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THE ACTS OF FINANCIAL ADMINISTRATION BY DIOCESAN BISHOPS ACCORDING TO THE NORMS OF CANON 1277

by
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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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ISBN 0-315-80056-9

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I wish to acknowledge the support and encouragement of members of the Society of the Precious Blood - Kansas City Province who made my study of canon law possible. A special thanks to my present Provincial, the Reverend Thomas Albers, C.PP.S., and my former Provincial who encouraged me to undertake this task, the Most Reverend Joseph Charron, C.PP.S., Auxiliary Bishop of Saint Paul and Minneapolis.

Special recognition goes out to the Faculty of Canon Law at Saint Paul University and the Dean, Rev. Jean Thorn. Thanks also go to my advisor, Rev. Augustine Mendonça for his time, assistance and direction in this work. A word of sincere appreciation goes to the Rev. Francis Morrisey, O.M.I., for his guidance, support, and generous use of his time throughout this project.

I also wish to express my appreciation to the library staff of Saint Paul University for their assistance and interest in this work.

Finally, I want to thank all those who have supported me over these years in this endeavor, especially my family, and the Reverend Peter Comensoli, Judicial Vicar of the diocese of Wollongong, Australia.

Thomas Vowell, C.PP.S. was born on May 26, 1957, in Blackwell, Oklahoma, USA. After obtaining a Bachelor's Degree in Business Administration with a concentration in Accounting, he entered Saint John's University, School of Divinity where he earned a M. Div. Degree in 1985.

After serving two years as a parochial vicar he began Canon Law studies at Saint Paul University in 1987, receiving his Licentiate in Canon Law in 1989. Doctoral studies in Canon Law were begun in the summer of 1989.

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INTRODUCTION

The pastoral leadership of the diocesan bishop encompasses not only the tasks of teaching and sanctifying, but it also includes the function of governance. Exercising the role of governance in this day and age, more than ever before often entails making administrative decisions which are necessary for the proper and efficient management of the diocese as a juridic person.

The exercise of the governance necessary for the proper administration of the diocese includes making decisions which affect its temporal goods. These decisions, which are administrative in nature, are regulated by the canons found in the 1983 Code of Canon Law. Canon 1277 specifically concerns acts of extraordinary administration determined by the conference of bishops, and acts of major importance determined by the diocesan bishop in light of the financial condition of the diocese. In each of these cases, because of the impact such acts have upon the diocesan Church, the participation of the finance council and the college of consultors is required. In acts of extraordinary

administration, the diocesan bishop must obtain their consent, and in acts of major importance, he must seek their counsel.

The requirements of canon 1277 are not simply formalities to be followed or limitations placed upon the diocesan bishop in the making of administrative decisions. Rather, they reflect the notion of the diocesan bishop as a steward and an understanding that decisions affecting the temporal goods of a diocese are complex, requiring the valuable assistance of other individuals. Thus canon 1277 supposes a renewed understanding of the role of the diocesan bishop in the temporal administration of the diocese. It places his responsibility within the context of the notion of stewardship, a concept which finds its foundation in the biblical tradition.

Prior to this study, the most extensive work which focused upon the legal formalities in the area of temporal administration is the study done by F. Demers, entitled The Temporal Administration of the Religious House of a Non-Exempt, Clerical, Pontifical Institute.[1] The focus of Demers' work concerns the temporal administration by superiors of

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[1] F. Demers, The Temporal Administration of the Religious House of a Non-Exempt, Clerical, Pontifical, Institute, Canon Law Studies, no. 396, Washington, DC, Catholic University of America, 1961, xi-147p.

religious institutes and not specifically the diocesan Church. However, many of the concepts which are part of the temporal administration for religious institutes find their basis in the temporal administration of the diocesan Church as it is presented in Book 3 of the 1917 Code. A number of these concepts have formed the foundation for this study. These concepts, however, are being examined in relation to the stewardship role of the diocesan bishop, the teachings of the Second Vatican Council, and the development of the 1983 Code.

The purpose of this study is to examine the bishop's role as a steward of the temporal goods of the Church as it is presented in canon 1277. This examination involves a number of canonical issues found in canon 1277 of the 1983 Code and canon 1520, §3 of the 1917 Code. Among these are a canonical understanding of administration, the concepts of ordinary and extraordinary administration, and acts of major importance.

Since these concepts are not defined in the 1983 Code, Chapter I will begin by exploring their meaning in the 1917 Code. This will entail an analysis of the role of the Roman Pontiff as the supreme administrator and dispenser of all ecclesiastical goods in comparison to the diocesan bishop whose role has been described in terms of a supervisor, and at times an administrator, of ecclesiastical goods.

Consideration will also be given to the canonical notions of moral and juridic persons as they are presented in the 1917 Code since they are in need of an administrator to act on their behalf. In addition, an analysis will be made of the levels of administration, namely ordinary and extraordinary administration and matters of major importance. The various methods used to determine acts which constitute these levels of administration will also be considered. Finally, attention will be given to the role of the diocesan council of administration in the administration of the temporal goods of the diocese in accord with the norms of the 1917 Code.

These fundamental concepts found in the 1917 Code have been incorporated substantially into the 1983 Code. However, their interpretation has been enriched by the doctrinal understanding of the role of the diocesan bishop presented by the Second Vatican Council. Chapter II will analyze the influence of the Second Vatican Council on the understanding of the stewardship role of the diocesan bishop. This analysis will cover conciliar teaching and the post-conciliar document, The Directory on the Pastoral Ministry of Fishops, which re-defines the role of the diocesan bishop as a canonical steward.

After presenting the foundational concepts of temporal administration in the 1917 Code, and the influence of the Second Vatican Council upon the role of the diocesan bishop as an administrator and steward, we will turn to canon 1277 of the 1983 Code. In Chapter III we will trace the evolution of the canon through the deliberations of the coetus involved in its formulation, and analyze its important elements.

Finally, Chapter IV will focus on the practical application of canon 1277. Since the canon enjoins on the conference of bishops the task of determining which acts constitute extraordinary administration, the decrees issued by various conferences concerning this matter will be examined. In doing so, consideration will be given to the three common methods used by various conferences in determining acts of extraordinary administration. The common trends underlying these common methods, their advantages and disadvantages, limitations, etc., will also be reviewed in this chapter. Since canon 1277 also includes acts of major importance, we will examine how some dioceses in the United States have defined this term in their day to day operations.

CHAPTER ONE

FOUNDATIONS OF ECCLESIASTICAL ADMINISTRATION IN THE 1917 CODE OF CANON LAW

Canon 1277 of the 1983 Code of Canon Law provides legislation concerning decision-making by the diocesan bishop in matters of extraordinary administration and acts of major importance. The prescriptions of this canon provide a means whereby the diocesan bishop functions as a steward in relation to the temporal goods of the diocesan Church.

An understanding of canon 1277 in the 1983 Code takes place through the analysis of four canonical concepts which are found in the 1917 Code. First, the 1917 Code presents an understanding of administration as it is reflected in the role of the Roman Pontiff and the diocesan bishop. Second, the usage of moral and juridic persons in the 1917 Code creates the need for administrators. Third, through its legislation, the 1917 Code reflects various levels of administration. These include acts of ordinary and extraordinary administration, and matters of major importance. Finally, the 1917 legislation incorporates the participation by other individuals, namely the diocesan council of administration,

in decisions by the local ordinary which are of major importance.

The 1917 Code provides legislation governing acts of administration on the part of the diocesan bishop and local ordinary as they relate to the temporal goods of the diocesan Church. This legislation, particularly canon 1520, §3, imposes upon the diocesar bishop a process he must go through depending on the impact such an act will have upon the diocese. These acts, considered to be of major importance, require the consultation of the council of administration. In addition, canon 1527, §1 speaks of ordinary administration and thus implicitly points to acts of extraordinary administration. The determination of what denotes acts which are ordinary extraordinary or of major importance, is significant in the application of this legislation. However, the 1917 Code does not precisely define any of these categories of administration.

A definition of each of these terms involves an analysis of a number of legal concepts which are part of canonical tradition and practice, as well as the consideration of the role of the administrator. The relation of these concepts to the canons on the temporal administration of the Church is the focus of this chapter.

In order to formulate an understanding of these different levels of administration, consideration will first be given to the role of the Roman Pontiff as supreme administrator and dispenser of all ecclesiastical goods. Secondly, the role of the diocesan bishop as supervisor and administrator of ecclesiastical goods will be addressed. Thirdly, an analysis of the various theories regarding the determination of acts which are ordinary, extraordinary, and of major importance will be discussed. Finally, the interaction of the council of administration will be examined in relation to acts of major importance and the formalities which are called for within that level of administration. An analysis of these four points in the 1917 Code sets the foundation for an appraisal of canon 1277 of the 1983 Code in Chapter III.

1.1 Acts of administration in the 1917 Code of Canon Law

1.1.1 The context of canons 1495-1551

The specific focus of this chapter is on the interpretations of canons 1520, §3 and 1527, §1 which define different levels of administration used by the diocesan bishop in the exercise of his administrative power. The canons under

consideration are located under the title De Bonis Ecclesiae Temporalibus in Book 3 on De Rebus.

The placement of these canons within Book 3 on res[1] emphasizes the principle that temporal goods are a means of fulfilling the spiritual goals of the Church. These canons recognize the right of the Church to acquire, retain, administer and alienate those temporal goods which are necessary fulfilling its spiritual goals.

The spiritual goals or purposes of temporal goods are presented in canon 1496 where three specific ends are noted: (1) divine worship, (2) adequate support of the clergy, and (3) other purposes.[2] R. Kealy points out that the third end or purpose traditionally had been to provide for the poor. This purpose finds its origin in biblical tradition. However, because of complexities associated with the system of benefices the explicit reference to the poor was left out in the drafting of canon 1496, but provided for in canon 1473

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[1] For a discussion of the words res and bona as they apply to ecclesiastical property, see J. McManus, Administration of Temporal Goods in Religious Institutes, Canon Law Studies, no. 109, Washington, DC, Catholic University of America Press, 1937, p. 1.

[2] Canon 1496. "Ecclesiae ius quoque est, independens a civili potestate, exigendi a fidelibus quae ad cultum divinum, ad honestam clericorum aliorumque ministrorum sustentationem et ad reliquos fines sibi proprios sint necessaria."

which states the holder of a benefice was obliged to give to the poor from surplus of funds.[3]

These three ends, including the care of the poor, are legislated to remind the Church of the purpose of having property and financial resources. Fundamentally ecclesiastical goods owned and administered by the Church are a means to these ends. However ecclesiastical goods owned by the Church cannot be applied to these ends without the assitance of individuals who act in administrative capacities and represent the Church as leaders and administrators within the limits of their competence.

1.2 Canon 1518 - The Roman Pontiff as the supreme administrator of all ecclesiastical goods

Before studying canon 1520, §3, it is important to consider canons 1518 and 1519 because of their interrelationship and complementary characteristics. Canon 1518 states:

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[3] R. Kealy, Diocesan Financial Support: Its History and Canonical Status, JCD diss., Romae, Pontificia Universitas Gregoriana, Tipografia Di Patrizio Graziani, 1986, p. 200.

> The Roman Pontiff is the supreme administrator and dispenser of all eccesiastical property.[4]

An analysis of this canon helps to understand the meaning of administration, which historically has not always been clear and concise, as well as the scope of the legislation itself. The lack of clarity has centered around interpreting the phrase "supreme administrator".

1.2.1 Supreme administration

Canon 1518 attributes to the Roman Pontiff three qualities in relation to the temporal goods of the Church. The first of these denotes a positioning in relation to other individuals by the use of the word "supreme". Then, the canon assigns to the Roman Pontiff two specific tasks or functions: those of administrator and of dispenser of goods.

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[4] Canon 1518. "Romanus Pontifex est omnium bonorum ecclesiasticorum supremus administrator et dispensator." English translation, J. A. Abbo and J. D. Hannan, The Sacred Canons: A Concise Presentation of the Current Disciplinary Norms of the Church, 2nd rev. ed., St. Louis, MO, B. Herder Book Co., 1960, v. 2, p. 724.

J. Comyns notes that the word "supreme" expresses a hierarchical concept in relation to the temporal goods owned by the entire Church. He states:

> The pope's power is said to be supreme, that is, it is declared to be the right to administer immediately and mediately any ecclesiastical property whatever.[5]

Immediate administration is that form of administration which takes place through active participation or involvement. Conversely, a mediate form of administration is indirect and takes place through legislation, administrative decrees, or delegation.[6] Therefore, the Roman Pontiff can actively participate in the administration of all subordinate moral and juridic persons or he can do so mediately in various ways.[7]

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[5] J. Comyns, Papal and Episcopal Administration of Church Property: An Historical Synopsis and Commentary, Canon Law Studies, no. 147, Washington, DC, Catholic University of America Press, 1942, p. 57; see also J. Munday, Ecclesiastical Property in Australia and New Zealand, Canon Law Studies, no. 387, Washington, DC, Catholic University of America Press, 1957, pp. 74-88.

[6] J. Comyns, Papal and Episcopal Administration, p. 57.

[7] It should be noted that J. Comyns points out that G. Vromant does not consider the supremacy of the Pontiff in administration to include acts of immediate administration. J. Comyns bases this on G. Vromant's exclusion of the word immediate when he states: "Vi primatus iurisdictionis in societate perfecta, uti est Ecclesia Catholica, Romanus Pontifex habet: (1) supremam et mediatam administrationem omnium bonorum ecclesiasticorum [...]", G. Vromant, De bonis ecclesiae temporalibus ad usum praesertim missionariorum et

The competence of the Roman Pontiff to exercise this form of leadership comes about through his supreme, immediate and ordinary jurisdiction ordered for the good of the entire Church. The exclusive nature of this supreme, immediate and ordinary jurisdiction makes it possible for him to make decisions affecting every moral or juridic person and this may be done on either an immediate or a mediate level. If the leadership and jurisdiction of the Pontiff were not supreme, then the implications would be far reaching because the lack of supremacy could potentially lead to fragmentation in unity.

1.2.1.1 Function as administrator

Canon 1518 notes that the supremacy of the Roman Pontiff is exercised through his two functions of administrator and dispenser.

The role of the Pontiff as supreme administrator is described through four tasks carried out on behalf of the entire Church. F. Wernz provides the elements of the classical definition of administration by listing these four tasks: (1) caring for the temporal goods of the moral or

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religiosorum, ed. alt., Louvain, Museum Lessianum, 1934, pp. 202-203. See also U. Beste, Introductio in codicem, ed. alt., Collegeville, MN, St. John's Abbey Press, 1944, p. 738.

juridic person, (2) making the temporal goods productive, (3) deriving fruits from them and (4) applying what has been acquired to the moral or juridic person.[8]

Therefore, when the Roman Pontiff functions as supreme administrator, the object of his administration is, among other things, the carrying out of these four tasks. In other words, his decisions are directed towards the care, preservation, production and application of ecclesiastical property. As supreme administrator, then, he has the power to make decisions in this regard independent of subordinate administrators. However, it is important to note that the canon uses the term "supreme administrator" as distinct from "supreme owner" because the obligations of the Roman Pontiff as administrator concern the stewardship of the ecclesiastical goods of the entire Church and not their ownership.[9]

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[8] "[...] quatenus ab acquisitione et alienatione distinguitur, denotat omnes illos actus, qui ad conservationem et melioratione substantiae bonorum ecclesiasticorum iam acquisitorum aut ad legitimam perceptionem, conservationem, melioratione atque praesertim applicationem fructuum et redituum ecclesiasticorum referuntur. Omnes igitur leges et iura quibus isti fines promoventur, spectant ad administrationem bonorum ecclesiasticorum." F. Wernz and P. Vidal, Ius canonicum, Romae, Apud Aedes Universitatis Gregorianae, 1935, v. 4-2, pp. 211-212.

[9] The term ownership finds its root in Roman Law. Ownership, termed dominium, was an expression contained in private law and represented the relationship between the one who owned an object and the object itself. B. Nicholas in An Introduction to Roman Law, Oxford, Clarendon Press, 1962, pp. 153-154, identifies the essence of this concept by saying:

1.2.1.2 Function as dispenser

The Roman Pontiff's ability to act as a supreme dispenser of ecclesiastical goods appears to be integrally tied to the concept of eminent domain. This opinion is held by M. Coronata[10], M. Pistocchi[11], D. Prümmer[12], J. A. Abbo and J. D.

"At its simplest it is the difference between mine and thine, at its most sophisticated it is the ultimate right, the right behind all other rights. The elusive character of ownership can be appreciated if one attempts to give a precise meaning to the often repeated statement that Roman ownership is markedly, and to some of its critics excessively, 'absolute'." See also, J.A.C. Thomas, Textbook of Roman Law, Amsterdam, North-Holland Publishing Co., 1976, pp. 133-150; R. David, Major Legal Systems in the World Today: An Introduction to the Comparative Study of Law, 2nd ed., trans. by J.E.C. Brierly, New York, The Free Press, 1978, pp. 33-73, as a study which tracks the development of law, and in particular Roman Law, within the context of historical influences and changes; J. Doyle, Civil Incorporation of Ecclesiastical Institutions: A Canonical Perspective, JCD diss., Ottawa, Saint Paul University, 1989, pp. 111-113, where he notes that the application of the Roman Law concept of dominium is not entirely transferable into canonical understandings because of its original meaning emanating from Roman private law. J. Doyle suggests that "ownership" in its canonical tradition involves the presence of three elements: (1) the juridical capacity of subjects, acquired or created by law, to acquire, retain, administer and alienate goods; (2) the exercise of rights, granted by a higher authority; (3) and the use of those rights in relation to a specific purpose of the Church.

[10] M. Conte a Coronata, Institutiones iuris canonici ad usum cleri, Taurini, Marietti, 1939, v. 2, p. 442.

[11] M. Pistocchi, De bonis ecclesiae temporalibus, Taurini, Marietti, 1932, pp. 68-69.

[12] D. Prümmer, Manuale iuris canonici, Friburgi Brisgoviae, Herder and Co., 1927, pp. 532-533.

Hannan[13]. Eminent domain, as it is used in civil law, denotes the power of a state to take private property.[14] The concept implies that decisions be based on a response to the common good and that just compensation be given for the private property acquired.

The Roman Pontiff exercises his role as supreme dispenser in relation to moral and juridic persons. Thus for the common good he has the ability in some circumstances to transfer ecclesiastical property from one moral or juridic person to another. His doing so constitutes a limitation on the right of the juridic or moral person to hold property. This right is partially protected in canon 1499 which states:

> §1. The Church can acquire temporal property in all ways that are rendered just for others by natural or positive law.
>
> §2. Under the supreme authority of the Apostolic See, the ownership of property belongs to

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[13] J. A. Abbo and J. D. Hannan, The Sacred Canons, v. 2, pp. 710-711.

[14] H. Ayrinhac, Administrative Legislation in the New Code of Canon Law, New York, Longmans, Green, 1930, p. 382. "Eminent domain" is defined as, "[t]he power to take private property for public use by the state, municipalities, and private persons or corporations authorized to exercise functions of public character", in H. Black, Black's Law Dictionary, 5th ed., St. Paul, MN, West Publishing Co, 1983, p. 273.

the moral person which has legitimately acquired it.[15]

In spite of this opinion of learned authors, not all commentators agreed with the analogy that the Roman Pontiff, acting as supreme dispenser, functions within the scope of eminent domain. For instance, A. Blatt associates instead the Pontiff's ability to dispense the ecclesiastical goods of the Church with his role as vicar of Christ. Thus, for Blatt, decisions regarding changes of property enacted by the Roman Pontiff as supreme dispenser, do not require that they be made for the common good or that adequate compensation be given to individual juridic or moral persons.[16]

However, a convincing argument in support of the eminent domain theory can be based on the understanding of Church as a perfect society, as was underlying the 1917 Code. The

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[15] Canon 1499, §1. "Ecclesia acquirere bona temporalia potest omnibus iustis modis iuris sive naturalis sive positivi, quibus id aliis licet."

§2. "Dominium bonorum, sub suprema auctoriate Sedis Apostolicae, ad eam pertinent moralem personam, quae eadem bona legitime acquisiverit." English translation, J. A. Abbo and J. D. Hannan, The Sacred Canons, v. 2, p. 710.

[16] A. Blat, Commentarium textus Codicis iuris canonici, 2nd ed., Romae, Institutum Pontificium Internationale Angelicum, 1934, v. 3, p. 592.

Church is a society structured with a hierarchy, and thus eventually one person will be entrusted with the ultimate responsibility of protecting the common good. This form of leadership, from time to time, may necessitate the exercise of supreme power in the transfer of property in order to protect the common good and preserve unity. The theory of eminent domain recognizes the Roman Pontiff as supreme administrator and dispenser of all ecclesiastical goods, but limits his competence through the requirements of responding to the common good and due compensation. These limitations are important because they indicate that the Roman Pontiff does not act as an owner of ecclesiastical goods, but rather as an administrator, and more precisely as a steward.

The Roman Pontiff thus has the supreme right and obligation to care for all the goods of the entire Church, to make them productive, to derive benefits from them and in turn to apply those benefits to the good of the Church. These four tasks reflect his role as supreme administrator. Furthermore, he has the right to dispense ecclesiastical property for the good of the Church in his role as supreme dispenser. On the diocesan level, the diocesan bishop exercises a similar yet somewhat different role in these matters.

1.3 The diocesan bishop and administration of the diocese

There are both similarities and differences between the role of the Roman Pontiff and the diocesan bishop as an administrator of temporal goods. These similarities and differences can be noted by first considering the power granted to the diocesan bishop in the governance of the diocese, second his obligation to direct the administration of the diocese, third the consequences of that obligation due to the moral or juridic personality of the diocese, and finally the method of exercising his role as an administrator.

1.3.1 Administrative power of the diocesan bishop

According to the 1917 Code, the power exercised by the diocesan bishop in relation to administrative matters is part of his power of governance or jurisdiction. The power of jurisdiction entrusted to diocesan bishops is noted in canon 335 which states:

> They have the right and duty to govern the diocese both in temporal and spiritual matters, with legislative, judicial and coercive power, to be exercised according to law.[17]

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[17] Canon 335, §1. "Ius ipsis et officium est gubernandi dioecesim tum in spiritualibus tum in temporalibus cum potestate legislativa, iudiciaria, coactiva ad normam sacrorum canonum exercenda." English translation, T.

According to the 1917 Code, jurisdiction for the entire Church is held by the Roman Pontiff through divine institution. He shares this jurisdiction with individual bishops. However the jurisdiction given to bishops is limited to a territory and to those under their care.[18]

The 1917 Code states that it is through canonical mission that the bishop possesses the ability to govern those entrusted to him. Canon 335 notes that governance takes place through three forms of power: legislative, judicial and coercive.

Bouscaren and A. Ellis, Canon Law: A Text and Commentary, 3rd rev. ed., Milwaukee, Bruce Publishing Co., 1958, p. 178. See also G. Ryan, Principles of Episcopal Jurisdiction, Canon Law Studies, no. 120, Washington, DC, Catholic University of America Press, 1939, pp. 57-73.

[18] J. Comyns, Administration of Church Property, p. 65. See also A. Ottaviani, Institutiones iuris publici ecclesiastici, 4th ed., Vaticanum, Typis polyglottis Vaticanis, 1958, v. 1, pp. 178-185; M. DeWitt, The Cessation of Delegated Power, Canon Law Studies, no. 330, Washington, DC, Catholic University of America Press, 1954, pp. 1-7 who traces the development of jurisdiction through Roman Law and into Canon Law; A. Vermeersch and J. Creusen, Epitome iuris canonici cum commentariis, 8th ed., Parisiis-Brugis, Desclée De Brouwer, 1963, v. 1, nos. 449-450, pp. 387-388; F. Alvarez, "Derecho administrativo canonico perspectivas actuales", in Sal terrae, 61(1973), pp. 692-696; J. Johnson, "De distinctione inter postestatem iudicialem et potestatem administrativam in iure canonico", in Apollinaris, 9(1936), pp. 258-269.

G. Ryan suggests that the most important of these three is legislative power which is exercised through the development of particular law. These laws are instrumental in accomplishing the various tasks of the Church.[19]

The other powers, judicial and coercive, are consequences of legislative power. If the diocesan bishop is granted the power to enact a particular law, then he must have the ability to make a judgement as to whether the law is being observed. Furthermore, he must have the capacity to implement its usage and at the same time compel those who violate the law to observe it.[20]

This canon, however, does not specifically speak of the administrative or executive power of the diocesan bishop. Indeed there has been debate over the place of administrative or executive power within the legislative, judicial and coercive powers mentioned in the canon. The point of debate for a majority of canonists involved in this issue centers on the definition of coercive power.

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[19] G. Ryan, Principles of Episcopal Jurisdiction, p. 121.

[20] Ibid., p. 123.

For instance, a number of canonists in their consideration of coercive power, make no mention of administrative power; rather they consider it in association with penal law. Thus, U. Beste's definition of coercive power is limited to this area.[21] F. Cappello also follows the view of Beste as he relates coactive power to the canons on penalties.[22] Both F. Wernz and H. Ayrinhac agree with these authors maintaining coercive power as a means of correcting abuses and violations of both general and particular law.[23]

These authors maintain that the question of administrative power is not addressed in canon 335 but rather in canon 336, §2, which grants to the bishop the responsibility of watching over a number of areas in order to avoid abuses or violations of general or particular law. Among these areas are the administration of the sacraments and sacramentals, worship and the veneration of saints,

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[21] U. Beste, Introductio in codicem, p. 267 states: "Potestate coercitiva utuntur, quando exsecutioni mandant poenas, poenitentias et remedia poenalia legi adnexa, sive hae sanctiones ipso iure infligantur, sive sint ad normam iuris infligendae. Cavendum utique est ab immoderantia et nimio rigore."

[22] F. Cappello, Summa iuris canonici in usum scholarum concinnata, 4th ed., Romae, Apud Aedes Universitatis Gregorianae, 1940, v. 1, p. 331.

[23] F. Wernz and P. Vidal, Ius canonicum, v.2, p. 747; H. Ayrinhac, Constitution of the Church in the Code of Canon Law, New York, Logmans, Green, 1930, p. 158.

indulgences, pious wills and foundations, the preservation of faith and morals, teaching of doctrine, religious training of children, and preaching of the Word.

Canon 336, §2 presents the administrative responsibilities of the bishop in a different light than that of canon 335. Most notably, it speaks of his role in terms of vigilance over these areas as it uses the word "advigilent".

There is, however, another opinion which directly ties the administrative or executive activities of the diocesan bishop into jurisdictional power spoken of in canon 335 and does not limit such power to vigilance.

For example, while considering canon 335, J. A. Abbo and J. D. Hannan state that the power of administration is part of coercive power.[24] It is only after making this statement that they consider canon 336, §2 as a listing of the functions of administration. R. Naz is in agreement with this opinion. He first affirms the fact that coercive power is attributed

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[24] J. A. Abbo and J. D. Hannan, The Sacred Canons, v. 1, p. 362. See also C. Warnholtz, The Nature of the Episcopal Office According to the Second Vatican Council, Canon Law Studies, no. 455, Washington, DC, Catholic University of America Press, 1968, pp. 25-30. In this section C. Warnholtz traces the origin of episcopal power of jurisdiction and the prevailing opinion from Trent to the Second Vatican Council.

to penal law as others have suggested, but then he also notes that canon 335 grants to the bishop the competence to function administratively.[25] In addition, he states that the power of administration is exercised for the good order of the Church through specific acts.[26]

G. Ryan states that the interpretation of coercive power must be broad in its application. He suggests that executive power is contained within coercive power. The argument he uses is that legislative and judicial power has a very limited benefit if coactive or coercive power is viewed only in terms of penal law. The inclusion of executive power within coercive power allows for the application of laws which are not solely penal in nature. He therefore concludes that executive power is implied in the word "coactive".[27]

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[25] R. Naz, Traité de droit canonique, 2nd rev. ed., Paris, Letouzey et Ané, 1955, v. 1, p. 445, "Outre le triple pouvoir cité au can. 335, §1, on doit reconnaître à l'évêque le pouvoir doctrinal et la compétence administrative."

[26] Ibid., "Le pouvoir administratif s'exerce par les actes multiples tendant à assurer le bon ordre de la vie ecclésiastique (nominations--déplacements--acceptations de démissions--contrôle des biens et des gestions--sauvegarde et contrôle de la vie religieuse, etc.)."

[27] G. Ryan, Principles of Episcopal Jurisdiction, pp. 124-125. See also W. Onclin, "The Church Society and the Organization of its Power", in The Jurist, 27(1967), pp. 13-14.

These opinions suggest that one can look upon the power of the diocesan bishop in two different ways. A narrow interpretation of coercive or coactive power will entail an emphasis being placed on coercive acts as a response to penal actions. On the other hand, a broad interpretation will include seeing acts of administration as a form of power of governance to be used as a means of implementing legislation and judicial decisions, which will not always be penal in nature.

Based on this broad interpretation it can be concluded that a diocesan bishop by way of jurisdiction holds administrative power and thus is empowered to place acts of administration.

1.3.2 Obligations of the diocesan bishop in administration

The diocesan bishop, as a local ordinary, exercises his right and duty of governance by carefully watching over the administration of temporal goods within his diocese and in some instances through the placement of acts of administration. This obligation is noted in canon 1519 as it states:

> §1 It is the duty of the local ordinary to watch carefully over the administration of all ecclesiastical property in his territory which has not been withdrawn from his jurisdiction, without prejudice to more extensive rights which he may enjoy through lawful prescriptions.
>
> §2 Ordinaries shall take care to regulate the entire field of the administration of ecclesiastical property through special opportune instructions given within the limits of the general law and with due respect to vested rights, lawful customs, and the circumstances involved.[28]

Paragraph one of the canon points to the supervisory role of the local ordinary in relation to subordinate administrators. The use of the word advigilare indicates a difference between the supervisory role of the local ordinary compared with the administrative role of the Roman Pontiff. Supervision, as it is defined in the canon, does not denote that the local ordinary is an administrator in a strict sense, but rather points to his obligation of vigilance.

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[28] Canon 1519, §1. "Loci Ordinarii est sedulo advigilare administrationi omnium bonorum ecclesiasticorum quae in suo territorio sint nec ex eius iurisdictione fuerint subducta, salvis legitimis praescriptionibus, quae eidem potiora iura tribuant."

§2. "Habita ratione iurium, legitimarum consuetudinum et circumstantiarum, Ordinarii, opportune editis peculiaribus instructionibus intra fines iuris communis, universum administrationis bonorum ecclesiasticorum negotium ordinandum curent." English translation, J. A. Abbo and J. D. Hannan, The Sacred Canons, v. 2, pp. 724-725.

The acts of vigilance, according to G. Vromant, include the right of the local ordinary to observe and evaluate the administrative work of a subordinate administrator. This vigilance concerns the administrator's adherance to both universal and particular law regarding the administration of temporal goods.[29] In a more detailed way, this form of vigilance includes knowing the value of the ecclesiastical goods, the amount of donations given to a moral or juridic person, their application, and the formulation of administrative norms.[30] The formulation of administrative norms as particular law is further noted in the second paragraph of the canon.

Even though paragraph one of the canon does not call the diocesan bishop an administrator, his role does shift beyond supervision when the final clause of the first paragraph is considered. That clause, which states, "without prejudice to more extensive rights which he may enjoy through lawful

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[29] G. Vromant, De bonis ecclesiae temporalibus, 1934, p. 198.

[30] Ibid., p. 199. See also C. Balvo, Towards More Effective Administration of Ecclesiastical Goods: A Study of the Diocesan Finance Council and the Diocesan Finance Office, JCL thesis, Washington, DC, Catholic University of America, 1984, p. 24; M. Pistocchi, De bonis ecclesiae temporalibus, pp. 313-314; M. Conte a Coronata, Institutiones iuris canonici, v. 2, pp. 472-473; J. Comyns, Papal and Episcopal Administration, p. 68; A. Couly, "Les biens temporels de l'Église", in Le canoniste contemporain, 54(1922), pp. 303-320.

prescriptions" implies that in some cases the local ordinary moves from a supervisory role to immediate administration.[31] The extensive rights mentioned in the canon include ecclesiastical property which is strictly diocesan; property which makes up the mensa episcopalis; alms which are given to churches entrusted to religious who do not have ownership of the alms; alms given for unspecified charitable purposes; bequests noted in wills; revenues from pensions and taxes; property of divided or supressed parishes; and property administered by the local ordinary through special title.[32] Thus in some cases the local ordinary acts as an administrator on behalf of moral and juridic persons.

1.3.3 Moral and juridic persons

The role of the diocesan bishop as an administrator by way of his more extensive rights, as well as the role of all subordinate administrators, is integrally tied to the notion of moral or juridic persons. The 1917 Code incorporates the

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[31] J. Comyns, Papal and Episcopal Administration, pp. 71-72, 85.

[32] Ibid., pp. 85-87. See also the affirmative response of Pontificia Commissio ad Codicis Canones Authentice Interpretandos, 25 iulii 1926, ad IV-AAS, XVIII (1926), p. 393 which states, "D. An vi canonum 631 § 3; 535 §3 n. 2; 533 §1 nn. 3, 4, loci Ordinarius ius habeat exigendi rationes de administratione fundorum legatorumque paroeciae religiosae, de qua in canone 1425 §2. R. Affirmative, firmis praescriptis canonum 630, §4; 1550."

concept of juridic person through its application of moral personality in the general legislation of the Church. Canons 99 and 100, §1 are examples of this application.

Canon 99 states:

> Besides physical persons there are also in the Church moral persons constituted by public authority which are distinguished as collegiate or non-collegiate bodies, such as churches, seminaries, benefices, etc.[33]

Canon 100, §1 states:

> The Catholic Church and the Apostolic See have the nature of a moral person by divine ordinance; other subordinate moral persons in the Church derive their personality either from the provision of the law itself or from a special concession of the competent ecclesiastical superior granted by formal decree for a religious or charitable purpose.[34]

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[33] Canon 99. "In Ecclesia, praeter personas physicas, sunt etiam personae morales, publica auctoritate constitutae, quae distinguuntur in personas morales collegiales et non collegiales, ut ecclesiae, Seminaria, beneficia, etc." English translation, J. A. Abbo and J. D. Hannan, The Sacred Canons, v. 1, p. 143 and adaptations make by the author.

See also canon 87 which states: "Baptismate homo constituitur in Ecclesia Christi persona cum omnibus christianorum iuribus et officiis, nisi, ad iura quod attinet, obstet obex, ecclesiasticae communionis vinculum impediens, vel lata ab Ecclesia censura."

[34] Canon 100, §1. "Catholica Ecclesia et Apostolica Sedes moralis personae rationem habent ex ipsa ordinatione divina; ceterae inferiores personae morales in Ecclesia eam sortiuntur sive ex ipso iuris praescripto sive ex speciali competentis Superioris ecclesiastici concessione data per formale decretum ad finem religiosum vel caritativum." English translation, J. A. Abbo and J. D. Hannan, The Sacred Canons, v. 1, p. 146.

When canon 100, § 1, speaks of moral person, it is limiting the term to two classes of persons. First, those which are moral persons by divine ordinance, the Catholic Church and the Apostolic See. Second, those moral persons which are so created by the competent ecclesiastical authority or through the law itself. The canon does not make direct reference to the granting of juridic personality to those moral persons which exist. It simply states that an ecclesiastical authority has the ability to grant moral personality to some thing or group, and in so doing it grants at the same time the juridic capacity needed to acquire rights and obligations.[35]

B. Brown, in The Canonical Juristic Personality With Special Reference to its Status in the United States of America, Canon Law Studies, no. 39, Washington, DC, Catholic University of America Press, 1927, p. 90, points out that the Catholic Church and Apostolic See are not moral persons, but have the character or nature of a moral person. He makes this determination through the interpretation of the word ratio and by the fact they are not included in canon 99.

C. Bartlett, in The Tenure of Parochial Property in the United States of America, Canon Law Studies, no. 31, Catholic University of America Press, 1926, p. 17, also conveys the observations of B. Brown when he states that canon 100 does not say "Ecclesia Catholica et Apostolica Sedes sunt personae morales", but "moralis personae rationem habent."

[35] It would seem that the practice of the Church in this area is somewhat in opposition to the theoretical distinction which exists between the moral and juridic person. If a moral person, as it has been developed from Roman Law, is simply a group of individuals, then the granting of moral personality would have to be followed by the granting of

In addition, the same superior has the ability to grant juridic personality to those moral persons presently in existence to allow for the acquisition and exercise of rights and obligations.[36] It should be noted, however, that in so doing the competent authority is not granting moral personality; moral personality exists prior to the granting of juridic personality.[37]

The incorporation of moral and juridic persons in the 1917 Code created the need for legislation concerning administration. The moral or juridic person was not natural, but juridic. It therefore had no will by which external acts could be placed. The moral or juridic person was thus looked

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juridic personality. This would allow the moral person to have rights and obligations. The practice of the Church however has been to view the granting of moral personality to include at the same time the granting of juridic personality.

