qui administratorem, ad normam statutorum, in munere adimplendo adiuvent."

of private and public juridic persons must be assisted in their work by a council or at least two advisers.

The question then arises as to which bodies or institutes are bound by this norm. Some are easily identified as they are explicitly recognized in the Code as possessing juridic personality.⁴⁷ Others can only be so classified after examination of the decree by which the competent authority erected them.⁴⁸ In addition, however, some determination needs to be made with regard to the organisms which, before the revision of the Code, were looked upon as being moral persons, those whose goods were regarded as ecclesiastical.⁴⁹

47. The Code lists the following as possessing juridic personality: seminaries (canon 238,1), public associations (canon 313), particular Churches (canon 373), ecclesiastical provinces (canon 432,2), conferences of bishops (canon 449,2), parishes (canon 515,3), institutes of consecrated life, their provinces and houses (canon 634,1), societies of apostolic life, their parts and houses (unless stated otherwise in their constitutions) (canon 741,1), and autonomous pious foundations (canon 1303,1,1^o).

48. The revised Code divides ecclesiastical juridic persons into two distinct categories, public and private. The former possess their particular personality either through the law itself, or by a special decree of the competent authority expressly granting it, while the latter are given this personality only through a special decree of the competent authority expressly granting it (cf. canon 116,2).

49. Cf. canon 1497,1 (1917). "Bona temporalia, sive corporalia, tum immobilia tum mobilia, sive incorporalia, quae vel ad Ecclesiam universam et ad Apostolicam Sedem vel ad aliam in Ecclesia personam moralem pertineant, sunt bona ecclesiastica."

For instance, G. Michiels included benefices, chapters of canons, groups of diocesan consultors (now colleges of consultors), the college of Cardinals, the Roman congregations, and vicariates forane as moral persons.⁵⁰ However, the present Code makes no explicit statement that these are juridic persons.

In the absence of such an explicit determination in the Code, attention must be focused on the other manner in which public juridic persons are given this personality, that is, by special decree of the competent authority expressly granting it (canon 116,2). The reference to an "express grant" of this personality would seem to exclude opinions such as that held by Michiel's in which he proposed, commenting on the earlier Code, that unless the ecclesiastical superior expressly denied moral personality to the entities being erected, once the decree was promulgated they were considered moral persons.⁵¹ Silence in this regard in the decree of erection is not to be interpreted as granting juridic personality.

Some of the above-mentioned bodies, however, have an

50. G. MICHIELS, Principia generalia de personis in Ecclesia: commentarius libri II codicis iuris canonici. Canones praeliminares 87-106, editio altera, Tournai, Desclée & Co., 1955, p. 428-454.

51. G. MICHIELS, op. cit., pp. 410.

involvement in the life of the Church reaching back for centuries, are they now to be denied juridic personality because the conditions of canon 116,2 are not fulfilled? One foreseeable danger in accepting such bodies as juridic persons is that every group that exists in the Church in a corporate way, such as the episcopal council (canon 473,4), the presbyteral council (canon 495,1), the diocesan pastoral council (canon 511), and the diocesan finance council (canon 492) could be categorized as a juridic person and thereby bound to observe the norm of canon 1280.

The prospect of the diocesan finance council having its own finance council or advisers does not seem desirable from an organizational viewpoint, but such an outcome would seem to be demanded if the concept of juridic person is extended beyond the parameters set by canon 116,2.

This study can do no more than raise these questions. One hopes that future, specific studies will bring greater clarity to these matters. For the present, those bodies which are specifically designated in the law as being juridic persons or those whose decree of establishment expressly grants this personality are required to have a council or at least two advisers to assist the administrator in carrying out his or her function.

III Membership of the Finance Council

a. Number of Members

The council is to be composed of at least three members (canon 492,1). The statement of a minimum number leaves the bishop free to decide what would be the best number for the diocese.⁵² It would seem that three would be a constitutive element; that is, any number less than that would mean that there was no council, merely one or two advisers (cf. canon 1280).⁵³ That three is a constitutive element can be argued from the requirements laid down in canon 127,1 for consulting or obtaining the consent of colleges or groups of persons. When the consent of the group or college is required, the stipulation is that an absolute majority of those present be in favour. An absolute majority is more than half. This means that there be at least three to have even the chance of achieving this result. A diocesan bishop would be well advised to choose an uneven number of members for the council so as to provide that an absolute majority can be gained, rather than a tied vote. In practice, a rela-

52. B. DAVID, "Le conseil diocésain pour les affaires économiques", in Les cahiers du droit ecclésial, 2(1985), p. 11.

53. The 1917 Code stipulated that the council of administration be composed of at least two members. By increasing the minimum number to three the 1983 Code makes provision for a majority decision being reached where such is required by law.

tively restrained number would be desirable: it would help the effectiveness of the group in coming to decisions and is easier to assemble, especially in those dioceses where the number of financial matters about which the law requires the council's advice or consent leads to frequent meetings.⁵⁴

b. Qualifications for Membership

(i) Christian Faithful

Canon 492,1 states that membership of the finance council is open to the Christian faithful. The significance of the requirement can be overlooked in favour of the more "technical" qualifications members are required to possess to be eligible for appointment.⁵⁵ B. David mentions the requirement in general, but chooses not to include it as a criterion required by the Code. For him, competence and honesty are the only two criteria to be used in selecting members.⁵⁶ Yet he is insistent on the fact that those selected be in communion with the church, have a "sense of

54. B. DAVID, loc. cit., p. 11.

55) For instance, J.A. ALESANDRO in the US Commentary makes no reference to the faith requirement in his comments on these canons. His thoughts seem more in line with the wording of the 1977 draft.

56. B. DAVID, loc. cit., p. 9.

the church," and be open to the life of the diocesan community.⁵⁷ He fails to say why he does not regard baptismal commitment as a prerequisite for selection. In a later article on parish finance councils, the same author develops these ideas:

Besides the sense of Church and the apostolate, (the members) should be informed about the reasons why the Church possesses goods as well as the criteria according to which it should manage them to manifest its "being" in its "having" [...] The sacramentality of the Church is also at work in the face it shows economically to the public gaze [...] even if certain prejudices (the richness of the Church, congregations) are hard to shake. Clarity and openness in financial matters are, for their part, at the service of the sacramentality of the Church.⁵⁸

What can be said then with regard to the appointment of baptized non-Catholics or of people not even baptized?

Provision of an ecclesiastical office to a person who lacks the required qualities is invalid if the qualities expressly required for validity by universal or particular law or the law of the foundation are missing (cf. canon

57. Ibid., pp. 9-10.

58. ID, "Les conseils paroissiaux", in Les cahiers du droit ecclésial, 3(1986), pp. 30-31: "[...] il sera nécessaire que les "administrateurs", outre le sensus Ecclesiae apostolatusque, soient informés des raisons pour lesquelles l'Eglise possède des biens ainsi que des critères selon lesquelles elle doit les gérer pour manifester son 'être' dans son 'avoir' [...] La sacramentalité de l'Eglise passe aussi par le visage qu'elle donne économiquement aux yeux des hommes [...] même si certains préjugés (les 'richesses' de l'Eglise, des Congrégations [...]) sont tenaces. La clarté et la transparence économiques sont, pour leur part, au service de la sacramentalité de l'Eglise."

149,2). Hence, provided particular law has made no determination to the contrary, the appointment of a "baptized non-Catholic" to this office would seem to be valid since the Code in canon 149 speaks of being in communion with the Church; it does not speak of full communion or of the Catholic Church, although this might be reasonably argued from the context.

With regard to the appointment of a non-baptized person, it does not seem possible to argue in the same way. A non-baptized person does not have juridic personality in the Church and thus would not be eligible for direct membership. However, according to circumstances, such a person might be called upon to assist the council in an advisory capacity.

Designating council membership as an ecclesiastical office could seem wrong to some, since an ecclesiastical office is defined as any function constituted in a stable manner by divine or ecclesiastical law to be exercised for a spiritual purpose (canon 145,1). The finance council would seem then to have only temporal purposes as its goal, not spiritual ones. However, such a conclusion fails to take seriously the fact that the finance council is a diocesan curial institution which assists the bishop in his administration of the whole diocese. Of course, the greater part of its work, both in tendering advice and in deciding whether

to give consent or not, concerns the management of ecclesiastical goods, either by the diocesan bishop personally or by the administrators of those public juridic persons subject to him. However, these goods can only be used for the ends proper to the mission of the Church among which are especially: ordering divine worship, providing decent support for the clergy and other ministries, and performing works of the sacred apostolate and of charity, especially towards the needy (canon 1254,2). These ends are certainly spiritual goals and it is for the promotion of these that the members of the finance council assume their particular task. Their involvement with these realities may not be immediate, but it is real and necessary and offers solid grounds to support and confirm the statement that membership on the finance council is an ecclesiastical office.

(ii) Gender and Ecclesial Status

The prescription of the 1917 Code which declared that only men were eligible for appointment to the council of administration, the forerunner of the present finance council, has been eliminated in the 1983 Code. The use of the term christifideles means that clerics, members of institutes of consecrated life and societies of apostolic life, lay men and lay women are all eligible for selection, provided they meet the other requirements of the law.

While the possibility exists that a bishop could choose only lay people or only clerics as members of the council, such a course of action might not be the most prudent to take. J.A. Alesandro feels that it would be prudent to have representatives from the presbyteral council and college of consultors on the finance council to foster co-ordination and information sharing.⁵⁹ It is a sound suggestion and one worthy of implementation provided that the distinctiveness of these councils and colleges is maintained.

(iii) Technical Expertise

The canon states that those chosen for the council are to be "truly skilled in financial affairs as well as in civil law." This expertise, born of training and practical experience, is the characteristic of this council. Modern diocesan management is a demanding task and one of growing complexity. For the bishop to be a good householder of the goods entrusted to him directly as the administrator of the diocese (cf. canon 1284), and to be a vigilant overseer of the administration of the public juridic persons subject to him, he needs skilled assistants. "Skilled" would seem to imply that the person had at least a business degree, or

59. J.A. ALESANDRO, loc. cit., in US Commentary, p. 398.

equivalent qualification, or is a qualified lawyer.⁶⁰

Those who serve as members of the finance council need more than their skills and qualifications. If the council is to realize its full ecclesial potential, the members must also have an appreciation of the theological, pastoral and historical bases for the Church's use of temporal goods.⁶¹ Church business management can be very different from commercial accounting, and to help the people who will participate in the Church's mission in this way, the suggestion that there should be training programs for finance officers and those who will be members of finance councils is one that is worthy of serious consideration.⁶² What would be looked for from such training would be the formation of attitudes that would bring about an enriching blend of financial and legal acumen and an informed sensitivity and understanding of the mission of the Church.

The canon does not mention explicitly the need for members of the council to be skilled in canon law, especial-

60. A.P. BENNETT, "The Practical Effect on the Fiscal Administration of Church Finances of Book V: The Law Regarding Church Possessions", in CLSA Proceedings, 42(1980), p. 102.

61. Ibid.

62. Ibid.

ly the canon law which regulates the use of temporal goods. Yet if the training programs mentioned above became a reality, then part of the curriculum should address this question. But apart from that, it could be reasonably stated that the council would need at least one member who is truly skilled in canon law if the bishop himself or his delegate is not fully cognizant of the legislation.

(iv) Personal Qualities

(a) Integrity

"Outstanding integrity"⁶³ (canon 492,1) is an important quality for those involved in the management of church finances. The Church is a "sacrament of salvation" and its financial activity is one that is scrutinized by a curious world to see whether there is any discrepancy between what the Church professes to be and what it actually is. Scandals in this area have caused grave harm to the Church's credibility. In selecting the men and women who will serve on the finance councils, bishops should take great pains to assess the suitability of those being considered.

63. This is a much stronger description than "suitable" (idoneis) used in canon 1520,1 (1917).

(b) Relationship to the Bishop

Just as the Church must ensure that those who participate in the financial affairs of the Church are honest and above reproach, it must also guard against nepotism or even the appearance of it. For this reason the law excludes from membership of the council those who are related to the bishop up to the fourth degree of consanguinity or affinity. While the bishop could dispense from this regulation of prohibited relationship (in virtue of canon 87,1), he would be wise to consider the possible consequences of so doing.

c. Mutually Exclusive Offices

Canon 152 establishes that some ecclesiastical offices cannot be fulfilled at the same time by the same person. At times the incompatibility will be declared by the law: e.g. the priest who is the canon penitentiary cannot assume the role of vicar general or episcopal vicar (canon 478,2); the finance officer cannot be the diocesan administrator when the see is vacant (canon 423,2). At other times, a decision has to be reached working from the prescriptions of the law and the circumstances of the actual situation.

Although the canons regulating membership of the diocesan finance council explicitly exclude no one by virtue of

the office held, yet there would seem to be some who should be so excluded.

(i) The Diocesan Bishop

First, in the strict sense of the term "membership", the diocesan bishop cannot be a member of the finance council, or of any other diocesan council.⁶⁴ The finance council exists to help the bishop in his administration of the temporal goods, as the other councils help him with their particular functions. The bishop or his delegate presides at the finance council (canon 492,1) but is not a member. When the council is asked for its consent or its advice, the bishop is the one who receives, not the one who gives.

The requirement that the diocesan bishop or his delegate preside over the council does not mean that he must chair the meetings of the council.⁶⁵ In fact, his role as president and the one who is assisted by the council would stand out more clearly if another chaired the meetings and he was present to share his concerns and listen to the discussion without being burdened by the demands of chairing the proceedings.

64. B. DAVID, loc. cit., p. 11.

65. J.J. MYERS, "The Diocesan Fiscal Officer and the Diocesan Finance Council", in CLSA Proceedings, 44(1982), p. 183.

Another support for the proposition that the bishop is not a member of the council is the fact that even when the see is vacant the finance council continues to function. If the finance officer is elected diocesan administrator, the council is to choose another temporary one (canon 423,2).

(ii) The Finance Officer

The finance officer is not included in the Code as a member of the finance council and should not be made one. The roles assigned to the officer and the council are distinct, and while they will work closely together, the distinctiveness of the relationship envisaged in the law should be maintained.

Canon 493 makes it clear that the council works according to the directions of the bishop, but it is not merely a passive executor of policies decided upon elsewhere. The council is a source of expertise which is not only valued by the bishop at a theoretical level, but also acted upon at a practical one. Policies for the financial management of the diocese, and general plans for their execution are to be the product of respectful, honest and informed interaction between the bishop and the council.

The finance officer executes on a day to day basis the budget strategies decided upon by the bishop with the help of the finance council, as well as performing the other authorized tasks. The law requires the diocesan bishop to consult both the finance council and the college of consultants before appointing a person to this role, a requirement which implies the finance officer is not a member of the finance council. It is expected the finance officer would be invited to participate in meetings of the council because of the immediate involvement with the financial running of the diocese, but not to take part in all the deliberations.⁶⁶ Similarly, to avoid confusion of roles, it would seem to be the intention of the law that the finance officer not be the person delegated by the bishop to preside over the council.⁶⁷

(iii) The Vicar General and the Episcopal Vicars

Whether those who assume the roles of vicar general or episcopal vicar can be appointed members of the council is a difficult question to answer. The vicar general in virtue of his office possesses that executive power in the entire diocese which belongs to the diocesan bishop in law; that

66. B. DAVID, loc. cit., p. 19.

67. Ibid.

is, he possesses the power to place all administrative acts with the exception of those which the bishop has reserved to himself or which in law require the special mandate of the bishop (canon 479,1). The episcopal vicar possesses by law the same power as the vicar general, but only over that determined section of territory, that type of business, or those faithful of a determined rite or group for which he was appointed, again with the exceptions foreseen by law (canon 479,2). In a real sense, those who assume the role of vicar general or episcopal vicar become alter egos of the bishop. They assist the bishop in the governance of the diocese. They are never to act contrary to the mind and will of the diocesan bishop, reporting to him on the principal matters which are to be considered and which have been treated (canon 480). Their pastoral activity is coordinated by the bishop himself who is free to establish an episcopal council of which they alone are eligible for membership as a means of fostering more suitable pastoral activity (canon 473,2 and 3).

One of the vicars, possessing ordinary, vicarious executive power, would seem the logical choice as the bishop's delegate to preside over the finance council, but does the law place an obstacle to membership on the council itself?

These men are undoubtedly trusted co-workers and ones

to whom the bishop would almost naturally turn for advice in the governance of the diocese. Even the law sees a benefit in their being formed into a council. But what is the significance of the prescription in canon 480 that they are never to act contrary to the will and mind of the diocesan bishop?

Canon 369,2 of the 1917 Code contained a similar norm, but expressed it in more specific language, referring to the "use of powers against the will and mind of the bishop."⁶⁸ The wording focuses on the central issue -- the vicars are to exercise the authority given to them in such a way that they do nothing to undermine the bishop's authority or create division within the diocese. Canon 480, undoubtedly, intends to make the same point, but the word "act" (agant) is a less precise expression than the one used in the former Code.

As a member of the finance council, would a vicar, for instance, contravene the norm expressed in canon 480 if, in a case where the bishop needed the consent of the council to place an act, he voted against a proposal? One hopes that is not the significance of the canon, but it seems to allow

68. Canon 369,2 (1917): "Caveat ne suis potestatibus utatur contra mentem et voluntatem sui Episcopi, firmo praescripto can. 44,2."

such an interpretation to be made with the consequence being that the vicars become mere "yes men" who only say what the bishop wants to hear.

(iv) The Diocesan Administrator

The diocesan administrator would not seem to be able to be a member of the finance council for the same reasons for which the diocesan bishop cannot be a member. The council is there to assist the one to whom governance of the ~~diocese~~ diocese has been entrusted. If a member of the finance council was chosen to be administrator of the vacant see, he should resign his post.

