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**FACULTÉ DES ÉTUDES SUPÉRIEURES  
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**FACULTY OF GRADUATE AND  
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GRADE / DEGREE

**Faculty of Law**  
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**The Power of the Diocesan Bishop with Regard to the Administration of Ecclesiastical Goods of  
Public Juridic Persons Subject to him: An Analysis of Canon 1276, §2**

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**THE POWER OF THE DIOCESAN BISHOP WITH REGARD TO THE  
ADMINISTRATION OF ECCLESIASTICAL GOODS OF PUBLIC JURIDIC  
PERSONS SUBJECT TO HIM: AN ANALYSIS OF CANON 1276, §2**

by  
Edwin N. OMOROGBE

A thesis 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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395, rue Wellington  
Ottawa ON K1A 0N4  
Canada

*Your file Votre référence*  
ISBN: 978-0-494-79729-7  
*Our file Notre référence*  
ISBN: 978-0-494-79729-7

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## **Abstract**

The current norms on the administration of temporalities demand a new openness and a mutual trust between those who administer Church property and those who donate temporal goods to the Church. The entire matter of regulating how donated goods are managed is the subject matter of canon 1276. Canon 392, §2 stipulates that the diocesan bishop has an obligation to ensure that abuses do not creep into the administration of ecclesiastical goods. The legislator recognizes the fact that if abuses creep into the administration of ecclesiastical goods this will damage the credibility of the Church. The transparency and accountability of administrators are vital to sustaining this credibility. How is the diocesan bishop to ensure this transparency and accountability? The specific way of achieving this is the subject matter of our dissertation.

In order to achieve this goal the dissertation was divided into four chapters. The first chapter examined the power of the diocesan bishop with regard to caring for ecclesiastical goods. The second chapter studied the roles of those who administer ecclesiastical goods. The third chapter examined the very nature of the special instructions that the diocesan bishop is expected to issue for administrators, while the fourth chapter considered the contents of this special instructions.

Ecclesiastical goods assist the Church in fulfilling its mission. There is a correlation between ecclesiastical goods and the mission of the Church. Therefore, the mission of the Church is the same as the reasons why a public juridic person own goods. The same concern and due diligence that is shown to ensure that abuses do not creep into the proper celebration of the sacraments is to be shown to ensure the proper administration of ecclesiastical goods (c. 392, §2); We strongly hold that the obligation to issue special instructions for administrators of ecclesiastical goods is one of the major functions of a diocesan bishop, a function that he must consider as part of the mission which has been entrusted to him to fulfill. The special instructions serve as a canonical proactive measure to forestall possible financial malfeasance within the Church. If the Church is to avoid expending its energy and ecclesiastical resources in solving financial crisis in the future, the diocesan instruction for administrators of ecclesiastical goods should be a must for all dioceses.

## TABLE OF CONTENTS

|                                                                                                                 |     |
|-----------------------------------------------------------------------------------------------------------------|-----|
| <b>TABLE OF CONTENTS</b> .....                                                                                  | i   |
| <b>ACKNOWLEDGMENTS</b> .....                                                                                    | vi  |
| <b>ABBREVIATIONS</b> .....                                                                                      | vii |
| <b>GENERAL INTRODUCTION</b> .....                                                                               | 1   |
| <b>1 — THE POWER OF THE DIOCESAN BISHOP IN CARING FOR ECCLESIASTICAL GOODS</b>                                  |     |
| Introduction .....                                                                                              | 9   |
| 1.1 – General Conception of Power in the Church.. .....                                                         | 12  |
| 1.1.1 – The Bipartite Division of Power: Order and Jurisdiction .....                                           | 14  |
| 1.1.2 – The Tripartite Division: Orders, Jurisdiction and Magisterium .....                                     | 19  |
| 1.1.3 – The Nature of Power of the Residential Bishop in the 1917 Code of Canon Law .....                       | 20  |
| 1.1.4 – The Nature of the Power of the Diocesan Bishop according to the Second Vatican Council .....            | 26  |
| 1.2 – The Nature of Power of the Diocesan Bishop in the 1983 Code of Canon Law .....                            | 30  |
| 1.2.1 – The Legislative Power of the Diocesan Bishop .....                                                      | 35  |
| 1.2.2 – The Executive Power of the Diocesan Bishop .....                                                        | 37  |
| 1.2.3 – The Judicial Power of the Diocesan Bishop .....                                                         | 39  |
| 1.2.4 – The Administrative Power of the Diocesan Bishop .....                                                   | 40  |
| 1.3 – The Meaning of Ecclesiastical Goods .....                                                                 | 46  |
| 1.4 – The Ownership of Ecclesiastical Goods .....                                                               | 50  |
| 1.5 – Juridic Persons in the 1983 Code of Canon Law .....                                                       | 56  |
| 1.5.1 – Public Juridic Persons .....                                                                            | 60  |
| 1.5.2 – Private Juridic Persons .....                                                                           | 64  |
| 1.6 – Categories of Ecclesiastical Goods .....                                                                  | 66  |
| 1.6.1 – Stable Patrimony .....                                                                                  | 67  |
| 1.6.2 – Non-Stable Patrimony.....                                                                               | 69  |
| 1.7 – Ecclesiastical Goods and Mission of the Church .....                                                      | 70  |
| 1.8 – The Exercise of the Power of the Diocesan Bishop in Caring for Ecclesiastical Goods... .....              | 75  |
| 1.8.1 – The Exercise of the Legislative Power of the Diocesan Bishop in Caring for Ecclesiastical Goods .....   | 78  |
| 1.8.2 – The Exercise of the Executive Power of the Diocesan Bishop in Caring for Ecclesiastical Goods .....     | 80  |
| 1.8.3 – The Exercise of the Judicial Power of the Diocesan Bishop in Caring for Ecclesiastical Goods .....      | 82  |
| 1.8.4 – The Exercise of the Administrative Power of the Diocesan Bishop in Caring for Ecclesiastical Goods..... | 84  |
| Conclusion .....                                                                                                | 85  |

## 2 — THE ROLE OF THE ADMINISTRATORS IN CARING FOR ECCLESIASTICAL GOODS

|                                                                                                                                                       |     |
|-------------------------------------------------------------------------------------------------------------------------------------------------------|-----|
| Introduction .....                                                                                                                                    | 87  |
| 2.1 – The Administrators of Public Juridic Persons .....                                                                                              | 89  |
| 2.1.1 – The Roman Pontiff and other Administrators of Ecclesiastical Goods .....                                                                      | 96  |
| 2.1.2 – The Importance of the Role of the Administrator of Ecclesiastical Goods .....                                                                 | 105 |
| 2.2 – Councils and Persons Assisting Administrators of Ecclesiastical Goods .....                                                                     | 107 |
| 2.2.1 – The Episcopal Vicar for Administration and the Vicar Forane .....                                                                             | 108 |
| 2.2.2 – The College of Consultors .....                                                                                                               | 111 |
| 2.2.3 – The Presbyteral Council .....                                                                                                                 | 113 |
| 2.2.4 – The Diocesan Finance Council and the Parish Finance Council .....                                                                             | 114 |
| 2.2.5 – Other Administrators .....                                                                                                                    | 118 |
| 2.3 – The <i>Munera</i> of Administrators of Ecclesiastical Goods .....                                                                               | 119 |
| 2.3.1 – The Administrator and the Acquisition of Temporal Goods .....                                                                                 | 125 |
| 2.3.1.1 – The Right of the Church to Acquire Temporal Goods and the Obligation of the Christian Faithful to Provide for the Needs of the Church ..... | 126 |
| 2.3.1.2 – The Means of the Acquisition of Temporal Goods .... ..                                                                                      | 128 |
| 2.3.2 – The Administrator and the Administration of Ecclesiastical Goods ..                                                                           | 131 |
| 2.3.2.1 – Acts of Ordinary Administration .....                                                                                                       | 138 |
| 2.3.2.2 – Acts of Ordinary Administration “More Important” in the Light of the Economic Situation of the Public Juridic Person .....                  | 146 |
| 2.3.2.3 – Acts of Extraordinary Administration .....                                                                                                  | 148 |
| 2.3.3 – Administrators and Contracts Involving Ecclesiastical Goods .....                                                                             | 151 |
| 2.3.3.1 – Contracts Involving Alienation of Ecclesiastical Goods .....                                                                                | 152 |
| 2.3.3.2 – Contracts Threatening Stable Patrimony .....                                                                                                | 156 |
| 2.3.3.3 – Contracts Involving Leasing of Ecclesiastical Goods .....                                                                                   | 159 |
| Conclusion .....                                                                                                                                      | 160 |

## 3 — THE NATURE OF THE DIOCESAN INSTRUCTIONS FOR ADMINISTRATORS OF ECCLESIASTICAL GOODS

|                                                        |     |
|--------------------------------------------------------|-----|
| Introduction.....                                      | 163 |
| 3.1 – The Remote History of Instructions .....         | 163 |
| 3.2 – The Juridic Nature of an Instruction .....       | 166 |
| 3.3 – Instructions in the 1983 Code of Canon Law ..... | 170 |
| 3.4 – The Instruction for Administrators .....         | 175 |
| 3.5 – The Legislative History of Canon 1276 .....      | 176 |
| 3.5.1 – The 1977 <i>Schema</i> .....                   | 178 |
| 3.5.2 – The 1980 <i>Schema</i> .....                   | 181 |
| 3.5.3 – The 1982 <i>Schema</i> .....                   | 183 |
| 3.5.4 – Canon 1276 of the 1983 Code of Canon Law ..... | 184 |

|                                                                                                                         |     |
|-------------------------------------------------------------------------------------------------------------------------|-----|
| 3.6 – Analysis of Terms in Canon 1276 .....                                                                             | 184 |
| 3.6.1 – The Context of Canon 1276 .....                                                                                 | 186 |
| 3.6.2 – The Meaning of Words in Canon 1276 .....                                                                        | 187 |
| 3.6.2.1 – The Concept of Ordinary in the 1983 Code of Canon Law .....                                                   | 187 |
| 3.6.2.2 – The Vigilance of the Ordinary .....                                                                           | 193 |
| 3.6.2.3 – The Ordinary’s Regard for Rights of Public Juridic Persons .....                                              | 195 |
| 3.6.2.4 – The Legal Rights of Specific Administrators of Ecclesiastical<br>Goods .....                                  | 199 |
| 3.6.2.5 – The Legal Rights of Administrators of the Temporal Goods<br>of Private Associations in the Diocese.....       | 204 |
| 3.6.2.6 – The Legal Rights of Administrators of Ecclesiastical Goods of<br>Religious Institutes of Diocesan Right ..... | 204 |
| 3.6.2.7 – Regard for Customs .....                                                                                      | 210 |
| 3.6.2.8 – Regard for Circumstances .....                                                                                | 212 |
| 3.6.3 – Ecclesiastical Laws .....                                                                                       | 213 |
| 3.6.3.1 – Universal Laws .....                                                                                          | 214 |
| 3.6.3.2 – Particular Laws .....                                                                                         | 215 |
| Conclusion.....                                                                                                         | 217 |

#### **4 — THE CONTENT OF THE DIOCESAN INSTRUCTION FOR ADMINISTRATORS OF ECCLESIASTICAL GOODS**

|                                                                                                                                                 |     |
|-------------------------------------------------------------------------------------------------------------------------------------------------|-----|
| Introduction .....                                                                                                                              | 219 |
| 4.1 – Terminological Clarification .....                                                                                                        | 220 |
| 4.2 – The Subjects of the Diocesan Financial Instructions (c. 1276, §2) .....                                                                   | 222 |
| 4.3 – The General Principles for Administrators of Ecclesiastical Goods .....                                                                   | 224 |
| 4.3.1 – The Principle of <i>Communio</i> in the Administration of Ecclesiastical Goods ...                                                      | 225 |
| 4.3.2 – The Principle of Subsidiarity in the Administration of Ecclesiastical<br>Goods.....                                                     | 227 |
| 4.3.3 – The Principle of Using Ecclesiastical Goods to Aid the Mission of the<br>Church.....                                                    | 229 |
| 4.3.4 – The Principle of Collaboration in the Administration of Ecclesiastical<br>Goods .....                                                   | 230 |
| 4.3.5 – The Principle of Careful Vigilance in the Administration of Ecclesiastical<br>Goods .....                                               | 232 |
| 4.3.6 – The Principle of Observance of Civil Law in the Administration of<br>Ecclesiastical Goods .....                                         | 232 |
| 4.3.7 – The Principle of Respect for the Intention of the Donor in the Administration<br>of Ecclesiastical Goods .....                          | 234 |
| 4.3.8 – The Principle of Transparency and Accountability in the Administration of<br>Ecclesiastical Goods .....                                 | 236 |
| 4.3.9 – The Principle of the Just Remuneration of Workers .....                                                                                 | 238 |
| 4.3.10 – The Principle of the Protection of the Stable Patrimony of Public Juridic<br>Person in the Administration of Ecclesiastical Goods..... | 239 |
| 4.3.11 – The Principle of Legitimate Acquisition of Temporal Goods in the<br>Church.....                                                        | 240 |

|                                                                                                                          |            |
|--------------------------------------------------------------------------------------------------------------------------|------------|
| 4.3.12 – The Spiritual Principle Underlining the Administration of Goods .....                                           | 241        |
| 4.4 – Stewardship Role of Administrators .....                                                                           | 243        |
| 4.5 – Change of Administrators of Ecclesiastical Goods .....                                                             | 246        |
| 4.6 – Functions of Administrators of Ecclesiastical Goods .....                                                          | 247        |
| 4.6.1 – Acquisition of Goods .....                                                                                       | 249        |
| 4.6.1.1 – Appeals and Fund Raising/Special Collections .....                                                             | 251        |
| 4.6.1.2 – Mass Offerings .....                                                                                           | 254        |
| 4.6.1.3 – The Offering Given to Administrators .....                                                                     | 256        |
| 4.6.1.4 – Goods Derived from the Modification of Parishes .....                                                          | 257        |
| 4.6.1.5 – Prescription .....                                                                                             | 258        |
| 4.6.2 – Acts of Administration .....                                                                                     | 258        |
| 4.6.2.1 – Acts of Ordinary Administration .....                                                                          | 261        |
| 4.6.2.1.1 – Routine Purchases and Repairs .....                                                                          | 262        |
| 4.6.2.1.2 – Mandating the Opening of Bank Account(s) .....                                                               | 262        |
| 4.6.2.1.3 – Annual Budget and Annual Financial Report to the<br>Faithful .....                                           | 264        |
| 4.6.2.1.4 – Requirement of an Annual Inventory .....                                                                     | 266        |
| 4.6.2.1.5 – Taxes .....                                                                                                  | 267        |
| 4.6.2.1.6 – Donations for Charitable Purposes.....                                                                       | 269        |
| 4.6.2.1.7 – Payment for Expenses for Clerics .....                                                                       | 269        |
| 4.6.2.2 – Acts of Extraordinary Administration .....                                                                     | 270        |
| 4.6.2.3 – Acts of Ordinary Administration “More Important” in the Light<br>of the Economic Situation of the Diocese..... | 273        |
| 4.7 – Contracts .....                                                                                                    | 274        |
| 4.7.1 – Contracts involving Alienation .....                                                                             | 275        |
| 4.7.1.1 – Procedures to be Observed in the Alienation of Ecclesiastical<br>Goods .....                                   | 277        |
| 4.7.1.2 – Contracts involving Leasing .....                                                                              | 283        |
| 4.7.1.3 – Contracts that threatens the Patrimonial Condition of a<br>Public Juridic person .....                         | 284        |
| 4.7.2 – Contracts involving Labor Issues .....                                                                           | 287        |
| 4.7.2.1 – Insurance Policies .....                                                                                       | 289        |
| 4.7.2.2 – Employment Contract and Dismissal of Employees.....                                                            | 289        |
| 4.7.2.3 – Pension Plan for Lay Employees .....                                                                           | 291        |
| 4.8 – Remuneration of Clerics.....                                                                                       | 292        |
| 4.8.1 – Assistance to Priests in Need .....                                                                              | 293        |
| 4.8.2 – Pension Plan for Clerics .....                                                                                   | 294        |
| 4.8.3 – Other Issues Concerning Priests .....                                                                            | 296        |
| 4.9 – Civil Incorporation of Public Juridic Persons .....                                                                | 297        |
| 4.10 - The Report to Civil Authority.....                                                                                | 298        |
| Conclusion .....                                                                                                         | 299        |
| <b>GENERAL CONCLUSION .....</b>                                                                                          | <b>301</b> |
| <b>APPENDIX 1 Decree Establishing, and Statutes of A Public Juridic Person.....</b>                                      | <b>307</b> |

|                                                                                                              |     |
|--------------------------------------------------------------------------------------------------------------|-----|
| <b>APPENDIX 2</b> Decree Establishing an Ordinary Diocesan Tax.....                                          | 311 |
| <b>APPENDIX 3</b> Statutes of an Autonomous Foundation .....                                                 | 313 |
| <b>APPENDIX 4</b> Decree Establishing a Non-Autonomous Foundation.....                                       | 315 |
| <b>APPENDIX 5</b> Decree Establishing an “Institute for Priest Support” .....                                | 317 |
| <b>APPENDIX 6</b> Decree Establishing Particular Law for Annual Budgets.....                                 | 320 |
| <b>APPENDIX 7</b> Decree Establishing Particular Law for Acts of Extraordinary<br>Administration.....        | 322 |
| <b>APPENDIX 8</b> Instruction on Inventory by Administrators of Public Juridic Persons.....                  | 324 |
| <b>APPENDIX 9</b> Decree on Rendering Account to Donors.....                                                 | 326 |
| <b>APPENDIX 10</b> Rescript: Permission to Perform an Act of Extraordinary Administration .....              | 328 |
| <b>APPENDIX 11</b> Rescript: Permission to Alienate Stable Patrimony Valued Above the<br>Minimum Amount..... | 329 |
| <b>APPENDIX 12</b> Rescript: Permission to Designate Stable Patrimony.....                                   | 330 |
| <b>APPENDIX 13</b> Decree Establishing Norms for Parish Finance Council.....                                 | 331 |
| <b>APPENDIX 14</b> Decree Approving Norms for a Parish Finance Council.....                                  | 334 |
| <b>SELECTED BIBLIOGRAPHY</b> .....                                                                           | 339 |
| <b>CURRICULUM VITAE</b> .....                                                                                | 375 |

## ACKNOWLEDGMENTS

I would like to first of all express my gratitude to God Almighty who ultimately is responsible for every good work of the human person. He is the one who gave me the grace, strength, and intellect to complete this project.

I would also like to thank all those who have contributed in many ways to the commencement and completion of this study. I wish to thank my parents and siblings for their support and encouragement.

I wish to thank the archdiocese of Benin City, for its financial, spiritual, and moral support during this time of my study. My thanks also go to Archbishop P.E. Ekpu who initiated the process of my studies. I am also grateful to his successors Archbishop R.A. Burke and Bishop Anthony Gburi who both continued to support this study. Special thanks to all the priests and friends who have encouraged me during the process of writing this dissertation.

My special thanks to Professor John A. Renken, my supervisor, who has been so helpful all through this period. His scholarly guidance, expertise, renowned imparting of knowledge, and valuable suggestions and encouragement have brought this project to its completion. Without your encouragement I do not think I would have been where I am at this time. Your prompt reading of the drafts all helped to bring this dissertation to its completion at this time.

I am also grateful to Professors Francis Morrissey, John Huels, Alexandre Tache, for all your assistance and encouragement during this period. Special thanks also to Dr. Chad Glendinning, William L. Daniel, Sisters Kelly Connor PM, Stella Giegbefumwen SSH, and Revs. Peter Akin-Otiko, Michael Barth, and Jude Onogbosele, John Okosun for all your help. I wish to also thank Professor Roland Jacque the former Dean and the present Dean Professor Anne Asselin, the administrative assistant and clerk Beverly Kavanaugh, and Sylvie Jutras, and all the staff members of the Faculty of Canon Law. I am also grateful to Saint Paul University for all the assistance given to me during the period of my study.

To all my friends and classmates who supported me during these years of study I express my profound appreciation.

Finally, I also wish to thank Rev. Jeffrey King the pastor of Our Lady of Fatima Parish in Woodroffe for his support and encouragement. My thanks also go to all the parishioners of the parish for their kindness and support. God bless you all.

## Abbreviations

|                   |                                                                                                                                                                      |
|-------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i>AA</i>         | SECOND VATICAN COUNCIL, decree on the Apostolate of the Lay People <i>Apostolicam actuositatem</i>                                                                   |
| <i>AAS</i>        | <i>Acta Apostolicae Sedis</i> , Rome: 1909-                                                                                                                          |
| Art               | article                                                                                                                                                              |
| Arts              | articles                                                                                                                                                             |
| <i>ASS</i>        | <i>Acta Sanctae Sedis</i> , Rome, 1865-1908                                                                                                                          |
| <i>AG</i>         | SECOND VATICAN COUNCIL, decree on the Church's Missionary Activity <i>Ad gentes divinitus</i>                                                                        |
| c.                | canon                                                                                                                                                                |
| cc.               | canons                                                                                                                                                               |
| CCCB              | Canadian Conference of Catholic Bishops                                                                                                                              |
| <i>CCLA</i>       | CAPARROS, E. et al. (eds.), <i>Code of Canon Law Annotated</i>                                                                                                       |
| <i>CCEO</i>       | <i>Codex canonum Ecclesiarum orientalium</i> , Libreria Editrice Vaticana, 1995<br><i>Code of Canon of the Eastern Churches. Latin-English Edition</i><br>CLSA, 2001 |
| <i>CD</i>         | SECOND VATICAN COUNCIL, decree on the Pastoral Office of Bishops <i>Christus Dominus</i>                                                                             |
| CDF               | CONGREGATION FOR THE DOCTRINE OF THE FAITH                                                                                                                           |
| <i>CIC/17</i>     | <i>Codex iuris canonici</i> , Pii X Pontificis Maximi iussu digestus                                                                                                 |
| <i>CIC/83</i>     | <i>Codex iuris canonici</i> auctoritate Ioannis Pauli PP. II promulgatus                                                                                             |
| <i>CLD</i>        | <i>Canon Law Digest</i>                                                                                                                                              |
| CLSA              | Canon Law Society of America                                                                                                                                         |
| <i>CLSA Comm1</i> | CORIDEN, J., T.J. GREEN, and D.E. HEINTSCHEL (eds.), <i>The Code of Canon Law. A Text and Commentary</i>                                                             |
| <i>CLSA Comm2</i> | BEAL, J.P., J.A. CORIDEN, T.J. GREEN (eds.), <i>New Commentary on the Code of Canon Law</i>                                                                          |



|                    |                                                                                                                                                                                                       |
|--------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| CLSANZ             | Canon Law Society of Australia and New Zealand                                                                                                                                                        |
| CLSGBI             | Canon Law Society of Great Britain and Ireland                                                                                                                                                        |
| <i>CLSGBI Comm</i> | SHEEHY, G. et al. (eds.), <i>The Canon Law. Letter &amp; Spirit</i>                                                                                                                                   |
| <i>DH</i>          | SECOND VATICAN COUNCIL, Decree on Religious Liberty<br><i>Dignitatis humanae</i>                                                                                                                      |
| <i>DPMB</i>        | 2004 <i>Directory for the Pastoral Ministry of Bishops Apostolorum<br/>successores</i>                                                                                                                |
| <i>ExComm</i>      | MARZOA, Á., J.MIRAS, R. RODRÍGUEZ-OCAÑA (eds.), and E.<br>CAPARROS (gen. ed. of English translation), <i>Exegetical<br/>Commentary on the Code of Canon Law</i> , Montréal: Wilson & Lafleur,<br>2004 |
| FLANNERY1          | FLANNERY, A. (ed.), <i>Vatican Council II</i> , vol. 1: <i>The Conciliar and Post<br/>Conciliar Documents</i> , new revised edition, Northport, New<br>York, Costello, 1996                           |
| FLANNERY2          | FLANNERY, A. (ed.), <i>Vatican Council II</i> : vol. 2: <i>More Post-Conciliar<br/>Documents</i> , new revised edition, Northport, New York,<br>Costello Publishing Co., 1998                         |
| <i>GS</i>          | SECOND VATICAN COUNCIL, Decree Pastoral Constitution on the<br>Church in the Modern World <i>Gaudium et spes</i>                                                                                      |
| <i>LG</i>          | SECOND VATICAN COUNCIL, dogmatic Constitution on the Church<br><i>Lumen gentium</i>                                                                                                                   |
| <i>PB</i>          | JOHN PAUL II, apostolic constitution <i>Pastor bonus</i>                                                                                                                                              |
| <i>PC</i>          | SECOND VATICAN COUNCIL, Decree on the Up-to-date Renewal of<br>Religious Life <i>Perfectae caritatis</i>                                                                                              |
| <i>PO</i>          | SECOND VATICAN COUNCIL, Decree on the Ministry and Life of<br>Priests <i>Presbyterorum ordinis</i>                                                                                                    |
| <i>SC</i>          | SECOND VATICAN COUNCIL, Constitution on the Sacred Liturgy<br><i>Sacrosanctum concilium</i>                                                                                                           |
| USCC               | United States Catholic Conference (prior to 1 July 2001)                                                                                                                                              |
| USCCB              | United States Conference of Catholic Bishops (since 1 July 2001)                                                                                                                                      |

## GENERAL INTRODUCTION

The current norms on administration of temporalities are based on the thrust of the Second Vatican Council.<sup>1</sup> This demands a new openness and a mutual trust between those who administer Church property and those who donate temporal goods to the Church.<sup>2</sup> Christ's faithful are obliged to assist with the needs of the Church. They do this by donating their temporal goods to support the Church's mission (cc. 222, §1; 1261). The diocesan bishop has a special obligation to remind them of this obligation (c. 1261, §2). Christ's faithful would be more willing and ready to fulfill this obligation if they were certain that these goods will be properly administered by the competent authority. If donors are sure that goods previously donated are used for the intention for which they were given, then the Church will soon start noticing a more favorable response to appeals and fund raising.

The entire matter of regulating how donated goods are managed is the subject matter of canon 1276. The universal law stipulates that the diocesan bishop has an obligation to ensure that abuses do not creep into the administration of ecclesiastical goods (c. 392, §2). This canon recognizes the fact that abuses in the administration of ecclesiastical goods will damage the credibility of the Church.<sup>3</sup> The transparency and accountability of administrators are crucial to sustaining this credibility. How is the

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<sup>1</sup> The Legislator, in describing the Code as a great effort to translate conciliar doctrine and ecclesiology into canonical law, underscores how the Second Vatican Council influences the norms in the Code. The various principles outlined in the conciliar documents are to influence our interpretation and implementation of the norms of the Code. Several documents of the Second Vatican Council mention temporal goods, see *LG*, nn. 12, 23; *GS*, nn. 42, 69, 71, 76; *AA*, no. 10; *CD*, n. 6, 28; *DH*, no. 4, 13; *GE*, no. 8; *IM*, n. 3; *PC*, no. 13; and *PO*, nn. 17, 20, 21.

<sup>2</sup> A.P. BENNETT, "The Practical Effects on the Fiscal Administration of Church Finances of Book Five: The Law Regarding Church Possessions," in *CLSA Proceedings*, 42 (1980), p. 171.

<sup>3</sup> In a similar manner Saint Paul underscores the need for administrators to avoid credibility problems. "There is one thing I wish to avoid, namely, any blame over my handling of this generous collection. We are concerned not only for God's approval but also for the good esteem of men." (2 Cor 8:22).

diocesan bishop to ensure this transparency and accountability? Or put in another way, how is he to provide a mechanism to assure accountability. The precise manner envisaged to fulfill this obligation to care for ecclesiastical goods will be addressed in our research.

This work also intends to study how the power of the diocesan bishop is exercised with regard to the administration of ecclesiastical goods. Our goal is to partly explore the relationship that exists between the mission of the Church and the purposes of ecclesiastical goods. The diocesan bishop has a unique role in ensuring that the mission of the Church is fulfilled. He receives his *munera* through episcopal ordination and exercises it for the purpose of the mission. Whatever aids the mission is also subject to this power. As a result, a brief overview of the nature of the diocesan bishop's power will be considered. Since this power is exercised within the Church, it will be pertinent to at least briefly examine the nature of ecclesiastical power.<sup>4</sup> The relationship between this power and mission will also be studied.<sup>5</sup> Since he governs the particular church, it falls on the diocesan bishop to organize the proper administration of ecclesiastical goods of public juridic persons subject to his authority (cc. 392, §2; 1276).<sup>6</sup> The dissertation will

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<sup>4</sup> The 2004 *Directory for the Pastoral Ministry of Bishops*, no. 64 says that episcopal power is distinguished from secular power by reason of its divine origin and by the context of ecclesial communion and mission. It has a goal which is pastoral, and it is to promote unity in faith, in sacraments and in ecclesial discipline in the particular church. See CONGREGATION FOR BISHOPS, *Directory for the Pastoral Ministry of Bishops*, no. 64, Vatican City, Libreria editrice Vaticana, 2004, p. 73 (=DPMB). One way of promoting the disciplinary unity of administration of ecclesiastical goods in the particular church is through the issuing of the special instructions of canon 1276, §2.

<sup>5</sup> CD, no. 16 says the diocesan bishop fulfills his *tria munera* by exercising his sacred power in the particular church. The power of the diocesan bishop is required for the building up of the faithful; hence episcopal power in the Church should always be seen as “a *pastoral activity*, since the Church's canon law exists for the service of a just order in which love, grace and charismatic gifts can be harmoniously developed.” In DPMB, no. 65, p. 74

<sup>6</sup> See DPMB, no. 188, p. 205.

attempt to study the particular ways in which the exercise of the power of the diocesan bishop relates to ecclesiastical goods.<sup>7</sup>

There have been quite a number of studies in the area of temporal goods of the Church. Most of them have generally focused on the areas of acquisition and alienation of goods. This line of study has been helped by the crucial nature of these two aspects. By acquisition, one gains ownership of property and by alienation one loses the property or rights over it. Since acts of administration and possession do not *per se* lead to change of ownership, less attention has been paid to them. But given recent happenings, and the potential threat of massive civil litigation against administrators of goods in the Church for financial malfeasance, there is the need to examine more critically the various acts of administration of ecclesiastical goods.

Some of the major studies that will be helpful in our research are:

J. ABBASS, "The Temporal Goods of the Church," in *The Two Codes in Comparison*, Kanonkia, vol. 7, Rome, Pontificio Istituto Orientale, 1997, pp. 177-205. The author of this article compares the Latin Code and the Eastern Code with regard to the acquisition, retention/possession, administration, and alienation of temporal goods. In this work, he identifies what the two Codes have in common and also their differences. In the area of administration, the various organs of authority that give permission for acts of administration are also examined. This work will be helpful to our research especially because the Eastern Code helps to fill certain *lacuna* in the Latin Code.

ARCHDIOCESE OF OTTAWA, *Administration Manual*, Chancery, Archdiocese of Ottawa, 1996. This book is a response by the Archbishop of Ottawa to the requirement of canon 1276, §2. The work gives details of the duties and mode of operation of

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<sup>7</sup> This study reflects principally upon the discipline of the Latin Church, though occasionally references are made to corresponding legislation for the several Eastern Churches (CCEO).

administrators of ecclesiastical goods subject to the diocesan bishop. This work will be helpful in our attempt in chapter four to propose a model of a financial directory or instructions for diocesan administrators. The work is different from our dissertation because it does not analyze the prescript of canon 1276, §2, neither does it discuss the role of the diocesan bishop vis-a-vis the mission of the Church and the administration of ecclesiastical goods.

C. BALVO, *The Administration of Temporal Goods and Diocesan Finance Councils*, JCD thesis, Rome, Pontifical Gregorian University, 1984. The dissertation treats of the diocesan council of administration in the *1917 Code of Canon law* and then considers corresponding elements of the new legislation. In Chapter One, it defines the notion of administration of ecclesiastical goods, the source of the power of administration and the various organs of financial administration. Chapter Two examines the diocesan finance council and the role of the finance officer. This work will be helpful in our examination of the nature of ecclesiastical goods and of financial administration in the Church. The dissertation is different from ours because it does not focus on the role of the diocesan bishop as a supervisor obliged to issue special instructions for the proper administration of ecclesiastical goods.

R.J. BOWERS, *Episcopal power of Governance in the Diocesan Church: From the 1917 Code of Canon Law to the Present*, Canon Law Studies no. 535, Washington, The Catholic University of America, 1990. The dissertation, in Chapter One, traces the development of the notion of episcopal power of governance from the ante-preparatory and preparatory stages of the Second Vatican Council. Chapter Two examines episcopal power of governance in the *schemata* of the preparatory Commission. In Chapter Three, the dissertation gives an analysis of episcopal power of governance as presented in *Lumen*

*Gentium*, and in the *Nota Praeua Explicativa*, while Chapter Four gives other complimentary conciliar teachings on episcopal power of governance. This work is a good resource material for our understanding of the notion of the power of governance of the diocesan bishop. It is different from our dissertation because it does not relate the diocesan power of governance to the administration of ecclesiastical goods.

A.G. FARRELLY, *The Diocesan Finance Council: A Historical and Canonical Study*, JCD thesis, Ottawa, St. Paul University, 1987. This dissertation, like R.J. Bowers' work, examines the historical development of the diocesan finance council. It is helpful for our research for the same reasons given above and different obviously for the same reasons.

A.J. MAIDA, and N.P. CAFARDI, *Church Property, Church Finances, and Church-Related Corporations*, St. Louis, The Catholic Health Association of the United States, 1984. One aspect of the act of the administration of ecclesiastical goods is its civil protection. This work examines the protection of ecclesiastical goods through civil incorporation, while avoiding the inadvertent alienation of these same goods. It is certainly helpful to our task by giving detailed reasons why Church property should be civilly protected. The diocesan bishop, in his exercise of administration, must issue norms that will ensure that public juridic persons subject to him civilly protect ecclesiastical goods. This work is helpful in this area by identifying the importance of civil incorporation of ecclesiastical goods. It is different from our work, however, because it does not deal with the other aspects of administration that our dissertation will be addressing.

Other recent studies related to our research are: J.A. RENKEN., *Church Property: A Commentary on Canon Law Governing Temporal Goods in the United States and Canada*, New York, The Society of Saint Paul/Alba House, 2009. J. I. ARRIETA, (ed.), *Enti ecclesiastici e*

*controllo dello stato: Studi sull'Istruzione CEI in materia amministrativa*, Istituto di Diritto Canonico San Pio X, Study no. 5, Venezia, Marcianum Press, 2007; A. E. BAWYN, *Discovering the Administrative Power Belonging to the Diocesan Bishop: The Use and Implication of Power and Governing in Book II and Book I of the 1983 Code of Canon Law*, JCD thesis, Leuven, Faculty of Canon Law, Katholieke Universiteit, 2000; P. MALÉ, *The Role of Temporal Goods in the Life and Mission of the Church: Towards an Understanding and Application of Church Property Law in Mission Territories According to Canon 1254 of the 1983 Code of Canon Law*, JCD thesis, Rome, Pontifical Lateran University, 2003.

The focus of our research is on the administration of the goods of public juridic persons subject to the diocesan bishop. Our dissertation requires a careful analysis of the norms governing administration of ecclesiastical goods in the Church. Our study will involve a systematic analysis and eventual application of canon 1276, §2

In order to achieve this goal the dissertation will be divided into four chapters. The first chapter will examine the exercise of the power of the diocesan bishop in caring for the ecclesiastical goods of public juridic persons subject to his authority. The insights brought into the conception of power of the diocesan bishop by the Second Vatican Council will be examined. Chapter one will also look at the power of the diocesan bishop in the 1983 Code. We intend to study the precise manner in which this power relates to the protection and care of ecclesiastical goods in the particular church.

The function of administering ecclesiastical goods is entrusted to an administrator who immediately governs the public juridic person (c. 1279, §1). Chapter two will identify administrators in the Code who are subject to the diocesan bishop and

their specific functions.<sup>8</sup> Shortly, before doing that we shall briefly examine the stewardship role of the Roman Pontiff as a unique administrator in the Church. Chapter three intends to examine the *munera* of the administrator.<sup>9</sup> It will consider whether or not the functions of administrators are restricted to the canons on administration (cc. 1273-1289). The function of administering ecclesiastical goods also involves some councils and persons. Chapter two will also consider the functions of these councils and persons. The possibility of having an episcopal vicar whose competency will be focused on temporal goods will be studied as well.

Having studied the exercise of the power of the diocesan bishop in caring for ecclesiastical goods and the role of the administrator in caring for ecclesiastical goods, it will be pertinent to consider the nature of the norms issued by the diocesan bishop which direct the exercise of his power towards caring for ecclesiastical goods. These norms are also to provide a guide for administrators to exercise their functions properly. The document envisaged by the Code to be “the one in all” is the special instructions mentioned in canon 1276, §2. However, in order to study what this instructions addresses, we need to understand the nature of an instruction. Chapter three will consider the juridic nature of an instruction as provided in canon 34. Canon 1276, §2 will then be examined in detail. The various terms used in the canon will be analyzed. In examining the meaning of the words in canon 1276, §2, the vigilance of the ordinary<sup>10</sup>

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<sup>8</sup> The focus will be on administrators who are subject to the diocesan bishop’s power of jurisdiction. We do not intend to study administrators of religious institutes and societies of apostolic life.

<sup>9</sup> The functions of the administrator require him or her to act on behalf of the public juridic person. In so doing, he or she performs every act that has to do with governing the public juridic person. His or her function is not only to perform acts of administration, but also to acquire and to enter into contracts, especially alienation, on behalf of the public juridic person.

<sup>10</sup> Our dissertation shall focus mainly on local ordinary (c. 134, §2).



and his duty to ensure that the rights of public juridic persons are respected in the issuance of an instruction will be addressed.

Chapter four will focus on the content of the diocesan special instructions for administrators of ecclesiastical goods. Our aim in this chapter will be to produce a template from which diocesan bishops may issue the special instructions of canon 1276, §2. We shall explain technical terms used in Book V. After that, the chapter will identify the subjects of the special instructions. We shall attempt to present a general principle that can assist in understanding the need for the proper administration of ecclesiastical goods. The specific ways the diocesan instructions may mandate or direct administrators to acquire, retain, administer, and alienate temporal goods will be considered. Matters concerning other contracts that an administrator may perform apart from alienation will also be studied. Moreover, we will make some recommendations on how this instructions is to address issues of labor and other civil law concerns.

## Chapter One

### The Power of the Diocesan Bishop in Caring for Ecclesiastical Goods

#### Introduction

The diocesan bishop's power is properly appreciated within the broader understanding of ecclesiastical power. Consequently, in this chapter we shall first briefly examine the notion of power within the Church. The goal is to delineate the power of the diocesan bishop in caring for ecclesiastical goods of public juridic persons subject to him. Power exists in the Church for its mission. The Church receives its mission from Christ, and all the baptized<sup>1</sup> are called to share in it (c. 216; *CCEO*, c. 19).<sup>2</sup> This mission consists partly in the proclamation of the divine message for the salvation of everyone (c. 211). In order to fulfill this mission, Christ entrusted the Church with the means necessary for exercising authority, namely, the power of orders, the power of governance (*potestas regiminis*), and general moral authority.<sup>3</sup>

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<sup>1</sup> The faithful have by divine law the right and duty, in virtue of baptism (c. 204, §1) and holy orders (c. 1008, §1), to participate in the threefold *munera* of the Church, but the precise way in which this is done is regulated by the ecclesiastical law

<sup>2</sup> *Codex iuris canonici auctoritate Ioannis Pauli PP. II promulgatus fontium annotatione et indice analytico-alphabetico auctus*, Vatican City State, Libreria editrice Vaticana, 1989, *Code of Canon Law: Latin-English Edition, New English Translation*, prepared under the auspices of THE CANON LAW SOCIETY OF AMERICA, Washington, CLSA, 1999 (=CIC/83).

*Codex canonum Ecclesiarum orientalium auctoritate Ioannis Pauli PP. II promulgatus, fontium annotatione auctus*, Vatican City State, Libreria editrice Vaticana, 1995, English translation *Code of Canons of the Eastern Churches: Latin-English Edition, New English Translation*, prepared under the auspices of THE CANON LAW SOCIETY OF AMERICA, Washington, CLSA, 2001 (=CCEO).

*Codex iuris canonici Pii X Pontificis Maximi iussu digestus Benedicti Papae XV auctoritate promulgatus*, Typis polyglottis Vaticanis, 1917, English translation E. N. PETERS (ed.), *The 1917 Pio-Benedictine Code of Canon Law*, San Francisco, Ignatius Press, 2001.

These three translations are used throughout this work.

<sup>3</sup> "The word 'authority' comes from the Latin *auctoritas* which belongs to a family of terms meaning 'to cause to grow,' 'to produce.' A person in authority should, accordingly, foster the growth of a society thanks to an invested power to influence or command, thought, opinion or behavior 'Authority' is found frequently in the texts of Vatican II, but only once in the Latin translation of the Bible, the Vulgate, which prefers *potestas* = 'power.' The New Testament Greek uses *dynamis* = 'ability,' 'capacity,' 'power'; and *exousia* = 'the ability to perform an action,' 'the power which decides.'

The temporal goods owned by the universal Church, the Apostolic See, and other public juridic persons are ecclesiastical goods (c. 1257). Ecclesiastical goods have a special ecclesial dimension because they serve the mission of the Church. The legislator identifies the following as the principal purposes for ecclesiastical goods in the Church: the ordering of divine worship, the fitting support of clergy and other ministers, and the works of the apostolate and charity, especially towards the needy (c. 1254, §2). These purposes relate to the mission of the Church. The mission of the Church is fulfilled through the *munera Christi*. The Church carries out these *munera Christi* with the aid of temporal goods. Ecclesiastical goods are involved in the governance and administration of dioceses, parishes, religious institutes, public associations of the faithful, and autonomous foundations; they are needed to celebrate the sacred liturgy which is the principal way of sanctification of the people of God (c. 834, §1); they are needed to fulfill the prophetic office of Christ (e.g., proclamation of the word of God, establishment of Catholic schools and universities, etc.).

The Code makes provisions for the participation of all in the mission of the Church (cc. 211; 216; 759<sup>4</sup>; and 781; *CCEO*, cc. 402; and 584, §1).<sup>5</sup> However, this

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“In the Church of God, ‘authority,’ in the basic and fullest sense of the word, belongs to the Triune God, Father, Son, and Spirit. This is illustrated by the fact that the ultimate source of ‘growth’ is said to be God alone (1Cor 3:6-7; 8:6). [...]”

“When humankind is granted to participate in their power, it is always with the understanding that the source, mode/norm, and the end of such a derived power are none other than the Trinity. This holds true even of civil (Rom 13:1; John 19: 11; Wis 6:3) and parental (Matt 23:9; Eph 3:14-15) authority. In turn, ‘obedience’ is due, in the last resort, exclusively to the Triune God no matter how many intermediaries may have been established to lead us to this point.” In T.R. POTVIN, “Authority in the Church,” in M. GLAZIER and M.K. HELLWIG (eds.), in *The Modern Catholic Encyclopedia*, revised and expanded edition, Collegeville, Minnesota, The Liturgical Press, 2004, pp. 59-60 (=POTVIN, “Authority in the Church”).

<sup>4</sup> This canon has no corresponding Eastern canon.

<sup>5</sup> “The New Testament testifies to a further delegation of authority within the Church of God, one which often explicitly includes the active participation of the whole community in the form of election and/or prayer.” In POTVIN, “Authority in the Church,” p. 61.

mission is in a special way committed to the Roman Pontiff, and the college of bishops together with the Roman Pontiff, who are the subject of supreme and full power over the universal Church (c. 336). The diocesan bishop, as a member of this college, has a unique obligation to coordinate the various activities in his diocese to ensure that the mission of the Church is fulfilled (cc. 375, 381 and 391).<sup>6</sup> Since ecclesiastical goods serve the fulfillment of this mission, the diocesan bishop has a special duty in ensuring that ecclesiastical goods are well administered (c. 392, §2).

After studying the power of the diocesan bishop, we shall proceed to examine how this power is exercised to care for the ecclesiastical goods of public juridic persons subject to him. Given the fact that only the goods of the universal Church and public juridic persons are recognized as “ecclesiastical goods” in the Latin Church (c. 1257, §1), we shall also examine the nature of public juridic persons.

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<sup>6</sup> The 2004 *Directory for the Pastoral Ministry of Bishops* describes episcopal power as that which is distinguished “by its divine origin and by the context of ecclesial communion and mission. It has a pastoral goal and character which promotes unity in faith, in sacraments and in ecclesial discipline, and orders the particular Church in accordance with its nature and ends. The diocesan Bishop accomplishes his mission through exercising in Christ’s name that *power* which is attached by law to the office conferred by the canonical mission. In virtue of this power bishops have the sacred right and duty before the Lord to issue laws for the faithful, to make judgments and to regulate everything pertaining to the good order of worship and the apostolate.” In CONGREGATION FOR BISHOPS, *Directory for the Pastoral Ministry of Bishops*, no. 64, Vatican City, Libreria editrice Vaticana, 2004, p. 73 (=DPMB). For a thorough study of this Directory, see T. GREEN, “The 2004 Directory on the Ministry of Bishops: Reflections on Episcopal Governance in a Time of Crisis,” in *Studia canonica*, 41 (2008), pp. 117-152 (= GREEN, “The 2004 Directory on the Ministry of Bishops”); see also A.W. BUNGE, “El nuevo Directorio para el ministerio pastoral de los obispos, *Apostolorum Successores*,” in *Anuario Argentino de Derecho Canónico*, 12 (2005), pp. 117-164.

## 1.1 — The General Conception of Power in the Church<sup>7</sup>

Our task is to determine the scope of power of the diocesan bishop as it relates to his care for ecclesiastical goods of public juridic persons subject to him. One model of the Church that was predominant before the Second Vatican Council was that of the Church as a perfect society.<sup>8</sup> As a perfect society, it had its own goals and means of fulfilling them.<sup>9</sup> F. Cappello defined a society as “a union of men for the sake of achieving certain and common goals using the same common means.”<sup>10</sup> J. Cuneo

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<sup>7</sup> J. BURKE defines ecclesiastical power as “that authority to govern God’s people towards the supernatural end for which the Church was founded.” In *A Dictionary of Canon Law*, Akure, Don Bosco Publications, 2004, p. 368 (=BURKE, *A Dictionary of Canon Law*) Power is, therefore, understood as any authority that is required to ensure that the mission of the Church is fulfilled.

There have been various understandings of power and some commentators believe that it is difficult, if not impossible, to define what exactly constitutes power J Cuneo, writing before the 1983 code, says. “What do we mean by power? Is it a function (something to be done)? Is it a personal capacity to fulfill a function? Is it a right to function? Has the ontology of power ever been clarified or does it usually remain undefined in various discussions? It seems that various discussions or statements about power take the basic definition for granted. At different times the part is used for the whole or the whole for the part. Canon law says that the hierarchy has the power of orders and the power of jurisdiction, *Lumen gentium* affirms that episcopal ordination confers functions of sanctifying, teaching, ruling Is Vatican II saying that power comes only from ordination for all three functions? It seems that the term power is equivocal, so that the simple evolution from the Code to Vatican II cannot be at all apparent.” In “The Power of Jurisdiction: Empowerment for Church Functioning and Mission Distinct from the Power of Orders,” in *The Jurist*, 39 (1979), footnote 32, pp. 197-198 (=CUNEO, “The Power of Jurisdiction”).

<sup>8</sup> J. BEAL explains: “The Church articulated in the 1917 code bore the unmistakable stamp of the *Schema De Ecclesia* that had been prepared for, but was not acted on by, the First Vatican Council. This *Schema* asserted badly that ‘it is an article of faith that the Church of Christ represents a perfect society,’ a society which possesses all the means necessary to pursue its end.” In “The Exercise of the Power of Governance by Lay People: State of the Question,” in *The Jurist*, 55 (1995), p. 2 (=BEAL, “The Exercise of the Power of Governance by Lay People”).

<sup>9</sup> Y. CONGAR writes: “The Church was defined juridically in social categories as *societas perfecta*, a complete, autonomous society, having all the juridical attributes of such a society, in particular that of ‘*potestas coactive*.’” In “What Belonging to the Church Has Come to Mean,” in J F HITE et al. (eds.), *Reading Cases Materials in Canon Law. A Textbook for Ministerial Students*, Collegeville, Minnesota, The Liturgical Press, 1980, p. 99 (=CONGAR, “What Belonging to the Church Has Come to Mean”).

G. J. ROCHE remarks: “There have been debates about whether Book V adequately reflects the teachings of the Second Vatican Council, especially on the issue of ‘communio.’ It has been stated that Book V is based more on the notion of the Church as a ‘perfect society,’ than on the ecclesiology of the council.” In “The Poor and Temporal Goods in Book V of the Code,” in *The Jurist*, 55 (1995), p. 300 (= ROCHE, “The Poor and Temporal Goods in Book V of the Code”) For a comprehensive overview of the poor in magisterial teaching see idem, *The Poor in the Code of Canon Law and the “Option for the Poor” in the Teaching of Pope John Paul II*, Rome, Pontifical Gregorian University, 1993.

<sup>10</sup> F. CAPPELLO, *Summa iuris publicis ecclesiastica*, 6<sup>th</sup> edition, Rome, Pontificia Universitas Gregoriana, 1945, p. 25; see also CUNEO, “The Power of Jurisdiction,” p. 183.

remarks that two aspects of this definition of Cappello are vital to a true understanding of how a society functions: (1) every society has a common goal, and (2) every society has the means to attain this goal.<sup>11</sup> The Church as a society also has a common goal and the means to fulfill it. The goal of the Church is the salvation of everyone, and the means to attain this goal are both spiritual and temporal. The spiritual means are the sacraments, grace, and the power which Christ has given to the Church.<sup>12</sup> The temporal means are ecclesiastical goods, which are used to assist in achieving the mission of the Church.<sup>13</sup>

The concept of mission affects the structure of power by broadening its base of exercise to include by right a greater participation of the ecclesial membership<sup>14</sup> in the

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<sup>11</sup> CUNEO, "The Power of Jurisdiction," p. 183

<sup>12</sup> For a technical treatment of *communio* and the mission of the Church see J. RENKEN, "Duc in Altum" *Communio: Source and Summit of Church Law*, in *The Jurist*, 63 (2003), pp. 22-69; J A KOMONCHAK, "Canon Law in Service of Communion," in *The Jurist*, 63 (2003), pp. 1-21, R.J. KASLYN remarks that "accountability exists as an integral element in the structure of the Church and is essential to the office of bishops." In "Accountability of Diocesan Bishops: A Significant Aspect of Ecclesial Communion," in *The Jurist*, 67 (2007), p. 109. In other words accountability is essential to fulfilling properly the office of the bishop. Concerning *communio* and financial matters in the diocese, see D. FRUGE, "Diocesan Taxation of Parishes in the United States, Sign of *Communio* or Source of Tension?" in *CLSA Proceedings*, 60 (1998), pp. 68-81.

<sup>13</sup> See BEAL, "The Exercise of the Power of Governance by Lay People," p. 3.

<sup>14</sup> CONGAR cautions against the use of the term "*membra*" because the term membership in the Church could be misleading: "The Council intentionally avoided speaking of '*membris*.' The Council Fathers had in fact perceived that this vocabulary led to difficulties for which no solution could be found. In the sub-committee of the doctrinal Commission, in which we participated, it was realized that the way in which one spoke of the membership of Catholics in the Church implied a particular concept of the Church. If only external elements were brought into play, one was left with a completely external, juridical concept of the Church. Therefore, it was essential to mention an interior, spiritual element without, however, transforming the whole notion of belonging to the Church into something invisible as with Wyclif or Huss. Hence this wording of no. 14 *Lumen Gentium*: 'They are *fully* incorporated into the society of the Church who, possessing the spirit of Christ, accept her entire system of organization.' In "What Belonging to the Church Has Come to Mean," p. 101 [emphasis in the original].

The 1983 Code also avoids the use of the term "membership." It rather speaks of incorporation: c. 204, §1 says: "The Christian faithful are those who, inasmuch as they have been incorporated in Christ through baptism, have been constituted as the people of God." Canon 205 establishes the external and spiritual criteria for determining full communion in the Church.

fulfillment of the ends of the Church.<sup>15</sup> Power in the Church is always related to a mission or a goal. The evaluation of whether power is exercised positively or negatively is, therefore, based on its relation to the goal or end which it is meant to achieve. Let us now take a cursory look at how various concepts of power evolved in the past.

### 1.1.1 — The Bipartite Division of Power: Order and Jurisdiction

Beal writes:

In order to achieve its end of promoting the salvation of its members, the Church—society requires and, by the will of Christ, possesses two powers, one a sacramental power which enables the Church to communicate to each of its members the saving grace of God *in persona Christi* and the other a social power which enables the Church to guide and if necessary to coerce its members along the ways of salvation. These two powers are equally rooted in the will of Christ for his Church.<sup>16</sup>

These two powers are related to each other since they both have a common goal, namely, the salvation of souls. A.E. Bawyn recently authored a comprehensive study on the power of the diocesan bishop.<sup>17</sup> In this work, he discusses the historical development of the notion of power in the Church. Ecclesiastical power, he argues, has always been conceived as having its origin in Christ: “Being thus founded in the life of the one who instituted the Church, this power can stress its spiritual roots from which has grown a society comparable to other societies [...]. But since she also wished to differentiate

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<sup>15</sup> See CUNEO, “The Power of Jurisdiction,” p. 184.

<sup>16</sup> See BEAL, “The Exercise of the Power of Governance by Lay People,” p. 3.

<sup>17</sup> See A.E. BAWYN, *Discovering the Administrative Power Belonging to the Diocesan Bishop: The Use and Implication of Power and Governing in Book II and Book I of the 1983 Code of Canon Law*, JCD thesis, Leuven, Katholieke Universiteit, 2000 (=BAWYN, *Discovering the Administrative Power Belonging to the Diocesan Bishop*).

herself from nation states, the Church called her power sacred, because ‘it goes back to Christ.’”<sup>18</sup>

A few theologians and canonists hold the theory that *sacra potestas* is the foundation for all power within the Church. K. Mörsdorf, who was one such proponent, argues that *sacra potestas* is “the power which Jesus Christ has given the Church to exercise in his name, in the discharge of ministries he has established in his Church in such a way that they have to be carried out by special authorities [...]”<sup>19</sup> Thus, according to Mörsdorf, all power within the Church derives from *sacra potestas*.<sup>20</sup> He says that although this power relates to the diocesan bishops, it is nonetheless too narrow to accommodate contemporary ecclesiology which recognizes a wider participation in church power than only that of the ordained.<sup>21</sup>

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<sup>18</sup> Ibid, p. 11; J.I. ARRIETA says: “The Second Vatican Council expressed the mystery of the Church as ‘De populo Dei’ and the 1983 code adopted this terminology in Book II ‘The People of God’ The relevance of the term ‘people’ to ecclesial society refers to a consideration of the Church as a union of those who belong to a common lineage who have assumed by baptism the mission of Christ. [ ] The bonds that unite the members and bind them to Christ are the fruits of grace and of participation in the redemption of Christ. The juridical dimension of these bonds constitutes radical positions of freedom, submission and autonomy in those who form part of the people of God” In *Governance Structures Within the Catholic Church*, Chicago, Midwest Theological Forum, 2000, p. 1.

<sup>19</sup> K. MORSDORF, “Ecclesiastical Authority,” in K. RAHNER et al. (eds.), *Sacramentum Mundi*, vol 2, London, Burns and Oates, 1968, p. 133 (=MORSDORF, “Ecclesiastical Authority”).

<sup>20</sup> For detailed study of “sacred power” as the source of all power in the Church see K. MORSDORF, “Munus regendi et potestas iurisdictionis,” in *Acta Conventus Internationalis Canonistarum Romae diebus 20-25 mai 1968 celebrati*, Vatican City, Typis Polyglottis Vaticanis, 1970, pp. 206-211 (=MORSDORF, “Munus regendi et potestas iurisdictionis”).

<sup>21</sup> BAWYN argues that the term *sacra potestas* is not used by the 1983 Code because its use would limit the cooperation or participation of the lay faithful in this power. In *Discovering the Administrative Power Belonging to the Diocesan Bishop*, p. 13.

However, BEAL treats this matter slightly differently when he explains that “the Council placed special emphasis on the ‘secular’ character of lay people and on their responsibility ‘to work for the sanctification of the world as it were from inside, like leaven’ (LG 31) and ‘to make the Church present and active in those places and circumstances where only through them can it become salt of the earth’ (LG 33) This secular character of the lay apostolate was *intended to be a typological description rather than an ontological definition*. Thus, the council did not foreclose the possibility of an active role of lay people in the Church’s internal mission.” In “The Exercise of the Power of Governance by Lay People,” p 15 [emphasis added].



The traditional teaching on the power of order has been that it comes from the laying on of hands in ordination. J. Ferrante explains: “Christ the Lord, the founder of the Church, willed these two things: a) to confer on the Apostles and their successors full and supreme authority over those things which pertain to the supernatural order; b) to confer on them a power wholly independent from civil authority.”<sup>22</sup> J.M. Huels says that “[t]raditionally, the power of order is divided into the power of order of divine law and the power of order of the ecclesiastical law. Very few powers of order are of the divine law. They are the power to celebrate the sacraments of confirmation, the Eucharist, penance, possibly anointing of the sick (a disputed question), and holy orders. All other powers of order are powers of the ecclesiastical law.”<sup>23</sup> The power of order was understood to be handed on through the laying on of hands at ordination. Ordination was, therefore, conceived as the only source of power in the Church, and this power was understood as any faculty that was required for governing the Church.<sup>24</sup>

As time went on, the Church struggled to deal with the question of what happens to those who had received this power but had later abandoned the faith. Do such persons lose this power? Can a distinction be made between an enduring power and one which is effective only during the fulfillment of an office? This problem led some to argue in favor of a general distinction between a power originating in sacred ordination<sup>25</sup>

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<sup>22</sup> J. FERRANTE, *Summa iuris constitutionalis Ecclesiae*, Rome, Officium Libri Catholici, 1964, pp. 118-119; see also BEAL, “The Exercise of the Power of Governance by Lay People,” p. 3.

<sup>23</sup> J.M. HUELS, *Empowerment for Ministry: A Complete Manual on Diocesan Faculties for Priests, Deacons and Lay Ministers*, New York/Mahwah, Paulist Press, 2003, p. 23 (=HUELS, *Empowerment for Ministry*).

<sup>24</sup> See E. LABANDEIRA, *Tratado de derecho administrativo canónico*, 2<sup>nd</sup> edition, Pamplona, EUNSA, 1993, p. 68 (= LABANDEIRA, *Tratado*).

<sup>25</sup> BEAL notes: “The power of order was communicated directly and immediately by Christ through sacred ordination. In virtue of this power, the ordained became a merely instrumental cause of the communication of divine grace *ex operato* to the faithful especially through the sacraments.” In “The

and a power originating in a canonical mission.<sup>26</sup> These debates produced two theological views of ordination and power,<sup>27</sup> namely, relative and absolute ordination. “The relative ordination is understood as an ordination which is accompanied by a simultaneous conferral of an office for the exercise of ecclesiastical power.”<sup>28</sup> The absolute ordination was ordination without the conferral of an office and this was favored by those who held the view that there were two distinct species of power.

K. Mörsdorf notes that the Council of Chalcedon in 451 abolished absolute ordinations, but with the transfer of bishops the issue of absolute ordination was revived.<sup>29</sup> The practice of benefices also kept the issue of absolute ordination alive. Benefices became the custom in most places. Attached to specific offices were parcels of land by which clerics received sustenance.<sup>30</sup> Mörsdorf further remarks that, although the Third Lateran Council (1179) warned that bishops should not ordain without a specific title to a benefice, “the Council nonetheless legitimized the practice of separating

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Exercise of the Power of Governance by Lay People,” p. 4, see also G. MICHIELS, *De potestate ordinaria et delegata. Commentarius Tituli V Libri II Codicis Iuris Canonici*, Paris, Desclée, 1964, p. 37.

<sup>26</sup> See BAWYN, *Discovering the Administrative Power Belonging to the Diocesan Bishop*, p. 14. BEAL explains: “Only the Roman Pontiff received the power of jurisdiction immediately from Christ on his acceptance of a legitimate election. All others received this power through the mediation of a canonical mission from competent ecclesiastical authority.” In “The Exercise of the Power of Governance by Lay People,” p. 4

<sup>27</sup> BAWYN notes that “the school of thought that holds that one sacred power exists in the Church is represented by K. Mörsdorf, W. Aymans, P. Kramer, K. Ludicke, J. Neumann, O. Saier, H. Socha, K. Walf, M. Schmaus, K. Rahner, W. Bertrams, G. Philips and J. Ratzinger. The second school of thought, which holds that there are two powers that exist separately, is represented by J. Beyer, J. Cuneo, G. Ghirlanda, A. Gutiérrez, A. Stickler, J. Hervada, P. Lombardia, P. Gismondi.” In *Discovering the Administrative Power Belonging to the Diocesan Bishop*, p. 15. For a detailed treatment of this matter see M. WIJLENS, *Theology and Canon Law: The Theories of Klaus Mörsdorf and Eugenio Corecco*, JCD thesis, Ottawa, Saint Paul University, 1992, especially pp. 61-73; 117-118 (=WIJLENS, *Theology and Canon Law*).

<sup>28</sup> BAWYN, *Discovering the Administrative Power Belonging to the Diocesan Bishop*, p. 15.

<sup>29</sup> See K. MÖRSDORF, “De sacra potestate,” in *Apollinaris*, 40 (1967), pp. 49-51.

<sup>30</sup> See *ibid.*

ordination from office by insisting that bishops provide for such clerics until such time as they can support themselves or be assigned to a benefice.”<sup>31</sup> However, it became possible for a bishop to lose his see, in which case he could still validly exercise his order even without an office or jurisdiction. The unity of power, as was taught in earlier times, was then understood differently.<sup>32</sup> Power had come to be conceived as both power of order (which comes with ordination) and power of jurisdiction (which comes with an office).<sup>33</sup>

This distinction between the power of order and the power of jurisdiction led to the teaching on the distinction of the possession of orders themselves from the exercise of the order.<sup>34</sup> It was taught that the power of order could not be lost but the power of jurisdiction could be lost because it is rooted in canonical mission.<sup>35</sup> The mode of

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<sup>31</sup> Ibid; see also E. LABANDEIRA, *Tratado*, pp. 69-70.

The Fathers of the Third Lateran Council decreed: “If a bishop ordains someone as deacon or priest without a definite title from which he may draw the necessities of life, let the bishop provide him with what he needs until he shall assign him the suitable wages of clerical service in some church, unless it happens that the person ordained is in such a position that he can find the support of life from his own or family inheritance” In “The Third Lateran Council,” canon 5, March 1179, in N.P. TANNER, *Decrees of the Ecumenical Councils*, vol. 1, Washington, Sheed & Ward, and Georgetown University Press, 1990, p. 214 (=TANNER, *Decrees of the Ecumenical Councils*).

<sup>32</sup> See M. WIJLENS, “The Power of Governance [cc. 129-144],” in *CLSA Comm2*, p. 184.

<sup>33</sup> See *ibid*.

<sup>34</sup> See BAWYN, *Discovering the Administrative Power Belonging to the Diocesan Bishop*, p. 16.

<sup>35</sup> See *ibid*; see also K. MORS DORF, “Abgrenzung und Zusammenspiel von Weihegewalt und Hirten Gewalt,” in *Die Kirche in der Welt*, 4 (1951), p. 19; see also M. WIJLENS, *Theology and Canon Law*, pp. 49-50.

M. SCHMAUS wrote “The Donatists in North Africa had so lofty a conception of the sanctity of the Church that they declared that only holy men could be the ministers of the Church’s holy power. The sinner, by his sin, lost all his spiritual power; he could not administer the sacraments, celebrate the Eucharist, or forgive sins. Augustine played a decisive role in this debate. Although he did not himself find a satisfying solution, he did prepare the way for one by his teaching about the spiritual character, the mark of consecration which remained even with the heretical bishops. This according to Augustine is not possible to lose. It represents in some way a likeness to Christ, who is the reason why such a bishop can administer the sacraments. It was through painful experience that the distinction was learned between the power of orders, which cannot be lost, and the power of jurisdiction, which can be.” In *Dogma 4: The Church its Origin and Structure*, translated by M. LEDERER, Kansas City/London, Sheed and Ward, 1976, p. 146.

transmission of these two distinct powers was also a source of great debate.<sup>36</sup> E. Labandeira comments that the Council of Trent and the First Vatican Council both agreed that there were two distinct powers: the power of order and the power of jurisdiction.<sup>37</sup>

### **1.1.2 — The Tripartite Division: Orders, Jurisdiction and Magisterium**

Some protestant theologians influenced the further division of power into order, jurisdiction, and magisterium. Beal writes: “In the eighteenth century, some Catholic theologians, influenced by Calvin through the mediation of Lutheran theologians, adopted a tripartite division of ecclesial power. This tripartition paralleled Christ’s three-fold office as priest, prophet and king with the Church’s mission to sanctify, teach and govern.”<sup>38</sup> This division of power was not readily accepted by all theologians and canonists. Beal explains: “While this tripartite distinction of powers had some following among theologians and was occasionally mentioned in magisterial documents, it was not warmly received by canonists. When they adverted to this tripartite paradigm, canonists generally assimilated the office of sanctifying to the power of orders and the offices of teaching and governing to the power of jurisdiction.”<sup>39</sup> Beal further remarks: “Attempts

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<sup>36</sup> MORS DORF notes: “It was not episcopal consecration but the bestowal of episcopal office which made a bishop [...] the original sense of the distinction made it impossible to discern the Church’s nature as a whole, and above all opened a gulf in men’s minds between the Church as a religious society and the Church as a juridical society.” In “Ecclesiastical Authority,” p. 134; see also V. WALSH, “The Theological and Juridical Role of the Bishop: Early Twentieth Century and Contemporary Views,” in *Apollinaris*, 41 (1971), pp. 47-50 (=WALSH, “The Theological and Juridical Role of the Bishop”).

<sup>37</sup> See LABANDEIRA, *Tratado*, p. 80.

<sup>38</sup> BEAL, “The Exercise of the Power of Governance by Lay People,” p. 6.

<sup>39</sup> *Ibid.*; WIJLENS writes: “Canonists and theologians attempted to relate the notion of the three offices to the original two powers. They assigned each office a power of its own: *potestas docendi*, *potestas sanctificandi*, and *potestas regendi*. [...] it became the practice to define the three powers by their tasks [...]

were made to introduce this tripartite division of the Church's power into canon law and to correlate it with the traditional doctrine of two powers in the nineteenth century by F Walter and G. Philips."<sup>40</sup> From this notion of *munera* came the doctrine of the threefold power (*potestas*).<sup>41</sup> Given the fact that the bipartite distinction was still in place during the eighteenth century, "scholars had to find a power under which to place the task of magisterium."<sup>42</sup>

### 1.1.3 — The Nature of Power of the Residential Bishop in the 1917 Code of Canon Law

The 1917 Code declared that there is a divinely instituted distinction in the Church between clerics and laity among Christ's faithful. Canon 107 stated: "By divine institution there are in the Church *clerics* distinct from *laity*, although not all clerics [possess orders that] are of divine institution; either of them can be *religious*." This canon stipulated that the "Church is by divine institution a *hierarchical society*. Hence the distinction between clerics, who participate in the powers of order and jurisdiction, and the laity, who do not, is of divine origin; but not all orders of clerics are of divine institution."<sup>43</sup> First tonsure, though not an order in itself, was nonetheless regarded as

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which, without quite obliterating it, more and more obscured the distinction drawn on another basis between *potestas ordinis* and *potestas iurisdictionis*" In *Theology and Canon Law*, p 52

<sup>40</sup> BEAL, "The Exercise of the Power of Governance by Lay People," p 6, see also WIJLENS, *Theology and Canon Law*, p 52, WALSH, "The Theological and Juridical Role of the Bishop," pp 47-50, BAWYN, *Discovering the Administrative Power Belonging to the Diocesan Bishop*, p 18

<sup>41</sup> See BAWYN, *Discovering the Administrative Power Belonging to the Diocesan Bishop*, p 18

<sup>42</sup> *Ibid*, p 20

<sup>43</sup> T L BOUSCAREN, et al, *Canon Law. A Text and Commentary*, 4<sup>th</sup> revised edition, Milwaukee, W Bruce Publishing Co, 1963, p 93 (=BOUSCAREN, *Canon Law. A Text and Commentary*) For a recent treatment of cleric-lay distinction see D M SHAKAL, "The Canonical Status of Members of Institutes of Consecrated Life," in *Studia canonica*, 43 (2009), pp 297-330

the entrance to the clerical state. “First Tonsure is not an order but a preparation for orders. It is, however, recognized as the entrance into the clerical state (c. 108, §1); and is classed with orders, the rite by which it is conferred being called ordination (c. 950). Like the orders, it is *never* repeated.”<sup>44</sup>

Canon 109 stated:

Those who are taken into the ecclesiastical hierarchy are not bound thereto by the consent or call of the people or secular power, but are constituted in the grades of the power of orders by sacred ordination; into the supreme pontificate, by divine law itself upon the completion of the conditions of legitimate election and acceptance; in the remanding grades of jurisdiction, by canonical mission.

The canon refuted the erroneous teaching of the time that postulated that power comes from the popular will of the people.<sup>45</sup> The source of power was ordination and canonical mission. Canon 948 said ordination was instituted by Christ to distinguish clerics from laity for the purpose of governance of the faithful and the ministry of divine worship. “Ordination is a sacred rite which confers the power of order. It is certainly a sacrament in the case of Bishops, priests, and deacons. Almost certainly it is not a sacrament, but a sacramental, in minor orders, and most probably also in the ordination of subdeacons.”<sup>46</sup>

The power of jurisdiction comes from canonical mission.<sup>47</sup> Canon 147, §2 defined

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<sup>44</sup> Ibid, p. 95 [emphasis in the original].

<sup>45</sup> See *ibid.*, p. 96. “This canon, the first clause of which is taken from the dogmatic canons of the Council of Trent, is directed against certain innovations which cropped out throughout the history of the Church, but were introduced especially by the so-called reformers of the sixteenth century. The ‘consent of the people’ was the favourite cry of Arnold of Brescia and his followers, in the twelfth century. It was repeated by Wiclif and Huss, Calvin and Zwingli’ Against these the Council of Trent declared it as an article of faith that the people have no voice in the choice of ministers.” In C.A. BACHOFEN, *A Commentary on the New Code of Canon Law*, vol. 2, Saint Louis, Herder Book Co., 1936, p. 47 (=BACHOFEN, *A Commentary on the New Code of Canon Law*).

<sup>46</sup> Ibid.

<sup>47</sup> For an example of this, see the apostolic constitution of JOHN PAUL II *Sapientia christiana*, where he uses the expression “canonical mission” (*missio canonica*), in this way: “Those who teach disciplines concerning faith or morals must receive, after making their profession of faith, a canonical mission from the chancellor or his delegate, for they do not teach on their own authority but by virtue of the mission they have received from the church.” In apostolic constitution on Norms for Ecclesiastical

canonical provision but not canonical mission: “Under the name *canonical provision* comes a grant of ecclesiastical office made by the competent ecclesiastical authority according to the norms of the sacred canons.”<sup>48</sup> Canon 118 stipulated: “Only clerics can obtain powers, whether of orders or of ecclesiastical jurisdiction, and benefices or ecclesiastical pensions.” It was considered the right of clerics only to obtain power of jurisdiction by virtue of their ordination. Augustine pointed out that “[t]his is a strict *right*, not a mere privilege; a right reserved to the clergy because the divine organization of the Church enjoys the peculiarity that ecclesiastical power is granted only to those chosen by Christ. Hence whatever pertains to the hierarchical power, order, and jurisdiction can be conveyed only to such as belong to the hierarchy.”<sup>49</sup>

One commentator on the 1917 Code explained jurisdiction as

the power to govern the faithful for the supernatural end for which the Church was established by Christ. This power is in the Church by *divine institution*, because Christ with divine authority placed it there (cf. c. 108). Its chief classifications are: (1) jurisdiction in the external and internal fora (c. 196); (2) ordinary jurisdiction and delegated jurisdiction (c. 197); judicial and voluntary jurisdiction (c. 201).<sup>50</sup>

Ecclesiastical jurisdiction of the residential bishop was “the public power of ruling baptized persons toward holiness and supernatural happiness. This power is granted to

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Universities and Faculties *Sapientia christiana*, 29 April 1979, no. 27, in *AAS*, 71 (1979), p. 483; English translation in *Origins*, vol. 9, no. 3 (1979), p. 39.

<sup>48</sup> BACHOFEN wrote: “‘*missio canonica*’ is necessary for all who are inferior to the Pope. For as the Lord sent his Apostles, so in turn they sent others to exercise their spiritual power with authority, and without such credentials no one has authority in Church. Formerly (up to the twelfth century) the *missio canonica* was believed to be included in ordination, but now that absolute ordination is possible, a distinct *missio canonica*, by which jurisdiction is conferred, is always required.” In *A Commentary on the New Code of Canon Law*, p. 48.

<sup>49</sup> *Ibid.*, p. 57.

<sup>50</sup> *Ibid.*

someone by Christ or by the Church through injunction or through canonical mission.”<sup>51</sup> The “public” nature of this power was understood as used in the primary Latin sense of “belonging or pertaining to the state or to the commonwealth or the people.”<sup>52</sup> Thus, the power of jurisdiction in the 1917 Code was understood as a “kind of power or authority which is public and truly and uniquely of the Church: the power of ecclesial communion.”<sup>53</sup>

Canon 329 stated: “§1. Bishops are successors of the Apostles and by divine institution are placed over specific churches that they govern with ordinary power under the authority of the Roman Pontiff. §2. The Roman Pontiff freely appoints them.” Residential bishops had the right and duty to govern the dioceses entrusted to them with ordinary power of jurisdiction. One commentator on the 1917 Code taught that the bishop’s power is different from that of the priest because the former has the fullness of power of the priesthood and the power of jurisdiction in the external forum.<sup>54</sup> There was doubt the jurisdictional power of the residential bishop was subject to and dependent upon the jurisdictional power of the Supreme Pontiff.<sup>55</sup>

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<sup>51</sup> F. WERNZ-P. VIDAL, *Ius canonicum, II: De Personis*, 3<sup>rd</sup> edition, Rome, Universitatis Gregorianae, 1943, pp. 58-59.

<sup>52</sup> CUNEO, “The Power of Jurisdiction,” p. 188.

<sup>53</sup> *Ibid.*, p. 189.

<sup>54</sup> See *ibid.*, p. 341.

<sup>55</sup> “However, the *power* of the *bishops*, though subject to and dependent upon, this supreme jurisdiction of the Pope, is really *ordinary*, i.e., given by virtue of the episcopal office, radically or *aptitudinaliter* by consecration, fully and expeditely [expeditiously] by confirmation or promotion. Whether this jurisdiction is given to the bishop immediately by the Pope or by God Himself through the medium of his Vicar on earth, is a question which may agitate a speculatively inclined theologian, but does not excite the canonist. The more common opinion is the one mentioned first because it is certain that no bishop is constituted without the consent and confirmation of the Holy See; and hence we may say that all jurisdictions in the Church come immediately from the Pope.” In *ibid.*, pp. 45-46 [emphasis in the original].



The power of the residential bishop with regard to ecclesiastical goods derived from jurisdictional power. T. Comyns wrote: "The right to administer church property is derived from the power of jurisdiction."<sup>56</sup> Canon 335 of the 1917 Code stated that residential bishops "have the right and duty to govern the diocese both in temporal and spiritual matters, with legislative, judicial and coercive power, to be exercised according to the law." The 1917 Code also stipulated that a residential bishop possessed jurisdictional power over the people entrusted to him through a canonical mission given to him (cc. 197; 334, §1). This meant that, without a canonical mission, even a validly ordained bishop had no office with jurisdictional power. If a bishop had no office he could not administer the ecclesiastical goods of the diocese since the administration of ecclesiastical goods relates to the power of one's office.<sup>57</sup> Furthermore, since a canonical

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On the other hand, the First Vatican Council was very clear in defining the power of the Pontiff over the universal Church: "Wherefore we teach and declare that, by divine ordinance, the Roman church possesses a pre-eminence of ordinary power over every other church, and that this jurisdictional power of the Roman pontiff is both episcopal and immediate. Both clergy and faithful, of whatever rite and dignity, both singly and collectively, are bound to submit to this power by the duty of hierarchical subordination and true obedience, and this not only in matters concerning faith and morals, but also in those which regard the discipline and government of the church throughout the world. In this way, by unity with the Roman pontiff in communion and in profession of the same faith, the church of Christ becomes one flock under one supreme shepherd. This is the teaching of the catholic truth, and no one can depart from it without endangering his faith and salvation.

"This power of the supreme pontiff by no means detracts from that ordinary and immediate power of episcopal jurisdiction, by which bishops, who have succeeded to the place of the apostles by appointment of the holy Spirit, tend and govern individually the particular flocks which have been assigned to them. On the contrary, this power of theirs is asserted, supported and defended by the supreme and universal pastor." In "Session 4, Chapter 3: On the Power and Character of the Primacy of the Roman Pontiff," 18 July 1870, in TANNER, *Decrees of the Ecumenical Councils*, vol. II, pp. 813-814

<sup>56</sup> T. COMYNS, *Administration of Church Property*, Canon Law Studies, no. 147, Washington, The Catholic University of America, 1942, p. 65 (=COMYNS, *Administration of Church Property*); see T. VOWELL, *The Acts of Financial Administration by Diocesan Bishops according to the Norm of Canon 1277*, JCD thesis, Ottawa, Saint Paul University, 1991, p. 14 (=VOWELL, *The Acts of Financial Administration by Diocesan Bishops*).

<sup>57</sup> Different authors have noted that opinions were divided among scholars as to whether jurisdictional power comes from episcopal ordination or through the office given to the bishop. For a comprehensive study of this topic see G. RYAN, *Principles of Episcopal Jurisdiction*, Canon Law Studies, no. 120, Washington, The Catholic University of America, 1939; R.J. BOWERS, *Episcopal Power of Governance in the Diocesan Church: From the 1917 Code of Canon Law to the Present*, Canon Law Studies, no. 535, Washington, The Catholic University of America, 1990. Pius XII explained that the power of jurisdiction does not come from ordination: "If a lay person was elected Pope, [...] the power to teach and govern, as well as

mission was given by the pope to the bishop it was also understood that jurisdictional power was likewise given by the pope to the bishop, (and, therefore, the source of jurisdictional power, even though divine, had a mode of transmission which was not divine).<sup>58</sup> The consequence of this notion was reflected in canon 81 which stated that “ordinaries below the Pontiff cannot dispense from general laws of the Church, even in a specific case, unless this power has been explicitly or implicitly granted to them, or recourse to the Holy See is difficult or there is a grave danger or harm in delay.”

The notion that the power of jurisdiction was distinct from the power of order, and the rule that only clerics<sup>59</sup> could exercise the power of jurisdiction, continued to raise significant questions. Some of the questions asked were: Is the power of order necessary for the exercise of the power of jurisdiction? Can one who has not been ordained exercise the power of jurisdiction? What happens to one who was ordained and is no longer in union with the Church? Does he still exercise the power of jurisdiction because he has the power of order? The Second Vatican Council attempted to answer these questions in its treatment of the *tria munera*.

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the charism of infallibility, would be accorded to him from the moment of his acceptance, even before his ordination.” In “Allocutio us qui interfuerunt Conventui alteri catholicorum ex universo orbe, pro Laicorum Apostolatu,” 4 October 1957, in *AAS*, 49 (1957), p. 924; see also BEAL, “The Exercise of the Power of Governance by Lay People,” p. 8.

<sup>58</sup> For a detailed theological study of the relationship between the power of the pope and the diocesan bishop, see P. DELETTRE, “Primacy and Episcopacy: Doctrinal and Practical Implications,” in *The Thomist*, 27 (1963), pp. 222-235.

<sup>59</sup> BEAL writes: “Thus, the class of those to whom the power of jurisdiction could be lawfully conceded included many who had not received sacramental ordination and some who did not share even ecclesiastical power of orders. As a result, the link between the power of jurisdiction and sacramental ordination was somewhat looser in the 1917 code than might appear at first glance.” In “The Exercise of the Power of Governance by Lay People,” p. 8.

### 1.1.4 — The Nature of the Power of the Diocesan Bishop according to the Second Vatican Council

The First Vatican Council dealt largely with the power of the Roman Pontiff, but the relationship of this power to that of the diocesan bishop was not treated in detail. Consequently, scholars started treating the diocesan bishops as delegates of the Roman Pontiff; they were sometimes considered vicars of the Roman Pontiff, who had full jurisdiction over the universal Church. The power to grant dispensations from universal laws had to be delegated by the Holy See to the bishops (c. 81). The Fathers of the Second Vatican Council in their treatment of the power of bishops clearly defined the source of episcopal power:

The holy synod teaches, moreover, that the fullness of the sacrament of Orders is conferred by episcopal consecration, and both in the liturgical tradition of the church and in the language of the Fathers of the church it is called the high priesthood, the summit of the sacred ministry. Episcopal consecration confers, together with the office of sanctifying, the offices also of teaching and ruling, which, however, of their nature can be exercised only in hierarchical communion with the head and members of the college. In fact, from tradition, which is expressed especially in the liturgical rites and in the customs of both the Eastern and Western Church, it is abundantly clear that by the imposition of hands and through the words of the consecration, the grace of the Holy Spirit is given, and a sacred character is impressed in such wise that bishops, in a resplendent and visible manner, take the place of Christ himself, teacher, shepherd and priest, and act as his representatives (*in eius persona*). It is the right of bishops to admit newly elected members into episcopal body by means of the sacrament of Orders <sup>60</sup>

The Council went on to explain the nature of this power, and declared that bishops were not vicars or legates of the Roman Pontiff; instead, they are proper pastors of their flock with all the power necessary to shepherd it flock:

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

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<sup>60</sup> LG, no. 21, English translation in FLANNERY1, pp. 373-374.

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. [...].

The pastoral charge, that is, the permanent and daily care of their sheep, is entrusted to them fully, nor are they to be regarded as vicars of the Roman Pontiff, for they exercise the power which they possess in their own right and are called in the truest sense of the term prelates of the people whom they govern <sup>61</sup>

The decree on the Pastoral Office of Bishops in the Church further elaborated on how diocesan bishops are to exercise this power freely:

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

(b) Individual diocesan bishops have the power to dispense from the general law of the Church in particular cases those faithful over whom they normally exercise authority. It must, however, be to their spiritual benefit and may not cover a matter which has been specially reserved by the supreme authority of the Church.<sup>62</sup>

From the teachings of the Second Vatican Council it is clear that the power of the diocesan bishop is “ordinary” (related to the office), “proper” (exercised in his own name, not vicariously in the name of another), and “immediate” (directed toward all in the diocese without the mediation of another).<sup>63</sup> The diocesan bishop is no longer considered a delegate or vicar of the Roman Pontiff, but the Vicar of Christ in his own diocese.

The Second Vatican Council avoided using the term “power” (*potestas*) as much as possible; rather, it used the word *munus* which can mean an office, task, or duty.<sup>64</sup> The

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<sup>61</sup> *LG*, no. 27, English translation in FLANNERY1, pp. 382-383

<sup>62</sup> *CD*, no. 8, English translation in FLANNERY1, p. 567.

<sup>63</sup> See J.A. RENKEN, “Particular Churches and Their Groupings [cc. 368-572],” in *CLSA Comm2*,” in *CLSA Comm2*, p. 519

<sup>64</sup> BURKE, *A Dictionary of Canon Law*, p. 322

diocesan bishop receives the *munera* of sanctifying, teaching, and governing through the sacrament of episcopal ordination. Furthermore, the council clearly taught that Christ established a variety of offices in the Church which aim at the good of the whole Church. The holders of these offices are invested with sacred power: “The holders of office, who are invested with a sacred power, are, in fact, dedicated to promoting the interests of their brethren, so that all who belong to the people of God [...] may, through their free and well ordered efforts towards a common goal, attain to salvation.”<sup>65</sup>

K. Rahner, writing on the nature of ministries in relation to the exercise of power in article 18 of *Lumen gentium*, says: “The ‘ministries’ spoken of here are those which stem from a ‘sacred power’ (*sacra potestas*), as already stated in Article 10, in contrast to the charisms (Article 12). No formal explanation of a ‘sacred power’ is given in terms of the theological law or constitution of the Church.”<sup>66</sup> The Fathers of the Council recognized one sacred power, and this one power is exercised by the diocesan bishop in order to carry out the mission of the Church; in other words, the sacred power of the diocesan bishop is for the service of mission. Rahner further explains:

In keeping with the relatively recent doctrine of the three offices of Christ (and of the Church), and the classical distinction between *potestas ordinis* and *iurisdictio* (the power conferred by Orders and the power conferred by jurisdiction), the text makes its description of the episcopal office a

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<sup>65</sup> LG, no. 18, English translation in FLANNERY1, p. 369. The holders of offices are not limited to the clergy. There are numerous ecclesiastical offices that are open to lay people (chancellor, judge, diocesan finance officer, superior of non-clerical religious institutes, etc.; see cc. 145; 494; and 617). However, sacred power is exercised by those who hold offices rooted in the divine law. They are, therefore, limited to divine law offices (cc. 331; 336; 381, §1). HUELS notes that the way this divine law power is concretized is determined by canon law: “Christ did not establish vicars general, judicial vicars, the dicasteries of the Roman Curia, nor did he lay down rules for the delegation of power.” In “The Power of Governance and Its Exercise by Lay Persons: A Juridical Approach,” in *Studia canonica*, 35 (2001), p. 64 (“The Power of Governance and Its Exercise by Lay Persons”).

<sup>66</sup> K. RAHNER, “The Hierarchical Structure of the Church, with Special Reference to the Episcopate; Articles 18-27,” in H. VORGRIMLER (gen. ed.), *Commentary on the Documents of Vatican II*, vol. 1, New York, Herder and Herder Publisher, 1966, p. 188 (=RAHNER, “The Hierarchical Structure of the Church”).

presentation of the three offices, but avoids speaking of three powers. This distinction between office (*munus*) and power (*potestas*) is not further elaborated. It is simply stated that the ministries (*munisteria*, *munera* or offices) are based on a “sacred power,” and this power, which is ultimately one, is not differentiated into its intrinsic components. The relationship of the two distinguishable elements of the sacred power (the power of Orders and the power of jurisdiction) to the three offices (*munera*) is not given any further clarification. Stress is laid on the fact that this ministry is a service (*servitium*).<sup>67</sup>

*Lumen gentium* did not clearly resolve the issue of whether the power of jurisdiction requires the power of order for its exercise. Beal points out that it also fails to make a distinction between the power of order and the power of jurisdiction.<sup>68</sup> The Fathers of the Council rather propose one *sacra potestas* which is needed to fulfill the mission of the Church. The Second Vatican Council, therefore, adopted three *munera* instead of three *potestates*. This made it possible to restore the doctrine of one power in the Church, because it puts the two traditional powers (orders and jurisdiction), on a plane different from the three *munera*. Ecclesiastical power is proposed as “one power” with three distinct functions or tasks.<sup>69</sup>

The explanatory note that followed *Lumen gentium* nuances the way the terms *potestas* and *munus* of the bishop should be understood in the Church. The preliminary

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<sup>67</sup> Ibid, pp 188-189

<sup>68</sup> BEAL notes the number of times the word “jurisdiction” occurred in the documents of the Second Vatican Council: “the term ‘jurisdiction,’ which pervaded both canonical and theological literature during the period leading up to the Second Vatican Council, was found infrequently in the documents of the council itself. ‘*Iurisdictio*’ appeared only nine times in the conciliar documents: SC 130; LG 23, 45, NEP 2; OE 4, 7; and CD 35 (three times).” In “The Exercise of the Power of Governance by Lay People,” p 10; see also X. OCHOA, *Index verborum cum documentis Concilii Vaticani II*, Rome, Commentarium pro Religiosis, 1967, p. 274.

<sup>69</sup> See P. KRAMER, *Dienst und Vollmacht in der Kirche: Eine rechtstheologische Untersuchung zur Sacra Potestas-Lehre des II. Vatikanischen Konzils*, Trierer Theologische Studien, no. 28, Trier, Paulinus, 1973, pp. 34-48.

MORS DORF treats this differently when he writes: “It is not adequate because the tasks transcend each other and each one is efficacious in the other. It is not complete because not everything can be expressed through the medium of the distinction of the three tasks which constitute the one task of Christ and the Church.” In “*Munus regendi et potestas iurisdictionis*,” p. 203.

explanatory note was published as an appendix to the official Latin version of the Constitution on the Church; it reads, in part, as follows:

A man becomes a *member* of the college through episcopal consecration and hierarchical communion with the head of the college and its members (cf. art. 22, end of par 1)

It is the unmistakable teaching of tradition, including liturgical tradition, that an *ontological* share in the *sacred* functions is given by consecration. The word *function* is deliberately used in preference to *powers* which can have the sense of power *ordered to action*. A *canonical or juridical determination* through hierarchical authority is required for such power ordered to action. A determination of this kind can come about through appointment to a particular office or the assignment of subjects, and is conferred according to norms approved by the supreme authority. [...].

The ontologico-sacramental function, which must be distinguished from the juridico-canonical aspect, *cannot* be discharged without hierarchical communion. It was decided in the commission not to enter into questions of *licerty* and *validity*, which are to be left to theologians, particularly in regard to power exercised *de facto* among separated Eastern Christians, about which there are divergent opinions <sup>70</sup>

This explanation emphasizes the fact that, by its nature, episcopal power requires communion with the head of the college and the other members of the college. Episcopal ordination alone does not grant the power to govern (power ordered to action); it grants functions (*munera*). The power of the bishop to act is granted through the free conferral of an office or by confirmation made by the Roman Pontiff.

## 1.2 — The Nature of Power of the Diocesan Bishop in the 1983 Code of Canon Law

The guiding principles for the revision of the Code of Canon Law were developed by the meeting of the General Synod of Bishops held from 30 September to 4 October 1967. Principle four for the revision of the Code called for a more positive presentation of the power of the diocesan bishop and for a reduction in the number of

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<sup>70</sup> *AAS*, 57 (1965), pp 73-75, English translation in FLANNERY1, pp. 424-426.

cases to be reserved to the supreme authority.<sup>71</sup> Principle five called for the application of the principle of subsidiarity.<sup>72</sup> The 1983 Code, in line with these principles and the teachings of the Second Vatican Council (*LG*, nn. 21, 27; *CD*, no. 8), stipulates that the diocesan bishop receives the *tria munera* at his episcopal ordination (c. 375) and that he has all the power necessary to govern the community of Christ's faithful entrusted to him (cc. 381; 391).

