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AUSTRALIAN CONCILIAR LEGISLATION
PRIOR TO THE 1917 CODE OF CANON LAW:
A COMPARATIVE STUDY WITH SIMILAR CONCILIAR LEGISLATION
IN GREAT BRITAIN, IRELAND, AND NORTH AMERICA

by

Ian Benjamin Waters

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





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ABBREVIATIONS

<u>AAS</u>	<u>Acta Apostolicæ Sedis</u>
AP	Archivio della Sacra Congregazione <u>de propaganda fide</u>
<u>ASS</u>	<u>Acta Sanctæ Sedis</u>
<u>CL</u>	<u>Acta et decreta sacrorum conciliorum recentiorum: Collectio Lacensis, auctoribus presbyteris S.J. e domo B.V.M. sine labe Conceptæ ad Lacum</u>
<u>Collectanea</u>	<u>Collectanea S. Congregationis de Propaganda Fide, seu decreta, instructiones, rescripta pro apostolicis mis- sionariis</u>
<u>Concilia Cincinnatensia I-IV</u>	<u>Acta et decreta quatuor Conciliorum provincialium Cincinnatensium 1855-1882, adjectis pluribus decretis, rescriptis, aliisque documentis</u>
<u>Concilia Oregonopolitana</u>	<u>Acta et decreta Conciliorum provincia Oregonopolitana annis 1848, 1881 et 1891 celebratorum</u>
<u>Concilia Westmonasteriensia</u>	<u>Decreta quatuor conciliorum provincialium Westmonaster- iensium 1852-1873, adjectis pluribus decretis, rescriptis, aliisque documentis</u>
<u>Concilium Armacanum, 1908</u>	<u>Acta et decreta Synodi provincialis Armacana habitæ apud Armacham an. MDCCCXVIII</u>
<u>Concilium Cassiliense, 1907</u>	<u>Acta et decreta Synodi provincialis Cassiliensis habitæ anno MDCCCXVII</u>

<u>Concilium Cincinnatiense V</u>	<u>Concilium Cincinnatiense provinciale V habitum anno 1889 a die 19 ad diem 26 maii</u>
<u>Concilium Marianopolitanum</u>	<u>Acta et decreta Concilii provincialis Marianopolitani primi A.D. MDCCCXCV, præsides Illmo et Rmo Eduardo Carolo Fabre, archiepiscopo Marianopolitano</u>
<u>Concilium Milwaukiense</u>	<u>Acta et decreta Concilii provincialis Milwaukiensis primi, A.D. MDCCCLXXXVI, præsides Illmo. ac Revmo. Michael Heiss, archiepiscopo Milwaukiensi</u>
<u>Concilium Neo-Eboracense IV</u>	<u>Acta et decreta Concilii provincialis Neo-Eboracensis IV, in ecclesia metropolitana S. Patritii, Neo-Eboraci, a die XXIII ad XXX septembris, A.D. MDCCCLXXXIII, præsides eminentissimo ac reverendissimo Ioanne McCloskey, tituli S. Mariæ supra Minervam S.R. Ecclesiæ presbytero cardinali et archiepiscopo Neo-Eboracensi, habiti, et a Sede Apostolica recogniti</u>
<u>Concilium Philadelphiense</u>	<u>Decreta concilii provincialis Philadelphiensis I anno MDCCCLXXX habiti</u>
<u>Concilium plenarium Australasiense</u>	<u>Acta et decreta Concilii plenarii Australasiæ, habiti apud Sydney A.D. 1885, a Sancta Sede recognita</u>
<u>Concilium plenarium Australiense II</u>	<u>Acta et decreta Concilii plenarii Australiensis II, habiti apud Sydney A.D. 1895, a Sancta Sede recognita</u>

Concilium plerarium
Australiense III

Acta et decreta Concilii
plenarii Australiensis III,
habiti apud Sydney A.D. 1905,
a Sancta Sede recognita

Concilium plerarium
Baltimorese III

Acta et decreta Concilii
plenarii Baltimorensis tertii
A.D. MDCCCLXXXIV, præsides
Illmo. ac Revmo. Jacobo
Gibbons, archiepiscopo Balt.
et delegato apostolico

Concilium plen.
IV Aust. et N.Z.

Concilium plerarium IV
Australiae et Novae Zelandiae
habitum apud Sydney a die 4a
ad diem 12am mensis septembris
anno Domini 1937, præsides
Excell.mo ac Rev.mo domine
Joanne Panico, archiepiscopo
tit. Justinianen. delegato
apostolico, a Sancta Sede
recognitum

Concilium plerarium
Quebecense

Acta et decreta Concilii
plenarii Quebecensis primi,
anno Domini MCMIX

Concilium Quebecense V

Acta et decreta quinti
Concilii provinciae Quebecensis
in Quebecensi civitate anno
Domini MDCCCLXXIII celebrati a
Sancta Sede revisa et
recognita

Concilium Quebecense VII

Acta et decreta septimi
Concilii provinciae Quebecensis
in Quebecensi civitate anno
Domini MDCCCLXXXVI celebrati a
Sancta Sede revisa et
recognita

Concilium S. Bonifacii

Acta et decreta primi Concilii
Sancti Bonifacii, 1889

ABBREVIATIONS

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<u>Concilium S. Francisci I</u>	<u>Concilii provincialis S. Francisci I. in ecclesia metropolitana Sancti Francisci A.D. MDCCCLXXIV habiti, et a Sede Apostolica recogniti, acta et decreta</u>
<u>Concilium Scoticum</u>	<u>Acta et decreta Concilii Scotiae plenarii primi post redintegratam hierarchiam</u>
<u>Concilium Torontinum I</u>	<u>Acta et decreta primi Concilii provincialis Torontini in ecclesia metropolitana Sti. Michaelis celebrati mense septembris MDCCCLXXV, a Sancta Sede revisa et recognita anno III^o pontificatus Leonis P.P. XIII, additis quibusdam aliorum conciliorum decretis</u>
<u>Concilium Tuamense, 1907</u>	<u>Acta et decreta Concilii provincialis Tuamensis habiti anno 1907</u>
<u>Concilium Wellingtonense</u>	<u>Acta et decreta Concilii provincialis primi Wellingtonensis habiti in ecclesia Sancti Iosephi Wellingtone in Nova Zelandia, die 21 ianuarii et sequentibus usque ad diem 29 ianuarii 1899</u>
IC	Irish College Archives
<u>i.p.i.</u>	<u>in partibus infidelium</u>
<u>IPPF, pars 1a</u>	<u>Iuris Pontificii de Propaganda Fide, pars prima</u>
Lettere	Lettere e decreti della Sacra Congregazione e Biglietti di Monsignor Segretario
MA	Maitland Diocesan Archives
Mansi	<u>Sacrorum Conciliorum nova et amplissima collectio</u>
MDHC	Melbourne Diocesan Historical Commission Archives
MP	Moran Papers

NK	New Collection, Kirby
NS	Nuova serie
Observanda	Observanda, quæ addita fuerunt decretis primi Concilii provincialis a reverendissimo archiepiscopo et episcopis congregatis, in ecclesia cathedrali Melbournensi, festo Omnium Sanctorum, 1862
Propaganda	Sacred Congregation for the Propagation of the Faith
SAA	Sydney Archdiocesan Archives
SC	Scritture riferite nei Congressi - Oceania
SNCA	Scottish National Catholic Archives
SOCG	Scritture originali riferite nelle Congregazioni Generali
<u>Synodus Maynutiana, 1875</u>	<u>Acta et decreta Synodi plenariæ episcoporum Hiberniæ habitæ apud Maynutiam, an. MDCCCLXXV</u>
<u>Synodus Maynutiana, 1900</u>	<u>Acta et decreta Synodi plenariæ episcoporum Hiberniæ habitæ apud Maynutiam, an. MDCCCC</u>
<u>Synodus Sandhurstense</u>	<u>Prima Synodus dioecesana Sandhurstensis, habitæ in ecclesia S. Kiliani diebus XX et XXI septembris, A.D. 1881</u>
Udienze	Udienze di Nostro Signore

INTRODUCTION

In his opening address at the Second Vatican Council, Pope John XXIII stated that all councils, not only the twenty ecumenical ones previously celebrated, but also the countless others of a provincial or regional character celebrated through the centuries, are important, prove clearly the vigour of the Catholic Church, and are shining lights in her annals.¹

The nineteenth century was a period when provincial and plenary councils flourished, and produced what were de facto local codes of canon law that regulated Catholic life and determined ecclesiastical policy. Between 1842, when Pope Gregory XVI erected at Sydney the first metropolitan see to be established in the British overseas dominions, and 1917, when the first Code of Canon Law was promulgated, six such councils were celebrated in Australia. From the start of the nineteenth century until 1917, there were thirty-four such councils celebrated in the United States of America, fourteen in Ireland, twelve within what is now Canada, four in England, and one in Scotland.² Until 1908, all these

¹ Cf. John XXIII, Allocutio, 11 October 1962, in Acta Apostolicæ Sedis (=AAS), 54(1962), p. 786.

² A list of these and subsequent councils is in app. 4, pp. 268-269.

countries were subject to the jurisdiction of the Sacred Congregation for the Propagation of the Faith (=Propaganda), the special body at the Holy See which had supervised since 1622 all the missionary areas of the Church.³ Australia remained subject to Propaganda until 1976.⁴

The purpose of this dissertation is to examine the conciliar process in Australia (a newly-founded church), to review the conciliar legislation that governed the country prior to the promulgation of the Code of Canon Law, and to extract a number of trends or themes obvious in the Australian legislation, comparing the norms in these areas with the conciliar legislation of North America,⁵ and Great Britain and Ireland during the same period. In particular, there will be investigations to determine (a) how much, if any, of the Australian legislation was indeed original, and whether any was simply taken over from other legislation; (b) whether any of the original Australian legislation was subsequently modified or replaced because of the influence of bishops in Great Britain, Ireland, or North America.

³ Cf. Pius X, Apostolic constitution, "Sapienti consilio", 29 June 1908, in *ibid.*, 1(1909), p. 12.

⁴ Cf. Paul VI, Apostolic letter, "Australiam terram", 22 March 1976, in *ibid.*, 69(1977), p. 29.

⁵ Although provincial councils were held in Mexico during the 1890s - one each in five of the six ecclesiastical provinces then existing - it was decided to exclude them from this study, both because Mexican dioceses were not subject to Propaganda, and because it would be more appropriate to compare Mexican councils with those from other Hispanic, rather than Anglophone, countries.

Furthermore, this study of traditions of legislation in the past may well offer guidelines for future particular legislation.

As yet, there has been no general study of Australian conciliar legislation, much less any comparison with the legislation of other places. In 1949, in Rome, the future Cardinal James R. Knox defended his thesis on the First Provincial Council of Australia.⁶ That council, held in 1844 when there were only three bishops, is the only one that has ever been the direct subject of study.⁷

The method used in preparing the dissertation consists primarily in analyzing the historical data in order to trace the origins, development, and refinement of the Australian

⁶ Cf. J.R. Knox, The Historical and Juridical Importance of the First Council of the Australian Province held in Sydney, 1844, J.C.D. diss., Rome, Pontifical University De Propaganda Fide, 1949, xiii-214 p.

⁷ The only other Australian canonical studies known to the writer are: I.H. Burns, The Foundation of the Hierarchy in Australia 1804-1854, J.C.D. diss., Rome, Pontifical Urban University of Propaganda Fide, 1954, xvi-335-xlix p. (which did no more than mention in passing the First Provincial Council of 1844); R.A. Mulkearns, De legislatione particulari Australiensi de clericis, J.C.D. diss., Rome, Pontificia Universitas Lateranensis, 1960, xii-287 p. (which, in general, was an examination of current 1960 legislation about clerics, in effect the decrees about the subject in the 1937 plenary council and recent diocesan synods); J.E. Munday, Ecclesiastical Property in Australia and New Zealand: An Historical Synopsis and Comparative Study of the General Law of the Church, Canons 1495-1551, and the Decrees of the Fourth Plenary Council of Australia, Decrees 653-685, Canon Law Studies, no. 387, Washington, D.C., Catholic University of America Press, 1957, xiv-141 p. (which is outside the scope of the proposed dissertation, as the Fourth Plenary Council was held in 1937).

Church and its legislation, and then comparing the laws with the concurrent legislation of North America and Great Britain and Ireland. All this concurrent legislation is readily available in its final printed form, both in collections of conciliar documents (Mansi⁸ and the Collectio Lacensis⁹) and in local publications.

In preparing the dissertation, as a result of the kind permission of His Eminence, Jozef Cardinal Tomko, prefect of the Congregation for the Propagation of the Faith, the writer was fortunate in being able to research in the archives of Propaganda, Rome.¹⁰ These archives are now open as far as 1922, although in practice access to material later than 1903 is difficult as proper cataloguing and indexing has yet to occur. However, the writer is confident that he located the bulk of the documentation for the 1905 plenary council and the 1907 Melbourne provincial council.

The writer was also fortunate to secure, through the gracious and welcoming permission of His Eminence, Edward Bede Cardinal Clancy, archbishop of Sydney, access to the

⁸ Cf. G.D. Mansi (ed.), Sacrorum Conciliorum nova et amplissima collectio (=Mansi), Parisiis, H. Welter, 1901-1927; 53 vols in 60.

⁹ Cf. Acta et decreta sacrorum conciliorum recentiorum: Collectio Lacensis, auctoribus presbyteris S.J. e domo B.V.M. sine labe Conceptae ad Lacum (=CL), Friburgi Brisgoviae, Herder, 1870-1892, 7 vols.

¹⁰ Both Cardinal Knox and Monsignor Burns had used these archives, when they were opened as far as 1854; however, neither Bishop Mulkearns nor Father Munday did so.

Sydney Archdiocesan Archives. As the result of a financial grant from the Australian government on the occasion of the Australian Bicentennial celebrations in 1988, those archives are at present being ordered to conform to recognized professional standards. The voluminous papers of Patrick Francis Cardinal Moran, who presided over three plenary councils, have been subjected to preliminary classification, and divided into volumes, but it will be some time before cataloguing of each document will occur. The writer located the minutes of meetings and other documentation connected with the second and third plenary councils. Unfortunately, very little connected with the first plenary council has been located yet; in particular, the minutes of meetings are missing. Deep gratitude is due to the archivist Mr John Cummins, and to Miss Chantel Celjun and fellow-workers.

The archives of the archdiocese of Melbourne were used, and the writer appreciates the help given by Rev. John Keaney and Mr Les McCarthy. These archives do not appear to contain the minutes of the 1907 provincial council. While much effort has been spent since the 1960s locating and preserving documents from the past, it appears that earlier this century some documents were burnt. However, the Melbourne archives, as well as others, do hold papers, notably correspondence, which can provide insights into the attitudes of individuals, as well as narrating events.

For this reason of correspondence being valuable for having recorded attitudes and narrated events, the writer sought access to the archives of the Irish College, Rome, since the rectors there acted unofficially as agents of various Australian bishops in their dealings with the Holy See. The kind permission for access was granted by the rector, Rt Rev. Mgr Séan Brady, and the assistance of the archivist, Rt Rev. Mgr John Hanly, is appreciated. Because one of the older Australian dioceses, Maitland, is reputed to have well-ordered archives, the writer used it, and is grateful to the bishop, Most Rev. Leo M. Clarke, and the archivist, Mr Michael Sternbeck.

A visit to the Westminster Diocesan Archives, in an attempt to discover correspondence or minutes in connection with the assistance at the Second Provincial Council of Westminster as an episcopus invitatus by Archbishop John Bede Polding, O.S.B., of Sydney, and a similar assistance at the Fourth Provincial Council of Westminster by his coadjutor, Archbishop Roger Bede Vaughan, O.S.B., bore no fruit. However, an inquiry to the Scottish National Catholic Archives about a copy of the printed acta et decreta of the Scottish plenary council resulted in a visit to examine manuscripts, documents, and correspondence of that council. The writer is in debt to the keeper, Rev. Gerard Mark Dilworth, O.S.B.

An inquiry to the Baltimore Archdiocesan Archives, about records of contact between the hierarchies of Australia and the United States prior to or during the celebration of the plenary councils in Baltimore in 1884 and Sydney in 1885, produced a reply in the negative. This led the writer to decide not to visit Baltimore. No doubt there are repositories containing relevant supplementary material. However, the writer is confident that he has examined sufficient source material to permit collation, and the drawing of valid conclusions.

The dissertation, in its first chapter, places the Australian provincial and plenary councils in their historical framework of Australian Catholic history, with particular reference to the erection of the hierarchy, and episcopal meetings and cooperation.

The second chapter provides an overview of each Australian council, including the initiating causes, the participants, the discussions, the legislation enacted, and the emendations and recognitio by the Holy See.

The third chapter examines more closely the legislation on six topics dealt with at the Australian councils, and compares that legislation with the legislation produced in contemporary councils in Great Britain, Ireland, and North America, noting significant similarities and differences. As regards the choice of such topics, "marriage" and

"education" naturally suggested themselves as they had been major concerns at several councils. During the preparation of the dissertation, research into the concerns of the fathers, and the resulting legislation, led these topics to be refined to become "mixed marriage" and "Catholic primary education". When examining the legislation affecting priests, the decision to introduce canons and parish priests in 1885 suggested examination, chiefly because of the significant emendations at Propaganda. As well, the privilege for over half a century of active participation of priests in the nomination of bishops appeared too significant to be bypassed. Some other subjects chosen - "ecclesiastical discipline" and "temporal administration" - were chosen because it could be expected that legislation on each would point to local conditions and problems; as well, studies in penal law and temporal goods would help give as broad a sample as possible of the legislation. Mindful of Cardinal Newman's remark that the Church would look foolish without the laity,¹¹ it was originally intended that "the laity" be one of these topics. However, it became clear that while much of the legislation concerned the laity, at least in so far as policy and regulations affected the living of the faith, very little was legislated about them specifically. Therefore the proposed topic was narrowed

¹¹ Cf. J.H. Newman, The Letters and Diaries of John Henry Newman, C.S. Desain (ed.), vol. 19, London, Nelson, 1969, p. 141.

down to "aborigines", because the Holy See had asked that evangelization of the aborigines be dealt with. A deliberate decision was made to exclude "religious life" from this list, as the writer suspects that justice could not be done to such a topic without studying the constitutions and rules of the various religious orders and congregations affected, which could not be done adequately within the limits of this dissertation.

The final chapter examines the significance of the Australian councils in their contribution to the progress of the Church in Australia, in comparison to the work of councils in the countries of comparison, and in the providing of guidelines for future action.

As regards references to the councils in other countries, the reader will normally be referred to the Collectio Lacensis, a readily accessible work containing most of the councils prior to 1870. In matters of abbreviation and punctuation, the Australian Style Manual¹² has been preferred. As regards terminology, "fathers" rather than "bishops" has been used when referring to the body of all those who have a right to, or are conceded, a deliberative vote at a council, because some are not bishops. It is presumed that any reader of this

¹² Cf. Style Manual for Authors, Editors, and Printers, 4th edn, Canberra, Australian Government Publishing Service, 1988, xi-409 p.

dissertation has a general appreciation of the history, nature, and authority of provincial and plenary councils, which have been the subject of English-language doctoral dissertations.¹³

¹³ Cf. F.J. Murphy, Legislative Powers of the Provincial Council, Canon Law Studies, no. 257, Washington, D.C., Catholic University of America Press, 1947, xii-158 p; E. Poblete, The Plenary Council: A Historical Synopsis and a Commentary, Canon Law Studies, no. 372, Washington, D.C., Catholic University of America Press, 1958, xiv-127 p. Both works must now be read with the practical regulations of the 1983 Code of Canon Law (e.g. frequency, those to be summoned, voting rights) in mind.

1 - HISTORICAL BACKGROUND

1.1 - Early missionary activity in New Holland

On 23 August 1770, Captain James Cook, R.N., claimed the east coast of the Australian continent, regarded as terra nullius, for King George III of Great Britain and Ireland, giving it the name New South Wales. Over the preceding centuries, Chinese, Portuguese, Spanish, Dutch, and French navigators and explorers had landed on various parts of the continent, but made no territorial claims. From the time of the Dutch explorers in the seventeenth century, the name New Holland was generally given to the continent, and Van Dieman's Land to the large island to the south-east.¹

European settlement commenced with the arrival on 26 January 1788 of a fleet of eleven vessels from Portsmouth, Eng., containing about 730 prisoners and over 250 free persons chiefly seamen of various ranks and one stowaway.

¹ In 1817, Matthew Flinders circumnavigated the continent, and then urged that the name Australia be used. From then on, that name gradually replaced New Holland as the name for the continent, especially after other British colonies were established in addition to New South Wales. Australia as a nation did not exist until 1 January 1901, when the five mainland colonies - New South Wales, Queensland, South Australia, Victoria, and Western Australia - and Tasmania (the former Van Dieman's Land; the name had been changed in 1856) federated.

There was an Anglican chaplain, and attendance by all at Anglican services was compulsory. The request by two Catholic prison chaplains to be allowed to accompany the prisoners even without government salary was ignored.² England had chosen New South Wales and the nearby Norfolk Island to be penal colonies after the Thirteen Colonies in North America became independent in 1776.

In 1798, rebellions in southern Ireland against the British Government led to many Irish being arrested, tried, and transported to the new prison colony in Australia. Their number included three priests accused of being leaders; Fathers James Dixon and James Harold arrived in Sydney in January 1800, while Father Peter O'Neil arrived early in 1801, after receiving 275 lashes to send him on his way! We can only speculate as to what type of underground ministry these three carried out among the Catholic convicts. But the governor, Philip Gidley King, was soon impressed by Father Dixon's "exemplary" conduct³ so that on 19 April 1803 he had him emancipated to enable him "to perform his clerical functions".⁴

² Cf. letter of Rev. Thomas Walshe to Lord Stanley, 1789; in P. O'Farrell (ed.), Documents in Australian Catholic History, London, G. Chapman, 1969, vol. 1, pp. 7-8.

³ Cf. letter of Governor King to Lord Hobart, 9 May 1803, in *ibid.*, pp. 49-50.

⁴ Cf. Governor King's Regulations of 19 April 1803 controlling Catholic Worship, in *ibid.*, pp. 50-51.

Father Dixon wasted no time in writing to the Holy See to get his position recognized ecclesiastically, with the result that on 29 January 1804 Pope Pius VII, on the advice of Propaganda, erected the prefecture apostolic of New Holland,⁵ named Father Dixon the prefect apostolic, and gave him the faculties customarily given to missionaries "cum sanatione in radice omnium gessorum quae sunt sanationis capacia".⁶

But any hint of a bright future soon faded; when a rebellion occurred amongst Irish prisoners on 4 March 1804, Dixon was held responsible for not preventing it, his salary terminated, and the permission to celebrate Mass in public withdrawn. Any further work in the prefecture apostolic was done underground while the priests remained convicts.

⁵ There had been an abortive attempt to establish a prefecture apostolic 127 years earlier. In 1676, Father Vittorio Riccio, O.P., an Italian missionary in the Philippines who was prefect apostolic of Formosa, wrote to the cardinals of Propaganda reporting that he had spoken with Dutch sailors and explorers who had told him of the vast Terra Australis, and offering himself to lead a mission to evangelize the vast southern lands. On 16 July 1681, after discussion in a general meeting of Propaganda cardinals, the prefecture apostolic of Terra Australis was created (presumably including what we now know as West Irian, Papua New Guinea, Australia, and Antarctica), and Riccio appointed prefect apostolic. Riccio died on 17 February 1685, probably before he received news of the appointment and certainly before he exercised his office (cf. R. Wiltgen, The Founding of the Roman Catholic Church in Oceania, 1825 to 1850, Canberra, Australian National University Press, 1979, pp. 164-178).

⁶ Cf. Archivio della Sacra Congregazione de propaganda fide (=AP), Udienze di Nostro Signore (=Udienze), vol. 42 (1804), ff. 50^r-51^v.

Father O'Neil was freed and returned to Ireland in 1803, Father Dixon in 1808, and Father Harold in 1810.

The next prefect apostolic, Father Jeremiah O'Flynn, a former Trappist, had been in trouble with his religious superiors most of his life. Somewhat impetuous and unstable in temperament, he had decided to seek secularization and to volunteer for the priestless mission in the antipodes. On 1 September 1816, Pope Pius VII delegated the matter to the cardinal prefect of Propaganda, and within weeks O'Flynn was secularized, appointed prefect apostolic, and equipped with special faculties, finance, and necessities;⁷ whereupon he set off without authorization from the British Government. Arriving in New South Wales in November 1817, he received similar treatment that a modern traveller entering Australia with neither passport nor visa could expect. In May 1818, he was arrested without warning and deported, leaving the continent priestless again.

This fiasco led to questions being asked in the British House of Commons, as well as newspaper reports, which naturally put pressure on the British Government, and on Bishop William Poynter, the vicar apostolic of the London

⁷ Cf. *ibid.*, vol. 54(1816), ff. 569-570^V, 590, 595^V; AP, *Scritture riferite nei Congressi - Oceania (=SC)*, vol. 1 (1816-1841), ff. 9, 11-14^V.

District,⁸ to do something. The eventual solution was to suppress the prefecture, and on 10 April 1819 its vast territory was added to the similarly vast vicariate apostolic of the Cape of Good Hope, Madagascar, Mauritius and the adjacent islands,⁹ presided over at that time by Bishop Edward Bede Slater, O.S.B., whose headquarters were in Mauritius.¹⁰ Neither Slater,¹¹ nor his successor, Bishop William Placid Morris, O.S.B.,¹² ever set foot on the Australian part of the vicariate, but were content to arrange for a few Irish priests to go out to Australia and manage the best way they could. Communication was

⁸ Since 1688, the vicar apostolic of the London District had held special faculties for dealing with Catholics throughout the British Empire. Bishop Poynter (1762-1827), bishop of Alia in partibus infidelium (=i.p.i.), vicar apostolic from 1812 until 1827, had those faculties renewed and clarified on 11th December 1812 (cf. AP, Udienze, vol. 50[1812], ff. 665-666).

⁹ Cf. AP, Lettere e decreti della Sacra Congregazione e Biglietti di Monsignor Segretario (=Lettere), vol. 300 (1819), ff. 212^V-213^V.

¹⁰ The vicariate apostolic of The Cape of Good Hope, Madagascar and the adjacent places had been erected in 1818 (cf. Pius VII, Apostolic letter, "Cum nobis innotuerit", 18 June 1818, in Iuris Pontificii de Propaganda Fide, pars prima (=IPPF, pars 1a), vol. IV, Romæ, ex Typographia Polyglotta S.C. de Propaganda Fide, 1891, pp. 563-564). Within a year, its jurisdiction had been extended to include Mauritius, which was also named the residence of the vicar apostolic (cf. Pius VII, Apostolic letter, "Cum nos te per alias nostras", 11 March 1819, in H.N. Birt, Benedictine Pioneers in Australia, London, Herbert & Daniel, 1911, vol. 1, pp. 14-15).

¹¹ Edward Bede Slater, O.S.B. (1774-1832), bishop of Ruspæ i.p.i., was vicar apostolic from 1818 until 1831.

¹² William Placid Morris, O.S.B. (1794-1872), bishop of Troas i.p.i., was vicar apostolic from 1831 until 1840.

occasionally by letter. And so, Fathers Philip Connolly and John Joseph Therry arrived in Sydney in 1820. Soon, Father Connolly went south to Hobart leaving Father Therry in Sydney, assisted for most of the time by a third priest.

Significant events, such as the start of immigration in 1825 (adding a new element to the population of convicts, emancipists and soldiers), Catholic emancipation in Great Britain in 1829, and the fact that by 1832 about eighteen thousand persons in Australia (about one third of the population) were Catholic, led the government to suggest that more than a few chaplains were needed; instead an ecclesiastical "authority" was required. So Bishop Morris arranged for a young English Benedictine, Father William Ullathorne, to go out to Australia as his vicar general.

Ullathorne certainly had an appreciation of his position and dignity, as he later recorded in his autobiography:

[On my voyage to Australia,] I followed a plan of studies in my cabin [...]. Feeling my deficiency in ecclesiastical law, I made it a point of special study, and directed special attention to what concerned the authority and jurisdiction of a Vicar General. [...] I knew that I should be some four thousand miles away from my Bishop, with whom the means of communication would be rare and casual. Even the consecrated oils for the Sacraments were received from London, much after date, and there was the whole breadth of the world between these colonies and the Holy See. I felt, then, that I should have to act almost as if the complete authority of

the Church was concentrated in my office, and to rely on my own resources.¹³

This gifted man, after stopping briefly at Hobart with Father Connolly, who had not seen another priest for thirteen years, proceeded to Sydney, where he soon summed up the situation and reported to both London and Rome that there would be no progress with Catholicism until a bishop was appointed who could attract priests. Eventually, John Bede Polding, O.S.B., who had already refused the mitres of Mauritius and of Madras, agreed to become vicar apostolic for the new vicariate of New Holland and Van Dieman's Land, erected by Pope Gregory XVI on 3 June 1834.¹⁴

1.2 - The vicariate apostolic of New Holland and Van Dieman's Land

John Bede Polding received episcopal consecration as bishop of Hierocæsarea i.p.i. at the hands of Bishop Bramston¹⁵ in London on 29 June 1834. Ullathorne had persuaded the English Benedictines to see the proposed vicariate as a mission they could supply; Polding was willing to accept this mitre because he had felt for many

¹³ Cf. W.B. Ullathorne, The Autobiography of Archbishop Ullathorne with Selections from his Letters, London, Burns & Oates, 1891, pp. 58-59.

¹⁴ Cf. Gregory XVI, Apostolic letter, "Pastoralis officii munus", 3 June 1834, in IPPF, pars 1a, vol. V, 1893, p. 102.

¹⁵ James Yorke Bramston (1763-1836), bishop of Usula i.p.i., was vicar apostolic of the London District from 1827 until 1836.

years a call to work amongst the transported convicts. The apostolic letter establishing the vicariate gave as reasons the great difficulty in having any useful communication between Mauritius and New Holland, and the need for someone with the episcopal character in New Holland and Van Dieman's Land where there were huge numbers of Catholic inhabitants.

When Bishop Polding started his Australian ministry on 6 August 1835, he had three churches in the course of erection and nine priests (including those who accompanied him to Australia). He saw himself primarily a missionary, so much so that his greatest critics considered that he did not give enough time to administration. He travelled great distances with little consideration for personal comfort, meeting people who had no contact with the Church for a long time, preaching missions, and aiming to provide priests at the population centres. Those priests, although having a centre, had great distances to cover, and in general saw themselves as roving missionaries, pioneering the Church. In the initial years, there had been little contact between the various priests because of the distances.

After five years, Bishop Polding returned to Europe to make his ad limina visit, and to recruit more missionaries. In those first years there had been great expansion: the number of priests had increased to nineteen; the Sisters of Charity introduced; a seminary and orphanage established; Catholics numbered about twenty thousand. In that initial

phase of Bishop Polding's ministry, he became convinced that the vicariate was far too large for one bishop to direct effectively, and that proper dioceses should be erected.

1.3 - The establishment of the hierarchy in 1842

In late 1841 and early 1842, Bishop Polding was having extensive discussions with Propaganda, insisting that because of the immense size of his vicariate, further jurisdictions were essential. And he further insisted that those jurisdictions must be real dioceses, arguing that the bishops must be seen by the Protestants not as foreign intruders (having to bear titles of foreign extinct sees) but as true bishops of their people. Furthermore, in that less ecumenical age, the claiming of an episcopal title, before the Church of England (which had attempted to present itself as the established Church) did so, was considered important. Finally, Polding asked that these residential bishops, because of their missionary work and the vast distance from Rome, receive all the faculties customarily given to vicars apostolic.

Polding made the right impression, because on 5 April 1842, Pope Gregory XVI established the hierarchy, dividing the territory into three dioceses, Sydney, Adelaide and Hobart, each immediately subject to the Holy See.¹⁶ As

¹⁶ Cf. Gregory XVI, Apostolic letter, "Ex debito pastoralis officii".

well, each bishop was to receive all the faculties customarily given to vicars apostolic.

But Polding was not content with just being bishop of Sydney, because he was also convinced that there had to be uniformity of discipline and unity amongst the bishops as they established the Church in Australia, and that this could only be done through metropolitan authority that would coordinate them. It would appear that the decision to erect an ecclesiastical province was made by the Pope himself in a private audience that Polding had with him on 9 April. On 10 April, Polding wrote that the Pope had constituted him archbishop the previous evening, and on the same day there was mention for the first time in the Propaganda minutes that Sydney was to be a metropolitan see, and that an apostolic letter was to be prepared.¹⁷ Two and a half weeks later, 22 April 1842, Sydney became a metropolitan see, and Adelaide and Hobart were assigned to it as suffragans.¹⁸ Archbishop Polding had achieved what he wanted.¹⁹

¹⁷ This was the last of twenty-three matters considered in an audience that the secretary of Propaganda had with the Pope that day; different handwriting to that of the other matters listed indicates a last minute inclusion on the agenda (cf. AP, Udienze, vol. 96[1842], f. 510).

¹⁸ Cf. Gregory XVI, Apostolic letter, "Ad supremum totius Ecclesiae regimen", 22 April 1842, in IPPF, pars 1a, vol. V, pp. 294-295.

¹⁹ The creation of the hierarchy appears to have been done without any reference to the civil authorities either in London or in Sydney, and there was no upset caused. This

However, among the missionaries Polding recruited at this time for his new archdiocese were four Passionist priests, specifically intended for evangelizing aborigines. After the archbishop departed Rome, the superior, Father Raimondo Vaccari, had himself appointed prefect apostolic of the mission to the aborigines on 12 June 1842,²⁰ thus removing the apostolate to the aborigines from Polding's jurisdiction. The prefecture, a failure, ceased to exist with the departure of Vaccari in 1845.²¹

Archbishop Polding consecrated Robert William Willson first bishop of Hobart at Nottingham, Eng., on 28 October 1842. The first Bishop of Adelaide, Francis Murphy, was

was in contrast to the uproar in England with the restoration of the hierarchy there in 1850. In Canada, official opposition in Canada and London made it impossible to form the ecclesiastical province of Québec until 1844 (cf. Gregory XVI, Apostolic letter, "Cum per similes apostolicas", 12 July 1844, in *ibid.*, vol. V, p. 342). Prior to that, the solution was to divide the huge diocese of Québec first into episcopal districts presided over by auxiliary or suffragan bishops (in pre-1917 code terminology, the term "suffragan" was not restricted to the relationship between a metropolitan and his comprovincial bishops, but was also used to describe an auxiliary bishop given to a see rather than to a diocesan bishop [cf. G.E. Lynch, Coadjutors and Auxiliaries of Bishops: A Historical Synopsis and Commentary, Canon Law Studies, no. 238, Washington, D.C., Catholic University of America Press, 1947, pp. 42-44]); and later into dioceses immediately subject to the Holy See (cf. e.g. documentation in archives of archdiocese of Kingston, file AI5 ER1).

²⁰ Cf. AP, Udienze, vol. 96(1842), f. 811.

²¹ For details, including Polding's original unawareness and subsequent resentment of this shortlived independent jurisdiction within his own, see O. Thorpe, First Catholic Mission to the Aborigines, Sydney, Pellegrini, 1950, xv-271 p.

consecrated at Sydney on 8 September 1844, by Archbishop Polding assisted by Bishop Willson.

1.4 - The creation of further dioceses and provinces

Polding had suggested, when the hierarchy was established, that where a new colony with independent local government was set up, the Holy See should similarly establish a new diocese, coinciding with the civil boundaries as was occurring in various parts of North America. As a result, Van Dieman's Land became the diocese of Hobart Town, South Australia became the diocese of Adelaide, and New South Wales and the remainder of New Holland became the archdiocese of Sydney. According to this principle, Western Australia should have become a diocese at that time, but Polding suggested that Western Australia, still very much in its infancy and without a priest, should remain for the time being part of the archdiocese, with a vicar general to represent Polding there.

On 1 September 1843, Archbishop Polding named Father John Brady vicar general for Western Australia. Brady arrived in Western Australia on 4 November and by the end of the year he informed the archbishop by letter that he intended to sail for Europe almost immediately to recruit personnel, leaving in charge Father Jan Joostens, an elderly Dutch priest who had accompanied him from Sydney. By the time he returned in January 1846, he had been most

successful as a party of twenty-eight priests and religious accompanied him. He had also presented himself successfully at Propaganda, so much so that the diocese of Perth, the vicariate apostolic of The Sound, and the vicariate apostolic of Essington had been created,²² he himself becoming bishop of Perth and vicar apostolic of both vicariates. The diocese was wholly within Western Australia, but the vicariates only partially, The Sound having some territory in South Australia, and Essington some in New South Wales (most of the present Northern Territory). Archbishop Polding was not impressed that divisions be made without reference to him, the metropolitan, and when he was in Rome in 1847, he was successful in having both vicariates suppressed and the diocese of Perth made coterminous with Western Australia. Sadly, Bishop Brady's ambitious projects and Propaganda's unquestioning confidence in him soon led to financial disaster and bankruptcy, much infighting and finally suspension of Brady by the Pope in 1851.²³

In 1847, Polding arranged that new dioceses be created in Australia Felix (soon to become the colony of Victoria)

²² Cf. Gregory XVI, Apostolic letter, "Universo dominico gregi", 6 May 1845, in IPPF, pars 1a, vol. V, p. 355.

²³ Bishop Brady, forbidden by the Pope to reside in Australia, refused to resign, retired to Ireland, and retained the title of bishop of Perth until his death in 1871. At first Bishop José Serra and later Bishop Martin Griver were apostolic administrators. (cf. D.F. Bourke, The History of the Catholic Church in Western Australia, Perth, Archdiocese of Perth, 1979, pp. 5-51).

with the name Melbourne, in the north-central part of the continent with the name Port Victoria (the new name for Essington), and at Maitland, a town about 100 miles north of Sydney. Maitland would have no other territory for the time being except Maitland itself, but its bishop would also serve as coadjutor to the archbishop, and help match the Anglican episcopal strength.²⁴

The next diocese to be created was Brisbane, in 1859, the year of the establishment of the colony of Queensland, and coterminous with it.²⁵ But New South Wales was rapidly expanding in population as new areas were opened up, and the 1860s saw the archdiocese being further reduced with the erection of new dioceses at Goulburn,²⁶ Armidale,²⁷ and Bathurst²⁸ and the giving of territory to the diocese of Maitland.²⁹ Soon afterwards, Bishop Rosendo Salvado, who had returned to the mission he had started at New Norcia,

²⁴ Cf. Pius IX, Apostolic letter, "Apostoli munus officium", 25 June 1847, in IPPF, pars Ia, vol. VI/I, pp. 37-38.

²⁵ Cf. Pius IX, Apostolic letter, "Universum Dominicum", 12 April 1859, in *ibid.*, p. 302.

²⁶ Cf. Pius IX, Apostolic letter, "Ex debito pastoralis", 28 November 1862, in *ibid.*, p. 384.

²⁷ Cf. Pius IX, Apostolic letter, "Ex debito pastoralis", 28 November 1862, in *ibid.*, pp. 384-385.

²⁸ Cf. Pius IX, Apostolic letter, "Quod catholica Ecclesia", 20 June 1865, in *ibid.*, p. 431.

²⁹ Cf. Pius IX, Apostolic letter, "Ex debito pastoralis", 13 April 1866, in *ibid.*, p. 438.

Western Australia, when the European settlement in his diocese of Port Victoria had withdrawn, managed to have the mission separated from the impoverished diocese of Perth and established as an abbacy nullius immediately subject to the Holy See.³⁰

Melbourne (first settled by Europeans in 1835) was no more than a frontier town of a few huts when Father Patrick Geoghegan, O.F.M., the first priest, arrived in 1839. By the time Bishop James Alipius Goold, O.S.A., arrived in 1848 he had only three priests, but the population was already over eleven thousand, one third claiming to be Catholic. The discovery of gold in 1851 in Ballarat, Sandhurst, and other places led to an explosion in population, and soon Melbourne was a city to rival those of Europe. By the late 1860s, some other bishops were urging the division of the diocese, suggesting that it be divided into five or even seven dioceses. Bishop Goold, convinced that he knew his diocese best, travelled to Rome and obtained the division that he considered wisest at that time, the creation of only two new sees (Ballarat and Sandhurst).³¹

³⁰ Cf. Pius IX, Apostolic letter, "Relatum est nobis", 12 March 1867, in *ibid.*, p. 444. (New Norcia was a suffragan of Adelaide from 1887 until 1913, then of Perth until 1982 when it lost its nullius status and was incorporated into the archdiocese of Perth).

³¹ Cf. Pius IX, Apostolic letter, "Universi Dominici gregis", 30 March 1874, in Pii IX Pontificis Maximi Acta, pars prima, vol. VI, Romæ, ex Typographia Vaticana, 1875, pp. 311-313.

This multiplication of dioceses led to the question of the division of the original province of Sydney; the result was the elevation of Melbourne in 1874 to the status of a metropolitan see, with metropolitan jurisdiction over the dioceses in Victoria, Tasmania, South Australia, and Western Australia.³² The dioceses in New South Wales, Queensland, and the Northern Territory remained as the province of Sydney. In 1887, Brisbane became the metropolitan see for Queensland, and Adelaide for South Australia, the Northern Territory, and Western Australia.³³ The division of the Adelaide province in 1913, when Perth became the metropolitan see for Western Australia,³⁴ completed the provincial structure. The dioceses of Hobart³⁵ and of Goulburn³⁶ have become archiepiscopal; but as they are not metropolitan sees, they continue to be associated with the provinces of Melbourne and Sydney respectively. New sees

³² Cf. Pius IX, Apostolic letter, "Incrementa", 31 March 1874, in *ibid.*, pp. 314-315.

³³ Cf. Leo XIII, Apostolic letter, "Ex officio supremi apostolatus", 10 May 1887, in Leonis XIII Pontificis Maximi Acta, vol. VII, Romæ, ex Typographia Vaticana, 1888, pp. 96-97.

³⁴ Cf. AP, Acta, vol. 286(1913), f. 313, prot. num. 1483.

³⁵ Cf. Leo XIII, Apostolic letter, "Divinæ providentiæ concilio", 3 August 1888, in Leonis XIII Pontificis Maximi Acta, vol. VIII, 1889, pp. 280-281.

³⁶ Cf. Pius XII, Apostolic constitution, "An dioecesium opportuniorem", 5 February 1948, in AAS, 40(1948), pp. 353-358. This constitution also changed the name of the see to Canberra and Goulburn.

have been established from time to time within the various provinces,³⁷ so that now there are twenty-eight Latin dioceses, as well as three Oriental eparchies and a military ordinariate.³⁸

1.5 - The holding of councils³⁹

At the time of the consecration of the first bishop of Adelaide in Sydney in 1844, the archbishop took the opportunity to convoke the First Provincial Council of Australia. Not only were the three bishops to sit in council; the archbishop called most of the priests of Australia, and many of them were able to be present. As the priests had come not just from different seminaries but from different countries, the archbishop's decision to involve

³⁷ Further dioceses have been created in New South Wales: Grafton (1887) [changed to Lismore in 1900], Wilcannia (1887) [became Wilcannia-Forbes in 1917], Wagga Wagga (1917), Wollongong (1951), Parramatta (1986), and Broken Bay (1986); in Victoria: Sale (1887); in Queensland: Queensland [an apostolic vicariate in 1877, becoming Cooktown in 1887, and the diocese of Cairns in 1941], Rockhampton (1882), Toowoomba (1929), and Townsville (1930); South Australia: Port Augusta (1887) [changed to Port Pirie in 1951]; and Western Australia: Kimberley [an apostolic vicariate in 1887, becoming the diocese of Broome in 1966], Geraldton (1898), and Bunbury (1954); as well as the missio sui iuris of Drysdale River (1910), [then of Kalumburu in 1971, and suppressed in 1981]. Port Victoria in the Northern Territory became Victoria and Palmerston in 1888, then Darwin in 1938. A chronological list of the dioceses is in app. 1, pp. 253-256; a series of ecclesiastical maps is in app. 2, pp. 257-263.

³⁸ Cf. Annuario pontificio per l'anno 1990, p. 1079.

³⁹ This section gives only the basic historical factual information; the analysis of the councils is the subject of chapter 2.

them in the council and its legislation was very wise, since the priests would be vital in implementing any plan for coordination and unity.

In convoking the priests, the archbishop communicated to them the aims of the council: that ecclesiastical discipline be correct and uniform, that Mass and the sacraments be celebrated worthily, that priests lead blameless lives, that the faithful be instructed and guided properly, that unbelievers be led to the faith, and that abuses be corrected. And in his opening address to the clergy at the council, which was celebrated from 10 until 12 September 1844, the archbishop made it clear that they were dealing with the regulations on which the discipline of the dioceses would rely in the future. In fact, this is what happened, and a careful reading of the decrees of the First Plenary Council (1885) shows that the 1844 decrees were absorbed into its legislation.

Roman recognitio was not quick. Soon after the council, Bishop Jean-Baptiste François Pompallier, vicar apostolic of Western Oceania, and resident in New Zealand, visited Sydney, and Archbishop Polding showed him the acts and decrees of the recent council. Unfortunately, they were packed in Bishop Pompallier's luggage, and were not found for some time; they were not returned to Sydney from New Zealand until 1846. As Archbishop Polding was about to go to Rome, he took them with him and presented them personally

at Propaganda on 1 February 1847. In his covering letter, he stated that there was really nothing new in the council legislation, as the decrees had been drawn from previous councils ratified by the Holy See, especially the Councils of Milan presided over by St Charles Borromeo, and adapted to Australian conditions. After careful examination, an instruction was prepared concerning amendments to be made to the texts, and sent to the archbishop on 9 October 1847. After corrections, the decrees were not given the recognitio until 31 March 1852, the civil disturbances in the Papal States no doubt having a lot to do with the delay.

At the end of the First Provincial Council, it had been decreed that the next provincial council would convene on 8 September 1847. But, in fact, it was held in St Patrick's Cathedral, Melbourne, from 18 until 25 April 1869. In the intervening quarter of a century, there was episcopal cooperation, with the bishops meeting informally from time to time for consultation and policy setting, rather than for formal legislation in council.

Archbishop Polding was certainly quite conscious of his metropolitan authority. He had no hesitation in travelling to Perth in 1851 to officiate at the canonical suspension of Bishop Brady. With similar alacrity he had travelled to Hobart in 1844 to try to mediate between Bishop Willson and

Father Therry in an ongoing dispute about temporal goods.⁴⁰ Moreover, Polding wrote to Bishop Serra that "the British government looks to [the metropolitan] as guaranteeing the loyalty and good feeling of the bishop elected,"⁴¹ and when Goold protested that he was the ecclesiastical superior of the new diocese of Melbourne and therefore correspondence with the government must pass through his own rather than the archbishop's office, Polding replied: "it is not canonically correct to assert that the see of Melbourne has been withdrawn from my spiritual jurisdiction. The canons define the matters in which a metropolitan holds spiritual jurisdiction."⁴² Nevertheless, the extant correspondence and diaries of the pioneer bishops show that they kept in frequent contact with the archbishop and each other, both by letters, and by visiting one another at prearranged places.

By the late 1850s, the Holy See was urging the archbishop to arrange meetings of the bishops, so that they could deliberate on the problems and challenges for the church in the rapidly developing colonies, and secure united

⁴⁰ This permanently soured relations between Polding and Willson; for details see W.T. Southerwood, "A Contemporary Episcopal View of Archbishop Polding: The Willson Correspondence", in Journal of Religious History, 9(1976-1977), pp. 364-386.

⁴¹ Polding to Serra, 28 January, 1850, cited in F. O'Donoghue, The Bishop of Botany Bay: The Life of John Bede Polding, Australia's First Catholic Archbishop, Sydney, Angus and Robertson, 1982, p. 125.

⁴² Cf. *ibid.*, pp. 92-93.

policy and action. But the tyranny of distance meant that gathering all simultaneously at such a meeting was nearly impossible. However, attempts were made. In 1858, when arranging a meeting of the bishops, the archbishop wrote:

There are many important topics on which I desire to communicate orally [...] thus without the formal convocation of a synod, we might take counsel with each other, and arrange many things for the general good of the province, and prepare suggestions to be submitted to the Holy See.⁴³

Really, the canonical institute of the episcopal conference was evolving in Australia at this time, as in many other places. The archbishop, Bishop Willson (Hobart), and Bishop Goold (Melbourne)⁴⁴ met in Melbourne from 5 until 11 June and issued a monitum pastorale to the clergy.⁴⁵ Further meetings were held in Sydney in April 1860 and February 1862. But for one reason or another, never more than three or four managed to attend. James Quinn, the new bishop of Brisbane, who had urged the February 1862 meeting, was annoyed that on the set date, only he and Polding were

⁴³ Cf. Polding to Goold, 26 April 1858, cited in P.F. Moran, History of the Catholic Church in Australasia, Sydney, Oceanic Pub. Co., 1894, p. 767. (It is of interest that Polding, while in England in 1855, attended the Second Provincial Council of Westminster as an episcopus invitatus with a consultative vote [cf. CL, vol. 3, cols 972, 974, 985]).

⁴⁴ The archbishop was administrator of Maitland (appointed by the Holy See on 6 May 1855), Bishop Murphy of Adelaide had died in April, and the great distance to Western Australia made the attendance of Bishops Serra and Salvado practically impossible.

⁴⁵ Cf. J. B. Polding, The Eye of Faith: The Pastoral Letters of John Bede Polding, G. Haines, M.G. Forster, and F. Brophy (eds.), Kilmore, Vic., Lowden, 1981, pp. 380-382.

present; Bishop Patrick Geoghegan, O.F.M., of Adelaide arrived a week late and the others did not come! Quinn, the first of a new breed of bishop selected by the influential Cardinal Paul Cullen of Dublin, had been advised by Propaganda to urge episcopal meetings to unify the hierarchy. Despite disagreements, Polding had in general got on well with the first generation of bishops, mostly missionaries recommended by him. But he was very suspicious of and ill at ease with Quinn and those who followed him, protégés of Cullen, fiercely Irish, and demanding a church with tight structures and firm discipline.

A council was planned for 1862, and the archbishop and three of the suffragans,⁴⁶ Bishops Willson of Hobart, Goold of Melbourne and Quinn of Brisbane,⁴⁷ did meet at that time in Melbourne where they drew up some provincial decrees, but as these were refused the Roman recognitio, the meeting did not achieve the status of a council; instead, the decrees were printed as an appendix to those of the 1844 council.⁴⁸

⁴⁶ As regards the others: Bishop Salvado (Port Victoria) had attempted to renounce his episcopal dignity and title to devote himself fully to the New Norcia mission, Bishop Geoghegan (Adelaide) was in Europe, and Father Martin Griver (apostolic administrator of Perth) was unaccounted for. The archbishop was administering Maitland.

⁴⁷ Throughout this work, listings of ecclesiastics are given in order of canonical precedence.

⁴⁸ See supplement, "Observanda, quæ addita fuerunt decretis primi Concilii provincialis a reverendissimo archiepiscopo et episcopis congregatis, in ecclesia cathedrali Melbournensi, festo Omnium Sanctorum, 1862" ("Observanda"), 8 p., added to the Acts and Decrees of the

This meeting also issued the first two joint pastoral letters of the Australian bishops, one addressed to the laity, the other to the clergy.⁴⁹

Polding procrastinated in calling another meeting or council, despite invitations from Propaganda to do so.⁵⁰ In the absence of the archbishop, William Lanigan and the three bishops who consecrated him at Goulburn on 2nd June 1867 discussed common problems and policy, and the following year the archbishop was prevailed upon to call a preliminary meeting for a provincial council. This occurred at Sydney in August 1868, with the bishops of Hobart, Brisbane, Bathurst, Maitland, and Goulburn present. An agenda for the provincial council was drawn up.⁵¹

The second council was eventually celebrated in Melbourne in 1869 with great solemnity by the archbishop, the bishops of Hobart, Melbourne, Brisbane, Bathurst, Maitland, Adelaide, and Goulburn, and the administrator sede vacante of Armidale. The bishops of Port Victoria and Perth were absent. The nation had become prosperous after the

First Provincial Council in Acta et decreta Conciliorum primi et secundi provincialum Australiensium, et Synodorum primæ, secundæ, tertiæ, quartæ, quintæ, et sextæ, diocesanarum Melbournensium, Melbourne, Advocate Press, 1891.

⁴⁹ Cf. Polding, The Eye of Faith, pp. 382-393.

⁵⁰ Cf. e.g. AP, Acta, vol. 228(1864), f. 60; vol. 229 (1865), f. 271.

⁵¹ Cf. CL, vol. 3, cols 1057-1058.

gold rushes of the 1850s attracted many immigrants. Therefore, the bishops in council legislated for the resulting concerns, which included Catholic education, mixed marriage, and the conversion of aborigines; they also recommended the erection of new dioceses, and a metropolitan see at Melbourne. Roman recognitio came more quickly than after the first council; it was given on 18 July 1872.

In 1873, Propaganda invited Polding to convene another provincial council.⁵² When Polding asked whether Archbishop Vaughan could preside in his place,⁵³ he was told that it would be more appropriate to have Archbishop Goold, thus implying a plenary council of both provinces rather than a provincial one.⁵⁴ When nothing had happened by early 1877, Propaganda wrote to Vaughan that he could preside at a provincial council if Polding was too infirm.⁵⁵ His reply,

⁵² Cf. AP, Lettere, vol. 369(1873), f. 250; vol. 370 (1874), f. 17.

⁵³ Cf. AP, SC, vol. 10(1873-1876), f. 589. (Roger Bede Vaughan, O.S.B., born 9 January 1834 at Courtfield, Hereford, Eng., was prior of the cathedral monastery of Saint Michael, Hereford, when appointed archbishop of Nazianzus i.p.i. and coadjutor archbishop of Sydney on 28 February 1873. Before setting out for Australia, at the request of Propaganda he assisted at the Fourth Provincial Council of Westminster, where he was given a consultative vote [cf. AP, Acta, vol. 241(1874), ff. 500-560]. He succeeded to Sydney on the death of Archbishop Polding, 16 March 1877. He died at Ince Blundell, Eng., on 17 August 1883 on way to his ad limina visit).

⁵⁴ Cf. AP, Lettere, vol. 370(1874), f. 284. (Goold had become a metropolitan when the ecclesiastical province of Melbourne was erected on 31 March 1874).

⁵⁵ Cf. *ibid.*, vol. 373(1877), ff. 31^v-32.

within a month of Polding's death, advised against a council at that time claiming it would be only a gathering of cousins.⁵⁶ In 1882, he sought permission to convoke a provincial synod;⁵⁷ as a metropolitan did not need papal approval to convoke a provincial council, one could speculate that Archbishop Vaughan really had a plenary council in mind, although his correspondence referred only to Sydney province and its concerns. His sudden and premature death ended whatever plans he had, although, at his invitation, Bishops James Murray (Maitland) and Elzearo Torregiani, O.F.M.Cap. (Armidale) had already started to draft material.⁵⁸

The translation of Patrick Francis Moran⁵⁹ to the

⁵⁶ Cf. AP, SC, vol. 11(1877-1878), ff. 133-136. This reply reflected the mistrust and tension between the English religious metropolitan and his five Irish secular suffragans, three of them cousins, and all closely united Cullenite bishops. For Vaughan's perceptive assessment of the Irishism of these bishops, in particular when Bishop O'Mahoney of Armidale was accused of misconduct, see *ibid.*, ff. 741-768.

⁵⁷ Cf. *ibid.*, vol. 14(1882-1884), ff. 247, 428.

⁵⁸ Cf. Maitland Diocesan Archives (=MA), letters A.6.5, A.6.6, and B.1.16.

⁵⁹ Moran, born 16 December 1830 at Leighlin, Ire., a nephew of Paul Cardinal Cullen of Dublin, was educated in Rome from the age of twelve until his ordination in 1853. He remained as a professor in Rome, being vice-rector of the Irish College from 1853 to 1856. He was secretary to Cardinal Cullen in Dublin from 1856 to 1872. Appointed bishop of Olba i.p.i. and coadjutor of Ossory on 22 December 1871, he succeeded to Ossory on 11 August 1872. Appointed third archbishop of Sydney on 22 March 1884, he arrived in Sydney on 8 September 1884, was created cardinal on 27 July 1885, and died at Manly, N.S.W., on 16 August 1911.

archdiocese of Sydney in 1884 could well be the most significant event in the history of the Australian Church. He came to Australia with a mission to transform the Australian Church with its missionary structures into the stable European type of church, with all the canonical institutions. He was soon appointed apostolic delegate, and instructed by the Holy See to convoke a plenary council, that is a council of the bishops of both provinces then in existence (Sydney and Melbourne) as well as the New Zealand bishops (hence the council's title of Australasia rather than Australia).

The council consisting of eighteen prelates met in Sydney from 14 until 29 November 1885, deliberating on every aspect of ecclesiastical life, and producing an impressive book of legislation (274 decrees) including matters as varied as: faith, bishops, vicars forane, synodal examiners, the concursus, seminary, male and female religious, the sacraments, clerical discipline, aborigines, fasting, and education. Fifty-two priests assisted with consultative votes. Much of what had been legislated in 1844 and 1869 was absorbed into the 1885 legislation which became more or less the code of canon law for the dioceses in Australia and New Zealand. Roman recognitio, after some emendations and modifications, was dated 1 May 1887.

Further plenary councils were held in Sydney, the second from 17 November until 1 December 1895 (which

received the Holy See's recognitio on 22 January 1898), and the third from 2 until 10 September 1905 (with recognitio on 24 September 1906). Each council was really a reworking of the 1885 one, keeping the same basic format, but expanding to 344 decrees in 1895 and to 371 in 1905.⁶⁰ Cardinal Moran presided over the second and third councils as apostolic delegate. At the third council, the assembled prelates petitioned that Sydney become a primatial see; the request was refused.

From 1890, at the request of the Holy See,⁶¹ there was an annual meeting of the metropolitans.⁶² After these meetings, the metropolitans would communicate with their suffragans. All the bishops met somewhat irregularly between the councils, sometimes giving explanations and

⁶⁰ The New Zealand bishops were not called to the 1895 and 1905 councils, but instead held a council of their own (the First Provincial Council of Wellington) in 1899, having been advised by Propaganda that New Zealand was considered to be quite distinct from Australia, and that two matters in particular should be considered, a New Zealand seminary, and the evangelization of indigenous people (cf. AP, Acta, vol. 271[1900], ff. 149-197). The legislation is that of 1895 slightly modified, with the two special requests attended to (cf. Acta et decreta Concilii provincialis primi Wellingtonensis habiti in ecclesia Sancti Iosephi Wellingtone in Nova Zelandia, die 21 ianuarii et sequentibus usque ad diem 29 ianuarii 1899 [=Concilium Wellingtonense], Dunedin, N.Z. Tablet, 1900, 132 pp.).

⁶¹ Cf. AP, Lettere, vol. 386(1890), ff. 15^v-16^v; SC, vol. 17(1890-1892), f. 68.

⁶² Cf. AP, Nuova serie (=NS), vol. 170(1899), ff. 493-494; vol. 216(1901), ff. 213-214, 219-234, 284-288, 301-302; Sydney Archdiocesan Archives (=SAA), Synodal Matters file.

interpretations of their conciliar legislation.⁶³ In the latter years of Cardinal Moran's life, both forms of meeting lapsed; the annual meeting of archbishops was reactivated in 1918;⁶⁴ in 1922 the bishops agreed to meet triennially,⁶⁵ the forerunner of the episcopal conference.

The Fourth Plenary Council met in Sydney from 4 until 12 September 1937,⁶⁶ and had a significant difference from the previous three, being convoked and presided over by an apostolic legate, who was the apostolic delegate of that time, Archbishop Giovanni Panico,⁶⁷ rather than by a member

⁶³ Cf. e.g. Resolutions of the Synodical Conference of the Archbishops and Bishops of Australia, held in Sydney in January, 1888; Synodical Conference of the Archbishops and Bishops of Australia, held in Goulburn June 30th, and July 1st, 1890, Sydney, n.d., 4 p.; Meeting of the Hierarchy of Australasia present at the Consecration of St Patrick's Cathedral, Melbourne, held in Archbishop's House, Melbourne, on Wednesday, 3rd November 1897, at 10 a.m., ms. minutes, 7 p. (SAA, Synodal matters file).

⁶⁴ Cf. "Minutes of the First Meeting of the Archbishops of Australasia", in Australasian Catholic Record, 65(1988), pp. 181-193.

⁶⁵ Cf. Report of Conference of the Hierarchy of Australasia, held in Archbishop's House, Raheen, Melbourne, on October 24th & 25th 1922, copy of typescript, p. 7 (Melbourne Diocesan Historical Commission Archives [=MDHC], Hierarchy file).