+ + +

The bishop is entrusted with the governance of the diocese, but the exercise of that office necessitates a sharing of many talents. The finance council brings together financial skills, civil law expertise, and outstanding honesty. Combined with an understanding of the mission of the Church born of the lived experience of full communion as well as from study, it will do much to ensure that the diocesan administration of finance and property is exercised in the spirit of Vatican II.

While similar in a number of ways to the council of administration of canon 1520 of the 1917 Code of Canon Law, the diocesan finance council of the 1983 Code differs from its predecessor in some aspects. The bishop's choice of members is no longer restricted to men with the required qualities and abilities; he is free to choose the men and women, laity, religious, or clerics whom he wishes. Nor is he required to ask the advice of any group before doing so. The minimum number for the council has been raised and members have a set term of office. In addition, and probably one of the most significant developments with regard to this part of church life, is the fact that the finance council continues to function even when the See is vacant.

These changes reflect not only the insights of the Second Vatican Council as they are applied to the actual life of the diocesan church, but also the growing complexity of financial administration. The diocesan finance council shares deeply in the episcopal administration of diocesan ecclesiastical goods, and also in the episcopal supervision of the administration of the ecclesiastical goods which belong to public juridic persons subject to the bishop's authority. The extent of this sharing will be seen in the next chapter when the council's functions and duties are examined.

CHAPTER FIVE

FUNCTIONS AND DUTIES OF THE DIOCESAN FINANCE COUNCIL

Within the diocese, the diocesan bishop has two major roles as regards the administration of temporal goods. First, he represents the juridic person of the diocese (cf. canon 118) and as such is responsible for the administration of the ecclesiastical goods which belong directly to it. Second, he has the duty of supervising the administration of the temporal goods which belong to public juridic persons subject to him (canon 1276,1). The finance council is to assist the bishop in the fulfillment of both duties.

In the examination of the canons which require the diocesan bishop to have recourse to the finance council, no attempt has been made to divide the canons into two groups: those in which the bishop functions as the administrator of the diocese (cf. canon 118), and those in which he exercises his function of vigilant supervision over the administration of the temporal goods of the public juridic persons subject to him. The canons do not fall easily into two distinct groups -- some contain prescriptions which belong to both categories. However, comment will be in the appropriate places as to what role or roles the bishop is called upon to fulfill and hence how the finance council is to assist in

that task.

I. Preliminary Comments

a. Scope of the Study

Canon 493 of the 1983 Code reads:

In addition to the duties committed to it in Book V: The Temporal Goods of the Church, the finance council is to prepare each year according to the directions of the diocesan bishop a budget of the income and expenditures foreseen for the governance of the entire diocese in the coming year; moreover at the close of the year it is to examine a report of receipts and expenditures.¹

The relevant canons in Book V are these:

- canon 1263 -- the bishop's right to use taxation as a means of acquiring goods;
- canon 1277 -- the procedure to be followed by the bishop in performing more important acts of administration and acts of extraordinary administration;
- canon 1281,2 -- acts of extraordinary administration for persons subject to the diocesan bishop;
- canon 1287,1 -- the requirement of annual reports from

1. Canon 493: "Praeter munera ipsi commissa in Libro V De bonis Ecclesiae temporalibus, consilii a rebus oeconomicis est quotannis, iuxta Episcopi dioecesanii indicationes, rationem apparare quaestuum et erogationum quae pro universo dioecesis regimine anno venturo praevidentur, necnon, anno exeunte, rationem accepti et expensi probare." English translation is from the the translation prepared under the auspices of the Canon Law Society of America in Code of Canon Law. Latin-English edition, Washington, D.C., Canon Law Society of America, 1983.

- clerical and lay administrators of ecclesiastical goods;
- canon 1292,1 -- procedures for acts of alienation;
 - canon 1295 -- procedures for acts which endanger the patrimony of juridic persons;
 - canon 1305 -- the investment of money and moveable goods assigned to an endowment;
 - canon 1310,2 -- the procedure the ordinary is to follow when diminishing the obligations of a will.

The following canons also call for the intervention of the diocesan finance council:

- canon 423,2 -- the choice of a temporary diocesan finance officer sede vacante when the incumbent has been appointed diocesan administrator;
- canon 494,1 -- the appointment of the diocesan finance officer sede plena;
- canon 494,2 -- the removal of the diocesan finance officer sede plena.

In all these cases, the diocesan bishop is required to have recourse to the finance council either to hear the opinions of the councillors or to obtain its consent in order to perform the acts described in the canons. Others also must participate in some of these decisions: the presbyteral council (canon 1263), the college of consultors (canons 494,1 and 2; 1277; 1292,1; 1295), and interested

parties² (canons 1292,1; 1295; 1305; 1310,2).

b. Notion of Consultation and Consent

The new Code has clarified and made more precise the law which governs the relationship between superiors, in the broad sense, and their councils. Canon 127 resolves the doubt of law which had arisen over canon 105 of the 1917 Code whether consultation, when stipulated in the canons, was required for validity in the same way as consent.³ The response is in the affirmative.

As the notions of consultation and consent are central to the functioning of the finance council attention needs to be given to canon 127:

1. When the law determines that in order to place certain acts a superior requires the consent or counsel of a college or group of persons, the college or group must be convoked according to the norm of canon

2. Interested parties would seem to be at least those who represent the public juridic person, possessors of benefices, patrons, founders and donors. Further discussion is needed to decide whether the finance council of a juridic person should be included as well. Civil law in some countries would require this. Cf. G. VROMANT, De bonis Ecclesiae temporalibus, Louvain, Museum Lessianum, 1927, p. 306; M. PISTOCCHI, De bonis Ecclesiae temporalibus, Taurini, Marietti, 1932, pp. 407-408.

3. Cf. J. ABBO and J. HANNAN, The Sacred Canons: A Concise Presentation of the Current Disciplinary Norms of the Church, St. Louis, Herder, 1952, pp. 152-155. This is a succinct outline of the point in question.

166 unless particular or proper law provides otherwise when counsel only is to be sought; however, for such acts to be valid it is required that the consent of an absolute majority of those present be obtained or that the counsel of all who are present be sought.

2. When the law determines that a superior in order to place certain acts requires the consent or the counsel of certain persons as individuals:

1° if consent is required, the action of the superior is invalid if the superior does not seek the consent of those persons or acts contrary to the opinion of the persons or person;

2° if counsel is required, the action of the superior is invalid if the superior does not listen to those persons; although in no way obliged to accede to their recommendation, even if it be unanimous, nevertheless the superior should not act contrary to it, especially when there is a consensus, unless there be a reason which, in the superior's judgement, is overriding.

3. All whose consent or counsel is required are obliged to offer their opinion sincerely and, if the seriousness of the matter requires it, to observe secrecy sedulously, and this obligation can be insisted upon by a superior.⁴

4. Canon 127, "1. Cum iure statuatur ad actus ponendos Superiorem indigere consensu aut consilio alicuius collegii vel personarum coetus, convocari debet collegium vel coetus ad normam can.166, nisi, cum agatur de consilio tantum exquirendo, aliter iure particulari aut proprio cautum sit; ut autem actus valeant requiritur ut obtineatur consensus partis absolute maioris eorum qui sunt praesentes aut omnium exquiratur consilium.

"2. Cum iure statuatur ad actus ponendos Superiorem indigere consensu aut consilio aliquarum personarum, uti singularum:

"1° si consensus exigatur, invalidus est actus Superioris consensum earum personarum non exquirentis aut contra earum vel alicuius votum agentis;

"2° si consilium exigatur, invalidus est actus Superioris easdem personas non audientis; Superior, licet nulla obligatione teneatur accedendi, ad earundem votum, etsi concors, tamen sine praevalenti ratione, suo iudicio aesti-

The canon throws into clear relief the importance attached by the legislator to consultation as part of ecclesial governance. R.A. Hill's comment is worth noting when he says that consultation:

constitutes a very significant means of participation in the exercise of the role of governance on the part of the Christian faithful, and the quality and effectiveness of church administration⁵ substantially depend on its proper use.

As the validity of the diocesan bishop's action is concerned in these situations, it would seem that the finance council is to be convoked in a manner similar to that laid down in canon 166 for elections. It reads:

1. The presiding officer of the college or group shall convoke all the members of the college or group; and the notice of convocation, when it must be communicated to each member personally, is valid if it is directed to the place of domicile or quasi-domicile or actual residence.

2. If one of those to be convoked is overlooked and is therefore absent, the election is valid; however, upon the instance of such a one and after proof of the oversight and absence, the election, even if it has

manda, ab earundem voto, praesertim concordi, ne discedat.

"3. Omnes quorum consensus aut consilium requiritur, obligatione tenentur sententiam suam sincere proferendi atque, si negotiorum gravitas id postulat, secretum sedulo servandi: quae quidem obligatio a Superiore urgeri potest."

5. R.A. HILL, "Title VII: Juridic Acts", in J.A. CORIDEN, T.J. GREEN, and D.E. HEINTSCHEL, (eds.), The Code of Canon Law: a Text and Commentary, New York, Paulist Press, [1985], (hereafter cited as US Commentary), p. 91.

been confirmed, must be rescinded by the competent authority, provided that it has been juridically established that recourse was made within at least three days of the receipt of the notice of election.

3. But if more than one-third of the electors were overlooked, the election is invalid by the law itself, unless all those overlooked were in fact present.⁶

Yet, how many of the prescriptions of canon 166 are applicable with regard to the convocation of the members of the finance council?

Canon 127,1 speaks only of observing the norms of canon 166 for the convoking of the college or group. Given this and the fact that the second and third paragraphs of canon 166 are concerned with elements that affect the validity of an election, it would seem that the norms contained in canon 166,1 are the only ones to be observed in the convocation of the finance council. Therefore, notice of the meeting must be communicated to each member. The canon does

⁶ Canon 166, "1. Collegii aut coetus praeses convocet omnes ad collegium aut ad coetum pertinentes; convocatio autem, quando personalis esse debet, valet, si fiat in loco domicilii vel quasi-domicilii aut in loco commorationis.

"2. Si quis ex vocandis neglectus et ideo absens fuerit, electio valet; attamen ad eiusdem instantiam, probata quidem praeteritione at absentia, electio, etiam si confirmata fuerit, a competenti auctoritate rescindi debet, dummodo iuridice constet recursum saltem intra triduum ab habita notitia electionis fuisse transmissum.

"3. Quod si plures quam tertia pars electorum neglecti fuerint, electio est ipso iure nulla, nisi omnes neglecti reapse interfuerint."

not say if this notice should be in writing, but it would seem advisable to send written notices and keep a copy in the files as a record. If the message has been conveyed by telephone, then a record of the call having been made should be kept in the files.

To fulfill the duty entrusted to them, the members of the council need to be well-informed about any proposed transaction on which they have to give their consent or counsel. B. David makes a valuable suggestion when he proposes that the norm of canon 1292,4 be applied in a general fashion, and not be restricted to acts of alienation.⁷ The canon reads:

4. The persons who take part in alienating goods through their advice or consent are not to give their advice or consent unless they have first been thoroughly informed concerning the economic situation of the juridic person whose goods are proposed for alienation and concerning previous alienations.⁸

The opinion of the council is to be the fruit of informed deliberation. For this to be possible, the council

7. B. DAVID, "Le conseil diocésain pour les affaires économiques", in Les cahiers du droit ecclésial, 2(1985), p. 13.

8. Canon 1292,4: "Ii, qui in alienandis bonis consilio vel consensu partem habere debent, ne praebeant consilium vel consensum nisi prius exacte fuerint edocti tam de statu oeconomico personae iuridicae cuius bona alienanda proponuntur, quam de alienationibus iam peractis."

must be given access to all relevant information and in sufficient time prior to the meeting to enable the individual members to digest and reflect on the matters for discussion, and if needed, to seek opinions from those they themselves trust, making sure at all times to protect the confidentiality of the material they handle. Then it would be the responsibility of the bishop to create an atmosphere within the meeting itself where an open and honest discussion could take place, with the bishop or his delegate participating, but in such a way as to avoid depriving himself of the benefits of a free exchange of ideas and opinions.⁹

The 1917 Code underlined the seriousness of the role played by those who participate in an act of alienation, by means of their consent or counsel, through the establishment of a penalty for those who wilfully neglect their obligations in this regard.¹⁰ The 1983 Code makes no direct mention of those who participate in an illegal alienation (cf. canon 1377).¹¹

In cases where the consent of other bodies or persons as well as of the council is required, the bishop cannot act if even one of the lawfully stipulated bodies or persons

9. B. DAVID, loc. cit., p. 13.

10. Canon 2347 (1917).

11. However, see canon 1329 on cooperators in an offence.

refuses to consent to the proposed action. He does not have the right to supply the consent of those who have refused it.¹²

c. The Meaning of the Term "Administration" with regard to Ecclesiastical Goods.

In the 1983 Code, the term "administer" and its derivatives "administration", "administrator", and "administrative" are used in a variety of ways.¹³ On the one hand, it denotes the exercise of executive power as distinct from legislative or judicial power. Hence, there is mention made of administrative acts, administrative decrees, administrative tribunals. In this sense, administration is one aspect of executive power.

But "administer" enjoys a wider usage as well. There is the administration of the sacraments, the administration

12. Cf. SACRED CONGREGATION OF THE COUNCIL, reply, January 14, 1922, in A.A.S., 14(1922), p. 161; "V. An in Ordinarii facultate sit, quando Consilium administrationis et Capitulum cathedrale inter se dissentiant, supplere alterutrius consensum, tum in negotio alienationum tum in quovis aequipollenti contractu. R. ad V: Negative." Cf. also J. ABBO and J. HANNAN, op. cit., p. 739; S. WOYWOD and C. SMITH, A Practical Commentary on the Code of Canon Law, New York, J.F. Wagner, 1948, pp. 209-210.

13. This summary of ideas on the meaning of the word "administer" is based on V. DE PAOLIS, "Quaestiones miscellaneae", in Periodica, 73 (1984), pp. 451-452.

of justice, the administration of a diocese, parish, or office. In this broader sense, the term can include all the powers, even legislative and judicial ones. The Apostolic Administrator of an apostolic administration erected on a stable basis (canon 368) is regarded as equivalent in law to a diocesan bishop (canon 381,2). The diocesan administrator who governs a vacant see enjoys the power of the diocesan bishop, excluding those things which are excepted by their very nature or by the law itself (canon 427,1).

Yet "administer" also enjoys a principal use and a precise meaning with regard to temporal goods. Administration, as it applies to ecclesiastical goods, is distinguished from acquisition and alienation. It denotes all those acts which pertain to the conservation and substantial improvement of ecclesiastical goods already acquired or to the lawful receipt, retention, improvement and especially the application, of the produce and of ecclesiastical revenues.¹⁴ This opinion, shared by almost all commentators on the 1917 Code, can still be applied under the 1983 Code.

14. Cf. F. WERNZ and P. VIDAL, Ius canonicum, Romae, Apud Aedes Universitatis Gregoriana, 1927-1938, tome 4, vol. 2, pp. 211-212.

II Specific Functions and Duties

a. Regularly Recurring Items

(i) The Diocesan Budget

Canon 493 requires the finance council to prepare each year, according to the directions of the diocesan bishop, a budget of the income and expenditures foreseen for the governance of the entire diocese in the coming year.¹⁵ According to Black's Law Dictionary "budget" has a number of meanings, three of which can shed light on the work facing the finance council: first, a balance sheet or statement of estimated receipts and expenditures; second, a plan for the coordination of resources and expenditure; third, the amount of money that is available for, required for, or assigned to a particular purpose.¹⁶ Of the three areas, the second is the one in which the council's knowledge and pastoral sensitivity will be exercised most. The first and third areas are more properly concerns for practical bookkeeping and business practice.

Drawing up a budget for the governance of the entire diocese demands not only the necessary accounting skills,

15. "[...] consilii a rebus oeconomicis est quotannis, iuxta Episcopi dioecesanii indicationes, rationem apparare quaestuum et erogationum quae pro universo dioecesis regimine anno venturo praevidentur."

16. H.C. BLACK, Black's Law Dictionary, St. Paul, Minnesota, West Publishing Co., 1979, p. 176.

but also a high degree of awareness of the possible impact it can have on a group, society or Church. An essential part of budget preparation is the establishment of a priority scale of the recipients; yet, whenever such a scale is used, especially where the allocation of money is concerned, there is a high risk of discord because one agency feels badly done by at receiving less than another. Consultation should, therefore, be a major element in the preparation of the diocesan budget, especially with those who head the various agencies and departments of the diocese. The manner of this consultation will vary from place to place, but it should not be omitted. In light of the facts gathered from this, the finance council should make recommendations in respect to the raising, allocation and distribution of funds. The budget would include financial projections and plans to achieve these goals.¹⁷

(ii) Taxation

Canon 1263 allows the diocesan bishop the power to impose taxes as means of raising revenue for the needs of the diocese. The canon represents a dramatic development

17. Cf. Steering Committee, A Management Plan for the Archdiocese of Brisbane, Brisbane, 1984, pp. 44-45. This management plan relating to the financial reporting systems and central services in the Brisbane archdiocese was the work of diocesan officials and employees of Peat, Marwick, Mitchell services.

from the revenue-raising powers accorded the bishop in the 1917 Code.¹⁸ It reads:

The diocesan bishop has the right to impose a moderate tax on public juridic persons subject to his authority; this tax, which should be proportionate to their income, is for diocesan needs and may be imposed only after hearing the diocesan finance council and the presbyteral council; he can impose an extraordinary and moderate tax on other physical and juridic persons only in cases of grave necessity and under the same conditions with due regard for particular laws and customs attributing even more significant rights to him.¹⁹

Provision for prior consultation with the presbyteral council was made in the first draft of the canon,²⁰ but it was not until the 1980 Schema that a similar stipulation was made for the finance council.²¹ The canon contains a number

18. For a detailed account of the evolution of the formulation of canon 1263 see R.L. KEALY, Diocesan Financial Support: Its History and Canonical Status, Romae, Pontificia Universitas Gregoriana, Facultas Iuris Canonici, 1986, pp. 311-343.