Canon 375, §2, identifies the origin of episcopal power: "Through episcopal consecration itself, bishops receive with the function of sanctifying also the functions of teaching and governing; by their nature, however, these can only be exercised in hierarchical communion with the head and members of the college." A bishop receives his functions through episcopal ordination, but these functions can only be exercised in communion with the Roman Pontiff and the college of bishops.<sup>73</sup> This canon basically reiterates the essential provisions of *Lumen gentium* no. 21 and no. 2 of the explanatory

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<sup>71</sup> "In the revised Code of Canon Law, the office of the bishop should be defined in a positive way and the extent of the bishop's power and authority should be determined according to the prescriptions of the Decree on the Pastoral Office of Bishops in the Church *Christus Dominus*, no. 8a; and the cases which are reserved to the Holy See or to some other authority should be listed." In *Communicationes*, 1 (1969), p. 80, English translation in HITE, *Reading Cases Materials in Canon Law*, p. 73.

<sup>72</sup> "Yet it seems rather foreign to the mind and spirit of Vatican II--apart from the particular disciplines of the Oriental Churches--that there be in the Western Church special statutes which seem to be like the laws of national churches. But nevertheless this need not be taken to mean that greater broadness of power and autonomy is not desirable for particular legislation, especially when it concerns laws enacted by national and regional councils, so that the special characteristics of the individual churches could be clearly apparent." In *Communicationes*, 1 (1969), p. 81, English translation in HITE, *Reading Cases Materials in Canon Law*, pp. 74-75. For a recent study on the principle of subsidiarity see J.P. BROWN, "The 1983 Code and the Vatican II Ecclesiology. The Principle of Subsidiarity in Book V," in *The Jurist*, 69 (2009), pp. 583-614.

<sup>73</sup> Canon 377, §1 states: "The Supreme Pontiff freely appoints bishops or confirms those legitimately elected." This canon has its source in *Christus Dominus* no. 20, which states: "Since the apostolic office of bishops was instituted by Christ the Lord and is directed to a spiritual and supernatural end, the holy ecumenical council, asserts that the competent ecclesiastical authority has the proper, special, and, as of right, exclusive power to appoint and install bishops." In FLANNERY1, p. 575.



note.<sup>74</sup> J. Herranz points out that the diocesan bishop cannot exercise his power independent of the Roman Pontiff: “Rather they (bishops) must act in accord with the *communio* structures given by Christ to the Church: that is, in communion with the whole of the episcopal body, and in submission to the one who is its head.”<sup>75</sup>

The Code notes that the diocesan bishop is entrusted with the care of a particular church,<sup>76</sup> and that he is endowed with all the ordinary,<sup>77</sup> proper, and immediate power required for the exercise of his pastoral function, except for cases which the law reserves to the supreme authority (c. 381; *CCEO*, c. 178).<sup>78</sup> Canon 391 (*CCEO*, c. 191) further highlights the manner of the exercise of this power:

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<sup>74</sup> See RENKEN, “Particular Churches and their Groupings [cc. 368-572],” in *CLSA Comm2*, p 512.

<sup>75</sup> C.J. HERRANZ, “The Personal Power of Governance of the Diocesan Bishop,” in *CLSA Proceedings*, (1987), p 20 (=HERRANZ, “The Personal Power of Governance of the Diocesan Bishop”); see also *Communicationes*, 20 (1988), pp 288-310.

The Church bases its declaration of its innate right to acquire, possess, administer and alienate property in the divine will (*CIC/83*, c 1254, §1). V.G. D’SOUZA explains this matter further when he says “This right is inherent to the Church as it derives from the will of the Founder and is intimately connected with the proper ends of the Church. Jesus willed the Church not only as a spiritual structure, but also as a visible structure: a social structure that needs adequate economic means, besides the spiritual ones (LG 8) having, therefore, the right to have these necessary means or goods to fulfill its mission.” In “General Principles Governing the Administration of Temporal Goods of the Church,” in V.G. D’SOUZA (ed), *In the Service of Truth and Justice: Festschrift in Honour of Professor Augustine Mendonça*, Bangalore, Centre of Canon Law Studies, Saint Peter’s Pontifical Institute, 2008, pp 469-470 (=D’SOUZA, “General Principles Governing the Administration of Temporal Goods”) For further consideration of the subject matter see T. GREEN, “The Pastoral Governance Role of the Diocesan Bishop: Foundations, Scope and Limitations,” in *The Jurist*, 49 (1989), p. 477 (=GREEN, “The Pastoral Governance Role of the Diocesan Bishop”).

<sup>76</sup> Canon 368 defines particular churches “Particular churches, in which and from which the one and only Catholic Church exists, are first of all dioceses, to which, unless it is otherwise evident, are likened a territorial prelature and territorial abbacy, an apostolic vicariate and an apostolic prefecture, and an apostolic administration erected in a stable manner ”

<sup>77</sup> Canon 131 states: §1. The ordinary power of governance is that which is joined to a certain office by the law itself; delegated, that which is granted to a person but not by means of an office.

§2. The ordinary power of governance can be either proper or vicarious.

<sup>78</sup> Enforcing ecclesiastical norms that relate to administration of goods is certainly one of the ways of preserving the unity spoken of in this canon.

§1. It is for the diocesan bishop to govern the particular church entrusted to him with legislative, executive, and judicial power according to the norm of law.

§2. The bishop exercises legislative power himself. He exercises executive power either personally or through vicars general or episcopal vicars according to the norm of law. He exercises judicial power either personally or through the judicial vicar and judges according to the norm of law.

The first paragraph states the general principle that guides the diocesan bishop's exercise of power of governance in the Church entrusted to him. The power is to be exercised according to the norm of law.<sup>79</sup> This power is given to the diocesan bishop to enable him to serve both the spiritual and temporal needs of the faithful entrusted to him.<sup>80</sup>

Canon 392 further explains the purposes of the power of the diocesan bishop.<sup>81</sup> The diocesan bishop's power is exercised to promote the unity of the universal Church, by urging the observance of all ecclesiastical laws (c. 392, §1).<sup>82</sup> The second paragraph further determines the goal of the power of the diocesan bishop. He is to have "special vigilance that abuses do not enter the ecclesiastical discipline, especially regarding the ministry of the word (cc. 756-780), the celebration of sacraments and sacramentals (cc.

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<sup>79</sup> The Code establishes in various places how the diocesan bishop is to exercise his power of governance. For example canon 135, §2 says he must respect norms (*ius*) established by higher authority when he legislates; and he can dispense from them only in accordance with the pertinent general norms (cc. 85-93); he possesses all the power necessary to fulfill his pastoral *munus* (c. 381), he has the power of governance required to govern the diocese (c. 391, §1). Concerning the specific ways by which he exercises his executive power, see canons 136-144 on the exercise of executive power.

<sup>80</sup> See RENKEN, "Particular Churches and their Groupings [cc. 368-572]," in *CLSA Comm2*, p. 527

<sup>81</sup> Concerning the personal power of the diocesan bishop and its exercise in the diocese see HERRANZ, "The Personal Power of Governance of the Diocesan Bishop," pp. 16-34. Explaining the uniqueness of the power of the diocesan bishop in the Church, the author writes: "In civil and democratic societies it is the citizens and their representatives who themselves establish in their constitutions what the offices and structures of government, and the powers surrendered and entrusted to them, ought to be. In the Church, on the contrary, it was the divine Founder himself who established what are the two principal offices and ministries that have a constitutional character (namely, the primacy of Peter and the episcopacy). He also determined at the same time the fundamental rights and duties of their respective missions and power," p. 17.

<sup>82</sup> In the Latin Church, ecclesiastical legislation can originate from the supreme authority of the Church (c. 333), from particular councils (cc. 445-446), conferences of bishops (c. 445), or from the diocesan bishop (c. 391, §2).

840-1172), divine worship and veneration of the saints (cc. 834-839, 1186-1190), and the administration of goods (cc. 1254-1310).<sup>83</sup>

The different usage of *potestas* and *munus* in the Code is not very clear. The Code distinguishes the three *munera*<sup>84</sup> in canons 204, §1; 375, §2; 519 (*CCEO*, cc. 7; 281, §1),<sup>85</sup> and 1008 (*CCEO*, cc. 323, §1; 743). Each of these canons is theological in content and one is not always connected to the other; the Code does not attempt to harmonize them with any canon on the power of governance.<sup>86</sup> Canon 135, §1 (*CCEO*, c. 985) says the power of governance is legislative, judicial, and executive.<sup>87</sup> Canon 129 (*CCEO*, c. 979) equates the power of governance with the power of jurisdiction.<sup>88</sup> Canon 381, §1 (*CCEO*, c. 178) sets the bishop's power in the context of his general pastoral *munus*.<sup>89</sup> The power required to exercise this pastoral *munus* is not just the power of governance.

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<sup>83</sup> RENKEN, "Particular Churches and their Groupings [cc 368-572]," in *CLSA Comm2*, p. 529.

<sup>84</sup> GREEN says. "The *munera* are integral aspects of one sacred power although they are differentiated for purposes of both systematic analysis and more effective ministry" In "The Pastoral Governance Role of the Diocesan Bishop," p. 476 R. PAGE also explains this point when he says: "What is a bishop doing when, by virtue of his power of governance, he decides to establish a catechetical office or a marriage preparation programme? He is simply applying his power of governance to its proper end: the greater welfare of the Church's mission, summarized by the terms *teaching* and *sanctifying*." In "Full-Time Pastoral Ministers and Diocesan Governance," in *Louvain Studies*, 26 (2001), p. 172 [emphasis in the original] (=PAGE, "Full-Time Pastoral Ministers").

<sup>85</sup> The Eastern Code has no parallel canon to Latin canon 375.

<sup>86</sup> See BAWYN, *Discovering the Administrative Power Belonging to the Diocesan Bishop*, pp. 24-25

<sup>87</sup> PAGÉ notes that the object of the power of governance is the *munus docendi* and *munus sanctificandi*. He writes: "As for the power of governance, all is not said by declaring that it is exercised in legislative, executive and judicial powers, and that it can be delegated under certain conditions. This concerns only its juridical nature [...] the power of governance has no *raison d'être* or objective other than the remaining two powers. It is an instrumental power whose object is first and foremost pastoral since it is intended for teaching and sanctifying" He further observes that *PO*, no. 7 refers to the bishops' *munus docendi*, *sanctificandi* and *pascendi* instead of to the usual *munus regendi* For him this is the best way to speak about the power of governance. In "Full-Time Pastoral," p 173

<sup>88</sup> The *coetus* revising the Code preferred the term "governance" to "jurisdiction" because the latter commonly connotes judicial power in civil legislations See *Communicationes*, 8 (1976), p. 234

<sup>89</sup> See V. M. MENEZES, *The Executive Power of the Diocesan Bishop According to the 1983 Code of Canon Law*, JCD thesis, Ottawa, Saint Paul University, 2003, p. 69 (=MENEZES, *The Executive Power of the Diocesan Bishop*); see also *CIC/83*, canon 381, §1.

This can be inferred when we read that the bishop receives the fullness of the *tria munera* at ordination and canonical mission enables him to exercise this function with the sacred power that he possesses (c. 375). Canon 381 says he has the ordinary, proper and immediate power necessary for governing the diocese, and canon 392, §2 stipulates the ways in which this power is exercised. The diocesan bishop's power ultimately is to be exercised in order to fulfill the goal of ecclesial power, which is the salvation of souls (c. 1752).<sup>90</sup>

### 1.2.1 —The Legislative Power of the Diocesan Bishop

Canon 135, §2 states how the legislative power of the diocesan bishop is to be exercised: "Legislative power must be exercised in the manner prescribed by law; that which a legislator below the supreme authority possesses in the Church cannot be validly delegated unless the law explicitly provides otherwise. A lower legislator cannot validly issue a law contrary to higher law." The diocesan bishop exercises his legislative power alone (cc. 135, §2; 391, §2); even in the diocesan synod he is the sole legislator in his

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<sup>90</sup> The sixth principle for the revision of the Code underscored the unity and goal of the diocesan bishop's power: "A very important problem must be solved in the future Code of Canon Law, namely, how can the rights of persons be defined and safeguarded? It is clear that power is one and the same, whether it resides in the Supreme Authority or in a person of lesser authority, namely, in the Roman Pontiff or in the diocesan bishops within their respective sphere of jurisdiction. Each one is totally competent to exercise his juridic power for the service of the community to which he has been assigned. This strengthens and establishes the unity of his power; no one will doubt that this is of great benefit for the pastoral care of one's subjects.

"The use of this power in the Church, however, must not become arbitrary, because natural law prohibits such arbitrary use of power, as do also positive divine law and the law of the Church itself. The rights of each and every faithful must be acknowledged and safeguarded, both the right which they have by natural law and the rights contained in divine positive law, as also the rights which are duly derived from these laws because of the social condition which the faithful acquire and possess in the Church." In *Communicationes*, 1 (1969), p. 82, English translation in HITE, *Reading Cases Materials in Canon Law*, pp. 75-76.

When there is a problem with regard to the correct exercise of the pastoral function of the bishop the competent authority is to be notified to offer assistance. The competent Congregation may decide to initiate an apostolic visitation (see *PB*, nn. 79 and 89). For a more detailed study of this subject see CLSA COMMITTEE FOR THE STUDY OF APOSTOLIC VISITATION AND THE LIMITATION OF POWERS OF A DIOCESAN BISHOP, "Apostolic Visitation, Accountability, and the Rights of the Local Church," in *The Jurist*, 49 (1989), pp. 341-346.

diocese (c. 466). The diocesan bishop cannot validly delegate his legislative power to any other person unless the law provides otherwise; only the supreme authority (the pope and ecumenical council, cc. 333, §1; 337) can delegate legislative power. The diocesan bishop also cannot promulgate a law contrary to a higher norm (*iuris*) established by the Apostolic See, the conferences of bishops, a particular council, or a plenary council<sup>91</sup> (c. 135, §2).

The diocesan bishop uses his legislative power to defend the unity of the universal Church and to foster the discipline which is common to the whole Church.<sup>92</sup> The 1983 Code in a number of instances oblige the diocesan bishop to legislate.<sup>93</sup> V.G. Iglesias describes the object of the legislative power of the diocesan bishop:

By virtue of his legislative power, he regulates matters and issues not considered in universal law, including everything that may be necessary for the proper running of the life of the portion of the people of God entrusted to him. These matters, subject to regulation, may be quite varied: liturgy; discipline of sacramental procedure; organization of catechesis, Catholic schools; regulation of the diocesan, parochial, structures, etc., seminaries; permanent formation of the clergy; patrimonial issues [*administration of ecclesiastical goods of public juridic persons subject to him* (c. 392, §2)]; penal laws, etc.<sup>94</sup>

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<sup>91</sup> Canon 135, §2 stipulates. "Legislative power must be exercised in the manner prescribed by law; that which a legislator below the supreme authority possesses in the Church cannot be validly delegated unless the law explicitly provides otherwise. A lower legislator cannot validly issue a law contrary to higher law." *PB*, no. 158, grants competence to the Pontifical Council for the Interpretation of Legislative Texts the power to determine whether laws made by legislators below the supreme pontiff are contrary to the laws enacted by the supreme authority: "At the request of those interested, this Council determines whether particular laws and general decrees issued by legislators below the level of the supreme authority are in agreement or not with the universal laws of the Church."

<sup>92</sup> Canon 1316 specifically urge the diocesan bishop to take care that penal laws issued in the same city are uniform insofar as possible (*quatenus fieri potest*).

<sup>93</sup> See canons 277, §§2-3; 491, §3; 533, §3; 535, §1; 537; 548, §1; 755, §§1-2; 772, §2; 777, 838, §4; 1316, etc. For an extensive treatment of this issue see J.L. GUTIERREZ, "La potestà legislativae del vescovo diocesano," in *Ius canonicum*, 24 (1984), p. 523.

<sup>94</sup> V.G. IGLESIAS, "Diocesan Bishops," in *ExComm*, vol. II/1, pp. 813-814 [emphasis added].

## 1.2.2 — The Executive Power of the Diocesan Bishop

The diocesan bishop exercises his executive power either personally or through his vicars general or episcopal vicars, or any other person to whom he may delegate his executive power in accordance with the norms of canons 137-142. The Code identifies numerous acts of executive power that may be placed by the diocesan bishop.<sup>95</sup> These acts of executive power may be either general and abstract (cc. 31-34), or specific and concrete (cc. 35-93). The former are typically called the general administrative norms,<sup>96</sup> and the latter are called singular administrative acts.

An example of the diocesan bishop's exercise of executive power is when he promulgates general executory decrees (cc. 31-33), e.g., a diocesan catechetical directory. He can also issue instructions for executors of the law (c. 34), e.g., instructions for administrators of ecclesiastical goods subject to his authority (c. 1276, §2). The general executory decrees of the diocesan bishop are to determine more precisely the methods to

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<sup>95</sup> See canons 31, §1; 34, 522, 540; 476; 492; 494; 502, 555, §2, 1265, §1; 1267, 1276, §2; 1279, §2; 1281, §1, 1284, §2, 6°; 1304, §1, 1305, §1; 1308, §2, 1309; 1310; 1741. Although some of the canons do not directly mention the diocesan bishop we know that they indirectly relate to him. Seven canons directly mention the diocesan bishop in Book I (cc. 65, §3; 72; 87, §1; 98, §2; 134, §3 and 157). A number of indirect references to the diocesan bishop can also be found in Book I, for example the use of the terms "ordinary" and "local ordinary" (cc. 5, §1; 14; 65, §1, 66; 68; 84; 87, §§1-2; 88; 107, §§1-2; 132, §2; 134, §1; and 162). The Code also makes reference to the diocesan bishop in an impersonal way by using terms such as "competent authority," "superior," and, "presiding officer." See canons 7; 8; 16; 23; 26; 29; 30; 33, §2, 34, §3, etc.). For further study of this issue see BAWYN, *Administrative Power Belonging to the Diocesan Bishop*, pp. 213-248.

<sup>96</sup> Concerning the term "general administrative norms," J.M. HUELS writes: "The term 'general administrative norms' does not exist in the Code but is used by some canonists. The Code speaks of the same reality using the terms 'general executory decrees' and 'instructions.' General executory decrees 'more precisely determine the methods to be observed in applying the law or they urge the observance of laws' (c. 31, §1). Instructions 'clarify the prescripts of the laws and elaborate on and determine the methods to be observed in fulfilling them' (c. 34, §1). These definitions of general executory decrees and instructions show their close relationship to laws. However, many norms contained in juridic documents of the Roman curia are not directly related to the law. Not infrequently they even establish new obligations only remotely related to the law, if at all. The use of the term 'general administrative norms' is comprehensive of all the norms found in general juridic documents of executive power, not just those that fit the definitions of general executory decrees and instructions." In *Liturgy and Law: Liturgical Law in the System of Roman Catholic Canon Law*, Montréal, Wilson & Lafleur Ltée, 2006, pp. 83-84.

be observed in applying the law or to urge the observance of law. They “oblige those who are bound by the laws whose methods of application the same decrees determine or whose observance they urge” (c. 32).<sup>97</sup> Such decrees of the bishop are not to derogate from laws, and their precepts contrary to laws lack force (c. 33).<sup>98</sup>

The diocesan bishop also exercises his executive power when he issues singular administrative acts.<sup>99</sup> Canon 35 states: “A singular administrative act, whether it is a decree, a precept, or a rescript, can be issued by one who possesses executive power within the limits of that person’s competence, without prejudice to the prescript of can. 76, §1.” The special feature of a singular administrative act is its particularity. It is directed to an individual or a group of persons in a particular case.<sup>100</sup> Canon 35 identifies the various forms of singular administrative acts. All singular administrative acts of the diocesan bishop must conform to the common norms found in canons 35-47. The diocesan bishop may issue singular administrative decree that makes a decision<sup>101</sup> or a provision<sup>102</sup> (c. 48), grants permission (*licentia*) for certain acts(c. 59, §2),<sup>103</sup> grants an oral

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<sup>97</sup> M.R. MOODIE says: “A general executory decree is analogous to a law. Like a law, it is general and abstract. It differs from a law, however, in that it does not create a new norm as such but applies an existing norm more specifically. The general decree depends upon a prior law.” In “General Decrees and Instructions,” in *CLSA Comm2*, p. 99.

<sup>98</sup> See *ibid.*

<sup>99</sup> The Code does not define singular administrative act, it only describes it. An author like L. CHIAPPETTA defines a singular administrative act as: “an act of governance posited by a competent authority in the exercise of his functions, and directed to an individual or even a community in a concrete and particular case.” In *II Codice diritto canonico. Commento giuridico-pastorale*, vol. 1, seconda edizione, Roma, Edizioni Dehoniane, 1996, p. 89.

<sup>100</sup> See MENEZES, *The Executive Power of the Diocesan Bishop*, p. 150.

<sup>101</sup> The diocesan bishop issues singular administrative decree that makes a decision when he removes a pastor from office (c. 1740)

<sup>102</sup> The diocesan bishop issues a singular decree that makes provision when he appoints a pastor for a particular community (c. 519), approves statutes of juridic persons (c. 117, §1), erects a parish (c. 515, §2), appoints someone to an ecclesiastical office (cc. 146; 522), etc

favor (c. 59-75),<sup>104</sup> grants a privilege (cc. 76-84), grants a dispensation (cc. 85-93), or issues a precept (c. 49).<sup>105</sup>

### 1.2.3 —The Judicial Power of the Diocesan Bishop

With regard to the bishop's exercise of judicial power, canon 1419 §1 says that, apart from cases expressly excepted by law,<sup>106</sup> the diocesan bishop can exercise his judicial power personally or through others in the first instance tribunal.<sup>107</sup>

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<sup>103</sup> Some canons require the permission of the diocesan bishop before administrators of ecclesiastical goods can act (see cc. 1288, 1291; 1292, §1, 1295).

<sup>104</sup> MOODIE points out that the grant of an indult is also an administrative act of the diocesan bishop. "Although canons 35-47 provide the general norms for singular administrative acts, inconsistencies of usage do occur in the code. Canons 1400, §2 and 1445, §2 refer to acts of administrative power. Sixteen canons (cc. 320, §2, 684, §2, 686, §§1, 2, 687, 688, §2, 691, §§1, 2, 692, 726, §2; 727, §1, 728, 743; 745; 1015, §2; 1019, §2; and 1021) refer to indults, even though an indult is not included here as a type of administrative act. Despite such inconsistencies, however, it is clear that an indult of release from vows issued by the Holy See or a diocesan bishop in accord with canon 691, §2 is an administrative act and must conform to the precepts of the general norms." In "General Decrees and Instructions," in *CLSA Comm2*, p. 101. As he points out more specifically elsewhere, though, the indult is not truly a separate kind of act; it is rather a flexible term used in administrative praxis that can refer to different kinds of acts, usually rescripts. It is used in order to avoid the need to identify the precise nature of the act. See his "Privilege, Faculty, Indult, Derogation: Diverse Uses and Disputed Questions," in *The Jurist*, 63 (2003), pp. 213-252.

<sup>105</sup> See HUELS, *Empowerment for Ministry*, p. 34.

<sup>106</sup> Cases that are expressly excepted by law are found in canons 1400, §2; 1404; 1405, 1427, §§ 1 - 2; 1444-1445.

<sup>107</sup> Z. GROCHOLEWSKI writes: "Jesus Christ as 'judge of the living and the dead' (Acts 10:42) granted the Apostles and their successors the power to judge. For this reason the Second Vatican Council, in accord with Holy Scripture and Tradition, reaffirmed that, by virtue of the power conferred upon bishops in their episcopal ordination (cf. *LG* 21-27), they have 'a sacred right and a duty before the Lord . . . of passing judgment on their subjects' (*LG* 27). Similarly, the Code states that bishops have both a *right* and a *duty* to judge. This is part of the *munus regendi* of the bishop, which is what sets him apart in the legislative, executive, and judicial spheres (c. 135 § 1). The power the bishop receives in his episcopal ordination (cf. c. 375) includes this *munus*, along with the *munera sanctificandi* and *docendi*." In "Trial in General," in *ExComm*, vol. IV/1, p. 717 [emphasis in the original].

*Dignitas connubi*, no. 22, §2 suggests that diocesan bishops not regularly exercise their judicial power in causes of marriage nullity. K. LUDICKE and R.E. JENKINS note. "The Instruction goes beyond the *CIC* by recommending that the bishop refrain from adjudicating causes personally unless special circumstances require it. There are several prudent reasons to warrant this admonition. First, the diocesan bishop may not be qualified to conduct a trial. Additionally, he most likely has many other duties that would prevent him from undertaking an efficient processing of the cause. And perhaps most importantly, the perception of a conflict can arise in the minds of the faithful between the pastoral mission of the bishop and his sitting as judge to determine the status of a particular marriage of one of the Christian faithful. By appointing judges to hear causes on his behalf, the bishop removes himself from the



Canon 135, §3 says the judicial power possessed by judges must be exercised in the manner prescribed in the law. In most cases the diocesan bishop exercises his judicial power through his judicial vicar, adjutant judicial vicar(s), and other diocesan judges (see cc. 1420-1421). Nonetheless, he can reserve certain cases to himself.<sup>108</sup>

#### 1.2.4 —The Administrative Power of the Diocesan Bishop

Canon 1400, §2 says that “controversies arising from an act of administrative power can be brought only before the superior of an administrative tribunal.” Canon 1445, §2 says that the Apostolic Signatura “deals with conflicts which have arisen from an act of ecclesiastical administrative power and are brought before it legitimately.” The very nature of this “administrative power” was not defined in the Code.<sup>109</sup> One can infer

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immediate perception of sitting in judgment over the faithful placed in his care.” In *Dignitas Connubii: Norms and Commentary*, Washington, CLSA, 2006, p. 58.

<sup>108</sup> In addition, certain acts of executive power pertaining to the judicial forum are reserved by law to the diocesan bishop. GROCHOLEWSKI explains. “Although the diocesan bishop exercises judicial power by means of his tribunal, certain actions are reserved to him personally: 1. appointing the judicial vicar (c. 1420 § 1), associate judicial vicars (c. 1420 § 3), other diocesan judges (c. 1421 § 1), the promoter of justice and defender of the bond (c. 1435), and other members of the tribunal (c. 1470), as well as removing these persons; 2. punishing judges according to c. 1457 § 1 (cf. cc. 1341 and 1717ff).” In *ibid.*, p. 718.

<sup>109</sup> *CCEO*, canon 1055, which is the corresponding canon to *CIC/83*, canon 1400, §2, does not mention *potestas administrativa*. *CIC/83*, canon 1445, §2 has no parallel in the *CCEO*. It appears that the theological difficulty and a possible “inappropriateness” associated with setting up an administrative tribunal to judge the acts of the diocesan bishop is the reason why administrative tribunals are not mentioned in the *CCEO*. For a technical study of this matter, see J. P. BEAL, “Administrative Tribunals in the Church: An Idea Whose Time Has Come or An Idea Whose Time Has Gone?” in *CLSA Proceedings*, 50 (1988), pp. 86-105; Z. GROCHOLEWSKI, “Atti e ricorsi amministrativi,” in *Apollinaris*, 57 (1984), pp. 259-279.

MENEZES identifies four different views of the concept of administrative power. See *The Executive Power of the Diocesan Bishop*, pp. 100-103.

The first view holds that administrative power strictly speaking is the same as executive power of governance. Thus, the proponent of this position argue that references in the Code to administrative power (cc. 1400, §2 and 1445, §2) must be understood as executive power. See W. ONCLIN, “De potestate regiminis in Ecclesia,” in P. LEISCHING et al., (eds.), *Ex aequo et bono, Willibald M. Plochl zum 70. Geburtstag*, Innsbruck, Universitätsverlag Wagner, 1977, pp. 227-228; idem, “The Church Society,” in *The Jurist*, 27 (1967), pp. 13-14; C.J. HERRANZ, “De principio legalitatis in exercitio potestatis Ecclesiasticae,” in PCCICR, *Acta conventus internationalis canonistarum*, pp. 221-238.

from canons 1400, §2 and 1445, §2 that administrative power may not mean the same thing as executive power of governance that was treated in canons 29-30.<sup>110</sup> F. Urrutia points out that there are many acts of administration which cannot be placed under the power of governance. He explains: "The 1917 Code did not use the term 'administrative power,' while the term 'administration,' which occurred quite frequently, had several restricted meanings. It was used, in the first place, to apply to the management of temporal goods. Then, it was applied to the distribution of the various sacraments and sacramentals."<sup>111</sup> The exact juridic nature of "administrative power" is not clear in the

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The second view claims that administrative power is a fourth category of power. The proponent of this view points to the fact that not all acts in the Code can be associated with legislative, executive, or judicial power. See J. H. PROVOST, "The Participation of the Laity in the Governance of the Church," in *Studia canonica*, 17 (1983), pp. 439-440.

The third view holds that administrative power is broader than executive power. Executive power according to this view is only an aspect of administrative power. Therefore, administrative power involves administrative acts of executive power as well as acts of administration not requiring executive power. See BAWYN, *Administrative Power Belonging to the Diocesan Bishop*, pp. 76-77; F. URRUTIA, "Administrative Power in the Church According to the *Code of Canon Law*," in *Studia canonica*, 20 (1986), pp. 261-262 (=URRUTIA, "Administrative Power in the Church According to the *Code of Canon Law*");

The fourth view claims that executive power extends to every aspect of non-legislative and non-judicial diocesan governance. Administrative power, within this context, pertains only to the administration of goods. See BOWERS, *Episcopal Power of Governance*, pp. 260-292, J. E. MCMANUS, *The Administration of Temporal Goods in Religious Institutes*, Canon Law Studies no. 109, Washington, The Catholic University of America, 1937, p. 79

A thorough examination of the many actions of the representatives of public juridic person points to the fact that there are some activities that cannot be placed under anyone of the aspects of the power of governance. Activities such as (submission of annual report, entering into contract, leasing of ecclesiastical goods, and acts of ordinary and extraordinary administration, etc., do not entail the exercise of the power of governance. Consequently, it is our view that, administrative power is broader than executive power. However, we do not think that administrative power is only restricted to administration of temporal goods. This position is also held by J. M. HUELS, when he distinguishes between jurisdictional faculties and non-jurisdictional faculties. See "Permissions, Authorizations and Faculties in Canon Law," in *Studia canonica*, 36 (2002), p. 30 (=HUELS, "Permissions, Authorizations and Faculties in Canon Law")

<sup>110</sup> For a thorough theological and canonical study of "The Power of Diocesan Bishop in His Diocese," see the series of papers presented at the 2005 symposium held in Rome, entitled "The Relationship Between Bishop and the Local Church: Old and New Questions in Ecumenical Perspective," in *The Jurist*, 66 (2006), pp. 1-336

<sup>111</sup> F. URRUTIA, "Administrative Power in the Church According to the *Code of Canon Law*," p. 254.

1917 Code. Commentators disagreed on whether “administrative power” and the power of jurisdiction are the same.<sup>112</sup>

Urrutia further notes that there is an “explicit trace of ‘administrative power’ in other parts of the Code, particularly in Book I on General Norms, which not only has a title (VIII) on the ‘Power of Governance’ but also another (IV) on Singular Administrative Acts, acts which one would presume to be produced precisely by administrative power.”<sup>113</sup> He argues that since the power of governance<sup>114</sup> is distinguished in the Code into three categories in canon 135, §1<sup>115</sup> without any reference to “administrative power,” one would be inclined to think that executive power and “administrative power” are the same.<sup>116</sup> The question still remains: why did the Code choose to name this aspect of the power of governance “executive” rather than “administrative?”<sup>117</sup> It seems the reason is because executive power and administrative power are not the same. Urrutia explains that in the Code there are administrative acts (e.g., singular administrative acts) which are acts of executive power, and acts of

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<sup>112</sup> See F. URRUTIA, “La potestà amministrativa secondo il diritto canonico,” no. 10, in *De iustitia administrativa in Ecclesia*, Rome, Officium Libri Catholici, no. 10, 1984, pp. 81-83.

<sup>113</sup> URRUTIA, “Administrative Power in the Church According to the *Code of Canon Law*,” p. 257.

<sup>114</sup> The group of experts in the Pontifical Commission for the Revision of the Code of Canon Law spoke of legislative and administrative acts: “Tandem et quidem praesertim notari debet duos Titulos additos esse de Actibus administrativis [...]: ideoque Titulus II [title III in the Code] agit de decretis atque praecipis generalibus et de instructionibus, atque Titulus III [IV in the Code] tractat de actibus administrativis singularibus.” [...] “[U]t cum certitudine constet quandonam habeatur lex vera, quandonam autem actus executorius” In *Communicationes*, 9 (1977), pp. 232-233

<sup>115</sup> *CIC/83*, canon 135, §1: “The power of governance is distinguished as legislative, executive, and judicial.”

<sup>116</sup> See URRUTIA, “Administrative Power in the Church According to the *Code of Canon Law*,” p. 257.

<sup>117</sup> URRUTIA examined the various uses of the terms related to “administrative power” in the Code. See *ibid.*, pp. 257-260.

administration which are not always acts of the executive power. The Code identifies such acts in canon 1277.<sup>118</sup> The canon says the diocesan bishop exercises his power in this case by placing an act of administration. The canon says the diocesan bishop must hear the finance council and college of consultors before he places an act of administration (*actus administrationis*). This act of administration is not always the same as the singular administrative acts mentioned in canon 35. In placing the act of administration of canon 1277, the diocesan bishop exercises his administrative power.

Therefore, the diocesan bishop's exercise of administrative power is seen in his acts of administration, acts which according to Urrutia

proceed from a *power of leadership* which presupposes some power of governance and is based on it, but does not need to express itself always and for every directive, even directives concerning the disciplinary area, [...]. Thus the diocesan bishop has the duty and right to foster in his own local church the discipline of the universal Church by urging the observance of universal laws (c. 392, §1) This, to be sure, is an important part of the "administration" of his diocese, but it does not necessarily need to be carried out by decrees of execution.<sup>119</sup>

Commenting on the relationship between "administrative power" and executive power, Urrutia remarks:

*Administrative power* in its broader sense includes every function of the power of governance, [...] since these functions play a role in the *ruled* of the Church, whether universal or particular. [...] it also includes the teaching and sanctifying powers by which the bishop "rules" or "administers" his Church. In fact "administration" of a diocese, a term that renders in a rather juridic form the *pastorale munus* of the diocesan bishop (c. 381), involves "solicitude" (cc. 383-384), listening to advice (cc. 384; 228, §2) [...].

Perhaps it was because of this broad sense of "administration" that the Pontifical Commission for the Revision of the Code of Canon Law found it less advisable to distinguish the power of governance into legislative, *administrative*, and judicial, as did the seventh of the ten guiding principles for the revision of the Code, and chose instead legislative, *executive* and judicial.<sup>120</sup>

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<sup>118</sup> See *ibid.*, p. 260.

<sup>119</sup> *Ibid.*, p. 262.

<sup>120</sup> See URRUTIA, "Administrative Power in the Church According to the *Code of Canon Law*," p. 262.

The exercise of the executive power of the diocesan bishop entails the implementation or explanation of established law; however, the exercise of his administrative power may not entail a particular application or execution of a law.<sup>121</sup>

Canon 136 says those who have executive power are able to exercise it over their subjects; therefore, in every exercise of executive power, there must necessarily be an authority-subject relationship.<sup>122</sup> Not all the acts of a diocesan bishop, however, involve an authority-subject relationship. The diocesan bishop as the juridic representative of the diocese (c. 393)<sup>123</sup> can enter into a contract with a civil entity or other non-ecclesial entity; however, such acts of the diocesan bishop do not necessarily constitute an exercise of executive power, but rather are part of the pastoral *munus* that he carries out with his administrative power (c. 381).

J.M. Huels describes such acts as a non-jurisdictional exercise of authority:

It is important to note that not every action of an administrator is an administrative act. An administrator often handles a variety of affairs. Administrators answer correspondence, order office supplies, chair staff meetings, and approve expense accounts. The fact that an action is performed by an administrator does not make that action an administrative act as understood in these canons [cc. 35-47].<sup>124</sup>

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<sup>121</sup> BAWYN who rightly recognizes this distinction between executive power and administrative power, defines executive function as “either an individual task or collection of tasks, performed by an authority who possesses the power of governance, which apply and enforce the law or, at times, go beyond it or against it, in order to promote the common good and the well-being of the faithful.” In *Administrative Power Belonging to the Diocesan Bishop*, p. 72.

Administrative function he defines as “either an individual task or collection of tasks, performed by a competent authority, which apply the law by both juridical or non-juridical and formal or informal means in order to promote the common good and well-being of the faithful.” In *ibid.*, p. 71.

<sup>122</sup> Those who are subjects are determined according to canons 13, §2, 2°; 107, §1.

<sup>123</sup> The 1917 Code had only indicated that the local ordinary can stand in trials concerning the cathedral church or the episcopal temporal goods (c. 1653, §1).

<sup>124</sup> MOODIE, “Singular Administrative Acts,” in *CLSA Comm2*, p. 101.

Huels further notes the distinction between acts of the executive power of governance and those that are not of the executive power of governance. He says that in canonical literature authors have often divided faculties into jurisdictional faculties (for acts requiring the power of jurisdiction) and non-jurisdictional faculties (all other faculties).<sup>125</sup> According to Huels, a faculty that does not require the exercise of the power of governance is called an “authorization.” “Authorizations were the faculties for non-jurisdictional acts given on lists of habitual faculties.”<sup>126</sup>

Huels further explains: “Canonical tradition has always divided these habitual faculties into those that grant the power of governance and those that are authorizations for non-jurisdictional acts of ministry and administration.”<sup>127</sup> Defining the juridic nature of a faculty, Huels remarks that “a faculty, in its most common meaning in canon law, is aptly defined as *an ecclesiastical power or authorization necessary for performing lawfully an act of ministry or administration in the name of the Church.*”<sup>128</sup> What is obvious in this definition is that the recipient of a faculty acts in the name of the Church<sup>129</sup> for the common good. A faculty, therefore, is for the common good, given in connection with the fulfillment of the mission of the Church: “The person empowered by the faculty acts in the name of the Church because the faculty was granted by the competent authority of the Church to

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<sup>125</sup> J.M. HUELS, “Permissions, Authorizations and Faculties in Canon Law,” p. 30.

<sup>126</sup> *Ibid.*

<sup>127</sup> *Ibid.*, p. 31.

<sup>128</sup> *Ibid.*, p. 29 [emphasis in the original].

<sup>129</sup> The word “Church” should be understood in the sense of canon 1258 which says: “In the following canons, the term Church signifies not only the universal Church or the Apostolic See but also any public juridic person in the Church unless it is otherwise apparent from the context or the nature of the matter.”

be used for the benefit of the faithful or the common good of a juridic person.”<sup>130</sup> The diocesan bishop in exercising his administrative power acts in the name of the church, and his actions are for the common good. Canon 381 says the diocesan bishop has all the ordinary, immediate, and proper power for the exercise of his pastoral *munus*. Part of the pastoral *munus* of the diocesan bishop lies in the various acts which he carries out as the representative of the diocese for the common good of his flock. Some of these acts are considered part of the exercise of his “administrative power.”

We have studied the nature of the power of the diocesan bishop. We intend to examine concrete ways by which the exercise of this power cares for ecclesiastical goods. But in order to do that, we need to understand the meaning of ecclesiastical goods.

### 1.3 — The Meaning of Ecclesiastical Goods

Ecclesiastical goods (*bona ecclesiastica*) is a technical term defined by the Code. “All temporal goods which belong to the universal Church, the Apostolic See, or other public juridic persons in the Church are ecclesiastical goods and are governed by the following canons and their own statutes (c. 1257, §1).”<sup>131</sup> Incapable of owning ecclesiastical goods

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<sup>130</sup> HUELS, “Permissions, Authorizations and Faculties in Canon Law,” p. 29.

<sup>131</sup> D’SOUZA says that the “definition of ecclesiastical goods has a precise, technical meaning. It seeks to confine the goods to a determinate subject around which the ecclesiastical authority intends to develop and actuate its mission. It also reserves the function of governing, directing and controlling such subjects to an ecclesiastical authority. Just as the activity of the hierarchy does not exhaust the finality of the church, *ecclesiastical goods do not exhaust the ecclesial dimension* of other goods.” In “General Principles Governing the Administration of Temporal Goods,” p. 471 [emphasis in the original]. For several comprehensive studies of ecclesiastical goods in the 1983 Code see V. DE PAOLIS, “De bonis Ecclesiae temporalibus in novo Codice Iuris Canonici,” in *Periodica*, 73 (1984), pp. 113-151; idem, “I beni temporali nel Codice di diritto canonico,” in *Monitor ecclesiasticus*, 111 (1986), pp. 9-30; idem, “Les biens temporels au regard du Code de Droit canonique,” in *L’année canonique*, 47 (2005), pp. 7-36; D. FALTIN, “Diritto di proprietà ed uso dei beni temporali da parte della Chiesa,” in E. CAPPELLINI (ed.), *Problemi e prospettive di diritto canonico*, Brescia, Editrice Queriniana, 1977, pp. 227-240.

are physical persons, private juridic persons, and *de facto* private association.<sup>132</sup> The reason for designating goods of public juridic persons as ecclesiastical goods has to do with the purpose or the goal of ecclesiastical goods in the Church. M. L. Alarcón explains: “The designation of ecclesiastical goods in c. 1257 means they are goods that belong to juridical persons who are part of an official Church organization and also to persons linked to canonical authority by reason of submission and direction, goods governed by canon law and meant to fulfill the Church’s proper objectives.”<sup>133</sup> Designating the goods of public juridic persons as ecclesiastical goods underscores the fact that these ecclesiastical goods are used to assist in fulfilling the mission of the Church, not a private mission.<sup>134</sup> J. Fox writes: “This concept of *ecclesiastical goods* opens to the theological values underlying the mission of the Church. Ecclesiastical goods are subordinated to achieving that goal. Temporal goods, then, are in this way of understanding transformed

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<sup>132</sup> The parallel Eastern canon simply recognizes juridic persons (c. 1010). Temporal goods that belong to a juridic person (cc. 920-930) are ecclesiastical goods (c. 1009, §2), and they are subject to the legislation of the Code. J. ABBASS explains that “with respect to the acquisition of temporal goods, Eastern c. 1010 is able to speak precisely and simply about ‘juridic person.’ On the level of the Churches *sui iuris* and their eparchies, CCEO c. 921, §2 specifically constitutes them as juridic persons.” In Temporal Goods of the Church: A Comparative Study of the Eastern and Latin Codes of Canon Law,” in *Periodica canonica*, 83 (1994), p. 179 (=ABBASS, “The Temporal Goods of the Church”). For further study of temporal goods in the Eastern Code see R. METZ, “Temporal Goods of the Church, [cc. 1007-1054],” in *A Guide to the Eastern Code*, G. NEDUNGATT (ed.), Rome, Pontificio Istituto Orientale, 2002, pp. 689-712; J. D. FARIS, “The Code of Canons of the Eastern Churches and Temporal Goods,” in *Church Finance Handbook*, K. E. MCKENNA et al., (eds.), Washington, Canon Law Society of America, 1999, pp. 29-43; V. J. POSPISHIL, *Eastern Catholic Church Law*, 2<sup>nd</sup> revised edition, New York, Saint Maron Publications, 1996, pp. 693-705. The Pontifical Commission for the Revision of the Code of Eastern Canon Law acknowledged a heavy reliance on *Postquam Apostolicis Litteris*, the 1917 Code, and the 1983 Code; see *Nuntia*, 5 (1977), p. 49; see also *AAS*, 44 (1952), pp. 65-150.

<sup>133</sup> M. L. ALARCÓN, “Book V: Temporal Goods of the Church, Introduction cc. 1254-1258,” in *ExComm*, vol. IV/1, 2004, p. 36 (=ALARCÓN, “Book V: Temporary Goods of the Church, Introduction cc. 1254-1258”).

<sup>134</sup> D’SOUZA rightly observes: “Temporal goods of persons, whether physical or juridical, can have a common element, namely, they can be placed at the service of the Church, thus participating in her mission. However, the ‘ecclesiasticity’ of goods is not defined by the ends or objectives, but on the basis of ownership, that is, according to whom the goods belong.” In “General Principles Governing the Administration of Temporal Goods,” p. 471.



from being merely secular realities into being means of achieving the divine mission of the Church.”<sup>135</sup>

Since ecclesiastical goods are crucial to the mission of the Church, they are also subject to the universal norms of Book V (c. 1257). The temporal goods of private juridic persons are governed by their own statutes and not by the canons of Book V except in certain cases, i.e., when a canon binds all juridic persons. The following canons in Book V are examples of norms governing the goods of private juridic persons:

1. Canon 1263 (CCEO, c. 1012): private juridic persons can be subject to an extraordinary diocesan tax;<sup>136</sup>
2. Canon 1265, §5 (CCEO, c. 1015). private juridic persons are forbidden to beg for alms without the written permission of their own ordinary and the local ordinary;
3. Canon 1266 (CCEO, c. 1014): the local ordinary can order special collections in the oratories (see cc. 1223-1225) of private juridic persons;
4. Canon 1267, §1 (CCEO, c. 1016): offerings given to the administrator of a private juridic person are presumed to be given to the private juridic person itself;
5. Canon 1269 (CCEO, c. 1018) private juridic persons can own and acquire sacred objects through prescription,
6. Canon 1280. private juridic persons must have a finance council or at least two financial counselors.<sup>137</sup>

When the statutes of private juridic persons do not make provisions for temporal goods, it would be reasonable to follow the norms of Book V, *mutatis mutandis*.

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<sup>135</sup> J. FOX, “Introductory Thoughts about Public Ecclesiastical Juridic Persons and Their Civilly Incorporated Apostolates,” in *Acts of the Colloquium: Public Ecclesiastical Juridic Persons and Their Civilly Incorporated Apostolates* (e.g., Universities, Healthcare Institutions, Social Service Agencies) in the Catholic Church in the U.S.A.: *Canonical-Civil Aspects*, Rome, Pontifical University of St Thomas Aquinas in Rome, 1998, p. 252 (=FOX, “Introductory Thoughts”) [emphasis in the original].

<sup>136</sup> See also CIC/83, canon 264 which allows the diocesan bishop to impose the seminary tax on private juridic persons: “In addition to the offering mentioned in can. 1266, a bishop can impose a tax in the diocese to provide for the needs of the seminary.”

<sup>137</sup> See J A RENKEN, *Church Property: A Commentary on Canon Law Governing Temporal Goods in the United States and Canada*, New York, The Society of Saint Paul/Alba House, 2009, pp. 58-59 (=RENKEN, *Church Property*).

Although the goods of physical persons are not ecclesiastical goods, Book V makes certain references to these goods:

1. Canon 1260 (*CCEO*, c. 1011): the Church has an innate right to require from the Christian faithful<sup>138</sup> (physical persons) those things necessary for its proper purposes;
2. Canon 1261:<sup>139</sup> the Christian faithful are free to give their temporal goods to the Church, and the diocesan bishop is to admonish them on this obligation;
3. Canon 1262. the Christian faithful are to give their support by responding to appeals;
4. Canon 1263 (*CCEO*, c. 1012). the diocesan bishop is permitted to impose an extraordinary and moderate exaction on physical persons in cases of grave necessity;
5. Canon 1265, §1 (*CCEO*, c. 1015). private persons, except mendicants, are forbidden to beg for alms for any pious or ecclesiastical purpose without the written permission of their own ordinary and the local ordinary,
6. Canon 1267, §1 (*CCEO*, c. 1016). offerings given to physical persons who are administrators or superiors of (public or private) juridic persons are presumed to be given to the juridic person;<sup>140</sup>
7. Canon 1267, §3 (*CCEO*, c. 1016). offerings given by the faithful for a certain purpose can be applied only for that same purpose;
8. Canon 1269 (*CCEO*, c. 1018): private persons can acquire privately owned sacred objects through prescription, but these can be used for profane purposes only if they have lost their dedication or blessing;
9. Canons 1278-1289 (*CCEO*, cc. 1023; 1024; 1025-1026; 1020, §§1-2, 1028-1033): norms on administrators (who are physical persons),
10. Canon 1296 (*CCEO*, c. 1040): action may be taken against persons who alienate ecclesiastical goods in ways which are canonically invalid but civilly valid,
11. Canon 1298 (*CCEO*, c. 1041): ecclesiastical goods are not to be sold or leased to administrators and their close relatives,
12. Canon 1299 (*CCEO*, c. 1043): persons who are free in natural law and canon law to dispose their goods can bestow them for pious causes; civil

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<sup>138</sup> *CIC/83*, canon 204, §1 describes Christ's faithful as "those incorporated into Christ through baptism." By implication, the Church has no right to require donations from the non-Christians. The Church may accept donations from all but the right to request applies only to the Christian faithful

<sup>139</sup> There are no corresponding Eastern canons to canons 1261 and 1262.

<sup>140</sup> This canon restates a fundamental canonical principle, that the intentions of the donors must be carefully and diligently fulfilled.

formalities in depositions *inter vivos* and *mortis causa* should be observed, and heirs must be admonished to fulfill the intentions of the donors;

14. Canon 1300 (*CCEO*, c. 1044): the legitimately accepted wills of the faithful for pious causes are to be fulfilled most diligently,
15. Canon 1301, §2 (*CCEO*, c. 1045): persons who serve as executors of pious wills must render an account of their function to the ordinary;
16. Canon 1302 (*CCEO*, c. 1046): persons can accept goods in trust for pious causes,
17. Canon 1308, §3 (*CCEO*, c. 1052, §§1-5): founders can expressly give the ordinary the ability to reduce foundation Mass obligations because of diminished revenues;
18. Canon 1310, §1 (*CCEO*, c. 1054): founders can expressly entrust to the ordinary the power to reduce, moderate, or commute the wills of the faithful for pious causes (other than Masses).<sup>141</sup>

#### 1.4 — The Ownership of Ecclesiastical Goods

The history of the Church testifies to the fact that goods are owned by the “juridic person” who lawfully acquired them. B. Ferme notes:

We know that after his victory over Maxentius (28 October 312), Constantine restored to the Church those goods that had been confiscated during the persecution of Diocletian. In fact on 13 June 313 he recognized religious liberty and announced the restitution to Christians of the property that had been confiscated. These immovable goods were restored to the Churches, defined for this purpose in the sense of being ruled by a bishop. *They were not returned to individuals or to the universal Church.*<sup>142</sup>

Ownership of ecclesiastical goods was clearly understood as belonging to those institutes, local churches, etc., that lawfully had acquired them.<sup>143</sup> Canon 1256 (*CCEO*, c.

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<sup>141</sup> RENKEN, *Church Property*, pp. 59-60

<sup>142</sup> B. FERME, “The Temporal Goods of the Church: Some Historical Notes and Reflections,” in *Render Unto Caesar : Church Property in Roman Catholic and Anglican Canon Law*, in J. FOX, (ed.), Rome, Pontifical University of Saint Thomas Aquinas, 2000, p. 9 (=FOX, *Render Unto Caesar: Church Property in Roman Catholic and Anglican Canon Law*) [emphasis added].

<sup>143</sup> The Second Ecumenical Council of Nicaea enacted legislation which underscored the true ownership and administration of ecclesiastical goods. The legislation stipulated: “If it is discovered that a bishop or a monastic superior is transferring episcopal or monastic farmland to the control of the ruler, or has been conceding it to another person, *the transaction is null and void* in accordance with the canon of the holy Apostles which stipulates: ‘Let the bishop take care of all ecclesiastical affairs, and let him administer

1008, §2) continues this traditional understanding of ecclesiastical goods when it says: “Under the supreme authority of the Roman Pontiff, ownership of goods belongs to that juridic person which has acquired them legitimately.” This canon explains that the ownership of goods (*dominium bonorum*) belongs to the juridic person (public or private) which has acquired them legitimately. The public juridic person exercises its right of *dominium* under the supreme authority of the Roman Pontiff, but the Roman Pontiff does not have ownership of the goods.<sup>144</sup> The Code adds that the Roman Pontiff is the supreme administrator (*administrator*) and steward (*dispensator*) of all ecclesiastical goods (c. 1273; *CCEO*, c. 1008, §1). The Roman Pontiff’s role as administrator flows from his supreme and full power over the universal Church (cc. 332, §1; 333, §1; *CCEO*, cc. 44-45).<sup>145</sup>

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them as if under God’s inspection’ It is not permitted him to appropriate any of these things, nor to make a present of the things of God to his own relatives. Should the latter be poor, let him care for them as for other poor people, but let him not use them as an excuse for selling off the church’s possessions. [ . ] The bishop or monastic superior who acts thus should be expelled, the bishop from the episcopal house and the monastic superior from the monastery, because they wickedly waste what they have not gathered” In TANNER, *Decrees of the Ecumenical Councils*, pp 147-148 [emphasis added].

B. TIERNEY cites an interesting passage from the patristic period concerning ownership of ecclesiastical goods: “If you ask to whom ecclesiastical goods are said to belong, here it is said that they belong to the Church [ . . . ] Elsewhere it is said that they belong to the poor [ . . . ]. And again it is said that they belong to the clergy [ . . . ]. But Hostiensis harmonizes the above opinions, saying, and I believe rightly, that the Church, that is, the community of the faithful, has dominion over them, and principally Christ as head. What is said of the poor is true as to sustenance, and what is said of the clergy is true as to administration or government, and for this reason clergy are called agents, not owners. In *Distinctiones ad X.* 5. 40. 13, p. 300.” *Medieval Poor Law: A Sketch of Canonical Theory and its Application in England*, Berkeley, CA, University of California Press, 1959, p. 43.

<sup>144</sup> When one consultor of the *coetus De bonis Ecclesiae temporalibus* had suggested that this canon omit reference to the Roman Pontiff since it attributes ownership of goods to juridic persons, another replied that the reference to the Roman Pontiff should remain “since it denotes the nature of the authority of the Supreme Pontiff over ecclesiastical goods—namely, that this power is not the same as ownership.” The *coetus* rejected the recommendation that the canon should state explicitly that other ecclesiastical authorities are unable to claim ownership of goods belonging to those subject to their authority; the *coetus* said that the canon as drafted suffices to explain this. See *Communicationes*, 12 (1980), p. 398; see also RENKEN, *Church Property*, p. 53-55.

<sup>145</sup> The Roman Pontiff commonly exercises his supreme authority over ecclesiastical goods through the competent dicasteries of the Roman Curia.

The canon uses the term *dominium*,<sup>146</sup> a concept well established in ancient Roman law to mean an absolute right over a thing (*ius in re*).<sup>147</sup> According to J. J. Myers, *dominium* over a thing has three constitutive rights, which are “the right to make physical use of a thing and possess it (*utendi*); the right to income gained from it in money, land, or services (*fructu*); and the right to manage it—well or badly—including conveying it to someone else (*abuti*). The social policy was to keep these three rights as closely associated as possible—although some exceptions were made—particularly regarding the right to income.”<sup>148</sup>

Common law, however, differs in its understanding of *dominium*. It allows various dimensions of ownership to be separated (for example, one person may hold a piece of real estate and another may have a right to income from it).<sup>149</sup> Canon law’s traditional understanding of *dominium* follows the ancient Roman usage, that is, ownership of

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<sup>146</sup> M. DIPIETRO remarks: “The actual use of the word *dominium* which introduces the notion of complete ownership of property occurs only twice in Book V of the 1983 Code *Dominium* is used once in c. 1256 and a second time in c. 1269, which deals with the private ownership of sacred objects. *Proprietas*, which also connotes a type of ownership, used in c. 1284, §2 in the context of an enumeration of the duties of an administrator. The use of *dominium* in c. 1256 settles the historical dispute among canonists concerning the placement of ownership of Church property in God, in the saints, or in the universal Church. Juridically, *dominium* is placed in the public juridic person acquiring the temporal good and the rights of ownership are subject to the Roman Pontiff (c. 1256).” In “Public Juridic Persons: Owners and Trustees of Church Property,” in FOX, *Render unto Caesar: Church Property in Roman Catholic and Anglican Canon Law*, p. 82 (=DIPIETRO, “Public Juridic Persons: Owners and Trustees of Church Property”).

<sup>147</sup> “The Roman law of classical times is dominated by what is commonly called the *absolute* conception of ownership which has evolved and by the action through which this right is asserted, the *vindication*. Ownership, in the developed law, may be defined as the unrestricted right of control over a physical thing, and whosoever has this right can claim the thing he owns wherever it is and no matter who possesses it.” In H. F. JOLOWICZ and B. NICHOLAS (eds.), *Historical Introduction to the Study of Roman Law*, 3<sup>rd</sup> Edition, Cambridge, Cambridge University Press, 1972, p. 140.

“*Dominium* denotes full legal power over a corporeal thing, the right of the owner to use it, to take proceeds therefrom, and to dispose of it freely. The owner’s *plena potestas in re* (=full power over a thing) is manifested by his faculty to do with it what he pleases and to exclude anyone from the use thereof unless the latter has acquired a specific right on it (a servitude, a usufruct) which he might obtain only with the owner’s consent.” In A. BERGER, *Encyclopedic Dictionary of Roman Law*, vol. 43, part 2, Philadelphia, The American Philosophical Society, 1953, p. 441 (=BERGER, *Encyclopedic Dictionary of Roman Law*).

<sup>148</sup> J. J. MYERS, “The Temporal Goods of the Church,” in *CLSA Comm1*, pp. 862-863 (=MYERS, “Temporal Goods”); see also RENKEN, *Church Property*, p. 54.

<sup>149</sup> See F. G. MORRISEY, “The Temporal Goods of the Church,” in *CLSGBI Comm*, p. 709.

ecclesiastical goods rests with the juridic person to whom the goods pertain. Furthermore, there is an added dimension to the Church's use of *dominium*, which is the purpose for owning goods.<sup>150</sup> W.J. King observes that "*dominium* always denotes ownership for a purpose—the holding and use of property or funds to enable the religious, charitable, and spiritual mission of the Church to be conducted in the world."<sup>151</sup> Administrators of public juridic persons must ensure that ecclesiastical goods are in possession of the juridic person in accord with the clear canonical traditional understanding of *dominium*, and it is also important that this *dominium* be reflected in secure civil legal structures.<sup>152</sup> The diocesan financial manual, or the instructions envisioned by canon 1276, §2, are to make provisions for the canonical protection of ecclesiastical goods. Such instructions intend to ensure that *dominium* of goods remains with the juridic person that has legitimately acquired them.<sup>153</sup>

To apply this understanding of *dominium* of ecclesiastical goods to public juridic persons means, for example, that the legitimately acquired goods of a parish (see c. 515,

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<sup>150</sup> See RENKEN, *Church Property*, p. 54.

<sup>151</sup> W. J. KING, "Mandated Diocesan Centralized Financial Service," in A. ESPELAGE (ed.), *CLSA Advisory Opinions, 2001-2005*, Alexandria, CLSA, p. 332 (=KING, "Mandated Diocesan Centralized Financial Service").

<sup>152</sup> For studies concerning the debate on the civil protection of ecclesiastical goods without canonically alienating them, see D.C. CONLON, "The McGrath Thesis and Its Impact on a Canonical Understanding of the Ownership of Ecclesiastical Goods," in *CLSA Proceedings*, 64 (2002), pp. 73-96; A.J. MAIDA, "Canonical and Legal Fallacies of the 'McGrath Thesis on Reorganization of Church Entities,'" in *The Catholic Lawyer*, 19 (1973), pp. 275-286, 288-289; R.T. KENNEDY, "McGrath, Maida, Michiels: Introduction to a Study of the Canonical and Civil Law Status of Church-Related Institutions in the United States," in *The Jurist*, 50 (1990), pp. 351-401; R. KEALY, "Methods of Diocesan Incorporation," in *CLSA Proceedings*, 48 (1986), pp. 163-177; S. HOLLAND, "Canonical Reflections on Civilly Incorporated Apostolates," in *Acts of the Colloquium: Public Ecclesiastical Juridic Persons and their Civilly Incorporated Apostolates (e.g., Universities, Healthcare Institutions, Social Service Agencies) in the Catholic Church in the U.S.A.: Canonical-Civil Aspects*, Rome, Pontifical University of St. Thomas Aquinas in Rome, 1998, pp. 325-341; F.G. MORRISSEY, "Establishment of a Lay Board and Alienation of Property," in A. ESPELAGE (ed.), *CLSA Advisory Opinions, 1994-2000*, Washington, CLSA, pp. 422-424.

<sup>153</sup> See RENKEN, *Church Property*, p. 54.

§3; *CCEO*, cc. 279; 280, §§2-3) are owned by the parish.<sup>154</sup> Its administrator, who represents it in all juridic affairs, is its pastor (see c. 532; *CCEO*, c. 290, §1; see c. 1279, §1; *CCEO*, c. 1023), and no one else. The local ordinary is to exercise careful vigilance over the pastor's administrative function (c. 1276, §1; *CCEO*, c. 1022), but the ordinary is neither the administrator of the parish nor the owner of its goods. Since they are not personal goods, neither the ordinary nor the pastor may dispose of them capriciously. Administration and alienation must follow the *iuss* that binds the juridic person. This must be reflected properly in diocesan practice and in civil legal structures.

Renken notes that full *dominium* means that a juridic person acquires, retains, administers, and alienates temporal goods (see c. 1254, §1; *CCEO*, c. 1007). If the juridic person cannot exercise all four of these actions, it cannot claim full ownership.<sup>155</sup> When there is no full ownership, such goods cannot technically be termed "ecclesiastical goods." We find this especially when the Church receives goods *in trust* (see c. 1302; *CCEO*, c. 1046): the Church acquires, retains, and administers the goods but is unable to alienate them since the Church is holding them for a long-term purpose agreed upon when the trust relationship was established. F.G. Morrissey says that "the test of full ownership (*dominium*), then, consists in determining whether all four rights can be exercised."<sup>156</sup>

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<sup>154</sup> See *ibid.*, p. 55.

<sup>155</sup> See *ibid.*

<sup>156</sup> F.G. MORRISSEY, "Acquiring Temporal Goods for the Church's Mission," in *The Jurist*, 56 (1996), p. 592 (=MORRISSEY, "Acquiring Temporal Goods"). See also R.J. AUSTIN, "Temporal Goods Within the Church: Some Canonical Reflections," in *CLSANZ Newsletter*, no. 2 of 1992, pp. 8-20.

Canon 1255 designates the following as the subjects capable of owning goods: the universal Church (*universa ecclesia*)<sup>157</sup> (see c. 204; *CCEO*, c. 7), the Apostolic See (see c. 361; *CCEO*, c. 48), the particular Churches (see c. 368), and all other juridic persons – public or private (see c. 116). Those entrusted with the care of ecclesiastical goods must give an account of their duties to the competent authority determined by law,<sup>158</sup> and, in many instances, they may need special intervention (consultation, consent, permission) from others in order to perform certain aspects of their administration validly.<sup>159</sup> Canon 1273 (*CCEO*, c. 1008, §1) affirms that the Roman Pontiff is the supreme administrator and steward of all ecclesiastical goods; under his authority, all other ordinaries in the Church exercise vigilance over the ecclesiastical goods of public juridic persons subject to them (see cc. 1276, §1; 1301, §2; 1302, §2). Yet, nowhere in the law does it state that *dominium* belongs to the Roman Pontiff and the other ordinaries. The concept of ecclesiastical goods cannot be properly understood without a grasp of the concept of public juridic persons. This is so because only goods of the Apostolic See, universal Church and other public juridic persons are ecclesiastical goods (c. 1257). It is therefore necessary to offer a synthesis of the notion of a juridic person in canon law.

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<sup>157</sup> Canon 113 § 1 says that the Catholic Church (i.e., the universal Church) and the Apostolic See are moral persons established by divine ordinance. The particular Churches, however, are public juridic persons *a iure* (c. 373). Canon 1255 legislates that all these persons are capable of owning temporal goods. However, the Catholic Church as such owns nothing, nor does the Apostolic See inasmuch as the term, as used in canon 113 §1, refers to the Roman Pontiff (the supreme administrator and steward of all ecclesiastical goods—see c. 1273), not the Roman Curia. The identification of the Apostolic See with the Roman Pontiff himself was mentioned in the third meeting of the *coetus de bonis Ecclesiae temporalibus* on 21 January 1967. See *Communicationes*, 36 (2004), p. 244; DE PAOLIS, *De bonis Ecclesiae temporalibus*, p. 44.

<sup>158</sup> See, for example, *CIC/83*, canons 636, §2; 1284, §2; 1287; and 1307.

<sup>159</sup> See, for example, *CIC/83*, canons 1263; 1264; 1265; 1267, §2; 1277; 1279, §1; 1280; 1281; 1283; 1284; 1288; 1291; 1292; 1295; 1296; 1297; 1298; 1302; 1304, §1; 1305; 1308; 1309 and 1310.



## 1.5 — Juridic Persons in the 1983 Code of Canon Law

Canon law, just like civil law, recognizes not only human beings but also juridic entities as the subjects of rights and obligations. The foundation of this recognition is Roman law, which recognized the existence of entities other than physical persons, also endowed with rights and duties.<sup>160</sup> The 1917 Code did not use the term “juridic person” but employed the term “moral person.” The 1983 Code changed the terminology, and a different understanding is now given to it. The *coetus De normis generalibus* responsible for the revision of this section of the Code distinguished between “juridical” and “moral” persons.<sup>161</sup> The consultants considered that a “juridical” person is a creation of the law, while a “moral” person pre-exists in the moral order by virtue of natural law.<sup>162</sup>

Canon 96 says a physical person who has been baptized is thereby constituted as a subject of rights and obligations in the Church.<sup>163</sup> Canon 113, §1<sup>164</sup> says that the

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<sup>160</sup> A. GAUTHIER, “Juridical Persons in the *Code of Canon Law*,” in *Studia canonica*, 25 (1991), p. 79 (=GAUTHIER, “Juridical Persons in the *Code of Canon Law*”).

<sup>161</sup> See *Communicationes*, 9 (1977), p. 240; *Communicationes*, 12 (1982), p. 122. GAUTHIER writes. “In fact, though the group in charge of preparing the draft for this part of the Code, when discussing the binomial moral person/juridical person, was thinking above all of associations that somehow exist before they are recognized in law, it also understood that the distinction could be used to honor the fact that the Church preexists as a ‘moral’ entity before the intervention of human positive law.” In “Juridical Persons in the *Code of Canon Law*,” p. 81.

<sup>162</sup> See W. ONCLIN, “De personalitate morali vel canonica,” in *Acta Conventus internationalis canonistarum Romae diebus 20-25 mai 1968 celebrati*, Typis Polyglottis Vaticanis, 1970, p. 131 (=ONCLIN, “De personalitate morali vel canonica”).

<sup>163</sup> See R. CORONELLI, “Appartenenza alla Chiesa e abbandono: aspetti fondamentali e questioni terminologiche,” in *Quaderni di diritto ecclesiale*, 20 (2007), pp. 8-34. CORONELLI examines how a person is “constituted” and “incorporated” into the Church through the sacrament of baptism. Canon 11 recognizes the rights and obligations of those not baptized in the Church but received into it.

<sup>164</sup> RENKEN observes that CIC/83, canon 113, §1 did not exist in the 1977 *Schema* or the 1980 *Schema* but was inserted after the 1982 final proposed draft of legislation was presented to Pope John Paul II. In explaining the rationale for the omission, the *coetus* had explained that reference to the Catholic Church as a moral person had no need to be mentioned in the law since its origin is divine and not juridic; and reference to the Apostolic See as a moral person was omitted because the *coetus* discovered no consensus among commentators on the CIC/1917 about the proper subject of its personality or about its collegial or non-collegial nature. Therefore, the *coetus* decided it would be better to make no reference to it

Catholic Church and the Apostolic See are *moral persons* by divine ordinance.<sup>165</sup> Canon 361 explains that in the Code the term “Apostolic See” (or the “Holy See”) refers to the Roman Pontiff, the Secretariat of State, the Council for the Public Affairs of the Church, and the other institutes of the Roman Curia.<sup>166</sup> In the context of canon 113, §1, clearly the “Apostolic See” means the Roman Pontiff only, since the institutes of the Roman curia do not claim divine origin.<sup>167</sup> In the context of canon 1255, however, the “Apostolic See” means all the institutes identified in canon 361 (CCEO, c. 48). Also, the “universal Church” here refers to the “Latin Church.” Since as a rule this Code contains legislation only for the Latin Church *sui iuris*, not for the several Eastern Churches *sui iuris* (c. 1). A juridic person is therefore, an artificial construct of the law, established to fulfill a particular purpose or purposes which transcends the purposes of any of the individuals or the group of persons constituted a juridic person.

The 1983 Code identifies two ways whereby an ecclesiastical entity can acquire juridic personality, either by the law itself (*a iure*) or by decree of the competent authority

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in the law. The *coetus* envisioned that the norms of the Code would legislate only for juridic persons, not moral ones. In *Church Property*, footnote 47, p. 27; see also *Communicationes*, 9 (1977), p. 240.

<sup>165</sup> R.T. KENNEDY remarks: “The 1983 Code more clearly distinguishes artificial persons (juridic persons constituted by ecclesiastical authority) from groups of persons or accumulations of assets not brought into existence by ecclesiastical authority (moral persons), and among the latter it distinguishes moral persons of divine institution (the Catholic Church and Apostolic See) from moral persons of human origin, such as various *de facto* associations or funds.” In “Juridic Person, [cc. 113-123],” in *CLSA Comm2*, pp. 154-156. The Eastern code does not use the term “moral persons” (see CCEO, c. 920). See also GAUTHIER, “Juridical Persons in the Code of Canon Law,” pp. 77-92, 231-258; FOX, “Introductory Thoughts” pp. 231-258; J. HITE, *A Primer on Public and Private Juridic Persons: Applications to the Healthcare Ministry*, Saint Louis, The Catholic Health Association, 2000, pp. 5-9 (=HITE, *A Primer on Public and Private Juridic Persons*); RENKEN, *Church Property*, pp. 22-43.

<sup>166</sup> These institutes are further defined as congregations, tribunals, pontifical councils, and other offices. See JOHN PAUL II, apostolic constitution *Reorganizing the Roman Curia Pastor bonus*, 28 June 1988, in *AAS*, 80 (1988), pp. 841-921, English translation in *CIC/83*, pp. 683-751.

<sup>167</sup> G. VROMANT, *De bonis Ecclesiae temporalibus*, 3<sup>rd</sup> revised edition, Brussels, Éditions De Schuet, 1953, p. 18 (=VROMANT, *De bonis Ecclesiae temporalibus*). A. MCGRATH adds: “Here the term is understood as referring to the totality rather than to any particular department which may function in the name of the whole (cf. Can. 361)” In “Physical and Juridical Persons,” in *CLSGBI Comm*, p. 64, footnote 2.

(*ab homine*) (c. 114, §1).<sup>168</sup> Juridic persons are not the product of chance; they are deliberately established to serve a purpose which must always be in keeping with the mission of the Church (c. 114, §2).

There are several instances in which the law itself establishes an entity's juridic personality. This occurs for example, when the competent authority erects the following institutes: seminaries (c. 238, §1; *CCEO*, c. 335), public associations of the faithful (c. 313), dioceses (c. 373; *CCEO*, c. 177, §2), ecclesiastical provinces (c. 432, §2), conferences of bishops (c. 449, §2), parishes (c. 515, §3; *CCEO*, cc. 279; 280, §2), religious institutes (c. 634, §1), religious provinces (c. 634, §1), religious houses (c. 634, §1), secular institutes (by inference - see c. 718), societies of apostolic life (c. 741, §1), parts of societies of apostolic life (unless the constitutions determine otherwise (c. 741, §1), houses of societies of apostolic life (unless the constitutions or statutes determine otherwise (c. 741, §1).<sup>169</sup> Since they are public juridic persons and they act in the name of the Church, their goods are always governed by the norms of Book V and by their individual statutes (c. 116, §1). The promulgated Code, however, has preferred not to legislate the establishment of private juridic persons *a iure*.<sup>170</sup>

Juridic personality is also established by an act of the competent authority (*ab homine*), namely, a singular administrative decree that makes a provision (c. 48). Who are

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<sup>168</sup> It is important to note the distinction between a juridic person and a juridic personality. Almost all juridic persons are established by a singular administrative decree, not by the law itself. What this canon means is that the person's personality exists either in virtue of the law or in virtue of the competent authority's decree (usually a singular decree). For example, a diocese is established by a singular administrative decree that makes a provision of the Congregation of Bishops, or the Congregation for Evangelization of People (*PB*, arts. 76, and 89) but it is in virtue of the law itself that the newly-created diocese is a juridic person. This is important because the legislator wants all dioceses to be juridic persons.

<sup>169</sup> See RENKEN, *Church Property*, p. 35.

<sup>170</sup> See GAUTHIER, "Juridical Persons in the *Code of Canon Law*," p. 85.

the competent authorities to grant juridic personality to an entity? The 1917 Code established in canon 1489, §1 that only the local ordinary had the competence to grant moral personality, but the 1983 Code is silent on restricting this competence to the local ordinary alone.<sup>171</sup> This seems to create the possibility of a major clerical religious superior granting juridic personality to an entity subject to him.<sup>172</sup> R. Geisinger recently remarked that the 1983 Code does not resolve the problem of whether or not major superiors of pontifical non-clerical religious institutes can confer juridic personality separately on the work of their apostolate.<sup>173</sup> We are of the view that diocesan bishops or major superiors of pontifical clerical institutes can confer juridic personality on the apostolate of an institute, because the establishment of a juridic person is by law or singular administrative decree. Diocesan bishops can grant it by particular law or administrative decree, whether general or singular, while major superiors of clerical institutes of pontifical rights can only do so through administrative decree. This is precisely because the law provides executive power to these persons (c. 134, §1); other superiors do not have this power by law. They may have it through their approved constitution when it

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<sup>171</sup> See B K. DUNN, *Sponsorship of Catholic Institutions, Particularly Healthcare Institutions, by the Sisters of Providence in Western United States*, JCD thesis, Ottawa, Saint Paul University, 1995, pp. 121-122.

<sup>172</sup> MORRISEY explains: "The Code does not determine clearly who can grant canonical juridical personality to these works (*works of the apostolate of institutes*). There is no doubt that the diocesan bishop can do so; but can religious ordinaries or other major superiors also do so since they can establish provinces and houses which, by law, have juridical personality? Can a bishop give juridical personality to a health-care system that will function in many dioceses, or could the superiors of the institutes involved do so? Is it possible to have acquired juridical personality by custom (lapse of time) or by some other means than a formal decree? In "*Decimo anno... On the Tenth Anniversary of the Code of Canon Law*," in *Studia canonica*, 28 (1994), pp. 110-111 (=MORRISEY, "*Decimo anno*") [words in italic are mine].

<sup>173</sup> See R. GEISINGER, "Some Ongoing Considerations in Canon Law for Treasurers General of Religious Institutes," in *Periodica*, 96 (2006), pp. 231-237

stipulates that they can perform such executive acts by virtue of their office or through delegation.<sup>174</sup>

The Code provides ways by which the competent authorities can erect a juridic person through a singular administrative decree. Before granting juridic personality to any group or foundation, the Code warns that the competent authority be sure that the proposed juridic person has the means foreseen to be sufficient to fulfill the purpose(s) in canon 114, §3 (*CCEO*, c. 921, §§1, 3). This juridic personality is acquired through the decree of approval of the statutes and the decree of erection of the juridic person by the competent authority (c. 117; *CCEO*, c. 922, §1).

The 1983 Code distinguishes between public and private juridic persons. The 1917 Code only recognized moral persons without making any distinction. The distinction of the 1983 Code is important because it creates two different levels of regulations of the goods of the two different kinds of juridic persons.

### **1.5.1 — Public Juridic Persons**

Canon 116, §1 describes public juridic persons as “aggregates of persons” *universitates personarum* or “aggregates of things” *universitates rerum* established by the competent authority to act in the name of the Church in fulfilling the specific tasks entrusted to them.<sup>175</sup> Their goods are technically recognized as “ecclesiastical goods” and

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<sup>174</sup> See MORRISEY, “*Decimo anno*,” pp 110-11, MP JOYCE et al, *Procedural Handbook for Institutes of Consecrated Life and Societies of Apostolic Life*, Washington, CLSA, 2001, p 197

<sup>175</sup> KENNEDY says “The distinction between a public and a private juridic person is essentially the distinction between a juridic person that is closely governed by ecclesiastical authority (public juridic person) and one that, although subject to authority in certain respects, enjoys more autonomy and is governed primarily by its own statutes (private juridic person) *This distinction is essentially a difference in relationship to the hierarchy*” In “Juridic Person, [cc 113-123],” in *CLSA Comm2*, p 161 [emphasis added]

thus are subject to the norms of Book V (c. 1257). The fact that public juridic persons act in the name of the Church implies that they are closely governed by ecclesiastical authority.<sup>176</sup>

Canons 121-123 provide for the allocation of the temporal goods of a public juridic person when it is merged, or amalgamated, or extinct.

Canon 121 states:

If aggregates of persons (*universitates personarum*) or of things (*universitates rerum*), which are public juridic persons, are so joined that from them one aggregate (*universitas*) is constituted which also possesses juridic personality, this new juridic person obtains the goods and patrimonial rights proper to the prior ones and assumes the obligations with which they were burdened. With regard to the allocation of goods in particular and to the fulfillment of obligations, however, the intention of the founders and donors as well as acquired rights must be respected.

This canon provides for the union of juridic persons. It envisions the possibility of juridic persons losing their personality in such a union. Such a union produces a new juridic person. The new juridic person that emerges from the union obtains the patrimonial rights of the prior juridic persons. The rights and obligations follow the juridic persons into the new reality. All the temporal goods of the juridic persons joined belong to the new juridic person. The Congregation for the Clergy recently warned and directed that the norm of canon 121-122 should be appropriately applied when parishes

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The apostolate of public juridic persons is thus regarded as Catholic, because, "[t]he use of the name 'Catholic' could at least suggest that a specific effort represents the Church itself or is officially accepted by the Church. The authority competent to consent to the use of the name 'Catholic,' would depend on particular circumstances. For example, canons 300 and 312 explain that the authority competent to erect a public association is also competent to allow that association to use the word 'Catholic.'" In R.J. KASLYN, "The Christian Faithful," in *CLSA Comm2*, p. 272. See also J.J. MYERS, "Church Approval Necessary for Activity to be Truly Catholic," in *Health Progress*, 68 (1987), pp. 70-74.

<sup>176</sup> See KENNEDY, "Juridic Person, [cc. 133-123]," in *CLSA Comm2*, p. 154.

are joined or merged. The temporal goods follows the faithful to their parish *ad quem*, they do not go to the diocese.<sup>177</sup>

Canon 122 reads:

If an aggregate (*universitas*) which possesses public juridic personality is so divided either that a part of it is united with another juridic person or that a distinct public juridic person is erected from the separated part, the ecclesiastical authority competent to make the division, having observed before all else the intention of the founders and donors, the acquired rights, and the approved statutes, must take care personally or through an executor:

1° that common, divisible, patrimonial goods and rights as well as debts and other obligations are divided among the juridic persons concerned, with due proportion in equity and justice, after all the circumstances and needs of each have been taken into account;

2° that the use and usufruct of common goods which are not divisible accrue to each juridic person and that the obligations proper to them are imposed upon each, in due proportion determined in equity and justice.

Kennedy notes: “Commentators on the 1917 code often stated that a juridic person (moral person) could not be divided; its territory could be divided, but not the person.”<sup>178</sup> This was in accord with the theory that a person was indivisible. The 1983 Code provides for two possibilities of the division of a public juridic person. The first is when the separated part of a public juridic person is joined to another public juridic person. There is no creation of a new juridic person in this case; there is only a change in

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<sup>177</sup> See CONGREGATION FOR CLERGY, Letter to the President of the United States Conference of Catholic Bishops, Prot No. 20060481, 3 March 2006.

<sup>178</sup> See *ibid*, p. 169 The *CCEO*, canon 929 retains the 1917 Code approach when it speaks of the division of the territory of a juridic person and not the division of a juridic person. The expression “moral person” and “juridic person” in both the 1917 Code and the 1983 Code are not exactly equivalent. While the two expressions were at least roughly equivalent as used in the 1917 Code, they are not equivalent at all in the 1983 Code. The reason for the change was influenced by “the doctrine according to which one should distinguish between ‘juridical’ and ‘moral’ persons, the ‘juridical’ person being created by law, while the ‘moral’ person (for instance an association existing in fact could be pre-exist in the moral order, by virtue of natural law. this reality acknowledged by an analysis of society, is one that positive law should recognize.” See A. GAUTHIER, “Juridical Persons in the Code of Canon Law,” pp. 77-92, especially pp. 81-83

the composition of both juridic persons involved. The second case is when the separated part represents the substrate for the constitution of a new public juridic person.<sup>179</sup>

Canon 122 stipulates that the act of dividing a juridic person and the act of dividing its assets are different juridic acts. The division of assets are carried out in due proportion as dictated by equity and justice.<sup>180</sup> The competent authority to effect either of these changes is the same authority that is responsible for the erection of the public juridic person.<sup>181</sup> In both cases, the competent authority is to ensure that the allocation of goods and liabilities are equitably distributed.<sup>182</sup>

Given the fact that public juridic persons are involved in the mission of the Church, the law provides that every public juridic person is perpetual by its nature (c. 120; *CCEO*, cc. 925; 927, §1). Castro says that a juridic person is “an artificial subject created by the law, [and] it has the nature that law attributes to it. ‘By its nature’ must be understood in the sense that, being a center of rights and duties that transcend physical persons, *the juridical person as such is not tied to the life of physical persons.*”<sup>183</sup>

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<sup>179</sup> See L. CASTRO, “Juridical Persons,” in *ExComm*, vol. I, p. 790.

<sup>180</sup> See KENNEDY, “Juridic Persons [cc. 113-123],” in *CLSA Comm2*, p. 171.

<sup>181</sup> See *ibid.*, p. 169. Kennedy writes: “Ordinarily, this would be the authority competent to create the juridic person (or establish the underlying moral person upon which the law confers juridic personality), such as the Holy See for a diocese (c. 375) or the diocesan bishop for a parish (c. 515, §2). Where not determined by universal law, the designation of competent authority is to be found in the proper law (see, e.g., c. 581) or in the statutes of a public juridic person.” In *ibid.*, p. 170.

<sup>182</sup> The process of this division must ensure that common, divisible, patrimonial goods and rights (as well as debts and other obligations) are divided among the juridic persons, with due proportion in equity and justice, after all the circumstances and needs of each have been considered; and also that the use and usufruct of common goods which cannot be divided accrue to each juridic person, and that the obligations proper to them are imposed upon each, in due proportion determined in equity and justice. See RENKEN, *Church Property*, p. 30.

<sup>183</sup> CASTRO, “Juridical Persons,” in *ExComm*, vol. I, p. 782 [emphasis added].



Nevertheless, the law provides ways by which juridic persons can cease to exist

(c. 120).<sup>184</sup> Canon 123 (*CCEO*, c. 930) reads:

Upon the extinction of a public juridic person, the allocation of its goods, patrimonial rights, and obligations is governed by law and its statutes, if these give no indication, they go to the juridic person immediately superior, always without prejudice to the intention of the founders and donors and acquired rights. Upon the extinction of a private juridic person, the allocation of its goods and obligations is governed by its own statutes

Canon 123 distinguishes between public and private juridic persons in the event of their extinction. Concerning public juridic persons, the allocation of the goods, patrimonial rights, and obligations belong to the immediate superior of the public juridic person, but always respecting the intention of the donors and acquired rights. The juridic person immediately superior is “that which pursues the same purpose or an analogous purpose.”<sup>185</sup> Thus, for example, the immediate superior of a parish is the diocese, and of a diocese is the Holy See.<sup>186</sup>

### 1.5.2 — Private Juridic Persons

One of the novel aspects of the 1983 Code is its recognition of private juridic persons, a category that was hitherto unmentioned in the codified law of the Church.<sup>187</sup> The private juridic person was proposed as a way of resolving “some of the difficulties met in the exercise of the right of association, especially in the case of associations

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<sup>184</sup> See *ibid*

<sup>185</sup> See *Communicationes*, 6 (1974), p. 100, no. 7, “quella che persegue lo stesso fine o un fine analogo”

<sup>186</sup> See Circular Letter of CONGREGATION FOR THE CLERGY Prot. no. 20060481, 3 March 2006, in RENKEN, *Church Property*, pp. 39-40

<sup>187</sup> MORRISEY, “*Decimo anno*,” p. 111

arising from private initiative.”<sup>188</sup> The 1917 Code provided for “ecclesiastical” associations, erected by Church authorities (c. 708). Although the 1917 Code recognized the associations established by the Christian faithful, it did not mention their juridic personality. Such associations could own property, receive privileges, etc. In order to give them recognition, the 1983 Code has made provisions for granting juridic personality to private associations started by the initiative of the Christian faithful. Morrissey, nevertheless, notes that this innovation of the 1983 Code on private juridic persons remains unclear in some areas:

The legislation does not distinguish clearly enough between merely voluntary associations of the faithful (c. 310) and those which have obtained some type of recognition from ecclesiastical authorities. This has led to a number of ambiguities, particularly when it came to the administration of temporal goods. It would be helpful were any revised legislation to clarify the relationships existing between public and private associations.<sup>189</sup>

Private juridic persons are less subject to hierarchical authority in their actions; this is precisely because they do not act in the name of the Church.<sup>190</sup>

The goods of private juridic persons are not considered ecclesiastical goods. In the case of a private juridic person, the allocation of its goods, patrimonial rights, etc., is carried out according to the norms of proper statutes, always with due regard for the acquired rights and will of the donors. This requirement that the temporal goods of private juridic persons be governed by its statutes is repeated in canon 326, §2 concerning private associations: “The allocation of the goods of an association which

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<sup>188</sup> GAUTHIER, “Juridical Persons in the *Code of Canon Law*,” pp. 90-91.

<sup>189</sup> MORRISSEY, “*Decimo anno*,” p. 111.

<sup>190</sup> KENNEDY however observes: “Within the Church, all persons, natural and juridic, are subject to hierarchical authority in the area of doctrinal and moral integrity (see, e.g., cc. 209; 305; 323; 386, §2; 397).” In “Juridic Person, [cc. 133-123],” in *CLSA Comm2*, p. 160.

has ceased to exist must be determined according to the norm of its statutes, without prejudice to acquired rights and the intention of the donors.”

## 1.6 — Categories of Ecclesiastical Goods

Ecclesiastical goods have traditionally been grouped into different categories, as distinguished below:<sup>191</sup>

1. Corporeal goods<sup>192</sup> – goods which are palpable or that can be perceived by the senses (e.g., a church, hospital, automobile),
2. Incorporeal goods – goods which are not palpable and cannot be perceived by the senses but can only be perceived by the mind (e.g., legal rights, patents, stocks);
3. Immovable goods<sup>193</sup> – corporeal goods which cannot be transferred from place to place naturally (e.g., land, buildings) or legally (e.g., doors, plumbing, windows);
4. Movable goods – corporeal goods which can be transferred from place to place (e.g., merchandise, livestock, automobiles), these are further distinguished as
  - a. Fungible moveable goods – moveable goods which could be replaced in kind and which are consumed when used (e.g., grain, vegetables, fruit, candles);
  - b. Non-fungible moveable goods – moveable goods which are not consumed by their first use (e.g., automobiles, furniture, computers);
5. Sacred goods – goods designated for divine worship by dedication or blessing (see c. 1171);<sup>194</sup>

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<sup>191</sup> CIC/17, canon 1497. See BOUSCAREN et al., *Canon Law: A Text and Commentary*, pp. 802-803; DE PAOLIS, *De bonis Ecclesiae temporalibus*, p. 11; VROMANT, *De bonis Ecclesiae temporalibus*, pp. 41-42.

<sup>192</sup> The 1983 Code recognizes the Roman law distinction between *corporeal* and *incorporeal* goods, “Res corporales sunt, quae tangi possunt, incorporeales, quae tangi non possunt” In GAIUS, *Institutiones*, II, 12. We find this term also in CIC/1917, c. 1497 § 1.

<sup>193</sup> Mention is made of immovable and movable goods in CIC/83, canons 1270; 1283, 2°; 1285; 1302, §1; 1303; and 1376.

<sup>194</sup> Although canon 1171 reminds us to treat sacred things with due reverence, it does not necessarily make all of them ecclesiastical goods. It is important to note that not all ecclesiastical goods are sacred goods, and not all sacred goods are ecclesiastical goods (private persons can own sacred goods, c. 1269; only the sacred goods of public juridic persons are ecclesiastical goods).

6. Profane goods – goods which are not sacred;
7. Precious goods – goods distinguished by artistic, historical, or material content, age, art, or veneration (see c. 1189<sup>195</sup>; *CCEO*, c. 887, §2)
8. Non-precious goods – goods which are not precious.<sup>196</sup>

Goods in any of these categories can be ecclesiastical goods or not, depending on who owns them. A further categorization can be implicitly discerned in the 1983 Code, namely, non-stable patrimony and stable patrimony (see cc. 114, §3, 1285, 1291).

### 1.6.1— Stable Patrimony

The 1983 Code does not define the term “stable patrimony,” but the wording of canons 1285 and 1291<sup>197</sup> presumes that the juridic person possesses stable patrimony. The phrase *patrimonium stabile* was not in the 1917 Code, but was introduced during the revision of the Code.<sup>198</sup> Commentators after the promulgation of the 1983 Code have tried to explain the meaning of the term “stable patrimony.” V. De Paolis writes:

The concept of stable patrimony is a new notion introduced to answer the needs of our modern economy, which no longer rests prevalently on goods once defined as immovable. Jurisprudence needs to define the concept of stable patrimony further. One thing is certain: the new code presupposes that every juridical person has a stable patrimony which can be made up of either movable or immoveable goods. The determination

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<sup>195</sup> The 1983 Code mentions precious goods in the following canons: 638, §3; 1189, 1220, §2; 1270; 1283, 2°, and 1292, §2.

<sup>196</sup> RENKEN, *Church Property*, pp. 23-24.

<sup>197</sup> Canon 1291 states. “The permission of the authority competent according to the norm of law is required for the valid alienation of goods which constitute by legitimate designation the stable patrimony of a public juridic person and whose value exceeds the sum defined by law.”

<sup>198</sup> See *Communicationes*, 12 (1980), p. 420. RENKEN writes: “The *coetus De bonis Ecclesiae temporalibus* had received recommendations to eliminate the term ‘stable patrimony’ from the 1977 *Schema*; the recommendations indicated that this phrase was more apt to conditions of an earlier time, but that it does not seem suitable for the modern age which experiences so much economic change. Nonetheless, the *coetus* retained the term in order to indicate some limit on the donations proscribed by this canon, the *coetus* considered the term to reflect the conventional notion of what this canon conveys.” In *Church Property*, footnote 147, p. 221.

of these goods depends on the organs of the juridical person itself, in as much as a legitimate ascription is required for those goods to become a part of the stable patrimony.<sup>199</sup> When we speak of legitimate ascription we mean that such an ascription is done according to the norms of law and even according to particular law.<sup>200</sup>

Kennedy proposes a description of stable patrimony:

Stable patrimony is all property, real or personal, movable or immovable, tangible or intangible, that either of its nature or by explicit designation is destined to remain in the possession of its owner for a long or indefinite period of time to afford financial security for the future. It is the opposite of free or liquid capital which is intended to be used to meet operating expenses or otherwise disposed of within a reasonable short period of time (within one or, at most, two years).<sup>201</sup>

M.L. Alarcón provides a similar description of stable patrimony:

Stable patrimony is comprised of those goods that constitute the minimum secure financial basis to enable the juridical person to subsist autonomously and to attend to the purposes and services proper to it, there are no absolute rules, however, for establishing the stability of a patrimony, since this depends not only on the nature and the quality of the goods, but also on the financial requirements for the fulfillment of the objectives, as well as on the stationary or expansive situation of the institution.<sup>202</sup>

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<sup>199</sup> The Italian Episcopal Conference has designated the following as stable patrimony:

- “1. goods which are part of the foundational property of the entity;
2. goods coming to the entity itself, if the donor has so designated them;
3. goods assigned to stable patrimony by the administrative organ of the entity,
4. mobile goods given *ex voto* to the juridic person.