⁶⁶ This council was originally planned for 1925 at the prompting of the apostolic delegate in 1922 (cf. *ibid.*, p. 11).

⁶⁷ C. 281 of the 1917 Code decreed that a plenary council was to be convoked and presided over by a legate appointed by the Pope. Pope Pius XI appointed Archbishop Panico, titular archbishop of Giustiniana, apostolic delegate for Australasia from 1935 until 1948, to convoke and preside over the 1937 council. (A permanent apostolic

of the local hierarchy. As in 1885, New Zealand was called to this council.⁶⁸ In addition to the apostolic legate, there were thirty-two prelates with a deliberative vote and fifty-three priests with a consultative vote. The mere bulk of the legislation was noteworthy (685 decrees) and it followed the sequence of the 1917 Code of Canon Law. The opening decrees gave general norms. The fourth is very important: "The decrees of the previous plenary councils in force till now, which are neither explicitly nor implicitly contained in this council, are to be considered abrogated." The legislation of 1844 and 1869 has not been formally abrogated, but as that legislation was, in general, absorbed into the 1885 legislation, it would generally be seen as a fons rather than as ius vigens. This council also decreed that the hierarchy should meet together biennially on both national and provincial levels.⁶⁹ The council received

delegation for Australia and New Zealand had been established in 1914 [cf. AAS, 6(1914), pp. 223-224].)

⁶⁸ At this time in New Zealand there were the archdiocese of Wellington and three suffragan dioceses: Auckland, Christchurch and Dunedin.

⁶⁹ Cf. Concilium plenum IV Australiae et Novae Zelandiae habitum apud Sydney a die 4a ad diem 12am mensis septembris anno Domini 1937, praeside Excell.mo ac Rev.mo domine Joanne Panico, archiepiscopo tit. Justinianen. delegato apostolico, a Sancta Sede recognitum, (= Concilium plen. IV Aust. et N.Z.), editio officialis, Manly, N.S.W., Manly Daily, 1938, p. 16. In 1952, the apostolic delegate advised the hierarchy that their recently approved annual meetings should become a conference regulated by a constitution (cf. Archbishop Paul Marella to Australian bishops, North Sydney, 1 September 1952, prot. num. 2443/52 [M.D.H.C., Hierarchy file]).

Roman recognitio on 14 March 1938.

In 1968, the Australian Episcopal Conference sought from the Canon Law Society of Australia and New Zealand a report on what decisions of the 1937 plenary council were still in force and what may have lapsed. Moreover, the president of the episcopal conference asked about the advisability of a new plenary council within the relatively near future. The report was presented, along with advice that a new plenary council should not be held until the Code of Canon Law had been revised; then new decrees interpreting, amplifying, and explaining the general law may be needed, at least in some matters.⁷⁰

Despite the Tridentine legislation, and mention of provincial councils in the legislation of the plenary councils, only one provincial council has been celebrated in Australia since the division of the original province of Sydney, the First Provincial Council of Melbourne.⁷¹ From 1888 on, the province of Melbourne consisted of the state of

⁷⁰ Cf. Submission made to the Episcopal Conference by the Canon Law Society of Australia regarding the binding force of the Decrees of the Fourth Plenary Council, mimeographed, [1970], pp. 2-3.

⁷¹ A provincial council was planned for January 1888 for the province of Sydney, to coincide with the centenary celebrations for New South Wales. As bishops from the other Australian colonies decided to attend the celebrations, that projected council evolved into a synodal conference of all the bishops (cf. O'Haran to Kirby, Sydney, 9 November 1887, and Moran to Kirby, Sydney, 6 February 1888 [Irish College Archives {=IC}, New collection - Kirby {=NK}, nos. 1887/34, 1888/4]).

Victoria only, i.e. the archdiocese and the three suffragan dioceses, Ballarat (1874), Sandhurst (1874), and Sale (1887).⁷² On 14 September 1907, Thomas Joseph Carr,⁷³ second archbishop of Melbourne, quoting the Tridentine legislation on provincial councils,⁷⁴ convoked his three suffragan bishops, and all others who by law or custom should attend a provincial council,⁷⁵ to the First Provincial Council of Melbourne which was held there from

⁷² The diocese of Sale was erected from Melbourne territory (cf. Leo XIII, Apostolic letter, "Ex debito pastoralis", 10 May 1887, in Leonis XIII Pontificis Maximi Acta, vol. VII, 1888, pp. 86-88).

⁷³ Carr, born at Moylough, Co. Galway, Ire., on 10 May 1839, was a priest of the archdiocese of Tuam and vice-president and professor of theology at St Patrick's College, Maynooth, when appointed bishop of Galway and Kilmacduagh (to which was attached the administration of the diocese of Kilfenora) on 12 June 1883. Translated to Melbourne on 16 November 1886, he died on 6 May 1917.

⁷⁴ Cf. Sess. 24, de ref., cap. 2.

⁷⁵ The Council of Trent had decreed (cf. *ibid.*) that diocesan bishops immediately subject to the Holy See (i.e. lacking a metropolitan) were to join themselves to a neighbouring metropolitan see for the purposes of provincial councils. But nothing was decreed at Trent about archbishops who lack suffragans (who therefore are not metropolitans). However, the 1917 Code of Canon Law legislated in c. 285 that archbishops lacking suffragans, like bishops not subject to a metropolitan, are to choose the nearest metropolitan for provincial councils. The practical effect of this is that Hobart, a suffragan of Sydney from 1842 until 1874, then of Melbourne until 1888, and an archiepiscopal see immediately subject to the Holy See since 1888, had no provincial connection from 1888 until 1918 but has been, since the implementation of the 1917 Code, associated with the province of Melbourne. Therefore, its archbishop was not convoked to the 1907 Provincial Council of Melbourne, but its archbishop now attends provincial bishops' meetings, uses provincial institutes (e.g. the tribunal, the seminary), and would be called to a provincial council, if one were to be convoked.

17 until 24 November 1907. Twenty-three secular and religious priests from the province participated with a consultative vote. One hundred and twelve decrees were formulated and forwarded to Rome, where they received the recognitio on 12 June 1909. The bishops decreed during the council that the next one would be in 1910, although they reserved the right to alter that time limit. That council is still to be held.

2 - THE SIX AUSTRALIAN COUNCILS

2.1 - The First Provincial Council of Australia - 1844

Archbishop Polding arrived back in Sydney from Rome on 9 March 1843, and was immediately conscious that as the Church, no longer in infancy, was developing into separate dioceses, there was a need for unity and good order. Some amount of uniformity in policy and practice was necessary to achieve this. It is not known when the archbishop first decided to have a provincial council, but it is likely that it appeared to him to be the logical sequence to the consecration of Bishop Francis Murphy of Adelaide, which would occur as soon as Bishop Willson of Hobart could join him.¹ It would be natural for these bishops to want to discuss common policy and approaches on an informal level at the very least; a council would provide the benefits of firm decisions and decrees that would be a norm of conduct.

Bishop Willson did not reach his see until 11 May 1844. Polding had hoped that the consecration would take place on 29 June, but Willson was not prepared to go to Sydney so soon. He eventually did go, and the convocation of the

¹ However, the decision to convoke a council should not be seen as abnormal, as triennial celebration of a council was required in each ecclesiastical province by current canon law (although frequently ignored).

council was announced on 3 September. It is difficult to ascertain how many of the clergy were actually present; certainly the majority from the archdiocese of Sydney, probably all who were able to attend the episcopal consecration on 8 September. Bishop Willson brought only one of his four priests.² Absent were the four Passionist Fathers, whose superior had been made prefect apostolic of the mission to the aborigines. (As he was exercising vicarious papal jurisdiction, he was not a suffragan of Archbishop Polding, who had no authority to convoke him.)³

At a preliminary meeting on 9 September, the bishops appointed some priests as their theological consultants - three for the archbishop, and two for each bishop - and Father Vincent Bourgeois, O.S.B., as secretary of the council. The council was celebrated from 10 until 12 September with all the formalities and ceremonial prescribed

² Moran in his history listed thirty-four priests as attending, obviously presuming that all those convoked had been present (Moran, History of the Catholic Church in Australasia, p. 439). Subsequent authors have repeated this (e.g. Knox, The Historical and Juridical Importance of the First Council of the Australian Province held in Sydney, 1844, p. 51; T.L. Suttor, Hierarchy and Democracy in Australia 1788-1870, London, Melbourne University Press, 1965, p. 67). However, one newspaper report named twenty priests as present and fifteen as unable to attend (cf. The Morning Chronicle, 25 September 1844, p. 3); another twenty-two as present and fourteen as absent (cf. ibid., 28 September 1844).

³ The writer considers this a preferred explanation to Father Thorpe's suggestions, viz. distance, lost or late notification, or the archbishop's bias (cf. Thorpe, First Catholic Mission to the Aborigines, pp. 133-134).

by the pontifical, large numbers of the faithful attending the associated liturgical functions. The formulation of decrees establishing uniform discipline in the three dioceses commenced by the priests, from their missionary experience, proposing cases of conscience which were entrusted to the theologi for discussion before being submitted to the bishops for definition. The proposed decrees were reviewed and discussed before solemn signing by the bishops. Some lay witnesses were admitted towards the end. We can only speculate as to what part they played.⁴ The date of 8 September 1847 was assigned for the opening of the next council.

The actual legislation is in two sections. Four general decrees are followed by fourteen decrees providing specific instructions for priestly ministry and the administration of the sacraments. The first three general decrees urged the bishops to maintain a permanent bond of charity and unity between themselves; to defend church institutions; and to visit all parts of their diocese each two years. The fourth general decree was an exhortation to the priests to remember their priestly office; to use the usual means of sanctification; and to influence others by good example.

⁴ James Knox suggested that they may have signed the documents (cf. Knox, The Historical and Juridical Importance of the First Council of the Australian Province held in Sydney, 1844, p. 70), but the original documents have only the signatures of the bishops (cf. AP, Scrittura Originali riferite nelle Congregazioni Generali [=SOCG], vol. 969 [1847], f. 615).

The regulations in the other decrees contain plenty of detail about the lives of the clergy. Clerics were to avoid public theatres, dances, horse races and unbecoming meetings (decr. 1), to wear distinctive clerical dress, including the Roman collar (decr. 2), and to have and study regularly books of moral theology (decr. 3). They were to reserve half an hour each day for meditative prayer; moreover, their confessors were to question them about this (decr. 4); they were to spend six days annually in spiritual retreat, at least three of the days being spent with the other priests of the deanery at a retreat arranged by the dean, and the other days privately (decr. 5). Where possible in each deanery, there were to be at least three clergy conferences annually, wherein questions were to be discussed according to norms set by the bishop (decr. 6).

The bulk of the council's legislation was concerned with the administration of the sacraments. Some of the decrees are quite lengthy, running to many paragraphs. Decr. 7 is a good example of this, seven paragraphs requiring holiness in the celebrant, fidelity to the rubrics, preparation (by prayer and vestments), avoidance of any appearance of simony or avarice, prompt administration (even at times of epidemic), a study of the requirements of the Roman Ritual, and instruction of the faithful. A further decree (no. 8) introducing the individual sacraments legislated that as far as possible the celebrant had to use

the surplice and stole at each administration, and should use sacramental confession, to keep himself worthy as a minister, each week if possible but at least monthly.

Baptismal fonts were to be erected immediately in each church, the usual place for baptism unless there was some reasonable cause for it to be performed elsewhere. Only Catholics of good reputation and living good lives could be admitted as sponsors; if the parents presented a non-Catholic sponsor, the priest was privately to suggest a Catholic or substitute one if available, but he was to act in this way only with great prudence and without causing offence. Prayers and ceremonies omitted at baptism had to be supplied later. Baptisms had to be carefully registered, under threat of suspension for neglect. Unmarried mothers were not to receive the usual blessing of mothers after childbirth (decr. 9).

Decr. 10 on the Mass bound the clergy to read the rubrics of the missal annually, to use a worthy chalice and paten and vestments, to have a fixed timetable for Sunday Masses; it prescribed prayers to be recited before Sunday Mass; priests were not to celebrate Mass without a soutane or with leggings, while altar boys were to be properly trained and wear a surplice. The decree on the Eucharist regulated careful preparation for first Holy Communion, the custody and regular renewal of reserved hosts, regular instruction of the faithful about eucharistic dogma, the

obligation of annual reception, the necessity of the state of grace for non-sacrilegious reception, the withholding of communion from those clearly unworthy, allowing individuals the freedom to choose whether to communicate or not, and the proper dispositions for communion (decr. 11).

Confessions were if possible to be heard in a church or chapel; absolution was to be refused to a penitent failing to denounce solicitation in the confessional; a catalogue of sins reserved to the ordinary (homicide, abortion, perjury, apostasy, bigamy, solicitation, and attempted absolution of an accomplice in peccato turpi) was drawn up (decr. 12).

The legislation on marriage (decr. 13) required instruction of the faithful, preparation of those about to marry and attention to the possibility of impediments. Marriage outside the Catholic Church was acknowledged as valid, although illicit; such marriages should later receive the nuptial blessing, with the cleric explaining, if necessary, that the validity of the marriage was not questioned. Celebrants, under pain of suspension, were bound to record all marriages in a register.

Finally, decr. 14 required preaching (carefully prepared) at Mass on Sundays and feasts; priests were responsible for catechetical instruction, and so were to erect and visit schools, see that prayers were recited there, and that suitable teachers were provided. The

preparation of a provincial calendar and ritual was also prescribed. Diocesan officials, with the exception of vicars general and forane, were to hold office from synod to synod. Priests were not to lend, borrow, or mind the money of others without written permission; and a register of deceased persons was to be kept.

Archbishop Polding's covering letter referring the acts and decrees to the Holy See indicated that there was nothing new in them, as they had been taken from the other councils, especially the Councils of Milan presided over by St Charles Borromeo. The careful research on this council done in 1949 by James Knox revealed that while the revision at Propaganda was quite thorough and required amendments, these amendments (to both acts and decrees) were minor⁵ and did not change the substance of the legislation. The congregation insisted on corrections that may appear trivial and fastidious today; but it seems that it was conscious that the final text would be a guide and precedent for other councils and therefore should not reflect inaccuracy.⁶ The only substantial amendments or additions to the actual decrees were: 1) the

⁵ E.g. specific mention of the breviary in the fourth introductory decree; the exact words from the rubric of the Roman Ritual about the use of the surplice and stole for administration of the sacraments rather than the wording composed at the council.

⁶ E.g. the original text indicated that the opening Mass was celebrated by the bishop of Adelaide; the amended text omits mention of the celebrant, the reason being that the rubric in the pontifical required the opening Mass to be celebrated by the metropolitan wearing the pallium.

removal of attempted absolution of an accomplice in peccato turpi from the list of reserved sins in decr. 12; 2) a requirement that priests arrange for their faculties to be renewed before expiry; 3) an insistence on proper title deeds for all ecclesiastical property; 4) a prohibition against incurring debts without authorization; and 5) an exhortation to priests to apply Mass "pro populo". The ratified decrees tolerated the use of a non-Catholic sponsor at baptism and made no requirements for mixed marriages.

At the conference of bishops held in Melbourne in 1862 which was refused Roman recognitio⁷ and consequently is not

⁷ This study reveals a noticeable lack of consistency in the terminology used by Propaganda in connection with the now commonly-called recognitio, required since 1588 (cf. Sixtus V, Apostolic constitution, "Immensa aeterni", 22 January 1588, in Bullarum, diplomatum et privilegiorum sanctorum Romanorum pontificum Taurensis editio, vol. VIII, Neapoli, Augustae Taurinorum, 1883, p. 991). In 1852, after Propaganda recommended the acta et decreta of 1844 "esse probanda", Pope Pius IX "ratam habuit et confirmavit" that recommendation (cf. CL, vol. 3, col. 1058). When examining the 1862 decrees in 1864, Propaganda replied in the negative to the question, "Se convenga approvare i decreti ...?" (cf. AP, Acta, vol. 228[1864], ff. 59-60). In 1872, Propaganda referred to Pope Pius IX the acta et decreta of 1869 "esse approbandam" (cf. CL, vol. 3, col. 1082). In 1887, the Propaganda cardinals "recognoverunt" the 1885 decrees with emendations and modifications, so that Pope Leo XIII could "approbare" (cf. Acta et decreta Concilii plenarii Australasiae, habiti apud Sydney A.D. 1885, a Sancta Sede recognita [=Concilium plenum Australasiense], Sydney, Cunninghame, 1887, p. iv). In 1898, after the cardinals advised the 1895 decrees "recognoscenda esse", Pope Leo XIII "ratam habuit et confirmavit" (cf. Acta et decreta Concilii plenarii Australiensis II, habiti apud Sydney A.D. 1895, a Sancta Sede recognita [=Concilium plenum Australiense II], Sydney, Cunninghame, 1898, p. iv); similar wording was used in 1906 for the 1905 decrees (cf. Acta et decreta Concilii plenarii Australiensis III habiti apud Sydney A.D. 1905, a Sancta Sede recognita [=Concilium plenum

recognized as a council, three provincial decrees were passed which were later printed and circulated as a supplement to the council of 1844. An agenda drawn up at the informal meeting of bishops earlier in the year contained nine items: an agent in Rome, a provincial seminary, pecuniary regulations for the clergy, education, frequent episcopal meetings, precedence amongst heads of Churches, incardination of clergy, new dioceses, and clerical insurance and superannuation. The bishops met from 29 October until 13 November. On the first day, the bishop of Brisbane was appointed secretary of the meetings and the bishops agreed to keep their deliberations secret. On the second day, they agreed that a central seminary in Rome would be advisable eventually, but for the present they would have diocesan seminaries. It seems that nothing came of some of the agenda items. By the end of their deliberations, the bishops had produced five documents, all dated 1 November. A circular letter to the clergy indicated that in the future bishops would not accept the services of a priest bearing only an exeat from another diocese, whether in Europe or Australia; commendatory letters would be required before a decision would be made about accepting

Australiense III], Sydney, Brooks, 1907, p. v). Finally, in 1909, the recommendation was the acta et decreta "recognoscenda esse censuit; atque Synodum Provinciale Melbournensem a Sancta Sede recognitam promulgari posse statuit" to which Pope Pius X "benigne adprobare ratamque habere dignata est" (cf. Acta et decreta Synodi provincialis Melbournensis lae apud Melbourne habitae 17-24 novembris, 1907, Melbourne, Advocate Press, 1909, pp. xxiii-xxiv).

him or not. There were three provincial decrees, legislating: 1) that where there were several priests, one would be given pastoral charge with the other(s) as his assistant(s); 2) a strict prohibition, under threat of suspension, against wandering priests making appeals for money; and 3) a grave obligation on the part of the clergy to see that real Christian and Catholic education be provided, in view of the system of government schools which were being established. Two pastoral letters were issued: one to the laity spelling out their obligations with regard to financial support, Catholic schools, and the evils of mixed marriages; the other to the clergy warning them of the dangers of wealth and greed. Finally, some observanda were issued, in general providing guidelines for the conduct and ministry of priests, and clarifying the legislation of the 1844 council.⁸

⁸ The Propaganda cardinals were scathing in their general congregation of 14 March 1864. After complaining that this was the first council since 1844, despite the decree requiring a council in 1847, and that neither conciliar acts nor letter to the Pope or Propaganda accompanied the decrees, which were mainly in English rather than in "idioma latino proprio della chiesa", they indicated that before approving decrees about the possessions of the clergy, they required details of the local circumstances demanding this; they urged the bishops to start afresh in council as soon as possible, following the method of 1844 (cf. AP, Acta, vol. 228[1864], ff. 57-64; SOCG, vol. 991 [1864], ff. 202-220). James Knox, who did not have access to the Propaganda archives for 1864, speculated that recognitio was refused as fewer than two-thirds of the bishops were present (cf. Knox, The Historical and Juridical Importance of the First Council of the Australian Province held in Sydney, 1844, p. 170); Cardinal Moran, no doubt believing that written history is meant to edify, suggested that the decrees had never been sent to Rome (cf. Moran,

2.2 - The Second Provincial Council of Australia - 1869

In August 1868, a week-long meeting of bishops in Sydney⁹ prepared an agenda for a provincial council: 1) Catholic education; 2) mixed marriages; 3) episcopal and clerical sustentation and administration of ecclesiastical goods; 4) provincial seminary; 5) evangelization of aborigines. The agenda reflected a milieu different from the one the infant churches knew in 1844. Since then, government subsidies for churches had ceased, government policy was introducing a secular system of education, and society in general, injected with wealth from the gold rushes, had become much more sophisticated and materialistic.

On 15 March 1869, Archbishop Polding convoked his suffragan bishops and all those who by law or custom should attend a provincial council to be present at St Patrick's Cathedral, Melbourne, on Sunday, 18 April 1869. The venue was chosen because the Sydney cathedral had been destroyed by fire on 5 January 1869. There was a preparatory meeting

History of the Catholic Church in Australasia, p. 770); Archbishop Polding's explanation to Cardinal Alessandro Barnabò was that "un simple projet de règles" was accidentally presented as the acts and decrees (cf. Polding to Barnabò, Sydney, 22 September 1864 [SAA, Polding correspondence]).

⁹ Cf. p. 33.

of the fathers on 17 April.¹⁰ Some bishops objected to the presence of Father S.J.A. Sheehy, stating that Armidale had de facto not been separated from Sydney and that Father Sheehy, as vicar general of Sydney, still resided in Sydney.¹¹ Father Sheehy resolved the matter by stating that he was happy to attend merely as vicar general of Sydney. Other items included rules of procedure in meetings, naming of officials, and dividing the theologi into two groups (to deal with education and marriage).

¹⁰ With the archbishop, were Bishops Daniel Murphy (Hobart), James Alipius Goold, O.S.A. (Melbourne), James Quinn (Brisbane), Matthew Quinn (Bathurst), James Murray (Maitland), Laurence Bonaventure Shiel, O.F.M. (Adelaide), and William Lanigan (Goulburn), as well as Father Samuel John Augustine Sheehy, O.S.B. (administrator of Armidale). Absent were Bishop Rosendo Salvado, O.S.B. (Port Victoria), who was in Europe, and Father Martin Griver (apostolic administrator of Perth), who wrote that he had received the letter convoking the council too late.

¹¹ By virtue of a faculty from Propaganda dated 28 January 1863, Archbishop Polding appointed Father Sheehy administrator of the diocese of Armidale in May 1863. (On 23 June 1865, Father James B. Hayes, O.S.A., was appointed to the see, but refused the appointment. The first bishop, Timothy O'Mahoney, was not appointed until 1 October 1869). Father Sheehy was appointed bishop of Bethsaida i.p.i. and auxiliary to Archbishop Polding at the consistory of 29 October 1866, but refused the episcopal office (cf. C. Eubel et al. [eds], Hierarchia catholica medii et recentioris ævis; Summarum Pontificum, S.R.E. cardinalium, Ecclesiarum antistitum series e documentis tabularii praesertim Vaticani collecta, digesta, edita, Patavii, Il Messagero di S. Antonio, 1978, vol. 8, pp. 123, 148). At this appointment, Father P.F. Moran (see p. 35, footnote 59), scheming with Bishop Murray of Maitland to ensure a majority of Cullenite bishops in the council, had advised that auxiliary bishops have no right to take part or vote in a provincial council (cf. Moran to Murray, Tara, Ire., 21 April 1867 [MA, letter D.3.8]).

The cathedral was crammed full for the opening Mass and ceremonies on 18 April; so many people were there that admission was by pre-purchased ticket only. Thirty priests were present with the bishops.¹² At the opening session, the promotor announced that the discussions could be in English but the documents had to be in Latin. Most mornings, the bishops met privately; committee meetings with the theological advisors were normally in the afternoon.

On 19 April, from 3.00 p.m. until 5.00 p.m., Bishop Murray of Maitland chaired the committee meeting on marriage, at which was tabled a request from the priests at the council that the legislation be benign. The theological discussion was resumed during the evening with reference being made to an instruction on mixed marriages of Pope Pius IX on 15 November 1858 and more recent instructions from Propaganda. The decree on matrimony was formulated, and all the observations were forwarded to the bishops. However, immediately after breakfast on 21 April, all the priests met in the library and drew up a petition requesting that some parts of the decree on mixed marriages be modified or even deleted. They conceded that the legislation was in accord

¹² The archbishop had three theological advisors, the bishops two each. The others included two provincials (Marist and Jesuit), five vicars general, three archdeacons, five deans, and a chaplain for each bishop. The archbishop indicated those who should attend by custom were "those on whom your choice may fall" (cf. Polding to Murray, Sydney, 22 March 1869 [MA, letter D.5.1]).

with church doctrine and discipline, but they gave their opinion that it was too severe, and because of the general practice in the province would not help religion. In particular, the regulations attached to the toleration of mixed marriages (e.g. celebrated outside the church, with no sacred rite) could be left to the prudent discretion of priests, rather than become law. The bishops received the petition but would not modify their position. In the afternoon, Bishop Shiel of Adelaide, on behalf of the bishops, thanked the priests for their submission, but indicated that the teachings of the Holy See would not permit modifications. There was a long discussion, described in the acta as "acrem sed valde utilem", on the conditions and reasons for tolerating mixed marriages, and the good that would come from omitting ceremonial. The priests decided to present another petition which came to nothing. This frank exchange between the hierarchy and their priests appears to be unique in Australian history; but the priests' votes were only consultative and did not manage to influence the legislation.

The decree on marriage contained twelve paragraphs. As well as confirming the rubrics of the missal and Roman ritual, and the decrees on marriage of the First Provincial Council, it made banns obligatory, permitted ordinaries to allow mixed marriages if the cautiones were made and there were justas gravesque causes, and directed such weddings be

celebrated outside the church with no sacred rite; moreover, the sin of a Catholic entering a mixed marriage before a non-Catholic minister or civil official was reserved to the ordinary, while two Catholics contracting marriage in this way incurred automatic excommunication.

While there was division and tension over mixed marriages, there appears to have been unity and harmony over the other major concern, education. The priests raised no objections to the prepared decrees which became the firm foundation for their stand on Catholic education for almost a century. The decree was in seven sections, the last giving the clergy propositions 45, 47 and 48 of the Syllabus of Errors issued by Pope Pius IX in 1864 as errors to be expounded in their instruction of their people.¹³ The other sections disapproved of an educational system that impeded the Church's task of teaching faith and morals; required Catholic children to be removed from the mixed schools where the church could not exercise its authority, moderate study, select books and choose teachers; required Catholic schools be erected; claimed the right of Catholics to a share in public funds to establish and maintain schools; conceded the right of the state to inspect schools

¹³ These three propositions claimed that the state alone may control education, that common schools open to all and removed from ecclesiastical control are best, and that Catholics may approve of education separated from faith and Church authority.

and teachers; and required standards of excellence in Catholic schools and teachers.

There was an animated discussion amongst the clergy in connection with the matters of support of the clergy and administration of temporal goods. The priests were in agreement with the legislation proposed. A lengthy decree on the sustentation of bishops and clergy legislated that the financial obligations of the faithful be carefully explained to them, that imprudent priests be prevented from disedifying ways of money-raising, that income (whether pew-rents or offerings) was subject to ecclesiastical authority, that the bishop's income may derive from a tax on all pew-rents, offerings and stole fees, and that diocesan infirm clerics' societies should be established. Other decrees forbade any collection being made or debt incurred without permission of the ordinary, required each priest to make a will with another priest as executor, forbade priests to borrow money or be executors of wills of laypersons without permission, and required an inventory and financial records. The other decrees gave further regulations about baptism, promoted the Society for the Propagation of the Faith and the annual collection for the Pope, insisted on Latin for the administration of the sacraments, and pledged to arrange that a religious congregation be found to evangelize the aborigines.

The solemn closing of the council was on 25 April. However, the bishops kept meeting until 4 May, discussing matters which included whether Melbourne should become a metropolitan see, Ballarat a diocese, the northern part of Brisbane diocese a vicariate apostolic, and the possibility of a Jesuit-staffed provincial seminary at Melbourne. The archbishop forwarded the acts and decrees to the Holy See on 16 June; Propaganda decided to defer examination so that the review would be in light of the First Vatican Council; by 1872, Propaganda admitted the suspension of the council had become indefinite, so, after plenary meetings on 4 and 11 March, and 15 April, the recognitio was granted on 18 July 1872. The letter accompanying the recognitio protested at the faithful paying an admission fee to the opening Mass, and said that the custom of pew-rents as a source of clerical sustentation could be tolerated only until other means were sufficient, and with the provision that there must always be free places for the poor; it also insisted that the matter of episcopal taxation was to be dealt with by annual consultation with the clergy in the diocesan synod (as provided in the decrees of the Second Plenary Council of Baltimore [1866]). Finally, an instruction was provided for gathering information for the Holy See in connection with the suggested new sees.

The bishops provided a pastoral letter, dated 24 April 1869, decrying indifferentism ("the deadliest of all

errors"), mixed schools ("so gross an invasion of common liberty of conscience"), and mixed marriages ("irreligious connections"). It also pleaded for justice for the aborigines and pointed out the responsibilities of Catholics to provide for the necessities of the Church.

2.3 - The First Plenary Council of Australasia - 1885

On 24 May 1884, Giovanni Cardinal Simeoni, prefect of Propaganda, sent a circular letter to all bishops in Australia and New Zealand¹⁴ announcing the wish of Pope Leo XIII that they all meet in a plenary council within two years. On 10 June, the newly appointed archbishop of Sydney, Patrick Francis Moran, was delegated by Pope Leo XIII to convoke and preside over the council.

Archbishop Moran's letter of convocation, dated 15 April 1885, was addressed to the archbishop and bishops of the Australian churches and all others who by law ought to

¹⁴ Until this time, New Zealand had never been linked ecclesiastically with Australia. Whereas New Holland and Van Dieman's Land had been linked with Mauritius and the Cape of Good Hope, New Zealand had originally been part of the prefecture apostolic of the South Sea Islands (established 1830), and then of the vicariate apostolic of Western Oceania (established 1836). The dioceses of Auckland and of Port Nicholson (later Wellington) were established in 1848, and Dunedin in 1869, all immediately subject to the Holy See. While the Tridentine legislation requiring such dioceses to associate themselves with the nearest metropolitan for provincial purposes should have linked them to the archdiocese of Sydney, there is no record of the New Zealand bishops attending bishops' meetings in Australia or considering themselves associated with the Australian bishops before 1885.

attend a plenary council, convoking them to be present, on 14 November 1885 in Sydney.¹⁵ At the council, the prelates numbered eighteen;¹⁶ with them were fifty-two priests, thirty-four diocesan and eighteen religious, all listed as theologi. It is not clear how all these were selected,¹⁷ but in general most dioceses had several. There was one priest each from the Carmelites, Franciscans, Redemptorists, and

¹⁵ At that time, those required to be present by law were all diocesan bishops of the territory (if lawfully hindered, they were bound to send a procurator), apostolic administrators, administrators of vacant sees, vicars apostolic, an elected representative of each cathedral chapter, and abbots nullius; those present by custom were coadjutor and auxiliary bishops, other bishops who happened to be in the territory at the time, provincials of clerical religious, rectors of major seminaries, abbots, and those whose services the bishops may wish to use, e.g. priests used as theologians and canonists; laymen could go as notaries or periti, e.g. lawyers to explain points of civil law in relation to ecclesiastical property (cf. S.B. Smith, Elements of Ecclesiastical Law, 9th edn, New York, Benziger Bros, 1887, vol. 1, pp. 36-38; Bishop Murray [Maitland] claimed that this work was used by priests in Australia [cf. Murray to Moran, West Maitland, 29 April 1885 (SAA, Moran Papers <=MP>, vol. 197)]).

¹⁶ With Cardinal Moran were the bishops of Hobart, Port Victoria, Dunedin, Maitland, Goulburn, Perth, Adelaide, Wellington, Armidale, Rockhampton, Brisbane, Auckland, Ballarat, and Bathurst, as well as Bishop Stephen Reville, O.S.A., coadjutor of Sandhurst, who was admitted as procurator for Bishop Martin Crane, O.S.A., of Sandhurst (in Europe seeking treatment for blindness), Father John Hutchinson, O.S.A., vicar apostolic of Queensland, and Archdeacon Patrick Slattery, procurator for Archbishop James A. Gbold, O.S.A., of Melbourne (absent because of health).

¹⁷ A memorandum attached to the decree of convocation stated that, as diocesan chapters had not yet been erected, the clergy of each diocese should elect one of their body to represent them at public sessions, and be consulted on matters concerning their respective dioceses, should occasion so require (cf. AP, SOCG, vol. 1026[1887], f. 554).

Vincentians, but six Jesuits, four Benedictines and four Marists.¹⁸

The letter of convocation had stated that the council was an opportunity to emphasize the decrees of the Vatican Council, to correct any abuses in ecclesiastical discipline, to support and preserve Catholic education, and to do anything else which would promote the salvation of souls or the good of the Church.¹⁹ The council was held from Saturday, 14 November until Sunday, 29 November 1885. There were five public sessions in St Mary's Cathedral (each Sunday and Wednesday) during which there were solemn pontifical Masses, sermons, and the formalities and legalities required by the pontifical for the opening and closing of the council and promulgation of the legislation. Over five thousand people attended the opening Mass and ceremonies, and Cardinal Moran claimed the council ceremonies were "the grandest ever witnessed in the Southern Hemisphere".²⁰ By the end of the council, there had been thirteen private episcopal meetings in the presbytery, two

¹⁸ It would seem that some of the religious were representing dioceses rather than religious orders, e.g. two Benedictines but no diocesans from Auckland where there was a Benedictine bishop, and a Jesuit from Port Victoria, where all priests were Jesuit.

¹⁹ Moran told the fathers the aims were "to root out evil, promote discipline, strengthen the bulwarks of faith, and establish the Church on a canonical footing" (cf. Preparatory session, ms. notes [SAA, MP, vol. 88]).

²⁰ Cf. Moran to Kirby, Sydney, 1 December 1885 (IC, Moran-Kirby letters, no. 111).

general meetings in the cathedral of all the council bishops and priests, as well as an unrecorded number of committee meetings. On the afternoon of 19 November, all travelled to Manly, a Sydney suburb, for the laying of the foundation stone of St Patrick's College, the new Sydney seminary, in the presence of a huge concourse of people, while in the evening of 26 November, a public reception was tendered to the council bishops and priests.

At the preliminary meeting on 14 November, the order of business and rules of procedure for the private meetings of the bishops were decided upon, and the various officials for the council were appointed. The primary committee of bishops was then formed, consisting of Cardinal Moran, the secretary (Bishop Robert Dunne of Brisbane), and three elected by the other bishops (Bishops James Murray of Maitland, William Lanigan of Goulburn, and Francis Redwood, S.M., of Wellington). This committee then divided the other bishops and the priests into four committees - Faith, Discipline, Sacraments, and Education - each with a bishop as president and a priest as secretary.

The general meetings had none of the debate of those of the 1869 council. At the first, on 14 November, at 3.00 p.m., the priests were informed of the committees to which they had been assigned, the officials appointed to various offices, and a telegram forwarded to the Pope. At the other, on 23 November, there was discussion about various

points of discipline and recommendations about amendments to the proposed legislation, all being conducted with maxima concordia et ecclesiastico decore. Other contributions by the priests were confined to the committee meetings, records of which do not appear to have survived. At their first private meeting, the bishops conceded decisive votes to the two procurators, Bishop Reville and Archdeacon Slattery, and schemata of the proposed legislation were distributed for discussion in the various committees.

The legislation, as sent to Rome, consisted of 287 decrees, arranged in thirty-two chapters, as follows: Faith (nine decrees), Making the Profession of Faith (one), Avoiding Dangers to the Faith (eight), Bishops (seven), Vicars Forane (three), Canons (six), Parish Priests (ten), Synodal Examiners (four), The Concursus (twelve), Diocesan Seminaries (seven), Male Religious (thirteen), Nuns (nineteen), Sacraments in General (eight), Baptism (seven), Confirmation (one), Sacrifice of the Mass (seven), Sacrament of the Eucharist (nine), Sacrament of Penance (six), Sacrament of Extreme Unction (three), Marriage (thirteen), Life and Behaviour of Missionaries (twenty-five), Uniformity of Discipline (thirty-one), Propagation of the Faith among Aborigines (six), Fasting (twelve), Provision for the Dead (eleven), Primary Education (fifteen), Intermediate Schools (three), University Education (three), Ecclesiastical

Tribunal (eleven), Avoiding Disputes (five), Establishing Archives (four), and Ecclesiastical Goods (eight).

It seems that some of the schemata were drafted by Moran on board ship during September-November 1885, returning from the consistory creating him cardinal.²¹ Many of the decrees were verbatim from the 1875 Plenary Council of Maynooth,²² while others were substantially the same. Practically all the legislation on faith, the profession of faith, nuns, confirmation, intermediate schools, ecclesiastical tribunal, avoiding disputes, and ecclesiastical goods, as well as much of the legislation on bishops, sacrament of penance, sacrament of extreme unction, and life and behaviour of missionaries was from this source, as were a number of other decrees.

There appears to have been no dissatisfaction with the prepared schemata until 28th November, when the fathers decided that as a rule the 1869 decrees on the sacraments were to be the text for this plenary council. Prior to then, many of the schemata were approved after return from the committees, either with no comment or with little discussion. One can only speculate whether the original

²¹ Cf. Moran to Kirby, Adelaide, 28 October 1885, (ibid., no. 95).

²² See Acta et decreta Synodi plenarii episcoporum Hiberniæ habitæ apud Maynutiam, an. MDCCCLXXV (=Synodus Maynutiana, 1875), Dublin, Browne and Nolan, 1877, ix-375 p. Moran, as bishop of Ossory, was a father of that council.

schemata for the sacraments (which do not appear to be extant) were from Maynooth. However, six of the bishops had been at the 1869 council,²³ as had four of the priests, including Archdeacon John Rigney of Sydney, who was a member of the Sacraments Committee, and had even been at the 1844 council. These, and all the bishops and priests present, would have worked under the older legislation and would hardly have approved of its being needlessly replaced. The result was that most of the marriage decrees and one on baptism are from the 1869 council, while practically all legislation on sacraments in general, baptism,²⁴ and the Mass, and much on the Eucharist and the sacrament of penance is from the 1844 council.

Of the remaining legislation, that on male religious was a series of quotations from a constitution issued by Pope Leo XIII to settle long-standing disputes between bishops and religious in Great Britain;²⁵ five decrees on the ministry and behaviour of missionaries were from the Fourth Provincial Council of Westminster (1873); while the

²³ Three (Murphy of Hobart, Murray of Maitland, and Lanigan of Goulburn) as bishops, and three as priests (Moore of Ballarat, Reynolds of Adelaide, and Cani of Rockhampton).

²⁴ The 1844 baptism legislation was amended so that occasional toleration of "patrinum qui catholicus non sit" became "haereticos nullimode admittendos esse in munus patrini vel matrinæ".

²⁵ Cf. Leo XIII, Constitution, "Romanos pontifices", 8 May 1881, in Acta Sanctæ Sedis (=ASS), 13(1880-1881), pp. 481-498.

bulk of legislation on the concurus and one decree on vicars forane was from the Third Plenary Council of Baltimore (1884). The rest of the legislation (including most of that on avoiding dangers to the faith, parish priests, and primary education, and all of that on canons, synodal examiners, seminaries, uniformity in discipline, aborigines, and fasting) appears to be original, at least in its wording and formulation. Cardinal Moran was later to claim that the decrees of the 1869 council on education were incorporated into the 1885 legislation,²⁶ but a comparison of both texts shows no similarities beyond the same principles being incorporated.

The only real debates about legislation concerned the issue of central versus diocesan government for non-clerical religious, and establishment of irremovable parish priests. The Sisters of St Joseph of the Sacred Heart had been founded in 1868 by Mary McKillop who had fought a long hard battle in Rome and Australia for the principle of central government under a superior general, rather than independent branches forming as the institute developed.²⁷ Already these sisters in some dioceses had become separated from the

²⁶ Cf. Moran, History of the Catholic Church in Australasia, p. 883.

²⁷ For details, see the biographies: G. O'Neill, Mother Mary of the Cross, Sydney, Pellegrini, 1930, 411 p; O. Thorpe, Mary McKillop: The Life of Mother Mary of the Cross, Foundress of the Sisters of St Joseph of the Sacred Heart, London, Burns & Oates, 1957, x-327 p.

main group at the insistence of the local bishop. At the council, after a full discussion of the matter, the bishops voted fourteen to three²⁸ that the religious houses of these sisters be under the authority of the local ordinary in the respective dioceses, as the Sisters of Mercy were. A decree to this effect was added to the decrees on nuns.

The other matter for protracted discussion was permanent parish priests. There had been no problem with aliquot titulares canonicos appointed permanently in each diocese, to assist the bishop as his consultors in matters of great importance, and with clearly defined tasks (e.g. giving advice to the bishop regarding alienation of property and other specified matters, assisting liturgically at the cathedral on occasion, and proposing names for filling an episcopal vacancy), probably because the legislation contained the provision that local circumstances did not yet permit all the usual prescriptions about chapters. But there was no such unanimity about parish priests. Some argued that, as far as local circumstances permitted, Australia should conform to universal law; the others saw many poorly staffed dioceses having the disadvantage of being unable to transfer the few priests. Until this time, all priests were considered as missionaries, and could be transferred at the will of the bishop; the proposed

²⁸ As there were eighteen voting members, there appears to have been one abstention, or one member absent.

legislation required if possible one fifth of the districts of each diocese to have a permanent parish priest, and as an absolute minimum, each diocese was to have three. When put to a secret ballot, there was a tie, nine affirmative and nine negative votes. Cardinal Moran, entitled by the rules of procedure to a casting vote in the event of a tie, cast an affirmative vote to pass the legislation. A significant privilege given to the parish priests and canons was that they were to meet as a body to propose names of episcopal candidates, which were to be forwarded to the bishops of the province for presentation to the Holy See, which retained the right of appointment. Up until this time, the names of candidates to the episcopacy in Australia had been made by bishops only, with no prescribed consultation of priests.

An Irish stamp was clearly noticeable on the council, not just with the 1875 Council of Maynooth being the major source of legislation, but in matters such as St Patrick's Day becoming a double of the first class in the calendar, with the abolition of the Lenten fast on that day, the feast days of twenty-two other Irish saints being introduced, as well as the catechism used in Ireland.²⁹ In answer to a letter from the New Zealand Hibernian Society, the bishops insisted that they have rules regulating frequenting the

²⁹ Twelve of the council fathers were Irish; of the others, Bishops Salvado (Port Victoria) and Griver (Perth) were Spanish, Torregiani (Armidale) and Cani (Rockhampton) Italian, Redwood (Wellington) and Luck (Auckland) English.

sacraments, having a chaplain and excluding unworthy Catholics. Other matters dealt with included setting up a commission to provide books used in Catholic schools, and the seeking of certain faculties from the Holy See (e.g. for a priest to celebrate three Masses on All Souls' Day). An annual collection was ordered for the missions, and the fathers were so impressed with reports about the Benedictine mission at New Norcia and the Jesuit mission near Palmerston in the diocese of Port Victoria that they ordered these to be bound as an appendix to the decrees of the council.

During the council, much time (two entire meetings and a major part of four others) was given over to planning and drawing up recommendations to the Holy See about new sees and ecclesiastical provinces and proposing names of episcopal candidates. The fathers were unanimous or nearly unanimous in proposing that new dioceses be erected at Grafton, Wilcannia, Sale, Port Augusta, and Christchurch; as well, they were unanimous that the apostolic prefecture of Fiji (in the Pacific Ocean) should be a diocese.³⁰ However, when Cardinal Moran proposed that the southern area of the archdiocese of Sydney become a new diocese, he was

³⁰ Cardinal Moran had written to Propaganda, describing Fiji as una colonia Australese and suggesting representation at the council; he received an affirmative response, but the elderly prefect apostolic, Father Jean-Baptiste Bréhéret, S.M., did not attend (cf. AP, SC, vol. 14[1882-1884], ff. 1262-1263; SOCG, vol. 1026[1887], ff. 532-534).

persuaded to seek an auxiliary bishop instead.³¹ Finally, in a deadlock over whether the vicariate apostolic of Queensland should become a diocese, Cardinal Moran declined to use his casting vote.³² There was also general agreement on the need for three vicariates apostolic, one in the Kimberley region of north-west Australia, one for all aborigines in Queensland, to be entrusted to the Spanish Augustinians working in the Philippines, and one with a vicar having the episcopal character for all indigenous people (Maoris) in New Zealand. The fathers voted that Brisbane and Adelaide become metropolitan sees, with seventeen and ten affirmative votes respectively, but the matter of a metropolitan see in New Zealand was more complex. The three New Zealand bishops abstained, and the result was nine for Dunedin (the smallest and youngest diocese, but with an Irish secular bishop) and three each for Auckland and Wellington. When the fathers voted whether Christchurch would be assigned, at least for the present, to the Marist Fathers, like Wellington (from which it was excised), they voted seven affirmative and eleven negative. The bishops then divided into Sydney province, Melbourne province and New Zealand to propose names for bishops for

³¹ This area became the diocese of Wollongong only in 1951.

³² Nine voted negative, eight affirmative, and one affirmative juxta modum. When some fathers objected to the juxta modum vote, a reballot brought nine each. The vicariate became a diocese only in 1941, renamed Cairns.

the new sees, Melbourne province also proposing names for coadjutors for Melbourne and Perth.

During the council, the fathers sent letters to the Pope, to the bishops of Ireland (supporting the cause of canonization of Irish martyrs), of the United States (congratulating them on the Third Plenary Council of Baltimore), of Germany, of Spain, and of China (sympathizing with difficulties), and to the cardinal prefect of Propaganda (protesting about treatment by the Italian government). A long pastoral letter was issued on the final day of the council to the clergy and laity. In a somewhat triumphal tone it referred to progress in the Australasian church as "unparalleled since the early days of the Apostles", and then outlined the work of the council. The evils of mixed marriages and of a secular education system were dealt with at length and condemned in the strongest language.³³

The acts and decrees were forwarded to Propaganda where they were consigned to one of the consultors, Father Andrea Steinhuber, S.J., who arranged the material into three sections - ecclesiastical discipline, new ecclesiastical jurisdictions, and candidates for new sees - and had his comments prepared by 16 November 1886. The material, with the exception of providing for the sees of Melbourne and

³³ The pastoral is printed in Moran, History of the Catholic Church in Australasia, pp. 684-701.

Perth which had taken place the previous September, was then dealt with at general meetings of Propaganda on 21 and 22 March, and 4 April 1887, with Luigi Cardinal Serafini acting as ponens.

For Australia, it was decided that Brisbane and Adelaide would become metropolitan sees, that dioceses would be established at Grafton, Wilcannia, Sale, and Port Augusta, that the apostolic vicariate of Queensland would be renamed Cooktown but not become a diocese although Father Hutchinson would become a titular bishop, and that two new apostolic vicariates be established: Queensland for all aborigines in Queensland, and Kimberley. For New Zealand it was decided that the council fathers had been incorrectly motivated,³⁴ with the result that Wellington, the capital, became the metropolitan see and a new diocese of Christchurch was confided to the Marists. The matter of the vicariate for the Maoris was not acted upon. For Fiji, the advice of the Marists was accepted and the prefecture was raised to a vicariate only, with no link to an ecclesiastical province.

In introducing the study of the council decrees, Cardinal Serafini informed the other cardinals that the decrees were mainly from the Councils of Westminster and Baltimore. This would appear to have been a misbelief on

³⁴ Cf. AP, Acta, vol. 257(1887), ff. 135-137.

his part, in view of the fact that they were mainly from the Council of Maynooth and the earlier Australian councils.

The decrees were subjected to corrections, some of which were minor in the areas of spelling and grammar, others of somewhat insignificant matter, e.g. the presence of three rather than two synodal examiners being required for a valid concursus, each diocese required to have "at least three" rather than four synodal examiners, and olive rather than vegetable oil required for the sanctuary lamp. Some decrees were suppressed, e.g. one extending the time for fulfilling the paschal precept from Ash Wednesday to the octave of the feast of SS Peter and Paul, another stating that it was in order to administer extreme unction sub conditione until half an hour after apparent death. Part of the first decree on the sacrament of penance was deleted, although this was taken verbatim from the 1844 council;³⁵ however, its contents are contained in subsequent decrees, except for one provision regarding the deaf. One of the decrees ratified after the 1869 council, received some additions, mainly from an 1858 instruction on mixed marriages. Other deletions included a decree complaining of priests other than the proper pastor witnessing a marriage and requiring such to send dimidiam partem of the stole fee

³⁵ "Semper excipiatur Sacramentalis Confessio in Ecclesia seu Capella, si sit possibile. Curet Sacerdos apertis januis pro Tribunali ipse sedere ut omnis suspicio mali abigatur. Surdorum Confessionem in quocumque loco excipere possunt" (cf. First Provincial Council, decr. 12).

to the bride's pastor, reference to Blessed Margaret Mary Alacoque and promises made to her in a decree on devotion to the Sacred Heart, and details of how the feast of the Sacred Heart was to be observed. Five decrees about procedures were deleted from the chapter "De foro ecclesiastico".

However, there were some very important emendations. One concerned religious women,³⁶ where the last decree requiring religious houses to be subject to the local ordinary was suppressed,³⁷ a great victory for Mother Mary McKillop and her fight for central government. The chapter "De canonicis" became "De consultoribus dioecesanis". In addition to some minor amendments, the final decree which gave a canon permanent appointment and permitted his removal only after canonical process and advice from the rest of the canons was replaced by a decree from the Third Plenary Council of Baltimore which provided for a three year term of office, and the possibility of removal for a reasonable and just cause (including sickness and old age) with advice of the other consultors. The chapter "De parochis" became "De rectoribus immovibilibus". The sixth decree imposing the obligation of the Missa pro populo was removed while the

³⁶ The chapter title was changed from "De monialibus" to "De monialibus et institutis religiosis mulierum".

³⁷ "Quod vero attinet ad Congregationem quae Sorores Sancti Ioseph de Sanctissimo Corde denominatur, Episcopi opportunum ducunt ut Conventus seu Religiosae domus quae in singulis Dioecesibus habentur suis respective ordinariis ad instar Sororum Misericordiae subsint".

penultimate decree was replaced by one from Baltimore. Cardinal Serafini had argued that the original one would allow bishops to be arbitrary; it had permitted removal from a parish where there was a) grave incapacity to rule a parish in spiritualibus or in temporalibus, b) obstinate refusal to observe the rules of administration laid down by the ordinary in the diocesan synod, c) neglect to erect or maintain a school after warning, d) rash incurring of debts after warning or refusal to clear debts, e) inebriation with scandal, or f) suspicion of incontinence. The Baltimore decree made it difficult for a bishop to be arbitrary;³⁸ moreover it provided that a priest removed for no fault of his own could be provided with a pension and the title Rector emeritus. The Holy See did not raise any questions or comments about the body of diocesan consultors and irremovable rectors providing the names of episcopal candidates.³⁹

In an audience given to Cardinal Simeoni by Pope Leo XIII on 24 April 1887, the amended decrees and the decisions about territories were approved. The recognitio of the

³⁸ It required causes such as publica et perdurans infamatio and fraudentia deceptio Ordinarii per deliberatam falsitatem.

³⁹ Moran was so upset with the alterations that he considered returning them for reexamination (cf. Moran to Kirby, Sydney, 5 July 1887 [IC, NK, no. 1887/40]); his secretary accused Propaganda of bungling the decrees and ruining the true interests of the Australasian Church (cf. O'Earan to Kirby, Sydney, 9 November 1887 [ibid., no. 1887/34]).

council was issued on 1 May; the apostolic constitutions for the new provinces, dioceses and vicariates were dated 10 May 1887.

2.4 - The Second Plenary Council of Australia - 1895

On 31 January 1895, Pope Leo XIII again wrote to Cardinal Moran, asking him to convoke a plenary council of the bishops of Australia and appointing him apostolic delegate to preside over it. On 24 July 1895, Cardinal Moran wrote to the archbishops and bishops in Australia and Tasmania,⁴⁰ together with the abbots,⁴¹ provincials of clerical orders or congregations, and all others who by law or custom should attend a plenary council, calling them to the opening of a council in St Mary's Cathedral, Sydney, on Sunday, 17 November 1895. He pointed out the advantages the council would bring - strengthening discipline, increasing virtue, honouring the faith, defending the Church, and glorifying God. Instructions from Father Denis O'Haran, the cardinal's chancellor, on 28 August suggested that each bishop appoint a theologian to take part in committee

⁴⁰ As the federation of the Australian colonies had not yet occurred, the term Australia was still understood to refer to the mainland only.

⁴¹ The abbots at this time were Bishop Rosendo Salvado, O.S.B., titular bishop of Adriana and abbot nullius of New Norcia, Abbot Fulgentius Dominguez, O.S.B., coadjutor abbot nullius of New Norcia, and Abbot Ambroise Janny, O.C.R., of Beagle Bay, W.A. (the latter two did not attend).

meetings and general sessions, and that the parochial clergy of each diocese elect one of their body to represent them.

Since the last council, the two new ecclesiastical provinces and four new dioceses had been established as recommended. As well, Hobart had become archiepiscopal, Port Victoria had been renamed Victoria and Palmerston and given an apostolic administrator after Bishop Salvado had resigned it, and Father Hutchinson had become a titular bishop in his vicariate, now named Cooktown. But although the other two vicariates, Queensland for the Aborigines and Kimberley, had been erected by Pope Leo XIII, these decisions had not been executed, because no religious institutes had been willing to accept them. These territories would obviously be agenda items for the council, together with an examination of the adequacy of the 1885 legislation for current needs.

The council fathers numbered twenty-three;⁴² twelve of these had been fathers of the 1885 council, and a further

⁴² With Cardinal Moran were the archbishops of Melbourne, Brisbane, Hobart, and Adelaide, the bishops of Maitland, Goulburn, Armidale, Rockhampton, Ballarat, Bathurst, Perth, Wilcannia, Sale, and Grafton, the abbot nullius of New Norcia (Bishop Rosendo Salvado, O.S.B.), the vicar apostolic of Cooktown (Bishop John Hutchinson, O.S.A.), the coadjutor bishops of Sandhurst (Bishop Stephen Reville, O.S.A.), Hobart (Bishop Patrick Delany), and Goulburn (Bishop John Gallagher), the auxiliary bishop to Cardinal Moran (Bishop Joseph Higgins), the administrator sede vacante of Port Augusta (Father James Maher), and the apostolic administrator of Victoria and Palmerston (Father Anton Strele, S.J.).

seven had been there as theologi.⁴³ The theologi numbered forty-nine; thirty-five were secular of whom twelve had been at the 1885 council, and fourteen were religious (three Jesuits; Marists, Redemptorists, and Vincentians two each; and one each from the Benedictines, Carmelites, Franciscans, Missionaries of the Sacred Heart, and Passionists) of whom only two were from 1885.

There was a preliminary meeting on Saturday, 16 November, when the fathers gathered. The bishop of Sandhurst, absent because of health, had deputed his coadjutor as his proxy. Cardinal Moran explained that the 1885 procedures would be followed. The officials were named, including Bishop Murray of Maitland as promotor and Coadjutor Bishop Delany of Hobart as secretary. The primary committee of Bishops was formed of Cardinal Moran, all the archbishops, Bishop Delany, and three bishops elected by the others (Bishops Murray of Maitland, Lanigan of Goulburn, and Byrne of Bathurst). These divided the other bishops and the priests into four committees as at the previous council. On the question of a deliberative vote for Bishops Salvado and Hutchinson, the coadjutor and auxiliary bishops, and Fathers Maher and Strele, Bishop Corbett of Sale, renowned as a canonist, argued with examples from recent councils that they had no right to vote. But the cardinal, agreeing that

⁴³ The four not at the 1885 council were Archbishops Carr (Melbourne) and O'Reilly (Adelaide), Bishop Higgins and Father Maher.

they had no right, said that the council could concede a deliberative vote to them and the other fathers agreed.

The council concluded on Sunday, 1 December. There were three solemn sessions - one each Sunday - in St Mary's Cathedral, where solemn pontifical Mass was celebrated and all the legal requirements prescribed by the pontifical were carried out with great solemnity, and the council decrees were promulgated in the presence of large crowds. On 21 November, the fathers were received at Government House by the governor of New South Wales, Henry Robert Brand, Viscount Hampden, and a public reception was tendered to all the fathers and priests in Sydney Town Hall in the evening of 25 November. All the other sessions were at St Patrick's College, Manly, the Sydney seminary.

There were three general sessions of all the fathers and priests. At the first on 16 November, after opening legal formalities, the priests were informed of those who had been appointed officials, the committees to which each had been assigned, and the material assigned to them for study. The second was on 25 November, and after reports had been read from the various committees about their work, there was a long discussion about remedies for alcoholic priests, where their problems in Australia were compounded by distance and loneliness. Also discussed were the difficulties of observing the laws of fast and abstinence in places like the Queensland plantations, where fish, eggs and

vegetables were not plentiful; the difficulties experienced by priests having to recite the full divine office on Sundays;⁴⁴ and the difficulties of observing holy days of obligation. The third general session was on 28 November where three points raised by the priests were discussed at length: voting for episcopal candidates in small dioceses; negative attitudes to the concursus by the priests; and the wish of some priests to remain in the original diocese should it be divided. Other points discussed included prevention of clandestine marriages, the banns,⁴⁵ marriage of persons from another jurisdiction, and the rights of rectors.

Between 18 and 30 November, the council fathers had fourteen private meetings. At the first meeting, they agreed that the legislation of 1885 would be the basis for Australian church discipline and that new decrees could be inserted as necessary. A small committee was set up to petition the Holy See for faculties required. Decisions during the meetings included seeking permission for

⁴⁴ Archbishop Polding obtained a faculty dispensing priests who celebrated two Sunday Masses in different churches from part of the divine office; the faculty did not apply to those who celebrated two Masses in the same church (cf. AP, Udienze, vol. 106[1847], ff. 98^V-99^V). In 1862, a petition from the bishops for priests to be dispensed from the obligation of the first two nocturns on Sundays in Lent was answered negative (cf. AP, SC, vol. 7[1861-1864], ff. 898^r-899^v).

⁴⁵ Archpriest Sheehy, O.S.B., explained that the custom was to publish the banns even for mixed marriages, because civil law had required it.

Australian bishops to use at their consecration the oath approved for the American bishops, the appointment of Father Michael Verdon as agent in Rome for the Australian bishops,⁴⁶ supporting the cause of canonization of Blessed Peter Chanel, protomartyr of Oceania, requesting St Peter Claver be named patron of missions ad nigritos,⁴⁷ and seeking the reduction of the number of holy days of obligation to four (the Feasts of the Nativity of Our Lord, the Circumcision of Our Lord, the Assumption of Our Lady, and All Saints).

As at the previous council, much time was spent discussing new dioceses. Two new dioceses were strongly recommended for Western Australia (Geraldton, and Coolgardie), as well as two for Queensland (Townsville, and Maranoa or Warwick), while proposals for two in Victoria (Warrnambool, and Benalla) and one to the south of Sydney were strongly rejected. The fathers also recommended that the episcopal see of Grafton be transferred to Lismore, and

⁴⁶ Verdon sailed for Rome in February 1896, but while en route received notification that he had been appointed bishop of Dunedin, New Zealand. No further Roman agent was ever appointed.

⁴⁷ St Peter Claver was so named in 1896, by a decree of the Sacred Congregation of Rites mentioning petitions from bishops in Africa, North and South America, and Australia (cf. Analecta ecclesiastica, 5[1897], p. 24). The fathers voted (twenty-one to two) to sign the petition, at the request of the Jesuit general (cf. Cong. privata, 22nd Nov. 2 p.m., ms. minutes, p. 5 [SAA, MP, vol. 152]). However, this does not appear to have started any devotion in Australia to this saint.

that there be some adjustment to existing boundaries. They recommended that Cardinal Moran negotiate with the Marists or Jesuits about assuming the care of the aborigines in Queensland.

In the actual legislation, two new chapters were added to those of 1885 - "De studiis ecclesiasticis" and "De missionibus parochialibus". In the former, four decrees urged clerics to keep studying through reading and conferences. Ten decrees regulated missions which were to be conducted in each parish at least every five years to promote piety and the frequenting of the sacraments. The bishops discussed having a vicar general in each diocese if possible, but that did not eventuate as a decree.

Additions to or amendments of the 1885 legislation included: a) in dioceses where the number of diocesan consultors and irremovable rectors was fewer than ten, all rectors or administrators who had served in the diocese for seven years could propose names of episcopal candidates; b) religious women were to make a will before profession and observe the clausura. The chapter on baptism received much detail about who could be sponsor, and heretics were excluded. Divorce was severely castigated, and a separation from one's spouse required permission from an ecclesiastical judge. There was to be uniformity of posture at Mass, a manual of sacred chant and ceremonies was recommended, and the Forty Hours eucharistic devotion was established.