19. Canon 1263: "Ius est Episcopo dioecesano, auditis consilio a rebus oeconomicis et consilio presbyterali, pro dioecesis necessitatibus, personis iuridicis publicis suo regimini subiectis, moderatum tributum, earum redditibus proportionatum, imponendi; ceteris personis physicis et iuridicis ipsi licet tantum, in casu gravis necessitatis et sub iisdem condicionibus, extraordinariam et moderatam exactionem imponere, salvis legibus et consuetudinibus particularibus quae eidem potiora iura tribuant."

20. Cf. Communicationes, 5(1973), p. 95.

21. PONTIFICIA COMMISSIO CODICIS IURIS CANONICI RECOGNOSCENDO, Codex iuris canonici: schema patribus commissionis reservatum, Civitate Vaticana, Libreria Editrice Vaticana, 1980, p. 270.

of elements whose determination demands the expertise of the finance council. For instance, what constitutes a "moderate" tax? What is the meaning of "proportionate to their income"? As the parishes would be the public juridic persons mainly subject to this tax, it would be the diocesan finance council which, from the reports sent in annually by the administrators of the parishes in accord with canon 1287,1, would know what was the income of such juridic persons.

If the bishop proposed imposing an extraordinary tax, consultation with the finance council would provide him not only with opinions as to the soundness and feasibility of the proposal, but also with realistic suggestions of ways to exact such a tax especially if, as the canon allows, the bishop chooses to include other physical and juridic persons. The words "under the same conditions" are generally accepted to mean that the bishop can impose the tax only on persons subject to him.²² The wording of canon 264,2, which allows the bishop to impose a tax for the seminary on "all

22. Cf. R.L. KEALY, *op. cit.*, p. 337. He notes that J.J. MYERS, "Book V: The Temporal Goods of the Church", in *US Commentary*, p. 856, holds the contrary opinion that the extraordinary tax could be applied to persons not subject to the bishop. M.L. ALARCON in his commentary on canon 1263 in *Código de Derecho Canónico*, Pamplona, Ediciones Universidad de Navarra, 1983, p. 751, agrees with Kealy's position on this point when he says: "[...] en las mismas condiciones que el tributo ordinario, es decir, que estén sujetas a la potestad de régimen del Obispo, y que el tributo sea moderado y proporcionado a las rentas."

ecclesiastical juridic persons, even private ones, which have a foundation in the diocese", confirms that the more reliable interpretation of canon 1263 would be that which restricts the tax to those persons subject to the bishop.

The Code does not provide for the mandatory intervention of the finance council in the imposition of a tax to provide for the needs of the seminary (canon 264), or in the decision to take up the special collection mentioned in canon 1266, but it does not exclude such possibility either.

(iii) More Important Acts of Administration and Acts of Extraordinary Administration²³

The 1983 Code prescribes in two canons the intervention of the diocesan finance council with regard to acts that go beyond the limits and procedures of ordinary administration. Canon 1277 regulates the actions of the diocesan bishop as the administrator of the temporal goods belonging to the diocese, and canon 1281 regulates the actions performed by the administrators of public juridic persons subject to the diocesan bishop. The two canons will be analysed separately.

²³. For a more extensive treatment of these matters, see M.L. ALARCON, "La administración de los bienes eclesiásticos", in Ius canonicum, 24(1984), pp. 87-121.

Canon 1277 reads:

The diocesan bishop must hear the finance council and the college of consultors in order 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 charter of a foundation. It is for the conference of bishops to define what is meant by acts of extraordinary administration.²⁴

The canon introduces the notions of "more important acts of administration" and "acts of extraordinary administration." To perform the former, the bishop must consult the finance council and the college of consultors, whereas to perform the latter, he must obtain their consent.

In accord with canonical tradition's aversion to definitions, the 1983 Code does not state what acts constitute these "more important acts of administration", but it makes the economic condition of the diocese the determining criterion to be used in deciding which acts fall into this category. The 1917 Code contained no similar criterion. In

24. Canon 1277: "Episcopus dioecesanus quod attinet ad actus administrationis ponendos, qui, attento statu oeconomico dioecesis, sunt maioris momenti, consilium a rebus oeconomicis et collegium consultorum audire debet; eiusdem tamen consilii atque etiam collegii consultorum consensu eget, praeterquam in casibus iure universali vel tabulis fundationis specialiter expressis, ad ponendos actus extraordinariae administrationis. Conferentiae autem Episcoporum est definire quinam actus habendi sint extraordinariae administrationis."

addition, the present canon has added to the formalities to be observed in performing these acts, requiring the diocesan bishop to consult both the finance council and the college of consultors. Canon 1520,3 of the 1917 Code required the local Ordinary to consult only the council of administration before performing them.

The law does not determine a particular authority whose task it is to decide which acts are considered the more important ones, but since the guiding criterion for making the decision is the economic condition of the diocese, the diocesan bishop would be the one best qualified to be aware of this condition and with the authority to make the ruling.²⁵ As the requirement to consult the finance council before placing these acts is a condition for the validity of the act, the bishop should establish which acts fall under this heading in the guidelines he issues for the administration of ecclesiastical goods throughout the entire diocese (cf. canon 1276,2).²⁶

25. Cf. M.L. ALARCON, Código de derecho canónico, edición anotada, Pamplona, Ediciones Universidad de Navarra, 1983, p. 763.

26. Acts classified as being "more important" will differ from diocese to diocese: what would be considered such an act in a diocese of 20,000 would probably not be so considered in a diocese of 2,000,000. The following acts, however, might be included: the conversion of schools to other purposes, civil suits, joint ventures with other groups for purposes such as development and peace, assuming responsibility for an aged persons home (the diocese would be bound for a long time).

The commonly held distinguishing feature between acts of ordinary and extraordinary administration was that acts of ordinary administration were those which could be placed by individual administrators without prescribed prior recourse to a higher authority; acts which exceed the limits of ordinary administration would be those for the performance of which the law requires recourse to a higher authority, principally for the sake of the public good and the lawful protection of ecclesiastical goods.²⁷

The revised Code retains the distinctions. Ordinary administration is referred to in canons 638,1 and 2, 1281,1 and 2, 1524,2; extraordinary administration, in canons 638,1, and 1277.²⁸

Canon 1281,1 and 2 seems to apply to acts performed by

27. Cf. F. WERNZ and P. VIDAL, op. cit., p. 212.

28. Traditionally included as acts of extraordinary administration: acceptance or refusal of a gift or bequest; purchase of land; construction of new buildings; opening of a cemetery; investment of any kind of capital whether liquid or stable; establishment of a school or any other similar parochial institution; taking up special collections. Acts of ordinary administration were those acts normally repeated on a regular basis, e.g. collection of debts, rents, interest or dividends; contracts and payments necessary for the ordinary maintenance of the church and its personnel; opening chequing accounts to facilitate those payments; acceptance of ordinary donations. Cf. J. ABBO and J. HANNAN, op. cit., p. 731. Also see G. VROMANT, op. cit., p. 185; SACRA CONGREGATIO DE PROPAGANDA FIDE, July 21, 1856, in Collectanea Sacra Congregatio de Propaganda Fide, [2a ed.], Romae, Ex Typographia Polyglotta, 1907, vol. 1, n. 1127, art. 20, p. 603.

the administrators of juridic persons subject to the diocesan bishop. The requirements stated therein provide the diocesan bishop with a means of fulfilling his obligation of supervising the administration of the juridic persons subject to him. The canon reads:

1. With due regard for the prescriptions of their statutes, administrators invalidly posit acts which go beyond the limits and procedures of ordinary administration unless they first obtain written authority from the Ordinary.

2. The acts which go beyond the limits and procedures of ordinary administration are to be defined in the statutes; if, however, the statutes do not mention such acts, it is within the competence of the diocesan bishop to determine such acts for persons subject to him after he has heard the finance council.²⁹

What constitutes an act of extraordinary administration for a juridic person subject to an Ordinary is to be spelled out in its statutes. With regard to the juridic persons subject to the diocesan bishop, if their statutes fail to make such a determination, the law allows the bishop to do so. However, he must consult the finance council beforehand. This requirement ensures that the determination

29. Canon 1281, "1. Firmis statutorum praescriptis, administratores invalide ponunt actus qui fines modumque ordinariae administrationis excedunt, nisi prius ab Ordinario facultatem scripto datam obtinuerit.

"2. In statutis definiantur actus qui finem et modum ordinariae administrationis excedunt; si vero de hac re sileant statuta, competit Episcopo dioecesano, audito consilio a rebus oeconomicis, huiusmodi actus pro personis sibi subiectis determinare."

is realistic for the bodies for whom the provision is made. For the most part, these would be the parishes, and so it would be sufficient for the bishop to state in the special instructions he issues for the administration of ecclesiastical goods within the diocese (cf. canon 1276,2) which acts are considered acts of extraordinary administration. He is free to decide what criterion he wishes to use for this task, but normally he would, among other possibilities, state a set amount as the limit beyond which all acts of administration are considered extraordinary.

(iv) Reports

The finance council has a particular mandate from the law: to examine the annual reports sent to the bishop (canon 1287,1), and also to examine the report prepared by the diocesan finance officer of the receipts and expenditures of the diocese at the end of each year (canons 493 and 494,4). The Code leaves the manner in which the various reports are made to the discretion of the diocesan bishop. The data gleaned from the reports would be used to prepare future diocesan budgets.

The diocesan bishop is bound to render an account to the faithful concerning the goods given to the diocese (canon 1287,2). The report is mandatory; the manner of

composition and presentation is left to diocesan regulation. Faithful fulfillment of such requirements does much to prevent scandals that are so damaging to the credibility of the Church and the effectiveness of its mission. In all likelihood, the bishop would assign the task of preparation of this report to the finance officer who in turn would submit it to the finance council for consideration.

(v) Investment of Endowment Capital

The safekeeping and proper investment of the money or goods belonging to an endowment require consultation with the finance council (canon 1305).³⁰ As with canon 1547 of the former Code, this canon allows for the establishment of a common fund comprised of all the goods of the separate foundations. The revenue takes care of the obligations. Profits and losses are equitably distributed and so the respective endowments enjoy greater security.³¹ The council would be well advised to adopt as part of its operating procedures, guidelines or policies to direct its advisory

30. Canon 1305: "Pecunia et bona mobilia, dotationis nomine assignata, statim in loco tuto ab Ordinario approbando deponantur eum in finem, ut eadem pecunia vel bonorum mobilium pretium custodiantur et quam primum caute et utiliter secundum prudentiam eiusdem Ordinarii iudicium, auditis et iis quorum interest et proprio a rebus oeconomicis consilio, collocentur in commodum eiusdem foundationis cum expressa et individua mentione oneris."

31. Cf. A. MOSTAZA, "El nuevo derecho patrimonial de la Iglesia (libro V)", in Estudios Eclesiásticos, 58(1983), p. 213.

opinions, thereby injecting consistency into its deliberations.³²

(vi) Wills

Canon 1310,2³³ addresses the situation where the fulfillment of the obligations of a bequest for some pious cause becomes impossible. Diminished income from the bequest or some other reason beyond the control of the administrator is cited as the cause. The law prescribes that the ordinary consults the interested parties and the finance council beforehand. The interested parties could be the administrators of the public juridic person in whose favour the bequest was made, if it was not made to the diocese as such, the family of the testator, or the person obliged to carry out the obligation. The finance council's advice as regards the civil law requirements and implications of such a proposal would be vital.

32. Cf. J.J. MYERS, "The Diocesan Fiscal Officer and the Diocesan Finance Council", in CLSA Proceedings, 44(1982), p. 185.

33. Canon 1310,2: "Si executio onerum impositorum, ob imminutos redditus aliamve causam, nulla administratorum culpa, impossibilis evaserit, Ordinarius, auditis iis quorum interest et proprio consilio a rebus oeconomicis atque servata, meliore quo fieri potest modo, fundatoris voluntate, poterit eadem onera aequè imminuere, excepta Missarum reductione, quae praescriptis can. 1308. regitur."

b. Particular Responsibilities Regarding Alienation
and Acts Endangering the Patrimonial Condition of
a Juridic Person

Alienation is any act by which the right to ownership of an ecclesiastical property is transferred to another.³⁴ Canon 1291³⁵ establishes that the permission of the competent authority is required if the goods to be alienated constitute part of the stable patrimony of a public juridic person, and their value exceeds the sum determined in law. Canon 1292³⁶ then establishes who is the competent authority

34. F.G. MORRISEY, "The Conveyance of Ecclesiastical Goods", in CLSA Proceedings, 39(1976), p. 126.

35. Canon 1291: "Ad valide alienanda bona, quae personae iuridicae publicae ex legitima assignatione patrimonium stabile constituunt et quorum valor summam iure definitam excedit, requiritur licentia auctoritatis ad normam iuris competentis."

36. Canon 1292, "1. Salvo praescripto can. 638,3, cum valor bonorum, quorum alienatio proponitur, continetur intra summam minimam et summam maximam ab Episcoporum conferentia pro sua cuiusque regione definiendas, auctoritas competens, si agatur de personis iuridicis Episcopo dioecetano non subiectis, propriis determinatur statutis; secus, auctoritas competens est Episcopus dioecetanus cum consensu consilii a rebus oeconomicis et collegii consultorum necnon eorum quorum interest. Eorundem quoque consensu eget ipse Episcopus dioecetanus ad bona dioecesis alienanda.

"2. Si tamen agatur de rebus quarum valor summam maximam excedit, vel de rebus ex voto Ecclesiae donatis, vel de rebus pretiosis artis vel historia causa, ad validitatem alienationis requiritur insuper licentia Sanctae Sedis.

"3. Si res alienanda sit divisibilis, in petenda licentia pro alienatione exprimi debent partes antea alienatae; secus licentia irrita est.

in various cases, what method is used to arrive at the values that will work as limits in making these decisions, and what extra formalities have to be observed in alienating goods.

The expression "stable patrimony",³⁷ as used in this section of the Code, refers to all the goods which are designated as constituting the minimum, reliable economic base by which the juridic person can subsist in an autonomous manner and take care of the purposes and services that are proper to it. However, it is a difficult task to determine precisely, while the juridic person continues to function, what is this stability. As a minimum, it would be what is required financially for the accomplishment of its goals; but to say much more is difficult because of the nature and the amount of the goods involved, and also the condition of the juridic person as it exercises its mission, whether it be maintaining what it has or it is expanding its operations.

"4. Ii, qui in alienandis bonis consilio vel consensu partem habere debent, ne praebeant consilium vel consensum nisi prius exacte fuerint edocti tam de statu oeconomico personae iuridicae cuius alienanda proponuntur, quam de alienationibus iam peractis."

37. Stable patrimony is made up of those goods not needed for ordinary living or meeting ordinary necessities. Immoveable and moveable goods constitute the stable patrimony (cf. canon 1285). Cf. V. DE PAOLIS, loc. cit., p. 145; also M.L. ALARCON, op. cit., p. 769.

The conference of bishops determines the range of the minimum and maximum amounts for alienations; when the goods whose alienation is proposed belong to a public juridic person subject to the diocesan bishop, the competent authority for permission to alienate is the same bishop with the consent of the finance council, the college of consultors, and the parties concerned (canon 1292,1). When the alienation concerns a juridic person who is not subject to the diocesan bishop, the law or the group's own statutes determine the competent authority.

When the value of the goods to be alienated exceeds the maximum amount, or when the goods have been donated to the Church through a vow or are especially valuable due to their artistic or historical value, the permission of the Holy See is also required (canon 1292,2). This constitutes a change from the requirements of the 1917 Code which did not call for the consent of diocesan groups in those instances where the permission of the Holy See had to be sought.³⁸ The change is evidence of the application of the principle of subsidiarity in the revision of the law. Even where the permission of the Holy See is required, the diocesan bishop must act in concert with the bodies designated in the law.

38. Cf. J.F. CLEARY, Canonical Limitations on the Alienation of Church Property, Washington, D.C., Canon Law Society of America, 1936, p. 84.

The 1983 Code does not explicitly regard alienation as an act of extraordinary administration. At a meeting on June 19, 1979, the consultants examining the 1977 schema on the patrimonial law of the Church added the right to alienate to the list of rights which were already contained in the 1917 Code, that is, the right to acquire, to retain and to administer temporal goods.³⁹ The addition was made for the very reason that alienation was not considered of its nature to be an act of administration.⁴⁰ Recognition of this difference is made in the Code where specific legislation is enacted for alienation, different from that regulating acts of extraordinary administration (cf. canons 1291-1292, 638,3).⁴¹

A question to be answered, then, is whether those acts which endanger the patrimonial condition of a juridic person (canon 1295)⁴², since they are treated in the same section of Book V as acts of alienation, would also have to be considered different from acts of extraordinary administration. The fate of this distinction will depend on future

39. Canon 1495,1 (1917).

40. Cf. Communicationes, 12(1980), pp. 395-396.

41. Cf. V. DE PAOLIS, loc. cit., p. 453.

42. Canon 1295: "Requisita ad normam cann. 1291-1294, quibus etiam statuta personarum iuridicarum conformanda sunt, servari debent non solum in alienatione, sed etiam in negotio, quo condicio patrimonialis personae iuridicae peior fieri possit."

critical studies. For now, it can be stated that canon 1295 represents a recognition of the increasing complexity that church administrators face in modern financial management. Perhaps we are facing an evolution in the understanding of what is meant by alienation, so that the concept broadens to assume a wider meaning than the transfer of property rights from one person to another.⁴³

To fulfill adequately the office to which they have been appointed, the members of the finance council need to be well-informed as to which transactions are regulated by the canons governing acts of alienation and which are not. The practical application of the canons can become exceedingly complex,⁴⁴ but some of the more common transactions can be listed.⁴⁵

(i) Acts Subject to the Canonical Regulations
Regarding Alienation

a) Any act by which the title to property (owner-

43. Cf. J.J. MYERS, loc. cit., in US Commentary, pp. 879-880.

44. Cf. ibid., p. 882.

45. The list is based on the lists given in F.G. MORRISEY, loc. cit., pp. 127-133, and J. HITE, "Church Law on Property and Contracts", in The Jurist, 44(1984), pp. 126-129.

ship)⁴⁶ is transferred to another, without prejudice to the explanations given below.

b) Spending a part or all of immobilized funds for some purpose other than that for which they were immobilized.⁴⁷

Some examples would be:

- conveying money and investments beyond the amount approved for the country if this money or these investments have become a part of the fixed capital of any public juridic person;

- withdrawal of money or investments beyond the amount approved for each country, from the fixed capital of any public juridic person;

- conveyance of money or securities (beyond the approved amount) received in the form of annuities contingent upon the payment of certain annual sums;

- conveyance of money or securities accruing from non-autonomous pious foundations,⁴⁸ Mass foundations, scholar-

46. The canonical understanding of ownership does not admit of fragmentation or division between legal and equitable estates and owners. All church property is owned by ecclesiastical public juridic persons, a fact that can be obscured by civil modes of property tenure. Cf. J.K. MALLET, "Temporalities Under the Revised Code", in The Catholic Lawyer, 29(1984), p. 188.