“On the contrary, not considered as *stable patrimony* - unless the entity has been legitimately designated as such - are the fruits of the earth, of work or of other contractual activity; revenue from capital and from immobile patrimony, funds temporarily invested to achieve a higher return; immobile funds designated by will of the donor to be immobilized for the immediate use of the proceeds.

“To be underscored is the importance of a ‘legitimate designation’ (cfr. Can. 1291) in order for a good to be part of the stable patrimony of a juridic person.

“Therefore, it is opportune that every juridic person prepares a list of goods constituting its own stable patrimony.” In CONFERENZA EPISCOPALE ITALIANA, “Istruzione in materia amministrativa (2005),” testo approvato dalla 54a Assemblea Generale, Roma, 30-31 May 2005, art. 53, English translation in RENKEN, *Church Property*, p. 225.

<sup>200</sup> V. DE PAOLIS, “Temporal Goods of the Church in the New Code with Particular Reference to Institutes of Consecrated Life,” in *The Jurist*, 43 (1983), p. 356

<sup>201</sup> R. T. KENNEDY, “The Temporal Goods of the Church, [cc. 1254-1310],” in *CLSA Comm2*, p. 1495.

<sup>202</sup> M.L. ALARCON, “Book V: The Temporal Goods of the Church, (cc. 1254-1258),” in *CCLA*, 993.

The categories of ecclesiastical goods designated as stable patrimony are goods that have been frozen, stabilized, or immobilized. Renken points out that, “[a]lthough some goods may be considered part of stable patrimony due to custom (see canon 26), and although a presumption normally exists that land and buildings are part of stable patrimony, a deliberate decision must be made by competent authority in order to immobilize goods which had earlier been considered free or liquid capital.”<sup>203</sup> Stable patrimony is the basic means that a public juridic person needs to fulfill the mission for which it was established.

### 1.6.2 — Non-Stable Patrimony<sup>204</sup>

Canon 1285 stipulates: “Within the limits of ordinary administration, only administrators are permitted to make donations for purposes of piety or Christian charity from movable goods which do not belong to the stable patrimony.” This canon deals with donations made by administrators of ecclesiastical goods from moveable goods that do not belong to the stable patrimony of the juridic person.<sup>205</sup> All ecclesiastical goods

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<sup>203</sup> RENKEN, *Church Property*, p. 226. For an in-dept study of stable patrimony see, Idem, “The Stable Patrimony of Public Juridic Persons,” in *The Jurist*, 70 (2010), pp. 131-162.

<sup>204</sup> The term “patrimony” connotes a broader meaning that including inheritance, tradition, etc. But we are using it in a restricted sense in our research. We are actually limiting the term to temporal goods. See L.F., STELTEN, *Dictionary of Ecclesiastical Latin*, Peabody, Massachusetts, Hendrickson Publishers, Inc., 1995, p. 188.

<sup>205</sup> KENNEDY explains the use of the phrase *fas est administratoribus*: “This is an instance where the force of the Latin is lost in English translation. The Latin *fas est administratoribus*, translated ‘administrators are permitted,’ is stronger than mere permission; *fas* connotes a religiously based right or responsibility. It can be translated ‘it is lawful,’ but with the connotation of lawful by divine command as distinguished from lawfulness by human command or right (*ius est*).” In “The Temporal Goods of the Church, [cc. 1254-1310],” in *CLSA Comm2*, p. 1487.

RENKEN notes that “the phrase *fas est* appears in ten canons: 45; 366, 2°; 396, 2°; 628, §3; 748, §2; 762; 952, §1; 1177, §2; 1285; and 1609, §4.

“The opposite phrase is *nefas est*, which carries the connotation that something is forbidden by divine command. It appears in four canons: 927; 983 § 1; 1026; 1190 § 1.” In *Church Property*, footnote 142, p. 220.

that have not been designated as stable patrimony are considered non-stable patrimony of the public juridic person, and therefore, subject to the possibility of the administrator making a donation from them (c. 1285). Part of the task of the diocesan bishop in caring for ecclesiastical goods is to mandate the proper designation of stable patrimony of all public juridic persons subject to him (cc. 392, §2; 1276).

### 1.7 — Ecclesiastical Goods and the Mission of the Church

The Second Vatican Council declared that there is a link between earthly things (temporal goods) and those elements of the human condition which transcend the world. The Church itself makes use of temporal things insofar as its own mission requires it.<sup>206</sup> The same Council identified the principal purposes of ecclesiastical goods:

Priests are to manage ecclesiastical property, properly so called, according to the nature of the case and the norm of ecclesiastical laws and with the help, as far as possible, of skilled laymen. They are to apply this property always to those purposes for the achievement of which the Church is allowed to own temporal goods. These are: *the organization of divine worship, the provision of decent support for the clergy, and the exercise of works of the apostolate and of charity, especially for the benefit of those in need.*

Priests, just like bishops (without prejudice to particular law) are to use moneys acquired by them on the occasion of their exercise of some ecclesiastical office primarily for their own decent support and the fulfillment of the duties of their state. They should be willing to devote whatever is left to the good of the Church or to works of charity.<sup>207</sup>

Commenting on the manner in which ecclesiastical goods can contribute to the building up of the Church, the Fathers of the Council urge that bishops “should demonstrate that worldly things and human institutions are ordered, according to the plan of God the

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<sup>206</sup> See GS, no. 76, English translation in FLANNERY1, p. 985.

<sup>207</sup> PO, no. 17, English translation in FLANNERY1, p. 895 [emphasis added].

Creator, towards the salvation of men, *and that they can therefore make no small contribution to the building up of the Body of Christ.*<sup>208</sup>

Stressing one of the purposes of ecclesiastical goods (assistance to the poor),<sup>209</sup> the Council Fathers stated:

God destined the earth and all it contains for all men so that created things would be shared fairly by all mankind under the guidance of justice tempered with charity. No matter what the structures of property are [ . ] we must never lose sight of this universal destination of earthly goods. In his use of things man should regard the external goods he legitimately owns not merely as exclusive to himself but common to others.[ . ] the Fathers and Doctors of the Church, who taught that men are bound to come to the aid of the poor and to do so not merely out of their superfluous goods <sup>210</sup>

One of the purposes of ecclesiastical goods is to care for the poor or needy, a task that the Church has always carried out. The universal Church still helps the needy today through various charitable organs, and their function is coordinated by the Pontifical Council *Cor Unum*.<sup>211</sup> *Pastor bonus* states that it is the function of this Pontifical Council to stimulate the Christian faithful to participate in the mission of the Church by giving witness to evangelical charity and support to the needy.<sup>212</sup>

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<sup>208</sup> *CD*, no. 12, English translation in FLANNERY1, p. 570 [emphasis added].

<sup>209</sup> “Jesus and the twelve kept a common purse. The funds from this common purse were used both for their own needs and for the needs of the poor (Jn 12:6; 13 29) The apostolic church also had common funds which were used for the poor (Acts 2. 44, 4:34-37). In the name of communion, collections were made in order to help needy congregations (2 Cor 8:4; Rom 15:26; Heb 13.16).The ‘common purse’ of the disciples has evolved into the ‘temporal goods of the Church.’” In ROCHE, “The Poor and Temporal Goods in Book V of the Code,” p. 299.

<sup>210</sup> *GS*, no 69, English translation in FLANNERY1, p. 975

<sup>211</sup> *PB*, art. 145 states: “The Pontifical Council *Cor Unum* shows the solicitude for the needy, in order that human fraternity may be fostered and that the charity of Christ be made manifest.”

Article 146, 2° stipulates that it is the duty of the Council “to foster and coordinate the initiatives of Catholic organizations that labour to help peoples in need, especially those who go to the rescue in the more urgent crises and disasters, and to facilitate their relations with public international organizations operating in the same field of assistance and good works.”

<sup>212</sup> See *PB*, art. 146.



The mission of the Church also involves the sanctification of the faithful through divine worship (c. 834, §1). The *munus sanctificandi* requires the use of temporal goods.<sup>213</sup> In order to carry out its *munus sanctificandi* the Church requires ministers, and temporal goods are necessary for their formation (c. 264) and sustenance (c. 281).<sup>214</sup> The mission of the Church is also fulfilled through the works of the sacred apostolate<sup>215</sup> (establishment of orphanages, hospitals etc.) These apostolates require temporal goods. Therefore, the proper purposes of ecclesiastical goods identified in canon 1254, §2 are all in aid of fulfilling the mission of the Church.

There is no agreement among authors whether this list of canon 1254, §2 is taxative. Kennedy writes:

Insertion of the word ‘principally’ indicates, for some, the existence of other purposes,<sup>216</sup> while others suggest that the insertion was made solely because the paragraph speaks generally of the purposes of the Church, not just of the ownership of temporal goods by the Church, and that the

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<sup>213</sup> D’SOUZA writes: “The divine worship concerns all that concerns the sanctification of the faithful, which is regulated in Book IV: ‘The Sanctifying Office of the Church.’ There are a number of applications for the use of material goods in the divine worship, especially for sacraments and sacramentals: water for baptism, bread and wine for the eucharist, oil for confirmation and anointing of the sick and also for baptism, ordination, consecration of chalices, churches. Canon 1215, §2 states that the bishop should not give permission to build a church until, among other requirements, he also decides ‘that the necessary means will be available to build the church and to provide for divine worship.’” In “General Principles Governing the Administration of Goods,” p. 470.

<sup>214</sup> D’SOUZA explains: “The fitting support of the clergy and ministers has been a practice right from the Old Testament. The Levites were provided for their necessities by the people and they had the right to certain offerings. The New Testament has many references to the worthy sustenance of ministers. ‘the labourer deserves his wages’ (Lk. 10:7), ‘now to one who works, his wages are not reckoned as a gift but as his due’ (Rom 4:4); ‘you go into the vineyard too and whatever is right I will give you’ (Mt 20:4).” In *ibid.* For further study of the remuneration of clergy and other ministers see P. GREINER, “Les biens paroissiales dans le contexte des diocèses français,” in *L’Année Canonique*, 47 (2005), pp. 37-50. See also N.P. ODCHIMAR, “Decent Support and Social Security for the Clergy Under the 1983 Code of Canon Law,” in *Philippiana sacra*, 18 (1983), pp. 511-538.

<sup>215</sup> The work of the sacred apostolate is often identified as those works necessary for the proclamation of the good news of salvation, which is primarily dealt with in Book III: “The Teaching Function of the Church.” In D’SOUZA, “General Principles Governing the Administration of Goods,” p. 470.

<sup>216</sup> V. DE PAOLIS, *De Bonis Ecclesiae Temporalibus: Adnotationes in Codicem: Liber V*, Rome, Gregorian University, 1986, p. 29; F.G. MORRISSEY, “Acquiring Temporal Goods for the Church’s Mission,” p. 591.

purposes of church ownership are, in fact, taxatively stated<sup>217</sup> In any event, in light of the conciliar definition of the apostolate as all activity of the Church directed to bringing the world to Christ, it would be difficult to conceive of any ecclesial purpose not included in 'works' of the sacred apostolate.<sup>218</sup>

The 2004 Directory for the Pastoral Ministry of Bishops also notes this principal purposes: "In the administration of goods, always presupposing that justice is observed, the Bishop concerns himself first of all with providing for divine worship, charity, the apostolate and the support of clergy: these ends are given precedence over all others."<sup>219</sup> Renken points out that goods accumulated "solely for the sake of wealth and security but not for one of the principal purposes identified in canon 1254, §2, have no right to be called ecclesiastical goods"<sup>220</sup> The purpose of owning ecclesiastical goods is principally for the mission of the Church, because all the elements identified in canon 1254, §2 concern the mission of the Church.

In a similar manner, canon 114, §1 (CCEO, c. 921, §1, §3) says all juridic persons are ordered for a purpose which is in keeping with the mission of the Church and which transcends the purpose of the individuals.<sup>221</sup> Canon 114, §2 says these purposes are understood as "those which pertain to works of piety, of the apostolate, or of charity,

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<sup>217</sup> A. MAIDA and N. CAFARDI, *Church Property, Church Finances, and Church-Related Corporations: A Canon Law Handbook*, St. Louis, Catholic Health Association, 1984, p. 10.

<sup>218</sup> KENNEDY, "The Temporal Goods of the Church, [cc 1254-1310]," in *CLSA Comm2*, p. 1455 The *coetus* revising temporal goods saw no need to list multiple specific ends of the Church (e.g., assistance to missionaries, the promotion of culture, etc.) The group said that "all the other ends that could be added are nothing but the development of the ends already contained under the more general formulation of 'works of the sacred apostolate and of charity.'" See *Communicationes*, 12 (1980), pp. 396-397.

<sup>219</sup> *DPMB*, no. 188, p. 205

<sup>220</sup> RENKEN, *Church Property*, pp. 22.

<sup>221</sup> HITE says that "a juridic person would not be true to its purpose if it engaged in purely secular activity." In *A Primer on Public and Private Juridic Persons*, p. 6.

whether spiritual or temporal.” The same purposes are asserted in canon 1254, §2. M.

Di Pietro explains:

The purpose of the public juridic person transcends the purpose of the individual, in a juridic sense. But the purpose of the public juridic person in the concrete human situation, is dependent on the intentionality and the motives that move either the members of the *universitas personarum*, constituted as a public juridic person or the moderators of the *universitas rerum*, constituted as a public juridic person both of which are recognizable in the larger community.<sup>222</sup>

The purposes (goals or ends) of every juridic person must be in agreement with the mission of the Church. These purposes are works of piety, works of the apostolate, and works of charity (spiritual or temporal) (c. 114, § 2).<sup>223</sup> The purposes for the existence of public juridic persons are the same as the purposes for the ownership of temporal goods in the Church. This shows that the mission of public juridic persons is the same as the mission of the Church.<sup>224</sup>

Ecclesiastical goods therefore have an instrumental value in the Church.

According to DiPietro, they are the

necessary means to fulfill the theological and spiritual ends of the Church. *The general trust obligations attaching to property are rooted in the spiritual and theological self perception of the Church and its mission.* This theological context governs the interplay among four concepts of the public juridic person’s relationship to property that form the basic framework of Book V: ownership (*dominium*); stewardship (*dispensator*); administration (*administrator*) and trusteeship (*fiduciaria*) (cc. 1256, 1273, 1273-1289 and 1302).<sup>225</sup>

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<sup>222</sup> M. DI PIETRO, *An Examination of the Universitas Rerum and the Universitas Personarum of New Public Juridic Persons Succeeding to the Healthcare Apostolate of Religious Institutes in the United States*, Rome, Saint Thomas Aquinas Pontifical University, 2004, p. 228.

<sup>223</sup> This canon can be compared with *CIC/83*, canon 222, §1 (on needs of the Church for which all the Christian faithful are bound to offer assistance) and 1254, §1 (on the purposes for which the Church can have temporal good) See RENKEN, *Church Property*, p. 27

<sup>224</sup> D’ SOUZA observes: “Ecclesiastical goods are for the mission and they cannot be owned and administered in the spirit and logic of profit and accumulation.” In “General Principles Governing the Administration of Temporal Goods,” p. 474. FOX also explains: “Public juridical persons exist to act, to perform specified tasks, to fulfill a mission entrusted to it by the Church. The *identity* of the public juridical person is intimately connected with its Church entrusted activity” In “Introductory Thoughts,” p. 247

<sup>225</sup> M. DIPIETRO, “Public Juridic Persons: Owners and Trustees of Church Property,” p. 81.

In addition to these principal purposes of ecclesiastical goods in the Church, one must also note that the proper administration of temporal goods in the Church helps to promote certain fundamental human values. Morrissey identifies such values to include honesty, respect for the intention of the donor, accountability, etc.<sup>226</sup> The principal purposes of temporal goods in the Church are the same as the purposes or ends of public juridic persons in the Church (cc. 114, §2; 1254, §2). Since public juridic persons share in a special way in the mission of the Church, one can say that ecclesiastical goods are “indispensable” in achieving that mission.

### 1.8 —The Exercise of the Power of the Diocesan Bishop in Caring for Ecclesiastical Goods

The diocesan bishop governs the diocese entrusted to him with ordinary, immediate, and proper power (c. 381).<sup>227</sup> The universal law requires that he urge the observance of all ecclesiastical discipline (c. 392, §1); he is bound to promote the common discipline of the whole Church and, therefore, he is to exercise careful vigilance so that abuses do not creep into the *administration of ecclesiastical goods* (c. 392).<sup>228</sup> The Code

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<sup>226</sup> See MORRISSEY, “Acquiring Temporal Goods for the Church’s Mission,” p. 590; see also RENKEN, “The Principles Guiding the Care of Church Property,” pp. 136-177.

<sup>227</sup> WJ. KING says: “Although canon 381 provides that a diocesan bishop possesses ‘all the ordinary, proper and immediate power which is required for the exercise of his pastoral office,’ we know that the legal capacity for a bishop to act upon juridic persons other than the diocese itself is quite limited and circumscribed. He is by universal law the administrator only of the public juridic person of the diocese [for acts of ordinary administration more important in the light of the economic situation of the diocese, and for acts of extraordinary administration]. By particular law other juridic persons, pious foundations, or merely civil corporations may be established under his administration. The majority of ecclesiastical goods (*bona ecclesiastica*) within a diocesan territory do not belong to the juridic person of the diocese.” In “Mandated Diocesan Centralized Financial Service,” p. 331.

<sup>228</sup> IB. WATERS explains: “The bishop’s episcopal office obliges him to governance of the diocese entrusted to his pastoral care, not only in spiritualities but also in temporalities. Among the bishop’s various duties, *he is obliged to supervise carefully the administration of all goods* that belong to each parish

defines the goods of public juridic persons as “ecclesiastical goods” subject to the norms of Book V and the statutes of the public juridic persons (c. 1257, §1). Ecclesiastical goods are administered by those identified as their administrators (c. 1279, §1). If these goods belong to a public juridic person subject to the jurisdiction of the diocesan bishop, they are also subject to the diocesan bishop’s careful vigilance (c. 1276, §1).<sup>229</sup> It is, therefore, part of the pastoral duty of the diocesan bishop to care for the ecclesiastical goods of the public juridic persons subject to him. This care of the bishop is part of his pastoral *munus* (c. 381, §1). This pastoral *munus* requires that he use his proper, ordinary, and immediate power to care for the ecclesiastical goods of the public juridic persons subject to him. Bishop D. Schnurr points out the danger that could result from a bishop’s failure to supervise the administration of ecclesiastical goods:

As we are painfully aware, the Church is not immune to financial malfeasance, a fact that has become increasingly clear in recent months as financial scandals have been reported from all over the country. In fact, some in the media and elsewhere have coined Church finances as the next

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in his diocese. In order to do this, *he is entitled to issue instructions whenever necessary to ensure that all ecclesiastical goods are safeguarded*” In “Bishop’s Responsibility in Parish Financial Matters,” in A. ESPELAGE (ed.), *CLSA Advisory Opinions, 1994-2004*, Alexandria, CLSA, p. 406 [emphasis added] (=WATERS, “Bishop’s Responsibility in Parish Financial Matters”).

<sup>229</sup> See RENKEN, “Penal Law and Financial Malfeasance,” in *Studia canonica*, 41 (2008), p. 12 (=RENKEN, “Penal Law and Financial Malfeasance”).

The supervisory role of the bishop is crucial to the safeguarding of ecclesiastical goods of the public juridic persons subject to him. The bishop must therefore ensure that he is well informed before he makes any decisions that the law requires of him. Concerning this issue, WATERS writes: “Moreover, the role of the diocesan bishop’s careful supervision of the temporalities of parishes cannot simply be limited to ratification of the decisions of the parish priests. When an act of administration, which is determined by the bishop’s conference as extraordinary [in the statutes or by the diocesan bishop], is to be carried out, the diocesan bishop cannot merely ratify a parish priest’s decision. Rather, he is obliged not only to consult but also to obtain the consent of both the diocesan finance committee and the college of consultors before he can approve.” In WATERS, “Bishop’s Responsibility in Parish Financial Matters,” p. 406. Canon 1281 provides that acts of extraordinary administration by administrators of public juridic persons subject to the diocesan bishop are defined in the statutes of the juridic person or by the diocesan bishop after consulting the diocesan finance council if the statutes are silent. The same canon further indicates that all that is required for such an act of extraordinary administration is a written faculty from the ordinary. The required consent of the finance council and the college of consultors, mentioned in canon 1277 apply only to acts of extraordinary administration by the diocesan bishop, not by administrators of public juridic persons subject to the diocesan bishop. See KENNEDY, “The Temporal Goods of the Church [cc. 1254-1310],” in *CLSA Comm2*, p. 1483.

big scandal for the Catholic Church. A number of articles have appeared as of late on this topic in various newspapers such as the *Wall Street Journal*, *New York Times*, *USA Today* and *Time Magazine*. In today's environment of the Enrons, Worldcoms, et al., the Church must remain vigilant. It must continuously seek measures and procedures that can better ensure that the monies and resources are being expended in accordance with the intention of donors and benefactors.<sup>230</sup>

Bishop Schnurr makes a series of recommendations to diocesan bishops, among which are the “more active involvement and accountability of parish finance councils, and training for its members, diocesan policies on conflicts of interest, parish internal control questionnaires, and internal audits of parishes.”<sup>231</sup> These recommendations are all means that can be employed by the diocesan bishop to care for ecclesiastical goods of public juridic persons subject to him. In this way the diocesan bishop can prevent abuses from creeping into the administration of ecclesiastical goods (c. 392, §2).<sup>232</sup>

In order to fulfill this pastoral *munus* of caring for ecclesiastical goods, the diocesan bishop is empowered to promulgate laws and general decrees, issue singular administrative acts, publish instructions, and to use other legitimate administrative means. In view of what was discussed above, the diocesan bishop's exercise of legislative, executive, judicial, and administrative power specifically in caring for ecclesiastical goods will now be examined.

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<sup>230</sup> D.M. SCHNURR [USCCB Treasurer], “Memorandum” to All Bishops on “Parish Financial Governance,” 23 March, 2007, in <http://www.usccb.org/finance/parishfinancialgovernance.pdf>, (=SCHNURR, “Parish Financial Governance”); see also RENKEN, “Penal Law and Financial Malfeasance,” pp. 5-6.

<sup>231</sup> SCHNURR, “Parish Financial Governance.”

<sup>232</sup> See RENKEN, “Penal Law and Financial Malfeasance,” p. 6.

### 1.8.1 — The Exercise of the Legislative Power of the Diocesan Bishop in Caring for Ecclesiastical Goods

The fifth principle for the revision of the Code of canon law stated: “The importance of particular legislation should be more accurately described in the new Code of Canon Law, especially in the matter of temporal administration, since the control of temporal goods must be governed for the most part by the laws of the respective nations concerned.”<sup>233</sup> Following this recommendation, the Code makes provision for the promulgation of particular laws with special reference to temporal goods.<sup>234</sup> Canon 1287, §2 says norms regulating the administration of ecclesiastical goods *are to be determined by particular law*. In some cases the diocesan bishop, who is the only legislator in his diocese (c. 135, §2; 391), is mandated by the Code to employ *ius particulare*<sup>235</sup> to regulate the administration of ecclesiastical goods:

1. Canon 1277 prescribes that he define acts of ordinary diocesan administration “which are more important in light of the economic condition of the diocese”;
2. Canon 1281, §2 mandates him to determine acts of extraordinary administration for public juridic persons subject to him (unless their statutes already define such acts),
3. Canon 1287, §2 requires him to promulgate particular law determining how administrators render an account to the faithful concerning goods offered by them to the Church;
4. Canon 1303, §1, 2° prescribes that the diocesan bishop issue norms defining the conditions, in addition to those found in the universal law, for the establishment and acceptance of non-autonomous foundations.<sup>236</sup>

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<sup>233</sup> *Communicationes*, 1 (1969), pp. 80-81, English translation in HITE, *Reading Cases*, p. 75.

<sup>234</sup> See J. RENKEN, “Particular Laws on Temporal Goods,” in *Studies in Church Law*, 4 (2008), pp. 447-454 (=RENKEN, “Particular Laws on Temporal Goods”).

<sup>235</sup> *Ius particulare* could either be legislation (*lex*) or a general administrative decree (which falls within the category of *ius*). Concerning the promulgation of particular law see J. M. HUELS, “Ecclesiastical Laws,” in *CLSA Comm2*, pp. 55-85. HUELS explains: “A law must be enacted according to the necessary legal formalities. The text of the law must be drafted in writing, approved by the legislator, dated, and signed. Then, the law must be promulgated according to the requirement of canon 8. Finally, the law goes into effect on the established date.” In *ibid.*, p. 57.

<sup>236</sup> RENKEN, “Particular Laws on Temporal Goods,” pp. 447-448.

Other canons are facultative, which allow (but do not require) the diocesan bishop to establish particular laws:

1. Canon 1263 says after he has heard the presbyteral council and diocesan finance council, he may establish legislation imposing a moderate tax for diocesan needs upon public juridic persons subject to him, and an extraordinary and moderate exaction in cases of grave necessity upon other physical and juridic persons;
2. Canon 1266 provides for situations where the diocesan bishop may, through the promulgation of particular law, determine collections for specific parochial, diocesan, national or universal projects;<sup>237</sup>
3. Canon 1274 says the diocesan bishop may promulgate particular law establishing various financial institutes (e.g., for clergy support, for social security of clergy, for non-ordained diocesan personnel, for poorer dioceses, etc),
4. Canon 1284, §2 says the diocesan bishop may require that administrators of public juridic persons subject to him to prepare annual budgets of projected income and expenses;
5. Canon 531 says, after the diocesan bishop has received the counsel of the presbyteral council, he may issue particular law concerning the allocation of offerings on the occasion of parochial functions and the remuneration of the clerics performing these functions<sup>238</sup>

The diocesan bishop, as the chief shepherd of the diocese, can promulgate law for the good of the community (c. 391, §1). Though the Code does not mandate the promulgation of these laws, the bishop, judging the particular needs of his diocese, may decide to promulgate laws requiring:

1. That each parish sends the names and professional qualification of the members of the parish finance council, the dates they met, the dates on which parish budgets were approved to the diocesan bishop or diocesan finance council;

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<sup>237</sup> Although the canon uses a broad term “local ordinary,” we know that only the diocesan bishop can promulgate laws for the diocese (see cc. 391, §1, 135, §1). We must also note that the Code makes several provisions for the possibility of bishops’ conferences promulgating particular law for their territory. Such a law will definitely have to meet the criteria of canon 455. For further study of the general decrees of episcopal conferences see A. J. ASANBE, *The Authority of the Diocesan Bishop and the Decisions of the Conference of Bishops in the Light of Recent Studies: An Appraisal of Canon 455*, §4, JCD thesis, Rome, Universitas Urbaniana, 1996.

<sup>238</sup> See RENKEN, “Particular Laws on Temporal Goods,” pp. 449-450.



2. That the prior written permission of the local ordinary be required before a special collection is gathered in the church or oratories (other than those in which the local ordinary can order a special collection for specific parochial, diocesan or national projects: c. 1266);
3. That the prior written consent of the diocesan bishop be received before capital campaigns are carried out by any public juridic person subject to the diocesan bishop;
4. That the administrators of ecclesiastical goods subject to the diocesan bishop receive the prior consent of their finance councils before performing ordinary acts of administration which are more important in light of the economic condition of the juridic person,
5. That certain limits be established concerning donations which an administrator of ecclesiastical goods can make for pious and charitable purposes from non-stable patrimony;
6. That administrators receive prior consent or consultation from others when performing certain acts of alienation or transactions which may harm the patrimonial condition of the public juridic person. Such particular law should further define precisely the nature of such acts.<sup>239</sup>

### **1.8.2 — The Exercise of the Executive Power of the Diocesan Bishop in Caring for Ecclesiastical Goods**

The diocesan bishop exercises his executive power to care for ecclesiastical goods whenever he issues general administrative norms and singular administrative acts that relate to temporal goods. The following are examples of the exercise of executive power of the diocesan bishop in caring for ecclesiastical goods:

1. To refuse permission, in matters of greater importance, for a public juridic person to accept offerings (c. 1267, §2;<sup>240</sup> *CCEO*, c. 1016);
2. To give permission for a public juridic person to accept offerings burdened by a modal obligation or condition (c. 1267, §2);
3. To issue special instructions, within the limits of universal and particular law, for the entire matter of the

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<sup>239</sup> See *ibid.*, p. 449.

<sup>240</sup> The act that is issued is a singular administrative decree that makes a decision and must follow the provisions of *CIC/83*, canons 35-58.

administration of ecclesiastical goods (c. 1276, §2;<sup>241</sup> *CCEO*, c. 1022);

4. To intervene in the case of the negligence of an administrator (c. 1279, §1; *CCEO*, c. 1023);
5. To appoint suitable persons for a term of three years, renewable, to administer the goods of public juridic persons subject to him if no other administrator is identified by law, the charter of the foundation, or the statutes (c. 1279, §2);
6. To give the written faculty for administrators to place valid acts of extraordinary administration (c.1281, §1; *CCEO*, c. 1024);
7. To give consent for an administrator to invest money which remains after expenses and which can be set aside usefully for the purposes of the juridic person (c. 1284, § 2, 6°; *CCEO*, c. 1020, §§1-2; 1028);
8. To demand that goods held in trust be safeguarded (c. 1302, §2);
9. To give written permission for a juridic person to accept a foundation validly (c. 1304, §1; *CCEO*, c. 1048, §§2 & 3);
10. To render prudent judgment, after hearing those concerned and his own finance council, on the investment of money and movable goods assigned to an endowment (c. 1305, §1; *CCEO*, c. 1049);
11. To reduce Mass obligations because of diminished revenues if this power is expressly given to him in the charters of the foundation (c. 1308, §2; *CCEO*, c. 1052, §§1-5);
12. To transfer, for an appropriate cause, the obligations of Masses to days, churches, or altars different from those determined in the foundations (c. 1309; *CCEO*, c. 1053);
13. To reduce, moderate, or commute the wills of the faithful for pious purposes, for a just and necessary cause, if the founder has expressly entrusted this power to him (c. 1310, §1; *CCEO*, c. 1054);

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<sup>241</sup> The issuing of an instruction is an exercise of executive power governance and thus must follow the norm of *CIC/83*, canon 34

14. To lessen obligations (other than Mass obligations) imposed by founders when their fulfillment, through no fault of the administrators, has become impossible because of diminished revenue; the ordinary must first hear those concerned and his own finance council, and must intend to preserve the intention of the founder as much as possible (c. 1310, §2);<sup>242</sup>
15. To appoint a pastor who is to administer the goods of the parish (cc. 522; 532);
16. To appoint the diocesan finance officer who administers the goods of the diocese under the authority of the bishop (c. 494, §3);
17. To appoint members of the college of consultors who are to assist in the administration of ecclesiastical goods of the diocese (cc. 502; 1277);
18. To establish the diocesan finance council which is to assist in the administration of the ecclesiastical goods of the diocese (cc. 492-493; 1263; 1277; 1281, §2; 1292, §1; 1295);
19. To establish the presbyteral council which assists in the administration of the ecclesiastical goods of the diocese (cc. 495-501; 1263);
20. To remove a pastor from office because of poor administration of temporal affairs when this causes grave damage to the Church (c. 1741);
21. To designate some of the ecclesiastical goods belonging to the diocese as stable patrimony, and to grant permission for administrators of public juridic persons subject to him to make such a designation.<sup>243</sup>

### **1.8.3 — The Exercise of the Judicial Power of the Diocesan Bishop in Caring for Ecclesiastical Goods**

The judicial power of the diocesan bishop is to be exercised according to the norm of law (c. 391, §1). This power is to be exercised for the pastoral care of the

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<sup>242</sup> See RENKEN, “The Principles Guiding the Care of Church Property,” pp 144 147

<sup>243</sup> This is certainly not an exhaustive lists

diocese (c. 381, §1). Such pastoral care includes the exercise of the judicial power of the diocesan bishop to ensure that abuses do not creep into the administration of ecclesiastical goods (c. 392, §2), and that ecclesiastical goods are used for the proper purposes of the Church (c. 1254, §2). The diocesan bishop on some occasions exercises his judicial power to care for ecclesiastical goods through his tribunal (c. 1427, §3).

Canon 1419, §2 says: “If a case concerns the rights or temporal goods of a juridic person represented by the bishop, the appellate tribunal judges in first instance.” This canon provides for adjudication of cases that concern ecclesiastical goods of juridic persons represented by the diocesan bishop. The diocesan bishop who moderates the appellate tribunal exercises his judicial power through this means. Although the diocesan tribunal cannot adjudicate cases involving diocesan property, the appellate tribunal adjudication is no doubt an occasion of exercise of judicial power to care for ecclesiastical goods.

Canon 1427, §3 says: “Finally, if the controversy arises between physical or juridic religious persons of different religious institutes or of the same clerical institute of diocesan right or of the same lay institute, or between a religious and a secular cleric or lay person or a non-religious juridic person, the diocesan tribunal judges in first instance.” The controversy between physical persons, or between religious institutes of diocesan right may involve temporal goods or ecclesiastical goods of the religious institute. By providing that the diocesan tribunal adjudicate these cases identified by canon 1427, §3 the legislator further provides ecclesiastical means by which the diocesan bishop can exercise his judicial power to care for ecclesiastical goods. Furthermore, public juridic persons (e.g., parishes, schools that have been given public juridic personality, religious institutes of diocesan right, etc.) may have controversies concerning

property resolved in the diocesan tribunal, if it is competent to hear such cases (cc. 1427, §3).<sup>244</sup>

#### 1.8.4 — The Exercise of the Administrative Power of the Diocesan Bishop in Caring for Ecclesiastical Goods

Whereas executive power is necessary to place administrative acts, both general and singular in character, not all acts of administration require executive power. Some technical aspects of the acts of administration of ecclesiastical goods which pertain to general governance of a community do not commonly require an exercise of the power of governance. They are, rather, an exercise of the ordinary, proper, immediate power of the diocesan bishop used in fulfilling the pastoral *munus* identified in canon 381.

The following are examples of the diocesan bishop's exercise of administrative power in caring for ecclesiastical goods:

1. To perform acts of administration which are more important in the light of the economic situation of the diocese; to place act of extraordinary administration (c. 1277);<sup>245</sup>
2. To perform acts of alienation and other acts harmful to the patrimonial condition of a juridic person of a religious institute of diocesan right (c. 1295);
3. To alienate certain relics (c. 1190, §2; *CCEO*, c. 887, §1; 888);
4. To raise funds for any pious or ecclesiastical institution or purpose (c. 1265, §1; *CCEO*, c. 1015);

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<sup>244</sup> Canons 1496-1499 provide for instances where a judge could place some restraint on another's exercise of right. Within such a judicial forum, the judge could sequester ecclesiastical goods of a public juridic person that is in debt (c. 1497, §2). He could even place a sequestration on the exercise of the right of the public juridic person (cc. 1498-1499). These are instances where judicial power of the diocesan bishop is exercised through the judges of his tribunal to care for ecclesiastical goods. For an in-depth study of sequestration, see M. A. ORTIZ, "Actions and Exceptions in Particular [cc 1486-1499], in *ExComm*, vol. IV/1, pp. 1042-1050

<sup>245</sup> Although the law establishes in canon 494, §3 that the diocesan finance officer administer the goods of the diocese under the authority of the diocesan bishop, there is nothing in the Code that prohibits the diocesan bishop from administering the ecclesiastical goods of the diocese. However, it will be prudent to allow the diocesan finance officer to carry out acts of ordinary administration in the diocese.

5. To accept a gift [a contract] to which is attached a condition or a modal obligation c. 1267, §2; *CCEO*, c. 1016),
6. To initiate or contest a lawsuit on behalf of a public juridic person in civil court (c. 1288; *CCEO*, c. 1032);
7. To alienate goods (c. 1291; *CCEO*, c. 1035, §1);
8. To alienate divisible goods, some of which were previously alienated (1292, §3; *CCEO*, c. 1036, §1; 1038);
9. To lease church goods (c. 1297);
10. To sell or lease ecclesiastical goods to their own administrators or to their relatives up to the fourth degree of consanguinity or affinity (c. 1298; *CCEO*, c. 1041),
11. To accept a foundation for a juridic person (c. 1304, §1; *CCEO*, c. 1048, §§2 & 3).<sup>246</sup>

## CONCLUSION

This chapter has examined the power of the diocesan bishop within the broader understanding of “power in the Church.” The diocesan bishop’s power comes both from the sacrament of orders and from the conferral of a canonical mission. His power is exercised for the fulfillment of the mission of the Church, a mission in which all Christ’s faithful are called to participate.<sup>247</sup>

Our study so far has shown that public juridic persons act in the name of the Church and assume a principal role in the fulfillment of the mission of the Church. This is precisely why the goods of public juridic persons are subject to the universal law

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<sup>246</sup> RENKEN, “The Principles Guiding the Care of Church Property,” pp. 146-147.

<sup>247</sup> *DPMB* no. 59, p. 69, states: “The ecclesiology of communion requires the Bishop to involve all Christians in the one mission of the Church. In fact all Christians, individually and collectively, have the right and the duty to cooperate in the mission which Christ entrusted to his Church, each according to his own particular vocation and gifts received from the Holy Spirit. In those things not essential to the common good, the baptized justly enjoy freedom of opinion and of action. In governing the diocese the Bishop should willingly recognize and respect this healthy pluralism of responsibility and this just freedom, whether of persons or associations. He should gladly communicate to others a sense of responsibility, both individual and collective, and he should encourage this in those who hold office in the Church, showing them his full confidence; in this way they will accept and fulfil with zeal the tasks that fall to them by virtue of canon law or their vocation.”

contained in Book V. Since all laws in the Church are geared toward the salvation of souls (cf. c. 1752; *CCEO*, c. 1400), we can also confidently say that laws regulating ecclesiastical goods are also for the salvation of souls, since these laws serve to ensure that the Church has the means for a befitting worship, for remuneration of its ministers, for works of the apostolate, and also for rendering help to those who are in need.

We also saw that there is a correlation between the mission of the Church and the purposes for owning ecclesiastical goods. The purposes for which the Church legitimately owns temporal goods are related to the mission of the Church. The mission of the Church is the mandate given by Christ to all Christ's faithful to go and proclaim the gospel to all nations. The practical fulfillment of this mission lies in the functions of sanctifying, teaching, and governing in the Church. Ecclesiastical goods help fulfill this mission. Given the importance of ecclesiastical goods for the mission of the Church, we then examined specific ways in which the diocesan bishop (who as the vicar of Christ in the diocese has a principal task of ensuring that the mission of Christ is properly fulfilled) exercises his power to care for the ecclesiastical goods of public juridic persons subject to him.

The role of the administrator of ecclesiastical goods is very crucial to ensuring that ecclesiastical goods are used for their proper purposes. Although the diocesan bishop is to care for ecclesiastical goods of public juridic persons subject to him, he is not their administrator (c. 1279, §1). The administrator of each public juridic person is responsible for all the acts i.e., acquisition, possession, administration and alienation (see c. 1254, §2) of caring for ecclesiastical goods. We shall in the next chapter study who the administrator is and what constitutes the *munus* of the administrator of ecclesiastical goods.

## Chapter Two

### The Role of Administrators in Caring for Ecclesiastical Goods

#### Introduction

The role of an administrator of ecclesiastical goods is important in the life of the Church. This is because he or she administers the property of a public juridic person. In order to understand the role of the administrator in caring for ecclesiastical goods, we need to be aware of what it means to administer. The term *administrare* has both strict and broad connotation.<sup>1</sup> The strict meaning of the term means the activity of the administrator to preserve, nourish, and invest goods already acquired, i.e., acts of administration (cc. 1273-1289). The broad meaning of *administrare* entails all the activity of the administrator as the representative of the public juridic person (cc. 118, 1279, §1). F. Coccopalmerio points out that the concept of *administrare* is broader than acts of administration. He says to administer is to

carry out the activities aimed at using ecclesiastical goods for the purposes of the juridical person to whom they belong. Therefore, we can indicate the following fundamental activities (pursuant to the norms of book V, particularly cc. 1281ff): recognize what those goods are, and their condition (cf. c. 1283, 2): -acquire or alienate property; -dispose of goods

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<sup>1</sup> The Pontifical Council for Legislative Texts explained the different meanings of the term *administrare* as used in the Code. It noted that the term “administration” has a double meaning in the Code, which one must carefully distinguish: “(1) ‘Administration’ can indicate the function proper to ecclesiastical authority – different from the function of legislating and judging – consisting in placing *acts of governance* in respect to the law. e.g., *singular administrative acts* which include singular decrees and precepts, rescripts, privileges, and dispensations (see canons 35-93). Administration here refers to the power of governance. (2) ‘Administration’ can also refer to economic actions, which seek to conserve, to make to bear fruit, and to better a patrimony. The Legislator uses the term *in both senses* in the Code. For example, when he is regulating an administrative act in Book I, he is evidently making reference to the *first meaning* of ‘administration;’ when, however, he establishes in canon 1279 the need for a public juridic person to have an administrator, he is adopting the *second meaning* of ‘administration.’

“It is important to recall this distinction when examining Book V, and in particular its Title II on “the administration of goods,” since there the Legislator is adopting both senses of the term “administration” in relation to ecclesiastical goods. Concretely, when canon 1273 identifies the Roman Pontiff as the supreme administrator of ecclesiastical goods, it is referring to *the proper jurisdiction of the Pope* in the Church and, therefore, over the goods of public juridic persons destined for the proper purposes of the Church, as well as to an *administrative function of an economic type* founded on dominative power over goods.” In PONTIFICAL COUNCIL FOR LEGISLATIVE TEXTS, Note *La funzione dell'autorità ecclesiastica sui beni ecclesiastici*, 12 February 2004, in *Communicationes*, 36 (2004), p. 26 [emphasis added], English translation by J.A. RENKEN, “The *Parochus* as Administrator of Parish Property,” in *Studia canonica*, 43 (2009), p. 492



for various purposes; -preserve, restore, or transform goods; -draft and preserve the documents relative to the administration of goods by rendering an account to the local ordinary.<sup>2</sup>

The importance of administering ecclesiastical goods is further underscored by the extensive treatment that the legislator gives to the subject matter. In fact the whole of Book V could be called “norms for the administration of ecclesiastical goods.” The competent authority designated as “administrator of ecclesiastical goods” is empowered by both universal and particular laws to carry out the task of administering the ecclesiastical goods of a public juridic person (cc. 118; 494, §3; 532; 1279, §1). Broadly speaking, the administrator administers ecclesiastical goods by carrying out the acts of acquisition, possession/retention, administration, alienation and contracts, on behalf of the public juridic person.<sup>3</sup>

In this chapter we shall examine the role of the administrator of ecclesiastical goods. The task of administering ecclesiastical goods involves the four aspects of full *dominium* identified in canon 1254, §1. The role of administrators of ecclesiastical goods shall therefore be examined along this line. We shall first discuss the role of the Supreme Pontiff who is also the supreme administrator of all ecclesiastical goods (cc. 331; 333, §1; 360; 1273). Since the Code provides for the participation of some organs in the administration of goods, this chapter shall also study the role of the college of consultors, the presbyteral council, and the finance council in this matter.

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<sup>2</sup> F. COCCOPALMERIO, “Particular Churches,” in *ExComm*, vol. II/2, p. 1180.

<sup>3</sup> We are using “administration” in a broad sense here because it is obviously not true that to administer (in the strict sense of canons 1273-1289) is a means by which goods are acquired.

## 2.1 — The Administrators of Public Juridic Persons

Canon 118 states: “Representing a public juridic person and acting in its name are those whose competence is acknowledged by universal or particular law or by its own statutes. Representing a private juridic person are those whose competence is granted by statutes.” This canon has no parallel either in the Eastern Code or the 1917 Code.<sup>4</sup> The canon implies the fact that juridic persons have rights to exercise and an obligations to fulfill (c. 113, §2). They are capable of acquiring, retaining/possessing, administering, and alienating temporal goods (c. 1255); they can vindicate their rights before an ecclesiastical tribunal (c. 1400, §1, 1°).<sup>5</sup> However, juridic persons as artificial constructs of the law need physical persons to act on their behalf, whether these be individuals or groups. The competent person to represent a juridic person is mostly designated by law, especially when it is a case of a public juridic person whose personality is conferred by the law itself. The Code, for example, designates the diocesan bishop as the juridic representative of the diocese in all affairs of the diocese (c. 393), the pastor or parochial administrator for all juridic affairs of the parish (cc. 532; 543, §2, 3°), and the rector of a seminary for all the affairs of the seminary (c. 238, §2). When the law does not designate the juridic representative, the statutes of the juridic person should make such designation.<sup>6</sup>

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<sup>4</sup> G.L. CASTRO notes: “It is important to remember in this respect, that in the Code the norm of c. 100 of the *CIC/1917* has not been included, which went back to the golden period of classical canon law (cf. X 1, 41 and 3), according to which ‘personae morales sive collegiales sive non collegiales mononibus aequiparantur.’ This norm imposed the submission of the activity of juridical persons to preventive controls (authorizations) and successive controls (approvals), whose omission could lead to the annulment of the acts, controls that still exist today, even though they are no longer required as a general rule, can be made use of by particular and statutory norms.” In “Juridical Persons,” in *ExComm*, vol. I, p. 774.

<sup>5</sup> See R.T. KENNEDY, “Physical and Juridic Persons,” in *CLSA Comm2*, p. 164.

<sup>6</sup> CASTRO writes: “The individuation of the person that represents the entity and manifests its will to the exterior appears as a necessary requirement for the approval of the statutes on the part of the competent ecclesiastical authority and, consequently, for the recognition itself of the juridical person. Otherwise, it is understood that, without the representative it would be as though the public or private

One of the consequences of this juridic representation is that the roles of the authorities are clearer than they were before. It also enforces the principle of subsidiarity which is one of the principles for the revision of the Code.<sup>7</sup> The diocesan bishop, for example, is not the juridic representative of the parish, even though the diocese may have a single civil representation by the charter of sole corporation. Kennedy remarks:

The apparent simplicity of canon 118 masks a source of tension between diocesan bishops and pastors or others who, by law of the Church or by statutes, are said to represent and act in the name of a juridic person in places where the civil-law structure of a diocese does not mirror the canonical structure. Where a diocese is civilly structured as a corporation sole, for example, as in many dioceses in the United States, all, or nearly all, church-related assets are considered to belong to a single corporation whose sole representative is the diocesan bishop. He, and he alone, acts for the corporation.<sup>8</sup>

Kennedy cautions that this method of holding title to church property is incompatible with canon law, and the Holy See has long disapproved of this method.<sup>9</sup> He concludes

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juridical person did not have a voice: It would find itself incapable of manifesting its will and of participating in the formation of a juridical relationship." In "Juridical Persons," in *ExComm*, vol. I, p. 775.

The juridic representative is not always the sole administrator of the juridic person. For example the diocesan finance officer is an administrator of ecclesiastical goods of the diocese but he is not the juridic representative of the diocese

<sup>7</sup> See *Communicationes*, 14 (1982), p. 199.

<sup>8</sup> KENNEDY, "Physical and Juridic Persons, [cc. 113-123]," in *CLSA Comm2*, p. 164.

<sup>9</sup> See SACRED CONGREGATION Private letter, 29 July 1911, English translation in *CLD*, 2 (1956), pp. 443-445.

The Sacred Congregation for Council in a private letter to the Bishops of United States on 19 July 1911 explained that the "parish corporation" is the preferred method to hold title to, and to administer, church property:

"1 Among the methods which now are in use in the United States for holding and administering church property, the one known as *Parish Corporation* is preferable to the others, but with the conditions and safeguards which are now in use in the State of New York. The Bishops therefore should immediately take steps to introduce this method for the handling of property in their dioceses, if the civil law allows it. If the civil law does not allow it, they should exert their influence with the civil authorities that it may be made legal as soon as possible.

"2 Only in those places where the civil law does not recognize *Parish Corporations*, and until such recognition is allowed, the method commonly called *Corporation sole* is allowed, but with the understanding that in the administration of ecclesiastical property the Bishop is to act with the advice, and in more important matters with the consent, of those who have an interest in the premises and of the diocesan consultors, this being a conscientious obligation for the Bishop in person.

"3. The method called *in fee simple* is to be entirely abandoned."

that “whatever the civil structure, every effort should be made to see that the laws of the Church regarding the official representation of parishes and other juridic persons in all juridic affairs are faithfully fulfilled.”<sup>10</sup>

Castro says that in representing the juridic person, the representative must act in accord with the will of the juridic person.

It can occur that the representative may not be only the organ of external manifestation of the entity, but also an organ of formation of that will. Several cases can be conceived to that purpose. that the organ of the formation of the will of the juridical person might coincide completely

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S. M. BAINBRIDGE and AARON H COLE recently noted some of the dangers inherent in the corporation sole structure of diocesan property. These authors write. “It is impossible to square the use of the corporation sole with canon law, and incorporation as a corporation sole exposes the assets of parishes and other juridic persons, which in canon law are the property of such persons, to the claims of creditors of the diocese” In “The Bishop’s Alter Ego: Enterprise Liability and the Catholic Priest Sex Abuse Scandal,” in *Journal of Catholic Legal Studies*, 46 (2007), pp. 77-78.

A recent letter from the APOSTOLIC NUNCIO to Canada stated clearly that the diocesan corporation sole model to hold parish property is incompatible with canon law

“Acknowledging that the diocese has an obligation in justice to a victim of abuse, it is nevertheless equally true that the diocese has an obligation in justice to the rest of the faithful of the diocese; these two cannot be mutually exclusive [ ] Since the *corporation sole* is in fact incompatible with the canonical autonomy of the parish, it appears necessary that all dioceses having their bishop holding the civil status of a *corporation sole* look seriously at changing it [ ] This means re-establishing the primacy of Canon Law in the financial structure of the dioceses [ ]” In Letter of the Apostolic Nunciature, Prot. N 6088/05, 14 December 2005.

For an in-depth discussions on the civil legal structuring of parishes, see P.J. BROWN, “Square Pegs in Round Holes: Toward a Better Model of Parish Civil Law Structures,” in *The Jurist* 69 (2009), pp. 261-310 (=BROWN, “Square Pegs in Round Holes”); M. E. CHOPKO, “An Overview of the Parish and the Civil Law,” in *The Jurist*, 67 (2007), pp. 194-226; R.L. KEALY, “Methods of Diocesan Incorporation,” in *CLSA Proceedings*, 48 (1986), pp. 163-177; W.J. KING, “The Corporation Sole and Subsidiarity,” in *CLSA Proceedings*, 65 (2003), pp. 107-134; M.J. O’BRIEN, “Instructions for Parochial Temporal Administration,” in *Catholic Lawyer*, 41 (2001), pp. 131-136.

<sup>10</sup> KENNEDY, “Physical and Juridic Persons, [cc. 113-123],” in *CLSA Comm2*, p. 164 BROWN writes: “If corporation sole is chosen for parishes, as was recently done in the Diocese of Sacramento, presumably the pastor and his successors (that is, the office of pastor) will be named as the corporation sole. In terms of parish governance, this accords well with canon 532 (‘In all juridic affairs, the pastor acts in the name of the parish according to the norm of law’), and the pastor is still subject to the authority of the bishop canonically (c. 519). Civilly, however, does this mode of organization grant too much independence to the pastor in the administration and governance of the parish? Although he is subject to the bishop in canon law, would civil law enforce the bishop’s authority if a pastor acts contrary to the bishop’s wishes or directives? [..] Furthermore, as with any civil corporation, if the corporation sole fails to operate according to the norms of civil law (for instance, by failing to hold regular meetings, or keep careful minutes and reports, etc.), civil authorities may disregard the corporate form when addressing issues involving the temporal and civil affairs of the parish. Thus, when corporation sole is used for parishes, it is especially important to delineate carefully the limitations on corporate powers in the articles of incorporation and by-laws and place prudent restrictions in the deeds to real property, etc.” In “Square Pegs in Round Holes,” p. 290.

with that of its external manifestation; or it might not coincide at all; or it could coincide in part because the formation of the will might be produced through a complex procedure (e.g., a collegial act), in which a plurality of subjects participate, but after the will is externally manifested by a representative that has participated in the formation of the wishes of the entity.

In all these cases, even when the subject that represents the entity *ad extra* and manifests its will coincides with the organ of its formation, it is necessary always to distinguish the two instances, that of formation and that of exteriorization of the will, and to assess its correct formation, possible defects, and the consequent responsibilities.<sup>11</sup>

In a related vein, we can recognize that the presbyteral council, the college of consultors, and the diocesan and the parish finance councils are organs that help express the will of the public juridic person. These organs are not, however, the subject of expression of the will of these public juridic persons; this subject always remains the designated representative of the public juridic person. The representative of a juridic person must act according to the purpose for which a juridic person was established. Moreover, not all actions of the representative can be imputed to the juridic person. Only those acts which comport with the conferred mandate can be imputed to the juridic person.<sup>12</sup>

The ownership of ecclesiastical goods is vested in the public juridic person that lawfully acquired them. The administration of goods is one of the essential aspects of the ownership of goods (c. 1254, §1). The canons on the administration of goods in the 1983 Code are essentially organized in a hierarchical way.<sup>13</sup> This organization begins with a declaration that the Roman Pontiff is the supreme administrator of all ecclesiastical goods (c. 1273); this is followed by norms on administration by diocesan bishops and

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<sup>11</sup> CASTRO, "Juridical Persons," in *ExComm*, vol. I, p. 776.

<sup>12</sup> See *ibid.* For a study on the liability of the action of the representative of a public juridic person, see C.J. FLOWERS, "Liability Issues for Related Church Entities," in *Public Ecclesiastical Juridic Persons and their Civilly Incorporated Apostolates (e.g., Universities, Healthcare Institutions, Social Service Agencies) in the Catholic Church in the U.S.A.: Canonical-Civil Aspects: Acts of the Colloquium*, Rome, Pontifical University of St. Thomas Aquinas in Rome, 1998, pp. 97-179.

<sup>13</sup> See R.T. KENNEDY, "The Temporal Goods of the Church [cc. 1254-1310]," in *CLSA Comm2*, p. 1474 (=KENNEDY, "The Temporal Goods of the Church [cc. 1254-1310]," in *CLSA Comm2*).

other ordinaries (cc. 1274-1278); and finally these are followed by norms on administration by persons other than ordinaries (cc. 1279-1289).<sup>14</sup>

Canon 1279 identifies the proper administrator of ecclesiastical goods. It states:

§1 The administration of ecclesiastical goods pertains to the one who immediately governs the person to which the goods belong unless particular law, statutes, or legitimate custom determine otherwise and without prejudice to the right of the ordinary to intervene in case of negligence by an administrator.<sup>15</sup>

§2. In the administration of the goods of a public juridic person which does not have its own administrators by law, the charter of the foundation, or its own statutes, the ordinary to whom it is subject is to appoint suitable persons for three years; the same persons can be reappointed by the ordinary.

This canon sets forth the general principle that ecclesiastical goods are administered by those persons who immediately govern the public juridic person which owns them. The Code identifies several administrators of ecclesiastical goods. For example, the administrator of the ecclesiastical goods of a parish is its pastor (c. 532).<sup>16</sup> The diocesan finance officer is the routine administrator of the ecclesiastical goods of the diocese (c.

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<sup>14</sup> See *ibid.*

<sup>15</sup> There are two different English translations of the first paragraph of this canon. The original Latin states: “Administratio bonorum ecclesiasticorum ei competit, qui immediate regit personam ad quam eadem bona pertinent, nisi aliud ferant ius particulare, statuta aut legitima consuetudo, et salvo iure Ordinarii interveniendi in casu neglegentiae administratoris.” The *ExComm* (CLSGBI) translates the first line as “the administration of ecclesiastical goods pertains to the one *with the direct power of governance* over the person to whom the goods belong,” while the 1999 *CLSA* translates it as “The administration of ecclesiastical goods pertains to *the one who immediately governs* the person to which the goods belong.” The *CLSA* translation is the better translation because the Latin does not in any way use the word *potestas* in relation to the verb *regit*. In fact, nowhere in this canon is the power of governance mentioned. The administration of ecclesiastical goods is not carried out solely with the power of governance, as we have argued in chapter one. The administration of ecclesiastical goods entails the exercise of the power of governance but is not co-terminus with the power of governance.

<sup>16</sup> T. GREEN poses the possibility of the appointment of a parish finance officer to assist in the administration of parochial ecclesiastical goods. In “Shepherding the Patrimony of the Poor: Diocesan and Parish Structures of Financial Administration,” in *The Jurist*, 56 (1996), pp. 709, 710, 732-734. It must be understood, however, that such a figure would not diminish the role of the pastor who must remain the one who represents the parish in juridic matters and sees to the administration of parochial goods (c. 532). See also P. GREINER, “Les biens des paroisses dans le contexte des diocèses français,” in *L’année canonique*, 47 (2005), pp. 41-42.

494, §3), under the authority of the diocesan bishop who governs the diocese (see cc. 369; 393).

Canon 1279, §1 empowers the ordinary to intervene in the case of negligence by an administrator. The principal way of determining whether or not an administrator is negligent is to be assessed in light of the goal of the public juridic person: Are the goods of the public juridic person being used for its designated purpose(s)? Are they being administered according to the statutes of the public juridic person? This right to intervene in case of negligence of an administrator is also consistent with the pastoral duty of the diocesan bishop stated in canon 392, §2: “[...] to exercise vigilance so that abuses do not creep into ecclesiastical discipline, *especially regarding [...] the administration of goods*” [emphasis added]. The Code also identifies a specific way to fulfill this task by urging the diocesan bishop to issue special instructions that will guide administrators of ecclesiastical goods subject to him (cc. 34, §1; 1276, §2). The careful vigilance required of the diocesan bishop (c. 1276, §1) is exercised over the ecclesiastical goods administered by the diocesan finance officer, pastors of parishes, and administrators of other public juridic persons subject to the diocesan bishop (cc. 1278; 532).<sup>17</sup>

Although the law permits the diocesan bishop<sup>18</sup> to entrust the task of careful vigilance over ecclesiastical goods of public juridic persons subject to his authority to the

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<sup>17</sup> The pastor is obliged *always* to carry out his duties under the authority of the diocesan bishop. Canon 519 states that the pastor as the proper pastor of the parish entrusted to him, exercises his pastoral care of the community committed to him under the authority of the diocesan bishop. The diocesan bishop is like a father to the pastor; there's a paternal relationship that has both pastoral and juridic dimensions. For an excellent study of the relationship between the diocesan bishop and his priests see A. MENDONÇA, “The Bishop as Father, Brother and Friend to His Priests,” in *Philippine Canonical Forum*, 4 (2002), pp. 75-95.

<sup>18</sup> We are aware that canon 1279, §1 mentions ordinaries, but we have decided to focus on the diocesan bishop who is one of the ordinaries identified in canon 134, §1. This is because our study focuses on the power of the diocesan bishop with regard to providing norms to guide administrators of

diocesan finance officer (c. 1279, §1), the canon does not indicate that the latter may intervene in the case of an administrator's negligence. Rather, he or she would inform the diocesan bishop about the administrator's negligence and the diocesan bishop himself would then make the intervention.<sup>19</sup> Since the intervention of the bishop is a restriction of the rights of the administrator (c. 18), a strict interpretation should be given to this canon in order to protect the rights of administrators.

Canon 1279, §2 is supplemental law in the sense that it provides for instances where no law or provision in a governing document (charter or statutes) designates an administrator. In such a situation, the ordinary is to appoint a suitable person<sup>20</sup> for a three year renewable term. The law wants to ensure that each public juridic person always has an administrator, as required by canon 118.

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ecclesiastical goods subject to his authority. Consequently, we shall be restricting the use of ordinary to the diocesan bishop most of the time.

<sup>19</sup> See J.A. RENKEN, *Church Property: A Commentary on Canon Law Governing Temporal Goods in the United States and Canada*, New York, The Society of Saint Paul/Alba House, 2009, p. 147 (=RENKEN, *Church Property*).

<sup>20</sup> KENNEDY notes: "The 1983 code reflects a deliberate change to allow the appointment of women and to allow reappointment." In "The Temporal Goods of the Church [cc. 1254-1310]," in *CLSA Comm2*, p. 1481. "Suggestum est ut dicatur 'personas idoneas' loco 'viros idoneos' ut etiam mulieres includantur. Propositio placet Consultoribus." In *Communicationes*, 12 (1980), p. 416.



### 2.1.1 — The Roman Pontiff and Other Administrators of Ecclesiastical Goods<sup>21</sup>

Canon 1273 states: “By virtue of his primacy of governance, the Roman Pontiff is the supreme administrator and steward of all ecclesiastical goods.” This principle is drawn from the theological teaching of the Church concerning the supremacy of the Roman Pontiff.<sup>22</sup> The source of this canon 1273 is canon 1518 of the 1917 Code. The Roman Pontiff exercises his supreme administration of ecclesiastical goods and stewardship either personally or through the various dicasteries of the Roman Curia, and in numerous other ways. He does it, for example, when he promulgates general laws (e.g., the 1983 *Code of Canon Law*, the 1990 *Code of Canons of the Eastern Churches*, the 1988 apostolic constitution *Pastor bonus*); when he reserves to himself certain activities concerning ecclesiastical goods (e.g., cc. 1292, §2; 1308, §1; 1310, §3); when he reserves to himself the approval of certain norms regarding ecclesiastical goods (e.g., cc. 1264, 1°; 1272), etc. In practice, several dicasteries of the Apostolic See are involved in the administration of ecclesiastical goods in the name of the Roman Pontiff:

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<sup>21</sup> The scope of this study will not permit us to treat administrators of ecclesiastical goods in religious institutes and societies of apostolic life. For a more thorough study of this matter see P E CAMPBELL, and F. SACKETT, “Temporalities for Religious: Six Practical Cases,” in *CLSA Proceedings*, 46 (1984), pp. 71-97; V. DE PAOLIS, “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; J. HITE, “Property Issues for Religious,” in *CLSA Proceedings*, 48 (1986), pp. 163-177; Idem, “Religious Institutes (canons 607-709),” in *CLSA Comm1*, pp. 470-524; J.D. LEONARD, “Temporal Goods: Canons 634-640,” in J. HITE, S. HOLLAND, and D. WARD (eds), *A Handbook on Canons 537-746*, Collegeville, The Liturgical Press, 1985, pp. 99-114; F.G. MORRISSEY, “The Directory for the Administration of Temporal Goods in Religious Institutes,” in *Unico Ecclesiae Servitio: Etudes de Droit Canonique Offertes à Germain Lesage, O.M.I.*, Ottawa, Saint Paul University, 1991, pp. 267-285; Idem, “Religious Institute’s Finance Council,” in A. ESPELAGE (ed), *CLSA Advisory Opinions, 1994-2000*, Washington, CLSA, pp. 409-410.

<sup>22</sup> The Fathers of Vatican Council II declared: “The college or body of bishops has for all that no authority, unless united with the Roman Pontiff, Peter’s successor, as its head, whose primatial authority let it be added, over all, whether pastors or faithful, remains in its integrity. For the Roman Pontiff, by reason of his office as Vicar of Christ, namely, and as pastor of the entire Church, has full, supreme and universal power over the whole Church, a power which he can always exercise unhindered.” In *LG*, no. 22, English translation in FLANNERY1, pp. 374-376

1. Congregation for the Clergy – ‘This Congregation carries out everything that pertains to the Holy See regarding the regulation of ecclesiastical goods, and especially their correct administration; it grants the necessary approvals and *recognitions*, and it further sees to it that serious thought is given to the support and social security of the clergy’ (*Pastor bonus*, art. 98).  
  
‘The congregation deals with those matters that are within the competence of the Holy See [.] concerning Mass obligations as well as pious wills in general and pious foundations’ (*Pastor bonus*, art. 97, 2°);
2. Congregation for Institutes of Consecrated Life and Societies of Apostolic Life – ‘It deals with everything which, in accordance with the law, belongs to the Holy See concerning [.] administration of goods of institutes of consecrated life and societies of apostolic life’ (*Pastor bonus*, art. 108 § 1);
3. Congregation for the Evangelization of Peoples – ‘the Congregation administers its own funds and other resources destined for the missions [.]’ (*Pastor bonus*, art. 92),
4. Congregation for the Oriental Churches—‘The Congregation for the Oriental Churches considers those matters, whether concerning persons or things, affecting the Catholic Oriental Churches’ (*Pastor bonus*, art. 56);
5. Pontifical Commission for Preserving the Patrimony of Art and History – ‘At the Congregation for the Clergy there exists the Pontifical Commission for Preserving the Patrimony of Art and History that has the duty of acting as curator for the artistic and historical patrimony of the whole Church’ (*Pastor bonus*, art. 99);
6. Administration of the Patrimony of the Apostolic See – ‘It is the function of the Administration of the Patrimony of the Apostolic See to administer the properties owned by the Holy See in order to underwrite the expenses for the Roman Curia to function’ (*Pastor bonus*, art. 172; see arts. 173-175),
7. Prefecture for the Economic Affairs of the Holy See – ‘The Prefecture for the Economic Affairs of the Holy See has the function of supervising and governing the temporal goods of the administrations that are dependent on the Holy See, or of which the Holy See has charge, whatever the autonomy of these administrations may happen to be’ (*Pastor bonus*, art. 176; see arts. 177-179)<sup>23</sup>

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<sup>23</sup> RENKEN, *Church Property*, pp. 153-154. Besides the dicasteries listed above, mention should also be made of the unique role of the Apostolic Camera which functions *sede Apostolica vacante*: ‘When the Apostolic See falls vacant, it is the right and the duty of the cardinal camerlengo of the Holy Roman Church, personally or through his delegate, to request, from all administrations dependent on the Holy See, reports on their patrimonial and economic status as well as any information on any extraordinary business that may at that time be underway, and, from the Prefecture for the Economic Affairs of the Holy See he shall request a financial statement on income and expenditures of the previous year and the

Beside the supreme administrator of ecclesiastical goods, the Code itself also designates other persons with the responsibility of administering ecclesiastical goods.<sup>24</sup> While the diocesan bishop is not explicitly identified as administrator of the ecclesiastical goods of the diocese, he certainly can administer the goods of the diocese. In fact, only the diocesan bishop can place the acts of administration identified in canon 1277 (acts that are of major importance in the light of the economic situation of the diocese and acts that are determined by the conference of the bishops to be acts of extraordinary administration). Coccopalmerio explains that the diocesan bishop is specifically designated as the administrator of the goods of the diocese:

-the diocesan bishop is the legal representative of the juridical person 'diocese' (c. 393); -he is also the administrator of the juridical person 'diocese.' This second fact follows from c. 1277, in relation with cc. 1279 § 1 and 1280. In effect, in c. 1277 it is stated -'Episcopus diocesanus quod attinet ad actus administrationis ponendos...' From that expression it is deduced that the diocesan bishop is the one who does the acts of administration; he is the administrator.<sup>25</sup>

In light of Coccopalmerio's remarks and our theology of episcopal ordination, it is undeniable that the bishop is an administrator. The *Directory for the Pastoral Ministry of Bishops* calls him the sole administrator of the diocese: "As the one who presides over the particular Church, it falls to the Bishop to *organize* the administration of ecclesiastical goods. He does this through suitable norms and instructions, in harmony with the

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budgetary estimates for the following year. He is duty bound to submit these reports and estimates to the College of Cardinals." In *PB*, no. 171, §2.

<sup>24</sup> Canon 636, §1 says that each institute's proper law should determine its finance officer, who is to administer the goods of the institute according to the norm of law, under the direction of the respective authority.

<sup>25</sup> COCCOPALMERIO, "Particular Churches," in *ExComm*, vol II/2, p. 1182.

directives of the Apostolic See, and he may also make use of any guidelines and resources supplied by the Episcopal Conference.”<sup>26</sup>

Another administrator at the diocesan level identified in the Code is the diocesan finance officer. This person is entrusted with the task of routinely administering diocesan goods on a daily basis under the authority of the diocesan bishop. Canon 494 states:

§1. In every diocese, after having heard the college of consultors and the finance council, the bishop is to appoint a finance officer who is truly expert in financial affairs and absolutely distinguished for honesty.<sup>27</sup>

§2 The finance officer is to be appointed for a five year term but can be appointed for other five year terms at the end of this period. The finance officer is not to be removed while in this function except for a grave cause to be assessed by the bishop after he has heard the college of consultors and the finance council.<sup>28</sup>

§3. It is for the finance officer to administer the goods of the diocese under the authority of the bishop in accord with the budget determined by the finance council and, from the income of the diocese, to meet expenses which the bishop or others designated by him have legitimately authorized

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<sup>26</sup> DPMB, no. 188, p. 205 The DPMB further explains the duties of the diocesan bishop “In order to avoid abuses, he should monitor carefully the administration of all the goods which belong to *public juridical persons* subject to him (574). He is to establish by decree, after having heard the diocesan finance council, those acts which exceed the limits and the parameters of ordinary administration. He may alienate, with the consent of the diocesan finance council and of the college of consultors, those goods whose value falls within the minimum and maximum amounts determined by the Episcopal Conference. The permission of the Holy See is also required for alienations of goods whose value exceeds the maximum amount, of goods given to the Church by vow, or of objects of artistic or historical value.

“He should implement all donations and provisions *mortis causa* (so-called *pious wills*) directed towards pious causes. In these cases, he should fulfil the will of the benefactor or ensure that it is fulfilled.

“In the administration of goods, always presupposing that justice is observed, the Bishop concerns himself first of all with providing for divine worship, charity, the apostolate and the support of the clergy: these ends are given precedence over all others.” In *ibid.*, pp. 205-206.

The use of the terms “sole administrator” of the diocese could be misleading. It could create the impression that the diocesan bishop is the only administrator in the diocese. A more appropriate term like “the diocesan bishop is a unique administrator of the diocese” would have been more helpful.

<sup>27</sup> The CCEO, canon 262, §1 says that the eparchial finance officer is to be a member of the Christian faithful. J.D. FARIS notes that, the term *Christifidelis* in CCEO indicates both Catholics and baptized non-Catholics. Therefore, the eparchial finance officer must be baptized but need not be a Catholic. In *Eastern Catholic Churches: Constitution and Governance*, New York, Saint Maron Publication, 1992, p. 534.

<sup>28</sup> The CCEO, canon 262, §1 says particular law should determine the term of office of the financial officer. It does not mention or prohibit reappointment for successive terms.

§4. At the end of the year, the finance officer must render an account of receipts and expenditures to the finance council.<sup>29</sup>

The canon mandates the diocesan bishop to appoint a financial administrator for a five year term after mandatory consultation of the diocesan finance council and the college of consultors.<sup>30</sup> Given the importance of the task of administering ecclesiastical goods, the legislator has decided to grant to the finance officer a more stable office than that of the chancellor, episcopal vicars, vicar generals, etc.<sup>31</sup> In order to remove validly the diocesan finance officer from office during his term, the diocesan bishop must hear the diocesan finance council and the college of consultors (cc. 127, §2, 2°; 193, §2; 494, §2).<sup>32</sup> B.A.

Cusack explains:

Among the more stable officers in the diocesan curia is that of the finance officer. Unlike other curial officials, such as episcopal vicars, whose appointments are optional, the finance officer holds a mandated office. Unlike other curial officials, such as vicars, who cease from office during a vacant see, the finance officer remains in office. Unlike other curial officials, such as chancellors or vicars, who can be freely removed from office for just cause, the finance officer can be removed only for a grave cause.[. .]

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<sup>29</sup> The Latin Code does not say that the finance officer is a member of the finance council but the parallel *CCEO*, canon 263, §3 says that the eparchial finance officer is *ipso iure* a member of the finance council. For the finance officer in the Latin Church to be a member of the finance council, he or she has to be appointed by the diocesan bishop, and he or she is to possess the required qualities of being an expert in civil law or canon law. Furthermore, *CCEO*, canon 262, §4 requires the eparchial finance officer to submit the annual eparchial income and expenditure report to the eparchial bishop and not to the finance council as required by *CIC/83*, canon 494, §4.

<sup>30</sup> If the diocesan bishop fails to hear the college of consultors and diocesan finance council before appointing the diocesan finance officer, the appointment will be invalid by virtue of canons 124, §1 and 127, §2, 2°.

In the initial *Schema* the present canon was canon 28; it only stated that the bishop should hear the finance council, “audito Consilio a rebus oeconomicis.” In the *Schema* 1977, canon 308, §1 added the college of consultors “auditis Collegio consultorum [...] atque Consilio a rebus oeconomicis.” See *Communicationes*, 13 (1981), p. 128; 24 (1992), pp. 62, 88, 121.

<sup>31</sup> Each of the renewals of appointment must be for a five year term. The *coetus De Sacra Hierarchia* in their discussion added this requirement. See *Communicationes*, 24 (1992), pp. 53; 62; 67

<sup>32</sup> J. LOBO says: “By demanding special precautions for the appointment and the dismissal of the finance administrator the code itself demonstrates that the office of the finance administrator is an office of outstanding responsibility.” In “Finance Administrator,” in *Canonical Studies*, 26 (2002), p. 203.

A further indicator of stability in office for the finance officer is the requirement of a term of office. The diocesan bishop appoints the finance officer for a five year term which is renewable without limit.<sup>33</sup>

Coccopalmerio notes the reason for a fixed term for the finance officer:

What is the reason for an appointment 'ad tempus'? It seems to be twofold. On the one hand, the provision that the designated financial administrator might not turn out to be the appropriate person for this difficult task, thus he or she should be replaced. On the other hand, the advisability of not making the diocesan bishop intervene with a removal process [ . ] to guarantee the autonomy of the financial administrator before the bishop in administrative activity. In effect, if the bishop could easily remove the financial administrator, it would be as though the latter worked under the former's close control since the decision to remove the person would become in the end for the bishop a means of expressing his disapproval regarding the administrative decisions of the financial administrator, who, consequently, would feel inclined to look for another way to please the bishop. This argument is suggested by virtue of which the *Coetus* 'De Sacra Hierarchia' introduced a fixed time.<sup>34</sup>

The finance officer is expected to possess certain qualities required for the office.

The qualities are twofold; professional and personal.<sup>35</sup> Cusack says: "Not only must the lay person or cleric<sup>36</sup> have expertise in the area of finances, usually as a certified public accountant or a member of a similar profession, but he or she must also be noted for personal honesty and integrity."<sup>37</sup>

Canon 494, §§3-4 principally mandates the finance officer to administer the goods of the diocese under the authority of the diocesan bishop;<sup>38</sup> to meet from the

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<sup>33</sup> B.A. CUSACK, "The Internal Ordering of Particular Churches, [cc. 460-572]," in *CLSA Comm2*, p. 651.

<sup>34</sup> COCCOPALMERIO, "Particular Churches," in *ExComm*, vol II/2, p. 1177.

<sup>35</sup> Both the Latin Code (c. 423, §2) and the Eastern Code (c. 225) prohibit the finance officer from being the diocesan administrator and finance officer at the same time. The Eastern Code contains other norms regarding the function of the eparchial finance officer during *sede vacante* (see c. 232).

<sup>36</sup> The *coetus De populo Dei* decided to suppress the initial phrase "sive clericus sive laicus" of *Schema* of 1977 c. 308 for being pleonastic. See *Communicationes*, 13 (1981), p. 128.

<sup>37</sup> CUSACK, "The Internal Ordering of Particular Churches, [cc. 460-572]," in *CLSA Comm2*, p. 651.

<sup>38</sup> What exactly does it mean for the finance officer to administer the goods of the diocese under the authority of the diocesan bishop? Coccopalmerio writes: "If the diocesan bishop is the administrator

diocesan income the expenses which the bishop or others designated by him have legitimately authorized; to render an account of receipts and expenses to the finance council at the end of the year.

Other functions are assigned to the diocesan finance officer as well.<sup>39</sup> Canon 1278 states: “In addition to the functions mentioned in can. 494, §§3 and 4, the diocesan bishop can entrust to the finance officer the functions mentioned in cann. 1276, §1 and 1279, §2.” In the first place, these provisions directly recall the mandatory tasks (*munera*) of the diocesan finance officer already assigned to him in canon 494, §§3 and 4, mentioned above. In addition, the canon mentions that the diocesan bishop may further entrust two additional duties to the diocesan financial officer:<sup>40</sup>

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of the juridical person ‘diocese’ (c. 1277) and, at the same time, the financial administrator administers the goods of that same juridical person (c. 494 § 3), what is the relationship between them? Canon 494 § 3 responds: the financial administrator administers ‘sub auctoritate Episcopi.’ What does that mean?

“That expression, such as it literally appears in c. 494 § 3, does not mean anything specific in the case of financial administrator. In effect, every administrator of public juridical persons subject to the diocesan bishop (cf. cc. 1263, 1276, 1303 § 2) is normally ‘sub auctoritate Episcopi’ regarding the regulations (cf. c. 1276 § 2), oversight (cf. cc. 1276 § 1, 1283, 1° and 3°, 1284 § 2, 9°, 1287, 1301-1302); specific authorizations for certain acts (cf. cc. 1288, 1291-1297, 1304-1306, 1308-1310). The direct administration by the diocesan bishop is provided for in particular cases or in the case of negligence (cf. 1279 § 1), or in the case of absences of administrators (cf. cc. 1279 § 2, 1278). [...]

“The only way to understand the simultaneous presence of two administrators is to consider that the second one administers in the place of the first, taking his place. Why? For the same reason that the diocesan bishop creates the offices of the curia. Since the diocesan bishop cannot personally do everything, since moreover he is not expert in everything, and since he must promote collaboration between clerics and laity, he entrusts the various activities to several expert subjects. Regarding the administration of the goods of the juridical person ‘diocese’ (of which the diocesan bishop is the legal representative and first administrator) the same thing occurs. [ . ].

“Having arrived at this point, we must specify what it means for the financial administrator to administer instead of the bishop or in his place. That situation or vicarious circumstances can mean essentially two things: -the financial administrator performs the work prior to the formal acts of the administration and afterwards the bishop carries out the formal acts by signing them, -the financial administrator also carries out the formal acts by signing them himself.” In COCCOPALMERIO, “Particular Churches,” in *ExComm*, vol. II/2, p. 1183.

<sup>39</sup> The *CCEO* does not assign additional functions to the eparchial finance officer.

<sup>40</sup> *CCEO*, canon 263 corresponds to *CIC/83*, canon 1278, but does not identify additional tasks which the eparchial bishop may choose to entrust to the eparchial finance officer.

1. To exercise careful vigilance over the administration of public juridic persons subject to the diocesan bishop (canon 1276, §1);
2. To appoint administrators of the goods of a public juridic person which is subject to the ordinary and which does not have its own administrator designated by law, the charter of the foundation, or its own statutes (c. 1279, §2).

In these two instances, the diocesan finance officer would be serving as a delegate of the diocesan bishop.<sup>41</sup>

A pastor (*parochus*), as the juridic representative of the parish, administers its goods. Canon 532 stipulates: "In all juridic affairs the pastor represents the parish

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<sup>41</sup> F. G. MORRISEY, however, concludes that the diocesan bishop would not be delegating these faculties to the diocesan finance officer, but rather that he would appoint the diocesan finance officer to *serve as* the administrator. In "Temporal Goods of the Church," in *CLSGBI Comm*, pp. 724-725. This same position is taken by other canonists; see M. L. ALARCON, "Temporal Goods of the Church," in *ExComm*, vol. 4/1, p. 986; V. DE PAOLIS, *De bonis Ecclesiae temporalibus*, p. 89; L. MISTO, "I beni temporali della Chiesa," in *Scuola cattolica*, 119 (1991), p. 325. According to this interpretation of canon 1278, the diocesan finance officer would not be exercising a delegated power of the diocesan bishop, but would simply be the administrator of a public juridic person.

KENNEDY, however, holds that canon 1278 empowers the diocesan bishop to delegate the diocesan finance officer the power to appoint the administrators mentioned in canon 1279 § 2. In "The Temporal Goods of the Church [cc. 1254-1310]," in *CLSA Comm2*, p. 1480. J. M. HUELS agrees and offers a suggested faculty which the diocesan bishop may enact: "If a public juridic person does not have its own administrator, whether by law, custom, the charter of foundation, or its statutes, you may appoint a suitable administrator for a three-year term and reappoint the same person for another term (c. 1279 § 2)." He presents this as the bishop's delegation of a faculty to place an act of executive power. In *Empowerment for Ministry*, New York, Paulist Press, 2003, p. 197.

Z. COMBALIA writes: "With respect to the financial administrator performing these functions, their nature is different in the two cases included in the Code. Thus, in the function indicated in c. 1279, §2, the financial administrator does not carry out any duties that the law attributed directly to the bishop; he merely fills the lack of an immediate administrator. His competence will therefore theoretically be that of said administrator, and he will remain subject to the common regime of administrators of ecclesiastical goods unless the bishop, when assigning him the duty, limits his powers in some way. However, in the task of vigilance, it appears that the financial administrator acts more as a delegate of the bishop, for in that case he is filling a function that is incumbent upon him *ex officio*, as stipulated in c. 1276, §1." In "The Administration of Goods," in *ExComm*, vol. IV/1, p. 99.

The position of KENNEDY and HUELS seems preferable to that which claims that c. 1278 empowers the diocesan bishop merely to appoint the diocesan finance officer to serve as the administrator in canon 1279, §2. The duty identified in c. 1279, §2 is the legal empowerment of the ordinary to appoint administrators for a public juridic person where the statutes do not make provisions for such an appointment. In addition, we must also not forget that inasmuch as the diocesan finance officer administers diocesan goods, it would appear inappropriate for him or her also to be the "substitute appointed" administrator of goods of public juridic persons (c. 1279, § 2) over whose administrators he or she may be exercising vigilance by special concession of the diocesan bishop (c. 1276, §1). See V. DE PAOLIS, "Alcune osservazioni sulla nozione di amministrazione dei beni temporali della Chiesa," in *Periodica*, 88 (1999), p. 118.



according to the norm of law. He is to take care that the goods of the parish are administered according to the norm of cann. 1281–1288.” This canon provides that the pastor administers the goods of the public juridic person that is the “parish” (c. 515, §3). In view of the broad meaning of “administration” discussed above, canon 532 could have referred to the entire norm of Book V, because this is precisely what the pastor is to follow in caring for the goods of the parish. Canon 1257, §1 stipulates that goods of public juridic persons are governed according to the norm of Book V. Since the parish is a public juridic person *a iure* (c. 515, §3), the administration of its goods must follow all the norms of Book V, not just the provisions of canons 1281-1288. The pastor represents the parish in all juridic affairs;<sup>42</sup> part of such representation includes the tasks of acquiring and alienating property, disposing of goods for various purposes, preserving, restoring, or transforming goods, drafting, and preserving relevant documents of title to property, etc.<sup>43</sup>

It is important that this representative function of the pastor be mirrored in any civil law charter of incorporation. Renken explains: “The pastor alone is to represent the parish. He alone is to see to it that parochial goods are appropriately administered, according to the norms of canon law (especially cc. 1281-1288) and civil law. In addition,

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<sup>42</sup> For the purposes of this dissertation, the canonical equivalent of the *parochus* is the parochial administrator (c. 540); the interim priest appointed to administer the parish when it becomes vacant or the *parochus* becomes impeded, who immediately assumes parochial governance temporarily until a parochial administrator is appointed (c. 541, §1); the moderator of the priests to whom is entrusted *in solidum* the pastoral care of a parish(es) (see c. 543, §2, 3°); and the “priest-moderator” of a vacant parish in which, due to a dearth of available priests, a person(s) other than a priest has been given a participation in the exercise of parochial pastoral care (c. 517, §2). Consequently, when we mention the *parochus* it should be understood that other persons named above could as well administer the property of the parish.

<sup>43</sup> See COCCOPALMERIO, “Particular Churches,” in *ExComm*, vol. II/2, p. 1180.

diocesan particular law may address the civil involvement of a pastor on behalf of the parish.”<sup>44</sup>

### 2.1.2 — The Importance of the Role of the Administrator of Ecclesiastical Goods

Canons 1282 and 1283 underscore the importance of the role of administrators of ecclesiastical goods. They act in the name of the Church and, as such, they are required to take their function seriously. Consequently, the law obliges them to take an oath before assuming their office.

Canon 1282 points to the important role of administrators of ecclesiastical goods by stating that they act in the name of the Church: “All clerics or lay persons who take part in the administration of ecclesiastical goods by a legitimate title are bound to fulfill their functions in the name of the Church according to the norm of law.” This canon addresses not only the immediate administrators of ecclesiastical goods, but also all others “who take part in the administration of ecclesiastical goods” by a legitimate title (e.g., members of the diocesan finance council, the college of consultors, etc.).<sup>45</sup> Combalía points out the logical reason why the canon states that administrators of ecclesiastical goods act in the name of the Church: “[T]his canon refers to the administration of ecclesiastical goods that, under c. 1257, are goods belonging to public juridical persons. It is therefore logical that the administration of their goods be performed in the name of the Church, since that is what distinguishes public juridical

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<sup>44</sup> J.A. RENKEN, “Parishes, Pastors, and Parochial Vicars, [cc. 515-552],” in *CLSA Comm2*, p. 704.

<sup>45</sup> KENNEDY notes: “It is the essence of a public juridic person that all of its activity is undertaken in the name of the Church, that is, pursuant to a mission received from competent ecclesiastical authority and closely governed by that authority (c. 116).” In “The Temporal Goods of the Church [cc. 1254-1310],” in *CLSA Comm2*, p. 1485; see also DE PAOLIS, *De bonis Ecclesiae temporalibus*, p. 91.

persons from private juridical persons.”<sup>46</sup> Administrators of public juridic persons act in the name of the Church because ecclesiastical goods are destined for the mission of the Church. The administration of ecclesiastical goods is, therefore, to be done “according to the norm of law.” The law may be universal, particular or, proper, or statutes approved by the competent ecclesiastical authority, and any civil law “canonized” by canon law. Renken remarks that the “universal law makes it clear that ecclesiastical goods are owned for the very specific purposes outlined in canon 1254 § 2; the administrator of ecclesiastical goods performs his or her function to fulfill these purposes and for no other reason.”<sup>47</sup>

Canon 1283 mandates that administrators take an oath before they assume their duties, and also requires that they present a regularly updated inventory to the competent authority:

Before administrators begin their function:

1° they must take an oath before the ordinary or his delegate that they will administer well and faithfully;

2° they are to prepare and sign an accurate and clear inventory of immovable property, movable objects, whether precious or of some cultural value, or other goods, with their description and appraisal; any inventory already done is to be reviewed,

3° one copy of this inventory is to be preserved in the archive of the administration and another in the archive of the curia; any change which the patrimony happens to undergo is to be noted in each copy.

The oath required for administrators illustrates the seriousness with which the legislator views their role.<sup>48</sup> During the revision of the Code it was suggested that the oath be replaced with a promise; this suggestion was not accepted.<sup>49</sup>

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<sup>46</sup> COMBALIA, “The Administration of Goods,” in *ExComm*, vol. IV/1, p. 99.

<sup>47</sup> RENKEN, *Church Property*, p. 204.

<sup>48</sup> The Congregation for the Doctrine of the Faith on July 1, 1989 issued the decree titled “Profession of Faith and Oath of Fidelity on Assuming an Office to be Exercised in the Name of the Church,” in *AAS*, 90 (1998), pp. 543-544. Although, this oath of fidelity does not mention administrators of ecclesiastical goods, RENKEN advises. “Particular law may prudently require the oath of fidelity, or at

Particular law is to specify the manner by which the inventory will be taken. With regard to the content of the inventory, the following are specified: immovable goods, movable goods that are precious or that belong to the cultural patrimony, and any other goods. The inventory is to be updated from time to time.<sup>50</sup> The Code prescribes that a description and estimate of the value of the goods should be attached to the inventory list. The administrator is to sign the inventory. A copy which must be periodically updated is to be kept in the administration file and the other in the curia file.<sup>51</sup> F.R. Aznar says that “this is a measure of basic prudence for the conservation of the ecclesiastical patrimony. If taken seriously it may serve to ensure that the patrimony of the juridical person will be preserved, to control the management of the previous administrator and the security of the new one.”<sup>52</sup>

## 2.2 — Councils and Persons Assisting Administrators of Ecclesiastical Goods

The Fathers of the Second Vatican Council urge priests “to manage ecclesiastical property, properly so called, according to the nature of the case and the norm of

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least the elements mentioned [in it] to be taken by all administrators of ecclesiastical goods.” In *Church Property*, p. 208.

<sup>49</sup> “Suggestum est ut in n. 1º non imponatur iuramentum, sed tantum requiratur promissio de munere fideliter adimplendo. Unus Consultor accedit huic propositioni, sed alii Consultores sunt contrarii.” In *Communicationes*, 12 (1980), p. 418. The value and importance of an oath is stressed by *CIC/83*, canon 1199. Several canons mention taking an oath: *CIC/83*, canons 380; 876; 1454; 1455, §3; 1532; 1562, §2; 1568; 1728, §2. An oath invokes God as a witness to the matter promised, thereby making an oath an act of the virtue of religion. A mere promise does not invoke the name of God as witness to the truth; several canons mention making of a promise: see cc. 153, §3; 471, 1062; 1125-1126; 1489. See RENKEN, *Church Property*, p. 206.

<sup>50</sup> COMBALÍA, “The Administration of Goods,” in *ExComm*, vol. IV/1, p. 111.

<sup>51</sup> See *ibid.*

<sup>52</sup> F.R. AZNAR, *La Administración de los bienes temporales de la Iglesia*, 2<sup>nd</sup> ed., Salamanca, Universidad de Salamanca, 1993, p. 364.

ecclesiastical laws, and *with the help, as far as possible, of skilled lay persons*. They are to apply this property always to those purposes for the achievement of which the Church is allowed to own temporal goods.”<sup>53</sup> The Code provides for various persons (see cc. 476, 555, §1, 3<sup>o</sup>) and councils (cc. 495-501; 502); to assist in the administration of ecclesiastical goods.<sup>54</sup> Sometimes, these persons and councils are called to ensure the proper administration of ecclesiastical goods (c. 555, §1, 3<sup>o</sup>), to give advice (cc. 1263; 1277) or to give consent (cc. 1277; 1292, §1). Their participation indicates a practical way of expressing the call to collaboration in the mission of the Church (c. 211).