[36] C. Bartlett, The Tenure of Parochial Property, p. 18. See also W. Bertrams, "De personalitatis moralis in iure canonico natura metaphysica", in Periodica, 48(1959), pp. 213-228; H. Ayrinhac, General Legislation in the New Code of Canon Law, New York, Blase Benziger, 1923, pp. 187-219.

[37] The 1917 Code contains three specific canons which call for the granting of juridic personality; canon 687 on the giving of juridic personality to lay associations; canon 1489 on the granting of such to hospitals, orphan asylums and other institutions; and canon 1495, §2 on the rights of acquiring, owning and administering property by moral persons who have received juridic personality. See also P. Rayanna, "Moral or Juridical Persons?", in The Jurist, 18(1958), pp. 463-465.

upon as a minor who was incapable of placing acts without the assistance of a guardian.[38]

This additional concept finds itself expressed in canon 100, §3 which considers all moral persons to be minors and in canon 1649 which states that their actions are placed by rectors and administrators.[39]

The administrator of these persons becomes the one who places acts for the good of the juridic person; acts which, according to F. Wernz, include the care, preservation, improvement, and application of the fruits of the ecclesiastical juridic person.

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[38] C. Bartlett, The Tenure of Parochial Property, p. 16. See also B. Brown, The Canonical Juristic Personality, pp. 19, 82, 98; J. Doyle, Civil Incorporation of Ecclesiastical Institutions, p. 65; F. Wernz and P. Vidal, Ius canonicum, v. 2, pp. 28-33; A. Ranaudo, Le persone morali ecclesiastiche nel diritto canonico e nel diritto concordatario italiano, Roma, Desclée, 1966, pp. 1-118; S. Bueno Salinas, La noció de persona jurídica en el derecho canónico: su evolución desde Inocencio IV hasta el C.I.C. de 1983, Barcelona, Universitat de Barcelona, Facultat de Teologia de Barcelona, 1985, pp. 121-180.

[39] Canon 100, §3. "Personae morales sive collegiales sive non collegiales minoribus aequiparantur."

Canon 1649. "Nomine eorum de quibus in can. 100, §3, stat in iudicio rector vel administrator, firmo praescripto can. 1653; in conflictu vero eorum iurium cum iuribus rectoris vel administratoris, procurator ab Ordinario designatus."

1.3.4 Summary

The role of the diocesan bishop in the temporal administration of the diocese is principally one of supervision and vigilance over subordinate administrators. However, in some situations he moves beyond the role of supervision and becomes an administrator who represents the diocese in temporal affairs. This role is reflected in his obligation to care directly for the temporal goods, insure their productive use, acquire any benefits from their production and apply those benefits to the juridic or moral person.

1.4 Levels of administration: ordinary, extraordinary and matters of major importance

The 1917 Code legislates that generally the diocesan bishop functions in a supervisory role when it comes to the temporal administration of ecclesiastical goods. However, as has been previously noted, in some cases his role moves beyond that of supervision to administrator. As administrator he is entrusted with the decision-making for the moral or juridic person in question or in giving the subordinate administrator the necessary permission to place an act. The level of participation in administration by the diocesan bishop is determined by the impact a decision will have upon the moral

or juridic person. This concept is presented in canons 1520, §3 and 1527, §1. These canons present, either explicitly or implicity, three levels of administration: ordinary, extraordinary and matters of major importance.

Ordinary and extraordinary administration, as well as matters of major importance are not defined in the 1917 Code. Their definitions, as they have developed through canonical tradition, are essential for determining the degree of participation by the diocesan bishop as either supervisor or administrator, and the formalities involved for subordinate administrators in acts of extraordinary administration or the diocesan bishop in matters of major importance.

1.4.1 Canon 1527, §1 - Ordinary administration

Canon 1527, §1 is concerned with the invalidity of acts which are performed by administrators who exceed their mandate. For our purposes the canon says much more. It presents a distinction in what can be considered levels of administration. Canon 1527, §1 states:

> Administrators act invalidly in performing acts that exceed the limits or the method of ordinary

> administration, unless they have previously obtained the written authorization of the local ordinary.[40]

This canon refers to two forms of administration: those acts which are considered to be ordinary and within the competence of the administrator and those acts which go beyond his or her competence and are therefore extraordinary. The canon presents this distinction as a means of giving the local ordinary a degree of control over subordinate administrators of ecclesiastical property through the use of immediate administration by granting authorization once they have moved beyond the limits of ordinary administration. In other words, in certain situations, the function of the ordinary changes, that is, from a supervisory role to an immediate form of administration. Even though the Code makes this distinction, although implicitly, it fails to give clear criteria to be followed in determining which acts fall within the category of ordinary administration and those which come under the heading of extraordinary administration.[41]

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[40] Canon 1527, §1. "Nisi prius ab Ordinario loci facultatem impetraverint, scriptis dandam, administratores invalide actus ponunt qui ordinariae administrationis fines et modum excedant." English translation, J. A. Abbo and J. D. Hannan, The Sacred Canons, v. 2, p. 730.

[41] M. Pistocchi, De bonis ecclesiae temporalibus, p. 367 notes this difficulty in saying, "[...] non ita facile dari potest norma ex qua quod ingreditur fines ordinariae administrationis dignoscatur, quod eos fines praetergreditur."

Acts which fall into the category of ordinary administration generally are those which can be placed by an administrator within the scope of his or her office. Traditionally these have included such day-to-day activities as accepting funds, payments, donations of small importance and leases which are contracted for less than one year and whose value does not exceed one thousand lire or francs.[42]

J. McManus includes the following acts under ordinary administration:

In spite of these exclusions, it can generally be said that ordinary acts are those which can be performed by an administrator without the permission of a higher superior, while extraordinary acts necessitate a special permission from a higher authority for the validity of the act. This general principle is noted by J. Comyns, Papal and Episcopal Administration, p. 2. See also F. Wernz and P. Vidal, Ius canonicum, v. 4-2, pp. 211-212; G. Vromant, De bonis ecclesiae temporalibus, 1934, pp. 196-197; F. Demers, The Temporal Administration of the Religious House of a Non-Exempt, Clerical, Pontifical, Institute, Canon Law Studies, no. 396, Washington, DC, Catholic University of America Press, 1961, pp. 50-51; P. Monleon, Church Property and its Diocesan Administration Along With The Church Extension in The Philippines, Romae, Pontificia Universitas Lateranensis, Gregorian University Polyglott Press, 1960, p. 23.

[42] "[...] ut fructus, reditus, solutiones accipere; emere et vendere quae ad regimen oeconomicum quasi quotidianum spectant; collocare modo precario ad breve tempus pecuniam superfluam, acceptare donationes minoris momenti; locare bona quorum locationis valor mille libellas aut francos non excedit, non ultra novennium." E. Regatillo, Institutiones iuris canonici, Santander, Sal Terrae, 1941-1942, v. 2, p. 140.

> [...] the collecting of debts that are paid in regular installments; the collecting of rentals for houses and lands; the perception of annual, semi-annual, or quarterly interest or dividends; the purchase of supplies needed for daily use; the sale of crops or other perishable produce; the banking of money for purposes of security or convenience; and other similar acts, are all per se acts of ordinary administration, because regularly necessary.[43]

It can therefore be said that ordinary administration involves acts which take place in the daily economic management of an entity. Furthermore, they take place on a regular basis and are situated within established economic limits. The determination of acts of ordinary administration in this straightforward way allows a moral or juridic person to operate efficiently. Ordinary administration implies that decisions which are recurring and have a limited impact should be carried out in the most expedient manner, thus avoiding unnecessary formalities.

1.4.2 Extraordinary administration

Canon 1527, §1, describes ordinary administration as those acts which fall within a determined limit and method

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[43] J. McManus, The Administration of Temporal Goods, pp. 80-81. See also G. Vromant, De bonis ecclesiae temporalibus, 1934, p. 196; J. Comyns, Papal and Episcopal Administration, pp. 3-4; L. McReavy, "The Administrator of Parochial Property", in The Clergy Review, 29(1948), pp. 2-3.

whereby an administrator acts validly. The description of ordinary administration naturally leads to the consideration of acts of administration which fall beyond the prescribed limits and methods. Canon 1527 does not name those acts, but historically they are commonly referred to as acts of extraordinary administration.

An understanding of what constitutes an act of extraordinary administration is important because subordinate administrators are incapable of placing these acts without the permission of the local ordinary. The determination of such acts is principally directed towards subordinate administrators. The 1917 Code itself does not specifically consider acts of extraordinary administration on the part of the diocesan bishop. Although it can be noted that some acts, such as alienation and acts which jeopardize the patrimonial condition of the diocese, do require the consent of the diocesan council of administration, the diocesan consultors and the interested parties.

These acts are difficult to define because they are not circumscribed by any definite limits as are those of ordinary administration. A number of opinions have emerged among canonists in identifying acts which fall outside ordinary administration. These opinions generally fall into three

categories: those based on the need for permission, those based on a listing of acts, and those focusing on the object and mode of the act.

1.4.2.1 Determination by the need for permission

J. McManus, looking at extraordinary administration within the confines of religious law, considers those acts to be extraordinary which require the consent of a superior. He specifically notes that unless the person has the faculty to perform the act, the act is invalid.[“]

Wernz-Vidal also maintain that acts of extraordinary administration are those which require consent from a superior. He bases his opinion in part upon acts of alienation which are similar to acts of extraordinary administration in their nature, infrequency, and the impact they have upon the moral or juridic person. Because of their nature, acts of alienation require special permissions and

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[“] J. McManus, Administration of Property, p. 82. See also G. Vromant, De bonis ecclesiae temporalibus ad usum praesertim missionariorum et religiosorum, Louvain, Museum Lessianum, 1927, p. 185 where he states: "Sunt etiam alii actus graviores, qui in rebus administrandis rarius locum habent, et pro quibus praevia licentia cuiusdam Superioris vel nonnullae aliae sollemnitates imponuntur: hi fines ordinariae administrationis excedunt." See also canons 1527, §1; 1530 §1, 3°; 1532 §4; 1523, 4°; 1526; 1536, §2.

procedures in the same way as those of extraordinary administration.[45]

A similar opinion has been offered by J. Comyns. He notes that extraordinary administration includes those acts requiring the permission of a superior and are considered extraordinary by the general law of the Church, as well as "any contract which renders the temporal condition of the Church less secure."[46] J. McManus holds a similar opinion as he suggests as extraordinary administration those acts involving the disposition of capital which in effect are alienations necessitating the intervention of superiors.[47]

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[45] "[...] actus administrationis extraordinariae generatim loquendo non recurrunt periodice et graviores plerumque sunt, inter quos imprimis adnumerandi sunt ii, qui referuntur ad formalem vel aequivalentem alienationem et ceteri pro quibus a iure requiritur praevius recursus ad Superiorem auctoritatem vel nonnullae aliae praeviae solemnitates imponuntur quorum plura exempla habentur in canonibus tit. XXIX sequentis." F. Wernz and P. Vidal, Ius canonicum, v. 4-2, p. 221.

[46] J. Comyns, Papal and Episcopal Administration, p. 4. See also canon 1522; G. Vromant, De bonis ecclesiae temporalibus, 1927, pp. 311-312; L. McReavy, "The Administration of Parochial Property", pp. 4-5.

[47] J. McManus, Administration of Property, p. 82. See also canons 534; 1538; 1541; F. Wernz and P. Vidal, Ius decretalium, alt. ed., Romae, Typographia polyglotta, 1908-1915, v. 3, p. 177; J. Landázuri, De alienatione bonorum temporalium religiosorum, Romae, Desclée, 1950, pp. 1-5; J. Comyns, Papal and Episcopal Administration, p. 4 for additions to the list provided by McManus in determining extraordinary acts, which includes the remission of debts to the debtor, the cession of the right to judicial action which alone will

These opinions, however, which define acts of extraordinary administration are not without limitations. F. Demers argues against these opinions which attribute the extraordinary nature of an act to the need for the permission of a higher superior. His argument is partly based on religious law and on the prescription of canon 532, §2.[48] However he examines the need for a superior's permission in relation to canon 1527, §1. In his analysis, he states that the permission from a higher authority does not determine the extraordinary nature of an act of administration. Instead he states:

> [T]he necessity of a permission from a higher superior for the validity of an administrative act is a consequence rather than a cause of the extraordinary nature of the act.[49]

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protect church property, and the relinquishment of an active servitude or the toleration of a passive servitude. Comyns defines an active servitude as, "the right to use another's property, for example a road or a waterway; a passive servitude is the admission of the same right over one's own property to another."

[48] Canon 532, §2. "Expensas et actus iuridicos ordinariae administrationis valide, praeter Superiores, faciunt, intra fines sui muneris, officiales quoque, qui in constitutionibus ad hoc designatur."

[49] F. Demers, The Temporal Administration, p. 53.

In making this observation, Demers points out that by requiring permission the act becomes extraordinary. But the act is not extraordinary in and of itself.[50] To use the requirement of permission as the basis of determining the extraordinary nature of an act fails to clarify the issue.

1.4.2.2 Determination by office of the administrator

An opinion similar to that of those suggesting the need for permission in determining extraordinary administration is presented by D. Huot who argues that the determination is tied to the office of the administrator.[51] He includes under ordinary administration all those acts placed within the proper limits of one's office. Extraordinary administration, then, encompasses those acts which exceed the limits of one's office.[52] He uses canon 532, §2 with its phrase "within the limits of their office" as the basis of his reasoning. In

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[50] An example of this would be an act which takes place on a regular basis, has no financial impact on the moral or juridic person, and is within the limits of the administrator's mandate. By statutory legislation the act could require the permission of a superior, thus making the act extraordinary.

[51] D. Huot, "Bonorum temporalium apud religiones administratio ordinaria et extraordinaria", in Commentarium pro religiosis, 34(1955), pp. 61-62.

[52] "[...] administratio ordinaria est illa quae continetur in potestate seu intra limites muneris administratoris; extraordinaria vero, quae hos limites transgreditur." Ibid., p. 61.

addition, because of the nature of the canon and its placement in religious law, he suggests that extraordinary administration is directly tied to issues of stable patrimony."[11] This reasoning comes from the fact that the religious superior has the responsibility of protecting the stable patrimony of the community. An administrator under the religious superior, by his or her office, would be unable to place acts which could change the stable patrimony. Therefore, acts involving stable patrimony are extraordinary.

F. Demers refutes this opinion by questioning the relationship between stable capital and extraordinary administration. He points out that extraordinary administration is not limited to acts involving stable capital, but also free capital. If one follows Huot's argument, it could be said that other acts, which are extraordinary, but involving only free capital, could be placed by administrators under the religious superior without

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[11] "Administratio extraordinaria est illa quae ordinatur ad modificationem ipsius patrimonii stabilis." ibid. See also, J. Graviers, "L'Administration des biens des congrégations religieuses, de leurs provinces et leurs maisons en conformité du Code de droit canonique", in L'Année canonique, 8(1963), pp. 105-108; E. Heston, "De notione juridica capitalis stabilis", in Acta et documenta congresus generalis de statibus perfectionis, Romae, Libreria internazionale pia società San Paolo, 1950, v. 1, pp. 618-623.

the required consent. An application of this sort, according to Demers, would be an incorrect interpretation.[54]

1.4.2.3 Determination by list

The determination of extraordinary acts through a specific listing of items is principally based on an instruction issued by the Sacred Congregation for the Propagation of the Faith for dioceses in Holland on July 21, 1856. This instruction is commonly referred to by canonists in the consideration of acts which are extraordinary by their nature. However, it should be noted that the instruction was not issued as a means of determining extraordinary acts for the diocesan bishop, but acts which go beyond the limits of ordinary administration for subordinate administrators. The instruction specifically states this in its title by using the words "ecclesiarum parochialium ... nistrandis" and in article 20 where it states that the written permission of the bishop is necessary for the parish council of administration to place acts which are beyond the limits of ordinary administration.[55]

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[54] F. Demers, The Temporal Administration, pp. 54-55.

[55] "Art. 20. Concilium praedictum non potest, nisi obtenta in scriptis facultate ab Episcopo, quidquam facere, quod fines ordinariae administrationis transgreditur." Sacra Congregatio de Propaganda Fide, "Statuta generalia de conciliis quae bonis temporalibus ecclesiarum parochialium administrandis in Archidioecesi Ultraiectensi et suffraganeis dioecesibus proponuntur", in Collectanea Sacrae Congregationis

The instruction considers the following to be acts of extraordinary administration:

> a) To accept an inheritance, legacy, donations (made solemnly) or foundations, or to refuse the same;
>
> b) To buy immovable goods;
>
> c) To sell, exchange, mortgage, pledge as security, burden by servitude or in any other way, or to lease the immovable goods of the Church beyond the space of three years;
>
> d) To sell, exchange, pledge as security or in any way turn away from their destination objects of art, historical monuments, or any other movable goods of some notable significance;
>
> e) To borrow large sums of money, and to make other burdensome contractual transactions;
>
> f) To erect, demolish or to renovate ecclesiastical buildings, and to make extraordinary repairs;
>
> g) To establish a cemetery;
>
> h) To erect or suppress parochial institutions which are parish property;
>
> i) To impose taxes, to establish collections or to give to others those things which the Church has;
>
> j) To litigate whether as plaintiff or defendant.[56]

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de Propaganda Fide seu decreta instructiones rescripta pro apostolicis missionibus, 1907, v. 1, no. 1127, p. 603.

[56] "a) Hereditatem, legata, donationes (solemniter factas) vel fundationes acceptare, aut iisdem renunciare;
b) Bona immobilia emere;
c) Vendere, permutare, hypothecae subiicere, oppignorare, servitute aliove modo onerare, aut ultra trium annorum spatium locare res Ecclesiae immobiles;

G. Vromant advocates this method of determination and makes reference to this document as providing the norm by which a determination can be made as to the extraordinary nature of acts. He suggests that the development of a list of extraordinary acts takes place by first determining the ordinary items. Those which then go beyond the ordinary items listed are considered extraordinary.[57]

F. Demers disagrees with this opinion or any opinion which determines acts of extraordinary administration by a listing of acts. He notes these opinions are flawed because they fail to look at the underlying reasons by which a

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d) Vendere, permutare, oppignorare vel alio quovis modo a destionatione sua avertere obiecta artificiosa, monumenta historica, aliave mobilia alicuius magni momenti;
e) Magnas pecuniae summas mutuo accipere, transactiones aliosque contractus onerosos facere;
f) Aedes ecclesiasticas excitare, diruere, aut nova forma induere, et reparationes extraordinarias facere;
g) Coemeteria condere;
h) Facere aut supprimere parochiales, sive ad rem ecclesiasticam parochiae pertinentes, institutiones;
i) Imponere capitationem, collectas inducere, aut eas, quas habet ecclesia, aliis donare;
j) Litigare sive tamquam actor, sive tamquam reus." Ibid., trans. from C. Balvo, Towards More Effective Administration, pp. 17-18.

[57] G. Vromant, De bonis ecclesiae temporalibus, 1934, p. 235-236. See also A. Vermeersch and J. Creusen, Epitome iuris canonici, v. 2, pp. 595-596; R. Naz, Traité de droit canonique, v. 3, pp. 248-250; M. Conte a Coronata, Institutiones iuris canonici, v.2, p. 479; M. Pistocchi, De bonis ecclesiae temporalibus, pp. 367-372.

determination is made.[58] In addition, these methods can become overly complex and combersome in their development and application.

1.4.2.4 Determination by object and mode

A final opinion focuses on the evaluation of the object and mode of administration.[59] Under this criterion three elements are present: the object which is the end to be achieved, the mode which is the method followed by the superior in reaching that end, and an approved stable order of economic activity.[60] F. Demers, when looking at this method within religious law, states:

> The OBJECT of administration of temporal goods in religious houses is the maintenance, productivity and amelioration of property. [...] The MODE in which the temporal administration is conducted refers to the manner in which the acts are performed; for example buying wholesale or retail, buying a daily supply or a yearly supply.[61]

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[58] F. Demers, The Temporal Administration, p. 55.

[59] See A. Larraona, "Commentarium codicis can. 532", in Commentarium pro religiosis, 12(1931), note 484, p. 357; A. Gutierrez, "Quaestiones canonicae circa bona ecclesiastica", in Acta et documenta congressus generalis de statibus perfectionis, Roma, Libreria Internazionale Pia Società San Paolo, 1952-1953, v. 1, pp. 563-565.

[60] F. Demers, The Temporal Administration, pp. 55-56.

[61] Ibid.

The stable order of economic activity is comprised of those acts which are deemed to be ordinary administration. They are specific acts which are placed to bring about the maintenance, productivity and improvement of property. Because of their ordinary nature, they are approved by the competent authority and thus become generally accepted as ordinary administration.

Based on these three elements, ordinary administration comprises those acts which take place within the object and mode of the stable economic activity. For example, the approval of repairs to a building which are considered to be maintenance and are within the preset limits of cost, would be considered an act of ordinary administration.

The term "extraordinary administration" is applied to those acts which go beyond the object and or mode. For example, the building of a new church is beyond the maintenace, productivity and improvement of property. At the same time, the mode of payment would be beyond those employed for the objects of ordinary administration. Therefore the act of building would be extraordinary.[62]

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[62] Ibid., p. 57.

F. Demers suggests that the classification of an act of ordinary administration must be made in light of both the object and mode, otherwise it is an act of extraordinary administration. The evaluation of acts in light of these two criteria allows for differences in juridic or moral persons to influence their administration.[63]

Each of these opinions attempts to bring clarity in determining what goes beyond the boundaries of ordinary administration. Yet, the inadequacies of each opinion surface because of the difficulty in balancing the need for cautious and prudent economic decision-making with the need for flexibility which arises out of cultural and situational differences.

1.5 Canon 1520 §3 - Diocesan council of administration and acts of major importance

Paragraphs one and three of canon 1520 deal with the interactions which takes place between the local ordinary and the diocesan council of administration when responding to administrative acts within the diocese considered to be of major importance. The study of this canon presents this third

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[63] Ibid., p. 58.

level of administration and offers three specific areas of interest for consideration. First of all the role and make-up of the diocesan council of administration; secondly, the impact the body has upon administrative acts; and, thirdly, the results of those acts in the absence of proper consultation.

1.5.1 Diocesan council of administration

Canon 1520, §1 states:

> For the proper discharge of this responsibility, every ordinary shall establish in his episcopal city a council which shall consist of a president, who shall be the ordinary himself, and of two or more qualified men who are, if possible, experts also in secular law, selected by the ordinary after hearing the chapter [diocesan consultors], unless an equivalent provision has been lawfully made by law or particular custom.[44]

The legislation calling for a council to assist the ordinary in the temporal administration of the diocese

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[44] Canon 1520, §1. "Ad hoc munus rite obeundum quilibet Ordinarius in sua civitate episcopali Consilium instituat, quod constet praeside, qui est ipsemet Ordinarius, et duobus vel pluribus viris idoneis, iuris etiam civilis, quantum fieri potest, peritis, ab ipso Ordinario, audito Capitulo, eligendis, nisi iure vel consuetudine peculiari iam alio aequivalenti modo legitime fuerit provisum." English translation, J. A. Abbo and J. D. Hannan, The Sacred Canons, v. 2, p. 725.

indicates the desire on the part of the Church to protect the temporal goods it has acquired. Since the fourth century various groups, including the clergy of a diocese, or of the see city, or the cathedral chapter of canons, have in some capacity been involved in the promotion of the bishops' stewardship role through their consultative activity.[65] To a great extent the role of these groups was developed through the decrees of the Council of Trent (1545-1563). The documents of that Council, in response to the need of reform, placed greater emphasis on the ordinary's role as administrator of the diocese, as well as the assistance of others in this task, through his vigilance over subordinate administrators.[66]

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[65] A. Farrelly, The Diocesan Finance Council: A Historical and Canonical Study, JCD diss., Ottawa, Saint Paul University, 1987, pp. 1-38. Within this section Farrelly provides a comprehensive historical development of the bishop's role as a steward of the community and the changes which took place in his ability to exercise that role. See also A. Sigur, "Lay Cooperation in the Administration of Church Property", in The Jurist, 13(1953), pp. 177-200 where the author traces the elements of lay participation in matters of temporal administration throughout history. In relation to the diocesan board of administration he notes, pp. 190-191, "[...] there is no restriction on lay membership on the board [...] According to the tenor of Canon Law, laymen serve in such capacity as consultors, not as sui iuris administrators, and their vote is always consultative (not deliberative), unless provided otherwise in the law or the charter of foundation of institutions." See also F. Wernz and P. Vidal, Ius canonicum, v. 4-2, pp. 216-217.

[66] Council of Trent, Session 22, Chapter 9, De reformatione, in J.D. Mansi, Sacrorum conciliorum nova et amplissima collectio, Parisiis, H. Welter, 1901-1927, v. 33, col. 136. See also A. Farrelly, The Diocesan Finance Council,

The shift of placing greater emphasis on the ordinary's vigilance should not be interpreted as an act of strict centralization. Trent confirmed both the centrality of the bishop and the inclusion of the presbyterium in the administration of the diocese. The broader participation of the presbyterium in the diocesan affairs generally took place by gathering those priests in the city. Prior to this, the cathedral chapter was the primary body involved in the administration of the diocese.

The legislative thrust of Trent's decrees was incorporated in the 1917 Code as it called for three bodies to be developed to assist the diocesan bishop in the ecclesiastical administration of the diocese. Specifically these were, the chapter of canons[67] or diocesan consultors,[68]

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p. 39.

[67] Canon 391. For a comprehensive study of the scriptural, patristic, theological and canonical development of the chapter of canons, see J. Hannon, The College of Consultors and the Exercise of Ecclesial Authority, JCD diss., Ottawa, Saint Paul University, 1986, pp. 61-80.

[68] Canon 427. See also P. Klekotka, Diocesan Consultors, Canon Law Studies, no. 8, Washington, DC, Catholic University of America Press, 1920, pp. 99ff.

the diocesan council of administration,[69] and the missionary council.[70]

The role of the diocesan council of administration was clear: to assist the local ordinary in the financial administration of the diocese. Moreover, it was to function in this manner on a consistent and stable basis. Therefore the council was to be a part of the diocesan church structure.[71]

1.5.2 Methods of assistance

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[69] Canon 1520.

[70] Canon 302.

[71] A. Farrelly, The Diocesan Finance Council, pp. 63-68. Farrelly notes additionally in relation to the role of the council that because of its permanence, "all would see that this group shared the bishop's responsibility for temporal administration. The law did not state that one reason for having the council was to free the bishop for other duties, especially those connected with teaching, preaching and presiding at worship -- a view expressed, however, by commentators. The council was to help the bishop fulfill properly the functions of vigilant supervision that was one of his principal duties." p. 68. Therefore, the role of the council was not to remove administrative responsibility, but to assist in its exercise. See also W. La Due, "The Right of the Church People to Participate in Ecclesial Decision-Making", in Studia canonica, 7(1973) pp. 179-190 for a brief comprehensive historical survey of the participatory role of councils in the decision-making process.

The method by which the diocesan council of administration exercised its role of assistance in temporal matters is legislated in canon 1520, §3 which states:

> When important administrative acts are to be performed the local ordinary shall not fail to consult the council of administration; the members of it have, however, only an advisory capacity unless their consent is required in cases specially enumerated in the general law or in virtue of the articles of foundation.[72]

There are several items within this canon which are essential to this study and necessitate further consideration, among them are (1) those cases where the participation of the diocesan council of administration is required by law, (2) the concept of important acts of administration, and (3) the obligation placed upon the ordinary to consult this body.

1.5.2.1 Acts requiring participation of council by law

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[72] Canon 1520, §3. "Loci Ordinarius in administrativis actibus maioris momenti Consilium administrationis audire ne praetermittat; huius tamen sodales votum habent tantum consultivum, nisi iure communi in casibus specialiter expressis vel ex tabulis fundationis eorum consensus exigatur." English translation, J. A. Abbo and J. D. Hannan, The Sacred Canons, v. 2, pp. 725-726.

The 1917 Code divides the participation of the diocesan council of administration into two categories; those requiring its consultation and those stipulating its consent.

a. Matters of consultation

The legislation within the 1917 Code stipulates eight acts where consultation is required by law.

(1) Canon 1412, §2 , states that if an endowment is given for investment, and it is given in cash, then the ordinary has the responsibility of investing the money. The role of the council in this case is to assist the ordinary in making a prudent investment.

(2) The consultative role of the council for administration is also prescribed in canon 1532, §2, in matters of alienation. Its participation takes place in those alienations where the value of the item is below one thousand francs or lire.

(3) Canon 1533, calls for the application of canons 1530-1532 on alienation for those contracts which can jeopordize the patrimonial condition of the Church. If the

impact of the contract were under one thousand lire or francs, then the consultation of the council is necessary.

(4) The contracting of debt through pledges or mortgages as a more specific form of jeopardy in canon 1538, §1, also necessitates the application of canon 1532 and thus consultation within the prescribed limits. Two canons legislating the need for consultation in matters concerning the leasing of ecclesiastical property are to be added to the list of cases where consultation is prescribed.

(5) Canon 1541, §2, 2°,3° states if the value of a lease is between one thousand and thirty thousand lire and the term of the lease is less than nine years, then the same provision of canon 1532, §3 applies with the need for consultation. If the lease is valued at less than one thousand lire and the term is longer than nine years, then same provision of consultation is required.

(6) According to canon 1542, consultation is also required for a contract of emphyteusis, a contract to a third party where the person has the right of use and becomes the owner of the lands' produce but for not less than ten years. The individual annually pays a fee for the use of those rights. Under this canon, the individual cannot be relieved

of the obligation without the consultation called for in canon 1512.

(7) Funds that are placed in endowments also necessitate the consultation of the diocesan council for administration prior to their investment. Again, canon 1547 calls for this consultation as a means of assisting the ordinary in making prudent investments.

(8) Canon 1653, §1, requires the consultation of the council of administration or the cathedral chapter in litigation where the ordinary represents the cathedral Church of the diocese."

See A. Farrelly, The Diocesan Finance Council, pp. 76-79. G. Neville in, The Religious Superior's Council, JCD diss., Ottawa, Saint Paul University, 1988, pp. 14-16, makes the distinction between the meaning of consultation to be used in the previous eight items and consent which is a constitutive element in the eight items to follow. He states, "Commentators generally refer to consent as a deliberative vote, and to advice or counsel as a consultative vote. With consent there is an identical opinion and will; while advice is an opinion or view concerning an affair." See also G. Michiels, Principia generalia de personis in ecclesia, Commentarius libri I Codicis iuris canonici, Lublin, Polonia, Universitas Catholica, 1955, p. 496; R. O'Brien, The Provincial Religious Superior, Canon Law Studies, no. 258, Washington, DC, Catholic University of America Press, 1942, pp. 74-75; G. Escudero, "Las consejeras o discretas", in Vida religiosa, 8(1951), pp. 210-211.

These eight acts represent the first level of participation by the diocesan administrative council through its consultative role. The potential impact of these acts upon the patrimonial character of the diocese is significant enough to necessitate its consultation.

b. Matters of consent.

The diocesan administrative council has a greater degree of influence within the legislation which requires its consent before the Ordinary can validly place a juridic act. The legislation necessitating consent also covers eight issues.

(1) Consent is required in the exchange of bearer securities for other forms of security, provided the exchanges are safe or at least equally safe and productive. In such an act, canon 1539, §2 requires the consent of the council of administration.

(2) Consent of this council is also prescribed by canon 1532, §3 for those acts of alienation which are between one thousand and thirty thousand lire or francs.

(3) Consent is needed according to canon 1533 in those contracts which may worsen the condition of the Church within these monetary limits.

Three canons require the consent of the council for administration in matters regulating leases:

(4) Canon 1541, §2, calls for consent if the value of a lease exceeds thirty thousand lire or francs with a lease of less than nine years.

(5) If the value of the lease is between one thousand and thirty thousand francs or lire and the lease is for more than nine years, canon 1541, §2, 2° also requires consent.

(6) Canon 1542 requires consent if an emphyteusis is granted when the values of the lease falls within the limits determined for alienations.

(7) In matters of litigation when the sum of money falls within the range determined for alienations, consent is required as noted in canon 1653.

(8) The pledging of securities as well as the contracting of debts when the amount is within the limits of canon 1532 also call for the consent of the council.[74]

These acts by law call upon the diocesan administrative council to exercise a greater degree of participation as a means of assisting the local ordinary in the decision-making process. This more active form of participation is a means whereby the temporal goods of a diocese are further protected through the conditioning of an administrative act on the part of the ordinary.

1.5.2.2 Matters of major importance

Outside those situations legislated in the law which prescribe consultation or consent of the diocesan administrative council are those instances which require its consultation in "the more important administrative affairs" as noted in canon 1520, §3. The Code does not indicate exactly what those important affairs are within the diocesan church. J. Comyns understands the term maioris momenti to include acts falling into two categories. The first of these are those acts which are not regular in occurrence and not

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[74] See A. Farrelly, The Diocesan Finance Council, pp. 79-80.

necessary for the preservation of property, but in the end are useful and add value to the property. The second are those acts which do not take place on a regular basis but are essential for the preservation and upkeep of property.[75]

Specifically these two categories include acts such as the erection of a school, the purchase of a cemetery, the examination of annual fiscal reports, proposed future plans, and the refusal of a donation. These acts, among others, require the consultation of the diocesan administrative council.[76]

G. Vromant refines the qualities which determine acts of major importance by focusing on their timing and the financial impact they have upon the moral or juridic person. He first notes that ordinary administration pertains to acts which take place on a recurring and predictable basis, requiring no special permissions. Acts of major importance then become those acts which take place less often and their financial impact is within the boundaries and mode of extraordinary administration. This, coupled with special permission which

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[75] J. Comyns, Papal and Episcopal Administration, pp. 116-117.

[76] Ibid.

may be required by universal or particular law, makes them acts of major importance.[77]

Therefore these acts represent a level of administration which finds itself situated between ordinary and extraordinary acts and are determined in light of their occurrence, as G. Vromant suggests, as well as by their nature as indicated by J. Comyns. The determination of exactly what these acts are, however, can only be made in light of their nature and occurance and thus will be somewhat different from one diocese to another.[78]

1.5.2.3 Obligation to consult

The final area to be considered within canon 1520, §3, concerns the phrase "shall not omit to consult" on the part of the Ordinary. This phrase caused a great deal of

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[77] "Inter actus ordinariae administrationis, quidam ad res administrandas saepe ac regulariter requisiti, poni possunt ab administratoribus, quin ullus recursus praevius ad altiorem auctoritatem, vel aliqua formalitas ecclesiastica specialis requiratur. Alii vero, etsi ex iure communi ordinariae administrationis fines et modum non excedunt, rarius locum habent; atque ad illos ponendos, sive ex iure communi sive ex iure particulari, praevia licentia Superioris aliaeve formalitates saepe praescribuntur, eosque graviores dicimus." G. Vromant, De bonis ecclesiae temporalibus, 1934, p. 196.

[78] See also J. McManus, Administration of Temporal Goods, pp. 81-82.

difficulty for canonists in their attempts to interpret its meaning in light of the impact it had on the validity or invalidity of certain acts. The question came down to: was the phrase "shall not omit to consult" a clause of validity? The consequences of the answer to that question would be far-reaching. If an ordinary failed to consult the diocesan administrative council on a matter which was of major importance, and then placed an act in relation to that matter, the act would either be valid or invalid depending upon the interpretation of the phrase "shall not omit to consult".[79]

The debate over this issue involves canon 105, 1° which reads:

> Whenever the law states that the superior needs the consent, or the consultation, of some persons, the following rules obtain:
>
> 1° If consent is required, the superior acts invalidly against the vote of these persons: if only consultation is demanded by words like de consilio consultorum or audito capitulo, or parocho, etc., it is sufficient for the validity of the action, that the superior consult these persons. Though he is not bound to follow their advice, he should nevertheless have great regard for the unanimous vote where several persons had to be

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[79] It should be noted that the consequences referred to in this area are not limited to issues involving administration, but include all those acts within the 1917 Code which stipulate the consultation of the diocesan bishop or ordinary with other individuals or groups within his jurisdiction.