47. Immobilized funds, stable, fixed or invested capital means money invested in such a way that the principal must be permanently preserved and the income used for the specific purpose of the investment, e.g. a scholarship or endowment, or the capital, if spent, must be spent for the specific purpose of the fund, e.g. retirement fund for clergy. For further comments see F.G. MORRISEY, loc. cit., p. 126.

48. Canon 1303 (1983) introduces a new concept

ships, endowments, annuities and the like, particularly if the obligations have not been acquitted;

- conveyance of money or securities (beyond the approved amount) being diverted from the specific purpose for which they were originally acquired.

c) Any act which is a preparation for conveyance, such as giving security, a mortgage, an option, compromise, or settlement.

d) In general, any act by which ecclesiastical property is subjected to burdens either in perpetuum or for a long time, such as granting the use, the usufruct, or an easement of various kinds, again subject to the explanations given below.

e) Alienation of goods donated to the Church through a vow or goods which are especially valuable due to their artistic or historical value (canon 1292,2).

f) Possibly certain forms of leasing of property as determined by the conference of bishops (canon 1297).

(ii) Acts Not Subject to the Canonical Regulations

Regarding Alienation

a) Spending free capital. If money, goods, or invest-

"autonomous pious foundation." These are aggregates of persons or things erected by the competent authority as juridic persons. If they are subject to the governance of the diocesan bishop, then their administrators are bound by particular law as well as universal law.

ments are not immobilized, they are free to be used for the legitimate purposes of the public juridic person who owns them. Spending free capital may be limited by the canons on administration or the statutes of a public juridic person regarding either the amount spent or the nature of the transaction. Canon 1284,2,6^o requires administrators to invest money left over after expenses for the advantage of the juridic person. Those subject to the diocesan bishop need his consent or that of another ordinary with the faculty to give this permission. Funds temporarily designated for some purpose are still considered free capital.⁴⁹

b) Restructuring and transferring title to assets. If the diocese separately incorporates itself and its works such as a college or hospital, it is not an alienation because the same juridic person retains ownership, unless these were constituted public juridic persons by the competent authority.

c) Receiving mortgaged property as a gift. As the property was never part of the stable patrimony of the juridic person, the mere act of acceptance is not an act of alienation.

d) Exchange of goods of different categories. To exchange real estate for securities has generally been regarded by commentators as alienation, although the prac-

49. Cf. J.J. MYERS, loc. cit., in US Commentary, p. 879.

tice of dioceses and religious institutes has varied from this interpretation. An exchange of goods in the same category and of the same value would not be subject to the canons on alienation.

e) Sale or transfer of title in special cases. Commentators are not in agreement regarding the following matters, but they represent the practice in some dioceses and institutes.⁵⁰

- If land or property is no longer being used for church purposes, is being heavily taxed, or retaining ownership is lessening the credibility of the Church in regard to social justice, it is not considered by some to be alienation to sell or transfer title. Others would say this gives rise to a just cause for alienation.

- Likewise, if a juridic person determines it must withdraw from a particular apostolic work because continued deficits jeopardize the financial status of the whole juridic person, such as transferring a hospital or nursing home from a diocese or religious institute to another diocese, religious institute, or even to the government where there is no alternative, there is no alienation. However, this opinion is not held by most reputable canonists.

- If land or buildings which are part of the stable patrimony of a juridic person are sold and the proceedings

50. Cf. F.G. MORRISSEY, loc. cit., pp. 130-131.

used for another similar capital purpose such as a new construction or payment on a mortgage, or are placed in a plant reserve fund, it is regarded as a conversion of capital assets from one form to another.

f) Use of church property as loan collateral. Property or securities which are not part of the stable patrimony of a juridic person may be used as collateral for borrowing.

g) If a juridic person borrows or issues bonds to construct a new building, and the only collateral is the new building, it is not considered alienation. Such transactions may be acts of extraordinary administration subject to the requirement of obtaining the permission of the proper ordinary.⁵¹

h) Lending money. A loan would only jeopardize ecclesiastical property if it were imprudent and the juridic person would not receive interest and the return of the principal. Default of payment would give rise to an action to recover the value of the ecclesiastical goods involved.⁵²

i) Purchase or sale of equipment and furniture. The sale of equipment and furniture to replace it is normally considered ordinary administration.⁵³

51. Cf. W.J. DOHENY, Practical Problems in Church Finance: a Study of the Alienation of Church Resources and of the Canonical Restrictions on Church Debt, Milwaukee, Bruce Pub. Co., 1941, pp. 48-49.

52. Cf. ibid., p. 59.

53. Cf. F.G. MORRISEY, loc. cit., p. 132.

c. The Appointment and the Dismissal of the Finance Officer

Canon 494,1⁵⁴ calls for the bishop to appoint a finance officer in the diocese. Before doing so, he must consult the finance council and the college of consultors. Given the key role the officer will play in the financial management of the diocese, the consultation must be as thorough as possible. The finance officer carries extensive responsibilities and, consequently, the bishop must take the utmost care to select the person best qualified for the position. The expertise of the council members will play a vital role in assessing potential candidates.

In the dismissal of the finance officer,⁵⁵ the bishop is required to have a grave cause for doing so, and to have consulted the college of consultors and the finance council -- the same bodies whom he consulted in the appointment of the officer.

54. Canon 494,1: "In singulis dioecesibus ab Episcopo, auditis collegio consultorum atque consilio a rebus oeconomicis, nominetur oeconomus, qui sit in re oeconomica vere peritus et probitate prorsus praestans."

55. Canon 494,2: "Oeconomus nominetur ad quinquennium, sed expleto hoc tempore ad alia quinquennia nominari potest; durante munere, ne amoveatur nisi ob gravem causam ab Episcopo aestimandam, auditis collegio consultorum atque consilio a rebus oeconomicis."

What constitutes a "grave cause" would definitely include any criminal acts, such as embezzlement, or inept and negligent management that caused or was likely to cause harm to the stable patrimony of the diocese or even to its reputation, e.g., investing diocesan funds in shares in companies whose policies were contrary to Church teaching (underpaying workers), or whose products were not in harmony with the nature and mission of the Church (munitions and arms manufacture). In addition, "grave cause" could include such reasons as the bishop losing faith in the person holding the position. Even though the finance officer is appointed for a five year term, if he or she has lost the support of the one for whom and under whose authority the goods of the diocese are administered (canon 494,3) then, provided that justice is strictly observed and an equitable settlement reached, the officer could be dismissed.

d. Particular Situation: Impeded or Vacant See

The finance council continues in existence even when the see is impeded or vacant (cf. canon 423,2).⁵⁶ It is similar in this regard to the college of consultors. The

56. Canon 423,2: "Administrátor dioecesanus ne simul sit oeconomus; quare si oeconomus dioecesis in Administratorem electus fuerit, alium pro tempore oeconomum eligat consilium a rebus oeconomicis."

finance council is created by the bishop, but does not cease to function in the event of his death, transfer, resignation, imprisonment, or dismissal as do other bodies such as the presbyteral council (canon 501,2).

The person chosen to govern the see in these circumstances still needs the assistance of the council to administer the goods of the diocese and to supervise the administration of the ecclesiastical goods which belong to public juridic persons subject to his governance. Carrying out these roles when the see is vacant would not seem to constitute an infringement of the prescription of canon 428,1 that there be no innovations at this time. Indeed, to neglect these duties could create serious problems for the next bishop which would be an infringement of the requirement of canon 428,2 that those who temporarily govern the diocese do nothing prejudicial to it. Failure to administer or to supervise properly could be gravely prejudicial to the welfare of the diocese.

The authority vested in the finance council is demonstrated in a striking way when the finance officer is elected the diocesan administrator. The council itself is to choose another temporary finance officer. This changes the requirements of the former Code in two ways: first, the office of diocesan administrator and finance officer could

be held by the same person;⁵⁷ and second, the cathedral chapter or consultors elected the econome or finance officer.⁵⁸ In the first place, the changes reflect the complexity of modern financial and property management which demands a concentrated application of skills, along with a concern that those who are entrusted with the care of a portion of the people of God, even if temporarily, be allowed to devote themselves as wholeheartedly as possible to the central elements of that care which are the word of God and the sacraments. In the second place, the change is in keeping with the prominent position the finance council is given in episcopal administration of temporal goods.

The power exercised by the finance council in appointing someone to fill the ecclesiastical office of finance officer is the power of governance (canon 129,1), a power in the exercise of which lay people can cooperate (canon 129,2). To fill an ecclesiastical office is an exercise of executive power (canon 130,1). The law does not explicitly address the situation where the council exercises such power, but some observations can be made.

The choosing of a replacement for the finance officer would not be a case of several persons being delegated to

57. Canon 433,3 (1917).

58. Canon 432,1 (1917).

perform a task collegially (canon 140,2). The law does not delegate the council to perform this task; it prescribes the conditions in which the council is to exercise lawfully and validly the power it possesses by virtue of its constitution. Nor is the council the only body in the new Code with the power to fill vacant offices. The college of consultors, when the requirements of the law are fulfilled, is to elect a diocesan administrator when the see is vacant (canon 421,1).

III. Related Questions

a. Parish Finance Councils

Each pastor is to see that the goods of the parish are administered in accord with the norms of canons 1281-1288 (cf. canon 532). However, the Code does not see the pastor shouldering the burden alone. Canon 537 prescribes that each parish is to have a finance council to assist the pastor in the work of administration.⁵⁹

The parish finance council is a new juridical structure. It is an obligatory part of parish organization, unlike the parish pastoral council (cf. canon 536,1). It is

59. Canon 537: "In unaquaque paroecia habeatur consilium a rebus oeconomicis, quod praeterquam iure universali, regitur normis ab Episcopo dioecesano latis et in quo christifideles, secundum easdem normas selecti, parrocho in administratione bonorum paroeciae adiutorio sint, firmo praescripto can. 532."

composed of members of the Christian faithful⁶⁰ who are to be selected according to the norms laid down by the bishop for the regulation of the councils.

Provided that the requirements of Book V are observed, the bishop is free to structure this body in the way best suited to the circumstances of the diocese, another instance of the application of the principle of subsidiarity.⁶¹

Canon 537 requires the council to be composed of members of the Christian faithful, but, apart from that, the Code states nothing explicitly with regard to the content of the norms to be issued by the bishop, or to the process to be followed in formulating them. He is free to consult those he wishes before coming to a decision. The diocesan finance council could make a valuable contribution both from its own area of expertise and from its own lived experience as an administrator's council.

Using what the Code has spelled out for the diocesan finance council as a model, a parish finance council could be structured along the following lines. The council consists of the pastor as ex officio president, possibly the

60. Cf. above pp. 176-179.

61. Cf. J.J. HUELS, "Parish Life and the New Code", in Concilium, 185(1986), p. 66.

associate pastor, and at least three other members of the Christian faithful, committed and active members of the parish community, able managers of their own financial affairs, persons of outstanding integrity. They are appointed by the pastor after he has sought the advice of the parish pastoral council, or in its absence, of mature and prudent people.

The members of the finance council have a specified term (for instance, two years), but can be named to other consecutive terms. For the duration of their mandate, councillors cannot be dismissed except for serious and documented reasons.

They cannot be appointed to the finance council who are related to the pastor to the fourth degree of consanguinity or affinity, or who have direct financial interests in the parish.

The duties of the president are these: a) to convoke and preside at the council meeting; b) to fix the agenda for each meeting.

The duties of the council are:

- a) to prepare a budget of the income and expenditure foreseen for the coming year for the parish;
- b) at the close of each year, to examine the report of the

parish financial administration before it is forwarded to the local Ordinary (Canon 1287,1);

c) to verify, concerning the financial arrangements, the application of the agreement foreseen by canon 520,2 for parishes entrusted to religious;

d) to ensure that the obligations of canon 1284,2 are not neglected;

e) to fulfill the diocesan requirements with regard to acts which go beyond the limits and procedures of ordinary administration. The council is to assist the pastor in the financial administration of the parish. The parish priest acts invalidly if, in those cases where universal law or diocesan regulation requires he seek the advice or obtain the consent of the finance council, he fails to do so.

f) to prepare a report, according to the form prescribed by the diocesan bishop, of the financial administration of the parish for the members of the parish.

Canons 1283-1288 provide the norms which guide the way administrators of ecclesiastical goods conduct their affairs. The members of the parish finance council are not administrators, but advisers and so are not bound by these norms. However, to the extent they assist the administrator, it would seem that a knowledge of the content of the norms and an attentiveness to what is required there would enable them to fulfill their duties conscientiously.

b. Public Associations of the Christian Faithful

The degree to which the various areas of competence of the diocesan finance council could affect public associations of the Christian faithful is determined by a number of considerations -- who was the competent authority who erected the association, what provisions have been made in its statutes for the administration of the goods it possesses, what are the prescriptions of universal law which affect the administration of its goods?

Implicit in canon 313 is the understanding that public associations, as well as confederations of public associations, are public juridic persons (cf. canon 116). As such, the goods that belong to them are ecclesiastical goods and hence subject to the canons of Book V. The question to be considered in relation to the diocesan finance council is this: whether the association is under the authority of the diocesan bishop.

Canon 319,1 states that, unless other provisions have been made, the administration of the goods possessed by the association is under the higher direction of the authority who erected it. Canon 312,1 identifies three authorities as competent to erect public associations: the Holy See, the

conference of bishops, and the diocesan bishop.⁶² Hence the public associations whose administration of goods would be required to conform to the regulations laid down by the diocesan bishop, would be those erected by him or his predecessors. They would also be required to observe the prescriptions contained in Book V. All these requirements should be spelled out in the association's statutes which are to be approved by the authority competent to erect it (canon 314).

c. Institutes of Consecrated Life and Societies of Apostolic Life

For the most part, the diocesan bishop and hence the diocesan finance council to the extent it would be required

62. Canon 312, "1: Ad erigendas consociationes publicas auctoritas competens est:

"1° pro consociationibus universalibus atque internationalibus, Sancta Sedes;

"2° pro consociationibus nationalibus, quae scilicet ex ipsa erectione destinatur ad actionem in tota natione exercendam, Episcoporum conferentia in suo territorio;

"3° pro consociationibus dioecesanis, Episcopus dioecesanus in suo cuiusque territorio, non vero Administrator dioecesanus, iis tamen consociationibus exceptis quarum erigendarum ius ex apostolico privilegio aliis reservatum est."

to assist him, have no role to play in the administration of the goods possessed by an institute of consecrated life (canons 634-640, 718) or a society of apostolic life (canon 741). However, there are some exceptions.

Autonomous monasteries (canon 615) must render an account of their administration once a year to the local Ordinary (canon 637), who determines the form of the account. This Ordinary has the right to know about the financial reports of religious houses of diocesan right (canon 637). He can choose not to exercise this right. If, on the other hand, he wishes to be informed, the manner, time and frequency of the reports are left to his determination.⁶³ The practice of the Holy See currently calls for his nihil obstat in many cases of alienation of property, even though this is not prescribed by the canon law.

One area with regard to religious communities in which the expertise of the finance council could be a source of great benefit would be in the matter of contracts entered into by the diocesan bishop and religious. The requirements to be observed in this case are contained in canon 681:

1. Works which are entrusted to religious by the

63. J.F. GALLEN, Canon Law for Religious, New York, Alba House, 1983, p. 98.

diocesan bishop are subject to the authority and direction of this same bishop, with due regard for the right of religious superiors according to the norm of canon 678, 2 and 3.

2. In these cases a written agreement is to be drawn up between the diocesan bishop and the competent superior of the institute, which, among other things, expressly and accurately defines what pertains to the work to be carried out, the members to be devoted to this, and economic matters.⁶⁴

The apostolic works referred to are works that are not directly proper to the spiritual patrimony of the religious institute.⁶⁵ The canon deals with works entrusted to the institute, and with the contracts between the diocesan bishop and the institute.

In these matters contracts are essential. They are to be signed by the bishop and the competent superior of the institute. Three items must be considered: the nature of the work and how it is to be carried out, personnel issues,

64. Canon 681: "1. Opera quae ab Episcopo dioecesano committuntur religiosis, eiusdem Episcopi auctoritati et directioni subsunt, firmo iure Superiorum religiosorum ad normam can. 678, 2 et 3.

"2. In his casibus ineatur conventio scripta inter Episcopum dioecesanum et competentem instituti Superiorem, qua, inter alia, expresse et accurate definiantur quae ad opus explendum, ad sodales eidem addicendos et ad res oeconomicas spectent."