### 2.2.1 — The Episcopal Vicar for Administration and the Vicar Forane

The Fathers of the Second Vatican Council urged the diocesan bishop to appoint episcopal vicar(s) when the good of the diocese requires it: “When, however, the good government of the diocese requires it, the bishop may appoint one or more episcopal vicars who by the very fact of their appointment will enjoy in specified parts of the diocese, or in specific types of affairs, or in regard to the faithful of particular rites, that authority which is conferred by the general law on the vicar general.”<sup>55</sup> *Ecclesiae sanctae* explained the reason for the establishment of this new office: “The new office of episcopal vicar was established in law by the council in order that *the bishop with the assistance of new helpers may be enabled to exercise the pastoral care of the diocese in the best possible manner*. For this reason, the bishop of the diocese is free to choose one or more

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<sup>53</sup> PO, no. 17, English translation in FLANNERY1, p. 895 [emphasis added].

<sup>54</sup> See canons 421, §1; 494, §2; 537; 492-493; 493; 502; 531; 551; 1263; 1277; 1280; 1287, §1; 1295; 1310.

<sup>55</sup> CD, no. 27, English translation in FLANNERY1, p. 579.

episcopal vicars in accordance with the particular needs of the place.”<sup>56</sup> The Apostolic letter, issued *motu proprio*, went on to describe the power of episcopal vicars as “ordinary vicarious power which common law gives to the vicar general in a determined part of the diocese or with regard to certain areas of business or certain groups of persons, according as the bishop of the diocese has specified.”<sup>57</sup>

Canon 476 (whose sources are *CD*, nos. 23; 27 and *ES*, I, no. 14) stipulates: “Whenever the correct governance of a diocese requires it, the diocesan bishop can also appoint one or more episcopal vicars, namely, those who in a specific part of the diocese or in a certain type of affair or over the faithful of a specific rite or over certain groups of persons possess the same ordinary power which a vicar general has by universal law, according to the norm of the following canons.” In virtue of this canon, the diocesan bishop can appoint an episcopal vicar who will help him to supervise the administration of ecclesiastical goods in the diocese. Such an appointment should define his specific area of competence. Since the universal law grants him the ordinary, vicarious executive power, it means he will be able to assist the diocesan bishop more personally and effectively in the governance of the diocese.<sup>58</sup> The episcopal vicar will be able to issue most singular administrative acts (but cf. c. 76, §1), general executive decrees, and instructions pertaining to the regulation of ecclesiastical goods. In this way the bishop

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<sup>56</sup> *ES*, I, no. 14, English translation in FLANNERY1, p. 599 [emphasis added].

<sup>57</sup> *Ibid.*

<sup>58</sup> For a study of the historical origin of the episcopal vicar in the Second Vatican Council see A. PERLASCA, “I vicari generale ed episcopali,” in *Quaderni di diritto ecclesiale*, 18 (2005), pp. 31-54; concerning the nature of the office of episcopal vicar, see M. CALVI, “Vicari episcopali o delegate vescovili?” in *Quaderni di diritto*, 18 (2005), pp. 55-69; A. RAYAPPAN, “The Office of the Vicar General and Episcopal Vicar,” in *Canonical Studies*, 26 (2002), pp. 142-171.

will be fulfilling part of his pastoral *munus* (c. 381) that is the caring for ecclesiastical goods of the public juridic persons subject to him.

The 1917 Code had stipulated that it was part of the duty of the vicar forane to see to it that ecclesiastical goods were properly administered (c. 447, §1, 4°). *Ecclesiae sanctae* I, no. 19 stated:

Amongst those who assist the bishop of the diocese in a more intimate manner are those priests who exercise a pastoral duty of a supraparochial nature. Included in this class are vicars forane, also called archpriests, deans and, in the Eastern Church, proto-presbyters. To this office priests shall be appointed outstanding for learning and for apostolic zeal who through the necessary powers conferred on them by the bishop will promote and direct common pastoral activity in the district assigned to them.<sup>59</sup>

The 1983 Code reflects this norm in canon 555, §1, 3°:

In addition to the faculties legitimately given to him by particular law, the vicar forane has the duty and right:

3° of seeing to it that religious functions are celebrated according to the precepts of the sacred liturgy, that the beauty and elegance of churches and sacred furnishings are maintained carefully, especially in the eucharistic celebration and custody of the Most Blessed Sacrament, that the parochial registers are inscribed correctly and protected appropriately, *that ecclesiastical goods are administered carefully*, and finally that the rectory is cared for with proper diligence.

This canon envisions that the vicar forane will assist the diocesan bishop to fulfill his task of supervising the proper administration of ecclesiastical goods and of ensuring that abuses do not creep into the administration of ecclesiastical goods (cc. 1276; 392, §2). The vicar forane has the right and duty of vigilance, on behalf of the diocesan bishop, to ensure that parochial ecclesiastical goods are administered carefully, and that abuses and negligence in their administration are remedied promptly.<sup>60</sup>

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<sup>59</sup> English translation in FLANNERY1, p. 579.

<sup>60</sup> See G. READ, "Particular Churches and their Groupings," in *CLSGBI Comm*, p. 307.

## 2.2.2 — The College of Consultors

The Second Vatican Council decreed that among the cooperators of the bishop in the governance of the diocese is the college of consultors.<sup>61</sup> The Code consequently mandates its establishment in canon 502, §§1-2:

§1. From among the members of the presbyteral council and in a number not less than six nor more than twelve, the diocesan bishop freely appoints some priests who are to constitute for five years a college of consultors, to which belongs the functions determined by law. When the five years elapse, however, it continues to exercise its proper functions until a new college is established.

§2. The diocesan bishop presides over the college of consultors. When a see is impeded or vacant, however, the one who temporarily takes the place of the bishop or, if he has not yet been appointed, the priest who is senior in ordination in the college of consultors presides.

The college is constituted from the members of the presbyteral council.<sup>62</sup> It is composed of six to twelve priests.<sup>63</sup> It assumes a special role when the see is vacant (c. 419),

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<sup>61</sup> CD, no. 27, English translation in FLANNERY1, p. 579. A study of the history of the college of consultors shows that it originated from the local or particular legislation of the churches under the jurisdiction of the *Propaganda Fide*, which called the group the “Diocesan Consultors.” H.V. RELON writes. “The Third Plenary Council of Baltimore required that in every diocese under their jurisdiction a group of Diocesan Consultors was to be established. This [*sic*] Diocesan Consultors served as temporary replacement of the Cathedral Chapter to help the bishop in the governance of the diocese.” In *Legislation on the College of Consultors. Evolution and Commentary on some Aspects*, JCD thesis, Rome, Pontifical University of the Holy Cross, 1996, p. 8 (=RELON, *Legislation on the College of Consultors*).

Canons 423-432 of the 1917 Code laid the foundation for the college of consultors. Canon 423 obliged residential bishops to establish diocesan consultors in the diocese if there were no cathedral chapters. Canon 425 stipulated that the number of the college should be between six and four. Canons 426 established the tenure of the college. Canons 429-431 determined the specific functions of the college when the see was impeded or vacant. For further study on the history of the development of these canons, see *ibid.*, pp. 16-32.

<sup>62</sup> During the revision process, many consultors expressed their wish that the members of the college of consultors be taken from the presbyteral council; some others wanted the members drawn from both the cathedral chapter and presbyteral council. Five consultors voted that the members of the college of consultors must only come from the presbyteral council. Three voted that they must come from both the presbyteral council and the cathedral chapter. See *Communicationes*, 24 (1992), p. 69.

<sup>63</sup> Concerning the members of the council and samples of statutes for the college, PROVOST says that the diocesan bishop “is limited in the pool of candidates from which he may draw; he must select members of the college from among the members of the presbyteral council. Therefore, the consultors must be priests or bishops.” In J. PROVOST, “Presbyteral Councils and Colleges of Consultors: Current Law and Some Diocesan Statutes,” in *CLSA Proceedings*, 49 (1987), pp. 201-211 (=PROVOST, “Presbyteral Councils and Colleges of Consultors”). On the issue of the number of consultors in the college PROVOST says: “The usual commentators on the 1983 Code do not address whether this is a constitutive law, i.e., whether the minimum and maximum numbers of members of the college are constitutive of the college itself. There is an authentic interpretation of the code which states that a bishop does not have to replace a



especially when it elects the diocesan administrator (c. 421, §1). The routine function of the college, however, is to assist the diocesan bishop in the governance of the entire diocese. The college assists in the administration of ecclesiastical goods through their advice and consent. Several canons identify the involvement of the college in the administration of ecclesiastical goods. The diocesan bishop must receive the counsel of the college in order:

1. to appoint the diocesan finance officer (canon 494 §1),
2. to remove the diocesan finance officer during his or her five year term (canon 494 §2);
3. to place 'non-routine' acts of ordinary administration of diocesan ecclesiastical goods which are more important in light of the economic condition of the diocese (canon 1277).<sup>64</sup>

Furthermore, the diocesan bishop must receive the consent of the college in order:

1. to place acts of extraordinary administration, as defined by the conference of bishops (canon 1277, the diocesan finance council must also give its consent);
2. to give permission to alienate goods of public juridic persons subject to his authority, and to alienate diocesan goods, which belong to the stable patrimony and whose value is beyond the minimum amount established by the conference of bishops (canon 1292 § 2; the diocesan finance council and 'those concerned'<sup>65</sup> must also give their consent),

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consultor during the five-year term, unless the total number would fall below six; then he must replace at least one to provide for the minimum number (authentic interpretation of June 26, 1984: *AAS* 76 [1984], p. 747). A college which lacked the minimum number would not be able to act legally. It would seem that a college which had more than the maximum would be in the same position; it could not act legally." In "Number of Members of College of College of Consultors," in A ESPELAGE (ed.), *CLSA Advisory Opinions, 1994-2000*, Washington, CLSA, p. 125. See also J.G. JOHNSON, "The Grouping of Particular Churches [cc. 431-459]," in *CLSA Comm2*, pp. 566-609.

<sup>64</sup> RENKEN, *Church Property*, p. 108

<sup>65</sup> On two occasions in Book V the diocesan bishop is required to receive the consent of "those concerned" before he acts (cc. 1292, §2 and 1295). On two other occasions he is required to receive the counsel of "those concern" before he acts (cc 1305, §1; 1310, §2). F.G. MORRISEY says that "in the case of parochial property, the parish priest would certainly be [one concerned] (see can. 532); in other cases, each to be examined in its own circumstances; it might well be the original donor or the lawful representative thereof, or anyone who might retain an acknowledged legal interest in the property in question," In "Temporal Goods of the Church," in *CLSGBI Comm*, p. 734.

3. to give permission to administrators to perform any contractual transaction (other than alienation) which can worsen the patrimonial condition of a public juridic person subject to his authority, or to perform the transaction himself if it involves diocesan goods (canon 1295; the diocesan finance council and 'those concerned' must also give their consent, see canon 1292 § 2).<sup>66</sup>

### 2.2.3 — The Presbyteral Council

Canon 495, §1 describes the presbyteral council as a group of priests representing the *presbyterium*. It is to be like a senate of the bishop which assists him in the governance of the diocese according to the norm of law, to promote as much as possible the pastoral good of the portion of the people of God entrusted to him.<sup>67</sup> The Code identifies several situations in which the diocesan bishop must hear this council; the Code identifies no instances where he needs its consent.<sup>68</sup> The council assists in the administration of ecclesiastical goods through its advice and consent given to the diocesan bishop. The diocesan bishop must receive the advice of the presbyteral council:

1. to convoke a diocesan synod (c. 461, §1),
2. to establish, suppress, or notably alter parishes (c. 515, §2);

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<sup>66</sup> RENKEN, *Church Property*, pp. 108-109.

<sup>67</sup> J. PROVOST notes some of the problems that often arise between the presbyteral council and the pastoral council: "The problem of competencies has also been an acute question in relating between presbyteral councils and diocesan pastoral councils. Pastoral councils are supposed to look toward planning, while presbyteral councils are to be involved in advising on governance of the diocese. Yet in practice, as presbyteral councils became more focused on priests' concerns, diocesan pastoral councils sometimes took over the task of providing effective advice on financial and other governance issues." In "Presbyteral Councils and Colleges of Consultors," p. 196; see also *idem*, "The Working Together of Consultative Bodies—Great Expectations?" in *The Jurist*, 40 (1980), pp. 257-281.

<sup>68</sup> See SACRED CONGREGATION FOR THE CLERGY, circular letter, 11 April 1970, in *AAS*, 62 (1970), p. 462, English translation in *CLD*, vol. 7, p. 388. "The priests' council is a special consultative organ. It is called consultative because it does not possess a deliberative vote. As a result it is not competent to make decisions which bind the bishop unless the universal law of the Church provides otherwise or unless the bishop in individual cases believes it appropriate to give the council a deliberative vote."

It appears that the only that the presbyteral council acts with a deliberative power is when they elect the group of priests whom the diocesan will consult in removing or transferring an unwilling pastor (cc. 1742, §1; 1745, 2°; 1750).

3. to determine how to allocate offerings made by the faithful for parochial services and remunerate the clerics who perform them (cc 531; 551),
4. to mandate the establishment of parish pastoral councils (c 536, §1);
5. to erect a new church building (c 1215, §2);
6. to relegate a church to profane but not sordid use (c 1222, §2);
7. to impose an ordinary or extraordinary diocesan tax (c. 1263);
8. to establish[elect] a group of priests whom the diocesan bishop will consult in removing<sup>69</sup> or transferring an unwilling pastor (cc. 1742, §1; 1745, 2°; 1750).<sup>70</sup>

Renken rightly observes: “The majority of these situations involve ecclesiastical goods. It is no wonder, then, that the *Directory for the Pastoral Ministry of Bishops* advises diocesan bishops to involve the presbyteral council in more important financial decisions.”<sup>71</sup> The presbyteral council ceases when the see becomes vacant (c. 501, §2).<sup>72</sup>

#### 2.2.4 — The Diocesan Finance Council and the Parish Finance Council

Prior to the promulgation of the 1917 Code, there was no universal legislation prescribing that each residential bishop should establish a council of administration to assist him in the financial administration of the diocese.<sup>73</sup> However, the Church had

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<sup>69</sup> Canon 1741, 5° identifies poor administration of ecclesiastical goods of the parish as one possible cause for the removal of a pastor.

<sup>70</sup> See RENKEN, *Church Property*, p.108. See also PROVOST, “Presbyteral Councils and Colleges of Consultors,” pp. 204-206.

<sup>71</sup> See RENKEN, *Church Property*, p.108 [emphasis in the original]. The of author is referring to no 189b of *Apostolorum successors*.

<sup>72</sup> RELON notes that the Code Commission initially wanted the presbyteral council not to cease *sede vacante*. “However, there seems to be a problem with this provision because the only person who can preside over the Presbyteral Council is the diocesan bishop, who in this case is not available. This would mean that even though the Presbyteral Council continues to exist *sede vacante* it still cannot exercise its power because there is nobody to convoke it.” In *Legislation on the College of Consultors*, p. 67.

<sup>73</sup> See J.J. COMYNS, *Papal and Episcopal Administration of Church Property: An Historical Synopsis and Commentary*, Canon Law Studies, no 147, Washington, The Catholic University of America, 1942, p. 110 (=COMYNS, *Papal and Episcopal Administration of Church Property*).

traditionally employed the experience and wisdom of various diocesan officials.<sup>74</sup> Comyns noted that the reason for this practice was “a normal outcome of the safeguards which the Church has used in the past for the protection of her property.”<sup>75</sup> The 1917 Code mandated that each diocese have a group of experts in financial matters to assist the bishop in the financial management of the diocese. Canon 1520 mandated the residential bishop to establish the council of administration to help him fulfill his duty of overseeing the proper administration of goods. The members were appointed by the residential bishop, and they were to be experts in canon law and civil law. The residential bishop was to consult the council in more important financial affairs.<sup>76</sup>

The 1983 Code mandates the establishment of a finance council or at least two financial consultants for every juridic person.<sup>77</sup> Canon 1280 states: “Each juridic person is to have its own finance council or at least two counselors who, according to the norm of the statutes, are to assist the administrator in fulfilling his or her function.” Public juridic persons have a right to the proper administration of their goods (cf. c. 1254, §1).

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<sup>74</sup> The role of economes and the archdeacons in the history of the Church shows that they played an important part in the administration of goods in the early Church. COMYNS said that “the acts of extraordinary administration, such as alienations, required that the bishop seek the advice or consent of the diocesan clergy. Later the cathedral chapter was authorized to give the consent which the bishop needed before he could alienate church property.” In *Administration of Church Property*, p. 110. Concerning lay involvement in financial administration see A. O. SIGUR, “Lay Cooperation in the Administration of Church Property,” in *The Jurist*, 13 (1953), pp. 171-200. SIGUR commented: “From scriptural times, and in the very foundation of the Church, Christ seemed to imply generous lay cooperation in the matters of temporalities, when He told the Apostles to leave their support and the handling of temporal goods to the good will of the people, thus freeing themselves from encumbrances of administration, which were left largely to lay followers.” In *ibid.*, pp. 172-173.

<sup>75</sup> COMYNS, *Administration of Church Property*, p. 111.

<sup>76</sup> For an in-depth study of this canon, see A. SALDHANA, *The Diocesan Board of Administration*, Rome, Saint Thomas Aquinas Pontifical University, 1959.

<sup>77</sup> See canons 492-493; 1263; 1277; 1281, §2, 1292, §1; 1295; see also A. FARRELLY, “The Diocesan Finance Council. Functions and Duties according to the *Code of Canon Law*,” in *Studia canonica*, 23 (1989), p. 149 (=FARRELLY, “The Diocesan Finance Council”).

In order to ensure that this right is protected, the legislator mandates that certain persons assist the administrator to administer the goods of public juridic persons. The statutes of the juridic person will determine whether it will have a council or just two consultants. Canon 492, §1 obliges the diocesan bishop to establish a diocesan finance council of at least three members appointed by himself, over which he himself or his delegate presides. Canon 537, in a similar manner, mandates the establishment of a parish finance council for each parish; particular diocesan law is to determine the manner of the selection of its members, and its function is to assist the bishop or the pastor in administering the goods of the diocese or the parish. The members of the diocesan finance council are to be experts in financial affairs and civil law, outstanding in integrity, and appointed for a five year terms (c. 492, §2).<sup>78</sup> None of them may be related to the bishop up to the fourth degree of direct or collateral line of consanguinity or affinity (c. 492, §3). Diocesan particular law may establish similar norms for the members of the parish finance council.<sup>79</sup>

The role of the diocesan finance council is identified in canon 493: “In addition to the functions entrusted to it in Book V, *The Temporal Goods of the Church*, the finance council prepares each year, according to the directions of the diocesan bishop, a budget of the income and expenditures which are foreseen for the entire governance of the diocese in the coming year and at the end of the year examines an account of the

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<sup>78</sup> Given the fact that the members of this council are to be expert in both financial and civil law, one would presume that the level of professional expertise required will favor more lay membership. Concerning lay participation in financial administration in the Church, see F. TESTERA, “Cases and Inquiries: Lay Persons in the Administration of Ecclesiastical Property,” in *Boletín eclesiástico de filipinas*, 62 (1986), pp. 639-650.

<sup>79</sup> Concerning parish finance council, see P.J. SHEA, “Parish Finance Councils,” in *CLSA Proceedings*, 68 (2006), pp. 169-188.

revenues and expenses.” The canon places the responsibility of preparing an annual budget on the diocesan finance council. This is because the Code presumes the expertise of the members with regard to financial matters (c. 491§1).

Book V of the Code assigns the following specific tasks to the diocesan finance council:

1. Canon 1263: To advise the diocesan bishop before he imposes a moderate tax upon public juridic persons;
2. Canon 1277: To advise the diocesan bishop before he places acts of administration which are more important in the light of the economic condition of the diocese, and to give consent for him to place an act of extraordinary administration as determined by the episcopal conference,
3. Canon 1281, §2. To advise the diocesan bishop before he defines the acts which exceed the limit and manner of ordinary administration not determined by the statutes of the juridic person (i.e., acts of extraordinary administration);
4. Canon 1287, §1. To examine annual reports submitted by administrators of goods subject to the diocesan bishop,
5. Canon 1292, §1. To give consent for acts of alienation whose value is beyond the minimum amount determined by the episcopal conference;
6. Canon 1295. To give consent for contracts that can endanger the patrimony of the public juridic person,
7. Canon 1305: To advise the diocesan bishop on the investment of money and moveable goods assigned to an endowment,
8. Canon 1310, §2: To advise the diocesan bishop before he diminishes the obligations of a pious will.<sup>80</sup>

Other areas where the council is to intervene are the following:

1. Canon 423, §2: The choice of a temporary diocesan finance officer *sede vacante* when the incumbent has been appointed diocesan administrator. The same principle can be applied if the diocesan finance officer dies during the *sede vacante* (see c. 19, “laws issued in similar matter”);
2. Canon 494, §1: To give advice on the appointment of the diocesan finance officer *sede plena*,

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<sup>80</sup> FARRELLY, “The Diocesan Finance Council,” pp. 150-151.

3. Canon 494, §2. To advise the diocesan bishop on removal of the diocesan finance officer *sede plena*.<sup>81</sup>

### 2.2.5 — Other “Administrators”

Canon 1289 stipulates: “Even if not bound to administration by the title of an ecclesiastical office, administrators<sup>82</sup> cannot relinquish their function on their own initiative; if the Church is harmed from an arbitrary withdrawal, moreover, they are bound to restitution.” The Code designates the pastor as the administrator of the goods of the parish, the diocesan bishop and the financial officer as the administrators of the goods of the diocese, and a finance officer as the administrator of the goods of a religious institute.<sup>83</sup> Canon 1289 concerns other persons who assist in administering ecclesiastical goods but does not do so by reason of an ecclesiastical office. There are instances where the function of administering ecclesiastical goods is fulfilled by persons designated by the competent authority (cf. c. 1279). Other persons could also volunteer to assist them and their services are considered by the legislator as very important and invaluable. This is precisely why such persons are expected to inform the competent authority before relinquishing their functions. The sudden withdrawal of the services rendered by these “unofficial” administrators could greatly harm the Church; thus, the Code contains the requirement that harm caused from their arbitrary withdrawal is to be

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<sup>81</sup> RENKEN, *Church Property*, p. 102; see also *idem*, “The Collaboration of Canon Law and Civil Law in Church Property Issues,” in *Studies in Church Law*, 4 (2008), pp 72-73 (=RENKEN, “The Collaboration of Canon Law and Civil Law”).

<sup>82</sup> It would have been more appropriate not to use the term administrator for such persons because the Code has already determined the proper use of the term administrator of ecclesiastical goods (cc. 118; 1279, §1). It is our opinion that it designates an ecclesiastical office in accordance with canon 145. The reference to administrators who are not officeholders, therefore, is not appropriate. The corresponding Eastern Code canon 1033 states: “An administrator of ecclesiastical goods who relinquishes his or her office or function on his or her own initiative is bound to restitution, if the Church is harmed from an arbitrary withdrawal.”

<sup>83</sup> See canons 532; 494, §3; 1277; 636, §1

remedied by restitution.<sup>84</sup> The requirement of restitution is a specific application of canon 128.<sup>85</sup> Although canon 1289 speaks of public juridic persons, Kennedy points out that “the moral principle underlying the canon, however, would apply as well to private juridic persons.”<sup>86</sup>

### 2.3 — The *Munera* of Administrators of Ecclesiastical Goods

The Code of Canon Law is greatly influenced by Roman law concepts.<sup>87</sup> In order to understand certain terms in the Code we need to understand their Roman law usage. *Munera* in Roman Law was understood as “public services, charges, duties or offices which every individual living in the state is obliged to fulfill on behalf of the state or the city (*municipium*) in which one was born or has his domicile.”<sup>88</sup> *The Dictionary of Ecclesiastical Latin* defines the word *munus* as a responsibility, service, duty, or office, etc.<sup>89</sup>

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<sup>84</sup> The requirement of restitution was added to the 1977 *Schema*. “Ex suggestione autem cuiusdam Organi consultationis canon completur his verbis. ‘. . .dimittere nequeunt; quod si ex arbitraria dimissione damnum Ecclesiae obveniat, ad restitutionem tenetur.’” In *Communicationes*, 12 (1980), p. 422 [emphasis added] For a more detailed treatment of liability of administrators of ecclesiastical goods see C. J. FLOWERS, “Liability Issues for Related Church Entities,” in *Public Ecclesiastical Juridic Persons and their Civilly Incorporated Apostolates* (e.g., Universities, Healthcare Institutions, Social Service Agencies) in the Catholic Church in the U.S.A: Canonical-Civil Aspects. Acts of the Colloquium, Rome, Pontifical University of St. Thomas Aquinas in Rome, 1998, pp. 97-179. Administrators who perform their duties by the title of an ecclesiastical office cease from that function when they lose that office, which may occur in a number of ways (cc. 184-196): by the passing of a predetermined time (c. 184, §1), by reaching the legal age limit (c. 185), by resignation (cc. 187-189), by transfer (cc. 190-191), by removal (cc. 192-195), by deprivation (c. 196), and by death.

<sup>85</sup> Canon 128 states: “Whoever illegitimately inflicts damage upon someone by a juridic act or by any other act placed with malice or negligence is obliged to repair the damage inflicted.”

<sup>86</sup> KENNEDY, “The Temporal Goods of the Church [cc. 1254-1310],” in *CLSA Comm2*, p. 1492.

<sup>87</sup> For thorough study of this subject matter see, C. VAN DE WIEL, *History of Canon Law*, Louvain, Peeters, 1991; R.C. MORTIMER, *Western Canon Law*, London, A. and C. Black, 1953.

<sup>88</sup> A. BERGER, *Encyclopedic Dictionary of Roman Law*, vol. 43, part 2, Philadelphia, The American Philosophical Society, 1953, p. 589 (=BERGER, *Encyclopedic Dictionary of Roman Law*).

<sup>89</sup> See L.F. STELTEN, *Dictionary of Ecclesiastical Latin*, Peabody, Massachusetts, Hendrickson Publishers, Inc., 1995, p. 166.



In relation to ecclesiastical goods, the *munus* of the administrator refers to all the activities that are exercised by virtue of office. Canon 1279, §1 says: “The administration of ecclesiastical goods pertains to the one who immediately governs the person to which the goods belong.” *Black’s Law Dictionary* defines administration as follows:

Management or conduct of an office or employment; the performance of the executive duties of an institution, business, or the like. In public law, the administration of government means the practical management and direction of the executive department, or of the public machinery or functions, or of the operations of the various organs or agencies. Direction or oversight of any office, service or employment. [.] The term ‘administration’ is also conventionally applied to the whole class of public functionaries, or those in charge of the management of the executive department.<sup>90</sup>

Thus, to administer ecclesiastical goods means to manage everything that concerns the goods of a public juridic person. It pertains to his or her *munus* to acquire, retain, administer, and alienate ecclesiastical goods. Canon 1284 gives a detailed list of the *munera* of administrators of ecclesiastical goods:

§1. All administrators are bound to fulfill their function with the diligence of a good householder.

§2. Consequently they must.

1° exercise vigilance so that the goods entrusted to their care are in no way lost or damaged, taking out insurance policies for this purpose insofar as necessary;

2° take care that the ownership of ecclesiastical goods is protected by civilly valid methods;

3° observe the precepts of both canon and civil law or those imposed by a founder, a donor, or legitimate authority, and especially be on guard so that no damage comes to the Church from the non-observance of civil laws;

4° collect the return of goods and the income accurately and on time, protect what is collected, and use them according to the intention of the founder or legitimate norms;

5° pay at the stated time the interest due on a loan or mortgage and take care that the capital debt itself is repaid in a timely manner;

6° with the consent of the ordinary, invest the money which is left over after expenses and can be usefully set aside for the purposes of the juridic person;

7° keep well organized books of receipts and expenditures;

8° draw up a report of the administration at the end of each year,

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<sup>90</sup> B.A. GARNER, *Black’s Law Dictionary: Definitions of the Terms and Phrases of American and English Jurisprudence, Ancient and Modern*, 9<sup>th</sup> ed., Saint Paul Minnesota, West Publishing Co., 2009, p. 49 (=GARNER, *Black’s Law Dictionary*).

9° organize correctly and protect in a suitable and proper archive the documents and records on which the property rights of the Church or the institute are based, and deposit authentic copies of them in the archive of the curia when it can be done conveniently.

§3. It is strongly recommended that administrators prepare budgets of incomes and expenditures each year; it is left to particular law, however, to require them and to determine more precisely the ways in which they are to be presented.

The canon explains that administrators have the duty to fulfill their function with the diligence of a good housekeeper (*diligentia boni patrisfamilias*).<sup>91</sup> It enumerates nine specific obligations in paragraph two. All these duties are to ensure that ecclesiastical goods are used for their designated purposes, and thus to respect the intention of the donor.<sup>92</sup> Canon 1284, §3 *strongly recommends* the preparation of an annual budget by an administrator, but leaves the determination of the manner of the presentation to particular law. Even though the canon does not require preparation and presentation of an annual budget, the diocesan bishop can promulgate particular law for his diocese mandating administrators to prepare and present it. Such a determination helps to fulfill the broad *munus* of the diocesan bishop to ensure that abuses do not creep into the administration of ecclesiastical goods (c. 392, §2), and to exercise careful vigilance over ecclesiastical goods of public juridic persons subject to his jurisdiction (c. 1276, §2). It will also help further to remind administrators of ecclesiastical goods of their duty to

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<sup>91</sup> Concerning the duties of administrators of ecclesiastical goods in the Church, see A. PERLASCA, "Commento al canone 1284," in *Quaderni di diritto ecclesiale*, 11 (1998), pp. 382-394; KENNEDY, "The Temporal Goods of the Church [cc. 1254-1310]," in *CLSA Comm2*, pp. 1484-1487.

RENKEN remarks: "The code does not include a listing of personal qualifications for most administrators of ecclesiastical goods. Such qualifications may be identified in the statutes of a juridical person. To establish them, analogous reference may be made to qualifications for being a member of the diocesan finance council (canon 492); being a member of the Christian faithful (see canon 204 § 1), truly expert in financial affairs and civil law, outstanding in integrity, not related to the superior of the public juridic person by consanguinity or affinity through the fourth degree. Likewise, and also relying upon canon 492, the statutes of the public juridic person would determine who appoints the administrator, the length of the administrator's term and whether the term is renewable." In *Church Property*, p. 205

<sup>92</sup> Several canons mention the intention of the donor: See canons 121; 122; 123; 326, §2; 531; 616, §1; 706, 3°; 954; 1267, §3; 1284, §2, 3°; 1300; 1302, § 1; 1303, §2; 1304, §1; 1307, §1; and 1310, §2.

render an annual account to the competent authority and the faithful who have contributed to support the Church (c. 1287, §2).

An important aspect of the *munus* of the administrator is the obligation to ensure that “ownership of ecclesiastical goods is protected by civilly valid methods” (c. 1284, §2, 2°).<sup>93</sup> One way of civilly protecting ecclesiastical goods is their civil incorporation of goods.<sup>94</sup> Civil incorporation creates a structure of governance for an activity, creating an artificial person in law which owns the goods. The goods are owned by a corporation. The Code canonizes secular norms in a number of situations.<sup>95</sup> These civil laws then have force in the canonical order.<sup>96</sup> The administrator should ensure that the canonical provisions conform to the civil law as far as possible (cf. c. 22). The norms of the Church on juridic persons make it quite simple to prove the existence, nature, and specific purposes of public juridic persons. One need only refer to the decrees of the competent ecclesiastical authority establishing them and to the statutes governing them. These decrees and statutes have no force in most secular jurisdictions. Therefore, it is important that the competent ecclesiastical authority ensure that public juridic persons

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<sup>93</sup> For further examination of this issue see J.J. FOLMER, “The Canonization of Civil Law. The Law of Personal Injury,” in *CLSA Proceedings*, 46 (1984), pp. 46-65.

<sup>94</sup> Concerning civil incorporation of parishes in order to protect their goods in the case of broader diocesan civil litigation, see M. E. CHOPKO, “An Overview on the Parish and the Civil Law,” in *The Jurist*, 67 (2007), pp. 194-226 (=CHOPKO, “An Overview on the Parish and the Civil Law”).

<sup>95</sup> These secular laws are attributed the same force as ecclesiastical law, unless they are contrary to divine law or canon law stipulates otherwise. See canons 98, §2; 197; 1105, §2; 1290; 1500; 1714 and 1716.

<sup>96</sup> D’SOUZA explains. “A special feature of the 1983 Code may be seen in the fact that it remits a large number of cases to the civil norms. The laws to which the canon remits are, materially, civil laws, but formally, they become ecclesiastical and obtain juridic force. In other words the [civil] law becomes canon law. This process of welcoming civil laws in the canonical order and making them become ecclesiastical norms is known as the canonization of civil laws.” In “General Principles Governing the Administration of Temporal Goods of the Church,” in V.G. D’SOUZA (ed.), *In the Service of Truth and Justice: Festschrift in Honour of Professor Augustine Mendonça*, Bangalore, Centre of Canon Law Studies, Saint Peter’s Pontifical Institute, 2008, p. 490 (=D’SOUZA, “General Principles Governing the Administration of Temporal Goods of the Church”).

also have recognition in civil law.<sup>97</sup> M.E. Chopko says that “a parish’s canonical structures and rights must be expressed in civil documents themselves to better assure, in this legal culture, that they will be adequately protected.”<sup>98</sup> J.S. Manny underscores the need for the civil protection of ecclesiastical goods:

The most popular and perhaps the best way to effectively reduce risk is to separately incorporate the parishes, the dioceses, and the various organizations that support the parishes and dioceses, such as fund-raising entities. If properly structured, the incorporation of each organization will limit the liability of the individual parishes and diocese by reducing their exposure to the actions and negligence of parish employees, volunteers, and associated parties.<sup>99</sup>

Canon law sometimes canonizes civil law in its operation, provided that the civil laws do not contradict divine law and the norms of the Code (see c. 22; *CCEO*, c. 1504). Several canons on temporal goods make particular mention of compliance with civil law.<sup>100</sup> Civil law in most settings does not recognize canonical provisions. Although secular courts in some jurisdictions will defer to the norms of Church law in rendering their decisions, such disposition is not assured in all jurisdictions. More often and assuredly, however, the secular courts will rely upon secular legislation when rendering their decisions on ecclesiastical goods. Therefore, it is important for administrators of

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<sup>97</sup> See RENKEN, *Church Property*, p. 214.

<sup>98</sup> CHOPKO, “An Overview on the Parish and the Civil Law,” p. 198.

<sup>99</sup> J.S. MANNY, “Governance Issues for Non-Profit Religious Organizations,” in *The Catholic Lawyer*, 40 (2000), pp. 1-2 (=MANNY, “Governance Issues for Non-Profit Religious Organizations”). P. BROWN admonishes the competent authority to ensure that the ecclesial governance is not lost in the process of civil incorporation: “By the same token, the civil structure must preserve the same ability of the diocesan bishop (and theoretically the Holy See) to intervene in the administration and governance of the parish in appropriate circumstances that exists in canon law.” In “Square Pegs in Round Holes: Toward a Better Model of Parish Civil Law Structures,” in *The Jurist*, 69 (2009), p. 304

<sup>100</sup> See canons 1268; 1274, §5; 1284, §2, 2°; 1284 §2, 3°; 1286, 1°; 1290; 1296; 1299 § 2; see also J. OTADUY, “General Norms, [cc. 1-28],” in *ExComm*, vol. 1, pp. 377-378.

ecclesiastical goods and those with the right of vigilance to ensure that these goods are protected in a civilly recognized manner.<sup>101</sup>

Manny says that, among other things, protecting ecclesiastical goods through civil incorporation will encourage donors to be more generous towards the Church:

The first and most important reason for restructuring is the protection of assets from creditors. A second goal of incorporation, especially in light of the Dallas award,<sup>102</sup> is to attract donors who may be less inclined to give directly to a church due to fear that the church's assets are vulnerable to claims from judgment creditors. A third reason for incorporating separate entities is to attract government grants--for example, government contracts for low-income housing. In these situations, the government might not be willing to make the grant unless it can be made to a distinct non-profit corporation.<sup>103</sup>

Since administrators of ecclesiastical goods are to ensure that the public juridic person acquires temporal goods to meet its purposes, they must ensure that the goods are protected through civil means. Protection of ecclesiastical goods encourages more generous donations from the faithful who will give when they are sure that their donations will be used for the designated purposes. In the next section, attention will be given to the role of administrators in the acquisition of temporal goods, and the obligations of the faithful to make donations to enable public juridic persons meet their proper purposes.

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<sup>101</sup> See RENKEN, "The Principles Guiding the Care of Church Property," pp. 165-168.

<sup>102</sup> "In July 1997, a Texas jury awarded \$119 million in damages to ten former altar boys and the family of another after finding that the Catholic Diocese of Dallas ignored evidence that the priest was sexually abusing the boys and thereafter attempted to cover up the scandal. The terms of the unprecedented judgment mandated that not only the priest but also the diocese satisfy the damage award." In MANNY, "Governance Issues for Non-Profit Religious Organizations," p. 1. See also *Doe v. Hicks*, No. 93-05258-G (Texas Dist., Dallas County, 1993).

<sup>103</sup> MANNY, "Governance Issues for Non-Profit Religious Organizations," pp. 4-5.

### 2.3.1— The Administrator and the Acquisition of Temporal Goods

The Church affirms its innate right to acquire goods in pursuit of its proper purposes (cc. 1254, §1; 1259).<sup>104</sup> This right reflects the right to use temporal goods for the mission of the Church. The Church has the innate right to all the means needed to fulfill its mission. V.J. Pospishil comments:

While the goals of the Church as an institution established by its divine founder Jesus Christ are directed toward the spiritual, supernatural world, they have to be attained in this material world, in a society of humans, a task that requires the means appropriate to this world, which refers to temporal possession, pecuniary income, real and personal property, legal claims, and the freedom to acquire, possess, administer and alienate them for the purposes of the Church<sup>105</sup>

Even though the mission of the Church is essentially spiritual, directed principally to the eternal salvation of human beings, it needs to make use of earthly goods.<sup>106</sup> Therefore, “it is impossible to make a sharp separation between the two, the spiritual and the material.”<sup>107</sup>

The acquisition of temporal goods, therefore, acquires a special place in the life of the Church because of its intimate connection to the mission of the Church. Without acquisition of goods, the Church would not be able to make donations for charitable

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<sup>104</sup> The acts of acquisition of temporal goods treated in canons 1259-1273 concern all public juridic persons. Our study, however, shall be concerned mainly with the means of acquisition available to public juridic persons subject to the diocesan bishop (the most numerous of which are parishes). Besides, we also recognize that what constitutes a means of acquisition for one public juridic person may constitute alienation for another public juridic person. For example, canon 1263 speaks of the bishop’s right to tax public juridic persons for meeting the needs of the diocese; the tax will constitute alienation for parishes and other public juridic persons taxed, while it will constitute a means of acquisition for the diocese. We have to note that even though some of the canons are on the section on acquisition of goods, they may actually relate to alienation for other public juridic persons.

<sup>105</sup> V.J. POSPISHIL, *Eastern Catholic Church Law*, Revised Edition, New York, Saint, Maron Publications, 1996, p. 694 (=POSPISHIL, *Eastern Catholic Church Law*).

<sup>106</sup> See R. METZ, “Temporal Goods of the Church,” in G. NEDUNGATT (ed.), *A Guide to the Eastern Code*, n. 10, Rome, Pontificio Istituto Orientale, 2002, p. 690 (=METZ, “Temporal Goods of the Church”).

<sup>107</sup> See *ibid.*

purposes (c. 1285), remunerate the clergy and others who work in the Church (c. 281; 1286); nor carry out the offices of sanctification or teaching. The administrator of ecclesiastical goods acts on behalf of the public juridic person to acquire goods for the purposes of the public juridic person. It is part of the *munus* of the administrator to help organize and collect funds for the public juridic person.<sup>108</sup>

### 2.3.1.1 — The Right of the Church to Acquire Goods and the Obligation of the Christian Faithful to Provide for the Needs of the Church

Temporal goods are principally acquired from the generous contributions of the faithful (c. 1264). The faithful have the obligation to support the Church's mission through their donations and bequests. It is one of the *munera* of the administrator to remind Christ's faithful of their obligation to support the Church financially. Since the administrator has the obligation to represent the public juridic person in all affairs (c. 118), the duty of reminding Christ's faithful to support the Church through their donations also rests on the administrator. He or she acts in the name of the public juridic person to solicit funds to meet the purposes for which the public juridic person is established (cc. 114, §2; 118; 1254, §2).

Given that fact that the Church has the innate right<sup>109</sup> to acquire goods, the Code also states that it has an innate right to require from the Christian faithful<sup>110</sup> those things

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<sup>108</sup> See canons 222, §1; 1259-1262; 947; 1264, 2°; 1266, 1267, §1; 1268; 1270; and 1299-1302.

<sup>109</sup> MORRISSEY says: "In referring to the 'inherent right'--the same word that is used in Can. 1254--the canon underlines that this right does not depend on the good will of others. Of course, the *use* of the right might be restricted in some fashion by civil legislation or, in some countries, it might even be enhanced by public taxation laws (the well-known *Kirchensteuer* is an example). As regards the limitation of the use of the right, in some areas there are mortmain laws which have for their object the control of possessions of religious corporations or trusts: no lands are to be given to charities unless certain requisites are observed. Other places have restrictions concerning donations which are to be given to recognized charitable organizations if they are to qualify for taxation exemptions." In "Temporal Goods of the Church," in *CLSGBI Comm*, p. 711.

needed for its proper purposes (c. 1260). Canon 222, §1 obliges all Christian faithful to provide for the needs of the Church, so that it has what is necessary for divine worship, for the works of the apostolate and of charity, and for the decent support of the ministers. The diocesan bishop “is bound to admonish the faithful of the obligation mentioned in canon 222, §1 and in an appropriate manner to urge its observance” (c. 1261, §2).<sup>111</sup> All the faithful “have a duty and right to work so that the divine message of salvation more and more reaches all people in every age and in every land” (c. 211). This mission is not possible without the aid of ecclesiastical goods. Therefore, the faithful must see the “intrinsic” connection between their obligation to the mission and their obligation to contribute to the means of achieving it. Although the Code specifically obliges the diocesan bishop to remind Christ’s faithful of the need to support the Church, the administrator of a public juridic person should also ensure that Christ’s faithful are well educated on this issue.

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<sup>110</sup> Canon 204 defines the term Christian faithful (*Christifideles*) as “those who, inasmuch as they have been incorporated in Christ through baptism, have been constituted as the people of God. For this reason, made sharers in their own way in Christ’s priestly, prophetic, and royal function, they are called to exercise the mission which God has entrusted to the Church to fulfill in the world, in accord with the condition proper to each.”

<sup>111</sup> *CCEO*, canon 1010 states that the competent authority has the right to require the faithful to participate in providing for the needs of the Church identified in canon 1007. The Latin text is *ius exigendi*, and not simply soliciting (*ius exquirendi*), the participation of the faithful. R. METZ says: “A strict application of the law would require that the Church should have recourse to a system of obligatory taxation and should sanction the recalcitrant with canonical penalties. The Church does not do so. Indeed, it would be difficult for the Church to do so without the agreement and aid of the civil power, as obtains in a few countries like Germany with the *Kirchensteuer* (church tax). Ultimately, it is a question of a moral obligation of the faithful. It is only under certain conditions that the authority, as a rule the eparchial bishop, is authorized to impose taxes and order collections.” In “Temporal Goods of the Church, p. 695 [emphasis added]. For a comparative study of the two Codes with regard to the conditions required for the imposition of taxes see J. ABBASS, “The Temporal Goods of the Church: A Comparison of the Eastern and Latin Codes of Canon Law,” in *Periodica*, 83 (1994), pp. 705-710 (=ABBASS, “The Temporal Goods of the Church”).



### 2.3.1.2 — The Means of Acquisition of Temporal Goods

The Code identifies a number of legitimate means through which the Church acquires temporal goods. Canon 1259 states that the Church<sup>112</sup> may acquire temporal goods by every just means of natural law<sup>113</sup> or positive law permitted to others.<sup>114</sup> Several canons identify the specific way by which a public juridic person may legitimately acquire goods for its proper purposes: free-will offerings (c. 1261), appeals (c. 1262), taxation (c. 1263), prescribed fees (c. 1264), fund raising (c. 1265), special collections (c. 1266), prescription (cc. 1268—1270),<sup>115</sup> income from benefices (c. 1272), and pious wills (cc. 1299-1301), trusts (c. 1302, §§2-3), foundations (cc. 1304, §1; 1308, §4; 1309). Other means through which the Church acquires temporal goods are by merger or union (cc. 121-122) or extinction (c. 123) of juridic person; the seminary tax (c. 264); fees for tribunal services (c. 1649); and fines (c. 1488, §1; 1489). It is part of the *munus* of the

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<sup>112</sup> The term Church is understood in the sense of canon 1258: “Church signifies not only the universal Church or the Apostolic See but also any public juridic person in the Church.”

<sup>113</sup> Several ways of acquiring temporal goods by natural law are:

- “1. Occupancy – the taking of something which has no owner with the intention of making it one’s own
- 2. Accession – the acquisition of ownership by gaining something produced by what one already owns
- 3. Contract – the transfer of ownership by consent between two or more persons who are naturally capable to make the transfer
- 4. Testament – the disposition of one’s goods at the moment of death
- 5. Labor – the acquiring of ownership of a good in return for work rendered to one who heretofore owns that good” In T.L. BOUSCAREN et al, *Canon Law: A Text and Commentary*, 4<sup>th</sup> rev. ed. Milwaukee, WI, Bruce Publishing Co, 1963, p. 804 (=BOUSCAREN, *Canon Law: A Text and Commentary*)

<sup>114</sup> The corresponding *CCEO*, canon 1010 speaks of juridic persons rather than “the Church” as defined in *CIC/83*, canon 1258. The *CCEO* makes no reference to natural law or civil law; it simply states that juridic persons can acquire temporal goods by every just means permitted to others.

<sup>115</sup> For an excellent treatment of prescription in the Eastern Code see V DE PAOLIS, “Prescription, Reckoning of Time (cc. 1540-1546),” in G. NEDUNGATT, (ed), *A Guide to the Eastern Code*, no. 10, Rome, Pontificio Istituto Orientale, 2002, pp. 843-845.

administrator to ensure that these legitimate means are employed to acquire goods for the public juridic person (cc. 118; 1279, §1).

Administrators of ecclesiastical goods should be aware of some differences in the norms on the acquisition of temporal goods in the previous Code and the present Code. A recent comparative study of the means of acquisition of goods in the 1917 Code and the 1983 Code by Renken reveals the following: “The 1983 Code of Canon Law does not contain three sources of diocesan revenue which had existed in the 1917 code: the *cathedraticum*<sup>116</sup> (CIC/1917, canon 1504); the charitable subsidy<sup>117</sup> (CIC/1917, canon 1505); and the foundation tax<sup>118</sup> (CIC/1917, canon 1506).”<sup>119</sup> On the other hand, the 1983 Code added three new sources of acquisition of temporal goods that were not in the previous Code. Renken writes:

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<sup>116</sup> *Cathedraticum* was a “uniform tax to be paid equally by all churches and benefices in recognition of their subjection to the Bishop, without regard to the size of their membership.” In SACRED CONGREGATION FOR THE COUNCIL Decree, 13 March 1920, in *AAS*, 12 (1920), p. 444, English translation in *CLD*, vol. 1, p. 720. The *Cathedraticum* was for the person of the bishop, not for the needs of the diocese; one could really argue that such moneys were not ecclesiastical goods. Ecclesiastical goods are owned by moral persons [juridic persons], and the diocesan bishop is not a moral person (c. 1497, §1).

The concept of *Cathedraticum* may not fit well into the new ecclesiological insight brought by the Second Vatican Council. One such new insight is the consideration of the Church as the People of God first and foremost, before consideration of the hierarchical nature of the Church. The 1983 Code, which obviously followed the ecclesiology of the Second Vatican Council, treats the diocesan bishop in Book II, Part II- “The Hierarchical Constitution of the Church,” section II- “Particular Churches and Their Groupings.” Within this context, the diocesan bishop is understood to be under the diocese, unlike the 1917 Code that treated the diocese under title 8 “On episcopal power and those who participate in it.” The 1983 Code treats the diocese before the treatment of diocesan power following the schema of the Second Vatican Council that treated the People of God before the hierarchical constitution of the Church. To speak of paying taxes in recognition of one’s subjection to the bishop may not be appropriate language in the light of the insight from *Lumen gentium*, chapter two. After all, the holders of offices in the Church are invested with sacred power in order that they may promote the interests of the faithful and order the people of God to their common goal, which is the salvation for all (see *LG*, no. 18; c. 1752).

<sup>117</sup> A charitable subsidy was an optional exaction that could be imposed by the local ordinary to meet special pressing needs of the diocese.

<sup>118</sup> A foundation tax was imposed by the ordinary on the occasion of the foundation or consecration of a church, benefice, or other institute.

<sup>119</sup> RENKEN, “The Acquisition of Diocesan Revenue by the Diocesan Bishop,” in *Philippine Canonical Forum*, 11 (2009), p. 80 (=RENKEN, “The Acquisition of Diocesan Revenue”)

The 1983 Code of Canon Law contains three sources of diocesan revenue which have no direct precedence in the 1917 code: the diocesan tax, both ordinary and extraordinary (canon 1263); special collections for diocesan projects (canon 1266); and the establishment of structures for restricted diocesan funds for the support of clergy, for the social security of clergy, for persons other than clerics who serve the Church, for diocesan projects, and for assistance to poorer dioceses (canon 1274).<sup>120</sup>

Renken also points out that the present Code retains three means of acquisition of goods that were present in the 1917 Code: “The 1983 Code of Canon Law contains three sources of revenue which had also existed in the 1917 code: the diocesan seminary tax (canon 264); tribunal fees (canon 1649); and goods from the extinction of public juridic persons subject to the diocesan bishop (canon 123).”<sup>121</sup> The means of acquisition that are not repeated in the new Code can no longer be used to as legitimate means of acquisition of goods.

The administrator must note that not all the canons on the acquisition of goods constitute a means of acquisition of goods for all public juridic persons. Canon 1263 on taxes is one of the ways of acquisition of goods for the public juridic person which is the diocese.<sup>122</sup> The same canon advances a legitimate means of alienation of goods of public juridic persons that are subject to the diocesan tax. Parishes that are taxed on the basis of canon 1263 lose ownership of what they own, while the diocese acquires these same goods. In a similar manner, canon 1271 advances a means of acquisition of temporal goods for the Apostolic See, but for the diocese it concerns the alienation of its goods. If canons 1263 and 1271 are regarded as “alienation” for parishes and dioceses, do the

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<sup>120</sup> Ibid., p. 89.

<sup>121</sup> Ibid., p. 84. Both Codes recognized prescription as one of the ways of acquiring temporal goods as well (*CIC/17*, canons 1508-1512; *CIC/83*, cc. 197-199; 1268-1270).

<sup>122</sup> For further study of taxation based on canon 1263 see D.J. FRUGÉ, “Diocesan Taxation of Parishes in the United States, Sign of *Communio* or Source of Tension?” in *CLSA Proceedings*, 60 (1998), pp. 68-81.

canons on alienation apply to the procedure for paying such taxes/donations? Would the pastor or diocesan bishop be required to follow the norms of canons 1291-1294? After all, in the budget the entry of such items would be entered as income or expenditure, depending on who acquires and who loses possession of the goods. It is our opinion that, since the law has anticipated such payment to be made by public juridic persons, the formalities for alienation would not apply to such actions of the administrators.<sup>123</sup> The universal law has granted the “permission” by stipulating that such public juridic persons can be taxed or asked to make donations (cc. 1263 and 1271). Besides, the norms of canons 1291-1294 require special permission of higher authority only for very large transactions, unlike those envisioned in canon 1263 and 1271.

### 2.3.2 — The Administrator and the Administration of Ecclesiastical Goods

Ownership of ecclesiastical goods is vested in the public juridic person that lawfully acquires them (c. 1257).<sup>124</sup> The administration of goods is one of the essential aspects of ownership (c. 1254, §1). Although the 1983 Code mentions acts of

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<sup>123</sup> E. REGATILLO argues that transfer of goods from one public juridic person to another does not constitute alienation because their status as ecclesiastical goods is not altered by the transaction. See *Institutiones Iuris Canonici*, 6<sup>th</sup> ed., Santander, Sal Terrae, 1961, pp. 2 and 230. This view is contrary to the practice of the Roman Curia. See KENNEDY, “The Temporal Goods of the Church [cc. 1254-1310],” in *CLSA Comm2*, p. 1495.

<sup>124</sup> The corresponding *CCEO*, canon 1010 states. “Under the supreme authority of the Roman Pontiff, ownership of temporal goods of the Church belongs to that juridic person which acquired them legitimately.” The *CCEO* simply recognizes juridic persons. J. ABBASS explains that, “with respect to the acquisition of temporal goods, Eastern canon 1010 is able to speak precisely and simply about ‘juridic person.’ On the level of the Churches *sui iuris* and their eparchies, *CCEO* c. 921, §2 specifically constitutes them as juridic persons.” In “The Temporal Goods of the Church,” p. 179.

administration of goods in other sections of the Code (e.g., cc. 634-640), in this chapter we shall focus principally on the canons of Book V.<sup>125</sup>

Canon 1286<sup>126</sup> obliges administrators to practice social justice and to pay a just wage to employees.

Administrators of goods:

1° in the employment of workers are to observe meticulously also the civil laws concerning labor and social policy, according to (*iuxta*) the principles handed down by the Church;

2° are to pay a just and decent wage to employees so that they are able to provide fittingly for their own needs and those of their dependents.

This canon identifies the ecclesiastical and civil rights of employees which are to be fulfilled by the administrator who acts on behalf of the employer (i.e., public juridic person).<sup>127</sup> It emphasizes the Church's teaching on justice in society.<sup>128</sup> The requirement that civil law be followed is a "canonization" of civil law, although this must be done "according to the principles handed down by the Church."<sup>129</sup> The canon envisions that persons who serve the Church should be properly remunerated.<sup>130</sup> Kennedy notes:

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<sup>125</sup> For a more detailed study of the administration of goods in religious institutes see V. DE PAOLIS, "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.

<sup>126</sup> For an in-depth study of canon 1286, see T. T. GRANT, "Social Justice in the 1983 Code of Canon Law: An Examination of Selected Canons," in *The Jurist*, 49 (1989), pp. 135-136; see also D. J. HERMANN, "The Code of Canon Law Provisions on Labor Relations," in *The Jurist*, 44 (1984), pp. 180-193.

<sup>127</sup> It is the duty and responsibility of diocesan bishops to ensure that administrators in the Church fulfill this obligation of paying a just wage to its employees. J. MYERS writes: "Surely a just wage and just working conditions would be among the things a diocesan bishop must attend to. The bishops must point out that in order for them to meet this responsibility, the members of the Church will have to provide the financial means for doing so." In "The Economic Pastoral Foundation in the Church's Mission; Challenges for the Church's Life," in *CLSA Proceedings*, 49 (1987), p. 191

<sup>128</sup> The 1983 Code has several canons making reference to justice: canons 222 § 2, 287 § 1; 528 § 1, 695 § 1; 797; 978 § 1; 1148 § 3, 1199 § 1; 1341; 1435; 1445 § 3, 1°; 1446 § 1, 1453, 1670; 1722; 1727 § 2.

<sup>129</sup> Some of the principal documents presenting the social teaching of the Church are the following:  
LEO XIII, Encyclical letter *Rerum novarum*, 15 May 1891, in *ASS*, 23 (1890-1891), pp. 641-670;

The sad truth is that in most if not all nations, [ . . . ] many people live and work in social and economic conditions far below the level demanded by the dignity of the human person as taught by the Church, and they do so despite the existence of civil laws ostensibly designed to further social justice. Meticulous conformity to civil laws that fall short of serving the fullness of social justice is hardly the measure of institutional behavior sought by the law of the Church. That is why in canon 1286, 1° observance of civil law is joined to fulfillment of the principles of social justice taught by the Church.<sup>131</sup>

Administrators are to ensure that observance of the social teaching of the Church on employment is to be given precedence over civil law.<sup>132</sup> This is precisely so because some civil laws may not mandate the just wages which are required by natural law for every worker. Kennedy comments: “Unfortunately, this message may be clouded not only by the word order [of c. 1286] which can be misinterpreted as putting emphasis on meticulous observance of civil law, but also because of a translation that renders the Latin *iuxta* in its secondary meaning of ‘according to’ rather than in its primary meanings of ‘alongside’ or ‘immediately after’ (from which is derived the English word

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PIUS XI, Encyclical letter *Quadragesimo anno*, 15 May 1931, in *AAS*, 23 (1931), pp. 177-228;  
 JOHN XXIII, Encyclical letter *Pacem in terris*, 11 April 1963, in *AAS*, 55 (1963), pp. 257-304;  
 PAUL VI, Encyclical letter *Populorum progressio*, 26 March 1967, in *AAS*, 59 (1967), pp. 257-299;  
 PAUL VI, Apostolic letter *Octogesimo adveniens*, 24 May 1971, in *AAS*, 63 (1971), pp. 401-441;  
 JOHN PAUL II, Encyclical letter *Laborem exercens*, 14 September 1981, in *AAS*, 73 (1981), pp. 577-647;  
 JOHN PAUL II, Encyclical letter *Sollicitudo rei socialis*, 30 December 1987, in *AAS*, 80 (1988), pp. 513-586;  
 JOHN PAUL II, Encyclical letter *Centesimus annus*, 1 May 1991, in *AAS*, 83 (1991), pp. 793-867;

CONGREGATION FOR CATHOLIC EDUCATION, Circular letter *Guidelines for the Study and Teaching of the Church's Social Doctrine in the Formation of Priests*, 27 June 1989, Vatican City State, Typis polyglottis Vaticanis, 1989;

PONTIFICAL COUNCIL FOR JUSTICE AND PEACE, *Compendium of the Social Doctrine of the Church*, 25 October 2004, Vatican City State, Typis polyglottis Vaticanis, 2004. See also RENKEN, *Church Property*, p. 229, footnote 161.

<sup>130</sup> Several other canons mention the remuneration (*remuneratio*) to be given to persons who serve the mission of the Church: See canons 191, §2; 230, §1, 231, §2; 263; 281, §§1 & 3; 418, §2, 2° and 531.

<sup>131</sup> KENNEDY, “The Temporal Goods of the Church [cc. 1254-1310],” in *CLSA Comm2*, p. 1488.

<sup>132</sup> Concerning the treatment of remuneration of Church workers and civil law, see B. K. DUNN, and L. ROBITAILLE, “Canon Law and the Observance of Labor Law,” in A. ESPELAGE (ed.), *CLSA Advisory Opinions, 1994-2000*, Washington, CLSA, pp. 412-416; D. HERMANN, “The Code of Canon Law Provisions on Labor Relations,” in *The Jurist*, 44 (1984), pp. 153-193.

juxtapose’).<sup>133</sup> The result is a translation which enjoins Church administrators to observe civil laws “according to the principles handed on by the Church” instead of “alongside (or together with) the principles handed on by the Church (*iuxta principia ab Ecclesia tradita*).” To speak of meticulous observance of civil law “according to the Church’s social teaching reduces Church teaching to the obligations of civil law or to a set of notions somehow subject to secular law. This would entail a failure to recognize in Church teaching additional positive demands which transcend the content of civil law and which, on that account, must be followed by church employers as an affirmative duty.”<sup>134</sup>

Canon 1287 concerns the two financial reports that are to be made by administrators of ecclesiastical goods:

§1. Both clerical and lay administrators of any ecclesiastical goods whatever which have not been legitimately exempted from the power of governance of the diocesan bishop are bound by their office to present an annual report to the local ordinary who is to present it for examination by the finance council; any contrary custom is reprobated.

§2. According to norms to be determined by particular law, administrators are to render an account to the faithful concerning the goods offered by the faithful to the Church.

The first paragraph requires administrators of ecclesiastical goods who are subject to the diocesan bishop to submit an account each year to the diocesan bishop who is one of the local ordinary (c. 134, §2).<sup>135</sup> Receiving this annual report is certainly one of the

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<sup>133</sup> The *CCEO*, canon 1030 1° replaces *iuxta* with *secundum*, the primary meaning of which is ‘after, behind, in the second place,’ which effectively accords appropriate priority to Church teachings by enjoining administrators to observe civil law after, or secondarily to, the principles handed down by the Church. See KENNEDY, “The Temporal Goods of the Church [cc. 1254-1310],” in *CLSA Comm2*, pp. 1489.

<sup>134</sup> See *ibid.*, p. 1490.

<sup>135</sup> Canons 586, §1 exempts administrators of ecclesiastical goods of institutes of consecrated life from submitting an annual account to the diocesan bishop. Canon 297 also exempts personal prelatures from such an obligation.

supervisory duties of the diocesan bishop (c. 1276, §1). Through the annual report the diocesan bishop can assess whether or not administrators of ecclesiastical goods have performed their function according to the provisions of universal law, particular law, and the statutes of the public juridic person. The transmission of the report to the finance council is to ensure that experts in financial matters have the opportunity to study it, and to call to the local ordinary's attention both its commendable and troublesome aspects.<sup>136</sup>

The second paragraph concerns administrators' rendering an account to the faithful concerning the goods that the latter have given to the Church.<sup>137</sup> The Code leaves the determination of the manner of rendering this account to particular law. This canon underscores the need for administrators to be accountable to the faithful.<sup>138</sup> The

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<sup>136</sup> See KENNEDY, "The Temporal Goods of the Church [cc 1254-1310]," in *CLSA Comm2*, p 1490

<sup>137</sup> The parallel *CCEO*, canon 1031, §2 requires administrators to render accounts publicly unless the authority, by particular law, has determined otherwise. The *CIC/83* does not say the account must be rendered publicly, but only to the faithful. KENNEDY notes. "During the revision process, unsuccessful efforts were made to expand the scope of this report to include an account not just of offerings from the faithful but of all the financial holdings of the public juridic persons, including returns on investments, sales of property, and other sources of income." In "The Temporal Goods of the Church [cc 1254-1310]," in *CLSA Comm2*, p. 1490; see *Communicationes* 12 (1980), p. 421.

RENKEN recommends that administrators make complete disclosure of all sources of income in their annual report: "Canon 1287 § 2 does not require administrators to give to the faithful a report of *all* income of public juridic persons, but only a report on the goods offered by the faithful. Thus, for example, the report to the faithful is not *required* to identify revenue from grants, the civil government, private agencies, etc. Nonetheless, financial transparency suggests giving the faithful a *complete* report of *all* revenue from *whatever* source." In *Church Property*, p 235 [emphasis in the original].

<sup>138</sup> RENKEN notes the various places in the Code where the requirement of rendering account of stewardship is mentioned: "Elsewhere the code identifies persons other than the local ordinary who are to receive the financial reports to be submitted by the administrator. Public associations of the faithful are to make an account of their administration to the authority which established them—i.e., the Holy See, the conference of bishops, or the diocesan bishop (canon 319; see canon 312 § 1). Finance officers and other administrators of religious institutes, their provinces, and their local communities are to render an account of their administration to the competent authority (canon 636 § 2). Autonomous monasteries (see canon 625) must render an account of their administration to the local ordinary once a year, and the local ordinary has the right to be informed about the financial reports of a religious house of diocesan right (canon 637). The diocesan finance officer is to present an annual diocesan financial report to the diocesan finance council (canon 494 § 4). Likewise, in light of canon 1287 § 1, inasmuch as a pastor is the administrator of the parish (canon 532), he also must present an annual financial report to his superior, the diocesan bishop (see canon 515 § 1). In addition, if a parochial administrator serves a parish retaining its pastor, he must render an account to the pastor when he has completed his function (canon 540 § 3), if the



diocesan bishop exercises his duty of careful vigilance over the administration of ecclesiastical goods in his diocese by legislating the time and manner by which administrators of ecclesiastical goods subject to his jurisdiction are to make this annual report to the faithful (c. 1287, §2). Such particular law would promote the transparency that is expected of all administrators of ecclesiastical goods (c. 1284, §1).

Canon 1288 declares that administrators of public juridic persons require the written permission of their proper ordinary before they initiate or contest any legal proceeding in a civil court: “Administrators are neither to initiate nor to contest litigation in a civil forum in the name of a public juridic person unless they have obtained the written permission of their own ordinary.”<sup>139</sup> Such permission is not required for initiating or contesting litigation in the canonical forum (see c. 1480). The reason for seeking this permission is to ensure that the administrators of ecclesiastical goods do not endanger these goods in civil court. Renken says that “an obvious reason for the permission of the ordinary is the patrimonial risk to which a public juridic person is subjected by a civil lawsuit, and harm done to the Church by negative notoriety. If the administrator were to proceed without the ordinary’s written permission, the administrator’s action would be illicit (but not invalid).”<sup>140</sup> Such an action of the administrator could be subject to canonical action or recourse if damage results (see cc.

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parochial administrator serves a vacant parish, he would render the account to the diocesan bishop as would a pastor (see canon 540 § 1)” In *Church Property*, p 234

<sup>139</sup> The corresponding canon in the Eastern Code does not mention written permission. It only states that administrators of ecclesiastical goods require the permission of his or her own hierarch before they initiate or contest a civil litigation (c. 1032)

<sup>140</sup> RENKEN, *Church Property*, p 236

1281, §3; 128).<sup>141</sup> The granting of the permission by the ordinary affords him the opportunity to fulfill “careful vigilance over the administration of all the goods which belong to public juridic persons subject to him” (c. 1276, §1).

As we have discussed above, canonical tradition has recognized acts of ordinary administration and acts of extraordinary administration. Canon 1277 deals with certain acts of administration at the diocesan level:

The diocesan bishop must hear the finance council and college of consultors to place acts of administration which are more important in light of the economic condition of the diocese. In addition to the cases specially expressed in universal law or the charter of a foundation, however, he needs the consent of the finance council and of the college of consultors to place acts of extraordinary administration. It is for the conference of bishops to define which acts are to be considered of extraordinary administration.<sup>142</sup>

This canon obliges the diocesan bishop to hear, or to obtain the consent of, two bodies, the college of consultors and the finance council, before he places certain acts of administration in the diocese. The goal of this canon is to ensure that ecclesiastical goods are well protected and used for the intended proper purposes.<sup>143</sup> It provides for three types of acts of administration of ecclesiastical goods: acts of ordinary administration, acts of ordinary administration which are more important in the light of the economic situation, and acts of extraordinary administration.

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<sup>141</sup> See *ibid*; for a detailed treatment of penalties for administrators involved in financial malfeasance, see RENKEN, “Penal Law and Financial Malfeasance,” pp. 5-58, especially pp. 34-54.

<sup>142</sup> KENNEDY notes. “Although the canon does not use the word ‘ordinary,’ it is clear from the use of the word ‘extraordinary’ in the second part of the canon, which requires consent of the two consultative bodies, that the first part, which requires only that the two bodies be heard, concerns the more important acts of ordinary administration.” In “The Temporal Goods of the Church [cc. 1254-1310],” in *CLSA Comm2*, p. 1478.

<sup>143</sup> KENNEDY says that the rationale for canon 1277 is twofold: “[F]irst to guard against the dangers of grave harm to the financial condition of a diocese from decisions hastily made in the absence of the accurate and adequate information from truly knowledgeable and skilled experts; second, to free the diocesan bishop from the felt need to spend an inordinate amount of time attending to financial matters to the neglect of his many responsibilities in the teaching and sanctifying offices of the Church and in the nonfinancial areas of the governing office.” In *ibid*.

Canon 1281 provides norms to regulate acts of ordinary and extraordinary administration for a public juridic person subject to the diocesan bishop (e.g., the parish). It requires the diocesan bishop to determine what exceeds acts of ordinary administration for public juridic person subject to him.

### 2.3.2.1 — Acts of Ordinary Administration

Canonical tradition has often identified acts of ordinary administration as “the collection of debts, rents, interests or dividends, contracts and payments necessary for the ordinary maintenance of the church and its personnel; the opening of checking accounts to facilitate these payments; and the acceptance of ordinary donations.”<sup>144</sup> In other words, acts of ordinary administration involve “the normal transaction of business by the administrator of a public juridic person, i.e., things done routinely or regularly.”<sup>145</sup> Administrators of ecclesiastical goods act on behalf of the juridic person. Canon 118 says that those whose competence is acknowledged by universal or particular law or by its own statutes are the legal representatives of a public juridic person. Canon 1279, §1 identifies the administrator of ecclesiastical goods as the one who immediately governs the person to which the goods belong. The universal law recognizes the diocesan finance officer as the routine administrator of the ecclesiastical good of the diocese, who functions under the authority of the diocesan bishop who immediately governs the

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<sup>144</sup> J. A. ABBO and J. D. HANNON, *The Sacred Canons: A Concise Presentation of the Current Disciplinary Norms of the Church*, Saint Louis, B. Herder Book Co., 1952, p. 731. See also RENKEN, *Church Property*, pp. 176-177; A. FARRELLY, “Acts of Extraordinary Administration and Acts of Alienation,” in *CLSANZ Newsletter*, no.1 of (2004), pp. 40-49.

<sup>145</sup> See A. MAIDA and N. P. CAFARDI, *Church Property, Church Finances, and Church-Related Corporations*, Saint Louis, The Catholic Health Association of the United States, 1984, pp. 301-302. The authors give the following examples as acts of ordinary administration: “Maintaining property and checking accounts, receiving rent or interest income, accepting nominal gifts, paying bills, and making routine sales and purchases” In *ibid.*, p. 302. See also RENKEN, *Church Property*, pp. 176-177.

diocese (c. 494, §3),<sup>146</sup> and the pastor as the administrator of the property of the parish (c. 532). Acts of ordinary administration in the diocese are typically performed by the diocesan financial officer, while the pastor performs the same acts in the parish. To perform acts of ordinary administration, an administrator does not need special authorizations on each occasion. Such acts are part of routine duties. F.G. Morrissey explains:

The simple fact of approval of the annual budget carries with it the mandate to carry out certain duties. [...] It must be recognized, though, that most acts of financial administration would be situated within the parameters of ordinary administration. For this reason, the law poses few major difficulties to those entrusted with the office of financial administrator (i.e., treasurer, diocesan finance officer, and so forth)<sup>147</sup>

Let us consider two possible manifestations of ordinary administration: diocesan taxation and donations made by administrators.

### (i) — Diocesan Taxation

Part of the *munus* of the administrator is the payment of taxes on behalf of the public juridic person (cc. 1284, §2, 5°). The Code provides for two possible taxes that administrators of ecclesiastical goods subject to the diocesan bishop may be required to pay to the diocese: the seminary tax, and general taxation. Paying taxes on behalf of public juridic persons is considered an act of ordinary administration, especially when the amount does not exceed the limit of ordinary administration determined by the competent authority or the statutes of the public juridic person (c. 1281).

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<sup>146</sup> KENNEDY points out that the diocesan bishop is the financial administrator of temporal goods owned by the diocese. In “The Temporal Goods of the Church [cc. 1254-1310],” in *CLSA Comm2*, p. 1478. *CIC/83*, canon 494, §3 states that “it is for the finance officer to administer the goods of the diocese under the authority of the bishop.” This canon certainly recognizes the financial officer of the diocese as the routine financial administrator of the ecclesiastical goods of the diocese.

<sup>147</sup> F.G. MORRISSEY, “Ordinary and Extraordinary Administration,” in *The Jurist*, 48 (1988), p. 716 (=MORRISSEY, “Ordinary and Extraordinary Administration”).

*The Seminary Tax.* Canon 264 states:

§1 In addition to the offering mentioned in can. 1266, a bishop can impose a tax in the diocese to provide for the needs of the seminary.

§2. All ecclesiastical juridic persons, even private ones, which have a seat in the diocese are subject to the tax for the seminary unless they are sustained by alms alone or in fact have a college of students or teachers to promote the common good of the Church. A tax of this type must be general, in proportion to the revenues of those who are subject to it, and determined according to the needs of the seminary.

The 1917 Code had three ways through which the bishop provided for the proper operation of the seminary (see *CIC/17*, c. 1355).<sup>148</sup> The present Code provides two means to maintain the seminary: canon 264 mentions the seminary tax, and canon 1266 permits a special seminary collection. The imposition of the seminary tax does not require the formalities of canon 1263,<sup>149</sup> except that it must be proportionate to the income of the juridic person.<sup>150</sup> M. Nobel explains:

It is necessary to strictly distinguish the seminary tax in canon 264 and the other diocesan taxes mentioned in canon 1263. the latter allows the diocesan bishop, after hearing the finance council and the presbyteral council, to impose a moderate tax for the needs of the diocese upon public juridic persons, and impose extraordinary tax in case of grave necessity and under the same conditions upon other physical and juridic persons.<sup>151</sup>

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<sup>148</sup> For the support of the seminary the residential bishop can: 1. Order that pastors and rectors of the other churches, even exempt ones, at stated times, take up an offering in churches for this end; 2. Impose a tribute or *tax* in his diocese; 3. If these are not sufficient, attribute to the Seminary some simple benefices.

<sup>149</sup> A. McGRATH writes: "This levy is not imposed on physical persons, and it is to be distinguished from the levy mentioned in Can. 1263." In "Part I Christ's Faithful," in *CLSGBI Comm*, p. 150.

<sup>150</sup> An author like D. CITO argues differently: "The juridical system of taxes provided for under §2 consider this tax a mere application of c. 1263 and not a part of doctrines as far as those liable for the tax are concerned. Thus, in order for it to be levied, the provision of c. 1263 shall be applied after consultation with the finance council and the presbyteral senate." In "The Formation of Clerics," in *ExComm*, vol. II/1, p. 298.

<sup>151</sup> M. NOBEL, "Academic Aspect of Priestly Formation in the 1983 Code," in *Studia canonica*, 42 (2008), p. 448

Only juridic persons in the diocese are liable to the seminary tax.<sup>152</sup> Excluded from it are juridic persons that are sustained by alms and those that have college(s) of students or teachers to promote the common good of the Church, and physical persons.<sup>153</sup> It is part of the *munus* of the administrator to pay debts owned by the public juridic person. A seminary tax imposed by the diocesan bishop in accordance with the norm of canon 264 becomes a debt that the administrator must pay on behalf of the public juridic person.

Canon 1263 also creates the option of the diocesan bishop taxing public juridic persons subject to him.<sup>154</sup> This canon presently constitutes one of the major ways by which a diocesan bishop can receive revenue from public and private juridic persons in his diocese.<sup>155</sup> Canon 1263 states:

After the diocesan bishop has heard the finance council and the presbyteral council, he has the right to impose a moderate tax for the needs of the diocese upon public juridic persons subject to his governance, this tax is to be proportionate to their income. He is permitted only to impose an extraordinary and moderate exaction upon other physical and juridic persons in case of grave necessity and under the same conditions, without prejudice to particular laws and customs which attribute greater rights to him.

The canon has two aspects. The first relates to the diocesan bishop's right to taxation, after proper consultations. The consultation makes him *habilis* to tax public juridic

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<sup>152</sup> See D. CITO, "The Formation of Clerics," in *ExComm*, vol. II/1, p. 298.

<sup>153</sup> See RENKEN, "The Acquisition of Diocesan Revenue," p. 84.

<sup>154</sup> For a study of the development of canon 1263, see RENKEN, *Church Property*, pp. 80-92.

<sup>155</sup> The preferred way of generating revenue for any public juridic person is the free will donation recognized in canon 1262. See PONTIFICAL COMMISSION FOR THE REVISION OF THE CODE OF CANON LAW, *Schema canonum libri V: De iure patrimoniali Ecclesiae*, Vatican City, Typis polyglottis Vaticanis, 1977, p. 287. Canon 1262 of the 1983 Code was canon 5, §3 in the 1977 *Schema*, and it followed the discipline on the diocesan taxation. After the 1980 *Schema*, the Secretariate decided to place the canon before the canon on taxation. This was done to avoid the impression that taxation, rather than free-will responses to fund-raising appeals, is the preferred mode of acquisition of temporal goods. See *Relatio: complectens synthesis animadversionum ab Em.iss. atque Exc.iss. patribus commissionis ad novissimum schema Codicis Iuris Canonici exhibitarum, cum responsionibus a secretaria et consultoribus datis*, Vatican City, Typis polyglottis Vaticanis, 1977, p. 282.

persons subject to his authority.<sup>156</sup> The tax must be moderate and proportionate to the income of the public juridic person. This first part makes no reference to grave necessity nor does it designate the tax as extraordinary. Kennedy explains:

This makes clear that the tax referred to in the first part could be a regularly recurring means of raising funds to meet regularly recurring diocesan needs, and, in that sense, may be considered to be an 'ordinary' tax in contradistinction to the extraordinary tax referred to in the second part of the canon. Reluctance to use the word 'ordinary' in the canon's first part appears to have been in deference to the decision to give primacy to voluntary responses to fund-raising appeals as the preferred mode of acquisition [...], explicit reference to an 'ordinary' tax could be misunderstood as an indication that taxation is to be an expected or preferred mode of acquiring needed funds.<sup>157</sup>

The diocesan bishop should thoroughly inform the members of the councils on all issues that relate to the need for the tax. This will afford the councils the opportunity to give good advice and, finally, such well founded advice will help the diocesan bishop to make a well informed decision. V. De Paolis cautions the diocesan bishop to avoid making the consultation process a mere formality. The participation of these councils, he argues, "is a real involvement and corresponsibility; this must not be reduced to a mere formality. As a matter of fact, law must never be pure formality."<sup>158</sup> Kennedy notes some of the issues that could be involved in the consultation: "Consultation should include such matters as the genuineness and relative importance of diocesan need for which the tax is

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<sup>156</sup> An authentic interpretation declared that schools owned by pontifical religious institutes are not subject to the "ordinary" tax to be imposed by the diocesan bishop for diocesan needs. PONTIFICAL COUNCIL FOR THE INTERPRETATION OF LEGISLATIVE TEXTS, reply, 24 January 1989, in *AAS*, 81 (1989), p. 991.

<sup>157</sup> KENNEDY, "The Temporal Goods of the Church [cc 1254-1310]," in *CLSA Comm2*, p. 1463 MORRISEY also suggests criteria for determining what could be considered moderate and proportionate tax. "It is for the Bishop to determine whether the tax is based on gross or on net income. Sometimes a combination of procedures is adopted: parishes that do not have a debt could have their tax rated on gross revenue; parishes with a debt might have their tax rated on gross revenue less any capital paid back on the debt. The Bishop could also determine a sliding scale in proportion to the revenue." In "The Temporal Goods of the Church," in *CLSGBI Comm*, p. 713.

<sup>158</sup> V DE PAOLIS, "Temporal Goods of the Church in the New Code with Particular Reference to Institutes of Consecrated Life," in *The Jurist*, 43 (1983), p. 353.

to be imposed, the appropriate meaning in the particular circumstances of ‘moderate’ (a relative term but clearly indicative of limits), and the criteria for determining what qualifies as taxable income.”<sup>159</sup> If the tax is a recurring one, the bishop would have to consult each time he wants to renew it.<sup>160</sup> Kennedy points out that failure to consult these bodies “would invalidate a tax, relieving those upon whom it had been imposed of the obligation to pay it.”<sup>161</sup> The diocesan bishop is not obliged to follow the advice of the councils, but he is nonetheless not to act contrary to the advice, especially if unanimous, without a reason which is overriding in his judgment (c. 127, §2, 2°).<sup>162</sup>

Canon 1263 clearly states that the “ordinary” tax be imposed for the needs of the diocese. The Code does not explain what exactly constitutes these needs. However, these will be found in the purposes for which the Church owns ecclesiastical goods (c. 1254, §2; 114, §2 and 222, §1). Renken gives some examples of what could be regarded as the diocesan needs that can necessitate the imposition of the ordinary tax in accord with canon 1263: “Included obviously among these needs are the recurring costs of operating diocesan agencies and institutions. Excluded from these needs are ‘extraordinary’ endeavors for which an extraordinary tax may be imposed (e.g., renovation of the cathedral, establishment of a clergy retirement center, erection of a seminary, etc.).”<sup>163</sup>

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<sup>159</sup> KENNEDY, “The Temporal Goods of the Church [cc. 1254-1310],” in *CLSA Comm2*, p. 1463.

<sup>160</sup> RENKEN however, thinks differently. He contends that the ordinary tax can be recurring: “It is appropriate, however, that the diocesan bishop, when consulting the presbyteral council and the finance council to set the taxation formula, explains that the formula will be used repeated (e.g., annually) until such time as the formula is changed. To modify the formula validly, the diocesan bishop must have a new consultation with the two councils” In RENKEN, *Church Property*, pp. 88-89.

<sup>161</sup> KENNEDY, “The Temporal Goods of the Church [cc. 1254-1310],” in *CLSA Comm2*, p. 1463.

<sup>162</sup> The Eastern Code requires the eparchial bishop to receive the consent of the finance council before he can impose a tax on juridic persons subject to his authority (*CCEO*, c. 1012, §1).

<sup>163</sup> RENKEN, *Church Property*, p. 87.



The second part of canon 1263 concerns the extraordinary tax to be imposed by the diocesan bishop. The pre-tax formalities are the same as the ordinary tax, namely, that the diocesan bishop has to hear the presbyteral and finance councils before he can impose it. However, those subject to this tax are quite broader than those subject to the “ordinary” tax. An extraordinary tax can be imposed also on physical and juridic persons.<sup>164</sup> Moreover, it can be imposed only when there is a grave necessity (*in casu gravis necessitatis*). Once the tax has been determined, the administrator of the public juridic person is obliged to pay it on behalf of the public juridic person.

## (ii) — Donations by Administrators

Canon 1285 concerns donations which can be made by administrators: “Within the limits of ordinary administration only, administrators are permitted to make donations for purposes of piety or Christian charity from movable goods which do not belong to the stable patrimony.” This donation is to be made in accord with the proper purposes for which ecclesiastical goods are owned, namely, remuneration of clergy and

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<sup>164</sup> There is no consensus among commentators as to whether an extraordinary tax can be imposed on public juridic persons not subject to the diocesan bishop. Kennedy explains: “Arguments in favor of limiting extraordinary taxes to persons subject to the governance of the diocesan bishop could point to the fact that imposition of a tax, even extraordinary in nature on persons not otherwise subject to the legislator, is highly unusual. Moreover, during the revision process, the Secretariate at one point intimated that the taxing power of a diocesan bishop would be confined to persons subject to his governance (*Rel* 282). Contrary arguments could point to the fact that the Latin text of c. 1263 uses, in the first part, the word *tributum*, which connotes the classical notion of tribute being paid by subjects, but, in the second part, the canon uses the word *exactionem*, a broader term suggesting a legislative intention to reach beyond those who, strictly speaking, are subjects. Also, canon 264, providing for the support of a diocesan seminary, authorizes the imposition of a tax on juridic persons which have an establishment in the diocese, even if they are not otherwise subject to the diocesan bishop, thereby affording a precedent within the code for a more extensive interpretation of the second part of c. 1263.” In “The Temporal Goods of the Church [cc. 1254-1310],” in *CLSA Comm2*, footnote 43, p. 1464.

For the opinion that an extraordinary tax does not extend to persons not subject to the diocesan bishop, see A GIL, *La Administración de los bienes temporales de la Iglesia*, 2<sup>nd</sup> ed. Salamanca, University of Salamanca, 1993, p. 166. For contrary opinion, see J. C. PÉRISSET, *Les biens temporels de l'Église*, Paris, Tardy, 1996, p. 87.

other ministers, works of charity and pious causes. J. Provost points out that the canon does not specify what “purposes of piety or Christian charity” are, but leaves that determination to the prudent determination of the administrator.<sup>165</sup> The donation is to be made only from movable goods not belonging to the stable patrimony of the juridic person.<sup>166</sup> According to L. Alarcón:

Stable patrimony is comprised of those goods that constitute the minimum secure financial basis to enable the juridical person to subsist autonomously and to attend to the purposes and services proper to it; there are no absolute rules, however, for establishing the stability of a patrimony, since this depends not only on the nature and quantity of the goods, but also on the financial requirements for the fulfillment of the objectives, as well as on the stationary or expansive situation of the institution when discharging its commitment.<sup>167</sup>

Designating stable patrimony limits the *habilitio* of the administrator to make donations only from non-stable patrimony. The administrator’s role is to ensure that the stable patrimony of the public juridic person is secured in both canonical and civil parlance (c. 1284, §2, 3°).

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<sup>165</sup> See J. PROVOST, “Use of Parish Funds for Gifts,” in A.J. ESPELAGE (ed.), *CLSA Advisory Opinions, 1994-2000*, Washington, CLSA, p. 411.

<sup>166</sup> See L. ALARCÓN, “The Administration of Goods,” in *CCLA*, p. 993.

<sup>167</sup> *Ibid.* Concerning stable patrimony, KENNEDY recognizes four categories of stable patrimony: (1) real estate (land, buildings); (2) non-fungible property (tangible movable property that is not consumed in its use, such as automobiles, furniture, books); (3) long-term (over two years) investments in securities (stocks, bonds, treasury notes); (4) restricted funds, that is, funds, even if comprised of cash or short-term securities, that have been set aside for a specific purpose, such as pension funds or certain building or educational funds. The Code commission also discussed the suitability of using the expression “stable patrimony.” It was initially thought that it was not adequate for the movement and flow of actual finances, but the commission finally accepted the expression. In “The Temporal Goods of the Church [cc. 1254-1310],” in *CLSA Comm2*, pp. 1495-1496; see also *Communicationes*, 12 (1980), p. 420; COMBALIA, “The Administration of Goods,” in *ExComm*, vol. IV/1, p. 115.

### 2.3.2.2 — Acts of Ordinary Administration “More Important” in Light of the Economic Situation of the Public Juridic Person<sup>168</sup>

Canon 1277 mentions “acts of administration which are more important (*maiores momenti*) in light of the economic condition of the diocese.” This category of acts of administration does not extend in the Code to parishes and other public juridic persons subject to the diocesan bishop. However, the diocesan bishop can establish similar norms for public juridic persons subject to him (c. 1281). Renken points out that, given the particular economic circumstances of each parish, the diocesan bishop may wish to determine the specific acts of parochial administration about which the parish finance council would need to give its counsel to the administrator of their goods.<sup>169</sup> This act of determining what constitutes acts of major importance that require the counsel or consent of the parish finance council would reflect the diocesan bishop’s stewardship role. However, acts of routine or “ordinary” administration (like paying salaries, utility bills, insurance premiums, etc.) would be excluded from those that will require counsel or consent of the finance council.<sup>170</sup> Renken further advises that it would be appropriate for any civil legal documents governing public juridic persons to refer to the various limitations of acts required by canon 1281.<sup>171</sup> This will ensure that the same acts of administration are recognized in both the ecclesiastical forum and the secular forum.

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<sup>168</sup> KENNEDY says: “Despite request during the revision process for precise determination of what is meant by acts of ordinary administration *of greater importance*, the canon, in deference to economic diversity among the dioceses of the world, offers no specification of the term other than to indicate that its meaning is relative to the financial condition of each diocese.” In “The Temporal Goods of the Church [cc. 1254-1310],” in *CLSA Comm2*, p. 1478 (emphasis in original). See also *Communicationes*, 12 (1980), p. 414.

<sup>169</sup> See RENKEN, *Church Property*, p. 179.

<sup>170</sup> See *ibid.*, p. 201.

<sup>171</sup> See *ibid.*

Canon 1520, §3 of the 1917 Code prescribed that the local ordinary hear the diocesan council of administration before he places acts of ordinary administration of “greater importance,” but the canon did not further specify criteria for judging what constituted these acts. The 1983 Code “gives more clarity by indicating that the criterion whereby to judge if the acts are of ‘greater importance’ is *the economic condition of the diocese*.”<sup>172</sup> The determination of acts of greater importance is to be made by the diocesan bishop, not the diocesan finance officer.<sup>173</sup> If such consultations are not carried out, the act will be invalid by virtue of the provisions of canon 127.<sup>174</sup> Canon 127 gives the general principles required for the specific dialogue between any superior and groups or individuals who are required by law to give their counsel or consent.<sup>175</sup>

The principal determining factor for what constitutes an act of ordinary administration of major importance in the light of the economic situation of the parish will be the amount of money involved in the transaction and not the manner in which

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<sup>172</sup> Ibid., p. 178 [emphasis in the original]. Some members of the *coetus De bonis Ecclesiae temporalibus* had suggested that the new Code have a clearer determination of what is to be understood as acts of major importance in the diocese. COMBALIA explains that the consultants finally resolved this by adopting the following statement. “attento statu oeconomico dioecesis.” This means that assessment of acts of ordinary administration of major importance is not absolute, but should be made in consideration of the financial situation of each diocese. See COMBALIA, “The Administration of Goods,” in *ExComm*, vol. IV/1, p. 97.

<sup>173</sup> The diocesan bishop may make such determination either through a general administrative decree (c. 29) or on a case-by-case basis. Regarding the latter, some unforeseen act of administration may be needed which the bishop considers important but not extraordinary; the bishop could spontaneously declare such an act to be more important.

<sup>174</sup> For a detailed study of CIC/83, c. 127, see E. GUTHOF, “Consensus” und “consilium” in c. 127 CIC/1983 und c. 934 CCEO, Würzburg. Echter, 1994; A. MENDONÇA, “The Legitimate Method for Contacting the College of Consultors,” in A. ESPELAGE (ed.), *CLSA Advisory Opinions, 2001-2005*, Washington, CLSA, pp. 58-64.

<sup>175</sup> Beside these requirements, canon 1292, §4 further stipulates that those who give counsel or consent in matters of alienation “are not to offer advice or consent unless they have first been thoroughly informed both of the economic state of the juridic person whose goods are proposed for alienation and of previous alienations.” Complete disclosure of appropriate information should also be given in matters other than alienation when the counsel or consent of others is required by law. See RENKEN, *Church Property*, pp. 255-266.

the transaction is carried out.<sup>176</sup> The identification of acts of major importance may be on a case-by-case basis.<sup>177</sup> It would be preferred, however, that these acts be identified in the parish statutes (and also in its civil articles of incorporation),<sup>178</sup> in particular law, or in the instructions required by canon 1276, §2.<sup>179</sup>

### 2.3.2.3 — Acts of Extraordinary Administration

Canon 1277 deals with acts of extraordinary administration of the diocese while canon 1281 deals with acts of extraordinary administration of public juridic persons subject to the diocesan bishop. Canon 1281 stipulates:

§1. Without prejudice to the prescripts of the statutes, administrators invalidly place acts which exceed the limits and manner of ordinary administration unless they have first obtained a written faculty from the ordinary.

§2. The statutes are to define the acts which exceed the limit and manner of ordinary administration; if the statutes are silent in this regard, however, the diocesan bishop is competent to determine such acts for the persons subject to him, after having heard the finance council.

§3. Unless and to the extent that it is to its own advantage, a juridic person is not bound to answer for acts invalidly placed by its administrators. A juridic person itself, however, will answer for acts illegitimately but validly placed by its administrators, without prejudice to

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<sup>176</sup> See MORRISEY, “Ordinary and Extraordinary Administration,” p. 717.