Confraternities were to promote regular confession, special confession times were to be arranged for children, and a list of occasions when reserved sins could be absolved was provided. From this distance, much of the new legislation could appear trivial, but it probably was an indication that the council fathers saw the pioneering days as past so that detail seen as important elsewhere should be observed.

The area where the former legislation was most expanded concerned the life of priests and ecclesiastical discipline. Inter alia, the Apostolic Union of Priests was to be established in each diocese, priests were to be very careful with their familiarity with women in general, and their choice of housekeepers in particular. Temperance societies were to be promoted in seminaries supplying Australia; a religious community was to be invited to provide a house for the rehabilitation of alcoholic priests; a committee in each diocese was to raise a sustentation fund for priests cooperating with treatment for alcoholism. Where several priests were together, one was to be on duty in the house; financial reports were to be provided; no priest was to speak publicly of any person. Buildings were not to be altered nor debts incurred without permission of the ordinary, parishioners were to be kept informed of feast days, days of fast and abstinence, and indulgences; only the Roman and Baltimore rituals could be used; the prescribed registers had to be maintained, as well as the

status animarum book; the Irish catechism was official, the Confraternities of Christian Doctrine, and of the Holy Family, and the Catholic Truth Society were to be promoted, and the faithful were to be urged to say the rosary and be wary of the dangers of certain dances for young people. For funerals, the Requiem Mass was urged, flowers were an abuse, some English prayers were permitted after the official ritual, and burial was to be denied to those who ordered their bodies to be cremated or where members of a secret society attended a funeral in regalia. With education, details were added to the basic principles that had been provided in 1869 and 1885. These were regulations forbidding parish priests from closing a school without the bishop's permission, and appointing a priest examiner of schools in each diocese. Although the 1885 council had said parents who sent children to non-Catholic schools could be refused absolution, this council stated they were not to be refused the sacraments publicly inconsulto ordinario. Schoolbooks published by Benziger Bros were warmly commended; the claim to a pro rata share in public funds was reaffirmed; and some statements from the Third Plenary Council of Baltimore were added.

The usual letter of loyalty to the Holy Father was sent, as well as a joint pastoral letter to the clergy and laity.

After corrections at Propaganda, the cardinals considered the acts and decrees in general meetings on 14 and 20 December 1897. The corrections were minor and of little significance, except perhaps the one referring to those who married before a Protestant minister; they incurred an excommunication reserved to the Holy See. The cardinals agreed to recommend the decrees to the Holy Father. As well, they sent the request for the reduction of the number of holy days of obligation to the Holy Office, (from where a recommendation was sent on 4 August 1898 to the Holy Father who decreed that five holy days were to be observed, the list submitted with the addition of the Ascension of Our Lord). The bishops could continue to use faculties granted in the past mitigating fast and abstinence laws, but there would be no relaxation in the obligations of the priests with the divine office on Sundays; any priest with difficulties was to follow prudently the usual rules of moral theology.

As regards the proposed new dioceses, the cardinals gave their approval only to Geraldton, recommending Father William Kelly to be first bishop. They decided against dioceses at Coolgardie and Townsville, and also Maranoa/Warwick at least for the time being. After considering whether the apostolic vicariate of Kimberley should be suppressed, they decided instead to attach it in the meantime to the diocese of Geraldton, while inquiries were

made about possible missionaries, and in particular about the Trappists who had a mission in that territory. Finally, the boundary between the diocese of Victoria and Palmerston and the Queensland dioceses was adjusted to conform exactly to the civil boundary. After the council, there had been much correspondence from Cardinal Moran about the proposed dioceses, but Archbishop Dunne had also written several times, complaining of Cardinal Moran's interference, and claiming that he, who had worked in Queensland for thirty three years, and Bishop Cani of Rockhampton, who had worked thirty five years, were in a better position to make recommendations. He complained of the craze at the 1885 council to erect new dioceses, and wrote of the difficulties with Grafton, Wilcannia, Sale and Cooktown being planned without forethought and being in difficulties financially and otherwise.⁴⁸

Pope Leo XIII confirmed the decrees of the council on 11 January 1898, and Mieczysław Cardinal Ledóchowski issued a decree to that effect on 22 January 1898. Along with the acts and decrees of the council published that year, was an appendix of twenty documents, including not only various Roman decrees and instructions, but also schedules, samples of documents a bishop might need to use, various official prayers, and rubrics for Benediction and the laity's assistance at Mass.

⁴⁸ Cf. AP, NS, vol. 216(1901), ff. 360-362.

2.5 - The Third Plenary Council of Australia - 1905

On 19 September 1904, Cardinal Moran wrote to the prefect of Propaganda, Girolamo Maria Cardinal Gotti, O.C.D., informing him that as plenary councils had been celebrated in 1885 and 1895, in accord with this tradition the next one could be celebrated in 1905, if the cardinal thought it opportune. Provided the Holy Father approved, Cardinal Moran sought the brief authorising him to convoke the council; moreover, he wanted it by 1 December so that the bishops could be informed in good time for a council in May, which had salubrious weather. He asked if Propaganda had any special matters to be considered, and after pointing out that Cardinal Ledóchowski had directed that the New Zealand bishops not attend the 1895 council, said that they wished to attend the projected council to free themselves from isolation and to strengthen their unity with the Australian bishops.⁴⁹

⁴⁹ On 8 September 1898, Archbishop Francis Redwood, S.M., of Wellington convoked the New Zealand bishops and all who by law or custom should attend a provincial council to attend such a council on 21 January 1899. His letter indicated that the Holy See had decided four years previously that the ecclesiastical province of Wellington was to be separate from Australia and had stated then that a provincial council should be celebrated as soon as possible. Bishops John Grimes, S.M. (Christchurch), Michael Verdon (Dunedin), and George Lenihan (Auckland), together with six secular and seven religious priests celebrated the council in St Joseph's Cathedral and St Patrick's College from 21 until 29 January. Over eighteen hundred people were at the opening Mass and ceremonies. On 23 January, the bishops declared that the decrees of the First Plenary Council of Australasia were to remain in force throughout New Zealand. An examination of the legislation shows that with very few

An apostolic letter of Pope Pius X of 30 November 1904 authorized Cardinal Moran to convoke and preside over a plenary council of Australian bishops within two years. No mention was made of New Zealand. By a decree of 4 April 1905, Cardinal Moran called all the archbishops and bishops of the Commonwealth of Australia, as well as abbots, superiors of clerical orders and congregations, and all others who by law or custom should attend, to St Mary's Cathedral, Sydney on Sunday, 3 September 1905. Attached instructions indicated that each bishop had the privilege of appointing a theologian, that the parochial clergy of each diocese should send an elected representative, and "the superior of each of the religious orders" having a community in Australia was privileged to be present.

On 9 May 1905, Cardinal Moran wrote to Cardinal Gotti again asking whether he had any instructions concerning the council, and indicating that matters for discussion included revision of the Irish catechism adopted in 1885, and the elevation of Sydney to a primatial see with the right to receive appeals from the other metropolitan sees. Cardinal Gotti replied on 23 June that there were no special

exceptions the 1895 Australian decrees were adopted verbatim. The bishops did not include decrees cautioning priests about temperance or familiarity with women. They added a short chapter on the need for parish libraries and books, and had a much fuller chapter on the seminary in connection with the one established near Dunedin. The Roman corrections were few and minor. On 9 April 1900 approval of the cardinals was given, followed by papal ratification on 29 April 1900 (cf. Concilium Wellingtonense).

instructions, the catechism would be profitable work, and the question of a primatial see would merit careful study.

Proceedings commenced with a preliminary meeting of the council fathers on Saturday, 2 September, at St Patrick's College, Manly, where all business except the public sessions occurred. The fathers numbered twenty-one,⁵⁰ only twelve of whom had been fathers of the previous council, although three others had assisted in 1895 as theologi. Bishop James Murray of Maitland was the only one who had been present in 1869; he, with the cardinal, Archbishop Dunne of Brisbane, and Bishop Reville of Sandhurst had been present in 1885.

Absent were Archbishop Murphy of Hobart (ninety-one years old), Bishop Gibney of Perth (who became ill on the sea-journey and was hospitalised in Sydney), and Bishop Maher of Port Augusta (who had travelled as far as Adelaide where he became ill). The fathers conceded deliberative votes to the titular bishops, Abbot Torres, and Fathers

⁵⁰ With Cardinal Moran were the archbishops of Melbourne, Brisbane, and Adelaide, the coadjutor archbishop of Sydney, the bishops of Maitland, Sandhurst, Wilcannia, Sale, Lismore, Ballarat, Goulburn, Geraldton, Bathurst, and Armidale, the coadjutor bishops of Hobart, and Maitland, the vicar apostolic of Cooktown (Bishop James D. Murray, O.S.A.), the abbot nullius of New Norcia (Abbot Fulgentius Torres, O.S.B.), the administrator sede vacante of Rockhampton (Father William Mason Walsh), and the procurator of the bishop of Port Augusta (Father John Norton). Bishop William Kelly of Geraldton was at this time also apostolic administrator of the diocese of Victoria and Palmerston, and of the vicariate apostolic of Kimberley.

Walsh and Norton. (As Bishop Gibney remained in hospital, he later designated as his procurator Father Laurence Smyth, who joined the fathers from Thursday, 7 September). Archbishop Murphy had sent his nephew, Monsignor Daniel Beechinor, as his procurator, but the fathers, questioning the liceity of this as the coadjutor bishop was present, left the matter with the judges of disputes.⁵¹ The primary committee of bishops was formed of the cardinal, the archbishops, the secretary (coadjutor Bishop Dwyer of Maitland), four bishops elected by the others (the bishops of Ballarat, Sandhurst, Maitland, and Goulburn), the assistant secretary (Father James O'Brien), and the chancellor (Monsignor Denis O'Haran). At this meeting it was also decided to send a telegram to the Pope, and one to President Roosevelt of the United States of America congratulating him on negotiating a peace to end the Russo-Japanese war. Moreover, a Te Deum would be sung in the cathedral on the following day in thanksgiving for the end of the war.

Three public sessions with solemn Masses according to the requirements of the pontifical were celebrated with the usual solemnity in St Mary's Cathedral. The cathedral was consecrated on the morning of Saturday, 2 September, by Archbishop Michael Kelly, coadjutor of Sydney, and the

⁵¹ Bishops Corbett (Sale), Dunne (Wilcannia), and Murray (Cooktown) who ruled the appointment was ultra vires.

first public session of the council on the following day was really the public celebration of the consecration. The other public sessions were on Thursday, and on Sunday, 10 September, the closing day. In addition to the priests already mentioned, there were twelve superiors of clerical orders and congregations, and thirty-seven theologi, four religious and the rest secular. Nineteen of these forty-nine had been at the 1895 council. As in the previous plenary councils, they were divided into committees, but this time there were only three - Faith and Sacraments, Discipline, and Education. There were three general meetings of all the priests with the fathers. The first was only for the preliminaries, but the second and third provided the opportunity for the priests to express their opinions on a variety of topics: education (including teachers' colleges and the prohibition of sending children to government schools), the concursus, fast and abstinence, the disagreeableness of being prohibited the racecourse and theatre, funds for sick priests, treatment for alcoholic priests, home for mentally ill priests, the problems in the mission areas of Western Australia and the Northern Territory, Holy Communion for nuns, mixed marriages and the Australian Catholic Truth Society. The matters discussed pointed to a very different church from that of 1844.

During the week, the fathers had eight private meetings. At the first, they approved letters to the Pope,

and the bishops of Ireland and of France; they also decided that a pastoral letter dealing with socialism would be issued by the council (which was composed and approved before the end of the council). On the following day, they accepted the decrees of the 1895 council as the basic legislation, and formed a committee to draft additional decrees.

Educational issues invaded most of the meetings. Also discussed were mixed marriages which were still just as strongly disapproved of, the need for insurance of buildings against fire, Gregorian chant, and the publications of the Australian Catholic Truth Society. The state of missionary areas in Australia was studied. The bishop of Geraldton told of how he had been trying since 1900 to get the Holy See to relieve him of administering the diocese of Victoria and Palmerston. In contrast to the two previous councils, there were no plans for new dioceses or vicariates, except that the Benedictines of New Norcia were prepared to establish a priory in the Kimberley district, which would be annexed to New Norcia, with similar nullius jurisdiction.⁵²

The two meetings on Saturday were given over to voting. The fathers voted that Sydney receive a primacy of honour, that the catechism be revised and used in each diocese, and

⁵² This was established as the missio sui iuris of Drysdale River on 10 May 1910, by a decree of Propaganda (cf. AAS, 2[1910], pp. 410-411).

that Catholic schools keep to a standard of efficiency (in religious education, to the standards set by a committee of bishops, and in secular subjects, to the standards of government schools). They renewed the decree of 1869 forbidding collections without the ordinary's written permission. They decided to erect a missionary seminary to serve the Philippines and Japan, and to promote the Society for the Propagation of the Faith. There should be a Catholic teachers' college in each ecclesiastical province that aspirants to religious teaching communities might use; fire insurance; and institutions for mentally-ill and deaf males (similar ones for women already existed). The publications of the Catholic Truth Society were recommended and care was to be taken with the selection of books for libraries and for school prizes. Books of prayers and piety issued without ecclesiastical approval were condemned. There were to be reparations for recent blasphemies against Christ and the Church. As well, a number of faculties were to be sought from the Holy See (permission to send holy oils by post, for priests to omit matins and lauds on Sundays, some relaxation of fast and abstinence laws, short formulae for blessing the baptismal font and the profession of faith by converts, and the observance of some feasts on Sundays). They also wanted clarification on the faculties to hear confessions on sea-journeys. The fathers disapproved of the archbishops becoming a tribunal of appeal for questions of discipline and for implementing the decrees of plenary

councils, of a uniform tax for matrimonial dispensations, and of having a summary and explanation of difficult words at the start of the catechism.

The new decrees were inserted into the old, which were still kept in chapters, but the chapters were now grouped into six sections - "De fide", "De personis ecclesiasticis", "De sacramentis", "De disciplina", "De educatione", and "De foro ecclesiastico". As well, three new decrees formed a præambulum, indicating that all the decrees formed the norm of law throughout the Commonwealth of Australia. There were forty-two new items, formulated into decrees, although many of these were requests to the Holy See for faculties or permissions. A significant decree stated that an irremovable rectorate could be reduced in status by the bishop after hearing the consultors, because of reduction of population or other reasons.

After the acts and decrees were sent to Rome, Cardinal Moran was advised that some decrees were properly petitions to be sought from the Holy Father, and so on 27 February 1906, he sent a long petition in the name of all the bishops to Pope Pius X.⁵³ It sought a) permission to send holy oils by mail, b) the observance of some major feasts on Sunday, c) a short form of profession of faith for converts, d) the short American formula of blessing the baptismal font at

⁵³ Cf. AP, NS, vol. 512(1912), ff. 527-534.

Easter and Pentecost, e) the faculty to grant a dispensation in disparitate cultus (in quantum opus sit) whenever a dispensation mixtæ religionis was granted because of doubts about Protestant baptism, f) some relaxation of fast and abstinence because of the climate and general use of meat, g) a dispensation for priests from matins and lauds on Sundays, h) some propers for the divine office already granted to Ireland, i) permission for priests to say three Requiem Masses per week, j) that Australian priests have all priestly faculties on sea journeys, k) that bishops be permitted to unite independent houses of female religious into institutes,⁵⁴ and l) that Sydney become a primatial see.

After corrections were recommended by the Commission for the Revision of Provincial Synods, the cardinals dealt with the council in the usual way. What were considered requests for faculties were removed from the text. The only petition that received a simple affirmative reply was the request to use proper texts of the divine office conceded to Ireland. Requests refused included priests being able to omit matins and lauds on Sundays, using a short profession of faith for converts, and the faculty to grant ad cautelam

⁵⁴ In 1900, the Irish bishops considered amalgamation of houses of Presentation Nuns and Sisters of Mercy at provincial or diocesan level as "optandum" (cf. Acta et decreta Synodi plenariæ episcoporum Hiberniæ habitæ apud Maynutiam an. MDCCCC [=Synodus Maynutiana, 1900], Dublini, Browne and Nolan, 1906, p. 116).

a dispensation from disparity of cult whenever a dispensation from mixed religion was granted. It was stated that the bishops could already use the short form for blessing baptismal water (as they had the use of the Baltimore ritual), the fast and abstinence faculties, as well as the faculties for sea journeys. For celebrating feasts on Sundays, they were told to follow the rubrics. Amalgamation of religious houses was possible, but could not be imposed by the bishops. The archdiocese of Sydney could not become a primatial see; since it was a relatively young see, the Holy See replied that it did not usually create a grade of the hierarchy that is not in actual use today, just as Pope Pius VII had refused a similar request for Baltimore. It also stated that the Holy See may wish to establish an apostolic delegation instead. The only petition that was left in the decrees dealt with the holy oils; it was amended to permit laypersons to carry them, rather than using postal services. Of the remaining decrees, the one prohibiting collections was amended to preserve the rights of mendicants, one about making reparation for blasphemy was omitted, and the one requiring that persons who married outside the church do some public penance to repair the scandal was modified. An irremovable rectorate could not be reduced in status with the rector in office, without his consent.

The other twenty-six decrees, dealing mainly with avoiding dangers to the faith, with works of charity, and with education, were virtually unchanged. Pope Pius X confirmed them on 4 September 1906, Cardinal Gotti issuing a decree to that effect on 24 September. They were inserted into the 1895 decrees and published in 1907, with an appendix of various documents.

2.6 - The First Provincial Council of Melbourne - 1907

On Saturday, 16 November 1907, Archbishop Thomas Joseph Carr, his three suffragan bishops, and twenty-three theologi (seventeen diocesan and six religious priests) gathered in the library of the archbishop's residence for a general preparatory meeting for the provincial council, convoked on 14 September and due to open solemnly the following day. Of the Australian ecclesiastical provinces, Melbourne was the smallest and most compact geographically, facilitating interaction among the dioceses. The archbishop's letter of convocation did not indicate that the council was to deal with extraordinary problems; on the contrary, he wrote to Cardinal Moran it "was to substitute for the numerous and divergent decrees of diocesan synods one harmonious body of provincial laws".⁵⁵ At the preliminary meeting, the priests were assigned to one of three committees, each presided over by a bishop - Sacraments with Bishop Stephen Reville,

⁵⁵ Cf. Carr to Moran, Melbourne, 29 November 1907, (copy in MDHC, Carr correspondence. B79).

O.S.A., of Sandhurst, Discipline with Bishop James Francis Corbett of Sale, and Education with Bishop Joseph Higgins of Ballarat. The bishops had all been at two or three plenary councils, while eleven of the theologi had been at one or more plenary councils. The usual solemn public sessions were held in St Patrick's Cathedral on Sunday 17, Thursday 21, and Sunday 24 November. The committees met on Monday, Tuesday, and Wednesday, but no records of the discussions in them or of other private or general meetings appear to have survived.

Of the 112 decrees produced by the council, fifty-one dealt with the administration of the sacraments. The others dealt mainly with clerical life and discipline (including dress, residence, and remuneration), and administration of goods (including inventory, offerings, debts, wills, special collections, and bequests). There was only one decree on education (priests were to visit nearby schools weekly and distant ones monthly to teach or supervise catechism and church history).⁵⁶ Sodalties and the Catholic Truth Society were promoted.

⁵⁶ Despite such minimal legislation, much time was spent working on common policy on education matters like registration of teachers and schools, teacher training, and a catholic college at the University of Melbourne (cf. ibid., and Pastoral Letter of the Archbishop and Bishops of the Province of Melbourne to the Clergy and Laity of the Province, Melbourne, Advocate, 1907, pp. 2-3).

In general, there appears to be little of significance in the decrees. They were regarded as needing little emendation in Rome, being almost completely concordant with the general law and that of the plenary councils. In fact, many of the decrees refer to the Third Plenary Council (1905), whose regulations were being made more specific. Perhaps the most significant was decr. 66 which gave priests having faculties to hear confessions in any diocese of the province the faculty to absolve priests anywhere in the province. The source of many of the decrees is the synods of the archdiocese of Melbourne. Separate from the decrees was a petition seeking four privileges from the Holy See: 1) a dispensation from the obligation of priests to recite matins and lauds on days they binate; 2) a dispensation from the obligation of matins and lauds for Sunday when priests hear confessions on Saturdays from 3.00 p.m. until 10.00 p.m. with only short breaks; 3) a dispensation from the law of abstinence on a day other than Friday when two abstinence days occur together; and 4) permission for ordinaries to raise the amount of Mass stipends where money has been left in wills for the celebration of Masses.

The bishops forwarded the work of the council to the Holy See on 3 March 1908, where it was dispatched to the Commission for the Revision of Provincial Synods. After a report dated 5 June 1908 from Father Pedro Armengol Valenzuela, O. de M., and one from the archivist, the

commission studied the decrees and petition on 27 June and 4 July and after corrections recommended that the decrees of the synod receive the recognitio. The four privileges were all refused, after the archivist had reported on similar refusals after the second and third plenary councils in connection with the breviary and abstinence; Father Valenzuela had advised resorting to the accepted advice of moral theologians for the breviary, that the request about abstinence seemed unnecessary as Saturday abstinence was easily dispensed in most places,⁵⁷ and that faculties for foundation Mass stipends seemed unnecessary.⁵⁸ There were amendments to eighteen decrees, in general quite minor; significant ones being that taking an additional saint's name at confirmation was "permitted", rather than "necessary" (decr. 9), suspension for a priest who dared to witness a marriage without the licentia of the ordinary or pastor of the bride was deleted (decr. 41), the words quia hæc est activa cooperatio in ritu hæretico were removed from the prohibition of Catholics from attending non-Catholic weddings (decr. 63), and bishops were legitimi rather than supremi administratores of ecclesiastical goods, the latter

⁵⁷ He seems to have overlooked that it was still mandatory in Australia on Saturdays in Lent and Quarter Tense (cf. Third Plenary Council, decr. 302[b]). In 1910, Archbishop Carr, in the name of the bishops of the province, sought a faculty to dispense; he received it for Melbourne ad decennium; his suffragans could apply individually if they thought it necessary (cf. Gotti to Carr, 9 June 1910, prot. num. 1128/910 [MDHC, Holy See file]).

⁵⁸ He appears to have misunderstood the request.

qualification being reserved for the Pope (decr. 100). The consultors questioned the decree on reservation of sins; it was forwarded to the Holy Office for study.

The outcome was that on 11 March 1909, the Holy Office advised Cardinal Gotti that decr. 33 should be removed, as it contained reservations already made by the Holy See or the plenary councils making further reservations on such sins superfluous and wrong.⁵⁹ Pope Pius X approved all the recommendations on 2 June 1909, Cardinal Gotti issuing a decree to this effect on 12 July 1909. On 14 July, he sent a letter to Archbishop Carr explaining the refused requests and the deleted decr. 33. The acts and decrees were printed later that year in Melbourne with an appendix of twenty-seven documents, mainly issued by the Holy See over the last decade. On 9 July 1909, Cardinal Gotti wrote to Cardinal Moran asking him to advise the Australian episcopate that they regard the cases of procuring abortion, apostasy, and sollicitatio ad turpia as removed from the list of reserved cases in synods.⁶⁰

⁵⁹ After the removal of decr. 33, the same number of decrees was kept by dividing decr. 19 into decrs 19 and 20.

⁶⁰ Cf. Moran to Australian bishops, Sydney, 1 August 1909 (copy in SAA, MP, vol. 5).

3 - A COMPARISON OF SELECTED THEMES IN AUSTRALIAN CONCILIAIR LEGISLATION WITH SIMILAR CONCILIAIR LEGISLATION IN GREAT BRITAIN AND IRELAND AS WELL AS IN NORTH AMERICA

As explained in the introduction to this work, this chapter examines closely the Australian legislation on six topics - chosen because they are both representative and indicative of major concerns - and makes comparison with legislation from contemporary councils in other places.¹

3.1 - The life and ministry of priests

In the nineteenth century, practically every council - Australian and other - was preoccupied with the good conduct, habits, and devotion of the priests, so that often the bulk of legislation seems to have been directed at them. There would be little practical value in comparing the decrees from various councils on matters such as the clerical collar, the prohibition of beards, devotional

¹ The order of countries examined varies from topic to topic in an attempt to make the detailed narrative easier for the general reader to comprehend. While the intention to stress a similarity or contrast with a particular country might place that country immediately after Australia in one instance, other factors (e.g. the necessity to describe the United States irremovable rector after the English missionary rector which was to a great extent its prototype) are instrumental. On occasion, countries are examined together, either to highlight a significant feature (e.g. the tension generated over the differing English and Irish legislation on mixed marriages), or because of insignificant or minimal legislation.

practices, the concursus, and the selection of housekeepers. However, the matter of whether stable offices such as those of canon and parish priest would replace the system of missionary priests is worthwhile to study.

3.1.1 - Canons or consultors?

3.1.1.1 - Australia. Prior to 1885 in Australia, there were no consultative bodies, aside from the rare diocesan synod. An agenda item of the First Plenary Council had been "Capitula dioecisana",² so the fathers were prepared for consideration of it. The schema "De canonicis", considered on 24 November, was passed unanimously in contrast to the protracted discussion and disagreement at the same session with the matter of stable parish priests.³

The consultor appointed at Propaganda to examine the council decrees, Father Andrea Steinhuber, S.J., did not raise questions about the chapter "De canonicis", nor did the archivist. However, at the general congregation of Propaganda, the title of the chapter was changed to "De consultoribus dioecisanis" and wherever the decrees had referred to "canon" they were amended to refer to "diocesan consultor". Moreover, there was an amendment to the first of the six decrees (the removing of words indicating that

² Cf. Syllabus materiæ quas in synodo plenaria discutiendas nonnulli reverendissimi præsules proponunt, no. 4, in MDHC, in Archbishop Goold's diary for 1886.

³ Cf. Concilium plenum Australasiense, p. xxxi.

the canons would be the bishop's consultors in matters of major importance), while the final decree was replaced by one from the Third Plenary Council of Baltimore (1884).⁴

It has been suggested by some that the Australasian legislation on diocesan consultors was inspired by that of Baltimore.⁵ An examination of the Propaganda archival records would suggest the Baltimore influence to be merely indirect via Propaganda,⁶ and that the Australasian bishops, the majority Irish-born, attempted to legislate for canons as they existed at that time in Ireland. The legislation as prepared and voted at the First Plenary Council of Australasia in 1885 indicated that, although Australian circumstances did not as yet permit the erection of chapters according to all the prescriptions of canon law, it was opportune to establish titulares canonicos who would be conspicuous among the clergy, be the bishop's consultors, and have defined duties in diocesan governance (decr. 29).

⁴ Cf. AP, Acta, vol. 257(1887), f. 101^r-101^v. The original and corrected texts are reproduced in app. 3, pp. 264-267.

⁵ See H.M. Ayrinhac, Constitution of the Church in the Code of Canon Law (Lib. II., Can. 215-486), London, Longmans, Green, 1930, p. 258; J.B. Hannon, The College of Consultors and the Exercise of Ecclesial Authority, J.C.D. diss., Ottawa, Saint Paul University, 1986, p. 35; and P.J. Klekotka, Diocesan Consultors, Canon Law Studies, no. 8, Washington, D.C., Catholic University of America, 1920, p. 23.

⁶ Baltimore Archdiocesan Archives contains no correspondence between the American and Australasian bishops before the letter sent from the 1885 council (cf. Rev. P.K. Thomas [archivist] to author, Baltimore, 28 April 1989).

A uniform number, six, was recommended, although four or even two would suffice (decr. 30). When a see was vacant, these canons were to join with the parish priests to propose names to the provincial bishops, and, at least twice yearly on special solemnities defined in the diocesan synod, would assist the bishop at solemn Mass in the cathedral. As well they would give advice to the bishop: in assigning the time for the synod and in drawing up new statutes to be proposed in it; whenever a parish was being dismembered or given into the care of religious; and before the appointment of a new canon (decr. 31). Moreover, advice was to be given in writing to the bishop when property was being alienated or mortgaged (decr. 32). A diocesan administrator required their advice, but could not appoint new canons; only the new bishop could do that (decr. 33). Finally, canons were appointed permanently. While they could be invited to resign, they could be removed only after the advice of the other canons and for a cause that would occasion removal from a benefice (decr. 34).

Because decr. 34 was replaced by one from the Third Plenary Council of Baltimore, which stipulated a three-year term instead of permanent appointment, and a legitimate and just cause (including old age and ill health) as the only cause necessary for removal, and because the corrected texts changed the title from "canons" to "diocesan consultors", it could thus appear that the Australasian decrees had come

from Baltimore. But while Baltimore prescribed similar occasions when the consultors' advice was required (drawn from the occasions when canon law required the advice of the chapter), it did not require assistance at solemn Mass nor any liturgical function, nor did it speak of dignities among the clergy. And against the Australian legislation permitting a free appointment by the bishop, the American norm required that half the appointees be chosen by the bishop from names proposed by the priests.⁷

3.1.1.2 - United States. While diocesan consultors had been legislated for at various American councils,⁸ they had not been made obligatory nor given defined duties until the Third Plenary Council (1884). Although it appears that by 1884 the majority of bishops had consultors, they were under no obligation to seek their advice. The United States

⁷ The bishops at the 1905 plenary council rejected a resolution passed unanimously by the priests present "That the priests of every diocese be entitled to elect one or more representatives to act as diocesan consultors" (cf. September 9, 1905, 9th sess., ms. minutes, p. 6, and A Meeting of the Priests representing the Clergy, ms., no. 2 [SAA, MP, vol. 230]).

⁸ E.g. at the First and Second Plenary and Eighth Provincial Councils of Baltimore (cf. CL, vol. 3, cols 146, 161-162, 421). There had been a chapter in one American diocese, New Orleans, as the decree of the Sacred Consistorial Congregation establishing the diocese in 1793 (a suffragan of Santo Domingo) provided for the appointment of two canons to serve as a chapter (cf. Eubel, Hierarchia catholica medii et recentioris aevi, vol. 6, p. 108). The small chapter functioned during the episcopate of the first bishop, but became defunct when both canons died during the vacancy after his transfer, and his successors never revived it (cf. R. Baudier, The Catholic Church in Louisiana, New Orleans, 1939, pp. 219, 223, 228, 242, 249, 254).

legislation for consultors with definite duties was a result of a meeting in Rome in November 1883 between officials of Propaganda and representatives of the American hierarchy, at which the congregation tried to insist on chapters of canons being established, while the American bishops held that it was not expedient to establish chapters and that their role could be fulfilled by consultors, removable ad nutum episcopi. They argued that chapters were not in accord with the American character, that canons could not be gathered for meetings without expense and inconvenience, they might become insolent to the bishop and demand unwarranted privileges, and history shows controversies between bishops and chapters. The reply that the chapters envisaged would be senates of the bishop, such as those in England and Holland, did not convince the Americans. The compromise agreed upon was that chapters should be considered, but at least diocesan consultors were obligatory, selected as in Scotland, half freely by the bishop and half from names proposed by the clergy.⁹

3.1.1.3 - England. The English chapters had been established by Pope Pius IX only a few months after reestablishing the hierarchy.¹⁰ It could be argued that he

⁹ See "Minutes of Roman Meeting Preparatory to the III Plenary Council of Baltimore", in The Jurist, 11(1951), pp. 124-125, 129-130.

¹⁰ Cf. Pius IX, Apostolic letter, "Nostris Apostolicis litteris", 19 November 1850, in Pii IX Pontificis Maximi Acta, pars prima, vol. 1, Romæ, ex Typographia Vaticana,

was establishing a new type of chapter with only tenuous links with the cathedral,¹¹ but the emphasis was on restoration of the episcopal government extinguished by the Reformation in contrast to the establishing of the Church in a new land. These new chapters had all the rights of chapters (including that of providing a vicar capitular during a vacancy) with the secondary duties considerably modified.

3.1.1.4 - Scotland. The Scottish hierarchy was restored on 4 March 1878.¹² A plenary council was planned but for various reasons did not occur until 1886. Without waiting for the council, on 27 July 1883 Giovanni Cardinal Simeoni, prefect of Propaganda, wrote to Bishop John Macdonald of Aberdeen¹³ stating that Pope Leo XIII wished chapters to be formed immediately, and where this could not be done, four consultors were to be appointed, two by the bishop

1854, pp. 262-264.

¹¹ E.g. decrees of Propaganda, dated 21 April 1852, gave special faculties including exemption from residence at the cathedral and attending choir, provided that the First Provincial Council of Westminster name some days for office and capitular meetings where the bishop could consult the chapter, and made special provisions for the dioceses of Plymouth, and of Newport and Menevia, to ensure that they would have chapters (cf. CL, vol. 3, cols 956-958).

¹² Cf. Leo XIII, Apostolic letter "Ex supremo apostolatus", 4 March 1878, in Leonis XIII Pontificis Maximi Acta, vol. 1, Romæ, ex Typographia Vaticana, 1881, pp. 1-16.

¹³ The metropolitan see (St Andrews and Edinburgh) was vacant; Bishop Macdonald was the senior suffragan.

personally and two by the bishop in consultation with the clergy. These consultors, unlike the canons, would lack the right to elect the vicar capitular and propose candidates for the episcopate.¹⁴ Chapters were established in the archdioceses of Glasgow (1884), and of St Andrews and Edinburgh (1885).¹⁵ The four dioceses established consultors as an interim measure, but all had chapters by 1907; the diocese of Aberdeen established a board of consultors at its first synod on 9 July 1884 and the diocese of Argyle and the Isles did so at its second synod on 23 July 1885, becoming the first dioceses anywhere to institute diocesan consultors as a required institute with defined duties.¹⁶

3.1.1.5 - Canada. In Canada, the Holy See at first tried to

¹⁴ Cf. Acta et decreta Concilii Scotiae plenarii primi post redintegratam hierarchiam (=Concilium Scoticum), Edinburgi, 1888, pp. 170-171.

¹⁵ Cf. ibid., pp. 173-175, and Acta et decreta Synodi dioecesanæ tertiæ Glasguensis, accedunt synopsis decretorum primæ et secundæ Synodorum et regulæ et constitutiones archidioecesis, cum appendicibus, Glasguæ, Donegan, 1899, p. 2.

¹⁶ Cf. Acta et decreta Synodi dioecesanæ primæ Aberdonensis, habitæ in ecclesia pro-cathedrali Sanctissimæ Virginis Mariæ in Coelis Assumptæ, Aberdoniæ, die 9 iulii MDCCCLXXXIV, Aberdoniæ, King, n.d., p. 6, and Acta et decreta Synodorum II, III, et IV dioecesis Ergadiensis et Insularum, Glasguæ, Donegan, 1891, p. 6; note that the Third Plenary Council of Baltimore concluded on 7 December 1884 and did not receive recognitio until 21 September 1885.

encourage chapters like those in England,¹⁷ and complained in 1865 that only one chapter - Montréal - had been represented at the Third Provincial Council of Québec.¹⁸ Chapters were not erected outside the civil province of Québec, except at Halifax¹⁹ and Ottawa. The plenary council in 1909²⁰ legislated that chapters were to be erected as soon as possible, but where not possible six or four diocesan consultors were to be established. The term was three years; they were to meet as often as required: there was no liturgical function; they were appointed by the bishop on the advice of the consultors.²¹

3.1.1.6 - Ireland, and its influence. Despite the Reformation and the harsh penal laws directed against

¹⁷ Cf. instructions of Propaganda of 28 September 1852 and 23 April 1853, in Acta et decreta Concilii plenarii Quebecensis primi, anno Domini MCMIX (=Concilium plenum Quebecense), Québec, L'Action sociale, 1912, pp. 570-572.

¹⁸ Cf. CL, vol. 3, cols 684-686.

¹⁹ The Halifax chapter (cf. Pius IX, Apostolic letter, "Sub die iv mensis", 20 April 1855, in IPPF, pars Ia, vol. VI/1, p. 236) became defunct, 1913 being the last year a canon was listed in the year book. (cf. Le Canada ecclésiastique, 1913, Montréal, Librairie Beauchemin, p. 292); diocesan consultors for Halifax were first published in the 1938 year book (cf. ibid. for 1938, p. 502).

²⁰ In 1909, six of the twenty-nine dioceses in Canada - Joliette, Montréal, Ottawa, Rimouski, St-Hyacinthe, and Trois-Rivières - had chapters, all represented at the council (cf. Concilium plenum Quebecense, pp. 17-18). The Québec chapter, erected in 1684, was defunct; it was restored in 1915 (cf. Mandements, lettres pastorales et circulaires des évêques de Québec, Québec, [Chancellerie de l'Archevêché], vol. 11[1912-1918], pp. 149-168).

²¹ Cf. Concilium plenum Quebecense, pp. 171-174.

Catholics, chapters of canons had existed for centuries in Ireland at least in theory, although as regards corporate activity they were practically defunct in some dioceses. At the Plenary Council of Maynooth (1875), twelve chapters were represented by procurators. By immemorial custom, the chapter (where it existed) and parish priests of a diocese would present a terna for the bishops of the province to forward to Rome when a new bishop was to be appointed.²² The Australasian bishops legislated in 1885 for canons as they existed in Ireland at that time - chapters with few regulations, minimal liturgical obligations, and permanent appointment by the bishop. Their decrees, when reviewed by Propaganda, were amended so that the canons became the diocesan consultors reluctantly agreed to by Propaganda when the American bishops refused to have chapters.²³ After receiving the amended decrees, the bishops bestowed the

²² In 1829 and 1833, Propaganda issued instructions to regulate this (cf. Synodus Maynutiana, 1875, pp. 273-279).

²³ Moran's lament "The American consultores dioecesani take the place of our intended canonici" leaves no doubt about the bishops' intention (cf. Moran to Murray, Sydney, 20 June 1887 [MA, letter D.3.205]). This was after being advised by Propaganda that there were to be established "al presente in Australasia i consultori dioecesani in luogo dei canonici" (cf. Simeoni to Moran, Propaganda, 2 May 1887 [SAA, MP, vol. 91]). There was no further legislation on diocesan consultors at any council in Australia and New Zealand until the 1937 plenary council, which rewrote the legislation to conform with the Code of Canon Law, but retaining decr. 31(b) of 1885, requiring assistance at solemn Mass in the cathedral on occasion (decr. 146).

title "Very Reverend" on the consultors,²⁴ and some even obtained for them the privilege of wearing the rochet.²⁵ In 1900, a plenary council mandated consultors for Ireland: where chapters were lacking, six or at least three consultors were to be appointed whose consent or advice the bishop was to receive when required by law.²⁶ Finally, when diocesan consultors were mandated for dioceses lacking chapters in Latin America (1899) and in the Philippines (1907), the 1885 Australasian legislation was the fons.²⁷

3.1.2 - Parish priests or irremovable rectors?

3.1.2.1 - Australia. The question of stability of office was not a consideration of the first Australian missionaries, so many of whom had to move around large

²⁴ Cf. Resolutions of the Synodical Conference of the Archbishops and Bishops of Australia, held in Sydney in January 1888, no. 3.

²⁵ E.g. the Sydney diocesan consultors received the faculty of wearing the rochet on 22 July 1888, in answer to a petition from Cardinal Moran describing them as "un quasi capitolo diocesano" (cf. AP, Udienze, vol. 228[1888], f. 1696); Melbourne's consultors received the same privilege on 25 January 1891 (cf. *ibid.*, vol. 241[1891], f. 180); however, a petition by Bishop Murray of Maitland for a similar privilege for all the suffragan dioceses of Sydney was unsuccessful (cf. AP, Lettere, vol. 386[1890], ff. 18, 292), after Cardinal Moran advised that this was premature for some of the dioceses (cf. AP, SC, vol. 17[1890-1892], ff. 51-52).

²⁶ Cf. Synodus Maynutiana, 1900, p. 93.

²⁷ Cf. Acta et decreta Concilii plenarii Americae latinae in Urbe celebrati anno Domini MDCCCXCIX, Romae, Typis Vaticanis, 1902, pp. 116-117; Acta et decreta Concilii provincialis Manilani I in urbe Manila celebrati anno Domini MDCCCXVII, Romae, Typis Polyglottis Vaticanis, 1910, p. 124.

territories ministering to those they managed to contact. The 1844 council showed no concern with the issue of stability; rather there was a concern that the priests occasionally meet each other.²⁸ By 1862, following the goldrushes and accompanying growth, the former roving missionary was more settled, so that the first decree of the 1862 "council" in Melbourne legislated that, where several priests were assigned to one district, one was to have the pastoral charge with the others to assist him.²⁹ Archbishop Polding was alarmed to hear of Bishop Quinn of Brisbane "instituting parish priests", as it "changes the aspect of a missionary country" and was not done in America or England; moreover such an innovation needed "the concurrence of his episcopal brethren".³⁰ However the matter was not dealt with at the 1869 council, although soon afterwards some diocesan synods were strictly prohibiting priests from

²⁸ Three of their six days of annual retreat had to be spent with the other priests of the deanery (decr. 5), and if possible they had to attend clergy conferences thrice annually (decr. 6).

²⁹ Similar legislation was passed in 1829 for the United States of America at the First Provincial Council of Baltimore (decr. 6), in 1852 for England at the First Provincial Council of Westminster (decr. 13/6), and in 1886 for Scotland (decr. 24/6) (cf. CL, vol. 3, cols 26, 926, and Concilium Scoticum, p. 42).

³⁰ Cf. Polding to Goold, Sydney, 26 August 1865 (MDHC); in 1859, Bishop Goold had written to Propaganda that he and Polding were concerned that Irish priests were not good missionaries, as they expected a parochial rather than diocesan appointment (cf. AP, SC, vol. 6[1858-1860], ff. 517-519).

ministry outside their own districts.³¹

The agenda for the 1885 council included "An parochi inamovibiles instituendi sint",³² so the fathers were prepared for discussion of the schema "De parochis". They were clearly divided, with some arguing during their long discussion that the local legislation should conform to that of the universal Church, in so far as their circumstances allowed, and that if permanence was excluded, much of the rest of their legislation was in vain. The others argued that many dioceses were so poorly equipped with priests that great inconvenience would result from permanent appointments, and that up to the present there had been no inconvenience from the lack of irremovability.³³ The legislation, passed on the casting vote of Cardinal Moran, numbered nine decrees. Ignoring the division in the episcopal ranks,³⁴ it stated that as no one would doubt the

³¹ See Prima Synodus dioecesana Melbournensis, habita in ecclesia Sancti Patritii, diebus X et XI martii 1875, Melbournii, Mason, Firth and McCutcheon, 1875, p. 17; Synodus dioecesana prima Ballaratensis habita die 24 feb. 1881 in ecclesia cathedrali S. Patritii apud Ballarat, Ballaarati, Fraser, n.d., p. 61; Prima Synodus dioecesana Sandhurstensis, habita in ecclesia S. Kiliani diebus XX et XXI septembris, A.D. 1881 (=Synodus Sandhurstense), Melbournensi, Ford, 1897, pp. 6, 16.

³² Cf. Syllabus materiarum ... præsules proponunt, no. 5.

³³ Cf. Concilium plenum Australasiense, p. xxxi.

³⁴ E.g. Bishop Reville wrote to Cardinal Simeoni on 16 December 1885 that he would seek a dispensation from this legislation if passed, as priests had to be transferred because many Catholics were transient (cf. AP, SOCG, vol.

good from establishing proper parish priests as in Catholic countries; since the local circumstances did not allow this, at least the principal missions in each diocese were to be selected by the bishop to have irremovable parish priests (decr. 35). If possible, each diocese was to have at least one fifth of its districts with parish priests; as a minimum, each diocese was to have three (decr. 36). The districts selected were to be those equipped with the necessities for worship and education, and not too heavily in debt (decr. 37). To be appointed parish priest, one should have exercised a ministry in the diocese for seven years, proved himself capable of spiritual and temporal administration, and made the concursum according to the norms legislated by this council (decr. 38). The bishop could appoint the first parish priest without the concursum (decr. 39). Parish priests had the obligation of the Missa pro populo on Sundays and feasts (decr. 40). New missions (not usually irremovable) could be erected by the bishop from irremovable parishes (decr. 41), and on the erection of a new diocese, the cathedral rector was ipso facto removable (decr. 42). A list of causes for removal was added (decr. 43), and it was stated that the parish priest acquired no other right than irremovability, unless granted by a plenary or provincial council, or diocesan synod (decr. 44).

The council fathers summarized their decisions in the pastoral letter they issued at the end of the council:

As regards our clergy, those who have left home and kin, and who deny themselves so much that they may work with us in the Master's vineyard, we have decided to submit to the Holy Father our opinion that they have a title to share, to some extent, that permanency of position which hitherto has been possessed by bishops only in Australia. For years back the necessities of these missions require that every priest should be ready, at the beck of authority, to start in any direction [...] half a century does not record a word of refusal [...] the extent of country now settled makes an opening to give a comparatively greater permanence to some of the priests. We thankfully welcome it, and hasten to submit to Rome our desire that it may be availed of.³⁵

At Propaganda, the consultor Father Steinhuber, after noting the debate and casting vote, wondered whether it was yet opportune to erect parishes, and recommended that Australia have what was legislated for the United States of America, that is that the most suitable missions be selected as quasi-parishes to be ruled by permanently constituted irremovable missionaries as in England. Accordingly, the Third Plenary Council of Baltimore had refrained from using the terms parish and parish priest, although there was an irremovability that came not from the mission becoming a benefice but from privilege. He preferred that Australia, like England and the United States, refrain from establishing parishes. He then dealt with the causes for removal (decr. 43) criticizing them for being too many and

³⁵ Cf. Moran, History of the Catholic Church in Australasia, p. 685.

indefinite, so that the privilege of irremovability would amount to nothing and bishops would be able to be too arbitrary.³⁶ The archivist's recommendation was that the decrees should be comparable with those of Baltimore.

At the general congregation of Propaganda, Luigi Cardinal Serafini, the ponens, introduced the matter by asking whether there should be proper parish priests, and requested that the cardinals reflect on the similar conditions in England and the United States. He also suggested that the causes for removal were too many and would permit bishops to be arbitrary, and pointed to the conditions legislated at Baltimore. The result was that the title of the chapter was changed to "De rectoribus inamovibilibus" and the text was amended throughout so that "parish priest" became "irremovable parochial rector". Decr. 40 (imposing the obligation of the Missa pro populo) was deleted, while decr. 43 (renumbered 42, and with causes for removal including suspicion of incontinence, and inebriation with scandal) was replaced by a more acceptable one from Baltimore.³⁷

³⁶ Cf. AP, Acta, vol. 257(1887), ff. 138-139.

³⁷ Cf. ibid., ff. 101^v-102^v; Acta et decreta Concilii plenarii Baltimorensis tertii A.D. MDCCCLXXXIV, præsidente Illmo. ac Revmo. Jacobo Gibbons, archiepiscopo Balt. et delegato apostolico (=Concilium plenarium Baltimoreense III), Baltimoræ, J. Murphy, 1886, decr. 38, pp. 23-24.

The legislation was left untouched at the 1895 council, but at the Third Plenary Council of Australia in 1905 the fathers considered whether a bishop, after advice from the diocesan consultors, could reduce an irremovable rectorate to the status of an ordinary mission if the reasons for the irremovable status no longer existed because of change in population or some other reason, and transfer the rector to another irremovable rectorate.³⁸ The bishops approved the decree after removing the condition that the rector be transferred to another irremovable rectorate.³⁹ At Propaganda, Father Giovanni de Marchi, O.S.M., a consultor from the Commission for the Revision of Provincial Synods, commenting on this decree, recommended that some compensation be made to a rector deprived of irremovability so that no injustice be done to him.⁴⁰ The general meeting of Propaganda then corrected the decree by adding that such an arrangement has no effect until the rector vacates the rectorate, unless the rector agrees.⁴¹ The First Provincial Council of Melbourne did not consider irremovable rectors.

³⁸ A petition to Propaganda from the 1899 meeting of metropolitans seeking this had been answered negative (cf. AP, NS, vol. 170[1899], ff. 493-494).

³⁹ Cf. Concilium plenum Australiense III, pp. xlvi and 27.

⁴⁰ Cf. AP, NS, vol. 512(1912), f. 523^V.

⁴¹ Cf. *ibid.*, f. 558^V.

3.1.2.2 - England. The English "missionary rector" was born in a decree of Propaganda on 21 April 1851⁴² which declared that, although the hierarchy had been restored in England, circumstances did not permit a general observance of the common law, especially as regards parishes. So the Holy See would permit the bishops, on the advice of their chapters, to select churches suitable to be considered quasi-parishes. The priest-in-charge was to be called a missionary rector, whose care for the church and for souls was to be like that of other priests-in-charge, except that he was permanently fixed. Moreover, at the diocesan synod, the bishop was to choose five priests to form a commission of enquiry, three of whom were to advise the bishop whenever a missionary rector was to be removed. At the First Provincial Council of Westminster (1852), these provisions were decreed (decr. 13), and a procedure of inquiry (later approved by the Holy See) was established.⁴³ The council ensured that the establishing of a quasi-parish did not prevent the bishop from subdividing it later; all he needed was the advice of his chapter, despite any protests the missionary rector might make. All other missionaries were removable at the bishop's pleasure, and defined boundaries were required between missions.

⁴² Cf. CL, vol. 3, cols 959-960.

⁴³ Cf. ibid., cols 925-926, 960-961.

3.1.2.3 - United States. Because at times in the United States of America several priests claimed the same territory and church, but exercised authority independently of each other, the first and fourth provincial councils of Baltimore legislated in 1829 and 1840 that in each district there was to be one pastor, with the other priests assisting him.⁴⁴ The First Plenary Council (1852) required definite boundaries between districts⁴⁵, as did the First Provincial Council of New Orleans (1856).⁴⁶ The Second Plenary Council (1866) repeated the existing legislation and decreed that in major cities there should be quasi-parishes and rectors with quasi-parochial rights; however, irremovability was expressly excluded, even though a form of the concursus was instituted.⁴⁷

At the meeting in Rome between officials of Propaganda and representatives of the American hierarchy in November 1883, the matter of parishes of irremovable tenure was introduced by Propaganda on the first day, 13 November. Archbishop James Gibbons of Baltimore agreed on behalf of the Americans that such parishes be established provided that the decision about the fitness of those appointed be

⁴⁴ Cf. *ibid.*, cols 26 and 69.

⁴⁵ Cf. *ibid.*, col. 146.

⁴⁶ Cf. *ibid.*, col. 242. This council spoke of paroecia, but the priest was sacerdos, not parochus.

⁴⁷ Cf. *ibid.*, cols 432-433.

left to the bishop, those appointed submit to a concursus, and only those who have worked for ten years in the diocese be eligible. However, the matter was reopened on 16 November when Archbishop Charles Seghers of Oregon City questioned why such parishes were necessary because no mission in the United States had the necessary conditions for a true parish. When the cardinals indicated the reason being the general law as well as complaints from priests who desired stability of tenure, Archbishop Seghers argued a mobile population, and an unwillingness to give tenure to young priests. The cardinals insisted that such priests would enjoy ordinary rather than delegated power. On the following day, Archbishop Patrick Ryan, coadjutor of St Louis, and Archbishop Patrick Feehan of Chicago asked whether irremovable rectors, as in England, could be established as this would give the tenure the priests desired. The cardinals promised to consider the request. When the matter was raised again by Archbishop Seghers on 22 November, the cardinals requested that their difficulties with parish priests be put into writing, and a meeting of the Propaganda cardinals would rule whether there would be true parish priests or the irremovable rectors of England. On the following day, it was announced that for the present irremovable rectors could be appointed as in England.⁴⁸

⁴⁸ Cf. "Minutes of Roman Meeting Preparatory to the III Plenary Council of Baltimore", pp. 124-125, 130-131, 303-304, 310.

The Third Plenary Council of Baltimore then legislated for irremovable rectors. It is substantially the same as the corrected Australasian legislation, although there are significant differences - only one in ten of the districts was to be so constituted with this proportion not being increased for twenty years, a priest so appointed had to have served ten years in the diocese, and the advice of the consultors was required for the establishment; moreover, these rectors were exhorted to have a stronger filial bond with the bishop.⁴⁹ In 1886 at the First Provincial Council of Milwaukee, the bishops do not seem to have been encouraging irremovability; they stressed the requisite conditions of Baltimore, both for the mission and for the priest, and stated that that included parish schools pro utroque sexu.⁵⁰ In 1889, the Fifth Provincial Council of Cincinnati's decree that the name "rector" be used only by priests enjoying the privilege of irremovability, all other priests holding the pastoral office being called "pastor",⁵¹ was the final United States legislation on this matter.⁵²

⁴⁹ Cf. Concilium plenum Baltimoreense III, pp. 20-25.

⁵⁰ Cf. Acta et decreta Concilii provincialis Milwaukiensis primi, A.D. MDCCCLXXXVI, præsidi Illmo. ac Revmo. Michaeli Heiss, archiepiscopo Milwaukiensi (=Concilium Milwaukiense), Milwaukee, Hoffman, 1888, p. 32.

⁵¹ Cf. Concilium Cincinnatiense provinciale V habitum anno 1889 a die 19 ad diem 26 maii (=Concilium Cincinnatiense V), Cincinnati, Keating, 1893, p. 38.

⁵² The only other United States provincial councils after the 1884 Baltimore council were in Oregon (1891, 1932, and 1957).

3.1.2.4 - Scotland. Some months before the 1883 meeting with the American bishops, the Scottish bishops were informed by the cardinal prefect of Propaganda that for the time being missions rather than parishes seemed best for Scotland, with the recommendation that there be irremovable missionary rectors in the principal churches.⁵³ The plenary council legislated accordingly in 1886; no number was recommended, such rectors were to have exercised their ministry in Scotland for ten years, and the missions selected after advice of the chapter or the consultors. Before giving the recognitio, Propaganda inserted the Baltimore decree giving causes for removal.⁵⁴

3.1.2.5 - Canada. In Canada, a new country with immense distances and scattered population like Australia and the United States, the matter is not as clear. While under the French regime, some parishes appear to have been erected in the present-day civil province of Québec,⁵⁵ in general the missionary situation militated against the concept of stability essential for a true parish. Outside Québec, the missionary approach was similar to that taken in Australia and the United States. Consequently, the first four

⁵³ Cf. Concilium Scoticum, p. 171.

⁵⁴ Cf. ibid., pp. 36-38, and the corrected text (document ED4/79) in the Scottish National Catholic Archives, Edinburgh (=SNCA).

⁵⁵ Cf. G. Arbour, Le droit canonique particulier au Canada, Ottawa, Éd. de l'Université d'Ottawa, 1957, p. 63.

provincial councils of Québec, held in 1851, 1854, 1863, and 1868, referred often to parishes and parish priests when legislating on matters such as liturgy, sacraments, and catechetics,⁵⁶ although there was nothing about parishes as such or their erection. The First Provincial Council of St-Boniface (1889) referred to parishes, yet the priests were referred to as pastores rather than parochi;⁵⁷ however the First Provincial Council of Montréal (1895) legislated at length about parochi, without commenting on the status of the parishes or stability.⁵⁸ The First Provincial Council of Halifax (1857) carefully used "mission" and "district".⁵⁹ The First Provincial Council of Toronto (1875), after repromulgating the decrees of the first four councils of Québec, spoke of parish and parish priest, but then of priests exercising pastoral care in those churches quas parochias vocamus but which are movable ad nutum episcopi.⁶⁰

⁵⁶ Cf. e.g. CL, vol. 3, cols 614, 615, 640, 642, 648, 652, 711, etc.; note especially decr. 6 of the 1863 council reminding the bishops to appoint parish priests with the Tridentine requirements in mind (col. 674).

⁵⁷ Cf. Acta et decreta primi Concilii Sancti Bonifacii, 1889 (=Concilium S. Bonifacii), St-Boniface, 1892, pp. 12, 15-17.

⁵⁸ Cf. Acta et decreta Concilii provincialis Marianopolitani primi A.D. MDCCCXCV, præsidi Illmo et Rmo Eduardo Carolo Fabre, archiepiscopo Marianopolitano (=Concilium Marianopolitanum), Marianopoli, ex Typographia Arbour & Laperle, 1901, pp. 85-91.

⁵⁹ Cf. CL, vol. 3, cols 745, 749, 756, etc.

⁶⁰ Cf. Acta et decreta primi Concilii provincialis Torontini in ecclesia metropolitana Sti. Michaelis celebrati mense septembris MDCCCLXXV, a Sancta Sede revisa et

It would appear that while there was care on occasion to avoid giving the impression that true parishes existed, there were other occasions when the term parochus was used loosely. At any event, the Plenary Council of Québec (1909) decreed that there should be parishes, but where this was not possible, there were to be missions or quasi-parishes. The decrees speak of both parish priests and rectors of missions; the former were obliged to the Missa pro populo, the latter were not.⁶¹

3.1.2.6 - Ireland, and its influence. In summary, in Australia the question of parish priests appears to have followed the way of the chapters of canons. Propaganda had tried to insist that the United States have parish priests, but eventually compromised to permit merely the irremovable rectors which England enjoyed at that time. Soon afterwards, Australia asked for parish priests and was told to have the rectors that England and the United States had. It seems that Australia had not considered the irremovable rectors, but had sought what the majority of the bishops - the Irish - had experienced as normal: parishes and parish priests⁶²

recognita anno III^o pontificatus Leonis P.P. XIII, additis quibusdam aliorum conciliorum decretis (=Concilium Torontinum I), Toronto, Hunter, Rose, 1882, p. 34.

⁶¹ Cf. Concilium plenarium Quebecense, p. 174.

⁶² Moran was informed by Propaganda that it was not considered opportune to establish "per ora in Australia le parrocchie propriamente dette", but, because conditions were similar to those in England and the United States, it was better "introdurre prima costi il sistema dei rettori

who had survived in Ireland, despite the Reformation and penal laws.⁶³

3.1.3 - Participation of priests in appointment of bishops⁶⁴

3.1.3.1 - Australia. The 1885 plenary council, in legislating that canons and parish priests (corrected by Propaganda to become diocesan consultors and irremovable rectors) present three names whenever the bishops of the province proposed candidates to the Holy See for appointment as a diocesan bishop or coadjutor bishop, was legislating for Australasia the system in use in Ireland for centuries. There had already been instances of the clergy seeking this privilege;⁶⁵ moreover, it would appear to be the logical

inamovibili come si e praticato nelle dette regioni" (cf. Simeoni to Moran, Propaganda, 2 May 1887 [SAA, MP, vol. 91]). Moran advised Bishop Murray of Maitland, "The rectores inamovibiles are substituted for the parochi" (cf. Moran to Murray, Sydney, 20 June 1887 [MA, letter D.3.205]).

⁶³ Cf. a letter from Propaganda to the archbishops of Ireland on 25 June 1791 about certain matters of discipline, which clearly speaks of true parishes and parish priests, in Collectanea S. Congregationis de Propaganda Fide, seu decreta, instructiones, rescripta pro apostolicis missionaribus (=Collectanea), 2a ed., Romæ, Typographia polyglotta S.C. de Propaganda Fide, 1907, vol. 1, pp. 375-379; and the decrees on parish priests in Synodus Maynutiana, 1875, pp. 108-114.

⁶⁴ The role and participation of priests only (and not that of bishops) is examined here.

⁶⁵ E.g. during the vacancy of the diocese of Ballarat in 1883, the clergy spontaneously sent a recommendation for a new bishop to the Holy See and the metropolitan (cf. AP, SOCG, vol. 1018[1883], ff. 1325-1344), and, on 8 July 1884, the priests of the Goulburn diocese petitioned Pope Leo XIII for the perpetual privilege of nominating priests from whom the diocesan bishop would be chosen (cf. AP, SC, vol. 14

outcome of Irish bishops deciding to establish canons and parish priests.

The legislation required the diocesan consultors and irremovable rectors of a vacant diocese to meet under the presidency of the archbishop (or the senior suffragan if the metropolitan see was vacant, or a suffragan bishop delegated by either); by a secret ballot, after an oath to seek neither grace nor favour, they were to produce a list of three names of priests they considered most worthy and suitable for the episcopal office. This list was to be sent to Propaganda, and to the bishops of the province for them to have præ oculis as they drew up the list to be presented to the Holy See, although, if they omitted any names proposed by the priests, they had to attach their reasons for the omission (decr. 23). The proposing of names for a coadjutor bishop was similar: the meeting of priests could be presided over by the archbishop, who could delegate either the bishop seeking the coadjutor, or another suffragan (decr. 24). For a bishop of a newly-established diocese, the archbishop was to convoke all diocesan consultors in the diocese(s) from which the new diocese was formed, together with all the rectors in the newly-established diocese (decr. 25).⁶⁶

[1882-1884], f. 1177).