> consulted, and he should not without a very good reason go against their counsel.[80]

The majority opinion held that a superior, in order to place a valid act, must seek the advice of his or her council. The basis of the argument rests on the phrase statis est ad valide. In their opinion this phrase represents the minimum requirement needed for validity.[81]

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[80] Canon 105. "Cum ius statuit Superiorem ad agendum indigere consensu vel consilio aliquarum personarum:
§1. "Si consensus exigatur, Superior contra earundem votum invalide agit; si consilium tantum, per verba, ex gr.: de consilio consultorum, vel audito Capitulo, parocho, etc., satis est ad valide agendum ut Superior illas personas audiat; quamvis autem nulla obligatione teneatur ad eorum votum, etsi consors, accedendi, multum tamen, si plures audiendae sint personae, concordibus earundem suffragiis deferat, nec ab eisdem, sine praevalenti ratione, suo iudicio aestimanda, discedat." English translation, S. Woywod, The New Code of Canon Law: A Commentary and Summary of the New Code of Canon Law, 3rd ed., New York, J. F. Wagner, 1918, p. 21.

[81] G. Neville, The Religious Superior's Council, p. 17. See also H. Ayrinhac, General Legislation in the New Code of Canon Law, p. 225; T. Urquiri "Valor del voto consultivo para la profesion", in Vida religiosa, 6(1949), p. 55; A. Blat, Commentarium textus Codicis iuris canonici, v. 2, pp. 45-46; R. Charland, "Le supérieur et son conseil", in Vie des communautés religieuses, 4(1945), p. 294. See also W. Bertrams, "De mente legislatoris quoad interpretationem c. 105 Codicis iuris canonici (II)", in Periodica, 49(1960), p. 62 where he states: "Dicebam, quod verba can. 105 CIC 'satis est ad valide agendum' sensu obvio, claro et univoco statuunt minimum faciendum ad valide agendum [...]; consilium igitur esse audiendum, ut actus sit validus"; C. Bastnagel, "The Requirement of Consultation for Valid Action", in The Jurist, 9(1949), p. 368.

Those opposed to this interpretation consider the effect of the canon to be one of liceity and not validity. These canonists suggest that in canons 476, §3, 1162, §3, 1280, and 1416 the consultation of individuals is required, but if consultation is not made, no penalty is imposed. In addition, canon 11 states that for a law to have an invalidating or disqualifying effect, it must be expressly stated. Canon 105 however never makes a clear statement to the effect that without consultation the act is considered invalid. The use of the word "sufficient" is neither clear nor strong enough to create an invalidation.[82]

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[82] G. Neville, The Religious Superior's Council, pp. 17-18. See also J. Creusen, "L'Effet juridique des consultations", in Nouvelle revue théologique, 55(1928), pp. 100-116; A. Boudinhon, "Circa can. 105, n. 1, an nullus semper sit actus superioris non petito consilio", in Jus pontificium, 8(1928), pp. 29-35; A. Schönegger, "Canonis 105.1 interpretatio et interpretes", in Periodica, 31(1942), pp. 119-140; P. Gillet, "Succincta explanatio canonis 105", in Collectanea mechliniensia, 25(1936), pp. 619-621; A. Vermeersch and J. Creusen, Epitome iuris canonici, v. 1, pp. 229-232; C. Bastnagel, "The Requirement of Consultation", pp. 365-395. Bastnagel (on p. 367) lists the following nine points that he feels forms the basis of this interpretation:

1. The wording of the text in canon 105, 1°;
2. The correlation of this text with canons 11 and 1680;
3. The addition of some other word as a suppletive term in connection with the word satis when the test of invalidity is invoked;
4. The addition of such phrases as ut valide agat and ne invalide agat in connection with the clause auditis iisdem examinatoribus and auditis duobus parochis consultoribus;
5. The negative element of the auditio;
6. The canons wherein the obtaining of advice is made optional;
7. The intent of the law in canon 105, 1°;
8. The teaching of the older canonists;

The differences of opinion among canonists led to the first request for an official interpretation of canon 105, 1° in 1921. While the request was pending, canonists considered canon 105, 1° to be an example of a dubium iuris and thus, in accordance with canon 15, the law held no binding effect.[83] This dubium iuris was never resolved under the 1917 Code.[84] One of the reasons for the failure to resolve it centered around the consequences of the interpretation. If the interpretation were to require that consultation take place for validity, then all previous acts placed by superiors without such consultation would be invalid.[85] In light of the dubium iuris those acts of major importance placed by the ordinary without the consultation of the council of administration would be considered valid.

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9. The momentous consequences of invalid acts resulting from a neglect to seek counsel.

[83] Ibid., p. 394. Canon 15. "Leges, etiam irritantes et inhabilitantes, in dubio iuris non urgent; in dubio autem facti potest Ordinarius in eis dispensare, dummodo agatur de legibus in quibus Romanus Pontifex dispensare solet."

[84] G. Neville, The Religious Superior's Council, pp. 20. 108.

[85] C. Bastnagel, "Requirement of Consultation", p. 367. See also M. Gohs, The Role of the Council in the Government Structure of Religious Life, JCL thesis, Washington, DC, Catholic University of America, 1980, pp. 27-34.

Conclusion

It is evident that the legislation of the 1917 Code concerning the administration of temporal goods of the Church reflects a particular ecclesiology prevalent at the time of its promulgation. The underlying ecclesiology views the Church as a perfect society. This view comes out clearly in canon 1499 which declares the competence of the Church to acquire temporal goods and in canon 1518 which affirms the supremacy of the Roman Pontiff over all ecclesiastical property. The Roman Pontiff is declared to be the supreme administrator and dispenser of the Church's temporal goods. He exercises his role as supreme administrator through acts which are directed towards the care and protection of the goods, acquisition of benefits and application of those benefits on behalf of moral and juridic persons within the Church. His role as supreme dispenser is exercised through the movement or transfer of ecclesiastical property for the good of the Church. Both these functions are carried out in virtue of his supreme, ordinary and immediate jurisdiction.

The diocesan bishop holds a similar yet a different role in the care of temporal goods within his diocese. According to the 1917 Code, the diocesan bishop does not function as a supreme administrator like the Roman Pontiff. Canon 1519

fails even to name him administrator of the diocesan temporal goods, rather it assigns him the role of supervision over subordinate administrators. His competence in this area is not his own, but one which is acquired through a sharing in the jurisdictional power of the Roman Pontiff.

Even though the diocesan bishop functions primarily as a supervisor of ecclesiastical goods, there are situations determined in law where his competence moves beyond the supervisory role to that of administrator. These situations may occur when acts no longer fall within the limits of ordinary administration as defined in canon 1527, §1. Thus in matters of extraordinary administration, the diocesan bishop no longer functions as a supervisor, but takes on the role of an administrator. Throughout history canonists have offered various theories to assist the diocesan bishop in determining the parameter or criteria circumscribing the ordinary and extraordinary administration.

In view of the nature of ecclesiastical temporal goods, the diocesan bishop is required by law to involve the council of administration in evaluating acts specifically mentioned in the law as as well as acts of major importance. In a number of matters which can have significant impact upon the financial condition of the diocese, the law prescribes the

obligation of seeking counsel or consent of the council on the part of the diocesan bishop.

Thus, the limitations placed by the 1917 Code upon the diocesan bishop's competence in the administration of diocesan temporal goods reflects an ecclesiology which emphasizes centralization of ecclesiastical administration in the person of the Roman Pontiff. Significant and meaningful shifts ushered in by the Second Vatican Council in this ecclesiology have important consequences for a renewed theological and juridical understanding of the diocesan bishop's role in the administration of the temporal goods of the diocese. The evidence of this change in ecclesiology is to be found in conciliar documents which emphasize the bishop's role as shepherd and steward, which is the subject matter of Chapter Two.

CHAPTER TWO

THE INFLUENCE OF VATICAN II TEACHING ON DIOCESAN STEWARDSHIP

There is no doubt that the emphasis placed by the Second Vatican Council on the diocesan bishop's pastoral role in his diocese and the ecclesiological understanding of Church as communio, has reshaped the administrative role of the diocesan bishop in the care of temporal goods. These changes can be seen in the efforts made by the Council to recapture the more fundamental understanding of the bishop's role through the use of such terms as "shepherd", and more importantly for our purposes, "steward".

The concept of "stewardship", as it relates to financial decision-making and administrative acts by the diocesan bishop has recently been raised to the forefront of canonical thinking. This development reflects the greater demands of accountability placed upon the diocesan bishop through canon and civil law. The new emphasis upon the diocesan bishop as a steward in part represents a renewed understanding of the

administrative responsibility of the bishop especially in matters of temporal administration.

The renewed insight into the stewardship role of the diocesan bishop is not solely a development of the Second Vatican Council, but is drawn from biblical and theological sources. The Second Vatican Council by itself does not focus specifically on the stewardship role of the diocesan bishop in his administration. However a clearer understanding of his stewardship role emerges in the post-conciliar document, The Directory on the Pastoral Ministry of Bishops.

Stewardship, as it is presented in conciliar and post-conciliar documents, is the focus of this chapter. Therefore, we will examine in this chapter its meaning from a biblical perspective and in light of the post-conciliar document, The Directory on the Pastoral Ministry of Bishops.

Congregatio pro Episcopis, Directorium de pastorali ministerio Episcoporum, in Civitate Vaticana, Typis polyglottis Vaticanis, 1973). English translation prepared by the Benedictine monks of the Seminary of Christ the King, Mission, B.C., Directory on the Pastoral Ministry of Bishops, Ottawa, Publications Service of the Canadian Catholic Conference, 1974 (hereafter: Directory).

For a comprehensive examination of this area, see H. Brattgård, God's Stewards: A Theological Study of the Principles and Practices of Stewardship, trans. by G. Lund, Minneapolis, MN, Augsburg Publishing House, 1963, 248p; J. Mark, The Question of Christian Stewardship, London, SCM Press, 1964, 167p; T. Thompson, ed., Stewardship in Contemporary Theology, New York, Associated Press, 1960, 252p.

2.1 Conceptual understandings of stewardship

2.1.1 Biblical foundations

A comprehensive understanding of stewardship can be had by considering it from different points of view. One such perspective is that of the important biblical tradition which provides the fundamental basis upon which a modern definition is developed. T. Thompson provides such a definition of stewardship which captures its very essence:

> In religious terms stewardship refers to man's condition under God. God is the ultimate owner of all creation; man is the responsible servant [...].'

This condition he refers to is one of dependence, but even dependency upon God is relative to persons and their moment in history. For this reason, the meaning of the word "stewardship" for the people of biblical times can thus be viewed through three defined periods: the first being the Old

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' T. Thompson, Stewardship in Contemporary Theology, p. ix.

Testament tradition; the second, the New Testament tradition with a particular emphasis on the gospels; and the third the post-resurrection tradition.

2.1.1.1 Old Testament tradition

The meaning of stewardship in the lives of the Old Testament people has its foundation in the Greek word oikos. Its most central and original meaning is that of a place or residence.[4] For the Old Testament people, house or residence was associated with the actions of the creator or the builder of the house. Oikos therefore holds an additional meaning by affirming that God is the one who builds the house in which his people reside.[5]

The use of oikos for stewardship is tied to this image of God as builder. He is the creator who builds his house and ultimately owns and cares for all those within it.[6] Seeing God as creator and builder in Jewish thought leads to a two part interaction: the gratuitous acceptance of God's gifts and

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[4] H. Brattgård, God's Stewards, p. 22.

[5] Ibid., p. 23. See also, 2 Sam. 7; Ps. 127:1.

[6] R. Scheef, "Stewardship in the Old Testament", in Stewardship in Contemporary Theology, p. 19. See also, Isaiah 66: 1; Psalm 24: 1.

a sacrifical response as a sign of gratitude.[1] This response is made by those who are members of the house and have received God's gifts. Biblically this expresses a fundamental relationship of seeing how God has entrusted to his people the gifts of creation and how they in turn have assumed the responsibility of caring for that which has been given to them.[2]

In expanding upon this, T. Thompson notes that the reciprocal relationship of responsibility brings with it two consequences: first, people are subject to God and, secondly, they cannot consider themselves to be the absolute owners of property. These two consequences can be seen in the emphasis the Old Testament places upon the people of Israel being a sojourning nation.[3] Their ownership was limited as they moved about searching out their true home.

This relationship of being subject to God is reflected in the literature of the day. Consistently Old Testament writings spoke of how the people were to view ownership of

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[1] J. Mark, The Question of Christian Stewardship, p. 56. See also Gen. 28: 20-21; Lev. 25: 33; Deut. 26: 1-10; 1 Chron. 29: 14-15.

[2] R. Scheef, "Stewardship in the Old Testament", p. 19.

[3] Ibid., pp. 19-20. See also Leviticus 25: 23.

land and property. In addition, their literature reminds them of how they are to respond to the needs of those around them, namely the poor.[10] A good example of this is the norm of not cultivating the land every seven years.[11] Such a stipulation reminds the people of their place within God's house by recognizing the true owner of the land. In following this command the community begins to take on a stewardship role as they live under God's house.

Old Testament sources, such as those noted, contain both a doctrine of stewardship and a point of reference whereby the doctrine is to be interpreted. The doctrine is situated within the broader context of the Old Testament and its values relating to the enjoyment of God's creation, to seeking justice and mercy, and to the need to return God's blessings.[12] These three areas help to shape an understanding of Old Testament stewardship which ultimately is an expression of the acceptance of responsibility, and which in this context takes place through legislative norms found in literature which

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[10] See 1 Kings 21: 1-19; Job 31: 16-23, 31-32; Amos 4: 1-3; 5: 11.

[11] See Exodus 23: 10-11; Leviticus 25: 1-7. See also Deut. 15: 1-6 for the presentation of a similar concept known as the seventh year of release.

[12] J. Mark, The Question of Christian Stewardship, p. 61.

communicates the value of caring for what has been entrusted to the community.

2.1.1.2 New Testament understandings - the Gospels

The meaning of stewardship in the mind of Christ is difficult to appraise fully. This is not to say that stewardship was without importance. Rather, the difficulty lies in the limitations which exist in the transmission of material and its interpretation. In order to grasp a general understanding of stewardship in the gospels, it is important to remember three points stressed by W. Quanbeck in evaluating the sources of the gospels and their inclusion or exclusion of specific material.[13]

First of all, the authors of the gospels did not intend to provide a biographical work on the deeds and words of Jesus. It was their conviction that Jesus was the Messiah which motivated them to write works for the purposes of evangelization and worship.

Secondly, the gospels are written in three levels. W. Quanbeck notes this in saying:

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[13] W. Quanbeck, "Stewardship in the Teachings of Jesus", in Stewardship in Contemporary Theology, pp. 39-40.

> Part of it goes back to Jesus himself; part of it has been modified by the special interests and concerns of the early Christian community; and a third part is contributed by the evangelist himself in his selection, arrangement, and editing of the materials.[14]

Thirdly, the authority of the gospels does not lie in what they offer, but in their presentation of the good news of Christ to others.

In light of these three criteria for biblical interpretation, it is not surprising that the gospels speak very little about Christ's attitude towards material ownership and its subsequent stewardship.[15] To do so would be a departure from the fundamental thesis of evangelization and worship. However this is not to suggest that Jesus never spoke nor directed a teaching to his disciples on stewardship. Indeed, W. Quanbeck sums up the entire teaching of Jesus on stewardship when he states:

> The teaching of Jesus concerning the disciple as steward is set forth in a series of parables in the Synoptic Gospels. The main point of the parable lies in setting the relationship of God and man alongside that of the householder and the servant

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[14] Ibid.

[15] J. Mark, The Question of Christian Stewardship, p. 65; see also, T. Campbell and G. Reierson, The Gift of Administration: Theological Bases for Ministry, Philadelphia, The Westminster Press, 1981, pp. 44-50.

> who is in charge of the estate. God is sovereign; man is responsible to him. God is the possessor of all things; man owns nothing at all. But man is nevertheless entrusted with the administration of his master's estate, and must give an account of his management.[16]

Two parables in the Lukan tradition specifically point to Quanbeck's analysis. Both parables speak of stewardship using the word oikonomos.[17] The first of these is found in Luke 12: 42-48 where the steward is encouraged to be prepared for the return of his master.[18] In this passage, Luke presents

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[16] W. Quanbeck, "Stewardship in the Teachings of Jesus", p. 47.

[17] The concept of oikonomos is a more developed form of oikos. Its definition is noted in the following: "The picture presented to us in the Bible of the first Christian congregations as 'God's oikos,' built upon separate 'houses' or families, is of the utmost importance for an understanding of the stewardship idea. To be an oikonomos in the biblical sense implies, above all, the ability to manage our own house in an acceptable manner. Stewardship is something which must begin with the task nearest at hand, in our own house (1 Tim. 5:8). Any participation in the work of the congregation, effective as it may be, which leads to the neglect of our own house and its care, can never be in agreement with the biblical understanding of stewardship." H. Brattgård, God's Stewards, pp. 25-26. Another definition reads as follows: "Oikonomos originally meant housekeeper; gradually the meaning was extended to include anyone who administers the affairs of another", T. Thompson, Stewardship in Contemporary Theology, p. ix.

[18] It is noteworthy to state that in this parable the word steward is linked to that of servant. Furthermore this link can also be seen in light of the fact that a servant was usually a slave. The extension of the meaning of steward in these cases is important in that Matt. 24: 45-51 presents a parable parallel to Luke 12: 42-48 but does not speak of stewards but servants. In a similar way, Paul in 1 Cor. 9: 16-18, speaks of his stewardship in terms of slavery. See H.

Jesus' interpretation of the basic qualities which must be present in a steward; specifically they are fidelity, wisdom, and an openness to living one's life always in anticipation of the day of judgement.[19]

The second example of stewardship within the gospel narratives is found in Luke 16: 1-9, the parable of the wise, but devious steward. In addition to affirming the qualities of stewardship presented in Luke 12: 42-48, an additional emphasis is placed upon the steward's need for accountability.[20]

The characteristics of good stewardship presented in these parables come from the Jewish concept of "house". By

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Brattgård, God's Stewards, p. 44.

[19] H. Brattgård, God's Stewards, p.44. See also G. Buttrick, et al., The Interpreter's Bible: The Holy Scriptures in the King James and Revised Standard Versions with General Articles and Introduction, Exegesis, Exposition for Each Book of The Bible, New York, Abingdon Press, 1951-1957, v. 8, pp. 233-234; M. Tolbert, "Luke",in The Broadman Bible Commentary, C. Allen, general ed., Nashville, TN,, Broadman Press, 1969-1972, v. 9, pp. 111-112; J. Kodell, "Luke", in The Collegeville Bible Commentary: Based on the New American Bible with Revised New Testament, D. Bergant and R. Karris, general eds., Collegeville, MN, The Liturgical Press, 1989, p. 960.

[20] See J. Kodell, "Luke", p. 965; M. Tolbert, "Luke", pp. 127-129; G. Buttrick, et al., The Interpreter's Bible, pp. 280-284; C. Stuhlmueller, "The Gospel According to Luke", in The Jerome Biblical Commentary, R. Brown, J. Fitzmyer, and R. Murphy, eds., Englewood Cliffs, NJ, Prentice-Hall, 1968, p. 149.

associating the steward with the term house, Jesus and the evangelists begin to offer an understanding of the steward's role: he or she becomes the one who cares for the house by adopting values which will reflect this special relationship. The concept of "house" in the gospels thus becomes the vantage point from which the post-resurrection teaching reflected the importance, values, and consequences contained in the exercise of stewardship itself.

2.1.1.3 Post-Resurrection teachings on stewardship

The refined understanding of stewardship we have today is primarily an expression of the post-resurrection period. The New Testament accounts of this period present both the memory of Jesus' teaching on stewardship and the contextual reality it held for the early Church.

Indeed, the early Church retained the understanding of stewardship found in the Greek word oikos. However, it amplified this concept and deepened its meaning in relation to the Christian understanding of "congregation". Thus stewardship, as a reflection of the early Church's understanding of congregation or family, is woven throughout

a number of post-resurrection writings.[21] H. Brattgård notes the importance of these concepts in stating:

> To be an oikonomos in the biblical sense implies, above all, the ability to manage our own house in an acceptable manner. [...] The New Testament texts also make it clear that the kind of life which is lived day by day in the Christian 'houses' serves as an evangelical witness to the heathen environment simply by so existing.[22]

The acceptance of God as the builder of the house or congregation for the early Church brings with it certain consequences. For instance, oikonomos implies an active response in one's relationship with God. In other words, members of the community are called upon to join in the building up of the family. Furthermore, individuals are invited to be cooperators in the building of God's house, and thus assume a role of responsibile stewardship.[23]

Eventually the application of oikonomos led the early Christians to adopt the word oikonomia as their expression of the reality. H. Brattgård points out that this word was

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[21] See 1 Cor. 1: 16; Acts. 2: 37-47; 5: 42; 11: 14; 16: 15; 16: 31; 18: 8; Philemon, v.2.

[22] H. Brattgård, God's Stewards, pp. 25-26.

[23] Ibid., p. 29. See also Rom. 15: 2; 1 Cor. 3: 10-23; 2 Cor. 10: 8; 12: 19; 13: 10; Eph. 2: 20; 4: 16; Col. 2: 7.

common in the Greek culture long before the Christian era. He goes on to state:

> Originally the term referred to the management, direction, or administration of a household with its variety of concerns. But this meaning soon broadened, so that the term came to refer to the administration of an entire state, particularly in the military and economic areas.[24]

The refinement of the term oikonomia and its use suggests that the concept of stewardship had regular importance and application for the early Christians. However, there are only nine references to it in the New Testament. Even though this is rather limited, H. Brattgård notes that a fuller use of the word along with its variants can be found in the writings of the early fathers of the Church.[25] The use of oikonomia in the New Testament leads H. Brattgård to state that there are three fundamental meanings which arise from the word. First of all oikonomia describes the task of the steward; the gospel parables point to this. Secondly, the word is also an expression of office within the early Church; St. Paul notes this application. Thirdly, it is a term which expresses the

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[24] Ibid., p. 32.

[25] Ibid., p. 33.

value of performing acts without the desire for rewards, but as a sign of faith.[26]

The consideration of oikonomia would be incomplete without some attention being given to the one who assumes the role of stewardship. As in the case of oikonomia, the early Christians adopted a term which was common in their Greek cultural experience; the person entrusted with the role of stewardship was called the oikonomos. The steward therefore becomes the one, who through fidelity and wisdom, seeks to assist in the building and maintaining of God's house. H. Brattgård notes this final concept by suggesting that the oikonomos ideally becomes a living stone in God's oikos. An individual through personal involvement in caring for God's house in all actuality becomes an integral part of that house. In extending the metaphor he concludes that those who become living stones through their stewardship bring strength and stability to God's house.[27]

2.1.1.4 Summary

Both the Old and the New Testament sources emphasize that stewardship involves the task of caring for what has been

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[26] Ibid., p. 37. See Luke 16: 2-8; 1 Cor. 9: 16-18.

[27] H. Brattgård, God's Stewards, pp. 50-51.

entrusted to a group or individual. This understanding has evolved from the greek word oikos with its meaning of house or residence. Theologically this is presented through the understanding that God is the builder of the house and his people are responsible for the necessary care of this gift. In the New Testament a more developed understanding led to consideration of the qualities of the steward; these include fidelity, wisdom and an awareness of the day of judgement.

Throughout history leading up to the Second Vatican Council, the application of stewardship was never totally lost, however, the degree of importance it played in the administration of temporal goods was lessened. As the Church developed, the care of property and goods took on added importance because of the number of significant acquisitions. Thus, structures were developed to cope with the administration of temporal goods, but less and less were these structures developed in the model of stewardship.

These biblical notions of stewardship were set forth in the Vatican II understanding of the term. The Council, seeing God as the builder and noting the human response through acts of care, preservation, and betterment incorporated the biblical notion of stewardship into that of administration.

This sets the ground work necessary for our consideration of conciliar and post-conciliar legislative developments.

2.1.2 The Conciliar teaching and The Directory on the Pastoral Ministry of Bishops

The biblical notion of stewardship is incorporated into the documents of the Second Vatican Council and the Directory on the Pastoral Ministry of Bishops for a relationship exists between the components of stewardship and the role of the diocesan bishop as presented y the Second Vatican Council. The image of the bishop as steward is principally found in the Directory which defines his role from a theological and ecclesiological perspective. In addition, without promulgating new legislation, it considers methods by which that role is to be exercised.

2.1.2.1 The office of the diocesan bishop

The quality of stewardship as it is found within the office of the diocesan bishop is described in those Conciliar documents which attribute to him the title of "shepherd". For instance, the Decree on the Pastoral Ministry of Bishops, Christus Dominus, no. 11, notes the underlying principle when it states:

> A diocese is a section of the People of God entrusted to a bishop to be guided by him with the assistance of his clergy so that, loyal to its pastor and formed by him into one community in the Holy Spirit through the Gospel and the Eucharist, it constitutes one particular church in which the one, holy, catholic and apostolic Church of Christ is truly present and active.[28]

This text sets the parameters within which the diocesan bishop is to exercise his role which is one of assuming the responsibility of guiding the diocesan Church, a portion of the people of God entrusted to him.[29] In addition, the text determines the object on behalf of which the stewardship is to be exercised, the diocesan Church. Therefore, by incorporating the biblical notion of stewardship, the diocesan

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[28] Vatican Council II, Decree on the Pastoral Office of Bishops in the Church, Christus Dominus, October 28, 1965, (hereafter: CD), in Acta Apostolicae Sedis (hereafter: A.A.S.), 58(1966), n. 11, p. 677: "Diocecesis est Populi Dei portio, quae Episcopo cum cooperatione presbyterii pascenda concreditur, ita ut, pastori suo adhaerens ab eoque per Evangelium et Eucharistiam in Spiritu Sancto congregata, Ecclesiam particularem constituat, in qua vere inest et operatur Una Sancta Catholica et Apostolica Christi Ecclesia." English translation in A. Flannery, ed., Vatican Council II: The Conciliar and Post-Conciliar Documents, Northport, New York, Costello Publishing Company, 1986, (hereafter: A. Flannery) p. 569. K. Mörsdorf, in "Decree on the Bishops' Pastoral Office in the Church", in Commentary on the Documents of Vatican II, H. Vorgimler, ed., Montreal, Palm Publishers, 1967, v. 2, p. 231 states: "The decree being chiefly concerned with pastoral matters, describes the duties of the bishop as briefly and concretely as possible and makes suggestions for a contemporary care of souls. Hence the legal questions arising in doctrinal, priestly and pastoral spheres are rather neglected."

[29] K. Mörsdorf, "Decree on the Bishops' Pastoral Office", p. 230.

Church can now be seen as the "house" entrusted to the care of the diocesan bishop who acts as a representative of Christ and in doing so exercises his role as a good steward.[30]

The exercise of stewardship takes place through the threefold power entailed in the office of bishop, the power of teaching, sanctifying and governing. Stewardship in the administration of the particular Church is principally a function of governance.[31] The Dogmatic Constitution on the Church, Lumen gentium, no. 27, establishes the scope of the power of governance as follows:

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

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[30] Ibid., pp. 230-231.

[31] Ibid., pp. 198-199. Mörsdorf notes that the title of the decree on the pastoral office of the bishop is misleading because of the various meanings attributed to munus pastorale. Strictly speaking the term is limited in this case to the sphere of governance. It is only through a wider interpretation that the teaching and sanctifying offices may be included. Mörsdorf concludes that the use of munus apostolicum would have been more appropriate.

> power bishops have a sacred right and a duty before the Lord of legislating for and of passing judgment on their subjects, as well as of regulating everything that concerns the good order of divine worship and of the apostolate.[32]

The nature of the bishop's proper, ordinary and immediate power is understood fully when considered in relation to Lumen gentium, no. 21, and the Nota explicativa praevia, no. 2. Lumen gentium, no. 21 states:

> [...] episcopal consecration confers, together with the office of sanctifying, the duty also of teaching and ruling, which, however, of their very nature can be exercised only in hierarchical communion with the head and members of the college.[33]

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[32] Vatican Council II, Dogmatic Constitution on the Church, Lumen gentium, November 21, 1964, (hereafter: LG), in A.A.S., 57(1965), n. 27, pp. 32-33: "Episcopi Ecclesias particulares sibi commissas ut vicarii et legati Christi regunt, consiliis, suasionibus, exemplis, verum etiam auctoritate et sacra potestate, qua quidem nonnisi ad gregem suum in veritate et sanctitate aedificandum utuntur, memores quod qui maior est fiat sicut minor et qui praecessor est sicut ministrator (cfr. Luc. 22, 26-27). Haec potestas qua, nomine Christi personaliter funguntur, est propria, ordinaria et immediata, licet a suprema Ecclesiae auctoritate exercitium eiusdem ultimatim regatur et certis limitibus, intuitu utilitatis Ecclesiae vel fidelium, circumscribi possit. Vi huius potestatis Episcopi sacrum ius et coram Domino officium habent in suos subditos leges ferendi, iudicium faciendi, atque omnia, quae ad cultus apostolatusque ordinem pertinent, moderandi." English translation in A. Flannery, pp. 382-383.

[33] LG, no. 21, in A.A.S., 57(1965), p. 25: "[...] Docet autem Sancta Synodus episcopali consecratione plenitudinem conferri sacramenti Ordinis, quae nimirum et liturgica Ecclesiae consuetudine et voce Sanctorum Patrum summum sacerdotium, sacri ministerii summa nuncupatur. Episcopalis autem consecratio, cum munere santificandi, munera quoque confert docendi et regendi, quae tamen natura sua

This conciliar text notes that the role of the bishop, through episcopal consecration, entails acquiring an office and a duty in contradistinction to an understanding of the power to teach, sanctify and govern. Through episcopal consecration, the diocesan bishop acquires the functions of teaching, sanctifying and governing, however, they become operative powers only through hierarchical communion which is expressed in the form of a canonical mission. This distinction is noted in the Nota explicativa praevia no. 2:

> It is the unmistakable teaching of tradition, including liturgical tradition, that an ontological share in the sacred functions is given by consecration. The word function is deliberately used in preference to powers which can have the sense of power ordered to action A canonical or juridical determination though hierarchical authority is required for such power ordered to action. A determination of this kind can come about through appointment to a particular office or the assignment of subjects, and is conferred according to norms approved by the supreme authority.[34]

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nonnisi in hierarchica communione cum Collegii Capite et membris exerceri possunt." English translation in A. Flannery, p. 373.

[34] LG, Nota explicativa praevia, 2°, in A.A.S. 57(1965), p. 73: "In consecratione datur ontologica participatio sacrorum munerum, ut indubie constat ex Traditione, etiam liturgica. Consulto adhibetur vocabulum munerum, non vero potestatum, quia haec ultima vox de potestate ad actum expedita intelligi posset. Ut vero talis expedita potestas habeatur, accedere debet canonica seu iuridica determinatio per auctoritatem hierarchicam." English translation in A. Flannery, pp. 424-425. See also A. Stickler, "Potestatis sacrae natura et origo", in Periodica,

Lumen gentium, nos. 21 and 27 in essence point to the munus of the bishop through ordination and the operative nature of the munus through juridical determination.[35] E. Corecco notes this ecclesiological point in stating:

> Analogously to the universal Church, there is within the diocese a personal principle of unity and a collegial principle. The bishop is the personal principle, in as far as he possesses by divine right the complete power of orders and jurisdiction necessary to carry out his apostolic duties of teaching, sanctifying and ruling. [...] The power of orders of the bishop was not defined by the council by referring it to the priestly power of order, but rather the other way round, and the sacramental fullness of the priesthood was predicated of the bishop. With reference to the power of jurisdiction on the other hand, the council eliminated any possibility of seeing such jurisdiction as deriving from the papal primacy, but affirming explicitly that the individual bishop has, per se and in his own right, all the ordinary powers necessary for his apostolic functions.[36]

71(1982), pp. 83-86; Id., "La 'Potestas Regiminis' visione teologica", in Apollinaris, 56(1983), pp 399-410; K. Mörsdorf, "De sacra potestate", in Apollinaris, 40(1967), pp. 54-55.

[35] S. Ryan, "The Hierarchical Structure of the Church", in The Church: A Theological and Pastoral Commentary on the Constitution of the Church, K. McNamara, ed., Dublin, Veritas Publications, 1983, p. 215. See also M. Dortel-Claudot, Églises locales Église universelle; comment se gouverne le peuple de Dieu, Lyon, Chalet, 1973, pp. 93-102.

[36] E. Corecco, "The Bishop, Head of the Local Church and Discipline", in Concilium, 4(1968), v. 8, p. 51.

The emphasis placed by E. Corecccc on the personal function of the diocesan bishop is one which asserts the fact that the bishop operates in his own right and not simply as a priest with a greater degree of jurisidiction.[37] In reviewing the distinction between orders and jurisdiction, it can be said that the Second Vatican Council radically moved in its ecclesiological perspective by situating episcopal leadership in a model of communio rather than placing an emphasis on the distinction between the power of orders and the power of jurisdiction which finds its basis in the Church as perfect society.[38]

The proper, ordinary and immediate power which is noted in article 27 indicates a dramatic shift in the pre-Vatican II understanding of sacred power. It essentially removes the previously long-held distinction between the power of orders

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[37] J.J. Cuneo, "The Power of Jurisdiction: Empowerment for Church Functioning and Mission Distinct from the Power of Orders", in The Jurist, 39(1979), p. 192.

[38] B. Kloppenburg, The Ecclesiology of Vatican II, trans. by M. O'Connell, Chicago, Franciscan Herald Press, 1974, pp. 222-223. See also K. Mörsdorf, "Decree on the Bishops' Pastoral Office", pp. 199-203; J. Beyer, "La nouvelle définition de la 'Potestas Regiminis'", in L' Année canonique, 24(1980), pp. 53-67; A. Stickler, "Le pouvoir de gouvernement: pouvoir ordinaire et pouvoir délégué", in L' Année canonique, 24(1980), pp. 69-84; R. Schwarz, "De potestate propria ecclesiae", in Periodica, 63(1974), pp. 429-445.

and that of jurisdiction.[39] B. Kloppenburg sums up the former juridical understanding and the impact the subsequent change has upon the Church when he notes:

> Before the Council it was customary to distinguish among episcopal functions between the power of orders (that is, of sanctifying) and the power of jurisdiction (that is, of teaching and governing). It was admitted that the power of sanctifying was given the bishop through his episcopal consecration (which many regarded as a true sacrament). But it was commonly held that the

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[39] It should be noted that not all canonists agree that in reality the distinction between the power of order and jurisdiction has been removed. J.J. Cuneo, in "The Power of Jurisdiction", pp. 183-219, suggests that the distinction is still present. He builds his argument, based on church as communion, on the analysis that "the basis of distinction [orders and jurisdiction] is not just the source and function-type of each power, but also the way in which each power touches the minister, or more exactly the way each power exists. The ontology of each power differs. Power of orders is innate to the person. Power of jurisdiction is essentially relational between individual minister and community", pp. 194-195. Noting the Nota explicativa praevia, no. 2 of Lumen gentium he states, "In the ordination there is given an ontological participation in sacred functions which, however, is not the same as power brought to full term. For power to be present in full active sense it is necessary also to receive a canonical or juridical assignment from hierarchical authority." p. 199. The function of governance therefore takes place when the individual is in relationship to a hierarchical authority and thus is given a task in which to exercise the function. J.J. Cuneo is thus suggesting that this in reality is the granting of jurisdiction. J. Huels, in "Another Look at Lay Jurisidiction", in The Jurist, 41(1981), pp. 59-80, follows up on the observations of J.J. Cuneo. He supports them and develops a set of reflections on lay governance based on a model of Christ as the origin of orders and jurisdiction. Like Cuneo, he supports the theory that the power of orders is sacramental and is a function that flows from ordination, while the power of jurisdiction is a function which flows from canonical mission thus opening up a greater degree of lay participation.

> power of teaching and ruling (jurisdiction) was conferred upon the bishop directly by the pope.[40]

It was understood according to the previous doctrine that the bishop's ability to govern and administer his diocese came about only through the jurisdiction granted to him by canonical mission. Under this theological understanding, the diocesan bishop was often thought to act as a vicar of the pope instead as a vicar of Christ.

The shift in eccesiology brought about by the Second Vatican Council points to a movement towards decentralization in the post-conciliar Church. In addition, the recognition of the diocesan bishop as the vicar of Christ suggests the possibility for a new sense of life being brought into the local Church.[41] T. Green notes that decentralization has a substantial impact upon the bishop's role of governance. As expressed in the bishop's proper and immediate power, it offers a greater degree of latitude for decision making.[42]

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[40] B. Kloppenburg, The Ecclesiology of Vatican II, p. 222.

[41] T. Green, "The Diocesan Bishop in the Revised Code: Some Introductory Reflections", in The Jurist, 42(1982), p. 321.