<sup>177</sup> See RENKEN, *Church Property*, pp. 178-179. One problem that may be associated with a case-by-case determination is the risk of arbitrariness in the judgment of the bishop. If he does not want to consult the finance council and the college of consultors in a particular case (even though it is evidently more serious than an act of ordinary administration), he might arbitrarily declare the matter to be ordinary. If he issues norms, he holds himself publicly accountable and binds himself to consultation. MORRISEY explains: “For this reason and for the credibility of its administration each diocese should draw up as soon as possible a list of actions that would be considered to be of major importance. In this way those involved with the administration of temporal goods subject to the diocesan authority would know when to have recourse to other groups or advice.” In “Ordinary and Extraordinary Administration,” p. 717.

<sup>178</sup> The Code could be regarded as the statutes for diocese and the articles for civilly incorporating the diocese should reflect the norms of Book V. However, written statutes are better, because it directly indicates what the purpose of the juridic person is for the manner of its governance.

<sup>179</sup> See J. R. BINZER and W. KING, “Alienation and Acts of Extraordinary Administration” in *CLSA Advisory Opinion, 2001-2005*, p. 338. The *coetus De bonis Ecclesiae temporalibus* expressly stated that acts of ordinary administration which are more important in light of the diocesan economic condition cannot be determined by the universal law. See *Communicationes*, 16 (1984), p. 33.

its right of action or recourse against the administrators who have damaged it.

Administrators of ecclesiastical goods act invalidly when, without the prior written faculty<sup>180</sup> of the ordinary, they perform acts of extraordinary administration (without prejudice to the statutes).<sup>181</sup> The Code refrains from determining acts of extraordinary administration and leaves such a determination to the statutes.<sup>182</sup> If the statutes<sup>183</sup> fail to do so, however, the diocesan bishop is competent to determine the acts of extraordinary administration for the public juridic persons subject to him after he has heard his finance council.<sup>184</sup> The norms decreed by the conference of bishops concerning acts of extraordinary diocesan administration (c. 1277) will assist and guide the diocesan bishop to determine acts of extraordinary administration for the public juridic persons subject to him. Such a determination will be in accord with the diocesan bishop's general oversight of ecclesiastical goods of public juridic persons subject to him

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<sup>180</sup> This is the only time in Book V where the term *facultas* appears. J.M. HUELS defines a faculty as "an ecclesiastical power or authorization necessary for performing lawfully an act of ministry or administration in the name of the Church" In "Permissions, Authorizations and Faculties in Canon Law," in *Studia canonica*, 36 (2002), p. 29 [emphasis in the original]

<sup>181</sup> DE PAOLIS concludes that the validity of the act of extraordinary administration requires both that the permission be requested in writing and that it be granted in writing. See *I beni temporali della Chiesa*, p. 164.

<sup>182</sup> The word "extraordinary" is used in the 1983 Code 11 times see cc. 346, §2, 345; 353, §§1 & 3, 638, §1; 910, §2; 943; 1263; 1277; 1355, §1 2°; and 1356, §2). With the exception of cc. 638, §1, 1263 and 1277, none of them pertains to temporal goods. See X OCHOA, *Index verborum ac locutionum Codicis iuris canonici*, 2<sup>nd</sup> Edition, Vatican City, Libreria Editrice Lateranense, 1984, p. 188.

<sup>183</sup> Statutes (c. 94) are required for all juridic persons, and no aggregate intending to obtain juridic personality is to acquire it without statutes (c. 117).

<sup>184</sup> If the statutes of public juridic persons not subject to the diocesan bishop are silent, the determination of acts of extraordinary administration is made by the competent authority identified in universal, particular, or proper law. See DE PAOLIS, *De bonis Ecclesiae temporalibus*, p. 90. The 1977 *Schema* said that the diocesan bishop is to define acts of extraordinary administration following consultation with the diocesan finance council. The *coetus De bonis Ecclesiae temporalibus* changed the draft to clarify that the diocesan bishop, following consultation with the diocesan finance council, is to define acts of extraordinary administration only for juridic persons subject to him See *Communicationes*, 12 (1980), p. 417, see also RENKEN, *Church Property*, p. 179.

(c. 1276, §1). Before the diocesan bishop makes this determination, he should wisely consult with the persons concerned, as well as the diocesan finance council, the college of consultors, the presbyteral council, and the pastoral council. Consultation is very crucial in the process of decision-making. Their stewardship role requires that the diocesan bishop and other administrators of ecclesiastical goods try as much as possible to consult those concerned before making a final decision.<sup>185</sup>

Commentators on the 1983 Code have made various attempts to define what constitutes an act of extraordinary administration.<sup>186</sup> J. Hite says acts of extraordinary administration are “those which because of the nature of importance of the action or its financial value require the permission of a higher authority. Examples would include acceptance or refusal of major bequests or gifts, purchase of land, construction of new buildings or extensive repair of old buildings, initial investments of capital, other

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<sup>185</sup> The proper law of institutes of consecrated life should determine what constitutes an act of extraordinary administration in the institutes and the authority competent to grant the permission before such acts are placed (c. 638, §1).

<sup>186</sup> Concerning the definition of an act of extraordinary administration see J. HITE, “Church Law on Property and Contracts,” in *The Jurist*, 44 (1984), p. 121 (=HITE, “Church Law on Property and Contracts”); A. FARRELLY, “Acts of Extraordinary Administration and Acts of Alienation,” in *CLSANZ Newsletter*, no. 1 of (2004), pp. 49-40, MORRISEY, “Ordinary and Extraordinary Administration,” p. 717; KENNEDY, “The Temporal Goods of the Church [cc. 1254-1310],” in *CLSA Comm2*, p. 1489; See BOUSCAREN, *Canon Law: A Text and Commentary*, p. 830.

The members of the *coetus De bonis Ecclesiae temporalibus* agreed to differentiate clearly acts of extraordinary administration from alienation “De sententia unus Organum consultationis addi debet in canone: ‘administrare et alienare velent.’, quia alienatio non est actus administrationis. Hanc sententiam favent duo Consultores, dum alii duo sunt contrarii, quia alienatio non est nisi actus administrationis etsi extraordinariae. Fit suffragatio an placeat addere verbum ‘alienare’ placet 5, non placet 1.” In *Communicationes*, 12 (1980), p. 396

Concerning the definition of an act of ordinary administration, F. L. DEMERS comments: “Acts which require frequent, either daily or periodic, recurrence of the acts belong to acts of ordinary administration. But this standard may not be valid in every case since certain acts of ordinary administration are not necessarily performed daily, nor even at short term intervals.” In *The Temporal Administration of the Religious House of a Non-Exempt, Clerical, Pontifical Institute*, Canon Law Studies no. 396, Washington, The Catholic University of America, 1961, p. 51 (=DEMERS, *The Temporal Administration of the Religious House*). Therefore, the way to identify acts of ordinary administration was to observe those acts which the administrator performed routinely by virtue of his or her office

expenditures of an amount over a certain limit.”<sup>187</sup> Another act of extraordinary administration identified by De Paolis is the act of designating some goods as stable patrimony.<sup>188</sup>

### 2.3.3 — Administrators and Contracts Involving Ecclesiastical Goods

The administrator as the juridic representative of the public juridic person acts on behalf of the latter in issues of contracts involving ecclesiastical goods (cc. 118; 1279, §1). J. Mantecón points out that most of the canons on contracts refer to alienation (cc. 1290-1294, 1296 and 1298).<sup>189</sup> Canon 1290 obliges administrators to observe civil law in matters of contracts, provided the civil law does not contradict divine law or canon law (c. 22).<sup>190</sup> Canon 1295 protects the stable patrimony of a public juridic person by stipulating that the canons on alienation also apply to acts or transactions that may harm the stable patrimony of the public juridic person. Canon 1297 regulates the leasing of ecclesiastical goods by directing that conferences of bishops promulgate particular law for their territory.

In the next section we shall examine the canons that regulate contracts of alienation, contracts other than alienation threatening stable patrimony, and lease contracts. In order to carry out actions that touch on these aspects validly, the administrator often requires the permission of a higher authority.

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<sup>187</sup> J. HITE, “Church Law on Property and Contracts,” p. 121

<sup>188</sup> See DE PAOLIS, “De bonis Ecclesiae temporalibus in novo Codice Iuris Canonici,” in *Periodica*, 73 (1984), p. 101

<sup>189</sup> J. MANTECON, “Contracts and Especially Alienation,” in *ExComm*, vol. IV/1, p. 124

<sup>190</sup> See RENKEN, *Church Property*, p. 241



### 2.3.3.1 — Contracts Involving Alienation of Ecclesiastical Goods

*Black's Law Dictionary* defines alienation in real property law as “the transfer of the property and possession of lands, tenements, or other things, from one person to another. The term is particularly applied to absolute conveyances of real property. The voluntary and complete transfer from one person to another. Disposition by will. Every mode of passing reality by the act of the party, as distinguished from passing it by the operation of law.”<sup>191</sup> The Latin verb *alienare* means “to make something another’s.” Thus, the alienation of ecclesiastical goods is the transfer of ownership to another. Kennedy remarks: “Ownership may be total (as in fee simple ownership of real estate) or partial (as in a life estate or a remainder interest in real estate); alienation is a transfer of either total or partial ownership.”<sup>192</sup> It is effected nearly always by sale, gift, or exchange. In every act of alienation there is the lost of full *dominium* as understood in canon 1254, §1.<sup>193</sup>

Canon 1290 stipulates the observance of civil law when it comes to contracts and alienation. It is the role of the administrator of ecclesiastical goods to ensure that contracts entered by public juridic persons reflect civil norms. Mantecón explains: “Canonization of civil law on contracts is not necessarily limited to contracts on

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<sup>191</sup> GARNER, *Black's Law Dictionary*, p. 84.

<sup>192</sup> KENNEDY, “The Temporal Goods of the Church [cc. 1254-1310],” in *CLSA Comm2*, p. 1495.

<sup>193</sup> KENNEDY explains that the mortgaging of property is not an act of alienation. “A mortgage gives rise to rights in regard to property, and creates the potential of a future loss of ownership in the event of default in payments on the loan for which the mortgage serves as collateral, but there is no immediate transfer of ownership and, hence, no alienation. The same is true of assuming a mortgage when purchasing property which already has a mortgage on it.” In *ibid*, p. 1494.

ecclesiastical goods. It is extended to all contracts--and to the extinction of obligations, including extracontractual ones.”<sup>194</sup>

The administrator requires the permission of the competent authority<sup>195</sup> in order to alienate validly ecclesiastical goods which constitute the stable patrimony of a public juridic person and whose value exceeds the sum determined by particular law (c. 1291). Stable patrimony is constituted by legitimate designation (c. 1291).<sup>196</sup> In order to know what constitutes the stable patrimony of the public juridic person, the administrator needs to identify such items in the annual inventory to be submitted to the competent authority (c. 1283).<sup>197</sup>

The provisions of canon 1292 make it clear that only the diocesan bishop can alienate diocesan property; the diocesan finance office is legally rendered *inhabilis* to alienate diocesan property. However, for other public juridic persons subject to the diocesan bishop, their administrator is *habilis* to alienate its goods.<sup>198</sup> By reason of universal law, administrators can alienate part of the stable patrimony without consent of

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<sup>194</sup> MANTECÓN, “Contracts and Especially Alienation,” in *ExComm*, vol. IV/1, p. 125.

<sup>195</sup> RENKEN points out that “for juridic persons subject to the diocesan bishop the competent authority is the diocesan bishop (who also must receive the *consent* of the diocesan finance council, the college of consultors, and those concerned). For juridic persons of the diocese the competent authority is the diocesan bishop (who also must receive the *consent* of the diocesan finance council, the college of consultors, and those concerned).

“If the value of the stable patrimony amount is *greater than* the maximum amount, the *additional* (*insuper*) permission of the Holy See is required for its *valid* alienation (canon 1292 § 2) The Holy See must also give its permission for the valid alienation of an ecclesiastical good which has been given to the Church by vow, or is precious for artistic or historic reasons.” In *Church Property*, p. 260 [emphasis in the original].

<sup>196</sup> See *ibid* , p 227

<sup>197</sup> The parallel canon in the Eastern Code states specifically that the regularly updated inventory is to note changes in “stable” patrimony (CCEO, c. 1026).

<sup>198</sup> See RENKEN, *Church Property*, p. 260.

others if its value<sup>199</sup> is less than the minimum amount established by the conference of bishops (c. 1292). If the value of the stable patrimony is beyond the minimum amount decreed by the conference of bishops, the permission of the competent authority is required (c. 1292, §1).<sup>200</sup> The permission of the Holy See is required if the value of the goods exceeds the maximum amount determined by the conference of bishops (c. 1292, §2). If administrators intend to alienate the goods in parts, then “the parts already alienated must be mentioned; otherwise the permission given is invalid” (c. 1292, §3).<sup>201</sup> Canon 1293, §1, 1° obliges administrators to have a just cause to alienate Church property. The canon identifies such just causes as “urgent necessity, evident advantage, piety, charity, or some other grave pastoral reason.”

Canon 1294, §2 directs that money received from alienation must be carefully invested for the advantage of the public juridic person. Administrators should therefore ensure that they alienate ecclesiastical goods when it is appropriate. Securing the required permission<sup>202</sup> is also crucial for the canonical validity of the act of alienation.<sup>203</sup> Canon

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<sup>199</sup> Concerning how to determine the value of goods to be alienated RENKEN writes. “The value of goods may be determined in a number of ways: (1) the original value; (2) the insured replacement value; (3) the depreciated value; (4) the worth determined for taxation purposes; and (5) the market value. Canon 1293 § 1, 2° requires the written appraisal of experts before alienating an asset, and canon 1294 § 1 says that ordinarily an asset must not be alienated at a price less than its appraised value.” In *ibid* , p. 257.

<sup>200</sup> See *ibid* , p. 259.

<sup>201</sup> The permission given is a singular administrative act in the form of a rescript Canon 1292, §3 is a practical application of canon 63, §§1-2 which states: “§1. Subreption, or concealment of the truth, prevents the validity of a rescript if in the request those things were not expressed which according to law, style, and canonical practice must be expressed for validity, unless it is a rescript of favor which is given *motu proprio*.

“§2. Obreption, or a statement of falsehood, also prevents the validity of a rescript if not even one proposed motivating reason is true.”

<sup>202</sup> The Eastern Code is more precise by requiring the *consent*, not just *permission* for validity, of the competent authority (CCEO, c. 1035, §1, 3°), because permission required in the Latin Code actually means consent. See J.M. Huels, “Permission, Authorizations and Faculties in Canon Law,” in *Studia canonica*, 36 (2002), p. 47

1296 stipulates that the competent authority<sup>204</sup> is to act when ecclesiastical goods are alienated without following the proper canonical formalities. Canon law holds that in such a situation pieces of property invalidly alienated according to canonical principles remain ecclesiastical goods even though their alienation may be valid in civil law (c. 1292, §3). Administrators must be aware that the one who places an act that is valid in civil law but invalid or illicit in canon law may be subject to the penalty mentioned in canon 1389 on the abuse of ecclesiastical office.<sup>205</sup>

However, administrators must not hesitate to alienate ecclesiastical goods for the benefit of the public juridic persons that they represent. Kennedy admonishes administrators of public juridic persons not to view alienation of ecclesiastical goods as a prohibited evil because the Code does not view alienation as always undesirable:

At times it is highly desirable, even encouraged. One of the principal purposes for the acquisition of material possessions by the Church is to use them for or give them to the poor and needy (c. 1254, §2). Accordingly, alienation for purposes of charity is recommended (see cc 640, 1285). Though not prohibited, and though often encouraged, alienation is nevertheless restricted at times. As canon 1291 directs, it is restricted when the property to be alienated is part of the lawfully

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<sup>203</sup> For further study of various opinions on this issue see I. B. WATERS, "Transfer of Property from Religious Congregation to Diocese," in A. ESPELAGE (ed.), *CLSA Advisory Opinions, 1994-2000*, Washington, CLSA, p. 416; N. P. CAFARDI and J. FRUGÉ, "Alienation of Objects Precious by Reason of Artistic or Historical Significance," in A. ESPELAGE (ed.), *CLSA Advisory Opinions, 1994-2000*, Washington, CLSA, pp. 417-419; C. R. ARMSTRONG, "Alienation of Church Property and Consultation," in A. ESPELAGE (ed.), *CLSA Advisory Opinions, 1994-2000*, Washington, CLSA, p. 421.

<sup>204</sup> The competent authority is not clearly identified in the Latin Code, but the parallel canon in the Eastern Code fills this *lacuna legis*. *CCEO*, canon 1040 states: "Whenever ecclesiastical goods have been alienated against the prescripts of canon law but the alienation is valid civilly, the higher authority of the one who carried out the alienation, after having considered everything thoroughly, is to decide whether and what type of action is to be taken by whom and against whom in order to vindicate the rights of the Church" [emphasis added]. The use of the phrase *autoritas superior illius* clearly indicates who the competent authority will be. The diocesan bishop is the higher authority for all public juridic persons subject to him, while for the action of the diocese the higher authority is the Apostolic See.

<sup>205</sup> See RENKEN, *Church Property*, p. 201. Canon 1389 states: "§1. A person who abuses an ecclesiastical power or function is to be punished according to the gravity of the act or omission, not excluding privation of office, unless a law or precept has already established the penalty for this abuse

"§2. A person who through culpable negligence illegitimately places or omits an act of ecclesiastical power, ministry, or function with harm to another is to be punished with a just penalty."

designated stable patrimony of a public juridic person and of a value in excess of a legitimate established minimum.<sup>206</sup>

### 2.3.3.2 — Contracts Threatening Stable Patrimony

Administrators of public juridic persons enter into various forms of contracts. Canons 1291-1294 lay down the principles to be followed in all acts of alienation involving public juridic persons. Canon 1295, however, does not concern acts of alienation; rather, it concerns itself with contracts that can worsen the patrimonial condition of a juridic person.

Canon 1295 states: “The requirements of cann. 1291–1294, to which the statutes of juridic persons must also conform, must be observed not only in alienation but also in any transaction which can worsen the patrimonial condition of a juridic person.”<sup>207</sup> This canon rightly presumes that every public juridic person has its own statutes (c. 117).<sup>208</sup>

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<sup>206</sup> KENNEDY, “The Temporal Goods of the Church [cc. 1254-1310],” in *CLSA Comm2*, p. 1495.

<sup>207</sup> KENNEDY notes. “Although the view has been expressed that canon 1295 applies to private as well as public juridic persons, such a view seems untenable. Canon 1257, §2 is clear that private juridic persons are not bound by the canons of Book V unless expressly so provided. There is nothing in the wording of canon 1295 that either explicitly or implicitly expresses an intention to include private juridic persons within its scope. Moreover, the norms governing alienation found in canons 1291-1294 apply only to the stable patrimony of public juridic persons, and it is the chief purpose of canon 1295 to apply canons 1291-1294 to transactions other than alienation. That would seem to make clear that canon 1295 is similarly limited to public juridic persons.” In *ibid.*, p. 1502.

<sup>208</sup> Canon 117 states: “No aggregate of persons (*universitas personarum*) or of things (*universitas rerum*), intending to obtain juridic personality, is able to acquire it unless competent authority has approved its statutes.” The canon also applies to all public juridic persons, whether their juridic personality finds its source in the law or in the decree of erection. The decree of erection of a parish should therefore, only be issued when the statutes of the proposed public juridic person are in place. Interestingly, the Code does not address the issue of whether a public juridic person *a iure* needs to have its own statutes before its erection.

KENNEDY remarks “Canon 117 makes no distinction between juridic personality that is to be conferred by operation of law (*a iure*) and that which is to be conferred by decree of competent authority (*ab homine*); it would seem, therefore, that all juridic persons, public or private, whether their juridic personality is conferred *a iure* or *ab homine*, should have their statutes approved as a prerequisite for the conferral of juridic personality. The implication is clear that all parishes and all dioceses, as juridic persons, should have statutes though, as a matter of fact, many do not. The absence of statutes is no doubt largely due to the absence in the 1917 code, under which most presently existing diocesan and parishes were established, of any general norm requiring statutes. While, strictly speaking, canon 117 can be said to be binding only on juridic persons constituted after the promulgation of the 1983 code (see c. 9) and, hence,

The principal purpose of canon 1295 is to place restrictions on a transaction carried out by administrators which do not entail the alienation of ecclesiastical goods but which will have adverse effects on the public juridic person.<sup>209</sup> Such transaction would include every contract and other financial transactions whose common characteristic is the risk they pose overall to the economic well-being of the public juridic person. Kennedy points out that canonical tradition views this economic well-being as “rooted in stable patrimony, namely, in all property destined to remain in the possession of its owner for a long or indefinite period of time and, hence, property on which the financial future of a public juridic person depends. [...] That is the meaning of the ‘patrimonial condition’ referred to in canon 1295.”<sup>210</sup>

The Code does not identify what transaction will fall under canon 1295. One view holds that mortgaging a parcel of real estate or pledging valuable items of personal

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only on newly created dioceses and parishes, good governance would seem to call for the enactment and approval of statutes for all existing dioceses and parishes as well. Nor does there seem to be any compelling ecclesiological reason why the statutes of all parishes or all dioceses need to contain identical provisions; diversity, within the parameters of the law, especially in financial matters, would seem to be entirely compatible with Catholic unity [...]” In “Physical and Juridic Persons,” in *CLSA Comm2*, p. 163. E. MOLANO also holds the same view: “Another way of distinguishing public and private juridical persons is given in § 2 of c. 116, which refers to the acquisition of juridical personality by the law itself or by concession. *In either case, prior approval of statutes is required (c. 117)*” [Emphasis added] In “Physical and Juridic Persons,” in *CCLA Comm*, p. 102.

Often, the text of the universal law is taken as a substitute for the statutes of public juridic persons established *a iure*. G. L. CASTRO comments: “It is necessary to add still that, for many public juridical persons recognized *ipso iure* (dioceses, parishes, etc.) the statutory norms are identified with their juridical regulation contained in the Code.” In “Juridical Persons,” in *ExComm*, vol 1, p. 773.

A study of the history of the legal drafting of canon 117 does not indicate that those drafting the 1983 Code addressed the question of whether or not statutes are required for juridic persons established both *ab homine* and *a iure*: see *Communicationes*, 6 (1974), p. 99, 12 (1980), p. 124; 14 (1982), p. 143; 21 (1989), p. 146.

The parallel Eastern canon (c. 992, §1) requires statutes only for juridic persons established *ab hominem*. “Every juridic person erected by a special concession of the competent ecclesiastical authority must have its own statutes approved by the authority that is competent to erect it as a juridic person.” See RENKEN, “The Statutes of a Parish,” (to be published in the next edition of *studio canonica*, 44 [2010]).

<sup>209</sup> See KENNEDY, “The Temporal Goods of the Church [cc. 1254-1310],” in *CLSA Comm2*, p. 1495.

<sup>210</sup> *Ibid.*

property as collateral to secure the repayment of a loan, granting easements, licenses, liens, options to purchase, contracting to pay annuities, making unsecured loans, acting as guarantor or surety, transferring operational control of one's assets while retaining ownership, and incurring debts even if unsecured by collateral is an of the example of a transaction that will affect the patrimonial condition of the public juridic person.<sup>211</sup>

Renken points out the relative nature of the danger to patrimonial condition of public juridic persons:

The threat to the stable patrimony related to canon 1295 must be *reasonable*-i.e., based on prudently evaluated reasons, following appropriate consultation and research. Given diverse circumstances throughout the world, it is impossible to identify actions which may worsen the patrimonial condition of public juridic persons everywhere. What is threatening in one time and place may not be so in another time and place.

Some acts of extraordinary administration [ . . . ] may threaten the patrimonial condition of a given public juridic person. All acts of extraordinary administration require the involvement of others. Those acts of extraordinary administration which may threaten stable patrimony, however, also must involve the persons and processes identified in canons 1291-1294. Therefore, some acts of extraordinary administration may require even the permission of the Apostolic See for validity, even though these are not acts of alienation (see canon 1292 § 2).<sup>212</sup>

Consequently, the administrators of public juridic persons are to ensure "that any transaction that can worsen the patrimonial condition of the public juridic person" follows the norms governing the alienation of goods (cc. 1291-1294).<sup>213</sup> To aid administrators of ecclesiastical goods to achieve this aim, the diocesan bishop may

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<sup>211</sup> See *ibid.* The same author adds that such a listing may or may not be a canon 1295 transaction depending upon the potential impact upon the overall patrimonial condition of the public juridic person.

<sup>212</sup> RENKEN, *Church Property*, p. 282; see also MORRISEY, "Temporal Goods in the Church," in *CLSGBI Comm.*, p. 736; *idem*, "The Alienation of Temporal Goods in Contemporary Practice," in *Studia canonica*, 29 (1995), p. 311. D. WARD identifies some of the important information to be listed when applying to the Holy See for permission, see "Temporal Goods," in *Procedural Handbook for Institutes of Consecrated Life and Societies of Apostolic Life*, Washington, CLSA, 2001, p. 203.

<sup>213</sup> The corresponding Eastern canon does not require that the statutes of the juridic person reflect the provisions of the canons on alienation (see c. 1042)

require that all public juridic persons subject to his authority identify transactions that would fall under canon 1295. This could be reviewed annually along with the updating of inventory required by canon 1284, §2, 7°-9°.

### 2.3.3.3 — Contracts Involving Leasing Ecclesiastical Goods

Canon 1297 stipulates: “Attentive to local circumstances, it is for the conference of bishops to establish norms for the leasing of Church goods, especially regarding the permission to be obtained from the competent ecclesiastical authority.” The leasing of goods is understood as “a contract by which property, whether movable or immovable, is let to another for his use for a determined time at a specified price or rent.”<sup>214</sup> Since a lease is a contract, it is also governed by the civil law of contracts unless a particular civil law is contrary to divine law or canon law (see c. 1290).<sup>215</sup> Leasing is different from alienation because there is no transfer of ownership.<sup>216</sup> The canon obliges conferences of bishops to establish norms to regulate leasing of Church goods.<sup>217</sup> Such norms are to determine the conditions that have to be fulfilled before an administrator of ecclesiastical

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<sup>214</sup> BOUSCAREN et al., *Canon Law: A Text and Commentary*, p. 844.

<sup>215</sup> RENKEN observes that “during the process of drafting the proposed revised code, consideration was given to require the Church simply to observe civil laws when leasing goods. In the end, however, the promulgated law requires not only observance of civil law but also observance of the particular ecclesiastical law on leasing promulgated by the conference of bishops.” In *Church Property*, p. 288; see *Communicationes*, 12 (1980), p. 427.

<sup>216</sup> See KENNEDY, “The Temporal Goods of the Church [cc. 1254-1310],” in *CLSA Comm2*, p. 1507.

<sup>217</sup> The 1983 Code recognizes the difficulty in attempting to legislate universally for leasing. The civil law situations vary from state to state, province to province, country to country. The Code therefore wisely remits this task of legislating on leasing to the conference of bishops. See *Communicationes*, 5 (1973), p. 101, and 9 (1977), p. 272.



goods can lease out the property of a public juridic person. In order to act lawfully administrators must observe the particular legislation in force in their territory.<sup>218</sup>

Canon 1298 specifically prohibits administrators from leasing or selling Church property of great value, to themselves or their relatives up to the fourth degree of consanguinity or affinity,<sup>219</sup> without the written permission of the competent authority. The purpose of this prohibition is to avoid abuses and an appearance of impropriety.<sup>220</sup> The competent authority is to determine the value of the item to be leased or sold before he gives the written permission. The value of the good determined in the inventory of the public juridic person will be a helpful guide in assessing the value of the goods. The norm of canon 1298 is in accord with the broad functions of administrators mentioned in canon 1284, §1, which, as was discussed above, obliges administrators to fulfill their *munus* with the diligence of a good householder--*omnes administratores diligentia boni patrisfamilias suum munus implere tenentur*.

## Conclusion

Ecclesiastical goods in the Church serve to promote the mission of the Church. All Christ's faithful are called to cooperate in this mission.<sup>221</sup> The diocesan bishop has a

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<sup>218</sup> For some complimentary norms promulgated by English language conferences of bishops see *CCLA*, Appendix III, pp. 1637-1817. Concerning more recent legislation on canon 1297 in the United States and Canada, see RENKEN, *Church Property*, pp. 288-292.

<sup>219</sup> Consanguinity is based on a relation of common blood, while affinity is a relationship based on a valid marriage (see canons 108-109).

<sup>220</sup> See RENKEN, *Church Property*, p. 293. Several canons in the Code provide for similar situations of avoiding abuses and impropriety, see canons 478, §2; 492, §3; 1448; 1456.

<sup>221</sup> T. VOWEL notes the significant impact of the Second Vatican Council on the 1983 Code with regard to the participation of Christ's faithful in the mission of the Church through the administration of ecclesiastical goods. He points out that canon 1277 "expands the participatory role of other groups in ecclesial decision-making in temporal affairs. Consultation was called for in the 1917 Code; however it was limited only to the council of administration for acts of major importance and for those other acts

unique function in helping all Christ's faithful entrusted to his care to cooperate and participate in this mission. One aspect of this function is seen in his exercise of power to care for ecclesiastical goods. This duty of caring for ecclesiastical goods entails that the bishop issues norms and supervise the administration of ecclesiastical goods in his diocese (c. 1276). However, apart from ecclesiastical goods of the diocese, the diocesan bishop is not the administrator of the goods of public juridic persons subject to him. The administrators of public juridic persons are those recognized by law as governing the public juridic person (cc. 118; 1279, §1).

In this chapter we studied the role of administrators of ecclesiastical goods. We saw that administrators act on behalf of the public juridic persons most of the time (c. 118). Administrators have the *munera* of acquiring, retaining, administering and alienating the goods of the public juridic person. His or her role was therefore broadly defined to include every action that relates to temporal goods. We discovered that an act of administration is just one aspect of the *munus* of the administrator.

Since the Code calls for collaboration in the administration of ecclesiastical goods, the chapter examined the various bodies and individuals who, although they may not have the ecclesiastical title of "administrator," but who nevertheless assist in administering ecclesiastical goods. The legislator, in his desire to protect ecclesiastical goods so that they can serve well the mission of the Church, has provided several conditions for certain acts of administration. We then proceeded to study the activities

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prescribed by universal law. Canon 1277, however, calls for the participation of both the finance council and the college of consultors in regards to two types of acts. [...]. The inclusion of both these bodies, as well as the requirement of their participation for validity, affirms the principle that the greater the impact an administrative decision will have upon the diocesan Church, the greater the number of formalities to be observed and the participation by other groups." In *The Acts of Financial Administration by Diocesan Bishops According to the Norm of Canon 1277*, JCD thesis, Ottawa, Saint Paul University, 1991, pp. 181-182.

of administrators that require the permission of the competent authority. The competent authority can provide general supervision and direction to administrators by special instructions that will further assist them to properly administer ecclesiastical goods (c. 1276, §2).

In the next chapter we shall study canon 1276, which is the specific canon urging the diocesan bishop to issue special instructions that will help administrators of ecclesiastical goods to function properly. The specific details of the requirements of this canon will be examined. Since canon 1276, §2 calls for an instruction in the sense of canon 34, we will first study the nature of an instruction in order to understand better the specific purpose of canon 1276, §2.

## Chapter Three

### The Nature of the Diocesan Instructions for Administrators of Ecclesiastical Goods

#### Introduction

The administrator of ecclesiastical goods is responsible for ensuring that these goods are used for the proper purposes for which they were acquired. The supreme legislator has stated that the norms of Book V are to regulate the administration of ecclesiastical goods (c. 1257, §1). Among these norms is canon 1276, §1 requiring the ordinary to exercise special vigilance for the administration of ecclesiastical goods. Paragraph 2 of the same canon specifies that a special instruction is one way of fulfilling this task of special vigilance.

A special instruction issued in accordance with the provisions of canon 1276, §2 must conform to the requirement of canon 34 that determines the nature of instructions. This canon shall be examined in view of aiding our understanding of the nature of the special instruction to be issued by the ordinary. This chapter shall study the historical evolution that led to the *motu proprio Cum iuris canonici* of Benedict XV which defined what exactly an instruction is meant to achieve. Following that, we shall study canon 1276 in detail. Since the history of the development of any canon is crucial to its proper interpretation, this chapter shall also study the legislative history of canon 1276. Subsequently, the context and meaning of words used in the canon will be examined.

#### 3.1 — The Remote History of Instructions

The juridic nature of an instruction has not always been clear. The role of an instruction, as an exercise of executive power of governance—according to the current understanding of the *potestas regiminis*— has often not been apparent. Nor has the

distinction in the various forms of the exercise of the power of governance (legislative, executive and judicial) been very obvious in the life of the Church. M.J. Cíaurriz points out that the threefold distinction of the exercise of power appeared for the first time in the *Schema de constitutione Ecclesiae* of the First Vatican Council.<sup>1</sup> Subsequently, it was used by Leo XIII in the encyclicals *Immortale Dei* and *Satis cognitum*.<sup>2</sup> The distinction was articulated in canon 335, §1 of the 1917 Code which speaks of legislative, judicial and coercive power. The right to exercise these distinct powers by the Roman Pontiff has never been in doubt. He holds supreme power over the universal Church, but the demands of his office have for centuries necessitated the exercise of this power through some other organs. Pope Innocent III stated this in his letter to bishops and prelates of France in 1198:

Although the Lord has given us the fullness of power in the Church, a power that makes us owe something to all Christians, still we cannot stretch the limit of human nature. Since we cannot deal personally with every single concern - the law of human condition does not suffer it - we are sometimes constrained to use certain brothers of ours as extensions of our own body, to take care of things we would rather deal with in person if the convenience of the Church allowed it.<sup>3</sup>

In order to coordinate the administrative activities of these various organs that assist the Supreme Pontiff, Pope Sixtus V established the Roman Curia.<sup>4</sup> However, the

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<sup>1</sup> See M.J. CIAURRIZ, "General Decrees and Instructions," in *ExComm*, vol. 1, p. 440.

<sup>2</sup> See *ibid.*

<sup>3</sup> *Die Register Innocenz' III.*, 1, *Pontifikatsjahr* 1198/99, B. V.O. HAGENEDER und A. HAIDACHER, et. al, Graz, Köln, H. BOHLAUS, publikationen der Abteilung für historische Studien des Österreichischer Kulturinstituts in Rom., 1964, vol 1, pp 515-516, English translation in JOHN PAUL II Apostolic constitution on the Roman Curia *Pastor bonus*, 28 June 1988, art. 1, in *AAS*, 80 (1988), p. 844, English translation in *Code of Canon Law: Latin-English Edition*, prepared under the auspices of the CANON LAW SOCIETY OF AMERICA, Washington, Canon Law Society of America, 1999, p. 686 (=PB).

<sup>4</sup> See SIXTUS V, Apostolic constitution *Immensa aeterni Dei*, 11 February 1586 in *Bullarium Diplomatum et Privilegorum*, Sanctorum Romanorum Pontificum, Taurinensis Editio, 8 (1586), pp. 985-999. He established the following Congregations. (1) of the Inquisition; (2) the Signatura; (3) for the Establishment of Churches; (4) Rites and Ceremonies; (5) of the Index of Forbidden Books; (6) the Council of Trent; (7) the Regulars; (8) the Bishops; (9) the Vatican Press; (10) the Annona, for the

lack of precision regarding the distinction of powers and functions exercised by the Roman Curia gave rise to countless conflicts among its bodies. The executive and judicial powers appeared to be confused; the Congregations acted as true tribunals, and the delineation of competencies was not clear. This conflict led to many questions, including concerns about what power belongs *de facto* and *de iure* to the different Curial bodies, and whether the Congregations were capable of exercising legislative power.<sup>5</sup> Pius X decided to resolve these conflicts and reform the Roman Curia.<sup>6</sup> His apostolic constitution *Sapienti consilio* was basically aimed at addressing this problem. Direct functions were attributed to the various Roman dicasteries. However, it did not resolve the problem that stems from the direct involvement of the Roman Pontiff in these decisions.<sup>7</sup> The Congregations were sometimes regarded as participating in the legislative

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provisioning of Rome and the provinces; (11) the Navy; (12) the Public Welfare; (13) the Sapienza; (14) Roads, Bridges, and Waters; (15) State Consultations.

Subsequent reforms have been carried out, including some major reforms in the 20<sup>th</sup> century. PIUS X's apostolic constitution *Sapienti consilio* was for the reformation of the Roman curia to make it more effective: "It has seemed most fitting to start from the Roman Curia so that, structured in a suitable way that everyone can understand, the Curia may more easily and effectively lend its help to the Roman Pontiff and the Church." In *AAS*, 1 (1909), p. 8 (English translation is mine).

PAUL VI responded to the desire of the Second Vatican Council for the reformation of the Roman Curia (*CD*, no. 9) by the promulgation of the apostolic constitution *Regimini Ecclesiae universae* on 15 August 1967. This apostolic constitution laid down more detailed specifications for the structure, competence, and the procedures to be observed by the dicasteries. It suppressed some of the sacred congregations provided for in the 1917 Code by non-inclusion. Some new departments in the curia were established, e.g., the Pontifical Council for the Laity; the General Accounting or Statistics Office of the Church; the second section of the Supreme Tribunal of the Apostolic Signatura. See *AAS*, 59 (1967), pp. 885-928, English translation in *CLD*, vol. VI, pp. 324-357. JOHN PAUL II in his apostolic constitution on the Roman Curia *Pastor bonus* of 28 August 1988, further reformed the Roman Curia to meet the changes effected by the 1983 Code and other present day needs. See *AAS*, 80 (1988), pp. 841-930. Subsequent to *PB* the Roman Pontiff has slightly modified the Roman Curia by occasional adaptations, most recently the establishment of the Pontifical Council for New Evangelization.

<sup>5</sup> See M.J. CIÁURRIZ, "General Decrees and Instructions," in *ExComm*, vol. 1, p. 442.

<sup>6</sup> PIUS X, apostolic constitution *Sapienti consilio*, 29 June 1908, in *AAS*, 1 (1909), pp. 7-19.

<sup>7</sup> See M.J. CIÁURRIZ, "General Decrees and Instructions," in *ExComm*, vol. 1, p. 442.

power of the Roman Pontiff, and the juridic weight that was to be given to these various documents was still not very clear.<sup>8</sup>

The promulgation of the 1917 Code did not resolve the issue of what sort of power the Roman Curia exercised over the universal Church. The decrees and instructions of the Curia sometimes contradicted the promulgated law. The proper delineation of functions and the exercise of power by the Roman Curia was particularly addressed by Pope Benedict XV shortly after the promulgation of the Code.

### 3.2 — The Juridic Nature of an Instruction

Pope Benedict XV explained the nature of instructions in his *motu proprio Cum iuris canonici*, issued on 15 September 1917.<sup>9</sup> In this document he declared that one of the functions of a Sacred Congregation was to issue instructions, whereby canons of the Code were to be explained with greater clarity.<sup>10</sup> The 1917 Code had no canon dealing with instructions, but shortly after the promulgation of the Code, the *motu proprio Cum iuris canonici* explained the competent authority to issue an instruction and what an instruction should address. The document constitutes the major source of canon 34 of the 1983 Code.

Pope Benedict XV, in establishing the Commission for the Authentic Interpretation of the Code of Canon Law, explained the juridic nature of an instruction as follows:

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<sup>8</sup> See *ibid*

<sup>9</sup> BENEDICT XV, *Motu proprio Cum iuris canonici*, 15 September 1917, in *AAS*, 9 (1917), pp 483-484, English translation in *CLD*, vol 1, pp 55-57 (=BENEDICT XV mp)

<sup>10</sup> See J E RISK, “General Decrees and Instructions, [cc 29-34],” in *CLSA Comm1*, p 48, (=RISK, “General Decrees and Instructions”)

As We, a short time ago, fulfilled the expectations of the whole Catholic world by promulgating the Code of Canon Law which had been drawn up by order of Our Predecessor, Pius X, of happy memory, the welfare of the Church and the very nature of the matter certainly require that We should take precautions as far as We can to ensure that the stability of so great a work be not at any time endangered either by the uncertain opinions and conjectures of private persons regarding the true meaning of the canons, or *by the frequent enactment of various new laws*. We have therefore determined to guard against both of these dangers.<sup>11</sup>

This apostolic constitution recommended the publication of an instruction as a means of guarding against uncertain interpretations of the Code. J.R. Schmidt explained this in these terms: “[T]he supreme legislator wishes to provide for the stability of the Code of Canon Law, and he sees in the issuance of new law after the promulgation of the Code a danger to its stability. Consequently, new law is viewed as an extraordinary measure.”<sup>12</sup>

H. Kinane described the situation prior to the promulgation of the 1917 Code:

[T]hese powers [i.e., the legislative powers of the Roman Congregations] were exercised rather freely. Each year saw a considerable amount of legislation added to that already in existence. If this procedure were allowed to continue unchecked, the Code was bound to be out of date in a comparative short period, and all the difficulties which it was meant to obviate would again arise.<sup>13</sup>

It is a well founded belief that a change of law is detrimental to the common good, except when such change is in order by reason of an evident necessity or great utility.<sup>14</sup>

Consequently, the second section of the document stipulated:

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<sup>11</sup> BENEDICT XV *motu proprio*, English translation in *CLD*, vol. 1, p. 55 [emphasis added].

<sup>12</sup> J.R. SCHMIDT, “The Juridic Value of the *Instructio* Provided by the *Motu Proprio* ‘*Cum Iuris Canonici*,’” in *The Jurist*, 1 (1941), pp. 289-290 (=SCHMIDT, “The Juridic Value of the *Instructio*”). Traditionally, law is believed to be stable and permanent; *praeterea ius debet esse perpetuum*, see D. 1, c. 1, 9. According to a rule of Roman law, an imperial rescript *secundum ius* (which had the force of general law, cf. D. c. 1, 4) was to be considered perpetual: “Falso adversatur auctoritatem rescriptorum devoluto spatio anni obtinere firmitatem suam non oportere, cum ea, quae ad ius rescribuntur, perennialia esse debent, si modo tempus, intra quod adlegari vel audiri debeat, non sit comprehensum” In C. 1, q. 23, c. 2.

<sup>13</sup> H. KINANE, “Recent ‘*Motu Proprio*’ Regarding the New Code of Canon Law,” in *The Irish Ecclesiastical Record*, 10 (1917), p. 421. The resolutions of the Sacred Congregations were in the past regarded as legislative enactments, except when restricted in their juridic scope to determined circumstances; hence, they were promulgated as apostolic constitutions for the universal Church when approved by the Roman Pontiff. See SCHMIDT, “The Juridic Value of the *Instructio*,” p. 290.

<sup>14</sup> See D. 1, c. 7, 2.



The Sacred Roman Congregations shall hereafter enact no *new General Decrees*, unless some grave necessity of the universal Church requires it.<sup>15</sup> Their ordinary function in this matter will therefore be not only to see that the prescriptions of the Code are religiously observed, but also to issue *Instructions*, as need arises, whereby those prescriptions may be more fully explained and appropriately enforced. These documents are to be drawn up in such a manner that they shall not only be in reality explanations of and complements to the canons, but also that they may be clearly seen to be such; and therefore it will be very helpful to cite the canons themselves in the text of these documents.<sup>16</sup>

The Roman Pontiff assigned to the Sacred Congregations the duty of safeguarding the conscientious observance of the prescripts of the Code and of issuing opportunely, as the need may arise, *Instructiones* regarding the application of the existing law of the Code.<sup>17</sup> In order to make it clear that instructions were to explain laws and not revoke them, the *motu proprio* stated that instructions should cite the canons explained. The nature of an instruction, therefore, required that it be in conformity with already promulgated law.<sup>18</sup> Consequently, any modification or abrogation of the law would affect instructions issued for its execution.

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<sup>15</sup> Y. CHIRON explains the reason for the warning that such decrees be rare and only when grave necessity requires it: "For a long time, first as a priest, and then as a bishop, he had become aware of the inconvenience presented by the multiplicity of laws, decrees, special provisions, exemptions, and the fact they were scattered through compendia of diverse origin and unequal authority. It had been a long-expressed wish in the Church to unify all these legislative provisions which took place with a view to preparing for the Ecumenical Council which was to take place at the Vatican, many bishops had requested this codification of canon law." In *Saint Pius X: Restorer of the Church*, translated by G. HARRISON, Kansas City, MI, Angelus Press, 2002, p. 149.

<sup>16</sup> "Sacrae Romanae Congregationes *nova Decreta Generalia* iam nunc ne ferant, nisi qua gravis Ecclesiae universae necessitas aliud suadeat. Ordinarium igitur earum munus in hoc genere erit tum curare ut Codicis praescripta religiose servantur, tum *Instructiones*, si res ferat, edere, quae iisdem Codicis praeceptis maiorem et lucem afferant et efficientiam pariant. Eiusmodi vero documenta sic conficiantur, ut non modo sint, sed appareant etiam quasi quaedam explanationes et complementa canonum, qui idcirco in documentorum contextu peropportune afferentur." In *motu proprio Cum iuris canonici*, 15 September 1917, in *AAS*, 9 (1917), p. 484, English translation in *CLD*, vol. 1, p. 56.

<sup>17</sup> See SCHMIDT, "The Juridic Value of the *Instructio*," p. 291

<sup>18</sup> The Congregations were to inform the Roman Pontiff if the instruction was not in agreement with the legislation of the Code. However, these provisions of the *motu proprio Cum iuris canonici* were not always observed. One author notes: "It is indisputable that the popes knew this and permitted it; thereby obviating the legal procedure established so that a Congregation could modify the Codex. Thus the congregations exercised legislative power with the consent of the Pontiff. A crisis was then created by the

The document declared that the Sacred Congregations were the competent authorities to issue instructions for the universal Church. However, the document did not state clearly the nature of the power that was to be exercised in issuing an instruction. It said only that it was the function of the Roman dicasteries to issue instructions as the need arises. Schmidt explains:

It is clear from the wording of the *Motu proprio* that the *instruction* belongs to the genus or class of *decreta*, because in the sphere of issuing decrees the Sacred Congregations are to exercise vigilance concerning the observance of the law and opportunely to publish instructions which will both furnish greater clarity to the laws of the Code and at the same time prepare the way for their greater efficacy; they will be explanations on the application of the law.<sup>19</sup>

Judging from the wording of the *motu proprio*, an instruction is not a law, nor a general decree; nor is it an exercise of judicial power. Rather, we can safely conclude that the act of issuing an instruction is an exercise of the executive power of governance, although one must note that the concept of executive power of governance was not that clear in the 1917 Code.<sup>20</sup> Schmidt commented: "Hence instructions are called *instructiones executivae* or *decreta executoria*, which seek to procure the observance of existing law."<sup>21</sup>

After the *motu proprio* was promulgated, some of the Congregations issued instructions in line with its directives. Two such instructions are cited as the sources of canon 34 of the 1983 Code. The first was that of the Sacred Congregation of

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distinction of functions, a distinction that Benedict XV had cautiously wished to affirm, not in the Code where perhaps it might have attained its objective, but in a lesser document that was systematically ignored by the Holy See itself and interpreted in a confused manner by the doctrine." In CIAURRIZ, "General Decrees and Instructions," in *ExComm*, vol. 1, p. 441

<sup>19</sup> SCHMIDT, "The Juridic Value of the *Instructio*," p. 292.

<sup>20</sup> Although the 1917 Code did not use the term "instruction" for any juridic document, the Roman Curia, issued many "instructions." These instructions, in fact, often created new laws. For example, the Instruction concerning the procedure for matrimonial nullity cases (*Provida Mater Ecclesia*, issued on 15 August 1936 by the SACRED CONGREGATION FOR THE SACRAMENTS, in *AAS*, 28 (1936), pp. 313-370, English translation in *CLD*, vol. 2, pp. 471-530 had the force of law.

<sup>21</sup> SCHMIDT, "The Juridic Value of the *Instructio*," p. 310

Propaganda of 25 July 1920 concerning the erection of quasi-parishes in vicariates and prefectures apostolic.<sup>22</sup> The second concerned the questions to be answered by the superiors general of institutes professing simple vows in their *quinquennial* report to the Holy See.<sup>23</sup> These instructions implemented the prescriptions of the *motu proprio* by citing the canons within the text of the instruction and explaining in a more practical way how to apply the law.<sup>24</sup>

However, in the 1960s and 1970s, after the Second Vatican Council, many routine changes in the law were made through instructions. Consequently, the rule that instructions should not derogate from the law did not seem applicable to all documents issued during the period between the promulgation of the 1917 Code and that of the 1983 Code.<sup>25</sup> It must also be noted that the *motu proprio* of Benedict XV did not envision instructions as being approved *in forma specifica*. Nonetheless, the Roman Pontiff, as the subject possessing supreme, full, immediate and universal ordinary power in the Church, can always freely exercise this power as he so chooses (c. 331).

### 3.3 — Instructions in the 1983 Code of Canon Law

One of the principles for the revision of the Code was to make clear the distinction between the different aspects of governance in the Church. Principle seven proposed that “the diverse functions of ecclesiastical power, namely legislative,

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<sup>22</sup> See SACRED CONGREGATION OF PROPAGANDA, Instruction concerning the erection of Quasi-Parishes in Vicariates and Prefectures Apostolic, in *AAS*, 12 (1920), pp 331-333, English translation in *CLD*, vol 1, pp 147-148

<sup>23</sup> See *AAS*, 15 (1922), pp 459-468, English translation in *CLD*, vol 1, pp 284-292

<sup>24</sup> See SCHMIDT, “The Juridic Value of the *Instructio*,” pp 289 316

<sup>25</sup> See V M MENEZES, *The Executive Power of the Diocesan Bishop According to the 1983 Code of Canon Law*, JCD thesis, Ottawa, Saint Paul University, 2003, p 145, footnote 16 (=MENEZES, *The Executive Power of the Diocesan Bishop*) J M HUELS also made this point in “Interpreting an Instruction approved *in forma specifica*,” in *Studia canonica*, 32 (1998), pp 5-54 (= HUELS, “Interpreting an Instruction”)

administrative and judicial, be clearly distinguished.”<sup>26</sup> This principle was given particular expression in canons 135 and 29-34.

Canon 34 of the 1983 Code is a new canon in the sense that it was not in the previous Code. The *coetus* working on “General Norms” made clear their intention to follow the *motu proprio Cum iuris canonici* of Benedict XV regarding the new canon on instructions.<sup>27</sup> Canon 34 reads:

§1. Instructions clarify the prescripts of laws and elaborate on and determine the methods to be observed in fulfilling them. They are given for the use of those whose duty it is to see that laws are executed and oblige them in the execution of the laws. Those who possess executive power legitimately issue such instructions within the limits of their competence.

§2 The ordinances of instructions do not derogate from laws. If these ordinances cannot be reconciled with the prescripts of laws, they lack all force.

§3 Instructions cease to have force not only by explicit or implicit revocation of the competent authority who issued them or of the superior of that authority but also by the cessation of the law for whose clarification or execution they were given

Canon 34 addresses the juridic nature of instructions. The canon says that those who have executive power of governance can issue an instruction. An instruction is, therefore, by its nature to be understood as “a document that is issued by an authority who has executive power [...]. Unlike a general executory decree, instructions are not given for the community at large, but are directed to those whose duty it is to execute

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<sup>26</sup> *Communicationes*, 1 (1969), p. 83. The purpose of the distinction of the three powers is to have juridic certainty, that is, to know the value and weight of various documents as well as their correct application and, most importantly, if they are not legislative texts, to be assured of their conformity to existing law. This is the principle of legality in canon law. See CIAURRIZ, “General Decrees and Instructions,” in *ExComm*, vol. 1, pp. 439-440

<sup>27</sup> “Ill. mus tertius Consultor tenet hac explicatione instructiones nihil aliud esse nisi decreta generalia ideoque sufficere ut initio canonis dicatur ‘Decreta et instructiones.’ Rev mus Secretarius adnotat nullam haberi petitionem ut textus reformetur et Coetus qui textum paravit praecise Benedicti Pp. XV diei 15 sept. 1917 in fine disceptationis per suffragium textus probatur uti est, omnibus consentientibus, excepto Ill.mo tertio Consultore et Exc.mo Secretario, qui se abstinet.” In *Communicationes*, 23 (1991), p. 174. See also *Communicationes*, 14 (1982), p. 136.

the law.”<sup>28</sup> Instructions call to attention the specific laws that they seek to clarify and explain. Instructions are not to derogate from the laws they seek to clarify; if they do, they then lack all force.<sup>29</sup> Since instructions are to clarify the law, they lose their legal force through the cessation of the law for whose execution they were issued. They also cease to have force when revoked by the same authority who issued them or the superior of the authority who issued the instruction.<sup>30</sup>

In view of the fact that instructions are intended to explain and clarify a law, they presupposes the existence of a law. If a competent authority were to issue an “instruction” that does not clarify any law or explain any law, such a document would technically not be termed an instruction.<sup>31</sup> Instructions by their nature cannot exist without a law, because they are meant to explain the law and to give more practical

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<sup>28</sup> HUELS, “Interpreting an Instruction,” p. 8. Instructions, being acts of executive power, may be published by the diocesan bishop, the vicar general and, within the scope of their competence, episcopal vicars in the diocese. At the universal level, the Roman Pontiff and the dicasteries of the Roman Curia are competent to publish instructions. Conferences of bishops may also publish instructions for those subject to them. When the plural form—*instructiones* is used—as do canons 34 and 1276, it refers to not only the title of the document but more specifically to the contents of the document. When the singular form *instructio* is used, it refers to the document form. Broadly speaking, “instructions” has a more general sense: they are norms of executive power that clarify laws, elaborate on them, and determine the means for implementing them. They could be called “directives,” “regulations,” “policies” or something else, but they would have the same nature as instructions provided that they are issued by executive authority to those entrusted with executing the law, that is, they are not intended for the community in general. The need for a canonical precision requires that ordinaries properly designate executive documents that explain the law with the appropriate name—instruction.

<sup>29</sup> See RISK, “General Decrees and Instructions,” p. 48.

<sup>30</sup> CIAURRIZ, “General Decrees and Instructions,” in *ExComm*, vol. 1, p. 465.

<sup>31</sup> Concerning the juridic nature of documents issued by the diocesan bishop, J.M. HUELS explains: “There is no question about whether a document at the diocesan level is legislative: unless the bishop has signed and promulgated it, it is not legislative. What is open to dispute is whether a document issued by the bishop may be an act of his executive authority rather than legislative, since he has both powers and can freely use either. E. Labandeira thinks that the basis for determining the difference is by attending to the contents of the document. If it is independent of other laws, he says, it is legislative; but if it is accessory to the law and serves to execute it, it is administrative in nature. Labandeira himself admits it is sometimes difficult to make this distinction.” In “A Theory of Juridical Documents Based on cc 29-34,” in *Studia canonica*, 32 (1998), pp. 360-361 (= HUELS, “A Theory of Juridical Documents”).

direction to its application.<sup>32</sup> The various prescripts of the Code that call for the diocesan bishop to promulgate laws for the particular Church must be in place before issuing an instruction to explain these laws. The same applies to the various particular laws that the Code expects the conference of bishops, provincial bishops and diocesan bishop to promulgate. An instruction may explain a particular law or a universal one.

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<sup>32</sup> An exception is a document approved *in forma specifica* by the Roman Pontiff. For a technical study of this matter, see HUELS, "Interpreting an Instruction," especially p. 15, where he points out that "the approval *in forma specifica* not only raised the status of the document from curial to pontifical, but it also changed the nature of the document from executory to legislative." F. URRUTIA, however, argues differently, when he explains that approval *in forma specifica* gives to the particular dicastery the power to do something it would otherwise not be able to do, but does not change the nature of the act, the act remains the action of the dicastery, and not that of the pope. In "Quandonam habeatur approbatio '*in forma specifica*,'" in *Periodica*, 80 (1991), pp. 3-17. For further study of this debate, see A. VIANA, "El Reglamento General de la Curia Romana (4 II.1992). Aspectos generales y regulación de las aprobaciones pontificias en forma específica," in *Ius Canonicum*, 32 (1992), pp. 515-523, J. PROVOST, "Approval of Curia Documents *In Forma Specifica*," in *The Jurist*, 58 (1998), pp. 213-225. PROVOST concludes concerning the nature of documents approved *in forma specifica*. "But that does not mean it has to be considered a papal document as such. If it were, the document should be listed in the *Acta Apostolicae Sedis* under the pope. But curial documents approved *in forma specifica* continue to be listed in the *AAS* under the respective dicastery of the Roman Curia. They are not even listed as a special category of 'documents approved *in forma specifica*,' and they continue to be referred to by the name of the dicastery which issued them, not by the name of the pope who granted the approval *in forma specifica*." In *ibid.*, p. 220.

Can one apply this same principle of *in forma specifica* (c. 19) to the document issued by one who has only the level of executive authority in the diocese: if the diocesan bishop gives approval to such a document, does it raise it to the level of a legislative document? Since the diocesan bishop can legislate for his diocese (c. 391), although he cannot delegate his legislative power (c. 135, §2), can his approval of an executive act that is contrary to diocesan law, abrogate diocesan law? It would appear that the diocesan bishop's approval cannot change the nature of the document. It would be prudent for him rather to promulgate it as law. This raises the question of discerning the juridical nature of general norms issued by the diocesan bishop. It is the content of the norms in such documents that determines whether he is using his legislative power or executive power. HUELS explains: "I agree that one needs to examine the contents of any document to determine its weight, but in the case of decrees being issued by the same person, the bishop, the difference between a legislative general decree and an administrative general decree is not often of any practical significance as it is at the universal level where there are two different levels of authority (the pope and the Curia) and it is necessary that the general decrees of a Roman dicastery be clearly subordinate to laws of the pope. When the diocesan bishop issues a general decree, whether it is an act of legislative or executive power, it emanates from the same authority and is binding on those for whom it is made. It may be presumed, I contend, that all general decrees of the diocesan bishop are legislative in nature, unless he explicitly states that it is administrative, or unless the nature of the document is clearly administrative, such as one containing exhortations, values, commentary on the law, etc., but no new preceptive norms. The basis for this presumption is the fact that the bishop is a legislator, if he issues a general decree, one ought to presume he is using his legislative power rather than a lesser power, unless the contrary is evident." In "A Theory of Juridical Documents," p. 361.

Instructions technically bind only the executors of the law because they are not issued for everyone. Consequently, instructions most often are addressed to these executors. Regarding the recipients of instructions, Huels writes:

[I]nstructions and similar documents binding only the executors of the law might have occasional application in a diocese. For example, a bishop who has authority over several religious institutes of diocesan right might issue an instruction on the implementation of diocesan policies for religious and direct it to the supreme moderators of the various institutes. Instructions could also be given to vicars, curial officials, deans, or parish priests. These are usually the persons entrusted with executing diocesan law.<sup>33</sup>

Any instruction should be properly identified as an “instruction” so that those concerned can assess its binding norms according to the juridic nature of the document. There are some features of instructions that distinguish them from general executive decrees. Instructions are directed to those whose duty it is to see that laws are executed and oblige them in the execution of the laws (c. 34, §1), but general executive decrees are addressed to the entire community.<sup>34</sup> This explains why instructions are not expected to

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<sup>33</sup> Ibid., p. 363

<sup>34</sup> Sometimes the Holy See imposes new obligations on the executors of law through an instruction. See, for example, CONGREGATION FOR BISHOPS AND THE CONGREGATION FOR THE EVANGELIZATION OF PEOPLES, Instruction on the Diocesan Synods *In Constitutione Apostolica*, 19 March 1997, which obliges the bishop to send a copy of the diocesan synodal documents to the Apostolic See for its information. See *AAS*, 89 (1997), p. 721. HUELS says that even though this norm does not fit the description of an instruction mentioned in canon 34, it nonetheless has some juridic value because it is contained in an instruction binding executors of law. In “A Theory of Juridical Documents,” footnote 88, p. 363.

A. MENDONÇA, compares an instruction to a general decree: “Instructions bear some clear resemblances to general executory decrees e.g.:

- they may be issued by those with executive authority (see Cann. 136-144) within the limits of their competence (see Can. 31 §1),
- they must conform to the law and cannot derogate from the law (see Can. 33 §1);
- they cease to have effect by implicit or explicit revocation, or by the cessation of the law which they were intended to explain and execute (see Can. 33 §2);

“They are also distinctly different from general executory decrees:

- they are not given directly to the community bound by the law they explain, but to those whose responsibility it is to execute the law for the community (see Can. 32);
- they do not require promulgation, nor is there any *vacatio legis* (see Can. 31 §2).” In “General Norms,” in *CLSGBI Comm*, p. 28.

be promulgated,<sup>35</sup> unlike general executive decrees that are to be promulgated in the same manner as law (see c. 31, §2).

### 3.4 — The Instructions for Administrators of Ecclesiastical Goods

As noted above, a number of canons in Book V of the Code call for particular legislation by the diocesan bishop and the bishops' conference. The instructions issued by the competent ordinary, would explain these laws as well as the universal laws. Canon 1276, §2 prescribes that ordinaries are to issue special instructions directed to all administrators of ecclesiastical goods (executors of the law) who are subject to them. In a diocese, such an instruction will bind all pastors of parishes (and their canonical equivalents) as well as all other administrators of public juridic persons subject to the diocesan bishop.

Given the fact that canon 1276, §2 could affect a broad spectrum of the faithful (administrators of ecclesiastical goods), we shall analyze the wording of the canon and its context. But before doing so, we will examine the redactional history of the canon. An understanding of this history will assist us in better appreciating the role of careful vigilance of the ordinary over the administration of ecclesiastical goods of public juridic persons subject to him.

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<sup>35</sup> Promulgation is a constitutive element of the process of making a law. HUELS writes: "It is important that the diocesan bishop always promulgate any policy that he wants to be binding. A document that the bishop wants to be legally binding should be identified as such, or promulgated by means of a general decree. Sometimes a diocesan document will be published under the name of 'policies,' or 'guidelines,' or something similar, but there is no indication that it has been promulgated as law by the bishop. *Without promulgation it does not have the force of law.*" In HUELS, "A Theory of Juridical Documents," p. 362 [emphasis added].



### 3.5 – The Legislative History of Canon 1276

The legislative history of any legal document is essential to understanding the mindset of its legislator (c. 17). E. N. Peters writes:

In modern legal systems, analysis of the incremental development of law - its legislative history - sheds important light on how the text of law came about, what alternatives were considered, and why some formulations were accepted while others were rejected. In ecclesiastical law, legislative history is a great aid in applying the fundamental interpretative principles contained in Canon 17 of the 1983 Code of Canon Law, especially in coming to understand 'the mind of the legislator.'<sup>36</sup>

The 1983 Code passed through several stages before it was finally promulgated.<sup>37</sup> Peters explains that “a stage may be considered ‘major’ when a complete set of canons, usually covering what will be an entire book of the new code, is published in monograph form and sent for comment beyond the confines of the *coetus* charged with its drafting to various episcopal conferences, Roman dicasteries, religious superiors and ecclesiastical faculties.”<sup>38</sup> The four major stages were: the 1972 to 1977 *primae versiones*, the 1980 *Schema*, the 1982 *Schema*, and finally the 1983 Code.<sup>39</sup> One of the procedural criteria adopted by the Code Commission in the working process was not to drift too far from

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<sup>36</sup> E.N. PETERS, *Incrementa in Progressu 1983 Codicis Iuris Canonici*, Montréal, Wilson & Lafleur Ltée, 2005, p. xi (= PETERS, *Incrementa in Progressu 1983 Codicis Iuris Canonici*).

<sup>37</sup> For a critical analysis of the revision process for what is now Book V, see J.C. PERISSET, *Les biens temporels de l'Église*, Paris, Éditions Tardy, 1966, pp. 17-27, 275-282.

<sup>38</sup> PETERS, *Incrementa in Progressu 1983 Codicis Iuris Canonici*, p. xii

<sup>39</sup> See *ibid.* C.J. HERRANZ notes: “Paul VI had already established that the Code Commission should solicit the opinion of the Pastors of the Church on each of the *schemata*. In a discourse to the College of Cardinals, he announced, ‘After approval of the guiding principles and of the systematic arrangement of the new legislation, some *schemata* are already in final phase. Soon the examination by the Episcopate will begin.’ Later he decided that the dicasteries of the Roman Curia, ecclesiastical universities and faculties, the union of Religious Superiors General and other institutions should also be consulted.” In “Genesis and Development of the New Code of Canon Law,” in *ExComm*, vol. 1, p. 153. The same author remarks. “Considering the high number of general and particular comments sent in by the bishops in spite of the relatively short time (six months for each consultation) given for studying and preparing the comments, the actual contribution of the universal Episcopate as a consultative body to the legislator was very important. [...] In effect, about 90% of the bishops on the five continents expressed their own opinions on the Code Commission’s draft legislation either through their Conference of Bishops or by sending in their responses directly.” In *ibid.*, p. 154.

the ordinary *modus operandi* followed by other dicasteries of the Holy See. An effort was made to designate the different phases of preparation and revision of the legislative *schemata*, and the subsequent complementary work by the body of consultors and members of the Code Commission itself was a factor kept in mind.<sup>40</sup>

Paul VI had warned that the task of revising the Code would be intricate and time consuming:

The work of consultation and another examination will no doubt require a fair amount of time. But it is time used wisely, not only because by consultation the law will potentially become more effective, but because the time can become ripe for a more fruitful reception of the new legislation, which should be for those who believe in and love Christ and the Church 'lex vitae et disciplinae' (Ecl 45, 6). Without it the Holy Spirit may be extinguished (cf 1 Tim 5, 19).<sup>41</sup>

After each study group had organized the *schema* of its canons, the drafts were sent to the Cardinal members of the Code Commission for their observations and proposals. Then, to discover from a collegial discussion what the members of the Code Commission thought about some of the more key questions, a fourth Plenary Assembly was held May 24-27, 1977.<sup>42</sup> The secretariat estimated that the general and particular proposals for revision exceeded 90,000. Six years were required to examine and discuss them, from 1974-1980.<sup>43</sup> There was not a single amendment proposed that was not cautiously evaluated even when, as regularly occurred, there were conflicting proposals.<sup>44</sup>

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<sup>40</sup> See *ibid.*, p. 151.

<sup>41</sup> PAUL VI, Discourse to the College of Cardinals 23 June 1970, in *AAS*, 62 (1970), p. 518.

<sup>42</sup> See *Communicationes*, 9 (1977), p. 62.

<sup>43</sup> See *Communicationes*, 12 (1980), p. 224.

<sup>44</sup> See HERRANZ, "Genesis and Development of the New Code of Canon Law," in *ExComm*, vol 1, p. 156. When the finished draft of the new Code was sent to the Cardinal members of the Code Commission, they were asked to make any observations and propose emendations they deemed necessary in writing, with a view to preparing for a plenary meeting to examine collegially the *schema* before submitting it to the legislator. From October 1980 to June 1981 the Secretariat of the Code Commission, assisted by groups of consultors who were experts in the various matters, collected, classified and

### 3.5.1 — The 1977 Schema

The various committees of the revision of the Code published ten individual sets of canons in specific areas of law.<sup>45</sup> Regarding the *schema* for what is now Book V of the Code, J.A. Renken notes: “The *coetus* met nine times prior to November 15, 1977 when the *Schema* entitled *Liber V: De iure patrimoniali Ecclesiae* was sent to various consultative organs. The schema consisted of 57 proposed canons.”<sup>46</sup> Canon 20 in the 1977 *Schema*<sup>47</sup> reads:

§1. The local Ordinary shall be sedulously vigilant about the administration of all ecclesiastical goods that are in his territory and that have not been taken from his jurisdiction, with due regard for legitimate prescriptions that give him more authority

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examined all comments sent in by members for the completed *Schema* of the new Code, and the most suitable response to each was written. From that work came the long report or study -- a 359- page book-- entitled *Relatio complectens synthesim animadversionum ab Em.iss atque Exc.iss Patribus Commissionis ad novissimum Schema Codicis Iuris Canonici exhibitarum, cum responsionibus a Secretaria et a Consultoribus datis*, Vaticanis, Typis polyglottis, 1981. The task of completing and refining the general *schema* of the new Code after the Plenary Assembly was entrusted to the President and Secretariat of the Code Commission. The result of their hard work was the *Schema novissimum*, which was submitted to the Roman Pontiff. With the help of two successive small commissions - one composed of experts, the other consisted of bishops, they worked from May to December of 1982. They evaluated the draft and especially some of the new comments addressed to the legislator by conferences of bishops. Many of the questions were resolved by the experts, but about 39 questions were deemed necessary for the Roman Pontiff's final decision. He examined these questions together with a small group of three Cardinals and one bishop. See *ibid.*, p. 162.

<sup>45</sup> For the various versions of publications, see PETERS, *Incrementa in Progressu 1983 Codicis Iuris Canonici*, p. xiv. A decade passed from the beginning of preparation of the first *schema* until the last was completed in July 1976. As each *schema* was prepared, the President of the Code Commission would send it to the Legislator, through the Office of the Secretary of State. The President would receive in return the responses, any observations and necessary explanations. If the draft was deemed ready, permission to submit it for examination to the Episcopate and other consultative bodies was also received. See *Communicationes*, 9 (1977), pp. 62-79.

<sup>46</sup> J.A. RENKEN, *Church Property: A Commentary on Canon Law Governing Temporal Goods in the United States and Canada*, New York, The Society of Saint Paul/Alba House, 2009, p. 7 (=RENKEN, *Church Property*). The *coetus* “De bonis Ecclesiae temporalibus” met on 24-27 January 1967, 5-10 June 1967; 20-24 November 1967; 19-24 February 1968, 13-17 May 1968; 20-25 January 1969; 26-31 May 1969, 15-19 December 1969, 20-22 April 1970. See *Communicationes*, 36 (2004), pp. 236-249; 36 (2004), pp. 250-267; 36 (2004), pp. 277-305; 36 (2004), pp. 306-333; 37 (2005), pp. 116-138; 37 (2005), pp. 186-202; 37 (2005), pp. 203-222; 37 (2005), pp. 223-255; 37 (2005), pp. 256-283; 26 (2004), pp. 218-220. The summary of the *coetus* work through these nine sessions can be found in *Communicationes*, 5 (1973), pp. 94-103. See PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECOGNOSCENDO, *Schema canonum libri V: De iure patrimoniali Ecclesiae*, Vatican City State, Typis polyglottis Vaticanis, 1977, p. 3; see also *Communicationes*, 37 (2005), pp. 284-303.

<sup>47</sup> This canon was the revision of canon 1519 of the 1917 Code

§2. In the light of the rights, legitimate custom, and circumstances, Ordinaries, by the publication of opportune special instructions within the limits of common law, shall take care for the complete ordering of administration of ecclesiastical goods [and] affairs.<sup>48</sup>

Canon 20 of the 1977 *schema* read:<sup>49</sup>

§1. It is for the ordinary to exercise careful vigilance over the administration of all goods which belong to juridic persons subject to his power, without prejudice to legitimate prescriptions which attribute more significant rights to him.

§2. With due regard for rights, legitimate customs, and circumstances, ordinaries are to take care of the ordering of the entire matter of the administration of goods by issuing special instructions within the limits of universal and particular law.<sup>50</sup>

The *coetus De bonis Ecclesiae temporalibus* changed “local ordinary” to “ordinary” without any explanation for the change.<sup>51</sup> The word “ordinary” however, is broader, because it includes additional ecclesiastical authorities who are excluded from the more restricted term, “local ordinary,” especially certain religious superiors. Canon 198 of the 1917 Code determined those who were ordinary and local ordinary when it stated:

§1. In law by the name of *Ordinaries* are understood, unless they are expressly excepted, in addition to the Roman Pontiff, a residential Bishop in his own territory, an Abbot or Prelate [*nullus*] of no one and his [their]<sup>52</sup> Vicar General, Administrator, Vicar or Prefect Apostolic, and likewise those who, in the absence of the above-mentioned, temporarily take their place in governance by prescript of law or by approved

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<sup>48</sup> §1. Loci Ordinarii est sedulo advigilare administrationi omnium bonorum ecclesiasticorum quae in suo territorio sint nec ex eius iurisdictione fuerint subducta, salvis legitimis praescriptionibus, quae eidem potiora iura tribuant. §2. Habita ratione iurum, legitimarum consuetudinum et circumstantiarum, Ordinarii, opportune editis peculiaribus instructionibus intra fines iuris communis, universum administrationis bonorum ecclesiasticorum negotium ordinandum curent.

<sup>49</sup> English translation of the Latin text from the *Schema* are mine.

<sup>50</sup> “§1. Ordinarii est sedulo advigilare administrationi omnium bonorum, quae ad personas iuridicas pertinent suae potestati subiectas, salvis legitimis praescriptionibus, quae eidem potiora iura tribuant. §2. Habita ratione iurum, legitimarum consuetudinum et circumstantiarum, Ordinarii, editis peculiaribus instructionibus intra fines iuris universalis et particularis, universum administrationis bonorum negotium ordinandum curent.” In *Communicationes*, 12 (1980), p. 413; see also PETERS, *Incrementa in Progressu 1983 Codicis Iuris Canonici*, p. 1104

<sup>51</sup> See *Communicationes*, 12 (1980), p. 413.

<sup>52</sup> We prefer to translate *eorum* as their. This is very important since it is referring to the vicars general, administrators, etc., of all of the aforementioned.

constitution, and, for their subjects, major Superiors of exempt clerical religious [institutes].

§2. By the name of *Local Ordinaries* come all those just mentioned with [the] exception of Religious Superiors.<sup>53</sup>

In choosing to use the word “ordinary” instead of local ordinary, the members were intending to give to all major superiors of exempt clerical religious institutes the power to exercise vigilance over the administration of goods in their institutes by issuing special instructions.<sup>54</sup>

An additional change concerns the power of the ordinary with regard to the administration of goods in his territory. As noted above, the wording of the 1977 *Schema* stated: “*Ordinari est sedulo advigilare administrationi omnium bonorum, quae ad personas iuridicas pertinent suae potestati subiectas.*” Thus, the ordinary’s power concerns all goods belonging to public juridic persons subject to his authority, not just to the ecclesiastical goods situated in his territory. The exercise of the power of the ordinary is now more personal than territorial, as was the case in canon 1519 of 1917 Code. In other words, the Code did not permit the local ordinary to exercise vigilance over the administration of the goods situated outside his territory, though belonging to a moral person subject to him. His vigilance was limited to goods in his territory. Canon 20 of the 1977 *Schema*, however, stated that the ordinary is to exercise vigilance over the administration of goods belonging to public juridic persons subject to his jurisdiction, irrespective of where these goods are located. M.L. Alarcón rightly observes:

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<sup>53</sup> *CIC/17*, c. 198: §1. In iure nomine *Ordinari* intelliguntur, nisi quis expresse excipiat, paeter Romanum Pontificem, pro suo quisque territorio Episcopus residentialis, Abbas vel Praelatus *nullius* eorumque Vicarius Generalis, Administrator, Vicarius et Praefectus Apostolicus itemque ii qui praedictis deficientibus interim ex iuris praescripto aut ex probatis constitutionibus succedunt in regimine, pro suis vero subditis Spetiores maiores in religionibus clericalibus exemptis. §2. Nomine autem *Ordinari loci seu locorum* veniunt omnes recensiti, exceptis Superioribus religionis” [emphasis in original].

<sup>54</sup> See *Communicationes*, 23 (1991), pp. 224-225, 277. Concerning a more detailed study of religious ordinaries in the 1917 Code, see M. KEENE, *Religious Ordinaries and Canon 198*, Canon Law Studies no. 135, Washington, The Catholic University of America, 1942.

The faculties for supervision and regulation that c. 1519 of the *CIC/17* had attributed to bishops for the administration of ecclesiastical goods are maintained. Whereas previously the competence of the bishop was real (over ecclesiastical goods within his territory), now it is personal (ecclesiastical goods belonging to the public juridical persons under his authority); furthermore, it is attributed to the ordinary, a much broader concept than that of the diocesan bishop (cf. c. 134), since it includes the Roman Pontiff, diocesan bishops and their equivalents, major superiors and all other ordinaries.<sup>55</sup>

### 3.5.2 — The 1980 *Schema*

The 1980 *Schema* was the product of the collections of the submissions made by study groups.<sup>56</sup> In 1979 the *coetus De bonis Ecclesiae temporalibus* reviewed the comments forwarded by the consultative organs and made some modifications in the proposed new law.<sup>57</sup> Peters says: “The 1980 Schema represented the first time that these individual drafts were brought together into a single integrated work, allowing prelates and scholars to see at last how the different sets of provisions in the proposed code were supposed to work together. More than one hundred canons made their first appearance in the 1980 Schema.”<sup>58</sup> Included in the 1980 *Schema* was Book V, *De Ecclesiae bonis temporalibus*. Eighteen consultors worked on this draft. They had eleven weekly sessions, with the total number of meetings amounting to 132, and 330 collegial hours of meetings.<sup>59</sup>

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<sup>55</sup> M. L. ALARCÓN, “Temporal Goods of the Church,” in *CCLA*, pp. 983-984

<sup>56</sup> HERRANZ writes: “On the Solemnity of Saints Peter and Paul, the twenty-ninth of June in 1980, the complete draft of the new Code was printed to be sent to all members of the Code Commission (*Patribus Commissionis reservatum*). It was entitled ‘Schema Codicis Iuris Canonici,’ with an explanatory subtitle, ‘iuxta animadversiones S.R.E. Cardinalium, Episcoporum Conferentiarum, Dicasteriorum Curiae Romanae, Universitatum Facultatumque ecclesiasticarum necnon Superiorum Institutuum vitae consecratae recognitum’” In “Genesis and Development of the New Code of Canon Law,” in *ExComm*, vol. 1, p. 156.

<sup>57</sup> The *coetus* met on 17-23 June 1979; 12-16 November 1979. See *Communicationes*, 12 (1980), pp. 388-414; 12 (1980), pp. 414-435; 36 (2004), p. 220.

<sup>58</sup> PETERS, *Incrementa in Progressu 1983 Codicis Iuris Canonici*, p. xiii.

<sup>59</sup> See *Codex Iuris Canonici. Schema Patribus Commissionis reservatum*, Vaticanis, Typis polyglottis Vaticanis, 1980. The names and members of the Code Commission were published in *Communicationes*, 13 (1981), p. 445.

Canon 1277 of the 1980 *Schema* stated:

§1. It is for the ordinary to exercise careful vigilance over the administration of all goods which belong to public juridic persons subject to him, without prejudice to legitimate titles which attribute more significant rights to him

§2. With due regard for rights, legitimate customs, and circumstances, ordinaries are to take care of the ordering of the entire matter of the administration of ecclesiastical goods by issuing special instructions within the limits of universal and particular law.<sup>60</sup>

During the revision process one consultor proposed that the word “public” be added to juridic persons in §1; and this proposal was accepted by all the members.<sup>61</sup> Another consultor proposed that the word “titles” be added; the members consented to this suggestion.<sup>62</sup> The *coetus De bonis Ecclesiae temporalibus* decided to change the word “tribuant” to “tribuantur” without any explanation for the change.<sup>63</sup> The *coetus* also decided to add “*ecclesiasticorum*” to paragraph two of the draft canon. This was in line with the draft of canon 1257 that recognized only the temporal goods of public juridic persons as being ecclesiastical goods.<sup>64</sup> The *coetus* on “General Norms” had made the distinction between public and private juridic persons and further stated that public juridic persons function in the name of the Church.<sup>65</sup> Since ecclesiastical goods are goods

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<sup>60</sup> “§1 Ordinarius est sedulo advigilare administrationi omnium bonorum, quae ad personas iuridicas **publicas sibi** subiectas pertinent, salvis legitimis **titulis quibus** eidem potiora iura **tribuantur**.”

§2 Habita ratione iurum, legitimarum consuetudinum et circumstantiarum, Ordinarius, editis peculiaribus instructionibus intra fines iuris universalis et particularis, universum administrationis bonorum **ecclesiasticorum** negotium ordinandum curent.” In PETERS, *Incrementa in Progressu 1983 Codicis Iuris Canonici*, p. 1104 [emphasis in original].

<sup>61</sup> “Consultor quidam proponit ut dicatur: ‘ quae ad personas iuridicas *publicas* sibi subiectas pertinent, salvis . ’ (omnibus placet).” In *Communicationes*, 12 (1980), p. 413.

<sup>62</sup> “Alter Consultor proponit ut dicatur “salvis legitimis titulis, quibus eidem potiora iura tribuantur” (omnibus placet).” In *ibid*.

<sup>63</sup> See *Communicationes*, 12 (1980), p. 413.

<sup>64</sup> See *Communicationes*, 12 (1980), pp. 397-398

<sup>65</sup> See *Communicationes*, 14 (1982), p. 143; 12 (1980), pp. 124-125.

of public juridic persons who act in the name of the Church, their goods are subject to universal law (Book V).

### 3.5.3 — The 1982 *Schema*

The 1982 *Schema* is substantially based on the 1,728 canons of the 1980 *Schema* that had been discussed and reworked by the Plenary Assembly of October 1981.<sup>66</sup> Peters points out that “[h]undreds of canons were reworked either in preparation for or during the Plenaria, with many of them (too many to cite here) undergoing, whether by way of textual addition, diminution, or rearrangement, significant modification before being published in the 1982 *Schema*.”<sup>67</sup>

Canon 1276 of the 1982 *Schema* stated:

§1 It is for the ordinary to exercise careful vigilance over the administration of ecclesiastical goods which belong to public juridic persons subject to him, without prejudice to legitimate titles which attribute more significant rights to the same ordinary.

§2. With due regard for rights, legitimate customs, and circumstances, ordinaries are to take care of the ordering of the entire matter of the administration of ecclesiastical goods by issuing special instructions within the limits of universal and particular law.<sup>68</sup>

The only change from the previous draft was the addition of “*Ordinario*” to §1.

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<sup>66</sup> See *Communicationes*, 13 (1981), pp. 255-270

<sup>67</sup> PETERS, *Incrementa in Progressu 1983 Codicis Iuris Canonici*, p. xiii.

<sup>68</sup> “§1 Ordinarii est sedulo advigilare administrationi omnium bonorum, quae ad personas iuridicas publicas sibi subiectas pertinent, salvis legitimis titulis quibus eidem **Ordinario** potiora iura tribuantur.

§2 Habita ratione iurium, legitimarum consuetudinum et circumstantiarum, Ordinarii, editis peculiaribus instructionibus intra fines iuris universalis et particularis, universum administrationis bonorum ecclesiasticorum negotium ordinandum curent.” In PETERS, *Incrementa in Progressu 1983 Codicis Iuris Canonici*, p. 1104.



### 3.5.4 — Canon 1276 of the 1983 Code of Canon Law

On 25 January 1983, the Code was promulgated, after eight months of personal examination of the 1982 *Schema* by John Paul II. The promulgated Code contains 1,752 canons, and it became effective on 27 November 1983, the First Sunday of Advent. Canon 1276 of the 1983 Code states:

§1. It is for the ordinary to exercise careful vigilance over the administration of all the goods which belong to public juridic persons subject to him, without prejudice to legitimate titles which attributes more significant rights to the same ordinary.

§2 With due regard for rights, legitimate customs, and circumstances, ordinaries are to take care of the ordering of the entire matter of the administration of ecclesiastical goods by issuing special instructions within the limits of universal and particular law.<sup>69</sup>

### 3.6 — Analysis of Terms in Canon 1276

The canon concerns the rights and duties of ordinaries with regard to the proper administration of ecclesiastical goods of the public juridic persons subject to them. The canon is situated among the canons on administration. In order to understand this canon properly we need to examine its text and context. Canon 17 provides the criteria by which ecclesiastical laws are to be interpreted:

Ecclesiastical laws must be understood in accord with the proper meaning of the words considered in their text and context. If the meaning remains doubtful and obscure, recourse must be made to parallel places, if there are such, to the purpose and circumstances of the law, and to the mind of the legislator<sup>70</sup>

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<sup>69</sup> “§1. Ordinarii est sedulo advigilare administrationi omnium bonorum, quae ad personas iuridicas publicas sibi subiectas pertinent salvis legitimis titulis quibus eidem Ordinario potiora iura tribuantur

§2. Habita ratione iurium, legitimarum consuetudinum et circumstantiarum, Ordinarii, editis peculiaribus instructionibus intra fines iuris universalis et particularis, universum administrationis bonorum ecclesiasticorum negotium ordinandum curent.”

<sup>70</sup> The corresponding *CCEO*, c. 1499 states: “Laws are to be understood in accord with the proper meaning of the words considered in their text and context. If the meaning remains doubtful and obscure, recourse is to be taken to parallel passages, if such exist, to the purpose and the circumstances of the law, and to the mind of the legislator ”

This canon lays down the general principle of interpreting and understanding ecclesiastical laws. Huels explains: “The interpretation of ecclesiastical laws begins with understanding the proper meanings of the key words of the legal text. The ‘proper meaning’ is the way the word or phrase is understood in the canonical tradition – in the practice of the Church and the writings of the ‘doctors,’ the canonical scholars.”<sup>71</sup> He further remarks: “The proper meaning of words is not usually determined solely by examining the text of the law in isolation; the text must be seen in relation to other statements that make up the context of the law.”<sup>72</sup> The context of a canon refers to related texts in the same book, document, or section, in which the law is published, i.e., the article, chapter, title, part, or book of the Code in which the canon is found. The context often clarifies the purpose of the canon. By studying the context, one is able to grasp the meaning of key terms and phrases of the canon.<sup>73</sup> If the meaning of the law still remains unclear, reference is to be made to the parallel places, the purpose (*ratio vel finis legis*) and circumstances of the law, and the mind of the legislator (*mens legislatoris*).<sup>74</sup> We shall, therefore, analyze the terms and context of canon 1276 with the aim of arriving at the proper canonical meaning of the words and thus better understanding the canon.

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<sup>71</sup> J. M. HUELS “Ecclesiastical Laws” in *CLSA Comm2*, p. 73.

<sup>72</sup> *Ibid*

<sup>73</sup> See *ibid* For a detailed study of the proper meaning and significance of words, see M.R. TORFS, “*Propria verborum significatio: De l’épistémologie à l’herméneutique*,” in *Studia canonica*, 29 (1995), pp. 179-192; W. KOWAL, *Understanding Ecclesiastical Laws: Canon 17 in Light of Contemporary Hermeneutics*, Ottawa, Saint Paul University, 1997.

<sup>74</sup> J. OTADUY adds: “In addition to the rules of c. 17, the canonical system also acknowledges certain objective ways to interpret norms, in which the will of the legislator operates only ‘*a posteriori*’ or ‘*ab extrinseco*’ to guarantee authoritatively the correctness of the interpretation, without diminishing its objectivity. Such are, for example, canonical custom, jurisprudence, and administrative practice, because jurisprudence and practice do not just function to supplement the law (c. 19), but also to constitute circumstances relevant for its interpretation.” In “Ecclesiastical Laws,” in *ExComm*, vol. 1, p. 327.

### 3.6.1 — The Context of Canon 1276

The canon is situated within the canons on administration of goods (cc. 1273-1289).<sup>75</sup> Consequently, the legislator may intend to indicate that the act of issuing special instructions is a means of preserving and nurturing temporal goods to serve their proper purposes. The administration of ecclesiastical goods, as noted above, belongs to the public juridic person that owns the goods (c. 1254, §1). The ordinary who issues the instructions has no right of administration but a duty of supervision and vigilance.

However, given the fact that the ordinary is not necessarily the administrator of ecclesiastical goods (c. 1279, §1) (unless he is recognized as an administrator by the law or the statutes of the public juridic person),<sup>76</sup> it might have been more appropriate to situate canon 1276 within the preliminary canons in Book V and not within the canons that deal with the role of administrators of ecclesiastical goods. This would have clearly expressed the power of the ordinary in supervising the administration of ecclesiastical goods and the role of the administrator in administering ecclesiastical goods. Furthermore, as illustrated above, the proper administration of ecclesiastical goods entails not only acts of administration (cc. 1273-1289) but all other acts that relate to temporal goods (cc. 1254-1310). The special instruction of canon 1276, §2 is to aid administrators in executing both universal and particular laws that concern the administration of ecclesiastical goods, broadly understood—not only acts of administration, in the strict sense of the term. The administrator of ecclesiastical goods

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<sup>75</sup> Book V has four titles: title I (cc. 1259-1272), “The Acquisition of Goods”; title II (cc. 1273-1288), “The Administration of Goods”; title III (cc. 1290-1298), “Contracts and Especially Alienation”; and finally title IV (cc. 1299-1310), “Pious Wills in General and Pious Foundations.”

<sup>76</sup> The statutes of a public juridic person may grant the right to administer its ecclesiastical goods to the diocesan bishop. It would, however, be prudent for the diocesan bishop to delegate such a function to the diocesan finance officer or some other person who should possess the qualities required of a diocesan financial officer (c. 494, §1).

represents the public juridic person in acts of acquisition of goods, administration, and in entering into contracts, including those involving alienation (c. 1279, §1). The special instruction called for in canon 1276, §2 is expected to address “*universum administrationis bonorum ecclesiasticorum negotium*.” In other words, “the entire matter of the administration of ecclesiastical goods” is to be the subject matter of the instruction of canon 1276, §2, and this explains precisely why it would have been more appropriately situated within the context of the preliminary canons that pertain to all the four rights of full *dominium* identified in canon 1254, §2.

### **3.6.2 —The Meaning of Words in Canon 1276**

The key words that we shall examine in canon 1276 are: ordinary, vigilance, rights of persons, customs, universal and particular laws. We consider these terms crucial to an understanding of the duty of the ordinary to issue special instructions to regulate the proper administration of the ecclesiastical goods of persons subject to him. It is also pertinent that the ordinary knows what the instruction should explain. An analysis of the terms in the canon will further elucidate what is to be addressed in the special instruction.

#### **3.6.2.1 — The Concept of the Ordinary in the 1983 Code of Canon Law**

Canon 1276, §2 speaks of the ordinary as the competent authority to issue the special instruction for administrators of ecclesiastical goods.<sup>77</sup> Canon 134 identifies ordinaries in the Church:

§1 In addition to the Roman Pontiff, by the title of ordinary are understood in the law diocesan bishops and others who, even if only

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<sup>77</sup> Several canons make reference to the ordinary. See, e.g., cc 107, §1, 129, 131, 135-137, 265, 266, §3, 268, 295, §1, 296, 368, 372, §2, 413, 419, 420, 475, 476, 479, 596, §2, 620, 734

temporarily, are placed over some particular church or a community equivalent to it according to the norm of can. 368 as well as those who possess general ordinary executive power in them, namely, vicars general and episcopal vicars; likewise, for their own members, major superiors of clerical religious institutes of pontifical right and of clerical societies of apostolic life of pontifical right who at least possess ordinary executive power.

§2. By the title of local ordinary are understood all those mentioned in §1 except the superiors of religious institutes and of societies of apostolic life.

§3. Within the context of executive power, those things which in the canons are attributed by name to the diocesan bishop are understood to belong only to a diocesan bishop and to the others made equivalent to him in can 381, §2, excluding the vicar general and episcopal vicar except by special mandate

This canon determines the concept of ordinary as used in the canonical system.