⁶⁶ Strangely, decr. 25 was bypassed in 1895 when the bishops at the Second Plenary Council decided to propose from the council the terna for the proposed see of Geraldton

This system was used in Australia (and New Zealand) until replaced by the legislation of the Fourth Plenary Council of Australia and New Zealand (1937), which removed the active participation of priests, and restricted their involvement to consultation by the bishop of the diocesan consultors and at least some irremovable parish priests, singly and under grave obligation of secrecy.⁶⁷ While the system was in use, there does not appear to have been dissatisfaction with it in principle, either on the part of the priests or the bishops, although difficulties soon appeared with the practical application.⁶⁸ The procedure

and other projected sees (cf. AP, NS, vol. 216[1901], ff. 573^V-574, and Congregatio privata, 29 Nov. 2 p.m., ms. minutes, p. 3 [SAA, MP, vol. 152]). In 1917, the apostolic delegate, Archbishop Bonaventura Cerretti, decided that, despite the conciliar legislation, only the bishops of the province of Sydney would form the ternas for the new diocese of Wagga Wagga and the reconstituted diocese of Wilcannia-Forbes, arguing that in common law the Holy See always has the right to nominate freely the first bishop of a diocese (cf. AP, Acta, vol. 289[1917-1918], ff. 113^V-115). Decr. 25 was first invoked in 1928 in connection with the diocese of Toowoomba (cf. J.J. Wiemers, West of the Range: Fifty Years of the Diocese of Toowoomba, Toowoomba, Downs, 1979, pp. 5-6).

⁶⁷ Cf. Concilium plen. Aust. et N.Z., pp. xliv (where the apostolic legate informed the fathers that the provisions in the schema to be voted on were "juxta explicitam mentem Sanctæ Sedis"), 16; also B.A. Santamaria, Daniel Mannix: The Quality of Leadership, Carlton, Vic., Melbourne University Press, 1984, pp. 182-184.

⁶⁸ The first use of the procedure was in 1891 when a coadjutor was sought for the archdiocese of Hobart, which had seventeen missions. Only four priests had the right to vote, and "tria nomina proponent" was interpreted to mean that each cast three votes. The result was two votes to one priest, and one vote each to two bishops and eight priests (cf. AP, NS, vol. 51[1894], ff. 369-370).

was discussed at an episcopal meeting held in conjunction with the consecration of St Patrick's Cathedral, Ballarat, on 19 November 1891, and at the second annual meeting of the metropolitans, held in Melbourne on 1 December 1891. Cardinal Moran later explained to Cardinal Ledóchowski of Propaganda that in some dioceses, where the total number of diocesan consultors and irremovable rectors may be only three or four, it could be difficult to form a terna, and therefore he sought a faculty so that, should those entitled to vote be fewer than ten, the rectores parochiales amovibiles of such a diocese in order of seniority be entitled to vote, provided the total number of voters not exceed ten, and that such rectores amovibiles had worked at least five years in the diocese for which the election be held.⁶⁹ On 24 July 1892, this was granted until the next plenary council, and was communicated by Cardinal Moran to the bishops in a circular letter late in 1892.⁷⁰ At the 1895 plenary council, these provisions were incorporated in the legislation, but broadened to include cæteri rectores (seu administratores) who had served in the diocese for seven years, without any restriction on number (decr.

⁶⁹ Cf. AP, SC, vol. 17(1890-1892), ff. 1010.

⁷⁰ Cf. AP, Udienze, vol. 250(1892), f. 3007; Moran to Australian bishops, n.d. (SAA, MP, vol. 5). The faculty was used in Adelaide in 1893 where four priests were added to the six already eligible; each cast three votes, resulting in two candidates receiving eight and six respectively, and the others dispersed among nine others (cf. AP, Acta, vol. 264[1894], ff. 559-560).

22[c])). Moreover, to end any confusion about one or three votes being cast, each voter was to cast a single vote;⁷¹ if only two names resulted, a new ballot was to be held for the third name (decr. 22[e])). There was no legislation on this matter at the 1905 plenary council, nor at the provincial council in Melbourne in 1907.

3.1.3.2 - United States. Although the first bishop of Baltimore, John Carroll, was presented to the Holy See by his priests, this was "pro prima hac vice tantum, et ex speciali gratia".⁷² Subsequent episcopal appointments until the Third Plenary Council of Baltimore were in the hands of the bishops, although the Eighth Provincial Council of Baltimore (1855), after discussing whether there should be diocesan consultors, prescribed that they be optional, and if any bishop wished to consult them before proposing names for the episcopacy, it was left to his own prudence and conscience.⁷³ At the 1883 Roman meeting preparatory to the third plenary council, the schema prepared at Propaganda proposed that priests be involved in forming the terna. Archbishop Gibbons indicated that this was acceptable to the United States bishops, provided that the archbishop (or

⁷¹ Voters in Goulburn (July 1894) and Port Augusta (March 1895) had in fact done this (cf. *ibid.*, vol. 265 [1895], ff. 83-86, 534-537).

⁷² Cf. Pius VI, Apostolic letter, "Ex hac apostolica", 6 November 1789, in *IPPF, pars 1a*, vol. IV, pp. 344-346.

⁷³ Cf. *CL*, vol. 3, cols 158, 161-162.

senior suffragan) preside over the meeting of the clergy.⁷⁴ Accordingly, the council's legislation on this matter was substantially the same as that of the First Plenary Council of Australasia, minor differences being: that the American legislation, unlike the Australasian, stressed secrecy and that the vote was consultative only; there was no time limit set for convoking the priests in America, as against fifteen days in Australasia; for proposing a coadjutor bishop, the American legislation permitted the bishop seeking the coadjutor to delegate a priest to preside in his place, and to suggest names of priests he considered suitable for appointment, whereas the Australasian did not; and the American legislation involved only the irremovable rectors of a newly established diocese, while the Australasian involved all rectors.⁷⁵ There was no further United States conciliar legislation concerning this matter. On 30 March 1910, the Sacred Consistorial Congregation issued a decree requiring secrecy in the matter of episcopal appointments in the United States, as public discussion of candidates was often iniusta et iniqua, resulting in reputations being damaged and the Holy See's freedom of choice being limited.⁷⁶ A further decree on 25 July 1916 ended the

⁷⁴ Cf. "Minutes of Roman Meeting Preparatory to the III Plenary Council of Baltimore", p. 126.

⁷⁵ Cf. Concilium plenum Baltimore III, pp. 12-14.

⁷⁶ Cf. AAS, 2(1910), pp. 286-287; the voters had to take an oath to keep secret the names discussed and votes cast, under penalty of removal of office for diocesan

United States clergy's participation in forming the terna; henceforth, bishops were merely to consult diocesan consultors and irremovable rectors individually and under secrecy.⁷⁷

3.1.3.4 - Canada. Except in connection with the appointment of the seventh bishop of Québec in 1765,⁷⁸ priests in Canada were never granted - either in councils or by indult - the privilege of participating in the various processes used for selecting bishops, until a decree of the Sacred Consistorial Congregation of 19 March 1919, drawing up new norms for the Canadian and Newfoundland bishops to present names to the Holy See, permitted a bishop, before attending an episcopal meeting to form a terna, to consult prudent ecclesiastics.⁷⁹

3.1.3.4 - England. On 21 April 1852, Propaganda issued an instruction about recommendations from England for episcopal

consultors and perpetual deprivation of the right to vote for irremovable rectors. Further decrees applied this to all places using the terna system (cf. AAS, 2[1910], p. 648, and 3[1911], p. 182).

⁷⁷ Cf. *ibid*, 8(1916), pp. 400-404.

⁷⁸ During the French régime in Québec, the king had the right of nominating bishops, so when Bishop Henri-M. de Pontbriand died in 1760 (just prior to the capitulation of Montréal), particular law was lacking. Eventually in 1764, the chapter of Québec took the initiative and elected first Étienne Montgolfier, then, after he was vetoed by the British government, Jean-Olivier Briand, who was appointed by Pope Clement XIII. But Propaganda did not recognize this as a right of the chapter (cf. Mandements, lettres pastorales et circulaires des évêques de Québec, Québec, A. Côté, vol. 2[1741-1806], pp. 185-188).

⁷⁹ Cf. AAS, 11(1919), pp. 124-128.

candidates, the first part of the process being a meeting of the chapter of the diocese, who were, by three secret ballots, to produce three names. If in any ballot there was not a clear majority in favour of someone, the voting did not count but was repeated. The three names were then sent to the bishops of the province in alphabetical order and without comment.⁸⁰ These provisions were incorporated into the legislation of the First Provincial Council of Westminster (1852),⁸¹ and were slightly modified at the Fourth Provincial Council of Westminster (1873) which recommended that the canons not confine their consideration to the chapter or the diocese, and invited comments with the votes.⁸² In 1903, the bishops sought and received from the Holy See modifications, including permission to obtain the votes and scrutinies of the chapter.⁸³ This privilege of the canons being actively involved in episcopal appointments has never been revoked by the Holy See, and is respected by

⁸⁰ Cf. CL, vol. 3, cols 958-959.

⁸¹ Cf. ibid., cols 924-925.

⁸² Cf. Decreta quatuor conciliorum provincialium Westmonasteriensium 1852-1873, adiectis pluribus decretis, rescriptis, aliisque documentis (=Concilia Westmonasteriensia), ed. 2a, London, Burns and Oates, p. 213.

⁸³ Cf. Statuta capitularia excerpta ex conciliis provincialibus Westmonasteriensibus adiectis nonnullis documentis recentissimis, Londini, Art and Book Co., 1907, pp. 47-48.

current canon law,⁸⁴ leaving England (and Wales) as the only country in this study where there is still active participation by priests in the appointment of bishops.

3.1.3.5 - Scotland. For Scotland, a Propaganda decree of 25 July 1883 decided that, for vacant dioceses lacking a chapter, the terna would be composed by the Scottish bishops; however, where there was a chapter, the vicar capitular would convoke the canons to a meeting, where after three ballots they would send a terna and the number of votes cast to the Scottish bishops and to Propaganda.⁸⁵ At the plenary council in 1886, this was included unchanged in the legislation,⁸⁶ despite discussion as to whether it was proper for the vicar capitular, rather than a bishop, to preside at the meeting, and whether there could be any priestly involvement for dioceses lacking chapters.⁸⁷ On 20 November 1920, a decree of the Sacred Consistorial Congregation ordered a new procedure for Scotland; priestly participation was reduced to the bishop consulting his canons individually as well as "alios prudentes viros, etiam

⁸⁴ Cf. cc. 364, 4°, and 377, § 3; and Paul VI, Motu proprio, "Sollicitudo omnium ecclesiarum", 24 June 1969, no. VI/2c, in AAS, 61(1969), p. 481.

⁸⁵ Cf. Concilium Scoticum, pp. 171-173.

⁸⁶ Cf. ibid., pp. 32-34.

⁸⁷ Cf. Provincial Synod at Fortaugustus, August 1886, ms. minutes, pp. 29-31 (SNCA, document ED4/69.11).

e clero regulari, praesertim parochos seniores et prudentiores".⁸⁸

3.1.3.6 - Ireland. As already mentioned, canons and parish priests in Ireland had been involved in presenting names for episcopal candidates by immemorial custom, and the regulations in the instruction from Propaganda on 17 October 1829 appear to be an attempt to prevent abuses and bring order into the system.⁸⁹ In 1853, the provincial council of the Cashel province listed as one of the duties of the metropolitan the convoking of the parish priests and canons of a vacant diocese "ut tres idoneos viros commendent, e quibus Summus Pontifex eligat, si velit, unum qui dioecesi vacanti praeficiatur".⁹⁰ Ireland is clearly the place where the greatest number of priests participated actively in the appointment of bishops, but this ceased on 25 March 1925, when the Sacred Consistorial Congregation changed the form of priestly involvement; henceforth the bishop, before attending a meeting of the bishops of the province to form a

⁸⁸ Cf. AAS, 13(1921), pp. 13-16.

⁸⁹ The instruction required the church doors to be closed, a quorum, a roll-call, absences to be explained, an oath to vote according to conscience, three names written on one ballot, and the metropolitan presiding (cf. Synodus Maynutiana, 1875, pp. 273-277); a letter from Propaganda to Archbishop Murray of Dublin on 25 April 1835 ordered that only one name be on the ballot (cf. *ibid.*, pp. 277-279).

⁹⁰ Cf. CL, vol. 3, col. 831.

terna, would ask secretly and individually the canons and the more prudent of parish priests for their opinions.⁹¹

3.1.3.7 - Summary. Leaving aside the role of the English canons, Australia and New Zealand⁹² kept the system of active priestly involvement longer than the other countries in this study. It is noteworthy that the bishops amended the legislation in 1895 to ensure this form of priestly involvement.

3.2 - Catholic primary education⁹³

3.2.1 - Australia. At first, it was taken for granted in the various Australian colonies and in New Zealand that education would be in the control of the clergy as it had been for centuries in Great Britain and other parts of Europe. Originally, the Anglicans presumed the privileged status of the established church, but other clergymen quickly protested that they were just as entitled to supervise education and hand on their own tradition of the Christian faith. Naturally, there were variations from

⁹¹ Cf. Appendix ad acta et decreta Concilii plenarii episcoporum Hiberniae quod habitum est apud Maynutiam die 2 augusti et diebus sequentibus usque ad diem 15 augusti 1927, Dublini, Browne and Nolan, 1929, pp. 27-31.

⁹² The First Provincial Council of Wellington (1899) absorbed verbatim the 1895 Australian amendments for this (cf. Concilium Wellingtonense, pp. 18-19).

⁹³ Secondary and university education is not considered here, as little was legislated about it in Australia during the period under consideration.

colony to colony, but in general the same process evolved: at first, there were denominational schools with government funding; then a dual system with government and denominational schools, each with government funding; finally in the 1870s, after heated public debate and inquiry, with the slogan of "free, compulsory, and secular", only government schools, committed to a purely secular education, receiving public funds.⁹⁴ While the older systems were criticized as wasteful and costly, finance was not the sole motivation for change, as much of the debate made it clear that the new philosophy of liberalism was being chosen in preference to the traditional Christian philosophy of education.

Therefore, the First Provincial Council of Australia in 1844 saw no need to spend time legislating about education. There was only one paragraph, part of "De Verbi prædicatione" (decr. 14), which required each missionary to erect schools in his district, visit them often, see they had daily prayer and regular religious instruction, and ensure that teachers were competent and living a good life. As there were only denominational schools at this time, this legislation was merely an exhortation to the clergy to carry out a normal part of their pastoral ministry.

⁹⁴ In 1872, Victoria became the first colony to remove government funding from all non-government schools; the last colony to do so was Western Australia in 1895.

However, by 1862 the scene was different, as the bishops viewed with alarm the debates on whether there should be state-aid to religion, the compromise of non-denominational religious instruction in schools, or the total exclusion of religion from schools which would be completely secular.⁹⁵ Therefore they drew up a provincial decree putting the clergy under a strict obligation to provide a truly Catholic and Christian education for all Catholic youth, in view of the system of public education being promoted by many, which would only encourage heresy and breed indifferentism. The motivating principles were enunciated in the pastoral letter to the laity issued at the same time, as the bishops spoke of their own role as they perceived it:

No system of education can be accepted, which does not recognise the guardianship of the bishops over the education of Catholic children; and to the security of such guardianship are essential the ownership of their schools, and control over teaching, by the power of appointing and dismissing teachers;⁹⁶

as well as of their estimation of the system on the horizon:

⁹⁵ Catholics were concerned by the Common Schools Act, passed in the Victorian Parliament on 18 June 1862, which concerned all schools receiving government aid. Among its provisions were the setting up of committees without reference to the head of any denomination, the Schools' Board being the final authority for employing or dismissing teachers, funds allocated for salaries and books only (not building or repairs) in denominational schools, and the prohibition of establishing a new school within two miles of a funded one (cf. A.G. Austin, Select Documents in Australian Education, 1788-1900, Melbourne, Pitman, 1963, p. 176).

⁹⁶ Cf. Polding, The Eye of Faith, p. 385.

Catholics do not believe that the education of a child is like a thing of mechanism that can be put together bit by bit [...] We hold that subjects taught, the teacher and his faith, the rule and practices of the school day, all combine to produce the result which we Catholics consider to be education [...] the human being teaching will, by reason of his religious faith and other qualities, influence the human being taught; the day with its work and devotions, arranged on a plan consistent throughout with our faith, will mould one form of character.⁹⁷

To its credit, the Australian hierarchy has never wavered from a forthright enunciation of these basic principles of a totally Catholic education subject to the authority of the Church, although the principles have naturally been developed and refined. The first occasion for this was at the Second Provincial Council in 1869, where the "Decretum de educatione" even at this distance can be admired for its clear and succinct principles, which became the documented firm policy statement of the bishops. They reiterated their firm position, in accord with the teachings of Pope Pius IX, on the obligation of Catholic education subject to ecclesiastical authority. But the logical consequences were now clearly enunciated too, viz. Catholic children would be withdrawn from the government schools which could not be tolerated in conscience; Catholics would erect their own schools, properly conducted and with their own trained teachers, yet open to government inspection; and Catholics claimed as a right their just proportion of public

⁹⁷ cf. *ibid.*

revenues for schools and teachers' colleges. They wrote about these things in the accompanying pastoral letter and dismissed the charge of sectarianism, claiming that public schools were sectarian, as they offered all that some desired, and denied what others claimed as necessary.⁹⁸

The plenary council of 1885 produced fourteen decrees entitled "De educatione primaria seu elementari". While none of the 1869 text was used,⁹⁹ the principles were still there, together with a new one - that the parents and guardians of children had the natural right and duty to educate their children, either personally or through others (decr. 235) - obviously intended for those who would claim that the state has the right to educate. This council insisted that there be a school in every mission, supported normally by mission revenue; because it was essential, it was to be built even before the church, and be used as a chapel in the meantime (decrs 239-240). Catholic education was so important that parents neglecting religious education, or choosing unsuitable or public schools without sufficient reason or without adopting means to avert perversion, were to be refused absolution if contumacious (decr. 238). Other details legislated included special

⁹⁸ Cf. *ibid.*, pp. 398-401.

⁹⁹ The 1885 schema was drafted by Bishop Patrick Moran of Dunedin, at the request of Cardinal Moran (cf. Bishop P. Moran to Cardinal Moran, Dunedin, 2 October 1885 [SAA, MP, vol. 197]).

provisions for deaf-mutes (decr. 242), and care about selection of books (decrs 243-244). Finally the fathers proposed a system of "Payment by Results" as an easy and fair method of government funding; grants for teachers salaries would be made after public examinations conducted by government officials (decr. 245).

Propaganda had no problem in giving the recognitio to these decrees, although amending decr. 234 by adding a quotation from a letter from Pope Pius IX to the archbishop of München and Freising on 11 December 1862 about the Church's right and duty to teach the entire deposit of faith and condemn error and false philosophies.¹⁰⁰

In 1895 a new decree followed the one that spoke of contumacious parents being refused absolution; it regulated that public refusal of the sacraments may not be inconsulto Ordinario (decr. 300). Other new decrees forbade priests from closing schools without the bishop's permission (decr. 303), and praised those who erect and financially support them (decr. 304). The fathers solemnly affirmed that it was the right of Catholics to receive a pro rata proportion of the public funds assigned to education (decr. 309). A second part of the same decree, a statement that the fathers did not wish to set a precedent for other religious bodies, besides wishing that the rights of no one be harmed, was

¹⁰⁰ Cf. AP, Acta, vol. 257(1887), f. 123.

deleted by Propaganda.¹⁰¹ The fathers indicated the methods of government funding of Catholic schools used in different countries (decr. 310), recommended that a priest be appointed inspector of schools in each diocese (decr. 311), established an episcopal committee to negotiate with the American firm, Benziger Bros, about producing schoolbooks, and finally added some decrees from the Third Plenary Council of Baltimore exhorting excellence, regular visitation by priests, generosity in contributions, and seeing schools as a essential component of a parish (decr. 313).¹⁰²

There was little left to add in 1905; but the fathers did give official approval to some catechetical and history books (decr. 331), decided on a new edition of the successful Catholic readers produced by Benziger Bros, (decr. 332), insisted on standards of proficiency (decr. 339), and urged the establishment of provincial or diocesan teachers' colleges that could be used by aspirants to religious life (decr. 340). As already noted,¹⁰³ Propaganda removed a decree asking the Holy See that independent houses of religious institutes of women be permitted to unite into diocesan congregations, as it was properly a petition.

¹⁰¹ Cf. AP, NS, vol. 216(1901), ff. 640, 652^v.

¹⁰² Cf. Concilium plenum Baltimoreense III, decrs 200-202, pp. 105-107.

¹⁰³ Cf. pp. 96-97.

However, it is of interest that that suppressed decree was among the educational ones, as its motive was religious and pedagogical formation in a common novitiate.¹⁰⁴

In view of the above, it is not surprising that only one of the one hundred and twelve decrees of the First Provincial Council of Melbourne in 1907 dealt with education, despite the fact that one of the three established committees was for education. That sole decree made specific the frequency of a priest's visitation of his schools for catechetics and church history (personally or by supervision) - at least weekly for schools within five miles, and at least monthly for the others (decr. 96).

3.2.2 - United States. There was a remarkable paucity of legislation concerning education in the first seven provincial councils of Baltimore.¹⁰⁵ However, the First Plenary Council of Baltimore (1852) was a little more forthright as it urged bishops to erect a school beside each

¹⁰⁴ Cf. AP, NS, vol. 512(1912), f. 560V.

¹⁰⁵ The first council (1829) simply stated that it was necessary for Catholic schools to be established for the religious and moral education of children, and that bishops should see that schoolbooks be free of doctrinal and historical error, but there was no mention of an obligation to use Catholic schools (cf. CL, vol. 3, col. 32). The second council (1833) established a committee to approve and correct books used in Catholic schools (cf. *ibid.*, col. 42), while the fourth (1840) urged priests to watch lest Catholic children endanger faith or piety by using Protestant bible, prayers, or hymns (cf. *ibid.*, col. 71). There was nothing legislated in the others, nor in the First Provincial Council of Oregon (1848).

church, because of the grave evils that youth were exposed to, and to pay suitable teachers from church revenue.¹⁰⁶

Between the first and second plenary councils, eight of the twelve provincial councils held in the United States did not legislate about education,¹⁰⁷ The First Provincial Council of New Orleans (1856) mentioned establishing parochial schools for children of each sex as soon as possible as one of the responsibilities of priests.¹⁰⁸ However, it was the councils of the province of Cincinnati¹⁰⁹ which took a principled position. In the first council (1855), legislation urged that schools submitting to Catholic authority be chosen rather than those endangering

¹⁰⁶ Cf. *ibid.*, col. 147.

¹⁰⁷ The eighth and ninth councils of Baltimore (1855 and 1858), the first, second, and third of New York (1854, 1860, and 1861), the first and second of St Louis (1855 and 1858), and the second of New Orleans (1860). However, in pastoral letters the second St Louis council recommended that pastors establish schools (cf. *ibid.*, col. 1193), the first New York council recommended sufficient religious instruction while stressing that they had no wish "to overturn the system of education which has found acceptance with our fellow-citizens of other denominations" (cf. *ibid.*, col. 1173), and the third New York council deplored that the rights, faith, and conscience of children were not respected in schools that Catholics established and maintained with fellow-citizens (cf. *ibid.*, col. 1183).

¹⁰⁸ Cf. *ibid.*, col. 243.

¹⁰⁹ The ecclesiastical province of Cincinnati, as established in 1850, embraced the states of Ohio, Michigan, Kentucky, and Indiana. In 1875, it was slightly reduced when the diocese of Sault Sainte-Marie and Marquette (in Upper Michigan) was detached, but it was expanded in 1883, with the addition of the state of Tennessee. There were no further territorial changes during the period of this study.

the faith;¹¹⁰ the second (1858) obliged each pastor under pain of sin to have a school if possible (and to send an annual account of parish revenues to the bishop so he could decide whether the obligation existed!);¹¹¹ the third council (1861), after legislating that Gregorian chant and liturgy be taught in schools, in a pastoral letter severely criticized the public schools as indistinguishable from "education among pagans", deplored "state monopoly in education", and asked why the sacred rights of parents were trampled underfoot by salaried state officials.¹¹² The Second Plenary Council (1866) repeated the previous Baltimore legislation, and it was stated that, as attendance at public schools was dangerous to faith, the best remedy was a school near every church, so pastors should build and equip such schools where possible. But where these schools were lacking, there were to be catechism classes on Sundays and feasts, especially in preparation for first communion

¹¹⁰ Cf. CL, vol. 3., col. 197.

¹¹¹ Cf. *ibid.*, col. 209. Its pastoral letter praised the schools erected by German immigrants and spoke of the injustice of being deprived of a proportionate share in school funds (cf. *ibid.*, col. 1225).

¹¹² Cf. *ibid.*, cols 223, 1237, 1239. This council is a source for the Second Vatican Council's assertion that parents, who have the primary and inalienable duty and right to educate their children, should enjoy the fullest liberty in their choice of school, and access to public subsidies for education (cf. Gravissimum educationis, no. 6, [AAS, 58(1966), p. 733]).

and confirmation. The bishops also urged the building of industrial schools and reformatories wherever necessary.¹¹³

In the decade after the Second Plenary Council, three provinces had councils. At the Tenth Provincial Council of Baltimore (1869), there was no education legislation.¹¹⁴ The Third Provincial Council of New Orleans (1873) issued another exhortation which included children africana stirpe,¹¹⁵ and the First Provincial Council of San Francisco (1874), regretting that there were not schools with each church, urged each priest to remember his duty of teaching Christian doctrine.¹¹⁶

¹¹³ Cf. CL, vol. 3, cols 514-519. The pastoral letter expounded the importance of Catholic schools, and the desirability of religious teaching as part of education (cf. ibid., col. 1265).

¹¹⁴ However an agenda item asked whether it was expedient for each bishop in his own state to see whether there could be lawful and apt ways to obtain a share from the public funds for Catholic education; at the council, the theologi advised the bishops not to act rashly; instead it was decided that a pamphlet on the Catholic position be prepared and widely distributed (cf. ibid., cols 578, 590).

¹¹⁵ Cf. Concilium Neo-Aurelianense provinciale tertium habitum mense januario, A.D. 1873, cui addita in appendice duae constitutiones Vaticanæ, epistola encyclica Quanta cura, Syllabus, et formula juramenti pro ordinandis ad subdiaconatum sub titulo missionis, Neo-Aureliæ, ex typis Propagatoris Catholici, 1875, p. 20, decr. 5.

¹¹⁶ Cf. Concilii provincialis S. Francisci I, in ecclesia metropolitana Sancti Francisci A.D. MDCCCLXXIV habiti, et a Sede Apostolica recogniti, acta et decreta (=Concilium S. Francisci I), Sancti Francisci, Thomas, 1875, p. 30. The pastoral letter stated that the government educational system exposed the faith and morality of children to the greatest peril (cf. ibid., p. 79).

By this time, the Holy See, concerned with the system of public schools in the United States of America, issued an instruction on 24 November 1875, condemning the system as dangerous, anti-Catholic, and unable to be used unless risk of perversion be remote; bishops were to use every means - Catholic schools if possible - to protect the faith.¹¹⁷ Following this instruction, councils had to take a firmer stand. Therefore, the First Provincial Council of Philadelphia (1880), regretting that public schools were unable to be used by Catholics although supported by their taxes, legislated that priests must make every effort to have parochial schools; where this was impossible children had to be catechized so that there be no danger to their faith.¹¹⁸ The Second Provincial Council of Oregon (1881) condemned radical liberalism which produced, among other evils, schools without religion.¹¹⁹ The Second Provincial Council of San Francisco (1882) not only bound pastors to build schools, but to provide (in consultation with the ordinary) each with sisters; there was discussion about

¹¹⁷ Cf. Collectanea, 1907, vol. 2, pp. 94-95.

¹¹⁸ Cf. Decreta concilii provincialis Philadelphiensis I anno MDCCCLXXX habiti (=Concilium Philadelphiense), Philadelphia, Gallagher, 1897, pp. viii-ix.

¹¹⁹ Cf. Acta et decreta Conciliorum provinciae Oregonopolitanae annis 1848, 1881 et 1891 celebratorum (=Concilia Oregonopolitana), Mount Angel, Or., Saint Benedict's Monastery, 1895, p. 32.

founding a local religious congregation for this end.¹²⁰ The Fourth Provincial Council of Cincinnati (1882) legislated that refusal by a pastor to build a school was cause for transfer or removal from office; parents sinned by sending children to a public school when a Catholic one was available. As well as quoting liberally from the 1875 instruction, this council decreed that there was to be an education committee in each diocese, and examinations for teachers.¹²¹ The Fourth Provincial Council of New York (1883) also referred to the 1875 instruction and legislated for Catholic schools if possible.¹²²

¹²⁰ Cf. Concilii provincialis S. Francisci II. in ecclesia metropolitana Sancti Francisci A.D. MDCCCLXXXII habiti, et a Sede Apostolica recogniti, acta et decreta, Sancti Francisci, Thomas, 1883, pp. 12, 15-16, 27.

¹²¹ Cf. Acta et decreta quatuor Conciliorum provincialium Cincinnatiensium 1855-1882, adiectis pluribus decretis, rescriptis, aliisque documentis (=Concilia Cincinnatiensia I-IV), Benziger Bros, 1886, pp. 223-227. Its pastoral letter spoke of the heavy burden and injustice for Catholics, forced to support their own schools (cf. *ibid.*, pp. 260-261).

¹²² Cf. Acta et decreta Concilii provincialis Neo-Eboracensis IV, in ecclesia metropolitana S. Patritii, Neo-Eboraci, a die XXIII ad XXX septembris, A.D. MDCCCLXXXIII, præsidente eminentissimo ac reverendissimo Ioanne McCloskey, tituli S. Mariæ supra Minervam S.R. Ecclesiæ presbytero cardinali et archiepiscopo Neo-Eboracensi, habiti, et a Sede Apostolica recogniti (=Concilium Neo-Eboracense IV), Neo-Eboraci, Typis societatis pro libris catholicis evulgandis, 1886, pp. 12-14. Its pastoral letter made it clear that no Catholic could approve of education from which religion is totally excluded, and spoke of the injustice of Catholics being taxed for public schools that they could not in conscience use (cf. *ibid.*, pp. liii-lvi).

Parochial schools were discussed at the 1883 meeting in Rome preparatory to the Third Plenary Council of Baltimore. Archbishop Gibbons of Baltimore indicated acceptance of the 1875 principles. Propaganda asked that bishops insist on building parochial schools and give appropriate attention to priests culpably negligent in this matter, although they did not require a time limit to be set for this. Archbishop Michael Heiss of Milwaukee asked whether confessors as well as ordinaries could judge whether a given school was a proximate danger to faith; the reply was that confessors could decide for individuals, but only the bishop could decide about the nature of the school itself.¹²³

At the council, the bishops ordered Catholic parents to procure a Catholic education and defend their children from the dangers of secularism, by sending them to Catholic schools, unless the bishop judged otherwise in a particular case, but they avoided mention of sin, denunciation, or refusal of sacraments. Other decrees tried to ensure a perfect curriculum and education system. In decr. 199, they decreed four fundamental rules, which can be summarized as follows:

1. Within two years, there must be a parochial school near every church, unless the bishop judges it impossible.
2. A priest neglecting this must be removed.

¹²³ Cf. "Minutes of Roman Meeting Preparatory to the III Plenary Council of Baltimore", pp. 422-424.

3. A mission or parish neglecting to respond was to be reprimanded, and given spiritual punishment if contumacious.
4. Catholic parents are bound to send children to parochial schools, unless at home or in other Catholic schools they provide sufficiently for Catholic education, or with the bishop's approval given for a good reason, they send them to other schools.¹²⁴

The provincial legislation following the plenary council reenforced its firm position. The First Provincial Council of Milwaukee (1886) stressed the 1883 legislation, insisted that catechism be taught in English as well as the language spoken at home so that youth would practice their faith after they left home, and required school committees in each diocese, one to examine teachers, the other to inspect schools and examine children.¹²⁵ The Fifth Provincial Council of Cincinnati (1889) decreed that children attending non-parochial schools not be admitted to first Communion or confirmation, without notifying the bishop that the diocesan rules and statutes for such situations had been observed.¹²⁶ The Third Provincial Council of Oregon (1891) legislated, among other things, that children must be taught prayers at school, and that children, whose parents cannot pay, must be admitted.¹²⁷

¹²⁴ Cf. Concilium plerarium Baltimoreense III, pp. 99-110.

¹²⁵ Cf. Concilium Milwaukiense, pp. 39-41.

¹²⁶ Cf. Concilium Cincinnatiense V, p. 38.

¹²⁷ Cf. Concilia Oregonopolitana, pp. 64-66.

Despite such legislation, there was some discussion about its binding force, and it was known that the hierarchy was divided. Archbishop John Ireland of St Paul was criticized for saying that he regretted the necessity for Catholic schools and for adopting compromises,¹²⁸ and Archbishop Gibbons was criticized for saying publicly that he hoped Catholic schools would one day become connected with the public school system. Cardinal Ledóchowski sent a decree (21 April 1892) to Archbishop Ireland; it ruled that his special arrangements could be tolerated because of the circumstances, but stressed that the Baltimore decrees in respect to parochial schools remained in full force.¹²⁹

This did not end the debate. Later that year, a personal legate of Pope Leo XIII, Archbishop Francesco Satolli, tried to help the bishops agree. He produced a document which restated the essentials of the Baltimore legislation, and made some suggestions for legitimate alternatives: a) an agreement in a spirit of fairness and good will between the bishop and the school board to allow Catholic children to assemble and receive religious

¹²⁸ At some centres of Catholic population in his archdiocese, Archbishop Ireland had arranged a tacit understanding that where the majority were Catholic, the teachers would be Catholic, would impart religious instruction and lead prayers before or after the regular secular curriculum, for which non-Catholics might attend or withdraw at their parents' request. Such a scheme found critics among Catholics and non-Catholics.

¹²⁹ Cf. ASS, 24(1891-1892), pp. 622-624.

education in free time; b) at agreed times, Catholic children would assemble outside the school building, under the authority of parents and priests, for catechism and instruction; c) the responsibility would be on the priests to urge parents constantly to raise their children in sound morality and Catholic faith, and to provide catechism classes in the church outside school hours.¹³⁰

The final legislative word¹³¹ came from Pope Leo XIII on 31 May 1893, in a letter to Cardinal Gibbons. He stated that, in the matter of parochial schools, there was no room for doubting the Baltimore decrees and the directions of the Holy See, which were to be steadfastly observed.¹³²

¹³⁰ Cf. "Archbishop Satolli's Fourteen Propositions for the Settling of the School Question", in N.G. McCluskey (ed.), Catholic Education in America: a Documentary History, New York, Bureau of Publications, Teachers College, Columbia University, 1964, pp. 151-160.

¹³¹ The effectiveness of the legislation can be gauged from these statistics: in 1917, there were in the United States 10,190 churches with a resident priest, yet only 5,687 churches with a parochial school; in 1927, the figures were 11,823 against 6,995, and in 1937, 12,776 against 7,445 (cf. The Official Catholic Directory, anno Domini 1938, New York, Kenedy, 1938, appendix); in 1988, there were 19,596 parishes and 7,387 diocesan and parochial elementary schools (cf. ibid. for 1989, appendix); in 1917, there were in Australia 560 parochial districts and 918 Catholic primary schools (cf. Australasian Catholic Directory for 1917, Sydney, St Mary's Cathedral, 1917, pp. 215-216); in 1927, it was 788 and 1410 (cf. ibid. for 1927, pp. 276-277); in 1937: 724 parishes and 1024 primary schools (cf. ibid. for 1937, pp. 442-443); in 1988, 1486 and 1308 (cf. Official Directory of the Catholic Church in Australia 1988-1989, Newtown, N.S.W., Dwyer, 1988, pp. 272-274).

¹³² Cf. Leo XIII, Apostolic letter "Clara saepenumero edidimus", 31 May 1893, in Leonis XIII Pontificis Maximi Acta, vol. 13, 1894, pp. 166-172.

3.2.3 - Canada. In what is now the province of Québec, it was presumed with French colonization that the Church had the right to direct education. When the British took over, despite the existence of the penal laws,¹³³ the Catholic position was tolerated. In the other British colonies which eventually federated with Québec as Canada in 1867 or joined later, it was presumed after Catholic Emancipation that the Catholic Church, like other churches, could direct schools.¹³⁴

The first four provincial councils of Québec occurred when the ecclesiastical province embraced what are now the civil provinces of Québec, Ontario, Manitoba, Saskatchewan, and Alberta, and the North-West and Yukon territories, although very few persons lived outside Québec (Lower Canada) and Ontario (Upper Canada). These councils did not

¹³³ The body of British legislation which had discriminated against Catholics (a total of twenty-six acts passed between 1559 and 1722). There were seven repeal acts between 1778 and 1926, though the most important one was in 1829 (which is why the 1829 act is called "The Catholic Emancipation Act" by Catholics from Great Britain).

¹³⁴ In Canada, education is a provincial rather than a federal matter, each province having its own system. These permit the tax-supported denominational schools in Québec; the separate schools for minorities (as distinct from the public schools) in Alberta, Ontario, and Saskatchewan; government funding by "gentlemen's agreement" of Catholic schools in New Brunswick, Nova Scotia, and Prince Edward Island; the public funding of denominational schools in Newfoundland; and limited public funding (in recent years only) of private schools in British Columbia and Manitoba.

see education as a major problem to be addressed.¹³⁵ The First Provincial Council of Halifax (1857), legislating for the Maritime Provinces, saw no need for education decrees.

In 1870, the ecclesiastical province of Québec was reduced to the civil province of Québec and the part of the diocese of Ottawa situated in Ontario. This reduced province presumed Catholic education was available and normal; its fifth council (1873), concerned that some priests allowed attendance at non-Catholic schools for slight reasons, warned confessors not to absolve such parents who continued this after a warning, although bishops could give permission in special circumstances;¹³⁶ the sixth had no education decrees, while the seventh (1886), after repeating previous legislation, saw parish schools as more necessary than private schools, urged Catholics not to contribute to non-Catholic schools unless forced by law to do so, insisted that schools constructed be of the best

¹³⁵ The first (1851) warned that, as mixed schools (schools attended by both Catholic and non-Catholic children, which existed in Upper Canada at this time) bred indifferentism, priests were to ensure that the faith was not affected and that Catholics preserved their right to have schools (cf. CL, vol. 3, col. 616); the second (1854) merely listed education of youth and visitation of schools among the many duties of priests (cf. ibid., col. 655); the third (1863) listed these as duties of bishops (cf. ibid., cols 675-676); the fourth (1868) had no education legislation.

¹³⁶ Cf. Acta et decreta quinti Concilii provinciae Quebecensis in Quebecensi civitate anno Domini MDCCCLXXIII celebrati a Sancta Sede revisa et recognita (=Concilium Quebecense V), Quebeci, P.-G. Delisle, 1875, pp. 30, 32, 34, 63-64.

quality, asked wealthy Catholics to contribute to education, whether they had children or not, and reminded school superintendents to see that religious instruction be well-taught, and to cooperate with priests in appointing teachers and seeing that schools were really Catholic.¹³⁷ The ecclesiastical province of Montréal was excised from that of Québec in 1886; its council in 1895 repeated verbatim the education legislation of the Seventh Provincial Council of Québec.¹³⁸

In 1875, the Ontario bishops saw the need for more detailed legislation at the First Provincial Council of Toronto. Separate or parochial schools were to be preserved and new ones built, and entrusted to religious; bishops and pastors were to watch books used in both Catholic and public schools; priests were to visit all schools and report annually on them to the bishop; teachers' salaries should be such as to attract competent teachers; the schools were to be equal to public schools; teachers needed a reference from a priest; and there was to be proper training of lay-teachers for places lacking religious.¹³⁹ Further west, the First Provincial Council of St-Boniface (1889) urged parents

¹³⁷ Cf. Acta et decreta septimi Concilii provinciae Quebecensis in Quebecensi civitate anno Domini MDCCCLXXXVI celebrati a Sancta Sede revisa et recognita (= Concilium Quebecense VII), Quebeci, A. Côté, 1888, pp. 54-57.

¹³⁸ Cf. Concilium Marianopolitanum, pp. 237-240.

¹³⁹ Cf. Concilium Torontinum I, pp. 23-24.

to teach children prayers and christian doctrine from a young age, invited them to establish Catholic schools, urged them to see that children attending other schools do not suffer spiritually, and indicated that higher Catholic education was desirable.¹⁴⁰

The First Plenary Council of Québec (1909), after stating that the need flowed from baptism, laid an admirable basis for its legislation on education. It reiterated various rights: of parents to educate their children; of the Church to preach the gospel; of the state to assist parents and uphold the Church's rights. Then, dealing with non-Catholic schools, it distinguished between anti-Catholic and "neutral". The dangers of neutral schools had been pointed out by popes; there was need in some Canadian provinces for Catholics to vindicate their rights; the ordinary could give permission for attendance at neutral schools if necessary, provided precautions were taken, but much greater care was needed with anti-Catholic schools. Children's faith was nourished at home. There was a précis of papal teaching and the 1875 instruction to the United States bishops, as well as warnings about materialism, liberalism, and modernism.¹⁴¹

3.2.4 - Great Britain. The bishops at the provincial councils of Westminster do not appear to have seen education

¹⁴⁰ Cf. Concilium S. Bonifacii, p. 17.

¹⁴¹ Cf. Concilium plenum Quebecense, pp. 252-275.

as a major concern.¹⁴² It was dealt with at the First Provincial Council (1852) within decr. 8, "De modis tuendi fidem", which amongst other things asked priests to establish or enlarge schools for all the children of their congregations, to visit and help teach catechism, and oppose any seducing of children to non-Catholic schools; schools were needed for the higher classes as well as for the poor.¹⁴³ The accompanying pastoral letter asked that the establishment of good schools be preferred to any other work, that it was preferable to establish the school first (and use it as a temporary church) when establishing a new mission, that Catholic schools were to be equal in every respect to others, and that schools providing "a good commercial and general education" should be provided for "children of families in a better worldly position", so that they will not attend schools lacking religious education and where their faith could be exposed to "serious trials".¹⁴⁴ Education was not dealt with again until the fourth council in 1873 - in decr. 17, "De laicorum informatione" - where there was the same concern for those who were neither rich

¹⁴² Education had always been seen as an ecclesiastical matter. It was not until the nineteenth century that provision for elementary public instruction was seen as a public duty. In 1833, the first parliamentary grant for education purposes was divided among Protestant schools. In 1847, Catholic elementary schools were admitted to share government grants, and the Catholic Poor Schools Committee was founded to supervise and direct them.

¹⁴³ Cf. CL, vol. 3, cols 920-921.

¹⁴⁴ Cf. ibid., cols 1333-1335.

nor poor, as well as for the phenomenon of schools lacking religious instruction. Like Pius IX, this council would not tolerate schools which banished ecclesiastical authority.¹⁴⁵ The Scottish bishops saw no need to legislate for education at their plenary council in 1886, other than, in the chapter dealing with means of safeguarding the faith, urging the erection of Catholic schools where lacking, and the attendance of Catholic children where they existed.¹⁴⁶

3.2.5 - Ireland. The bishops produced legislation which indicated clearly that they demanded a state-supported denominational system controlled by them. In fact, the National Synod of Thurles (1850), the first plenary council in Ireland since the twelfth century, while generally legislating for the newly developing Catholic life following Catholic Emancipation, really had education - both primary and university - as its immediate cause.¹⁴⁷

¹⁴⁵ Cf. Concilia Westmonasteriensia, pp. 248-251.

¹⁴⁶ Cf. Concilium Scoticum, p. 6. (Catholics had partial state-aid for their schools at this time; full state-aid came with the Scottish Education Act of 1918).

¹⁴⁷ In the first part of the nineteenth century, it was realized that a national system of education was needed, because while the Church ran schools, many received very poor or no education. Many bishops saw no hope of Catholic education with government aid, so aimed at a government system over which the clergy had adequate control, rather than a Catholic parochial system. The government policy became National Schools, for all children of different creeds (the population was 80% catholic, with the 20% non-Catholic mainly in the north-east of the island); care was to be taken not to interfere with religious beliefs; the children were to separate for religious instruction; the sponsoring body contributed one-third of building costs and

At the council, after claiming as a right government aid to provide separate denominational schools (as given in England), the bishops legislated that they would use the National Schools with the precautions of the 1841 rescript: objectionable textbooks were not to be permitted; lectures on faith, morals, and history in teachers' training colleges were to be given to Catholics by Catholics; Catholics were to be separated from Protestants for religious instruction; and schools were to be held in the name of parish priest or bishop (not school board), who must oversee everything carefully. Other decrees included: grants to go to the trustees, all textbooks to be approved by bishops, at least one Catholic teacher in every mixed school, and the archbishops to make the church's claims known to the government.¹⁴⁸ This legislation presented the Catholic claim clearly. One could wonder how the bishops could enforce it, but despite their own worries they were legislating for a predominately Catholic people, where the national schools were attended predominately by Catholics, the teachers were Catholic, and the managers were priests! The provincial council in Dublin in 1853 did not legislate

nominated the trustees; teachers were trained in model schools. In practice, most sponsors were clergymen. But ten bishops (all of Tuam province and three others) denounced the system to Rome as permitting proselytism. The decision of 16 January 1841 (cf. Collectanea, 1893, pp. 193-194) left the matter to each bishop, provided the faith was safeguarded.

¹⁴⁸ Cf. CL, vol. 3, cols 795-797.

on education;¹⁴⁹ while that of Cashel in the same year warned about scriptures being disseminated by Protestants, and the need for Catholic industrial schools to balance the Protestant ones.¹⁵⁰ In 1854, a council in Armagh threatened with suspension parish priests neglecting to visit national schools and whatever others they could.¹⁵¹ Led by Archbishop John MacHale, the bishops of Tuam province took a very strong stand. At their council of 1854, they urged more purely Catholic schools, and forbade schools run by parish priests or religious to be joined to the national system without the bishop's permission,¹⁵² while at another council in 1858, they not only urged more Catholic schools, especially with religious, but also the teaching of the Irish language.¹⁵³ The next plenary council was at Maynooth in 1875, at which the bishops built on the 1850 legislation about national schools, regulating, for example, that there must be sufficient schools in each parish, that the school trustees include bishop and parish priest, and that Catholic teachers not be trained at national education board schools but at Catholic establishments. The Church also claimed a

¹⁴⁹ However, its pastoral letter was concerned with proselytism of the poor, and versions of scripture and books aimed at common religious instruction (cf. *ibid.*, cols 1315, 1319).

¹⁵⁰ Cf. *ibid.*, col. 829.

¹⁵¹ Cf. *ibid.*, col. 852.

¹⁵² Cf. *ibid.*, col. 462.

¹⁵³ Cf. *ibid.*, col. 879.

right to receive a proportion of funds for its schools.¹⁵⁴ Despite the promise in the pastoral letter of 1875 to continue fighting until religious education replaced mixed education, even though there had been great progress,¹⁵⁵ the mixed schools were de facto Catholic schools by the time of the next plenary council in 1900. The bishops, in their pastoral letter on that occasion, could declare of national education "in its first conception it was thoroughly dangerous ... in a great part of Ireland [it] is now in fact, whatever it is in name, as denominational almost as we could desire".¹⁵⁶ New legislation in 1900 included the syllabus, time for religious instruction, and the diocesan inspector of schools.¹⁵⁷ Provincial legislation during the next decade was concerned with local application, or with matters of local interest,¹⁵⁸ rather than with the

¹⁵⁴ Cf. Synodus Maynutiana, 1875, pp. 129-132, 135.

¹⁵⁵ Cf. ibid., pp. 160-161.

¹⁵⁶ Cf. Synodus Maynutiana, 1900, p. 161.

¹⁵⁷ Cf. ibid., pp. 129-134.

¹⁵⁸ E.g. diocesan school inspectors, recommended nationally, were mandated for Armagh and Tuam provinces; the teaching of the Irish language for Tuam province; books on temperance and Gregorian chant in school libraries in Cashel and Tuam provinces (cf. Acta et decreta Synodi provincialis Armacanæ habitæ apud Armacham an. MDCCCXVIII (=Concilium Armacanum, 1908), Dublini, Browne and Nolan, 1911, p. 30; Acta et decreta Synodi provincialis Cassiliensis habitæ anno MDCCCXVII (=Concilium Cassiliense, 1907), Dublini, Browne and Nolan, 1909, p. 37; Acta et decreta Concilii provincialis Tuamensis habitæ anno 1907 (=Concilium Tuamense, 1907), Dublini, Browne and Nolan, 1908, pp. 41-43.

fundamental issue of Catholic education.

3.2.6 - Summary. It appears that the Australian bishops were concerned with the evils in secular education, as were the United States bishops. The Australian legislation was forthright and consistent, insisting that Catholics receive Catholic education, and that, because parents have the right to educate their children, they have a right to their share in public moneys for education. This was in contrast to the largely exhortatory legislation of the United States bishops, until the Holy See intervened. The other hierarchy to legislate in a forthright way about education was the Irish, although its concern was not secular education, but fears of Protestantism and proselytism.

3.3 - Mixed marriages

3.3.1 - Australia. At the First Provincial Council of Australia (1844), there was no mention of mixed marriages among the decrees on marriage. The bishops appear to have been more concerned with giving positive teaching on the holiness of marriage, and trying to ensure that all marriages would be blessed. No marriage legislation was produced at the 1862 "council", although the pastoral letter to the laity spoke strongly about the evils arising from mixed marriages.¹⁵⁹ But, by 1869 the picture was different.

¹⁵⁹ Cf. Polding, The Eye of Faith, pp. 386-387.

As already noted,¹⁶⁰ there was legislation for mixed marriages at the 1869 council; and Bishop Murray (Maitland) wrote to the future Cardinal Moran of it as follows:

The decrees on mixed marriages and education were drawn up by Dr Mat Quinn and myself. I think the Holy See will have no difficulty in approving them, the decrees on mixed marriages embody the instructions of the Holy See on that question, [...]. Dr Polding was very anxious to have a decree to the effect that the Holy See had given permission to use the stole and even sacred rites in mixed marriages, but we replied that such a decree would without doubt be eliminated by the authorities in Rome, that it was our duty to lay down the rule and not the exception especially as the Holy See had enjoined silence as to that privilege which was granted only per modum exceptionis. All the old Priests and some of the young ones too considered our decrees very strict. A petition was signed by them begging of the Bishops to give the widest interpretation possible to the decrees on mixed marriages as the circumstances of this country seemed to demand such consideration. This petition goes to Rome together with the Acts of the Council, and I hope that the Sacred Congregation will not yield. If the slightest concession is made, it will be interpreted and taken as an encouragement to mixed marriages, and they will go on more than ever and will do irreparable mischief. All the Suffragan Bishops are of one mind on this subject, [...] we asked [Dr Murphy of Hobart] as the senior suffragan Bishop to write to the Propaganda explaining the whole case and warning the Cardinal Prefect against making any concession to the petition of the priests. Dr Murphy asked one of the Priests in Melbourne what they really asked for, [...] they wanted the use of the stole too but did not wish to state so expressly. I think in the question of mixed marriages we have done our duty and we naturally expect that the Holy See will support us. I think Dr Polding will do all he can to get some of the decrees modified. We laid down that mixed marriages are not to be celebrated in the church, no stole or sacred rite is to be used, the priest is not to assist at the mixed marriage if before or after the ceremony

¹⁶⁰ Cf. pp. 55-57.

they go before a Protestant Minister or Registrar. All which provisions are directly opposed to the practice in Sydney.¹⁶¹

That letter indicates the provisions in the decrees: mixed marriages were strictly forbidden and condemned because of the evils coming from them (nos 5 and 6); all priests were regularly to teach their evil and annually to read and explain these decrees to the people on the second Sunday after Epiphany (no. 7); just and grave causes were always required in writing so the ordinary could decide whether he could use the dispensing power given by the Holy See (no. 8); such marriages were to be celebrated outside the church without sacred rite (no. 9); priests were forbidden to assist at marriages where the parties intended to present themselves to a non-Catholic minister or civil registrar (no.10); and those marrying this way were guilty of grave sin reserved to the ordinary (no. 11).

Bishops Murphy and Murray wrote to Propaganda in the terms indicated to Moran, and their letters were considered as the decrees were being examined.¹⁶² The decrees were not amended. But well before ratification, Polding was informed of allegations of abuses in his archdiocese: mixed marriages being celebrated like Catholic ones, and parties having a second ceremony before a Protestant minister; presumably

¹⁶¹ Cf. Murray to Moran, 14 June 1869 (MA, letter D.3.35).

¹⁶² Cf. AP, Acta, vol. 238(1872), ff. 144-148.

they had occurred in his absence, or due to the laxity or inexperience of a priest, but they were to cease.¹⁶³

The decrees on mixed marriages sent to Propaganda from the 1885 council were those of 1869, with the addition "nisi aliter ordinarius jusserit" to the decree requiring the celebration of marriage outside the church without sacred rite. Propaganda amended "jusserit" to "graves ob causas permiserit", and made additions: preaching on mixed marriages was to include the difference between mixed religion and disparity of cult, and the need for the cautiones which could not be dispensed; and priests were to see after the wedding that the cautiones were observed.¹⁶⁴

Despite discussion between the fathers and the priests at the 1895 council as to the reasons for some Catholics marrying in registry offices,¹⁶⁵ there was no change at the council to the mixed marriage legislation; Propaganda, in its emendations, decreed an excommunication reserved to the Pope for marrying before a Protestant minister.¹⁶⁶ Minor

¹⁶³ Cf. Cardinal Barnabò to Polding, Rome, 19 January 1871 (SAA, Polding correspondence).

¹⁶⁴ Cf. AP, Acta, vol. 257(1887), ff. 88^v, 92, 113^v.

¹⁶⁵ Whether because they were mixed marriages, or to avoid fees associated with dispensations from banns or letters of freedom (cf. Congregatio generalis, 28 Nov. 10 a.m., ms. minutes, pp. 2-4 [SAA, MP, vol. 152]).

¹⁶⁶ Cf. AP, NS, vol. 216(1901), ff. 624, 651^v. (Note that, as the Tridentine legislation prescribing the canonical form of marriage was never promulgated in Australia, the canonical form did not oblige for validity

amendments to marriage legislation at the 1905 council did not include anything on mixed marriages, although the fathers did discuss the topic, both among themselves,¹⁶⁷ and with the priests.¹⁶⁸ Finally, the 1907 provincial council in Melbourne had only one of its eleven marriage decrees concerned with mixed marriages: decr. 51 gave instructions to priests about the details needed on the application form for mixed marriage dispensations. Propaganda required the priest to provide more detail, namely any doubts he had about the validity of the non-Catholic party's baptism.¹⁶⁹

3.3.2 - Great Britain, Ireland. The contrasting approaches to the mixed marriage legislation of Archbishop Polding and the pioneer clergy versus that of the Cullenite bishops appears to have mirrored the attitudes in Great Britain and Ireland. At the First Provincial Council of Westminster (1852), the marriage legislation (decr. 22) commenced with a there until 1908).

¹⁶⁷ Contributions to their discussion included preventing such marriages by stressing their evils in preaching and pastoral visitation (rather than refusing dispensations), circulating pamphlets, converting non-Catholic spouses, and not permitting such marriages before the altar (cf. September 8th, 7 sess., ms. minutes, pp. 3-4 [SAA, MP, vol. 230]).

¹⁶⁸ The best ways of preventing such marriages were discussed; the resulting advice included promotion of social activities among Catholics, publicising the evils of mixed marriage, and making the best of each case as it occurs (cf. September 8th 1905, Gen. sess. 8 sess., ms. minutes, pp. 9-10 [ibid.]).

¹⁶⁹ Cf. AP, NS, vol. 471(1909), f. 157.

preamble noting the difficulty of living among non-Catholics, with the consequence that priests should act with the greatest prudence as regards the sacrament of marriage. The only reference to mixed marriages was the requirement that the usual promises were to be made before the marriage could be celebrated.¹⁷⁰ The decrees were left intact by Propaganda, and there was no mention of mixed marriages in the pastoral letter issued by the council. This was in contrast to the Irish legislation at the National Synod of Thurles (1850), which forbade mixed marriages as the sanctity of marriage required both parties to be qualified by faith and other dispositions of mind to receive the grace of the sacrament; evils including domestic discord and perversion of the Catholic party and the children often flowed from such marriages; they were to be celebrated outside the church without sacred rite or vestments.¹⁷¹ Although from the seventeenth century the Holy See had reserved to itself the right to dispense from the impediment of mixed religion, it had permitted contrary custom to exist in some places, including Ireland.¹⁷² The Synod of Thurles

¹⁷⁰ Cf. CL, vol. 3, cols 936-938.

¹⁷¹ Cf. ibid., cols 783-784. This decree is verbatim from the Fourth Provincial Council of Baltimore (1840); it was the source of marriage decrs 5, 8, and 9 of the Second Provincial Council of Australia (1869).

¹⁷² For details of the practice in Ireland of episcopal permissions and dispensations for mixed marriages during the seventeenth-nineteenth centuries, see T.P. Cunningham, "Mixed Marriages in Ireland before 'Ne Temere' Decree", in Irish Ecclesiastical Record, 5th ser., 101(Jan.-June 1964),

brought the strict universal legislation, including the requirement of a papal dispensation in each case, to Ireland. Not only that, Cardinal Cullen complained to Rome that the Westminster legislation of 1852 undermined that of Thurles (e.g. some wealthy people crossed to England for their marriages, and some Irish bishops questioned the necessity of the dispensation).¹⁷³ The provincial council in his own province of Dublin in 1853 made it clear that the dispensation was always necessary for a mixed marriage, for to contract such a marriage without one was a reserved sin;¹⁷⁴ the provincial council at Tuam in 1854 insisted on the dispensation, although without the reservation,¹⁷⁵ although the councils of Cashel (1853) and Armagh (1854) did not mention mixed marriages. The national legislation at Maynooth in 1875 and 1900 repeated the Thurles legislation verbatim, while that of 1927 was similar.¹⁷⁶ Of the Irish provincial legislation in 1907-1908, mixed marriages were dealt with only at Tuam, where the faithful were warned that they incurred an excommunication specially reserved to the

p. 56.

¹⁷³ Cf. AP, Acta, vol. 218(1854), ff. 4-6V, 14-15.

¹⁷⁴ Cf. CL, vol. 3, col. 808.

¹⁷⁵ Cf. *ibid.*, col. 861.

¹⁷⁶ Cf. Synodus Maynutiana, 1875, pp. 91-92; Synodus Maynutiana, 1900, pp. 80-81; Synodus Maynutiana, 1927, p. 100.

Holy See, if they entered a mixed marriage before a Protestant minister.¹⁷⁷

There was no further English legislation, although at the Fourth Provincial Council of Westminster (1873) the bishops dealt with the matter in their pastoral letter. Avoiding condemnatory language, they stated that the Church has always condemned marriages of mixed religion, the prohibition being self evident for Catholics, while to others unintelligible as the faith itself was. They emphasized the obligation of educating children in the faith, and taught that as the civil law had not since 1836 required Catholics to marry before a Church of England minister for civil validity, Catholics should not marry before him. No doubt, they dealt with this matter in the pastoral letter because of an instruction from the Holy See in 1868 which had stressed that, along with the guarantees given by the parties prior to a mixed marriage, there must be true and grave causes.¹⁷⁸ The Scottish legislation of 1886 contained the prohibition, need of dispensation, and promises, but added that in the celebration none but Catholic religious ceremonies were permitted. This

¹⁷⁷ Cf. Concilium Tuamense, 1907, p. 28.

¹⁷⁸ Cf. Collectanea, 1893, pp. 534-535. This referred back to an instruction issued at the order of Pope Pius IX in 1858, which insisted that mixed marriages were dangerous, never approved of, reluctantly permitted by dispensation following precautions, and to be celebrated without sacred rites, unless these were permitted by way of exception to avoid greater evils (cf. *ibid.*, pp. 531-533).

provision about ceremony was struck out by Propaganda, and replaced by a directive to follow the instruction of 15 November 1858.¹⁷⁹

3.3.3 - United States. In the United States of America, there was a strong condemnation of mixed marriages at the Fourth Provincial Council of Baltimore (1840), four years before the First Provincial Council of Australia,¹⁸⁰ although one would hardly detect the severity of the regulations in the pastoral letter from that council announcing the legislation.¹⁸¹ The previous Baltimore councils had been silent on mixed marriages, although the diocesan synod of Baltimore in 1791, seeing mixed marriages as inevitable in areas where few Catholics dwelt, required the priest to ensure that there be no risk to the Catholic's faith, and to ask the non-Catholic not to prevent the

¹⁷⁹ Cf. Concilium Scoticum, pp. 24-25, and the corrected text (SNCA, document ED4/79).

¹⁸⁰ This became the legislation at Thurles in 1850, and consequently of Australia in 1869 (cf. footnote 171, and CL, vol. 3, col. 69). Note that for mixed marriages the bishops sanctioned choir dress for themselves, whereas priests could wear a cassock only (cf. *ibid.*, col. 67).