65. Cf. J.F. HITE, "The Apostolate of Institutes (cc. 673-683)", in US Commentary, p. 510.

financial matters. The list is not regarded as exhaustive. Other items may need to be included in the agreement.

The personnel issues and the financial arrangements appear as areas where the specific skills and expertise of the council members would be invaluable. As one commentator wisely notes, personnel issues are probably the most difficult to cover adequately, but they are usually the issues which occasion the most difficult and serious disagreements.⁶⁵ For this reason, the agreement should stipulate the number and qualifications of the religious assigned to the enterprise, their rights and duties, hours of service, holidays, vacations, and periods of retreat. Any obligatory or expected service to the parish, diocese, or institute over and above the normal duties of the apostolic work itself should be adequately indicated. Most important, this contract must detail the process of appointment and promotion, as well as the causes and process of dismissal. These would seem to be the minimum elements required to do justice both to civil laws and to Church principles in employment of personnel (cf. canon 1286, no. 1).

Financial arrangements should include, in addition to

65. Cf. R.A. HILL, "The Apostolate of Institutes", in J. HITE, S. HOLLAND, and D. WARD, (eds.), A Handbook on Canons 573-746, Collegeville, Minnesota, The Liturgical Press, 1985, p. 212.

salary or its equivalent, housing or housing allowance, travel and transportation, equipment and furnishings, health and retirement benefits, and continuing education and sabbatical provisions, whenever appropriate. It should be made clear to whom and at what intervals such compensation will be made.

The finance council will have access to the various standardized contracts which already exist to cover the well-established apostolic works, but attention should be given to adding details whenever a new or untested project is attempted. What is important in this area of collaboration between bishops and religious is a properly drawn-up contract.⁶⁶ It should be entered into for a set time, subject to periodic review, and provide for the right of either party to terminate it for stated causes and with timely notice. Contracts belong to the arena of justice, a forum of clearly defined rights and obligations. When justice has been served, however difficult the process, harmony and cooperation can be best assured.

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The functions and duties of the diocesan finance coun-

66. Cf. ibid., pp. 212-213.

cil as spelled out in the 1983 Code aim at providing the diocesan bishop with expert, reliable assistance in the increasingly complex and sophisticated realm of modern business. The areas where the universal law requires the bishop to take the advice of the finance council or to obtain its consent are ones that experience, at times painful, has shown to be vital to the well-being of the Church.

In some areas, such as alienation, the law's requirement that the bishop not act alone has a long history. In others, such as budget-setting and taxation-based revenue, the law is dealing with more recent economic realities, yet ones that are commonplace in many dioceses throughout the world.

The requirements of the revised Code for the participation of the diocesan finance council in the bishop's tasks as administrator of the goods of the diocese and as the one entrusted with the duty of supervising the administration of the public juridic persons subject to his authority reveal the influence, not only of sound financial management practices, but also of a newly awakened understanding of the wider role all the baptized are called to play in the mission of the Church.

CONCLUSION

Scant though detailed evidence may be of what material resources were held by the the apostolic Church, and of how they were managed, such goods were certainly an important element in the Church's mission. Given their importance, it can reasonably be presumed that those responsible for their care sought to fulfill their duty as well as possible.

In the second and third centuries, the centrality and supremacy of a single bishop as head of a church became firmly established. Along with other responsibilities, he took care of the material or temporal goods which members offered. For a time, he seems to have enjoyed an almost unconditional trust in the exercise of this responsibility with no requirement of accountability to anyone except God. However, such did not last.

From the fourth century onwards, ecclesiastical and imperial pronouncements established norms which qualified the bishop's freedom to act with regard to certain transactions, especially alienation, by the requirement that he consult some of his clergy or even obtain their consent before acting. This norm was to become one of the basic principles with regard to the administration of temporal goods.

While the requirement that the bishop not act alone in certain prescribed circumstances has remained constant, at least since the fourth century, there have been changes regarding the specific persons he was required to consult: all the clergy, the clergy of the city, or the cathedral Chapter.

From the tenth century, the cathedral Chapter was the body of priests which the law required the bishop to involve in his administration of the temporal goods of the diocese. The legislation determined in each case whether he was to consult them or obtain their consent for the proposed transaction.

In mission countries, the United States in particular, the chapter structure was not adopted by the developing churches. Councils of reliable, prudent missionaries were established in a number of countries at the instigation of the Congregation for the Propagation of the Faith. In the United States, the diocesan consultors, a group of priests chosen to assist the bishop in the governance of the diocese, was a noteworthy innovation in diocesan structure.

With their inclusion in the 1917 Code of Canon Law, the consultors became part of the universal law of the

Church, and were accorded a place in the legislation identical to that of the Chapter governing the bishop's administration of temporal goods. However, with the 1917 Code, another innovation in diocesan structure emerged: the council of administration. This was the first time in universal church law that legislation called for the establishment of a body whose sole purpose was to assist the bishop in the administration of the temporal goods of the diocese.

The legislation accorded the council a central position in episcopal administration of temporal goods. In the cases determined in law, the bishop was either to seek the advice of the council or to obtain its consent before acting. In that sense, the council could be said to have a limiting power on the actions of the bishop. He remained free, however, to accept or disregard the advice of the council, but was not to proceed without consultation, nor act without the consent of the council where the law so required.

Another important development in the universal law governing episcopal administration of temporal goods was the eligibility of lay men for selection as members of the council of administration. This was the first time in universal church law that lay men were formally authorized to be appointed as episcopal advisers.

The bishops at the Second Vatican Council reaffirmed the centrality of the bishop in the diocese. With regard to temporal goods, they spelled out the principles governing their use and the practices which embodied these principles. They refrained from including in conciliar statements detailed norms for such entities as the council of administration, believing such matters were better left to a post-conciliar directory. This indeed was done in the Directory on the Pastoral Ministry of Bishops published by the Congregation for Bishops in 1973.

The teaching of the conciliar and post-conciliar documents was incorporated into the 1983 Code of Canon Law. With regard to episcopal administration of temporal goods, the bishop is the central figure, both as the immediate administrator of diocesan ecclesiastical goods, properly so called, and as supervisor of the public juridic persons subject to him.

In these roles, as has been the case for the greater part of the Church's history, the bishop does not act alone. Depending on the matter in hand, the law now requires the involvement of the college of consultors, the diocesan finance council, the presbyteral council and those with legitimate interests in the matter. The principal body

assigned to assist in this administration is the diocesan finance council.

This council brings together financial skills, civil law expertise, and outstanding honesty. Combined with an understanding of the mission of the Church born of the lived experience of full communion as well as from reflective study, especially upon the relevant teachings of the council, it will do much to ensure that the diocesan administration of finance and property is exercised in the spirit of Vatican II.

While similar in a number of ways to the council of administration of the earlier Code, the diocesan finance council of the 1983 Code differs from its predecessor in a number of aspects. The bishop is now free to choose those qualified, be they women, men, laity, religious, or clerics. Nor is he required to consult any group before doing so. The minimum number for the council has been raised and members have a set term of office. One of the most significant developments is the fact that the council continues to function even when the See is vacant.

The functions and duties of the finance council are substantially the same as those prescribed for the council

of administration in the 1917 Code, although there are a few changes.

For instance, the number of areas in which the law requires the bishop to involve the council has been raised to include now diocesan taxation, determination of what constitutes an act of extraordinary administration within the diocese, the examination of annual reports, and the reduction of the obligations of wills in the circumstances prescribed in the canons.

Budget-setting is a new function in universal law for which the council is responsible following the directions of the diocesan bishop. The council also reviews the annual report of the finance officer.

The bishop is required to consult the finance council both in the appointment and in the dismissal of the finance officer. When the See is vacant, the law requires the council itself to appoint another finance officer in the event of the incumbent being made the diocesan administrator.

The mission of the Church to proclaim the Good News, to celebrate the faith born of that proclamation, and to exercise its shepherding role, especially with regard to the

poor and the needy, demands material resources. These are to be managed well so that the mission is not compromised or obstructed in any way. The diocesan finance council is a key body in this work assisting the bishop with its special skills and expertise, not only in those areas determined in law, but also in numerous other matters which invariably arise in a field as complex and sophisticated as modern business affairs.

BIBLIOGRAPHY

SOURCES

Acta Apostolicae Sedis, Romae, 1909-1929, e Civitate Vaticana, Typis Polyglottis Vaticanis, 1929-

Acta conciliorum et epistolae decretales, ac constitutiones Summorum Pontificum, edited by J. Hardouin, Parisiis, Ex Typographia Regia, 1714-1715, 12 vols.

Acta et decreta sacrorum conciliorum recentiorum, collectio Lacensis auctoribus presbyteris S.J. e domo B.V.M. sine labe Conceptae ad Lacum, Friburgi Brisgoviae, Herder, 1870-1892, 7 vols.

Acta et decreta primi Synodi regionalis Japoniae et Coreae Nagasaki habitae A.D. 1890, cum mutationibus a S. Cong. de Propaganda Fide inductis. Hongkong, Typis Societatis missionum ad exteros, 1923, 125 p.

Acta synodalia Sacrosancti Concilii Oecumenici Vaticani II, cura et studio Archivi Concilii Oecumenici Vaticani II, e Civitate Vaticana, Typis Polyglottis Vaticanis, 1970-1980, 4 vols. in 25 parts.

BONIFACE VIII, Liber sextus decretalium, in vol. 2 of the Corpus iuris canonici, edited by A. Richter and A. Friedberg, 2nd ed., Lipsiae, Ex Officina B. Tauchnitz, 1928, col. 933-1124.

CLEMENT V, Constitutiones, in vol. 2 of the Corpus iuris canonici, edited by A. Richter and A. Friedberg, 2nd ed., Lipsiae, Ex Officina B. Tauchnitz, 1928, col. 1125-1200.

The Code of Canon Law, London, Collins Liturgical Press, 1983, xv-319 p.

Code of Canon Law, Latin-English ed., Washington, Canon Law Society of America, 1983, xlii-668 p.

Codex iuris canonici, auctoritate Ioannis Pauli PP. II promulgatus, e Civitate Vaticana, Libreria Editrice Vaticana, 1983, xxx-317 p.

Codex iuris canonici, Pii X Pontificis Maximi iussu digestus, Benedicti Papae XV auctoritate promulgatus, e Civitate Vaticana, Typis Polyglottis Vaticanis, 1924, lv-916 p.

SOURCES

Codicis iuris canonici fontes, edited by Card. P. Gasparri (vols. 1-6) and Card. J. Seredi (vols. 7-9), Romae, Typis Polyglottis Vaticanis, 1926-1939, 9 vols.

Código de derecho canónico, edición anotada a cargo de Pedro Lombardía y Juan Ignacio Arrieta, Pamplona, Ediciones Universidad de Navarra, 1983, 1149 p.

Código de derecho canónico, edición bilingüe comentada, por los profesores de la Facultad de derecho canónico de la Universidad pontificia di Salamanca, Madrid, Bibl. de autores cristianos, 1984, lii-921 p.

Código de derecho canónico y legislación complementaria; texto latino y versión castellana, con jurisprudencia y comentarios por los catedráticos de texto del Código en la Pontificia Universidad eclesiástica de Salamanca, doctores Lorenzo Miguélez Domínguez, Sabino Alonso Morán, O.P., y Marcelino Cabreros de Anta, C.M.F., prólogo del Dr. Fr. José López Ortiz, O.S.A., 9a ed. revisada, ampliada y actualizada, Madrid, 1974, xxxix-1212 p.

Collectanea constitutionum, decretorum, indultorum ac instructionum Sanctae Sedis ad usum operariorum apostolicorum Societatis missionum ad externos selecta et ordine digesta cura moderatorum Seminarii Parisiensis ejusdem Societatis, ed. altera, documenta complectens ad annum usque 1905, Hongkong, Typis Societatis missionum ad externos, 1905, xxv-1093 p.

Collectanea S. Congregationis de propaganda fide: seu, decreta, instructiones, rescripta pro apostolicis missionibus, 2a ed., Romae, Ex Typographia Polyglotta, 1907, 2 vols.

Corpus iuris canonici, edited by A. Richter and A. Friedberg, 2nd ed., Lipsiae, Ex Officina B. Tauchnitz, 1928, 2 vols.

Corpus iuris civilis, edited by T. Mommsen and P. Krueger, ed. stereotypa decima, Berolini, Weidmannos, 1929, 3 vols.

GELASIUS I, letter, Respecto et Leonino episcopis, in J.P. MIGNE, Patrologiae cursus completus [Series Latina], vol. 59, col. 100.

SOURCES

- GREGORY I, epistola ad Ianuariam, in J.P. MIGNE, Patrologiae cursus completus [Series Latina], vol. 77, col. 1002.
- GREGORY IX, Decretalium D. Gregorii Papae IX compilatio, in vol. 2 of the Corpus iuris canonici, edited by A. Richter and A. Friedberg, 2nd ed., Lipsiae, Ex Officina B. Tauchnitz, 1928, col. 1-928.
- JOHN XXII, Extravagantes decretales, in vol. 2 of the Corpus iuris canonici, edited by A. Richter and A. Friedberg, 2nd ed., Lipsiae, Ex Officina B. Tauchnitz, 1928, col. 1237-1312.
- JOHN XXIII, encyclical letter, Mater et Magistra, May 15, 1961, in A.A.S., 53(1961), pp. 401-464.
- JOHN PAUL II, apostolic constitution, Spirituali militum curae, April 21, 1986, in A.A.S., 78(1986), pp. 481-486.
- JUSTINIANUS, Codex, edited by P. Krueger, in Corpus iuris civilis, edited by T. Mommsen and P. Krueger, ed. stereotypa decima, Berolini, Weidmannos, 1929, vol. 1.
- , Novellae, edited by R. Schoell and G. Kroll, in Corpus iuris civilis, edited by T. Mommsen and P. Krueger, ed. stereotypa decima, Berolini, Weidmannos, 1929, vol. 3.
- LEO I, letter 111, chapter 2, in J.P. MIGNE, Patrologiae cursus completus [Series Latina], vol. 54, col. 1021.
- MANSI, J.D., Sacrorum conciliorum nova et amplissima collectio, Parisiis, Welter, 1927, 53 vols.
- New American Bible, New York, Nelson, 1971.
- PAUL VI, encyclical letter, Ecclesiam suam, August 6, 1964, in A.A.S., 56(1964), pp. 609-659; English translation in Encyclical Letter of His Holiness Pope Paul VI, His Church, Ecclesiam Suam, [Vatican translation, Boston], St. Paul Editions, [1964], 53 p.

SOURCES

-----, apostolic letter, motu proprio, Ecclesiae sanctae 1a, August 6, 1966, in A.A.S., 58(1966), pp. 757-758; English translation in A. Flannery, (ed.), Documents of Vatican II, Grand Rapids, Michigan, W.B. Eerdmans Pub. Co., 1975, pp. 591-610.

-----, apostolic letter to Cardinal Maurice Roy, Octogesima adveniens, May 14, 1971, in A.A.S., 63(1971), pp. 401-441.

PIUS VII, indult, January 30, 1803, in Collectanea SS, no. 163, p. 72.

PIUS XI, encyclical letter, Quadragesimo anno, May 15, 1931, in A.A.S., 23(1931), pp. 179-228.

PONTIFICIA COMMISSIO AD CODICIS CANONES AUTHENTICE INTERPRETANDOS, reply to the Vicar Apostolic of Cambodia, January 26, 1919, in Sylloge, no. 66, p. 105; English translation in CLD, vol. 2, p. 121.

PONTIFICIA COMMISSIO CODICIS IURIS CANONICI RECOGNOSCENDO, Codex iuris canonici: schema novissimum iuxta placita patrum commissionis emendatum atque Summo Pontifici praesentatum, e Civitate Vaticana, Typis Polyglottis Vaticanis, 1982, xviii-308 p.

-----, Codex iuris canonici: schema patribus commissionis reservatum, e Civitate Vaticana, Libreria Editrice Vaticana, 1980, xxiii-382 p.

-----, Schema canonum libri II de populo Dei, e Civitate Vaticana, Typis Polyglottis Vaticanis, 1977, 155 p.

-----, Schema canonum libri V de iure patrimoniali Ecclesiae, e Civitate Vaticana, Typis Polyglottis Vaticanis, 1977, 23 p.

-----, Communicationes, e Civitate Vaticana, Typis Polyglottis Vaticanis, 1969- .

SACRED CONGREGATION FOR BISHOPS, Directorium de pastoralis ministerio episcoporum, e Civitate Vaticana, Typis Polyglottis Vaticanis, 1973, 253 p.; English translation, Directory on the Pastoral Ministry of Bishops, prepared by the Benedictine monks of Christ the King, Nission, B.C., Ottawa, Publications Service of the Canadian Catholic Conference, 1974, 116 p.

SOURCES

SACRED CONGREGATION FOR THE CLERGY, letter to the presidents of the conferences of bishops, April 11, 1970, in A.A.S., 62(1970), pp. 459-465; French translation in La Documentation catholique, 67(1970), pp. 527-530.

SACRED CONGREGATION OF THE COUNCIL, reply, January 14, 1922, in A.A.S., 14(1922), p. 161.

SACRED CONGREGATION OF THE HOLY OFFICE, reply, August 20, 1778, in Collectanea SCPF, vol. 1, no. 529, p. 326.

SACRED CONGREGATION FOR THE PROPAGATION OF THE FAITH, instruction, January 25, 1807, in Collectanea SCPF, vol. 1, no. 689, p. 410.

-----, approving general statutes for councils which administer the temporal goods of parochial churches in the archdiocese of Utrecht and suffragan dioceses, July 21, 1856, in Collectanea SCPF, vol. 1, no. 1127, pp. 602-604.

-----, instruction, September 8, 1869, in Collectanea SCPF, vol. 2, no. 1346, p. 24.

-----, instruction, October 18, 1883, in Collectanea SCPF, vol. 2, no. 1606, p. 195.

-----, instruction, March 19, 1893, in Collectanea SCPF, vol. 2, no. 1828, pp. 287-288.