Franceschi points out that the term *ordinarius* was used in the past to designate the bishops and the Roman Pontiff.<sup>78</sup> The concept of *ordinarius* and *ordinarius loci* were mostly used for diocesan bishops

until Leo XIII in an interpretation of the term in relation to matrimonial dispensations, argues that ordinary means ‘the bishops, the administrators or apostolic vicars, the prelates or prefects that have jurisdiction with separate territory, the officialis or the vicars general in spiritual matters, and, in a vacant see, the vicar capitular or the legitimate administrator’ That notion of ordinary, with some exceptions, such as the Constitution *Officiorum et munerum* of January 25, 1897 which only considered the bishops that governed the diocese and quasi-diocese, was kept until it was included in the c 198 of the *CIC/17*; this inclusion broadened the term to include major superiors of exempt clerical associations.<sup>79</sup>

Franceschi further explains that the 1917 Code considered an ordinary as one who had episcopal, or quasi-episcopal, ordinary power in the external forum, both proper and vicarious.<sup>80</sup> It was not specified whether this ordinary power had to be executive power, because at that time distinction of powers was not completely developed.<sup>81</sup>

<sup>78</sup> See H. FRANCESCHI, “Power of Governance,” in *ExComm*, vol. 1, p. 842.

<sup>79</sup> *Ibid.*

<sup>80</sup> See *ibid.* We must also note that at this time the distinction of the power of governance into legislative, executive and judicial was not that clear. The Code rather speaks of legislative, judicial and coercive power (c 33, §1).

<sup>81</sup> See *ibid.*, pp. 842-843.

The 1983 Code is more precise in the determination of who is an ordinary (c. 134). Franceshi points out that not all those who govern with ordinary power are acknowledged as *ordinaries*, as evident in a great number of canons. There are those who possess an executive, ordinary power, be it proper or vicarious, that must be general (cf. c. 479) which differentiates them from ordinaries who due to their office have some (ordinary) power which is not *general*, but specific or one referred to certain sphere of competence.<sup>82</sup> Franceshi continues by pointing out the essential elements of the concept of “ordinary” to include the

ordinary, executive power (proper or vicarious) of a general character and the juridical bond of authority-subject, to which c. 136 refers. In an ecclesiastical circumscription the executive power of a general character corresponds, besides the ‘capital offices,’ to the vicar general and episcopal vicars. The condition of ordinary thus corresponds to those who, *in officio*, exercise jurisdictional functions particularly related to those of the capital office, without implying that this notion be identified with that of ‘capital office,’ as we can easily deduce from § 3 of this canon, which distinguishes the concept of diocesan bishop from that of ordinary.<sup>83</sup>

Understanding the authority-subject relationship that exists between the ordinary and the faithful is also fundamental to the proper understanding of the concept of ordinary. According to Franceschi, this relationship of subordination is based on the sacramental character of the Church and on the functional diversity that results from the relationship existing between baptism and sacred orders, which is normally determined by means of the domicile or quasi-domicile with which the pastor and the ordinary are individuated for each of the faithful (c. 107 § 1).<sup>84</sup> Ordinaries and their subjects, in their various tasks, must always try to maintain communion (c. 209, §1). Each is to fulfill the

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<sup>82</sup> See *ibid.*, p. 843.

<sup>83</sup> *Ibid.*

<sup>84</sup> See *ibid.*

duties owed the universal Church and the particular Church by observing the precepts of the law (c. 209, §2). Another aspect underscored by the concept of ordinary in the Code is the theological value underlining “authority-subject relationship.”<sup>85</sup> The analysis of this relationship underscores the value of abiding by the instructions issued by the competent authority. The instruction issued for the regulation of the administration of ecclesiastical goods is not exempt from this canonical understanding of the authority-subject relationship. Administrators of ecclesiastical goods should keep in mind the obligation to obey with Christian obedience the norms of the ordinary (c. 212, §1) when applying the instructions issued by him. While the ordinary has the obligation to supervise the administration of ecclesiastical goods by issuing special instructions (c. 1276, §2), the administrators of ecclesiastical goods have a special obligation to adhere to the norms of the instructions.

Canon 134, §1 recognizes the major superiors of clerical religious institutes and societies of apostolic life of pontifical right as ordinaries.<sup>86</sup> However, Franceschi explains:

Strictly speaking, these are not ordinaries because they are superiors of the members of a religious order. In the internal scope of the institute marked by the vow of obedience, a power is exercised that used to be called dominative, which is *conceptually* different from hierarchical or secular

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<sup>85</sup> Canon 212, §1 states. “Conscious of their own responsibility, the Christian faithful are bound to follow with Christian obedience those things which the sacred pastors, inasmuch as they represent Christ, declare as teachers of the faith or establish as rulers of the Church.” The diocesan bishop, as ruler of the particular church entrusted to him, publishes special instructions for the administration of ecclesiastical goods. Canon 273 concerns the obedience of clerics to the Supreme Pontiff and their ordinary: “Clerics are bound by a special obligation to show reverence and obedience to the Supreme Pontiff and their own ordinary.” Pastors who by virtue of their office are administrators of ecclesiastical goods of the parish must also be aware that the norm of canon 273 applies to adhering to the instruction issued by the diocesan bishop for the administration of ecclesiastical goods (c. 1276, §2). Canon 1373 states that a person who publicly incites others to disobey an ordinary because of an act of governance is to be punished by an interdict or other just penalties. Publicly inciting parishioners to disobey the instruction of the diocesan bishop constitutes a delict punishable under canon 1373.

<sup>86</sup> Although canon 134, §1 mentions all those who are ordinaries, however, our dissertation shall must of the time restrict this term to the diocesan bishop. This is precisely because our work is mainly concerned with the diocesan bishop and the issuance of instructions for administrators subject to his authority.

power (that, for instance, bonds the faithful to the bishop upon the basis established by the sacraments), although the same norms of the code are applied to this relationship (cf. c. 596 § 3). It could be argued that in these institutes the superiors are ordinaries in as much as they have been granted by the legislator an ordinary executive power over the members of their religious order in the material sphere of competence that the legislator assigns to the superiors of the clerical institutions, considering that the exercise of the power of governance in the Church is reserved to those with the sacred orders (c. 129).<sup>87</sup>

Canon 134, §3 concerns the exercise of executive power that is proper to the diocesan bishop alone as an ordinary of the diocese. The canon

differentiates between a diocesan bishop and those equivalent to him according to canons 381, §2 and 364 on the one hand, and an episcopal vicar and vicar general on the other hand. At times the code prescribes that only the diocesan bishop can act. When a bishop extends this 'reserved' power to a vicar general or an episcopal vicar (see c. 479, §§1-2), the latter acts not with ordinary vicarious power, but in virtue of delegated power.<sup>88</sup>

The use of the term "ordinary" in canon 1276 implies that all those identified in canon 134, §1 can issue special instructions for the administration of ecclesiastical goods subject to their supervision. Our focus, however, is on the diocesan bishop. The scope of our research does not allow us to discuss in detail the other ordinaries identified in canon 134, §1.

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<sup>87</sup> FRANCESCHI, "Power of Governance," in *ExComm*, vol. 1, p. 844. FRANCESCHI'S interpretation of canon 129 is different from the widely held view today that lay people can and, in fact, had in the past exercised the power of jurisdiction or governance. To argue that the legislator reserved the power of governance to clerics alone is not sustainable in the light of canons 135, §1, and 1421, §2. For two excellent treatments of this issue, see J. M. HUELS, "The Power of Governance and Its Exercise by Lay Persons: A Juridical Approach," in *Studia canonica*, 35 (2001), pp. 59-96 (=HUELS, "The Power of Governance"), J. BEAL, "The Exercise of the Power of Governance by Lay People: State of the Question," in *The Jurist*, 55 (1995), pp. 1-92. BEAL says: "Thus, the class of those to whom the power of jurisdiction could be lawfully conceded included many who had not received sacramental ordination and some who did not share even ecclesiastical power of orders. As a result, the link between the power of jurisdiction and sacramental ordination was somewhat looser in the 1917 code than might appear at first glance." In *ibid.*, p. 8. On whether lay persons can exercise the power of governance, HUELS says: "To call these acts the power of governance if performed by a clerical superior, but 'domestic power,' 'associational power' (*Konsortiativgewalt*), or merely 'administrative power' if performed by a lay superior, is unnecessary and obsolete under the revised Code, since the Code does not reserve all acts of power of governance to the clergy alone." In "The Power of Governance," p. 78. See also A. STICKLER, "La 'Potestas Regiminis' Visione teologica," in *Apollinaris*, 56 (1983), pp. 400-410, F. G. MORRISSEY, "The Laity in the New Code of Canon Law," in *Studia canonica*, 17 (1983), pp. 135-148. See also A. ASSELIN, "The Laity: Their Service in the Church Twenty Years after the Code," in *Forum*, 2 (2005), pp. 436-458.

<sup>88</sup> M. WIJLENS, "The Power of Governance," in *CLSA Comm2*, p. 188.



The ordinary according to canon 1276, §1 is “*sedulo advigilare administrationi omnium bonorum.*” He is to supervise carefully the administration of all goods; he does not, however, administer them. The act of supervision and the act of administration are two distinct acts; the first concerns the ordinary while the latter concerns the administrators identified by canon 1279, §1. So even though the canon is situated within the context of the administration of ecclesiastical goods, it does not imply or indicate in any way that the ordinary is the administrator of the goods; rather, it indicates that administrators have, as part of their obligation, to see to the careful observance of the instructions for the administration of goods issued by their ordinary. In the strict sense, therefore, the issuing of the instructions required by canon 1276, §2 is not an act of administration of goods as envisaged by canon 1279, §1 which states that “the administration of ecclesiastical goods pertains to the one who immediately governs the person to which the goods belong.”<sup>89</sup> Rather it is an act of the power of governance vis-à-vis the administration of goods.

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<sup>89</sup> WJ. KING writes: “Among the several canons which provide for the rule-making authority of the diocesan bishop in matters of financial administration is canon 1276. Paragraph one recognizes a generic responsibility of the diocesan bishop ‘to supervise carefully (*sedulo advigilare*) the administration of all goods (*omnium bonorum*) which belong to the public juridic person subject to him’ *Advigilare* cannot be constructed as conveying ownership or the right of control over the ecclesiastical goods of juridic persons within a diocese, but the word does require the diocesan bishop to exercise a reasonable standard of care in providing for and reviewing (subject to the principle of subsidiarity) the fiscal operations or temporal governance of parishes and other public juridic persons subject to him within the diocese. It must be emphasized repeatedly that this general oversight does not permit, however, any invasion of the asset or property of a juridic person other than the diocese itself by the diocesan bishop. Rather, the exercise of vigilance is expressed, not in a right of control, but a right to legislate policy and particular law regarding parochial (and other) fiscal administration, a right to specify how universal and particular law are to be implemented within the diocese, and a right to intervene through a defined process of law in the case of suspected malfeasance or mismanagement by the pastor or other proper administrator of a public juridic person.” In “Mandated Diocesan Centralized Financial Service,” in A. ESPELAGE (ed.), *CLSA Advisory Opinions, 2001-2005*, Alexandria, VA, CLSA, 2006, p. 332 (=KING, “Mandated Diocesan Centralized Financial Service”)

### 3.6.2.2 —The Vigilance of the Ordinary

The noun “vigilance” is from the Latin verb *vigilare* which means to remain awake, to keep watch, or to guard.<sup>90</sup> The ordinary is always to be watchful that ecclesiastical goods are properly administered in accordance with the norms of Book V (c. 1257, §1). The ordinary may exercise this vigilance by the general oversight of administrators (e.g., by reviewing their annual financial report, by visitations, etc.) and in his intervening authority of placing singular administrative acts, not to mention the authority to permit certain acts of administration and alienation. Vigilance may also include visitation and inspection of the income and expenditure account of the public juridic person. Alarcón explains: “As a mediate administrator, the Ordinary remains vigilant when the direct administrator fulfils the commitment correctly, but he must act directly to correct any signs of negligence or misuse, to replace the administrator and to take appropriate steps when, because of new circumstances, decisions must be made that go beyond those of ordinary administration (c. 1279).”<sup>91</sup> In practice, this vigilance or watchfulness is observed by issuing special instructions to guide administrators of ecclesiastical goods in their duty.<sup>92</sup>

The vigilance of the ordinary does not by law extend to private juridic persons. However, the statutes of a private juridic person may grant such a right to the ordinary. R.T. Kennedy explains:

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<sup>90</sup> See L F STELTEN, *Dictionary of Ecclesiastical Latin*, 2<sup>nd</sup> ed , Massachusetts, Peabody, 1995, p 286

<sup>91</sup> ALARCON, “Temporal Goods of the Church,” in *CCLA*, p 984 Note that ALARCON calls the ordinary a “mediate” administrator

<sup>92</sup> The ordinary has the authority to *enforce* the instructions, and this enforcement would take concrete form especially in singular administrative acts (especially, decisional decrees and precepts, cf cc 48-49)

This is in keeping with the greater autonomy of private juridic persons. Canon 1276, §1, however, allows for lawful titles which give an ordinary greater rights. Such titles could include the statutes of a private juridic person (e.g., a healthcare, educational or other charitable institution or foundation) designating the ordinary as administrator of its temporal goods<sup>93</sup>

Several canons in Book V identify the specific supervisory duty of the ordinary:

- 1 The appointment of administrators for public juridic persons whose governing documents fail to make provisions for them (c. 1279, §2),
2. The reception, personally or through a delegate, of the required oath of an administrator regarding faithful performance of duty (c. 1283, 1°);
3. The determination of the limits of ordinary administration where the relevant statutes fail to do so (c. 1281, §2);<sup>94</sup>
- 4 The authorization of acts of extraordinary administration (c. 1281, §1),
5. The consent to long-term investments (c. 1284, §2, 6°),
6. The intervention in cases of negligence by an administrator (1279, §1);
- 7 The reception of annual reports and transmittal of them to the financial council (c. 1287, §1);<sup>95</sup>
- 8 The grant or denial of permission to initiate or contest a legal proceeding in civil court (c. 1288),
9. The grant or denial of permission to accept a non-autonomous foundation (c. 1304, §1);
10. Approval of provisions for the safe-keeping and investment of the endowment of a non-autonomous foundation (c. 1305),
11. The approval of the renunciation of the trial of an issue involving temporal goods (c. 1524, §2);
12. The execution of all pious dispositions<sup>96</sup>

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<sup>93</sup> R.T. KENNEDY, "The Temporal Goods of the Church [cc. 1254-1310]," in *CLSA Comm2*, p. 1477 (=KENNEDY, "The Temporal Goods of the Church [cc. 1254-1310]," in *CLSA Comm2*). COMBALIA notes the active role the ordinary is to play in the supervision of ecclesiastical goods: "Secondly, to the ordinary is attributed regulatory competence to organize, through instructions, the administration of the goods within his jurisdiction. Attribution of this power assumes that the task of the ordinary is not merely passive or to correct negligence and abuse, but that it fulfils an active function - also appropriate to his status as a mediate administrator - of orientation and direction over the immediate administrator." In "The Administration of Goods," in *ExComm*, IV/I, p. 94.

<sup>94</sup> The wording of canon 1281, §2 commits such a determination to diocesan bishops alone, not to all ordinaries.

<sup>95</sup> Canon 1287, §1 requires that an annual report be made to a local ordinary, not to all ordinaries

### 3.6.2.3 — The Ordinary's Regard for the Rights of Public Juridic Persons

Canon 1276, §2 stipulates that the ordinary is to respect the rights, legitimate customs, and circumstances of public juridic persons. The legislator intends to keep the rights of persons intact; he does not want an instruction to infringe on rights already granted or acquired.

The Code does not define the term “right,”<sup>97</sup> but it does state how one can become a person, that is, a subject of rights in the Church (c. 96): “By baptism one is incorporated into the Church of Christ and is constituted a person in it with the duties and rights which are proper to Christians in keeping with their condition, insofar as they are in ecclesiastical communion and unless a legitimately issued sanction stands in the way.”

A physical person attains canonical personality through baptism. Although there is a genuine fundamental equality of all Christ's faithful, the rights and obligations of each person are not identical.<sup>98</sup> Each category of physical persons in the Church has its own

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<sup>96</sup> KENNEDY, “The Temporal Goods of the Church, [cc. 1254-1310],” in *CLSA Comm2*, pp. 1477-1478.

<sup>97</sup> PAUL VI had charged the Commission preparing the revision of the 1917 Code with the task of defining the rights of persons in the Church and of devising procedures for their protection. See “Principia quae Codicis Iuris Canonici recognitionem dirigant,” in *Communicationes*, 1 (1969), pp. 77-85. Principle 6 deals with the protection of the rights of persons (“De tutela iurum personarum”), see *ibid.*, pp. 82-83, principle 7 is concerned with the mechanism for establishing procedures for the protection of the rights of persons (“De ordinanda procedura ad tuenda iura subiectiva”), see *ibid.*, p. 83.

<sup>98</sup> Many scholarly works have addressed the obligations and rights of Christ's faithful in the 1983 Code. For in-depth study of this subject matter, see J.P. BEAL, “Protecting the Rights of Lay Catholics,” in *The Jurist*, 47 (1987), pp. 129-164; J. CORIDEN, “The Foundations for Canonical Rights of Parishes and Other Local Catholic Communities,” in *Ius in vita et in missione Ecclesiae: Acta Symposii internationalis iuris canonici occurrente X anniversario promulgationis Codicis iuris canonici, diebus 19-24 aprilis 1993 in Civitate Vaticana celebrati*, Civitate Vaticana, Libreria editrice Vaticana, 1994, pp. 505-525, *idem*, “The Rights of Parishes,” in *Studia Canonica*, 28 (1994), pp. 293-309; *idem*, “The Vindication of Parish Rights,” in *The Jurist*, 54 (1994), pp. 22-39; F. DANEELS, “The Right of Defence,” in *Studia canonica*, 27 (1993), pp. 77-96; S. HOLLAND, “Equality, Dignity, Rights of the Laity,” in *The Jurist*, 47 (1987), pp. 103-128; J.M. HUELS, “Preparation for

obligations and rights. Canons 208-223 deal with the rights and obligations of all Christ's faithful; canons 224-231, with those of the laity; canons 273-289, with those of the clergy; canons 662-672, with those of religious; canons 1135-1136, with those of married couples and parents. Canon 221, §1 specifically states that the faithful can legitimately vindicate and defend their rights before the appropriate ecclesiastical forum.

The Code also recognizes juridic persons as subjects of obligations and rights (c. 113, §2). Included among those who can vindicate and defend their rights are juridic persons (c. 113, §2). Dioceses, parishes, institutes of consecrated life and societies of apostolic life can all defend and vindicate their rights in the Church.

Canon 4 deals with the protection of acquired rights in the Church.<sup>99</sup> The canon stipulates: "Acquired rights and privileges granted to physical or juridic persons up to this time by the Apostolic See remain intact if they are in use and have not been revoked, unless the canons of this Code expressly revoke them." The purpose of this canon is to protect those privileges and rights already lawfully acquired by physical or juridic persons from being taken away by the 1983 Code. It is an application of the principle of the non-retroactivity of the law (c. 9). In this context Huels points out that an acquired right in canonical parlance is understood to refer to "a right, other than an innate right or a legal

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the Sacraments: Faith, Rights, Law," in *Studia canonica*, 28 (1994), pp. 35-58; J. P. MCINTYRE, "The Acquired Right: A New Context," in *Studia canonica*, 26 (1992), pp. 25-38; M. R. MOODIE, "Fundamental Rights and Access to the Acts of a Case," in *Studia canonica*, 28 (1994), pp. 123-154; J. H. PROVOST, "Protecting and Promoting the Rights of Christians: Some Implications for Church Structure," in *The Jurist*, 46 (1986), pp. 289-342.

<sup>99</sup> Several canons mention acquired rights, see cc. 36, §1; 38; 121-123; 192; 326, §2; 565; 616, §1; 858, §1; 1196. W. CONWAY remarks: "The chief significance of acquired rights in law is that they have a certain inviolability which the law is very reluctant to infringe. If a new law is made, it is presumed to leave acquired rights untouched unless the contrary is stated expressly." In *Problems in Canon Law*, Westminster, MD, Newman Press, 1957, p. 12.

right that a physical or juridic person lawfully acquired before the 1983 Code went into effect.”<sup>100</sup> Huels further explains:

There are numerous ways by which a right may be acquired; these include the civil law (c. 22), administrative acts (cc. 48, 59, 76, 85), judicial sentences (e.g., c. 1684), contracts (cc. 192, 1290), prescription (c. 197), a promise to marry (c. 1062), election to office (cc. 147, 178), vows and oaths (cc. 1196, 1203). If an acquired right is contrary to a canon of the code, it is not affected by the code and remains intact unless expressly revoked by the canons of the code.<sup>101</sup>

An acquired right is different from an innate right (which is natural). Innate rights come from divine natural law; they are common to every human being from birth, including rights such as freedom of religion, the right to a good reputation and privacy (c. 220), the right of parents to see to the education of their children (c. 793, §1), the right to choose one’s vocation and state in life (c. 219), etc. Such rights are not given by any human authority; they are therefore inviolable and are never lost, even if abused or denied by human authority (e.g., the right to life, the right to free mobility, etc.).<sup>102</sup>

An acquired right is also different from a legal right. Legal rights, according to Huels, are

rights that come to a person in virtue of ecclesiastical law or legal custom, such as rights given by the code to pastors, clergy, religious, and laity (e.g., cc. 533, §2, 278, §1; 670; 229, §2). Such rights are subject to change when the law changes. [ . . . ]. If a right is granted by the ecclesiastical law, and a subsequent law abrogates the law or derogates from it, the right is thereby lost or is modified in accord with the new law. Legal rights coming from a custom that has the force of law (cc. 23-26) are also not the acquired right of c. 4. If a right acquired on the basis of a legal custom is contrary to a canon of the code, it is suppressed unless the code expressly provides otherwise or unless the custom is centenary or immemorial, in which case the ordinary may permit it to continue in keeping with canon 5, §1.<sup>103</sup>

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<sup>100</sup> J.M. HUELS, “Introductory Canons,” in *CLSA Comm2*, p. 51.

<sup>101</sup> *Ibid.*

<sup>102</sup> See *ibid.*, p. 52.

<sup>103</sup> *Ibid.*

Privileges are treated in canons 76-84. Canon 76, §1 states: “A privilege is a favor given through a particular act to the benefit of certain physical or juridic persons; it can be granted by the legislator as well as by an executive authority to whom the legislator has granted this power.” A legislator, or an executive authority delegated by the legislator, can grant a privilege. This is significant since the legislator does not grant a privilege in virtue of legislative power but executive power; and a delegate is not given legislative power but the executive power needed to grant a privilege. The law reserves all of this to the legislator since the legislator is the one who should have control over the perpetual, legitimate non-observance of his laws.

Canon 1276, §2 does not mention privileges. However, a privilege granted to a person (physical or juridic) is presumed to be perpetual. More specifically, when a person has been granted a privilege, the person has been given a new right (c. 78, §1) and this explicitly falls within the purview of canon 1276, §2 and, consequently, an instruction would not ordinarily revoke it. Canon 4 refers to privileges granted by the Apostolic See. Huels says: “If such privileges are still in use, they may continue, even if contrary to the code. However, privileges granted by any lower legislator than the pope (or his delegate) are revoked if they are contrary to the code. This is evident by the inclusion of the words ‘Apostolic See’ in reference to the privileges in question.”<sup>104</sup>

Acquired rights either by law or custom and privileges granted by the Apostolic See are protected by the legislator in canon 4. The ordinary, when issuing instructions for the administration of goods, must ensure that the acquired rights of physical and juridic

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<sup>104</sup> Ibid. HUELS also notes: “One opinion holds that a privilege, insofar as it is the source of an acquired right, would not be revoked by the code even if contrary to the code and granted by a legislator lower than the pope. While it is true that a right is acquired by a privilege, nevertheless canon 4 specifically distinguishes acquired rights from privileges. The only practical reason for this distinction in this context is to allow for the continuance of apostolic privileges contrary to the code while revoking contrary privileges granted by lower legislators.” In *ibid.*

persons are protected. Instructions by their nature cannot revoke or suppress acquired rights. An examination of what could possibly constitute a legal right of persons in relation to temporal goods will be apropos here. Let us consider the legal rights of some specific administrators—namely, those of the pastor of a parish, the diocesan finance officer, and the administrators of private associations of the faithful and of religious institutes of diocesan right.

### 3.6.2.4 — The Legal Rights of Specific Administrators of Ecclesiastical Goods

*The Pastor* - Some legal rights that are granted by the supreme legislator to public juridic persons<sup>105</sup> and other organs that assist in the administration of dioceses and parishes concern ecclesiastical goods. Canon 118 states that a public juridic person is to have a legal representative who is to act on its behalf. Such a right to represent the juridic person should be acknowledged in universal or particular law or the statutes of a public juridic person. A function granted by the universal law to a representative of a public

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<sup>105</sup> J. RATZINGER is of the view that parishes have their own rights. "Each time that the Church exists as a community, it is a subject of rights in the larger Church. It is not only the office-holders on the one hand, and the individual believers on the other, who have rights in the Church. The Church as such, as it exists in each community, is a holder of rights. These Churches are, properly speaking, the subjects of rights, in fact they connect all the other subjects of rights in the Church." In "Demokratisierung der Kirche?" in *Demokratie in der Kirche*, Limburg, Lahn, 1970, pp. 38-39, English translation in J.A. CORIDEN, "The Rights of Parish," in *Studia canonica*, 28 (1994), p. 294, footnote 1. CORIDEN remarks. "The fact of the existence of the rights and obligations of local communities is clear and undeniable, even though the exact nature and scope of those rights and obligations is not spelled out in the canons. The underpinnings for the rights are deep and strong. They are grounded firmly on biblical, historical, theological, and philosophical foundations [...]. The canonical provisions regarding temporal goods make clear that parishes and other juridical persons have the right to acquire, retain, administer, and dispose of their own goods and property (cc. 1255-1256). They do so in keeping with the norms of the Code and of the particular Church (c. 1276, §2), but they do so on their own authority. This is the reason that each parish or other juridical person must have a finance council (cc. 537; 1280). Local congregations of the Catholic faithful possess a legitimate autonomy and responsibility over their monies, investments, buildings, lands, and furnishings. These goods are not owned by the diocese; they are the property of the parish community which purchased or inherited them. Those temporal goods which are held for the long-term benefit and support of the parish and its activities, e.g., the church building, school, rectory, other real estate, bequests and designated investments, constitute the stable patrimony of the parish; they can only be alienated in accord with canonical procedures (cc. 1291-1296)." In "The Rights of Parish," in *Studia canonica*, 28 (1994), pp. 294-306.



juridic person (c. 118) is a legal right (as well as an obligation); this is because, once the provision of an office is made with the accompanying rights and duties, the officeholder enjoys such legal rights as long as he or she remains in office. Canon 145, §2 states that the obligations and rights proper to an office are defined either in the law by which such an office is established or through the decree of the competent authority. A number of canons grant legal rights to the administrator of the ecclesiastical goods of the parish (cc. 532; 1279, §1). A. Mendonça explains:

[W]hen a priest is appointed by the diocesan Bishop to the office of parish priest (see Cann. 157, 515 §1) he thereby obviously acquires a certain 'right' to that parish, but this becomes an *acquired* right only when he will have formally taken possession of the parish in accordance with the terms of Can. 527 [ .] The significance of acquired rights is that they have a certain inviolability which the law is very reluctant to infringe. The precise point of this Can. 4 is to prescribe that any such acquired right remains undisturbed ('intact') *even if the legal requirements for its acquisition might subsequently have been altered*. The reason is clear: were the rule to be otherwise, it would manifestly lead to such continual changes as would be destructive of the common good and of the security which the law itself is designed to achieve. It is to be noted that nowhere in the Code itself is any acquired right revoked, on the contrary, there are many instances in which such a right is expressly safeguarded (see e.g., Cann. 36 §1, 121-123, 192, 326 §2, 562, 616 §1, 1196).<sup>106</sup>

Canon 515, §3 states that parishes are public juridic persons *a iure*. As a public juridic person by law, the parish owns and administers its legitimately acquired ecclesiastical goods (cc. 515, §3; 1254; 1257). The pastor has the right to administer the ecclesiastical goods belonging to the parish, with the assistance of the parish finance council.<sup>107</sup> The pastor of the parish remains the proper administrator of all ecclesiastical goods owned by the parish (c. 532).<sup>108</sup> Renken says: "Canon 532 is universal law

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<sup>106</sup> A. MENDONÇA, "General Norms," *CLSGBI Comm*, pp. 3-4

<sup>107</sup> RENKEN, "Parishes, Pastors, and Parochial Vicars [cc. 515-552]," in *CLSA Comm2*, pp. 704.

<sup>108</sup> *CIC/83*, canon 532 states: "In all juridic affairs the pastor represents the parish according to the norm of law. He is to take care that the goods of the parish are administered according to the norm of cann. 1281-1288." Commentator like ALARCÓN holds that the representative function of the pastor does not necessarily involve the administration of the goods of the parish: "The reference made to cc. 1281-1288 is necessary, since the representative function of the parish priest does not contain the faculty to

identifying the pastor as the legal representative of the parish. It applies canon 1279, §1, which states that the person who directs a juridic person is the administrator of its ecclesiastical goods. The pastor is the administrator of the ecclesiastical goods of the parish, as administration is understood in canons 1281-1288.”<sup>109</sup> The legal rights of the pastor regarding the administration of the goods of the parish are given to him by the universal law (c. 532). The instructions of canon 1276, §2 cannot revoke this legal right, precisely because instructions cannot revoke or derogate from the laws they are meant to explain (cc. 20; 34, §2).

The parish finance council is an organ provided to assist the pastor in the administration of the goods that belong to the parish (c. 537). The instruction of the diocesan bishop cannot derogate from this basic premise of the parish finance council assisting the pastor. The instruction should therefore be very careful not to give “veto” power to the parish finance council. Such an act would be an invalid derogation from the

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administer the goods of the parish, even if the parish priest is the administrator *natus* of the parish. We feel this is in accord with his function, which c. 537 confirms, unless particular law, statutory or customary, prescribes otherwise.” In ALARCÓN, “Temporal Goods of the Church,” in *CCLA*, p. 446. S. GIL treats this differently when he says that “the function of *administrator of the goods* of the parish is attributed to the parish priest. It is a consequence of the capacity of the parish to acquire, retain, administer, and alienate temporal goods (cf. c. 1255) and of the mission of governing it, which is assigned to the parish priest (cf. cc. 419, 1279 § 1). In contrast to juridical representation, whose exercise corresponds personally to the parish priest, regarding the administration of goods, the parish priest can, pursuant to particular law, entrust the direct management of the goods to another person, cleric or lay (cf. 1282), who has in the parish functions similar to those entrusted to the diocesan *finance administrator* (cf. c. 494). Moreover, to carry out this task, the parish priest has the help of the finance council, [ . ], and of the vicar forane (cf. 555, § 1, 3°). Nevertheless, in every case the *canonical responsibility* of the parish priest over the proper functioning of administration remains, which he cannot renounce (cf. c. 1289).” In “Parishes, Parish Priests, and Assistant parish Priests,” in *ExComm*, vol. II/2, pp. 1331-1332. For more in-depth study of this subject, see, F.R. AZNAR-GIL, “La administración de los bienes temporales de la parroquia,” in J. MANZANARES (ed.), *La parroquia desde el Nuevo Derecho Canónico*, Salamanca, 1991, p. 174; *idem*, *La administración de los bienes temporales de la Iglesia. Legislación universal y particular española*, Salamanca, 1984, pp. 197-199; and J. RENKEN, “Parishes, Pastors, and Parochial Vicars [cc. 515-552],” in *CLSA Comm2*, pp. 703-704.

<sup>109</sup> RENKEN, “Parishes, Pastors, and Parochial Vicars [cc. 515-552],” in *CLSA Comm2*, p. 704

universal law, which has given the pastor the right to administer the goods of the parish

(c. 537). Renken underscores this point when he writes:

The role of the finance council is to assist the pastor in his role as administrator of parochial goods; the finance council cannot be conceived of as an administrative body, since administration is the pastor's competence [right]. Any particular legislation on the parish finance council must be careful not to compromise the canonical function of the pastor as administrator of parochial goods.<sup>110</sup>

An inter-dicasterial instruction issued in 1997<sup>111</sup> identified the parish finance council as “a collaborative structure necessary for conciliar renewal, consultative in nature, requiring the presence of the pastor for the validity of its proceedings, and not to be confused with parallel structures with a different origin or purpose.”<sup>112</sup> The document states that

the parish finance councils, of which non-ordained faithful are members, enjoy a consultative voice only and cannot in any way become deliberative structures. Only those faithful who possess the qualities prescribed by the canon law may be elected to these offices. The parish priest must preside over parochial [parish] councils. Therefore, decisions taken by a parochial council assembled without the presidency of the parish priest [pastor], or contrary to his wishes are invalid, i.e., null.<sup>113</sup>

The Code nonetheless stipulates that the diocesan bishop provides for a temporary administrator of goods in the absence of the pastor. Canon 533, §3 states: “It is for the diocesan bishop to establish norms which see to it that during the absence of the pastor, a priest endowed with the necessary faculties provides for the care of the

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<sup>110</sup> Ibid.

<sup>111</sup> CONGREGATION FOR THE CLERGY et al., instruction *Ecclesiae de mysterio*, 15 August 1997, in *AAS*, 89 (1997), pp. 857-876, *Communicationes*, 29 (1997), pp. 179-205; English translation in W.H. WOESTMAN (ed.), *The Sacrament of Orders and the Clerical State: A Commentary on the Code of Canon Law*, 3<sup>rd</sup> edition, Ottawa, Saint Paul University, 2006, pp. 285-308 (= *Ecclesiae de mysterio*).

<sup>112</sup> RENKEN, “Parishes, Pastors, and Parochial Vicars [cc. 515-552],” in *CLSA Comm2*, p. 710. “The 1917 code did not specifically mention a parish finance council. *Presbyterorum ordinis* 17 said that priests are to manage ecclesiastical property according to ecclesiastical laws and with the help, as far as possible, of skilled lay persons.” In *ibid.*

<sup>113</sup> *Ecclesiae de mysterio*, article 5, p. 300

parish.” Such a priest should be provided with the faculty to administer the ecclesiastical goods of the parish under such circumstances.<sup>114</sup>

*The Diocesan Finance Officer* - Another administrator who enjoys the legal right to administer ecclesiastical goods is the diocesan finance officer. The diocese possesses public juridic personality *a iure* (c. 373) and the diocesan bishop represents his diocese in all its juridic affairs (c. 393). However, unlike pastors of parishes, the diocesan bishop is not the routine administrator of the ecclesiastical goods of the diocese. The ordinary administration of the ecclesiastical goods of the diocese is to be carried out by the diocesan finance officer under the authority of the diocesan bishop. Canon 494, §3 stipulates:

It is for the finance officer to administer the goods of the diocese under the authority of the bishop in accord with the budget determined by the finance council and, from the income of the diocese, to meet expenses which the bishop or others designated by him have legitimately authorized.

The universal law thus grants a legal right to the office of the finance officer of the diocese to administer routinely the ecclesiastical goods of the diocese. The special instruction of canon 1276, §2 is to have due regard for this legal right granted to the diocesan finance officer.<sup>115</sup>

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<sup>114</sup> In other instances where the pastoral care of a parish or parishes is entrusted to priests *in solidum*, the moderator of the priests *in solidum* is the administrator of the ecclesiastical goods of the parish or parishes (c. 517, §1). When several parishes are entrusted to one priest as the proper pastor, he is the administrator of the ecclesiastical goods of all the parishes (cc. 523; 526, §2).

<sup>115</sup> WJ. KING notes: “Book V of the *Code of Canon Law* attributes rather broad authority for a diocesan bishop to establish either particular law or instructions regarding the administration of temporal goods in public juridic persons subject to his visitation or indirect oversight. This does not imply ownership of these goods and property by the diocese, or the right of control over them by the diocesan bishop or any member of the diocesan curia, however. It does imply a structuring of administrative discretion by rule-making or the establishment of norms which broadly affect all who engage in temporal administration within a diocese.” In “Mandated Diocesan Centralized Financial Service,” pp 331-332.

### **3.6.2.5 — The Legal Rights of Administrators of the Temporal Goods of Private Associations in the Diocese**

A private association arises from the private initiative of the faithful who founded it and freely drew up its statutes; and, once its statutes are approved and a decree of erection is issued by the competent authority, it acquires juridic personality. The association never acts in the name of the Church even though it pursues a spiritual goal (cc. 116, §1 and 215).<sup>116</sup> Its temporal goods are not ecclesiastical goods because such associations do not act in the name of the Church. The administration of their goods is primarily determined by their statutes (c. 325, §1). The diocesan bishop is competent to approve these statutes (cc. 312 and 322, §1). Since the universal law grants much autonomy in the administration of the goods of a private association, it would be prudent for the instruction of the diocesan bishop (c. 1276, §2) to acknowledge the same level of autonomy. In other words, the instruction must have due regard for the statutes of the association concerning the administration of its goods.

### **3.6.2.6 —The Legal Rights of Administrators of the Ecclesiastical Goods of Religious Institutes of Diocesan Right**

The extent of the diocesan bishop's power over a religious institute's ecclesiastical goods will depend on the canonical status of the institute. Canon 579 gives each diocesan bishop the right to establish institutes of consecrated life in his own diocese. The bishop can erect this institute only after he has consulted the Apostolic See. Such an institute erected by the diocesan bishop is known as "an institute of diocesan right." Institutes of pontifical right are those erected by the Apostolic See or, already having been established by a diocesan bishop, are later approved by the Apostolic See (c.

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<sup>116</sup> The distinction between a private and public juridic person is rooted in the teaching of the Second Vatican Council decree on the Laity (see *AA*, no. 24). See also R.T. KENNEDY, "Juridic Persons, [cc. 113-123]," in *CLSA Comm2*, pp. 161-162.

589). E. McDonough notes the differences between pontifical institutes and diocesan institutes:

At a practical level, perhaps the greatest difference between diocesan and pontifical institutes, is the more direct involvement afforded the local bishop in matters related to institutes which are of diocesan right. Note, for example, that in diocesan institutes the bishop both approves and can dispense from the constitutions, and also has the competence to deal with certain internal matters. [...]. In addition to matters already mentioned, for diocesan institutes the bishop presides by law at the election of the major superior (c. 625, §2), has the right of visitation (c. 628, §2), takes cognizance of community finances (cc 637 and 638, §4) and other items related to its temporal goods (cc. 1266; 1291; 1292, §1; 1295), extends *indults of exclaustation* (c. 686), *grants indults of permanent departure* (c. 691, §2), and confirms decrees of dismissal (c. 700).<sup>117</sup>

However, both an institute of diocesan right and an institute pontifical right are subject to the Apostolic See with regard to their internal governance of the institute.

McDonough writes:

Regardless of their being classified as diocesan or pontifical, however, a certain autonomy is recognized for all institutes of consecrated life by reason of their entire heritage, or patrimony, as derived from the gift of their charism and approved by the church as somehow articulated in their constitutions. This autonomy is technically not a grant from the hierarchy of the church to an institute within the church. Rather, it is an inherent right recognized by the hierarchy precisely because it is directly rooted in and ultimately derived from the charism. However, this autonomy is primarily, though not exclusively, related to internal matters. Note, too, that this autonomy is never totally unrestricted and must always function constructively within the actual context of both the universal and local church.<sup>118</sup>

Although the diocesan bishop may have authority over an institute of diocesan right, especially with regard to the approval of its constitutions and the grant of dispensations from its proper law, nonetheless, he should not unnecessarily interfere with the administration of the goods of the institute. Administration of the institute's goods is considered proper to the institute, and it is regulated by its statutes. Canon 586 stipulates

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<sup>117</sup> E. McDONOUGH, "Diocesan Institutes and Pontifical Institutes," in *Review for Religious*, 56, (1997), p. 97

<sup>118</sup> *Ibid*, p. 96

that every institute should enjoy a just autonomy of life, a term that has now largely replaced the term “exemption” used in the past.<sup>119</sup> The canon reads:

§1. A just autonomy of life, especially of governance, is acknowledged for individual institutes, by which they possess their own discipline in the Church and are able to preserve their own patrimony intact, as mentioned in can. 578.

§2. It is for local ordinaries to preserve and safeguard this autonomy.

The internal organization of a religious institute totally belongs to the competent authority within the institute as determined by the statutes.

Canon 635, §2 grants a legal right to religious institutes to establish freely suitable norms concerning the use and administration of its goods. Canon 635 states:

§1. Since the temporal goods of religious institutes are ecclesiastical, they are governed by the prescripts of Book V, The Temporal Goods of the Church, unless other provision is expressly made.

§2. Nevertheless, each institute is to establish suitable norms concerning the use and administration of goods, by which the poverty proper to it is to be fostered, protected, and expressed.

Given the fact that a religious institute’s goods are ecclesiastical goods, they are governed by the norms of Book V and their own proper law (c. 1257).<sup>120</sup> Canon 635 underscores the importance of the need for religious institutes to have competent and

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<sup>119</sup> “The privilege of exemption whereby religious are assigned to the control of the supreme pontiff, or of some other ecclesiastical authority, and are exempted from the jurisdiction of bishops, *relates primarily to the internal organization of their institutes*. Its purpose is to ensure that everything is suitably and harmoniously arranged within them, and the perfection of the religious life promoted. [ . ] *This exemption, however, does not prevent religious being subject to the jurisdiction of the bishops in the individual dioceses in accordance with the general law, insofar as it is required for the performance of their pastoral duties and the proper care of souls.*” In CD, no. 35, §3, English translation in FLANNERY1, p. 585 [emphasis added].

J M. HUELS remarks that the religious exemption of regulars (religious with solemn vows) does not exist in the 1983 Code. See “The Demise of Religious Exemption,” in *The Jurist*, 54 (1994), pp. 40-55.

<sup>120</sup> F.G. MORRISEY notes the need to “[d]istinguish clearly between the temporal goods of religious institutes and goods which are entrusted to the institute for a given period of time but without implying ownership. Thus, institutions such as schools or hospitals which belong either totally or partially to the government or third parties are not as such ecclesiastical goods and, generally, are not subject to the norms of book V.” In “Institutes of Consecrated Life,” in *ExComm*, vol. II/2, p. 1676. The same author remarks: “The proper law of each institute could determine particular norms regarding the acquisition and administration of goods. If these norms are part of the approved constitutions, they would take precedence over the general principles of canon 635, §1, because this canon provides for exceptions.” In *ibid*, p. 1675.

trained administrators for its ecclesiastical goods.<sup>121</sup> Administrators are to know and observe the proper law of the institute as well as the prescriptions of both canon law and civil law.

Canon 635, §2 expresses the basic principles of stewardship, subsidiarity, and accountability that should always underlie the administration of ecclesiastical goods. R. Smith writes:

One example of the principle of subsidiarity, found in the second paragraph of this canon, is its emphasis on the institute's taking responsibility for expressing its particular charism. This paragraph links concern about the appropriate handling of ecclesiastical goods with concern for the special character of a religious institute. Each institute is to apply the general law of the Church, found in the following canons and in Book V, in such a way that the poverty characteristic of that particular institute is fostered, protected, and expressed.<sup>122</sup>

According to Morrissey, the "suitable norms" for the administration of goods are not necessarily in the constitution:

Rather the most common form is for an institute to have a directory for the administration of temporal goods. [.] Norms governing administration can vary from one province to another within the same institute, according to geographical, economic, political and religious circumstances. For this reason, it would not be prudent to insert in formal codes, such as constitutions, references to specific sums of money, since these are subject to frequent changes.<sup>123</sup>

He continues by explaining what the financial directory of a religious institute should contain:

The financial directory can spell out the capacity for each level of government to acquire, possess, administer and alienate its own goods. It can establish norms for accounting procedures and specify the way in which annual reports and financial statements are to be presented. We can

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<sup>121</sup> V. DE PAOLIS offers a number of reflections on this subject matter. He discusses the general notion of temporal goods in religious institutes and then identifies and analyzes the specific responsibility of superiors, financial administrators, and the council. Finally, he concludes with general principles that should guide all administration of ecclesiastical goods. See "La rilevanza dell'economia nella vita religiosa," in *Angelicum*, 85 (2008), pp. 239-266

<sup>122</sup> R. SMITH, "Institutes of Consecrated Life and Society of Apostolic Life," in *CLSA Comm2*, p 780

<sup>123</sup> MORRISEY, "Institutes of Consecrated Life," in *ExComm*, vol. II/2, p 1676.



also expect to find in the directory norms relating to the inventory of goods, their classification as immovable [stable patrimony], precious (historical, cultural), or as free capital. Likewise, policies relating to gifts (c. 640) and hiring practices for employees could be spelled out.<sup>124</sup>

The financial directory or other suitable norms of a religious institute will be similar to the instructions envisioned by canon 1276, §2. These norms are part of the *ius proprium* and bind the whole institute. Such norms must not be contrary to the canons of Book V or the constitutions of the institute.<sup>125</sup> Any norm in the financial directory or similar document that is contrary to the canons of Book V or the constitutions of the institute will lack force and not be binding on its subjects.<sup>126</sup>

Having noted that the diocesan bishop has limited jurisdiction over the ecclesiastical goods of religious institutes, we must also note that there are a number of instances where the relationship between religious institutes and the diocesan bishop involves temporal goods. Although the internal organization of a religious institute belongs to the competent authority within the institute as determined by the statutes, the work of the apostolate that members of the institute carry out is, however, governed by the diocesan bishop, although the level of governance would largely depend on the nature of the apostolate.<sup>127</sup> Paul VI in *Ecclesiae sanctae I* decreed the specific areas where religious and the local ordinary are to work

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<sup>124</sup> Ibid

<sup>125</sup> It is important to note the relationship of the "suitable norms" of canon 635 to the special instructions of canon 1276. These suitable norms would have the same nature of the instructions of canon 1276 if they are issued on the authority of the proper ordinary, namely, a major superior of a clerical religious institute of pontifical right or a clerical society of apostolic life of pontifical right who have ordinary executive power (c. 134, §1). Otherwise, these suitable norms would typically be issued by a general or provincial chapter.

<sup>126</sup> For a more detailed treatment of the financial directory of religious institutes, see D. A. GUTIERREZ, "Modelo de 'Ratio Administrationis' o plan general de administración económica de una congregación," in *Commentarium pro Religiosis*, 83 (2002), pp. 67-116.

<sup>127</sup> THE PONTIFICAL COUNCIL FOR THE AUTHENTIC INTERPRETATION OF LEGISLATIVE TEXTS, issued a *Response to a doubt proposed*, whether external schools of religious institutes of pontifical right are subject to the ordinary diocesan tax of canon 1263, §1. The response was negative, implying that these schools are not subject to the full jurisdiction of the diocesan bishop. See *AAS*, 81 (1989), p. 991.

together for the common good of the particular church. Some of these areas may relate to temporal goods:

1. Religious shall not proceed to invite financial assistance by public subscriptions without the consent of the local ordinaries where the subscriptions are collected;
2. Those works, however, even though they be proper and special to the institute, which are entrusted by the local ordinary shall be subject to his authority and direction without prejudice to the right of religious superiors to supervise the way of life of the members, e.g., a diocesan school entrusted to a religious institute,
3. Whenever a work of the apostolate is entrusted to any *religious institute* by a local ordinary in accordance with the prescriptions of law, a written agreement shall be made between the local ordinary and the competent superior of the institute [such agreement will include the diocesan labor regulations];
4. The local ordinary who entrusted a religious member of an institute with an office may for a grave cause remove him after consulting with the superior of the religious [the financial compensation for such severance of labor will be regulated by diocesan financial instruction];
5. Associations of the faithful which are under the direction of a religious order, even if they have been erected by the Apostolic See, are subject to the supervision and jurisdiction of the local ordinary, who has the right and duty to inspect them [such inspection will include their temporal goods]<sup>128</sup>

Furthermore, canon 683, §1 says that the diocesan bishop can make an ordinary pastoral visitation and, in case of necessity, also visit the churches of religious or their oratories, which the Christian faithful habitually attend, as well as schools, and other works of religion or charity, entrusted to the religious institute. The scope of such a visitation is not limited in any way. It may include inspection of the physical plant, liturgical celebration, interview with staff, etc.<sup>129</sup> Paragraph 2 of the same canons states

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<sup>128</sup> See *ES I*, English translation in FLANNERY1, pp. 605-607. These provisions are to be applied without prejudice to the prescript of canon 682, §2.

<sup>129</sup> See R.A. HILL, "The Apostolate of Institutes: Canons 673-683," in *A Handbook on Canons* 573-746, p. 217

that, if the bishop discovers abuses, he is to advise the religious superior about it; only if the latter fails to act properly should the bishop provide for it.

These abuses could involve financial misappropriation or lack of adequate financial management to ensure that the ecclesiastical goods of the institutes are used for the intended purposes for which they were acquired. The administration of goods of the religious institute is to be carried out by the institute and not the diocesan bishop. This canon on visitation reflects only the oversight role of the diocesan bishop regarding everything that concerns the mission of the Church. Since ecclesiastical goods are destined to aid the fulfillment of the mission of the Church, the diocesan bishop has a right to address issues of financial malfeasance even in a religious institute. Although canon 683, §2 does not specify the particular area of abuse, there is no doubt that it will certainly include anything that relates to the apostolate which the diocesan bishop has the obligation to coordinate. If ecclesiastical goods of an institute, which were given for an apostolate, are no longer being used for this apostolate, the diocesan bishop could intervene. He could report the matter to the Holy See for appropriate action to be taken.

### 3.6.2.7 — Regard for Customs

As noted above, canon 1276, §2 says that the ordinary, in issuing instructions for administrators of ecclesiastical goods, should have due regard also for legitimate customs (*legitimæ consuetudines*).<sup>130</sup> Canon 23 stipulates that only customs introduced by the community and approved by the competent legislator have the force of law. Only a

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<sup>130</sup> HUELS explains “In addition to the divine and ecclesiastical law, customs are a major source of the *ius canonicum*. A law is a norm given for the community by a legislative authority, a custom is a norm introduced by the community itself. Customs are often called the ‘unwritten law,’ but this is not a definition, because a custom could be written down and it would still be a custom. The key difference between a law and a custom is their respective origins – the legislator for a law, the community for a custom.” In “Customs [cc 23-28],” in *CLSA Comm2*, p. 86.

community within the Church can introduce an ecclesiastical custom.<sup>131</sup> If a practice is imposed against the will of the community, it is not a custom and cannot have force of law. Customs contrary to divine law cannot obtain force of law, and those contrary to or beyond canon law cannot obtain the force of law if they are unreasonable (c. 24). Customs contrary to or apart from ecclesiastical law that have been observed for thirty continuous years obtain the force of law, unless the law had expressly prohibited future customs. However, a custom that is centenary or immemorial can prevail over a canonical law that has a prohibiting clause (c. 26). Once a custom attains the force of law, it can only be revoked by the competent authority through a legislative act, and not through an executive act. Huels explains: “If a custom has the force of law, the community has the right to maintain it. If the competent legislative authority opposes a legal custom, he may revoke it only by means of a law (c. 8).”<sup>132</sup>

The instructions for the administrators of ecclesiastical goods should give due regard to legitimate customs that have been observed for more than thirty years, as well as immemorial customs (c. 26). Such customs may grant more rights to a public juridic person and their administrator in the sphere of administration of its ecclesiastical goods. For example, there is a custom in most parishes in Nigeria where, on the occasion of a birthday or marriage anniversary of a parishioner, his or her friends rejoice with the person by presenting gifts (thanksgiving) during the Mass. Such customs constitute one of the ways by which the public juridic persons also acquire ecclesiastical goods for the

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<sup>131</sup> See *ibid*, p 87

<sup>132</sup> *Ibid*, p 94

purpose of meeting the needs of the parish (c. 1254, §1).<sup>133</sup> A diocesan bishop cannot revoke such customs by means of the instruction of canon 1276, §2; this could only be done through a general legislative decree (c. 29) properly promulgated for the community.<sup>134</sup>

### **3.6.2.8 — Regard for Circumstances**

Canon 1276, §2 urges the ordinary to take into consideration the circumstances of those who are to be bound by the norms of his instruction. The 1983 Code mentions situations that may change the outcome of an action because of “circumstances.”<sup>135</sup> The circumstances of public juridic persons vary, thus, the need to recognize this variance.

The instruction of the diocesan bishop should recognize the circumstances that may gravely affect the situation of a public juridic person. Instructions for the whole diocese may be altered in light of new circumstances influencing the entire diocese (e.g., civil, political changes). Instructions may also provide for diverse ways to implement the law in light of the diverse circumstances of the various parishes in the diocese - e.g., the way a large, affluent parish complies with a law may be different from the way a small,

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<sup>133</sup> Customs such as this are also in line with canon 1261, §1 which says that the faithful can give free will donations to support the needs of the Church.

<sup>134</sup> The 1917 Code praised the custom of the payment of ten percent of one's income and the first fruits (c. 1502). The subject of tithes was treated by THE SACRED CONGREGATION FOR THE COUNCIL in its decree *Tarvisina et Patavina*, in *AAS*, 25 (1925), pp. 470-472, English translation in *CLD*, vol. 1, pp. 717-719. The doctrine of tithe was explicitly explained. “Tithes are of two kinds, real and personal. The former follow the land; i.e., they are to be paid by actual holders and tillers of the land; the latter are paid in consideration of personal services. According to a more modern classification, tithes are either sacramental or ‘dominical.’ The former are paid by the faithful to their own pastor from whom they receive the sacraments. The latter are of the sort which follows the land. [...] Before the Code, it was accepted doctrine that real tithes should be paid to the parish where the land was, even though the owner lived elsewhere and received the sacraments from another pastor.” In *CLD*, vol. 1, p. 718.

<sup>135</sup> For example, canon 1326, §1, 1° states that, after a condemnation or after the declaration of a penalty, if a person continues so to offend, the obstinate ill will of the person can prudently be inferred from the circumstances. Canon 1324, §2 says a judge can diminish a penalty because of “other circumstances.”

poor parish does. Although these circumstances do not constitute a right to which the public juridic person can lay claim, nonetheless, they require special concern on the part of the ordinary in issuing special instructions for administrators of ecclesiastical goods. Other circumstances may be situations of war, internal strife, political persecution, and the like.

### 3.6.3 — Ecclesiastical Laws

Canon 1276, §2 says the special instructions of the ordinary should be within the limits of universal and particular law. This is in keeping with the juridic nature of instructions; they are to explain the law and must not be contrary to it (c. 34). Understanding the nature of universal and particular law that relates to temporal goods is therefore pertinent.

The 1983 Code does not define “ecclesiastical law.” A definition of law was introduced in the session of 11 May 1979 as “a general binding norm promulgated by the competent authority for the common good of a community capable of receiving a law.”<sup>136</sup> This definition was passed into the 1980 and 1982 *Schema*, but finally, since the Code wished to limit definitions, it was removed by the selected commission which at last reviewed the draft with the Roman Pontiff.<sup>137</sup>

Canon 7 states: “A law is established when it is promulgated.” Laws can be established only for a community capable of receiving them (c. 29), and they can be issued only by those who possess legislative power in the Church (cc. 135, §2; 333; 381, §2; 391, §2; 445; 455). Ecclesiastical law is of two types, universal and particular (cc. 12;

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<sup>136</sup> *Communicationes*, 23 (1991), pp 148-149

<sup>137</sup> See *Communicationes*, 16 (1984), p 144

13),<sup>138</sup> and binds “those who have been baptized in the Catholic Church or received into it, possess the sufficient use of reason, and, unless the law expressly provides otherwise, have completed seven years of age” (c. 11). However, laws which are of divine origin bind every human being.<sup>139</sup> Let us consider universal and particular law in greater detail.

### 3.6.3.1 — Universal Laws

Canon 12 states:

§1 Universal laws bind everywhere all those for whom they were issued.

§2. All who are actually present in a certain territory, however, are exempted from universal laws which are not in force in that territory

§3. Laws established for a particular territory bind those for whom they were issued as well as those who have a domicile or quasi-domicile there and who at the same time are actually residing there, without prejudice to the prescript of can. 13.

Universal laws bind those for whom they were made everywhere they go. Universal laws made for clerics, pastors, religious, certain groups of lay faithful, etc. will always bind such persons irrespective of where they may live. Excluded from those bound by universal laws are those who are present in a particular territory that is exempt from such a universal law (c. 12, §2). Huels points out that

a universal law might not be binding because of several reasons (1) a contrary custom, including desuetude; (2) a contrary particular law, not expressly revoked, that was in force before the universal law went into force (cf. cc. 20, 135, §2), or a contrary particular law that the Holy See made or confirmed; (3) an apostolic privilege (c. 76) or other apostolic indult; or (4) a dispensation for a particular case (c. 85).<sup>140</sup>

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<sup>138</sup> J M HUELS explains “Statutes of juridic persons, such as the constitutions of religious institutes, are an example of personal law (*iur*) in the broad sense; statutes may also be given legislative force (c. 94, §3).” In “Ecclesiastical Laws,” in *CLSA Comm2*, p. 65, footnote 69

<sup>139</sup> HUELS remarks: “Laws that are expressions of the divine law are always retroactive, as in the case of laws that stipulate the essential elements of capability or will needed to place a juridic act, insofar as they emanate from the divine natural law. For example, certain grounds for the invalidity of marriage in the 1983 code were not in the 1917 code, but they may be applied to marriages celebrated under the former law because they are based on the divine law (e.g., cc. 1095, §3; 1097, §2; 1098).” In *ibid*, p. 61.

<sup>140</sup> *Ibid.*, p. 65.

Several canons in the Code make reference to the competent authority capable of promulgating universal law. Those competent to promulgate universal law are the Roman Pontiff and the college of bishops, such as in an ecumenical council (cc. 333; 336-337), and those to whom the supreme authority may delegate this power (cc. 135, §2; 29). Book V constitutes a major source of universal laws governing ecclesiastical goods for the Latin Church (c. 1257, §1).

### 3.6.3.2 – Particular Laws

Concerning particular laws, canon 13 stipulates:

§1. Particular laws are not presumed to be personal but territorial unless it is otherwise evident

§2. Travelers are not bound:

1° by the particular laws of their own territory as long as they are absent from it unless either the transgression of those laws causes harm in their own territory or the laws are personal,

2° by the laws of the territory in which they are present, with the exception of those laws which provide for public order, which determine the formalities of acts, or which regard immovable goods located in the territory

§3. Transients are bound by both universal and particular laws which are in force in the place where they are present.

Particular laws may be personal or territorial, but the presumption of the law is that particular laws are territorial. Huels says: “Personal laws are given for non-territorial defined groups of persons that are capable of receiving a law, such as institutes of consecrated life and societies of apostolic life, personal prelatures, and various associations of the faithful.”<sup>141</sup>

Several canons make reference to the authority competent to promulgate particular laws, such as the supreme authority of the Church (cc. 333; 336-337), those to whom said authority may delegate legislative power (cc. 135, §2; 29), particular councils

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<sup>141</sup> Ibid.



and conferences of bishops (cc. 445; 455), diocesan bishops and their equivalents (cc. 391, §2; 381, §2), and the ordinaries of the military ordinariates; prelates of the personal prelatures can also promulgate law for their subjects if this is provided in the statutes (c. 295, §1).<sup>142</sup>

The Code in several places requires that particular laws be enacted by conferences of bishops and diocesan bishops<sup>143</sup> to govern the administration of ecclesiastical goods. Particular laws to be established by the conferences of bishops concerning ecclesiastical goods include:

1. Canon 1262 - norms governing appeals to the faithful for Church support;
2. Canon 1265, §2 - norms governing begging for alms which are to be observed by all, including mendicants;
3. Canon 1272 - norms to govern benefices, where they still exist, in such a way that the income and even, insofar as possible, the endowment itself of the benefices are gradually transferred to the “institute for clergy support” mentioned in canon 1274, §1;
4. Canon 1277 - norms defining acts of extraordinary administration;
5. Canon 1295 - norms defining the minimum and maximum amounts for alienation of ecclesiastical goods constituting stable patrimony of a juridic person (these norms also govern transactions other than alienation which can worsen the patrimonial condition of a juridic person: canon 1295);
6. Canon 1297 - norms for the leasing of Church goods, especially regarding the permission to be obtained from the competent ecclesiastical authority.<sup>144</sup>

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<sup>142</sup> The ordinaries of the personal ordinariate established by the apostolic constitution *Anglicanorum coetibus* have only executive power. See J.M. HUELS, “Canonical Comments on *Anglicanorum Coetibus*,” in *Worship*, 84 (2010), pp 237-253.

<sup>143</sup> For particular law established by the diocesan bishop concerning the administration of ecclesiastical goods, see Chapter one section 1.2.2 of this dissertation.

<sup>144</sup> J.A. RENKEN, “Particular Laws on Temporal Goods,” in *Studies in Church Law*, 4 (2008), pp 447-448. RENKEN points out that nothing prevents the conference of bishops from establishing additional particular laws concerning the temporal goods of the church. Canon 455 governs the enactment of particular laws (other than those required by universal law) by the conference of bishops. In this instance, the conference of bishops needs the special mandate of the Apostolic See before issuing a law in a matter not determined in universal law (c. 455, §1). The law requires that a general decree be passed by at least a

Some particular laws to be established by the provincial bishops concerning ecclesiastical goods are:

1. Canon 1264, 1° - norms prescribing fees for acts of executive power granting a favor or for the execution of rescripts of the Apostolic See,
2. Canon 1264, 2° - limits on the offerings on the occasion of the administration of the sacraments and sacramentals,
3. Canon 952 - Mass offerings <sup>145</sup>

## Conclusion

This study of the nature of instructions has shown that they are very helpful means of maintaining the stability of the law. The institute of an instruction was given much prominence after the *motu proprio Cum iuris* of Benedict XV. This document explained more clearly the purpose of an instruction and clarified that it is not a legislative act but an administrative one. It also gave direction as to how instructions were to be issued and what they were to concentrate on.

This chapter then examined the first codified canon explaining instructions in the history of the Church. This was followed by a study of canon 1276, completing the study of the juridic nature of instructions. Our study led us to the examination of the various changes that were effected during the drafting of the canon. The meaning of the terms in the canon was also examined.

Having studied the key terms in canon 1276, we noted that the ordinary is limited in the issues that the special instruction may address. Although the ordinary is

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two-thirds majority of the members of the conference having active voice, and the decree will subsequently be reviewed by the Apostolic See (c 455, §2) and promulgated in a manner to be determined by the conference (c 455, §3) See *ibid* , p 450

<sup>145</sup> *Ibid* , p 448 Concerning particular laws relating to temporal goods which are to be promulgated or which may be established by the diocesan bishop see chapter one

expected to exercise special vigilance over the administration of ecclesiastical goods, he is to respect the legitimate rights of persons.

The following chapter will study the specific content of the special instruction that ordinaries are to issue regarding the administration of ecclesiastical goods. Having examined the nature of the instruction to be issued, it is pertinent to discuss what specifically is to be addressed in it. The specific duties of administrators of ecclesiastical goods will then be discussed. The acts of administrators that may require permission of the ordinary will be identified.

## Chapter Four

### The Contents of the Diocesan Instruction for Administrators of Ecclesiastical Goods

#### Introduction

This last chapter intends to study the contents of the financial Instruction to be issued by the diocesan bishop for administrators of ecclesiastical goods subject to him (c. 1276, §2). The Instruction is intended to assist administrators of public juridic persons to observe properly the law on ecclesiastical goods. The principal way recommended by the Code for the diocesan bishop to achieve this task of vigilance over the proper administration of ecclesiastical goods is by the issuing of an Instruction for administrators subject to him (c. 1276, §2).<sup>1</sup> This Instruction has one general purpose, namely, “to allow the Church to fulfill the mission entrusted to it by Christ in accord with the appropriate Church and civil law.”<sup>2</sup> Having limited our dissertation so far to the diocese, we shall essentially be focusing on the financial instructions that could be issued by any diocesan ordinary (c. 134, §1).

For administrators to understand the norms of the Instruction, they need to be aware of the terminology often employed in relation to ecclesiastical goods. The subjects of the Instruction will be identified. After that, we intend to examine some basic principles in the drafting and interpretation of such an Instruction. These principles will help us to understand the overall importance of temporal goods in the life of the Church. The Instruction has as its purpose to explain and apply the laws that regulate the

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<sup>1</sup> In this chapter, we will use the expression “the Instruction” to refer to those special instructions of the diocesan ordinary mandated by canon 1276, §2

<sup>2</sup> THE CATHOLIC ARCHDIOCESE OF OTTAWA, *Administration Manual*, Ottawa, Catholic Archdiocese of Ottawa, Chancery Archdiocese of Ottawa (Ont.), 1996, p. 5 (= *Catholic Archdiocese of Ottawa, Instruction*)

administration of ecclesiastical goods. Since the task of administrators of ecclesiastical goods is what the Instruction intends to address, this study shall follow the schema laid out in previous chapters. The contents of the Instruction should explain how administrators are to acquire, retain/possess, and administer goods, and to enter into contracts involving goods, especially those relating to alienation and leases. The chapter shall also look briefly at other contracts concerning labor matters.

#### **4.1 — Terminological Clarification**

*Church* - Canon 1258 states that the term “Church” signifies the universal Church, the Apostolic See, and public juridic persons. In this light, when the word “Church” is mentioned it is to be understood as referring to a diocese (c. 373), a parish (c. 515, §3), and other entities that may have been granted public juridic personality.

*Ecclesiastical goods* - This term is used to express the temporal goods legitimately acquired by public juridic persons (c. 1256). In other words, property owned by the diocese or parish will be referred to as ecclesiastical goods. Goods belonging to physical or private juridic persons are not considered to be the ecclesiastical goods which the diocesan Instruction addresses.<sup>3</sup> Consequently, the temporal goods of lay societies such as the Saint Vincent de Paul Society, the Legion of Mary, and so forth are not ecclesiastical goods, and the Instruction does not relate to them.

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<sup>3</sup> A reply of the Apostolic See in 1921 makes it clear that properties of lay apostolic groups that are not moral persons are not ecclesiastical goods. The SACRED CONGREGATION OF THE COUNCIL was asked whether the property of the Society of Saint Vincent de Paul was to be considered ecclesiastical goods and, as such, subject to the jurisdiction of the residential bishop. The Congregation replied by stating that such a society was a lay society and that its property was not subject to the authority of the residential bishop. It nonetheless noted that the residential bishop has the right and duty of watching that nothing against faith or morals occur, and if any abuses occur, to correct and repress them. See *AAS*, 13 (1921), pp. 135-144, English translation in *CLD*, vol 1, pp. 714-715.

*Juridic persons* - The Code of Canon Law recognizes juridic persons as subjects of rights and obligations (c. 113, §2). They are similar to civil corporations; they exist without reference to the physical persons who operate on their behalf, and they are perpetual by nature (c. 120, §1). Since they are artificial constructs of the law, they are represented by an administrator (cc. 118; 1279, §1). Certain juridic persons are public because they act in the name of the Church, while others are private (c. 116, §1). Among public juridic persons we could mention:

- The conference of bishops (c. 449, §2);
- The diocese and other particular churches (cc. 373; 368);
- The parish (c. 515, §3);
- A religious institute, a province of an institute, and a canonically established religious house (c. 634, §1), etc.

One of the major consequences of obtaining public juridic personality is enjoyment of the right to acquire temporal goods for the purposes of fulfilling the mission of the Church (cc. 114, §2; 1254, §2). Therefore, the temporal goods of a juridic person are called ecclesiastical goods, and they are subject to the law of the Church—whether universal (cc. 1254-1310) or particular.

*Stable patrimony* - Ecclesiastical goods are broadly divided into stable and non-stable property. Stable patrimony refers to legitimately designated property intended to remain in the possession of the public juridic person for its security and to aid it to fulfill the principal purposes for which it was erected (cc. 1285; 1291). Generally, the following are recognized as stable patrimony for public juridic persons subject to the authority of the diocesan bishop:

- Goods which are part of the foundational property of the entity;

- Goods coming to the entity itself, if the donor has so designated them;
- Goods assigned to stable patrimony by the administrator of the public juridic person after obtaining the consent of the diocesan bishop or his delegate;
- All immoveable goods such as land, buildings, etc. lawfully designated as stable patrimony by administrators, and identified in the inventory required by canon 1283, 3<sup>o</sup>.<sup>4</sup>

*Diocesan bishop* - This term refers to a bishop who has the care of a diocese or its canonical equivalent (cc. 376, §1; 381, §1). One of the responsibilities of the diocesan bishop is to ensure that abuses do not creep into the administration of ecclesiastical goods of persons subject to him, and he especially does this by issuing special instructions for administrators of ecclesiastical goods subject to his authority (cc. 392, §2; 1276, §2).

#### **4.2 — The Subjects of the Diocesan Financial Instruction**

Instructions according to canon 34, §1, are given to those whose duty it is to see that laws are executed and oblige them in the execution of the law. The Code recognizes the following persons as administrators of ecclesiastical goods:

1. The diocesan bishop who places acts of ordinary administration including those which are more important in the light of the economic situation of the diocese, after he has received the counsel of the college of consultors and the diocesan finance council. He alone places acts of extraordinary administration in the diocese after he receives the consent of the college of consultors and of the diocesan finance council (c. 1277). He alienates diocesan property that belong to the stable patrimony of the diocese after he

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<sup>4</sup> See J A RENKEN, *Church Property A Commentary on Canon Law Governing Temporal Goods in the United States and Canada*, New York, The Society of Saint Paul/Alba House, 2009, p 225 (=RENKEN, *Church Property*), F GRAZIAN, "Patrimonio stabile istituto dimenticato" in *Quaderni di Diritto ecclesiale*, 16 (2003), pp 282-296

receives the consent of the college of consultors, the diocesan finance council, and those concerned if the value exceeds the minimum figure determined by the conference of bishops (c. 1292); if the value exceeds the maximum figure, the diocesan bishop also needs the consent of the Holy See;

2. The diocesan finance officer who carries out routine acts of ordinary administration in the diocese under the authority of the diocesan bishop (c. 494, §3);
3. The pastors of parishes who are to administer the ecclesiastical goods of the parish according to the norms of Book V (see c. 532);
4. The parochial administrator of a parish (c. 539), but always keeping in mind the transitory nature of his office (cf. c. 540, §3);
5. The priest mentioned in canon 541, §2 who assumes the governance of the parish when the pastor is impeded;
6. When several priests are entrusted with the care of a parish *in solidum*, the moderator mentioned in canon 517, §1 to represent the parish in all juridic affairs and the administrator of the ecclesiastical goods of the parish;
7. When the care of several parishes is entrusted to one pastor, he is the administrator of the ecclesiastical goods of all the parishes without prejudice to the just autonomy of each parish to acquire, possess/retain, administer and alienate its property (cf. c. 526);
8. Persons recognized as administrators by the statutes of autonomous pious foundations established in accordance with the provisions of canons 1303, §1, 1° and 1304;
9. Other administrators named in the law or approved statutes.

It is pertinent to note that the various bodies concerned with the proper administration of ecclesiastical goods would also be bound by the Instructions. In this light mention is to be made of the following:



1. The diocesan finance council that assists in the administration of the ecclesiastical goods of the diocese (c. 493);
2. The parish finance council that assists the pastor in the administration of ecclesiastical goods of the parish (c. 537);
3. The college of consultors that assists the diocesan bishop with matters of temporal goods (cc. 502; 1277);
4. The presbyteral council that assists the diocesan bishop with the governance of the whole diocese. The council deals with temporal goods in a number of instances as is noted in chapter two (c. 495).

#### **4.3 — General Principles for the Drafting and Application of the Diocesan Financial Instruction**

Administrators of ecclesiastical goods are to be aware of certain principles which are to guide them in their function of caring for ecclesiastical goods.<sup>5</sup> The first canon of Book V serves as a leading canon for the entire book.<sup>6</sup> Canon 1254 thus constitutes the basis for understanding everything concerning ecclesiastical goods. According to V.G. D'Souza, "it contains the hermeneutic key."<sup>7</sup> The first paragraph of canon 1254

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<sup>5</sup> A principle is defined as follows: "A fundamental truth or doctrine, as of law; a comprehensive rule or doctrine which furnishes a basis or origin for others; a settled rule of action, procedure, or legal determination. A truth or proposition so clear that it cannot be proved or contradicted unless by a proposition which is still clearer. That which constitutes the essence of a body or its constituent parts." In B.A. GARNER, *Black's Law Dictionary*, 9th ed., Minneapolis, West Publishing Co., 2009, p. 1313 (=GARNER, *Black's Law Dictionary*). In relation to temporal goods, V.G. D'SOUZA explains: "A principle is something that is first in a certain order, whether in law, art or music, upon which everything else follows. It refers to rules and standards of conduct and to basic sources from which consequences follow. The principles we are now referring to under the administration of ecclesiastical goods are related to each other and their listing is only exemplificative and not exhaustive. Moreover, c. 1254, §2 gives basic principles of purpose of ecclesiastical goods." In "General Principles Governing the Administration of Temporal Goods of the Church," in V.G. D'SOUZA (ed.), *In the Service of Truth and Justice: Festschrift in Honour of Professor Augustine Mendonça*, Bangalore, Centre of Canon Law Studies, Saint Peter's Pontifical Institute, 2008, p. 472 (= D'SOUZA, "General Principles Governing the Administration of Temporal Goods").

<sup>6</sup> L. ORSY, says: "A canon introducing a new chapter or a new topic in the Code can contain an important clue for the interpretation of all other canons in the same group." In *Theology and Canon Law: New Horizons for Legislation and Interpretation*, Collegeville, Minnesota, Liturgical Press, 1992, p. 56.

<sup>7</sup> D'SOUZA, "General Principles Governing the Administration of Temporal Goods," p. 468

articulates the innate right of the Church to own property, while the second underscores the principal purposes for ownership of temporal goods. Some authors have outlined general principles that should be noted and observed in the drafting of special instructions for the administration of ecclesiastical goods.<sup>8</sup> These principles constitute the background from which administrators should view their function. Some of these principles will now be discussed.

#### **4.3.1 —The Principle of *Communio* in the Administration of Ecclesiastical Goods**

The principle of *communio* simply implies that those who have more temporal goods should share with those who have less.<sup>9</sup> This applies to the diocese and to all other public juridic persons (cf. cc. 1263; 1271; 1274, §3).<sup>10</sup> *Communio* constitutes the fundamental principle for any proper interpretation of the Code of Canon Law. This is because the Code is to be assessed in the light of the ecclesiology of the Second Vatican

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<sup>8</sup> See J A RENKEN, “The Principles Guiding the Care of Church Property,” in *The Jurist*, 68 (2008), pp. 136-177 (=RENKEN, “The Principles Guiding the Care of Church Property”); D’SOUZA, “General Principles Governing the Administration of Temporal Goods,” pp. 467-499; L.Y. MEDROSO, “Administration of Temporal Goods of the Church and Transparency,” in *Philippine Canonical Forum*, 6 (2004), pp. 241-246 (=MEDROSO, “Administration of Temporal Goods”).

<sup>9</sup> See MEDROSO, “Administration of Temporal Goods,” p. 243.

<sup>10</sup> The Code provides two practical ways of manifesting this *communio* of goods. In canon 1271 it requests diocesan bishops to assist the Apostolic See with financial aid so that the latter can offer services properly to the entire Church. The second way envisioned by the Code is the optional opportunity for wealthier dioceses to establish a common fund from which to assist the poorer dioceses (c. 1274, §3). D’SOUZA writes: “Canon 1273 reminds us that the Roman Pontiff is the supreme administrator of the Church’s goods. The theological foundation of this canon is important. The public juridic persons have the right to acquire, administer and alienate goods because they live in communion with the Church and act in the name of the Church and are therefore in communion with the Roman Pontiff, the visible sign of Church unity and its guarantor. Precisely these requirements of unity and communion demand the observance of the canonical norms on the administration of Church goods. Moreover, the Roman Pontiff, as the supreme administrator and dispenser of all ecclesiastical goods, expresses his role as ‘the presider of charity.’ This communion of sharing of goods - through the Holy See to the poor churches and assistance to the Holy See by the richer churches - renders the hierarchical communion effective under the authority of the Roman Pontiff (cc. 331, 333; 336; 375, §2).” In “General Principles Governing the Administration of Temporal Goods,” p. 494.

Council which presents the image of the Church as *communio*.<sup>11</sup> Therefore, *communio* ecclesiology should also inform the administration of ecclesiastical goods.<sup>12</sup> Public juridic persons should show the Church as *communio* in their relationship with each other.<sup>13</sup> Only one mission from Christ is entrusted to the entire Church, which manifests itself in the particular churches and in relations among all the Christian faithful.<sup>14</sup>

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<sup>11</sup> JOHN PAUL II in *Sacrae disciplinae leges* says: "The instrument which the Code is fully corresponds to the nature of the Church, especially as it is proposed by the teaching of the Second Vatican Council in general and in a particular way by its ecclesiological teaching. Indeed, in a certain sense this new Code could be understood as a great effort to translate this same conciliar doctrine and ecclesiology into canonical language. If, however, it is impossible to translate perfectly into canonical language the conciliar image of the Church, nevertheless the Code must always be referred to this image as the primary pattern whose outline the Code ought to express insofar as it can by its very nature

"Among the elements which characterize the true and genuine image of the Church we should emphasize especially the following: the doctrine in which the Church is presented as the people of God (cf. dogmatic constitution *Lumen gentium*, chapter 2) and hierarchical authority as service (cf. *ibid.*, chapter 3); the doctrine in which the Church is seen as a *communio* and which therefore determines the relations which are to exist between the particular churches and the universal Church, and between collegiality and the primacy." In *Code of Canon Law: Latin-English Edition*, prepared under the auspices of the CANON LAW SOCIETY OF AMERICA, Washington, Canon Law Society of America, 1999, p. xxx (=CIC/83)

<sup>12</sup> CIC/83, p. xxx The extraordinary Synod of Bishops in 1985 reiterated this view when it said that "[t]he ecclesiology of *communio* is the central and fundamental idea of the [Second Vatican Council's] documents." In SYNOD OF BISHOPS, Final Report *Ecclesia sub verbo Dei mysteria Christi celebrans pro salute mundi*, 7 December 1985, Vatican City State, Libreria editrice Vaticana, 1985, English translation in *Origins*, 15 (1985-1986), p. 448. See also J.A. RENKEN, "'Duc in altum!' *Communio*: Source and Summit of Church Law," in *The Jurist*, 63 (2003), pp. 22-69.

<sup>13</sup> See RENKEN, "The Principles Guiding the Care of Church Property," p. 138. D'Souza underscores the value of *communio* in relation to temporal goods: "The Church's portrayal as the people of God and the ecclesiology of *communio* must reflect in the area of temporal goods. No part of the Church's administration can afford to forget this primary imagery of the Church, nay a theological principle. We cannot just speak of communion of faith in the abstract, we cannot just stop at the hierarchical communion, but we need to understand also the 'communion of goods' - which is best expressed in sharing - holding it for the purposes of the Church and its mission and administering it. This principle should touch on every aspect - whether it is acquisition, administration or alienation. Providing for the purposes of the Church manifests a sense of communion and participation in its mission." In "General Principles Governing the Administration of Temporal Goods," p. 494.

<sup>14</sup> "Indeed, according to the fathers ontologically the Church-mystery, the Church that is one and unique, precedes creation and gives birth to the particular churches as her daughters. She expresses herself in them; she is the mother and not the offspring of the particular churches. Furthermore, the Church is manifested temporally on the day of Pentecost in the community of the 120 gathered around Mary and the twelve Apostles, the representatives of the one unique Catholic Church and the founders-to-be of the local churches, who have a mission directed to the world. From the first century the Church speaks all languages. From the Church, which in its origins and first manifestation is universal, have arisen the different local churches as particular expressions of the one unique Church of Jesus Christ. Arising within and out of the universal Church, they have their ecclesiality in her and from her. Hence the formula of the Second Vatican Council: *The Church in and formed out of the churches (Ecclesia in et ex ecclesiis)* is inseparable from this other formula, *the churches in and formed out of the Church (ecclesiae in et ex Ecclesia)*. Clearly the relationship

Within this *communio* there exist public juridic persons whose ecclesiastical goods are used for the purposes of aiding the mission of the Church. As a result, the Instruction could exhort administrators to work toward mutual assistance among public juridic persons. They are therefore to be of one mind with the Church:

*Being of one mind with the Church implies a sense of solidarity [communio] with the diocese. No parish is a completely self-sufficient entity. It is one cell in a body which is the diocese and shares in the vitality and dynamism of the whole body. It is, therefore, necessary for each cell to do its share to keep the body in good spiritual, pastoral, cultural, apostolic, missionary and financial health*<sup>15</sup>

Assisting to pay off the debts of other public juridic persons or making donations to help fund a project when it seems reasonable to do so could be undertaken by administrators. Through this mutual help rendered to support the mission of Christ entrusted to the entire Church, the beauty of Christ's charity is clearly manifested.<sup>16</sup>

#### **4.3.2 — The Principle of Subsidiarity in the Administration of Ecclesiastical Goods**

The 1967 Synod of Bishops laid down principles for the revision of the Code of Canon Law.<sup>17</sup> One of these stated that the new Code should give more opportunity for

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between the universal Church and the particular churches is a mystery and cannot be compared to that which exists between the whole and the parts in a purely human group or society." In CONGREGATION FOR THE DOCTRINE OF THE FAITH, Letter on Certain Aspects of the Church as a Communion *Communio notio*, 28 May 1992, no. 9, in *AAS*, 85 (1993), pp. 838-850, English translation in *Origins*, 22 (1992-1993), pp. 108-112.

<sup>15</sup> *Catholic Archdiocese of Ottawa, Instruction*, p. 20.

<sup>16</sup> D'SOUZA notes: "The principle of communion expressed in the communion of goods, which could be considered under three aspects (a) the common use of goods in the times of need; faithful who have more are obliged to give to the needs of the church - it is an obligation of all the faithful - the clergy, laity and the religious as stated in c. 222; (b) the common life, though it is a part of the proper law of religious, is recommended to the clergy (c. 280); and (c) the common ownership of Church goods through juridic persons - in fact 'juridic person' (an aggregate of person or things) is the owner of Church goods and no one can treat such goods as their own individual private property." In "General Principles Governing the Administration of Temporal Goods," p. 495.

<sup>17</sup> See *Communicationes*, 1 (1969), pp. 77-85, especially pp. 80-81.

particular laws to be enacted by authorities lower than the Supreme Pontiff. “The importance of these particular laws is to be more accurately described in the new Code of Canon Law, especially in temporal administration, since the governance of temporal goods must be ordered for the most part according to the laws of each nation.”<sup>18</sup>

Subsidiarity is the seventh of the ten principles that guided the work of the revision. The principle highlights, among other things, the significance of the particular church and recognizes legitimate pluralism within certain boundaries.<sup>19</sup> The principle takes into account appropriate decentralization and adaptation related to governance. It upholds unity but not uniformity in ecclesial communion.<sup>20</sup> This principle implies two affirmations: (a) positively, the lower authority must have greater responsibility for accomplishing the task, and can and must have recourse to superior authorities, as when assistance is indispensable; (b) negatively, the superior authority must not interfere in the exercise of the responsibility of the inferior authority, unless it is beyond its competence.<sup>21</sup>

The Instruction is also in line with this principle of subsidiarity. The supreme legislator has acknowledged the rights of diocesan bishops, familiar with their local

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<sup>18</sup> *Communicationes*, 1 (1969), p. 81. The central committee of the Pontifical Commission for the Revision of the Code of Canon Law drafted these principles in April 1967. The Synod of Bishops met September 30-October 4, 1967. They voted in favor of Principle 5: 128 *placet*, 58 *placet iuxta modum*, 1 *non placet*. See *Communicationes*, 1 (1969), pp. 99-100.

<sup>19</sup> When the *coetus De bonis Ecclesiae temporalibus* published its 1977 *Schema* of proposed legislation, it stated its commitment to follow this principle. See PONTIFICIA COMMISSIO CODICIS IURIS CANONICI RECOGNOSCENDO, *Schema canonum Libri V: De iure patrimoniali Ecclesiae*, Vatican City, Typis polyglottis Vaticana, 1977, p. 3 (Preface). The preface is reprinted in *Communicationes*, 9 (1977), pp. 269-273. For an in-depth study of the principle of subsidiarity, see T.J. GREEN, “The Latin and Eastern Codes: Guiding Principles,” in *The Jurist*, 62 (2002), pp. 235-275.

<sup>20</sup> See D’SOUZA, “General Principles Governing the Administration of Temporal Goods,” p. 487.

<sup>21</sup> See *ibid.*

situations, to issue norms to regulate all aspects of administration of ecclesiastical goods. Furthermore, the Instruction should clarify the specific duties of different bodies that are to assist in the management of temporal goods. In this way, competencies are clearly defined, thereby giving opportunity for lower authorities to exercise their office. In the same spirit, administrators of ecclesiastical goods are to assign or delegate duties to lower authorities.

Given the fact that ecclesiastical goods serve the mission of the Church, administrators must be conscious of the fact that a proper management of temporal goods entails participation in the mission of the entire Church. In the same vein poor management of ecclesiastical goods constitutes an obstruction of the mission entrusted by Christ to the Church. One way to ensure proper administration is to allow various individuals or authorities to play their part in the administration of goods, and the Instruction is to mention this in its norms. It could, for instance, stipulate the instances when the various organs to assist the administrator are to act.

#### **4.3.3 — The Principle of Using Ecclesiastical Goods to Aid the Mission of the Church**

The purposes of the Church identified in canon 1254, §2 are likewise identified for public juridic persons who act *in nomine ecclesiae* to pursue the mission of the Church (cc. 114, §§1-2; 116).<sup>22</sup> The 2004 Directory for the Pastoral Ministry of Bishops instructs

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<sup>22</sup> RENKEN notes: “Several canons in *Book V* reflect the principle that ecclesiastical goods are owned for the proper purposes of the Church. Within the limits of ordinary administration, administrators are permitted to make donations for purposes of piety or Christian charity (but never from stable patrimony), which are proper purposes (canon 1285). Likewise, if any ecclesiastical good is alienated, if the proceeds are not invested for the advantage of the Church, they must be expended prudently for the intended purposes of the alienation (canon 1294 § 2), which would be for the proper purposes of the Church. When goods have been entrusted to a non-autonomous foundation of a public juridic person subject to the diocesan bishop, when the time has lapsed, the goods are to be remanded to the institute for clergy support (canon 1274 § 1) unless the donor has made a different determination (canon 1303 § 2); thus

diocesan bishops to ensure that goods are used as instruments in the service of evangelization and catechesis.<sup>23</sup>

How one spends one's money is an indicator of one's values. In this light, the budget prepared by administrators should make certain that ecclesiastical goods of public juridic persons are used for nothing else than the stated purposes. They are not to be accumulated for the sole purpose of profit. D'Souza cautions: "If the budget is planned simply with the goal of maximizing income and limiting expenditure, the danger is that the proper purposes of Church temporal goods will be ignored."<sup>24</sup> The Instruction helps administrators observe this principle by requesting them to report income and expenditures to the faithful. It should explain the manner and means by which the report will be structured and publicized.

#### **4.3.4 — The Principle of Collaboration in the Administration of Ecclesiastical Goods**

Collaboration means cooperating with another person in order to achieve a common goal or a common result.<sup>25</sup> According to Renken,

to collaborate means 'to work together' for a common purpose, whether as equals, as agents of a superior, as persons who give consent, or as persons who offer their counsel. Several examples of these kinds of collaboration are found throughout the code, particularly in Book V. Since ecclesiastical goods belong to the Church and not individuals, and must be used for the proper purposes of the Church, those charged with caring for them wisely collaborate with others.<sup>26</sup>

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assures that the generosity of the donor continues to the clergy, which is a proper ecclesiastical purpose." In RENKEN, "The Principles Guiding the Care of Church Property," p. 151

<sup>23</sup> See CONGREGATION FOR BISHOPS, *Directory for the Pastoral Ministry of Bishops Apostolorum successores*, no. 189, Vatican City, Libreria Editrice Vaticana, 2004, p. 207 (=DPMB).

<sup>24</sup> D'SOUZA, "General Principles Governing the Administration of Temporal Goods," p. 474.

<sup>25</sup> See GARNER, *Black's Law Dictionary*, p. 297.

<sup>26</sup> RENKEN, "The Principles Guiding the Care of Church Property," p. 152.

The Code provides for numerous bodies to assist the administrators of ecclesiastical goods. The law requires a juridic person to have its own finance council or at least two finance counselors to assist its administrator (cc. 1280; 537).<sup>27</sup> The supreme legislator has provided specific legislation through which the diocesan finance council is to assist the diocesan administration.<sup>28</sup> He also provides for other collaborative bodies in the diocese for this same purpose: the parish finance council (c. 537); the college of consultors (cc. 1290-1294; 1295); the presbyteral council (c. 1277); and possibly the diocesan and parish pastoral council (c. 511). The Instruction should direct administrators to help achieve fruitful collaboration by requiring them to brief the members of the various organs that assist them about the financial situation of the juridic person (cf. c. 1292, §2). D'Souza points out that, although this right to information is explicitly mentioned only in connection with the alienation of goods, it is nonetheless relevant to any exercise of an informed consultative or deliberative role by groups or individual members of the faithful.<sup>29</sup> After all, these groups are all commonly concerned about the affairs of the juridic person, even though their responsibilities and functions differ. The Instruction could, on the basis of canon 392, §2 (ensuring that abuses do not creep into the proper administration of ecclesiastical goods), mandate that the principle of canon 1292, §2 be applied to all important matters that concern the public juridic person. In this way the Instruction will be allowing the principle of collaboration in the administration of ecclesiastical goods.

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<sup>27</sup> The Code does not have specific norms for finance councils of religious institutes or other juridic persons; rather it leaves this to the individual statutes.

<sup>28</sup> See canons 492-493; 1263; 1277; 1280; 1281, §2; 1287, §1; 1292, §1; 1305; 1310, §2.

<sup>29</sup> See D'SOUZA, "General Principles Governing the Administration of Temporal Goods," p. 482



#### **4.3.5 — The Principle of Careful Vigilance in the Administration of Ecclesiastical Goods**

The term “vigilance” connotes watchfulness and alertness so that harm does not come to the goods under the care of the administrator.<sup>30</sup> It involves the various precautions and assessments of the opportunity for enforcement of the rights of the public juridic person. Although the Code speaks explicitly of the vigilance duty of the ordinary (c. 1276, §1), the administrator is nonetheless charged with the broad responsibility of vigilance in canon 1284, §1 where the Code states that all administrators are to perform their functions with the diligence of a good householder. A good householder must ensure that the goods of the house are kept safe. In fact, canon 1284, §2, 1° specifically says administrators are to exercise vigilance so that the goods entrusted to their care are in no way lost or damaged. The same canon adds that taking out insurance policies and civilly incorporating property to protect ecclesiastical goods constitute ways of exercising careful vigilance. The entire purpose of the Instruction is to ensure careful vigilance.