[42] T. Green, "Rights and Duties of Diocesan Bishops", in Proceedings of the Canon Law Society of America, 44(1983), p. 27. See also R. Schwarz, "De potestate propria ecclesiae", pp. 429-445.

This alone is a recognition that because of his position, the diocesan bishop has the advantage of knowing the local needs of the people he serves, and the ability to respond to those needs.

Decentralization brought a radical shift into the life of the local Church. It instituted a return to the early Church's understanding of the episcopacy where local churches had greater autonomy. The bishop's role within this autonomous setting could be interpreted as one of stewardship. J. Lynch notes this in saying:

> [...] the bishop was in fact a father, a patriarch of an extended family. He constituted the Church and was in turn constituted by it. Chosen by the people, he assumed a lifelong familial relationship with them.[43]

The bishop's patriarcal role in the early Church contains characteristics found in the biblical concept of leadership. As a patriarch or the father of his family, he takes on the responsibility of caring for those entrusted to him through

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[43] J. Lynch, "The Changing Role of the Bishop: A Historical Survey", in The Jurist, 39(1979), p. 292.

governance and administration."[44] He therefore functions very much like the steward of the Old Testament.

The reinstitution of the autonomous role of the diocesan bishop and the emphasis placed on his responsibility of caring for those within his house suggests that the bishop functions as a steward. A. Maida and N. Cafardi highlight three fundamental aspects of stewardship which every administrator must consider. First of all, stewardship reflects a fiduciary relationship which exists between the steward and the one who is served.[45] Secondly, the temporal goods of the group are held by the steward. This point is made primarily in relation

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[44] In his presentation, J. Lynch traces the shifts which historically took place and their subsequent effect on the autonomous nature of the office of bishop.

[45] The concept of fiducia is present in modern American civil law. The one who exercises fiducia is known as a fiduciary. The term is defined as follows: "The term is derived from the Roman law, and means (as a noun) a person holding the character of a trustee, or a character analogous to that of a trustee, in respect to the trust and confidence involved in it and the scrupulous good faith and candor which it requires. A person having duty, created by his undertaking, to act primarily for another's benefit in matters connected with such undertaking. As an adjective it means of the nature of a trust; having the characteristic of a trust; analogous to a trust; relating to or founded upon a trust or confidence." H. Black, Black's Law Dictionary, 5th ed., St. Paul, MN, West Publishing Co., 1983, pp. 320-321.

For a further development on the concept of fiducia as it is expressed in fiduciary agreements, see M. Kaser, Roman Private Law, 2nd ed., trans. by R. Dannenbring, Durban, Butterworths, 1975, pp. 38, 102-103.

to property law; however, a broader application exists when one considers the patrimony of the juridic person. For, besides property, a group's patrimony may include its history, tradition, charism, etc. Finally, the steward acts on behalf of persons who are incapable of fully acting on their own. In other words, the steward functions as a guardian."

The changes which took place through the Second Vatican Council strengthened the stewardship role of the diocesan bishop. In virtue of his ordinary power as a vicar of Christ he has the capacity to provide for his diocese, a capacity which resembles the stewardship role of the Old Testament and involves a trust relationship, the holding of property for others, and the placing of acts for the benefit of others.

2.3 Stewardship according to the Directory

The documents of the Second Vatican Council set the foundation for a specific analysis of stewardship on the part of the diocesan bishop. A more developed understanding of

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" A. Maida and N. Cafardi, Church Property, Church Finances, and Church-related Corporations, St. Louis, The Catholic Health Association of the United States, 1983, p. 62. See also H. Black, Black's Law Dictionary, p. 361 where guardian is defined as: "a person lawfully invested with the power, and charged with the duty, of taking care of the person and managing the property and rights of another person, who, for defect of age, understanding, or self-control, is considered incapable of administering his own affairs."

this notion in the administration of the Church is found in the post-conciliar document the Directory on the Pastoral Ministry of Bishops.

This Directory, which is developed from the Decree on the Pastoral Office of Bishops in the Church, reflects upon the role of the diocesan bishop as a shepherd and outlines a number of virtues and principles necessary for the successful exercise of his authority. Pope Paul VI, in his acceptance of the Directory, captures its essence in his letter to Cardinal Carol Confalonieri, Prefect of the Congregation for Bishops, when he states:

> May it [the directory] go forth not so much by way of supplying laws or norms or a multitiude of new duties but rather as a reminder that encourages and makes it easier to fulfill the serious and difficult duties proper to the episcopal ministry.[47]

Many of the guiding principles presented in the Directory give shape to the bishop's role in administration through acts of governance which are exercised as a response to stewardship. This emphasis is evident in those articles of

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[47] Directory, p. 2: "prodeat secumque afferat non tam leges ac normas novorum multipliciumque officiorum, quam potius admonitiones atque cohortationes, quae efficiant ut gravia et difficilia munera episcopalis ministerii propria facilius expeditiusque impleantur", English translation, p. 3.

the Directory which define his role, the necessary virtues and the fundamental principles contained in the exercise of stewardship.

2.3.1 The bishop's role as steward

The bishop's role within the diocesan community implies service and stewardship. However, the exercise of service or stewardship is not solely an external act but a response to the gift of the Spirit. The Directory, in no. 11, reminds bishops that their call to service is grounded in this gift:

> [....] the episcopate, insofar as it is a gift of the Holy Spirit within the bosom of the Church building it up and being service, has the place of preeminence among the various ministries which contribute to the good of the whole Body of Christ.[48]

The emphasis this article places upon the gift of the Spirit is noteworthy at the outset of this analysis for it is a reminder that stewardship involves more than administration. In other words, stewardship as well as decisions by the diocesan bishop are to be guided by the Spirit, and not

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[48] Directory, no. 11, p. 20: "[...] Episcopatus enim, tamquam donum Spiritus Sancti in sinu Ecclesiae positus ad eam exstruendam eique inserviendum, praecellit inter varia ministeria quae ad bonum totius Corpris Christi tendunt." English translation, p. 13.

limited to facts and data. This means that ultimately stewardship must be viewed as a complex divine-human reality.[49]

The quality of service which flows from the gifts of the Holy Spirit finds its basis in the image of the good shepherd:

> Therefore the bishops are sent to rule the Church of God (cf. Acts 20:28) as shepherds of souls, who together with the Roman Pontiff, the successor of Peter, and under his authority make perennial the work of Christ, the eternal Shepherd.[50]

The identification of the Roman Pontiff and all bishops functioning in the image of Christ the Good Shepherd finds its origins in Christus Dominus, no. 2, which defines the Roman Pontiff as one who cares for the sheep of the Church and pastors the entire Church. In a similar way, the same duties are placed upon those who are bishops.[51] Their pastoral role,

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[49] T. Green, "The Diocesan Bishop in the Revised Code", p. 324.

[50] Directory, no. 13, p. 21: "Itaque Episcopi, tamquam pastores animarum, ad regendam Ecclesiam Dei (cf. Act. 20, 28) mittuntur, ut una cum Romano Pontifice, Petri successore, et sub eiusdem auctoritate, Christi, aeterni Pastoris, opus perenne reddant." English translation, p. 14.

[51] CD, no. 2, in A.A.S., 58(1966), pp. 673-674: "In hac Christi Ecclesia, Romanus Pontifex, ut successor Petri cui oves et agnos suos pascendos Christus concredidit, suprema, plena, immediata et universali in curam animarum, ex divina institutione gaudet potestate. [...] Episcopi autem et ipsi, positi a Spiritu Sancto, in Apostolorum locum succedunt ut animarum pastores, atque, una cum Summo Pontifice et sub Eiusdem auctoritate, ad Christi, aeterni Pastoris, opus

according to K. Mörsdorf, is exercised through the office of teaching, sanctifying and governing.[52]

K. Mörsdorf's observations when related to the Directory are insightful. They indicate that stewardship is a consequence of the bishop's shepherding role and not exclusively tied to one particular munus. For example, the diocesan bishop functions as a steward in his office of teaching by preserving and caring for the teachings of faith and morals. He also functions as a steward in this capacity by keeping the teachings alive through their presentation in the current age. Likewise stewardship is exercised through his ministry of sanctifying by providing the sacraments to the faithful and regulating their use is a sign of care for that which has been entrusted to him. Finally, stewardship is exercised through acts of governance as the bishop cares for the day-to-day obligations and management of the diocese.

The fulfillment of these responsibilities takes place through ministry. The Directory recognizes this by further

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perenne reddendum missi sunt." See also, LG 17, which addresses the obligation of evangelization and baptism for the building up of the Church.

[52] K. Mördorf, "Decree on the Bishops' Pastoral Office", pp. 199-200.

elaborating the image of the bishop as a shepherd in familial structures and terms:

> The bishop, as a member of the Church and as one who functions as head and pastor of the Christian people, should combine in himself at one and the same time the qualities both of a brother and of a father, of a disciple of Christ and of a teacher of faith, of son of the Church and, in a certain way, as father of the Church, for he ministers the spiritual birth of Christians (cf. 1 Cor. 4: 15).[53]

On a third level, after describing him as a shepherd and minister, the presentation of the image of the bishop as a "father", suggests that the Directory considers the role of the bishop to be similar to that of stewardship explained in the bible, that is, one who acts as the head of the house and cares for those under his direction.[54]

The responsibility of caring for God's house, however, is not entrusted exclusively to the bishop. The exercise of that responsibility takes place through consultation and collaboration with those who are part of the household. The

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[53] Directory, no. 14, p. 23: "Episcopus, uti Ecclesiae membrum et munere capitis ac pastoris fungens populi christiani, in se componere debet formam fratris simul et patris, Christi discipuli et fidei magistri, Ecclesiae filii et quodammodo patris, quippe qui supernaturalis christianorum regenerationis sit minister (cf. 1 Cor. 4, 15)." English translation, pp. 14-15.

[54] J. Lynch, "The Changing Role of the Bishop", p. 292.

Directory specifically notes this when it considers the collaborative elements of the bishops ministry and how it is to be exercised:

> Since he bears the weighty offices of teacher, priest and shepherd toward the portion of the Lord's flock entrusted to him, the bishop needs the collaboration of the whole community, not only -- although chiefly -- of priests and deacons who through the sacrament of orders conferred by the bishop have become sharers in the hierarchical priesthood and sacred ministry, but also of the other faithful. For these latter, in virtue of a general priesthood, are called to take part in the common apostolate in the Church and to cooperate seriously with their pastors under the guidance, or even the authority, of the bishop; and without this cooperation, the bishop's hierarchical apostolate is for the most part unable to achieve its full effect.[55]

The participation of the laity in the bishop's work of stewardship is clearly called for in the Decree on the Apostolate of Lay People:

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[55] Directory, no. 18, p. 25: "Episcopus, gravia munera gerens magistri et sacerdotis et pastoris in assignata sibi dominici gregis parte, cooperatione totius communitatis indiget: non tantum, etsi principaliter, presbyterorum et diaconorum qui, per sacramentum Ordinis ab Episcopo collatum, sacerdotii hierarchici vel sacri ministerii participes facti sunt, sed etiam ceterorum christifidelium. Hi enim, vi sacerdotii communis, vocantur et ad participandum communem apostolatum in Ecclesia et ad gravem cooperationem, sub moderamine vel etiam auctoritate Epsicoporum, pastoribus exhibendam, quorum hierarchicus apostolatus sine ea plenum suum effectum assequi plerumque nequit." English translation, pp. 15-16.

> Participators in the function of Christ, priest, prophet and king, the laity have an active part of their own in the life and action of the Church. Their action with the Church communities is so necessary that without it the apostolate of the pastors will frequently be unable to obtain its full effect.[56]

This participation of others in the stewardship activity of the diocesan bishop has deep historical roots. P. Granfield observes that there is historical evidence of participation by the laity in the episcopal stewardship during the time of Cyprian. According to Granfield, Cyprian himself once stated:

> From the beginning of my episcopacy, I made up my mind to do nothing on my own private opinion, without your advice and the consent of the people.[57]

T. Green notes that the inclusion of this consultative feature is necessary because the Church is a grace-filled

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[56] Vatican Council II, Decree on the Apostolate of Lay People, Apostolicam actuositatem, 18 November 1965, in A.A.S., 58(1966), no. 10, p. 846: "Utpote participes muneris Christi sacerdotis, prophetae et regis, laici suas partes activas habent in Ecclesiae vita et actione. Intra communitates Ecclesiae eorum actio tam necessaria est ut sine ea ipse pastorum apostolatus plenum suum effectum assequi plerumque nequeat." English translation, A. Flannery, p. 777.

[57] P. Granfield, "Consilium and Consensus: Decision-Making in Cyprian", in The Jurist, 35(1975), p. 397. In this work, Granfield defines consilium as advice, counsel, opinion, consultation, plan, decision, judgement and council. Consensus is a term used to describe community involvement and is an expression of agreement, harmony, assent or approbation.

community of believers through baptism. The Spirit given in baptism thus compels people to exercise their role primarily through consultation.[58]

The consultation suggested in the Directory is integrally connected to a sense of responsibility assumed by the members of the Church who exercise their responsibility by actively participating in ecclesial life through consultation and collaboration with the diocesan bishop.[59]

The application of the bishop's stewardship role is essentially based, then, in these two qualities: the gift of the Spirit and a commitment to consultation. Both of these help to exemplify the bishop's role as a steward. In other words, he cares for a Spirit-filled community but his care can only be effective through his awareness of the needs of those he serves.

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[58] T. Green, "The Diocesan Bishop in the Revised Code", p. 333. See also M. Gaudement, "Sur la co-responsabilité", in L'Année canonique, 17(1973), pp. 533-538.

[59] See J. Coriden, "Shared Authority: Rationale and Legal Foundation", in Shared Responsibility in the Local Church, C. Curran and G. Dyer, eds., Chicago, Catholic Theological Society of America, 1970, pp. 60-62.

2.3.2 The virtues of stewardship for the diocesan bishop

The Directory moves beyond identifying the diocesan bishop as a shepherd, father and thus steward by suggesting specific virtues which characterize his role. In doing so, it distinguishes between what can be considered a primary virtue and seven secondary ones.

First of all, the Directory suggests that the diocesan bishop, in his function as a steward, must be endowed with the virtue of pastoral charity.

> Weighed down by so many labors and distracted in so many different ways, the bishop's life finds its interior unity and the source of its power primarily in pastoral charity which is rightly called the bond of episcopal perfection.[60]

This bond of pastoral charity represents the foundation for the other virtues detailed in the Directory which a bishop must exercise in carrying out of his stewardship.

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[60] Directory, no. 22, p. 28: "Tot laboribus onerata, in tam diversa distracta, Episcopi vita unitatem interiorem et fontem suarum virium invenit imprimis in caritate pastorali, que merito vinculum perfectionis episcopalis est dicenda, quaeque veluti fructus exsistit gratiae et characteris sacramenti primi Ordinis." English translation, p. 17.

The first of these virtues is faith. The Directory in article 24 presents the connection between faith and stewardship when it states:

> A bishop judges all things in the light of faith; in this light he does all things and endures all things, even the hardest.[61]

The virtue of faith suggests a link to the second virtue, hope. Decisions which are made in faith must also be made with the hope of fulfilling the will of the Father.[62]

The third virtue noted in the Directory is obedience, as a sign of unity. Article 26 presents this concept in part as it says:

> Modeling himself after Christ, the bishop offers a noble service to unity and ecclesiastical communion, and by this way of acting shows that in the Church a person cannot properly rule others unless he has first proven himself to be an example of obedience.[63]

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[61] Directory, no. 24, p. 30: "In lumine fidei Episcopus omnia iudicat, omnia operatur, omnia sustinet etiam graviora." English translation, p. 18.

[62] Directory, no. 25, p. 31. English translation, p. 18-19.

[63] Directory, no. 26, p. 32: "Illi se conformans, Episcopus praeclarum exhibet servitium unitati et communioni ecclesiasticae, et sua agendi ratione demonstrat neminem in Ecclesia posse aliis rite praeesse nisi prius seipsum oboedientiae exemplar praebuerit." English translation, p.

The fourth and fifth virtues flow from the living example of obedience. The fourth speaks of the bishop being an example of perfect continence.[64] Through the assumption of this virtue he lives as an example of chaste love to the members of God's family. Likewise, the fifth virtue, poverty in both spirit and life, enables the bishop to witness to those whom he shepherds. By doing so he underscores the need for social justice and financial sensitivity to those in need:

> He will avoid every appearance of lordship or of secular business. Indeed, he will show himself a father to everybody, but especially to the weak and the poor, realizing that it was primarily to preach the Gospel to them that he was anointed by the Holy Spirit and sent in imitation of Christ Jesus.[65]

The virtue of poverty, therefore, shapes the bishop's style of stewardship in respect to financial matters. The Directory also offers a model by which the bishop conducts

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[64] Directory, no. 27, p. 32. English translation, p. 19.

[65] Directory, no. 28, p. 33: "A se etiam speciem spiritus dominationis aut saecularis administrationis arcet. Patrem quidem omnibus, sed praesertim tenuioribus ac pauperibus se exhibet, ad quos imprimis evangelizandos a Spiritu Sancto unctum se ac missum, ad instar Christi Iesu, existimat." English translation, p. 20.

the other affairs of his house according to the virtue of pastoral prudence. Article 29 states:

> In feeding the flock entrusted to him, the bishop is greatly aided by the virtue of prudence, which is wisdom reduced to practice and the art of ruling well. This prudence requires acts that are suitable for achieving the divine plan of salvation and for procuring the good of souls and of the Church and leaves aside all merely human considerations.[66]

Defining pastoral prudence as "wisdom reduced to practice and the art of ruling well" denotes a standard whereby quality leadership takes place on the part of the bishop. This form of leadership is exhibited through an emphasis being placed upon the diligent care of the diocese, avoiding any possibility of negligence.[67] The same article reflects this standard in saying,

> Led by this prudence, the bishop cultivates strength of character and constancy, and, rejecting

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[66] Directory, no. 29, p. 34: "In pascendo grege sibi commisso Episcopus maximopere virtus succurrit prudentiae, quae est sapientia ad praxim deducta et ars bene regendi, actus exposcens aptos ad divinum salutis consilium perficiendum, et ad animarum Ecclesiaeque bonum persequendum, omnibus posthabitis mere humanis rationibus." English translation, p. 20.

[67] See H. Black, Black's Law Dictionary, p. 641.

> all partiality, he religiously observes the norms of justice and takes care that others observe them too."[66]

The final secondary virtue is fortitude which is reflected in two approaches to stewardship on the part of the bishop: prudence and strong leadership:

> A bishop knows how to combine gentleness with fortitude, the ministry of mercy with the authority to govern.
>
> [...] daily pastoral care makes it more necessary for a bishop to make decisions relying on his own resources and judgment, and so he has many chances of making mistakes, despite his good will. Humbly aware of this -- for 'one's first strength is the recognition of one's weaknesses' -- he should become daily more open to consult others and ready to be taught, and more inclined to ask for and to take advice.
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> Nevertheless, prudence, 'the mother of fortitude', also demands fortitude in a bishop so that he is not at all afraid of losing human favor [...].[67]

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[66] Directory, no. 29, p. 34: "Hac prudentia ductus, Episcopus robur animi et constantiam colit, normamque iustitiae, postposita cuiuslibet personae acceptione, sancte custodit ipse et ab aliis custodiendam curat." English translation, p. 20.

[67] Directory, no. 30, p. 35: "Suavitatem in agendo simul cum fortitudine, ministerium misericordiae simul cum auctoritate regiminis scit Episcopus amice componere.

"[....] Ceterum cotidiana cura pastoralis maiorem praebet Episcopo necessitatem suo marte suoque ingenio decisiones capiendi, ideoque in plures incidit occasiones sese, licet bona fide, fallendi. Quarum humiliter conscius -- nam 'prima virtus est cognitio infirmitatis' -- ad colloquendum cum aliis fit in dies apertior et paratus semper

Finally, the Directory brings to close the reflection on the virtues of the bishop by speaking of other traits which should be found in him. Specifically it notes in article 31 that

> among these traits the following can be included: unfailing kindliness and courtesy, a good and upright disposition, a steady and sincere character, a mind that in everyway is both open and provident. He shares the joys and sorrows of others, has an earnest concern for justice, firm self-discipline, politeness, patience and modesty, a healthy inclination both to speak to others and to listen, a ready desire to spend himself in the service of his neighbor.[70]

These virtues represent qualities which are necessary for the exercise of leadership from a stewardship model and which are reflected in decisions made by the steward. Thus, decisions which are made in the care of the temporal goods of

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doceri, ad aliena consilia exquirenda recipiendaque inclinatior.

"Attamen prudentia, quae est 'mater fortitudinis', ab Episcopo fortitudinem quoque deposcit, vi cuius ipse, humanam gratiam amittere minime formidans [...]." English translation, p. 21.

[70] Directory, no. 31, p. 36: "In quorum numero haec computari possunt: affluens humanitas, animus bonus et honestus, constans ac sincera indoles, mens omnibus patens et providens alienique gaudii et doloris particeps, assiduae iustitiae cura, sui ipsius fortis disciplina, urbanitas, patientia et modestia, ad homines alloquendos et audiendos sana inclinatio, prompta voluntas se donandi in proximi servitium." English translation, p. 21.

the diocese take place through the exercise of these virtues such as pastoral charity, prudence, fortitude, and an awareness of or sensitivity to the social and financial needs of those entrusted to the steward's care.

2.3.3 Fundamental principles in the exercise of stewardship

The Directory does not limit its concern to the bishop's role within the diocese nor to those virtues which constitute the foundation from which he shepherds his people. Rather, it moves beyond these points by suggesting six fundamental principles to be applied in the care of his flock; these become the standard whereby stewardship is exercised.

The first of these is concern for the common good. This principle invites the bishop to be attentive to the good of the entire Church as well as of the particular Church. The Directory reminds the bishop of the responsibility first of being attentive to the common good, that is of the entire Church and secondly that of the diocese he shepherds.[71] This

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[71] Directory, no. 93, p. 95: "Commune diocesis bonum ad Ecclesiae universalis bonum ordinatur, aliarum vero magis particularium dioecesis communitatum praecedit." English translation, p. 50.

principle, as it relates to the particular Church, is further detailed in article 93:

> To avoid hindering a particular legitimate good, the bishop should acquire an exact knowledge of the common good of the diocese; and then by study, by inquiry into socio-religious custom, by the counsel of prudent persons and through discussions with the faithful, he constantly reviews and checks his information, since things change so quickly today.[72]

The second principle enunciated in the Directory is the promotion of unity. The Directory, drawing upon Lumen gentium no. 23, presents the bishop as the visible source of unity within the diocese.[73] The principle of unity reminds the bishop that he must always act in ways which hold together the unity of the entire Church and that of the particular Church.

> [He] is always actively concerned about the unity of the entire Catholic Church. This concern for unity does, however, admit legitimate variety

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[72] Directory, no. 93, p. 95: "Ne legitimum particulare bonum impediat, curat Episcopus sibi certam diocesis communis boni notitiam comparare et tum studiis, tum socialis-religiosi moris investigatione, tum prudentium personarum consiliis et fidelium colloquiis incessanter recognoscere et probare, cum citius res hodie mutentur." English translation, p. 50.

[73] K. Rahner, "The Hierarchical Structure of the Church with Special Reference to the Episcopate", trans. by K. Smyth, in Commentary on the Documents of Vatican II, v. 1, pp. 205-206.

> which the bishop accepts according to the norms of law.[74]

Thirdly, exercising leadership and stewardship demands cooperation and participation on the part of those under the care of the bishop. Interaction among the faithful was suggested in the first principle as a means of becoming aware of the demands of the common good. The Directory, in a fuller sense, encourages the application of the principle of responsible cooperation by all the faithful. This finds its basis in Lumen gentium, nos. 30 and 33 as well as in Apostolicam actuositatem, nos. 2 and 3. In his commentary, F. Klostermann captures the essence of what the Directory and Lumen gentium are presenting when he writes that

> it is not the business of the "pastors" to take the whole saving mission of the Church in the world upon themselves alone; on the contrary, it is their "noble duty" (praeclarum munus) to "shepherd (pascere) the faithful", to guide and nourish them rather than impose a mere external governance upon them, to "recognize their services and charismatic gifts", to see whether they are genuine, above all whether they lead to harmonious co-operation in the common undertaking.[75]

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[74] Directory, no. 94, pp. 95-96: "[...] ecclesiae particularis sibi commissae, in totius autem catholicae Ecclesiae unitatem animum et curas semper intendens. Hoc tamen unitatis studium legitimas varietates admittit, quas quidem ad normam iuris Epsicopus observat." English translation, p. 50.

[75] F. Klostermann, "The Laity", in Commentary on the Documents of Vatican II, v. 3, p. 236.

Functioning as a shepherd, rather than imposing an external form of governance, ultimately means creating an environment where care can be given. T. Green observes that the creation of a climate where rights and responsibilites can be exercised is the prerogative of the diocesan bishop.[76] The environment he speaks of is one where there is openness to participation, collaboration and consultation. When the diocesan bishop, through formal and informal means, creates an environment of this nature he fulfills the directive for responsibile cooperation. The point being made by T. Green is that within this environment the faithful are made aware of their obligation to participate with the bishop in the task of stewardship.

The fourth essential principle in the exercise of stewardship is subsidiarity. Article 96 specifically states this when it says that

> [t]he bishop takes care that he does not ordinarily take upon himself what can well be done by others; rather, he carefully respects the legitimate competencies of others and also gives his co-

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[76] T. Green, "Rights and Duties of Diocesan Bishops", p. 21.

> workers the powers they need and favors the just initiatives of individual believers and of groups.[77]

The foundation of this principle dates back to its public formulation by Pius XI in 1931 with his encylical, Quadragesimo anno[78] whose social teaching provided a basis for a new relationship between the Roman Pontiff, the Roman Curia, and bishops at the time of the Second Vatican Council.[79]

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[77] Directory, no. 96, pp. 96-97: "Episcopus curat, ne quod ab aliis bene peragi potest, ordinarie sibi faciendum assumat, sed e contrario legitimas aliorum competentias diligenter observant, facultates quoque, quibus opus sit, cooperatoribus tribuit et iustis fidelium, sive singulorum sive consociatorum, inceptis favet." English translation, p. 51.

[78] Pius XI, Encyclical letter, Quadragesimo anno, May 15, 1931, in A.A.S., 23(1931), p. 203: "[...] fixum tamen immotumque manet in philosophia sociali gravissimum illud principium quod neque moveri neque mutari potest: sicut quae a singularibus hominibus proprio marte et propria industria possunt perfici, nefas est eisdem eripere et communitati demandare, ita quae a minoribus et inferioribus communitatibus effici praestarique possunt, ea ad maiorem et altiorem societatem avocare iniuria est simulque grave damnum ac recti ordinis perturbatio."

[79] F. X. Kaufmann, "The Principle of Subsidiarity Viewed by the Sociology of Organizations", in The Jurist, 48(1988), p. 280. See also L. Voyé, "Subsidiarity from a Sociologist's Point of View", in The Jurist, 48(1988), pp. 292-297; J. Komonchak, "Subsidiarity in the Church: The State of the Question", in The Jurist, 48(1988), pp. 298-349; J. Losada, "Subsidiarity from an Ecclesiologist's Point of View", in The Jurist, 48(1988) pp. 350-354. In evaluating parts of the encylical, Kaufmann suggests that the human person is the basis of all activity and hence the freedom of the human person to act should be protected against all collective activity. Secondly, smaller units of activity should never be prevented from achieving their potential because of the power of larger groups. Finally, the state should respect the differences in the social order and the differences in

The Council noted this by reaffirming the membership of individuals as part of God's family through baptism. Since they have the right and obligation of functioning in that capacity, then higher authorities should interact with them only when it is necessary.[80]

This principle finds its way into the Directory as a prominent reminder to the bishop that subsidiarity in the local Church allows matters to be dealt with on the most approriate level and encourages those involved to accept their responsibilities in those matters.

In addressing the rights and duties of diocesan bishops, T. Green affirms the fact that subsidiarity is a consistent theme running throughout the conciliar texts. Essentially it is a reflection of decentralization, especially in decision-making. He states:

> The implementation of the principle of subsidiarity is meant to strengthen and confirm legislative unity while doing justice to the

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associations.

[80] K. Mörsdorf, "Decree on the Bishops' Pastoral Office", p. 171.

> reasonableness and need for individual institutions to provide for themselves by particular law.[81]

He also notes that the practical application of subsidiarity as presented in the Second Vatican Council insists upon the making of decisions on the most appropriate level. Green's observations help to correct a common misinterpretation of subsidiarity which views it as decision-making on the lowest or most immediate level.[82] The emphasis placed on subsidiarity in the Directory exemplifies stewardship because decision-making is to take place on the most appropriate level, thus allowing for a greater degree of participation.

The application of good principles of management in the exercise of stewardship is presented in the fifth and sixth principles. The fifth is that of coordination:[83] in stewarding God's house, the bishop has to look upon his role as the coordinator of a number of groups with different objectives and visions. He leads effectively when he directs these various groups in such a way that the legitimate rights

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[81] T. Green, "Rights and Duties of Diocesan Bishops", p. 19.

[82] T. Green, "The Diocesan Bishop in the Revised Code", p. 344.

[83] Directory, no. 97, p. 97.

of each are protected as well as the rights and unity of the Church."[84]

Finally, the sixth principle provides that it is through the proper use of human resources that the task of coordination becomes efficient and effective. Placing the right people in the right places is an example of how the steward is concerned about the quality of life in the house entrusted to him."[85]

These six principles taken together assist in the exercise of the bishop's role as a steward. They point to the complexity which exists in the care of his people, but they also offer him a structure within which he could fulfill his role of stewardship.

2.3.4 The exercise of authority

The Directory also offers a number of examples whereby the bishop pastors his people. The first, on attitudes, is found in article 32 which describes ten acts representative

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[84] See T. Green, "The Diocesan Bishop in the Revised Code", p. 327; T. Green, "Rights and Duties of Diocesan Bishops", pp. 30-31.

[85] Directory, no. 98, p. 97.

of stewardship on the part of the bishop. After affirming that the bishop is chief pastor of his people, the article states:

> Therefore in the exercise of his sacred power he should show himself rich in kindliness and courtesy [...] patient in enduring contrary things for the kingdom of God, strong and firm in the just decisions he makes, prudent as one who assumes his responsibilities and fosters the opportunities to talk things over with the faithful, solicitous for the flock committed to his care."[46]

These qualities express the fundamental attitude which the diocesan bishop should have as chief pastor. At the same time they demonstrate true stewardship because in their proper exercise, the diocesan bishop acts as the master of his house.

Secondly, the Directory points consistently to the fact that acts of leadership which exemplify stewardship are always placed in relation to the people for whom the care is given. In addressing this, the Directory reminds the bishop that his acts, in so far as it is possible, should take place with the cooperation of all those who are involved:

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[46] Directory, no. 32, pp. 37-38: "[...] in exercenda sua sacra potestate semper se praebet: [...] mitem et lenem [...] patientem in rebus adversis tolerandis propter Regnum Dei; fortem et firmum in recte latis sententiis; prudentem, qui sua onera assumat et cum fidelibus colloquia foveat; sollicitum de commisso sibi grege." English translation, p. 22.

> The bishop, therefore, does his best to enlist the cooperation of others, sets forth the objectives of the pastoral program step by step, and on a broad and unrestricted basis approaches and listens to priests, religious and laity.[87]

He is invited to seek the cooperation of others as a vehicle whereby the faithful can exercise their rights and obligations. T. Green in looking at the response of the bishop to this invitation again suggests that he has to be willing to create the climate or atmosphere by which participation and the sharing of burdens takes place.[88]

Thirdly, this form of consultative participation between the faithful and the bishop always respects the right of the bishop in the making of a decision. Article 34 states:

> He fosters discussion among faithful of different conditions and of different ages; but the principle is to be kept clear that, when it comes to determining programs of pastoral action and ways of accomplishing them, the decision -- after suggestions have been heard and examined -- belongs

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[87] Directory, no. 33, p. 38: "Hinc Episcopus pro viribus sociam aliorum exposcit operam, per gradus fines actioni pastorali proponit, expedite et effuse presbyteros, religiosos ac laicos adit et audit." English translation, p. 22.

[88] T. Green, "Rights and Duties of Diocesan Bishops", pp. 21-24. See also J. Coriden, "Shared Authority: Rationale and Legal Foundation", pp. 59-70; P. Granfield, "Consilium and Consensus: Decision-Making in Cyprian", pp. 397-408.

> to the bishop who according to the seriousness of the matter and his own prudent judgment, will make the decision either alone or collegially."[89]

R. Kennedy expands upon this principle of shared responsibility in stewardship by noting that quality decision-making by the bishop, or anyone in a position of leadership, takes place only through consultation and collaboration. The consultative process raises options to be considered by the one entrusted with leadership."[90] Article 34 is a good illustration of Kennedy's observation. It is through consultation that options can be presented to the bishop. After the presentation of those options he makes the choice or decision. Ultimately the decision has to be made by the one who is responsible for it.

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[89] Directory, no. 34, p. 39: "De variis quaestionibus omnes, quorum interest, pro viribus consulit; pro sua parte, quantum iustitia et caritas sinunt, notitias integras et accuratas exquirentibus non denegat; colloquia inter fideles diversarum condicionum et aetatum fovet, firma lege ut, quando agatur de determinandis rationibus actionis pastoralis et de mediis ad id capessendis, post audita et excussa consilia decisio rite spectet ad Episcopum qui, pro gravitate rei et prudenti suo iudicio, eam fert aut singulariter aut collegialiter." English translation, p. 22-23.

[90] R. Kennedy, "Shared Responsibility in Ecclesial Decision-Making", in Studia canonica, 14(1980), pp. 5-23.

Then, fourthly, article 35 of the Directory calls for the consideration of both the social and religious context of the world in making a decision.[91]

Finally, article 36 suggests that decisions must avoid those causes which could lead to separation, embitterment and hurt on the part of those affected by the stewardship of the bishop:

> The exercise of Christian authority also demands that all psychological causes be carefully removed which might lead to embitterment, alienation, the feeling that one has been deceived, and other similar attitudes. Hence in his behavior a bishop avoids everything which smacks of imperious domination or mere juridical procedures as well as the exaggerated fatherly approach commonly referred to as paternalism.[92]

T. Green observes that this article is presenting an ecclesiology which affirms the equality of all believers. Furthermore he states that the structural differences which

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[91] Directory, no. 35, p. 39.

[92] Directory, no. 36, pp. 39-40: "Christianum auctoritatis exercitium postulat quoque, ut sedulo removeantur omnes psychologicae causae, quae duritiae vel segregationis vel deceptionis sensum, et alia huiusmodi, in animos inducere possint. Proinde Episcopus in sui agendi ratione ea omnia vitat quae hinc imperiosum dominium aut mere iuridicam administrandi speciem, illinc affectatum paternitatis sensum (vulgo paternalismo) sapiunt [...]" English translation, p. 23.

legitimately exist within the community should be of secondary consideration when placed against fundamental equality."

The Directory therefore provides valuable insights into the role of the bishop as a shepherd and steward. The principles contained in it are especially applicable to temporal management of the particular Church.

2.3.5 Administration of property

The stewardship role of the bishop consists of more than caring for the individuals who belong to God's house for these same principles are also applicable to the stewardship of temporal goods. The Directory presents three articles which speak of the administration of property. Article 133 underscores a theme that has been previously presented: it reminds the bishop that the correct administration of temporal goods takes place through collaboration and consultation with other individuals and groups.

> The bishop takes suitable measures that the faithful may be educated to a sense of participation and cooperation also as regards the temporal goods which the Church needs to fulfill her purpose, so that all according to their individual capacities consider themselves co-responsible both in the

" T. Green, "The Diocesan Bishop in the Revised Code", p. 332.

> economic support of the community and of its works and charities, as well as in the preservation, increase and proper administration of the community's temporalities.[94]

Stewardship of temporal goods involves education and a sense of co-responsibility which, in this context, is not limited to the traditional financial support of the Church by the faithful, but includes the preservation and proper administration of property. Decision-making based on these administrative principles of interaction with groups or councils leads to a sense of mutual accountability. T. Green notes that the lack of accountability in the leadership of the Church has always been a point of tension, especially in matters involving finances and property.[95] However, accountability must be viewed from two perspectives because the invitation to collaborative participation in stewardship cannot be seen without some form of reciprocal accountability. In other words, those involved in collaboration should also

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[94] Directory, no. 133, p. 130: "Providet Episcopus aptis mediis, ut fideles educentur ad sensum participationis et cooperationis etiam quoad bona temporalia, quibus ecclesia indiget ad finem suum consequendum, ita ut omnes, pro suis quisque viribus, corresponsabiles se habeant sive in sustentatione oeconomica communitatis ecclesialis, eiusque operum et largitionum, sive in conservatione, incremento et recta administratione bonorum ipsius communitatis." English translation, p. 68.