¹⁸¹ The bishops wrote: "From the earliest period of the Christian dispensation, we find the code of discipline invariably opposed to those marriages of members of the Church with persons estranged from her communion; [...] we have to lament that this wholesome discipline has not been everywhere in our province rigidly observed; and we have taken those steps [...] to cause the ancient salutary regulations in this regard to be brought into full operation" (cf. P.K. Guilday, The National Pastorals of the American Hierarchy, 1792-1919, Washington, D.C., National Catholic Welfare Council, 1923, p. 139).

children being educated in the true religion; the only restriction on celebration was the prohibition of the nuptial blessing in the Roman Ritual.¹⁸² In 1810, the bishops of the newly established province of Baltimore met and agreed on uniform practice in some matters until a provincial council would be celebrated. As regards marriage, they considered it premature to form a rule, except to recommend all marriages be celebrated in church.¹⁸³

The paucity of legislation on mixed marriages is noticeable, although the 1840 legislation, repeated verbatim at the second plenary council in 1866, with the additional requirement of an annual sermon against mixed marriages,¹⁸⁴ and the 1884 legislation (a restatement of the 1858 instruction),¹⁸⁵ hardly required additions.¹⁸⁶ Most of the

¹⁸² Cf. CL, vol. 3, cols 4-5.

¹⁸³ Cf. ibid., col. 8.

¹⁸⁴ Cf. ibid., col. 488. The fathers in 1866 showed pastoral sensitivity in requiring priests to act suaviter lest the Catholic become exasperated and leave the Church.

¹⁸⁵ Cf. Concilium plenum Baltimoreense III, p. 66.

¹⁸⁶ However, the pastoral letters from these councils gave only scant mention to mixed marriages: for 1866 "[...] mixed marriages are in principle condemned by the Church; [because of] danger of perversion to which the Catholic party and the offspring of such marriages are exposed" (cf. Guilday, The National Pastorals of the American Hierarchy, p. 212); for 1884 "though the Church sometimes permits the contraction of mixed marriages, she never does so without regret and without a feeling of anxiety" (cf. ibid., p. 248).

provincial councils did not mention mixed marriages except indirectly.¹⁸⁷ The First Provincial Council of San Francisco (1874), did not legislate on mixed marriages, but in its pastoral letter questioned how a man could marry an heretical woman, and indicated that the Church refuses ritual for such weddings and forbids priests to be any more than a witness.¹⁸⁸ The appendix of the printed acts and decrees of that council contains a pastoral letter of 1868 on the abhorrence of the Church for and her treatment of mixed marriages, to be read annually in all churches.¹⁸⁹ Three councils in the 1880s dealt with the subject: the Second Provincial Council of Oregon City (1881) regulated that such marriages be in neither church nor sacristy, but in a suitable profane place without sacred rite or vestment;¹⁹⁰ the Fourth Provincial Council of Cincinnati (1882) stressed the necessity of grave canonical causes as well as the cautiones for a dispensation to be granted validly, and its pastoral letter said priests were to speak frequently to their flocks of the grave evils of mixed

¹⁸⁷ E.g. the Second Provincial Council of New Orleans (1860) taught that marriage, whether between two Catholics or mixed, before a non-Catholic minister brought an excommunication reserved to the Holy See (cf. CL, vol. 3, col. 254).

¹⁸⁸ Cf. Concilium S. Francisci I, p. 82.

¹⁸⁹ Cf. ibid., pp. 87-90.

¹⁹⁰ Cf. Concilia Oregonopolitana, pp. 36-37.

marriages;¹⁹¹ the Fourth Provincial Council of New York (1884) stated that the Church had always detested marriages with heretics, so that when a dispensation for a mixed marriage is given it must be clearly explained to the spouses about written cautiones of the non-Catholic, the Catholic's promise to try to convert the spouse, and the prohibition of two ceremonies, church, sacristy, sacred rite, stole, and surplice. However, its pastoral letter, free of aggressive language, explained why the Church detested such marriages, asked priests to instruct so that associations leading to such marriages be avoided, and stated that a dispensation could be granted only on acceptance of all the conditions prescribed by the Church (without enumerating these).¹⁹²

3.3.4 - Canada. None of the provincial councils of Québec legislated on mixed marriages, although marriage was dealt with, including local concerns;¹⁹³ nor did the First Provincial Council of Toronto (1875). However, the First Provincial Council of Halifax (1857) legislated that the

¹⁹¹ Cf. Concilia Cincinnatensia I-IV, pp. 221-222, 225.

¹⁹² Cf. Concilium Neo-Eboracense IV, pp. 56-57, lii-liii.

¹⁹³ E.g. the sixth council (1878) deplored the frequency of dispensations being sought from the impediment of affinity (cf. Acta et decreta sexti Concilii provinciae Quebecensis in Quebecensi civitate anno Domini MDCCCLXXVIII celebrati a Sancta Sede revisa et recognita, Quebeci, P.-G. Delisle, 1882, p. 46).

faithful were to be taught to detest mixed marriages,¹⁹⁴ but made no further rules. The First Provincial Council of St-Boniface (1889) insisted that the faithful be dissuaded, publicly and privately, from such unions; where unavoidable the cautiones were required; marrying before a non-Catholic minister was a reserved sin; and the celebration was to be according to the rite in the Baltimore ritual.¹⁹⁵ The First Provincial Council of Montréal (1895) mentioned aversion for mixed marriages, prohibition of a second ceremony, the cautiones, just and grave causes, frequent instruction by priests, persuasion against such unions, careful examination of causes for dispensation, and vigilance that the promises be kept after the wedding.¹⁹⁶ The preliminary schema for the First Plenary Council of Québec (1909) dealt with the matter in detail - the dangers, cautiones, and the instruction and persuasion against them. It also provided that the bishop could permit the active presence of a priest, provided there was no external pomp, Mass, or nuptial blessing.¹⁹⁷ In the council, the schema was rearranged and some significant changes made by the commission dealing with the sacraments: banns were to be

¹⁹⁴ cf. CL, vol. 3, col. 749.

¹⁹⁵ cf. Concilium S. Bonifacium, pp. 15-16, 32-33.

¹⁹⁶ cf. Concilium Marianopolitanum, pp. 208-210.

¹⁹⁷ cf. Acta a theologis specialiter deputatis praeeparata ad futurum Concilium plenum Canadense primum, Québec, 1904-1905, vol. 2, pp. 441-444.

omitted, celebration was to outside the church without sacred rite, and bishops were not to witness such unions.¹⁹⁸ The council not only accepted these, but added that the written cautiones should be given in the form of a civil contract valid locally.¹⁹⁹ In the pastoral letter, mixed marriages, under the heading "social plagues", were to be avoided.²⁰⁰

3.3.5 - Summary. The absence or paucity of legislation in some countries no doubt indicates that bishops there did not see mixed marriages as a pastoral problem, or at least as a problem to be solved by harsh legislation. However, from the advent of the Cullenite bishops, the Australian legislation was more rigorous than the Roman instructions, which at least tolerated the rite in the ritual (without Mass) in order to avoid greater evils.²⁰¹

¹⁹⁸ Cf. Ier Concile plénier de Québec: procès-verbaux, commissions synodales, les pères, bound typescripts, 1909, sect. 1, pp. 67-68.

¹⁹⁹ Cf. ibid., sect. 2, pp. 115-116, sect. 3, p. 76; Concilium plenarium Quebecense, pp. 71, 393-394.

²⁰⁰ Cf. Concilium plenarium Quebecense, pp. 555-556.

²⁰¹ Rituals indicate local practice. The Baltimore Ritual, recommended for Australia from 1885, had a rubric in the marriage rite forbidding the blessing of mixed marriages, and quoting the Baltimore legislation. An alternative exhortation before the ceremony was provided for mixed marriages (cf. Compendium Ritualis romani ad usum dioecesium provinciae Baltimorensis, jussu Concilii provincialis Baltimorensis III, approbante SS. D.N. Gregorio, Pp. XVI, editum, Baltimori, Murphy, 1842, pp. 103-110, 203-206). The English Ritual had no special rite or rubrics for mixed marriage, although prayers were provided to be recited over spouses when the nuptial blessing was not

3.4 - Ecclesiastical discipline

Councils have always had the correction of abuses as one of their objects.²⁰² Moreover, the Holy See, when urging Australian provincial councils in the 1860s and 1870s, was being motivated inter alia by alleged abuses

permitted (cf. Ordo administrandi sacramenta et alia quædam officia peragendi ex Rituali romano extractus nonnullis adiectis ex antiquo rituali anglicano, Londini, Burns et Oates, 1915, pp. 195-208). The Irish Ritual provided a separate brief ceremony for mixed marriages, which reflected exactly the stringent regulations (cf. Ordo administrandi sacramenta, et alia quædam officia ecclesiastica rite peragendi ex Rituali romano præcipue extractus et usui sacerdotum in missione hibernica accommodatus, Dublini, J. Duffy, 1889, pp. 60-67, 222-224). In Canada, rituals issued in 1836 and 1870 made no mention of mixed marriages, even in the rubrics (cf. Extrait du Rituel de Québec, contenant l'administration des sacremens [sic] de baptême, de la confirmation, de pénitence, de l'Eucharistie, de l'extrême-onction et de mariage, et aussi les bénédictions, et diverses formules d'actes, publié par l'ordre de Monseigneur l'évêque de Québec, Québec, T. Cary, 1836, pp. 224-235; Rituale romanum Pauli V Pontificis Maximi jussu editum et a Benedicto XIV auctum et castigatum, cui ad usum missionariorum apostolicorum nova nunc primum accedit benedictionum et instructionum appendix, Quebeci, P.G. Delisle, 1870, pp. 206-211, 485-488, 498-502). A later ritual, after giving the regulations for celebrating mixed marriages, indicated that bishops were permitted by the papal instruction of 1858 (cf. footnote 178) to tolerate something more. Consequently, priests receiving leave from the bishop "may follow the rite prescribed by the ritual of the diocese, that is solemnize the marriage in church, with surplice and stole, ask the parties' consent, say: Conjuncto vos ..., bless the nuptial ring and recite the V. Confirma hoc, &c ... and the prayer Respice quæsumus but in all cases he must omit the exhortation, the Mass and the solemn benedictions" (cf. Appendix au Rituel romain à l'usage des provinces ecclésiastiques de Québec, Montréal, Ottawa, publié par l'ordre et avec l'approbation de NN. SS. les archevêques et évêques des ces provinces, Québec, N.-S. Hardy, 1890, pp. 389-391).

²⁰² The Fourth Lateran Council (cf. Mansi, vol. 22, cols 991-992), and the Council of Trent (cf. Conc. Trid., sess. 24, de ref., cap. 2) specifically referred to this.

needing correction. Corrective measures by Australian councils have gone beyond exhortation and prohibition to the reservation of sins, and the threat or imposition of censures.

3.4.1 - Reserved sins

3.4.1.1 - Australia. The reservation of certain sins to the pope or bishop dates back to the Middle Ages, and has its roots in the early discipline of reconciling public sinners. The faculties for absolution for particular sins were withheld from priests, according to the theory that the superior was more competent to deal with the case, and that the difficulty in obtaining absolution would act as a deterrent.

The bishops at the 1844 council legislated in decr. 12 that, when they gave faculties to absolve, they did not intend those faculties to extend to sins reserved to themselves. The sins they reserved were: 1) voluntary and premeditated homicide; 2) the actual voluntary procuring of an abortion, or advising or cooperating with that; 3) formal perjury before a secular or ecclesiastical judge; 4) formal apostasy from the faith; 5) contracting a new marriage while a spouse was alive; 6) solicitation ad turpia; 7) attempted absolution of an accomplice in peccato turpi. They also decreed that these reservations ceased where there was a doubt of law or fact, and when it was necessary to

administer extreme unction; and they recalled the universal legislation about nullity of absolving an accomplice in peccato turpi and the attached excommunication. Propaganda removed the seventh reservation, arguing that the Sacred Congregation for Bishops and Regulars had advised bishops in 1602 to be very circumspect in reserving sexual sins. It also corrected the decree by adding words to clarify that the sins were being reserved to the respective ordinarii loci (rather than to the council), and by indicating that reservations 2, 4, and 6 also had censures reserved to the Holy See attached to them.²⁰³

There were no reservations in the 1862 "council", but in 1869 the bishops included in their strict mixed marriage legislation reservation to the ordinary of the sin of contracting a mixed marriage before a Protestant minister or civil official (decr. 3/11). In 1885, the structure of the 1844 decree was used; the reservations concerning homicide, abortion, apostasy, and solicitation were the same, perjury was deleted, and the fifth case was marriage by a Catholic before a Protestant minister or civil official, as well as attempted marriage while one's previous partner was still alive (decr. 132). Decr. 133 incorporated the 1844 provisions about doubt and absolving complicem in peccato turpi; the provision about extreme unction became in articulo seu periculo mortis, to which Propaganda added an

²⁰³ Cf. AP, Acta, vol. 210(1847), ff. 399, 430.

obligation of recourse in the event of recovery.²⁰⁴ In 1895, the 1885 legislation was left unchanged as decrees 150-151, but on the recommendation of the committee "De sacramentis" a new decree (152) enumerated times when episcopal reservations ceased, namely 1) when satisfying the paschal precept; 2) at parochial missions or retreats; 3) at Forty Hours devotion; 4) at one's first confession, first Communion, and confirmation; 5) at one's general confession; and 6) prior to marrying.²⁰⁵

In 1905, the 1895 legislation was repeated verbatim.²⁰⁶ In the 1907 council in Melbourne, the bishops reproduced the reserved cases of the plenary councils, except, strangely enough, the one concerning marriage, although they also reserved assisting at religious services (presumably including weddings) in a non-Catholic church. With this latter reservation, Propaganda added the clarification quin tamen cum hæreticis in divinis communicent.²⁰⁷ The matter of the other reservations was referred to the Holy Office, which advised that 1) the actual voluntary procuring of an

²⁰⁴ Cf. *ibid.*, vol. 257(1887), ff. 91^v, 111.

²⁰⁵ Cf. Congregatio privata, 29 Nov. 10 a.m., ms. minutes, p. 4 (SAA, MP, vol. 152).

²⁰⁶ The fathers considered limiting the reserved cases to apostasy and solicitation, but voted to defer the matter (cf. September 9, 1905, 9th sess., p. 5, and Syllabus of some Important Matters suggested for the consideration of the Third Plenary Synod, no. 27 [*ibid.*, vol. 230]).

²⁰⁷ Cf. AP, NS, vol. 471(1909), f. 159.

abortion, 2) formal apostasy from the faith, and 3) sollicitatio ad turpia were to be removed from all lists of reserved cases in Australia as they were already dealt with by the Holy See. The remaining reservations (voluntary and premeditated homicide, and advising or cooperating with abortion) needed no further reservation as they were reserved for each Australian diocese by the plenary councils.²⁰⁸

3.4.1.2 - Great Britain, United States, Canada. In the period under review, bishops in English and Scottish councils never legislated for the reservation of sins,²⁰⁹ while in the United States, only three councils determined reserved sins: the First Provincial Council of San Francisco (1874) - sacrilegious fornication, solicitation, procuring abortion, and the selling, hiring, alienating or retaining of ecclesiastical goods - ; the Fourth Provincial Council of Cincinnati (1882) - marrying before a protestant minister or civil official, and obtaining a civil separation without permission - ; and the Third Provincial Council of Oregon City (1891) - marrying before a civil official in places with a resident priest - ;²¹⁰ although the 1866 plenary

²⁰⁸ Cf. *ibid.*, vol. 464(1908), f. 346.

²⁰⁹ What was done in dioceses, whether within or outside synods, is outside the scope of this study.

²¹⁰ Cf. Concilium S. Francisci I, pp. 27-28; Concilia Cincinnatiensia I-IV, p. 223; Concilia Oregonopolitana, p. 71.

council and the Fourth Provincial Council of New York (1883) both gave instructions of how reserved sins were to be dealt with, presumably for cases reserved in individual dioceses.²¹¹ In Canada, the First Provincial Council of Québec (1851) reserved only public and notorious concubinage, and leasing houses as brothels, to which the fifth council (1873) added perjury.²¹² The St-Boniface council of 1889 added marriage before a non-Catholic minister.²¹³ Several councils gave instructions of how to deal with such cases, some listing occasions when reservations ceased.²¹⁴

3.4.1.3 - Ireland. Some Irish councils appear to have been at pains to bring some order and control to reservations. The plenary councils of 1875 and 1900 indicated that if reservations are too numerous they cause more trouble to the confessor than to the penitent. Legislation recommended limitation to the more atrocious crimes, indicating the times and circumstances when reservations cease, giving faculties for absolution to vicars forane, and ensuring that

²¹¹ Cf. CL, vol. 3, col. 472, and Concilium Neo-Eboracense IV, p. 50.

²¹² Cf. CL, vol. 3, col. 613, and Concilium Quebecense V, p. 57; the Montréal council of 1895 repeated these (cf. Concilium Marianopolitanum, p. 184).

²¹³ Cf. Concilium S. Bonifacii, p. 16.

²¹⁴ Cf. CL, vol. 3, cols 613, 745; Concilium Quebecense V, p. 53-56; Concilium Quebecense VII, pp. 47, 52; Concilium Marianopolitanum, p. 184; Concilium plenarium Quebecense, pp. 370-371.

each priest has the list of sins reserved in his diocese.²¹⁵ The province of Dublin reserved one sin - contracting a mixed marriage without a dispensation - at its 1853 council, but this was abrogated at the 1908 council, in view of the Ne temere decree.²¹⁶ The 1908 Armagh council reserved three sins, and detailed occasions when reservations cease.²¹⁷ Councils in Cashel province urged that only a few grave sins be reserved, well known to priests, and preferably promulgated in a diocesan synod (1853), and that a list of cases reserved throughout the province be drawn up (1907).²¹⁸ In contrast, the province of Tuam legislated practically nothing about reservation, but reserved an extraordinary number of sins. The 1817 council, having abrogated previous provincial legislation, reserved sixteen categories of sin, some with subdivisions. With sins such as homicide, apostasy, and duelling were not only incest,

²¹⁵ Cf. Synodus Maynutiana, 1875, pp. 84, 89, 107; Synodus Maynutiana, 1900, pp. 71, 76, 109.

²¹⁶ Cf. CL, vol. 3, col. 808, and Acta et decreta Synodi provincialis Dublinensis habitæ apud Maynutiam an. MDCCCXVIII, Dublini, Browne et Nolan, 1913, pp. 21, 46-47.

²¹⁷ Cf. Concilium Armacanum, 1908, pp. 35-36; the sins were holding protest meetings outside a church, homicide, and sacerdotal sexual intercourse.

²¹⁸ Cf. CL, vol. 3, col. 836, and Concilium Cassiliense, 1907, p. 34. Limerick, one of the nine sees in this province, included in its twelve reservations attending dances at night by young persons, doing opera superstitiosa on the vigil of All Saints, and eating meat on abstinence days if it occurs more frequently than once in two months (cf. Statuta et constitutiones dioecesis Limericensis, Limerici, O'Gorman, 1842, p. 17).

bestiality, and sodomy, but others such as neglect of paschal Communion, striking parents or clerics, and burning down houses.²¹⁹ In 1849, a council reserved attending, holding office in, or sending someone to Queen's Colleges, the universities being established by the British government,²²⁰ while the next council (1854) repromulgated the 1817 cases.²²¹ The 1907 Tuam council issued a revised list, three (perjury, taking liquor by a cleric before the main meal, and using liquor at a funeral or wake) reserved by the council, the other eight (including burning a house, buying a vote for a election) by each diocesan bishop.²²²

3.4.2 - Ecclesiastical censures

3.4.2.1 - Australia. The only censures imposed by the First Provincial Council of Australia concerned priests: they were to record baptisms and marriages in registers under pain of suspension ferendæ sententiæ (decrs 9/3, and 13/2). Propaganda changed the decree about registering baptism, requiring notable negligence before suspension be inflicted as some theologians taught a few omissions to be only

²¹⁹ Cf. CL, vol. 3, cols 761, 768.

²²⁰ Cf. Acta Synodi provincialis Tuamæ habitæ diebus 23, 24, 25, et 26 ianuarii A.D. 1849 (AP, Acta, vol. 213 [1851], ff. 164^v-171^r).

²²¹ Cf. CL, vol. 3, col. 859.

²²² Cf. Concilium Tuamense, 1907, p. 49.

venially sinful.²²³ However, the decree about the marriage register was left unchanged and, although it was not among the plenary council decrees, it was reproduced at the First Provincial Council of Melbourne (decr. 45). The 1862 "council" declared suspended ipso facto priests collecting without the diocesan bishop's written permission (decr. 2), but, as the recognitio was refused by the Holy See, the decree did not become law; the second provincial (decr. 12), third plenary (decr. 262), and Melbourne provincial (decr. 109) councils all renewed the prohibition, but without the suspension.

Excommunication reserved to the ordinary was used for the first time at the 1869 council to support marriage legislation: two Catholics marrying extra Ecclesiam incurred this penalty. The 1885 and 1895 councils repeated this; however Propaganda corrected the decree in 1895 so that even mixed marriage before a non-Catholic minister incurred an excommunication reserved to the Holy See.²²⁴ The 1895 fathers also declared excommunicated those who divorced in a civil court (decr. 170).

²²³ Cf. AP, Acta, vol. 210(1847), ff. 389^V, 407, 429. The corrected decree was repeated by the plenary councils.

²²⁴ Cf. AP, NS, vol. 216(1901), ff. 624, 651^V. This was in accord with Holy Office decree of 12 December 1888 that marrying with non-Catholic rites was communicatio in sacris incurring the censure for those who give credence to heretics; this did not apply to those marrying with civil rites (cf. Collectanea, 1907, vol. 2, pp. 232-234).

Councils in Australia avoided further censures for the laity, even decreeing in 1895 that a priest was not to refuse the sacraments inconsulto ordinario (decr. 300),²²⁵ and should try to reconcile Catholics who marry extra Ecclesiam, after having sought delegated faculties (decr. 172);²²⁶ that of 1905 decreed that outward penitential exercises might be ordered to deter Catholics from marriages prohibited by the Church and to repair scandal.²²⁷ The 1895 council also forbade any priest to speak about anyone from the altar, or to pronounce or threaten censures (decr. 190).²²⁸

²²⁵ The 1885 council had stated that it was Catholic doctrine that parents neglecting Christian education of their children, or sending them to state schools without reason or without averting danger of perversion could not be absolved if contumacious (decr. 238); this was a statement of moral theology, but without censure. Nor was there censure for this in 1905; Archpriest Maurice McKenna, vicar general of Melbourne, told the synodales that few parents would be deterred by penalties as bread and butter was their religion (cf. September 6th, Public session, ms. minutes, p. 8 [SAA, MP, vol. 230]).

²²⁶ Propaganda amended this decree, not changing the sense, but ensuring the pre-requisites for (mixed) marriage be attended to before the faculty be sought (cf. AP, NS, vol. 216[1901], ff. 624^v, 652).

²²⁷ Cf. September 9, 1905, 9th sess., p. 5, and Syllabus of some Important Matters suggested for the consideration of the Third Plenary Synod, no. 26 (SAA, MP, vol. 230). After correction at Propaganda, the decree indicated that the ordinary may wish to bind such persons to some public reparation of the scandal (cf. AP, NS, vol. 512 [1912], f. 559). It could be argued that the fathers were seeking some remedy other than excommunication.

²²⁸ Bishop Gibney of Perth indicated there could be occasion for a priest to act immediately, but the council decided nothing was to be done in scio episcopo (cf. Congregatio privata, 26 Nov. 2 p.m., ms. minutes, p. 2 [SAA,

The 1895 council, declaring it unbecoming for clerics to attend public plays, opera, and theatricals, forbade attendance under pain of suspension a divinis. Propaganda amended this to being merely liable to suspension.²²⁹ At the 1905 council, the matter was considered at the suggestion of a meeting of representative clergy of Melbourne archdiocese,²³⁰ who asked for uniform national legislation on theatres and horseracing. The result was an additional decree in which the council, in view of scandal being given to the faithful, renewed the prohibition et gravissimis verbis inculcant (decr. 215).²³¹ The 1907 Melbourne council brought uniform legislation on the matter to the Victorian dioceses: an ipso facto suspension a divinis, with absolution specially reserved to the ordinary, MP, vol. 152)).

²²⁹ Cf. AP, NS, vol. 216(1901), ff. 627, 652. There is no indication why the correction was made, e.g. whether Propaganda thought a lata sententia penalty unwarranted, or whether the wording was considered ambiguous, therefore being interpreted as a ferenda sententia censure.

²³⁰ Cf. Suggestions for Agenda Paper of Third Plenary Council of Sydney, 1905, ms., p. 7 (SAA, MP, vol. 230). These priests were possibly motivated by harsh diocesan legislation: ipso facto suspension a divinis for entering public theatres, and attending horse-race meetings and venationae publicae (cf. Acta et decreta secundae Synodi dioecesis Melbournensis, habitae in ecclesia cathedrali S. Patritii, die decimanona maii, 1885, Melbourne, Advocate, 1891, p. 4)).

²³¹ The committee "De Disciplina" had recommended that the item be passed by (cf. Suggestions from the Archdiocese of Melbourne, ms., p. 3 [SAA, MP, vol. 230]; it was raised at a general session, where it generated little discussion (cf. September 6th, Public session, p.4 [ibid])).

for a cleric attending a public theatre (decr. 56), or public racecourse (decr. 57);²³² with a threat of the same penalty for venatio clamorosa, playing in public games, and betting (decr. 60); moreover, extern priests making light of such laws were forbidden to celebrate Mass (decr. 59). Also suspended were priests refusing to make a will within three months (decr. 98). Finally, a priest witnessing a marriage of a woman from another mission without permission of her pastor or ordinary was threatened with suspension; however, Propaganda deleted this threat of suspension.²³³ The 1937 plenary council did not impose censures and abrogated those imposed by previous plenary councils. The Melbourne provincial legislation has not been abrogated, but it may be argued that the law about ipso facto suspensions has fallen into desuetude, having been influenced by the 1937 legislation which did not impose suspensions in connection with these activities.

3.4.2.2 - Great Britain, Ireland, Canada, United States. During the period under review, excommunication was not used by councils in England or Scotland. In Ireland, it was used in the province of Armagh against those contracting clandestine marriages, and those shutting a pastor out of

²³² There was an exception for the rector of the place where the racecourse was, in case of accidents (decr. 58).

²³³ Cf. AP, NS, vol. 471(1909), f. 156. No reason was given for the correction, but an instruction of 2 July 1907 of the Sacred Congregation of the Council had stated that grave necessity excused (cf. ASS, 40[1907], p. 528).

his church.²³⁴ In Canada, it was used only by the council at Halifax in 1857 for laypersons interfering with documents in an episcopal archives,²³⁵ although the St-Boniface council (1889) applied the excommunication from the Holy See for Freemasons, Carbonarii, and similar sects who plot against the Church to Communists, Socialists, and anarchists.²³⁶ A few councils in the United States also specified the sects plotting against the Church,²³⁷ but excommunication in the United States was generally connected with marriage, either for marrying after a divorce during the first spouse's life,²³⁸ or marrying before a non-Catholic minister.²³⁹

The conciliar use of suspension of the clergy varied from none in Scotland, none in Canada outside the ecclesiastical province of Halifax,²⁴⁰ and infringing the

²³⁴ Cf. Concilium Armacanum, 1908, p. 34.

²³⁵ Cf. CL, vol. 3, col. 755.

²³⁶ Cf. Concilium S. Bonifacii, p. 22.

²³⁷ Cf. Concilium S. Francisci I, p. 27; Concilia Oregonopolitana, p. 41; Concilia Cincinnatiensia I-IV, p. 231-233; Concilium plenary Baltimoreense III, p. 65, Concilium Milwaukiense, p. 50.

²³⁸ Cf. CL, vol. 3, col. 89; Concilium Neo-Eboracense IV, p. 59; Concilium plenary Baltimoreense III, p. 64.

²³⁹ Cf. CL, vol. 3, cols 254, 297-298.

²⁴⁰ Cf. CL, vol. 3, cols 751 (suspension, after a warning, for unbecoming clerical activities, viz. attending plays, opera, dances, public racecourses, and venatio clamorosa), 753 (for not attending clergy conferences), and 755 (for interfering with episcopal archives).

"theatre law" in England,²⁴¹ to a moderate use in the United States of America, both on the national level,²⁴² and in specific provinces.²⁴³ But in Ireland it was used widely and for varied clerical offenses. It would appear that there was an excessive fondness for money by the clergy²⁴⁴ as many suspensions, whether latæ or ferendæ sententiæ, were connected with that: refusing to baptize or witness marriage on the pretext of no offering or less than the usual sum;²⁴⁵

²⁴¹ Cf. CL, vol. 3, col. 939; Concilia Westmonasteriensia, p. 231. For the background of the prohibition of clerics attending theatres in England, see G. Moverley, "The Westminster Theatre Law", in The Jurist, 18 (1958), pp. 191-208.

²⁴² Cf. CL, vol. 3, cols 27-28 (the first Baltimore provincial council bringing suspension to any priest approving or inciting lay interference in spiritual matters [and placing any church retaining an unapproved priest under interdict]).

²⁴³ Cf. ibid., cols 254-255 (by the first New Orleans council for burying Catholics in a non-Catholic cemetery, and for deserting one's diocese of incardination), and 319 (by the second St Louis council for marrying persons from another parish without permission); Concilium Philadelphense, p. ix, Concilium Neo-Eboracense IV, pp. 26-27, and Concilium Milwaukiense, p. 36 (frequenting theatres and racecourses); Concilia Oregonopolitana, p. 39 (practicing medicine or surgery on a female); Concilia Cincinnatiensia I-IV, p. 220 (church funds in a name other than the bishop's).

²⁴⁴ When forwarding the apostolic brief appointing Cardinal Cullen to preside over the 1875 plenary council, Propaganda listed among the matters to be considered avaritia clericorum where great wealth was gathered from poor people (cf. Synodus Maynutiana, 1875, p. 12).

²⁴⁵ Cf. CL, vol. 3, cols 779, 888; Synodus Maynutiana, 1875, pp. 77, 92; Synodus Maynutiana, 1900, pp. 62, 81; Concilium Cassiliense, 1907, p. 36; Concilium Armacanum, 1908, p. 35.

scolding the faithful for not contributing enough money;²⁴⁶ collecting money without permission,²⁴⁷ or on the promise of offering Masses;²⁴⁸ possessing more than the permitted acreage of land.²⁴⁹ Abuses with preaching brought suspensions, not only for failing to preach or read the word of God,²⁵⁰ but for denouncing individuals, or speaking about merely secular or political matters from the altar.²⁵¹ In connection with the lifestyle of priests, there were suspensions for sexual sins or having a female companion,²⁵² for abuse of alcohol,²⁵³ and for attending unbecoming pastimes.²⁵⁴ Also suspended were those holding an office in

²⁴⁶ Cf. CL, vol. 3, col. 888.

²⁴⁷ Cf. Synodus Maynutiana, 1900, p. 89.

²⁴⁸ Cf. CL, vol. 3, cols 763, 852; Concilium Armacanum, 1908, p. 35.

²⁴⁹ Cf. CL, vol. 3, col. 853.

²⁵⁰ Cf. Concilium Tuamense, 1907, p. 44.

²⁵¹ Cf. CL, vol. 3, cols 805, 851, 853; Synodus Maynutiana, 1875, p. 120; Synodus Maynutiana, 1900, p. 120; Concilium Armacanum, 1908, pp. 34-35.

²⁵² Cf. CL, vol. 3, col. 765; Synodus Maynutiana, 1900, p. 85; Concilium Tuamense, 1907, pp. 30-31; Concilium Armacanum, 1908, p. 35.

²⁵³ Cf. CL, vol. 3, col. 766; Concilium Tuamense, 1907, p. 30; Concilium Armacanum, 1908, p. 35.

²⁵⁴ Horseraces, venatio clamorosa, plays, operas, and circuses (cf. Synodus Maynutiana, 1875, pp. 93-94; Synodus Maynutiana, 1900, p. 83; Concilium Tuamense, 1907, p. 35).

the Queen's Colleges,²⁵⁵ or interfering with documents in diocesan or parish archives.²⁵⁶ Many other clerical sins incurred suspension in particular provinces, as varied as using unapproved altar wine, failing to make a will, or failing to visit schools in Armagh province,²⁵⁷ to neglecting to instruct the laity how to baptize, witnessing marriages of non-parishioners without permission, or supporting dissensions among the laity over clerical appointments in Tuam province.²⁵⁸ However, it would be tedious and superfluous to list all offenses marked by Irish councils which would incur suspension. It is clear that the bishops used this penalty liberally to control or prevent abuses by their clergy; it is also clear that, in comparison, the Australian conciliar use of censures, especially for the clergy, was restrained.

3.5 - Temporal Administration

3.5.1 - Australia. The 1844 Australian council only touched on temporal administration when it forbade priests to lend, borrow, or accept money in trust (decr. 14), as the decree

²⁵⁵ Cf. Acta Synodi provincialis Tuamae habitæ diebus 23, 24, 25, et 26 ianuarii A.D. 1849 (AP, Acta, vol. 213 [1851], ff. 164^V-171^F); CL, vol. 3, col. 756; Synodus Maynutiana, 1875, p. 139; Synodus Maynutiana, 1900, p. 142.

²⁵⁶ Cf. CL, vol. 3, col. 793; Synodus Maynutiana, 1875, p. 125; Synodus Maynutiana, 1900, p. 125.

²⁵⁷ Cf. CL, vol. 3, cols 850-852.

²⁵⁸ Cf. ibid., cols 761-762, 764, 767; Concilium Tuamense, 1907, pp. 28, 137.

dealt primarily with effective priestly ministry by aiming to keep priests free from personal debts. It was Propaganda which introduced temporal administration by adding to the decree additional clauses stating that all ecclesiastical property should be safeguarded by title deeds, and that debts on ecclesiastical property were not to be incurred without canonical permission.²⁵⁹ In 1862, the bishops not only strictly forbade clerics to collect money without episcopal consent, but they also forbade them to incur a debt on a mission, to contract to build, or to alter buildings without written episcopal permission, and they mandated bank accounts, financial records, inventories, and annual returns.²⁶⁰ In 1869, fresh legislation was substantially the same with the new requirement that priests and bishops make wills (decrs 5-6, 13-15), as well as regulations for sustentation of the clergy (decr. 4).

The 1885 plenary council reproduced, practically verbatim, the chapter "De bonis ecclesiasticis" from the Irish plenary councils. Its nine decrees, as well as containing the safeguards already in Australian legislation (e.g. detailed updated inventory, annual returns, wills), required that 1) all ecclesiastical property be held in

²⁵⁹ Cf. AP, Acta, vol. 210(1847), f. 400^V, 410, 433.

²⁶⁰ Cf. "Observanda", pp. 6-7; however the bishops, unable to agree on those to be trustees for each mission, left each bishop to decide for his own diocese (cf. diary of Bishop Goold, entry for 5 November 1862 [MDHC]).

trust in the name of at least three persons, of which the diocesan bishop and two priests were to be members, and 2) the office of diocesan secretary be instituted to supervise such matters (decrs 267-274). This legislation was repeated unchanged in 1895 and 1905,²⁶¹ making it clear that, whatever may have happened in the pioneer days with property being held in some places in fee simple, the only canonically legal method after 1885 was a trust composed of the bishop and several others.²⁶² The 1885 legislation also required that, for the alienation of church property valued in excess of 200 pounds sterling, consilium in scriptis tradendum²⁶³ of the diocesan consultors was necessary (decr. 32) along with the customary permission of the Holy See. This was repeated in 1895 and 1905, after the synodical conference of 1888 had determined this regulation need not be invoked for a temporary lease, or a temporary mortgage which neither transferred the dominion of the property nor

²⁶¹ The 1937 legislation was substantially the same, with additional decrees forbidding priests, under threat of suspension, to hold ecclesiastical goods, property, or money in their own name (decrs 653-685). But in New Zealand, the First Provincial Council of Wellington (1899) repeated the 1885 decrees, except that requiring ecclesiastical goods to be vested in a trust body; it merely required in decr. 319 that title deeds and instruments be drawn up according to civil law (cf. Concilium Wellingtonense, p. 86).

²⁶² In practice, this was normally a trust corporation created by the state legislature.

²⁶³ The 1917 Code of Canon Law (c. 1532) and the 1937 council (decr. 148) would require consensus.

endangered its possession.²⁶⁴ Further legislation merely refined and safeguarded the principles already enunciated: in 1895, there was a strict prohibition to alter ecclesiastical goods or buildings inconsulto episcopo (decr. 223); houses of female religious erected as a result of public subscription or by the efforts of bishops or priests were normally to be held in the name of the bishop and some sisters (decr. 82); and insurance policies were to be in the names of those approved by the bishop (decr. 214). Moreover, the 1905 council, after much discussion, decided to establish a Catholic insurance company.²⁶⁵ The Melbourne council of 1907 provided local application, especially details about the inventory (decrs 85-94).

3.5.2 - Ireland, Great Britain. The rather uncomplicated Australian legislation was practically identical with the Irish.²⁶⁶ The Second Provincial Council of Westminster

²⁶⁴ Cf. Resolutions of the Synodical Conference of the Archbishops and Bishops of Australia, held in Sydney in January 1888, no. 3/2.

²⁶⁵ Cf. Syllabus of some Important Matters suggested for the consideration of the Third Plenary Synod, no. 15; Suggestions for Agenda Paper for Third Plenary Council of Sydney, 1905, p. 12; September 6th 1905, 5 sess., ms. minutes, pp. 3-5; September 6th, Public session, pp. 6-7; September 9, 1905, 9th sess., pp. 1-2, 4 (SAA, MP, vol. 230).

²⁶⁶ Cf. CL, vol. 3, cols 793-794; Synodus Maynutiana, 1875, pp. 126-127; Synodus Maynutiana, 1900, pp. 125-128. Note that the Irish, unlike the Australian, provided incentives for priests to make wills: failure meant deprivation of customary public suffrages after death (1850), or of the last sacraments (1875).

(1855) provided the English legislation, decr. 8 in 21 articles. After stressing that guardians of ecclesiastical goods have to account to God, it had similar content to the Australian: it safeguarded goods (e.g. buildings belonged to dioceses unless there was clear evidence that they belonged to religious orders; alienation was prohibited without episcopal permission; inventories and insurance were mandatory), attempted to prevent future problems (e.g. the intentions of donors were to be ascertained, donations were presumed to be for missions rather than priests), and approved ways of providing income.²⁶⁷ But, unlike the Australian, it did not mandate the type of body in which property was to be invested. Nor did the Scottish council of 1886. Its detailed legislation, subdivided into ecclesiastical goods, methods of collecting finances, and obligations and rights of priests, looked at the safeguarding of ecclesiastical goods and maintaining them in good order.²⁶⁸

3.5.3 - United States. In contrast to the Australian legislation, which seems to have been a minor matter in council agendas, was that of the United States where the administration of temporal goods had always been a grave concern. There were two causes: 1) "trusteeism", or the claiming by lay trustees in some places of exclusive power

²⁶⁷ Cf. CL, vol. 3, cols 980-984.

²⁶⁸ Cf. Concilium Scoticum, pp. 55-65.

to administer ecclesiastical property and the right to choose and dismiss priests;²⁶⁹ and 2) differing state laws which often prohibited legal incorporation of ecclesiastical bodies. As a result, the 1884 Baltimore legislation in 32 decrees, stating clearly the principle that the Church's possessions must be under the control of the bishop, listed the degree of desirability of the ways goods could be held, viz. civil legal incorporation in harmony with ecclesiastical laws; the bishop becoming a corporation sole; the goods being consigned to the bishop as trustee; or the bishop holding the goods in his own name in fee simple, in which case remembering before God that he was only administrator.²⁷⁰ The rest of the legislation was usual - inventory, will, reports, care - as well as careful selection of trustees, where permitted civilly, removable ad nutum episcopi.²⁷¹ At the diocesan synod of 1791 at Baltimore, Bishop Carroll had decreed two or three churchwardens for each church to collect the offerings.²⁷² One could speculate why he legislated to have them, except perhaps to indicate that trustees, already in existence by

²⁶⁹ For a history of trusteeism and the problems caused see P.J. Dignan, A History of the Legal Incorporation of Catholic Church Property in the United States (1784-1932), Studies in American Church History, no. 14, Washington, D.C., The Catholic University of America, 1933, viii-289 p.

²⁷⁰ Cf. Concilium plerarium Baltimoreense III, p. 153.

²⁷¹ Cf. ibid., pp. 149-169.

²⁷² Cf. CL, vol. 3, col. 3.

then, had no rights except to collect the offerings. The first, third, and fourth provincial councils were emphatic that no church could be blessed unless assigned to the bishop, laypersons had no right of patronage, and goods had to be secured to the Church by civil law,²⁷³ after Pope Pius VII, reacting to a schism in Philadelphia, had stated the basic principle that Church goods are subject to hierarchical and not lay control, and dismissed trustee claims to jus patronatus as novum ac plane inauditum.²⁷⁴ The plenary councils in 1852 and 1866 summarized the claims in the face of some state legislation refusing to permit incorporation of ecclesiastical property or automatic transfer to successors. Consequently, national legislation about wills was important.²⁷⁵ On the provincial level, while some legislation was about comparatively minor matters,²⁷⁶ much was just as concerned about the holding of property as the national councils. The second council at St Louis (1858) seeing the fee simple method as unsafe, too onerous on the bishop, and open to criticism, urged another

²⁷³ Cf. *ibid.*, cols 27, 57, 71.

²⁷⁴ Cf. Pius VII, Apostolic letter, "Non sine magna", 24 August 1822, in IPPF, pars 1a, vol. IV, pp. 619-622.

²⁷⁵ Cf. CL, vol. 3, cols 147, 453-455.

²⁷⁶ E.g. the Second Provincial Council of Oregon City (1881) decreed, inter alia, that a rector had to leave behind for his successor a horse, buggy, or carriage bought from mission funds (cf. Concilia Oregonopolitana, p. 40).

plenary council because of this concern.²⁷⁷ The 1855 Cincinnati council saw fee simple safeguarded by a will as the safest method,²⁷⁸ but by 1861 another council there preferred vesting property in a committee, the majority of whom were to be priests appointed by the bishop.²⁷⁹ It is impossible in a brief comparative study of this nature to examine the local legislation fully. At a glance it is clear that what was a minor uncomplicated matter in Australia was a major ongoing concern in the United States, helped no doubt by a combination of anti-Catholicism, American democracy, and theology absorbed from non-episcopal churches.

3.5.4 - Canada. The French régime in Québec left parish priests with the right to tithes, as well as parish councils comprised of prominent citizens who administered church goods under the direction of the parish priest; both institutes were recognized by civil law, this no doubt being the reason why there were none of the problems found in the United States. Consequently, Québec conciliar legislation on temporal goods was minimal.²⁸⁰ It was elsewhere in

²⁷⁷ Cf. CL, vol. 3, cols 316-318.

²⁷⁸ Cf. *ibid.*, col. 192.

²⁷⁹ Cf. *ibid.*, col. 225.

²⁸⁰ The usual type of regulations about parish administration and advice about suitable churchwardens in 1854 (cf. CL, vol. 3, cols 657-658); the obligation of the tithes in 1868 (cf. *ibid.*, cols 720-721); wills and need of permission for bazaars (cf. Concilium Quebecense VII, pp.

Canada too,²⁸¹ except at Toronto where the 1875 council showed great concern for financial matters, legislating in detail about revenues, priests' salaries, cathedraticum, insurance, wills, and debts.²⁸² The plenary council's legislation in 1909 was composed of practical guidelines about matters such as revenue, inventory, and records, and urged that care be taken that property be civilly secure.²⁸³

3.6 - Evangelization of the aborigines

3.6.1 - Australia. It may appear strange that the 1844 counciliar legislation made no reference to aborigines, especially evangelization of them, in view of Archbishop Polding's humanitarian and practical concern for them.²⁸⁴ However the confusion caused by the prefecture apostolic withdrawing aborigines from episcopal jurisdiction probably explains this.²⁸⁵

The first legislation, the final decree of the 1869 council, was vague: it decreed that this evangelization, assumed at the request of Propaganda, was to be confided to

44-45, 49-50).

²⁸¹ Cf. e.g. Concilium S. Bonifacii, p. 21, which mentioned only the inventory and fire insurance.

²⁸² Cf. Concilium Torontinum I, pp. 25-35.

²⁸³ Cf. Concilium plenum Quebecense, pp. 443-458.

²⁸⁴ See E.D. Stockton, "Polding and the Aborigines", in Tjurunga, 16(1978), pp. 49-62.

²⁸⁵ Cf. pp. 21, and 44.

some religious society or congregation of men (decr. 18). Despite being one of the five agenda items decided in 1868,²⁸⁶ very little time at the council was allocated for discussion, although the pastoral letter spoke strongly against injustices perpetrated against the aborigines.²⁸⁷ The council also recommended the erection of a vicariate apostolic in the northern part of the diocese of Brisbane, where aborigines were still numerous; when it was established nearly eight years later, the apostolic letter, stating it was potissimum for converting the natives, entrusted it to the priests of the Seminary of SS Peter and Paul for Foreign Missions, an Italian missionary society of diocesan priests.²⁸⁸ When these priests, speaking no English, proved unequal to the task, the vicariate was confided in 1884 to the Irish province of the Augustinian Order.²⁸⁹ Not only did neither group commence the aboriginal apostolate for which the vicariate was chiefly established; at the 1885 council, the vicar apostolic proposed, "That a prefect or vicar apostolic be appointed to

²⁸⁶ Cf. CL, vol. 3, col. 1058.

²⁸⁷ Cf. Polding, The Eye of Faith, pp. 403-405.

²⁸⁸ Cf. Pius IX, Apostolic letter, "Iamdiu factum est", 30 January 1877, in Pii IX Pontificis Maximi Acta, pars prima, vol. VII, pp. 284-286.

²⁸⁹ Cf. Leo XIII, Apostolic Letter, "Quum Nobis", 4 January 1884, in Leonis XIII Pontificis Maximi Acta, vol. IV, 1885, pp. 3-4.

the spiritual care of the aboriginals in Queensland",²⁹⁰ to which the fathers voted unanimously in the affirmative, and recommended that the new jurisdiction be committed to the Spanish Augustinians working in the Philippines. As a result of the council, two apostolic vicariates were created so that the faith could be propagated amongst the native people living in Australia: Kimberley, embracing that district in Western Australia, and Queensland, embracing all native persons in Queensland.²⁹¹ The 1885 council also produced six decrees under the heading "De propaganda fide inter aboriginales": aborigines were capable of and willing to embrace Christianity (decr. 203); reserves should be set aside for them (decr. 204); religious communities should be procured to instruct them in religious matters and the necessary pursuits of life (decr. 205); an annual collection for aboriginal missions was to be received in each diocese (decr. 206), and administered by a commission of bishops (decr. 207); and the bishops protested against the persecution of aborigines by colonists (decr. 208). These practical decrees laid policy.²⁹² Criticism cannot be

²⁹⁰ Cf. From Fr. Hutchinson, O.S.A., Vic. Apost., ms. memorandum (SAA, MP, vol. 88). This memorandum also stated, "That the priests and brothers in charge of the blacks teach them the English language".

²⁹¹ Cf. Leo XIII, Apostolic Letter, "Ecclesiae universae", 10 May 1887, in Leonis XIII Pontificis Maximi Acta, vol. VII, 1888, pp. 90-91.

²⁹² The first draft was in the handwriting of Father Anton Strele, S.J., superior of the Jesuit mission in the Northern Territory, and countersigned by Bishop Salvado (cf.

levelled at them, but at the legislators who, in general, ignored them. The collections over the next ten years brought only 795 pounds,²⁹³ and the 1895 council even discussed at length whether the decree about the collection be retained in view of the fact that in many dioceses the collection had not been made.²⁹⁴ However, the decrees were reproduced verbatim at that council and in 1905.²⁹⁵

After the 1885 council, much ink was spent between Cardinal Moran and Propaganda in trying unsuccessfully to arrange for religious - Benedictines, Salesians, Marianhill Missionaries, Holy Ghost Fathers, Trappists - to accept the Kimberley vicariate.²⁹⁶ It was left under the administration of the bishop of Perth, and from 1898 of the

De aboriginalibus, Nov. 23, 1885, ms. [SAA, MP, vol. 88]].

²⁹³ Cf. P. O'Farrell, The Catholic Church and Community: An Australian History, Kensington, N.S.W., New South Wales University Press, 1985, p. 273.

²⁹⁴ Cf. Cong. privata, 22nd Nov. 1895, 10 a.m., ms. minutes, pp. 1-4 (SAA, MP, vol. 152).

²⁹⁵ These councils even overlooked correcting the long preamble to the first decree which referred to missionary work in New Zealand and Fiji, despite Propaganda having excluded them from the jurisdiction of these councils. (The 1899 council in New Zealand took only decrs 203 [adapting it to refer to New Zealand] and 204 of the 1885 Australasian council. The rest were replaced by a decree petitioning the Society for the Propagation of the Faith to provide an annual grant of 20,000 French francs, but Propaganda deleted this decree, although advising that the bishops should seek such grants [cf. AP, NS, vol. 178(1900), ff. 727, 774; Concilium Wellingtonense, p. 66]).

²⁹⁶ Cf. AP, NS, vol. 216(1901), ff. 195-379; vol. 34 (1894), ff. 65-68; SAA, MP, vol. 91.

bishop of Geraldton. French Trappists established a monastery in the vicariate at Beagle Bay in 1890; the 1895 council voted to entrust the vicariate to them;²⁹⁷ but they withdrew in 1899 after refusing the vicariate.²⁹⁸ As for the vicariate of Queensland for Aborigines: although listed in the Australasian Catholic Directory from 1888 until 1906, and in the Annuario Pontificio until 1933, as a vacant see without clergy,²⁹⁹ it never came into being. This, and a letter in 1900 from the Queensland metropolitan, Archbishop Dunne, congratulating Propaganda for its wisdom in not making an appointment,³⁰⁰ indicates both the practicality of this part of the conciliar work, and the enthusiasm of the hierarchy for it.

The fathers at the 1905 council, after listening to reports from the bishops of Perth, and of Geraldton, and Father George Walter, S.A.C., superior of the Pallotines who

²⁹⁷ Cf. Kimberley Vicariate in Western Australia, ms., 2 p., and Cong. privata, 22nd Nov. 1895, 10 a.m., p. 4 (SAA, MP, vol. 152).

²⁹⁸ For details, especially of the incompatibility of Trappist monasticism for this missionary work and the consequent refusal to accept responsibility for the vicariate, see M. Durack, The Rock and the Sand, London, Constable, 1969, pp. 35-107. Moreover, in 1898 the abbot advised Propaganda that Bishop Kelly of Geraldton ridiculed office in choir and 2.00 a.m. rising, and withheld financial allocations (cf. AP, NS, vol. 146[1898], f. 527).

²⁹⁹ Cf. Australasian Catholic Directory for 1888, p. 120; ibid. for 1906, p. 113; Annuario Pontificio per l'anno 1933, p. 429.

³⁰⁰ Cf. AP, NS, vol. 195(1900), ff. 531-532.

had taken over the mission vacated by the Trappists at Beagle Bay, approved an offer from the New Norcia Benedictines to commence a priory with nullius jurisdiction in territory taken from the Kimberley vicariate, then legislated that it was appropriate to establish "a foreign missionary college" to train Australian priests for missions in the Philippines, China, and Japan (decr. 18), ignoring the obvious need for such a college for Australia's own missions.³⁰¹ Not surprisingly, this triumphal dream of sending out Australian missionaries remained an ignored decree that now seems remarkably out of place, in view of the bishops never considering to encourage their own diocesan priests, either singly or as members of a local missionary society, to evangelize Australian aborigines.

3.6.2 - Great Britain, Ireland, Canada, United States. Naturally, there was no legislation about evangelizing natives in England, Scotland, or Ireland; and, although many Irish priests went as missionaries from missionary seminaries and societies, no Irish council legislated for this. In Canada, evangelization by Jesuits, Recollects, and Oblates was well established before councils were held; the

³⁰¹ Cf. Syllabus of Some Important Matters suggested for the consideration of the Third Plenary Synod, no. 8; September 8th 1905, Gen. sess. 8 sess., pp. 1-4; September 9, 1905, 9th sess., pp. 2-3; September 9, 10 sess., ms. minutes, pp. 1-2 (SAA, MP, vol. 230).

legislation was minimal.³⁰² In the United States, the Second Provincial Council of Baltimore (1833) placed the Indian and Negro missions under the Jesuits.³⁰³ Although there was legislation about Negroes at the second plenary council, Indians were not mentioned; at the third council, the Indians were bracketed with Negroes, with the focus on the latter, probably because of their greater numbers. The past work of the missions to the Indians was praised, an agency established the previous decade by the archbishop of Baltimore was approved, and regulations for annual collections, which put the welfare work on a national basis, were passed.³⁰⁴ However, the American historian John Tracy Ellis judged the decrees to be quite inadequate, reflecting lethargy towards those of non-European stock.³⁰⁵

³⁰² Cf. CL, vol. 3, cols 737-738 (priests of Halifax province were regularly to visit native Catholics, and arrange for sermons and administration of sacraments); Concilium S. Bonifacii, p. 18 (mission aid societies were to be promoted); Concilium Marianopolitanum, pp. 244-245 (boarding schools were needed).

³⁰³ Cf. CL, vol. 3, col. 42.

³⁰⁴ Cf. Concilium plenum Baltimoreense III, pp. 133-136.

³⁰⁵ Cf. J.T. Ellis, "Australian Catholicism: An American Perspective", in Journal of Religious History, 10(1978-1979), p. 316.

4 - THE OVERALL SIGNIFICANCE OF THE COUNCILS

4.1 - The contribution to the life and progress of the Australian Church by the councils

4.1.1 - Involvement of priests with the bishops in decision-making and legislation. This study has revealed the unusually high proportion of the synodales being the priests actively assisting the council fathers in their legislative activity. This commenced at the first provincial council in 1844 where the three bishops were outnumbered by about twenty-one priests.¹ While that high proportion of 87.5% was never reached in subsequent councils, it was never far behind, the lowest being 68.06% in 1895.² From 1885, care was taken to ensure that as well as the priests taken by the bishops as advisors (theologians and canonists), each clerical religious order / congregation would be represented, as well as a delegate of the clergy of

¹ It is even more significant that thirty-four were convoked. It seems that, besides the four Passionists, only ten were not convoked; these were either at a vast distance or suspended (cf. Rev. T.J. Linane [researcher of pre-1900 Australian Catholic priests] to author, Torquay, Vic., 1 February 1989).

² The other percentages were 79.48% in 1869, 74.29% in 1885, 70% in 1905, and 85.19% in 1907. (However, it fell to 61.63% in 1937).

each diocese.³ While it is difficult to ascertain the full effect they had on the votes of the fathers, it appears that they were always encouraged to speak freely,⁴ and in 1885 amendments were made to the prepared schemata at a general meeting.⁵ In fact, on occasion the bishops appear to have

³ At this time, only abbots and provincials resident in the territory, and a delegate from each existing cathedral chapter, had the right de consuetudine to be present (cf. Smith, Elements of Ecclesiastical Law, vol. 1, pp. 36-37). The sending of an elected representative of the clergy of each diocese started as an interim measure for the 1885 council in the absence of chapters of canons (cf. p. 61, footnote 17). When the planned chapters did not eventuate, the alternative of elected diocesan representatives was repeated in 1895 and 1905. In the other countries in this study, chapters, where they existed, sent representatives; but this innovation of representatives of the clergy, in addition to theologi nominated by the bishops, emerged only in Ireland in those dioceses lacking chapters, and not until the celebration of three of the four provincial councils held in 1907-1908 (cf. Concilium Tuamense, 1907, pp. 2, 9-10; Concilium Cassiliense, 1907, pp. 10, 14-15; Concilium Armacanum, 1908, pp. 7-8). The only place where religious sent elected representatives was Scotland in 1886, where each of the seven clerical religious orders or congregations were represented, but only after forthright correspondence from the religious. The bishops had suggested that two be elected to represent all, but some objected to the possibility of a member of a religious congregation representing those of a religious order. A claim by some provincials, resident outside Scotland but with Scottish subjects, to be present was not admitted (cf. Fort Augustus Council: Correspondence, 1883-87, [SNCA, documents ED/4/68/4-10]).

⁴ In 1895, Moran told the synodales that the rule in general congregations permitted any priest, who wished to make any observation, to do so (cf. Congregatio generalis, 25th Nov. 10 a.m., ms. minutes, p. 1 [SAA, MP, vol. 152]); in 1905, he asked the priests to give their opinions on questions proposed in the fullest manner possible, as the only desire of the synod was to elicit opinions for the greater honour and glory of God (cf. September 6th, Public session, [ibid., vol. 230]).

⁵ Cf. Concilium plenarium Australasiense, p. xxx.

relied on these priests to provide solutions.⁶ Moran seems to have been determined to ensure that he convoke all who should be called. Accordingly, he inquired of Propaganda in 1895 whether he should convoke the coadjutor abbot nullius of New Norcia, the abbot of the Trappist monastery in the apostolic vicariate of Kimberley, and, in view of the resignation of the apostolic administrator of the diocese of Victoria and Palmerston, the superior in charge of the Jesuit mission there; and, in the event of them excusing themselves because of distance, whether they could nominate procurators.⁷ The bishops not only consulted the priests, but also considered resolutions forwarded by the priests on

⁶ E.g. advice about alcohol abuse by priests, where neither causes nor remedies were as in Ireland (cf. Congregatio generalis, 25th Nov. 10 a.m., pp. 1-3 [SAA, MP, vol. 152]; September 6th, Public session, p. 5 [ibid., vol. 230]); and about which and how many priests should be involved in proposing names for episcopal candidates in dioceses with fewer than ten diocesan consultors and irremovable rectors (cf. Congregatio privata held at 2 p.m. Nov. 18th, ms. minutes, pp. 4-5; Congregatio generalis, 28 Nov. 10 a.m., p. 1; Resolutions passed at meetings of representatives of the priests of the dioceses of Australia and Tasmania held in St Patrick's College, Manly, on Nov. 23rd, 26th and 27th 1895, ms., p. 2 [ibid., vol. 152]).

⁷ Cf. AP, NS, vol. 216(1901), ff. 323-324. (The reply was an interesting lesson on those with a right to be present: an abbot nullius, as he exercised quasi-episcopal jurisdiction, had a right to be present, but the right did not extend to his coadjutor; the Trappist abbot, neither an abbot nullius nor vicar apostolic, had no quasi-episcopal jurisdiction, but could be invited to attend, without obligation to do so, and given a consultative vote; Father Strele, S.J., was still apostolic administrator of Victoria and Palmerston, for although he, residing outside the diocese with Propaganda's permission, had submitted his resignation, this had not been accepted, and consequently he had to be convoked [cf. ibid., ff. 325-326]).

their own initiative.⁸ Prior to the 1905 council, Cardinal Moran asked each bishop to appoint a diocesan commission under his own presidency to consider alterations or additions deemed desirable to the 1895 legislation.⁹ Reports from these commissions were distributed among the committees at the council for redaction.¹⁰ The only exception to the very active participation by priests was at the 1862 "council", where the four bishops consulted alone.¹¹ Finally, except in 1869 when Father Sheehy, diocesan administrator of Armidale, was excluded from a deliberative vote,¹² the diocesan bishops have conceded

⁸ Cf. Resolutions passed at Meetings of the Representatives of the Priests of the dioceses of Australia and Tasmania in St Patrick's College, Manly on Nov. 23rd, 26th and 27th 1895, 3p., and Congregatio generalis, 28 Nov. 10 a.m., 5 p. (SAA, MP, vol. 152); A Meeting of the Priests representing the Clergy, and September 9, 1905, 9th sess., p. 6 (ibid., vol. 230).

⁹ Cf. Moran to Australian hierarchy, Sydney, 12 February 1905 (ibid.).

¹⁰ Cf. September 4, 05, 1 sess., ms. minutes, and various such reports (ibid.).

¹¹ Cf. diary of Bishop Goold, entries for 29 October - 13 November 1862 (MDHC). It should be noted that absence of priests at the "council" was not an irregularity, as at that time there was no one with a right de consuetudine to be present, viz. provincials, abbots, seminary rectors, and delegates of chapters. Bishops could, but were not obliged to, take theologians and canonists to advise them (cf. Smith, Elements of Ecclesiastical Law, vol. 1, pp. 36-37).