Sylloge præcipuorum documentorum recentium Summorum Pontificum et S. Congregationis De Propaganda Fide necnon aliarum SS. Congregationum Romanarum ad usum missionariorum, Civitate Vaticana, Typis Polyglottis Vaticanis, 1939, ix-788 p.

SYNOD OF BISHOPS, synodal document, De iustitia in mundo, November 24, 1971, in A.A.S., 63(1971), pp. 923-942; English translation in The Synodal Document on the Justice in the World, Boston, St. Paul Editions, 1971, 24 p.

Theodosiani libri XVI, edited by T. Mommsen and P. Meyer, ed. 2a, Berolini, Apud Weidmannos, 1954, 2 vols. in 3 parts.

SOURCES

TRENT, COUNCIL OF, Canons and Decrees of the Council of Trent. Original text with English translation by H.J. Schroeder. St.Louis, Herder Book, 1941, xxxiii-608 p.

VATICAN COUNCIL II, Constitution on the Sacred Liturgy, Sacrosanctum Concilium, December 4, 1963, in A.A.S., 56(1964), pp. 97-134; English translation in A. Flannery, (ed.), Documents of Vatican II, Grand Rapids, Michigan, W.B. Eerdmans Pub. Co., 1975, pp. 1-36.

-----, Decree on the Means of Social Communication, Inter Mirifica, December 4, 1963, in A.A.S., 56(1964), pp. 145-153; English translation in A. Flannery, (ed.), Documents of Vatican II, Grand Rapids, Michigan, W.B. Eerdmans Pub. Co., 1975, pp. 283-292.

-----, Dogmatic Constitution on the Church, Lumen Gentium, November 21, 1964, in A.A.S., 57(1965), pp. 1-89; English translation in A. Flannery, (ed.), Documents of Vatican II, Grand Rapids, Michigan, W.B. Eerdmans Pub. Co., 1975, pp. 350-426.

-----, Decree on the Pastoral Office of Bishops, Christus Dominus, October 28, 1965, in A.A.S., 58(1966), pp. 673-701; English translation in A. Flannery, (ed.), Documents of Vatican II, Grand Rapids, Michigan, W.B. Eerdmans Pub. Co., 1975, pp. 564-590.

-----, Decree on the Renewal and Adaptation to Modern Times of Religious Life, Perfectae Caritatis, October 28, 1965, in A.A.S., 58(1966), pp. 702-712; English translation in A. Flannery, (ed.), Documents of Vatican II, Grand Rapids, Michigan, W.B. Eerdmans Pub. Co., 1975, pp. 611-623.

-----, Declaration on Christian Education, Gravissimum Educationis, October 28, 1965, in A.A.S., 58(1966), pp. 728-739; English translation in A. Flannery, (ed.), Documents of Vatican II, Grand Rapids, Michigan, W.B. Eerdmans Pub. Co., 1975, pp. 725-737.

-----, Decree on the Apostolate of Lay People, Apostolicam Actuositatem, November 18, 1965, in A.A.S., 58(1966), pp. 837-864; English translation in A. Flannery, (ed.), Documents of Vatican II, Grand Rapids, Michigan, W.B. Eerdmans Pub. Co., 1975, pp. 766-798.

SOURCES

-----, Declaration on Religious Liberty, Dignitatis Humanae, December 7, 1965, in A.A.S., 58(1966), pp. 929-941; English translation in A. Flannery, (ed.), Documents of Vatican II, Grand Rapids, Michigan, W.B. Eerdmans Pub. Co., 1975, pp. 799-812.

-----, Decree on the Ministry and Life of Priests, Presbyterorum Ordinis, December 7, 1965, in A.A.S., 58(1966), pp. 991-1024; English translation in A. Flannery, (ed.), Documents of Vatican II, Grand Rapids, Michigan, W.B. Eerdmans Pub. Co., 1975, pp. 863-902.

-----, Pastoral Constitution on the Church in the Modern World, Gaudium et Spes, December 7, 1965, in A.A.S., 58(1966), pp. 1025-1115; English translation in A. Flannery, (ed.), Documents of Vatican II, Grand Rapids, Michigan, W.B. Eerdmans Pub. Co., 1975, pp. 903-1001.

BOOKS

- ABBO, J.A., and HANNAN, J.D., The Sacred Canons: a Concise Presentation of the Current Disciplinary Norms of the Church, St. Louis, Herder, 1952, 2 vols.
- ABBOTT, W.M., (ed.), The Documents of Vatican II, New York, Guild Press, 1966, xxi-793 p.
- ARCHDIOCESE OF BRISBANE, A Management Plan for the Archdiocese of Brisbane, compiled by diocesan officials and employees of Peat, Marwick Mitchell Services, Brisbane, 1984, 280 p.
- AYRINHAC, H.A., Administrative Legislation in the New Code of Canon Law (Lib. III, Cann. 1154-1551), New York, Longmans, Green, 1930, xxv-477 p.
- BALVO, C.D., Toward More Effective Administration of Ecclesiastical Goods: a Study of the Diocesan Finance Council and the Diocesan Finance Officer, unpublished dissertation submitted to the Faculty of the School of Religious Studies of the Catholic University of America in partial fulfillment of the requirements for the degree of licentiate in Canon Law, Washington D.C., 1984, iv-98 p.
- BASSETT, W.W. (ed.), The Finances of the Church, New York, Seabury Press, 1979, x-146 p.
- BERGIER, N.-S., Dictionnaire de théologie, Paris, Leroux et Jouley, 1854, 6 vols.
- BLACK, H.C., Black's Law Dictionary, St. Paul, Minnesota, West Publishing Co., 1979, xiv-1511 p.
- BLAT, A., Commentarium textus Codicis iuris canonici, Romae, Typographia Pontificia in Instituto Pii IX, 1921-1938, 6 vols.
- BOUSCAREN, T., ELLIS, A.C., and KORTH, F.N., Canon Law: A Text and Commentary, fourth rev. ed., Milwaukee, Bruce Pub. Co., 1966, xvi-1011 p.
- BROWN, B.F., The Canonical Juristic Personality with Special Reference to its Status in the United States, Washington, D.C., The Catholic University of America, 1927, v-212 p.
- BROWN, R., The Churches the Apostles Left Behind, New York, Paulist Press, 1984, 156 p.

BOOKS

- BUNTINX, H., L'Église et le management: aggiornamento de l'autorité et des structures de l'Église catholique, Puteaux, Hommes et Techniques, 1971, 176 p.
- BYRNE, H.J., Investment of Church Funds: a Study in Administrative Law, Washington, D.C., The Catholic University of America, 1951, xi-206 p.
- CAPPELLO, F.M., Summa iuris canonici in usum scholarum concinnata, ed. 4a accurate recognita, Romae, Apud Aedes Universitatis Gregorianae, 1945, [vol. 1, 1940], 3 vols.
- CAVALLERA, F., Indices (to Migne's Patrology), Parisiis, Apud Garnier, 1928, 218 p.
- CICOGNANI, A., Canon Law, 2nd rev. ed., authorized English version by J. O'Hara and F. Brennan, Philadelphia, Dolphin Press, 1935, xiv-892 p.
- CLEARY, J.F., Canonical Limitations on the Alienation of Church Property: an Historical Synopsis and Commentary, Washington, D.C., Catholic University of America, 1936, viii-141 p.
- COMYNS, J.J., Papal and Episcopal Administration of Church Property: an Historical Synopsis and Commentary, Washington, D.C., The Catholic University of America, 1942, ix-155 p.
- CONTE DA CORONATA, M., Institutiones iuris canonici, 4th ed., Romae, Marietti, 1933-1939, 5 vols.
- CORIDEN, J.A., GREEN, T.J., and HEINTSCHEL, D.E., (eds.), The Code of Canon Law: A Text and Commentary, New York, Paulist Press, 1985, xxvi-1152 p.
- CORIDEN, J., McMANUS, F., "The Present State of Roman Catholic Canon Law Regarding Colleges and Sponsoring Religious Bodies", in Church and Campus, P. Moots and E. Gaffney (eds.), Notre Dame, University of Notre Dame Press, [1979], pp. 140-153.
- COTTIER, G., (éd.), Église et pauvreté, Paris, Éditions du Cerf, 1965, 384 p.
- CROSS, F.L., and LIVINGSTONE, E.A., (eds.), The Oxford Dictionary of the Christian Church, London, Oxford University Press, 1974, xxxi-1518 p.

BOOKS

- DANIÉLOU, J., The First Six Hundred Years, translated by V. Cronin with illus. selected and annotated by P. Ludlow, London, Darton, Longman and Todd, 1964, xxx-522 p. (The Christian Centuries, vol. 1).
- DEMERS, F., The Temporal Administration of the Religious House of a Non-exempt, Clerical, Pontifical Institute, Washington, D.C., The Catholic University of America, 1961, xi-147 p.
- DOHENY, W.J., Church Property: Modes of Acquisition, Washington, Catholic University of America, 1927, x-118 p.
- , Practical Problems in Church Finance: a Study of the Alienation of Church Resources and of the Canonical Restrictions on Church Debt, Milwaukee, Bruce Pub. Co., 1941, 116 p.
- EUSEBIUS CAESARIENSIS, The Ecclesiastical History and the Martyrs of Palestine, translated by H.J. Lawlor and J.E.L. Oulton, London, Society Promoting Christian Knowledge, [1927-1928], 2 vols.
- FAIVRE, A., Les laïcs aux origines de l'Église, Paris, Centurion, 1984, 296 p.
- FALCHI, F., FELICIANI, G., FERRARI, S., et al, Ministero episcopale e dinamica istituzionale: i vescovi nella Chiesa del Vatican II, Bologna, e Mulino, 1981, 302 p.
- FLANNERY, A.P., Documents of Vatican II, Grand Rapids, Michigan, W. B. Eerdmans Pub. Co., 1975, xxiv-1062 p.
- FRANCK, B., Vers un nouveau droit canonique: présentation commentaire et critique du Code de droit canonique de l'Église catholique latine révisé à la lumière de Vatican II, Paris, Le Cerf, 1983, 300 p.
- FRANZEN, A., A Concise History of the Church, revised and edited by J.P. Dolan, translated from the German by P. Becker, London, Burns and Oates, 1969, xii-461 p.
- FUNK, F.X., (ed.), Didascalia et Constitutiones apostolorum, Paderbornae, In libraria F. Schoeningh, 1905, 2 vols.

BOOKS

- GAUDEMET, J., L'Église dans l'Empire romain (IVe-Ve siècles), Paris, Sirey, 1958, xi-770 p.
- GIACON, B.A., L'amministrazione dei beni ecclesiastici e religiosi, 2a ed. riv. ed ampliata, Padova, ed. Messaggero, 1964, xvi-429 p.
- GOHS, M., The Role of the Council in the Government Structure of Religious Life, Washington, D.C., Catholic University of America, 1980, 66 p.
- GOODWINE, J.A., The Right of the Church to Acquire Temporal Goods, Washington, D.C., The Catholic University of America, 1941, viii-119 p.
- HESTON, E.L., The Alienation of Church Property in the United States: An Historical Synopsis and Commentary, Washington, D.C., The Catholic University of America, 1941, xv-222 p.
- HITE, J., HOLLAND, S., WARD, D., A Handbook on Canons 573-746, Collegeville, The Liturgical Press, 1985, 400 p.
- HUOT, D-M., Bonorum temporalium apud religiones administratio ordinaria et extraordinaria, Roma, Commentarium pro religiosis, 1956, xiv-80 p.
- KEALY, R.L., Diocesan Financial Support: Its History and Canonical Status, Romae, Pontificia Universitas Gregoriana, Facultas iuris canonici, 1986, xix-406 p.
- KILCULLEN, T.J., The Collegiate Moral Person as Party Litigant: a Historical Synopsis and Commentary, Washington, D.C., The Catholic University of America, 1947, x-150 p.
- KLEKOTKA, P.J., Diocesan Consultors, Washington, D.C., The Catholic University of America, 1920, 1/9 p.
- KLOPPENBURG, B., The Ecclesiology of Vatican II, translated by M.J. O'Connell, Chicago, Franciscan Press, 1974, xv-373 p.
- KORTH, F.M., Canon Law for Hospitals: Administration of Temporal Goods, St. Louis, Catholic Hospital Association of the United States and Canada, 1963, vi-40 p.
- LAUER, A., Index verborum codicis iuris canonici, digessit Arcturus Lauer Heidelbergensis, Romae, Typis Polyglottis Vaticanis, 1941, xxx-936 p.

BOOKS

- LEBRETON, J., and ZEILLER, J., L'Église primitive, Paris, Bloud & Gay, 1938, 474 p.
- LOWRIE, W., The Church and its Organization in Primitive and Catholic Times: An Interpretation of Rudolph Sohm's Kirchenrecht: The Primitive Age, London, Longmans, Green, 1904, xxviii-402 p.
- LYNCH, T., Contracts Between Bishops and Religious Congregations: a Historical Synopsis and Commentary, Washington, D.C., The Catholic University of America, 1946, xiii-232 p.
- MARDA, A., and CAFARDI, N.P., Church Property, Church Finances and Church-Related Corporations: A Canon-Law Handbook, St. Louis, Mo., Catholic Health Association of the United States, 1984, xxii-339 p.
- MATHIAS, L., The Diocesan Curia: its Organization According to History and Canon Law, Madras, The Good Pastor, 1947, xxiii-305 p.
- MAURO, T., La personalità giuridica degli enti ecclesiastici, Città del Vaticano, Tipografia Poliglotta Vaticana, 1945, xii-360 p.
- McMANUS, J.E., The Administration of Temporal Goods in Religious Institutes, Washington, D.C., The Catholic University of America, 1937, xvi-196 p.
- MICHIELS, G., Normae generales iuris canonici, ed. altera, penitus retracta et notabiliter aucta, Tornaci, Desclée, 1949, 2 vols.
- , Principia generalia de personis in Ecclesia: commentarius libri II codicis iuris canonici, canones praeliminaries 87-106, ed. altera, Tournai, Desclée, 1955, xviii-708 p.
- MIGNE, J.P., (ed.), Patrologiae cursus completus, (Series Latina), Parisiis, Migne, 1844-1864, 221 vols.
- , Patrologiae cursus completus (Series Graeca), Parisiis, Vrayet, 1857-1887, 167 vols.
- MILLER, W.D., The Juridical Configuration of the Diocesan Consultors with Particular Reference to the Church in the United States, Roma, Pontificia Università Lateranense, 1975, 90 p.

BOOKS

- MONLEON, P.O., Church Property and its Diocesan Administration along with the Church Extension in the Philippines: Historical Presentation with Juridical Commentary, Romae, Pontificia Universitas Lateranensis, 1960, xv-167 p.
- MONNET, A., Administration des biens en pays de mission, Ottawa, thesis manuscript (typed), 1948, vii-296 p.
- MUNDAY, J.E., Ecclesiastical Property in Australia and New Zealand: an Historical Synopsis and Comparative Study of the General Law of the Church, Canons 1495-1551, and the Decrees of the Fourth Plenary Council of Australia, decrees 653-685, Washington, D.C., The Catholic University of America, 1957, xiv-141 p.
- MUNIER, C., Église et cité, Paris, Éd. Cujas, 1979, 307 p.
- MUNDY, T.M., The Union of Parishes: An Historical Synopsis and Commentary, Washington, D.C., The Catholic University of America, 1945, x-164 p.
- MURPHY, J.P., The Laws of the State of New York Affecting Church Property, Washington, D.C., Catholic University of America, 1957, v-193 p.
- MYERS, J.J., "Book V: The Temporal Goods of the Church", in The Code of Canon Law, A Text and Commentary, pp. 858-890.
- NAZ, R. (éd.), Dictionnaire de droit canonique. Paris, Letouzey et Ané, 1935-1965, 7 vols.
- , Traité de droit canonique, publié sous la direction de R. Naz, Paris, Letouzey et Ané, 1947-1949, 4 vols.
- Nuevo derecho canónico: manual universitario, Madrid, Bibl. de autores cristianos, 1983, xiv-625 p.
- OCHOA, X., Index verborum ac locutionum Codicis iuris canonici, ed. secunda et completa, Citta del Vaticano, Libreria editrice Lateranense, 1984, xv-592 p.
- PAGÉ, R., Les Églises particulières: leurs structures de gouvernement selon le Code 1983, Montréal, Ed. Paulines; Paris, Médiaspaul, 1985, 205 p.

BOOKS

- PAQUETTE, M., Les conseils presbytéraux au Québec: coresponsabilité des prêtres et de l'évêque dans le gouvernement de l'église particulière, Montréal, Fides, 1973, 319 p.
- PARALIEU, R., Guide pratique du droit canonique, Bourges, Ed. Tardy, 1985, 460 p.
- PETRONCELLI, M., Diritto canonico, 8a ed., Napoli, Jovene, 1983, 415 p.
- , Il diritto canonico dopo il Concilio Vaticano II, Napoli, Libreria scientifica, 1969, 477 p.
- PISTOCCHI, M., De bonis Ecclesiae temporalibus, Taurini, Marietti, 1932, viii-489 p.
- ROSSI, B.A., 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", Roma, Ed. dell'Urbe, 1979, 379 p.
- SALINAS, S.B., La noción de persona jurídica en el derecho canónico, Barcelona, Edicions de la Facultat de teologia de Barcelona, 1985, 261 p.
- SCHMALZGRUBER, F., Jus ecclesiasticum universum, brevi methodo ad discentium utilitatem explicatum: seu lucubrationes canonicae in quinque libros decretalium Gregorii IX Pontificis maximi, Romae, Ex Typographia Rev. Cam. Apostolicae, 1843-1845, 12 vols.
- SCHOENHERR, R., and SIMPSON, E., The Political Economy of Diocesan Advisory Councils: CROS Respondents' Report 3, Madison, University of Wisconsin, 1978, 141 p.
- SMITH, W. and CHEETHAM, S., (eds.), Dictionary of Christian Antiquities, Toronto, Willing and Williamson, 1880, 2 vols.
- STENGER, J.B., The Mortgaging of Church Property: A Historical Synopsis and Commentary, Washington, D.C., The Catholic University of America, 1942, 186 p.