[95] T. Green, "The Diocesan Bishop in the Revised Code", p. 339. See also R. Metz, "Les responsables des biens des Églises dans la perspective de Vatican II comparée à celle du Code de 1917", in Prawo kanoniczwe, 20(1977), pp. 57-58.

be accountable for what they offer to the bishop as a steward.[96]

The Directory then details how administration or stewardship takes place. Article 134 is perhaps the most important article in this section because it presents four key principles which ought to characterize administration and which are integrally related to charity and justice:

> After justice is assured, the following are the most salient features of this administration:
>
> a) the pastoral principle which subordinates everything to the interest of piety, charity and the apostolate;
>
> b) the cooperative principle which gives the diocese and parishes a share in the administration; for it should be the common action and common concern of the bishop along with the clergy and representatives of the faithful. At specified times reports should, if it seems prudent, be made to the entire community;
>
> c) the ascetical principle which, according to the spirit of the evangelical law (cf. Mt. 19: 21), demands that the disciples of Christ deal with the world as though they had no dealings with it (cf 1 Cor. 7:31): thus they are to be modest, free and unimpeded, trusting in divine Providence and open-handed to the needy, keeping the bond of charity (1 Jn 3: 17-18);

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[96] T. Green, "The Diocesan Bishop in the Revised Code", pp. 332-339; see also T. Green, "Rights and Duties of Diocesan Bishops", pp. 28-31; R. Kennedy, "Shared Responsiblity in Ecclesial Decision-Making", pp. 5-23.

d) the principle of the good of the family in the work of administration.[97]

These principles represent four variables which must be brought into the decision-making process by the diocesan bishop in matters concerning temporal goods. The use of these four principles by the diocesan bishop suggests that ecclesial decision-making is significantly different from secular decision-making, for to make an ecclesial decision in light of these principles involves more than the decision itself. First it involves the consideration of the faith, history and tradition of the people affected by the decision. Secondly, ecclesial decision-making incorporates a greater sense of involvement by other parties by allowing the greatest possible degree of collaboration. Thirdly, ecclesial decision-making

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[97] Directory, no. 134, pp. 130-131: "Iustitia in primis observata, huic administrationi potiores praesident rationes quae sequuntur:

a) ratio pastoralis, quae omnia pietatis et caritatis et apostolatus causae subicit;
b) ratio communionis, dioecesim et paroecias in partes advocans administrationis; haec enim communis actio communisque cura habenda est nempe ab Episcopo una cum clero et omnium fidelium legatis gerenda, universa communitate, si id prudens videatur, certiore statutis temporibus facta;
c) ratio ascetica, quae iuxta spiritum legis evangelicae (cf Mt. 19, 21) exigit ut Christi discipuli utantur hoc mundo tamquam non utantur (cf. 1 Cor. 7, 31): sint proinde modesti, liberi et expediti, divina Providentia confidentes et largiter egenis donantes, vinculum caritatis custodientes (cf. 1 Io. 3, 17-18);
d) ratio boni patrisfamilias in administratione gerenda." English translation, pp. 68-69.

in light of these principles calls for an adherance to gospel values, which at times will be in conflict with the values of the business world. For example, a decision made in stewardship may not seek the greatest profit, but consider other issues such as charity and justice. Finally, ecclesial decision-making calls the diocesan bishop truly to steward the members of the house entrusted to him. Stewardship of this sort involves caring for his family and making decisions which will deepen their faith and trust, even when those decisions are unpopular.

The ability of the bishop to make decisions in light of these principles is enhanced through interaction with groups and councils. Article 135 of the Directory reminds the bishop of his obligation to make sure that councils are erected so that a consultative model can be established in the diocese. As the article notes, the various diocesan councils become the bodies where deliberations can be made on many matters including those concerning finances. Furthermore, it also becomes a body which calls for financial accountability as it reviews the progress of the diocese and its special projects."[98]

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[98] Directory, no. 135, p. 132.

Conclusion

The Vatican II ecclesiology indeed necessitated a rethinking of the role of the diocesan bishop. This is particularly evident in Lumen gentium no. 27 where it is clearly noted that the power of governance for the diocesan bishop is proper, ordinary and immediate.

By attributing to the diocesan bishop proper, ordinary and immediate power which is exercised in communio, the Second Vatican Council was affirming the fact that bishops act as vicars of Christ. Such an affirmation called for a renewed interest in the image of Christ as the good shepherd who cares for his sheep and the application of that image in the ministry of the diocesan bishop.

By accepting the responsibility of being a shepherd, the diocesan bishop assumes the role of governance, and more precisely, that of caring for the temporal administration and ecclesiastical goods within the diocese.

Both the Old and New Testament provide a consistent understanding of stewardship which is structured around the obligation of an individual or group to care for what has been entrusted to them. According to the biblical notion of

stewardship, the person who represents the community takes on the responsibility of ensuring that this dependent relationship is recognized and deepened.

The theological foundations of stewardship as they are presented in the Old and New Testament are reflected in the post-conciliar Directory. The Directory underscores the concept of stewardship as it affirms the diocesan bishop as a shepherd who takes on the responsibility of ministering to the people entrusted to him. The Directory thus urges the diocesan bishop to adopt values and criteria for decision-making which concretely reflect that image of stewardship. Among those values are patience, cooperation, prudence, etc. The necessary criteria for decision-making, especially as they relate to the temporal goods of the Church, are based on co-responsibility with an emphasis on the pastoral, cooperative, ascetical and familial principles outlined in the Directory.

The qualities of stewardship which are noted in both the biblical tradition and the post-conciliar Directory are not legislative texts. They only offer direction by which the diocesan bishop can supervise and administer the activities of the diocesan Church as a steward. In addition, they remind the diocesan bishop that his leadership role is fundamentally grounded in the Church as communio. The basic theological

principles articulated in the Directory can be seen in the canons of the 1983 Code dealing with the administration of temporal goods. These canons emphasize the need for participation with other individuals or councils while placing acts which affect the financial condition of the diocese. In the following chapter, therefore, we will examine the development and interpretation of relevant legislation concerning administration of temporal goods as found in the 1983 Code.

CHAPTER THREE

CANON 1277 OF THE 1983 CODE OF CANON LAW

The influence of the 1917 Code on administrative and decision-making procedures in matters of temporal goods is clear when one considers the canons of the 1983 Code. Even though the new canons concerning temporal goods are very similar to those in the 1917 Code, the Second Vatican Council has brought a different understanding to their interpretation. As has been previously noted, such documents as Lumen gentium, Christus Dominus, and the post-conciliar Directory on the Pastoral Ministry of Bishops, have influenced this new interpretation by strengthening the stewardship role of the diocesan bishop.

The emphasis on conciliar and post-conciliar teachings, with their focus on the diocesan bishop's immediate, proper and ordinary power, has been incorporated into canon 1277 of the 1983 Code. An analysis of this canon is the focus of this chapter. This analysis will first review those principles of revision which are related to the canons on temporal goods. Secondly the evolution of the text of canon 1277 through the

various schemata will be examined to indicate how conciliar and post-conciliar theology has been incorporated. Thirdly, the essential elements of the canon will be identified and discussed.

3.1 Application of the fundamental principles of revision of the Code

The ten fundamental principles approved by the Synod of Bishops in 1967[1] for the revision of the Code of Canon Law are essential for the correct interpretation of the new canons. These principles provided the broad parameters for the creation of new legislation influenced by the doctrinal changes introduced by the Second Vatican Council.

Not all ten principles are applicable to every canon within the Code, especially those canons which address the temporal administration within the Church. Nevertheless, at least five of them have specific application in interpreting the canons of Book V on the temporal goods of the Church.

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[1] Pontificia Commissio Codici Iuris Canonici Recognoscendo, Communicationes, 1(1969), pp. 77-85 (hereafter: Communicationes). See also J. Coriden, "Highlights of the Revised Code", in The Jurist, 44(1984), pp. 28-40; J. Alesandro, "General Introduction", in The Code of Canon Law: A Text and Commentary, J. Coriden, T. Green, and D. Heintschel, eds., New York/Mahwah, Paulist Press, 1985, (hereafter: CLSA Commentary) pp. 5-7.

The first principle adopted by the Synod calls for the development of a Code with a juridic character. This is an affirmation of the social nature of the Church. Indeed, because of the Church's social nature, a structure is necessary to respect and protect the rights and obligations of all who comprise it as a social entity.[2]

An example of the application of this juridic principle in legislation concerning temporal matters can be seen in those canons where the Code affirms the right of the Church to acquire, retain, administer and alienate its own ecclesiastical goods.[3] In addition, legislation also protects the rights and intentions of those who voluntarily contribute to the Church by their donations.[4]

The third principle for revision emphasizes the centrality of pastoral ministry in the Church. This principle calls for the development of legislation which incorporates values reflecting the pastoral nature of the Church; charity,

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[2] "Principia quae codicis iuris canonici recognitionem dirigant", in Communicationes, 1(1969), p.79: "Canonici quoque iuris obiectum praecipuum et essentiale est iura et obligationes uniuscuiusque hominis erga alios et erga societatem definire atque tueri, etsi eatenus fieri possit in Ecclesia quatenus ad Dei cultum et animarum salutem pertineant."

[3] See canon 1254, §1.

[4] Canon 1267.

moderation, justice, etc. This principle is reflected in the canons regulating temporal goods and administration as they are directed towards divine worship, support of the clergy, and the needs of the poor.[5]

The fifth principle, subsidiarity, is woven into many of the canons on temporal administration. Subsidiarity places an emphasis on particular legislation and decision-making at the most appropriate level. In matters of temporal goods, the application of this principle allows for decisions to be efficiently made in light of particular circumstances.[6] This

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[5] See canons 1254, §2 and 1274.

[6] R. Cunningham, "The Principles Guiding the Revision of the Code of Canon Law", in The Jurist, 30(1970), pp. 450-452. See also J. Carroll, "Revisions of the Code of Canon Law", in The Australasian Catholic Record, 45(1968), pp. 237-242; T. Green, "Subsidiarity During the Code Revision Process: Some Initial Reflections", in The Jurist, 48(1988), pp. 771-799; J. George, The Principle of Subsidiarity with Special Reference to its Role in Papal and Episcopal Relations in the Light of Lumen Gentium, Canon Law Studies, no. 463, Washington, DC, Catholic University of America, 1968, pp. 2-84; V. De Paolis, "Temporal Goods of the Church in the New Code with Particular Reference to Institutes of Consecrated Life", in The Jurist, 43(1983), pp. 343-360. V. De Paolis notes that a prime example of subsidiarity in temporal goods is present where canon law "canonizes" the civil law of the place. This can be noted in Book V in canon 1290 concerning contracts and in canon 197 regarding prescription. Subsidiarity is also evident in those matters which are determined by the conference of bishops. These acts include: requesting offerings from the faithful (canon 1262), fund-raising by mendicants (canon 1265, §2), norms for benefices (canon 1272), collaboration among various dioceses in the administration of a common fund (canon 1275), determination of extraordinary administration (canon 1277), norms for alienation (canon 1292, §1), and norms for ecclesiastical

principle is operative in those canons which concern the office of the diocesan bishop and refer to his ordinary, proper and immediate power.[7] The application of subsidiarity in the exercise of episcopal power over temporal goods affirms the stewardship role of the diocesan bishop.

The sixth and seventh principles concern the protection of rights. The sixth affirms that even though functions differ within the Church, there is a fundamental equality of all persons. Therefore the rights of all persons must be respected, especially by those who hold positions of authority and leadership. The seventh principle supports a procedure whereby violations of rights can be addressed. Specifically this is realized through the procedure for administrative recourse. The canons relating to temporal goods and their administration reflect these principles. They first provide a mechanism to help prevent arbitrary decisions; an example of this is the requirement for the participation of consultative and consent-giving bodies in major financial

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leases (canon 1297).

[7] R. Brown, "Notes on Recent Work: The Revision of the Code", in The Clergy Review, 52(1967), pp. 808-810. R. Brown points to the historical shifts which have taken place in terms of authority and power. He notes that under Pius X power and authority in the Church were gradually centralized. The Second Vatican Council reversed this trend by decentralization. This change is reflected in the role of the diocesan bishop. See also J. Carroll, "Revisions of the Code", p. 242.

decisions.[8] Secondly, since decisions regarding the administration of temporal goods are administrative acts, such acts can be legitimately challenged through administrative recourse.[9]

The incorporation of these fundamental principles into the canons of the 1983 Code provides a basis whereby the new legislation can be correctly interpreted. In particular, these principles provide an opportunity for a new interpretation and understanding of the canons of Book V.

3.2 The Schemata

The application of the principles underlying the revision of the Code becomes evident in the analysis of the development of canon 1277. The revision of Book V took place in nine sessions beginning on 23 January 1967 and ending on 22 April 1970. This process led to the development of the 1977 Schema wherein canon 21 presented proposed legislation on extraordinary expenditures and administration in matters of major importance. In 1979, members of the Commission reviewed the observations received from various consultors and prepared a new draft (1980 Schema). In the 1981 Relatio several

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[8] See canons 127, §1; 1277; 1292, §§ 1, 2; 1295.

[9] See canons 1732-1739.

changes were proposed which were subsequently incorporated into the 1982 Schema. No further changes were made to the proposed canon and the text of canon 1277 remained unchanged in the 1983 Code of Canon Law.

3.2.1 1977 Schema

The 1977 Schema in canon 21 provides the first formulation for distinguishing various acts of administration. The canon states:

> The diocesan bishop should consult the board of financial administration referred to in canon 306 (in the section on the People of God) in acts of administration of greater moment. He needs the consent of that board in those cases where it is required by the general law of the Church or where it is required by the constitutions of a foundation. He also needs this consent when he wishes to incur extraordinary expenses, namely, expenses which he believes should be permitted for special reasons not forseen in the nature of the source of the funds.[10]

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[10] Pontificia Commissio Codici Iuris Canonici Recognoscendo, Schema canonum libri V de iure patrimoniali ecclesiae, Romae, Typis polyglottis Vaticanis, 1977, p. 13 (hereafter: 1977 Schema).

Can. 21 (can. 1520, §3). "Episcopus diocesanus ad actus ponendos administrationis maioris momenti Consilium a rebus oeconomicis de quo in can. 306 (de Populo Dei) audire debet; eiusdem tamen Consilii assensu eget, praeter casus iure universali vel tabulis fundationis specialiter expressos, etiam ut expensas faciat extraordinarias, quae scilicet ob adiuncta specialia in ratione erogationum non praevisas admittendas existimet." English translation from Draft of the Canons of Book Five: The Law Regarding Church Possessions, translated under the auspices of the Canon Law Society of

This presentation of canon 21 introduced two changes from its parallel source, canon 1520, §3, of the 1917 Code. The first notable change concerns the terminology used to express a theological understanding of leadership. The 1977 Schema obligates the diocesan bishop to consult or obtain the consent of the council of economic matters. The requirement placed upon the diocesan bishop departs from the previous legislation where the obligation applied to the local ordinary. Secondly, the requirement of obtaining consent for extraordinary expenses is a development not found in the previous canon 1520, §3.[11]

America by J. Alesandro, Washington, DC, NCCB, 1978, p. 20.

[11] Communicationes, 9(1977), p. 272. A third variation can be noted in the translation of the phrase "Consilium a rebus oeconomicis". Under the 1917 Code, some authors translated the word "consilium" as council, while others used the term board. It is important to underscore that this difference is one of translation of the text, but it does not indicate a change in the official latin text itself. S. Woywod, A Practical Commentary on the Code of Canon Law, New York, J. Wagner, Inc., 1948, v. 2, p. 203, defines the phrase "Consilium administrationis" as "Board of Administration" and consistently uses that term throughout his work. See also F. C. Augustine, A Commentary on the New Code of Canon Law, St. Louis, B. Herder, 1931, v. 6, p. 579. J. A. Abbo and J. D. Hannan, The Sacred Canons: A Concise Presentation of the Current Disciplinary Norms of the Church, 2nd rev. ed., St. Louis, B. Herder Book Co., 1960, v. 2, p. 725, translate the phrase as "Council of Administration" and apply this translation throughout their work. T. Bouscaren and A. Ellis, Canon Law: A Text and Commentary, 3rd rev. ed., Milwaukee, Bruce Publishing Co., 1958, p. 804 use both translations in their commentary.

Three general criticisms were made of these revisions. First of all, the final phrase of the canon, "namely, expenses which he believes should be permitted for special reasons not foreseen in the nature of the source of the funds" failed to provide an adequate means for the diocesan bishop to determine which acts are considered to involve extraordinary expenses. Secondly, the text grants to the diocesan bishop the discretion of determining which items are to be considered extraordinary, thus needing consent. The inadequacy of this phrase lies in its failure to protect against arbitrary decisions which could involve extraordinary expenses and yet exclude the participation of the finance council. The final criticism of the draft legislation was that there should be a greater degree of consistency throughout the entire Schema in the use of the terms "diocesan bishop" and "ordinary".[12]

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[12] The inconsistency lies in the use of the term "ordinary" in relation to functions which principally rest in the diocesan bishop. For example, in the 1977 Schema, canons 5 (the imposition of diocesan taxes), 8 (the institution of collections) and 20 (the supervision of subordinate administrators) concern themselves with diocesan matters and yet the person entrusted with the decision-making authority in these areas is the ordinary and not the diocesan bishop. In addition, the 1977 Schema on the Temporal Goods of the Church, used the term ordinary 23 times and limits the use of diocesan bishop to three instances (canons 21 on levels of administration; 25, §2 on ordinary administration; and 55, §6 on delegating faculties to reduce mass obligations). See L. Örsy, Canon Law Society of America, Task Force for the Revision of the Code of Canon Law, Washingon, DC, 1978, p. 4. See also V. De Paolis, "Schema canonum libri V. De iure patrimoniali ecclesiae", in Periodica, 68(1979) p. 684.

The proposal of the 1977 Schema differed from the promulgated text in three ways. First of all it made reference only to the finance council and not to the college of consultors. Secondly, and of most importance, was the use of the term "extraordinary expenses" instead of "extraordinary administration". In using the term "extraordinary expenses", the 1977 Schema limited the application of the canon. It would seem therefore that extraordinary expenses were understood to be specific acts involving the payment of funds. Extraordinary administration, however, which is the term used in the promulgated version, encompasses a wider range of acts placed by an administrator on behalf of a juridic person. Thirdly, the canon resolves the question of invalid acts when considered in relation to other canons found in the 1977 Schema. Because of the dubium iuris previously associated with canon 105 of the 1917 Code,[1] the presentation of canon 21 in the 1977 Schema naturally leads to the issue of the validity of acts placed by the diocesan bishop which require previous consultation with the council of financial administration when he has failed to do so. Such acts would be considered invalid when canon 21 of the 1977 Schema on Temporal Goods is read in conjunction with canon 116 of the 1977 Schema on General Norms. Canon 116, §2 states:

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[1] See supra, pp. 57-61.

> Whenever the law determines that in order to place certain acts a superior requires the consent or counsel of some persons: [...]
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> 2. if counsel is required, the act of the superior is invalid if he has not listened to these persons; the superior, although not obligated to accede to their opinion, even if unanimous, nevertheless, without some prevailing reason estimated in the superior's judgement, should not depart from this opinion, especially from the consensus of different persons;[14]

The second paragraph of this proposed canon thus removed any doubt of law which existed in both canon 105 and by extension in canon 1520, §3, of the 1917 Code.

3.2.2 1980 Schema

The review of comments during the first general consultation led the Commission to refine canon 21 in the 1980

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[14] "Cum iure statuatur ad certos actus ponendos Superiorem indigere consensu aut consilio aliquarum personarum: [...]

2. si consilium requiratur, invalidus est actus Superioris easdem personas non audientis; Superior, licet nulla obligatione teneatur ad earum votum, etsi concors, accedendi, tamen, sine praevalenti ratione, suo iudicio aestimanda, ab earundem voto, praesertim diversarum personarum concorde, ne discedat", Pontificia Commissio Codici Iuris Canonici Recognoscendo, Schema canonum libri I de normis generalibus, Romae, Typis polyglottis Vaticanis, 1977, p. 38. English translation from Draft Canons of Book One: General Norms, translated under the auspices of the Canon Law Society of America by D. Burns, Washington, DC, NCCB, 1977, p. 37.

Schema. The Commission met on 23 June 1979 to make three specific changes to the canon.

First of all, it was suggested that the diocesan bishop in making decisions of major importance not act solely in consultation with the finance council. Since decisions of this nature have a far-reaching impact which goes beyond the financial condition of the diocesan Church, it was suggested that the college of consultors also be included in the consultative process.[15]

Secondly, the consultors attempted to clarify what were considered to be "acts of major importance". Some consultors thought the canon was clear as it stood while others suggested the development of a list. Still other consultors preferred to add a clause to the canon whereby the determination of acts of major importance would take place in light of the financial condition of the respective diocese.[16] This method of

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[15] Communicationes, 12(1980), p. 414. "Suggestum est ut Episcopus ad actus ponendos administrationis maioris momenti audiat non solum Consilium a rebus oeconomicis sed etiam alterum organum dioecesanum, ita ut duplex habeatur votum de re agenda. Suggestio placet Consultoribus, qui decernunt ut audiatur etiam Collegium Consultorum de quo in can. 316 (De Populo Dei)."

[16] Ibid. "Nonnulli petierunt ut melius determinetur quinam sint actus administrationis maioris momenti. Unus Consultor censet normam esse claram, quin aliqua determinatio addatur; ceterum cum Episcopus non indigeat consensu, sed tantum audire debeat, ulterior determinatio esse fere

determination, which was eventually accepted by the Commission, prevented the canon from being too limited, thus giving it universal application.

Thirdly, the Commission approved the changing of the phrase "extraordinary expense" to "extraordinary administration" and made it obligatory to obtain consent before placing such an act.[17]

These three changes led to the development of canon 1228 in the 1980 Schema which now reads as follows:

> The diocesan bishop must hear the finance council and the college of consultors in order to perform the more important acts of administration in light of the economic situation of the diocese; he needs their consent in order to perform acts of extraordinary administration besides cases

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inutilis. Alii Consultores autem censent opportunam esse aliquam determinationem quae respiciat statum oeconomicum diocesis, a quo praescindi non potest ad videndum quinam actus sint maioris momenti; quare ipsi ita formulam canonis emendare volunt:

'Episcopus dioecesanus ad actus administrationis ponendos qui, attento statu oeconomico dioecesis, sunt maioris momenti, consilium a rebus oeconomicis et collegium Consultorum audire debet...'"

[17] Ibid. "Circa alteram partem canonis Consultor quidam proponit ut ita redigatur: 'eorundem tamen consensu eget, praeter quam in casibus iure universali vel tabulis fundationis specialiter expressis, ad ponendos actus extraordinariae administrationis'. Haec propositio omnibus placet."

specifically mentioned in universal law or in the charter of a foundation.[18]

The refinements which led to the development of canon 1228 of the 1980 Schema indicate the implementation of three principles. First, a broad understanding of administration is being employed in the 1980 Schema. Secondly, a cautious approach is being applied to decision-making which takes place in the administration of temporal affairs. This is noted by the removal of the limiting phrase "extraordinary expenses" and the substitution of the expression "extraordinary administration." Finally, the changes suggest that important decisions do not necessarily take place through the actions of one individual, but in conjunction with other bodies or groups. Therefore the 1980 Schema has included the college

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[18] Codex iuris canonici: Schema Patribus Commissionis reservatum, Città del Vaticano, Libreria editrice Vaticana, 1980, p. 273 (hereafter: 1980 Schema). "Episcopus dioecesanus ad actus administrationis ponendos, qui, attento statu oeconomico dioecesis, sunt maioris momenti, Consilium a rebus oeconomicis et Collegium consultorum audire debet; eorundem tamen consensu eget, praeterquam in casibus iure universali vel tabulis fundationis specialiter expressis, ad ponendos actus extraordinariae administrationis." English translation from F. Morrisey, "Ordinary and Extraordinary Administration", in The Jurist, 48(1988), p. 714. It should be noted that there is a difference in the translation of the phrase "audire debet" between the 1977 Schema and the successive drafts incorporating the term. The translation of the 1977 Schema issued by the Canon Law Society of America translated the phrase to mean "should consult." Translations of the 1980 Schema, 1981 Relatio, 1982 Schema, and the 1983 Code texts translate the phrase as "must consult".

of consultors in addition to the finance council in the decision-making process.

3.2.2.1 1981 Relatio

The members of the Commission reviewed the proposed wording of canon 1228 and considered additional refinements. In the 1981 Relatio three additional changes were proposed.[19]

Cardinal Arnau Jubany, a member of the Commission suggested that acts of major importance should encompass acts relating to works of art, of historic value, or of popular devotion, etc.[20] The Commission as a whole responded to the request by first stating that it was impossible to determine acts which are of major importance. It then noted that the canon already contains the qualifying phrase "in light of the economic situation of the diocese" to respond to this difficulty. If the phrase were to be correctly interpreted

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[19] Pontificia Commissio Codici Iuris Canonici Recognoscendo, Relatio complectens synthesim animadversionum ab em.mis atque exc.mis patribus Commissionis ad novissimum schema codicis iuris canonici exhibitarum, cum responsionibus a secretaria et consultoribus datis, Vatican City, Typis polyglottis Vaticanis, 1981, pp. 285-286 (hereafter: 1981 Relatio).

[20] Ibid., p. 285. "Ulterius determinentur actus [...] qui sunt maioris momenti, addatur ex. gr.: 'ratione artis, valoris historici, vel oeconomici aut ob specialem populi devotionem, si de obiecto cultus agatur, etc.'"

and applied, then in some dioceses, property or goods which hold historic or artistic value or are related to special popular devotion, could be considered as items of major importance. Furthermore the Commission noted that canon 1243, §2, which concerns alienations of historic and artistic objects, adequately provides for the concerns raised by Cardinal Jubany.[21]

A second suggestion was brought before the Commission by Cardinal Eugenio Sales. He suggested that some legal criteria be established whereby extraordinary administration would be defined. In addition, he pointed out an inconsistency present in the requirement for the participation of the finance council and the college of consultors.

He noted that in the proposed canon on administration, acts of extraordinary administration require the consent of the finance council and of the college of consultors. However, in the accompanying proposed canon on acts of alienation, in order to alienate a good, the competent

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[21] Ibid., p. 286. "Non possunt lege generali determinari quinam sint actus maioris momenti. Sufficit quod dicitur in canone: 'attento statu oeconomico dioecesis'. Criterium propositum inadaequatum est et ex parte iam memoratur in can. 1243, §2." See also Communicationes 3(1971), pp. 40-42, for an analysis of what constitutes property of historic and artistic value and for norms issued by the Congregation for the Clergy relating to its proper care.

authority requires the consent of only the finance council and of the interested parties when the alienation is between the established minimum and maximum amounts. He pointed out an inconsistency regarding the serious nature of these acts and the formalities which must be complied with for their validity. He was suggesting that if an act of alienation, which alters the stable patrimony of the juridic person, requires only the consent of the finance council and of the interested parties, some parallel should exist when considering acts of extraordinary administration.[22]

The Commission responded to these observations by first stating that as with acts of major importance, it was not possible to establish a list of acts to be considered

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[22] 1981 Relatio, pp. 285-286. "Iuxta Card. de Araujo Sales desideratur aliquod criterium legale pro dignoscendis actibus extraordinariae administrationis, cum ad eos actus ponendos egeat Ordinarius consensu tum Consilii a rebus oeconomicis tum Collegii consultorum (can. 1288), dum autem in can. 1243, §§ 1-2 sufficit consensus Consilii a rebus oeconomicis."

1980 Schema, p. 277. Canon 1243, §1. "Salvo iure Institutorum religiosorum, cum valor bonorum, quorum alienatio proponitur, continetur intra summam minimam et summam maximam ab Epsicoporum Conferentia pro sua cuiusque regione definiendas, auctoritas competens, si agatur de personis iuridicis Ordinario loci non subiectis, propriis determinatur statutis; si vero agatur de personis sibi subiectis auctoritas competens est loci Ordinarius cum consensu Consilii a rebus oeconomicis et eorum quorum interest."

extraordinary.[23] Secondly, it proposed a change in the text of the canon whereby the diocesan bishop would need only to consult the finance council for acts of major importance and in extraordinary matters would need the consent of both the finance council and the college of consultors.[24]

The third proposal for change was put forward by Archbishop (now Cardinal) Joseph Bernardin who suggested that the determination of acts of extraordinary administration be entrusted to the conference of bishops.[25] The 1981 Relatio does not address this suggestion nor offer any form of response, however, the suggestion was retained in the promulgated version.

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[23] 1981 Relatio, p. 286. "Neque possibile est determinari 'actus extraordinariae administrationis'."

[24] Ibid. "Ut tamen melius concordet iste canon cum can. 1243, supprimitur in primo commate mentio 'Collegii consultorum', quae manet tamen in secundo. Canon ita modificatur:

'Episcopus dioecesanus ad actus administrationis ponendos, qui, attento statu oeconomico dioecesis, sunt maioris momenti, Consilium a rebus oeconomicis audire debet; eiusdem tamen Consilii atque etiam Collegii consultorum consensu eget, praeterquam in casibus iure universali vel tabulis fundationis specialiter expressis, ad ponendos actus extraordinariae administrationis'."

[25] Ibid. "Fere eodem sensu Exc. Bernardin, qui postulat insuper ut Episcoporum Conferentiae committatur definitio actuum extraordinariae administrationis vel saltem statuitio quorundam criteriorum generalium et obiectivorum."

The changes introduced in the Relatio led to a new formulation of the canon which now reads as follows:

> The diocesan bishop must consult from the finance council in order to perform those acts which in light of the economic situation of the diocese are more important acts of administration; he needs the consent of this council and also the college of consultors to perform acts of extraordinary administration in addition cases specifically mentioned in the universal law or in the charter of the foundation.[24]

It can be noted that the revision presented in the 1981 Relatio reflects only one change in comparison with the 1980 draft of the canon. The 1981 text states that advice need be sought only from the finance council in the placement of acts of major importance. This differs from the 1980 text which required consultation of both the finance council and the college of consultors. In general terms, the portion of the text which refers to acts of major importance and to the requirement of hearing only the finance council, represents a return to the 1977 Schema.

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[24] Ibid. "Episcopus dioecesanus ad actus administrationis ponendos, qui, attento statu oeconomico dioecesis, sunt maioris momenti, Consilium a rebus oeconomicis audire debet; eiusdem tamen Consilii atque etiam Collegii consultorum consensu eget, praeterquam in casibus iure universali vel tabulis fundationis specialiter expressis, ad ponendos actus extraordinariae administrationis." Translation adapted by the author.

It seems that in making this change the Commission was attempting to bring about a parallel presentation between acts of extraordinary administration and acts of alienation. By responding to the observations of Cardinal Sales they present a consistent approach to the principle which suggests that the greater the impact a decision will have upon the Church, the greater the potential scope for participation by diocesan bodies and the greater the implications of their participation.

3.2.3 1982 Schema

The 1982 Schema contains two changes arising from the recommendations presented in the 1981 Relatio. First of all, the Commission removed the changes in canon 1228 which called for the intervention of only the finance committee in acts of major importance while calling for the participation of both the finance committee and college of consultors in acts of extraordinary administration.[27] In effect, no changes were

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[27] The rationale for giving the finance council a consultative voice in matters of major importance and including both the finance council and the college of consultors in extraordinary administration was based on canon 1243, §1 of the 1980 Schema. In that canon, an alienation between the minimum and maximum amount set by the conference of bishops required the consent of only the finance council and the interested parties. The participation of the college of consultors was not required. Cardinal Sales' intervention brought about the change of including the college of consultors in acts of extraordinary administration.

made from the 1980 Schema concerning the participation of the finance council and the college of consultors through advice or consent.

Secondly, the suggestion made by Archbishop Bernardin, although not responded to in the Relatio, was incorporated into the text of the 1982 Schema. Thus the conference of bishops was entrusted with the task of determining which acts constitute acts of extraordinary administration.

The canon, which was renumbered as 1277, is the same as the promulgated text in the 1983 Code. It states:

> The diocesan bishop must hear the finance council and the college of consultors in order to perform the more important acts of administration in light of the economic situation of the diocese; he needs the consent of this council and that of the college of consultors in order to perform acts of extraordinary administration besides cases

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The reversal by the Commission in regard to the consultation of the college of consultors in matters of major importance seems to reflect a desire to create a parallel between canons 1277 and 1292, §1. Canon 1292, §1 requires consent of both the college of consultors and the finance council in matters of alienation between the minimum and maximum amounts set for the region. The requirement of consent from both bodies was not found in the 1977 Schema (canon 37, §1) nor in the 1980 Schema (canon 1243, §1). In the 1981 Relatio the consultors suggested the inclusion of the college of consultors. Thus canon 1292, §1 of the 1982 Schema calls for "consensu consilii a rebus economicis et collegii consultorum." Reference to both bodies is found in the promulgated text.

> specifically mentioned in universal law or in the charter of a foundation. It is for the conference of bishops to define what is meant by acts of extraordinary administration.[28]

The development of this canon incorporates five changes which are of significance. First the Code Commission recognized the importance of participation by the finance council and the college of consultors both in those acts of administration which are of major importance as well as in extraordinary ones. Secondly, a significant shift took place in the use of the term "extraordinary administration" as compared to the phrase "extraordinary expenses" found in the 1977 Schema. This change underscores the notion that acts of administration encompass more than paying expenses. In using a term of wider application, the participation of the finance council and of the college of consultors becomes necessary for a greater number of acts. Thirdly, the use of the phrase

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[28] Pontificia Commissio Codici Iuris Canonici Recognoscendo, Codex iuris canonici: schema novissimum iuxta placita patrum Commissionis emendatum atque Summo Pontifici praesentatum, Civitate Vaticana, Typis polyglottis Vaticanis, 1982, p. 222. "Can. 1277 - Episcopus dioecesanus quod attinet ad actus administrationis ponendos, qui, attento statu oeconomico dioecesis, sunt maioris momenti, consilium a rebus oeconomicis et collegium consultorum audire debet; eiusdem tamen consilii atque etiam collegii consultorum consensus eget, praeterquam in casibus iure universali vel tabulis fundationis specialiter expressis, ad ponendos actus extraordinariae administrationis. Conferentiae autem Episcoporum est definire quinam actus habendi sint extraordinariae administrationis." English translation from Code of Canon Law, Latin-English ed., translation prepared under the auspices of the Canon Law Society of America, Washington, DC, Canon Law Society of America, 1983, p. 455.

"economic situation of the diocese" allows for a greater degree of flexibility and subsidiarity in the determination of the acts of major importance. Fourthly, by implicit refence to canon 127, §1, the debate over invalid acts caused by a failure to consult is resolved. Finally, the role of the conference of bishops allows for a different degree of subsidiarity to be exercised in each region in determining what acts are to be considered extraordinary.[29]

3.3 Administration

The term "administration" is used in a variety of forms and in numerous places throughout the 1983 Code. Because of the wide scope and application of the word, it is necessary to examine its meaning as it specifically relates to Book V. The word "administration" has diverse meaning in both secular and ecclesiastical use. Even when it is studied exclusively in relation to the canons of Book V, inconsistencies surface in its meaning and application.[30] However, a general

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[29] F. Morrisey, "Ordinary and Extraordinary Administration", p. 715.

[30] A. Farrelly, Diocesan Finance Council: A Historical and Canonical Study, JCD diss., Ottawa, Saint Paul University, 1987, pp. 200-201, notes that a narrow interpretation of the word "administration" centers upon executive power as distinct from legislative and judicial power. In these instances the Code speaks of administrative acts: decrees and recripts.

definition of administration can be formulated from an examination of canonical tradition and the present legislation on temporal goods.

1.1.1 Administration in the 1917 Code

One of the most precise and widely held descriptions of administration of temporal goods in the 1917 Code was given by G. Vromant who noted that administration, in a strict sense, involves three tasks: preservation, production and application. Preservation takes place through acts placed by the administrator to care for the goods which belong to the juridic person as well as finding those means which will bring about betterment or improvement of those goods. Production takes place through those means, either natural or artificial, which produce funds derived from the property and assets of the juridic person. Finally, application involves taking

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However a wider understanding of administration denotes its function in relation to a number of objects. For example, the administration of sacraments, justice, a diocese, etc. See also V. De Paolis, "Quaestiones miscellaneae", in Periodica, 73(1984), pp. 451-452; A. Mostaza, "El neuvo derecho patrimonial de la Iglesia (Libro V)", in Estudios eclesiasticos, 58(1983), pp. 198-204.

those funds and applying them to the works of the juridic person."