¹² See p. 54.

deliberative votes whenever possible to the others joining them as council fathers.¹³

4.1.2 - Uniform legislation promoting unity. The first decree of the 1844 council was an exhortation for the bishops to promote and maintain unity among themselves. So much of the legislation may appear today to be about trivia, but it encouraged a stable, uniform pastoral practice, especially in the ministry of priests and the administration of the sacraments. This united approach continued, with the body of bishops insisting that, no matter what opinions individuals may have in matters such as mixed marriages, a firm, united front must be presented lest the Church be weakened by the faithful being able to find a different type of particular church by crossing a diocesan boundary.

¹³ In 1885, the bishops unanimously gave deliberative votes to the procurators of absent bishops (cf. Concilium plenum Australasiense, pp. xxii-xxiii). In 1895, deliberative votes were granted to the coadjutor and auxiliary bishops, the vicar apostolic of Cooktown (who in 1885 was presumed to have such a vote), the abbot nullius of New Norcia, the apostolic administrator of Victoria and Palmerston, and the diocesan administrator of Port Augusta, only after debate (cf. Concilium plenum Australiense II, p. xi), although only the coadjutor and auxiliary bishops required discussion as the rest had a deliberative vote, regardless of the will of the bishops (cf. Smith, Elements of Ecclesiastical Law, vol. 1, p. 37). In 1905, Propaganda removed from the acta reference to the fathers admitting the diocesan administrator of Rockhampton, and the procurators of absent bishops, stating that these had a place in the council independently of the will of the fathers (cf. AP, NS, vol. 512[1912], f. 544). The acta also indicated that the fathers conceded a deliberative vote to these persons and the abbot nullius of New Norcia, but the text was not amended, although a marginal note indicated that the abbot nullius and diocesan administrator already had this vote (cf. *ibid.*).

Cardinal Moran was almost obsessed with unity among the hierarchy. He reported of the 1885 council that "the greatest concord, charity, and peace prevailed" where decrees were enacted "establishing uniformity of discipline as far as possible, the same catechism, the same ordo for reciting the divine office, the same rules for fasting, for holidays, for reserved cases, etc."¹⁴ Ten years later it was similar: "The most perfect harmony prevailed".¹⁵

Four of Australia's councils were celebrated before Australia became a nation in 1901.¹⁶ At these councils, there was an ecclesiastical federation long before the political one. Moran was very interested in and actively promoted political federation, even standing in 1897 as a candidate for election to the federal convention to frame

¹⁴ Cf. Moran to Kirby, Sydney, 1 December 1885 (IC, NK, no. 1885/111). Moran added, "All the members of the plenary council dined with me each day. It was somewhat expensive, but served to keep us all together" (cf. *ibid.*).

¹⁵ Cf. Moran to Kelly, Sydney, 30 December 1895 (IC, Kelly correspondence, no. 1895/304).

¹⁶ Despite England and Wales, Scotland, and Ireland forming a united kingdom during this period, there was never any attempt to have ecclesiastical unity. As the Maritime Provinces were never part of the ecclesiastical province of Québec, the only council that was national for present day Canada was the plenary council of 1909 (which did not include Newfoundland, then not part of Canada). In the United States of America, only the three plenary councils can claim to have legislated for what is now the "forty-eight states".

the Australian constitution.¹⁷ The plenary councils were highlights in his ecclesiastical federal vision, where he was convinced of the need for a united Australia, rather than autonomous colonies, long before politicians were.¹⁸ Given the authority of an apostolic delegate for the annual meetings of metropolitans, he was able to monitor ecclesiastical discipline between councils, and report regularly to Propaganda. Propaganda may have had to insist on a council in 1869, but once Moran was in Sydney he enthusiastically took up the idea of regular councils. After consulting the archbishops at their 1894 meeting, and the bishops of his province, he asked for a pontifical brief to convoke a plenary council for Australia and New Zealand in 1895, stating that great benefit would come from such a council each ten years.¹⁹ In 1904, he again sought a pontifical brief, so a plenary council (including New

¹⁷ For details see P.P. Ford, Cardinal Moran and the A.L.P: A Study in the Encounter between Moran and Socialism, 1890-1907: Its Effects upon the Australian Labor Party: The Foundation of Catholic Social Thought and Action in Modern Australia, London, Melbourne University Press, 1966, pp. 199-229.

¹⁸ He always spoke and wrote of Australia as a nation, e.g. "There is not in the wide world a national church so devoted to His Holiness as this young Australian church" (cf. Moran to Kirby, Sydney, 20 February 1890 [IC, NK, no. 1890/7]).

¹⁹ Cf. AP, NS, vol. 216(1901), ff. 284-288, 301-303. Moran was told the region was continental Australia, and Tasmania, as New Zealand and the islands of Oceania were a separate hierarchy. Further requests from Moran for reconsideration of New Zealand brought firm refusals (cf. *ibid.*, ff. 307-308, 331-344).

Zealand) could be celebrated in accord with the tradition of decennial celebration. The request was granted without New Zealand participation.²⁰ However Moran's federal approach was not accepted unquestioningly by his peers. Although the 1905 council voted that Sydney become a primatial see, the ballot details (not forwarded to Rome) were only fourteen in favour against eight negative.²¹ The same council considered whether the Australian archbishops at their annual meeting could be invested with the authority of a high ecclesiastical court of appeal with authority a) to receive appeals in ecclesiastical causes from diocesan and archiepiscopal tribunals, and b) to enforce throughout the Australian dioceses the observance of plenary council decrees. After Archbishop Carr (Melbourne) gave several reasons against the motion, it was rejected.²²

²⁰ Cf. AP, NS, vol. 512(1912), ff. 448-451.

²¹ Cf. Syllabus of Some Important Matters suggested for the consideration of the Third Plenary Synod, p. 1, and September 9, 1905, 9th sess., p. 2 (SAA, MP, vol. 230).

²² Cf. *ibid.* When first informed by Moran that Propaganda requested an annual meeting of archbishops with Moran presiding as apostolic delegate (cf. Moran to Carr, Sydney, 25 February 1890 [MDHC, Carr correspondence, A8]), Carr had reservations; he indicated he would carry out Propaganda's wishes, but feared that the general body of bishops would not approve, with unpleasantness resulting (cf. Carr to Moran, Melbourne, 3 March 1890 [*ibid.*, B16]). It has been suggested that the United States bishops resented their archbishops meeting annually from 1889 (cf. G.P. Fogarty, "American Conciliar Legislation, Hierarchical Structure, and Priest-Bishop Tension", in The Jurist, 32 [1972], pp. 407-408).

It seems that Moran at first saw the projected primate as receiving appeals from the other metropolitans, and being the authority to enforce the decrees of councils.²³ But by the time he produced the council agenda, after consulting the other bishops, the matter was listed as two separate issues: 1) "the honorary primacy of the Australian Church to the metropolitan see of Sydney", and 2) the high ecclesiastical court of appeal, composed of the archbishops (rather than the primate).²⁴ If he had really considered a primacy with jurisdiction to receive appeals, he was considering what has survived in the western Church only with the archbishop of Esztergom, primate of Hungary.²⁵

²³ Cf. Moran to Gotti, Sydney, 9 May 1905 (AP, NS, vol. 512[1912], ff. 452^V-453). The question of some means to enforce council decrees had been discussed at the 1895 council; Moran, replying to the question whether he, as apostolic delegate, could enforce them, said that he was delegated only for the council (cf. Congregatio privata, 30th Nov. 2 p.m., ms. minutes, pp. 4-5 [SAA, MP, vol. 152]).

²⁴ Cf. Syllabus of Some Important Matters suggested for the consideration of the Third Plenary Synod, p. 1 (SAA, MP, vol. 230).

²⁵ Cf. A. Szentirmai, "The Primate of Hungary", in The Jurist, 21(1961), pp. 27-46.

In Ireland, from the time of St Patrick there was attached to the see of Armagh a de facto primacy - considered by some to have been akin to a patriarchate. Soon after Ireland was divided into four ecclesiastical provinces in the twelfth century, Dublin's archbishops claimed to be primates, more to be exempt from Armagh's primacy than trying to assert jurisdiction over the other metropolitans. The main jurisdiction was the right to receive appeals (and Moran, a keen student of history, would have been aware of the extent of this). In 1353, Pope Innocent VI decided that the archbishop of Armagh would be the primate of All Ireland and the archbishop of Dublin the primate of Ireland. Serious disputes between these primates over rights of appeal, as well as precedence, occurred as

late as the eighteenth century (For details see F. MacEnerney, "The Origin and Value of the Distinction, 'Primate of Ireland,' 'Primate of All Ireland'", in Irish Ecclesiastical Record, 3rd ser., 10[1889], pp. 422-432; and A. Coleman, "The Primatial See and its Cathedral", in *ibid.*, 4th ser., 7[Jan.-June 1900], pp. 193-208). Authors consider that the jurisdiction of the Irish primates has now lapsed.

In the United States, the first petition that Baltimore become a primatial see was from the seventh provincial council of Baltimore; it was ignored (cf. CL, vol. 3, col. 117). In 1853, Propaganda commissioned Archbishop Gaetano Bedini, apostolic nuncio to Brazil, to make an apostolic visitation of the United States Church; one matter he was to investigate was the best way to maintain "l'uniformità e la concordia" between ecclesiastical provinces in view of "le ripetute suppliche fattene da quell' episcopato" for a primate (cf. AP, Lettere, vol. 343 [1852], ff. 315^v-317^r). Bedini advised against a primate, arguing that historically primates have abused authority, especially when nationalistic feeling is involved; he recommended an apostolic nuncio instead (cf. AP, SOCG, vol. 981[1856], ff. 1202^v-1205^r). A further request from the ninth provincial council of Baltimore resulted in a compromise: by a decree of Propaganda dated 15 August 1858, the archbishop of Baltimore is always to take precedence of all United States archbishops "in conciliis, coetibus et comitiis quibuscumque" (cf. CL, vol. 3, col. 179).

In England, when the original province of Westminster was divided in 1911, three special privileges were granted to the archbishop of Westminster in order to preserve unity in rule and action: 1) to convoke and be præses perpetuus of episcopal meetings for England and Wales; 2) to precede the other archbishops, and have the right to use throne, pallium, and metropolitan cross throughout those countries; 3) to represent all the bishops in dealing with the government, but consulting them beforehand and following the majority decision (cf. Pius X, Apostolic Constitution, "Si qua est", 28 October 1911, in AAS, 3[1911], pp. 553-555). These clearly are primatial rights, although the title "primate" was not used (presumably in deference to the Church of England primates); at the Second Vatican Council, the Holy See recognized him as a primate as he sat with the primates and was styled "Archiepiscopus Westmonasteriensis, Primas Angliæ" (cf. *ibid.*, 57[1965], p. 71). But in 1966, the then archbishop of Westminster sought the revocation of the first privilege, so that the presidency of the episcopal conference could become an elective office. Pope Paul VI granted this petition on 12 March 1966, so that from then the presidenza of the conference should be elettiva e "ad tempus" (cf. Meeting of the Bishops' Conference of England

4.1.3 - Provision of diocesan structures. The 1844 and 1869 councils made no attempt to legislate for diocesan structures. But after the 1885 council, Australia (and New Zealand) had legislation mandating basic diocesan structures; some had handy escape clauses, e.g. "saltem in dioecesibus in quibus frequens invenitur clerus" for vicars forane, "in quantum fieri potest" for diocesan consultors, and "si fieri potest" for irremovable rectors; but not for others such as diocesan examiners, diocesan secretary, archives, and minor seminary.²⁶ The office of vicar general was not mandated; in 1895 the fathers agreed that a vicar general should be appointed "if feasible" but no decree resulted.²⁷

and Wales at Archbishop's House, Westminster, Tuesday, 19th April and Wednesday, 20th April 1966, typescript minutes, p. 1 [copy from Mgr Ralph Brown, V.G., Westminster]].

In Scotland, the primacy enjoyed by the archdiocese of St Andrews prior to the Reformation was not revived at the restoration of the hierarchy.

In Canada, the archdiocese of Québec became a primatial see "ad honorem dumtaxat" on 24 January 1956, by a decree of the Sacred Consistorial Congregation. The see, originally embracing present Canada and much of the United States, (and, in view of the fact that there are older sees in Mexico, inaccurately referred to in the decree as the oldest "in America Septentrionali"), is clearly without primatial jurisdiction (cf. AAS, 48[1956], pp. 509-510).

²⁶ However, in 1895 the requirement of a diocesan minor seminary was modified by "in quantum fieri potest" (decr. 60).

²⁷ Cf. Cong. privata, 22nd Nov. 1895, 10 a.m., p. 1; Cong. privata, 22nd Nov. 2 p.m., p. 5 [SAA, MP, vol. 152]).

In general, the decrees were implemented immediately,²⁸ although some dioceses with scattered people, few priests, and few material resources had a genuine claim on the escape clauses.²⁹ Archbishop Dunne of Brisbane was notable for ignoring the decrees,³⁰ and Cardinal Moran, powerless to do anything, reported to Propaganda that bishops would not heed decrees if an archbishop be allowed to ignore them.³¹

²⁸ E.g. in Sydney in 1888 (cf. Decrees of the Diocesan Synod of Sydney, held at St Patrick's College, Manly, by His Eminence the Cardinal Archbishop, the 29th day of July, 1891, n.p., n.d., p.20); in Melbourne in 1887 (cf. Acta et decreta tertiæ Synodi dioecesanæ Melbournensis, habitæ in ecclesia cathedrali Sancti Patritii, die decimasexta novembris, 1887, Melbourne, Advocate, 1887, p.8); in Ballarat in 1889 (cf. Acta et statuta Synodi Dioecesanæ quæ habita fuit in ecclesia cathedrali S. Patritii, apud Ballarat die nona octobris 1889, Ballaarati, Fraser, pp. 63-65); in Sandhurst in 1888 (cf. Synodus Sandhurstense, pp. 21-22); in Port Augusta in 1893 (Bishop Maher in his relatio to Propaganda in 1905, reported that his huge diocese was divided into eight districts, three of which were made irremovable rectorates in 1893 [cf. AP, NS, vol. 334(1905), f. 151]).

²⁹ E.g. Bishop Cani of Rockhampton simply reported to Propaganda in 1892 that there were no parochi, but all were simple missionaries (cf. AP, SC, vol. 17[1890-1892], f. 1023). The first appointments of diocesan consultors and irremovable rectors in the scattered Wilcannia diocese was in 1905 (cf. Bishop John Dunne to Moran, Broken Hill, 17 July 1905 [SAA, MP, vol. 230]).

³⁰ Not until 1915, when the first apostolic delegate arrived in Australia, did the elderly Dunne set up canonical offices (cf. T.P. Boland, James Duhig, St Lucia, Qld., University of Queensland Press, 1986, pp. 118-120).

³¹ Moran, asked by Dunne to administer the archdiocese of Brisbane while he made his ad limina visit in 1890, had first-hand experience. Moran advised Cardinal Simeoni that Brisbane lacked a vicar general, diocesan consultors, and irremovable rectors, and moreover there had been no solemn Mass in the cathedral for three years, and asked Simeoni to insist on observance (cf. AP, SC, vol. 17[1890-1892], ff. 243-244).

Dunne, like other bishops, pleaded the escape clauses, and he could be accommodating.³² It is noteworthy that an attempt could be made to provide such European-type structures to embrace even the dioceses that were little more than mission fields. However, where the implementation was not immediate, there was at least a goal to be aimed for.³³ Moreover, the priests tried to encourage implementation.³⁴ As well, it seems that the procedure for

³² During his 1890 ad limina visit, Dunne, reporting that he had not created irremovable rectors because no mission as yet had the requisites suggested by the council, stated that rectorates would be established as soon as missions were sufficiently efficient (cf. *ibid.*, f. 359). When, as metropolitan, he had to preside at Rockhampton in 1905 over the priests entitled to vote to form a terna for the vacant diocese, he found in attendance only three of the six entitled to vote, the other three sending votes "by post or word of mouth". He accepted all votes and was satisfied: "I kept all things sufficiently before my eyes to be able to segregate thoroughly the results. All six voted for the dignissimus" (cf. Dunne to Moran, Brisbane, 27 May 1905 [SAA, MP, vol. 217]). Reporting to Propaganda that he had accepted the votes of the absentees without the prescribed oath, he shrewdly added, "In questa estremità di decisione il 'fare al meglio' e una massima supreme" (cf. AP, Acta, vol. 278[1905], f. 629).

³³ The prefect of Propaganda wrote after the celebration of the 1895 council, requesting that Moran, if the council had not concluded, insist in the name of Propaganda upon "la osservanza esatta ed accurata" of the decrees requiring consultors and irremovable rectors "in ciascuna diocesi", as this would help the development of Catholicism in Australia (cf. Ledóchowski to Moran, Propaganda, 17 January 1896 [SAA, MP, vol. 91]).

³⁴ E.g. at the 1895 council, the priests' representatives requested (albeit unsuccessfully) that irremovable rectors be appointed in every diocese, and that the words "si fieri potest" regarding the appointment of irremovable rectors be substituted with "quamprimum" (cf. Resolutions passed at Meetings of the priests of the dioceses of Australia and Tasmania held in St Patrick's College, Manly, on Nov. 23rd, 24th and 27th 1895, p. 2

recommending episcopal candidates worked successfully.³⁵

4.1.4 - Firm national policy on education and mixed marriages. "This education question is everything to us. The future of the Church in Australia depends upon it. A few noisy infidels and extreme Protestants would take it from under the control of the Church".³⁶ With these words, pioneer Bishop Goold welcomed Cullenite Bishop Murray of Maitland. If there is a single issue where the bishops have been as one, it has been Catholic education. They not only enshrined basic principles in legislation at the 1869 and 1885 councils; they taught those principles consistently. There was no disagreement or tension associated with the formulation of the decrees; nor was there at subsequent councils where amendments or additions were to ensure standards of excellence. In 1895 and 1905, much time was spent discussing training of teachers. Issues such as a) the right and desirability of a religious congregation to provide teacher training for its own members, b) insistence

[SAA, MP, vol. 152]); at the 1905 council, the committee "De disciplina", in favour of a high court of appeal, requested "the canonical erection of diocesan courts from which to appeal" (cf. The Adelaide Recommendations, ms. [ibid., vol. 230]). [There had been no obligation to implement the decrees "De foro ecclesiastico" of 1885].

³⁵ E.g. the five bishops appointed in the province of Melbourne between 1887 and 1917 had each received votes from the clergy (cf. AP, Acta, vol. 277[1905], ff. 195-201; vol. 285[1912], ff. 217-226, 261-264; vol. 288[1916] ff. 32-38; vol. 289 [1917-1918], ff. 1-6).

³⁶ Cf. Goold to Murray, Melbourne, 12 February 1867 (MA).

that excellence in training as a teacher not interfere with sound formation as a religious, c) training and registration of teachers to the satisfaction of the government authorities, d) the establishing of Catholic teachers' colleges, and e) the provision of religious as teachers in remote areas, required careful thought, delicate negotiation, and detailed planning. While there was plenty of discussion offering different opinions, there was a desire to reach policies and decisions that could be implemented.³⁷ The fathers were in agreement on such matters as diocesan funds for needy parochial schools, and the office of inspector of schools. The only recorded disagreement was Archbishop Dunne of Brisbane questioning whether there could be disadvantages using books specially approved for Catholic schools rather than those approved for government schools, especially for children sitting for public examinations. His objection was not supported by anyone.³⁸ The bishops took the advice offered at a general meeting with all the synodales in 1895 not to make the sending of children to public schools without a sufficient reason a reserved sin; it was agreed that decr. 238 of 1885

³⁷ Cf. Congregatio privata, Nov. 25th 2 p.m., ms. minutes, pp. 4-5, Congregatio privata, 26 Nov. 10 a.m., ms. minutes, pp. 1-3 (SAA, MP, vol. 152); September 5th 1905, 3 sess., ms. minutes, pp. 3-4, September 5th 1905, 4 sess., ms. minutes, pp. 1-3, September 6th, Public session, pp. 1-2, September 9, 1905, 9th sess., p. 3, September 9, 10 sess., p. 3 (ibid., vol. 230).

³⁸ Cf. September 6th 1905, 5 sess., pp. 1-3 (ibid.).

(that such parents, if contumacious, could not be absolved) was sufficiently strong.³⁹

Despite the initial disharmony in 1869 over the mixed marriage question, the bishops were firmly united in their policy once it had been implemented. The acta et decreta of the second and third plenary councils had a translation of the marriages decrees in an appendix, thus facilitating the observance of the legislation requiring the decrees to be read and explained to the people annually on the second Sunday after Epiphany.⁴⁰ The policy was uniform discipline. Discussion at the 1905 council disapproved of any deviation (despite the provision in the law permitting marriage in church "ob graves causas"), with Bishop Murray (Maitland) describing as "no greater charity" the refusal to permit any relaxation.⁴¹ The priests at the 1905 council made no attempt like their 1869 counterparts to argue with the fathers; they indicated that they should try to encourage Catholic marriages, although some mixed marriages were inevitable. The matter of place and ritual was not raised by them.⁴² The matter was discussed at the 1921 meeting of

³⁹ Cf. Congregatio generalis, 28 Nov. 10 a.m., p. 4 (ibid., vol. 152).

⁴⁰ Cf. Concilium plenum Australiense II, pp. 177-181; Concilium plenum Australiense III, pp. 154-159.

⁴¹ Cf. September 8th, 7 sess., p. 4 (SAA, MP, vol. 230).

⁴² Cf. September 8th 1905, Gen. sess. 8 sess., pp. 9-10 (ibid.).

archbishops, where it was alleged that most dioceses adhered to the practice of having such marriages celebrated in a room, or in the sacristy of the church, without any religious vestment or ceremony, although some dioceses, in order not to penalize a good Catholic or give a non-Catholic a poor idea of the dignity of marriage in the Catholic church, permitted celebration in the church.⁴³ The archbishops recommended that bishops use their own discretion until the next plenary council.⁴⁴

4.1.5 - Pastoral letters. At each council, except for that of 1844, the fathers issued a pastoral letter. These letters, not only printed, but also read (in installments) and explained from pulpits in every church and chapel, no doubt had more impact, at least in the short term, than many of the decrees. During each council, the public in Sydney (or Melbourne) attended the solemn Masses in great numbers and heard various bishops preach both eloquently and instructively. But it was the pastorals that reached every Catholic who attended Sunday Mass. Each of the pastorals can be admired for expounding firm principles on which the regulations or exhortation rested.

⁴³ Cf. Minutes of the Third Annual Meeting of the Archbishops of Australasia held in St Mary's Presbytery, Sydney, copy of typescript, pp. 5-6 (MDHC, Hierarchy file).

⁴⁴ That council (1937) continued the same practice. Australia ended up with many churches having extraordinarily large sacristies that were quite tastefully appointed!

Therefore, at the 1862 "council", the bishops taught that the material abundance received from God's generosity in their new land, compared what they had in the old countries, required a similar generosity on their part, so that the number of priests could be increased, churches and other buildings constructed, and the poor aided; mixed marriages were to be avoided because husband and wife were divided on the most important, most influential, and most pervading of subjects; Catholic schools were important because they provided a religious education rather than mere instruction.⁴⁵ In 1869, the bishops wrote again about Catholic education, the needs of the Church, and mixed marriages, as well as aborigines. Their teaching on these was really applications of the principle developed in the first section of the pastoral - the danger of indifferentism - which led to an anti-Christian spirit. The results were aborigines dispossessed of the soil; people with neither knowledge nor self restraint to use money with dignity and safely; thoughtless entering of marriage; and religion being a mere accessory to education.⁴⁶

The 1885 pastoral, after explaining the essence of some of the legislation, concentrated on urging Catholics to better their station in life. This was the council which, more than any other, bore an Irish stamp. After stating

⁴⁵ Cf. Polding, The Eye of Faith, pp. 382-387.

⁴⁶ Cf. *ibid.*, pp. 394-407.

that the Church's business was everywhere her children were, and that priests were not meant to keep to altars and prayer books, the fathers encouraged not only family prayer, but temperance societies, because intoxicating drink "has a worse effect on the Irish Catholic than on any of his fellow colonists", since he was "accustomed to the restraint of morality and religion". The laity were exhorted to make settled homes, those in country districts striving to get land for their children to inherit rather than to become wandering shearers or farm laborers. After leaving school, "the boy or girl, but especially the boy, should be immediately bound to some trade or profession", set on the path of industry and honest occupation. The fathers deplored so many Catholics being in the police force, in navy camps, in labour gangs, in charge of public houses, on wharves, on cab stands, dam making, fencing, and timber getting "because their parents brought them up to nothing better". Then mixed marriages and Catholic education were dealt with at length.⁴⁷

At the request of Cardinal Moran, the 1895 pastoral was composed by Bishop Delany (coadjutor of Hobart), assisted in the final stages by Archbishop Carr (Melbourne)

⁴⁷ Cf. Pastoral Letter of the Archbishops and Bishops of Australasia, in Plenary Council assembled, to the Clergy and Laity of their charge, Sydney, Cunninghame, 1886, 38 p.

and Bishop Gallagher (coadjutor of Goulburn).⁴⁸ After observing the disappearance of prejudices against Catholic doctrines and institutions that existed in the old lands, the fathers stated that the Church wanted people to inquire and be interested in her. The simplest way for non-Catholics to come in contact was through the conversation and life of Catholics. Consequently, hindrances to Catholic progress were secularism, an inordinate desire for wealth, and the weakening of domestic ties. The remedies were taking Christ seriously and living a Catholic family life with prayer and temperance, avoiding mixed marriages, and education based on religious convictions.⁴⁹

Cardinal Moran invited Bishop P. V. Dwyer (coadjutor of Maitland) to draft the 1905 pastoral suggesting: "The present developments of Anglicanism in hostility to the Blessed Virgin and to the divinity of our Saviour, and the Catholic position regarding the sacred scriptures would merit special treatment, and of course, the progress of religion amongst us, our wants, our hopes, our aspirations would receive due treatment".⁵⁰ But by the time the council met, some fathers had informed the cardinal that the council

⁴⁸ Cf. Cong. privata, 20 Novembris, ms. minutes, p. 4, Congregatio privata, 29 Nov. 2 p.m., p. 2 (SAA, MP, vol. 152).

⁴⁹ Cf. Pastoral Letter of the Archbishops and Bishops of Australia in Second Plenary Council Assembled, 1895, Sydney, Batson, 1895, 47 p.

⁵⁰ Cf. Moran to Dwyer, Sydney, 16 May 1905 (MA, Box 4).

should deal with the question of socialism, "a burning question of the time". There was a lot of discussion with most requesting that the faithful be clearly taught what aspects of socialism may be lawfully accepted, and what must be rejected as contrary to the faith. The pastoral, drafted by Bishop Dwyer, was discussed fully, and approved after minor amendments.⁵¹ It stated that the fathers did not accept that the existing state of human society was founded on injustice, with the consequence that the remedy was the overturning of the present order of society to get more equitable distribution of goods, the means being denouncing capitalism and Christianity. Instead, they saw socialism as the economic principles to influence and guide those who redress wrong and alleviate misery, principles contained in Christianity, which has already be instrumental in social reform. Their solution was a) to urge the faithful to have confidence in the Church to teach correct principles; b) zeal for Christian education; and c) to ensure that everyone have the right to the four things protected by the decalogue: life, one's family, one's goods, and one's character. Bishop John Dunne of Wilcannia had suggested that the rights of labour be recognized in any declaration

⁵¹ Cf. Concilium Australiense III, p. xxv; 2 Sept 1905, 3.30 p.m., ms. minutes, p. 4, September 4th 1905, 2 sess., ms. minutes, pp. 2-4, September 5th 1905, 3 sess., p. 2, September 9, 10 sess., p. 5 (SAA, MP, vol. 230).

of the hierarchy.⁵² The pastoral indicated that the Church would not discourage the use of lawful means to better one's earthly career, whether individually or collectively, provided Christ's command, "Seek ye first the kingdom of God and His justice", was obeyed. It added that schemes for settling people on the land and bettering the condition of the labouring class, and the state monopoly of public conveniences, were not necessarily at variance with Christian principles.⁵³

At the Melbourne council of 1907, the pastoral letter was a careful analysis of the heresy of "modernism", and advice for recognizing and refuting its errors.⁵⁴ All things considered, the pastoral letters show that the fathers took the opportunity to exercise their teaching office collegially. With the decrees for good governance, there was teaching that was anything but merely pious and devotional, aimed directly at the faithful. While some of it may have had an Irish bias, and some considered narrow by today's standards, it did show that priests and bishops were

⁵² Cf. 2 Septr 1905, 3.30 p.m., p. 4 (ibid.). Bishop Dunne's pro-cathedral was in Broken Hill, a mining town, a centre of labour agitation.

⁵³ Cf. Pastoral Letter of the Cardinal Delegate, Archbishops and Bishops of the Australian Commonwealth in Plenary Council assembled to the Clergy and Laity of their charge, Sydney, Cunninghame, 1905, 39 p.

⁵⁴ Cf. Pastoral Letter of the Archbishop and Bishops of the Province of Melbourne to the Clergy and Laity of the Province, Melbourne, Advocate, 1907, 25 p.

not confined to sacristies, but were involved with, concerned for, and leaders of their people.

4.2 - Significant similarities and differences to other churches

4.2.1 - The life and ministry of priests. All local churches in this study legislated for a mandatory body of clergy to advise the diocesan bishop on certain defined occasions: either a cathedral chapter, or a college of diocesan consultors. Some tailored the traditional chapter to their own needs, with minimal choir duty and no obligation of residence. Others mandated the new institute of diocesan consultors as a replacement for chapters. This study has shown how the Australasian Church intended to mandate canons to assist the diocesan bishop in governance, but was ordered by Propaganda to have diocesan consultors instead. But these Australasian consultors were unique in being all freely appointed by the diocesan bishop, with liturgical duties (albeit minimal), a title, and (in some places) even special choir dress.

All local churches in this study eventually provided for stability in tenure of office for at least some of the priests in charge of parishes or missions. In Ireland, parish priests had never lost their stability of office acquired in pre-Reformation times. Of the other places, only the United States, and Australia and New Zealand legislated for a lawful minimal percentage of such priests.

The Australian and New Zealand requirement of twenty percent was double that required by the United States. Moreover, the Australian legislation was unique in being amended: under certain conditions, the quality of stability could be transferred from one rectorate to another, to ensure that this legislation be practical and helpful.

During the nineteenth century, every country in this study, except Canada, received from the Holy See the privilege that at least some of the diocesan clergy participate in the process of the appointment of bishops. (There was no challenge in these countries to the right of the Holy See freely to appoint bishops). Apart from Ireland, whereby by immemorial custom all canons and parish priests were involved in the process of appointing bishops, Australia and New Zealand involved more priests than other places (where they were limited to canons, or diocesan consultors and irremovable rectors); they also kept this system of active priestly involvement well after the Holy See had removed the privilege from other places.

4.2.2 - Catholic primary education. While each local church in this study was concerned about education, it was only those in Australia and New Zealand, the United States of America, and some parts of Canada that had to face the problem of governments implementing policy that excluded a normal and acceptable Catholic education subject to ecclesiastical authority. The Australasian bishops were

unique in being perfectly united among themselves in refusing to accept anything less than Catholic education subject to Church authority. They insisted that the parents, not the state, had the right to determine the type of education that their children receive. Moreover, even though they established a full system of Catholic schools supported from parochial revenues, they continued to insist that Catholics had a right to their share in the public funds assigned to education. In contrast, the United States bishops were not united in their convictions, and legislated that Catholic parents should send their children to parochial schools in normal circumstances, only on the insistence of the Holy See. The results in our present day are a full Catholic education system throughout Australia, with government funding in recent decades.

4.2.3 - Mixed marriages. At first, mixed marriages were tolerated as inevitable in the young Australian colonies, and were solemnised in the same way as Catholic marriages. The advent of the Cullenite bishops in the 1860s brought a pastoral practice, enshrined in legislation, that can only be described as stricter than that of the Holy See, which was prepared to permit the celebration of mixed marriages with sacred rites under certain conditions to avoid greater evils. While Australia was not the only country in the study to adopt a strict position, it seems that the position adopted was the most inflexible. One could speculate how

much this position failed to distinguish between the Irish position in Ireland, a de facto Catholic country although Catholicism was not the established religion, and the Australian-Irish Church in a pluralistic society. It would be a worthwhile investigation, well beyond the scope of this study, to attempt to weigh the advantages (presumably preservation of the Faith, rejection of indifferentism, unification of families in habits of prayer and sacramental practice, etc.) against the disadvantages (presumably Catholics leaving the Church over the strict position, the Church being perceived as narrow, harsh, or unrealistic, anti-Catholicism being engendered, etc.).

4.2.4 - Ecclesiastical discipline. The institute of reservation of sins was limited by the 1917 Code of Canon Law to a few grave and very serious sins;⁵⁵ it ceased to exist with the implementation of the current Code of Canon Law. This study has demonstrated that Australia and New Zealand were the only countries examined where there was reservation of sins on a national level. However, the use was restricted to some serious matters affecting faith, human life, and marriage. It is reasonable to hold that the Australasian bishops used this now defunct institute wisely, attempting to support some very sacred values.

⁵⁵ Cf. c. 897.

The imposition of censures by councils, both for the laity or for the clergy, does not appear to have been done excessively anywhere, except for the clergy in Ireland.⁵⁶ In Australia, the imposition of censures in councils was restrained. For the laity, it was used to discourage marriage extra Ecclesiam, and divorce, both of which were seen as attempts to remove sacramental marriage from the jurisdiction of the Church. The clergy were being kept from activities considered unbecoming for their state in life. In the young colonial society, free from traditional European mores, bishops no doubt were concerned about the vocations and the effectiveness of their priests; they may have also been concerned that priests did not scandalize the laity, who may have been less capable than their grandchildren of distinguishing between the public and private lives of individuals.

4.2.5 - Temporal goods. All the local churches in this study legislated to ensure that ecclesiastical property and goods remain safe and in the Church's control. Legislation aimed at removing the possibility of fraudulent or accidental alienation or loss. None of these churches had to worry about matters that sometimes concern European churches, namely benefices, and valuable historical goods.

⁵⁶ It should be noted that this study is limited to plenary and provincial councils. It is likely that there was legislation about censures in diocesan synods in some, if not all of the countries examined.

The Australasian legislation was sound and uncomplicated, and remains substantially the same today. The Australasian church has never had to deal with a peculiar difficulty such as trusteeism which plagued the United States church.

4.2.6 - Evangelization of the aborigines. This is a matter that did not concern the churches in Great Britain and Ireland. There was minimal legislation elsewhere. The Australasian legislation on aborigines seems to say more about the non-aborigines: they were not really interested in anyone outside their own largely Irish congregations. The councils can be praised and admired for establishing in a new land all the structures of the European (notably Irish) church. The aborigines did not fit into this. When there was a brief romantic notion of evangelization, it was towards Asia rather than Australia. Where there are successful Catholic missions to aborigines, the history points to remarkable individuals and a few hard-working religious orders, rather than the Australian church in general.

4.2.7 - The sources of the Australian legislation. The decrees of the 1844 council were composed at the council, many based on the councils of Milan conducted by St Charles Borromeo. In 1869, the legislation appears to have been original, except for some of the mixed marriage legislation taken from the Irish National Synod of Thurles.

In 1882, replying to Archbishop Vaughan's seeking permission to convoke a provincial council, Propaganda encouraged celebration of a council, but urged careful preparation: consulting the legislation of the First Vatican Council, and the councils celebrated at Westminster, Baltimore, and Québec; and conferring with theologians and canonists.⁵⁷ In July 1885, Propaganda forwarded Cardinal Moran a copy of the acts and decrees of the council held in Baltimore the previous year "per avere una norma del modo di agire", so that the preparation for the approaching plenary council would be easier.⁵⁸ Yet, the main corpus of legislation used by the bishops in 1885, much of it taken verbatim, was the Council of Maynooth of 1875. Very little was from the Baltimore legislation.⁵⁹ In 1895, the Baltimore legislation was again recommended by Propaganda as a model to help in planning schemata; moreover, a copy of the acta et decreta of the third plenary council was forwarded to him, with the advice that the acta et decreta of the first two plenary councils could be obtained from the

⁵⁷ Cf. AP, Lettere, vol. 378(1882), f. 525.

⁵⁸ Cf. *ibid.*, vol. 381(1885), f. 392. Later, he was sent a list of topics discussed at the 1883 Roman preparatory meeting for the Baltimore council, together with some arising from letters and reports to Propaganda (cf. Capita nonnulla disciplinae quae Sacra Congregatio de Propaganda Fide censuit proponenda ut ab episcopis in prima plenaria synodo Australiensi coadunatis in disceptationem revocentur [SAA, MP, vol. 5]).

⁵⁹ Cf. pp. 65-67.

archbishop of Baltimore.⁶⁰ Although two Baltimore decrees were incorporated as decrs 313 and 318 in the 1895 legislation on education,⁶¹ this was an afterthought: only after Cardinal Moran adverted that there was very little about education in the new decrees, did he suggest to the fathers that they incorporate some from the Baltimore legislation that Propaganda had proposed for their example.⁶² In 1905, all the new decrees were original.

From the 1885 and 1905 councils, letters were sent to the Irish hierarchy. Letters also went to the bishops of China, Germany, Spain, and the United States in 1885, and to those of France in 1905. The bishops of Canada or Great Britain were never written to. In 1905, Bishop Kelly of Geraldton suggested a letter to the American bishops "especially having reference to Manila in which we are so much interested". But the fathers considered it unwise to send a letter after Cardinal Moran spoke about the state of the Church in the Philippines.⁶³ It seems legitimate to

⁶⁰ Cf. AP, NS, vol. 216(1901), ff. 307-308.

⁶¹ Cf. Concilium plerarium Baltimoreense III, pp. 105-107, 112-113.

⁶² Cf. Congregatio privata, 27 Nov. 10 a.m., ms. minutes, pp. 1-2 (SAA, MP, vol. 152).

⁶³ Cf. 2 Sept 1905, 3.30 p.m., p. 3 (ibid.). Moran claimed, "Immorality reigns supreme, and Manila people do not want whitefaced priests, and won't support them; only Spaniards or native clergy". The United States took the Philippines from Spain in the Spanish-American War of 1898. For details of the wide non-acceptance of the American occupation by the clergy, and attempts to Americanize the

conclude that the only hierarchy that the Australian bishops had continuing contact with during the years 1869-1905 was the Irish.⁶⁴

One would have to refute the claim that the Australian fathers accepted the Third Plenary Council of Baltimore as the pattern in framing their decrees;⁶⁵ and one would have to reply, "very little", to the question of how far the Baltimore legislation influenced the Australian Church.⁶⁶

Filipino Church, see J.N. Schumacher, Revolutionary Clergy: The Filipino clergy and the Nationalist movement, 1850-1903, Quezon City, Alenco de Manila University Press, 1981, viii-298 p.

⁶⁴ One could speculate whether there was an anti-American bias in Moran, for his secretary and confidante through his entire Australian episcopacy, Mgr Denis O'Haran, wrote, "Our yankee doodle bishops may be permitted to dream for themselves that the sun rises and sets on the 'states' alone. We laugh at the delusion; [...] if they want to keep ahead of us they will want to step out and step briskly" (cf. O'Haran to Kirby, Sydney, 25 March 1886 [IC, NK]).

⁶⁵ Cf. A.S. Will, Life of Cardinal Gibbons, Archbishop of Baltimore, New York, E.P. Dutton, 1922, vol. 1, p. 235.

⁶⁶ Cf. P.K. Guilday, A History of the Councils of Baltimore (1791-1884), New York, Macmillan, 1932, p. 249.

CONCLUSION

This study of provincial and plenary councils celebrated in Australia prior to the 1917 Code of Canon Law points to the following summary and to some suggestions regarding future conciliar action.

1 - Summary

Immediately after the division of the vicariate apostolic of New Holland and Van Dieman's Land into dioceses grouped into an ecclesiastical province, a provincial council was used to establish uniform pastoral practice, especially as regards the administration of the sacraments and the missionary apostolate. Subsequent provincial and plenary councils in Australia have been valuable in maintaining a uniform pastoral practice.

In 1862, a provincial "council" was celebrated in Melbourne by only four of seven eligible fathers. In 1864, its decrees were refused the recognitio of the Holy See, as they lacked the usual acts and formalities, and Propaganda lacked knowledge of the circumstances prompting some of the legislation. The bishops were told to start afresh following the method of the 1844 council. This next council was in Melbourne in 1869.

The 1844 legislation about baptism permitted the toleration of a non-Catholic sponsor if the parents insisted, to avoid giving offence. This decree was amended in 1885, so that heretics could on no account be admitted as godparents.

After government funding was withdrawn from denominational schools in various Australian colonies, conciliar legislation not only stated the obligation of Catholic parents to ensure a Catholic education for their children, and of priests to erect Catholic schools; it also stated rights: the right of parents to educate their children personally or through whom they choose, and their right to a just proportion of public revenues to maintain Catholic schools and teachers' colleges. The wilful neglect of Catholic education of one's children was seen as objectively morally evil; as with any serious evil, absolution could not be granted until the irregular position was rectified.

The third plenary council (1905) decreed, after voting fourteen affirmative to eight negative, that an honorary primacy be attached to the see of Sydney. Since it is the exclusive prerogative of the Holy See to establish particular churches and to determine their hierarchical rank, Propaganda correctly removed the decree, and changed it to a petition to the Pope. The petition received a negative reply.

The 1905 council rejected the proposal that the annual meeting of Australian archbishops be a high ecclesiastical court of appeal, with power to enforce plenary council decrees.

From 1869, mixed marriages were condemned by councils as producing evil, and were strictly forbidden. At each council from 1869, there were harsh deterrents (absence of ritual, vestments, and sacred place), and ecclesiastical penalties were imposed for marrying extra Ecclesiam.

The 1885 plenary council decreed the establishment of canons to advise diocesan bishops. Propaganda amended the decrees to replace for the time being the canons by diocesan consultors. No further attempt was ever made to introduce canons.

The 1885 plenary council decreed on the casting vote of Cardinal Moran, the apostolic delegate, that some missions in each diocese become parishes with parish priests. Propaganda amended these decrees, replacing the parishes and parish priests with irremovable rectorates and rectors as mandated for England and the United States at that time. (These became irremovable parishes and parish priests when the 1917 Code of Canon Law legislated that all divisions in dioceses be parishes, either irremovable or removable).

The 1885 plenary council legislated that the canons and parish priests of a diocese present three names to the Holy

See and to the bishops of the province whenever a diocesan bishop or coadjutor bishop was to be appointed. This legislation was ratified by the Holy See (with the adjustment to diocesan consultors and irremovable rectors). The 1895 plenary council amended the legislation to include other priests in some dioceses, to ensure that sufficient priests were involved. This privilege was allowed to be used until 1938.

The now defunct institute of reservation of sins was used by Australian councils to support some sacred values: faith, human life, and marriage. The councils also imposed censures to discourage marriage extra Ecclesiam and divorce, and to ensure that clerics did not engage in unbecoming activities.

Legislation at Australian councils on temporal administration was relatively uncomplicated, with practical regulations to prevent loss of property or goods by fraud or accident. Since 1885, all ecclesiastical property has had to be held in trust by a group of at least three persons.

Councils, as distinguished from some individual bishops, showed neither initiative nor enthusiasm for evangelizing aborigines, despite several invitations to do so from the Holy See. Legislation to consign the work to religious orders could be seen as relinquishing responsibility.

Three councils requested the Holy See that priests be dispensed from the obligation of reciting part of the divine office on days when binating or hearing many confessions. The replies were consistently negative, with the advice to follow the opinions of moral theologians.

Corrections at Propaganda always ensured that the rights of religious were upheld. The fathers at the plenary councils had sometimes disregarded these rights.

The 1885 council drew heavily on the decrees of the Irish plenary councils of 1850 and 1875, incorporating many of them verbatim. There was no other major source of decrees, and it appears that most of those of 1895 and 1905 were drafted at those councils. In particular, the fathers showed practically no interest in the Baltimore legislation.

Australian conciliar tradition would involve as wide and representative group as possible participating with consultative votes at a council. The tradition of involving as many as possible with a deliberative vote also indicates an openness by the bishops in the past to involve fully as many as possible.

2 - Some suggestions about future conciliar action

That the nineteenth century was a time of great conciliar action, and that the episcopal conference evolved in the twentieth century are undisputed facts. Current

canon law retains both institutes: the conference, a permanent institution with its own statutes, a permanent committee, and at least annual plenary meetings; and councils to be celebrated as often as considered necessary or advantageous.¹ Since episcopal conferences are now mandatory, all diocesan bishops must exercise joint pastoral care in this way. However, whereas in the past the law required regular celebration of councils, at least on the provincial level,² current law leaves celebrations of councils optional, although the preliminary draft of the current Code of Canon Law required celebration of plenary

¹ Cf. cc. 447-459, and 439-446.

² The First Council of Nicea (325) decreed that provincial councils were to be held twice each year (cf. Mansi, vol. 2, cols 669-670), and in 451 the Council of Chalcedon repeated this (cf. *ibid.*, vol. 7, cols 389-390). The frequency was reduced to annual celebration by the Second Council of Nicea in 787 (cf. *ibid.*, vol. 13, cols 750-751), and the Fourth Lateran Council repeated this in 1215 (cf. *ibid.*, vol. 22, cols 991-992). The frequency was further reduced to triennial celebration in 1515 by the Fifth Lateran Council (cf. *ibid.*, vol. 32, col. 911). In 1563 the Council of Trent repeated this, as well as placing the obligation of convoking the council on the senior suffragan if the metropolitan was lawfully impeded, and obliging exempt bishops to participate in the councils of a neighboring metropolitan (cf. *ibid.*, vol. 33, cols 157-158). At the First Vatican Council, quinquennial celebration was a provision in the "Schema constitutionis de episcopis, de synodis et de vicariis generalibus patrum examini propositum" (cf. *ibid.*, vol. 50, col. 344), which was not voted on before the indefinite prorogation of the council. The 1917 Code of Canon Law required a provincial council each twenty years (c. 283), except in Propaganda territories where no time limit was set (c. 304 §2).

councils at twenty-year intervals.³ Both institutes are to provide for the pastoral needs of the territory: the council has the power of governance, especially legislative power, but the conference can make general decrees only in cases where the universal law has prescribed, or by special mandate of the Holy See. It could be said that episcopal conferences demonstrate clearly the collegiality of bishops, whereas plenary and provincial councils stress more the communio between particular churches.

This historico-canonical study is not an apologia for the holding of regular councils. However, having examined the heritage of nineteenth-century conciliar legislation in Australia, and to some extent that in some other anglophone countries, the question must be faced as to whether it is desirable for the episcopal conference to become de facto the replacement of councils, as the sole form of coordinating the apostolate between the particular churches of a nation or locality. Whereas the episcopal conference

³ Cf. Communicationes, 17(1985), p. 106. But the 1977 draft prescribed no time for celebration (cf. Pontificia Commissio Codici iuris canonici recognoscendo, Schema canonum libri II de Populo Dei, Typis Polyglottis Vaticanis, 1977, p. 84). The Second Vatican Council, as well as decreeing that episcopal conferences were to exist universally, requested that councils flourish with new vigour (cf. Christus Dominus, nos 36-38 [AAS, 58(1966), pp. 692-693]). The current norm on the frequency of plenary councils, "quoties id [...] necessarium aut utile videatur", can be found in c. 439 §1; that on the frequency of provincial councils, "quoties id [...] opportunum videatur", in c. 440 §1.

is by definition an assembly of bishops,⁴ particular councils are representative of all in the constituent dioceses - bishops, clergy, religious of both sexes, universities and seminaries, bodies and individuals involved in diocesan governance, and the faithful.⁵ Australian conciliar tradition emerged as one of having as broadly representative a group as possible actively involved, although restricted by the then current canon law to the clergy (secular and religious).⁶ It is difficult to see disadvantages in involving a broad representation (which would now include non-clerical religious and laity). There may be practical difficulties in the logistics of involving great numbers of people, although the law provides limits to keep numbers manageable,⁷ and the requirements for the

⁴ Cf. c. 447; note too cc. 368, and 381 §2.

⁵ Cf. c. 443.

⁶ To some extent, the absence of the laity from the plenary councils was counterbalanced by the three great Catholic congresses in the early 1900s. E.g. at the second - held in Melbourne in 1904 - there were 2014 registered delegates; most of the seventy-two papers were delivered in sectional meetings, where discussion was involved; twenty-five resolutions were formally adopted by the congress (cf. Proceedings of the Second Australasian Catholic Congress, held in the Cathedral Hall, Melbourne, October 24th to 31st, 1904, Melbourne, St Patrick's Cathedral, 1905, xv-697-54 p.). It is significant that some legislation at the 1905 plenary council and 1907 provincial council (Melbourne) resembles some of the 1904 resolutions, viz. those concerning school textbooks, the Australian Catholic Truth Society, Catholic benefit societies, and temperance societies.

⁷ Cf. c. 443 §3 2°, 4°; §§ 4-5. Had a plenary council been celebrated in Australia in 1988, the numbers as prescribed by c. 443 would have amounted to fewer than 300.

associated ceremonial and formalities have been simplified and now permit flexibility.⁸ The number of members with a deliberative vote at a plenary council will be similar to the membership of the episcopal conference.⁹ All the others have a consultative vote only. Consultation is an important part of the legislative process, but it does not necessarily imply a parliamentary situation, nor admission to all sessions. A valid and extremely useful contribution by those with consultative vote is to be made in committee

There would have been 29 diocesan bishops, 11 auxiliary bishops, 10 retired bishops, 60 vicars general and episcopal vicars who would not be bishops, the rector and dean of one faculty of theology, and 4 seminary rectors. As there were 258 major superiors (as defined by c. 620) of religious institutes and societies of apostolic life having a sedes in Australia, it could be held that 30 elected representatives would be a generous delegation. There were no cathedral chapters; only 9 dioceses had a pastoral council (providing 18 members), and the councils of priests would provide 58 members. The members invited under the provisions of c. 443 §4 would not exceed 72. These statistics do not include the 3 oriental eparchies (cf. Official Directory of the Catholic Church in Australia 1988-1989, xii-463 p.).

⁸ Cf. Cæremoniale episcoporum Clementis VIII, Innocenti X et Benedicti XIII iussu editum, Benedictum XIV et Leonis XIII auctoritate recognitum, ed. 1a post typicam, Ratisbonæ, F. Pustet, 1902, pp. 126-131, and Cæremoniale episcoporum ex decreto Sacrosancti Oecumenici Concilii Vaticani II instauratum auctoritate Ioannis Pauli Pp. II promulgatum, editio typica, Typis polyglottis Vaticanis, 1985, pp. 277-278.

⁹ A variation can occur because of the provisions of c. 443 §2, viz. other titular bishops living in the territory, even retired ones, may be invited, and have the right to a deliberative vote, whereas c. 450 does not admit such bishops to membership of the episcopal conference. (However, recent norms permit episcopal conferences to admit retired bishops with a consultative vote [cf. Congregation for Bishops, "Normae de episcopis ab officio cessantibus", 31 October 1988, in Communicationes, 20(1988), p. 168]).

meetings, providing expert advice, helping draft and amend schemata, and engaging in research, in brief assisting the diocesan bishops to be as informed as possible of facts, and aware of all pastoral needs of the territory before they cast their deliberative votes. The Code of Canon Law does not define how consultative votes are to be sought or given, and it could be argued that most of the committee work could be carried out at various times and places, thus removing all objections associated with accommodating many persons for long periods of time. The Ceremonial of Bishops implies that all members of the council are present at least at the opening Mass.¹⁰

Australian councils did not attempt to deal with every aspect of ecclesiastical life. The 1844 council dealt mainly with the administration of the sacraments and the ministry of the missionaries, the obvious needs of the time. By 1869, there were problems - education and mixed marriage - to be addressed. In 1885, the remarkable growth called for norms for stable offices and diocesan administration. But previous legislation was not discarded; it was amended where necessary. Time was not wasted with matters judged of little concern to Australia.¹¹ Future Australian councils

¹⁰ Cf. Ceremoniale episcoporum ex decreto Sacrosancti Oecumenici Concilii Vaticani II, p. 277.

¹¹ E.g. at the 1895 council, Cardinal Moran informed the fathers that, as it would require time, which could not be given, to deal with a schema "De foro ecclesiastico", it had to be omitted or the matter taken in globo from the

would benefit from preserving this tradition of dealing with the current pastoral concerns.¹²

Councils do not just happen. They must be convoked, planned, prepared, and celebrated; then, after the recognitio, there is the promulgation of the legislation and the implementation of decisions. The Second Vatican Council, announced in 1959, was celebrated in 1962-1965. Many would say that that council would not have occurred without the initiative of Pope John XXIII, and that the implementation has not yet finished. Some of the Australian councils resulted from the initiative of an individual.¹³ The current law leaves the responsibility of convoking a plenary council to the episcopal conference, rather than a specific individual, and the responsibility for convoking a provincial council has passed from the

Baltimore legislation. Not only was it passed over; it did not even reappear in 1905 (cf. Congregatio privata, 29 Nov. 10 a.m., p. 1; Schema de foro externo seu de judiciis ecclesiasticis, 8 p. [SAA, MP, vol. 152]). The schema dealt with ecclesiastical courts and trials, matrimonial causes, detailed regulations about temporal goods, and lay trustees. In contrast, all these matters formed a significant part of Baltimore legislation (cf. Concilium plenum Baltimoreense III, pp. 149-181).

¹² It is noted here that the Synod of Bishops follows this approach of dealing with one or few issues each assembly.

¹³ Notably, Archbishop Polding for the 1844 provincial council, and Cardinal Moran for the 1895 and 1905 plenary councils. Moreover, it appears that the 1937 plenary council was the result of the efforts of apostolic delegates, Archbishops Bartolomeo Cattaneo (cf. p. 38, footnote 66) and Filippo Bernardini (cf. Concilium plen. IV Aust. et N.Z., p. 1).

metropolitan alone to the metropolitan with the consent of his suffragans. The current legislation no doubt promotes collegial action, but in practice it may limit personal initiative. The first three plenary councils were great opportunities for Cardinal Moran to demonstrate his extraordinary administrative ability, which included attending to what would be regarded by many as secretarial work (dealing with the correspondence with the Holy See in his own hand) and planning trivial detail far ahead.¹⁴ The current theology and canon law required that an apostolic delegate convoke and preside over a plenary council; his role was seen as a participation in the jurisdiction of the supreme authority in the Church, the Pope.¹⁵ Moran took this very seriously, and it appears that the agenda for the council, as well as for each session, was controlled by him. Naturally these councils bore his mark,¹⁶ although it should

¹⁴ E.g. he wrote to the rector of the Irish College, Rome, "At the preliminary meeting on the 16th, we will adopt the following telegraphic despatch to you for the Holy Father: 'Cardinalis [...]'. When the sending of the despatch has been agreed upon, I will send you a telegram with the single word Yes. This means that you will present to the Secretary of State at once the telegraphic despatch as set out in Latin, so that we may have the reply early next day" (cf. Moran to Kelly, Sydney, 30 September 1895 [IC, Kelly correspondence, no. 1895/232]).

¹⁵ In the 1917 Code of Canon Law, "De conciliis plenariis et provincialibus" was one of the chapters grouped under "De suprema potestate deque iis qui eiusdem sunt ecclesiastico iure participes".

¹⁶ As yet, no one has attempted a biography of Moran, although any study of Australian Catholic history would see him as a pivotal figure. The best overview is by Patrick O'Farrell who points to his tireless efficiency, detailed

not be thought that he did not respect the autonomy of each diocese and the rights of each bishop. While he reported bishops to the Holy See, urged uniformity of practice during councils, and was interested in a primatial jurisdiction that would permit him to enforce ignored decrees, he realized that his episcopal jurisdiction stopped at the boundaries of his own archdiocese. His convoking "archiepiscopis et episcopis ecclesiarum Australiensium" rather than using the usual formula "episcopis Australia",¹⁷ and his welcoming the fathers of the 1885 council as "the angels of all the Australian churches"¹⁸ point to a sensitivity and respect for each particular church.

control over day-to-day affairs, detachment from ultra-Irishism, and imperial view of Catholicism in Australia; his wishes determined development; like Cullen he became the episcopacy, the centre and source of power in the Australian Church (cf. O'Farrell, The Catholic Church and Community, pp. 194-297). Others see "a life of great drive and activity [...] leadership extending to the whole of the Catholic Church in Australia" (cf. Ford, Cardinal Moran and the A.L.P., p. xx); "scholar, statesman, democrat and prince of the Church, his wide interests and enlightened leadership influenced the youngest of the nations in the most critical and constructive years of her history" (cf. J.G. Murtagh, Australia: The Catholic Chapter, Melbourne, Polding Press, 1969, p. 152); "Moran saw himself as a prince-bishop and the Catholic Church triumphantly progressing under divine providence" (cf. K.T. Livingston, The Emergence of an Australian Catholic Priesthood, 1835-1915, Sydney, Catholic Theological Faculty, 1977, p. 112).

¹⁷ Cf. Concilium plenum Australasiense, p. viii; Concilium plenum Australiense II, p. vii; Concilium plenum Australiense III, p. viii.

¹⁸ Cf. Preparatory session (SAA, MP, vol. 88).

Future plenary councils, no doubt, would not be so tightly directed by an individual. As they are now seen as an expression of communio between the particular churches,¹⁹ they are the responsibility of the entire episcopal conference, which will convoke them; choose the place of celebration; determine the order of business and the matters to be considered, and announce the beginning, the duration, any transfer of location or prorogation, and the dissolution; and elect a president from among the diocesan bishops.²⁰ This president, although approved by the Apostolic See, is no longer given the authority of an apostolic delegate or legate.

Finally, the celebrations of councils in Australia were always occasions of public celebration on a grand scale. While this may appear to reflect a triumphalism that few would wish today, there is a strong argument in favour of a solemn proclamation of current convictions and future vision, involving the whole Catholic community. The decisions of a bishops' conference, even when the best use is made of the mass media and other instruments of communication, can still appear to be decisions made at a distance by people who are remote. Moreover, the impression may even be given that it is only the episcopacy that has

¹⁹ In the current Code of Canon Law, "De conciliis particularibus" is one of the chapters grouped under "De ecclesiarum particularium coetibus".

²⁰ Cf. c. 441.

any real responsibility for the mission of the Church, at least as regards anything beyond the boundaries of the particular church. Consequently, a solemn conciliar celebration has great potential for involvement and communication.