BOOKS

THOMASSIN, L., Ancienne et nouvelle discipline de l'Église, nouv. éd., rev., corr., et augm. par M. André, Bar-Le-Duc, L. Guérin, 1864-1867, 7 vols.

VERMEERSCH, A., CRÉUSEN, J. ., Epitome iuris canonici, 3a ed., Mechliniae et Romae, Dessain, 1927-1928, 3 vols.

VROMANT, G., De Bonis Ecclesiae Temporalibus, 2a ed., Louvain, Museum Lessianum, 1934, xi-392 p.

WOYWOOD, S., and SMITH, C., A Practical Commentary on the Code of Canon Law, New York, J.F. Wagner, 1948, 2 vols.

ARTICLES

- ADAMS, D., "The Rights and Duties of Trustees", in The Jurist, 18(1958), pp. 175-190.
- ALARCON, M.L., "La administración de los bienes eclesiásticos", in Ius canonicum, 24(1984), pp. 87-121.
- ALESANDRO, J., "Law and Renewal, a Canon Lawyer's Analysis of the New Code", in CLSA Proceedings, 44(1982), pp. 1-40.
- , "The Revision of Church Law: Conflict and Reconciliation", in The Jurist, 40(1980), pp. 1-26.
- , "General Introduction", in J.A. Coriden, T.J. Green, and D.E. Heintschel, (eds.), The Code of Canon Law: A Text and Commentary, New York, Paulist Press, 1985, pp. 1-22.
- AMANIEU, A., "Archidiacre", in Dictionnaire de droit canonique, vol. 1, Paris, Letouzey et Ané, 1935, col. 948-1054.
- , "Archiprêtre", in Dictionnaire de droit canonique, vol. 1, Paris, Letouzey et Ané, 1935, col. 1004-1026.
- ARIAS, J., "La función consultiva", in Ius canonicum, 22(1971), pp. 217-243.
- AZNAR GIL, F.R., "La nueva ordenación económica de la Iglesia Española", in Revista española de derecho canónico, 38(1982), pp. 313-365.
- BARRY, J.A., "The New Code of Canon Law: Diocesan Organization in the New Code", in Canadian Catholic Review, 2(1984), pp. 16-21.
- BASTNAGEL, C.V., "Requirement of Consultation for Valid Action", in The Jurist, 9(1949), pp. 365-395.
- BENNET, A.P., "Church Accounting Principles and Reporting Practices", in The Catholic Lawyer, 28(1983), pp. 98-103.
- , "The Practical Effect on the Fiscal Administration of Church Finances of Book V: the Law Regarding Church Possessions", in CLSA Proceedings, 42(1980), pp. 1/1-178.

ARTICLES

- BERTRAMS, W., "De origine personae moralis in Ecclesia", in Periodica, 36(1947), pp. 169-184.
- BEYER, J., "Il nuovo Codice di diritto canonico", in La Scuola cattolica, 112(1984), pp. 121-145.
- , "Le nouveau code de droit canonique: esprit et structures", in Nouvelle revue théologique, 106(1984), pp. 360-382, 566-583.
- BONNET, P.A., "De momento codificationis pro iure ecclesiae", in Periodica, 70(1981), pp. 303-368.
- BOUCHER, A., "Evolution historique de la loi des fabriques du Québec", in Studia Canonica, 4(1970), pp. 173-201.
- BOUDINHON, A., "An nullus semper sit actus superioris non petito consilio?", in Ius pontificum, 8(1928), pp. 29-35.
- BRANCHERAU, P., "De capitulo cathedrali eiusque relatione cum presbyterali et pastoralis consiliis in Gallia", in Periodica, 65(1976), pp. 697-712.
- BRUNEL, I., "Alienation of Church Property", in W. SMITH and S. CHEETHAM, (eds.), Dictionary of Christian Antiquities, Toronto, Willing and Williamson, 1880, vol. 1, pp. 50-55.
- BYRNE, H.J., "Investment of Church Funds", in The Jurist, 11(1951), pp. 33-57.
- CAHILL, W.F., "The Dedication of Property to the Fixed Patrimony of a Church", in The Jurist, 17(1957), pp. 133-156, 261-278.
- CARLSON, R.G., "Chancery Issues: Impediments and Dispensations, Validity of Acts, Relationship between Bodies", in CLSA Proceedings, 44(1982), pp. 93-104.
- CARTER, A., "Bishop - Priest - Laity Relationship in the Light of Vatican II", in Studia Canonica, 1(1967), pp. 79-95.

ARTICLES

- COCCOPALMERIO, F., "Considerazioni sui beni della Chiesa", in La scuola cattolica, 107(1979), pp. 299-317.
- , "De persona iuridica iuxta schema codicis novi", in Periodica, 70(1981), pp. 369-400.
- CONGAR, Y., "Les biens temporels de l'Église d'après sa tradition théologique et canonique", in Église et pauvreté, G. Cottier, (éd.), Paris, Ed. du Cerf, 1965, pp. 233-258.
- CORECCO, E., "La sortie de l'Église pour la raison fiscale", in Austritt aus der Kirche, L. Carlen (ed.), Freiburg, Schweiz, Universitätsverlag, 1982, pp. 11-67.
- COULY, A., "Les biens temporels de l'Église", in Le Canoniste contemporain, 43(1920), pp. 296-303, 392-399, 482-494; 44(1921), pp. 16-34, 113-121, 202-220, 307-320, 394-414, 482-499; 54(1922), pp. 14-24, 106-121, 205-216, 303-320, 400-410.
- CUNEO, J.J., "The Power of Jurisdiction: Empowerment for Church Functioning and Mission Distinct from the Power of Orders", in The Jurist, 39(1979), pp. 183-219.
- CUNNINGHAM, R.G., "The Principles Guiding the Revision of the Code of Canon Law", in The Jurist, 30(1970), pp. 447-455.
- DANAGHER, J.J., "The New Code and Catholic Health Facilities: Fundamental Obligations of Administrators", in The Jurist, 44(1984), pp. 143-152.
- DAVID, B., "Les Biens d'Église", in Les Cahiers du droit ecclésial, 2(1985), pp. 85-105.
- , "Le conseil diocésain pour les affaires économiques", in Les Cahiers du droit ecclésial, 2(1985), pp. 9-22.
- , "Les conseils paroissiaux", in Les Cahiers du droit ecclésial, 3(1986), pp. 1-35.
- DAHYOT-DOLIVET, G., "L'Église à l'époque impériale (313-590)", in Apollinaris, 55(1982), pp. 846-870.
- DE MESA, J.M., "Participation of Lay People in Church Decisions", in Vidyajyoti, 44(1980), pp. 267-283.

ARTICLES

- DE PAOLIS, V., "De bonis ecclesiae temporalibus in novo codice iuris canonicae", in Periodica, 73(1984), pp. 113-151.
- , "Quaestiones miscellaneae", in Periodica, 73(1984), pp. 451-472.
- , "Schema canonum libri V de iure patrimoniali Ecclesiae", in Periodica, 68(1979), pp. 673-713.
- , "Temporal Goods of the Church in the New Code with Particular Reference to the Institutes of Consecrated Life", in The Jurist, 43(1983), pp. 343-360.
- DEWITT, M.G., "The Alienation of Church Property", in The Jurist, 14(1954), pp. 394-409.
- DOHENY, W.J., "Church Finance and Problems of Alienation", in The Jurist, 1(1941), pp. 9-10.
- DONAGHER, J., "The New Code and Catholic Health Facilities: Fundamental Obligations of Administrators", in The Jurist, 44(1984), pp. 143-152.
- D'OSTILIO, F., "È pronto il nuovo Codice di diritto canonico", in Monitor ecclesiasticus, 107(1982), pp. 208-232, 354-382.
- ELLIS, A.C., "Canon Law; Some Canonical Terms in Dealing with Temporalities (bona temporalia)", in Theological Studies, 1(1940), pp. 171-174.
- FALTIN, D., "De recto usu bonorum ecclesiasticorum ad mentem Concilii Vaticani II", in Apollinaris, 40(1967), pp. 409-441.
- FITZPATRICK, G.D., "The Disposition of Surplus Church Funds", in The Jurist, 22(1962), pp. 142-156.
- FOURNERET, P., "Biens ecclésiastiques", in Dictionnaire de théologie catholique, tome 2, Paris, Letouzey et Ané, 1905, col. 843-878.
- FRISON, B., "Debts, Debentures and Annuities", in The Jurist, 22(1962), pp. 205-207.
- FRUGE, D.J., "Taxes in the Proposed Law", in CLSA Proceedings, 44(1982), pp. 274-288.

ARTICLES

FURER, I., "Capitulum cathedrale aliaque dioecesana consilia in Helvetia", in Periodica, 65(1976), pp. 687-696.

GALLAGHER, C., "Temporal Administration in the New Code", in The Way Supplement, 50(1984), p. 71-79.

GHIRLANDA, G., "De natura, origine et exercitio potestatis regiminis iuxta novum codicem", in Periodica, 74(1985), pp. 109-164.

GIANNINI, F., "La Chiesa particolare e gli organismi di partecipazione", in Apollinaris, 56(1983), pp. 514-527.

GOLLIN, J., "There's an Unholy Mess in the Churchly Economy", in Fortune, (1976), pp. 223-248.

GREEN, T.J., "The Diocesan Bishop in the Revised Code: Some Introductory Reflections", in The Jurist, 42(1982), pp. 320-347.

-----, "Reflections on the People of God Schema", in CLSA Proceedings, 40(1978), pp. 13-33.

-----, "Critical Reflection on the Schema of the People of God", in Studia Canonica, 14(1980), pp. 235-322.

-----, "Particular Churches and the Authority Established in Them (cc. 368-430)", in J.A. Coriden, T.J. Green, and D.E. Heintschel, (eds.), The Code of Canon Law: A Text and Commentary, New York, Paulist Press, 1985, pp. 311-349.

GUTIERREZ, A., "De superiore et consilio, triplex quaestio", in Commentarium pro religiosis et missionaribus, 54(1973), pp. 122-134.

HANNAN, J.D., "Alms for the Clergy", in The Jurist, 9(1949), pp. 286-305.

-----, "The Local Ordinary's Guardianship of Church Property", in The Jurist, 1(1941), pp. 317-328.

HATCH, E., "Archdeacon", in W. Smith and S. Cheetham, (eds.), Dictionary of Christian Antiquities, Toronto, Willing and Williamson, 1880, vol. 1, pp. 135-138.

HERLIHY, D., "Church Property", in New Catholic Encyclopedia, vol. 3, New York, McGraw-Hill Book Co., 1967, pp. 849-853.

ARTICLES

- HERMANN, D.H.J., "The Code of Canon Law Provisions on Labour Relations", in The Jurist, 44(1984), pp. 153-193.
- HESTON, E.L., "The Elements of Stable Capital in Temporal Administration", in The Jurist, 2(1942), pp. 120-133.
- HITE, J., "Church Law on Property and Contracts", in The Jurist, 44(1984), pp. 117-133.
- HOLLENBACH, D., "Corporate Investments, Ethics, and Evangelical Poverty: A Challenge to American Religious Orders", in Theological Studies, 34(1973), pp. 265-274.
- HOWES, R.G., "Reflections of a Pastoral Planner on the New Code of Canon Law", in The Priest, 38(1982), pp. 15-19.
- HUELS, J.M., "Another Look at Lay Jurisdiction", in The Jurist, 41(1981), pp. 59-80.
- INNES, M.B., "Parochial and Diocesan Finance", in The Clergy Review, 47(1962), pp. 201-207.
- JOSEPH, J., "Is Co-responsibility Possible in Our Church?", in Vidyajoti, 49(1985), pp. 259-273.
- JOYCE, J., "Absolute Power Curbed: the Code and Diocesan Administration", in Clergy Review, 69(1984), pp. 385-388.
- JURGENS, W.A., "Gangra", in The Jurist, 20(1960), pp. 1-12.
- KENNEDY, R.T., "Shared Responsibility in Ecclesial Decision-Making", in Studia Canonica, 14(1980), pp. 5-23.
- KIRBY, D.J., "The Church as Responsible Investor", in Clergy Review, 65(1980), pp. 21-27.
- KRESS, R., "Membership and Leadership in the Church", in The Jurist, 42(1982), pp. 29-69.
- LaDUE, W.J., "The Right of Church People to Participate in Ecclesial Decision-Making", in Studia Canonica, 7(1973), pp. 179-190.
- , "Structural Arrangements of the Parish: A Brief History", in The Jurist, 30(1970), pp. 314-327.

ARTICLES

- LEFEBVRE, C., "Les tendances générales préconisées dans le projet des livres IV, V, VI, VII, du Code", in Studia Canonica, 12(1978), pp. 211-223.
- LESAGE, G., "Régime de péréquation pour le clergé diocésain", in Studia Canonica, 3(1969), pp. 173-207.
- LOMBARDÍA, P., "Personas jurídicas, públicas y privadas", in Universitas canonica, 2(1982); pp. 67-78
- LYNCH, J.E., "The Parochial Ministry in the New Code of Canon Law", in The Jurist, 42(1982), pp. 383-421.
- MAIDA, A., "Canon Law Implications of Real Estate Transactions: Impact of the New Canon Law", in The Catholic Lawyer, 27(1982), pp. 218-223.
- , "Canonical and Legal Fallacies of the 'McGrath Thesis' on Reorganization of Church Entities", in The Catholic Lawyer, 19(1973), pp. 275-286, 288-289.
- , "Sponsoring Congregations' Answer to 'McGrath Thesis': Corporate Control", in Hospital Progress, 61(1980), pp. 66-68, 80, 84.
- , and N.P. CAFARDI, "Charitable Trust Helps Ensure Catholic Hospitals' Identity", in Hospital Progress, 63(1982), pp. 32-36, 62.
- MALLET, J.K., "Book V: Temporalities under the Revised Code of Canon Law", in The Catholic Lawyer, 29(1984), pp. 187-194.
- , "Diocesan Structure and Governance", in CLSA Proceedings, 42(1980), pp. 151-160.
- MARCEAUX, S.J., "Presbyteral Councils", in CLSA Proceedings, 44(1982), pp. 198-206.
- MAURO, T., "La disciplina delle persone giuridiche; le norme sui beni ecclesiastici e sul loro regime con riferimento all'ordinamento statale", in Monitor ecclesiasticus, 109(1984), pp. 379-396.
- McGRATH, J.J., "Canon Law and American Church Law: A Comparative Study", in The Jurist, 18(1958), pp. 260-278.
- McCREAVY, L.L., "The Limits of Diocesan Taxation", in Clergy Review, 52(1967), pp. 984-987.

ARTICLES

- MESLIN, M.M., "Ecclesiastical Institutions and Clericalization from 100 to 500 A.D.", in Concilium, (British ed.), vol. 7, no. 5, (September 1969), pp. 14-21.
- MESTER, S., "I beni temporali della Chiesa (la novità apportate dal nuovo Codice", in Apollinaris, 57(1984), pp. 49-59.
- METZ, R., "Les responsables des biens des Églises dans la perspective de Vatican II comparée à celle du Code de 1917", in Prawo Kanoniczne, 20(1977), pp. 53-65.
- MOLANO, E., "El régimen de la diócesis en situación de sede impedida y de sede vacante", in Ius canonicum, 21(1981), pp. 607-621.
- MONCION, J., "L'Église, peut-elle agir comme toute autre puissance financière?", in Studia Canonica, 14(1980), pp. 423-430.
- , "Should a Religious Congregation Provide for a Reserve Fund or Pension Plan for its Members?", in Studia Canonica, 8(1974), pp. 183-190.
- MORRISEY, F.G., "The Conveyance of Ecclesiastical Goods", in CLSA Proceedings, 38(1976), pp. 123-137.
- , "The Revision of the Code of Canon Law", in Studia Canonica, 12(1978), pp. 177-198.
- , "New Canon Law on Temporal Goods Reflects Vatican II's Influence", in The New Canon Law: Perspectives on the Law, Religious Life, and the Laity, St. Louis, Catholic Health Association, 1983, pp. 49-61.
- , "Canonical Duties, Liabilities of Trustees and Administrators", in Health Progress, 66(1985), pp. 47-51, 70.
- MÖRSDORF, K., "L'autonomia della Chiesa locale", in Il diritto ecclesiastico, 83(1972), pp. 265-285.
- , "Decree on the Bishop's Pastoral Office in the Church", in H. Vorgrimler, (ed.), Commentary on the Documents of Vatican II, Montreal, Palm Publishers, 1967, vol. 2, pp. 165-300.

ARTICLES

- MOSTAZA, A., "El nuevo derecho patrimonial de la Iglesia (libro V)", in Estudios eclesiásticos, 58(1983), pp. 183-216.
- MULCAHY, R.E., "Subsidiarity", in New Catholic Encyclopedia, vol. 13, New York, McGraw-Hill Book Co., 1967, p. 762.
- MULLER, H., "De formis iuridicis corresponsabilitatis in Ecclesia", in Periodica, 69(1980), pp. 303-320.
- MYERS, J.J., "The Diocesan Fiscal Officer and the Diocesan Finance Council", in CLSA Proceedings, 44(1982), pp. 181-188.
- , "Church Finances", in New Catholic World, 226(1983), pp. 132-135.
- , "The Temporal Goods of the Church (cc. 1254-1310)", in CORIDEN, J.A., GREEN, T.J., and HEINTSCHEL, D.E., (eds.), The Code of Canon Law: A Text and Commentary, New York, Paulist Press, 1985, pp. 857-890.
- NAUROIS, L. de, "Aspects juridiques des problèmes d'ordre financier et patrimonial de l'église diocésaine en France", in Esprit et vie, 86(1976), pp. 401-411, 417-421.
- , "Pour l'aggiornamento du droit canonique; la règle de droit en droit canonique", in Revue de droit canonique, 18(1968), pp. 271-302.
- NAZ, R., "Biens ecclésiastiques ou temporels", in Dictionnaire de droit canonique, vol. 2, Paris, Letouzey et Ané, 1937, col. 836-841.
- , "Econome", in Dictionnaire de droit canonique, vol. 5, Paris, Letouzey et Ané, 1953, col. 148-150.
- NESSEL, W.J., "The Administration of Church Property", in New Catholic Encyclopedia, vol. 3, New York, McGraw-Hill Book Co., 1967, pp. 853-856.
- NOVALIN, J.G., "De capitulo cathedrali aliisque diocesanis consiliis in Hispania", in Periodica, 65(1976), pp. 671-686.