3.3.2 Administration in the 1983 Code

These principles enunciated in the 1917 Code and analyzed by G. Vromant which define administration through three tasks remain applicable in the 1983 Code. Canon 1255 of the 1983 Code supports this as it defines administration as one of the four acts which relate to the temporal goods of the Church. The canon states:

> The universal Church and the Apostolic See, the particular churches as well as any other juridic person, whether public or private, are capable of acquiring, retaining, administering and alienating temporal goods in accord with the norm of law."

" G. Vromant, De bonis ecclesiae temporalibus ad usum praesertim missionariorum et religiosorum, ed. alt., Louvain, Museum Lessianum, 1934, p. 195: "Administratio proprie et stricte dicta propterea complectitur actus quibus: 1) res acquisitae conservantur; 2) fructus illarum rerum gignuntur: omnes actus scilicet quibus res acquisitae meliores atque utiliores fiunt vel fecundiores; actus quoque quibus fructus tempore debito percipiuntur; necnon personis convenienter applicantur." See also A. Vermeersch and J. Creusen, Epitome iuris canonici cum commentariis, 8th ed., Parisiis-Brugis, Desclée De Brouwer, 1963, v. 2, p. 591. See also F. Wernz and P. Vidal, Ius canonicum, Romae, Apud Aedes Universitatis Gregorianae, 1935, v. 4-2, pp. 211-212; A. Farrelly, The Diocesan Finance Council, p. 201.

" Canon 1255 - "Ecclesia universa atque Apostolica Sedes, Ecclesiae particulares necnon alia quaevis persona iuridica, sive publica sive privata, subiecta sunt capaci bona temporalia acquirendi, retinendi, administrandi et alienandi

This canon lists the administration of temporal goods as the third of four functions. The placement of the word "administering" is significant because it distinguishes the function of administering from those of acquiring, retaining and alienating temporal goods. This distinction is further noted in the canons under Title II which deals exclusively with administration.

The separation of administration from acts of acquisition and alienation in part reflects canonical tradition and the path taken by the coetus in the development of Book V. Canon 1495, §1, of the 1917 Code separates administration from acquisitions but not from alienations.[33] Canon 1254, §1, of the 1983 Code has generally followed the 1917 version of separating acts of acquisition from administration. However, the 1983 Code also makes the distinction between administration and acts of alienation. This distinction was introduced at a meeting of the consultors on June 19, 1979.

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ad normam iuris."

[33] J. A. Abbo and J. D. Hannon, The Sacred Canons, v.2, p. 704. See also F. Wernz and P. Vidal, Ius canonicum, v. 4-2, pp. 211-212.

Canon 1495, §1 (CIC 1917) - "Ecclesia catholica et Apostolica Sedes nativum ius habent libere et independenter a civili potestate acquirendi, retinendi et administrandi bona temporalia ad fines sibi proprios prosequendos."

At that meeting they chose to include in canon 1254, §1, the word alienare in order to distinguish acts of alienation from acts of administration.[34] Acts of alienation were not considered to be administrative because they are infrequent and fall outside the boundaries of ordinary and extraordinary administration. Furthermore, the canons in Title III on contracts and alienations define the formalities required for an act of alienation and the person competent to grant permission for the alienation.[35]

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[34] Communicationes, 12(1980), pp. 395-396.

"De sententia unius Organi consultationis addi debet in canone: '[...] administrare et alienare valent [...]', quia alienatio non est actus administrationis. Hanc sententiam favent duo Consultores, dum alii duo sunt contrarii, quia alienatio non est nisi actus administrationis etsi extraordinariae.

Fit suffragatio an placeat addere verbus 'alienare': placet 5, non placet 1."

[35] V. De Paolis, "Quaestiones miscellaneae", pp. 452-453. The distinction between acts of acquistion, alienation and administration has not always been noted by canonists. Some canonists interpret acts of administration from a broad perspective thus including acts of acquisition and alienation. There is some validity to their position. The mere decision to acquire or dispose of an ecclesiastical good is an administrative decision. However, both acts of acquisition and alienation lack the quality of control which rests in ownership. In an act of acquisition one does not have the ability to control the asset until it is acquired. Likewise in acts of alienation, the ability to control the asset ends with the conveyance of the good. By including alienation in acts of administration, these canonists are viewing alienation in terms of what might be properly called ecclesiastical management, rather than strict administration. See also F. Testera, "Ecclesiastical Financial Management", Philippiniana sacra, 18(1983), p. 498; J. Hite, "Church Law on Property and Contracts", in The Jurist, 44(1984), p. 121; J. Santos Diez,

On the basis of these distinctions it can be concluded that when the 1983 Code speaks of administration within the canons of Book V, it is to be understood in a limited manner. The limitations are established through the three functions: preservation, production and application. Therefore, acts of administration for our purposes, are those placed by a competent authority for the preservation of a juridic person, the production and application of income or benefits to that juridic person.

3.4 Analysis of canon 1277

Canon 1277 can be broken down into seven components. The consideration of each of these components is helpful, if not essential, in grasping a precise understanding and application of the canon.

"La administración extraordinaria de los bienes eclesiásticos", in Semana de derecho canonico. El derecho partimonial canónico en España: XIX Semana Española de derecho canónico, celebrada en Salamanca del 17 al 21 de septiembre de 1984, Salamanca, Universidad Pontificia, 1985, p. 47.

3.4.1 Diocesan bishop

The use of the phrase "diocesan bishop" in the beginning of the canon is a departure from the use of "local ordinary" in the 1917 Code. In using the phrase "diocesan bishop", the canon is more clearly defining the diocesan bishop's personal responsibility in the administration of the diocese, especially in regard to acts of major importance and to acts of extraordinary administration.

The title "diocesan bishop" is theological in its nature and represents the emphasis placed upon the office by the Second Vatican Council. The term itself is defined in canons 376 and 381, §1, of the 1983 Code. These canons state:

> Canon 376 Bishops are called diocesan when the care of a diocese has been entrusted to them [...].
>
> Canon 381, §1 A diocesan bishop in the diocese committed to him possesses all the ordinary, proper and immediate power which is required for the exercise of his pastoral office except for those cases which the law or a decree of the Supreme Pontiff reserves to the supreme authority of the Church or to some other ecclesiastical authority.[16]

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[16] Can. 376. "Episcopi vocantur dioecesani, quibus scilicet alicuius dioecesis cura commissa est [...]."

Can. 381, §1. "Episcopo dioecesano in dioecesi ipsi commissa omnis competit potestas ordinaria, propria et immediata, quae ad exercitium eius muneris pastoralis requiritur, exceptis causis quae iure aut Summi Pontificis decreto supremae aut alii auctoritati ecclesiasticae

The removal of the title "local ordinary" is significant because of its broad meaning in both the 1917 and 1983 Codes. Its definition is to be found in canon 134, §§ 1, 2, which names those who are ordinaries. The term local ordinary as defined in the canon includes the Roman Pontiff, diocesan bishops, territorial prelates, territorial abbots, apostolic vicars, prefects apostolic, and apostolic administrators appointed on a stable basis as well as vicars general, and episcopal vicars.[37]

The use of the term "diocesan bishop" is more restrictive and theologically appropriate, especially in the application of canon 1277. It affirms the diocesan bishop's stewardship obligations since he is entrusted with the care of the diocese. He thus exercises that stewardship in carrying out

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reserventur." See also, LG 27; CD 8, 11.

[37] Can. 134, §1. "Nomine Ordinarii in iure intelleguntur, praeter Romanum Pontificem, Episcopi dioecesani aliique qui, etsi ad interim tantum, praepositi sunt alicui Ecclesiae particulari vel communitati eidem aequiparatae ad normam can. 368, necnon qui in iisdem generali gaudent postestate exsecutiva ordinaria, nempe Vicarii generales et episcopales; itemque, pro suis sodalibus, Superiores maiores clericalium institutorum religiosorum iuris pontificii et clericalium societatum vitae apostolicae iuris pontificii, qui ordinaria saltem potestate exsecutiva pollent."

Can. 134, §2. "Nomine Ordinarii loci intelleguntur omnes qui in §1 recensentur, exceptis Superioribus institutorum religiosorum et societatum vitae apostolicae."

acts of administration which fall beyond the limits of ordinary administration. This change reflects the ecclesiology of Lumen gentium, no. 27, as well as the stewardship role of the diocesan bishop.[38] The restrictive nature of the term is noted in canon 134, §3:

> Whatever things in the canons in the realm of executive power which are attributed by name to the diocesan bishop are understood to pertain only to the diocesan bishop and to others equivalent to him in can. 381, §2, excluding the vicar general and episcopal vicar unless they have received a special mandate.[39]

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[38] This same principle can also be noted in the canons regulating the requirements for alienation. Canon 1532, §3, of the 1917 Code names the local ordinary as the competent superior to grant permission for alienation when the value of the good is between 1,000 and 30,000 lire with the consent of the cathedral chapter, council of administration and interested parties. Canon 1292, §1, in the 1983 Code names the diocesan bishop as the competent authority to grant, with the consent of the finance council, college of consultors and interested parties, permission to juridic persons subject to him to alienate their property when its value falls between the minimum and maximum amounts determined by the conference of bishops. The diocesan bishop also needs their consent to alienate goods of the diocese.

[39] Can. 134, §3 "Quae in canonibus nominatim Episcopo dioecesano, in ambitu potestatis exsecutivae tribuuntur, intelleguntur competere dumtaxat Episcopo dioecesano aliisque ipsi in can. 381, §2 aequiparatis, exclusis Vicario generali et episcopali, nisi de speciali mandato."

3.4.2 Consultation with the finance council and the college of consultors

In order to carry out acts which are deemed to be of major importance in light of the financial condition of the diocese, the diocesan bishop is required to enter into a process of consultation with two groups: the finance council and the college of consultors.

3.4.2.1 Consultation

The requirement of consultation within the canonical legislation of the Church is not without historical foundation.[40] The purpose of consultative bodies, according to J. Provost, is one whereby communion is expressed and decisions are made which are necessary in fulfilling the mission of the Church.[41] For many, consultation involves a simple act of being asked one's opinion regarding certain questions or issues. However, consultation within the Church

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[40] See W. La Due, "The Right of Church People to Participate in Ecclesial Decision-making", in Studia canonica, 7(1973), pp. 179-185, for a brief historical summary concerning consultation practices in the Church. See also, J. Provost, "The Working Together of Consultative Bodies -- Great Expectations?", in The Jurist, 40(1980), pp. 260-264; J. Clifton, "Canonical Reflections on Priestly Life and Ministry", in The American Ecclesiastical Review, 166(1972), pp. 365-370.

[41] J. Provost, "The Working Together of Consultative Bodies", p. 259.

encompasses a wider perspective. It entails two things. First of all, it generally involves colleges or groups and not individuals. Secondly, when properly implemented, consultation represents a process or means whereby groups or colleges throughly examine specific issues and offer a variety of responses or solutions. This is in distinction to the commonly-held perception that consultative bodies offer only one solution or response to a specific issue.

J. Provost notes the collegial aspect of consultation from a historical perspective when he states:

> From earliest times the Catholic Church has attempted a two-fold approach to governance. One element is the individual official responsible for a particular function. A complementary element has been a group or collegium who balance the individual with their support, insight, perspective, advice and at times their opposition.[42]

The Church, having seen the value of these bodies, has created legislation which, from time to time, imposes upon a superior the participation of other groups before he or she can act. Canon 127, §1, of the 1983 Code expresses this in these terms:

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[42] Ibid., p. 260.

> §1. When the law determines that in order to place certain acts a superior requires the consent or counsel of a college or group of persons, the college or group must be convoked according to the norm of can. 166, unless particular or proper law provides otherwise when counsel only is to be sought; however, for such acts to be valid it is required that the consent of an absolute majority of those present be obtained or that the counsel of all who are present be sought.[43]

Canon 127, §1, thus stipulates that when consultation is required, superiors act invalidly if they fail to seek the required consultation.[44]

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[43] Can. 127, §1. "Cum iure statuatur ad actus ponendos Superiorem indigere consensu aut consilio alicuius collegii vel personarum coetus, convocari debet collegium vel coetus ad normam can. 166, nisi, cum agatur de consilio tantum exquirendo, aliter iure particulari aut proprio cautum sit; ut autem actus valeant requiritur ut obtineatur consensus partis absolute maioris eorum qui sunt praesentes aut omnium exquiratur consilium."

[44] The reference in canon 127, §1, to canon 166 has caused some difficulties in its relationship to matters of consultation. The first paragraph of canon 166 concerns the valid convocation of a college or group and is directly in reference to canonical elections. The second paragraph concerns the rescinding of an election if one who was to be convoked has been overlooked. The third paragraph concerns the invalidity of the election if one-third of the electors have been overlooked. R. Hill, in "Juridic Acts", in J. Coriden, T. Green, and D. Heintschel, eds., The Code of Canon Law: A Text and Commentary, New York/Mahwah, Paulist Press, 1985, p. 91, maintains that the reference to this canon within canon 127, §1, concerns the first paragraph on canonical elections. Hill states: "It seems at least probable that the intention of the legislator was to cite canon 166 only with respect to the manner in which the members of the consultative group are to be notified or summoned and not with respect to the inadvertent oversight of even one member opening the way to rescission of the consequent juridic act."

Consultation of various colleges or groups as required by the canon involves more than simply stating one's opinion. It is a process whereby the superior who seeks it, gains a better understanding of the situation and insight into choices of action. J. Provost sums up the consultative process as follows:

> A body with consultative voice speaks up in gathering information, identifying and judging which option is most advisable.[45]

R. Kennedy takes a somewhat broader view than does J. Provost by seeing consultation as a means of participation in the decision-making process. He states that to participate through consultation denotes the acceptance of a certain

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In spite of the lack of clarity in the application of canon 166, Hill does point out that since the canon concerns the validity of an act, care should be taken to ensure that those from whom consultation or consent is required are promptly notified of impending decisions requiring their participation.

[45] J. Provost, "The Working Together of Consultative Bodies", p. 261. See also R. Huysman, "The Diocese as an Administrative Unit", in Concilium, 8(1972), p. 95. Huysman considers consultation in the following context: "Verbal formulation of what is really at issue in a given situation, exposing the contributory factors and working out new lines of action for the future call for discussion with other people. Authority is not thereby undermined, but on the contrary given substance and meaning."

degree of responsibility which is not reflected in the offering of an opinion. For Kennedy, consultation involves the elements listed by Provost, but in addition it entails presenting a number of options or solutions to the one who seeks advice. Kennedy suggests that it is through the presentation of a number of opinions that a higher quality of possible alternatives can be given.[46]

3.4.2.2 Finance council

In order to place an act of major importance, the diocesan bishop must consult with the finance council. In doing so, he gains insight into the financial condition of

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[46] R. Kennedy, "Shared Responsibility in Ecclesial Decision-Making", in Studia canonica, 14(1980), pp. 5-23. See also C. Reid, "Leadership Styles in Church Administration", in Pastoral Psychology, 20(1969), pp. 17-22; G. Gorsuch, "Research and Evaluation: Their Role in Decision Making in the Religious Setting", in Review of Religious Research, 17(1976), pp. 93-101; E. Schein, Process Consultation: Its Role in Organizational Development, Reading, MA, Addison-Wesley, 1969, ix-147p.; N. Bradburn, "Reflections on the Socio-Psychological Dimensions of Leadership and Some Possible Applications to the Church", in The Jurist, 31(1971), pp. 250-265. Bradburn captures the essense of consultation when he states: "The art of consultation is asking questions", p. 259; J. Coleman, "Dimensions of Leadership", in Origins 20(1990), pp. 223-228. It is worth noting that the consultation referred to by Kennedy and Provost is not always a means of good decision-making, but can become an obstacle. Coleman, in reflecting on the work Archbishop by T. Reese, notes that bishops often over-consult in an attempt to reach consensus. Even though their commitment to consultation is praiseworthy, it has negative implications in that decisions are slowly made and planning becomes inefficient.

the diocese and the impact such a decision will have upon it.

The bishop has the obligation by law of having a finance council as part of the diocesan curia.[47] This council is a post-conciliar development of the council of administration mentioned in the 1917 Code.[48] Its primary function is to assist the diocesan bishop in the administration of temporal goods.[49]

Canon 492, §1, states that certain qualities must exist for membership on this council: (1) at least three of the councilors must be members of the Christian faithful;[50] (2)

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[47] Canon 492, §1.

[48] See A. Farrelly, The Diocesan Finance Council, pp. 1-63.

[49] B. David, in "Le conseil diocésain pour les affaires économiques", in Les cahiers du droit ecclésial, 1(1985), p. 10, distinguishes between two types of councils in the 1983 Code. One form of council is representative of persons in the Church. This includes the diocesan pastoral council, the diocesan synod, and the presbyteral council. Its representative function is based on its criteria for membership such as age, ministry, or appointment. The second form of council is that which reflects a function. B. David includes in this category the finance council and the episcopal council.

[50] See canon 204, §1. It should be noted there is another opinion regarding the qualifications for membership to the finance council which requires all members to be Catholic. This is in distinction to ensuring that at least three of the members are Catholic. See J. Alesandro, "Title III: The Internal Ordering of Particular Churches", in CLSA Commentary, p. 398; J. Barry, "The New Code of Canon Law: Diocesan Organization in the New Code", in Canadian Catholic

members must be skilled in financial affirs and civil law: 3) members should exhibit outstanding integrity.

The members of this council are appointed for a five-year renewable term by the diocesan bishop.[1] Those excluded from this council are individuals related to the diocesan bishop up to the fourth degree of consanguinity or affinity and others so prevented by the law itself."

The diocesan finance council offers assistance to the diocesan bishop through various tasks mandated by universal and particular law, as well as offering advice or consent in relation to specific acts.[2] According to law, the diocesan finance council gives its consent in the following instances: acts of extraordinary administration - canon 1277: acts of alienation when the amount is between the minimum and maximum

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[1] Canon 492, §1

[2] Canon 492, §1 Besides persons mentioned expressly in this canon, there are also others who are prevented by law from becoming a member of the finance council or exercising their role on the council. These include persons who have received an ecclesiastical penalty. For example, canon 1331, §1, 3° states that a person who is excommunicated is prohibited from discharging an ecclesiastical office. Canon 1333, §1, 3° notes that if an excommunication has been imposed or declared a person cannot validly acquire an office in accord with the norm of canon 145, §1. canon 1331 is applicable

sums or above the maximum sum established by the conference of bishops - canon 1292, §1; acts which may worsen the partimonial condition of the diocese - canon 1295.

The role of the diocesan finance council in giving advice is determined by law as the following: furnishing advice in the appointment and dismissal of the finance officer - canon 494; giving advice on ordinary and extraordinary taxation - canon 1263; offering advice on matters of greater importance - canon 1277; supplying advice to the diocesan bishop when acts of ordinary administration are not defined in the statutes of juridic persons - canon 1282, §2; giving advice on the investment of funds or of goods belonging to an endowment - canon 1305; providing advice in matters involving the reduction of obligations contained in pious wills - canon 1310, §2.

Other tasks associated with the diocesan finance council by law are the preparation of the diocesan budget and the review of receipts and expenditures at the end of the financial year - canon 493, and the examination of financial reports sent to the diocesan bishop - canon 1287, §1.

3.4.2.3 College of consultors

Besides needing to consult the diocesan finance council, the diocesan bishop is also required to consult the college of consultors in order to perform acts of major importance. This college, like the finance council, has the responsibility of assisting the diocesan bishop in the administration of the diocese. However, its scope of responsibility is broader than that of the finance council since its duties are not limited to financial matters, but have broad application in the governance of the diocese.

The college of consultors is primarily a North American development as it is legislated in the 1983 Code.[“] Under the 1917 Code, the diocesan consultors held responsibilities similar to those of the chapter of canons which functioned as a body to assist the bishop in the governance of the diocese. A secondary function performed by the chapter concerned liturgical duties. The 1983 Code has retained the chapter of

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[“] See J. Hannon, The College of Consultors and the Exercise of Ecclesial Authority, JCD diss., Ottawa, Saint Paul University, 1986, pp. 1-58, for a historical development of the college of consultors in North America. See also P. Klekotka, Diocesan Consultors, Canon Law Studies, no. 8, Washington, DC, Catholic University of America Press, 1920, pp. 1-57; R. Pagé, Les Eglises particulières, Montréal, Editions Paulines, 1985, v. 1, pp. 153-165; F. Benetti, "Il collegio dei consultori", in Orientamenti pastorali, 33(1985), pp. 85-90.

canons in diocesan structures, but has withdrawn from the chapter most acts dealing with governance."[55] Canon 502, §1 sets forth the basic structure of the college of consultors:

> Some priests are to be freely selected by the diocesan bishop from among the members of the presbyteral council to constitute a college of consultors; their number is to be not less than six nor more than twelve; the college is established for a five year term, and is responsible for the functions determined in the law; when the five year term is over, the college continues to exercise its proper functions until a new college is established.[56]

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[55] R. Pagé, Les Églises particulières, p. 156. See also M. Dortel-Claudot, Églises locales Église universelle: comment se gouverne le peuple de Dieu. Lyon, Chalet, 1973, pp. 180-181; Canons 502-510. Canon 502, §3, allows the conference of bishops by decree to give the functions of the college of consultors to the cathedral chapter by way of exception.

[56] Can. 502, §1. "Inter membra consilii presbyteralis ab Episcopo dioecesano libere nominantur aliqui sacerdotes, numero non minore quam sex nec maiore quam duodecim, qui collegium consultorum ad quinquennium constituant, cui competunt munera iure determinata; expleto tamen quinquennio munera sua propria exercere pergit usquedum novum collegium constituatur."

It should be noted that there is a slight difference between the canons regulating the role of the college of consultors in the Latin Code in comparison to the Oriental Code. The newly promulgated Codex canonum ecclesiarum orientalium states in canon 271, §3: "Membra collegii consultorum eparchialium debent esse numero non minus quam sex nec plus quam duodecim; si quacumque de causa intra determinatum quinquennium numerus minimus membrorum collegii iam non habetur, Episcopus eparchialis quam primum collegium nominatione novi membri integret, secus collegium valide agere non potest"(emphasis added), AAS, 82(1990), p. 1118.

The invalidating clause in canon 271, §3 of the Oriental Code is important in the application of canon 502, §1, of the Latin Code and the effect of acts placed by a college with a

Among the many important components of the canon, two have particular significance for this study. First of all, the college of consultors is a college and not a group or a council. J. Hannon points out that because of its collegial nature, consultation must be made with the college and not simply with individual members.[57] The college therefore, because of its nature, falls under the requirements of canon 119.

Canon 119 concerns collegial acts of elections and other matters. It states that, "unless provision is made otherwise by law or statutes", an election has the force of law when a majority of those convoked are present and the one elected has an absolute majority of the votes of those actually present.[58] Similarly, in non-election matters, an action has the force of law when a majority of those convoked are present and the matter receives the approval of an absolute majority of those present. J. Hannon suggests that because of the nature of the college, collegial decisions can only take place through convocation of the college. He notes that the stipulation of

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number below the minimum required by law.

[57] J. Hannon, The College of Consultors, p. 260.

[58] For a recent authentic interpretation on canon 119, 1°, see Communicationes, 22(1990), p. 11; Osservatore Romano, 9 July 1990, p. 12.

convoking the college is binding not only in matters where they give their consent, but also in matters where their advice is sought. However, for non-collegial bodies, such as the presbyteral council, the method of convocation prior to giving adivce can be based on particular law.[59]

Canon 127, §1, however, provides an exception when it speaks of consultation. It allows particular law to establish norms regarding the method of convocation when advice is sought from collegial bodies. Since consultation does not prevent a superior from placing the act, it would seem reasonable to argue that the exception allowed by the canon can be applied to the college when consultation is involved. In other words, particular law can override the requirement of convoking the college according to the norm of canon 166.

The second feature of the college which is worthy of consideration is the manner in which it is constituted. Membership, as defined in the canon, is made up of those priests selected by the diocesan bishop who are members of the presbyteral council. Membership in the presbyteral council is determined in canon 497 which states:

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[59] J. Hannon, The College of Consultors, pp. 260-262.

> With regard to the designation of members of the presbyteral council:
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> 1° about half the members are to be freely elected by the priests themselves according to the norm of the following canons as well as the council's statutes;
>
> 2° some priests, according to the council's statutes, ought to be ex-officio members, that is, members of the council in virtue of their office;
>
> 3° the diocesan bishop is free to name some others.[60]

The function of the presbyteral council according to canon 495, §1, is to act like a senate to the bishop and to aid in the governance of the diocese through pastoral work. The college of consultors becomes an effective means whereby a smaller representative group of the presbyteral council can be established to provide the advice or consent needed by law concerning issues which would be inefficiently dealt with by the presbyteral council because of its size.[61]

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[60] Can. 497. "Ad designationem quod attinet sodalium consilii presbyteralis:
1° dimidia circiter pars libere eligatur a sacerdotibus ipsis, ad normam canonum qui sequuntur, necnon statutorum;
2° aliqui sacerdotes, ad normam statutorum, esse debent membra nata, qui scilicet ratione officii ipsis demandati ad consilium pertineant;
3° Episcopo dioecesano integrum est aliquos libere nominare."

[61] R. Pagé, Les Églises particulières, p. 160.

Like the finance council, the functions and duties of the college of consultors are stated in the universal law. However, unlike the finance council, their scope and application is broad, including many areas of diocesan governance. In the matters of temporal administration of the diocese, the college of consultors assists the bishop in the following manner: offering advice in acts of major importance and consent in matters of extraordinary administration - canon 1277; giving consent for the alienation of temporal goods when the value of the object is between the minimum and maximum determined by the conference of bishops - canon 1292, §1; and providing consent to those acts which could jeopardize the patrimonial condition of the diocesan Church within the limits set in canon 1292, §1 - canon 1295.[62]

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[62] Other duties incumbent upon the college of consultors include: (1) giving consent to diocesan administrator's act to incardinate or excardinate a cleric after the see has been vacant for a full year - canon 272; (2) drawing together the <u>ternus</u> which is forwarded to the papal legate - canon 377, §3; (3) receiving the apostolic letters of appointment of a new bishop - canon 382, §3; (4) receiving the apostolic letters of appointment of a coadjutor bishop - canon 404, §1; (5) providing for governance in an impeded see - canon 413, §2; (6) assuming governance of the diocese during the vacancy of the see - canon 419; (7) electing the diocesan administrator - canon 421; (8) notifiying the Holy See of the elected diocesan administrator - canon 422; (9) granting consent to the diocesan administrator for the removal of the diocesan chancellor or other notaries - canon 485; (10) offering consultation in the appointment and removal of the finance officer - canon 494, §§ 1 and 2; (11) receiving the profession of faith made by the diocesan administrator - canon 833, 4°; (12) giving consent to the diocesan administrator to grant dimissorial letters for the ordination of clergy of the diocese - canon 1018, §1, 2°.

3.4.3 Perform important acts of administration

Canon 1277 does not define precisely what are to be considered important acts of administration. The term actus administrationis is used only in canon 1277 and in canon 638, §1 where it relates to financial decision-making in religious life.

Acts of administration, as referred to in the canon, call for a broad understanding of their meaning to distinguish them from administrative acts dealt with in the canons of Title IV of Book I, "Individual Administrative Acts".[63]

Defining what essentially constitutes an act of administration in temporal matters is a difficult task.[64] However, an understanding of it in the broad sense can be had through a return to canonical history and tradition. In

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[63] Canons 35-47.

[64] A broad interpretation of administration includes all those acts which have an impact on the administrative life of the juridic person. This broad interpretation often goes beyond the traditional qualities of preservation, production and application of funds to include acts of alienation and those which bring about changes to the stable patrimony of the juridic person. See M. Lopez Alarcon, "La administracion de los bienes eclesiasticos", in Ius canonicum, 24(1984), pp. 94-99.

today's terminology the three tasks presented by G. Vromant[65] could be summed up as: preservation of the temporal goods of the diocese, their efficient use by proper investment, and application of income produced from investments.

This definition of acts of administration is essential for properly applying the requirements of canon 1277 to cases where those acts are not extraordinary in their nature, but are of major importance. Acts of administration as they relate to the temporal goods of the Church thus comprise those acts which are placed by a lawful administrator and are necessary for the preservation, efficient use, betterment, or application of income to the juridic person.

3.4.4 In light of the economic situation of the diocese

The inclusion of the phrase "in light of the economic situation of the diocese" allows for the application of the canon to individual dioceses. What may be of major importance for a small diocese may have very little impact on a diocese with a large Catholic population and with larger incomes and expenditures.

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[65] G. Vromant, De bonis ecclesiae temporalibus, v. 6, p. 195. See also F. Wernz and P. Vidal, Ius canonicum, v. 4-2, pp. 211-212.

As in previous instances, the canon does not define what is meant by acts of administration which are considered to be important in light of the econcomic situation. However, one can assume that such acts would fall between those considered ordinary in their nature and those considered extraordinary through the decree of the conference of bishops.

The precise determination of acts of major importance comes about through the diocesan bishop's understanding of stewardship and the exercise of that role. This determination is not left to the conference of bishops or to any other authority besides the diocesan bishop. In the event an act of administration goes beyond the limits of ordinary administration and is determined to be an act of major importance, the diocesan bishop has the obligation of seeking the advice of both the finance council and the college of consultors. To fail to do so would not only bring about the invalidity of the act from a canonical point of view, but also it might indicate a disregard for the intent of the canon.

3.4.5 Consent of the finance council and the college of consultors

The second clause of canon 1277 involves a change in the formalities required by the diocesan bishop in order to place certain acts of administration. The requirement of consent

indicates a change in the level of administration from acts of major importance to acts of extraordinary administration.

The consent clause of the canon and the consequences of invalidity if consent is not obtained,[66] embody two important administrative principles. The first one implies the greater the impact a decision will have upon the financial condition of the diocese, the greater the number of formalities which must be observed prior to placing the act. In effect, this represents a cautious approach in making administrative decisions whose consequences are substantial.[67]

The second principle represented by the consent clause is related to the diocesan bishop in his role as a canonical steward and in the exercise of his leadership in light of an understanding of communio. Stewardship is exercised in relation to those who make up the Church. Therefore decisions are reached in conjunction with other individuals. The requirement of consent does not infringe upon the bishop's

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[66] Canon 127, §§ 1; 2, 1°. Although the diocesan bishop needs the consent of both the finance council and the college of consultors, their consent cannot force him to act.

[67] T. Bouscaren and A. Ellis, Canon Law: A Text and Commentary, p. 814. Bouscaren and Ellis note that the formalities in the 1917 Code for acts of alienation serve as a means to protect the temporal goods of the Church. In a parallel manner, the requirements in the 1983 Code regulating the administration of temporal goods do the same.

leadership function, but it preserves, through the fulfillment of certain conditions, the relationship between the steward and those entrusted to his care. Even though consent is required, the diocesan bishop is still the one who places the act and the only one who is capable of doing so.[68] The requirement of consent on the part of the college of consultors and the finance council thus serves as a protecting function.

3.4.6 Acts of extraordinary administration

Acts of extraordinary administration require the consent of the finance council and the college of consultors. The canon neither defines nor identifies which acts are to be considered extraordinary. However the canon does refer to those which are specifically mentioned in univeral law and to those contained in the charter of a foundation.

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[68] G. Neville, The Religious Superior's Council, JCD diss., Ottawa, Saint Paul University, 1988, pp. 15-16, 27, 32. Parallels to this concept can be seen in canons 1292-1295 as they concern acts of alienation and acts which jeopardize the patrimonial condition of the Church. In those cases the impact of such acts is significant enough to call for the participation of other groups as a means to protect the patrimony. See also J. Provost, "The Working Together of Consultative Bodies", pp. 261-262.

3.4.6.1 Acts mentioned in universal law

The understanding of universal law is important in its application to canon 1277. It comprises all laws promulgated in the 1983 Code as well as any other laws which might be legislated by the Roman Pontiff or an ecumenical council and which would classify certain acts as acts of extraordinary administration. Laws enacted by the conference of bishops in response to the final clause of the canon are not universal laws since the application of such a legislation is limited in its scope and thus particular in its nature.[69]

At present there are no acts within the universal law, that is in the 1983 Code, which are specifically listed as acts of extraordinary administration.[70] The word

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[69] Canon 12, §3.

[70] F. Morrisey, however, in "Ordinary and Extraordinary Administration", pp. 717-718, associates those situations necessitating the consent of the finance council and college of consultors with instances where the universal law is naming an item to be extraordinary. Therefore, such acts as alienations and acts which jeopardize the patrimonial condition of the diocese would be considered acts of extraordinary administration by law. See also, P.V. Pinto, Commento al codice di diritto canonico, Roma, Urbaniana University Press, 1985, p. 726. However, this opinion can be challenged on two grounds. First, an alienation, which requires consent of the finance council and college of consultors, is not an act of extraordinary administration. The Code specifically distinguishes alienation from other acts. The extent of this is noted in part by the fact that acts of alienation fall under Title III while administration is confined to Title II. Secondly, such an opinion has been

"extraordinary", outside of canons 1277 and 638, §1, is used nine times.[71] With the exception of canon 1263 which concerns the authority of the diocesan bishop to impose extraordinary and moderate taxes, none of the references pertain to canons regarding temporal goods.[72]

3.4.6.2 Charter of a foundation

Universal law is not the only means whereby acts of extraordinary administration are determined. The canon allows for the charter of a foundation to determine acts of extraordinary administration applicable to that foundation.

The proper meaning of the term tabulae fundationis is found in canon 1306. The canon reminds administrators that

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criticized by F. Demers who notes that acts which require permission become extraordinary because of the requirement. But this does not mean that the act itself is extraordinary. Therefore, alienation should be considered as an act sui generis and not associated with administration. See also F. Demers, Temporal Administration of the Religious House of a Non-Exempt, Clerical, Pontifical Institute, Canon Law Studies, no. 396, Washington, DC, Catholic University of America Press, 1961, pp. 53-54; V. De Paolis, De bonis ecclesiae temporalibus, Romae, Pontificia Universitas Gregoriana, 1986, p. 88; supra, pp. 150-153.

[71] Canons 346, §2; 345; 353, §1; 353, §3; 910, §2; 943; 1263; 1355, §1, 2°; 1356, §2.

[72] X. Ochoa, Index verborum ac locutionum Codicis iuris canonici, 2nd ed., Città del Vaticano, Libreria Editrice Lateranense, 1984, p. 188.

foundations are written documents. These documents establish the terms regarding autonomous and non-autonomous pious foundations. The use of the phrase "charter of the foundation" indicates that the terms of the foundation could obligate the diocesan bishop to seek consent or consultation in specific matters which are not addressed in the universal law.

3.4.7 Conference of bishops to determine acts of extraordinary administration

The nature and function of the conference of bishops is presented in canon 447. Besides stating that the conference of bishops is a permanent body which functions in relation to a defined territory, the canon also notes that they exercise certain pastoral functions. In fulfilling the pastoral functions of teaching, sanctifying and governing, the conference of bishops may, in accord with canon 445, issue decrees which are applicable to those within their territory.[73]

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[73] There is no consistent agreement among canonists regarding the nature of these decrees. This disagreement arose in part from the requirements contained in canon 445. The canon states that in order to issue a general decree the conference of bishops must: (1) have a two-thirds acceptance of the decree by its members with deliberative vote; (2) obtain recognitio from the Holy See, and (3) legitimately promulgate the decree. Some canonists noted that if the conference of bishops were to issue general executory decrees, then the three requirements of canon 445 would not apply. This was based on the fact that general decrees, according to canon 29 are laws, while according to canon 31, §1, general

The task of determining those acts not specified in the universal or particular law which constitute acts of extraordinary administration is entrusted to the conference of bishops. The determination of these specific acts or the method used to determine acts of extraordinary administration thus becomes a particular law which is applicable to those residing within the territory of the conference.[74]

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executory decrees determine how an existing law is to be applied. To some extent this controversy was settled by the Pontifical Council for the Interpretation of Legislative Texts. It stated that the term "general decrees" as it is used in canon 445 includes "general executory decrees". In spite of the interpretation there is still considerable debate as to the nature of the decrees which a conference of bishops is required to issue within universal law. Furthermore, the nature of the decree will ultimately determine the form of power used by the conference of bishops. If the nature of a decree is considered a general decree, then the conference is issuing a law through its legislative power. If the nature of the decree is considered a general executory decree, then the conference is issuing the norms for the application of an exisiting law and is exercising executive power. See AAS, 77(1985), p. 771; F. Urrutia, "Responsa Pontificiae Commissionis Codicis Iuris Canonici Authentice Interpretando", in Periodica, 74(1985), p. 616-628; J. Provost, "Groupings of Particular Churches", in CLSA Commentary, pp. 368-373; P. Lagges, The Legislative Authority of the Conference of Bishops: Its Nature and Scope in the 1983 Code of Canon Law, JCD diss., Ottawa, Saint Paul University, 1988, pp. 213-228.