APPENDIX 1

Chronological development of Australian dioceses

- 1 1804 SYDNEY
 - Prefecture Apostolic of New Holland 29-I-1804
 - Vicariate Apostolic of The Cape of Good Hope, Madagascar, Mauritius, New Holland and the Adjacent Islands 5-IV-1819
 - Vicariate Apostolic of New Holland and Van Dieman's Land 3-VI-1834
 - Diocese of Sydney 5-IV-1842
 - Metropolitan Archdiocese of Sydney 22-IV-1842

- 2 1842 HOBART
 - Diocese of Hobart 5-IV-1842
 - Archdiocese of Hobart 3-VIII-1888

- 3 1842 ADELAIDE
 - Diocese of Adelaide 5-IV-1842
 - Metropolitan Archdiocese of Adelaide 10-V-1887

- 4 1842 MISSION TO THE ABORIGINES
 - Prefecture Apostolic of the Mission to the Aborigines 12-VI-1842
(Suppressed on departure of the prefect apostolic 4-VII-1847)

- 5 1845 PERTH
 - Diocese of Perth 6-V-1845
 - Metropolitan Archdiocese of Perth 28-VIII-1913

- 6 1845 THE SOUND
 - Vicariate Apostolic of The Sound 6-V-1845
(Suppressed; territory returned to Perth and Adelaide 25-VI-1847)

- 7 1845 ESSINGTON
 - Vicariate Apostolic of Essington 6-V-1845
(Suppressed; territory returned to Perth and Sydney 25-VI-1847)

- 8 1847 MELBOURNE
 - Diocese of Melbourne 25-VI-1847
 - Metropolitan Archdiocese of Melbourne 31-III-1874

- 9 1847 DARWIN
 - Diocese of Port Victoria 25-VI-1847
 - Diocese of Victoria and Palmerston 10-VIII-1888
 - Diocese of Darwin 29-III-1938

- 10 1847 MAITLAND
 - Diocese of Maitland 25-VI-1847

Appendix 1 - Chronological Development of Dioceses 254

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|----|------|--|--------------|
| 11 | 1859 | <u>BRISBANE</u> | |
| | | - Diocese of Brisbane | 12-IV-1859 |
| | | - Metropolitan Archdiocese of Brisbane | 10-V-1887 |
| 12 | 1862 | <u>CANBERRA AND GOULBURN</u> | |
| | | - Diocese of Goulburn | 28-XI-1862 |
| | | - Archdiocese of Canberra and Goulburn | 5-II-1948 |
| 13 | 1862 | <u>ARMIDALE</u> | |
| | | - Diocese of Armidale | 28-XI-1862 |
| 14 | 1865 | <u>BATHURST</u> | |
| | | - Diocese of Bathurst | 20-VI-1865 |
| 15 | 1867 | <u>NEW NORCIA</u> | |
| | | - Abbacy nullius of New Norcia | 12-III-1867 |
| | | (Suppressed; territory returned to Perth | 12-III-1982) |
| 16 | 1874 | <u>BALLARAT</u> | |
| | | - Diocese of Ballarat | 31-III-1874 |
| 17 | 1874 | <u>SANDHURST</u> | |
| | | - Diocese of Sandhurst | 31-III-1874 |
| 18 | 1877 | <u>CAIRNS</u> | |
| | | - Vicariate Apostolic of Queensland | 30-I-1877 |
| | | - Vicariate Apostolic of Cooktown | 10-V-1887 |
| | | - Diocese of Cairns | 8-VII-1941 |
| 19 | 1882 | <u>ROCKHAMPTON</u> | |
| | | - Diocese of Rockhampton | 29-XII-1882 |
| 20 | 1887 | <u>LISMORE</u> | |
| | | - Diocese of Grafton | 10-V-1887 |
| | | - Diocese of Lismore | 13-VI-1900 |
| 21 | 1887 | <u>WILCANNIA-FORBES</u> | |
| | | - Diocese of Wilcannia | 10-V-1887 |
| | | - Diocese of Wilcannia-Forbes | 28-VII-1917 |
| 22 | 1887 | <u>SALE</u> | |
| | | - Diocese of Sale | 10-V-1887 |
| 23 | 1887 | <u>PORT PIRIE</u> | |
| | | - Diocese of Port Augusta | 10-V-1887 |
| | | - Diocese of Port Pirie | 7-VI-1951 |

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|----|------|--|-------------|
| 24 | 1887 | <u>BROOME</u> | |
| | | - Vicariate Apostolic of Kimberley | 10-V-1887 |
| | | - Vicariate Apostolic of Kimberley in Western Australia | 28-XI-1918 |
| | | - Vicariate Apostolic of The Kimberleys | 13-XI-1959 |
| | | - Diocese of Broome | 7-VI-1966 |
| 25 | 1887 | <u>QUEENSLAND FOR THE ABORIGINES</u> | |
| | | - Vicariate Apostolic of Queensland for the Aborigines | 10-V-1887 |
| | | (Never formally erected; omitted from <u>L'Annuario Pontificio per l'anno 1933</u> and thereafter) | |
| 26 | 1898 | <u>GERALDTON</u> | |
| | | - Diocese of Geraldton | 30-I-1898 |
| 27 | 1910 | <u>DRYSDALE RIVER</u> | |
| | | - <u>Missio sui iuris</u> of Drysdale River | 4-V-1910 |
| | | - <u>Missio sui iuris</u> of Kalumburu | 8-IX-1971 |
| | | (Suppressed; territory returned to Broome | 11-V-1981) |
| 28 | 1917 | <u>WAGGA WAGGA</u> | |
| | | - Diocese of Wagga Wagga | 28-VII-1917 |
| 29 | 1929 | <u>TOOWOOMBA</u> | |
| | | - Diocese of Toowoomba | 28-V-1929 |
| 30 | 1930 | <u>TOWNSVILLE</u> | |
| | | - Diocese of Townsville | 12-II-1930 |
| 31 | 1951 | <u>WOLLONGONG</u> | |
| | | - Diocese of Wollongong | 15-XI-1951 |
| 32 | 1954 | <u>BUNBURY</u> | |
| | | - Diocese of Bunbury | 12-XI-1954 |
| 33 | 1958 | <u>SAINTS PETER & PAUL OF MELBOURNE OF THE UKRAINIANS</u> | |
| | | - Apostolic Exarchate for Ukrainians of Byzantine Rite in Australia | 10-V-1958 |
| | | - Apostolic Exarchate for Ukrainians of Byzantine Rite in Australia, New Zealand and Oceania | 12-XII-1958 |
| | | - Eparchy of Saints Peter and Paul of Melbourne of the Ukrainians | 24-VI-1982 |
| 34 | 1969 | <u>AUSTRALIAN MILITARY ORDINARIATE</u> | |
| | | - Australian Military Vicariate | 6-V-1969 |
| | | - Australian Military Ordinariate | 21-VI-1986 |

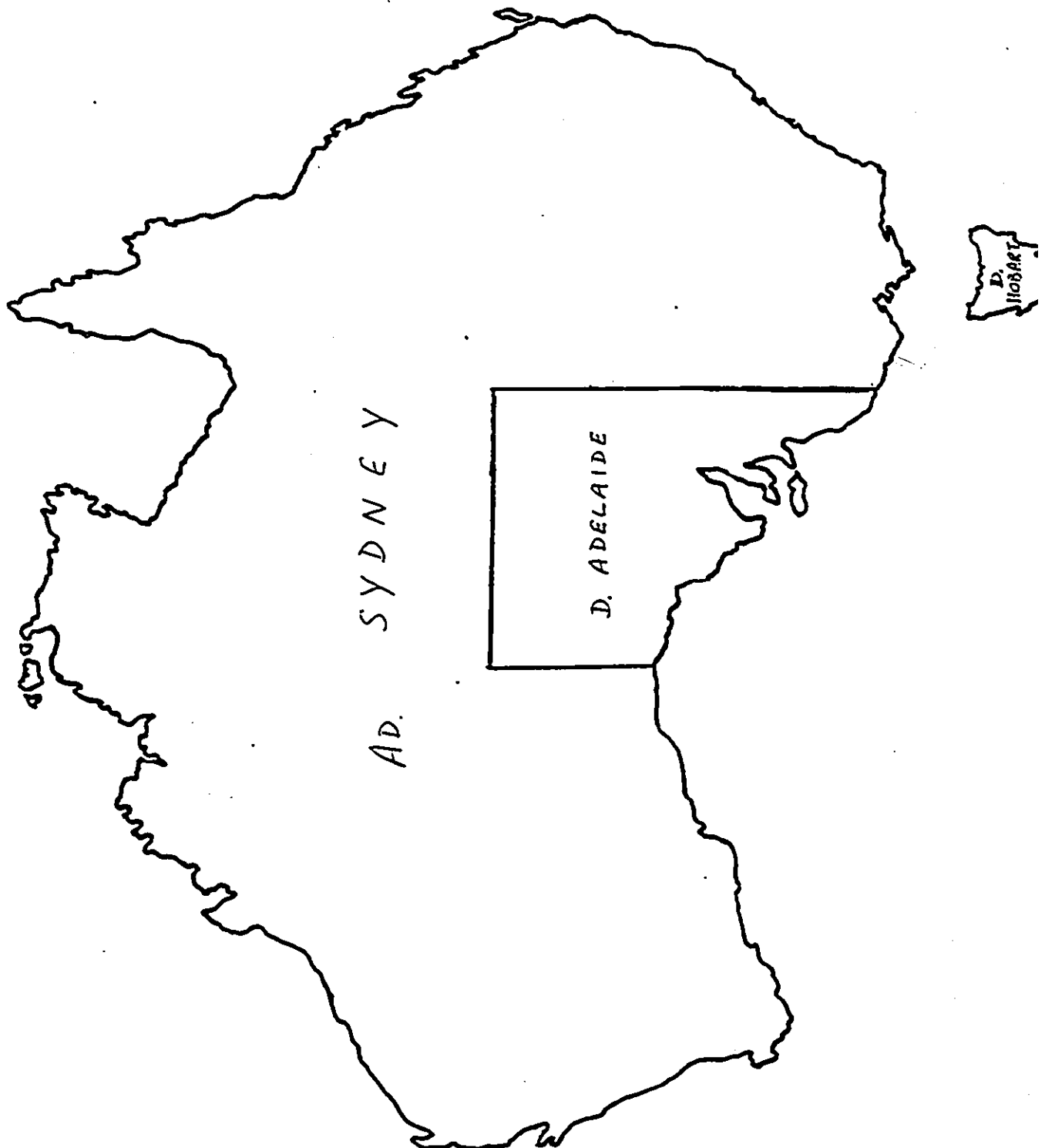
Appendix 1 - Chronological Development of Dioceses 256

- 35 1973 SAINT MARON OF SYDNEY OF THE MARONITES
- Eparchy of Saint Maron of Sydney of
the Maronites 25-VI-1973
- 36 1986 PARRAMATTA
- Diocese of Parramatta 8-IV-1986
- 37 1986 BROKEN BAY
- Diocese of Broken Bay 8-IV-1986
- 38 1987 SAINT MICHAEL OF SYDNEY OF THE GREEK MELKITE
CATHOLICS
- Eparchy of Saint Michael of Sydney of
the Greek Melkite Catholics 20-III-1987

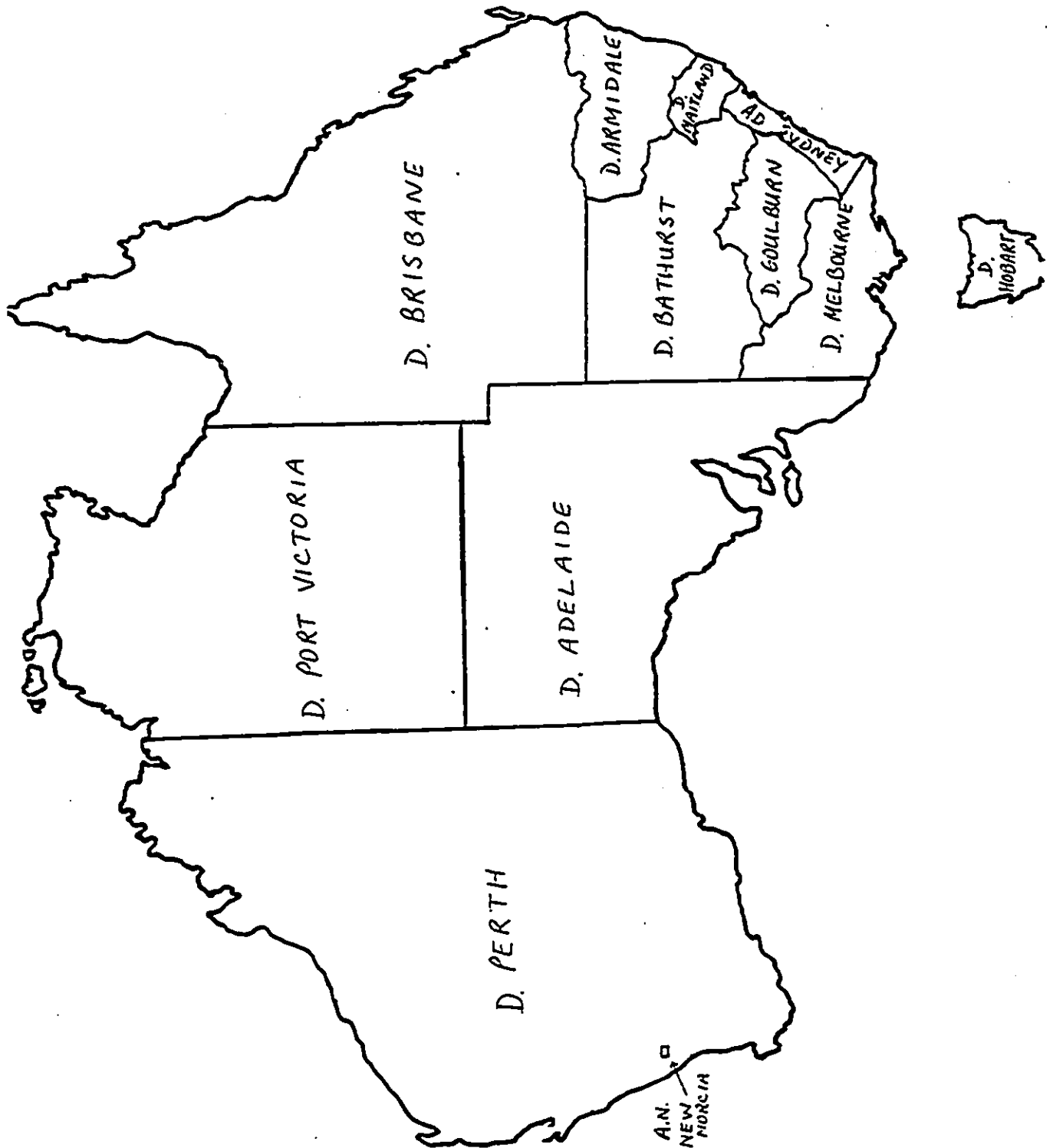
APPENDIX 2

Ecclesiastical maps of Australia

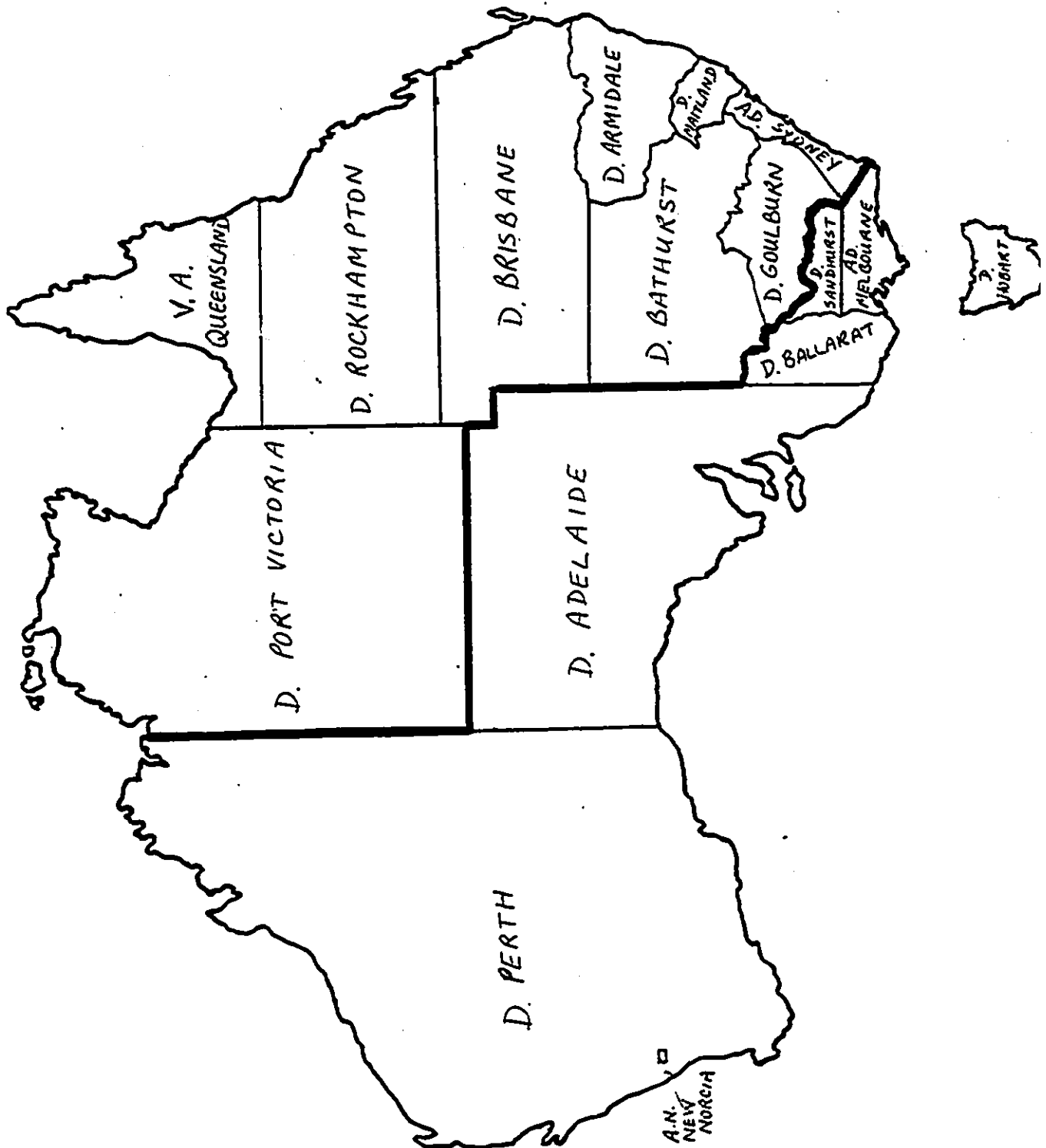
2.1 - Dioceses in 1844



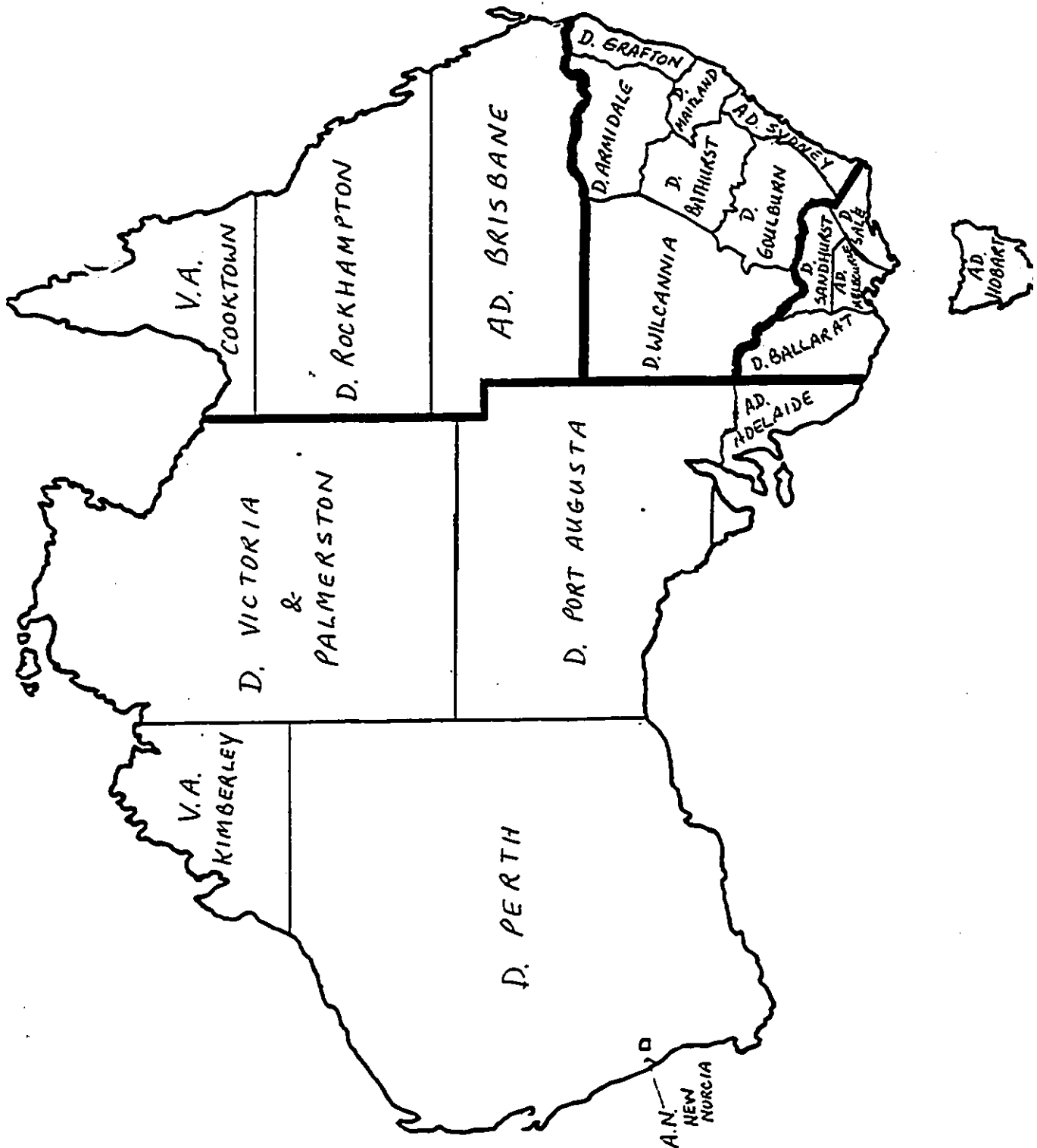
2.2 - Dioceses in 1869



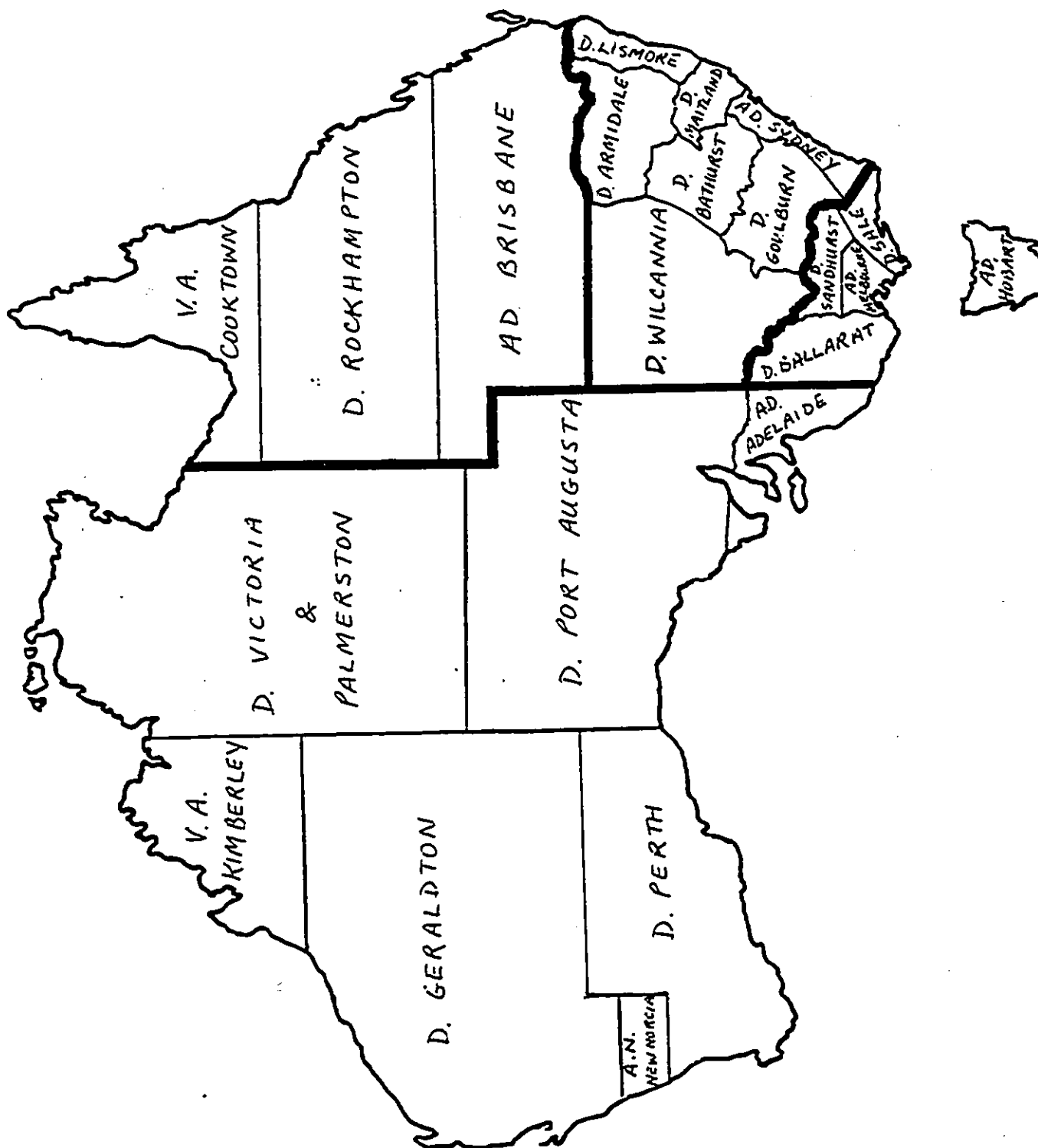
2.3 - Dioceses in 1885



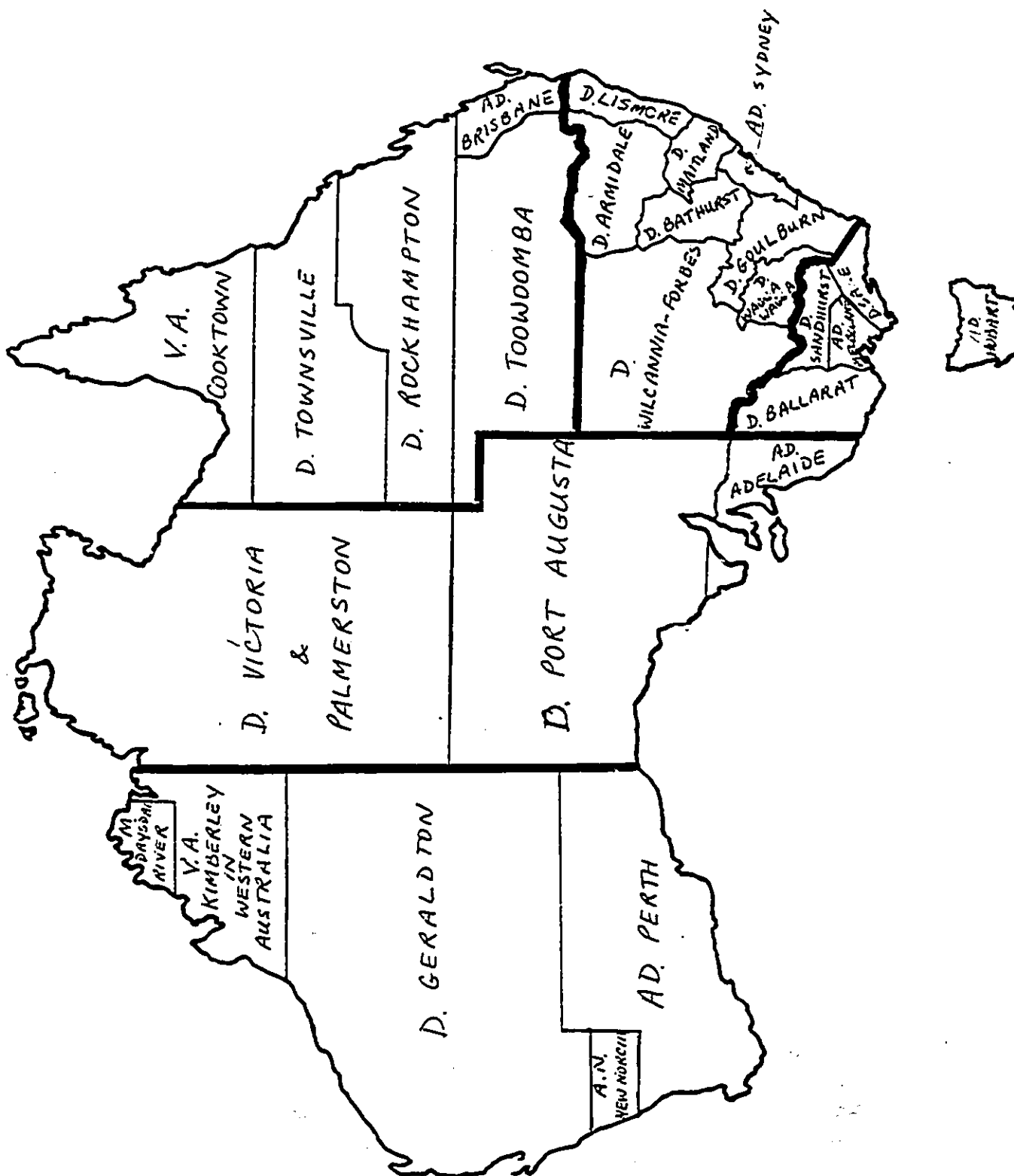
2.4 - Dioceses in 1895



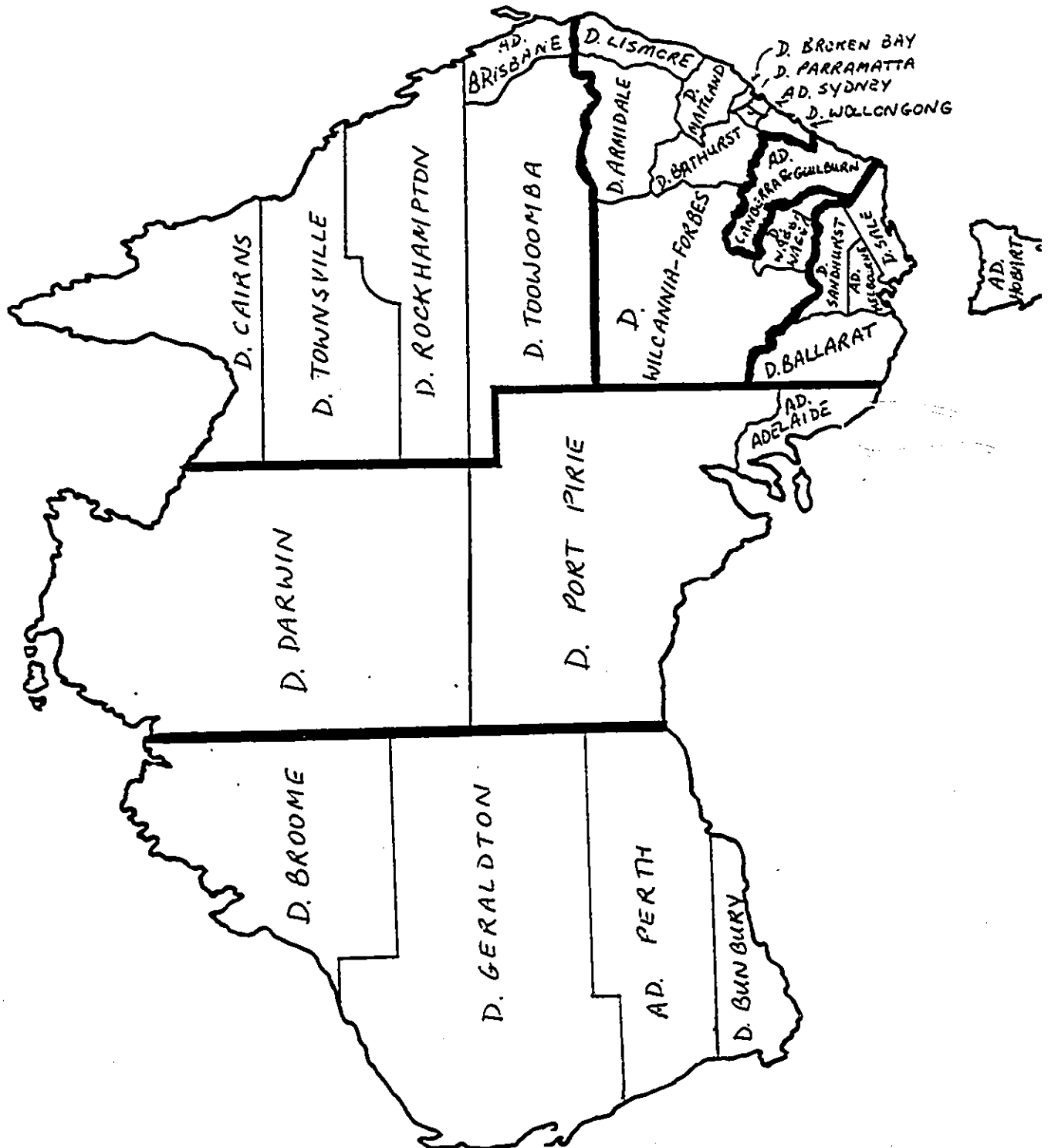
2.5 - Dioceses in 1905



2.6 - Dioceses in 1937



2.7 - Dioceses in 1990



APPENDIX 3

A comparison of the original and corrected texts of the decrees on diocesan consultors¹

De Canonicis

29. Quamquam Ecclesiarum Australiensium circumstantiae nundum tales esse videantur quae cum praescripta a Sacris Canonibus Capitulorum erectione omni ex parte componi possent, tamen aliquot Titulares Canonicos in singulis Dioecesibus constituendos opportunum ducimus qui inter clerum dignitate emineant, et clare definita munera exercentes Episcopo adjumentum in regenda Ecclesia praebeant, et veluti ex officio Consultores illius sint in Dioecesanis majoris momenti negotiis.

De Consultoribus Dioecesanis

29. Quamquam Ecclesiarum Australiensium circumstantiae nundum tales esse videantur quae cum praescripta a Sacris Canonibus Capitulorum erectione omni ex parte componi possent, tamen aliquot Consultores in singulis Dioecesibus constituendos opportunum ducimus qui inter clerum dignitate emineant, et clare definita munera exercentes Episcopo adjumentum in regenda Ecclesia praebeant.

30. Ut autem uniformitas, in quantum fieri potest, servatur, volumus ut in unaquaque Dioecesi sex vel ad minus quatuor ejusmodi Canonicos constituentur; ubi vero tot Sacerdotes omnibus requisitis dotibus instructi haberi non possunt, sint saltem Canonici duo.

30. Ut autem uniformitas, in quantum fieri potest, servatur, volumus ut in unaquaque Dioecesi sex vel ad minus quatuor ejusmodi Consultores constituentur; ubi vero tot Sacerdotes omnibus requisitis dotibus instructi haberi non possunt, sint saltem Consultores duo.

¹ Cf. AP, Acta, vol. 257(1887), ff. 101^r-101^v. (This indented format is preferred to columns, as the long words make comparison in columns untidy. The text to the left is the original one; that to the right is the corrected one).

31. Canonorum autem in suis respective Dioecesibus attributiones hae sunt:

(1) Vacante Episcopali sede eorum erit conjunctim cum Parochis inamovibilibus tria Ecclesiasticorum nomina proponere Provinciae Episcopis, juxta normam jam descriptam.

(2) Saltem bis in anno in praecipuis solemnitatibus, quae in Synodo Dioecesana definientur, inter Missarum solemnias Episcopo in Cathedrali Ecclesia adsistent.

(3) Canonorum consilium exquiretur ab Episcopo: (a) in assignando tempore quo singulis annis Synodus Dioecesana celebrabitur; (b) quoad nova Statuta si qua forte in Synodo Dioecesana proponenda sint; (c) quoties paroecia aliqua dismembranda sit, in quo casu pariter exquirendum erit consilium Parochi seu Sacerdotis qui parochialem districtum administrat; (d) quoties paroeciae alicujus administratio familiae Religiosae tradenda sit, ad cujus transactionis validitatem requiritur etiam venia Sanctae Sedis; (e) de novo eligendo Canonico, quoties Canonicatus vacare contigerit.

31. Consultorum autem in suis respective Dioecesibus attributiones hae sunt:

(1) Vacante Episcopali sede eorum erit conjunctim cum Rectoribus Paroecialibus inamovibilibus tria Ecclesiasticorum nomina proponere Provinciae Episcopis, juxta normam jam descriptam.

(2) Saltem bis in anno in praecipuis solemnitatibus, quae in Synodo Dioecesana definientur, inter Missarum solemnias Episcopo in Cathedrali Ecclesia adsistent.

(3) Consultorum consilium exquiretur ab Episcopo: (a) in assignando tempore quo singulis annis Synodus Dioecesana celebrabitur; (b) quoad nova Statuta si qua forte in Synodo Dioecesana proponenda sint; (c) quoties paroecia aliqua dismembranda sit, in quo casu pariter exquirendum erit consilium Rectoris seu Sacerdotis qui parochialem districtum administrat, servata constitutione "Romanos Pontifices";² (d) quoties paroeciae alicujus administratio familiae Religiosae tradenda sit, ad cujus transactionis validitatem requiritur etiam venia Sanctae Sedis; (e) de novo eligendo Consultore.

² The words servata constitutione "Romanos Pontifices" were omitted from the printed version (cf. Concilium plenum Australasiense, p. 16).

32. Insuper necessarium erit Canonorum consilium, in scriptis tradendum, quoties agitur de alienandis bonis Ecclesiasticis quae valorem bis centum librarum sterlingarum superant, necnon in constituendis hypothecis aliisque quae speciem alienationis praeseferunt, quoad praedictam summam.

32. Insuper necessarium erit Consultorum consilium, in scriptis tradendum, quoties agitur de alienandis bonis Ecclesiasticis quae valorem bis centum librarum sterlingarum superant, necnon in constituendis hypothecis aliisque quae speciem alienationis praeseferunt; necessaria praeterea erit in hujusmodi alienationis venia S. Sedis.

33. Sede Episcopali vacante Administrator Dioecesanus Canonorum consilium exquirere tenetur juxta praefatam normam. Si autem eo tempore canonicatus vacare contigerit non ab Administratore sed a novo Episcopo Canonicus est eligendus.

33. Sede Episcopali vacante Administrator Dioecesanus Consultorum consilium exquirere tenetur juxta praefatam normam. Si autem eo tempore canonicatus³ vacare contigerit non ab Administratore sed a novo Episcopo Consultor est eligendus.

³ Although the word canonicatus was left - apparently inadvertantly - in the corrected text, it was replaced by officium Consultoris in the printed version (cf. *ibid.*, p. 17).

34. Canonicus renunciare potest suo muneri invitatus autem removeri non potest ab Episcopo nisi legitima accedente causa qualis in Beneficii Ecclesiastici privatione haberi solet et habito insuper caeterorum Canonicorum consilio.

34. Consultores eligentur ad triennium. Postquam electi fuerint nullus eorum invitatus removeri potest, nisi ex legitima et justa causa et de consilio caeterorum Consultorum. Justa autem aderit causa si ob senectutem, infirmitatem et similia ad Consultoris partes obeundas inhabilis effectus fuerit, aut graviter delinquendo munere hujusmodi honorifico indignum sese reddiderit, vel propria culpa notabile passus sit famae detrimentum. In locum Consultoris recedentis, sive remotionis, sive renunciationis via, Episcopus alium sufficiet de Consilio tamen reliquorum Consultorum. Casu quo triennium expirare contigerit tempore vacationis sedis Episcopalis, Consultores in officio manebunt usque ad accessum novi Episcopi qui intra sex menses a consecratione sua ad Consultorum electionem instituendam tenetur.

APPENDIX 4

Provincial and plenary councils held in Great Britain, Ireland, and North America in the nineteenth and twentieth centuries

CANADA

1	1851	First Provincial Council of Québec
2	1854	Second Provincial Council of Québec
3	1857	First Provincial Council of Halifax
4	1863	Third Provincial Council of Québec
5	1868	Fourth Provincial Council of Québec
6	1873	Fifth Provincial Council of Québec
7	1875	First Provincial Council of Toronto
8	1878	Sixth Provincial Council of Québec
9	1886	Seventh Provincial Council of Québec
10	1889	First Provincial Council of St-Boniface
11	1895	First Provincial Council of Montréal
12	1909	First Plenary Council of Québec
13	1938	First Provincial Council of Kingston
14	1938	Second Provincial Council of Toronto

ENGLAND AND WALES

1	1852	First Provincial Council of Westminster
2	1855	Second Provincial Council of Westminster
3	1859	Third Provincial Council of Westminster
4	1873	Fourth Provincial Council of Westminster

IRELAND

1	1817	Provincial Council of Tuam
2	1849	Provincial Council of Tuam
3	1850	Plenary Council of Ireland at Thurles
4	1853	Provincial Council of Dublin
5	1853	Provincial Council of Cashel
6	1854	Provincial Council of Armagh
7	1854	Provincial Council of Tuam
8	1858	Provincial Council of Tuam
9	1875	Plenary Council of Ireland at Maynooth
10	1900	Plenary Council of Ireland at Maynooth
11	1907	Provincial Council of Tuam
12	1907	Provincial Council of Cashel
13	1908	Provincial Council of Dublin
14	1908	Provincial Council of Armagh
15	1927	Plenary Council of Ireland at Maynooth
16	1933	Provincial Council of Tuam
17	1938	Provincial Council of Armagh
18	1956	Plenary Council of Ireland at Maynooth

MEXICO

1	1892-93	First Provincial Council of Antequera
2	1896	Fifth Provincial Council of México
3	1896	First Provincial Council of Durango
4	1896-97	First Provincial Council of Guadalajara
5	1897	First Provincial Council of Michoacán

SCOTLAND

1	1886	First Plenary Council of Scotland
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UNITED STATES OF AMERICA

1	1829	First Provincial Council of Baltimore
2	1833	Second Provincial Council of Baltimore
3	1837	Third Provincial Council of Baltimore
4	1840	Fourth Provincial Council of Baltimore
5	1843	Fifth Provincial Council of Baltimore
6	1846	Sixth Provincial Council of Baltimore
7	1848	First Provincial Council of Oregon City
8	1849	Seventh Provincial Council of Baltimore
9	1852	First Plenary Council of Baltimore
10	1854	First Provincial Council of New York
11	1855	Eighth Provincial Council of Baltimore
12	1855	First Provincial Council of Cincinnati
13	1855	First Provincial Council of St Louis
14	1856	First Provincial Council of New Orleans
15	1858	Ninth Provincial Council of Baltimore
16	1858	Second Provincial Council of Cincinnati
17	1858	Second Provincial Council of St Louis
18	1860	Second Provincial Council of New York
19	1860	Second Provincial Council of New Orleans
20	1861	Third Provincial Council of Cincinnati
21	1861	Third Provincial Council of New York
22	1866	Second Plenary Council of Baltimore
23	1869	Tenth Provincial Council of Baltimore
24	1873	Third Provincial Council of New Orleans
25	1874	First Provincial Council of San Francisco
26	1880	First Provincial Council of Philadelphia
27	1881	Second Provincial Council of Oregon City
28	1882	Fourth Provincial Council of Cincinnati
29	1882	Second Provincial Council of San Francisco
30	1883	Fourth Provincial Council of New York
31	1884	Third Plenary Council of Baltimore
32	1886	First Provincial Council of Milwaukee
33	1889	Fifth Provincial Council of Cincinnati
34	1891	Third Provincial Council of Oregon City
35	1932	Fourth Provincial Council of Portland in Oregon
36	1957	Fifth Provincial Council of Portland in Oregon

BIBLIOGRAPHY

1 - UNPUBLISHED SOURCES

1.1 - Archivio della Sacra Congregazione de Propaganda Fide

1.1.1 - Acta della Sacra Congregazione de Propaganda Fide. Vols 210(1847), 213(1851), 218(1854), 228(1864), 229 (1865), 238(1872), 241(1874), 257(1887), 264(1894), 265(1895), 271 (1900), 277(1905), 278(1905), 285(1912), 286(1913), 288 (1916), 289(1917-1918).

1.1.2 - Lettere e decreti della Sacra Congregazione e Biglietti di Monsignor Segretario. Vols 300(1819), 343 (1852), 369(1873), 370(1874), 373(1877), 378(1882), 381 (1885), 386(1890).

1.1.3 - Nuova serie. Vols 34(1894), 51(1894), 146(1898), 170(1899), 178(1900), 195(1900), 216(1901), 334(1905), 464 (1908), 471(1909), 512(1912).

1.1.4 - Scritture originali riferite nelle Congregazioni Generali. Vols 969(1847), 981(1856), 991(1864), 1018(1883), 1026(1887).

1.1.5 - Scritture riferite nei Congressi - Oceania. Vols 1(1816-1841), 6(1858-1860), 7(1861-1864), 10(1873-1876), 11 (1877-1878), 14(1882-1884), 17(1890-1892).

1.1.6 - Udienze di Nostro Signore. Vols 42(1804), 50 (1812), 54(1816), 96(1842), 106(1847), 228(1888), 241(1891), 250(1892).

1.2 - Irish College Archives

Kelly Correspondence.
Moran-Kirby Letters.
New Collection - Kirby.

1.3 - Maitland Diocesan Archives

Correspondence of Bishop Dwyer.
Correspondence of Bishop Murray.

1.4 - Melbourne Diocesan Historical Commission Archives

Archbishop Goold's Diaries.
Carr Correspondence.
Goold Correspondence.
Hierarchy File.
Holy See File.

1.5 - Scottish National Catholic Archives

Section ED4 (William Smith Period): nos 68-80.

1.6 - Sydney Archdiocesan Archives

Moran Papers: vols 5, 88, 91, 152, 197, 217, 230.

The Morning Chronicle, 1844.

Polding Papers.

Synodal Matters File.

1.7 - Westminster Diocesan Archives

Documentation of Westminster Provincial Synods.

2 - PRINTED SOURCES

2.1 - General Sources

Acta Apostolicæ Sedis: commentarium officiale, Romæ, 1909-1928, Civitate Vaticana, Typis Polyglottis Vaticanis, 1929- .

Acta Sanctæ Sedis, Romæ, ex Typographia polyglotta S.C. de propaganda fide, 1865-1909, 41 vols.

Annuario pontificio per l'anno [...], Roma, Tipografia polyglotta vaticana, [etc.], 1716- , interrupted between 1798-1817 & 1870-1872, title has varied since inception.

BRADY, W.M., The Episcopal Succession in England, Scotland and Ireland, A.D. 1400 to 1875, with a new introd. by A.F. Allison, Rome, 1876-1877; Westmead, Eng., Gregg, 1971, 3 vols.

Cæremoniale episcoporum Clementis VIII, Innocenti X et Benedicti XIII jussu editum, Benedictum XIV et Leonis XIII auctoritate recognitum, ed. 'la post typicam, Ratisbonæ, F. Pustet, 1902, xx-308 p.

Cæremoniale episcoporum ex decreto Sacrosancti Oecumenici Concilii Vaticani II instauratum auctoritate Ioannis Pauli Pp. II promulgatum, editio typica, Typis polyglottis Vaticanis, 1985, 393 p.

Canon Law Digest: Officially published documents affecting the Code of Canon Law, Milwaukee, Bruce Publishing Co., 1934-1969, vols 1-6; Chicago, Canon Law Digest-Chicago Province S.J., 1975-1986, vols 7-10.

- The Code of Canon Law in English Translation, prepared by the Canon Law Society of Great Britain and Ireland in association with The Canon Law Society of Australia and New Zealand and the Canadian Canon Law Society, Sydney, Collins, 1983, xv-319 p.
- Code of Canon Law, Latin-English edition, translated under the auspices of the Canon Law Society of America, Washington, D.C., Canon Law Society of America, 1983, xxviii-668 p.
- Codex iuris canonici auctoritate Ioannis Pauli II promulgatus, Città del Vaticano, Libreria Editrice Vaticana, 1983, xx- 317 p.
- Codex iuris canonici Pii X Pontifici Maximi iussu digestus, Benedicti Papae XV auctoritate promulgatus, praefatione, fontium annotatione et indice analytico-alphabetico ab Emo Petro Card. Gasparri auctus, New York, Kenedy, 1918, xlvii-777 p.
- Collectanea S. Congregationis de Propaganda Fide, seu decreta, instructiones, rescripta pro apostolicis missionaribus, Romæ, Typographia polyglotta S.C. de Propaganda Fide, 1893, xi-924 p; 2a ed., 1907, 2 vols.
- DENZINGER, H., and A. SCHÖNMETZER (eds), Enchiridion symbolorum definitionum et declarationum de rebus fidei et morum, ed. 36a. emendata, Barcinone, Herder, 1976, xxxii-954 p.
- EUBEL, C., et al. (eds), Hierarchia catholica medii et recentioris ævi; sive, Summorum Pontificum, S.R.E. cardinalium, ecclesiarum antistitum series e documentis tabularii praesertim Vaticani collecta, digesta, edita, Patavii, Il Messagero di S. Antonio, 1913- , 8 vols to date.
- GASPARRI P., et J. SERÉDI (eds), Codicis iuris canonici fontes, Romæ, Typis Polyglottis Vaticanis, 1926-1939, 9 vols.
- Iuris pontificii de propaganda fide pars prima, complectens bullas, brevia, acta S.S., a Congregationis institutione ad praesens iuxta temporis seriem disposita auspice Emo ac Rmo Dño S.R.E. Cardinali Ioanne Simeoni, S.C. de Propaganda fide praefecto, cura et studio Raphaëlis de Martinis eiusdem Cong. consult. et Congregationis Missionis sacerdotis, etc. Romæ, ex Typographia polyglotta S.C. de propaganda fide, 1888-1909, 7 tomes in 8 vols.

Iuris pontificii de propaganda fide pars secunda, complectens decreta, instructiones, encyclicas litteras, etc. ab eadem Congregatione latae auspice Emo ac Rmo Dño S.R.E. Cardinali Mieczisłao Ledóchowski, S.C. de Propaganda fide praefecto nunc primum collecta cura ac studio Raphaëlis de Martinis, archiepiscopi tit. Laodicensis eiusdem Cong. consult. et Congr. Missionis procurat. g. etc., Romae, ex Typographia polyglotta S.C. de propaganda fide, 1909, 768 p.

LEO XIII, "Constitutio, 'Romanos Pontifices', qua nonnulla controversiarum capita inter episcopos et missionarios regulares Angliae et Scotiae definiuntur", die 8a maji, 1881, in Acta Sanctae Sedis, 13(1880-1881), pp. 481-498.

-----, Leonis XIII Pontificis Maximi acta, Romae, Typographia Vaticana, 1881-1905, 23 vols.

PALAZZINI, P. (ed.), Dizionario dei concili, Roma, Città Nuova Editrice, 1963-1967, 6 vols.

PIUS IX, Pii IX Pontificis Maximi acta, pars prima, Acta exhibens quae ad Ecclesiam universam spectant, Romae, vols. 1-4, Typographia Bonarum Artium; vols 5-7, Typographia Vaticana, 1854-1878, 7 vols.

Pontificale romanum in tres partes distributum, Clementis VIII ac Urbani VIII auctoritate recognitum, nunc primum prolegomenis et commentariis illustratum, auctore Josepho Catelano, nova editio recognita et novis commentariis et annotationibus locupletata, accurante aliquo sacrorum rituum cultore, Paris, J. Leroux et Jouby, 1850-1852, 3 vols.

PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECOGNOSCENDO, Communicationes, Città del Vaticano, Libreria Editrice Vaticana, 1969- .

-----, Schema canonum libri II de populo Dei, Typis Polyglottis Vaticanis, 1977, 159 p.

Praxis synodalis: manuale synodi diocesanae ac provincialis celebrandae, New York, Benziger Bros, 1883, 95 p.

ROMMERSKIRCHEN, G., and S.M. PAVENTI, "Elencho bibliografico dei sinodi e concili missionari", in Bibliografia missionaria, 9(1942), pp. 51-164.

SAWICKI, J.T., Bibliographia synodorum particularium, Civitate Vaticana, S.C. de Seminariis et Studiorum Universitatibus, 1967, xxx-397 p.

2.2 - General Conciliar Sources

Acta et decreta sacrorum conciliorum recentiorum: Collectio Lacensis, auctoribus presbyteris S.J. e domo B.V.M. sine labe Conceptae ad Lacum, Friburgi Brisgovia, Herder, 1870-1892, 7 vols.

Canons and Decrees of the Council of Trent, original text and English translation by H.J. SCHROEDER, St Louis, B. Herder, 1941, xxxiii-608 p.

MANSI, G.D. (ed.), Sacrorum Conciliorum nova et amplissima collectio, Parisiis, H. Welter, 1901-1927, 53 vols in 60.

2.3 - Australian Sources

Acta et decreta Concilii plenarii Australasiae, habiti apud Sydney A.D. 1885, a Sancta Sede recognita, Sydney, F. Cunninghame, 1887, xl-184 p.

Acta et decreta Concilii plenarii Australiensis II, habiti apud Sydney A.D. 1895, a Sancta Sede recognita, Sydney, F. Cunninghame, 1898, xlviii-205 p.

Acta et decreta Concilii plenarii Australiensis III, habiti apud Sydney A.D. 1905, a Sancta Sede recognita, Sydney, W. Brooks, 1907, xlviii-179 p.

Acta et decreta Concilii primi provinciae Australiensis a reverendissimo archiepiscopo Sydneiensi una cum praesulibus provinciae suae suffraganeis, anno Domini MDCCCXLIV pontificatus Gregorii Papae XVI decimo quarto celebrati, a Sancta Sede approbata, Sydney, F. Cunninghame, n.d., 25 p.

Acta et decreta Conciliorum primi et secundi provincialium Australiensium et synodorum primae, secundae, tertiae, quartae, quintae, et sextae, dioecesanarum Melbournensium, Melbourne, Advocate Press, 1891, vi-22-8-17-13-16-8-4-3-3 p.

Acta et decreta Synodi provincialis Melbournensis lae apud Melbourne habitae 17-24 novembris, 1907, Melbourne, Advocate Press, 1909, xxviii-97 p.

Ceremonial for the use of Members of the National Synod of the Australias, 1885, Sydney, Flanagan, 1885, 52 p.

Ceremonial for the use of the Members of the Second National Synod of Australia, 1895, Sydney, Cunninghame, 1895, 52 p.

Concilium plenum IV Australiae et Novae Zelandiae, habitum apud Sydney a die 4a ad diem 12am mensis septembris anno Domini 1937, praeside Excell.mo ac Rev.mo Domine Joanne Panico, archiepiscopo tit. Justinianen. delegato apostolico, a Sancta Sede recognitum, editio officialis, Manly, N.S.W., Manly Daily Pty Ltd, 1937, lv-207 p.

Decrees of the Diocesan Synod of Sydney, held at St Patrick's College, Manly, by His Eminence the Cardinal Archbishop, the 29th day of July, 1891, n.p., n.d., 35 p.

GOOLD, J.A., The Diaries of Archbishop Goold, F.D. MINOGUE (ed.), Melbourne, Graphic Books, 1979, xix-236 p.

O'FARRELL, P. (ed.), Documents in Australian Catholic History, London, G. Chapman, 1969, 2 vols.

The Pastoral Letter of the Archbishop and Bishops of the Province, assembled in the Second Provincial Council of Australia, held in St Patrick's Cathedral, Melbourne, in the year of Our Lord, 1869, Melbourne, Clarkson, Massima, 1869, 18 p.

Pastoral Letter of the Archbishop and Bishops of the Province of Melbourne, to the Clergy and Laity of the Province, Melbourne, Advocate, 1907, 25 p.

Pastoral Letter of the Archbishops and Bishops of Australasia, in Plenary Council assembled, to the Clergy and Laity of their charge, Sydney, Cunningham, 1886, 38 p.

Pastoral Letter of the Archbishops and Bishops of Australia in Second Plenary Council assembled, 1895, Sydney, Batson, 1895, 47 p.

Pastoral Letter of the Cardinal Delegate, Archbishops and Bishops of the Australian Commonwealth in Plenary Council assembled, to the Clergy and Laity of their charge, Sydney, Cunningham, 1905, 39 p.

POLDING, J.B., The Eye of Faith: The Pastoral Letters of John Bede Polding, G. HAINES, M.G. FORSTER, and F. BROPHY (eds), Kilmore, Vic., Lowden, 1981, xvi-430 p.

Prima synodus dioecesis Melbournensis, habita in ecclesia Sancti Patritii, diebus X et XI martii, 1875, Melbourne, Mason, Firth and McCutcheon, n.d., 30 p.

Proceedings of the First Australasian Catholic Congress, held in St Mary's Cathedral, Sydney, 10th September, 1900, Sydney, St Mary's Cathedral, 1900, xv-857 p.

Proceedings of the Second Australasian Catholic Congress, held in the Cathedral Hall, Melbourne, October 24th to 31st, 1904, Melbourne, St Patrick's Cathedral, 1905, xiii-697-54 p.

The Proceedings of the Second Provincial Council of Australia, held in Melbourne, April 1869, together with portraits of His Grace the Archbishop of Sydney, Metropolitan, and of the Lord Bishops of Hobart Town, Melbourne, Brisbane, Bathurst, Maitland, Adelaide, and Goulburn, to which is added a Report of the Déjeûner to the Catholic Hierarchy of Australia, Melbourne, S.W. Winter, [1869], 24 p.

Proceedings of the Third Australasian Catholic Congress, held at St Mary's Cathedral, Sydney, 26th September - 3rd October 1909, Sydney, St Mary's Cathedral Book Depot, 1910, xvi-692 p.

Resolutions of the Synodical Conference of the Archbishops and Bishops of Australia, held in Sydney in January, 1888; Synodical Conference of the Archbishops and Bishops of Australia, held in Goulburn June 30th, and July 1st, 1890, n.p., n.d., 4 p.

Submission made to the Episcopal Conference by the Canon Law Society of Australia regarding the binding force of the Decrees of the Fourth Plenary Council, mimeographed, [1970], 47 p.

2.4 - British Sources

Acta et decreta Concilii Scotiæ plenarii primi post redintegratam hierarchiam, Edinburgh, 1888, xxvii-277 p.

Decreta quatuor conciliorum provincialium Westmonasteriensium 1852-1873, adiectis pluribus decretis, rescriptis, aliisque documentis, editio secunda, London, Burns and Oates, n.d., xii-454-xxiii p.

Ordo administrandi sacramenta et alia quædam officia peragendi ex Rituali romano extractus nonnullis adiectis ex antiquo rituali anglicano, Londini, Burns et Oates, 1915, xii-321 p.

The Synods in English: being the text of the four Synods of Westminster, translated into English, and arranged under headings, with numerous documents and references by the Rev. Robert E. Guy, O.S.B., under the supervision of The Right Reverend Bishop Headley, O.S.B., with a preface by the same, Stratford-on-Avon, St Gregory's Press, 1886, iv-312-iv p.

2.5 - Canadian Sources

Acta a theologis specialiter deputatis praeeparata ad futurum Concilium plenarium Canadense primum, Québec, 1904-1905, 3 vols.

Acta et decreta Concilii plenarii Quebecensis primi, anno Domini MCMIX, Quebeci, L'Action sociale, 1912, viii-711 p.

Acta et decreta Concilii provincialis Marianopolitani primi A.D. MDCCCXCV praeside Illmo et Rmo Eduardo Carolo Fabre, archiepiscopo Marianopolitano, Marianopoli, ex Typographia Arbour & Laperle, 1901, 339-223-xliv p.

Acta et decreta primi Concilii provinciae Sancti Bonifacii, 1889, St-Boniface, 1892, 102 p.

Acta et decreta primi Concilii provincialis Halifaxiensis habiti in ecclesia metropolitana S. Mariae mense Septembri MDCCCLVII, Halifaxia, ex Typis Compton et Bowden, 1860, 76 p.

Acta et decreta primi Concilii provincialis Torontini in ecclesia metropolitana Sti. Michaelis celebrati mense septembris MDCCCLXXV, a Sancta Sede revisa et recognita anno III^o pontificatus Leonis P.P. XIII, additis quibusdam aliorum conciliorum decretis, Toronto, Hunter, Rose, 1882, 163 p.

Acta et decreta quinti Concilii provinciae Quebecensis in Quebecensi civitate anno Domini MDCCCLXXIII celebrati a Sancta Sede revisa et recognita, Quebeci, P.-G. Delisle, 1875, 127 p.

Acta et decreta septimi Concilii provinciae Quebecensis in Quebecensi civitate anno Domini MDCCCLXXXVI celebrati a Sancta Sede revisa et recognita, Quebeci, Côté, 1888, 92 p.

Acta et decreta sexti Concilii provinciae Quebecensis in Quebecensi civitate anno Domini MDCCCLXXXVIII celebrati a Sancta Sede revisa et recognita, Quebeci, P.-G. Delisle, 1882, 84 p.

Appendice au Rituel romain à l'usage des provinces ecclésiastiques de Québec, Montréal, Ottawa, publié par l'ordre et avec l'approbation de NN. SS. les archevêques et évêques des ces provinces, Québec, N.-S. Hardy, 1890, 406 p.

Concilia provinciæ Quebecensis I, II, III, IV in Quebecensi civitate celebrata et a Sancta Sede revisa et recognita, Quebeci, P.-G. Delisle, 1870, 321 p.

Extrait du Rituel de Québec, contenant l'administration des sacrements [sic] de baptême, de la confirmation, de pénitence, de l'Eucharistie, de l'extrême-onction, et de mariage, et aussi les bénédictions, et diverses formules d'actes, publié par l'ordre de Monseigneur l'évêque de Québec, Québec, T. Cary, 1836, ix-324 p.

Ier Concile plénier de Québec: procès-verbaux, commissions synodales, les pères, bound typescripts, 1909, 110-122-100-78 p.

Rituale romanum Pauli V Pontificis Maximi jussu editum et a Benedicto XIV auctum et castigatum, cui ad usum missionariorum apostolicorum nova nunc primum accedit benedictionum et instructionum appendix, Quebeci, P.G. Deslisle, 1870, x-508 p.

2.6 - Irish Sources

Acta et decreta Concilii plenarii episcoporum Hiberniæ quod habitum est apud Maynutiam die 2 augusti et diebus sequentibus usque ad diem 15 augusti 1927, Dublin, Browne and Nolan, 1929, xiv-226 p.

Appendix ad Acta et decreta Concilii plenarii episcoporum Hiberniæ quod habitum est apud Maynutiam die 2 augusti et diebus sequentibus usque ad diem 15 augusti 1927, Dublin, Browne and Nolan, 1929, xviii-288 p.