#### **4.3.6 — The Principle of the Observance of Civil Law in the Administration of Ecclesiastical Goods**

Canon 22 states a general principle for guiding administrators in their duties. It says that, whenever the Code yields to civil law, the latter is to be observed as long as it is

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<sup>30</sup> The term “vigilance” is defined as: “Watchfulness; precaution; a proper degree of activity and promptness in pursuing one’s rights or guarding them from infraction, or in making or discovering opportunities for the enforcement of one’s lawful claims and demands.” In GARNER, *Black’s Law Dictionary*, p. 1704.

not contrary to divine law or canon law (cf. c. 1290).<sup>31</sup> When the Code yields to civil law, it either recognizes the applicability and effects of civil laws or exhorts or requires the observance of the civil laws on a certain matter (which is also a way of recognizing their applicability in canon law).<sup>32</sup> Several canons relating to temporal goods exhort or require observance of civil law:

- institutes holding funds for the social security of clergy, for satisfying obligations toward persons other than clergy who serve the Church, for meeting various diocesan needs, and for assistance to poorer dioceses (canon 1274 §§ 3-4) “are to be so established that they also have recognition in civil law,” if possible (canon 1274, §5);
- the formalities of civil law are to be observed in dispositions *mortis causa* for the good of the Church, if possible; if these have been omitted, the heirs must be admonished of their binding obligation to fulfill the intention of the testator (canon 1299, §2);
- administrators are to take care that the ownership of ecclesiastical goods is protected by civilly valid methods (canon 1284, §2, 2°);
- administrators are to observe the prescripts of civil law (and those of canon law and of a founder, donor, or legitimate authority), lest harm come to the Church from non-observance (canon 1284, §2, 3°);
- administrators are to observe meticulously civil laws on labor and social policy in the employment of workers, according to the principles handed on by the Church (canon 1286, 1°);
- the competent ecclesiastical authority is to observe precautions prescribed by legitimate authority in acts of

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<sup>31</sup> The Code yields to civil law in canons 98, §2; 197; 1105, §2; 1290; 1500; 1714 and 1716. J.M. HUELS notes: “Since the taking of civil law obligations frequently involves a restriction on the free exercise of rights by persons operating in the canonical system, this list of canons is limited only to those that certainly canonize the civil law. Cf. c. 18.” In *Ecclesiastical Laws*, in *CLSA Comm2*, p. 85.

<sup>32</sup> See *ibid.*

alienation, lest harm come to the Church (canon 1293, §3; this “legitimate authority” can include civil legislation).<sup>33</sup>

Administrators of ecclesiastical goods must keep this principle in mind whenever they administer the goods of public juridic persons. Renken advises that administrators of ecclesiastical goods be well aware of civil laws on property, and that civil attorneys likewise be aware of the canonical laws.<sup>34</sup> The Instruction as far as possible should identify the various instances where civil law must be observed before administrators may proceed to act in the canonical sphere.

#### **4.3.7 —The Principle of Respect for the Intention of Donors in the Administration of Ecclesiastical Goods**

The seventh principle is born from natural law rather than positive ecclesiastical law. Yet, the supreme legislator has decided to give this natural law principle a juridic value by requiring administrators of ecclesiastical goods to observe meticulously the intention of donors. Several canons make reference to this principle.<sup>35</sup> The same principle is related to canons 531; 551, and 1267, §3 where the law presumes that goods given by the faithful to a pastor or an associate pastor or any other administrator is given to the public juridic person.<sup>36</sup> Furthermore, to guarantee that the intentions of donors are fulfilled, the law obliges administrators to observe the prescripts imposed by founders and donors; they must make sure that any revenue is collected and used

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<sup>33</sup> See RENKEN, “The Principles Guiding the Care of Church Property,” p. 167.

<sup>34</sup> See *ibid.*, p. 168.

<sup>35</sup> See canons 121-123; 326, §2; 616, §1; 706, 3°; 1284, §2, 4°; 1292, §2; 1300; 1310.

<sup>36</sup> D’SOUZA remarks: “If the administrator feels that there is another purpose that is better served than the purpose intended by the donor, then he requires the approval of the donor for the change of purpose.” In “General Principles Governing the Administration of Temporal Goods,” p. 478.

according to the purposes established by them (canon 1284 § 2, 4<sup>o</sup>); and they must set aside any excess revenue for the same (canon 1284 § 2, 6<sup>o</sup>). Moreover, to assure that the intentions of donors are protected and implemented in a timely way, the law requires that the proceeds of special collections are to be forwarded diligently to the diocesan curia (canon 1266) so they can be directed to their proper purposes.<sup>37</sup>

The canons on pious wills and foundations also highlight this principle of respect for the intentions of the donor (c. 1300). In most instances, goods given for a specific purpose cannot be altered by the administrator or ordinary; only the Holy See has the competence to change it for a just cause.<sup>38</sup> The only exception recognized in the law is one which denies the right of execution of a pious will to the ordinary (see c. 1301, §3). The law says that such intention be ignored since the ordinary's role as executor is precisely to assure the intention of the donor is fulfilled.<sup>39</sup> Consequently, administrators are obliged to refrain from accepting any donation with an attached condition contrary to the provisions of the Code. The *DPMB* instructs that diocesan bishops are to ensure

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<sup>37</sup> See RENKEN, "The Principles Guiding the Care of Church Property," p. 164. The same author writes: "Finally, when giving permission to alienate ecclesiastical goods which form the stable patrimony of a public juridic person subject to the diocesan bishop and whose value exceeds the minimum sum defined by law, the diocesan bishop must receive the consent of the diocesan finance council, the college of consultors, and 'those concerned' (*quorum interest*) (canon 1295 § 2; see canon 1291). 'Those concerned' may be the donors or founders of the ecclesiastical goods, or their heirs. Before giving their consent, 'those concerned' must have been 'thoroughly informed' (canon 1293 § 4)." In *ibid*

<sup>38</sup> See L. CHIAPPETTA, *Il codice di diritto canonico: commento giuridico-pastorale*, vol. 2, Bologna, Edizioni Dehoniane, 1996, p. 527. Canon 1310, §2 deals with a different situation, where express permission of the donor is not required because the situation envisaged is one where it has become impossible to carry out the obligations of the donor. The ordinary may diminish the obligations but always keeping in the best way possible to the intention of the donor. However, canons 1308-1310 make exceptions when it allows changes in pious wills, but the general principle remains, that is, all intentions of donors must be scrupulously followed and fulfilled.

<sup>39</sup> For a more thorough study of pious wills, see P. ZIELINSKI, "Pious Wills and Mass Stipends in Relation to Canons 1299-1310," in *Studia canonica*, 19 (1985), pp. 115-154.

that norms governing *mortis causa* gifts, donations and other intentions of donors are fulfilled by administrators.<sup>40</sup>

#### **4.3.8 — The Principle of Accountability and Transparency in the Administration of Ecclesiastical Goods**

Pope John Paul II underscored the importance of accountability and transparency: “[T]he priest [pastor] should also offer the witness of a ‘total’ honesty in the administration of the goods of the community, which he will never treat as if they were his own property, but rather as something for which he will be held accountable by God and his brothers and sisters, especially the poor.”<sup>41</sup> In line with the principle of accountability, the Code provides that the diocesan finance officer submit an annual report of income and expenditure to the diocesan finance council (c. 494, §4). Administrators are obliged to render an account to the faithful regarding the goods donated by the latter. The manner of rendering this account is to be determined by particular law. Although the law does not require full disclosure of all income and expenditure, a spirit of honesty and transparency should encourage all administrators to give full disclosure. The particular law of the diocese may appropriately mandate full disclosure of income and expenditure to the faithful. An honest report is useful in encouraging further giving on the part of the faithful.<sup>42</sup>

The Code provides for some specific ways by which administrators are to express accountability and transparency in their duties:

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<sup>40</sup> See *DPMB*, no. 188, p. 206.

<sup>41</sup> JOHN PAUL II, Post-Synodal Apostolic Exhortation *Pastores dabo vobis*, 25 March 1992, no. 30, Vatican City, Libreria Editrice Vaticana, 1992, p. 63.

<sup>42</sup> See D’SOUZA, “General Principles Governing the Administration of Temporal Goods,” p. 478.

- Canon 1298 forbids the alienation or leasing of ecclesiastical goods to persons related to their administrators through the fourth degree of consanguinity or affinity without the written permission of the ordinary, unless the goods are of little value;
- Canon 1292, §4 requires “full disclosure” to those whose counsel or consent is required for the acts of alienation; they must be informed of the economic condition of the juridic person alienating the goods, and of any previous alienations. If the asset is divisible and mention is not made of previous alienations, any permission for alienation is invalid (canon 1292 § 3);
- Canons 1267, §2 and 1302, §2 require full disclosure to the ordinary before he gives permission for a public juridic person to accept offerings of greater importance burdened by a modal obligation or condition (canon 1267, §2) or to accept a foundation validly (canon 1304 § 1); full disclosure must also be given when anyone accepts goods in trust for a pious cause (canon 1302 § 2).<sup>43</sup>

The principle of accountability and transparency is based on the fact that the administrator is not the owner of the property being administered. The goods are held in trust; they belong to the public juridic person who has legitimately acquired them (cc. 1258; 1256). It is, therefore, “the right” of the faithful who are “stakeholders” of the public juridic person to be informed of its income, expenditures and liability of the public juridic person.<sup>44</sup> This is one of the reasons why the *DPMB* stipulates: “The

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<sup>43</sup> See RENKEN, “The Principles Guiding the Care of Church Property,” p. 168. The same author notes: “The code expects that those caring for ecclesiastical goods be accountable and transparent in their service. In addition to canon 1377 mandating a *ferendae sententiae* penal sanction for the invalid alienation of ecclesiastical goods, the universal law contains several penal laws which may apply on the occasion of various actions involving financial malfeasance: canons 1389 § 1 (malicious abuse of authority); 1389 § 2 (negligent exercise of authority); 1391 (production and use of false documents); 1368 (perjury); 1375 (impeding the use of ecclesiastical goods); 1380 (simony); 1385 (illegitimate profit from Mass offerings); and 1386 (bribes). See also canons 1488-1489 (penalties for advocates and procurators who abuse their functions).” In *ibid.*, footnote 53, pp. 171-172.

<sup>44</sup> Some authors are of the view that the hierarchical structure of the Church limits accountability to superiors of administrators. In other words accountability and transparency does not mean everyone can demand the entire accounts: “The law has taken into account the hierarchical structure of the Church. In a democratic institution, the power of the official emanates from the people and is therefore accountable to people. The accountability is hierarchic too - priests are accountable to the bishops and the bishops to the pope.” In D’SOUZA, “General Principles Governing the Administration of Temporal Goods,” p. 478. MEDROSO expresses the same view: “The necessary consequence to this principle is: just as no pastor should allow his parishioners or a ‘self-appointed group’ thereof to dictate that he submits to

financial administration of the diocese [should be entrusted] to individuals who are competent as well as honest, so that it can become an example of transparency for other similar church institutions.”<sup>45</sup> The Instruction fulfills the requirement of transparency and accountability by mandating prompt reporting of income and expenditure of the public juridic person.

#### 4.3.9 — The Principle of Just Remuneration of Workers

Administrators are to ensure that the dignity of the human person is respected by paying just wages to workers (c. 1286, 2°). The 1971 Synod of Bishops addressed this issue when it declared: “If the Church must give witness to justice, she knows that

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their supervision and audit, except to the Ordinary of the place or the bishop, similarly neither should the bishop submit to the priests’ supervision and audit. The clergy is the cooperator of the bishop and not the business partner.” In “Administration of Temporal Goods,” p. 242. These authors seem to over stress the hierarchical structure of the Church in relation to accountability. The submission of reports to an authority does not necessarily connote subordination. After all, canon 208 stresses the fundamental equality of dignity and action of all Christ’s faithful. If the hierarchical structure should inform the right of the faithful to reports of income and expenditures, the Apostolic See will be accountable to no one on the basis of the supreme power enjoyed by the Roman Pontiff (c. 333). Yet, the Holy See often publishes its income and expenditures. It is true that the faithful only have a limited right to view the report of income and expenditure. This limitation is based on canon 1287, §2 which obliges administrators to render an account to the faithful concerning the goods they have offered to the Church, according to the norm of particular law. The faithful have a legal right to receive this report that concerns their donations. Renken observes: “The *coetus De bonis Ecclesiae temporalibus* rejected the proposal from some that financial reports give a complete accounting of all ecclesiastical goods, not only those which come from the offerings of the faithful. Although the *coetus* admitted that such full disclosure is praiseworthy where it can be done, it concluded that this should not be a requirement of the universal law since in some parts of the world the faithful may not understand the proper purposes for which the Church owns temporal goods. *Communicationes*, 12 (1980), p. 420. One observes that the norms issued by the USCCB [United States Conference of Catholic Bishops] on the implementation of canon 1262 call for disclosure of the monies generated in fund-raising appeals, and the purposes to which those funds are applied. The norms do not, however, require full disclosure of all the assets of the fund-raising group.” In *Church Property*, pp. 234-235, footnote 178.

The corresponding Eastern canon 1031, §2 requires administrators to make an annual report “publicly” (rather than “to the faithful”) on goods offered to the Church “unless the local hierarchy establishes otherwise for a grave reason.” *DPMB*, no. 189, p. 207 states. “It is opportune, moreover, that the diocesan community be kept informed concerning the financial situation of the diocese. Therefore, unless in a special case prudence suggests otherwise, the Bishop will see to the publication of the *financial reports* at the end of every year and at the conclusion of diocesan projects. Likewise, parishes and other institutions could do the same under the Bishop’s oversight.” This directory makes it clear that the act of giving a financial report is not necessarily contingent on the hierarchical structure of the Church.

<sup>45</sup> *DPMB*, no. 189, p. 206

whoever intends to speak to men of justice must first practice justice before them. Therefore, it is necessary above all to examine the Church's way of acting, her possessions, and the style of life."<sup>46</sup>

The Code, in various instances, obliges administrators to pay just wages to workers. Canon 231, §2 says that lay persons who perform some ecclesiastical service permanently or temporarily are to receive decent remuneration (*remuneratio*) for their personal and family needs, insurance, social security, and medical benefits.<sup>47</sup> The just remuneration of Church employees is directly addressed by canon 1286. Administrators are to be guided by the civil law provisions of the territory in which they are domiciled, always keeping in mind that civil laws contrary to canon law or divine law are not binding (c 22)<sup>48</sup> The Instruction should ensure the observance of this principle by establishing a general policy to regulate matters of labor and wages of those working for public juridic persons. The ordinary may establish a fixed rate but he has the obligation to ensure that administrators pay just wages.

#### **4.3.10 — The Principle of Protection of the Stable Patrimony of Public Juridic Persons in the Administration of Ecclesiastical Goods**

The Code presumes that every public juridic person has a stable patrimony (cc. 1285; 1291). In order to assure this, administrators are to ensure that the stable

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<sup>46</sup> SYNOD OF BISHOPS, document *De iustitia in mundo*, (November 30, 1971), in *AAS*, 63 (1971), p 933, English translation in *Origins*, 1 (1971-1972), p 394

<sup>47</sup> For further study of compensation and benefits for those serving the Church, see W P DALY, "Remuneration for Church Employees," in K E MCKENNA, L A DINARDO, and J W POKUSA (eds), *Church Finance Handbook*, Washington, CLSA, 1999, pp 53-59, D HERMANN, "The Code of Canon Law Provisions on Labor Relations," in *The Jurist*, 44 (1984), pp 153-193

<sup>48</sup> The phrase "according to the principles taught by the Church" does not demand conformity with immoral or unjust civil laws. If civil law, for example, requires health insurance that pays for abortion, the administrator would not be obliged to make such provision for Church employees



patrimony is properly designated. Public juridic persons exist to assist in fulfilling the mission of the Church (cc. 114, §2; 116, §1). Canon 114, §3 stipulates that the competent authority should confer juridic personality only on aggregates of things or persons when it is certain that they have the necessary means to fulfill their purposes. The stable patrimony of a public juridic person constitutes part of the necessary means needed to fulfill the purpose for which the juridic person exists. Consequently, administrators are to strive diligently to protect it.<sup>49</sup> The Instruction should mandate administrators to legitimately designate stable patrimony of public juridic persons subject to their governance.

#### **4.3.11 — The Principle of Legitimate Acquisition of Temporal Goods**

The Church claims the innate right to acquire temporal goods to use for its proper purposes (c. 1245, §1). The Code identifies numerous ways by which this innate right of acquisition is fulfilled (see cc. 1259-1272). The administrator of ecclesiastical goods acquires goods on behalf of the public juridic person (cc. 1279, §1; 1254, §1; 1259). He or she does this either by natural or positive law. Canon 1267, §2 establishes that offerings made to a public juridic person cannot be refused by the administrator without a just cause. In matters of greater importance the law requires the permission of the ordinary to refuse a gift.<sup>50</sup> A just cause could be the notoriety of the donor or the

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<sup>49</sup> See RENKEN, “The Principles Guiding the Care of Church Property,” pp. 172-176.

<sup>50</sup> RENKEN says: “The code does not define what is meant by a gift of ‘greater importance.’ Reference may be made to a similar phrase in canon 1277, which requires the counsel of the diocesan finance council and the college of consultors before the diocesan bishop places acts of administration ‘which are more important in light of the economic condition of the diocese.’ Once more here, the meaning of the phrase ‘more important’ is not explained. It is reasonable, nonetheless, to hold as a rule of thumb that the ‘matters of greater importance’ in canon 1267 would include refusing gifts whose value surpasses the minimum amount set by the conference of bishops for the alienation of ecclesiastical goods (see canon 1292 § 1). In addition, it may also happen that a gift is considered to be of greater importance

public suspicion of the source of wealth of the donor. The Instruction should spell out the various legitimate means of acquisition of temporal goods. In making such a determination, it would be helping administrators observe the norms on acquisition of temporal goods.

#### **4.3.12 — The Spiritual Principle Underlying the Administration of Goods**

The practice of the Church regarding the right to acquire and use temporal goods for the purposes of its mission has its roots in Sacred Scripture. The Old Testament identified tithes and first-fruits offerings as a means of the acquisition of goods (Gen. 28:22; Lev. 27:30; 32). The principal purposes for the acquisition of temporal goods in the Old Testament are the same as those identified in canon 1254, §2. The Old Testament mentions three distinct tithes for three distinct purposes. The first is for cultic or liturgical ceremonies (Gen. 28: 22; Lev. 27: 30; 32);<sup>51</sup> the second, to support priestly service (Deut. 18: 8-9, 20-21);<sup>52</sup> the third is for the poor (Deut. 26:12-13; Tob. 1:7-8).<sup>53</sup>

Jesus called his disciples to a sacrificial way of life and their generous alms were to provide for the needs of the assembly, the ministers of the Gospel, and the poor.

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if a certain notoriety is attached to it. Nothing prevents the local ordinary from defining the meaning of 'greater importance.' In the final analysis, the decision on the meaning of the term may rest with the person wishing to refuse the gift." In *Church Property*, p. 129, footnote 150.

<sup>51</sup> R.L. KEALY writes: "As a cultic offering the tithe was both a sign of adoration and the material for liturgical sacrifice. It was an act of adoration in that it was an offering to God of one-tenth of one's harvest and one's flock, symbolizing one's acknowledgment of the sovereignty of God, author of creation, who is the source of all the material blessing that one enjoys." In *Diocesan Financial Support: Its History and Canonical Status*, JCD thesis, Rome, Pontifical Gregorian University, 1986, p. 6 (=KEALY, *Diocesan Financial Support*).

<sup>52</sup> KEALY points out that "because the Levites were dedicated to a life of prayer and to service of God at the altar they were to be supported by the rest of the people so that they would not be distracted from their religious service by mundane concerns." In *ibid*, p. 8

<sup>53</sup> The third tithe was for the poor, the resident alien, orphans and widows.

Jesus even appointed a treasurer to administer donations and gifts received in the course of the ministry (Jn. 12:6). Jesus counseled that the way of perfection is to give everything to the poor (Mt. 28:16-22; Lk. 18:1-30). He also taught that the ministers were to rely on the offerings of the believers for what they needed (Mt. 10:8; Mk. 6:7-13).

The apostolic Church, we are told, held everything in common (Acts 2:44-45). Saint Paul encouraged the early Christians to make extra efforts to earn money to support the poor (Eph. 4:28; Acts 20:34-35). Support for sacred ministers was also identified as one of the reasons for giving an offering (Phil. 4:10-19). Saint Paul said that those who preach the gospel should live by the gospel (1Cor. 9:14), and communities in Asia Minor collected funds for the poor among the saints in Jerusalem (Rom. 15:26; 1 Cor. 16:1; Acts 2:44).<sup>54</sup> However, the obligation to give was moral and not legal - gifts were more of a free will offering (cf. 2 Cor. 9:5; Rom. 15:26-27).

Furthermore, during apostolic times, the contributions of the faithful were committed to the apostles (Acts 4:34-35). As the task of administering these goods became tedious and distracting from the duty of proclaiming the good news, the apostles decided to call for the selection of deacons to whom these responsibilities were to be entrusted (Acts 6:2-6). Herein we find the first appointment of administrators of ecclesiastical goods and the vigilance role of the apostles over the administration of these goods. Consequently, administrators of ecclesiastical goods must always be conscious of the fact that their function has its root in biblical sources. This dimension brings out the sacredness of this function and, therefore, calls for a religious and meticulous observance of the norms for administering temporal goods. The Instruction should emphasize as

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<sup>54</sup> See D'SOUZA, "General Principles Governing the Administration of Temporal Goods," p 468

much as possible the connection between temporal goods and the spiritual goal of these goods.

#### **4.4 — Stewardship Role of Administrators**

Canon 1273 refers to the Roman Pontiff as the supreme administrator and steward of all ecclesiastical goods (*supremus administrator et dispensator*). This same term “steward” (*dispensator*) applies to all administrators of ecclesiastical goods.<sup>55</sup> This notion of stewardship underscores the fiduciary relationship that the administrator has to the public juridic person. *DPMB* states that this principle of “the head of a household” refers to the conscientious and responsible way in which administrators are to conduct their affairs.<sup>56</sup> The second connotation of this stewardship role of administrators is that it unambiguously manifests that the goods are being held by one for the benefit of others. Stewards hold and manage property for the good of the owner. Finally, it also shows that the administrator has been charged by a higher authority to look after the goods of someone who cannot do so himself.<sup>57</sup>

As a result, administrators are to administer ecclesiastical goods with honesty and good will. One of the ways to ensure this is by adhering to the norms of the Instruction issued by the competent authority. The stewardship role of administrators entails

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<sup>55</sup> See F.G. MORRISEY, “Basic Concepts and Principles,” in K.E. MCKENNA, L.A. DINARDO, and J.W. POKUSA (eds.), *Church Finance Handbook*, Washington, The Catholic University of America, CLSA, 1999, p. 7 (=MORRISEY, “Basic Concepts and Principles”). The same author further explains that, as stewards, administrators are entrusted with a twofold duty: “[T]o administer the entrusted goods as a prudent householder would do (as mentioned in c. 1284, §1) and to give an account to the faithful of the goods received and the uses to which these were put (as prescribed in c. 1287, §2).” In *ibid*

<sup>56</sup> See *DPMB*, no. 189, p. 207.

<sup>57</sup> A.J. MAIDA, and N.P. CAFARDI, *Church Property, Church Finances, and Church-Related Corporations*, St. Louis, The Catholic Health Association of the United States, 1984, p. 62 (=MAIDA and CAFARDI, *Church Property*).

transparency. This open disclosure further helps to strengthen the faithful's confidence in the fact that their donations are properly managed. In order to avoid damages to property of public juridic persons, the Instruction should address the issue of possible negligence in administration.

Canon 1279, §1 grants the ordinary the right to directly intervene in the administration of ecclesiastical goods of public juridic persons subject to him. He does this when there is negligence on the part of the administrator. "Negligence is the failure to use such care as a reasonably prudent and careful person would use under similar circumstances."<sup>58</sup> It could also be an unwillingness to exercise reasonable care in administration leading to injury of the public juridic person or damages to its property. In order to ensure that an administrator's negligence does not damage temporal goods entrusted to their care, the Instruction should identify the following as constituting negligence of duty:

1. Misappropriation of funds, securities, supplies or other assets i.e., the use of property, assets, or money for purposes which are not of benefit or which are detrimental to the public juridic person;
2. Transactions outside of the competence or scope of the administrator or without proper consultation with the parish finance council or any other appropriate group recognized in its statutes or approval of the diocesan bishop;
3. The occurrence of theft of the assets or resources or conversion of the public juridic person assets or resources to personal use;
4. Expenditure of funds without appropriate written permission in excess of that which is permitted by the particular law of the diocese in accordance with canon 1281, §2;

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<sup>58</sup> B.A. GARNER, *Black's Law Dictionary*, 9<sup>th</sup> ed., Saint Paul/Minneapolis, West Publishing Co., 2009, p. 1133 (=GARNER, *Black's Law Dictionary*).

5. Failure to comply with the instructions and directives offered by those offices and persons delegated by the diocesan bishop to assist in the financial, business, and professional operations of the public juridic person;
6. Entering into or defending litigation without approval by the diocesan bishop;
7. Holding oneself out to third parties with implied authority to transact business beyond the actual authority granted;
8. Loaning or borrowing of funds without the written permission of the diocesan bishop;
9. Acting in a manner which does not fulfill the requirements of canons 1284 and 1286 including, but not limited to, failure to safeguard the assets, goods and revenues of the public juridic person, to keep well-ordered books of receipts and expenditures, to use the resources of the church in accord with the wishes of the donor(s) and to comply with civil law except where it violates divine law;<sup>59</sup>
10. Impropriety in the handling or reporting of money or financial transactions;
11. Breach of fiduciary duty, including disclosing confidential information to outside parties;
12. Seeking anything of value from contractors, vendors or persons providing (or seeking to provide) services/materials to an (Arch)diocesan entity [or any other public juridic person] for one's or another's personal benefit;
13. Accepting anything of value from contractors, vendors or persons providing (or seeking to provide) services/materials to an (Arch)diocesan entity [or any other public juridic person] for one's or another's personal benefit, in violation of the (Arch)diocesan Conflict of Interest Policy;
14. Bribery;
15. Inappropriate use of computer systems or other property of the (Arch)diocesan entity [or any other public juridic person];

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<sup>59</sup> See M.J. O'BRIEN, "Instructions for Parochial Temporal Administration," in *Catholic Lawyer*, 41 (2001), p. 140 (=O'BRIEN, "Instructions for Parochial Temporal Administration").

16. Unauthorized destruction or removal of records, furniture, fixtures and equipment;
17. Intentional falsification of, or misrepresentation in financial statements; and
18. Any dishonest act.<sup>60</sup>

#### **4.5 — Change of Administrators of Ecclesiastical Goods**

The Instruction should outline practical ways to ensure the protection of ecclesiastical goods on the occasion of the transfer or removal of an administrator. The most common public juridic person subject to the diocesan bishop is the parish. The diocesan bishop must, therefore, observe the laws regarding transfer and removal of a pastor (cc 1740-1752). Furthermore, he is to ensure that ecclesiastical goods are protected during this process (cc. 392, §2; 1276, §1). The Instruction could address this issue in the following manner. In order to provide smooth administrative transition and protection of ecclesiastical goods whenever there is a change of pastor, the following norms are to be observed:

1. When a pastor is transferred to another parish or office, before leaving the parish, he shall examine the parish inventory and sign and date it. This shall correspond with the copy on file at the chancery. He shall also submit a copy of personal property in the rectory being taken with him as he moves;
2. A financial report shall be prepared and forwarded to the finance office or episcopal vicar for administration covering the period of the fiscal year that has elapsed. This report shall be verified and signed by the parish finance council;
3. The incoming pastor is to receive a copy of the inventory, verify that the items listed are truly in the parish, and sign it anew;

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<sup>60</sup> Nn 10-18 is taken from the USCCB website <http://www.usccb.org/finance/>

4. Separate accounts shall be kept for the remainder of the fiscal year;
5. The new pastor, upon assuming office, shall request to have an audit of the parish finances;
6. Any changes in the parish personnel should be discussed first with the episcopal vicar for administration and the diocesan lawyer. No new person may be employed, except in accordance with the diocesan instruction on employment.<sup>61</sup>

#### 4.6 — Functions of Administrators of Ecclesiastical Goods

The Code assigns specific responsibility to the administrator with regard to ecclesiastical goods (c. 1284). The administrator is to fulfill these functions with the diligence of a good householder (*diligentia boni patrisfamilias*). The DPMB says it is the duty of the diocesan bishop to organize the administration of ecclesiastical goods in the diocese.<sup>62</sup> It also says he should do this through suitable instructions in accordance with universal and particular laws. The Instruction should state the specific responsibility<sup>63</sup> of the administrator as follows:

1. The administrator has the obligation and authority to engage in acts necessary for the ordinary administration of the public juridic person. He or she has no right to engage in any act of extraordinary administration without the prior written permission of the diocesan bishop (c. 1281, §1);
2. To exercise vigilance over parochial property so that it is not lost or damaged. This involves acquiring adequate insurance

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<sup>61</sup> See *Catholic Archdiocese of Ottawa, Instruction*, pp 48-49

<sup>62</sup> See DPMB, no 188, p 205

<sup>63</sup> Responsibility is the state of being answerable for an obligation. Responsibility presumes skills, judgment, ability and capacity. The responsibility of administrators of ecclesiastical goods is to acquire, protect and use goods for the purposes for which the public juridic persons exists



for the parish, insofar as necessary (cc. 1284, §2, 1°; 1284, §2, 2°);

3. To ensure debt reduction/elimination, i.e., to pay interest due on a loan or mortgage at the stated time, establish a debt reduction schedule so that the debt itself is eliminated in a timely fashion (c. 1284 § 2, 5°);
4. To place acts of ordinary administration which are to be in accord with an approved annual budget and are necessary for the day-to-day operation of the public juridic person, including the payment of outstanding indebtedness in the ordinary course of administration; the hiring, payment of reasonable compensation to, and termination of employees necessary or desirable for orderly operation of the public juridic person in line with diocesan instructions (cc. 1284, §2; 1286;);
5. To enter contracts and agreements regarding routine maintenance, provided that no contract or agreement will commit or oblige the public juridic person in excess of an amount determined by the diocesan bishop from time to time without the prior review of the expenditure by the parish finance council or its equivalent (c. 1290);
6. To prepare an annual report of administration in cooperation with the parish finance council (c. 1284, §2, 8°). This report would address such issues as act of extraordinary administration, acts of alienation, leases, litigation, etc.;
7. To render an accurate account to the faithful who have contributed to the support of the Church (c. 1287, §2);
8. To keep well organized books of income and expenditures (c. 1284, §2, 7°);
9. Before leaving office and not less frequently than five years from the date of his appointment as pastor, to prepare and certify an accurate and detailed inventory; within 30 days from its completion, the Inventory will be submitted to and reviewed by the parish finance council or its equivalent in law, and, within 10 days from the date the parish finance council has completed its review, the pastor will deliver a copy of the inventory to the diocesan bishop. A copy of the inventory will be retained in a secure manner in the books and records of the parish. The inventory will be submitted in a timely manner to the subsequently appointed pastor or parish

administrator for his review, updating, correction and signed approval (c. 1283);<sup>64</sup>

10. To make donations for purposes of piety or Christian charity from movable goods which do not belong to the stable patrimony of the parish, but only within the limits of ordinary administration (c. 1285);
11. To alienate ecclesiastical goods following the established canonical procedure;
12. To review the activities of any lay apostolate group in the parish and verify cash balances of bank accounts. Annually to meet with such groups to review the reporting of the past year's activities and a review of the budget for the coming year. To assess the accounting practices and internal control procedures in use to ensure compliance with diocesan policies [instruction]. To review the activities of such groups to ensure that they are not jeopardizing the tax-exempt status of the parish.<sup>65</sup>

Some of the various ways through which the Instruction could address the functions of the administrator in acquiring, administering and alienating goods can now be examined.

#### **4.6.1 — The Acquisition of Goods**

The Code provides several means of acquisition of temporal goods for public juridic person (cc. 1262-1274).<sup>66</sup> Some of these pertain only to the Holy See (c. 1271) or

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<sup>64</sup> See O'BRIEN, "Instructions for Parochial Temporal Administration," pp. 119-120.

<sup>65</sup> See "Diocesan Financial Issues," in USCCB website <http://www.usccb.org/finance/> (= <http://www.usccb.org/finance/>)

<sup>66</sup> The USCCB warns administrators against using illegitimate means to acquire temporal goods for the Church: "All clergy, religious, lay employees and volunteers (representatives) of the (Arch)diocese, its parishes (and parish schools), (Arch)diocesan high schools and other (Arch)diocesan entities must, at all times, comply with all applicable laws and regulations. The (Arch)diocese will not condone the activities of those who achieve results through violation of the law or unethical or immoral business dealings. This includes any payments for illegal acts, indirect contributions, rebates, bribery and other similar types of activity. All conduct should be clearly above the minimum standards required by law and expected by the Church. Accordingly, all representatives must ensure that their actions cannot be interpreted as being, in any way, in contravention of laws, regulations or principles governing the activities and mission of any

only to the diocese (c. 1263) while the others primarily concern parishes and other public juridic persons. Since the scope of the Instruction is limited to the subjects of the diocesan bishop, it must focus only on these persons. In this light the Instruction should explain the manner of implementing the canons on acquisition of goods. It should for instance say:

1. On Sundays and holy days of obligations, there is to be only one collection during the Mass, i.e., the offertory collection which has definite liturgical meaning (c. 1262);<sup>67</sup>
2. Collections are to be used only for the purposes for which they were taken up (c. 1287, §3);
3. Collections are not to be taken up at funerals. However, where such customs exist, the collection made on such occasion must be handed over to the parish for the celebration of Masses for the deceased;
4. Special collections are to be made in accordance with canon 1266. These special collections are to be taken up whatever way the pastor deems suitable for the parish. The customary form is to hold a second collection after the reception of communion. Although, there is no mandated target set for parishes, pastors are to encourage the faithful to generously respond to such special appeals. The list of special collections are as follows:
  - a. diocesan and missionary works (c. 791, 4°);
  - b. development and peace;
  - c. the Holy Land;
  - d. vocation works;
  - e. pastoral works of the Holy Father (c. 1271);
  - f. any others that circumstances may dictate and approved by the local ordinary (c. 1266);

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(Arch)diocesan entity Representatives that are uncertain about the application or interpretation of any legal requirements should refer the matter to their supervisor, who, if necessary, should seek the advice of the (Arch)bishop's Office or his designee(s) ” See <http://www.usccb.org/finance/>

<sup>67</sup> See SACRED CONGREGATION FOR DIVINE WORSHIP, *Ordo missae edition typica altera*, Polyglottis Vaticanis, 1975, no. 49, *General Instruction of the Roman Missal*, trans. ICEL, Washington, 1977 (=GIRM)

5. Any other collection not listed above must not be taken up during Mass without the permission of the local ordinary (c. 1266);
6. In accordance with canon 1267, §2 the faithful are to be informed of the purpose of any collection to be made and the amount generated from such a collection. The diocesan finance officer is responsible for communicating the entire amount collected in the diocese to all pastors who are subsequently obliged to do same to their parishioners;
7. Income from leased property, investment, or non-autonomous foundations are revenue for the parish or diocese.<sup>68</sup>

#### 4.6.1.1 — Appeals and Fund Raising/Special Collections

The preferred and common means of acquisition of temporal goods is through appeals made to the faithful to respond to their obligation to support the Church (cc. 1261; 1262; 1266; 222, §1).<sup>69</sup> One of the regular ways to achieve this aim is through regular Sunday offerings that take place during the Mass.<sup>70</sup> With regard to appeals for special purposes, the administrator is to follow the law established by the conference of

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<sup>68</sup> See *Catholic Archdiocese of Ottawa, Instruction*, pp. 50-51.

<sup>69</sup> See *Communicationes*, 12 (1980), p. 402, 16 (1984), pp. 28-30. The Church's preferred way of acquiring temporal goods as stated by the *coetus* drafting the canons on temporal goods is voluntary offerings, obligatory taxes are considered an extraordinary means. The principal types of voluntary offerings noted in the Code are: appeals (canon 1262); begging for alms (canon 1265); spontaneous offerings (canons 1261 and 1267); offerings made upon the occasion of a pastoral service (canon 1264); offerings made in response to a special appeal (canon 1266). See D. TIRAPU, "The Acquisition of Goods," in *ExComm*, vol. IV/1, p. 52 (=TIRAPU, "The Acquisition of Goods").

<sup>70</sup> Authors hold different views as to what canon relates to regular Sunday offerings for the support of the Church. R.T. KENNEDY is of the view that regular Sunday offerings fall under canon 1262. "The earlier CLSA translation, which rendered *subventiones rogatas* as 'collections,' led to a truncated understanding of this canon as having to do with offerings taken up in churches. Collections in churches are the subject matter of c. 1266." In "The Temporal Goods of the Church, [cc. 1254-1310]," in *CLSA Comm2*, pp. 1461-1462. RENKEN, however, holds that regular Sunday offerings do not fall under the provision of canon 1262. "One observes, however, that canon 1266 is about *special* collections, not those given on a regular basis." In *Church Property*, pp. 71-72.

bishops in accordance with canon 1262.<sup>71</sup> Fund-raising is to be motivated by a theologically sound basis so that the faithful may give for the love of God and neighbor.

Canon 1265 establishes another avenue for acquiring temporal goods. The law requires the written permission of one's own ordinary and the local ordinary (if these are different) before any private person (physical or juridic) can beg for alms for any pious or ecclesiastical purposes. In granting the written permission, the ordinary and the local ordinary are to be guided by the particular law of the conference of bishops where the alms will be collected (c. 1265). Consequently, associations of the faithful that have no public juridic personality will have to obtain written permission from the diocesan bishop, the vicar general, or the competent episcopal vicar. This requirement of written permission does not apply to public juridic persons.

Special collections made in accordance with the prescriptions of canon 1266 are to be forwarded diligently (*sedulo*) to the diocesan curia (c. 1266). The proceeds are to be sent in their *entirety* without delay to the curia; failure to send all the proceeds violates the intention of the donor.<sup>72</sup> Only local ordinaries can order this collection in churches and oratories habitually open to the faithful.<sup>73</sup> The collection must be for a determined purpose, which must always be in accord with the principal purposes for which the Church owns ecclesiastical goods (c. 1254, §2). However, a multiplicity of special

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<sup>71</sup> The Code makes a distinction between appeals and special collections. Canon 1262 relates to appeals (*subventiones rogatas*) for free-will offerings and fund raising, while canon 1266 concerns special collections.

<sup>72</sup> See KENNEDY, "The Temporal Goods of the Church, [cc. 1254-1310]," in *CLSA Comm2*, p. 1468.

<sup>73</sup> KENNEDY observes: "Among the several differences between ordering a collection, which can be done by any local ordinary, and imposing a tax, which can be done only by the diocesan bishop, the most significant is the absence of required consultation when mandating the taking up of a collection. This is no doubt due to the difference in nature between a noncoercive collection, in which no preset amount is designated as due, and a tax, which, of its nature, is coercive." In *ibid*.

collections taken up during liturgical celebrations can lead to a high level of frustration and disaffection among the faithful. Furthermore, the placing of a mandatory quota or target for a special collection is contrary to the norm of canon 1266.<sup>74</sup> Such a demand transforms the collection into a tax, which only the diocesan bishop can impose after consultation with the diocesan finance council and the presbyteral council (c. 1263). Other administrators of public juridic persons cannot impose a tax on the faithful subject to them. The pastor of a parish, for example, cannot impose a tax on the parishioners.<sup>75</sup>

In order to properly regulate fund-raising activities, the Instruction may stipulate that fund-raising is generally understood as an activity that involve collections taken up in the Church or from games played on the Church property for the intention of making money for the parish or public juridic person. They may also include special projects outside the parish confines wherein money is raised for the parish. Fund-raising activities shall be regulated according to the following norms<sup>76</sup>:

1. As provided for in canon 1265, §1 no physical person can begin a fund-raising activity for any pious or ecclesiastical purpose without receiving written permission from the local ordinary;
2. Any fund-raising in the diocese that is not one of those listed as special collection in this Instruction requires the permission from the office of the episcopal vicar for

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<sup>74</sup> See *ibid*

<sup>75</sup> It is our view that the diocesan bishop imposes the tax of canon 1263 through a general executive decree of canon 32. This is because the general decree promulgated in accordance with canon 1263 will only be defining the manner of application of the canon. Furthermore, since the canon envisions a repetition of the process if the formula for taxation is to be changed, it would not be appropriate to frequently promulgate particular law.

<sup>76</sup> In the United States, the particular law implementing the discipline of canon 1262 applies the canon to special fund-raising appeals. See <http://uscgb.org/norms/1262.htm>

administration or any other person delegated by the diocesan bishop to grant such permission. Excluded from this prescriptions are annual parish feasts and parish harvest;

3. The purpose of the fund-raising must be clearly stated before the permission by the episcopal vicar for administration is granted;
4. The permission to raise funds carries with it the obligation to provide a periodic report to the office of the episcopal vicar and the faithful who may have contributed (c. 1287, §§1-2);
5. Any change in the use of the funds collected must be approved by the episcopal vicar, who is to ensure that the donors have been informed of the reason for the change of intention;
6. Funds raised by any approved means shall be kept separate from the general finances of the parish, work, or diocese. They are to be considered restricted funds to fulfill the purpose for which they were bequeathed;
7. Any civil law relating to fund-raising activities must be carefully observed.<sup>77</sup>

#### **4.6.1.2 — Mass Offerings**

Mass offerings, strictly speaking, do not constitute a means of acquiring temporal goods for public juridic persons. However, interest from Mass offerings entrusted to an institution is acquired by the public juridic person. The law provides that the offerings given by the faithful to apply Masses for their intentions is a contribution to support priests and the good of the Church (c. 946).<sup>78</sup> The provincial bishops in a

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<sup>77</sup> See *Catholic Archdiocese of Ottawa, Instruction*, pp. 73-74.

<sup>78</sup> PAUL VI wrote concerning Mass offering of the faithful: "There has been a strong tradition in the Church that the faithful, led on by a religious and ecclesial awareness, should conjoin in a kind of sacrifice of themselves, as it were, with the Eucharistic sacrifice in order that they might more actively participate in it. In this way, they, on their part, provide for the needs of the Church, and especially for the support of her ministers. This is done in keeping with the spirit of our Lord's words: *The laborer deserves his wages* [Lk 10:7], which the Apostle Paul calls to mind in his first epistle to Timothy (5:18) and in his first epistle to the Corinthians (9:7-14). This practice whereby the faithful associate themselves more closely

council or a meeting are to determine through a decree the offering to be given for the celebration of the Mass (c. 952, §1). This general decree binds the whole province; and so it must be observed also by administrators. The Instruction should state:

1. Priests are to retain only one Mass offering per day, with the exception of Christmas, when they are permitted to retain as many as three;
2. The amount of the offering shall be in accordance with the decree issued by the provincial bishop. However, any priest may accept a lesser amount or nothing at all due to the condition of the faithful (c. 945, §2), and where there is no provincial decree the custom of the diocese shall be observed (c. 952, §2);
3. Offerings received for Masses without indication of the number of Masses to be celebrated are to be computed in accordance with the decree established in the donor's domicile unless the intention of the donor is legitimately presumed to be otherwise (950);<sup>79</sup>
4. Universal law allows a priest to offer a Mass for "collective intentions" only twice a week but on the condition that the faithful making the individual offerings agree to the Mass being celebrated with the intentions of others; the priest may retain only the amount for a single Mass set by the provincial

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with Christ offering Himself as victim and thereby reap a more abundant supply of fruits, has not only been approved by the Church but also promoted by it since the Church looks upon that practice as a sign of the union of the baptized persons with Christ, as well as of the member of the faithful with the priest who performs his ministry for benefit of the said faithful." In *Motu proprio Firma in Traditione*, in *AAS*, 66 (1974), p. 308, English translation in *CLD*, vol. 8, p. 530.

<sup>79</sup> Concerning offerings left to parishes in a will for the celebration of Masses F.G. MORRISEY says: "In order to provide for respect of the intentions of the donors, yet at the same time take into account our theology in relation to the infinite value of the Mass, in some dioceses bishops have established a policy to the effect that if the number of Masses is not specified in the will, and if the amount available for the celebration of Masses is more than thirty times the diocesan offering, then the sum is to be divided by thirty (in line with the former 'month's mind Masses'); the celebrant receives the ordinary offering in the diocese, and the rest goes to the parish or institution that was the beneficiary. Such a policy would have to be issued before a will is received and the executor notified accordingly when they present the request for Masses. If the number of Masses is indicated in the will and the bequest is accepted, then, of course, the intention has to be honored. At times, a percentage of what remains is taxed to provide for the continuing education of priests, and so forth." In "Acquiring Temporal Goods for the Church's Mission," in *The Jurist*, 56 (1996), p. 55 (=MORRISEY, "Acquiring Temporal Goods for the Church's Mission"). For another canonical opinion regarding an indeterminate number of Masses see J.M. HUELS, "Indeterminate Mass Obligations," in *CLSA, Roman Replies and Advisory Opinions*, J. KOURY, and S.M. VERBEEK (eds.), Washington, CLSA, 2007, pp. 79-80.



bishops, and he is to remit the excess money to the ordinary as specified in canon 951, §1 (see c. 946)<sup>80</sup>;

5. Priests with surplus stipends are to forward them to other priests (see canon 955) or to their own ordinary (canon 956).

#### 4.6.1.3 — The Offerings Given to Administrators

The discipline of canons 531 and 1267, §1 presumes that offerings given to administrators of any public juridic person have been given to the juridic person itself, unless the contrary is established. Consequently, sacramental offerings given to the administrators are presumed to have been given to the parish. The canons allow for overturning the presumption when, in the case of voluntary offerings, the intention of the donor to give a gift to the administrator is certain. The amount of the offering decreed by the provincial bishops and received in a parish on the occasion of administering a sacrament or sacramental is to be placed in the general parish revenue account, even if someone not assigned to the parish performs these functions. These norms of canons 531 and 1267, §1 apply also to parochial vicars (see c. 551) and any other administrator of public juridic person.<sup>81</sup>

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<sup>80</sup> See CONGREGATION FOR THE CLERGY, Decree, *Mos iugiter*, 22 February 1991, in *AAS*, 83 (1991), pp. 443-446, English translation in *Origins*, 20 (1990-1991), pp. 705-706. This decree was approved *in forma specifica* by the Roman Pontiff on 22 January, 1991, so the norms in it are true laws. For an extensive commentary on *Mos iugiter* see: J. MANZANARES, "De stipendio pro missis ad intentionem 'collectivam' celebratis iuxta decretum 'Mos igitur,'" in *Periodica*, 80 (1991), pp. 579-608.

<sup>81</sup> See RENKEN, *Church Property*, p. 115. Canon 531 says after hearing the presbyteral council, the diocesan bishop is competent to establish norms (1) for the allocation of these offerings and (2) for the remuneration of the clerics who perform the related functions. RENKEN explains: "There are no restrictions in the law on either the allocation of the offerings or the remuneration of the clerics. Regarding the allocation of the offerings, some dioceses simply retain them as part of ordinary parish revenue or assign them to one of the institutes mentioned in canon 1274. Regarding the remuneration of the clerics, the code does not specify that the diocesan norms apply only to visiting clergy: the norms may also apply to those clergy assigned to the parish (see canon 551). Nonetheless, it appears in keeping with the spirit of the code that clerics do not rely on sacramental offerings and stole fees for their sustenance but rather receive sufficient remuneration to provide for their needs (see canon 281 § 1; see *Presbyterorum ordinis*, 20)." In *ibid.*

The Code addresses the issue of offerings made on the occasion of the celebration of the sacraments and sacramentals (c. 1264, 2°). The provincial bishops are to set the limit on the offerings (*oblata*) given on this occasion. These are commonly called “stole fees.” They are not taxes but offerings whereby the faithful contribute to the support of the Church. The money goes to the public juridic person and not to the administrator who performed the task. The Instruction may restate this means of acquisition of goods.

#### **4.6.1.4 — Goods Derived from the Modification of Parishes**

The merger, division and suppression of a parish involve temporal affairs. The Code of Canon Law provides norms for the distribution of the goods of the parish on such occasions (cc. 121-123). The Instruction should explain to administrators that the norms of these canons will be observed whenever public juridic persons are divided or amalgamated.<sup>82</sup>

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<sup>82</sup> The Instruction is a means whereby the ordinary exercises vigilance over the public juridical persons subject to him. Therefore, it would be issued for administrators subject to his authority. When a public juridic person is divided, determinations about the goods are made by “the ecclesiastical authority competent to make the division” (c. 122), which in the diocese would always be the bishop or a vicar given a special mandate. Therefore, it is highly unlikely that the ordinary would regulate this matter (a matter reserved to himself) in the Instruction issued for his subjects. Also, the Instruction conveys general norms for all cases; but canon 122 clearly indicates that the allocation of these goods is to be determined on a case-by-case basis: “with due proportion in equity and justice, after all the circumstances and needs of each have been taken into account.” These standards of administrative discretion certainly bind the ordinary to consider all the details of the particular case before making a determination.

As for canon 121 (unions), the law itself determines the allocation of the goods: “. . . this new juridic person obtains the goods and patrimonial rights proper to the prior ones.” The Instruction could at most explain the application of this in the diocese; but again, the Instruction is for the administrators subject to the ordinary, not the ordinary himself. Therefore, the Instruction should at best make reference to the fact that administrators should be aware that the ordinary will abide by the provisions of canons 120-123 when public juridic persons are divided or merged with one another.

#### **4.6.1.5 — Prescription (cc. 197-199, 1268-1270)**

Temporal goods may be acquired through prescription. The Code provides norms regulating prescription in the Church (cc. 197-199; 1268-1270); and these norms demand that the civil law of the place be taken into account. The Instruction may explain and apply these norms.

#### **4.6.2 —Administration of Goods**

The right to administer the goods of a public juridic person is considered an essential element of ownership (c. 1254, §1). The law, therefore, provides norms for the proper administration of goods (cc. 1273-1289). The Code does not define the act of administration. Authors have generally agreed that administration constitutes those actions directed to preserving Church property, improving property or resources, managing the collection and distribution of income; keeping accurate records and properly reporting income, and expenses to the faithful and the competent authority.<sup>83</sup>

The competent person to place acts of administration is the administrator of the public juridic person recognized by universal or particular law or the statutes. Universal law, as already noted above, recognizes as administrators of ecclesiastical goods the Roman Pontiff, the diocesan bishop or his canonical equivalent, the diocesan finance officer, the pastor of a parish or his canonical equivalent (cc. 118; 1273; 1277; 494, §2; 532). Each of these persons can place acts of administration according to their

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<sup>83</sup> See V DE PAOLIS, "I beni temporali nel Codice di diritto canonico," in *Monitor ecclesiasticus*, 111 (1986), pp 144-145 (=DE PAOLIS "I beni temporali"), MORRISEY, "Basic Concepts and Principles," p 7, J J MYERS "The Temporal Goods of the Church," in *CLSA Comm*, p 870, RENKEN, *Church Property*, pp 147 and 176

competency determined by law. The law provides that each public juridic person is to have his own finance council (*consilium a rebus oeconomicis*) or two financial councilors who are to assist the administrator in fulfilling his or her function (c. 1280). The diocesan and parish finance councils, both mandated by the universal law, assist to fulfill these functions (cc. 492-493; 537). These councils do not have an autonomous executive function; rather, they function only in relationship to the administrator of the public juridic person (cc. 118; 1279, §1).<sup>84</sup> The specific ways through which these councils assist the administrator are determined to some degree by universal law and especially by the statutes of each public juridic person

The Instruction should state that the parish finance council shall perform all the functions assigned to it in the Code (see c. 537) and also observe the following norms:

1. The advice of the finance council should be sought both for acts of ordinary administration and acts of extraordinary administration. However, the degree of consultation varies. For certain actions of day-to-day administration, the pastor does not need any specific authorization to carry out such acts but may find it helpful to seek the advice of the parish finance council even in these matters. (For example, while the purchase of ordinary amounts of office supplies is within the pastor's authority, the finance council may provide useful advice on strategies that reduce the cost of such recurring purchases);
2. To review regularly (at least quarterly) financial reports – balance sheet, income statements, comparisons to budget as well as prior year results and cash flow analysis;
3. To give advice in the management of parish funds and banking arrangements. The finance council should approve a new bank account before the pastor would seek a procurator to open the account;

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<sup>84</sup> See T J GREEN, "Shepherding the Patrimony of the Poor: Diocesan and Parish Structures of Financial Administration," in *The Jurist*, 56 (1996), p. 729 (=GREEN, "Shepherding the Patrimony of the Poor")

4. To review the parish annual budget and parish annual report. They should ordinarily be involved in the preparation of both reports, particularly the budget report. After review, the chairperson of the finance council is to co-sign each report before it is submitted to the diocesan bishop;
5. To assess the effectiveness of existing fund-raising programs and recommend new programs or changes to existing programs if revenues are insufficient. To support parish and diocesan stewardship programs.
6. To review fundraising activities, such as raffles, bingo, and concession sales for acquisition of required licenses, support documentation for tax filings, and actual tax filings;
7. To provide advice on matters requiring proxies by the parish civil corporation when it is incorporated separately;
8. To be knowledgeable on diocesan fiscal policies and norms to provide advice on implementation. To evaluate compliance with diocesan fiscal policies and assist the pastor in meeting these obligations;
9. To provide advice on what the parish needs to do to comply with the diocesan Instruction and to make recommendations with respect to conflicts of interest, protection of whistleblowers and fraud detection, reporting and prevention;
10. To provide advice on how to use undesignated bequests or other unbudgeted revenue;
11. To provide advice on hiring and evaluating a business manager or anyone providing business services to the parish. To provide advice on training that might be helpful for parish staff;
12. Where possible, help the pastor establish and manage a parish endowment program. Particularly, help insure that the purpose of the endowment is well-defined considering the long-term needs and life of the parish and that any restricted gifts are first reviewed to assure that the parish can accept the restriction and, once accepted, that the funds are spent consistent with the donor restriction(s). Similarly, provide advice and oversight if an endowment already exists.<sup>85</sup>

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<sup>85</sup> See <http://www.usccb.org/finance/>

The statutes of the parish and finance council reflecting diocesan particular law, will determine the precise way through which the parish finance council is to assist in the administration of goods. It is, therefore, strongly recommended that all parishes have their statutes approved by the diocesan bishop.

Acts of administration at the diocesan level are of three categories (c. 1277), while the law provides for only two categories for other public juridic persons subject to the authority of the diocesan bishop (c. 1281). In the next section we shall discuss how acts of administration should be reflected in the Instruction.

#### **4.6.2.1 — Acts of Ordinary Administration**

Acts of ordinary administration are routine acts which occur on a repetitive basis; they include payment of bills, distribution of salaries and stipends, banking of receipts, ordinary repairs to property, etc. (c. 1279, §1).<sup>86</sup> For public juridic persons of the diocese, the Code has determined that acts of ordinary administration can be placed by the diocesan finance officer for goods of the diocese (c. 494, §3). He or she does so under the authority of the diocesan bishop. This implies that he or she must often report to the diocesan bishop or his delegate, which may be the vicar general or an episcopal vicar for administration. At the parish level, the pastor or his canonical equivalent is responsible for placing acts of ordinary administration (c. 532). Parishes that have a business manager who assists the pastor in the routine acts of ordinary administration in the parish could be accorded recognition in the Instruction.<sup>87</sup> Other public juridic

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<sup>86</sup> MORRISEY, "Basic Concepts and Principles," p. 9.

<sup>87</sup> Although such a parish business manager is not recognized as an ecclesiastical office in the universal law, it may be an office of particular law or custom. Nonetheless universal law states that even if one is not bound to administration by title of an ecclesiastical office, the person cannot relinquish their

persons are to determine in their statutes the competent person to place acts of ordinary administration.

For public juridic persons subject to the diocesan bishop, the following are commonly determined as acts of ordinary administration.

#### **4.6.2.1.1 — Routine Purchases, Repairs, and Expenses**

The ordinary repairs of property, replacement of damaged parts, and minor purchases are considered acts of ordinary administration. The standard for determining which purchases or repairs are acts of ordinary administration is the amount relative to the financial strength of the public juridic person. A determination could be made that purchases or expenses that are less than ten percent of the monthly income are to be considered acts of ordinary administration.<sup>88</sup>

#### **4.6.2.1.2 — Mandating the Opening of Bank Account(s)**

The diocesan bishop has the obligation of ensuring that abuses do not creep into the administration of ecclesiastical goods of persons subject to him (c. 392, §2). One way of doing so is by the supervision of administrators who are subject to his authority (c. 1276, §2). The law requires that administrators collect income and set aside money left over after expenses (c. 1284, §2, 4°- 6°). Through the Instruction the diocesan bishop

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function on their own initiative (1289). Furthermore, canon 1282 gives a broad principle when it says that all persons who lawfully take part in the administration of ecclesiastical goods are bound to fulfill their duties in the name of the Church in accordance with the norm of law, (*ad normam iuris*). The parish “financial manager” could be considered one of those mentioned in canon 1282. However, pastors are to be aware that such officeholders assist them in their functions as administrators of ecclesiastical goods, but they do not take their place as the administrator of the parish (c. 532).

<sup>88</sup> See *Catholic Archdiocese of Ottawa, Instruction*, p. 11; see also KENNEDY, “The Temporal Goods of the Church, [cc. 1254-1310],” in *CLSA Comm2*, p. 1492.

should mandate a procuration before the opening of bank account(s) (c. 392, §2). A procuration is an act by which an authority empowers another to perform an act which ordinarily the latter would not have been able to perform.<sup>89</sup> Procuration in this Instruction is understood as a written authorization by the diocesan bishop granted to an administrator to open a bank account in the name of a parish or a diocese.<sup>90</sup> Bank account is understood as a current or savings account held in a bank or some other financial institution in the name of the parish or diocese. Concerning the process and manner of opening and operating bank account the Instruction should stipulate:

1. No one may open an account in the name of the parish or diocese without official authorization from the diocesan bishop or his delegate;
2. Goods held in the name of the parish or diocese must be identified in the annual financial statement of account;
3. All administrators must obtain from the episcopal vicar for administration or any other person designated by the diocesan bishop the written procuration necessary to make bank transactions;
4. This procuration is required to open any bank account and to carry out financial transactions with any bank on behalf of the specific public juridic person to which the administrator has been assigned;
5. The procuration is usually granted to the pastor; however, after consultation with the pastor, a procuration could be granted to the chairperson of the parish finance council who then would be authorized to co-sign checks on behalf of the parish, always in conjunction with the pastor, and never without the pastor;
6. Unless otherwise specified, this procuration applies only to the opening and operation of bank accounts and cannot be used to take out bank loans on behalf of the parish;

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<sup>89</sup> See GARNER, *Black Law Dictionary*, p 1326

<sup>90</sup> See *Catholic Archdiocese of Ottawa, Instruction*, p 36



7. Separate bank accounts must be kept for:
  - the general administration of the parish or diocese;
  - stipends for Masses not yet celebrated;
  - funds held in trust for a specific purpose.<sup>91</sup>

#### **4.6.2.1.3 — The Annual Budget and Financial Report to the Faithful**

A part of the acts of ordinary administration performed by the administrator is the preparation of an annual financial report to the faithful. The Code mandates a diocesan budget of income and expenditure while strongly recommending that administrators of public juridic persons subject to the diocesan bishops do the same (cc. 493; 1284, §3). The Code requires administrators to give an annual financial report to the local ordinary who is to present such a report to the diocesan finance council for its review (c. 1287, §1). It also requires that well organized books of receipts and expenditures be maintained (c. 1284, §2, 7°). The diocesan bishop, through the Instruction, may mandate administrators, on the basis of canons 1284, §2, 7° and 1287, §1, may mandate the manner whereby administrators are to submit an annual financial report of the public juridic person. Based on the presumed expertise of members of the parish finance council (c. 492, §1), the Instruction should stipulate that such an organ needs to review the report before it is sent to the local ordinary.

Particular law is to determine the manner in which administrators are to render an account to the faithful concerning the goods they have offered to the Church. The diocesan bishops should issue particular law. This law will be a practical application of canons 392, §2 and 1276, §2 which require the diocesan bishop to ensure that abuses do

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<sup>91</sup> See *Catholic Archdiocese of Ottawa, Instruction*, pp 41-42

not creep into the administration of ecclesiastical goods. A perceived lack of transparency could certainly be considered as an abuse. Likewise, a lack of proper reporting to those who donate money to the Church would certainly be an abuse when this reporting is required by the norm of law.

A budget is understood as a report of income and expenditures covering a fiscal year.<sup>92</sup> To provide for a uniform method of reporting the Instruction may decree:

1. Each public juridic person, work, and other units functioning with their own accounting shall prepare an annual budget covering revenues and proposed expenditures as well as investments and other sources of income;
2. A sample form for such budgets can be obtained from the chancery or the diocesan website;
3. This budget, once duly prepared and approved in consultation with the parish finance council or diocesan finance officer, shall be forwarded to the episcopal vicar for administration;
4. The diocese does not allow for operational deficit funding, except in the case of major capital expenditures that have been duly authorized;
5. The annual budget shall be prepared at least two months before the beginning of the fiscal year;
6. The budget shall be examined and approved by the diocesan finance council in accordance with the norm of canon 493;
7. No extraordinary expenses foreseen on the budget can be undertaken before approval of the budget has been received from the diocesan finance council;
8. At the request of the pastor, the episcopal vicar for administration may meet with him and the parish finance council to examine the budget before it is submitted for a definitive approval;

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<sup>92</sup> See GARNER, *Black Law Dictionary*, p. 221.

9. Unless specifically authorized, sums of money authorized for expenditure during the financial year cannot be held over for another year and accumulated with funds foreseen in the subsequent budget.<sup>93</sup>
10. The parish finance council chairperson is to co-sign, with the pastor, any parish loan to acknowledge that the loan has been discussed with the council;
11. Annually, along with the parish annual report, each parish is required to send a letter to the diocesan bishop containing:
  - a. The names and professional titles of the members of the parish finance council;
  - b. The dates on which the parish finance council met during the fiscal year for which the report was prepared, along with the dates of all meetings since the end of the fiscal year;
  - c. The date(s) on which the approved (i.e. by the parish finance council) parish financial statements/budgets were made available to parishioners during the preceding fiscal year and since the end of the fiscal year. A copy of said published financial statements/budgets should be provided to the bishop;
  - d. A statement signed by the pastor and the parish finance council members that they have met, developed, and discussed the financial statements and budget of the parish.<sup>94</sup>

#### **4.6.2.1.4 — Requirement of an Annual Inventory**

Administrators are to submit an inventory to the competent authority before beginning their functions (c. 1283). It would be misleading to think that drawing up an inventory is not part of the functions of administrators, since it is an action that has to

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<sup>93</sup> See *Catholic Archdiocese of Ottawa, Instruction*, pp. 44-45.

<sup>94</sup> Nn. 10-11 are taken from USCCB website <http://www.usccb.org/finance/>.

take place before they begin their duties.<sup>95</sup> The stewardship duties of administrators require that they update this inventory and identify the stable and non-stable patrimony of the public juridic person (c. 1283, 3°). The annual inventory is one way of ensuring that temporal goods legitimately acquired remain in the possession of the public juridic person (c. 1254, §1). The *DPMB* states: “He [the diocesan bishop] should see to the preparation and updating of *inventories*, including photographs, with the description and appraisal of immovable and moveable goods which are precious or of some cultural value.”<sup>96</sup> The Instruction should stipulate the format of entering the inventory. A general format for the diocese would make it easier for administrators to understand.

#### 4.6.2.1.5 — Taxes

Canon 1263 allows the diocesan bishop to impose taxes on those subject to his authority under certain conditions. It identifies the “ordinary tax” that may be imposed upon public juridic persons subject to the governance of the diocesan bishop. The most common of such public juridic persons is the parish. The Instruction should state:

1. A diocesan tax can be imposed only on the income of the juridic person. Excluded from this tax are the lawfully designated stable patrimony, Mass stipends, and donations made for a specific purpose (cc. 1267, §3; 1300).<sup>97</sup> Income

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<sup>95</sup> Canon 1283 says before (*antequam*) taking office or beginning their function. Perhaps the canon would have been more precise to say as soon as they assume office.

<sup>96</sup> *DPMB*, no. 189, p. 208.

<sup>97</sup> The Holy See was asked whether Mass stipends could be assigned to an institution. The Congregation for the Clergy, which is the competent dicastery to address such issues, replied: “We have no objection as far as the stole fees are concerned, according to the spirit of the *Motu Proprio Ecclesiae sanctae*, n. 8 (*AAS*, 58 [1966] 757-787). We cannot, however, grant the requested indult to assign Mass stipends to the parish or institution where the Sacraments are celebrated, since it is part of the letter and the spirit of the law, to give the Mass stipend directly to the celebrant (can. 824 and can. 1506 *CIC*, confirmed by the rather recent *Motu Proprio Firma in Traditione* (*AAS*, 66 [1974] 308-311).” In *CLSA Roman Replies and Advisory Opinions*, Washington, CLSA, 1984, pp. 1-2. For further study of Mass offerings, see J. I. DONLON, “Priests’ Remuneration and Mass Stipends,” in *CLSA Advisory Opinion*, Washington, CLSA, 2003, pp. 254-256. The same author writes: “In saying that the priest is permitted to accept an offering for a specific

from investments will be regarded as income to the public juridic person and therefore subject to the diocesan tax;

2. The “extraordinary tax” can be imposed upon physical persons and all juridic persons but only for a grave necessity. Examples of grave necessity include cases of exceptional diocesan needs, e.g., to renovate the cathedral church, to build a retirement facility for clergy, to establish a seminary, to provide disaster assistance, etc;<sup>98</sup>
3. The ordinary tax can be imposed upon only public juridic persons subject to the diocesan bishop;
4. The purpose of the ordinary diocesan tax is for recurring diocesan needs;
5. No other authority except the diocesan bishop can impose a tax upon public juridic persons subject to him. Inferior administrators of public juridic persons are not competent to impose a tax upon their subjects;
6. The diocesan tax imposed according to canon 1263 must always be distinguished from the appeals of canon 1262 and the special collections of canon 1266;<sup>99</sup>
7. Another tax that may be imposed upon all juridic persons in the diocese is the seminary tax of canon 264.<sup>100</sup>

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intention, the canon gives the priest a right to do so [c. 945]. Insofar as this is a right, it is thus something that cannot be taken away or restricted. Canon 38, it must be noted, points out that an administrative act has no effect insofar as it harms the acquired rights of another or if it is contrary to the law. This same canon further notes that only the competent authority can derogate from the law [Supreme Legislator]. Thus, the canon places limits on one’s exercise of authority. Any act taken by one lacking the authority to do so would be invalid and without effect. Since canon 945, allowing priests to accept stipends for applying intentions to Masses celebrated, is universal law, only the Holy See would be competent to derogate from it. The local diocesan bishop would not have the authority to do so.” In *ibid.*, p. 67.

<sup>98</sup> See RENKEN, *Church Property*, p. 95.

<sup>99</sup> See *ibid.*, p. 79.

<sup>100</sup> The law does not require the diocesan bishop to seek the counsel of the diocesan finance council and presbyteral council, but it may be prudent for him to do so.

**4.6.2.1.6 — Donations for Charitable Purposes**

One of the purposes of owning ecclesiastical goods is for charity to the needy (c. 1254, §2). Public juridic persons are established for the purpose of fulfilling the mission of the Church (c. 114, §1). The law stipulates that the competent authority, before establishing public juridic persons, should ensure that the entities possess the means which are foreseen to be sufficient to achieve their designated purposes (c. 114, §3). These means needed to achieve the purpose of the public juridic person are referred to by the law as stable patrimony (cc. 1285; 1291). The prescript of canon 1285 is intended to protect the stable patrimony of the public juridic person to ensure that it fulfills its purpose. This explains why the legislator prohibits administrators from making donations even for charitable purposes from the stable patrimony of the public juridic person. The Instruction, pursuant to canon 1285, should explain that once ecclesiastical goods have been legitimately designated stable patrimony, they are no longer able to be donated. Giving away stable patrimony is an act of alienation, not administration.<sup>101</sup>

**4.6.2.1.7 — Payment of Expenses for Clerics**

Another act of ordinary administration performed by the administrator is the payment for annual retreats for clergy. Canon 276, §2, 4° imposes an annual retreat on clergy in order to aid the pursuit of perfection of life. Canon 279, §1 obliges priests to pursue continuous education after ordination. Paragraph two of the canon obliges the diocesan bishop to establish particular law to regulate the manner in which this continuous education will be pursued. Canon 283, §2 stipulates that clergy are entitled to fitting and sufficient time of vacation to be determined by both universal and particular

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<sup>101</sup> It is our opinion that donations from stable patrimony are to be treated like alienation and therefore subject to the norms of canons 1292-1294

law. Canon 533, §2 is the universal law that establishes one month as the duration of the vacation for a pastor and canon 550, §3 stipulates the same for a parochial vicar. Retreat time is not computed among vacation days.

The Code does not specify who is directly responsible for the payment of the annual retreat, continuing education, and vacations. However, canon 384 says that the diocesan bishop is to attend to the priests and take care that they correctly fulfill the obligations proper to their state. Canon 281, §1 states that clerics dedicated to the ministry deserve remuneration which is consistent with their condition. Certainly, payment for the annual retreats, continuous study, and vacation is consistent with their condition. The obligation rests with the diocese to provide the means for clerics to receive these benefits. The particular law of the diocese is to determine how this obligation is to be fulfilled. With regard to the continued study of priests, however, the diocese of incardination has the primary responsibility. It would be prudent to establish a diocesan fund to serve such a purpose. Such a goal would be in line with the purpose of ecclesiastical goods because education of priests further enhances their effective service in the priestly ministry. The Instruction should explain who is responsible for these payments.

#### **4.6.2.2 — Acts of Extraordinary Administration**

The term “extraordinary” is used to explain an act that exceeds “the usual, average, or normal measure or degree; beyond or out of the common order or rule.”<sup>102</sup> Consequently, acts are not in themselves extraordinary, they are, when they are determined by the competent authority to be so (cc. 1277; 1281, §1). For the diocese, the

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<sup>102</sup> GARNER, *Black Law Dictionary*, p 666

conference of bishops make such a determination; for other public juridic persons their statutes are to make such determination; if they fail to do so, the diocesan bishop determines these acts. Such a determination is made through proper law (*ius proprium*) (c. 1281, §2).<sup>103</sup> He is to do so if the statutes of the public juridic persons are silent on this matter. This canon, therefore, presumes that all public juridic persons, whether established *a iure* or *ab homine*, have their own statutes.<sup>104</sup> In determining the acts of extraordinary administration for public juridic persons subject to his authority, the diocesan bishop is to hear the diocesan finance council (c. 1281).<sup>105</sup> They are usually considered to include acts such as the following: the purchasing of real estate, involvement in court action, major repairs, acts whose cost exceeds a certain amount

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<sup>103</sup> In our opinion this would not necessarily be particular law. As a rule, the statutes of the juridical person define these; this is proper law (*ius proprium*) specific to the person, not particular law (*ius particulare*) for the diocese. If the statutes are silent, then the bishop determines such acts after hearing the finance council. The canon does not determine the manner in which the bishop must determine such acts—whether by a general act or a singular act.

<sup>104</sup> Canon 117 says no aggregate of persons or of things intending to obtain juridic personality is able to acquire it unless competent authority has approved its statutes. This canon uses the words *obtineré intendens* to limit such a requirement to only juridic persons established by decree. We can infer from the wordings of canon 117 that only juridic persons established *ab homine* require statutes. The intention of this canon is to mandate all *ab homine* juridic persons to have their statutes before their erection. The corresponding *CCEO*, canon 922, §1 is more precise: “Every juridic person constituted by special concession of ecclesiastical authority must have its own statutes, approved by the authority that is competent to set it up as a juridic person.” Nowhere in the 1983 Code is the same requirement explicitly mandated for juridic person *a iure*. Canon 1281, §2 makes no distinction between juridic persons *a iure* or *ab homine*. It simply says that the statutes are to define acts of extraordinary administration for public juridic persons. Consequently, parishes are presumed to have statutes that regulate this matter.

<sup>105</sup> *DPMB*, no. 188, p. 205, says the decree to be established by the diocesan bishop determining what constitutes an act of extraordinary administration is meant to avoid abuses in the administration of ecclesiastical goods.



established by the diocesan bishop,<sup>106</sup> the designation of goods as stable patrimony, etc.<sup>107</sup>

However, certain acts are generally considered acts of extraordinary administration. The Instruction should identify the following as acts of extraordinary administration<sup>108</sup>:

1. The acceptance or transfer of any right, title, or interest in real property;
2. The establishment of any partnerships, joint ventures, mergers or legal alliances with any entity or person, the ownership or operation of a business, or the creation of any corporate entity including endowments or foundations;
3. The acceptance of bequests given as a result of vows;
4. The establishment of or any substantial change in the purpose or operation of schools or other charitable works associated with the public juridic person;
5. All actions which substantially affect the marketability or accessibility of ecclesiastical goods, or other items listed on the inventory, with particular regard to the stable patrimony;
6. The expenditure of any amount for the maintenance of the fixed assets of the public juridic person in excess of an amount determined by the diocesan bishop from time to time;

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<sup>106</sup> DPMB, no. 189, p. 208, states: "He [the diocesan bishop] needs to be aware of the decisions of the Episcopal Conference concerning *acts of extraordinary administration* and he should see to their implementation. The same applies to the conditions for the alienation and leasing of ecclesiastical goods."

<sup>107</sup> See RENKEN, *Church Property*, p. 79; V. DE PAOLIS "De bonis Ecclesiae temporalibus in novo Codice Iuris Canonici," in *Periodica*, 73 (1984), p. 101 (=DE PAOLIS "De bonis Ecclesiae temporalibus").

<sup>108</sup> Although we recognize the fact that the definition of what constitutes an act of extraordinary administration would often be made through a proper law established for each public juridic person, we have decided nonetheless to give this list in order to help diocesan bishops in the promulgation of particular law in pursuant of canon 1281, §2.

7. The implementation of all building projects and renovations having an aggregate cost in excess of an amount determined by the diocesan bishop from time to time;
8. The renovation or remodeling involving structural changes or changes of design or building of churches and chapels;
9. The undertaking of defense of any civil litigation on behalf of any public juridic person subject to the diocesan bishop;
10. Any decision concerning the regulation by appropriate governmental authorities of the use of real estate, including preliminary and final approval, planned unit development, zoning, and substantial changes in compliance with all applicable building codes.<sup>109</sup>

#### **4.6.2.3 — The Acts of Ordinary Administration “More Important” in the Light of the Economic Situation of the Diocese**

Canon 1277 prescribes that the diocesan bishop is to determine for his diocese those acts which, because of the financial situation of the diocese, are of major importance. Once the acts have been identified, the diocesan bishop alone or his delegate can place such acts, albeit after consulting the diocesan finance council and the college of consultors. This concerns only acts at the diocesan level. The statutes of other public juridic persons subject to the diocesan bishop may also make a parallel determination, identifying acts of administration of greater importance in light of the economic condition of the public juridic person. If they fail to do so, the diocesan bishop may determine such acts by particular law.

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<sup>109</sup> See O'BRIEN, “Instructions for Parochial Temporal Administration,” p. 122.

#### **4.7 — Contracts**

Canon 1290 gives the general principle to be observed in matters relating to contracts in the Church. It prescribes that, provided civil law is not contrary to divine law and canon law, it should be observed in all matters dealing with contracts (cf. c. 22). A contract is a legal term concerning mutually agreed upon matter. Contracts may involve alienation, leases, mortgages, etc. The right of a public juridic person needs to be protected by its administrator in all contractual matter.<sup>110</sup> In order to help achieve this goal the Instruction should state:

1. Any question of a civil legal order must, without exception, be directed to the episcopal vicar for administration or the diocesan finance officer who shall, in consultation with the diocesan lawyer, seek the appropriate legal advice;
2. No contract shall be entered into or signed on behalf of the public juridic person without a special procuration to this effect;
3. No contract for the purchase, sale or expropriation of land and buildings may be entered into without the intervention of the diocesan bishop;
4. Agreements relating to the use of land (for instance, easements, rights of way, erection of permanent installations) require the permission of the diocesan bishop;
5. Agreements relating to repairs, renovations or substantial changes in existing buildings are subject to the procedures for acts of extraordinary administration of public juridic person subject to the diocesan bishop (c. 1281, §1);
6. The leasing of buildings or land is subject to the norms approved by the conference of bishops (c. 1297);
7. Loans taken out on behalf of the public juridic person require the prior permission of the diocesan bishop;

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<sup>110</sup> The capacity of public juridic persons to enter into contracts is rooted in canon law and not in any civil law provisions which the Code says should generally be observed (c. 22).

8. The episcopal vicar for administration or the diocesan finance officer is to be informed as soon as the public juridic person is notified that it will be receiving a bequest. Only the local ordinary can grant permission to accept a bequest with conditions attached to it (c. 1267, §2); a copy of the will is to be submitted to the episcopal vicar or diocesan finance officer;
9. The special permission of the diocesan bishop is required to enter into civil litigation on behalf of the diocese or parish, or to respond to citation in the name of the diocese or parish (1288).<sup>111</sup>

Three types of patrimonial contracts are easily discernable in the Code: contracts involving alienation (cc. 1291-1294), contracts involving transactions that can worsen the patrimonial condition of a juridic person (c. 1295), and, finally, contracts involving the leasing of ecclesiastical goods (cc. 1297-1298). However, other contracts may also involve other issues mentioned in Book V: those involving insurance policies (c. 1284, §2, 1°); employment (c. 1286); pious wills (cc. 1299-1301); trusts (c. 1302); and foundations (cc. 1303-1307).<sup>112</sup>

#### 4.7.1 — Contracts involving Alienation

Alienation is understood as the conveyance of ownership from one person to another. It is the transfer of ownership by gift, sale, or exchange.<sup>113</sup> Alienation in canon

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<sup>111</sup> See *Catholic Archdiocese of Ottawa, Instruction*, pp. 56-57

<sup>112</sup> See RENKEN, *Church Property*, p. 242.

<sup>113</sup> It is a commonly held view by authors that whenever ownership is lost, alienation has taken place. It does not matter whether ownership is gained by another public juridic person. If a parish makes a donation to another parish, the donating parish loses the ecclesiastical goods and therefore alienates its goods. But alienation that is regulated by the Code concerns those goods that have been legitimately designated as stable patrimony (c. 1292). See F.G. MORRISEY, "The Alienation of Temporal Goods in Contemporary Practice," in *Studia canonica*, 29 (1995), pp. 294-297 (=MORRISEY, "The Alienation of

law concerns only goods that have been legitimately designated as part of the stable patrimony (c. 1291). This further reinforces the need for administrators to designate the stable patrimony of the public juridic persons in whose name they act. Property not designated as stable patrimony is not subject to the canons on alienation.

The Code of Canon Law gives a detailed procedure to be observed in the alienation of goods (cc. 1290-1294). As noted above, these procedures pertain only to ecclesiastical goods that have been legitimately designated as stable patrimony (c. 1291). Traditionally, immovable goods such as land and buildings are considered stable patrimony.<sup>114</sup> First, the Instruction should state that the following are considered as acts of alienation:

1. To transfer title of ownership of stable patrimony by sale, exchange, or gift;
2. To transfer the stable patrimony of one public juridic person to another (e.g., from a parish to a diocese, from one religious institute to another, etc.);
3. To prepare for conveyance of part or all of stable patrimony (e.g., to give a mortgage, an option, compromise, settlement, etc.);
4. To use immobilized goods for some purpose other than that for which they were immobilized: e.g.,
  - a. To convey to other persons, for whom they were not originally intended, money and investments if these have become part of the stable patrimony of the public juridic person;

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Temporal Goods,"); RENKEN, *Church Property*, pp. 248-249; KENNEDY, "The Temporal Goods of the Church, [cc. 1254-1310]," p. 1495.

<sup>114</sup> V. DE PAOLIS also says: "Nevertheless, there can be a presumption that immovable goods constitute stable patrimony." In *De bonis Ecclesiae temporalibus: Adnotationes in Codicem, Liber V*, Rome, Gregorian University, 1986, p. 101; see also RENKEN, *Church Property*, p. 226. The same author states that some goods may be considered part of stable patrimony due to custom (canon 26), and that a presumption may exist that certain goods like land and buildings which constitute the majority of immovable ecclesiastical goods are part of the stable patrimony of public juridic person

- b. To withdraw, for other purposes, money or investments from the stable patrimony of a public juridic person;
- c. To convey to others money or its equivalent (e.g., stocks, bonds, bank notes, certificates of deposit, etc.) received from the sale of property belonging to the stable patrimony of the public juridic person;
- d. To convey to others money or securities received in the form of annuities contingent upon payment of certain annual sums;
- e. To convey money or securities accruing from pious foundations, Mass foundations, bursaries, endowments, annuities, etc., particularly so if the obligations have not yet been acquitted;
- f. To divert money and securities from the specific purposes for which they were originally acquired.<sup>115</sup>

After identifying acts of alienation, the Instruction needs to outline the procedures to be observed in order to place these acts validly.

#### **4.7.1.1 — The Procedures to be Observed in the Alienation of Ecclesiastical Goods**

The Instruction may establish the manner of observing the canonical procedures for alienation. It may state: In order to provide clear guidelines to be observed when there is a matter of alienation of stable patrimony of the Church the following norms are to be strictly observed:

- 1 The inventory of the goods of the parish or public juridic person shall clearly distinguish those goods which have been designated part of the stable patrimony of the parish or diocese from other goods used for ordinary administration;

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<sup>115</sup> RENKEN, *Church Property*, pp 249-250, see also MORRISEY, "The Alienation of Temporal Goods," pp 295 296

2. The administrator competent to alienate diocesan property is the diocesan bishop with the consent of the diocesan finance council and the college of consultors (c. 1292, §2); for a parish, the pastor (or his canonical equivalent) is the competent authority (c. 532). The statutes of other public juridic persons are to determine persons competent to alienate property; if such a determination is not made, the Instruction should empower the diocesan finance officer to do so only after receiving the consent of the diocesan bishop (cf. c. 1278);
3. When it is foreseen that alienation of stable patrimony will take place, the matter must first be brought to the attention of the episcopal vicar for administration or the diocesan finance officer;
4. When the value of goods to be alienated falls within the minimum and maximum amount determined by the conference of bishops, the competent authority to give permission is the diocesan bishop after receiving the consent of the diocesan finance council and the college of consultors; for other public juridic persons not subject to the diocesan bishop, the competent authority is determined in their statutes (c. 1292, §1);
5. Consultation shall be made with the parish or diocesan finance council;
6. An evaluation shall be made by the diocesan civil lawyer to ensure that all civil formalities are observed;
7. Requests for permission for an act of alienation of ecclesiastical goods shall indicate that the prescriptions of canons 1293-1294 have been observed: namely, that there must be a just reason for the transaction, such as urgent necessity, evident advantage, or a religious, charitable or other grave pastoral reason; there must be an evaluation in writing by at least two experts of the goods to be alienated; the money obtained must be carefully invested for the benefit of the Church, or prudently expended according to the purposes of the alienation;
8. Any request made by a pastor to alienate goods must be accompanied by an extract of the minutes of the parish finance council where such a transaction was discussed and

approved.<sup>116</sup> If the amount exceeds the maximum determined by the conference of bishops, the permission of the competent discastery of the Holy See is required.<sup>117</sup> Morrisey advises that the following information be included with the request for permission to the Holy See:

- a. A brief history of the asset; attached intention of donors, civil considerations (e.g., as an historic structure); perhaps, a map of the property;
- b. Explanation of the just cause for alienation (canon 1293, §1, 1°);
- c. Written evaluation by at least two experts (canon 1293, §1, 2°);
- d. Notation on observance of any precautions prescribed by legitimate authority (canonical and civil) (canon 1293, §2);
- e. Attestation of the consent of the appropriate bodies, likely demonstrated through minutes of meetings (canon 1292, §1);
- f. A statement regarding divisible goods, if applicable (canon 1292, §3);
- g. The offer to purchase, if available (see canon 1294, §1);
- h. An explanation why the asset is being alienated for a price lower than its appraised value, if applicable (canon 1294, §1, see canon 1293, §1, 2°);
- i. A statement explaining what will be done with the money to be received (canon 1294, §2),
- j. A statement regarding the observance of secular formalities (see canon 1296)<sup>118</sup>

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<sup>116</sup> See *Catholic Archdiocese of Ottawa, Instruction*, pp. 36-37

<sup>117</sup> PB, art. 98 stipulates that the Congregation for Clergy is competent to grant permission for alienation of ecclesiastical goods whose value exceeds the maximum amount established by the conference of bishops. In matters affecting institutes of consecrated life, the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life is competent (see PB, art. 108). The Congregation for the Evangelization of Peoples is competent in the same matter for mission territories (see PB, arts. 85-92). In a letter from the Apostolic Pro-Nuncio to the United States to the president of the National Conference of Catholic Bishops of United States, he communicated the concern of the competent congregation regarding the requirement of permission for valid alienation: "Under date of January 13, 1988, the Cardinal Prefect of the Congregation for Clergy has asked me to bring the following matter to your attention. It has recently been noted that some dioceses in the United States have not been requesting the necessary authorization from the Holy See in order to alienate ecclesiastical goods whose value exceeds the approved maximum amount of one million dollars. Cardinal Innocent, requests that you kindly advise all the Bishops in this regard, keeping in mind that the stipulation of canon 1292, §2 clearly indicates that such permission is required for validity." In *CLD*, vol. 12, pp. 750-751.

<sup>118</sup> See MORRISEY, "The Alienation of Temporal Goods," p. 298. N.P. CAFARDI gives a similar list in "Alienation of Church Property," in K.E. MCKENNA, L.A. DINARDO, and J.W. POKUSA (eds.), *Church Finance Handbook*, Washington, CLSA, 1999, pp. 256-257.



Canons 1292-1294 lay down the conditions that must be fulfilled in order to alienate ecclesiastical goods.<sup>119</sup> We shall discuss some key terms mentioned in the canon, terms such as - the value, assessment by experts, a just cause, full disclosure to the competent authority, informed consent, and the use of the proceeds:

*The value* - In order for the norms on alienation to apply, the value of the ecclesiastical goods must exceed that which has been determined by the particular law promulgated by the conference of bishops of the territory (c. 1291). If the value does not exceed the minimum determined by the particular law, such an act would not be subject to canonical formalities required for validity.<sup>120</sup>

The Code distinguishes three categories of alienation: those which are below a minimum prescribed amount; those between the minimum and the maximum; and finally, those above the maximum (c. 1292). In each case, the required permissions will vary according to the category in which the transaction falls.<sup>121</sup> If the value is below the minimum, the administrator is able to carry out such a transaction without any permission. If the appraised amount is lower than the minimum and the goods are sold at a higher price, no permission is required.<sup>122</sup>

The Instruction should stipulate that the above list be provided to the diocesan bishop before he grants permission even for alienation not exceeding the maximum

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<sup>119</sup> The discipline of canon 1292 binds for validity. The conditions mentioned in canons 1293-1294 bind for licety only, not validity.

<sup>120</sup> See MORRISEY, "The Alienation of Temporal Goods," p. 303.

<sup>121</sup> See *ibid.*

<sup>122</sup> See PONTIFICAL COMMISSION FOR THE AUTHENTIC INTERPRETATION OF THE CANONS OF THE CODE, Response, 24 November 1920, in *AS*, 12 (1920), p. 577, English translation in *CLD*, vol. 1, pp. 729-720.

amount determined by the conference of bishops.<sup>123</sup> It would also be prudent to have this in the statutes of the juridic person and the civil articles of incorporation as well (cf. c. 1295). The Instruction should also note that when the competent authority grants permission for an act of alienation, this authority does not assume eventual economic responsibility for the alienation. The authority guarantees only that the alienation is in accord with the finality of ecclesiastical goods.

The value of a property changes over time. In view of this, the Instruction should determine the criteria for determining the value of property to be alienated. Morrissey gives possible criteria: (a) the original cost; (b) the declared value of the property for taxation purposes; (c) its replacement or insurance value; (d) its depreciated value; and (e) its market value. Canon 1294, §1 stipulates that property should not be alienated below the valued amount.<sup>124</sup> The Instruction should establish norms for alienating goods less than the valued amount. It should state that the explicit permission of the diocesan bishop is required.

*Assessment by experts* - The Code calls for the assessment of at least two experts when the value of property to be alienated exceeds the minimum amount fixed by the conference of bishops (c. 1293, §1, 2°). This requirement is for liceity. The Code does not say who may be an expert, but it is generally accepted that this refers to professionals whose knowledge about the matter can give a reliable assessment of the value of the property.<sup>125</sup> Renken remarks that these experts must be persons of honesty and integrity

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<sup>123</sup> See PONTIFICAL COUNCIL FOR THE INTERPRETATION OF LEGISLATIVE TEXTS, *Nota La funzione dell'autorità ecclesiastica sui beni ecclesiastici*, 12 February 2004, in *Communicationes*, 36 (2004), pp. 24-32.

<sup>124</sup> See MORRISSEY, "The Alienation of Temporal Goods," p. 304.

<sup>125</sup> See *ibid.*

and competent in the matter about which they are making an appraisal.<sup>126</sup> D.J. Ward states:

There is no definitive answer as to who may or may not be an expert. Since the opinion of at least two different experts is required, the practical determination of who should be an expert must be considered in light of the cost factor. The Apostolic See has accepted as experts the financial auditors of a juridic person if the auditors have had a long history with the juridic person. The local property tax valuation should be acceptable if this is given at the fair market value or the percentage of the fair market value is stated.<sup>127</sup>

The Instruction should determine in more specific terms who may be considered an expert for purposes of alienation.

*A just cause* - In seeking permission for alienation, administrators are also required to have a just cause. Canon 1293, §1, 1 gives a possible list of just causes, such as urgent necessity, evident advantage, or a religious, charitable or other grave pastoral reason. This requirement of a just cause is for liceity. The law adds that a determination be made about what will be done with the proceeds that accrue from alienation before embarking on the act of alienation itself (c. 1294, §2).

*Full disclosure to the competent authority* - The law requires administrators to make full disclosure when seeking the permission of the competent authority. Failure to disclose fully what had already been alienated renders the permission granted invalid and, consequently, the alienation will also be invalid (c. 1292, §2).<sup>128</sup> For parishes, the permission of the diocesan bishop will be required; he may decide to make further enquiries before granting such permission.

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<sup>126</sup> See RENKEN, *Church Property*, p. 278.

<sup>127</sup> D.J. WARD, "Temporal Goods," in JOYCE et al, CLSA, *Procedural Handbook for Institutes of Consecrated Life and Societies of Apostolic Life*, Washington, CLSA, 2001, p. 205.

<sup>128</sup> This is practical application of canon 63, §1 that requires a factually true reason for requesting a rescript. In order to uphold this truth-value the canon forbids both subreption and obreption. Either withholding the truth or lying about the truth constitutes fraud (*dolus*) (c. 125, §2).

*Informed consent* - The law requires that those who are to give consent to the diocesan bishop be thoroughly informed before they do so (c. 1292, §4). The Instruction should specify the method for ensuring that thorough information concerning goods to be alienated is passed to the members of the diocesan finance council and college of consultors. The administrator may be required to present a detailed description of the item to be alienated, its value, the reason for its alienation, consultations with experts, etc. Those who are to give consent should have this information available to them prior to the meeting of the council.