[74] Besides their role in determining acts of extraordinary administration in canon 1277, the conference of bishops is also called upon to participate in the regulation of financial matters in the following canons: (1) to establish norms for collections to be received from the faithful - canon 1262; determination of norms for fund-raising - canon 1265, §2; supervision of remaining benefices to the conference - canon 1272; establishment of a fund to provide social security for clergy where forms of social insurance are not available - canon 1274, §2; to become the

Conclusion

The development of canon 1277 in the 1983 Code incorporates a number of concepts and principles which were not found in canon 1520, §3, of the 1917 Code. These include both the application of the teachings of the Second Vatican Council and a renewed understanding of what is entailed in the temporal administration of ecclesiastical goods.

Perhaps the most significant quality of the revised canon 1277 is the emphasis placed upon the function of the diocesan bishop and his office. The use of the phrase "diocesan bishop" instead of "local ordinary" stresses the importance of the bishop's pastoral function as shepherd of the people entrusted to his care, and specifically on his stewardship role over ecclesiastical goods.

Canon 1277 also expands the participatory role of other groups in ecclesial decision-making in temporal affairs. Consultation was called for in the 1917 Code; however it was limited only to the council of administration for acts of

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institute for the amalgamation of funds - canon 1274, §4; determination of the minimum and maximum sums for alienation within the territory -canon 1292, §1; determine the norms for leasing ecclesiastical property - canon 1297.

major importance and for those other acts prescribed by universal law. Canon 1277, however, calls for the participation of both the finance council and the college of consultors in regards to two types of acts. These organisms are required to play an advice-giving role in acts of major importance and a consent-giving role in extraordinary administration. The inclusion of both these bodies, as well as the requirement of their participation for validity, affirms the principle that the greater the impact an administrative decision will have upon the diocesan Church, the greater the number of formalities to be observed and the participation by other groups.

In addition to a broader participation by other groups, the revised canon provides a notion of administration which is both specific in its meaning and broad in its application. The specific meaning of administration reflects canonical tradition and the three tasks previously noted: preservation and production of funds belonging to the juridic person, and the application of income to the good of the juridic person. In addition, the Commission chose to separate the canons on administration from those regulating the acquisition and alienation of temporal goods, and those relating to pious wills and foundations.

The possibility for a broader application of the notion of "administration" lies in the undefined nature of acts of major importance and extraordinary administration. The Commission has provided a basis for this broader application by allowing for acts of major importance to be determined in light of the financial condition of the diocese, and the determination of extraordinary administration by the conference of bishops.

The practical use of this canon entails seeing how various general decrees issued by conferences of bishops help to define the broad nature of the canon in relation to existing conditions present in the territory of individual conferences. In addition, the application of the canon is presented through the methods used by individual bishops in determining acts of major importance. An examination of the common methods used by conferences of bishops to develop their general decrees, as well as a number of general decrees themselves, and the methods of determining acts of major importance on the diocesan level is the subject matter of Chapter 4.

CHAPTER FOUR

THE APPLICATION OF CANON 1277 BY CONFERENCES OF BISHOPS AND DIOCESAN BISHOPS

The previous chapters have traced the development of the diocesan bishops' role as an administrator and steward of temporal goods. The stewardship role of the diocesan bishop, as it is presented in canon 1277, is not one which he exercises solely by himself. There are some acts, which because of their nature, require the assistance of the college of consultors and the finance council.

The assistance of the finance council and the college of consultors first takes place through their consent in acts of extraordinary administration. The conference of bishops is entrusted with the task of determining these acts because of their ability to take into account history, culture, and the financial condition of a region.

Canon 1277, however, is not only concerned with the determination of acts of extraordinary administration. The

canon also stipulates that the diocesan bishop, as a steward, must seek the counsel of the finance council and the college of consultors in matters of major importance. These acts are not defined in the Code, but their determination is left to the diocesan bishop. The determination of these acts are made in light of the financial condition of the diocese.

In this chapter we will examine how various conferences of bishops have specifically determined which acts are to be considered extraordinary in their nature, and acts of major importance as they are defined by various diocesan bishops in the United States.

4.1 The application of canon 1277 by conferences of bishops

According to canon 1277, the conference of bishops is entrusted with the task of determining those acts which constitute extraordinary administration. In doing so, the decree issued by the conference obligates individual bishops to obtain the consent of the finance council and the college of consultors before placing those acts.

A number of conferences of bishops have issued the decree required by canon 1277 determining acts of extraordinary

administration.[1] To some extent each decree presents slight variations which reflect the historical, cultural, and economic environment of the countries within the territory of the conference. In general, the decrees which have been issued can be classified into three broad categories: (1) decrees determining acts of extraordinary administration by a monetary amount; (2) decrees determining specific acts as acts of extraordinary administration; and (3) decrees which combine the previous two methods determining acts of extraordinary administration by both monetary amounts and the listing of acts.

In this section each of these categories will be addressed by first considering the method employed. Secondly, some of these decrees which adopt one of these given methods will be presented as examples. Thirdly, any notable trend emerging among the similar decrees will be considered. Finally, observations will be made regarding these methods.

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[1] Conferences of bishops which have issued a decree on canon 1277 include: Argentina, Australia, Bénin, Berlin, Bolivia, Brazil, Canada, Chile, Colombia, Ecuador, Philippines, France, Gambia, Germany, Guatemala, Haiti, Honduras, India, Italy, Yugoslavia, Luxembourg, Malta, Mexico, Nigeria, Holland, Panama, Peru, Portugal, Puerto Rico, Dominican Republic, Rwanda, El Salvador, Scandinavia, Spain, Switzerland, Uruguay, Venezuela.

4.1.1 Determination by a monetary amount

This method of determination normally selects a monetary figure as the basis for establishing those acts which constitute extraordinary administration. The amount selected could be either a definite figure or a percentage of another figure.

4.1.1.1 Examples of decrees which determine extraordinary administration by a set monetary amount

Five decrees present examples of the determination of extraordinary administration by a monetary amount. Four of the five have fixed a definite figure while the fifth, from the Australian Conference of Bishops, incorporates a per capita system for determining the amount along with a method of indexing to allow for future changes.

a. Dominican Republic

The decree from the Conference of Bishops of the Dominican Republic is simple and direct in its approach and it is representative of those conferences which have selected this method of determination. The decree states:

> Included as acts of extraordinary administration are all those which exceed the amount of $250,000 RD.[2]

According to this decree, the consent required by canon 1277 is applicable when an act of administration exceeds $250,000 RD.

The amount determined in the decree should also be seen in relation to the decree issued for canon 1292, §1 which sets down conditions for alienation. Canon 1292, §1 requires consent from the college of consultors, the finance council and the interested parties when the value of goods alienated is "within the range of the minimum and maximum amounts" determined by the conference of bishops. Through its decree, this conference has established the minimum amount at $50,000 RD and the maximum at $250,000 RD.[3] Therefore, according to these two decrees, the diocesan bishop must obtain consent from the college of consultors and the finance council for an act of alienation at a lower amount ($50,000) than that which

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[2] J. T. Martín de Agar, Legislazione delle conferenze episcopali complementare al C.I.C., Milano, Dott. A. Giuffrè Editore, 1990, p. 596 (hereafter: Legislazione delle conferenze). "Serán actos de administración extraordinaria todos los que excedan la cantidad de 250,000 $ RD."

[3] Ibid. "El valor mínimo y máximo para la enajenación de bienes será respectivamente de 50,000 y 250,000 $ RD."

is required in an act of extraordinary administration ($250,000).

b. El Salvador

The Conference of Bishops of El Salvador has combined their legislation for canons 1277 and 1292, §1 into one decree. The first clause of the article specifically concerns canon 1277 as it states:

> 1. Included as acts of extraordinary administration are all those which exceed the amount of C. 150,000.00 ($40,000.00US).
>
> 2. The minimum amount for goods to be alienated, is C. 150,000 (USA $ 40,000.00) and the maximum is C. 400,000.00 (USA $ 100,000.00).[4]

What distinguishes this decree from that of the Conference of Bishops of the Dominican Republic is that the amount determined for extraordinary administration is the same as the mimimum amount for acts of alienation in canon 1292, §1. By using the same financial amount established for the minimum for alienatior., a similarity exists between canons

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[4] Ibid., p. 612. "1. Serán actos de administración extraordinaria todos los que excedan la cantidad de C. 150,000 (USA $ 40,000.00)."

"2. El valor mínimo de los bienes, que se quieran enajenar, será de C. 150,000.00 (USA $ 40,000.00) y el máximo de C. 400,000.00 (USA $ 100,000.00)."

1277 and 1292, §1, as to when consent is required. In this case, the amount of C. 150,000.00 activates the requirement of consent for both alienations and acts of extraordinary administration.

c. Philippines

The decree of the Philippines Conference of Bishops is similar to that of El Salvador. It sets the limit of extaordinary administration at the minimum for alienation. However, this limit is significantly lower than that established by El Salvador. The decree states:

> An act of administration is considered extraordinary when it involves the amount of $20,000 and above, or its peso equivalent.[5]

d. Gambia

The decree issued by the Conference of Bishops of Gambia follows the trend of the previous decrees, although it offers two distinct features in comparison to the others. First of all, it sets a very high limit for what denotes acts of

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[5] Ibid., p. 241. "1. The minimum amount in the alienation of temporal goods in the Church is $20,000 or its peso equivalent, and the maximum amount is $100,000 or its peso equivalent."

extraordinary administration. Secondly, in relation to the decree issued for canon 1292, §1, the limit for extraordinary administration is well above the minimum for alienation but slightly below the maximum. The decree issued for canon 1277 states:

> [The] Conference looks upon any act of administration dealing with money or goods above the value of $200,000 U.S. as an act of extraordinary administration.[6]

Whereas the decree for canon 1292, §1 states:

> [The] Conference sets $500 U.S. as the minimum sum and $250,000 U.S. as the maximum amount for the value of goods whose alienation is proposed.[7]

According to these decrees, the consent required by canon 1277 is not necessary unless the sum involved is beyond $200,000US. In contrast, the consent for acts of alienation is necessary at the much lower amount of $500US.

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[6] Ibid., p. 296.

[7] Ibid., pp. 296-297.

e. Australia

One of the most interesting decrees which determines acts of extraordinary administration by a set monetary amount has been enacted by the Australian Conference of Bishops. The decree contains three main elements. First, acts are partially determined by their nature of involving repayment of funds, for example a loan, or potential loss of funds, such as the loss of revenue or income. Secondly, the extaordinary nature of these acts depends upon their relationship with a monetary amount which is calculated either in terms of a per capita rate or a set sum. Third, the decree incorporates a system of indexing to allow adjustments to be made in the amount, relative to the change in the inflation rate. The decree states:

> The following are acts of extraordinary administration for diocesan bishops:
>
> (a) An act of administration by which a diocese would be committed to an annual repayment, principal and interest, in excess of 50 cents per capita of Catholic population or $100,000, whichever being the greater;
>
> (b) An act of administration by which a diocese would forego an annual sum equal to 20 cents per capita of Catholic population or $40,000 whichever being the greater, (Both figures to be indexed to inflation rate: the base rate being 1984).[8]

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[8] Ibid., p. 66.

4.1.1.2 Notable trends

When these five decrees are considered together two general trends become evident. First of all, most conferences tend to link together the amount established for acts of extraordinary administration with the amounts set for alienation. Some conferences have designated the minimum amount for alienation while others have set the limits for extraordinary administration at some point between the minimum and maximum for alienation.

The second trend concerns the lack of flexibility in decrees which designate extraordinary administration by a monetary amount. Determining one figure allows for simplicty, but it has the drawback of being unresponsive to changes in the economic condition of the conference. The Australian decree is an exception to this general trend. Even though it determines a monetary amount, it provides flexibility on two levels. First, determination is made in relation to a per capita rate of Catholic population. Thus larger dioceses will determine extraordinary administration in proportion to the number of Catholics within the diocese. The second flexible factor concerns dioceses whose Catholic population is small. Even though these dioceses may have small Catholic populations

which might significantly lower the set monetary amount for extraordinary administration, minimum figures are provided ($100,000 or $40,000) to make the determination of extraordinary administration more realistic. In addition, both of these sums change in relation to the rate of inflation.

4.1.1.3 Observations

Several observations can be made in the selection of this method for determining acts of extraordinary administration. These observations, however, can only be made having first considered the advantages and disadvantages of this method.

This method presents three basic advantages for determining acts of extraordinary administration. First of all it provides ease in application for individual dioceses within the conference. Based on the amount, one immediately knows if the act will require the consent of the college of consultors and the finance council. Secondly, this method offers the diocesan bishop a clear understanding of what constitutes an act of extraordinary administration. Thirdly, it allows for proportionality to exist between the financial resources of a diocese and the economic environment of the conference. For instance, the monetary amount set to

determine extraordinary administration for a conference in a developing country will probably be lower than that set for a conference in a fully developed country with a strong economic system.

At the same time, this method offers four disadvantages. First, it does not take into account the mode of the act.[9] For example, an act may be ordinary in its nature, but because it takes place on an annual basis, its costs may ultimately force it to be classified as extraordinary. Secondly, by applying a monetary amount, the diversity of a conference may fail to be taken into consideration. Issues such as population size for larger dioceses and the economic situation of smaller regions within the territory may prevent the monetary amount from being representative of extraordinary administration. Thirdly, a set monetary amount generally lacks flexibility. Unless the amount is a percentage relative to another basis, or incorporates a system of indexing for inflation, the amount will offer no variations, and subsequently will necessitate entering into complex

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[9] F. Demers, in The Temporal Administration of the Religious House of a Non-Exempt, Clerical, Pontifical Institute, Canon Law Studies, no. 396, Washington, DC, Catholic University of America, 1961, p. 56, defines the mode of the act as that which "[...] refers to the manner in which the acts are performed; for example buying wholesale or retail, buying a daily supply or a yearly supply." See supra pp. 42-44.

formalities in order for it to be changed.[10] Fourthly, this method does not focus on the specific act. It may be possible for an act to be extraordinary by its nature, but fall under the determined amount and thus not require the consent of the finance council and the college of consultors.

In spite of the many drawbacks of this method, a number of conferences have selected it for determining acts of extraordinary administration. Two observations can be made which a conference of bishops may want to consider in selecting this method.

As previously noted, one of the strongest advantages of this method is its simplicty. Therefore, a conference should strive to allow its simple elements to carry through in other decrees which are similar to canon 1277, namely canon 1292, §1. Since the determination of the monetary amount in canon 1277 affects the requirement of consent, a parallel should exist in canon 1292, §1. To provide ease of application, it would seem that by selecting the mimimum amount for alienation as the amount for acts of extraordinary administration, potential confusion might be dispelled. In doing so, consent will be required from the finance council and the college of

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[10] See canon 455.

consultors when an act of alienation or extraordinary administration is above the minimum amount.

The second observation concerns the limitation which exists in selecting this method. Depending on the size and diversity of the conference, a monetary amount may be impractical and thus be seen as an obstacle to good administration and management. Conferences which select this method should seriously consider the innovations contained in the decree of the Australian Conference of Bishops. Their use of a sliding scale based on per capita population of Catholics in a given diocese allows for flexibility. However, per capita need not be the only base for determination. A sliding scale feature can also be based on a percentage of diocesan income, debt, or annual expenses. By incorporating the sliding scale, the determination of acts of extraordinary administration then becomes relative to a given diocese and not relative to the conference itself. In addition, such a method allows for change within the decree without necessitating a complete revision, as well as the required recognitio.

4.1.2 Determination by listing of acts

The second method to be considered is that which is adopted by a number of conferences which determines extraordinary administration by listing individual acts. Some conferences list these acts in broad terms while others are more specific. This method focuses exclusively on acts and does not take into account any monetary limits.

4.1.2.1 Examples of determination by listing acts

a. Peru

The decree issued by the Peruvian Conference of Bishops is an example of a decree which lists specific acts within broad parameters. The decree states:

> Acts of extraordinary administration, besides those designated in common law, are those non-recurring acts, which do not fall within the economic budget of the persons or entities. This usually includes the acquisition of new goods, the alienation of other possessions, special high risk investments, assumption of debt, or uncommon mortgages, and all acts which deal with the alienation of moveable or immovable goods which form part of the stable patrimony of a juridic person.[11]

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[11] Legislazione delle conferenze, p. 560. "Se considerarán actos de administración extraordinaria, además de los señalados en el derecho común, todas aquellas operaciones menos periódicas, que no entran dentro de la

With the exception of those acts which are not part of the budget, the items contained within this decree can also be found in the decree issued to the Bishops of Holland in 1856.

b. Rwanda

The decree from this conference follows the broad application presented in the previous decree. It limits acts of extraordinary administration to six acts. The decree states:

> According to canon 1277, they are considered as acts of extraordinary administration: the purchase of real estate by the diocese; the purchase of vehicles for the diocese; the construction of parish churches; the mortgaging of property; the establishing of production units: carpenters, factories, farms; the creation of diocesan institutes such as minor seminaries, shelters, retreat houses, hospitals and other medical works.[12]

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planificación prevista en la vida económica de las personas o entidades y que suelen significar la adquisición de nuevos bienes, enajenación de otros ya poseídos, inversiones de especial alto riesgo, asunción de deudas o hipotecas no corrientes, y siempre que se trate de la enajenación de los bienes muebles or inmuebles que forman parte del partimonio estable de una persona jurídica."

[12] Ibid., p. 754. "Selon le c. 1277, sont considérés comme actes d'administration extraordinaire: l'achat d'immeuble[s] par le diocèse; l'achat de véhicule[s] pour le diocèse; la construction d'églises paroissiales; l'hypotèque des immeubles; la création d'unité de production: menuiserie,

The decree thus classifies extraordinary administration into three broad categories: acts of acquisition, creation and debt.

c. Guatemala

The decree by the Guatemalan Conference of Bishops distinguishes between those acts which constitute ordinary administration and those considered extraordinary. The section on extraordinary administration lists the following acts:

> The extraordinary administration is understood to be more grave acts and less frequent ones which modify or are able to compromise the established or solvency of the patrimony.
>
> -Purchases of immovable goods,
> -the repairs and modifications which destroy or bring about a loss of historic or artistic value,
> -repairs of another type when various alternative or options are presented with differing consequences of price,
> -alienation or renting of ecclesiastical goods, sales, donations, etc.
> -acceptance or rejection of inheritances or important donations.

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usine, ferme; institution d'oeuvres diocésaines comme les petits séminaires, les centres d'accueil, les maisons de retraite, les hôpitaux et les autre oeuvres médicales."

-investment in funds, certificates, participation in lawsuits,
-construction of new buildings.[13]

4.1.2.2 Notable trends

A number of notable trends emerge in these decrees focused exclusively upon individual acts for determining extraordinary administration. In general, all the acts named are non-recurring and do not constitute what might be considered the daily operating activities of the diocese.

Specifically these decrees commonly link together acquisitions, alienations and jeopardizing acts as those which make up extraordinary administration. To a certain extent they are suggesting that acts which touch upon the stable patrimony of the juridic person are acts of extraordinary administration. Secondly, many of the listed acts can be found in the decree issued by the Sacred Congregation for the

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[13] Ibid., p. 318. "La administración extraordinaria comprende los actos más graves y menos frecuentes que modifiquen o puedan comprometer la estabilidad o solvencia del patrimonio. -Compra de bienes inmuebles, -las reparaciones y modificaciones que pueden destruir o echar a perder el valor histórico o artístico. -las reparaciones de otro tipo cuando se presentan varias alternativas u opciones con las consiguientes variaciones de precios, -enajenación o arrendamiento de bienes eclesiásticos, venta, donación, etc. -aceptación o repudio de herencias o donaciones importantes. -inversión en valores, acciones, bonos, -construcción de nuevos edificios."

Propagation of the Faith to the Bishops of Holland in 1856. This document has thus been influential in the development of decrees of this nature.

4.1.2.3 Observations

The observations which can be made regarding this method are built upon its advantages and disadvantages which are similar to those which exist in setting a monetary amount. A prime advantage of this method is that by listing acts one has a concrete reference as to what is considered extraordinary administration. Thus to a certain degree, this method removes ambiguity of what does or does not constitute extraordinary administration. It also has the advantage of allowing specific acts to be determined as extraordinary, not because of their financial consequences, but because of their nature. Another advantage of this method is that it fully responds to the requirement of canon 1277 which states that the conference of bishops is to determine the acts of extraordinary administration in distinction to determining a financial amount to constitute extraordinary administration. Finally, formulating a list incorporates canonical tradition as reflected in the list of acts issued by Sacred Congregation

for the Propagation of the Faith to the Bishops of Holland in 1856.[14]

This method, however, is not without its disadvantages. The foremost of these lies in adopting a procedure to determine which acts are extraordinary by their nature.[15] Secondly, no specific listing of acts can anticipate all the possible situations and circumstances which may arise within a diocese. The final disadvantage to this method lies in its inflexibility. Once the acts are determined and the recognitio is obtained, any changes to the list will require the formalities of canon 455. In addition, it becomes difficult to find ways to work around the inflexible nature of the list, a limitation which does not always exist in a monetary amount.

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[14] See supra, pp. 39-41. It should be noted that the decree issued by the Sacred Congregation for the Propagation of the Faith to the Bishops of Holland specifically dealt with the temporal administration of parishes. Article 20, which canonists often refer to as denoting extraordinary administration, is directed towards parish administrators and describes acts which are beyond the limits of ordinary administration. Because of the nature of these acts, subordinate administrators are incapable of placing these acts without the written permission of the diocesan bishop. This listing of acts, although not specifically referring to extraordinary administration for the diocesan bishop, has become a useful model for determining such acts in light of canon 1277 of the 1983 Code. See J. Tejerina, "Los actos de administracion 'Ordinaria y Extraordinaria' y los de administracion 'Maioris Momenti'", in Studium legionense, 25(1984), P. 221.

[15] F. Demers, The Temporal Administration, p. 55.

The first observation worth considering in regards to this method is that no list can be entirely comprehensive of all acts of extraordinary administration. Furthermore, because of the diversity within a conference, any listing of acts must present a balance between not being overly specific or too general.

The second observation to be made concerns the selection of a method and criterion used to determine which acts are extraordinary by their nature. There are a number of possible methods which can be used. These range from those focusing on the non-recurring aspect of such acts to those acts which can jeopardize the temporal condition of the juridic person. Most of these methods, however, offer no criterion by which an act becomes extraordinary. For example, one can select an act and state that it is extraordinary, but at the same time fail to consider the basis by which the determination is made.

Nevertheless, there are two theories of determination which move beyond this limitation. Their focus is placed on the criterion for determination. A conference wishing to develop a list of acts which constitute extraodinary

administration should consider these methods as the basis for such a determinaton.

a. Determination by the object and mode of administration

This method suggested by F. Demers strives to establish what is considered to be acts of ordinary administration.[16]

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[16] Acts of ordinary administration are not specifically spoken of in reference to the diocesan bishop in canon 1277. However, they are addressed in relation to subordinate administrators in canon 1281, §1. Under the 1917 Code, acts of ordinary administration consisted of those acts necessary for the day to day operation of the juridic person. These included accepting funds, donations, making payments and entering into leases which were less than one year and under 1,000 lire. F. Testera, in "Ecclesiastical Financial Management", in Philippiniana sacra, 18(1983), p. 499, states that "Ordinary Administration includes whatever is necessary for the preservation and regular management of the property. These are acts which occur daily or periodically, monthly, quarterly, yearly, and are absolutely necessary for the customary transaction of business such as payments of current bills and wages, the making of ordinary repairs, the collection or disposal of earnings or fruits, the deposit and withdrawal of funds, the collection of receivables, the making of required sales and purchases. All these acts are similar in nature and are part of the normal functions of an administrator." Other methods of determining ordinary administration are tied to the understanding of the phrases, "limits and manner" of ordinary administration as it is presented in canon 638, §1, and "limits and procedures" in canon 1281, §1. The limits and manner or procedures are determined through the method of object and mode suggested by F. Demers. See supra pp.42-44. In issuing decrees on canon 1277, only the conference of bishops of Ecuador, Spain, and Guatemala address ordinary administration. The decrees of Ecuador and Spain are general in their description, while the Guatemalan Conference lists a limited number of acts which constitute ordinary administration. See Legislazione delle conferenze, pp. 225, 317-318, 651. See also L. Chiappetta, "Libro V - I beni temporali della Chiesa", in Il codice di

After coming to that formulation, acts which do not constitute ordinary administration can then be listed as extraordinary.

Demers' method involves three elements. The first element, the object of ordinary administration, is defined as the maintenance, production and betterment of property. The second element, the mode, reflects the manner in which these acts are performed. Acts within the object of ordinary administration form what Demers' calls the stable order of economic activity. In other words, they form a list of acts determined to be ordinary because they are necessary for the maintenance, production and betterment of the juridic person. The mode also becomes part of the stable order of economic activity in that it denotes the common manner by which payments or expenditures are made. Thus, acts which go beyond the object or mode constitute extraordinary administration.[17]

i. Advantages and disadvantages

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diritto canonico: commento giuridico-pastorale, Napoli, Edizioni Dehoniane, 1988, p. 387; M. Bonet Muixi, "Gestion del patrimonio eclesiastico", in El partimonio eclesiástico: estudios de la Tercera Semana de derecho canónico, Salamanca, 1950, p. 142.

[17] V. de Paolis, De bonis ecclesiae temporalibus, Romae, Pontificia Universitas Gregoriana, 1986, pp. 77-78; L. Chiappetta, "Libro V - I beni temporali della Chiesa", p. 387.

The first advantage of this method is that it provides a criterion which is used in determining acts of extraordinary administration. Therefore acts are not arbitrarily determined to be extraordinary but are based on an underlying principle.

Secondly, it allows for a significant degree of flexibility. According to this method, the object and mode of acts which constitute ordinary administration become part of the stable order of economic activity. Therefore, if an act took place on an annual basis, but involved a large monetary amount, its mode could still be classified as ordinary administration. Thus, even a non-recurring act could be considered part of ordinary and not extraordinary administration.

This method does have its disadvantages as well. First of all, the method is primarily concerned with determining acts of ordinary administration. It is only after one has determined which acts fall within this category that a listing of acts can be developed which fall outside the object and mode. Secondly, this method always associates an act with a monetary amount. Therefore "extraordinary administration" is being closely associated with "extraordinary expenses". A strict use of the method removes the possibility for a broad interpretation of the word "acts".

b. Determination by the long-term effects on the diocesan Church

A second method to be considered for the criterion by which acts constitute extraordinary administration is one formulated more specifically around the understanding of stewardship on the part of the diocesan bishop. This method is built upon the biblical understanding that stewardship is the task of caring for the house of God. Theologically, this task is entrusted to the diocesan bishop through his office. The stewardship role of the bishop therefore encompasses placing acts on behalf of the diocese. However, his stewardship role is exercised from time to time with the assistance of others. Their assistance is necessary when an act has a signficant and long-term impact upon the diocesan Church. It therefore becomes the task of the conference of bishops to decide which acts have a significant long-term effect on dioceses. These then comprise the list of acts which the bishop, as a steward, makes with the consent of the college of consultors and the finance council.

i. Advantages and disadvantages

The advantages of this method are twofold. First of all, the long-term impact element provides a criterion for

determining which acts are to be considered extraordinary administration. The understanding of a long-term impact will be relative to each conference of bishops, thus strengthening the conceptual understanding of subsidiarity on the part of the conference. The long-term impact of an act allows for such elements as history, culture and tradition to be factored into the basis whereby acts are considered to be extraordinary.

The second advantage of this method is that it allows for a broad application and consideration of acts of extraordinary administration. It helps to move a conference away from always associating an act with a monetary amount. Because of this, some acts can be listed as extraordinary, without having a monetary component. This advantage suggests that stewardship comprises all those acts which reflect care for the diocese as a juridic person, and not simply those directly tied to expenses or financial matters.

Besides these advantages, there are also two disadvantages to this method. First of all, as a criterion for determination, it does not provide a clear designation of what falls within the category of extraordinary administration. There is no clear definition provided for the term "long-term impact". A valid critque can be raised as to

how long is "long-term" or how does one evaluate the "impact" of an act upon the diocese.

The second disadvantage exists in the fact that the method is based on an accepted understanding of stewardship. In order to apply the method, there must be an understanding of the diocesan bishop's role as a steward, which may not exist in some countries. For instance, a listing of acts which are developed out of a "stewardship" model will be significantly different than those developed out of a purely "administrative" model.

ii. Application

It is sometimes said that custom is the best interpreter of law and such may well be the case in determining which acts should be listed as extraordinary because of their long-term impact on a diocese. The decree issued to the Bishops of Holland in 1856 presents a good example of acts which have a long-term impact upon the diocese and could be considered as a model for determining such acts today.

By incorporating an understanding of the diocesan bishop as a steward of the temporal goods entrusted to his care, the understanding that extraordinary acts are those which bring

about a long-term effect on the diocese as a juridic person, and the decree issued in 1856, it seems that the following might be considered to constitute acts of extraordinary administration: (1) the acceptance of donations with long-term obligations; (2) purchases of immovable goods for the diocese; (3) entering into forms of debt which cannot be satisfied by free capital;[18] (4) major renovations to buildings; and (5) establishing cemeteries.[19]

Each of these items has a long-term effect on the juridic person. Because of that effect, they could be considered extraordinary in their nature. It should be noted that this list purposely does not include acts of alienation nor leases. Alienation or acts which would jeopardize the stable capital of the juridic person fall within the requirements of canons 1292, §1 and 1295. In addition, leasing of ecclesiastical goods are governed by the norms of the conference in relation canon 1297.

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[18] A distinction is being made between free capital and fixed capital. If a debt could not be satisfied through available free capital, then the stable or fixed capital of the juridic person would be jeopardized. In this case, under a strict interpretation, the act would fall under canon 1295 and not 1277.

[19] See J. Santo Diez, "La administración extraordinaria de los bienes eclesiasticos", in Semana de derecho canonico, Salamanca, Universidad Pontificia, 1985, p. 46; T. Testera, "Ecclesiastical Financial Management", p. 499; M. López Alarcón, "La administración de los bienes eclesiásticos", in Ius canonicum, 24(1984), p. 104.

4.1.3 Determination by monetary amount and listing of acts

The third method to be considered is one which blends together the previous two under discussion. Some conferences have selected this method as a means of avoiding some of the disadvantages associated with the determination of extraordinary administration solely by a set of acts or a monetary amount. Because these decrees blend together the two previous methods, they generally tend to be more complex.

4.1.3.1 Examples of using a combination method

a. Argentina

The decree by this conference of bishops incorporates the minimum amount for alienation as the set monetary sum and then goes on to list a number of acts which constitute extraordinary administration. Most of the acts listed in the decree can also be considered acts addressed in canons 1292, §1 and 1295. The decree states:

> With reference to canon 1277, those acts to be considered extraordinary administration (ad experimentum for three years) are the following, when they are greater than the minimum amount established by the Argentina Conference of Bishops:

a) alienation or transfer of ownership by sale or donation;
b) transfer of any permission which corresponds to ownership;
c) cessation of burdens or debts by law, such as servitudes, leases, emphyteusis;
d) acquisition of new patrimonial goods;
e) acquisition of goods of production;
f) acceptance of legacies, essential loans, or third party deposits;
g) extraordinary leases for period of time or use, rents and land leasing;
h) administration of third party goods;
i) granting long-term rents;
j) granting of collateral and the permission to enter into collateral debt in all cases;
k) useful contracts to consume or use goods;
l) changing or destroying immovables[.][20]

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[20] Legislazione delle conferenze, p. 59. "Con referencia al canon 1277, los actos de administración extraordinaria serán (ad experimentum, por tres años) los siguientes, cuando superan la cantidad mínima establecida por la Conferencia Episcopal Aregntina: a) enajenación o transferencia de dominio por venta o donación; b) transferencia de alguna facultad que corresponda al dominio; c) cesión onerosa o gratuíta de derechos reales, como ser, servidumbre, hipoteca, enfiteusis; d) adquisición de nuevos biens patrimoniales; e) adquisición de bienes de producción; f) aceptación de legados, de prestaciones vitalicias o de depósitos de terceros; g) locación extraordinaria por causa del tiempo o del uso, arrendamiento y aparcería; h) administración de bienes de terceros; i) concesión de rentas vitalicias; j) concesión de fianzas y de mandatos "ad omnia"; k) contratación de préstamos de consumo o de uso; l) transformación y demolición de inmuebles[.]"

The minimum amount established in the decree is $10,000US.[21] This corresponds to the minimum set in canon 1292, §1.

b. Yugoslavia

The decree issued by this conference is significantly different than the previous decree from Argentina. The decree by the Yugoslavian Conference of Bishops is less precise, but similar to the previous decree in that it considers acts of alienation and jeopardization to be among those acts of extraordinary administration. The decree states:

> With regards to the meaning of canon 1277 the following are to be considered acts of extraordinary administration:
>
> 1. To substitute immovable goods, to give credit or to enter into a mortagage if the value is more than the minimum sum stated by the C.E.J.;
>
> 2. To substitute or give a pledge to release a debt, to exchange things of precious art or historical values and those given by vow.

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[21] Ibid., pp. 59-60. "Con referencia al canon 1292: a) el monto máximo par enajenaciones sin authorización de la Santa Sede será de 200.000 dólares USA. b) el monto mínimo será de 10.000 dólares USA."

3. To acquire property whose value is greater than the minimum sum stated by the C.E.J. according to the norm of canon 1292, §1.[22]

The minimum amount stated in reference to canon 1292, §1 is $100,000US.[23]

c. Panama

The Panamanian Conference of Bishops directly links together their decree for extraordinary administration and alienation. The decree is broad in its application and complex in its wording. It essentially considers three areas as acts of extraordinary administration. The decree states:

1) The maximum and minimum sums as addressed in canon 1292 are fixed as thus: the maximum amount in U.S.A. funds is $250,000; the minimum amount also in U.S.A. funds is $75,000.

2) Furthermore, in those cases noted in canons 1277, 1292, paragraphs 1 and 2; 1281,

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[22] Ibid., p. 400. "Ad sensum can. 1277 actus extraordinariae administrationis considerantur sequentes: 1. Substituere bona immobilia, fidem facere vel dare in pignus ad solvendum debitum si superant valorem summae minimae statutae a C.E.J.; 2. Substituere vel dare in pignus ad solvendum debitum res pretiosas arte vel valore historico ac dona ex voto; 3. Sumere in praestitum summam pecuniae quae superant summam minimam statutam a C.E.J. ad normam can. 1292 §1."

[23] Ibid. "Episcoporum Conferentia statuit: summa minima 100.000 dollari USA; summa maxima 300.000 dollari USA."

paragraph 1, and 1295, acts of extraordinary administration are:

a) the alienation of immovable goods, whatever their value might be;

b) those acts which cause debt or risk in amounts greater than the minimum which include: investments, liquidation of deposits or operations involving the exchange of stocks.

For the last acts, it is required to have at least the habitual authorization of the competent councils.

3) One is to remain aware of what is prescribed in canon 127, §2 towards the obligation of following advice.

4) Previous permission of the Diocesan Bishop is required:

a) For entering into contracts of rent or ecclesiastical goods. (Canon 1297).

b) For those acts of economic nature in amounts less than the minimum which cause debt or risk, whose cases are enumerated in Article 2 of the present decree. (Canon 1277).[24]

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[24] Ibid., pp. 533-534. "1) Las sumas máxima y mínima de las que trata el Canon 1292 se fijan así: la cantidad máxima es en U.S.A. $250,000.00; la mínima es también en U.S.A. $75,000.00. 2) Además de los casos señalados en los Cánones 1277, 1292, parágrafos 1 y 2; 1281, parágrafo 1, y 1295, son actos de administración extraordinaria: a) la enajenación de bienes inmuebles, cualquiera que sea su valor; b) los actos que causen deudas o riesgos en cantidades superiores a la mínima, dentro de los cuales deben considerarse; las inversiones, los depósitos a término y las operaciones bursátiles. Para estos últimos actos, se requiere al menos la authorizción habitual de los Consejos Competentes. 3) Se tendrá muy presente lo prescrito en el C. 127, 2 en cuanto a la obligación de seguir lo aconsejado. 4) Se requiere licencia previa del Obispo Diocesano: a) Para realizar contratos de arrendamiento de bienes eclesiásticos. (C. 1297). b) Para los actos de carácter económico en cantidades inferiores a la mínima que causen deudas o riesgos, cuyos casos son enumerados en el Art. 2 del presente Decreto.

d. Portugal

The decree issued by the Conference of Bishops of Portugal is perhaps the most complex of all the decrees combining the use of acts and a monetary amount. Like many other decrees using this method, this decree closely associates acts of extraordinary administration with alienation. But unlike many of the other decrees, they require the permission from the Holy See when an act of extraordinary administration is over the maximum figure set for alienation. The decree relating to canon 1277 states:

> The Conference of Bishops of Portugal, in conformity with canon 1277 determines that:
>
> 1. The following things which require permission from a competent authority are to be considered extraordinary:
>
> Immovable goods that can be bought and sold;
> Borrowing or mortgaging with or without guarantee when the value is more than the established minimum amount for the various public juridic persons;
> New Church construction or other costs associated with buildings which are greater than the quantity determined for public juridic persons as determined in their statutes or by decree from the Ordinary.[25]

(C. 1277)."