ARTICLES

OCHOA, X., "Acquisitio, distributio ac destinatio bonorum temporalium Ecclesiae institutorumque perfectionis ad mentem Concilii Vaticani II", in Commentarium pro religiosis et missionariis, 51(1970), pp. 20-33.

-----, "Ratio bonorum temporalium in Ecclesia et institutio perfectionis post Concilium Vaticanum II", in Commentarium pro religiosis et missionariis, 50(1969), pp. 339-348.

O'DONOHUE, J.A., "Administrative Aids to the Bishop", in The Jurist, 20(1960), pp. 13-29.

ONCLIN, W., "The Church Society and the Organization of its Powers", in The Jurist, 27(1967), pp. 1-17.

ÖRSY, L., "The Interpreter and his Art", in The Jurist, 40(1980), pp. 27-56.

PAGÉ, R., "L'Église particulière et le code de 1983", texte du séminaire présenté au Congrès de la Société canadienne de droit canonique, Québec, octobre, 1985, pp. 1-12.

PERLADO, P., "Fines eclesiales y técnicas organizativas en el régimen jurídico de los bienes eclesiásticos", in L'Année canonique, 17(1973), pp. 717-732.

PISTOCCHI, M., "Dell'opera del consiglio diocesano dell'amministrazione", in Perfice munus, 4(1929), pp. 437-438.

PROVOST, J.H., "Diocesan Administration: Reflections on Recent Developments", in The Jurist, 41(1981), pp. 81-104.

-----, "The Impact of the Proposed Book II 'De populo Dei' on the Local Church", in Studia Canonica, 15(1981), pp. 371-397.

-----, "Structuring the Church as 'Communio'", in The Jurist, 36(1976), pp. 191-245.

-----, "The Working together of Consultative Bodies: Great Expectations", in The Jurist, 40(1980), pp. 257-281.

ARTICLES

- , "Preparing for Particular Legislation to Implement the Revised Code", in The Jurist, 42(1982), pp. 348-382.
- RAHNER, K., "Art. 18-27 Constitution on the Church", in H. Vorgrimler, (ed.), Commentary on the Documents of Vatican II, Montreal, Palm Publishers, 1967, vol. 1, pp. 186-218.
- RAYANNA, P., "Moral or Juridical Person", in The Jurist, 18(1958), pp. 459-467.
- REED, J.J., "The Laity in Church Law", in Theological Studies, 24(1963), pp. 602-625.
- REID, C.J., "Some Applications of Principles of Management Theory to Diocesan Structures", in The Jurist, 44(1984), pp. 448-456.
- RITTY, C.J., "Changing Economy and the New Code of Canon Law", in The Jurist, 26(1966), pp. 469-484.
- ROBLEDA, O., "Innovationes Concilii Vaticani II in theoria et disciplina de officiis et beneficiis ecclesiasticis", in Periodica, 58(1969), pp. 155-198; 59(1970), pp. 277-314.
- , "Quaestio de personalitate officii ecclesiastici non soluta", in Periodica, 56(1967), pp. 384-427.
- ROVERA, V., "Il libro V: i beni temporali della Chiesa", in La Scuola cattolica, 112(1984), pp. 337-355.
- , "De structuris oeconomicis in Ecclesia renovandis", in Periodica, 60(1971), pp. 197-250.
- SCHLICK, J., "Paroisse et dynamique communautaire dans le code de 1983", in Praxis juridique et religion, 1(1984), pp. 194-213.
- SHARPE, J., "Property of the Church", in W. Smith and S. Cheetham, (eds.), Dictionary of Christian Antiquities, Toronto, Willing and Williamson, 1880, vol. 2, pp. 1730-1737.
- SIGUR, A., "Lay Co-Operation in the Administration of Church Property", in The Jurist, 13(1953), pp. 171-200.

ARTICLES

- SORRENTINO, A., "Le strutture verticali della Chiesa locale dopo il Vaticano II", in Monitor ecclesiasticus, 94(1969), pp. 216-232.
- STENGER, J.B., "Alienation of Church Property", in New Catholic Encyclopedia, vol. 3, New York, McGraw-Hill Book Co., 1967, pp. 856-857.
- TER REEGEN, O., "The Rights of the Laity", in Concilium, (British ed.), vol. 4, no. 8, (October 1968), pp. 10-15.
- TESTERA, F., "Ecclesiastical Financial Management", in Philippinana Sacra, 18(1983), pp. 495-510.
- TING PONG LEE, I., "De bonis in missionibus ius institutorum particulare", in Commentarium pro religiosis et missionariis, 58(1977), pp.35-46, 137-148, 346-355; ~~59(1978), pp.38-49.~~
- TOGANEL, P., "De consensu vel consilio consiliariorum", in Apollinaris, 33(1960), pp. 95-102.
- TORQUEBIAU, P., "Chapitres de chanoines", in Dictionnaire de droit canonique, vol. 3, Paris, Letouzey et Ané, 1942, col. 530-595.
- , "Curie diocésaine", in Dictionnaire de droit canonique, vol. 3, Paris, Letouzey et Ané, 1942, col. 961-971.
- TRUBAC, E.R., "Implementing Financial Plans Compatible with Community Goals", in Review for Religious, 34(1975), pp. 748-756.
- UNITED STATES CATHOLIC CONFERENCE, Accounting Practices Committee, "Churches and Other Non-Profit Organizations", in Origins, 7(1979), pp. 139-143.
- VERMEERSCH, A., "De temporalium bonorum possessione et administratione in missionibus externis", in Periodica, 6(1912), pp. 1-4, 17-21, 41-56.
- VOEGTLE, L.E., "Econome. (canon law)", in New Catholic Encyclopedia, vol. 5, New York, McGraw-Hill Book Co., 1967, p. 143.

ARTICLES

WARD, D., "Trust Management under the New Code of Canon Law", in The Jurist, 44(1984), pp. 134-142.

WASNER, F., "The Canonical Position of a Vicar Apostolic's Council", in The Jurist, 25(1965), pp. 310-318.

WESEMANN, P., "De capitulo cathedrali in iure particulari Germaniae", in Periodica, 65(1976), pp. 713-726.

APPENDIX.

PROPOSED CONSTITUTION OF THE DIOCESAN FINANCE COUNCIL

Article 1

Nature

The finance council of the diocese of _____, established in accord with canon 492,1 of the Code of Canon Law, is an organ of collaboration of the Christian faithful with the bishop in the administration of the financial matters of the entire diocese.

Article 2

Duties

The diocesan finance council has the following duties:

- a. To advise the bishop on financial policies for the diocese.
- b. To prepare annually a budget of income and expenditure over the coming year for the governance of the entire diocese, in accordance with the directions of the bishop, and after appropriate consultation with the heads of the diocesan departments.
- c. To examine at the end of each year the report of the diocesan finance officer on the income and expenditure of the diocese.
- d. To examine the annual reports of the administrators of the parishes and of the other public juridic persons subject to the diocesan bishop.
- e. To express an opinion, after legitimate convocation in accord with canon 127,1, on those matters where the Code of Canon Law calls for the diocesan

- bishop to have recourse to the finance council.¹
- f. To give or withhold consent;² with regard to acts

1. The diocesan bishop is to consult the finance council with regard to the following matters:

- the appointment and removal of the diocesan finance officer (canon 493,1 and 2)
- the imposition of a moderate tax on the public juridic persons subject to his authority, and of any extraordinary and moderate tax on other physical and juridic persons with due regard for the requirements of canon 1263.
- the performance by himself of acts which he has stated as being more important acts of administration (canon 1277).
- the investment of money and moveable goods assigned to an endowment (canon 1305).
- the equitable diminution of the obligations of a will for a pious cause when fulfillment of the obligations becomes impossible due to diminished income or some other reason (canon 1310,2).

2. The diocesan bishop is to obtain the consent of the finance council with regard to the following matters:

- the performance by himself of an act of extraordinary administration as determined by the conference of bishops (canon 1277).

[For the dioceses of Australia the following are acts of extraordinary 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 greater;

(b) An act of administration by which a diocese would forego an annual sum equal to 20 cents per capita of Catholic population or \$40,000 whichever being greater. (Both figures to be indexed to inflation rate: the base rate being 1984).

of extraordinary administration; to those acts judged to endanger the patrimonial condition of the public juridic person in question, and to leases covered by the norms laid down by the conference of bishops.

- g. To present other recommendations regarding fiscal policy in the diocese.

These norms became effective 1 December, 1985.]

- a proposed act of alienation of goods whose value is within the range of the minimum and maximum amounts as determined by the conference of bishops (canon 1292,1).
- a proposed act of alienation of goods whose value exceeds the maximum amount, goods donated to the Church through a vow or goods which are especially valuable due to their artistic or historical value (canon 1292,2).

[For the Australian dioceses the maximum sum for alienation is \$2,000,000 Australian, such sum being indexed with the annual rate of inflation as determined by the civil courts which govern industrial awards. The minimum sum for alienation is \$10,000 Australian, also indexed in the same manner.]

- any transaction through which the patrimonial condition of a juridic person can be worsened (canon 1295).
- leases of church goods in those circumstances covered by the norms determined by the conference of bishops (canon 1297).

[For the Australian dioceses the norm regulating leases is as follows: All leases of ecclesiastical goods are to be drawn up in accordance with the norms of civil law.

Except when the lease is to a body engaged in the apostolate, the monetary consideration is to approximate to the ruling market value.

Leases for periods in excess of nine years require the consent of the competent authority mentioned in canon 1292,1.]

- h. To monitor investment policies.
- i. To inform the bishop regarding financial trends which could affect the stable patrimony of the diocese.
- j. To elect a temporary finance officer if, sede vacante, the finance officer is elected diocesan administrator (canon 423).

Article 3

Powers of the Finance Council

The diocesan finance council has those powers accorded to it in the Code of Canon Law. The diocesan bishop is not bound to follow the advice given in those cases where the law requires him to consult the council. In those cases where the law requires he obtain the consent of the council, a withholding of consent bars the bishop from proceeding with the proposed act.

Article 4

Composition

The finance council is presided over by the diocesan bishop, and is composed of at least three members of the Christian faithful appointed by him. The councillors are to be outstanding for moral integrity, actively involved in the life of the local church, capable of evaluating financial choices with an ecclesial spirit, and expert in civil law or finance, as testified by their professional qualifications and testimonials.

Members of the finance council are appointed for a five-year term, renewable.

For the duration of their appointment, members cannot be dismissed by the diocesan bishop except for grave and documented reasons.

Article 5

Incompatibility

Persons who are related to the diocesan bishop up to the fourth degree of consanguinity or affinity, and those who have direct financial interests in the diocese, cannot be named members of the finance council.

Article 6

President

The president

- (a) convokes and presides at the meetings, either personally or through a delegate;
- (b) prepares or causes to be prepared the agenda for each meeting;
- (c) appoints one member to act as chairperson for a twelve-month period.

Article 7

Meetings of the Finance Council

Meetings are to be held monthly or as otherwise determined by the diocesan bishop.

A quorum shall consist of a majority of the councillors.

At the meetings of the council, those invited by the president may participate where necessary as non-voting members.

Each councillor may make public only those matters so designated by the diocesan bishop.

The minutes of the meetings are to be recorded in the proper minutes book and signed by the chairperson and secretary at the end of each meeting. These minutes are to be approved at the next meeting.

Article 8

Vacancy of a Seat in the Finance Council

In the case of death, dismissal, retirement, or permanent disability of one or more of the members of the finance council, the president proceeds as soon as possible to appoint replacements. Councillors thus appointed remain in office to the end of the original member's term and can be re-appointed for other terms.

Article 9

Financial Year

The financial year of the diocese runs from (July 1) to (June 30) each year. At the end of each year, and before (September 30), the finance officer will submit a report on diocesan income and expenditure.

Article 10

Information to the Diocesan Community

The diocesan finance council presents the annual financial report to the diocesan community through publication (in the diocesan newspaper). This report informs the community of the sources of income and its uses during the financial year.

Article 11

Reference to General Norms

With regard to any matters not treated in the present constitution, the norm of canon law will be applied.

The dissertation focuses on the concern of the Church for the temporal goods it possesses -- in particular, on a mandatory part of the organizational structure of each diocese throughout the world, the diocesan finance council. This council is a body that assists the diocesan bishop in his administration of the property and finance which belongs to the diocese as such (of which he is the administrator, strictly speaking), and in his supervision of the administration of the parishes and the other public juridic persons subject to his authority. The council members are members of the Christian faithful, appointed by the bishop for a five year term (renewable), outstanding in integrity, and expert in financial affairs and civil law.

The law spells out a number of ways in which the council participates in the bishop's work of administration and supervision which are summarized below. What is important to appreciate is that the finance council as described in the 1983 Code of Canon Law is the most recent body to be accorded such a role in church law, but by no means the first.

Chapters One and Two of the thesis are an historical survey of the norms established down the centuries in which

the bishop was required to involve other members of the diocese in his administration of the Church's temporal goods. At first, this role was filled by the clergy. Then, as dioceses expanded into rural areas, it was the clergy of the city, and with even further growth and development, the cathedral chapter.

The acts for whose performance the bishop was required to seek advice of or at times even the consent of these other diocesan members were usually acts of alienation or other acts where the Church's material well-being could be impaired.

In the nineteenth century, the Roman Congregations as well as particular councils in different parts of the world begin to establish norms for bodies or councils whose specific task was to assist the head of the local Church in property and finance matters. The importance of these developments is recognized with the requirement in the 1917 Code that each diocese establish a council of administration.

This council, the immediate forerunner in universal law of the finance council, was the first instance in universal law of such a body. The Ordinary was free to choose clerics or laymen as members.

The law required the Ordinary to seek the advice of the council, or to obtain its consent before performing certain transactions. These acts were those in which the Church's stable patrimony was somehow put at risk. This could be by an act which exceeded the limits and modes of ordinary administration, or by alienation. A number of these acts were specified in the Code.

The third chapter examines what the Second Vatican Council taught with regards to temporal goods, and how that teaching was incorporated in the 1983 Code of Canon Law. The Council did not go into details in this regard, being content to state attitudes to be held and general directions to be taken.

The last two chapters of the dissertation examine the canons which describe the finance council, how they evolved in the revision process, and what are the functions and duties of this body.

As the name suggests, the specific area of expertise of this council is diocesan finances. The council is a body which assists the bishop in fulfilling his duties -- it is part of the diocesan curia (the persons and institutes which assist the bishop in the governance of the entire diocese).

While it does not have the authority to make him act in a

particular way, but it can prevent his acting in certain circumstances where the law requires that he have the consent of the council before proceeding. However, for the most part, the role of the council is to provide the bishop with the skill and expertise in financial matters and civil law that are so much part of modern financial affairs.

The law allows the bishop to choose the people he wants -- women, men, clerics, laity or religious. The council is to have at least three members, members of the Christian faithful, outstanding in integrity, experts in financial matters and civil law, and not close relatives of the bishop (first cousins, or nephews and nieces). The bishop presides, but strictly speaking is not a member of the council and need not chair the meetings.

One of the main tasks of the council is the preparation of an annual budget of income and expenditures for the entire diocese, and at the end of each year examines a report prepared by the diocesan finance officer, the person who administers the goods of the diocese on a day to day basis.

With regard to certain acts determined in the law, the bishop acts validly only after seeking the advice of the council or obtaining its consent. He must seek advice before

imposing taxes, performing acts which are of greater importance in light of the economic condition of the diocese, deciding what acts will be extraordinary for subject public juridic persons (such as parishes), investing endowment capital, and diminish the obligations of wills in cases of reduced income and if the the testator has given this permission. He is not bound to follow the advice given, but unless there is some overriding reason he should act against a consensus.

However, where the law requires he obtain the council's consent he cannot act without it. Those spelled out in the law are the following: performing acts ~~of~~ extraordinary administration (decided by the bishops' conference), alienations of ecclesiastical goods above the set amount, performing acts which endanger the patrimonial condition of the public juridic person concerned, and leases depending on the decisions of the bishops' conference.

It is important to remember that in the diocese the bishop operates in a dual capacity -- as the administrator of the goods of the diocese, strictly speaking, and as the supervisor of the administration of the goods belonging to the public juridic persons subject to him. Unless, a parish priest, for instance, is negligent, the bishop is not free to intervene in the administration of the goods of a parish. He

can establish guidelines to be followed, but he is not the one in charge of the goods of the parish.

The finance council must also be consulted in the hiring and firing of the finance officer, and when the diocese is vacant (the bishop dies or is transferred) the council appoints another finance officer if the the present one is made diocesan administrator.

The new or renewed elements of diocesan structure are not simply the product of a desire for greater efficiency. They are also the product of a desire for the members of the Church to participate in the life of the Church as fully as possible making use of the gifts and talents they have. In the area of financial matters, the diocesan bishop still holds a central position, but does not shoulder the burdens alone. He is to seek assistance from his brothers and sisters in the diocese so that the mission of the Church is supported by able and effective management of its material resources.