*The use of the proceeds* - The Code requires for liceity that administrators carefully invest proceeds accruing to a public juridic person (c. 1294, §2). In the same light, proceeds from alienated goods should be carefully invested pending their use for the designated purposes.

#### **4.7.1.2 —Contracts Involving Leasing**

The leasing of property is different from alienation because there is no loss of ownership. In leases, one retains the ownership and grants use of the property to another party for a determined period of time in exchange for some benefit or payment. At the end of the lease period, the exclusive right reverts to the owner. Consequently, the various levels of permission required for alienation do not apply to leases.<sup>129</sup>

The Code obliges the conference of bishops to establish norms to regulate the leasing of ecclesiastical goods in its territory (c. 1297). The canon distinguishes between

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<sup>129</sup> P.L. GOLDEN, "Leasing Church Property Owned by a Religious Institute," in A. ESPELAGE (ed.), *CLSA Advisory Opinions, 1994-2000*, Washington, CLSA, p. 341. Another author defines lease as "a contract by which, in exchange for compensation-usually monetary in nature-one of the contracting parties is obligated to provide the other with the use and enjoyment of something." In J. MENTECÓN, "Contracts and Especially Alienation," in *ExComm*, vol. IV/1, p. 146.

norms on leases properly speaking and norms pertaining to the permission to be granted by competent authority.<sup>130</sup> Such norms will take into consideration the civil law in effect in the territory. Canon 1298 forbids administrators from leasing ecclesiastical goods that are not of little value to their relations up to the fourth degree of direct and collateral line of consanguinity or affinity.<sup>131</sup> Each diocesan bishop should establish further norms concerning this matter, especially if the civil law is at variance with the norms of the conference of bishops.

The Instruction should stipulate the specific ways the permission to lease ecclesiastical goods would be obtained. It would be prudent if the Instruction directed that administrators consult their finance council and the diocesan finance officer (or episcopal vicar for administration, if there is one) before requesting the permission. Such consultation will help to determine if it is necessary to lease the property and what advantages or liability may result by doing so. The Instruction should also require administrators to present to the diocesan bishop or his delegate the details of the contract before entering the lease.

#### **4.7.1.3 — Contracts that Threaten the Patrimonial Condition of a Public Juridic Person**

Canon 1295 establishes that those contracts which may threaten the patrimonial condition of public juridic persons are subject to the canons on alienation (cc. 1290-1294). These contracts are certainly different from alienation because there is no transfer of ownership in such a case. In canon 1295 transactions, ownership, though not lost, is

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<sup>130</sup> See J. MENTECÓN, “Contracts and Especially Alienation,” in *ExComm*, vol. IV/1, p. 146.

<sup>131</sup> Canons 108-109 determine the degrees of consanguinity and affinity. See J.P. MCINTYRE, “The Canonical Condition of Physical Persons,” in *CLSA Comm2*, pp. 148-149.

threatened. Renken writes: "Alienation focuses *ad extra* - on passing an ecclesiastical good to another; a transaction governed by canon 1295 focuses *ad intra* - on protecting ecclesiastical goods which one wishes to retain as stable patrimony."<sup>132</sup> The same author notes that, because of the diverse circumstances throughout the world, it is impossible to identify canon 1295 transactions for every public juridic person. What is threatening in one time and place may not be so in another time and place.<sup>133</sup>

The Instruction should stipulate that the patrimonial condition of a public juridic person includes an evaluation of whatever is necessary for its sustenance, and whatever could damage the fundamental means of sustenance. An evaluation of threatening contracts will necessarily consider everything that the public juridic person needs to achieve its designated purpose (c. 114, §3). Given the understanding of stable patrimony as those things necessary for the existence or survival of the public juridic person to fulfill its goal, any transaction that is reasonably judged to threaten the stable patrimony of a public juridic person is a canon 1295 transaction.<sup>134</sup> Morrissey identifies three

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<sup>132</sup> RENKEN, *Church Property*, p. 282. KENNEDY also says that canon 1295 transactions are different from acts of alienation: "While canon 1295 transactions are subject to the same norms that govern alienation, the wording of the canon makes clear that canon 1295 transactions are not acts of alienation. This is also evident from canon 1267, §2 which acknowledges the possibility that in some circumstances, canon 1295 applies to an act of *acquisition* of temporal goods, a matter far different from an act of alienation." In "The Temporal Good of the Church, [cc. 1254-1310]," in *CLSA Comm2*, p. 1504 [emphasis in the original]. M.L. ALARCÓN holds a slightly different view when he says that canon 1295 transactions are acts of alienation. He remarks that the Code "provides a criterion whereby a potential act of alienation can be identified: the juridical person might be left in a worse patrimonial situation, because of the quality of the goods removed from the patrimony or because of their value in relation to the total value of the patrimony in general. In the same way, it would be necessary to determine whether the goods that replace the ones alienated can be considered to be patrimonial compensation or to have caused a loss, once the purposes of the alienation have been fulfilled." In "Book V: The Temporal Goods of the Church," in *CCLA*, p. 1003. For a detailed summary of the views of several authors on this issue see, V. De Paolis, *I beni temporali della Chiesa*, Bologna, Dehoniane, 1995, pp. 212-221.

<sup>133</sup> See RENKEN, *Church Property*, p. 282.

<sup>134</sup> See KENNEDY, "The Temporal Good of the Church, [cc. 1254-1310]," in *CLSA Comm2*, p. 1505. F.G. MORRISSEY notes that acts which can worsen the patrimonial condition of a juridic person involve potential loss of ownership, control, or sponsorship. See "Ordinary and Extraordinary

important criteria for determining such transactions that could be incorporated into the special instructions for administrators: (a) loss or diminishment of “ownership”; (b) loss or diminishing of sponsorship; (c) loss or diminishing of control.<sup>135</sup> Given these criteria, the Instruction should identify the following as canon 1295 transactions:

1. Leasing of ecclesiastical goods for a long period of time ;
2. Establishing mortgages;
3. Granting an easement;
4. Assigning administration of ecclesiastical goods for a long period of time or in perpetuity;
5. Any transfer by which a real right over ecclesiastical goods is assigned to a third party—e.g., when a Church work is entrusted to a corporate board without the appropriate powers being reserved to ecclesiastical authority to direct its philosophy and mission, and to intervene at other moments when important decisions are being made;<sup>136</sup>
6. Using ecclesiastical goods as collateral for loans;
7. Making a loan;
8. Renegotiating loans;
9. Acceptance of non-autonomous foundations.<sup>137</sup>

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Administration: Canon 1277,” in *The Jurist*, 48 (1988), p. 736; idem, “The Alienation of Temporal Goods,” p. 311.

<sup>135</sup> See MORRISEY, “The Alienation of Temporal Goods,” p. 298.

<sup>136</sup> See *Catholic Archdiocese of Ottawa, Instruction*, p. 13.

<sup>137</sup> Some acts of extraordinary administration could also be acts that would threaten the patrimonial condition of the public juridic person. Such acts must therefore require the permission of the competent authority stipulated in canons 1291-1294. Failure to obtain this permission will render them invalid even though they may have fulfilled the conditions required for acts of extraordinary administration (cc. 1277; 1281). See RENKEN, *Church Property*, p. 282.

#### 4.7.2 — Contracts Involving Labor Issues

Canon 1286 states that administrators are to observe meticulously civil law in matters relating to labor issues and social policy. However, they are to always keep in mind the principles handed on by the Church. Administrators are also to pay a just wage to enable employees and their dependants to live a decent life. In order to achieve this goal, the diocesan bishop may help administrators to ensure that they are fulfilling this obligation. The obligation to pay just wages to employees is incumbent upon the public juridic person that hires such employees. The diocese has no obligation to pay for employees of the parish. This is based on the basic understanding that the diocese and the parish are distinct public juridic persons. Labor issues concern administration; the Code rightly puts the obligation on the public juridic person for whom the employees labor (c. 1286).

The Instruction should explain what is meant by labor contract and employment. Labor is a term that refers to work, services, or toil for wages.<sup>138</sup> Such issues often involve a contract between the employer and employee. A contract is “an agreement between two or more persons which creates an obligation to do or not to do a particular thing.”<sup>139</sup> A contract of employment is defined as an agreement between an employer and an employee in which the terms and conditions of one’s employment are provided.<sup>140</sup> The contract will be between the public juridic person and the laborer. In entering the contract, the administrator of the public juridic person seems to have a dual

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<sup>138</sup> See GARNER, *Black’s Law Dictionary*, pp. 952-953.

<sup>139</sup> *Ibid.*, pp. 318-319.

<sup>140</sup> See *ibid.*, p. 321.



responsibility. One is to ensure that the rights of the public juridic person are protected and the contract is of benefit to it; the other is to ensure that the contract respects the dignity of the human person as identified in the teaching of the Church.

The Fathers of the Second Vatican Council emphasized the need for the pastors of the Church—including those who are administrators—to ensure that the conditions of life of all who serve the Church are respected as far as possible, always observing the requirements of justice, equity and charity with due regard for their families.<sup>141</sup> Consequently, canon 1286, 1° obliges administrators to ensure a just wage to workers which allow them to provide a decent life for their dependents.<sup>142</sup> Other canons in the Code also make mention of this issue: the Church acknowledges that it is bound to offer just remuneration and good working conditions to priests and deacons (c. 281), to lay persons in professional services (c. 231, §2), and to religious (c. 681, §2).<sup>143</sup>

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<sup>141</sup> See *AA*, no. 22, in *AAS*, 58 (1966), p. 837, English translation in *FLANNERY*1, p. 788.

<sup>142</sup> Canon 1286, 1° has its source in *CIC/17*, c. 1524; PIUS XI Encyclical Letter *Quadragesimo anno*, 15 May 1931, in *AAS*, 23 (1931), pp. 200-201, idem, Encyclical Letter *Duwm redemptoris*, 19 March 1937, in *AAS*, 29 (1937), pp. 65-106; PIUS XII Radio Message *II Santo Natale e la umanità dolorante*, 24 December 1942, in *AAS*, 35 (1943), pp. 9-24; JOHN XXIII, Encyclical Letter *Mater et Magistra*, 15 May 1961, in *AAS*, 53 (1961), pp. 401-464, and Second Vatican Council, *AA*, no. 22; and *GS*, no. 67. For an in-depth study of the social teaching of the Church in relation to just wages as required by canon 1286, 1, see A.M. EZENWA, *Ecclesial and Nigerian Legal Perspectives on Employment of Workers: Application of Canon 1286, 1°*, JCD thesis, Ottawa, Saint Paul University, 1999, especially pp. 71-125 (=EZENWA, *Ecclesial and Nigerian Legal Perspectives on Employment of Workers*).

*CIC/17*, c. 1524 gives details of what is expected of the administrator: "All, and especially clerics, religious and administrators of ecclesiastical goods must, in hiring workers, give them respectable and just compensation; employers must also see to it that they are free to perform their religious duties at a convenient hour; they shall make no arrangement that will interfere with the worker's duties to their families and practice of thrift, and shall not impose on them work which is heavier than their strength can bear, or which is not suited to their age or sex." One commentator noted that this canon underscores, on the one hand, an example to be set of a truly religious interpretation of work and prayer; and on the other, the world is to be shown that the Church is opposed to slavish drudgery, but not to wholesome social and domestic pursuits. See C.A. BACHOFEN, *A Commentary on the new Code of Canon Law*, 3<sup>rd</sup> ed., vol. VI, Saint Louis, B. Herder Book Co., 1931, p. 585.

<sup>143</sup> See EZENWA, *Ecclesial and Nigerian Legal Perspectives on Employment of Workers*, p. 71.

#### **4.7.2.1 — Insurance Policies**

The Code obliges administrators to exercise vigilance so that goods entrusted to them are protected, and they are to do so by taking out insurance policies (c. 1284, §2, 1).

In order to implement the prescription of this canon the Instruction should state:

1. Every public juridic person subject to the diocesan bishop must be part of the diocesan Insurance Plan and see that its goods are fully insured through this master plan;
2. Depending on the nature of the property involved, insurance shall either be in the form of a replacement policy, or in a coverage for value policy. The form of insurance shall be determined in consultation with the episcopal vicar for administration and the diocesan lawyer;
3. Special insurance shall be taken out to cover potential liabilities;
4. Any individual or group insurance policy taken out in addition to the diocesan Insurance Plan shall be approved beforehand by the episcopal vicar for administration, only after receiving the consent of the diocesan bishop;
5. A listing of insurance policies particular to a parish or work, shall be included in the annual report and listed in the parish inventory.<sup>144</sup>

#### **4.7.2.2 — Employment Contracts and Dismissal of Employees**

One of the purposes of ecclesiastical goods is to pay for the works of the apostolate (c. 1254, §2).<sup>145</sup> The hiring of workers to fulfill the purpose for which the juridic person was established is carried out by the administrator.<sup>146</sup>

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<sup>144</sup> See *Catholic Archdiocese of Ottawa, Instruction*, pp. 77-78.

<sup>145</sup> EZENWA is of the view that canon 1286,1° refers to more than the administrator mentioned in canon 1279, §1: “However, in view of the social teachings of the Church, canonical tradition, and the spirit of the principles enunciated in the Second Vatican Council, it is our opinion that a broad interpretation,

E. Reissner cautions administrators who may be clerics or religious on being unrealistic concerning remunerating lay employees. According to him a

possible danger exists, however, when the employer is a priest or a religious. This is almost always the case among administrators of Church property. By reason of their state of life, priests and religious are most often more removed from the economic pressures which are felt by other employers, and indeed, by their employees. Priests and sisters do not have the direct and personal experiences of family responsibility [..]. For these reasons, it is necessary that they take special care to guarantee that their wage policy is not antiquated and unrealistic.<sup>147</sup>

The duty of the diocesan bishop is to ensure that the dual role of the administrator underscored in canon 1286, 1° is fulfilled. Administrators also have the task of ensuring that the appropriate civil insurance (health, liability, etc.) coverage is provided for

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which involves all those who are employers in the Church, either through ordinary or delegated power, fall within the meaning of administrators mentioned in the canon [1286, 1°], provided they are Church agencies operating within the law and working towards the objectives stated in c 1254” In *ibid*, p. 99

<sup>146</sup> The opinions of authors are divided as to whether this canon is a particular case of canonization of civil law. J.M. HUELS is of the view that the Code does not intend the canonization of civil laws on labor but rather their recognition. In other words, the applicable civil effects are recognized by canon law without being incorporated into the canonical system. “Recognition of the civil law does not eliminate the possibility that, in individual instances, competent church authorities may determine that a certain civil law should not be observed if it would harm the interest of the Church.” In “Ecclesiastical Laws,” in *CLSA Comm2*, p. 85. For T. MOLLOY, the civil laws on labor are incorporated into canon law: “A strong argument can be made that this canonizes civil labor laws and that the civil law of the place regarding labor relations is now incorporated into and has become part of Canon Law.” In “The Canonization of Civil Law,” in *CLSA Proceedings*, 46 (1984), p. 44; EZENWA, in a similar way, holds the opinion that canon 1286, 1° canonizes civil law: “We are inclined to the opinion that c 1286, 1° canonizes civil law, in view of the wording of the canon which requires that the civil laws on labour and social life be ‘observed meticulously.’” In *Ecclesial and Nigerian Legal Perspectives on Employment of Workers*, p. 116. We are of the view that this is a partial canonization of civil law on labor. Canon 1286, 1° incorporates civil laws that are consonant with the social teaching of the Church. To hold that it does canonize every civil law on labor would lead one to conclude that even civil labor laws that are intrinsically unjust are canonized by the canon. Whenever the Code of Canon Law adopts civil laws, it does not intend a sweeping observance but civil laws must always be subject to the conditions mentioned in canon 22.

PAUL VI in one of his address to the Roman Rota, noted that administrators are not allowed to follow civil laws which violate Christian moral principles. He asserted that the law of the Church must always emphasize the supernatural mission of the Church which cannot be limited by any secular authority. See “Judicial Structures in the Life of the Church,” in *The Pope Speaks*, 22 (1977), p. 175. For example, the social teaching of the Church acknowledges the equality of all persons (GS, no. 29); any civil law on labor that creates wage disparity for the same job on the basis of race or sex or creed will not bind administrators. See NATIONAL CONFERENCE OF CATHOLIC BISHOPS [OF THE UNITED STATES], “Economic Justice for All: Pastoral Letter on Catholic Social Teaching and the U.S. Economy,” no. 353, in *Origins*, 16 (1986-1987), p. 446.

<sup>147</sup> E.A. REISN, *Canonical Employer-Employee Relations, Canon 1524*, Canon Law Studies, no. 427, Washington, Catholic University of America, 1964, p. 70.

employees if this is not provided for by the government (see, for instance c. 1284, §2, 1°).

The Instruction should decree the following:

1. For the purpose of this Instruction an employee may be regarded as anyone not incardinated into the diocese and working for the diocese or any other public juridic person subject to the diocesan bishop;
2. No person may be employed in the name of the diocese or parish without having a legal signed contract;
3. Such a contract shall cover, among other things, the duration of the period of employment, the job description, the person to whom the employee is accountable, the accountability and evaluation of performance, possible renewal of the contract, termination of employment, etc.;
4. Contracts shall be entered into on behalf of the diocese by the diocesan bishop or episcopal vicar for administration; at the parish level, the pastor of the parish acts on its behalf;
5. Before employing anyone at the parish or diocesan level, the episcopal vicar for administration or the diocesan finance officer is to be consulted;
6. In all employment contracts, the applicable norms of civil law shall be duly observed as far as possible (c. 1286);
7. Before an employee is dismissed, the episcopal vicar for administration or the diocesan finance officer and the diocesan lawyer are to be consulted. Proper procedures shall be observed in every case and legal advice obtained before any action is taken.<sup>148</sup>

#### **4.7.2.3 — Pension Plan for Lay Employees**

The public juridic person has a canonical obligation to provide a pension plan for its employees (c. 231, §2). The canon says that lay persons who permanently or temporarily devote themselves to the service of the Church have a right to their social

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<sup>148</sup> See *Catholic Archdiocese of Ottawa, Instruction*, pp 65 66

provision, social security, and health benefits. This obligation rests on the public juridic person that employs such lay persons.

The Instruction should mandate that administrators ensure the observance of the norms of canons 231 and 1286.<sup>149</sup> It should place limits on employment when the public juridic person is unable to meet the obligations. Such a restriction would be in line with the ordinary's vigilance duty established by canon 1276, §1.

#### **4.8 — Remuneration of Clerics**

We have decided to treat clerics separately because the terms of employment of canon 1286 do not always apply to them. They are not employees of the public juridic person (diocese or religious institute). The Code identifies the decent support of clergy as one of the principal purposes of owning ecclesiastical goods (c. 1254, §2). The diocesan bishop has a special responsibility towards the clergy incardinated in the diocese. He is to ensure that provision is made for their decent support and social assistance, according to the norm of law (c. 384).<sup>150</sup> Canon 281, §1 says that clergy are to be remunerated. *DPMB* says the proper remuneration of priests will discourage them from seeking additional income through activities outside their ministry, which might well obscure their chosen state of life and reduce their pastoral and spiritual activity.<sup>151</sup>

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<sup>149</sup> EZENWA remarks that this canon relates to religious when they work in their institute since religious cannot be employees within the institute where they made their religious profession. Furthermore, canon 670 provides that institutes must supply the members with everything necessary in accordance with the constitutions to fulfill their vocation. However, canon 1286, 1° applies to religious when they take up employment outside the institute of profession. See *Ecclesial and Nigerian Legal Perspectives on Employment of Workers*, p. 111. The same principle applies to diocesan priests working in their dioceses of incardination. They are not employees of their diocese; however, when they take up employment in civil institutions or outside their dioceses, then canons 231 and 1286, 1° would apply.

<sup>150</sup> *DPMB*, no. 191, p. 209, states: "The diocese should be responsible for the remuneration of clerics who offer service for the benefit of the diocese, through the establishment of an institute or special foundation for collecting goods and offerings from the faithful, or through some other means."

<sup>151</sup> See *ibid.*, no. 80, p. 89.

The Instruction should address the manner of fulfilling this broad responsibility of the diocesan bishop:

1. The diocese shall be responsible for remunerating clergy who are incardinated (cc. 281, §1; 1274, §1);
2. The salary scale shall be based on the years of ministry. A scale of 1 to 10; 11-25; 26-50; 51 and above is to be observed (here the diocesan bishop may establish the amount to be paid to the clergy);
3. Other factors (such as the financial situation of the parish) will also be observed in computing the just remuneration of clergy;
4. Parishes are to ensure that the clergy who have been assigned to them are justly remunerated according to the scale determined above;<sup>152</sup>
5. Clergy who are engaged in other employment that may be generating enough income to pay for their needs may not be entitled to the determined remuneration in the diocese. Such persons are to discuss their income with the episcopal vicar for administration or the diocesan finance officer to establish the manner of remuneration;
6. Parishes who are not able to pay a just remuneration to their clergy shall be assisted by the diocese from the fund established in accordance with canon 1274, §1.

#### **4.8.1— Assistance to Priests in Need**

Priests who, due to illness or other factors, are unable to assume the responsibilities of the ministry, but are not yet eligible to benefit from the clergy retirement fund shall be taken care of in the following manner (c. 281, §§2-3). A group insurance plan entered on behalf of the clergy of the diocese may be established:

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<sup>152</sup> The diocesan bishop may mandate parishes to remunerate priests who are assigned to them. Parishes that are not able to fulfill this obligation are to be assisted by the diocese.

1. A priest who is unable to assume the responsibilities of ministry shall first bring the matter to the attention of the diocesan bishop;
2. If necessary, one or more medical certificates shall be provided, explaining the nature of the situation to the diocesan bishop;
3. After assessing the situation the diocesan bishop is to decide if the priest may receive payments from a fund set aside for this purpose e.g., “Priests’ Compensation Fund.”;
4. Other needs of the priest, such as money to cover living arrangements, special expenses, etc., shall be brought to the attention of the episcopal vicar for administration or the diocesan finance officer, who is to subsequently make recommendations to the diocesan bishop for an approved amount,
5. A priest who has sufficient personal funds to cover the situation would be expected to provide for his own needs so that the fund can come to the assistance of those who are truly in a situation of need,
6. If the incapacity to assume ministry is not based on a medical situation, but on other factors (such as legal issues), particular arrangements shall be made with the diocesan and the episcopal vicar for administration or finance officer on an individual basis.<sup>153</sup>
7. All diocesan clergy incardinated in the diocese are to contribute 6% of their gross salary to a fund to be called “Diocesan Compensation Fund”; likewise the parish or the public juridic person where the clergy works shall pay 12% of the gross salary to this fund.

#### 4.8.2 — Pension Plan for Clerics

The Code mandates the provision of social assistance to clerics in special need because of old age, illness or incapacity (c. 281, §2).<sup>154</sup> Canon 538, §3 stipulates that the diocesan bishop is to provide suitable support and housing for retired pastors observing

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<sup>153</sup> See *Catholic Archdiocese of Ottawa, Instruction*, pp 38-39

<sup>154</sup> See *ibid* , no 80, p 90

the norms established by the conference of bishops. Canon 1274, §2 provides an optional means of fulfilling this obligation. Where such social provisions have not yet been arranged, the conference of bishops is to establish an institute which provides sufficiently for the social security of clerics. In some civil law jurisdictions, this is taken care of in the form of a national health care plan for all citizens and also a national pension plan. The obligation mentioned in canon 1274, §2 persists only where there are no other provisions. However, the Code does not prohibit making supplemental provisions when there is a government plan. Having a social security plan for priests helps to keep them more focused for the ministry. The lack of such a provision could constitute an unhealthy distraction to their rendering effective service.

When there is a diocesan pension plan, the Instruction should mandate priests to contribute to this plan. This can be done on the basis of canons 281, §2 and 1274, §2. It is possible to deduct such an amount from the remuneration of the active priest. The Instruction should determine the amount and the method of payment. Before making such a determination, however, it would be prudent for the diocesan bishop to consult the clergy dedicated to the sacred ministry in the diocese. The Instruction should state the manner of generating this fund:

1. All diocesan clergy incardinated in the diocese, and they alone, must contribute to the Group Insurance Plan; they are to pay half of the premium while the diocese pays the other half of the premium;
2. Contributions to this Plan are payable in advance every three months, that is, no later than 1 January, 1 April, 1 July, and 1 October for the corresponding following trimester.



#### **4.8.3 — Other Issues Concerning Priests**

The Code of Canon Law in some instances makes reference to matters that touch on temporal goods which relate to priests in the diocese (cc. c. 384; 555, §3; 275). The Code assigns several responsibilities to the vicar forane (c. 555), and a number of these duties relate to temporal goods. He is to ensure that priests in his district do not lack assistance for their spiritual and material assistance (c. 555, §3). He is also responsible to ensure that the temporal goods belonging to the parish are not lost or removed on the death of the pastor (c. 555, §3).<sup>155</sup>

Given the fact that some of these obligations concerning annual retreats, continued education, vacation, etc. involve money, the Instruction should establish where and how the money would be sourced. One option is to have a fund set up for such a purpose; another is to make a special appeal to the faithful to contribute to such a purpose (c. 1262). It would be beneficial for the diocesan bishop to discuss this issue with the priests of the diocese before establishing such norms (cf. c. 384).

The Code does not specifically address the last will and testament of diocesan priests. However, the diocesan bishop could establish particular law mandating priests to make a civilly valid will (cc. 22; 381, §1; 391, §1). Once again, the importance of consultation before such a particular law is passed cannot be overemphasized. When such a law has been established, the Instruction could give further details on the procedure to be followed. It could also determine the competent authority to ensure compliance (cf. c. 34).

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<sup>155</sup> The Code does not mandate the establishment of deaneries and vicars forane. In a diocese that has no vicars forane, the Instruction would determine who fulfills duties similar to those of the vicar forane. The office may be optional but the obligation to fulfill those duties still binds the diocesan bishop.

Another issue concerns assistance that may be rendered to priests in need who are not incardinated in the diocese. Canon 275 states that, since all clerics work for the same purpose of building up the body of Christ, there should be a fraternal bond among them. Canon 383, §1 states that the diocesan bishop is to show himself concerned for all the faithful entrusted to his care. The faithful are entrusted to the care of the bishop on the basis of domicile or quasi-domicile (cc. 102; 107). *DPMB* says that the diocesan bishop should anticipate the needs of priests and make provision for them through his regional vicar.<sup>156</sup> Therefore, the Instruction could determine the specific ways in which the diocesan bishop is to show concern for priests, both those incardinated as well as those not incardinated. The Instruction may also address the case of a priest who is in unusual financial need.

#### **4.9 — Civil Incorporation of Public Juridic Persons**

The Code of Canon Law clearly envisions a system whereby civil laws are observed to protect the titles to property in the Church (cc. 22; 1281, 1°; 1284, §2, 2°; 1290). Canon 1256 stipulates that temporal goods legitimately acquired belong to the juridic persons that acquired them. The ownership (*dominium*) of these good, therefore, rests with the juridic person (c. 1254, §1). The duty to protect this property civilly also rests with the public juridic persons that own them. The Instruction is to ensure the proper administration of ecclesiastical goods. One aspect of such administration is the civil protection of this property. The Instruction should therefore mandate the civil incorporation of public juridic persons where the civil legal system permits this. In doing this, the civil charter or statutes must be parallel to those of the Code as much as

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<sup>156</sup> See *DPMB*, no 81, pp 90-92

possible. The rights of full *dominium* as provided in the Code (c. 1254, §1) must also be upheld in the civil statutes of incorporation.

Consequently, parishes and other public juridic persons should be civilly incorporated separately, with the administrator recognized in the Code as the administrator also recognized in the civil statutes. The practice of the diocesan corporation sole, whereby every property in the territory of the diocese, including that of the parishes, is held by the office of the diocesan bishop, is contrary to canon law. This arrangement does not recognize the right of full *dominium* of each of the public juridic persons. Since such provisions are contrary to law, Instructions cannot direct administrators to comply with such a norm (c. 34), unless perhaps when there are overriding considerations (e.g., where the State does not allow separate incorporation of parishes and other church entities).

#### **4.10 — The Report to Civil Authority**

The Code recognizes the need for the observance of civil laws in matters of temporal goods (c. 1290). Such observance may include a compulsory declaration of funds received, taxation, employment benefits, etc. The Instruction should explain the manner by which administrators are to fulfill this duty.

1. Any compulsory declaration that is to be filed with civil government must be duly prepared and presented before the prescribed time-limit;
2. Whenever administrators of ecclesiastical goods are in doubt concerning the time and the manner of making this declaration, they are to consult the episcopal vicar for administration;

3. One copy of documents sent to the government must be kept in the parish archive, and another must be sent to the diocesan chancery;
4. The responsibility of making such a report to the civil government for diocesan goods rests with the episcopal vicar in conjunction with the diocesan finance officer;
5. The report or declaration is to be totally honest;
6. In the case of any complaint from the civil government concerning the report, the administrator is promptly to inform the episcopal vicar who is to resolve the issue in collaboration with the diocesan finance officer and the diocesan lawyer.<sup>157</sup>

## CONCLUSION

In this chapter, the possible contents of the diocesan financial instruction were explained. The basic principles underlining the norms were first examined. *Communio* was studied as a principle to guide the application of the Instruction. From this we noted that, even though ecclesiastical goods are separately owned by the public juridic persons that have legitimately acquired them, they nonetheless have the same common goal of fulfilling the mission of the Church. In this light, public juridic persons need to come to the assistance of each other in a spirit of *communio*. Another aspect of *communio* that came to the fore was the need for each administrator and those who assist in administration to observe strictly the Instruction issued by the diocesan bishop. In so doing, they will be observing *communio* with the competent authority empowered by the Roman Pontiff to issue such norms (c. 1276, §2). Other principles such as subsidiarity, collaboration, careful vigilance, observance of civil law, respect for the intentions of the donor, transparency and accountability, just remuneration of workers, protection of the

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<sup>157</sup> See *Catholic Archdiocese of Ottawa, Instruction*, pp 575-74

patrimony of the public juridic person, legitimate acquisition of temporal goods and the spiritual principle underlining the administration of ecclesiastical goods were also examined.

The contents of the Instruction were examined in accordance with the functions of administrators of ecclesiastical goods. Since the purpose of the Instruction is primarily to help those concerned with administering ecclesiastical goods, we made several recommendations concerning how the laws on acquisition, administration and contracts involving temporal goods could be practically applied in varying circumstances by their administrators.

## GENERAL CONCLUSION

The goal of our study has been to provide the diocesan bishop with the materials needed for issuing the special instructions for administrators of ecclesiastical goods subject to his authority. The diocesan bishop is entrusted with the pastoral responsibility of governing the entire diocese with the sacred power received at episcopal ordination (cc. 375; 381; 391; 392). By virtue of this power, he coordinates the apostolate in the local church in order that all may participate effectively in the one mission of Christ entrusted to the Church (c. 394).<sup>1</sup> Ecclesiastical goods are crucial to fulfilling this mission (c. 1254, §2).<sup>2</sup> Consequently, the Code empowers the diocesan bishop to regulate the entire affair of administering ecclesiastical goods in the diocese (cc. 392, §2; 1276, §2). One of the most effective ways recommended to do this is by issuing special instructions for all those concerned with administering ecclesiastical goods (c. 1276, §2). We have divided our dissertation into four chapters. The first chapter examined the power of the diocesan bishop with regard to caring for ecclesiastical goods. The second chapter studied the roles of those who administer ecclesiastical goods. The third chapter studied the very nature of the special instructions that the diocesan bishop is expected to issue for administrators. The fourth chapter examined the content of the special instructions.

In our study of the nature of the power of the diocesan bishop, we concluded that it is a power that is rooted in ordination and office. The ecclesiastical nature of this

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<sup>1</sup> *AA*, no. 2 says that every activity of the Church which is intended to spread the kingdom of God is to be called the "apostolate." The Church therefore exercises its apostolate through the different activities of its members. The role of the faithful in the apostolate is mentioned among the rights and duties of all Christian faithful (see cc. 210-216; 298, §1).

<sup>2</sup> The Church's right to temporal goods is tied to their being used to fulfill the proper purposes of the Church. Canon 1254, §2 indicates that providing for divine worship, supporting the clergy and other ministers, and carrying out the works of the apostolate and charity are purposes to be served by such goods. The wording of this paragraph is not intended to be exclusive but rather inclusive of all those tasks which contribute to the spreading of the kingdom of God. See *Communicationes*, 12 (1980), pp. 395-396.

## GENERAL CONCLUSION

power requires that it is to be exercised in communion with the Roman Pontiff. It also means that it is for a particular goal, namely, the salvation of souls, which is the ultimate mission of the Church (c. 1752).<sup>3</sup> The mission of the Church is entrusted to all Christ's faithful, not just to the diocesan bishop. Although he has the duty of coordinating the entire apostolate, he is not expected to perform the entire task (cc. 211; 223, §2; 394). Therefore, the faithful also participate or cooperate in the exercise of any ecclesiastical power geared towards the mission of the Church. The assessment of whether or not power is exercised properly is to be made in relation to the overall mission of the Church: the salvation of souls.

Ecclesiastical goods are meant to aid the fulfillment of this mission (c. 114). There is a correlation between ecclesiastical goods and the mission of the Church. The mission of the Church identified in the Code (c. 114, §2) and the purposes of owning ecclesiastical goods (c. 1254, §2) are one and the same. Therefore, the mission of the Church is the same as the reasons why public juridic persons own goods. Consequently, the diocesan bishop has the duty of ensuring that ecclesiastical goods are properly designated as stable patrimony and administered according to the norm of law. The diocesan bishop, as one who is principally responsible for the mission of the Church, is also responsible for ensuring that the means to fulfill this mission are not jeopardized. Consequently, he is obliged to exercise careful vigilance over all ecclesiastical goods of public juridic persons subject to him (c. 1276, §1). We conclude that one of the most comprehensive ways of achieving this aim is through the issuance of special instructions for administrators of ecclesiastical goods. The diocesan bishop cannot fail to care for the

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<sup>3</sup> The Church as a society also has a common goal and the means to fulfill it. The goal of the Church is the salvation of everyone, and the means to attain this goal are both spiritual and temporal. The spiritual means are the sacraments, grace, and the power which Christ has given to the Church.

## GENERAL CONCLUSION

mission of the Church. He is appointed principally to nurture the faith of Christ's faithful. He cannot fulfill this duty if he relegates the due and proper vigilance over the administration of ecclesiastical goods to a secondary level of concern. The same concern and due diligence that is shown to ensure that abuses do not creep into the proper celebration of the sacraments is to be shown to ensure the proper administration of ecclesiastical goods (c. 392, §2).

The task of administering the ecclesiastical goods of a public juridic person is entrusted to the administrators of ecclesiastical goods. Administrators are identified in the Code or in the statutes of public juridic persons (cc. 118; 279, §1). One principle that must always be kept in mind in the administration of ecclesiastical goods is that the public juridic person that legitimately acquires the goods has the full right of ownership (c. 1254, §1; 1256). One of the rights of ownership is the ability to administer or exercise control over the goods acquired. The Code has stated this unambiguously: "*Dominium bonorum [ ] ad petinet iuridicam personam, quae eadem bona legitime acquisiverit*" (c. 1256). The diocesan bishop has the obligation to promote this ecclesiastical discipline by ensuring that diocesan properties are not jointly managed with the properties of other public juridic persons in such a way that an individual public juridic person loses the right of control over its property. The diocesan-wide corporation sole system of holding title to property in the diocese must be strongly discouraged. In fact, it should be contemplated only when the civil law does not allow separate incorporation of all public juridic persons in the diocese. To act contrary to the principle of separate incorporation of property of public juridic persons is not only financially imprudent, but it is also a violation of the



## GENERAL CONCLUSION

common ecclesiastical discipline which the diocesan bishop is obliged to promote and observe (cc. 392, §1; 1256).<sup>4</sup>

The diocesan bishop's role as one who exercises careful vigilance over the administration of ecclesiastical goods of public juridic persons subject to him is not to be confused with the function of administering ecclesiastical goods. He is not the administrator of goods of parishes and other public juridic persons in the diocese. Apart from the public juridic person of the diocese, he is not legally empowered to administer other public juridic persons except when the statutes of a juridic person grant him such a power. Therefore, the practice of having the bishop as a sole signatory to parish accounts would be contrary to the common ecclesiastical discipline of canon 1256. Such a practice also blurs the distinctive nature of public juridic persons in the diocese. It makes the financial assets of all public juridic persons vulnerable in the unfortunate event of a lawsuit against any of the other public juridic persons.

The principle of subsidiarity requires that persons and organs designated by legitimate authority to assist in the administration of goods are allowed to carry out their duties. The Code assigns numerous functions relating to temporal goods to the diocesan and parish finance councils, the college of consultors, the presbyteral council, the vicar forane, the pastor of a parish, and the diocesan finance officer. The diocesan bishop has the obligation of ensuring that these functions are diligently fulfilled. In order to achieve this goal, he may have to approve statutes and issue decrees for these groups and

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<sup>4</sup> *LG*, no. 23 states "All Bishops have the obligation to foster and safeguard the unity of faith and to uphold the discipline which is common to the whole Church, as a manifestation of the care and solicitude for the whole Church." The common discipline may be ecclesiastical laws which originate from the supreme authority of the Church (cc. 331, 336) but also particular councils (cc. 445-446), the episcopal conferences (c. 455), or the diocesan bishop himself (c. 391, §2). There must be a harmony between the common and particular discipline, because particular laws contribute to effectively strengthen universal laws. See V G IGLESIAS, "Diocesan Bishops," in *ExComm*, vol. II/1, p. 817.

## GENERAL CONCLUSION

individuals. We have provided samples of these statutes as appendices to our dissertation.

Given the fact that the diocesan bishop has many functions to fulfill, this dissertation has provided recommendations to assist him in implementing the discipline of canon 1276, §2. We have provided examples of norms that may regulate the acquisition, possession, administration, and alienation of goods. The issues of remuneration of clerics and employees were also addressed. The Church exists to bear witness to the gospel, to be a light to the nations. As with its teaching on social justice, so with forthrightness the Church must practice what it preaches concerning labor matters if it is to be a credible witness to the Gospels. Therefore, the diocesan bishop has the duty of ensuring that administrators pay just wages to workers employed by the public juridic person (cc. 231, §2; 1286). He may issue particular laws in pursuance of this obligation or, through the instructions of canon 1276, §2, fulfill this obligation by mandating a minimum wage for all employees. Prudence dictates that such norms be issued after consultation with the appropriate persons, and always observing the principle that what touches all ought to be considered by all.<sup>5</sup>

The employment contract is also subject to the diocesan bishop's vigilance. We recommended ways by which he may fulfill this duty. He may require administrators to follow diocesan procedures for the hiring and firing of workers. He may promulgate particular law concerning this matter. Such law would require that civil law be observed as much as possible in issues of employment contract and dismissal (cc. 22; 1290).

Regarding the remuneration of incardinated clergy in the diocese, it is the duty of the diocese and not parishes to remunerate them (cc. 281; 1274, §1). The diocese may,

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<sup>5</sup> RI 29 in VI° "Quod omnes tangit ab omnibus probari"

## GENERAL CONCLUSION

nonetheless, mandate parishes to do so. However, parishes that are not able to fulfill this duty are to be assisted by the diocese.

We strongly hold that the obligation to issue special instructions for administrators of ecclesiastical goods is one of the major functions of a diocesan bishop, a function that he must consider as part of the mission which has been entrusted to him to fulfill. Canon 1276, §2 becomes one of the key canons in the Code. Without temporal goods the mission of the Church cannot be fulfilled properly. Without the proper administration of ecclesiastical goods, the purposes of ecclesiastical goods cannot be achieved. Without careful vigilance over the proper administration of ecclesiastical goods, the mission of the Church cannot be fulfilled. One of the first things a diocesan bishop should do after taking canonical possession of his diocese is to review the existing special instructions required by canon 1276, §2. If none exists in the diocese, he should set up a procedure, perhaps involving a committee of competent persons, to draft such an instruction. In light of our study, it is our opinion that the special instructions of canon 1276, §2 should exist for every diocese. The special instructions serve as a canonical proactive measure to forestall possible financial malfeasance within the Church. If the Church is to avoid expending its energy and ecclesiastical resources in solving financial crisis in the future, the diocesan instruction for administrators of ecclesiastical goods should be a must for all dioceses.

## Appendix 1<sup>1</sup>

### DECREE ESTABLISHING, AND STATUTES OF, A PUBLIC JURIDIC PERSON

CONTENT – The decree of establishment of, and the statutes of, a public juridic person will identify several issues related to its purpose, administration, and functions, among which could be the following:

- competent authority establishing the public juridic person (canon 114 § 1)
- name of the juridic person
- the nature of the public juridic person (canons 113 § 2, 116 § 1, 120 § 1)
- historic recitals
- purposes and role (canon 114 § 2-3)
- governance (canon 115)
- ownership of ecclesiastical goods (canon 1256)
- accountability and regular reports (canon 1287)
- acts of extraordinary administration (canon 1281 § 2)
- approval of statutes (canon 117)
- changes in the decree or in approved statutes
- allocation of goods upon extinction (canon 123)
- resolutions of conflicts between civil and canonical documents
- closing prayer for future blessings
- place, date, signatures (diocesan bishop, chancellor), seal

#### SAMPLE DECREE

Paul Smith  
by the grace of God and the favor of the Apostolic See  
Bishop of Johnsbury

#### **Decree of Establishment as a Public Juridic Person Johnsbury Catholic Charities (2001)**

1. On May 1, 2001, “Johnsbury Catholic Charities (2001)” was incorporated as a Society under the *Societies Act* of the Province of Ontario. The objects of this Society include, among many other issues, the promotion, sponsorship, and advancement of charitable purposes; the acquisition of property, gifts, shares, securities, monies and other properties for use in meeting these purposes; the acquisition of administrative and accounting skills and equipment and the provision of such services for Catholic Social Services and other charitable organizations; and the provision of consultation services relating to the establishment and ongoing maintenance of social, welfare, and community

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<sup>1</sup> Appendices 1-14 are taken from J.A. RENKEN, “Selected Issues on Church Property,” Seminar Papers, 18-22 January 2010, Ottawa, Saint Paul University.

health programs for Catholic Social Services and other charitable organizations. Such objectives have traditionally been part of the Catholic Church's work of charity (*CIC*, canons 114 § 2, 298, 1254 § 2).

2. In order to retain the Catholic presence in the social, welfare, and community health fields, the Bishop of Johnsbury has requested that the "Johnsbury Catholic Charities (2001)" be established to sponsor these apostolic activities set out in the above paragraph on behalf of the Catholic Church.
3. Since 2001, "Johnsbury Catholic Charities (2001)" has played a very important role in providing administrative and accounting services, and consultation services for the establishment and ongoing maintenance of social, welfare, and community health programs for Catholic Social Services and other charitable organizations.. It is now time to give it, in addition to its civil recognition, a canonical status that will enable it to continue its saving mission in the name of the Church.
4. Therefore, with the consent of the college of consultors and the finance council of the Diocese of Johnsbury (cf. *CIC*, canon 1277), I hereby confer upon "Johnsbury Catholic Charities (2001)", based in the City of Johnsbury, the status of a non-collegial public juridic person, a *universitas personarum* (*CIC*, canons 115-116), operating in the name of the Catholic Church in accordance with the provisions of law and helping to carry out the Church's mission of charity and care for others.
5. Since juridic personality can be conferred only when the statutes of an aggregate have been approved by competent ecclesiastical authority (*CIC*, canon 117), I hereby approve and confirm the canonical statutes of "Johnsbury Catholic Charities (2001)" which are annexed to this decree and dated October 15, 2009.
6. My prayer is that, through the efforts of "Johnsbury Catholic Charities (2001)," the healing mission of Jesus Christ will continue to flourish in the Diocese of Johnsbury and beyond.

Given at the City of Johnsbury, in the province of Ontario, this first day of November, in the year of our Lord, two thousand and nine.

/s/ + *Paul Smith*  
Bishop of Johnsbury

/s/ *Msgr. Harold B. Anthony, V.G.*  
Chancellor

**Statutes**  
**Johnsburg Catholic Charities (2001)**

1. These canonical statutes which constitute the canonical norms whereby “Johnsburg Catholic Charities (2001),” a duly-erected non-collegial public juridic person, an aggregate of persons, in the Catholic Church, will be governed and directed.
2. The principal objective of “Johnsburg Catholic Charities (2001)” is to carry out various charitable works and activities of the Catholic Church (*CIC*, canon 114 § 2), including the promotion, sponsorship, and advancement of charitable purposes, the acquisition of property, gifts, shares, securities, monies, and other properties for use in meeting these purposes; the acquisition of administrative and accounting skills and equipment and the provision of such services for Catholic Social Services and other charitable organizations; and the provision of consultation services relating to the establishment and ongoing maintenance of social, welfare, and community health programs for Catholic Social Services and other charitable organizations.
3. The “Johnsburg Catholic Charities (2001)” shall be governed by those who, for civil law purposes, constitute the Members and the Board of Directors of the Society registered under the same name. The approved bylaws of the civilly recognized Society shall constitute the operating canonical statutes of “Johnsburg Catholic Charities (2001),” except where such are contrary to canon law (see *CIC*, canon 1290) or to these Statutes.
4. The “Johnsburg Catholic Charities (2001)” shall have as its superior, to whom it is subject as a public juridic person, the Bishop of Johnsburg. Its legal representative and administrator shall be the person designated as such by the diocesan bishop (cf. *CIC*, c. 1279 1).
5. The “Johnsburg Catholic Charities (2001)” shall have a finance council, composed of at least five persons chosen by the Bishop of Johnsburg, to assist its administrator in fulfilling his or her function (cf. *CIC*, c. 1280).
6. In the operation of “Johnsburg Catholic Charities (2001),” the canon law of the Catholic Church, as amended from time to time, and the principles outlined in the Code of Ethics approved and amended from time to time by the Members and the Board of Directors of “Johnsburg Catholic Charities (2001)” shall be complied with and observed.
7. The temporal goods owned by “Johnsburg Catholic Charities (2001)” and its constituent parts which are not otherwise committed at civil law prior to the date hereof are “ecclesiastical goods” which are governed by Book V of the *Code of Canon Law* and these statutes.
8. An annual report of the operations of “Johnsburg Catholic Charities (2001)” shall be presented for information purposes to the Bishop of Johnsburg at a mutually agreed upon time (see *CIC*, canon 1287).

9. The “Johnsburg Catholic Charities (2001)” is perpetual by its nature as a juridic person (*CIC*, canon 120 § 1). Any change in its canonical status is reserved to the Bishop of Johnsburg.
10. Subject to civil law requirements, in the event that “Johnsburg Catholic Charities (2001)” should cease to exist as an independent entity, its temporal goods shall be disposed of in accord with the norms of canon law (*CIC*, canon 123) and the applicable civil legal documents governing “Johnsburg Catholic Charities (2001).” In the case of conflict between the civil and canonical norms, the matter shall be referred to the Bishop of Johnsburg or to a person of his choice for resolution, and, subject to the commitments at civil law of “Johnsburg Catholic Charities (2001),” the temporal goods shall be dealt with in accord with such resolution.
11. Any changes in these canonical statutes requires the consent of the Bishop of Johnsburg.

*Approval*

The foregoing statutes are approved by the undersigned Bishop of Johnsburg, this fifteenth day of October, in the year of our Lord, two thousand and nine.

*/s/ + Paul Smith*  
Bishop of Johnsburg

*/s/ Msgr. Harold B. Anthony, V.G.*  
Chancellor

## Appendix 2

### DECREE ESTABLISHING AN ORDINARY DIOCESAN TAX

CONTENT – The decree of establishment of an ordinary diocesan tax will identify the following issues:

- motive
- legislative authority of diocesan bishop (c. 391)
- notion of particular law (c. 8 § 2)
- identification of universal law (c. 1263)
- the particular law
- effective date (c. 8 § 2)
- place, date, signatures (diocesan bishop, chancellor), seal

SAMPLE DECREE

Paul Smith  
by the grace of God and the favor of the Apostolic See  
Bishop of Johnsburg

#### Decree Particular Law on the Ordinary Diocesan Tax

Whereas, the diocesan bishop is charged with providing pastoral care for the people of the particular church entrusted to his care (*CIC*, c. 376; cf. cc. 383-387, 394); and

Whereas, the diocesan bishop is assisted by the diocesan curia in guiding pastoral action, in administering the diocese, and in exercising judicial power (*CIC*, c. 469); and

Whereas, the Diocese of Johnsburg does not have invested funds to support the functions to be provided by the diocesan bishop and his collaborators as they meet the needs of the diocese; and

Whereas, the diocesan bishop has the right to impose a moderate tax for the needs of the diocese upon public juridic persons subject to his governance, proportionate to their income, after he has heard the diocesan finance council and the presbyteral council (*CIC*, c. 1263);

By this decree, having heard the diocesan finance council on 15 June 2009 and the presbyteral council on 19 June 2009, I impose a tax for the needs of the diocese upon all parishes of the Diocese of Johnsburg, according to the following computation formula:



the tax shall be 6.5% of the “ordinary Church support” (that is, the monies accruing from regular parish collections) designated by each parish on the financial report of the last fiscal year, ending 30 June;

deducted from the “ordinary Church support” shall be any monies used during the fiscal year to pay off debts, principal and interest, owed to the Diocese of Johnsbury;

deducted from the “ordinary Church support” shall be any monies invested for a period of at last nine months during the past fiscal year into the diocesan investment cooperative;

excluded from “ordinary Church support” shall be: designated donations whose donor has specified a particular purpose, special collections, stole fees, Mass stipends, investment income, insurance claims, rental income, bequests, revenue from capital fund drives approved by the diocesan bishop, fees for religious education, school tuition, picnics/bazaars/other parish fund-raisers; overage from the revenue generated during the previous year’s “Bishop’s Annual Services Appeal.”

The diocesan finance officer will contact each pastor to identify the specific amount of the request for each parish. The tax is due on 1 March of each year. The diocesan Office for Stewardship will assist parishes to generate the amount of the tax through a direct-mail appeal to each Catholic household, beginning 1 October of each year and known as the “Bishop’s Annual Services Appeal” (BASA). Any revenue generated which exceeds the amount of the tax shall be returned to the parish and shall not be considered “ordinary Church support” in the computation of the next tax.

This tax will be imposed annually upon all parishes of the Diocese of Johnsbury annually on 1 October of each year, and is to be paid in full by 1 March of the following year. Should the diocesan bishop seek to change the formula of this tax, as explained in this decree, he may do so validly only after having heard the diocesan finance council and the presbyteral council of the Diocese of Johnsbury.

This particular law is effective immediately (cf. *CIC*, c. 8 § 2).

Given at the City of Johnsbury, in the province of Ontario, this first day of July, in the year of our Lord, two thousand and nine.

/s/ + *Paul Smith*  
Bishop of Johnsbury

/s/ *Msgr. Harold B. Anthony, V.G.*  
Chancellor

### Appendix 3

#### STATUTES OF AN AUTONOMOUS FOUNDATION

CONTENT – The statutes of an autonomous foundation will identify several issues related to its purpose, administration, and functions, among which could be the following:

- competent authority establishing the public juridic person
- name of the autonomous foundation
- the nature of the public juridic person
- origin (occasion for the establishment: e.g., a last will and testament)
- establishment by the competent ecclesiastical authority
- purposes (and who may change them in case of necessity)
- investment of the endowment
- annual accounts of administration
- administration
- determination of operating policies
- use of earnings
- designation of funds if the foundation is suppressed or divided
- compliance with canon and civil law
- place, date, signatures (diocesan bishop, chancellor), seal

#### SAMPLE STATUTES

##### Statutes

##### Diocese of Johnsbury, Ontario

##### The Monsignor William W. Walker Foundation

1. The name of this autonomous pious foundation shall be “The Monsignor William W. Walker Foundation,” referred to in these statutes as “the foundation.” It is established by the diocesan bishop of the Diocese of Johnsbury at the request of parishioners of Saint Katherine Drexel Parish, Warrensburg, to honor Monsignor William W. Walker, deceased. It is a **public juridic person**, a *universitas rerum* (CIC, canons 115-116), operating in the name of the Catholic Church. It is governed by the norms of the *Code of Canon Law* and other laws, universal and particular, of the Catholic Church, even as these may be amended from time to time. In particular, it is governed by the norms of Book V of the code.
2. The purpose of the foundation is to assist the formation of future priests, and the continued formation of diocesan priests, in the study of canon law, from monies which accrue from the endowment of funds designated for this purpose.

3. The initial endowment of the foundation is comprised of CA\$ 1,000,000 left for this purpose by the deceased, Monsignor William W. Walker in his last will and testament, and CA\$ 5,000 donated by parishioners of Saint Katharine Drexel Parish, Warrensburg, for this purpose.
4. The foundation shall have as its superior, to whom it is subject as a public juridic person, the Bishop of Johnsbury. Its legal representative and administrator shall be the person designated as such by the diocesan bishop (cf. *CIC*, c. 1279 § 1). The administrator shall perform the roles identified in the universal and particular law of the Catholic Church, particularly the *Code of Canon Law*.
5. The foundation shall have a finance council, composed of at least three persons chosen by the Bishop of Johnsbury, to assist its administrator in fulfilling his or her function (cf. *CIC*, c. 1280).
6. The administrator shall present an annual report of administration shall be presented to the local ordinary of the Diocese of Johnsbury, who will present it for review to the diocesan finance council (*CIC*, c. 1287 § 1)
7. The general administration of the fund shall be entrusted to an individual or investment institution chosen by the administrator of the foundation and approved for this purpose by the diocesan bishop. The administrator may determine to invest some percentage of the annual earnings in the endowment, so that its value keeps pace with inflation.
8. With the consent of the diocesan bishop, the administrator shall determine its general operating policies which he may revise from time to time with the same episcopal consent.
9. The annual earnings from the foundation shall be entrusted to the diocesan bishop who will use them for the purposes of the foundation and will render a report on that use to the college [person] administering the foundation.
10. Should the foundation be suppressed or divided, the revenue of the endowment and any earnings will be given to the diocesan bishop, who will use them for the purposes for which this foundation is established.
11. These Statutes shall conform to the pertinent norms of canon law and civil law.

*Approval*

The foregoing statutes are approved by the undersigned Bishop of Johnsbury, this eighteenth day of January, in the year of our Lord, one thousand nine hundred and ninety-nine.

/s/ + Paul Smith

Bishop of Johnsbury

/s/ Msgr. Harold B. Anthony, V.G.

Chancellor

## Appendix 4

### DECREE ESTABLISHING A NON-AUTONOMOUS FOUNDATION

CONTENT – The decree establishing non-autonomous foundation will identify several issues related to its purpose, administration, and functions, among which could be the following:

- competent authority establishing the non-autonomous foundation (c. 1304 § 1)
- name of the non-autonomous foundation
- origin (occasion for the establishment. e.g., a last will and testament)
- establishment by the competent ecclesiastical authority
- purposes (and who may change them in case of necessity)
- duration
- investment of the endowment (cc. 1287, 1305)
- annual accounts of administration
- administration
- determination of operating policies
- use of earnings
- designation of funds if the public juridic person holding the non-autonomous foundation is suppressed or divided
- compliance with canon and civil law
- place, date, signatures (diocesan bishop, chancellor), seal (c. 474)

#### SAMPLE DECREE

Paul Smith  
by the grace of God and the favor of the Apostolic See  
Bishop of Johnsburg

#### **Decree Establishing the Kevin P. Marion Foundation**

Whereas Kevin P. Marion by last will and testament dated 1 January 2008 has bequeathed the Diocese of Johnsburg the sum of \$500,000 to be used to constitute a foundation, the revenue of which is to provide for Mass offerings for the repose of his soul, and for the needs of the Diocese of Johnsburg, I hereby decree as follows:

1. The Diocese of Johnsburg accepts the foundation, to be known as the Kevin P. Marion Foundation, under the following conditions as determined by the general and particular law of the Catholic Church and by the stipulations of the donor as found in the above-mentioned last will and testament and as agreed upon by the executor of the estate.

2. The capital sum shall be carefully invested under the supervision of the diocesan finance officer of the Diocese of Johnsbury, who each year shall present a report to the diocesan bishop and the diocesan finance council for review.
3. This foundation shall be operative for a period of thirty years, beginning 1 January 2009 and ending 31 December 2038.
4. The interest deriving from the endowment shall be disbursed as follows:
  - 50% to be added to the capital of the foundation
  - 25% to be used for Mass offerings, to be determined according to the regulations in effect on 1 January of each year (cf. *CIC*, c. 952)
  - 25% to be used for the general operations of the Diocese of Johnsbury according to the discretion of its diocesan bishop.
5. If, during the course of the thirty years, the 25% of the interest allotted for Mass offerings is not sufficient to provide the accustomed stipend for one Mass, the remaining 25% to be given to the Bishop of Johnsbury shall be combined and one Mass shall be offered that year for the repose of the soul of Kevin P. Marion.
6. In the event that even 50% of the annual earnings from the endowment are insufficient to produce the offering necessary for even one Mass, the Bishop of Johnsbury shall have due freedom, if he sees fit, to reduce the amount of interest added to the capital each year in order to provide the required offering.
7. Upon dissolution of the foundation on 31 December 2038, the endowment shall be disbursed as follows:
  - 25% of the endowment shall be used for Mass offerings for the repose of Kevin P. Marion, to be determined according to the regulation in effect on 1 January 2039
  - 75% of the endowment shall be given to the Institute for Clergy Support (cf. *CIC*, c. 1274 § 1) or shall be used for the general operations of the Diocese of Johnsbury according to the discretion of its diocesan bishop.
8. If the Diocese of Johnsbury shall be divided or otherwise modified by the Apostolic See, this foundation and its revenue shall accrue to the particular church in whose territory is situated the city of Klapner where the donor was domiciled at the time of his death.
9. This foundation is subject to the norms of the *Code of Canon Law* and particular law, even as these shall be modified from time to time.

Given at Johnsbury, this first day of November, in the year of our Lord, two thousand and eight.

/s/ + Paul Smith

Bishop of Johnsbury

/s/ Msgr. Harold B. Anthony, V.G.

Chancellor

## Appendix 5

### DECREE ESTABLISHING AN “INSTITUTE FOR PRIEST SUPPORT”

CONTENT – The decree establishing an institute for clergy support will identify several issues related to its purpose, administration, and functions, among which could be the following:

- competent authority establishing the institute (c. 1274 § 1)
- name of the institute
- purposes
- duration
- investment of the endowment, if applicable (cf. cc. 1287, 1305)
- annual accounts of administration
- administration
- determination of operating policies
- use of earnings
- designation of funds if the public juridic person holding the non-autonomous foundation is suppressed or divided
- compliance with canon and civil law
- place, date, signatures (diocesan bishop, chancellor), seal (c. 474)

#### SAMPLE DECREE

Paul Smith  
by the grace of God and the favor of the Apostolic See  
Bishop of Johnsburg

#### **Decree Establishing the Institute for Priest Support of the Diocese of Johnsburg**

Whereas, the diocesan bishop has the responsibility to protect the rights of presbyters, and to take care that provision is made for their decent support (*CIC*, c. 384); and

Whereas, priests who dedicate themselves to ecclesiastical ministry deserve remuneration consistent with their condition and function (*CIC*, c. 281 § 1);

By this decree, I establish the “Institute for Priest Support of the Diocese of Johnsburg” (hereinafter, “the Institute”) which shall be a non-autonomous pious foundation of the Diocese of Johnsburg (cf. *CIC*, c. 1303 §1, 2°) existing for the period of twenty-five years, whose purpose and to which the following particular laws apply:

1. The initial endowment shall be \$1,000,000, generated by an extraordinary diocesan

tax upon all the parishes of the Diocese of Johnsborg, based on the formula which I had presented to the presbyteral council on 30 May 2009. This formula imposes an extraordinary tax of 1.4% upon all parishes, and is based upon the Sunday collections generated during the past fiscal year (cf. *CIC*, c. 1263). Through the agency of the diocesan Office for Stewardship, a direct-mail appeal will be made to all Catholic households to assist parishes in reaching their designated mandatory goals. The tax is due to be paid by each parish not later than 31 December 2009.

2. Added to the endowment for the duration of the Institute shall be any goods of a non-autonomous pious foundation entrusted to a public juridic person subject to the diocesan bishop when the time of the non-autonomous foundation is completed, unless the intention for the donor has been expressly manifested otherwise (*CIC*, c. 1303 § 3).
3. In addition, until such time as the endowment reaches \$15,000,000, each year 25% of the earnings on the endowment shall be invested into the endowment. After the endowment has reached a value of \$15,000,000, all earnings shall be available for the purposes of the Institute. If the value of the endowment ever subsequently diminishes below \$15,000,000, 25% of annual earnings will again be invested into the corpus until the endowment again reaches \$15,000,000.

Further, after the endowment has reached \$15,000,000, if the annual earnings are not needed for the purpose of the Institute, the Bishop of Johnsborg shall hear the diocesan finance council and the college of consultors before he invests not more than 25% of the annual earnings into the corpus, which shall be considered an act of ordinary administration more important in light of the economic condition of the diocese (*CIC*, c. 1277).

4. The earnings generated each year shall be to provide remuneration to diocesan clergy who do not receive remuneration directly from a parish or institution, and to all clergy (diocesan and others who have an assignment in the diocese) whose parish or institution is unable to provide remuneration according to the “Schedule for Clergy Remuneration” issued annually by the Bishop of Johnsborg.
5. The monies of the Institute shall be carefully invested under the supervision of the diocesan finance officer of the Diocese of Johnsborg, who each year shall present a report to the diocesan bishop and the diocesan finance council for review.
6. This non-autonomous foundation shall be operative for a period of twenty-five years, beginning 1 January 2010 and ending 31 December 2034. Until the non-autonomous foundation is established, the monies generated for it shall be held as “designated funds” by the Diocese of Johnsborg.
7. If in a given fiscal year the Institute produces no revenue, no money generated during the subsequent year will be invested to make up for the year when 25% was unable to be invested as corpus.<sup>8</sup> Upon dissolution of the foundation on 31 December 2034, the endowment shall be disbursed as follows according to the judgment of the Bishop of Johnsborg exclusively for the support, education, pension, or health care of the diocesan

clergy.

9. If the Diocese of Johnsbury shall be divided or otherwise modified by the Apostolic See, the monies of the Institute shall be pro-rated in an equitable and just fashion based on the number of clergy involved and as agreed upon by the diocesan bishops involved. In the case of a dispute among the diocesan bishops, the pro-ration shall be resolved in an equitable and just fashion by the metropolitan archbishop in whose province is located the City of Johnsbury.
10. Before 1 January 2010 when the Institute shall become operative, the Bishop of Johnsbury will establish a civil corporation whose articles of incorporation and bylaws shall reflect this decree (*CIC*, c. 1274 § 5).
11. This foundation is subject to the norms of the *Code of Canon Law*, this particular law, and the civil legal documents (unless the latter are contrary to divine law or canon law: cf. *CIC*, c. 22).

Given at Johnsbury, this first day of July, in the year of our Lord, two thousand and nine.

/s/ + *Paul Smith*  
Bishop of Johnsbury

/s/ *Msgr. Harold B. Anthony, V.G.*  
Chancellor



## Appendix 6

### DECREE ESTABLISHING PARTICULAR LAW ON ANNUAL BUDGETS

CONTENT – The decree establishing particular law requiring the creation of annual budgets should include the following:

- motive
- legislative authority of diocesan bishop (c. 391)
- notion of particular law (c. 8 § 2)
- identification of universal law which invites/requires particular law, if applicable
- the particular law
- effective date (c. 8 § 2)
- place, date, signatures (diocesan bishop, chancellor), seal

SAMPLE DECREE

Paul Smith  
by the grace of God and the favor of the Apostolic See  
Bishop of Johnsburg

#### Decree Particular Law on Formulation of Annual Budgets

Whereas, the diocesan bishop is charged to keep vigilance over the administration of ecclesiastical goods which belong to public juridic persons subject to him (*CIC*, c. 1276 § 1), especially in order to avoid abuses (*CIC*, c. 391 § 2); and

Whereas, it is strongly recommended that administrators prepare budgets of incomes and expenditures each year, and it is left to particular law to require them and to determine the ways in which they are to be presented (*CIC*, c. 1284 § 3); and

Whereas, the diocesan bishop has legislative authority in the particular church entrusted to his care (*CIC*, c. 391 § 1), which he must exercise personally (*CIC*, c. 391 § 2); and

Whereas, the diocesan bishop is able to issue particular law to be observed within the diocese (*CIC*, c. 8 § 2); and

Whereas, the preparation of an annual budget is an indispensable instrument in the process of pastoral planning to meet the needs of the People of God within the parameters of limited finances;

By this decree, I establish as particular law of the Diocese of Johnsburg:

that the administrators of all public juridic persons subject to the authority of the Bishop of Johnsbury prepare annually a budget of projected income and expenditures, to be submitted to the diocesan finance officer by 1 May of each year (that is, two months before the beginning of the fiscal year observed in the diocese) on a form provided by the diocesan finance officer;

that administrators prepare these budgets in consultation with the finance council (or, exceptionally, the two financial counselors) of the public juridic person (cf. *CIC*, cc. 537, 1280); and

that the budget be submitted with the signature of the administrator and the members of the finance council (or, exceptionally, the two financial counselors) whom the administrator consulted in preparation of the budget.

This particular law is effective immediately (cf. *CIC*, c. 8 § 2).

Given at the City of Johnsbury, in the province of Ontario, this first day of November, in the year of our Lord, two thousand and nine.

*/s/ + Paul Smith*  
Bishop of Johnsbury

*/s/ Msgr. Harold B. Anthony, V.G.*  
Chancellor

## Appendix 7

### DECREE ESTABLISHING PARTICULAR LAW ACTS OF EXTRAORDINARY ADMINISTRATION

CONTENT – The decree establishing particular law on acts of extraordinary administration should include the following:

- motive
- legislative authority of diocesan bishop (c. 391)
- notion of particular law (c. 8 § 2)
- identification of universal law which invites/requires particular law, if applicable
- the particular law
- effective date (c. 8 § 2)
- place, date, signatures (diocesan bishop, chancellor), seal

#### SAMPLE DECREE

Paul Smith  
by the grace of God and the favor of the Apostolic See  
Bishop of Johnsburg

#### Decree Particular Law Establishing Acts of Extraordinary Administration

Whereas, the diocesan bishop is charged to keep vigilance over the administration of ecclesiastical goods which belong to public juridic persons subject to him (*CIC*, c. 1276 § 1), especially in order to avoid abuses (*CIC*, c. 391 § 2); and

Whereas, the diocesan bishop is competent to determine acts of extraordinary administration for public juridic persons subject to his authority, after he has heard his diocesan finance council (*CIC*, c. 1281 § 2); and

Whereas, the diocesan bishop has legislative authority in the particular church entrusted to his care (*CIC*, c. 391 § 1), which he must exercise personally (*CIC*, c. 391 § 2); and

Whereas, the diocesan bishop is able to issue particular law to be observed within the diocese (*CIC*, c. 8 § 2); and

Whereas, acts of administration which exceed the limits and manner of ordinary administration must be clearly defined;

By this decree, having heard the diocesan finance council, I establish as particular law of the Diocese of Johnsbury that the following shall be considered acts of extraordinary administration requiring *for validity* the prior written faculty from the local ordinary (*CIC*, c. 1281 § 1) to be obtained by an administrator of public juridic persons subject to the Bishop of Johnsbury:

to expend more than \$25,000 for the purchase of any movable good; if a purchase is part of a larger purchase, the sum of the entire purchase is subject to this amount;

to expend more than \$25,000 for the repair of property; if a repair is part of a larger project, the sum of the entire project is subject to this amount;

to purchase any real estate or other immovable good;

to erect a building or a cemetery;

to lease property belonging to the public juridic person (cf. *CIC*, c. 1297);

to lease property on behalf of the public juridic person (cf. *CIC*, c. 1297);

to enter any transaction which may worsen the stable patrimonial condition of the public juridic person (cf. *CIC*, c. 1295);

to grant an easement on church property.

If the administrator of a public juridic person subject to the Bishop of Johnsbury performs any of the above-listed acts of extraordinary administration without the prior written faculty of the local ordinary, the act is invalid in canon law and the public juridic person is not bound to answer for it (*CIC*, c. 1281 § 3).

This particular law is effective immediately (cf. *CIC*, c. 8 § 2).

Given at the City of Johnsbury, in the province of Ontario, this first day of November, in the year of our Lord, two thousand and nine.

/s/ + Paul Smith  
Bishop of Johnsbury

/s/ Msgr. Harold B. Anthony, V.G.  
Chancellor

## Appendix 8

### INSTRUCTION ON INVENTORIES BY ADMINISTRATORS OF PUBLIC JURIDIC PERSONS

CONTENT – The instruction on inventories should include the following:

- motive
- notion of an instruction (c. 34)
- authority of one with executive power to issue instructions (c. 34 § 2)
- law concerning which the instruction is issued
- the instruction
- effective date (c. 8 § 2)
- place, date, signatures, seal

#### SAMPLE INSTRUCTION

Paul Smith  
by the grace of God and the favor of the Apostolic See  
Bishop of Johnsburg

#### **Instruction Inventories by Administrators of Public Juridic Persons**

Whereas, instructions clarify the prescripts of laws and elaborate on and determine the methods to be observed in fulfilling them; they are given for those whose duty it is to see that laws are executed and oblige them in the execution of laws; they do not derogate from laws (*CIC*, c. 34 §§ 1-2); and

Whereas, instructions are issued within the limits of their competence by those who possess executive power (*CIC*, c. 34 § 1); and

Whereas, the diocesan bishop possesses executive power to govern the particular church entrusted to him (*CIC*, c. 391 § 1); and

Whereas, administrators of juridic persons are bound to make an inventory of the stable patrimony owned by the juridic person before they begin their function, are to note changes in the inventory, and are to preserve one copy of the inventory, as initiated and as updated, in the archive of the administration and one copy of the same in the archive of the curia (*CIC*, c. 1283, 2°-3°); and

Whereas, when administrators make and update inventories they are exercising vigilance so that the goods entrusted to their care are in no way lost (*CIC*, c. 1284 § 2, 1°);

In order to assure the accurate recording of stable patrimony belonging to public juridic persons subject to the vigilance of the Bishop of Johnsbury , I issue this instruction regarding the inventories to be made and regularly updated by the administrators of public juridic persons subject to the authority of the Bishop of Johnsbury, and I instruct that these administrators are:

to use the form provided by the diocesan finance officer for the inventory of the ecclesiastical goods belonging to public juridic persons;

to update this form at least once every year;

to send to the diocesan finance officer each year an updated inventory together with the annual report of administration, which report is to be sent to the diocesan finance officer within one month of the end of each fiscal, i.e., within one month following 30 June each year (cf. *CIC*, cc. 1284 § 2, 7°; 1287 § 1);

to retain a copy of the updated annual inventory in the archive of the administration, together with other well organized books of receipts and expenditures (cf. *CIC*, c. 1284 § 2, 7°) and other documents and records on which the property rights of the public juridic person are based (cf. *CIC*, c. 1284 § 2, 9°).

The matter of this instruction is effective immediately.

Given at the City of Johnsbury, in the province of Ontario, this first day of November, in the year of our Lord, two thousand and nine.

/s/ + *Paul Smith*

Bishop of Johnsbury

/s/ *Msgr. Harold B. Anthony, V.G.*

Chancellor

## Appendix 9

### DECREE ON RENDERING ACCOUNTS TO DONORS

CONTENT – The decree establishing particular law on rendering accounts to donors should include the following:

- motive
- reference to the universal law (c. 1287 § 2)
- the particular law
- effective date (c. 8 § 2)
- place, date, signatures (diocesan bishop, Chancellor), seal

#### SAMPLE DECREE

Paul Smith  
by the grace of God and the favor of the Apostolic See  
Bishop of Johnsburg

#### Decree Particular Law on Rendering Accounts to Donors

Whereas, the diocesan bishop is charged to keep vigilance over the administration of ecclesiastical goods which belong to public juridic persons subject to him (*CIC*, c. 1276 § 1), especially in order to avoid abuses (*CIC*, c. 391 § 2); and

Whereas, the diocesan bishop has legislative authority in the particular church entrusted to his care (*CIC*, c. 391 § 1), which he must exercise personally (*CIC*, c. 391 § 2); and

Whereas, the diocesan bishop is able to issue particular law to be observed within the diocese (*CIC*, c. 8 § 2); and

Whereas, administrators of ecclesiastical goods which have not been legitimately exempted from the power of governance of the diocesan bishop are bound *ex officio* to present an annual report to the local ordinary who in turn is to present it to the diocesan finance council (*CIC*, c. 1287 § 1); and

Whereas, the same administrators are to render an account to the faithful concerning the goods offered by them to the Church according to norms determined by particular law (*CIC*, c. 1287 § 2);

By this decree, I establish the following as particular law for the Diocese of Johnsburg regarding the administrators of public juridic persons subject to my governance rendering accounts to the faithful concerning the goods offered by them to the Church:

- the administrator is to provide to each donor an annual report of gifts given by the donor within two weeks after the end of each calendar year;
- the administrator is to make public a comprehensive annual report of the income and expenditures of the public juridic person at the end of each fiscal year; this report is to correspond to the format of the annual financial report issued by the diocesan finance officer for parishes and other public juridic persons subject to the Bishop of Johnsbury
- the administrator may make public the above-mentioned comprehensive annual report by sending it to those interested through the postal service; by displaying it in a place readily accessible to the public within the building(s) belonging to the public juridic person; or, in the case of parishes, by including it in the parish bulletin

The matter of this decree is effective immediately.

Given at the City of Johnsbury, in the province of Ontario, this first day of November, in the year of our Lord, two thousand and nine.

*/s/ + Paul Smith*  
Bishop of Johnsbury

*/s/ Msgr. Harold B. Anthony, V.G.*  
Chancellor



## Appendix 10

### Rescript

#### Permission to Perform an Act of Extraordinary Administration

WHEREAS, administrators are bound to fulfill their functions in the name of the Church according to the norm of law (*CIC*, c. 1282) and with the diligence of a good householder (*CIC*, c. 1284 § 1); and

WHEREAS, administrators invalidly place acts of extraordinary administration unless they have first obtained the written faculty of the ordinary (*CIC*, c. 1281 § 1); and

WHEREAS, having heard the diocesan finance council, the Bishop of Johnsbury has determined that the purchase of real estate by the administrator of a public juridic person subject to his authority constitutes an act of extraordinary administration (cf. *CIC*, c. 1281 § 2); and

WHEREAS, the pastor of a parish represents it in all juridic affairs and is its administrator (*CIC*, c. 532); and

WHEREAS, the Reverend Thomas T. Terreau, moderator of the priests to whom has been entrusted *in solidum* (cf. *CIC*, c. 517 § 1; cf. c. 543 § 2, 3°) the care of Saint Michael Parish, Johnsbury, has requested permission from the Bishop of Johnsbury to purchase real estate adjacent to Saint Michael Church property (specifically, Lot 46-A of Marryberg township, located at the corner of South and Mildred Streets); and

WHEREAS, in accord with the particular law of the Diocese of Johnsbury, the Reverend Thomas T. Terreau has heard the members of the parish finance council before making this request;

I, the undersigned Bishop of Johnsbury, grant to the Reverend Thomas T. Terreau the faculty to perform the requested act of extraordinary administration and to purchase the above-mentioned real estate on behalf of Saint Michael Parish, Johnsbury. He is to take care that the ownership of this property is protected in civilly valid methods (*CIC*, c. 1284 § 2, 2°) and is to place the appropriate documents attesting to the ownership of the real estate in the parish archive and in the archive of the diocesan curia (*CIC*, c. 1284 § 2, 9°). Likewise, he is to exercise vigilance that this property is properly protected by taking out appropriate insurance coverage for it according to diocesan requirements (cf. *CIC* c. 1284 § 2, 1°).

Given at Johnsbury, Ontario, this first day of August, in the year of our Lord, two thousand and nine.

/s/ + Paul Smith

Bishop of Johnsbury

/s/ Msgr. Harold B. Anthony, V.G.

Chancellor

## Appendix 11

### Rescript

#### Permission To Alienate Stable Patrimony Valued Above the Minimum Amount

WHEREAS, administrators are bound to fulfill their functions in the name of the Church according to the norm of law (*CIC*, c 1282) and with the diligence of a good householder (*CIC*, c 1284 § 1), and

WHEREAS, administrators invalidly place acts of alienation of stable patrimony whose value exceeds the sum defined by the law unless they have first obtained the permission of the diocesan bishop with the consent of his diocesan finance council, the college of consultors, and those concerned (*CIC*, c 1292 § 1), and

WHEREAS, the pastor of a parish represents it in all juridic affairs and is its administrator (*CIC*, c 532), and

WHEREAS, the Reverend Robert R. Rhodes, pastor of Saint Patrick Parish, Johnsbury, has requested permission from the Bishop of Johnsbury to sell real estate donated to Saint Michael Parish by the late Maurice P. Frazier (specifically, Lot 46 A of Marryberg township, located at the corner of South and Mildred Streets) for the amount of CA\$ 2,500,000, which is between the minimum and maximum amounts established by the Canadian Conference of Catholic Bishops (see CCCB official memorandum, dated February 2008), and

WHEREAS, the Reverend Robert R. Rhodes has consulted both his parish pastoral council and his parish finance council, and they concur that the just cause for alienating this property, which is not needed for parochial operation, is evident advantage to the parish (cf *CIC*, c 1293 § 1, 1°) which intends to invest the revenue generated by the sale for the future erection of a parish catechetical center on property adjacent to the parish church (cf *CIC*, c 1294 § 2), and

WHEREAS, the Reverend Robert R. Rhodes has obtained two written appraisals of experts that this property is worth less than the proposed selling price (cf *CIC*, cc 1293 § 2, 2°, 1294 § 1),

I, the undersigned Bishop of Johnsbury, having obtained the consent of the diocesan finance council, the college of consultors, and those concerned, grant to the Reverend Robert R. Rhodes permission to alienate the above mentioned real estate on behalf of Saint Patrick Parish, Johnsbury. He is to take care that the sale of this property is protected in civilly valid methods (cf *CIC*, c 1284 § 2, 2°) and is to place the appropriate documents attesting to the sale in the parish archive and in the archive of the diocesan curia (*CIC*, c 1284 § 2, 9°). Likewise, he is to invest the revenue generated by the sale for the advantage of the church (cf *CIC* cc 1284 § 2, 6°, 1294 § 2).

Given at Johnsbury, Ontario, this first day of August, in the year of our Lord, two thousand and nine

/s/ + *Paul Smith*

Bishop of Johnsbury

/s/ *Msgr Harold B. Anthony, V.G.*

Chancellor

## Appendix 12

### Rescript Permission To Designate Stable Patrimony

#### SAMPLE RESCRIPT

Paul Smith  
by the grace of God and the favor of the Apostolic See  
Bishop of Johnsbury

WHEREAS, administrators are bound to fulfill their functions in the name of the Church according to the norm of law (*CIC*, c. 1282) and with the diligence of a good householder (*CIC*, c. 1284 § 1); and

WHEREAS, administrators are to exercise vigilance so that the ecclesiastical goods entrusted to their care are in no way lost or damaged (*CIC*, c. 1284 § 2, 1°); and

WHEREAS, the designation of an ecclesiastical good is a most suitable means to protect it from loss; and

WHEREAS, the goods which constitute stable patrimony are identified by legitimate designation (cf. *CIC*, c. 1291); and

WHEREAS, the act of designating stable patrimony of a parish is an act of extraordinary administration requiring the pastor, who is the administrator of the parish (*CIC*, c. 532) to obtain the prior written faculty from the local ordinary (*CIC*, c. 1281 § 1); and

WHEREAS, the Reverend Konrad Stevens, pastor of Saint Patrick Parish, Johnsbury, has requested permission from the Bishop of Johnsbury to designate three items as stable patrimony of the parish (that is, a new set of vestments valued at \$5,600; a new photocopy machine valued at \$15,200; and a new snow remover valued at \$8,600);

I, the undersigned Bishop of Johnsbury, grant the Reverend Konrad Stevens this written faculty to designate legitimately these three items as the stable patrimony of Saint Patrick Parish, Johnsbury. He is to see that these items are identified as parochial stable patrimony in the next inventory updated for the parish (cf. *CIC*, c. 1283, 3°).

Given at Johnsbury, Ontario, this third day of September, in the year of our Lord, two thousand and nine.

/s/ + Paul Smith  
Bishop of Johnsbury  
/s/ Dr. Madeline Pole  
Vice-Chancellor

### Appendix 13

#### DECREE ESTABLISHING NORMS FOR PARISH FINANCE COUNCILS

CONTENT – The diocesan bishop, by a general decree, is to issue norms to guide the operation of parish finance councils. Once they are made, the statutes for each finance council must be approved by the local ordinary through a singular administrative act. The general decree may address the following:

- preamble
- name
- purpose
- membership (ex officio, appointed, elected, etc.)
- officers (executive committee)
- meetings (general, special)
- committees
- finances
- rules of order
- amendments
- dissolution

#### SAMPLE DECREE

Paul Smith  
by the grace of God and the favor of the Apostolic See  
Bishop of Johnsburg

#### **Decree Norms for Parish Finance Councils**

WHEREAS, the universal law requires the establishment of finance councils in every parish; and

WHEREAS, the same law requires the diocesan bishop to issue norms to complement the universal legislation on parish finance councils; and

By this decree, I establish the following norms to govern the parish finance councils in the Diocese of Johnsburg.

- the pastor is the legal representative of the parish in juridic affairs and the administrator of parochial ecclesiastical goods (*CIC*, c. 532)
- the pastor is the president of the parish finance council, which assists him in the administration of parochial goods

- the pastor selects the members of the parish finance council from among the parishioners;
- the members of the finance council are to be between three and seven in number; they are to be outstanding in integrity and honesty, and truly expert in financial matters and civil law regarding temporalities (cf. *CIC*, c. 492 § 1); excluded are persons related to the pastor up to the fourth degree of consanguinity or affinity (cf. *CIC*, c. 492 § 3)
- members of the council are appointed for a term of two years, renewable
- the specific responsibilities of the parish finance council include:
  - to assist the pastor in preparing an annual budget of projected income and expenditures before the beginning of each fiscal year, to be presented to the local ordinary (cf. *CIC*, c. 1284 § 3); the budget is to be signed by the members of the parish finance councilors before submission
  - to review and to attest to the accuracy of the annual financial report which is to be presented to the local ordinary (cf. *CIC*, c. 1287 § 2); the annual financial report is to be signed by the parish finance councilors before submission
  - to be heard by the pastor before he seeks the written faculty from the local ordinary to perform an act of extraordinary administration on behalf of the parish (cf. *CIC*, c. 1281 § 1); the request is to be signed by the parish finance councilors before submission
  - to be heard by the pastor before he seeks permission from the diocesan bishop to alienate stable patrimony belonging to the parish in accord with the norms of universal and particular law (cf. *CIC*, c. 1291-1292), or to enter contractual transactions which may threaten the patrimonial condition of the parish (cf. *CIC*, c. 1295); these requests are to be signed by the parish finance councilors before submission
  - to be heard by the pastor before he enters into contracts involving leases (*CIC*, c. 1297)
- the parish finance council is to meet at least four times a year at times announced in advance by the pastor to the parishioners; the council may never meet without the pastor;

- all parishioners are to know the members of the parish finance council, so that the faithful may make known their opinions and needs to the councilors;
- minutes of meetings are to be made available to the parishioner through a method determined by the pastor;
- any changes in the approved statutes must again be approved by the local ordinary.

The above norms are to be contained in the statutes for every parish finance council in the Diocese of Johnsbury. I direct that each pastor present to me, within six months of the date of this decree, statutes for his parish finance council to be approved by the local ordinary.

The matter of this decree is effective immediately.

May the Holy Spirit guide all of us in our desire to provide effective care for and vigilance over the goods entrusted to the Church.

Given at Johnsbury, Ontario, this first day of February, in the year of our Lord, two thousand and nine.

*/s/ + Paul Smith*  
Bishop of Johnsbury

*/s/ Msgr. Harold B. Anthony, V.G.*  
Chancellor

## Appendix 14

### DECREE APPROVING STATUTES FOR A PARISH FINANCE COUNCIL

CONTENT – The statutes of a parish finance council will identify several issues related to its purpose, membership, and functions, according to the norms issued by the diocesan bishop (cf. *CIC*, c. 537), among which could be the following:

- preamble
- name
- purpose
- membership (ex officio, appointed, elected, etc.)
- officers (executive committee)
- meetings (general, special)
- committees
- election of members
- finances
- rules of order
- amendments
- dissolution

#### SAMPLE STATUTES

Saint John the Apostle Parish  
Johnsburg, Ontario

#### Parish Finance Council Statutes

#### 1. Preamble

Saint John the Apostle Parish is a community of baptized Catholics who share our time, talents, and treasure in service of the people of God in south central Johnsburg, Ontario.

The parish finance council, sensitive to the pastoral needs of our fellow parishioners, strives to discern creative and effective means to apply available resources to meet those pastoral needs, that we may grow in faith, hope, and love as we witness to the presence of Jesus Christ, the Risen Lord, in this portion of the Lord's vineyard by the gift and power of the Holy Spirit.

#### 2. Name

This council shall be called the "Parish Finance Council of Saint John the Apostle Parish, Johnsburg, Ontario," referred to in these statutes as "the finance council."

3. Purpose

A. The finance council assists the pastor in the administration of the ecclesiastical goods of the parish.

B. Nothing done by the finance council will compromise the norm of law which indicates that the pastor is the legal representative of the parish in juridic affairs and the administrator of its goods (cf. *CIC*, c. 532).

4. Specific Responsibilities

A. To assist the pastor in preparing an annual budget of projected income and expenditures before the beginning of each fiscal year, to be presented to the local ordinary (cf. *CIC*, c. 1284 § 3); the budget is to be signed by the members of the parish finance councilors before submission.

B. To review and to attest to the accuracy of the annual financial report which is to be presented to the local ordinary (cf. *CIC*, c. 1287 § 2); the annual financial report is to be signed by the parish finance councilors before submission.

C. To be heard by the pastor before he seeks the written faculty from the local ordinary to perform an act of extraordinary administration on behalf of the parish (cf. *CIC*, c. 1281 § 1); the request is to be signed by the parish finance councilors before submission. By particular law of the Diocese of Johnsbury, the following are acts of extraordinary administration performed by pastors:

1.) To expend more than \$25,000 for the purchase of any movable good; if a purchase is part of a larger purchase, the sum of the entire purchase is subject to this amount.

2.) To expend more than \$25,000 for the repair of property; if a repair is part of a larger project, the sum of the entire project is subject to this amount.

3.) To purchase any real estate or other immovable good.

4.) To erect a building or a cemetery.

5.) To lease property belonging to the public juridic person (cf. *CIC*, c. 1297).

6.) To lease property on behalf of the public juridic person (cf. *CIC*, c. 1297).



7.) To enter any transaction which may worsen the stable patrimonial condition of the public juridic person (cf. *CIC*, c. 1295).

8.) To grant an easement on church property.

D. To be heard by the pastor before he seeks permission from the diocesan bishop to alienate stable patrimony belonging to the parish in accord with the norms of universal and particular law (cf. *CIC*, c. 1291-1292), or to enter contractual transactions which may threaten the patrimonial condition of the parish (cf. *CIC*, c. 1295); these requests are to be signed by the parish finance councilors before submission.

E. To be heard by the pastor before he enters into contracts involving leases (*CIC*, c. 1297)

## 5. Membership

A. The pastor is the president of the finance council, which assists him in the administration of parochial goods.

B. The pastor selects the members of the finance council from among the parishioners.

C. The members of the finance council are to be between three and seven in number; they are to be outstanding in integrity and honesty, and truly expert in financial matters and civil law regarding temporalities (cf. *CIC*, c. 492 § 1); excluded are persons related to the pastor up to the fourth degree of consanguinity or affinity (cf. *CIC*, c. 492 § 3).

D. The members of the finance council are appointed for a term of two years, renewable.

E. All parishioners are to know the members of the finance council, so that the faithful may make known their pastoral needs to the councilors;

## 6. Meetings

The finance council is to meet at least four times a year at times announced in advance by the pastor to the parishioners; the council may never meet without the pastor.

## 7. Officers

A. The officers of the finance council shall be the chairperson, the vice-chairperson, and secretary. They will be elected at the annual organizational meeting, held after the beginning of a new fiscal year, and shall serve for a one-year term, renewable.

B. The chairperson is responsible for conducting the business of all meetings of the

finance council.

C. The vice-chairperson assists the chairperson, and substitutes for the chairperson when the chairperson is unable to perform the duties of office.

D. The secretary prepares and distributes agenda for meetings, records minutes of meetings and distributes them to members. The secretary places into the parish bulletin announcements of coming council meetings, and summaries of the minutes of the meetings, after these have been approved by the pastor.

#### 8. Committees

A. All committees of the finance council shall be ad hoc committees, whose members are appointed by the chairperson of the finance council with the consent of the pastor.

B. Although others than councilors may serve on ad hoc committees, the majority of members shall be members of the finance council.

C. The purpose of each ad hoc committee shall be determined clearly by the chairperson of the finance council.

D. Reports of the activities of the ad hoc committees shall be made at each finance council meeting.

#### 9. Quorum

A simple majority of members of the finance council and its committees shall constitute a quorum necessary for a meeting.

#### 10. Finances

A. An annual budget for the operation of the finance council will be submitted to the pastor in April of each year, after it has been approved by the councilors.

B. Funding for the operation of the finance council shall come from ordinary parish operating funds.

C. Councilors shall not receive remuneration for service on the finance council or for duties performed on its behalf, but may be reimbursed for reasonable expenses incurred if these have been approved in advance by the pastor.

#### 11. Rules of Order

- A. *Robert's Rules of Order*, as it may be updated periodically, shall govern the operations of the finance council, unless these statutes determine otherwise.
- B. Councilors shall endeavor to reach consensus in all matters being considered by the finance council.

12. Amendments

- A. These Statutes may be amended following a two-thirds majority of council members favoring amendment, including those absent from the meeting when a vote for amendment is taken.
- B. If the bishop of the Diocese of Johnsbury issues particular law governing the operation of parish finance councils, these shall be considered as being incorporated into these present statutes with overriding effect.
- C. No Statutes or amendment of Statutes shall be effective without approval by the pastor and the local ordinary.
- D. Nothing in the Statutes may contradict the divine law, the universal law of the Catholic Church, or the particular law of the Diocese of Johnsbury.

12. Dissolution

- A. The finance council may be dissolved by decision of the bishop of the Diocese of Johnsbury or, with the approval of the diocesan bishop, by decision of the pastor of Saint John the Apostle Parish.
- B. If the parish has no pastor or canonical equivalent, the finance council is suspended until one is appointed.

*Approval*

The above statutes for the parish finance council of Saint John the Apostle Parish, Johnsbury, Ontario, are approved this tenth day of November, in the year of our Lord, two thousand and nine.

*/s/ Msgr. Harold B. Anthony*  
Vicar General

*/s/ Sister Madeline Model, O.P.*  
Vice-Chancellor

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