[25] Ibid., p. 570. "Em conformidade com o cân. 1277, a Conferêcia Episcopal Portuguesa determina: 1. Devem-se considerar actos de administração extraordinária, para os quais se exige licença da autoridade competente: compra e venda de bens imóveis; empréstimos, com ou sem garanita

An element to be noted in this decree is its connection to the decree issued for canon 1292. It seems that the conference in this case has restructured the requirments for consultation and consent found in canon 1277. The decree on canon 1292 presents this when it states:

> Concerning canons 1277 and 1292, §1, the Conference of Bishops of Portugal determines:
>
> 1. That authorization of the Holy See is required for acts of extraordinary administration when the value is equal to or greater than $100,000,000.00 (100,000 cantos), as well as for acts mentioned in canons 1292, §2 and 1190, §§ 2, 3.
>
> 2. The authorization of the diocesan bishop with the consent of the college of consultors and the finance council is required for acts of extraordinary administration which are within the values of $10,000,000.00 and $100,000,000.00 (10,000 and 100,000 contos).
>
> 3. The authorization of the local Ordinary, after hearing the finance council, is required for acts of extraordinary administration when the values is between $3,000,000.00 and 10,000,000.00 (3,000 and 10,000 contos).
>
> 4. The authorization of the local Ordinary is required for acts of extraordinary administration

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hipotecária, acima do valor mínimo estabelecido para as diversas pessoas jurídicas públicas; novas construções em igrejas ou outros edifícios que importem uma despesa superior à quantia determinada para cada pessoa jurídicas pública a estabelecer nos estatutos ou por decreto do Ordinário."

or comprable acts, in value between $300,000.00 and $3,000,000.00 (300 and 3,000 contos).[26]

In this decree, articles one, three and four stand out as anomalies. Article one calls for the additional consent of the Holy See in acts of extraordinary administration in some cases. This is not a requirement of canon 1277. Article two is consistent with canon 1277, with the exception that it provides an upper limit or amount. Article three speaks of extraordinary administration, but only requires the advice of the finance council and authorizes the local ordinary, and not the diocesan bishop, to place the act. Article four is similar in stating that the local ordinary is the competent authority for placing acts of extraordinary administration when the values are even less, without seeking consultation

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[26] Ibid., p. 571. "Tendo presentes os câns. 1277 e 1292 §1, A Conferência Episcopal Portuguesa determina: 1. Requer-se authorização da Santa Sé para actos de administração extraordinária de valor igual ou superior a 100.000.000$00 (100.000 contos), e bem assim para os actos mencionados nos câns. 1292 §2 e 1190 §§ 2 e 3. 2. Requer-se authorização do Bispo diocesan com o consentimento do Conselho para os assuntos económicos e do Cabido ou do Colégio dos consultores diocesanos, para actos de administrção extraordinária ou equiparados de valor compreendido entre 10.000.000$00 e 100.000.000$00 (10.000 e 100.000 contos). 3. Requer-se authorização do Ordinário do lugar, ouvido o Conselho para assuntos económicos, para os actos de administração extraordinária ou equiparados, de valor compreedido entre 3.000.000$00 e 10.000.000$00 (3.000 e 10.000 contos). 4. Requer-se autorização do Ordinário do lugar para actos de administração extraordinária ou equiparada, de valor compreendido entre 300.000.$00 e 3.000.000$00 (300 e 3.000 contos)."

or consent from the finance council or the college of consultors. Both these articles run counter to the stipulation in canon 1277 that acts of extraordinary administration be placed by the diocesan bishop with the consent of these bodies.

e. Brazil

Like many of the previous decrees, this conference associates acts of alienation or acts which jeopardize the patrimony of the diocese with those of extraordinary administration. The decree indicates this as it states:

> Considered to be extraordinary administration in the sense of canon 1277, are the following acts:
>
> 1) the alienation of goods, by legitimate designation, constituting the stable patrimony of the juridic person in question;
>
> 2) other alienations of moveable or immovable goods and any other negotiations of which the partimonial situation could be worsened or of which the economic value exceeds the minimum fixed quantity, fixed in accordance with canon 1292, §1.
>
> 3) Renovations that exceed the minimum fixed quantity in accordance with the same canon;
>
> 4) Leases of goods for a time greater than a year, or with a clause for automatic renewal, when the

annual rent is more than the minimum amount fixed according to the same canon.[27]

Therefore, according to this conference the monetary sum which governs the determination of extraordinary administration outside acts of alienation is the minimum sum for alienation.[28]

f. Holland

The decree issued by the Conference of Bishops of Holland incorporates the original decree issued in 1856 defining acts which are beyond ordinary administration for subordinate

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[27] Ibid., pp. 124-124. "Consideram-se como de administração extraordinária, no sentido do Cân. 1277, os seguintes atos: 1. A alienação de bens que, por legítima destinação, constituem o partimônio estável da pessoa jurídica em questão; 2. Outras alienações de bens móveis ou imóveis e quaisquer outros negócios em que a situação partimonial ficar pior e cujo valor econômico exceder a quantia mínima fixada de acordo com o Cân. 1292, §1; 3. Reformas que superam a quantia mínima fixada de acordo com o mesmo Cânon; 4. O arredamento de bens por prazo superior a um ano, ou com a cláusula de renovação automática, sempre que a renda anual exceder a quantia mínima fixada de acordo com o mesmo Cânon."

[28] The decree for canon 1292, §1 does not list a specific sum. The decree states: "The maximum quantity referred to in canon 1292 is of three thousand times the minimum salary in force in Brasilia DF and the minimum quantity is of one hundred times the same salary." Ibid., "A quantia máxima referida no Cân. 1292 é a de três mil vezes o salário mínimo vigente em Brasília DF e a quantia mínima é a de cem vezes o mesmo salário."

administrators. They limit extraordinary administration to two broad categories. The decree states:

> 1. We determine that the following acts under a. and b. are to be regarded as acts which exceed ordinary administration. Among those acts we should distinguish between:
>
> a. acts of extraordinary administration.
> 1. determining, changing and exceeding budget estimates;
> 2. changes in the destination of property.[29]

After listing these acts, the decree goes on to address acts which go beyond the limits or manner of ordinary administration in section "b". That section of the decree is written in relation to canons 1281, §1; 1291; and 1295. It should be noted that those acts which are listed as beyond the limits and manner of ordinary administration, as well as acts of alienation and jeopardization are found in the original decree issued by the Sacred Congregation for the Propagation of the Faith to the Bishops of Holland in 1856 as extraordinary in their nature.[30]

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[29] Legislazione delle conferenze, p. 516.

[30] Ibid., pp. 516-517. "b. other acts which go beyond the limits and manner of ordinary administration (Canon 1281, §1, Canon 1291, 1295) namely: 1. accepting or rejecting inheritances, legacies, donations or foundations, as well as making donations; 2. acquiring immovable goods, alienating or mortgaging them, leasing or renting them, or giving them in use or usufruct, as well as entering into other agreements which are encumbering an ecclesiastical juridical person; 3. giving out or accepting loans of money, other than the

g. Canada

The final decree to be considered which incorporates both a listing of acts and a set monetary amount is that issued by the Canadian Conference of Catholic Bishops. This is the only decree to be issued by a conference of bishops in North America for canon 1277. Like many of the other decrees using this method, it combines a number of acts, including alienation, in its determination of what constitutes an act of extraordinary administration. The decree states:

> In accordance with the prescriptions of canon 1277, the Canadian Conference of Catholic Bishops hereby decrees that the following acts of administration will be considered as acts of extraordinary administration and therefore will be subject to the limitations of canons which regulate such acts:
>
> 1) non cumulative acts over 5% of the maximum amount approved by the Episcopal Conference and recognized by the Apostolic See for the alienation of Church property;

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ordinary transactions with bankers or cashiers; 4. alienating, mortgaging, leasing or in any way withdrawing from its proper destination objects of art and science, historical objects or other movable goods of special value; 5. the erection, demolishing, rebuilding or changing the destination of buildings and church furniture of special value belonging to the property of an ecclesiastical juridical person, as well as making extraordinary reparations; 6. laying out, expanding and closing cemeteries; 7. taking legal actions as plaintiff or defendant, committing legal disputes to a court of arbitration, and the assuming of obligaitons."

2) acts which, according to the prescriptions of the Code of Canon Law, require the approval or the advice of certain groups or advisors;

3) acceptance or refusal of an inheritance, a bequest, a donation or foundation because of long-term obligations;

4) acts of alienation of property (these acts are also subject to the limitations of canon 1292 ss);

5) acts which endanger the patrimony of a juridical person (these acts are also subject to the limitations of canon 1292 ss);

6) erection of a cemetary;

7) court action;

8) purchasing of real estate.[31]

The maximum amount approved for the Canadian Conference of Catholic Bishops is $1,000,000.00. Therefore, according to the decree, acts, besides those specifically listed, which surpass $50,000.00 are considered extraordinary administration and thus require the consent of the college of consultors and the finance council.

One of the problems associated in the application of this decree corcerns article no. 2. This article has essentially taken acts which require consultation by law and made them acts which require consent. Thus the decree has eliminated the category of acts of major importance, which requires the

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[31] "Decrees of the C.C.C.B", in Studia canonica, 19(1985), p. 185.

consultation of the college of consultors and the finance council, and made them acts of extraordinary administration.[32]

4.1.3.2 Notable trends

When these decrees which combine together a monetary amount and a list of acts for determining acts of extraordinary administration are considered as a group, they point to the following trends. First, it is common in the use of this method to include as acts of extraordinary administration alienations, debts, acquisitions, leases and

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[32] The C.C.C.B. has attempted to circumvent this difficulty in an up-dated commentary on decree no. 10 which was issued in response to canon 1292 in Studia canonica, 22(1988), p. 457. The commentary states:

> The C.C.C.B. has determined that acts of alienation of Church property whose value is situated between 5% and 10% of the maximum sum approved would be considered to be acts of major importance (governed by the prescriptions of canon 1277).
>
> Consequently, in virtue of the present decree, when Church land or buildings are to be sold, or other transactions entered into which could jeopardize the stable patrimony of a juridical person in the Church, the following norms are to be observed:
>
> -acts under $50,000: the diocesan bishop may carry out these acts on his own;
> -acts between $50,000 and $100,000: the diocesan bishop needs to consult the finance council and the college of consultors; [...]

Although the commentary accompanying decree 10 seems to resolve the issue, the distinctions presented in the commentary are not contained in decrees number 9 or 10.

capital projects. Secondly, most decrees tend to establish the minimum amount for alienation as the financial base which distinguishes between those acts which fall within the extraordinary range and those which do not.

4.1.3.3 Observations

Observations which can be made on this combination method must be made in light of its overall advantages and disadvantages. The advantages of using the combination of a monetary amount and the listing of acts generally exists in that it removes the limitations which are present in the two previously presented methods. For example, most lists of acts are not comprehensive. Although, by including a monetary sum, an act which may not be listed as extraordinary, may become extraordinary because of its cost. In addition, by combining acts with a monetary amount, it allows some acts to not be considered extraordinary until they have surpassed a specific amount. For instance, purchases of immovable goods might be considered extraordinary only when their cost is more than $10,000.00. Another advantage in this combined method is that it allows for a significant degree of flexibility. The monetary sum need not be set as one figure, but perhaps the percentage of a changeable sum. Methods of indexing can also

be employed so that the figure keeps pace with changing economic conditions of a given conference.

The prime disadvantage of this method lies in its application. In blending these two methods together the complex nature of some decrees becomes evident.

Given the limitations which exist in those methods which determine acts of extraordinary administration solely in relation to a set monetary amount or a listing of acts, it can be suggested that a combination method offers the greatest degree of benefit for determining acts of extraordinary administration. The beneficial quality of this method essentially lies in its ability to be adapted to a number of possible situations. This is achieved through the proper selection of a monetary amount, the selection of acts considered to be extraordinary in their nature, and of most importance, the blending together of these two elements. The following observations can be made regarding each of these elements.

a. Selection of monetary amount and listing of acts: The monetary amount is the most flexible element of this method. It seems that two options exist in the determination of this amount. First of all, the sliding

scale, which has already been refered to, allows the monetary amount to change relative to other factors. The second option, although less flexible, lies in adopting the minimum or maximum for alienation. However, it seems preferable to select the minimum amount so that a similarity exists in the requirement of consent in the canon.[33]

The selection of acts principally rests in the discussion of the two methods previously mentioned for determining acts alone. Determination of a set of acts can take place through the method of object and mode proposed by F. Demers[34]. Secondly, determination could also take place through an emphasis on the long-term effect of an act upon the juridic person.[35]

b. Blending of monetary amounts and acts: The blending of the monetary amount and acts allows this method to move beyond the limitations of those which determine extraordinary administration only by acts or a monetary amount. This blending can take place in three ways.

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[33] See supra, pp. 194-197.

[34] See supra, pp. 204-206.

[35] See supra, pp. 207-210.

First of all, the monetary amount can be directly tied to the listed acts so that it is seen as the dividing line between those listed acts which are or are not extraordinary administration. Therefore, any of the listed acts which are beyond the monetary amount, require the consent of the finance council and the college of consultors.

A second option is to include the previous method but at the same time to establish an amount for non-cumulative acts. This amount need not be the same as that associated with the acts. In other words, a listed act whose value goes beyond a minimum amount, is considered an act of extraordinary administration. In addition, any act which is not listed and goes beyond an even greater amount, becomes extraordinary in virtue of its financial impact.

A third method is to not link together a monetary amount with the listed acts, but provide one amount for non-cumulative acts which may take place.

The combination method, set up in this way, allows for a limited number of acts to be considered extraordinary, but at the same time recognizes that acts will come along which are not listed, but should require the consent of the college of consultors and the finance council.

4.2 Acts of major importance

The determination of acts of major importance does not rest with the conference of bishops but with each diocesan bishop. Because these acts are relative to the financial condition of the diocese the Code provides no method whereby each diocesan bishop comes to this determination.

An understanding of what constitutes an act of major importance is significant because of the juridic consequences. In order to place an act of major importance, the diocesan bishop must seek the consel of the finance council and the college of consultors before placing the act. This counsel, according to canon 127, §1, is necessary for the validity of such acts.

The purpose of this section is to look into how this concept is being applied in various dioceses throughout the United States. Therefore we will examine how individual dioceses are defining acts of major importance. Secondly, any notable trends will be presented. Finally, observations will be offered as to how diocesan bishops might want to define acts of major importance in light of the financial conditions of their respective dioceses.

4.2.1 Diocese of Rockville Center

The diocese of Rockville Center, New York, provides a good example of the way in which most diocesan bishops determine acts of major importance. Acts of major importance are identified not through a list of specific acts, but through the degree of participation of the finance council and the college of consultors. The determination of the times in which these bodies participate in decision-making primarily rests with the diocesan bishop, the chancellor and the diocesan policies which may address certain acts, such as building projects. For example, the chancellor of the diocese states:

> Normally, if it is a standard expenditure below $100,000 the matter is dealt with by my office in collaboration with the diocesan building office and the diocesan finance office. If the expenditure exceeds $100,000, the matter may be referred to the council and the college or simply reported to it. If the sum exceeds $500,000, the matter is always referred to the council and the college.
>
> All purchases and sales of property are referred to the council and college.[36]

Therefore it seems that acts which involve expenditures exceeding $100,000 or involve the sales or purchases of

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[36] Letter from Rev. Msgr. J. Alesandro, Chancellor, Diocese of Rockville Center, NY, July 5, 1990, p. 1.

property could be considered acts of major importance requiring participation of the finance council and the college of consultors.

4.2.2 Archdiocese of Philadelphia

The Archdiocese of Philadelphia, Pennsylvania, also employs a broad understanding of acts of major importance. Their basic method incorporates a financial sum and acts which involve capital expenditures. In this regard, the secretary for temporal affairs states:

> In this Archdiocese a practical guideline employed by the College of Consultors is that expenditures of funds for capital projects costing $100,000 or more is reviewed by that body. This has been derived from practical necessity given the volume of capital projects and the cost structure in this area of the country. Another example is review of the annual Archdiocesan budget by the Finance Council and submission of its views to the Ordinary.[37]

Even though the above guideline only speaks of the role of the college of consultors in acts involving expenditures over $100,000, it would seem that such acts are very similar to those of major importance.

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[37] Letter from J. Healy, Secretary for Temporal Affairs, Archdiocese of Philadelphia, PA, August 31, 1990, p. 1.

4.2.3 Diocese of Scranton

The Diocese of Scranton, Pennsylvania, presents a broad definition of acts of major importance. Their understanding is slightly different when compared to many other dioceses and archdioceses. They see acts of major importance from the perspective of stewardship and thus define it as those acts which signficantly touch the life of the diocese. This is in distinction to dioceses which associate such acts only in monetary terms. In light of this, they do not use a financial criterion nor a listing of specific acts. The chancellor of the diocese says:

> In our diocese, this [acts of major importance] is not based on any objective criteria or developmental guidelines. Usually our Bishop consults on these matters when he, in his own mind, comes to a conclusion that they are genuinely 'acts of major importance.' In this case, the rule of thumb relates to issues that touch on the life of much of the diocese."

4.2.4 Diocese of Helena

The Diocese of Helena, Montana, does not present a concise understanding of acts of major importance. However,

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Letter from Rev. N. Van Loon, Chancellor, Diocese of Scranton, PA, May 4, 1990, p. 1.

they do acknowledge a certain set of acts where the bishop seeks the advice of the college of consultors and finance council. These acts include the selling of a church; entering into debt; and the prioritization of programs of equal benefit, when funds are not adequate for both programs.[39]

4.2.5 Archdiocese of Baltimore

The Archdiocese of Baltimore, Maryland, does not specifically define what constitutes an act of major importance. However, they note the following acts which are brought before the finance council and the college of consultors. These acts include:

- the annual audit
- decisions on funding depreciation on both an Archdiocesan and parish level
- any alienations of property, as well as planned purchases of property
- important decisions relative to the property and liability insurance
-major decisions regarding group health insurance for the Archdiocese
- decisions regarding stewardship or sacrificial programs on the parish level
- decisions on divestment of Archdiocesan funds from companies doing business in South Africa
- decisions on financial policies and overall financial structure and management of the Archdiocese

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[39] Letter from Rev. J. Robertson, Chancellor, Diocese of Helena, MT, May 24, 1990, p. 1.

- decisions on major fund raising efforts, such as annual appeal, or capital fund raising.[40]

4.2.6 Archdiocese of Atlanta

The Archdiocese of Atlanta, Georgia, does not specifically define acts of major importance. Nevertheless, based on their internal structure, they feel that the formailties of consultation which are required by canon 1277 are adhered to through the use of various committees and sub-committees. E. Dillon, moderator of the curia, puts forth his understanding of the phrase "acts of major importance" and some of the difficulties associated with the term in relation to the Archdiocese of Atlanta when he states:

> The difficulty lies in defining 'acts of major importance in light of the economic situation of the diocese.' For example, if that is to include purchase of land for a parish, or approval of a loan for construction, it would mean that the Council and the College of Consultors would have to be in session virtually once a week. The only alternatives would be to delay projects on the one hand and to have excessively long meetings on the other. So, we are establishing a system of sub-committees of the Finance Council, which function with professional staff support. In effect we are trying to fulfill the spirit of the canon.[41]

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[40] Letter from Rev. Msgr. W. F. Malooly, Chancellor, Archdiocese of Baltimore, MD, May 18, 1990, pp. 1-2.

[41] Letter from Rev. E. Dillon, Moderator of the Curia, Archdiocese of Atlanta, GA, May 11, 1990, pp. 1-2.

Dillon notes that a primary difficulty in formulating "acts of major importance" rests in balancing the value gained through input prior to the making of a decision with knowing that a too narrow definition can become cumbersome. In these instances, "acts of major importance" can become an obstacle to good management.[42]

Based on this response it seems that the Archdiocese of Atlanta has incorporated a means of consultation in order to deal with significant matters. This consultation goes beyond the finance council and the college of consultors to include others in a given field. At the same time, the perceptions of Dillon in defining "acts of major importance" suggests that a degree of flexibility is needed in making this determination.

4.2.7 Diocese of Davenport

The final diocese to be considered in this examination of acts of major importance is that of Davenport, Iowa. This diocese attributes to this category a list of specific acts. The vicar general of the diocese notes this when he states:

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[42] Ibid.

> We would consider 'of major importance' the approval of the annual operating budget, the purchase or sale of property, usual leases or contracts (usual being maintenance contracts on computers, for example), review of our investment portfolio and investment policies and procedures. Most of these are covered already in the Code. Our operations are rather routine and matters do not come up too often.[43]

4.2.8 Notable trends

Five notable trends become evident when the responses by these individual dioceses and archdioceses are examined in regards to how they determine acts of major importance.

First, the one consistent trend is that dioceses have not defined "acts of major importance". Some have not defined the term because they are awaiting the decree on canon 1277 from the National Conference of Catholic Bishops in America. Even though it can be noted that the conference of bishops does not determine acts of major importance, it is reasonable to suggest that until a diocese knows what is considered extraordinary, it becomes difficult to determine what is of major importance. Perhaps the second reason for the delay among many dioceses in defining and determining acts of major importance lies in the consequences of such a determination.

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[43] Letter from Rev. Msgr. M. Morrissey, Vicar General, Diocese of Davenport, IA, April 24, 1990, p. 1.

To do so means that the consultation required by the canon is operative for validity, and current diocesan structures may not allow for this to take place efficiently.

Second, dioceses generally look to the diocesan bishop to determine which acts are of major importance. However, most dioceses do not have any objective criterion whereby the bishop makes this determination. For the most part, the diocesan bishop seems to make the determination on a case by case basis.

Third, most dioceses provide structures to ensure that consultation does take place before decisions are made on acts of major importance even though they have not specifically defined these acts. These structures do not always fulfill the specific requirements of seeking counsel from the college of consultors and the finance council, nevertheless, they do adhere to the spirit of the canon.

Fourth, most dioceses link together acts of major importance with a monetary amount. For many, this financial amount provides a general guideline to be followed whereby an act might be considered to be of major importance. In addition, it can be said that many dioceses are less concerned

with "acts" of major importance and more concerned with "expenses" of major importance.

Fifth, most dioceses consider two acts to be of major importance, namely acquisitions and sales of property.

4.2.9 Observations

Two limitations exist in making observations on the determination acts of major importance. First, the 1983 Code provides no definition of the term, nor have canonists developed a concise definition.[44]

Second, the application of the term is always relative to the financial condition of individual dioceses. Nevertheless, observations can be made which assist the diocesan bishop in understanding the nature of acts of major importance. These observations are made through the consideration of two possible methods which a diocesan bishop may want to adopt in determining acts of major importance.

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[44] See F. Testera, "Ecclesiastical Financial Management", p. 503; J. Santos Diez, "La administracion extraordinaria", p. 43; M. López Alarcón, "La administració de los bienes eclesiáticos", pp. 106-107.

4.2.9.1 Criterion of irregular occurrence

Since the 1983 Code provides no definition as to what constitutes an act of major importance one must consider the concept under the 1917 Code. Under the 1917 Code, canonists seldom supplied a definition to the term. However, J. Comyns is noted for defining acts of major importance through two categories.

First of all, he states that acts of major importance are those expenses which are irregular in the occurrence, not necessary for the preservation of property, but useful and add value to the juridic person. The second definition he offers are those acts which are irregular but essential for the preservation of property.[45]

a. Advantages and disadvantages

The definition provided by J. Comyns offers one advantage when it is viewed in relation to the 1917 Code. He links together the concept of an act of major importance with the understanding of administration presented by F. Wernz.[46] All

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[45] See supra, pp. 55-57.

[46] See supra, pp. 8-9.

acts of administration are tied to preservation, betterment, and application of funds for a juridic person.

These definitions of acts of major importance when viewed in terms of the 1983 Code offer two disadvantages which should be considered. First of all, Comyns is generally limiting his understanding of acts of major importance to property. However, the object of an act of major importance may not always be property. Secondly, he defines acts of major importance as irregular acts. It is possible that an act of ordinary administration can take place on an annual basis or in an irregular pattern, but still constitute only ordinary administration.

4.2.9.2 Criterion of short-term impact upon the diocesan Church

A second method to be considered in determining acts of major importance is one built upon the concept of the impact such acts have upon the diocesan Church and the stewardship role of the diocesan bishop. This method holds distinct similarities with that presented in determining acts of extraordinary administration.[47]

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[47] See supra, pp. 207-210.

As a steward, the diocesan bishop has the responsibility of caring for the temporal goods entrusted to him. Part of that act of care lies in seeing there are times when good stewardship is best excercised with the assistance of other skilled individuals. Acts of major importance thus become those which require this assistance through consultation. The criterion for determining these acts is their impact upon the diocese. Acts of major importance could thus be considered as those acts which occur less frequently and have at least a short-term impact on the diocese in light of its financial condition, enough to warrant the consultative participation of the finance council and the college of consultors.

a. Advantages and disadvantages

Three advantages exist in the adoption of this method for determining acts of major importance. First of all, it allows for a broad determination of those acts which have a short-term impact upon the diocese. This means that acts are evaluated not simply in terms of the effect they have upon property, but on the life of the diocesan Church.

The second advantage of this method is that it allows for an emphasis to be placed on the "acts" of major importance in distinction to only considering "expenses" which are of major

importance. Therefore, not all of the listed acts need to be associated with monetary amounts or financial decisions.

Finally, this method allows for the financial condition of the diocese to be considered in the selection of acts which are of major importance.

Even with these advantages, two disadvantages exist in the adoption of this method. First of all, it does not provide a well defined structure whereby acts are determined to be of major importance. As in acts of extraordinary administration, defining the term "short-term impact" is difficult and will be relative to the financial condition of the diocese.

The second disadvantage is that the method cannot be effective without the diocesan bishop understanding his role as a steward. This stewardship role is grounded in caring for the temporal goods of the diocese, but realizing that at times it is only exercised well through the assistance of other individuals. The selection of acts which are made through this point of view will be different than those developed purely from an administrative role.

b. Application

Based on this understanding of acts of major importance which looks to the short-term impact of an act upon the diocesan Church, it can be suggested that three categories of acts could be regarded as acts of major importance. Two of these categories determine acts of major importance in relation to monetary amounts while the third deals exclusively with acts.

The first category includes the following acts of major importance within a determined monetary amount: (1) acquisition of moveable and immovable goods; (2) civil litigation against the diocese; and (3) short-term contracts of debt. The monetary amount which governs these acts should be set somewhere between the limits of ordinary administration and extraordinary administration.

The second category concerns non-cumulative acts above a set amount. This amount need not be the same as in the first category. By providing a category for non-cumulative acts above a fixed amount, acts which are not listed but have a short-term impact, can become acts of major importance.

The final category of acts are those which are not associated with any monetary amount, but have a short-term impact upon the diocese. This third category includes: (1) approval of the annual budget; (2) approval of investment policies for the diocese; (3) approval of building projects; (4) approval of policies regulating opening and closing of salaried positions; (5) approval of policies regulating donations made by the diocese to charitable organizations.

These acts are purposely kept to a minimum so that the requirement of consultation does not become a burden upon the finance council or the college of consultors. However, they constitute acts which have at least a short-term impact upon the diocese and necessitate the involvement of the finance council and the college of consultors.

Conclusion

Two sets of conclusions can be drawn from the application of canon 1277. The first concerns the application of extraordinary administration by the conference of bishops, and the second, the determination of acts of major importance by diocesan bishops in the United States.

Conferences of bishops generally seem to formulate their decrees for determining acts of extraordinary administration by three methods: selecting a monetary amount; listing of acts; or a combination of a monetary amount and acts. The first two methods have limitations since acts which are extraordinary in their nature may not be recognized as such because they either fail to meet a monetary requirement, or are not specifically listed. However, the third method avoids some of these limitations by combining a monetary amount and the listing of acts. Thus acts which are not listed may become extraordinary because of their financial cost.

The greatest difficulty a conference of bishops faces in determining acts of extraordinary administration by any method which incorporates the listing of acts lies is selecting a criterion whereby acts constitute extraordinary administration. Two methods seem plausible for determining such a criterion.

The method proposed by F. Demers allows for the determination of acts of extraordinary administration through the evaluation of their object and mode. Although this method can be effective, it has the major drawback of being directly associated with monetary amounts. Thus, the understanding of acts of extraordinary administration is limited to expenses

- [illegible] to a broader understanding of what these acts will entail.

The second method proposed in this study suggests that the criterion of determination be based on the stewardship role of the diocesan bishop and the long-term impact of such acts. This method finds its basis in the Old Testament concept of stewardship which incorporates the understanding of house. The diocesan bishop, as a steward, is entrusted with the care of the house, which is the diocesan Church. However stewardship is not always exercised alone, but with the assistance of other skilled individuals. Therefore, under this model, the criterion for extraordinary administration, is the long-term impact an act will have upon the diocesan [illegible]. This impact is significant enough to warrant the consent of the college of consultors and the finance council prior to the act being placed by the diocesan bishop. In using this as a method, the conference is not limited to the consideration of extraordinary expenses, but extraordinary administration which is broad in its understanding.

The norm would be applicable to acts of major importance as diocesan bishops in the United States hold similarity to those acts concerning acts of extraordinary administration.

It seems most diocesan bishops in the United States have not precisely defined those acts considered to be of major importance. The reasons for not strictly defining these acts seems to be twofold. First of all, many bishops are awaiting a decree to be issued by the National Conference of Catholic Bishops determining acts of extraordinary administration. Secondly, by determining acts of major importance, the diocesan bishop is obligated, for reasons of validity, to seek the counsel of the college of consultors and the finance council before placing such acts. There seems to be an apprehension in imposing upon oneself this obligation, partly because of the consequences and how such a determination can affect the efficient operation of the diocese, and partly because other structures are in place which afford ample consultation before placing significant acts.

In spite of the fact that many diocesan bishops have been reluctant to define acts of major importance, the value in determining these acts can be seen when it is considered in light of a method which emphasizes the short-term impact such acts have upon the diocesan Church. This method emphasizes the role of the diocesan bishop in caring for the temporal goods entrusted to him. Under this method, those acts considered to be of major importance are those which have at least a short-term impact upon the diocese. In those cases,

as a steward, the diocesan bishop recognizes the need to seek the counsel of the college of consultors and the finance council because of the effect such acts will have upon the diocesan Church. This then becomes the basis whereby acts are listed which constitute acts of major importance in light of the financial condition of a diocese.

The determination of acts of extraordinary administration and major importance in light of a stewardship model is not without drawbacks. To a certain extent, the criterion is imprecise and unclear. However, the imprecise nature of the criterion as well as its lack of clarity primarily exists because this method is built upon stewardship and not exclusively on financial administration. It is only when a more developed understanding and practice of stewardship evolves within the Church that precision and clarity will be gained in determining those acts which impact upon the diocesan Church in such a way that good stewardship demands the participation and assistance of other skilled individuals as noted in canon 1277.

GENERAL CONCLUSION

The purpose of this dissertation has been to present the current interpretation and application of canon 1277 of the 1983 Code. This canon focuses on the role of the diocesan bishop in making decisions concerning the temporal administration of the diocese, specifically the acts of extraordinary administration and those of major importance. The interpretation of this canon is based on a number of canonical and theological concepts.

These canonical and theological concepts were presented by turning to the 1917 Code where canonists provide definitions of ownership, administration, moral and juridic persons, ordinary administration and matters of major importance, etc. To a significant degree these have been incorporated in canon 1277 of the 1983 Code.

The Second Vatican Council and the biblical understanding of "stewardship" were also essential elements considered in the formulation of an interpretation of canon 1277. The Second Vatican Council re-defined the role of the diocesan bishop by recognizing his proper, ordinary and immediate

power. As a vicar of Christ, he therefore assumes the responsibility to care for the diocese he shepherds.

To a large extent, the coetus incorporated both the canonical tradition of the 1917 Code and the doctrinal teachings of the Second Vatican Council in the development of canon 1277. Canon 1277 is formulated around the role of the diocesan bishop as shepherd and steward of the diocese entrusted to his care. As a steward, he places acts which are necessary for the temporal administration of the diocese in conjunction with the finance council and the college of consultors. The conference of bishops determines which acts require the consent of these bodies and are thus extraordinary, and the diocesan bishop determines which acts require the counsel of these bodies and are defined as acts of major importance.

Based on this study, the following conclusions can be made:

First, many of the concepts contained in the 1917 Code regarding the administration of temporal goods are applicable today. Canonists under the 1917 Code provide a workable definition of administration which includes the care, betterment, and application of incomes to the juridic person.

In addition, the presentations by canonists which distinguish between ownership and administration are helpful in developing an understanding of the diocesan bishop's role as a steward of the temporal goods of the diocese in accord with the 1983 Code.

Second, the Second Vatican Council has been highly influential in offering a new understanding of the diocesan bishop's role in the care of the temporal goods of the diocese. The Council refined the role of the diocesan bishop, recognizing his proper, ordinary, and immediate power. Because of this, he truly shepherds the local Church. At the same time, this understanding has offered a renewed consideration of his stewardship role in relation to the temporal goods of the Church based on its biblical understanding.

Third, the stewardship role of the diocesan bishop is not one which is exercised alone, but in conjunction with other individuals or groups. Canon 1277 reflects this as it requires the diocesan bishop to obtain first the consent of the college of consultors and the finance council before placing acts of extraordinary administration. He is also required to seek their counsel prior to placing acts of major importance. These requirements are not meant to diminish his

power, but to offer him a procedure whereby good stewardship takes place in decision-making.

Fourth, the 1983 Code has retained many of the terms used in the 1917 Code regarding acts of administration by the diocesan bishop. Canon 1281, §1 of the 1983 Code has retained the term "ordinary administration" for subordinate administrators. Canon 1277 also retains the term acts of "major importance", but in addition has added the term acts of "extraordinary administration", which is not found in canon 1520, §3 of the 1917 Code.

Fifth, under the previous Code, the criteria used to determine which acts fall within these categories of administration were developed from different canonical and theological models which are no longer fully operative under the present legislation. The 1917 Code presented a model of episcopal leadership based on a theology which emphasized the distinction between the power of orders and jurisdiction and the Church as perfecta societas. At this time, it seems that very little has been done to develop workable criteria to determine which acts are included within these categories under the present theological understanding of the diocesan bishop, his stewardship role, and the Church as communio.

Sixth, conferences of bishops do not employ a consistent method for determining those acts which constitute extraordinary administration. Several methods can easily be noted through the various decrees which have been issued. There is a strong tendency among conferences to determine acts of extraordinary administration on the basis of definitions formulated in light of the 1917 Code as well as the decree issued by the Sacred Congregation for the Propagation of the Faith to the Bishops of Holland in 1856.

Seventh, diocesan bishops in the United States have been reluctant to define which acts, based on the financial condition of their dioceses, constitute acts of major importance. Their apprehension seems to be based on the delay by their own conference in issuing a decree determining acts of extraordinary administration. In addition, many realize that once they determine acts considered to be of major importance, they will be obligated to seek the counsel of the college of consultors and the finance council.

These conclusions lead to the consideration of two possible areas for future study. First, more development is needed in understanding the diocesan bishop's role as a canonical steward. A study linking the administrative aspects of diocesan leadership with those of stewardship could be

beneficial to diocesan bishops in gaining a better understanding as to how they make administrative decisions regarding the temporal affairs of the diocese.

The second area for future consideration concerns developing a more refined criterion by which acts of extraordinary administration are determined by the conference of bishops, as well as acts of major importance as determined by the diocesan bishop. This criterion, however, needs to be developed not simply from an administrative point of view, but from the stewardship role of the diocesan bishop.

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