Acta et decreta Concilii provincialis Tuamensis, habiti anno 1907, Dublin, Browne and Nolan, 1908, iv-75 p.

Acta et decreta Synodi plenariæ episcoporum Hiberniæ habitæ apud Maynutiam, an. MDCCCLXXV, Dublin, Browne and Nolan, 1877, ix-375 p.

Acta et decreta Synodi plenariæ episcoporum Hiberniæ habitæ apud Maynutiam, an. MDCCCC, Dublin, Browne and Nolan, 1906, vi-250 p.

Appendix ad Acta et decreta Synodi plenariæ episcoporum Hiberniæ habitæ apud Maynutiam, an. MDCCCC, Dublin, Browne and Nolan, 1906, iv-417 p.

Acta et decreta Synodi provincialis Armacanæ habitæ apud Armacham an. MDCCCXVIII, Dublin, Browne and Nolan, 1911, 80 p.

Acta et decreta Synodi provincialis Cassiliensis habitæ anno MDCCCXVII, Dublin, Browne and Nolan, 1909, vi-92 p.

Acta et decreta Synodi provincialis Dublinensis habitæ apud Mavnutiam an. MDCCCXVIII, Dublin, Browne and Nolan, 1913, x-246 p.

Ordo administrandi sacramenta, et alia quædam officia ecclesiastica rite peragendi ex Rituali romano præcipue extractus et usui sacerdotum in missione hibernica accommodatus, Dublini, J. Duffy, 1889, viii-239 p.

2.7 - United States of America Sources

Acta et decreta Concilii plenarii Baltimorensis tertii A.D. MDCCCLXXXIV, præside Illmo. ac Revmo. Jacobo Gibbons, archiepiscopo Balt. et delegato apostolico, Baltimoræ, J. Murphy, 1886, cix-321 p.

Acta et decreta Concilii provincialis Milwaukiensis primi, A.D. MDCCCLXXXVI, præside Illmo. ac Revmo. Michael Heiss, archiepiscopo Milwaukiensi, Milwaukee, Hoffmann Bros, 1888, 53 p.

Acta et decreta Concilii provincialis Neo-Eboracensis IV, in ecclesia metropolitana S. Patritii, Neo-Eboraci, a die XXIII ad XXX septembris, A.D. MDCCCLXXXIII, præside Eminentissimo ac Reverendissimo Ioanne McCloskey, tituli S. Mariæ supra Minervam S.R. Ecclesiæ presbytero cardinali et archiepiscopo Neo-Eboracensi, habiti, et a Sede Apostolica recogniti, Neo-Eboraci, Typis societatis pro libris catholicis evulgandis, 1886, lxviii-109 p.

Acta et decreta Conciliorum provinciæ Oregonopolitanæ annis 1848, 1881 et 1891 celebratorum, Mount Angel, Or., St Benedict's Monastery, 1895, 75 p.

Acta et decreta quatuor Conciliorum provincialium Cincinnatiensium 1855-1882, adiectis pluribus decretis, rescriptis aliisque documentis, Cincinnati, Benziger Bros, 1886, vii-319 p.

Compendium Ritualis romani ad usum dioecesum provinciæ Baltimorensis, jussu Concilii provincialis Baltimorensis III, approbante SS. D.N. Gregorio, Pp. XVI, editum, Baltimori, Murphy, 1842, 200 p.

Concilia provincialia, Baltimori habita ab anno 1829 usque ad annum 1849, ed. altera, Baltimori, J. Murphy, 1851, 307 p.

Concilii plenarii Baltimorensis II in ecclesia metropolitana Baltimorensi a die VII ad diem XXI octobris A.D. MDCCCLXVI habiti et a Sede Apostolica recogniti acta et decreta, ed. altera mendis expurgata, Baltimora, J. Murphy, 1880, lxxv-311-xxviii p.

Concilii provincialis S. Francisci I in ecclesia metropolitana Sancti Francisci A.D. MDCCCLXXIV habiti, et a Sede Apostolica recogniti, acta et decreta, Sancti Francisci, Thomas, 1875, 91 p.

Concilii provincialis S. Francisci II in ecclesia metropolitana Sancti Francisci A.D. MDCCCLXXXII habiti, et a Sede Apostolica recogniti, acta et decreta, Sancti Francisci, Thomas, 1883, 36 p.

Concilium Cincinnatiense provinciale V habitum anno 1889 a die 19 ad diem 26 maii, Cincinnati, Keating, 1893, 54 p.

Concilium Neo-Aurelianense provinciale tertium habitum mense januario, A.D. 1873, cui addita sunt in appendice duae constitutiones Vaticanæ, epistola encyclica Quanta Cura, Syllabus, et formula iuramenti pro ordinandis ad subdiaconatum sub titulo missionis, Neo-Aureliæ, ex typis Propagatoris Catholici, 1875, 69 p.

Concilium plenarium totius Americæ Septentrionalis Foederatæ Baltimori habitum anno 1852, Baltimori, J. Murphy, 1853, 72 p.

Decreta Concilii provincialis Philadelphiensis I anno MDCCCLXXX habiti; et constitutiones dioecesanæ in Synodis Philadelphiensibus, annis 1832, 1842, 1847, 1853, 1855, 1857, et 1886 latæ et promulgatæ, Philadelphia, Gallagher, 1897, xx-51-iv p.

GUILDAY, P.K. (ed.), The National Pastorals of the American Hierarchy (1792-1919), Washington, D.C., National Catholic Welfare Council, 1923, xiii-358 p.

Relatio Collationum quas Romæ coram S.C. de P.F. praefecto habuerunt archiepiscopi plerisque episcopi Statuum Foederatorum Americae, 1883, an English translation in "Minutes of Roman Meeting Preparatory to the III Plenary Council of Baltimore", in The Jurist, 11(1951), pp.121-132, 302-312, 417-424, 538-547.

2.8 - Other Conciliar Sources

- Acta et decreta Concilii Antequerensis I. a die VIII decembris MDCCCXCII ad diem XII martii MDCCCXCIII Oaxacæ celebrati, Romæ, ex Typographia Vaticana, 1894, viii-536 p.
- Acta et decreta Concilii plenarii Americae latinae in Urbe celebrati anno Domini MDCCCXCIX, Romæ, Typis Vaticanis, 1902, cxx-462 p.
- Acta et decreta Concilii provincialis Durangensis primi. an. Dom. MDCCCXCVI Durangi celebrati, Romæ, Typis Vaticanis, 1906, 112 p.
- Acta et decreta Concilii provincialis Guadalaxarensis primi. annis Domini MDCCCXCVI et MDCCCXCVII Guadalaxaræ celebrati, Romæ, Typis Vaticanis, 1905, xvi-251 p.
- Acta et decreta Concilii provincialis Manilani I in urbe Manila celebrati anno Domini MDCCCXCVII, Romæ, Typis Polyglottis Vaticanis, 1910, xcii-506 p.
- Acta et decreta Concilii provincialis Mechoacanensis I. an. Dom. MDCCCXCVII Moreliæ celebrati, Romæ, Typis Vaticanis, 1905, xii-194 p.
- Acta et decreta Concilii provincialis Mexicani quinti. celebrati an. Dom. MDCCCXCVI: Metropolita illustrissimo ac reverendissimo D.D. Prospero Maria Alarcon y Sanchez de la Barquera, editio secunda melius digesta et notabiliter aucta, Mexici, Herrero Fratres, 1899, 206-(150) p.
- Acta et decreta Concilii provincialis primi Wellingtonensis habiti in ecclesia Sancti Iosephi Wellingtone in Nova Zelandia. die 21 ianuarii et sequentibus usque ad diem 29 ianuarii anno 1899, Dunedin, N.Z. Tablet Print. and Pub. Co., 1900, 132 p.

3 - BOOKS

- ANSON, P.F., Underground Catholicism in Scotland 1622-1878, Montrose, Standard Press, 1970, xi-344 p.
- ARBOUR, G., Le droit canonique particulier au Canada, Ottawa, Éditions de l'Université d'Ottawa, 1957, viii-167 p.
- ARNSTEIN, W.L., Protestant versus Catholic in Mid-Victorian England: Mr. Newdegate and the Nuns, Columbia, University of Missouri Press, 1982, viii-271 p.

- AUGUSTINE, C., A Commentary on the New Code of Canon Law, St Louis, Herder, 1918-1922, 8 vols.
- BARRETT, J.D., A Comparative Study of the Councils of Baltimore and the Code of Canon Law, Canon Law Studies, no. 83, Washington, D.C., Catholic University of America, 1932, x-212 p.
- BAUDIER, R., The Catholic Church in Louisiana, New Orleans, 1939, 605 p.
- BECK, G.A. (ed.), The English Catholics 1850-1950: Essays to Commemorate the Centenary of the Restoration of the Hierarchy of England and Wales, London, Burns and Oates, 1950, xix-640 p.
- BELLESHEIM, A., History of the Catholic Church in Scotland, from the Introduction of Christianity to the present day, translated with notes and additions by O.H. Blair, Edinburgh, W. Blackwood, 1887-1889, 4 vols.
- BENEDICTUS XIV, De synodo dioecesana, Prati, in Typographia Aldina, 1844, xix-788p. (in his Opera omnia, Prati, in Typographia Aldina, vol. 11 of 17 vols.)
- BIRCHLEY, D., John McEncroe, Colonial Democrat, Manly, N.S.W., St Patrick's College, 1986, xi-281 p.
- BIRT, H.N., Benedictine Pioneers in Australia, London, Herbert and Daniel, 1911, 2 vols.
- BOLAND, T.P., James Duhig, St Lucia, Qld, University of Queensland Press, 1986, xv-435 p.
- BOUIX, M.-D., Du concile provincial; ou, Traité des questions de théologie et de droit canon qui concernent les conciles provinciaux, Paris, J. Lecoffre, 1850, viii-614 p.
- , Tractatus de episcopo ubi et de synodo dioecesana, Paris, R. Ruffet, 1873, 2 vols.
- BOURGET, I., Cérémonial des évêques commenté et expliqué par les usages et les traditions de la sainte Église romaine, avec le texte latin, par un évêque suffragant de la province ecclésiastique de Québec, en Canada, anciennement appelé Nouvelle-France, Paris, J. Lecoffre, 1856, xxxiv-569-6 p.
- BOURKE, D.F., A History of the Catholic Church in Victoria, Melbourne, Catholic Bishops of Victoria, 1988, 346 p.

- BOURKE, D.F., The History of the Catholic Church in Western Australia, Perth, Archdiocese of Perth, 1979, 278 p.
- BOWEN, D., Paul Cardinal Cullen and the Shaping of Modern Irish Catholicism, Dublin, Gill, 1983, xii-311 p.
- BURNS, I.H., The Foundation of the Hierarchy in Australia 1804-1854, J.C.D. diss., Rome, Pontifical Urban University of Propaganda Fide, 1954, xvi-335-xlix p.
- BURNS, J.A., The Growth and Development of the Catholic School System in the United States, New York, Benziger Bros, 1912, 421 p.
- BURTSELL, R., The Canonical Status of Priests in the United States, New York, 1877, 106 p.
- BUTLER, E.C., The Life and Times of Bishop Ullathorne, 1806-1889, New York, Benziger, 1926, 2 vols.
- CAREY, P., An Immigrant Bishop: John England's Adaptation of Irish Catholicism to American Republicanism, Yonkers, N.Y., U.S. Catholic Historical Society, 1982, x-236 p.
- CARROLL, F.P., The Development of Episcopal Conferences, Sydney, Catholic Press, 1965, xxv-160 p.
- CASEY, T.F., The Sacred Congregation de Propaganda Fide and the Revision of the First Provincial Council of Baltimore (1829-1830), Romæ, Apud ædes Universitatis Gregorianæ, 1957, xv-233 p.
- CHOQUETTE, R., L'Église catholique dans l'Ontario français du dix-neuvième siècle, Ottawa, Éditions de l'Université d'Ottawa, 1984, 365 p.
- COGLEY, J., and R. VAN ALLEN, Catholic America, expanded and updated ed., Kansas City, Sheed and Ward, 1986, xx-viii-236 p.
- CONDON, K., The Missionary College of All Hallows 1842-1891, Dublin, All Hallows College, 1986, 382 p.
- CONNELLY, J.F., The Visit of Archbishop Gaetano Bedini to the United States of America (June, 1853 - February, 1854), Roma, Libreria editrice dell'Università Gregoriana, 1960, xiii-307 p.
- CONNOLLY, S.J., Priests and People in Pre-famine Ireland, 1790-1845, New York, Gill and Macmillan, 1982, 338 p.

- CONTE A CORONATA, M., Institutiones iuris canonici ad usum utriusque cleri et scholarum, Taurini, Marietti, 1933-1939, 5 vols.
- COONEY, J., Scotland and the Papacy, Edinburgh, P. Harris, 1982, 126 p.
- CORECCO, E., La formazione della Chiesa cattolica negli Stati Uniti d'America attraverso l'attività sinodale, con particolare riguardo al problema dell'amministrazione dei beni ecclesiastici, Brescia, Morcelliana, 1970, 245 p.
- CORISH, P.J., The Irish Catholic Experience: A Historical Survey, Wilmington, Del., M. Glazier, 1985, ix-283 p.
- DESROCHERS, B., Le premier Concile plénier de Québec et le Code de droit canonique, Canon Law Studies, no. 152, Washington, D.C., Catholic University of America Press, 1942, xiv-178 p.
- DIGNAN, P.J., A History of the Legal Incorporation of Catholic Church Property in the United States (1784-1932), Studies in American Church History, no. 14, Washington, D.C., The Catholic University of America, 1933, viii-289 p.
- DONNELLY, F.B., The Diocesan Synod, Canon Law Studies, no. 74, Washington, D.C., Catholic University of America, 1932, vii-142 p.
- DURACK, M., The Rock and the Sand, London, Constable, 1969, xv-335 p.
- EBSWORTH, W., Pioneer Catholic Victoria, Melbourne, Polding Press, 1973, ix-531 p.
- ELLIS, J.T., American Catholicism, Chicago, University of Chicago Press, 1956, xiii-207 p.
- , The Life of James Cardinal Gibbons, Archbishop of Baltimore, 1834-1921, Milwaukee, Bruce, 1952, 2 vols.
- , Perspectives in American Catholicism, Baltimore, Helicon, 1963, 313 p.
- ELLIS, J.T. (ed.), The Catholic Priest in the United States: Historical Investigations, Collegeville, Minn., St John's University Press, 1971, xvii-488 p.
- (ed.), Documents of American Catholic History, Milwaukee, Bruce, 1956, xxiv-677 p.

- ENDICOTT, M.A., The Augustinians in Far North Queensland 1883-1941, Brookville, N.S.W., Augustinian Historical Commission, 1988, 237 p.
- FELICIANI, G., Le conferenze episcopali, Bologna, Società Editrice Il Mulino, 1974, 592 p.
- FOGARTY, G.P., Vatican and the Americanist Crisis: Denis J. O'Connell, American Agent in Rome, 1885-1903, Roma, Università Gregoriana editrice, 1974, x-357 p.
- , The Vatican and the American Hierarchy from 1870 to 1965, Stuttgart, A. Hiersemann Verlag, 1982, xxi-438 p.
- FORD, P.P., Cardinal Moran and the A.L.P: A Study in the Encounter between Moran and Socialism. 1890-1907: Its Effects upon the Australian Labor Party: The Foundation of Catholic Social Thought in Modern Australia, London, Melbourne University Press, 1966, xxii-319 p.
- GARRETT, J., To Live among the Stars: Christian Origins in Oceania, Suva, Institute of Pacific Studies, 1982, xii-412 p.
- GAUDIN, J.-R., Les rapports entre l'Église et l'État d'après le cardinal Elzéar-Alexandre Taschereau (1820-1898), J.C.D. diss., Ottawa, Saint Paul University, 1972, vii-297-4 p.
- GOODY, L.J., Martin Griver, Second Catholic Bishop of Perth (1814-1886), Perth, Vanguard Press, 1986, 100 p.
- GRAY, R., Cardinal Manning: a Biography, New York, St Martin's Press, 1985, 306 p.
- GRIFFIN, B.F., The Provincial Councils of Portland in Oregon, Rome, Pontificia Universitas Lateranensis, 1964, viii-202 p.
- GRISÉ, J., Les conciles provinciaux de Québec et l'Église canadienne (1851-1886), Montréal, Fides, 1979, 454 p.
- GUÉRIN, P., Les conciles généraux et particuliers, Paris, V. Palmé, 1868-1869, 3 vols.
- GUILDAY, P.K., A History of the Councils of Baltimore (1791-1884), New York, Macmillan, 1932, x-291 p.
- GWYNN, D., A Hundred Years of Catholic Emancipation (1829-1929), London, Longmans Green, 1929, xxxi-292 p.

- GWYNN, D., The Second Spring: A Study of the Catholic Revival in England, London, Catholic Book Club, 1944, ix-264 p.
- HAINES, G., Lay Catholics and the Education Question in Nineteenth Century New South Wales: the Shaping of a Decision, Sydney, Catholic Theological Faculty, 1976, xiii-230 p.
- HANDY, R.T., A History of the Churches in the United States and Canada, New York, Oxford University Press, 1977, ix-471 p.
- HANNON, J.B., The College of Consultors and the Exercise of Ecclesial Authority, J.C.D. diss., Ottawa, Saint Paul University, 1986, xv-347 p.
- HENDERSON, G., Mr. Santamaria and the Bishops, Manly, N.S.W., St Patrick's College, 1982, xii-230 p.
- HENNESEY, J.J., American Catholics: A History of the Roman Catholic Community in the United States, New York, Oxford University Press, 1981, xvi-397 p.
- HOFFMAN, L.J., Clergy Conferences, Canon 131: A Historical Conspectus and a Canonical Commentary, Canon Law Studies, no. 383, Washington, D.C., Catholic University of America Press, 1957, x-101 p.
- HOLMES, J.D., More Roman than Rome: English Catholicism in the Nineteenth Century, London, Burns and Oates, 1978, 278 p.
- KEENAN, D.J., The Catholic Church in Nineteenth-Century Ireland: A Sociological study, Dublin, Gill, 1983, 285 p.
- KINLIN, P.S., Canonical and Civil Status of Parishes in Canada: A Study of Ecclesiastical Legislation both Universal and Particular, and of Canadian Civil Legislation affecting Parishes in Canada, and a Canonical Commentary, Regina, 1954, xii-302 p.
- KLEKOTKA, P.J., Diocesan Consultors, Canon Law Studies, no. 8, Washington, D.C., Catholic University of America, 1920, 179 p.
- KNOX, J.R., The Historical and Juridical Importance of the First Council of the Australian Province held in Sydney, 1844, J.C.D. diss., Rome, Pontifical Urban University of Propaganda Fide, 1949, xiii-214 p.

- KUTNER, R.W., The Development, Structure, and Competence of the Episcopal Conference, Canon Law Studies, no. 480, Washington, D.C., The Catholic University of America, 1972, ix-198 p.
- LAGGES, P.R., The Legislative Authority of the Conference of Bishops: Its nature and scope in the 1983 Code of Canon Law, J.C.D. diss., Ottawa, St Paul University, 1987, xiv-276 p.
- LARKIN, E.J., The Making of the Roman Catholic Church in Ireland, 1850-1860, Chapel Hill, University of North Carolina Press, 1980, xxiv-520 p.
- , The Roman Catholic Church in Ireland and the Creation of the Modern Irish State, 1878-1886, Philadelphia, American Philosophical Society, 1975, xxiv-412 p.
- , The Roman Catholic Church in Ireland and the Fall of Parnell, 1888-1891, Chapel Hill, University of North Carolina Press, 1979, xxi-316 p.
- LEMIEUX, L., L'établissement de la première province ecclésiastique au Canada, 1783-1844, Montréal, Fides, 1968, xxvii-559 p.
- LINDSAY, L. (ed.), Le premier concile plénier de Québec (10 septembre - 1er novembre 1909): travaux préparatoires, séances solennelles, fêtes religieuses et civiques, allocutions, Québec, Imprimerie de "L'Événement", 1910, vii-305-i p.
- LIVINGSTON, K.T., The Emergence of an Australian Catholic Priesthood 1835-1915, Manly, N.S.W., Catholic Theological Faculty of Sydney, 1977, xvi-269 p.
- LOHMULLER, M.N., The Promulgation of Law, Canon Law Studies, no. 241, Washington, D.C., Catholic University of America Press, 1947, xi-139 p.
- LYNCH, G.E., Coadjutors and Auxiliaries of Bishops: A Historical Synopsis and a Commentary, Canon Law Studies, no. 238, Washington, D.C., Catholic University of America Press, 1947, x-107 p.
- MCAVOY, T., A History of the Catholic Church in the United States, Notre Dame, Ind., University of Notre Dame Press, 1969, v-504 p.
- MCCLELLAND, V.A., English Roman Catholics and Higher Education, 1830-1903, Oxford, Clarendon Press, 1973, x-453 p.

- McDONALD, A.J., The Rights and Obligations of Metropolitans As Such according to the Code of Canon Law, J.C.D. diss., Ottawa, University of Ottawa, 1948, vi-232 p.
- McLAY, Y.M., James Quinn, First Catholic Bishop of Brisbane, Armadale, Vic., Graphic Books, 1979, xxvi-270 p.
- McROBERTS, D. (ed.), Modern Scottish Catholicism 1878-1978, Glasgow, Burns, 1979, vi-252 p.
- MacSUIBHNE, P., Paul Cullen and His Contemporaries with their Letters from 1820-1902, Naas, Leinster Leader, 1961-1977, 5 vols.
- MAHONY, W., Iura sacerdotum vindicata: The Rights of the Clergy Vindicated; or, A Plea for Canon Law in the United States, New York, J. Sheehy, 1883, 388 p.
- MANACORDA, E., Specimen iuris et disciplinae ecclesiasticae, pars prima, De praecipuis quae ad episcoporum pertinent, Fossani, M. Rossetti, 1897, viii-331 p.
- MAYNARD, T., The Story of American Catholicism, New York, Macmillan, 1941, xviii-694 p.
- MELVILLE, A.M., Louis William DuBourg: Bishop of Louisiana and the Floridas, Bishop of Montauban, and Archbishop of Besançon, 1766-1833, Chicago, Loyola University Press, 1986, 2 vols.
- The Memorial Volume: A History of the Third Plenary Council of Baltimore, November 9 - December 7, 1884, Baltimore, Baltimore Pub. Co., 1885, 114-267-31 p.
- MILLER, D.W., Church, State and Nation in Ireland, 1989-1921, Dublin, University of Pittsburgh Press, 1973, x-579 p.
- MOLONY, J.N., The Roman Mould of the Australian Catholic Church, Carlton, Vic., Melbourne University Press, 1969, xiv-209 p.
- MORAN, P.F., History of the Catholic Church in Australasia, Sydney, Oceanic Pub. Co., 1894, xix-1003 p.
- MORRISEY, F.G., The Juridical Status of the Catholic Church in Canada (1534-1840), J.C.D. diss., Ottawa, Saint Paul University, 1972, xi-250 p.
- MULKEARNS, R.A., De legislatione particulari Australiensi de clericis, J.C.D. diss., Rome, Pontificia Universitas Lateranensis, 1960, xii-287 p.

- MUNDAY, J.E., Ecclesiastical Property in Australia and New Zealand: An Historical Synopsis and Comparative Study of the General Law of the Church, Canons 1495-1551, and the Decrees of the Fourth Plenary Council of Australia, Decrees 653-685, Canon Law Studies, no. 387, Washington, D.C., Catholic University of America Press, 1957, xiv-141 p.
- MURPHY, F.J., Legislative Powers of the Provincial Council, Canon Law Studies, no. 257, Washington, D.C., Catholic University of America Press, 1947, xii-158 p.
- MURTAGH, J.G., Australia, The Catholic Chapter, Melbourne, Polding Press, 1969, xx-261 p.
- NABUCO, J., Pontificalis romani expositio juridico-practica: functiones pontificales extra-ordinariae, Petropoli, Editôra Vozes, 1945, 3 vols.
- NILLES, N., Commentaria in Concilium plenum Baltimoreense tertium ex prælectionibus academicis excerpta, Oeniponte, F. Rauch, 1888-1890, 2 vols.
- NORMAN, E.R., The Catholic Church and Ireland in the Age of Rebellion 1859-1873, London, Longmans, 1965, xi-185 p.
- , The English Catholic Church in the Nineteenth Century, Oxford, Clarendon Press, 1984, vi-399 p.
- O'BRIEN, E.M., The Dawn of Catholicism in Australia, Sydney, Angus and Robertson, 1928, 2 vols.
- O'BRIEN, J., The Men of '38 and other Pioneer Priests, Kilmore, Lowden Pub. Co., 1975, xx-247 p.
- O'CONNOR, J., The Catholic Revival in England, New York, Macmillan, 1942, ix-102 p.
- O'DONOGHUE, F., The Bishop of Botany Bay: The Life of John Bede Polding, Australia's First Catholic Archbishop, Sydney, Angus and Robertson, 1982, vii-193 p.
- , Mother Vincent Whitty, Woman and Educator in a Masculine Society, Carlton, Vic., Melbourne University Press, 1972, viii-189 p.
- O'FARRELL, P.J., The Catholic Church and Community: An Australian History, Kensington, N.S.W., New South Wales University Press, 1985, xv-484 p.
- O'KANE, F., A Path is Set: The Catholic Church in the Port Phillip District and Victoria 1839-1862, Melbourne, Melbourne University Press, 1976, 189 p.

- © RIORDAIN, J.J., Irish Catholics: Tradition and Transition, Dublin, Veritas Publications, 1980, xiv-98 p.
- PERKINS, H., The Convict Priests, Gardiner, Vic., Thistle Press, 1984, 100 p.
- PLANTE, H., L'Église catholique au Canada (1604-1886), Trois-Rivières, Éditions du Bien public, 1970, 510 p.
- POBLETE, E., The Plenary Council: A Historical Synopsis and a Commentary, Canon Law Studies, no. 372, Washington, D.C., Catholic University of America Press, 1958, xiv-127 p.
- POPEK, A.S., The Rights and Obligations of Metropolitans, Canon Law Studies, no. 260, Washington, D.C., Catholic University of America Press, 1947, xvii-460 p.
- PRESS, M.M., From our Broken Toil: South Australian Catholics, 1836 to 1905, Adelaide, Catholic Archdiocese of Adelaide, 1986, 286 p.
- , Julian Tenison Woods, Manly, N.S.W., Catholic Theological Faculty of Sydney, 1979, vi-242 p.
- PUTZ, L.J. (ed.), The Catholic Church, U.S.A., Chicago, Fides, 1956, xxiii-415 p.
- REYNOLDS, E.E., The Roman Catholic Church in England and Wales: A Short History, Wheathampstead, A. Clark Books, 1973, vii-376 p.
- ROBITAILLE, D., L'érection canonique des paroisses dans la province de Québec, J.C.D. diss., Ottawa, Université d'Ottawa, 1957, 264 p.
- ROEMER, T., The Catholic Church in the United States, St Louis, Herder, 1950, viii-444 p.
- ROGAN, E., Irish Catechesis: A Juridico-Historical Study of the Five Plenary Synods, 1850-1956, Romae, Pontificia Universitas Gregoriana, 1987, xx-494 p.
- , Synods and Catechesis in Ireland, c.445-1962: A Juridico-Historical Study of Irish Synodal Activity, from the Early Days of Christianity in Ireland up to the Second Vatican Council, with Special Reference to Catechesis, Romae, Pontificia Universitas Gregoriana, 1987, xx-159 p.

- ROISSELET DE SAUCLIERES, M., Histoire chronologique et dogmatique des conciles de la chrétienté depuis le Concile de Jérusalem tenu par les Apôtres l'an 50 jusqu'an dernier concile tenu de nos jours, continué par M. l'abbé André d'Avallon, Paris, Mellier, 1844-1855, 6 vols.
- SANTAMARIA, B.A., Daniel Mannix: His Contribution to the Art of Public Leadership in Australia, Carlton, Vic., Melbourne University Press, 1978, 40 p.
- , Daniel Mannix: The Quality of Leadership, Carlton, Vic., Melbourne University Press, 1984, xi-282 p.
- SCHIEFEN, R.J., Nicholas Wiseman and the Transformation of English Catholicism, Shepherdstown, W.Va, Patmos Press, 1984, xvi-399 p.
- SHANAHAN, M., Out of Time, Out of Place: Henry Gregory and the Benedictine Order in Colonial Australia, Canberra, Australian National University, 1970, xv-187 p.
- SHEA, J.G., A History of the Catholic Church in the US: From the First Attempted Colonisation to the Present Time, New York, J. G. Shaw, 1886-1892, 4 vols.
- SMITH, S.B., Elements of Ecclesiastical Law, with Reference to the Latest Decisions of the Sacred Congregation of Cardinals, or adapted especially to the discipline of the Church in the United States, New York, Benziger, 1892-1893, 9th ed., 3 vols.
- , Notes on the Second Plenary Council of Baltimore, New York, O'Shea, 1874, xvi-480 p.
- SNEAD-COX, J.G., The Life of Cardinal Vaughan, London, Herbert and Daniel, 1910, 2 vols.
- SONG, R.H., The Sacred Congregation for the Propagation of the Faith, Canon Law Studies, no. 420, Washington, D.C., Catholic University of America Press, 1961, xi-161 p.
- SOUTHERWOOD, W.T., Planting a Faith in Melbourne: Colonial Era 1839-1899, Sydney, Opus Books, 1973, vii-104 p.
- SPALDING, T.W., The Premier See: A History of the Archdiocese of Baltimore, 1789-1989, Baltimore, Md., Johns Hopkins University Press, 1989, ix-591 p.
- SUTTOR, T., Hierarchy and Democracy in Australia, 1788-1870: The Formation of Australian Catholicism, London, Melbourne University Press, 1965, xi-344 p.

- THORPE, O., First Catholic Mission to the Australian Aborigines, Sydney, Pellegrini, 1950, xv-271 p.
- , Mary McKillop: The Life of Mother Mary of the Cross, Foundress of the Sisters of St Joseph of the Sacred Heart, London, Burns & Oates, x-327 p.
- ULLATHORNE, W.B., The Autobiography of Archbishop Ullathorne, London, Burns and Oates, 1891, viii-259 p.
- VERMEERSCH, A., and J. CREUSEN, Epitome iuris canonici. cum commentariis ad scholas et ad usum privatum, 5a ed. auctior et accurate recognita, Mechliniæ, Dessain, 1933, 3 vols.
- WALDERSEE, J., A Grain of Mustard Seed: The Society for the Propagation of the Faith and Australia, 1837-1977, Sydney, Chevalier Press, 1983, v-476 p.
- WALKER, F.A., Catholic Education and Politics in Ontario, Toronto, J.M. Dent, 1955 (vol. 1), T. Nelson, 1964 (vol. 2), Catholic Education Foundation of Ontario 1986, (vol.3).
- WARD, W., The Life and Times of Cardinal Wiseman, 2nd ed., London, Longmans Green, 1897, 2 vols.
- WERNZ, F.X., Ius canonicum, ad Codicis norman exactum opera P. Petri Vidal, S.I., Romæ, Apud ædes Universitatis Gregoriana, 1927-1928, 7 tomes in 8 vols.
- WILL, A.S., Life of Cardinal Gibbons, Archbishop of Baltimore, New York, E.P. Dutton, 1922, 2 vols.
- WILTGEN, R.M., The Founding of the Roman Catholic Church in Oceania, 1825 to 1850, Canberra, Australian National University Press, 1979, xxii-610 p.

4 - ARTICLES AND PARTS OF BOOKS

- AHERN, J., "The Plenary Synod of Thurles", in Irish Ecclesiastical Record, 5th ser., 75A(1951), pp. 385-401; 78B(1952), pp. 1-20.
- ASPINWALL, B., "The Scottish Dimension: Robert Monteith and the Origins of Modern British Catholic Social Thought", in Downside Review, 97(1979), pp. 46-68.
- , "The Second Spring in Scotland", in Clergy Review, 66(1981), pp. 281-290, 312-319.

- BARIN, A., "Provisions pour l'Église canadienne: B. Further Developments after 1840", in J. METZLER (ed.), Sacra Congregationis de Propaganda fide memoria rerum, 1622-1972, Rom, Herder, 1971-1976, vol. 3-1, pp. 749-757.
- BARRY, P.C., "The Holy See and Irish National Schools", in Irish Ecclesiastical Record, 5th ser., 92(1959), pp. 90-105.
- , "The Legislation of the Synod of Thurles, 1850", in Irish Theological Quarterly, 26(1959), pp. 131-166.
- , "The National Synod of Thurles, 1850, Contemporary Accounts", in Irish Ecclesiastical Record, 5th ser., 86B(1956), pp. 73-82.
- "The Bishop's Visit 'Ad limina'", in American Ecclesiastical Review, 16(Jan.-June 1897), pp. 354-36.
- BESSESHEIM, A., "Das dritte Plenarconcil von Baltimore", in Archiv für Katholisches Kirchenrecht, 57(1887), pp. 41-88.
- , "Irische Plenarsynode vom Jahre 1900", in Archiv für Katholisches Kirchenrecht, 90(1910), pp. 424-431.
- , "Plenarconcil der schottischen Bischöfe in der Benedictinerabtei Fort Augustus vom 17. bis 26. August 1886", in Archiv für Katholisches Kirchenrecht, 61(1889), pp. 233-254.
- , "Plenarconcil von Australien zu Sydney vom 14. bis 29. November 1885", in Archiv für Katholisches Kirchenrecht, 60(1888), pp. 85-112.
- , "Zweites Plenarconcil von Australien vom 17. November bis 1. December 1895", in Archiv für Katholisches Kerchenrecht, 79(1899), pp. 151-157.
- BRADY, M., "Two Penalties of the Third Plenary Council of Baltimore", in The Jurist, 22(1962), pp. 346-355.
- BROWN, A., "Charles Henry Davis, O.S.B. 1815-1854", in Australasian Catholic Record, 59(1982), pp. 212-216.
- BUSCH, W., "From Other Times: the Voice of a Plenary Council", in Orate fratres, 21(1946-1947), pp. 452-458.
- CAMPEAU, L., "La jurisdiction ecclésiastique en Nouvelle-France avant M^{gr} de Laval", in La Société canadienne d'histoire de l'Église catholique: Sessions d'étude, 39(1972), pp. 91-108.

- CAMPION, E., "Irish Religion in Australia", in Australasian Catholic Record, 55(1978), pp. 4-16.
- CANNON, S., "Irish Episcopal Meetings 1788-1882", in Annuario historiae conciliorum, 13(1981), pp. 270-422.
- "Canonical Visitation of the Diocese", in American Ecclesiastical Review, 16(Jan.-June 1897), pp. 489-495.
- CASSIDY, F.P., "Catholic Education in the Third Plenary Council of Baltimore", in Catholic Historical Review, 34(1948-1949), pp. 257-305, 414-436.
- "The Chapter 'De fide catholica' in the Third Plenary Council of Baltimore", in American Ecclesiastical Review, 16(Jan.-June 1897), pp. 147-154.
- CHOQUETTE, R., "Linguistic and Ethnic Factors in the French-Irish Catholic Relations in Ontario", in Canadian Catholic Historical Association: Study Sessions, 39(1972), pp. 35-43.
- COLEMAN, A., "The Primatial See and its Cathedral", in Irish Ecclesiastical Record, 4th ser., 7(Jan.-June 1900), pp. 193-208.
- COLLINS, P.W., "Australia's First Bishops", in Australasian Catholic Record, 64(1987), pp. 189-199.
- CORISH, P.J., "Cardinal Cullen and Archbishop MacHale", in Irish Ecclesiastical Record, 5th ser., 91(1959), pp. 393-408.
- , Political Problems 1860-70, in P.J. CORISH (ed.), A History of Irish Catholicism, vol. 5, § 3, Dublin, Gill, 1967, 59 p.
- CORRIGAN, O., "Chronology of the Catholic Hierarchy of the United States", in Catholic Historical Review, 1(1915-1916), pp. 367-389; 2(1916-1917), pp. 127-145, 283-301; 3(1917-1918), pp. 22-32, 151-164.
- COSTALUNGA, M., "De episcoporum conferentiis", in Periodica, 57(1968), pp. 217-280.
- CULLEN, J.H., "Bishop Willson", in Australasian Catholic Record, 26(1949), pp. 298-308; 27(1950), pp. 33-40, 115-129, 224-234, 317-333; 28(1951), pp. 31-43, 111-119, 203-211, 313-322; 29(1952), pp. 20-27, 117-124, 205-214, 305-316; 30(1953), pp. 33-43, 124-131, 204-214, 289-299; 31(1954), pp. 15-21.

- CUNNINGHAM, T.P., Church Reorganization, in P.J. CORISH (ed.), A History of Irish Catholicism, vol. 5, § 7, Dublin, Gill and Macmillan, 1970, 32 p.
- , "Mixed Marriages in Ireland before 'Ne Temere' Decree", in Irish Ecclesiastical Record, 5th ser., 101(Jan.-June 1964), pp. 53-56.
- CURTIS, J.H.B., "A Notice of Dr. Charles Davis, Bishop of Maitland", in Downside Review, 21(1902), pp. 177-183.
- DALY, R.A., "Bishop Murray Settles into Maitland: 1867", in Australasian Catholic Record, 37(1960), pp. 189-201.
- "The Decrees of the Third Plenary Council of Baltimore: Their Object, Promulgation and Binding Force", in American Ecclesiastical Review, 16(Jan.-June 1897), pp. 1-10.
- DOLE, G., "L'assistance sociale au clergé séculier d'après le Concile de Baltimore de 1884 et les influences de cette législation", in Ephemerides iuris canonici, 19(1963), pp. 268-308.
- DOYLE, P., "Missed Opportunities: Clerical Conferences in the Nineteenth Century", in Downside Review, 100(1982), pp. 263-273.
- DROLET, A., "L'Épiscopat canadien et les bibliothèques paroissiales de 1840 à 1900", in La Société canadienne d'Histoire de l'Église catholique: Sessions d'étude, 49(1982), pp. 21-35.
- DUGGAN, E., New Zealand, in P.J. CORISH (ed.), A History of Irish Catholicism, vol. 6 § 7, Dublin, Gill and Macmillan, 1971, 18 p.
- ELLIS, J.T., "Australian Catholicism: An American Perspective", in Journal of Religious History, 10(1978-1979), pp. 313-321.
- , "The Centennial of the First Plenary Council of Baltimore", in American Ecclesiastical Review, 126 (Jan.-June 1952), pp. 321-350.
- ENGELHARDT, Z., "The First Ecclesiastical Synod of California (March 19-23, 1852)", in Catholic Historical Review, 1(1915-1916), pp. 30-37.
- "The Episcopal Office according to the Councils of Baltimore", in American Ecclesiastical Review, 16(Jan.-June 1897), pp. 290-295.

- EVANS, G.R., "Stability in the Parochial Office in the United States of America", in The Jurist, 23(1963), pp. 227-237.
- FENNING, H., "The Three Kingdoms: England, Ireland and Scotland", in J. METZLER (ed.), Sacrae Congregationis de Propaganda fide memoria rerum, 1622-1972, Rom, Herder, 1971-1976, vol. 2, pp. 604-629.
- FITZ-WALTER, P., "Archbishop Polding and Mary: An Attempt to Ascertain the Archbishop's Awareness of Mary", in Australasian Catholic Record, 54(1977), pp. 32-42.
- FOGARTY, G.F., "American Conciliar Legislation, Hierarchical Structure, and Priest-Bishop Tension", in The Jurist, 32(1972), pp. 400-409.
- , "The Bishops versus Religious Orders: The Suppressed Decrees of the Third Plenary Council of Baltimore", in The Jurist, 33(1973), pp. 384-398.
- , "Canon Law in American History and the History of American Canon Law", in Proceedings of the Fiftieth Annual Convention, Baltimore, Maryland, October 10-13, 1988, Washington, D.C., Canon Law Society of America, 1989, pp. 1-23.
- , "Church Councils in the United States and American Legal Institutions", in Annuario historiarum conciliorum, 4(1972), pp. 83-105.
- , "Diocesan Structure and Governance in the United States", in J. K. MALLETT (ed.), The Ministry of Governance, Washington, D.C., Canon Law Society of America, 1986, pp. 21-55.
- , "The Historical Origin of the Excommunication of Divorced and Remarried Catholics Imposed by the Third Plenary Council of Baltimore", in The Jurist, 38(1978), pp. 426-433.
- FORSTER, M.G., "The Stream in the South: Reflections on Australia's Monastic Heritage Occasioned by the Sesquimillennial Celebrations to Honour the Birth of St Benedict, 480-1980", in Australasian Catholic Record, 57(1980), pp. 274-289.
- , "To Protect, to Instruct, to Make Disciples of Christ: Aborigines, Islanders and Doctor Polding", in Australasian Catholic Record, 56(1979), pp. 160-175.

- GARCIA Y GARCIA, A., "Episcopal Conferences in the Light of Particular Councils during the Second Millenium", in The Jurist, 48(1988), pp. 57-67.
- GAUDIN, J.R., "L'Eglise et la politique d'après le cardinal Elzéar-Alexandre Taschereau (1820-1898)", in Studia canonica, 8(1974), pp. 23-43.
- GILLEY, S., "The Roman Catholic Church and the Nineteenth-Century Diaspora", in Journal of Ecclesiastical History, 35(1984), pp. 188-207.
- GODIN, E., "Établissement de l'Eglise catholique au Nouveau-Brunswick", in La Société canadienne d'histoire de l'Eglise catholique: Sessions d'étude, 48(1981), pp. 37-56.
- GRISÉ, J., "L'Eglise canadienne à partir de la formation de la province ecclésiastique de Québec (1844) jusqu'au cinquième Concile provincial de Québec (1873): évolution des structures et mentalité des évêques", in La Société canadienne d'histoire de l'Eglise catholique: Sessions d'étude, 39(1972), pp. 9-28.
- GUILDAY, P., "The American Hierarchy of 1846", in American Ecclesiastical Review, 114(Jan.-June 1946), pp. 321-326.
- , "The Appointment of Father John Carroll as Prefect Apostolic of the Church in the New Republic (1783-1785)", in Catholic Historical Review, 6(1920-1921), pp. 204-244.
- GWYNN, D., Great Britain: England and Wales, in P.J. CORISH (ed.), A History of Irish Catholicism, vol. 6, § 1a, Dublin, Gill, 1968, 54 p.
- HAINES, G., "The 'Freemans Journal', 1857-1860: Criticism within the Catholic Church", in Journal of Australian Catholic Historical Society, 4(1972), pp. 80-96.
- HANDLEY, J.E., Great Britain: Scotland, in P.J. CORISH (ed.), A History of Irish Catholicism, vol. 6, § 1b, Dublin, Gill, 1968, 29 p.
- HANNAN, J.D., "An American Ecclesiastical Code", in Homiletic and Pastoral Review, 43(1943), pp. 726-730.
- HANNON, J.B., "Diocesan Consultors", in Studia canonica, 20(1986), pp. 147-179.

- HENKEL, W., "The Final Stage of U.S.A. Church's Development under Propaganda Fide", in J. METZLER (ed.), Sacra Congregationis de Propaganda fide memoria rerum, 1622-1972, Rom, Herder, 1971-1976, vol. 3-1, pp. 705-728.
- HENNESEY, J., "The Baltimore Conciliar Tradition", in Annuario historiae conciliorum, 3(1971), pp. 71-88.
- , "An Eighteenth-Century Bishop: John Carroll of Baltimore", in Archivum historiae pontificae, 16(1978), pp. 171-204.
- HOGAN, D.C., "The Four Westminster Provincial Synods", in Clergy Review, 69(1984), pp. 444-450.
- HOLMES, J.D., "'Conciliarists' Versus 'Papalians': The Victory of Ultramontanism and the Decline of Gallicanism in England Illustrated by the Controversy over the Restoration of the Hierarchy", in Annuario historiae conciliorum, 5(1973), pp. 424-436.
- , "English Catholicism from Wiseman to Bourne: Some Recent Research on the History of English Catholicism in the Second Half of the Nineteenth Century", in Clergy Review, 61(1976), pp. 57-69, 107-116.
- , "English Ultramontanism and Clerical Education", in Clergy Review, 62(1977), pp. 266-278.
- , "Some Unpublished Passages from Cardinal Wiseman's Correspondence", in Downside Review, 90 (1972), pp. 41-52.
- HOSIE, J., "1859, Year of Crisis in the Australian Catholic Church", in Journal of Religious History, 7(1972-1973), pp. 342-361.
- HUEL, R., "The Irish-French Conflict in Catholic Episcopal Nominations: The Western Sees and the Struggle for Domination Within the Church", in Canadian Catholic Historical Association: Study Sessions, 42(1975), pp. 51-70.
- JEBB, P., "The English Mould of John Bede Polding", in Tjurunga, 15(1978), pp. 65-82.
- KAY, T.H., "The Rights of the Parochial Beneficiary in the United States", in The Jurist, 15(1955), pp. 318-336.
- KELLY, M., "The Benedictine Influence", in Australasian Catholic Record, 55(1978), pp. 17-27.

- KRISHOCK, J.J., "Sacred Music and the Plenary Councils of Baltimore", in American Ecclesiastical Review, 104(Jan.-June 1941), pp. 542-545.
- KROLLA, A, "Support of Sick, Old and Delinquent Clergymen", in American Ecclesiastical Review, 24(Jan.-June 1901), pp. 20-33.
- KWITCHEN, M.A., "Newspaper Comment on the III Plenary Council of Baltimore", in The Jurist, 8(1948), pp. 95-104.
- LAMIRANDE, É., "Le diocèse de l'île de Vancouver (1846) et le vicariat apostolique de la Colombie-Britannique (1863): limites et situation juridique", in Studia canonica, 21(1987), pp. 359-379.
- LARACY, H.M., "Bishop Moran: Irish Politics and Catholicism in New Zealand", in Journal of Religious History, 6(1970-1971), pp. 62-76.
- LARKIN, E.J., "Church, State, and Nation in Modern Ireland", in American Historical Review, 80(1975), pp. 1244-1276.
- , "The Devotional Revolution in Ireland, 1850-1875", in American Historical Review, 77(1972), pp. 625-652.
- , "Economic Growth, Capital Investment, and the Roman Catholic Church in Nineteenth Century Ireland", in American Historical Review, 72(1967), pp. 852-884.
- LEMIEUX, L., "Provisions pour l'Église canadienne: A. La Congrégation de la Propaganda, modératrice et promotrice d'une Église canadienne en expansion (1760 à 1840)", in J. METZLER (ed.), Sacræ Congregationis de Propaganda fide memoria rerum, 1622-1972, Rom, Herder, 1971-1976, vol. 3-1, pp. 729-748.
- LESLIE, S., "The Cullen Era", in The Month, 33(1965), pp. 230-238.
- LINDSAY, L.S., "The Centenary of the Archdiocese of Québec", in Catholic Historical Review, 7(1921-1922), pp. 152-164.
- LIVINGSTON, K., "First Steps towards an Australian Priesthood: 1835-1885", in Journal of Australian Catholic Historical Society, 4(1972), pp. 1-16.
- , "Voices in the Wilderness: Apologists for the Aborigines in the Past", in Australasian Catholic Record, 56(1979), pp. 176-191.

- LUZIO, S., "The Maynooth Synod Decrees", in Irish Ecclesiastical Record, 4th ser., 31(Jan.-June 1907), pp. 561-574.
- MCAVOY, T.T., and T.N. BROWN, The United States of America, in P.J. CORISH (ed.), A History of Irish Catholicism, vol. 6, § 2, Dublin, Gill and Macmillan, 1970, 100 p.
- McCLELLAND, V.A., "A Hierarchy for Scotland, 1868-1878", in Catholic Historical Review, 56(1970-1971), pp. 474-500.
- MacENERNEY, F., "The Origin and Value of the Distinction, 'Primate of Ireland,' 'Primate of All Ireland'", in Irish Ecclesiastical Record, 3rd ser., 10(1889), pp. 422-432.
- McGOVERN, J.J., "John Bede Polding", in Australasian Catholic Record, 11(1934), pp. 183-194, 291-305; 12(1935), pp. 10-24, 106-120, 208-220, 301-317; 13(1936), pp. 9-24, 107-117, 199-210, 299-310; 14(1937), pp. 19-31, 100-112, 204-215, 276-297; 15(1938), pp. 11-33, 110-129, 199-219, 301-321; 16(1939), pp. 6-27, 102-112.
- , "Our Lady, Help of Christians", in Australasian Catholic Record, 25(1948), pp.158-160.
- McGOVERN, J.J., and P.J. O'FARRELL, Australia, in P.J. CORISH (ed.), A History of Irish Catholicism, vol. 6, § 6, Dublin, Gill and Macmillan, 1971, 76 p.
- McMINN, W.G., "Bishop Murray and the Pattern of Australian Catholicism", in Journal of Religious History, 6(1970-1971), pp. 348-362.
- McNAMARA, R.F., "John Carroll and Interfaith Marriages: The Case of the Belle Vue Carrolls", in N.H. Minnich, R.B. Eno and R.F. Trisco (eds), Studies in Catholic History in honor of John Tracy Ellis, Wilmington, Del., M. Glazier, 1985, pp. 27-59.
- MacSUIBHNE, P., "Ireland at the Vatican Council", in Irish Ecclesiastical Record, 5th ser., 93(1960), pp. 209-222, 295-307.
- MANNIX, D., "Notes on the Canonical Aspects of a Plenary or National Synod", in Irish Ecclesiastical Record, 4th ser., 7(Jan.-June 1900), pp. 536-546; 8(July-Dec. 1900), pp. 164-175.
- MECHAM, F.A., "The Contribution of the Clergy to the Spirituality of the Australian Church", in Australasian Catholic Record, 55(1978), pp. 43-55.

- METZLER, J., "Erforschung und Darstellung der Missionssynoden und -konzilien: ein Erfahrungsbericht", in Annuario historiae conciliorum, 11(1979), pp. 171-181.
- METZLER, J. (ed.), "Compendio di Storia della S.C. per l'Evangelizzazione dei Popoli o 'De Propaganda Fide', 1622-1972", in Euntes docete, 26(1973), pp. 1-250.
- MONAHAN, A.P., Canada, in P.J. CORISH (ed.), A History of Irish Catholicism, vol. 6, § 3, Dublin, Gill and Macmillan, 1971, 34 p.
- MORRISEY, F.G., "The Development of Ecclesiastical Particular Law in Canada", in Canadian Catholic Historical Association: Study Sessions, 50(1983), pp. 141-158.
- , "The Development of Particular Canonical Legislation in Canada", in Eglise et théologie, 11 (1983), pp. 223-245.
- , "The Juridical Situation of the Catholic Church in Lower and Upper Canada from 1791 to 1840", in Studia canonica, 5(1971), pp. 279-321.
- , "La situation juridique de l'Eglise catholique au Bas-Canada de 1791 à 1840", in La Société canadienne d'histoire de l'Eglise catholique: Sessions d'étude, 39 (1972), pp. 65-89.
- MOVERLEY, G., "The Westminster Theatre Law", in The Jurist, 18(1958), pp. 191-208.
- MUCCI, G., "Concili particolari e conferenze episcopali", in La Civiltà cattolica, anno 138, vol. IV (aprile-giugno 1987), pp. 340-348.
- MULKEARNS, R.A., "Councils and Synods in Australia", in Australasian Catholic Record, 42(1965), pp. 113-120.
- , "The Scope of Canon Law in a Frontier Church Situation", in Tjurunga, 15(1978), pp. 39-46.
- MURPHY, I., S.V. O SUILLEABHAIN, and F. McGRATH, Catholic Education, in P.J. CORISH (ed.), A History of Irish Catholicism, vol. 5, § 6, Dublin, Gill and Macmillan, 1971, 142 p.
- MYERS, C., "The Theatre Law of the Old Province of Westminster", in Clergy Review, 3(1932), pp. 89-105.

- NEVIN, J.J., "Canonical Status and Proper Mode of Designating Priests in Charge of Missions", in Australasian Catholic Record, 3(1926), pp. 154-159.
- , "Irremovable Parishes", in Australasian Catholic Record, 11(1934), pp. 336-340.
- , "Irremovable Parishes Intuitu Personæ: Concursus for Parishes", in Australasian Catholic Record, 8 (1931), pp. 333-342.
- , "Power of Plenary Council to Reserve Sins", in Australasian Catholic Record, 8(1931), pp. 228-231, 330-333.
- , "Reservations", in Australasian Catholic Record, 2 (1925), pp. 56-61.
- O'BRIEN, E.M., "Jeremiah Francis O'Flynn", in Australasian Catholic Record, 1(1924), pp. 54-64, 52-61, 69-81, 66-84; 2(1925), pp. 71-78, 162-174, 259-270, 364-372; 3(1926), pp. 68-79, 170-176, 262-271, 356-364; 4(1927), pp. 62-76, 155-167, 246-253, 338-349; 5(1928), pp. 60-72, 156-160.
- O'BRIEN, J., "In diebus illis", in Australasian Catholic Record, 20(1943), pp. 15-25, 113-125, 159-178, 238-257; 21(1944), pp. 33-50, 90-103, 134-147, 194-209; 22(1945), pp. 20-39, 77-97, 155-173, 209-227.
- O'DONOGHUE, F., "Australia's Connection with Mauritius", in Australasian Catholic Record, 53(1976), pp. 70-80.
- O'HARA, E., "Catholic Pioneers of the Oregon Country", in Catholic Historical Review, 3(1917-1918), pp. 187-201.
- O'NEILL, C.E., "The United States of America", in J. METZLER (ed.), Sacræ Congregationis de Propaganda fide memoria rerum, 1622-1972, Rom, Herder, 1971-1976, vol. 2, pp. 1162-1184.
- O'REILLY, M., "The Renewal of the Church in Great Britain and Ireland after Emancipation", in J. METZLER (ed.), Sacræ Congregationis de Propaganda fide memoria rerum, 1622-1972, Rom, Herder, 1971-1976, vol. 3-2, pp. 192-250.
- PASSMORE, N.W., "Abbot Gregory Gregory (1813-1877)", in Downside Review, 89(1971), pp. 191-195.

- PAGE, R., "Particular Councils and Conferences of Bishops", in Proceedings of the Fiftieth Annual Convention, Baltimore, Maryland, October 10-13, 1988, Washington, D.C., Canon Law Society of America, 1989, pp. 216-221.
- PRINCE, B.A., "Foundation of the Episcopal Conference in Canada", in Studia canonica, 1(1967), pp. 97-109.
- PROVOST, J.H., "Groupings of Particular Churches", in J.A. CORIDEN, T.J. GREEN, and D.E. HEINTSCHEL (eds), The Code of Canon Law: A Text and Commentary, commissioned by the Canon Law Society of America, New York, Mahwah, N.J., Paulist Press, 1985, pp. 350-377.
- , "Particular Councils", in THÉRIAULT, M. and J. THORN (eds), The New Code of Canon Law: Proceedings of the 5th International Congress of Canon Law, organised by Saint Paul University and held at the University of Ottawa, August 19-25, 1984, Ottawa, Faculty of Canon Law, Saint Paul University, 1986, pp. 537-562.
- PURCELL, M., "Irish Faith and Roman Portmanteau: Some Comments on Irish Australian Spirituality in the time of Polding", in Tjurunga, 15(1978), pp. 83-90.
- PURCELL, P., "Bishop Murray and the Patrician Brothers", in Journal of Religious History, 8(1974-1975), pp. 75-89.
- ROBERTS, C., "Bishop James Quinn: From Dublin to Brisbane", in Australasian Catholic Record, 37(1960), pp. 116-122.
- , "James Quinn's Roman Background", in Australasian Catholic Record, 37(1960), pp. 11-16.
- RYAN, E., "Diocesan Organization in the Spanish colonies", in Catholic Historical Review, 4(1918-1919), pp. 170-185.
- , "Ecclesiastical Jurisdiction in the Spanish colonies", in Catholic Historical Review, 5(1919-1920), pp. 3-18.
- SCHIEFEN, R.J., "'Anglo-Gallicanism' in Nineteenth-Century England", in Catholic Historical Review, 63(1977), pp. 14-44.
- , "The First Provincial Synod of Westminster (1852)", in Annuario historiarum conciliorum, 4(1972), pp. 188-213.
- , "Some Aspects of the Controversy between Cardinal Wiseman and the Westminster Chapter", in Journal of Ecclesiastical History, 21(1970), pp. 125-143.

- SCHMANDT, R.H., "Episcopal Support of Catholic Intellectual Activity: A Note on the Fourth Provincial Council of Baltimore", in Catholic Historical Review, 64(1978), pp. 51-56.
- SCHMEISER, J.A., "The Development of Canadian Ecclesiastical Provinces, Councils, Rituals, and Catechisms from the Time of Bishop François de Montmorency-Laval (1658) to the Plenary Council of Quebec (1909)", in Studia canonica, 5(1971), pp. 135-165.
- SHANAHAN, M., "Bishop Davis: 1848-1854", in Manna, 6(1963), pp. 50-62.
- SOUTHERWOOD, W.T., "A Contemporary Episcopal View of Archbishop Polding: The Willson Correspondence", in Journal of Religious History, 9(1976-1977), pp. 364-386.
- , "New Light on the Foundation of Australian Catholicism" in Australasian Catholic Record, 61(1984), pp. 164-175.
- , "The Other Pioneer (Father Philip Connolly)", in Australasian Catholic Record, 59(1982), pp. 442-456.
- SZENTIRMAI, A., "The Primate of Hungary", in The Jurist, 21 (1961), pp. 27-46
- TATARCZUK, V.A., "Past and Present Practice in the selection of candidates for bishoprics in the U.S.", in The Jurist, 16(1956), pp. 309-317.
- THORNHILL, J., "The Christian Vision of John Bede Polding and Its Intimations of Concern for the Establishing of an Australian Local Church", in Australasian Catholic Record, 54(1977), pp. 6-16.
- TIERNEY, M., "Catalogue of Letters relating to the Queen's Colleges, Ireland, 1845-50, in the Papers of Archbishop Michael Slattery at Thurles", in Collectanea Hibernica, 9(1966), pp. 83-120.
- VOISINE, N., "Épiscopat canadien et collégialité", in La Société canadienne d'histoire de l'Église catholique: Sessions d'étude, 50(1983), pp. 119-140.
- WADE, M., "Relations between the French, Irish and Scottish Clergy in the Maritime Provinces 1774-1836", in Canadian Catholic Historical Association: Study Sessions, 39(1972), pp. 9-33.

- WEBER, F.J., "Episcopal Appointments in the U.S.A.", in American Ecclesiastical Review, 155(July-Dec. 1966), pp. 178-191.
- WHYTE, J.H., "The Appointment of Catholic Bishops in Nineteenth-Century Ireland", in Catholic Historical Review, 48(1962-1963), pp. 12-32.
- , Political Problems 1850-60, in P.J. CORISH (ed.), A History of Irish Catholicism, vol. 5, § 2, Dublin, Gill, 1967, 39 p.
- WILTGEN, R.M., "Oceania: The Youngest Mission (1825-1922)", in J. METZLER (ed.), Sacræ Congregationis de Propaganda fide memoria rerum, 1622-1972, Rom, Herder, 1971-1976, vol. 3-1, pp. 575-602.
- WYNNE, R., "Archdeacon John McEncroe", in Australasian Catholic Record, 31(1954), pp. 34-40, 119-126, 223-229, 309-316; 32(1955), pp. 21-27, 115-122, 212-221, 308-318; 33(1956), pp. 22-31, 112-128.
- , "The Coming of Cardinal Moran", in Australasian Catholic Record, 47(1970), pp. 202-208.

BIOGRAPHICAL NOTE

Ian Benjamin Waters was born on 18 November 1943 in Melbourne, Victoria, Australia. He was educated by the Sisters of Mercy, the Marist Brothers, and finally from 1963 until 1970 by the Jesuit Fathers at the regional seminary, Corpus Christi College. He was ordained a priest for the archdiocese of Melbourne on 23 May 1970 by Most Reverend J.R. Knox, archbishop of Melbourne.

After serving as a curate in several Melbourne parishes, he was sent in 1973 to study canon law at the Catholic University of America, Washington, D.C., U.S.A., where he obtained the Master of Church Administration degree in 1974. He was appointed secretary to the Regional Tribunal of Melbourne in 1974, a judge in 1975, and vice-officialis in 1976; he has been officialis since 1979. He has served as assistant-secretary (1976-1982) and vice-president (1982-1984) of the Canon Law Society of Australia and New Zealand, and has been a member of the Melbourne Diocesan Historical Commission since 1977, and its executive chairman since 1984.

He recommenced canonical studies in 1987, obtaining in 1988 the degree of Licentiate in Canon Law from Saint Paul University, Ottawa, and that of Master in Canon Law from the University of Ottawa.